Chapter - 7

Hindu Law Reform:
The Goal of Uniformity and Gender Justice
Chapter - 7

Hindu Law Reform: The Goal of Uniformity and Gender Justice

In this chapter attempt has been made to trace the legislative history of the Hindu law reforms proposals with the aim of identifying the reasons of those reforms with respect to women’s legal rights and also scrutinising the areas where legal equality has not yet been achieved. For the purpose of studying the legislative process of Hindu law reform, it is necessary to critically analyse the official reports, expert’s committee reports and Parliamentary Debates. Many people were involved in this process who, strictly speaking, were not part of the government or the state but they were working in close cooperation with the government, they were part of the state. They were influential people who framed the reform proposals which form the basis for further debate and state action.

A detailed analysis of the process of Hindu law reforms reveals the reasons that were put forward to justify the denial of equal rights to women. If we go through the statements made by state functionaries about the basis of their authority then discover the perceptions of these political leaders about the relationship between the state and religion. The behaviour of the state shows that the state wanted to give women more legal rights, it was never
the intention to give complete legal equality to women. The state meant to improve the position of women as a component of its plan of modernisation, but it did not intend to upset or alter, in any substantial manner, the power structure of the family. The state assumed the authority to modify certain rules of Hindu law. The following vexed questions have been discussed in this chapter -

1. How consistently did the state pursue its professed aims and what kind of opposition was generated to them?
2. How did the state respond to opposition?
3. What was the significance (implied or explicit) of the justifications of state action for the rights given to women?

**A. Hindu Law Reforms**

Under the Government of India Act, 1935 the Indians got an opportunity to have a representative Legislature. In 1937, G.V. Deshmukh, introduced a bill in the Federal Legislative Assembly on the Hindu women’s right to property. When enacted, this bill purported to give the Hindu widow and widowed daughter’s-in-law in the property of deceased male. However, daughter’s were excluded from its purview and due to this certain difficulties arose. Even after the Act was amended with retrospective effect in 1938, there were still several separate bills introduced in the federal Legislative Assembly to amend the Act. Mostly private bills were rejected.

A Hindu Law Committee was appointed to suggest the modifications. The first Hindu Law Committee presented its
Hindu Law Reform: The Goal of Uniformity and Gender Justice

report in 1941. Although, it was asked to recommend changes in the Hindu women’s Right to Property Act of 1937 and 1938, it presented a report with very different recommendation but not accepted. Because the Hindu Law Committee suggested that ‘The better plan would be to leave the Acts to their operation for the present and enact a Comprehensive Law’. The first Hindu Law Committee prepared two bills, one dealing with succession and other with marriage. These were referred to separate joint committees. The joint committee on the succession bill suggested changes and recommended that the bill be recirculated while the joint committee on the marriage bill did not present a report.

Upon the recommendation of the joint committee on succession bill the Hindu Law Committee was reappointed by the Government of India by a resolution passed on 20.1.1944. The Committee, with the dissent presented a Hindu Code Bill along with its report in 1947. The Hindu Code Bill was divided into five parts, dealing with marriage and divorce, intestate succession, minority and guardianship, maintenance and adoption and the Mitakshara joint family. In pursuance of the report the Hindu Code Bill was introduced in the Federal Legislative Assembly on 11 April, 1947.

The partition of India on 15th August 1947 polarised the population on the basis of religious affiliations on both the sides. Even so, the political leaders of the newly independent state of
India decided to go ahead with the process of reform of Hindu law. The law ministry rearranged the Hindu Code Bill and this draft was referred by the government to a ‘Select Committee’ of the Constituent Assembly. The ‘Select Committee’ presented its report containing the revised Hindu Code Bill on 12 August 1948. This Hindu Code Bill was inconclusively debated by the Provincial Parliament and lapsed when that Parliament was dissolved in 1951. When the first elected Parliament assumed office in 1952 the government decided to split the Hindu Code Bill and introduce it as several separate bills. The Special Marriage Bill, The Hindu Marriage Bill, The Hindu Succession Bill, The Hindu Minority and Guardianship Bill and The Hindu Maintenance and Adoption Bill were all passed by 1956.5

It is interesting to note that the codification and reform of Hindu Law was not taken up in response to Public demand; rather the state had initiated the reforms in Hindu Personal Law, inspite of the opposition by the orthodox Hindu leaders assumed the responsibility for reform on its own initiative on different occasions the state justified its actions and explained the basis of its authority to reform Personal Laws in different ways.

B. Demand for Change

The demand of the reform of Hindu Law was made by a few social reformers and they started this work but without a systematic plan of action. These were certain members of the
Federal Legislative Assembly who were interested in changes to some aspects of Hindu Law and when gradually the control of the government passed into the Indian hands these Indian political leaders. Without bothering to the stiff opposition, carried their work of reforming Hindu Law to bring about social change with determination.

C. The First Hindu Law Committee

The first Hindu Law Committee which was appointed by the government enlarged its jurisdiction and went much beyond the terms of the reference. The first Hindu Law Committee based its opinion which permits the codification of Hindu Personal Law. In its report it relied on the authority of some of the scholars who had expressed their ideas in treatises and supported the move by writing to eminent people to elicit their views about codification. The questionnaire was distributed to judges, distinguished lawyers and citizens, members of the Central Legislature, High Court bar libraries, heads of religious institutions, women’s associations, pandit’s associations and others. Copies of questionnaire were published in the papers and some women associations had it translated into the vernacular. The report of the first Hindu law Committee cited the favourable public opinion where it was available but it did not follow the policy that a proposal would not be recommended if the majority of public opinion was opposed to such a change. The government accepted its report and the bill prepared by the First Hindu Law Committee because
The report had a favourable reception. However, it was keen to dispel the objection that it was rushing with the reform of Hindu Law when political conditions were so extraordinarily disturbed. The law member of the Central Government, Sultan Ahmad refuted the charge that the government was hurrying the Assembly and said that the government was simply giving effect to the desire of some Hindu legislators, who had introduced various bills to reform certain areas of Hindu Law. Sultan Ahmad further claimed the support for codification from the fact that in the course of discussing the motion to refer the succession bill to the joint committee, the majority of the representatives (of Hindus) had shown themselves to be in favour of reform. Twelve elected assembly members made speeches on Part I of the Hindu Code. Sultan Ahmad described eight in favour, three against and one Sikh member as undecided about reforming and codifying Hindu Law.

The law member also argued that a number of bills to amend the Hindu Women’s Right to Property Act, 1937 and 1938, had made the rights of women so uncertain that it was important to enact part one of the Hindu Code Bill. The Hindu Law Committee was reconstituted by the government to complete the task of preparing Hindu Code Bill and a second Hindu Law Committee was constituted. A draft was prepared for the Hindu Code and this draft was prepared for the Hindu Code and this draft was sent
to few lawyers, of whom nine are reported to have sent their replies to Hindu Law Committee.9

The Committee, to gather the public opinion, toured the country. It was met with black flag protest demonstrations and the women constituted a substantial number of demonstrators. A substantial number of people who came before it to give evidence opposed the suggested changes. All these factors forced the committee to put forward a strong justification for continuing to advocate changes in Hindu Law. The Committee classified the public opinion into three categories. According to this classification, the first category comprised those people who where extremely orthodox hence opposed to the entire idea of reform and codification. The second category comprised of those people who were ultra-progressive and who wanted one uniform territorial law for the entire population. However, the bulk of the Hindu community occupied a middle position. Archana Parashar observed:

"By this observation the committee probably meant that the bulk of Hindus were neither against nor in favour of reforms and, therefore, the committee could recommend that the Legislature proceed with the reforms. But the conclusion about the attitude of the bulk of Hindus was not based on concrete evidence, as the members of the second Hindu Law Committee
had no means of determining the opinions of most Hindus. With regard to the opinions tendered to the committee, it decided that the 'quality' of opinion which favoured codification decidedly outweighed that which was opposed to it. In a similar manner the opposition from women was dismissed with the observation that:

"(Those) women opposing seemed to us to be merely reflecting the views of their menfolk."

According to the Hindu Law Committee, the reason for introducing the changes was that the existing Hindu Law had assumed a harshness which its authors never intended and the real question to be considered was not how many or how few demanded change but whether the proposals themselves were in principle correct and worthy of acceptance. Thus, the second Hindu Law Committee was of the view that the Legislature had the right to decide what changes were needed in the law and when. Ambedkar, the first Law Minister of independent India, justified the Hindu Code Bill as necessary to save the Hindu system from decay and stagnation. He exorted his fellow Legislators that if they wanted to maintain the Hindu system, Hindu culture, Hindu society, they should not hesitate to repair where repair was necessary. Obviously it was assumed that the state had the right or even the duty to determine that reforms were needed. The government rejected the objection that public opinion should also
be taken into consideration on the ground that the Parliament would not be able to function if it had to subject everytime to the 'Vote of the ignorant people outside who do not know the elementary facts of law making'. As far as the role of Congress party in reforming the Hindu Personal Law is concerned the Congress members, in the beginning had not played any decisive role in the debate on Hindu Law reform. The reason for not taking part in the debate that the Congress Party had boycotted the Legislative Assembly when the Hindu Law reform was being debated. The manifestos of the Congress party in the pre-independence period also did not make any specific reference to the reform of Hindu Law.

However, the Congress dominated Constituent Assembly made it very clear that Hindu Law reform was one of its top priority. Dr. Ambedkar and Pandit Nehru – Law Minister and the Prime Minister respectively, were strong proponents of Hindu Law reform at this stage. But the task of the government was made very difficult due to the division amongst the members of the Congress Party itself. At one stage Dr. Rajendra Prasad, the then President of India threatened to refuse to give presidential assent to the Hindu Code Bill. Eventually, the government decided to abandon the Hindu Code Bill for the time being, and as a consequence, Ambedkar resigned from the government. Pandit Nehru declared the first general election to take the mandate for reforming Hindu Code Bill. He was of the view that after the
general election the newly elected government would be able to counter the objection that the Legislature did not have a public mandate for the enactment of Hindu Code Bill.

In the first elected Parliament the government introduced the component Bills of the Hindu Code individually and with many modifications. As the Constitution had been adopted by this stage, the government justified each bill as an effort to make Hindu Law conform to the provisions of the constitution. The Special Marriage Bill had formerly been a part of the Hindu Marriage and Divorce bill but was dissociated from Hindu Law at this stage. The Law Minister explained that the underlying purpose of this bill was that religious differences should not prevent two people from marrying and unlike the Special Marriage Act, 1872, their marriage should not affect their religious beliefs. This observation indicates clearly that the government had decided to update the Special Marriage Act, and was acting entirely on its own initiative.

The Hindu Marriage and Divorce bill was important in the government's view not only for its specific provisions but, even more importantly, because it represented an essential aspect of national development, namely social progress. The other major reason for introducing this bill was to reiterate that society has changed completely and Hindu Law needed to be changed in order to continued to be relevant. It was also pointed out that the individual matters of faith and religion could not be allowed to
hold up social progress. It was also pointed out that the Hindu Law was scattered in many diverse judicial decisions and different schools of Hindu Law have made it very complicated. That’s why the codification of Hindu Law was of utmost importance.

The Hindu Minority and Guardianship bill was introduced with the explanation that it was intended to preserve some special features of guardianship amongst Hindus. And because, at one time or another, all branches of Hindu Law had to be codified. The Hindu adoption and maintenance bill was introduced as the remaining part of the Hindu Code Bill. The justification given was ‘bringing the law into conformity with the Constitution’.

While introducing the Hindu Succession bill, the Law Minister said that by passing the Hindu Marriage Act, the House had not only accepted the principle and necessity of having one Uniform Code for the Hindus, but also the responsibility of passing other parts of the Code. In addition to the arguments for the Hindu Marriage Bill, it was argued that this measure would give economic equality to women. The Law Minister stated that an examination of the opinion submitted to the state government revealed that except for the extreme orthodox view which is opposed to any reform being made ... enlightened opinion is in favour of the general principles underlying this bill. He also noted that all women members of this House and all the enlightened women outside had supported the bill. The argument that Hindu Women, if consulted, would have opposed the measure
was forcefully countered by the state. The Law Minister answered that the matter of giving property right to women could not be decided by consulting women. He said that knowing the women as they are, it would amount to taking advantage of their illiteracy and of their economic dependence to use such an argument; by the same logic when ‘sati abolition’ and ‘widow remarriage laws’ were to be enacted, if women had been asked their opinion about widow remarriage and sati they would not have favoured them, yet that would not mean that these laws were not needed.¹⁹

Thus the state took upon itself the responsibility of modifying those features of Hindu Law which, according to its view, needed to be changed. Public opinion was considered to be in favour of change, in view of the Congress victory in the general elections. It was widely believed that because the Congress won the first general elections it had acquired the mandate of the population for Hindu Law reform. However, the Congress election manifesto did not mention reform of Hindu Law as one of its point. Nehru was forced to address the issue when the opponents of reform fielded against him a sanyasi (a renunciate) who symbolically represented orthodox Hinduism.²⁰ The views of supposed beneficiaries of the reforms – women and untouchables were not considered important. The state had assumed the role of social reformer but paternalism in the performance of that role was also taken for granted. In this the state was continuing the tradition of pre-independence governments where the task of the state (and state

[ 199 ]
laws) was to ‘improve’ the life’s circumstances of the population. However, the British administrators had, for a long time, professedly avoided reforming religious Personal Laws because state interference in religious matters was considered inappropriate and also because that might impede the natural development of indigenous people. Instead the nationalist government based its actions on the need to modernise the nation. The range of arguments used by the state to recommend and make reforms, on its own initiative and in the face of stiff opposition, clearly establishes the importance which the state attached to Hindu Law reform. Parallel to the state’s effort to establish the need for reform were the arguments advanced to claim the authority to alter religious laws.

D. Source of Authority for Change

The first Hindu Law Committee report was instrumental in giving the idea of codifying the entire Hindu Personal Law which would give women legal equality. In pursuance of this that men and women should have equal human rights, the committee prepared two bills dealing with intestate succession and marriage. The decision to codify the entire Hindu Personal Law was in marked contrast from the policy followed by the Britishers in the last two centuries that state would least interfere in religious Personal laws of different communities. We find the changing attitude of the First Hindu Law Committee, the Second Hindu Law Committee report and the attitude of the government changing
from time to time. *For example,* the First Hindu Law Committee report introduced the idea of codification of the whole of Hindu Law, then demonstrated the capacity of the Legislature to do the job, and then went on explain the aims of codification. The Committee suggested that it would not improve a lot of women folk if isolated reforms are introduced in Hindu Law rather it would be feasible to enact a complete code replacing the existing Hindu Personal Law. The authority to do so was derived indirectly, by citing examples of ancient law givers and commentators. It was mentioned in the report that in the old age the task of codifying the law from time to time was performed by successive Law givers and Commentators. These authors implied the process of judicious selection and exposition of the texts in order to mould the orders of the law to the needs of the time, while appearing to make no changes. The first Hindu Law Committee likened the Legislature to the ancient *smrtikaras* and commentators and even went to the extent of suggesting that ‘The Legislature must, like our law makers of old, deal with the subject as a whole, weaving each part in its proper relation to other parts, and bringing to discharge of this task comprehensive scholarship as well as zeal.24

After justifying that the modern Legislature was the successors to the commentators the First Hindu Law Committee suggested modifications of the following topics and gave justification for the changes:
1. Under pre-reform Hindu Law provisions a widow was not entitled to own property as absolute owner except some specified kinds of property classified as *stridhana*. Her interest in the property left by her husband extended only to a right to enjoy the property without the right to alienate it, except in some specified cases. This was known as the widow’s limited estate. The committee recommended the abolition of the limited estate of the Hindu widow on the ground that it was created by a decision of the Privy Council in *Kasinath Bisack vs. Hurrosundery Dosse*. Although there were scholarly opinions both for and against the proposition that the ‘*smriti*’ authorise the limited estate for Hindu women, the First Hindu Law Committee report supported the abolition of the doctrine on the basis that ‘*smriti*’ did not unequivocally authorize such limitation.

2. The changes in the case of sacramental marriage was explained as an effort to ‘*restore the ancient law at its best*’. The recommendation of the committee to abolish polygamy was based on the explanation that it was not a prevalent practise and it was not suitable for modern day women. It was also expected from the committee to abolish *Sagotra* marriage which worked harshly against women whose marriages were declared invalid under them but the committee did not recommend abolishing those rules but suggested the application of the *factum valet* rule, meaning that once a
marriage has been celebrated it would not be declared void for contravening the sagotra requirement.

The Legislative Assembly Debates reveal that the government justified its actions as in consonance with the ‘smritis’. Sultan Ahmad the law member claimed that the government was simply following the directions indicated by the traditional law givers. He argued that the traditional Hindu system may not have given extensive property right to women but at the same time most ‘smritis’ did not intentionally slight women or deprive them of their right to succession. Renuka Ray a woman member of Legislative Assembly went further and claimed that in ancient times Hindu women were entitled to property rights and that they had lost these because of interpretations given to the rules by later jurists and under the British judicial system.²⁷

From the above it is clear that the Hindu Law Committees’ main argument was that they reflected the true rules of the smritis. The joint committees report modified some aspect of the Succession bill prepared by the first Hindu Law Committee. In its report the joint Committee addressed the matter of the alleged incapacity of women as a class capable of inheriting and the impropriety of granting women an absolute estate. The committee mentioned with approval the ‘sutrakaras’ and ‘smritikaras’ (The authors) who supported the right of women to hold property and their right to have a share in inheritance from the property of their husbands. Thus the joint committee established the legitimacy of
Hindu Law Reform: The Goal of Uniformity and Gender Justice

its proposals to make females co-heirs on the basis that Vedic literature did not support the theory of total exclusion of women from property rights. Similarly, with regard to the theory of limited ownership it examined the texts and relied on the authority of Golapchand Sarkar Shastri to decide that the text had been misread by the courts and wrong conclusions reached. In doing so the joint committee unambiguously reiterated the supremacy of the Vedic texts and the task of the legislators was seen to restate the correct law as embodied in the Vedic text. It made no specific reference to the previous practice of the government to refrain from interfering with religious personal laws.

The whole exercise was vigorously opposed by orthodox Hindus on the following grounds.

1. They questioned the need and legitimacy of the codification itself.

2. Codification is necessary where the law is unsettled but since various schools of Hindu Law possess written as well as the fact that they have been explained by the highest judicial tribunals, there was no need to codify Hindu Law.

3. The third argument put forward by the opponents of the reform was that no other country had put the whole of the Personal law of any community in a court and it was not right to use legislation to effect fundamental changes in the structure of law.
4. In any case codification would make Hindu law a command of the sovereign and would this result in stopping its natural growth.

The second Hindu Law Committee tried to answer all the objections raised against the reformation of Hindu law and straight away based its authority on the provisions of Government of India Act, 1935. It established the authority to legislate upon matters mentioned in the Hindu Code Bill on the ground that matters like succession, marriage and divorce, infants and minors and adoptions were specifically included in the concurrent Legislative List. The next argument in defence of reforming Hindu Personal Law was that in the past the Hindu law of succession and marriage had already been modified by the central legislature and their validity had not been questioned by anyone so far. In claiming such sweeping authority for the legislature under the Government of India Act of 1935, the second Hindu Law Committee showed a marked change from the stand taken by the first Hindu Law Committee and by the joint committee but the second Hindu Law Committee also assessed that the draft code which it prepared reflected the spirit of ancient law much better than the law as now administered.\(^\text{30}\)

We find no general discussion in the report of the ‘select committee’ of the Constituent Assembly about the basis of the authority of the Legislature but the justifications given for individual modifications provide us the information that the state’s
interest was also the basis of the change were not even making an effort to find justification for a proposed change within the traditional Hindu system and that the basis of the rule was stated to be the interests of the state.

While introducing this report into the Constituent Assembly Ambedkar explained the main changes in corporated by the 'select committee'. Changes in Marriage law were put forward as enabling measures and an assurance was given that there was 'no violation of shastra and no violation of smriti at all', Monogamy for all Hindus was recommended on the grounds that under the Dharamshastras the Hindu husband did not always have an unfettered, unqualified right to polygamy. Authority of precedent was claimed as well as prior legislation in some states had already made the Hindu marriage a monogamous union. More importantly the modification in marriage law was justified on the ground that in the existing law, custom had been allowed to trample upon the text of shastras which were all in favour of the right sorts of marital relations. This type of reasoning suggest that since the state was upholding the superiority of the true principles embodied in the shastras, its reform proposal would be directed towards making the law conform to those ideals.

India gained independence on August 15, 1947 and the constitution was adopted on 26th November 1949 and enacted on 26th January 1950. The constituent Assembly was redesignated as Provisional Parliament. This provisional Parliament was dissolved
in 1951 and the first elected Parliament met in 1952. During this period the provisional Parliament could only discuss the applicability of Hindu Code bill and the relationship between the Constitution and religious law. It was again argued that the Constitution does not permit the discrimination between people on religious grounds. Hence, the government has no power to reform Hindu Personal law. One member said that enactment of such a law for only one community would amount to a secular state encouraging communalism.\textsuperscript{34} The government defended its action through the Law Minister who stated that,

``My ideals are drawn from the Constitution. We are bound to examine every social institution that exists in the country and see whether it satisfies the principles laid down in the Constitution.''

The government emphasized that the Constitution permitted it to treat different communities differently without attracting the charge of practising discrimination. He further explained that the reason that there was no reform of Muslim law or that of other religious communities was that these communities had not been consulted and it would be unfair to impose reforms on them without consultation.\textsuperscript{36} The Law minister also declared that the state had power to interfere in the personal law of any community and he defended his statement on the basis of the Constitution of India.
Thus, the state made it very clear that the religious laws were not beyond the control of the Constitution and all religious Personal laws would eventually conform to the Constitution. The state on this basis claimed that the Constitution demanded that all laws be in conformity with its principles hence it was imperative to remove all the defects of Hindu Personal Law and make it in conformity with the Constitution.

Most of the reform proposals were explained as bringing Hindu Law into conformity with the Constitution. During the discussion on the Hindu marriage bill the Law minister observed:

"Why is it necessary to go to the length of finding out what was stated in certain smritis 2000 years ago? The ancient law as it prevailed several centuries back is not in existence and in no case can it be resurrected."

It does not mean that the state projected itself as acting against the scriptural Hindu law. State lost no opportunity to defend its actions as in conformity with the Hindu scriptural texts. Many proposals were either claimed to be supported by the ancient smritis or to embody the 'correct' version of the smritis rules. For example, the proposal where by the daughter was introduced as a simultaneous heir to the property of the Hindu intestate was explained as neither contravening contemporary law nor what was done in the past. The government even exhorted
the modern day ‘shastris’ to be true to their tradition and support the measures which were designed to ‘restore to women the rights which they had once enjoyed under the then prevailing shastras’.

While introducing the Hindu Marriage Bill in the Lok Sabha, it was mentioned that the real progress of the country could not only be political or economic but the social progress was also important. The Constitution was aimed at achieving social and economic justice and this bill was designed to give social equality to Hindu women in one area. It was explained that since every aspect of the condition of Indian women could not be improved at once, a beginning was being made in the area of marriage (The criticism that without first ensuring economic rights granting better marriage and divorce right would not really change the position of women was rejected by the government was absurd.

In the Lok Sabha, the Hindu Succession Bill was also projected as a measure concerned with questions of social emancipation and progress. It was argued that a society cannot progress if half part of it is reduced to the position of bond slaves and, although, reform of succession law may not achieve total economic emancipation it was of substantial consequence. Thus, the need for social progress provided the state with the authority to change the religious law which, in any case, was not accepted as the embodiment of religion.
The progress of Hindu Law reform proposals through various stages shows a gradual change in the basis of authority which the state claimed in order to reform the law. The first Hindu Law Committee claimed to be working in this the Hindu religious system but by the time several Hindu Law Acts were passed, the state was unambiguously asserting its right to decide which rule was to be modified and in what manner.

The difference in the position of the government of 1941 and the democratically elected national government of 1952 was that the later did not even bother to look to the religious text for specific support. Instead it sought to legitimise its actions primarily by reference to social progress criteria and, in the final analysis, the religious sanctity of any rule was not a bar to the authority of the state to modify it. This change in stand in turn indicated that the state had assumed the role of social reformer and it also indicated that it viewed legal reform as the appropriate technology for bringing about social change. In view of the fact that the state showed a strong persistence in reforming Hindu law it implied that law reform was the appropriate means, or at least one of the appropriate means, for achieving sex-equality and uniformity which were the two main professed aims of Hindu law reform were expected to result in, or even assist in, social transformation can be gathered from a close analysis of the substance of the reform proposals.43
E. Applicability of Reformed Hindu Law

One of the main goals of Hindu law reform was to introduce uniformity. This aim may primarily have been designed to lessen the complexities of the Hindu law but one of its obvious effect was to enlarge the area covered by the reformed law. To achieve the first objective the state also tried to achieve the second objective i.e. to enlarge the ambit of reformed Hindu Law. In the following section the applicability of the reformed Hindu law and the uniformity in the reformed Hindu Law shall be discussed one by one.

(i) Who is a Hindu?

The main task of the first Hindu Law Committee was to cover as broad an area as possible under the Hindu Code and it did not try to define the term ‘Hindu’ or specifying the categories of people which were to be governed by Hindu law. The bill on law marriage, in Section 8, mentioned the requisites for a civil marriage : that a civil marriage can be contracted under this Act by any person professing the Hindu, Buddhist, Sikh or Jain religion. In other words this was an attempt to say that the Buddhists, Sikhs and Jains are all ‘Hindu’. The second Hindu Law Committee enlarged the definition of ‘Hindu’ and made it clear that the Hindu Code Bill will be applicable to all persons professing the Hindu religion in any of its forms or developments, including Virasaivas or lingayats and members of the Brahmo, the Prasthana and Arya Samaj. It was also to be applied on
persons professing the Buddhists, Jain or Sikh religion. Then the
next move was to give the definition of Hindu a negative meaning
rather than a positive meaning. The next sub section made it
explicit that the Hindu Code Bill would cover any person who was
not a Muslim, Christian, Parsi or Jew by religion. The illustration
attached to the section made it clear that the Buddhists, Jains or
Sikhs have merely deviated from the orthodox practises of Hindu
religion but have not embraced the Muslim, Christian, Zorotrian
or Jewish religion. This move was opposed by certain sections of
the society, for example, Virasaivas' demand to be treated on the
same footing as the Sikhs and Jains was accepted with the
explanation that 'in view of strong sentiments felt by Virasaivas
on this matter, it is desirable to meet their wishes to the largest
extent possible.' The protest of the Buddhist that they did not
wish to be governed by Hindu Law was not accepted. Similarly,
the contentions of the Jains that there should be separate Code of
Law was also rejected that the differences between the Hindus and
the Jains were not fundamental in religion and they were the part
of the Hindu religion. From the above it is clear that the Hindu
law reformers wanted to enlarged the definition of 'Hindu' and the
aim of the second Hindu Law Committee was to cover as many
people as possible under the Hindu Code Bill.

To further consolidate the definition of Hindu the word
'professed' was removed from the definition of the word 'Hindu'
as suggested by the second Hindu Law Committee. Dr. Ambedkar
explained in the Constituent Assembly that the second Hindu Law Committee had defined a Hindu who ‘professed’ the Hindu religion, but that the ‘Select Committee’ had removed ‘professed’. He further explained that this was done in order to prevent people from escaping the application of the Hindu Code Bill on the excuse that they did not ‘profess’ the Hindu religion. The intention of the state was that the Hindu Code Bill should cover every person who belongs to the Hindu faith but who may not necessarily be an active follower of the same. In the Lok Sabha, during the debate on the Hindu Code Bill the government tried to dissociate the definition from its religion connotations and sought to explain that ‘Hindu’ denotes a particular religion. The Law Minister said that the word ‘Hindu’ did not denote any particular religion or any form of worship or any particular community. Therefore, it should be a mistake to equate Hinduism with religion, instead it should be called a culture – a synthesis of all the varied beliefs, customs and practises of different people.

From the above it is clear that the state’s intention was to enlarge the definition of the word ‘Hindu’ although, the government sometimes justified it on the basis of religion and sometimes on the basis of culture. The state on the one hand wanted to cover as many people as possible in the term ‘Hindu’ and on the other hand also wanted to be secular and this is evident from the final definition of the word ‘Hindu’.
(ii) Uniformity

The next move of the state was to achieve a high degree of uniformity in Hindu Law. Sometimes the reform proposals were offered in order to replace the simultaneous existence of various schools of law with a single law. Sometimes the proposals replaced the provisions of one school by another school and sometimes introduced novel provisions which were untraceable in any existing school of Hindu Law. The next device to introduce uniformity was to curtail the scope of custom by statutory Hindu Law. The first Hindu Law Committee did not see the existence of various schools as an obstacle to codification. It only supported the codification of entire Hindu Personal Law. It recommended that before making fundamental changes it was necessary to survey the whole field and enact a code for the entirely. If however, that was not possible then atleast those branches which would be affected by the contemplated legislation should be codified. They repeated the famous statement made by Macaulay that the aim of codification should be uniformity, where possible and divergence, where inevitable.

When the Hindu Code Bill was debated in the provincial Parliament, objections were raised that only a handful of Brahmins, kshatriyas and vaishyas were governed by Manu’s laws while the rest of the community was not; therefore, the repeal of all ‘customs’ would result in hardship to those who were governed by their own customs, furthermore, they constituted
almost eighty percent of the community.\textsuperscript{50} It was also pointed out that it would be unwise to destroy the traditions of the greater majority of the community especially when the did not conflict with any law\textsuperscript{51} and when the people governed by the customs had not demanded change.\textsuperscript{52} These objections were rejected by the government on the following grounds.

1. Any one who press that custom should override this particular Code would have to prove that custom was more progressive than the provisions of the Code.\textsuperscript{53}

2. The power to exempt any custom from the purview of Hindu Code Bill was possessed only by the Parliament and the Parliament has power to make exceptions in favour of customs.

3. To allow customs to continue to operate along with enacted laws would result in an erosion of the power of Parliament.\textsuperscript{54}

4. The state law was more progressive in nature. A demand that Hindu Code bill be made optional was turned down on the ground that an optional Code would not be of much use to women as they would not be able to exercise this option provided in the legislation.\textsuperscript{55} Yet the same government disallowed the application of the Malabar group of laws even though women under those laws had more rights than under the proposed Hindu Code Bill.\textsuperscript{55} Significantly, the result of the decision in both cases was to give the ‘uniform state
code procedure over other laws, although the first measure was justified as protecting the interest of the women while in the second the disadvantage to the women was completely ignored. Obviously the objective of better rights for women was pursued less consistently than the objective of a Uniform Code.\(^5\)

Upon the demand of certain states that the Hindu Code Bill should not be applied to them the Ambedkar emphasized that he would never agree to exempt any province from the operation of this law.

"Let there be no doubt about it at all that the Hindu Code shall be a Uniform Code throughout India. Either I will have this bill in that form or not have it at all."\(^5\)

The legal journals carried articles both supporting and condemning the idea that a Uniform law would create a unified nation. Whether the Uniform Law applicable to all Hindus would divide the nation or would create a unified nation became an issue of heated debate in the press and legal journals. The opponents of the Hindu Code Bill were of the view that the unity of the country could only be forged by a Uniform Civil Code for the entire population and not by a code for Hindus only. Objections were also raised that Hindu Law reform should be the concern only of Hindus. Non Hindus should have no say in that matter and thus
the non-Hindu legislators should not participate in the reform process.

After the election the Hindu Code bill was more openly projected as a means to unify the nation but the proposals for achieving uniformity were less far reaching than at the previous stage. The government explained that the Hindu law reform was being brought forward with a certain specific ideology which included the ‘the aim to bring together what are termed Hindus’\(^5\). It also said that the former foreign government could allow diverse schools of law to operate simultaneously as it was not interested in consolidating the society, but a national government could not ignore its legislative duties.\(^6\)

**Summary**

Thus, it becomes obvious that under Hindu Law Reform bill the aim of Uniformity of law was consistently proclaimed but only partially achieved. Selective concern only for some customs or institutions was not explainable except as a compromise in the face of stiff opposition. For example, the Hindu adoption and maintenance bill, when originally introduced in the Lok Sabha, did not contain any exceptions. In the later stages the government made a compromise and allowed the continuance of customs which permitted adoptions over the specified age and even of married persons.\(^6\) However, the government itself was not making concerted efforts to achieve uniformity. In many instances the
government retracted from the pre election Hindu Code Bill proposals and incorporated various exceptions to the rules with the result that many customs and institutions of traditional Hindu law continued in operation. But when the Joint Committee or the Rajya Sabha reduced the scope of these exceptions, the government supported the changed proposals and even managed to have them enacted. The foremost example of this was the initial exemption for joint family property governed by Mitakshara law from the perview of the Hindu Succession Bill. Understandibly the government was wary of generating the kind of opposition that had compelled it to abandon the Hindu Code bill in 1951. At the same time, however, it is difficult to accept that at the time of first introducing the bill the government was not sure of its capacity to carry through some of the reform measures but succeeded in actually enacting them into law after these proposals had been altered and made more radical by the Joint Committee or by the Rajya Sabha.⁶²
References

1. The reasons for doing so is that a study of the legislative process involves more than just a study of parliamentary debates. Normally the government has the option to either introduce an official bill or appoint an expert committee to frame the bill. The bill when introduced into Parliament can either be debated or referred to parliamentary select or joint committees. After that the bill is debated and passed in the two houses, only than it is sent to the president for his assent.

2. First Hindu Law Committee report, 1941, p. 17.

3. Legislative Assembly Debates, ii, 1943, p. 1631; LAD, iii, 1944, p. 1908.

4. In Hindu Law two distinct types of joint families are the mitakshara joint family and the Dayabhaga joint family. Mitakshara joint family is based upon the mitakshara coparcenary which consists of a male Hindu and his three male descendants. The members of a coparcenary cannot be removed more than four degrees from the last holder of the property. All coparceners hold the property jointly and their interest fluctuates with deaths and births. The son takes an interest in the joint property at birth. On the death of a coparcener his share devolves on other coparceners by survivorship. No female can be a coparcener, although wives and unmarried daughters of coparceners can be members of the mitakshara joint family which is a broader body than the coparcenory. In the Dayabhaga school, the father holds the property in his individual capacity his sons acquire an interest in this property on his death. The sons take a defined share each but have a unity of possession and thus it is on his death that a coparcenary comes into existence. The interest in property devolves by succession and not by survivorship. Significantly females can be coparceners under Dayabhaga. (See Paras Diwan, pp. 248-56, 281-83 (1988)).

6. First Hindu Law Committee Report 1941, p. 3; See also Legislative Assembly Debates, II, 1943, p. 1409.


14. Lok Sabha Debates, 19.v.55, Cols 7804-08.

15. Nehru, Lok Sabha Debates, 19.v.55, Col 7955.


17. Pataskar, Lok Sabha Debates, 5.v.55, Col 8022.

18. *Id.*, Col 8012.


22. *Supra note 5* at 89

23. First Hindu Law Committee Report, 1941, p. 11.

24. *Id.* at 12.
25. 1826, IV, Indian Reports, p. 97, cf.

In this case there was a difference of opinion amongst the Pandits about the correct legal position. The courts' Pandits were of the view that if the widow alienated property without legal necessity and without the consent of the reversionary heirs the alienation would be invalid. Four other Pandits held that in such a case the widow would incur moral blame but the alienation would be valid nevertheless.

26. All Hindus who trace their descent in the male line from the same ancient sage have the same gotra and are called sagotra.

27. Sultan Ahmad, Legislative Assembly Debates, II, 1943, pp. 1411-12; Renuka Ray, Id., pp. 1422-23.

28. Supra note 5 at 93.


30. Supra note 5 at 93.


32. Id. at 832-35.

33. Supra note 5 at 95-96.

34. Vidya Vachaspati, Parliamentary Debates, 5.v.51, Col. 2387.


37. Pataskar, Lok Sabha Debates, 26.iv.55, Col 6485.

38. Lok Sabha Debates, 5.v.55, Col 8015; See also Pataskar, Lok Sabha Debates, 9.xii.54, Cols. 2350-51. Where he claimed that the house had competence to enact the law of minority and guardianship on the authority of Manu according to whom Hindu Law vested the guardianship of the minor in the sovereign, the state.


40. Nehru, Lok Sabha Debates, 5.v.55, Col 7964.
41. Sadhan Gupta, Lok Sabha Debates, 5.V.55, Cols 8053-56.
42. Supra note 5 at 99.
43. Id. at 100-101.
44. Second Hindu Law Committee Report, 1947, p. 36.
45. Id. at 36.
47. Pataskar, Lok Sabha Debates, 5.v.55, Col 6959.
49. See Stokes W., The Anglo-Indian Codes, p. 10 (1887)
51. T.N. Singh, Id., Col 3127.
52. Ch. Ranbeer Singh, Id., Col 3144.
53. Ambedkar, Id., Col 2993.
54. Ambedkar, Id., Col 3183 ff.
55. Ambedkar, Id., Col 2948.
56. See the report of the Select Committee on Hindu Code, 1948, p. 1.
57. Supra note 5 at 107.
59. Pataskar, Lok Sabha Debates, 4.v.55, Cols 7674.
60. Pataskar, Lok Sabha Debates, 26.iv.55, Cols 6481-84.
61. Lok Sabha Debates, 14.xii.56, Col 2989.
62. Supra note 5 at 111.