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Women and the Hindu Personal Law in India: A Case of Systemic Denial of Land Rights-Deconstructing the Legal and Ideological Constructs

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Abstract

The whole plethora of steps being taken by the state, in terms of legal injunctions, affirmative actions, and welfare schemes designed to provide socio-economic and political benefits to women in particular, is a reflection of the whole debate on 'engendering development.' Several policy documents and debates recognise the significance of addressing 'rights to land,' in the context of challenges to development. Women face multiple barriers in accessing and benefitting from such rights and often cannot realise their transformative effects. Such barriers include inadequate legal standards and implementation of laws as well as discriminatory social norms, attitudes, customs, and traditions. The result is that women are less likely than men to have secure land rights.

In the above context it would be pertinent to discuss the issue of 'land rights' to women in India and it is in this context, that an analysis of the codification of the Hindu Code Bill becomes necessary but such an analysis should be done both in terms of its historical contextualisation and the rights and opportunities that flow out of it. The notion of opportunity over here implies both the presence of rights and also the presence of a set of circumstances which facilitates the exercise of rights. When contrasted with historical antecedents the Hindu code bill was definitely a step forward since it did provided certain legal claims to property ownership to women but when it comes to the creation of opportunities, it failed because it could not deconstruct the ideologically constructed gendered spaces and gendered roles which truncated the legal rights.

Introduction: The whole structure of gendered spaces and gendered roles is the result of ideological reproduction by way of every day practices, and custom with its strong anchoring in history becomes the modality through which these ideological structures of patriarchy are reproduced in every day relations. *The idea of division of labour in terms of gender should be viewed as a historical juncture rather than a moral claim, and it is this*

single idea of gender based division of labour that has created the stereotyped ascriptive identity of 'weaker sex', that has a historicity but not deterministic necessity.

The argument stated above is not an out-of-context statement, the debate in India surrounding the Hindu code bill illustrates this very aptly, since the clashes were purely ideological, between the liberals and progressives on one side and traditional orthodoxy on the other. The debate was ideologically camouflaged by invoking Hindu religion, where religion and custom should have been kept apart, the two were mapped upon each other and that is why it becomes hard to fight patriarchy in India because it is not simply a production of customs but also has a religious anchoring, issues like ownership of land and property are to be seen as a part of customary practices, which are open to change. The unit of the reformist debate was the 'family' and rhetoric's was largely build around the division of labour that pertains in the family, and thus invoking the image of women as mother's and wives (the notions of *maryada and pativrata were also invoked)*

The liberals like Sucheta Kriplani, parliamentarian from Delhi and a leader of the women's movement clearly made a distinction between custom and religion, she observed that, "The Hindu code does not seek to disturb the Hindu religion but to amend and modify the Hindu civil law. The law has changed from time to time. It is different from religion and has never been unchangeable and static". In the same critical strain Ambedkar said: "The Hindu society has always believed that law making was the function either of God or the Smriti and the Hindu society had no right to change the law".

Immediately after independence India was standing at cross roads, it had to pursue growth together with social justice, thus the need to reform the social or the inner domain of Indian society was looming large, and thus the need to codify the Hindu law, which governs the social sphere was of utmost importance for the progressives who wanted to have an integrated approach towards development, but the issue at heart was both the complexity of bringing a uniformity and a radical change of customs, so as to incorporate both social and gender justice, since it was already declared in the constitution that the state could not discriminate between citizens on the bases of caste, creed, colour, sex, race, language, and gender. *Now any analysis of such a codification should be done both in terms of its historical contextualisation and the rights and opportunities that flow out of it, the notion of opportunity over here implies both the presence of rights and also the presence of a set of circumstances which facilitates the exercise of rights, when contrasted with historical antecedents the Hindu code bill was definitely a step forward since it did provided certain legal claims to property ownership to women but when it comes to the creation of opportunities it failed because it could not deconstruct the ideologically constructed gendered spaces and gendered roles which truncated the legal rights.*

The paper basically tries to present a feminist critique of the Hindu code bill, precisely because the very attempt to codify the Hindu law arose from the emerging necessity, of looking into the gender related inequalities around the property rights of women. The argument of this paper is that the Hindu code bill was not an intelligent act, since it could

not provide a structure of checks and balances, the legislators could not project the act into the future, what actuated their efforts was *the saving of the principle rather than the practice.* The paper is divided into four parts, the first part tries to set the contextual background in which the debate regarding women's land rights arose and the various aspects which the issues weaves within itself. Second, tries to lay down the historical context and the various debates and critiques that have been directed on the Hindu code bill. The third, discuses the Hindu marriage act, 1955; the Hindu succession act, 1956; the Hindu minority and guardianship act, 1956; and the Hindu adoption and maintenance act, 1956, in the light of the above debates and critiques, and throws light upon the certain loop-holes of the act. The last section is the conclusion part which tries to provide, a conclusive picture and raises certain issues which have relevance in the contemporary times, and were raised in the discussions of the Hindu code bill, but there logical conclusions were rather not deliberated, precisely because the legislators were more given to the saving and enshrining of the principles rather than their implications, and thus landed onto an act of compromise between the orthodox tendencies and the liberals.

(1)

Women's Land Rights: Ideological Constructs and Truncated Legal Spaces: The historic United Nations (U.N.) statement of the mid – 1980's that women, comprising 50% of the world's population own just 1% of its property has led to an upsurge of discussions, research and policy interest in property and land rights of women. In the academics and policy making circles what emerged as an indicator of women's empowerment has been employment and education enhancing measures, "employment is taken as the principal measures of economic status, obscuring what has been commonplace in measuring the economic status of men or of households; property ownership and control."[1] But there have been scholars who have been centrally debating for women's rights in land and property, Bina Agarwal argues that "women's struggle for their legitimate share in landed property can prove to be the single most critical entry point for women's empowerment."[2] Women's land rights issues are still not being seriously taken by the policy making circles. Again Bina Agarwal argues that:

> *"Modern legislation, while a step forward, has yet to establish full gender equality in law or to permeate practice. Customary practices governing marriage, residence, and female seclusion; intimidation and violence by male kin; biases in the functioning of official agencies, etc. variously obstruct women in claiming their legal share or functioning as independent farmers, although the nature and incidence of those factors differs cross- regionally"*[3]

[1] Agarwal, Bina. (1994). "*A Field of One's Own: Gender and Land Rights in South Asia*." Cambridge: Cambridge University Press.
[2] Ibid.
[3] Agarwal, Bina. (1988). "Who Sows? Who Reaps? Women And Land Rights In India." *The Journal Of Peasant Studies*, Vol.15, No.4. pp. 531-584.

When it comes to the solutions of how to tackle the issue, one needs to introspect over four aspects, firstly that what we are dealing with is not simply the question of social and cultural constraint or legal and administrative but a combination of all these and also that this combination varies across regions and across cultural and religious communities. Secondly, property rights in India are not only governed by legal and administrative law but also by the customary laws and even these customary laws is not a unified category different collective groups and regions as per their customary traditions have their own customary laws regarding the ownership and management of landed property and hence even where land legislation is gender neutral, women's land rights may be curtailed by discriminatory norms of family law. Thirdly, the picture gets further complicated as the Indian constitution gives law making powers to both central and state governments to enact laws on matters of succession and hence the states can, and some states have, enacted their own variations of property laws within each personal law. And the fourth one needs some elaboration, the question is that why have women not mobilised around their rightful claims to land? What have been the constraints to their collective action? The possible reply is that one needs to see women as embedded in various subject positions "women's unity and cohesion on gender issues cannot be assumed" (Molyneux, 1985:285) since resistance can come from women's themselves, "who internalise their subject positions as wives and mothers. As long as the marriage is satisfactory, they do not consider male mediation of resources as necessarily apprehensive, but rather share in male prestige."[4] And together with these there are other arguments which are being forwarded in order to curtail women's right over land and one of them is the efficiency argument, which implies that the fragmentation of land reduces the agricultural productivity and this gets compounded by the fact that with the large-scale population explosion land has already become a scarce and contested resource, for instance many states have passed their own laws regarding prevention of fragmentation and consolidation of holdings act, such acts puts a ceiling on land which is the specification of a certain limit beyond which no fragmentation of land is allowed. So property share will have to abide by this act and this has negative implications for the women since they are forced to write away their share in the property for the welfare of their brothers and male counter parts.

(2)

> *"To observers unfamiliar with the social background of India, the position of Indian women appears in many ways to constitute a paradox…. there still exist laws and social customs which are inequitable and impediments to women's progress"*[5]

To contextualise the social construction of women, in Indian society one can aptly cite the text of Manusmriti where he says " her father protects her in childhood, her husband

[4] Rao, Nitya. (2005) "Questioning Women's Solidarity: The Case of Land Rights, Santal Parganas, Jharkhand , India," *The Journal of Peasant Studies.* Vol. 41, No. 3, pp. 353-375.

[5] Ray, Renuka. (1952), 'The Background of The Hindu Code Bill'. *Pacific Affairs*, vol. 25, No. 3.

protects her in youth and her sons protect her in old age; a women is never fit for independence"[6] . Women in India have rarely exercised property rights in de-facto terms, the only form of property which she possessed was the *stridhan*, which she received at the time of her marriage which could include movable assets such as jewellery, clothes, utensils, or cattle. In some cases immovable assets, such as landed property, were also given as *stridhan,* but she was never considered as the absolute owner of that property.

It was in the early 19th century, with the advent of colonial rulers that reform started taking place, with the abolition of sati in 1829 and the passing of widow remarriage act, 1856, the transition phase had started, the participation of Indian women in the national freedom movement had deconstructed the gendered spaces to a large extent, it was symbolic since the Indian women for the first time entered the public sphere, "during 1903 to 1926, several women's organisations surfaced in different parts of the country and an effective all-India platforms emerged with the formation of women's India association in 1917 and all-India women's conference (AIWC) in 1926"[7]. The basic thrust of the demand for social reform was removal of social and legal inequalities, which disfavour the Indian women.

The efforts got materialised with the Hindu women's right to property act, 1937, which allowed the Hindu widow a right in the husbands property, in terms of intestate succession, but even this right was in the form of 'limited interest' since she could not alienate the land, except under certain circumstances, like legal necessity of clearing the debts, for the benefit of the estate, for the discharge of indispensable duties (like marriage of the daughter), thus she simply becomes the manager of the land and the link through which the property would be passed on to the dependants of the last owner, after her death, and she would also lose the land if she remarriages. It was in 1940, that a federal court judgement ruled that Hindu women's property act is not valid in the devolution of agricultural land, since agricultural land was a provincial subject, it was in the wake of this controversial ruling that the government appointed a four member committee, headed by B. N. Rau, to look into the limitations of the act. In June 1941, the Rau committee also known as the Hindu law committee, submitted its report to the government recommending the need for a complete overhaul of the Hindu code as piecemeal legislation will generate insurmountable contradictions in the system as amplified by the Hindu women's right to property act,1937. Thus the committee was again reconstituted under B. N. Rau, to formulate a complete code of Hindu law. The committee drew up two bills, The Hindu marriage and the intestate succession bills, which were introduced in the legislature in 1943, which eventually got lapsed because of opposition from the conservative elements.

The congress government reintroduced the bill in the first parliament of independent India in 1947, the bill was eventually referred to the select committee on 9th April 1948,

[6] Manu IX.3: Manusmriti: The Laws of Manu, in Sacred Books of the East 56 (G. Bhuler trans. 1886) (available at http://www.hinduwebsite.com/sacredscripts/lwas_of_manu.htm)

[7] Sinha, Chitra. (2007), 'Images of motherhood: the Hindu code bill discourse'. *Economic and Political Weekly*, October 27, special article

however between the time of its reintroduction in 1947 until the dissolution of the first parliament of India in 1952, the bill failed to attain the final stages of enactment, Dr. B. R. Ambedkar, who was in a large way directing the select committee and had made recommendations to it, resigned on September 1951, when he realised that congress was not eager in enacting the bill.

In order to get the bill passed Nehru divided the bill into four acts, Hindu marriage act, Hindu succession act, Hindu minority and guardianship act, Hindu adoption and maintenance act, these were met with significantly less opposition and between the years of 1952-1956, each was effectively introduced and passed by the parliament.

The debate and criticism surrounding the bill, becomes important in order to be discussed because what ultimately had got introduced was a much watered down form of what was being proposed by the liberals and progressives. The attempt to codify the Hindu law was being guided by the British precedents, who wanted a uniform body for the whole of India, but as Madhu Kishwar, rightly points out " there was no single or uniform body of canon law or Hindu pope to legitimise a uniform code for all the communities of India, no Shankracharya whose writ ran all over the country"[8]. The legislators saw the Indian customary laws as something 'archaic' which really needed earnest reform so as to modernise the society, "time and again, the reformers put forward the argument that uniformity is necessary, without explaining why, simply assuming that uniformity is an unquestioned good"[9]. The very essence of Hindu law was its diversity and something which was not imposed from above by way of a sovereign authority, the codifiers were trying to base the Hindu code on the Hindu laws which were derived from the Dharmashastras and Smritis, but even in the Hindu Dharmashastras "there is no attempt to insist on a universal code for all of humanity. It is meant to be situation and time specific as well as person and place specific rather than an immutable set of laws", India has had a diversity of schools of Hindu law, which emerged in different parts of the country, and at different times, and none of the schools ever tried to claim supremacy over others. Madhu Kishwar alleges that:

> *"There is almost no principle introduced by the Hindu personal code which did not already exist somewhere in India as accepted law. On the other hand, there were several existing, much more liberal principles which were decimated by the Hindu code, In their determination to put an end to the growth of custom, the reformers were putting an end to the essence of Hindu law; but they persisted in calling their codification 'Hindu'"*[10].

The basic critique which she launches is that there were some much more liberal laws followed by the marumakkattayam and aliyasthana communities and the customary laws followed by the tribal's in north-east of India, but what got passed away as Hindu ideal was

[8] Kishwar, Madhu. (1994), 'Codified Hindu law: myth and reality'. *Economic and Political Weekly*, August 13, special article.
[9] Ibid.
[10] Ibid.

the north Indian custom, primarily because the Indian parliament was dominated both in terms of numbers and influence by members from the northern plains, where social oppression of women was most rampant. The attempt to introduce certain British notions, (for e.g. The 'adversarial notion of divorce' and testamentary successesion) have made the Hindu code bill appear to be more alienated from the Hindu customary law[11].

Another level of critique that comes from the feminist position is that "Multiple identities of motherhood constituted the core of the discourse….. The formative phase of family law reforms also played an important role in the social construction of the identity of motherhood"[12], both the discussion around the bill and the legalities initiated were woven around certain specific construction of femininity. Babu Bajinath Bajoria, the leader of the opposition, saw women as nurturers of the family and thus unsuitable to manage property, and that giving them property would destroy the very notion of family.

Some of the legislators raised the objection that granting property rights to women would mean that she will get property both from the fathers side and the husbands side, and thus will get two shares whereas the son would get only one, the orthodox view was against, the very principle of granting property rights to women, Ganpat Rai, an advocate, representing the Delhi provincial Hindu Mahasabha stated " I object to the granting of an absolute estate to women. My objections are: (1) that in order to keep the property in the family, they will begin to marry sapindas; (2) that women are weak physically; (3) that their character will suffer, if they are given an absolute estate"[13]. *The legislators never considered the migratory nature of women in the sense that she leaves the maternal home and moves to in-laws house and as a married women she has no separate right in the in-laws property till her husband is alive, thus her status as owner of property becomes ambiguous and the nature of dowry complicates the whole story because it was argued by many that what the son gets by way of landed property the daughter gets by way of dowry (stridhan), it was also argued by many that giving property rights to daughters will lead to more division of land.* All these arguments were strongly anchored in the patriarchal structure of the Indian society where the orthodox male were simply against parting away their share in landed property.

(3)

Now we shall discuss each act individually:

The Hindu marriage act, 1955: "Both the chief characteristics of Hindu marriage, viz., polygamy and indissolubility of marriage have been swept away by the Hindu marriage act, 1955. The act makes (a) monogamy a rule of law for all Hindus, and (b) divorce available to

[11] Ibid.

[12] Sinha, Chitra. (2007), 'Images of Motherhood: The Hindu Code Bill Discourse'. *Economic and Political Weekly*, October 27, special article.

[13] (cited in.), Sinha, Chitra. (2007), 'Images of Motherhood: The Hindu Code Bill Discourse'. *Economic and Political Weekly*, October 27, special article.

all Hindus. It lays down as a pre – condition of Hindu marriage that neither party to the marriage should have a spouse living at the time of the marriage: bigamy has made a penal offence and section 494 of the Indian penal code has been applicable to Hindus"[14]. The act provided for two kinds of marriages the sacramental and the civil form of marriage, and the act also did away with the requirement of husband and wife belonging to the same caste, for the marriage to be valid, but it was the provision of divorce which aroused the most controversy and the introduction of strict monogamy was on the cards of the challengers of the Hindu code bill.

The main argument in support of the allowance of polygamy was that if the husband fails to have a child from the first wife he should be allowed to have a second wife, the issue of resentment with monogamy also sprang from the fact that the Muslims still enjoyed polygamy under their personal law. *But such argument are completely debased since if the husband is legally allowed to remarry then social customs already stand in favour of them to move ahead but the women left behind finds it's difficult to get remarried because of social taboos and thus is left behind to become a destitute.*

In the Hindu law divorce has been recognised, and the customary practices regarding separation has been more flexible in India than in Britain, but still the legislators insisted on making the act of dissolution as rigid as possible following the British precedents and thus failed to draw upon the indigenous system, this was partly because of the contempt for indigenous systems, especially those of the south and thus what was adopted was the notion of 'adversarial divorce'. Divorce as practised in certain Hindu communities has been a 'one-time' affair " not requiring the couple to go through formal stages. The negotiations were conducted by the community decision making body in a relatively flexible manner"[15] in the tribal communities women are free to move out of marriage, without bearing social taboos, except that the new bridegroom is required to pay back the bride price, which was paid by the first bridegroom to the bride's family, in the marumakkattayam communities of Kerala divorce can take place even on grounds of incompatibility. The provision of legal divorce, involved expense and delay in litigation and would require a vast machinery for implementation, for which the government was not yet prepared neither the poor had money.

The act also provides that no marriage shall be dissolved unless three years have elapsed since the date of solemnisation of the marriage, though in case of exceptional hardship, courts have been empowered to dissolve the marriage earlier. The "principle is right, but it creates certain problems. For instance, if a party to the marriage is guilty of adultery after a few months of his or her marriage or if she or he is converted to some other religion, must

[14] Diwan, Paras. (1957), 'The Hindu Marriage Act, 1955'. *The International And Comparative Law Quarterly*, Vol. 6, No. 2.

[15] Kishwar, Madhu. (1994), 'Codified Hindu Law: Myth and Reality'. *Economic and Political Weekly*, August 13, special article.

the other party be asked to wait for three years?"[16] These are the certain loopholes built into the act.

The Hindu Succession act, 1956: In India, inheritance of property has been allowed by way of various customary practices and also in accordance with various schools of Hindu law. The most prevalent was the Mitakhshara and the Dayabhaga School, "the Mitakhshara School claimed that a coparcener's share in joint family property is not absolute and constantly fluctuates due to the birth or death of other coparceners. Coparceners therefore do not have absolute right to transfer their shares"[17] this school does not allow the daughters, widows, mothers and sisters to be a part of the coparcener, thus it severely restricted women's right to property. The Dayabhaga school was mainly followed in the eastern part of the country, especially in the provinces of Bengal and Assam, according to this school the right over Hindu joint family property devolves to the heir on the death of the father and not by birth and each person had a definite share, over here also the daughters and sisters did not had right to the property, but in the absence of male descendants, the widow has the right to inherit the property[18].

It was the Hindu woman's right to property act,1937, as an instrument, which declared the legal status of stridhan, and it established Hindu women's rights over landed properties inherited from male owners, especially from the husband, even though to a limited extent. The Hindu law committee had proposed that, the Mitakhshara school of Hindu law should be completely replaced by the Dayabhaga school of Hindu law, and that the daughter should have half the share of the property that was to be inherited by his brother and the limited estate of women was converted into an absolute estate.

However, the act which finally got passed in 1956, made certain major changes in the recommendations of the committee, the Mitakshara coparcenery, and the communities which were governed by this school of law could choose to be governed by the same, thus this joint property would still devolve by way of survivorship, the daughter was still not introduced in the coparcenery, she could get a part equal to that of his brother only from the fathers separate property. Another major change was the removal of exemption of marumakkattayam and aliyasthanam communities "that is, the virtual destruction of the only systems in which women were the equivalent of full coparceners"[19]. *The basic argument behind all this inequality was that the daughters in any case were to leave the natal family and thus cease from being full members, and thus should be provided by the in-*

[16] Diwan, Paras. (1957), 'The Hindu Marriage Act, 1955'. *The International And Comparative Law Quarterly*, Vol. 6, No. 2.

[17] Debarati, Halder and K. Jaishankar (2008-2009), 'Property Rights of Hindu Women: A feminist Review of Succession laws of Ancient, Medieval, And Modern India'. *Journal of Law and Religion*, vol. 24, No. 2

[18] ibid.

[19] Kishwar, Madhu. (1994), 'Codified Hindu Law: Myth and Reality'. *Economic and Political Weekly*, August 13, special article.

laws family. Another "disparity was in the list of heirs being for a male and a female with a woman's in-laws taking precedence over her parents, while a man's in-laws figure nowhere in his list of heirs"[20], *the argument given was that the married daughters parent don't even drink water from her in-laws village, and thus acquiring her property could not be even thought of, but this was the custom basically of the northern plains whereas this was not the custom in the south, thus what got passed as the Hindu ideal was particularly a northern India custom.*

The act of 1956 is meant for unmarried daughters to claim inheritance of the property. Under section 15 of the Hindu succession act, 1956, the daughter-in-law inherits only when she is a widow. Hence cannot inherit her due share in her father-in-laws property when her husband is alive. Another loophole in the act was the right to the dwelling house, here again there has been a discrimination of women, section 23 of the Hindu succession act states that the right of female heirs to claim partition of the dwelling house shall not arise until the male heirs choose to divide their respective shares therein. The act, under sec 23 also makes a distinction between married, unmarried, and widowed daughters ability to make claim over the residential house, it does not give any of them a right to claim for partition, they only have the right to residence, only if the daughter is unmarried, has been deserted or has been separated from her husband, married daughters do not have either right to claim partition or the right to residence and a married daughter who has left her husband of her own accord and is not deserted by her husband has no right to reside in the dwelling house. The restriction on the partition is imposed only on the female heirs. If a male heir chooses to partition the dwelling house, the female heirs cannot prevent him, but they will be entitled to their share.

The most debated topic was the introduction of the concept of will, "the right to will is completely alien to Hindu law. Its introduction into law labelled as Hindu was the single irony"[21]. This is the most important veto power which the father could exercise against their daughters and their wives to disinherit them from property, *it is really strange that the implications of making a will and the various rule that should be followed by testamentary succession were never discussed in detail, the very notion of inheritance by way of will, which the possessor of the property was free to draw, truncated the notion of women's property rights, but the provision of transferring the property by way of the still exists and thus serve as a major lacunae in the act. The legislators could have provided certain limits to testamentary succession by permitting that only half of the property could be willed away on the analogy of the Muslim law which provides for only one-third of the property to be willed away.*

[20] ibid.

[21] Kishwar, Madhu. (1994), 'Codified Hindu law: Myth and Reality'. *Economic and Political Weekly*, August 13, special article.

The Hindu minority and guardianship act, 1956: The act "introduced the artificial concept of a natural guardian, which also appear to be imported from England"[22], thus the father is considered to be the natural guardian and in the absence or unfitness of the father the mother could be the natural guardian, but no other person could be so termed, or unless appointed by the court decree, the act does not allow a guardian, even a parent to alienate any part of the minors property, without the permission of the court, the act also gives the mother the right to appoint a guardian by way of a will, after his death, and the act also took away the fathers right to make a will depriving the mother of her guardianship right.

The basic foot-hold of the act was that the parent lost all guardianship rights as soon as he/she converted to another religion, in the words of Ambedkar " the committee felt that as this was a code intended to consolidate the Hindu society and their laws, it was desirable to impose this condition, namely, that the father shall continue to be the natural guardian so long as he continues to be a Hindu"[23] *this clearly exemplifies, how religion got overlapped with customary practices,(where even the Dharmashastras do make a distinction between them) in the discussion on Hindu code bill*

Hindu adoption and maintenance act, 1956: The act recognised datta homam type of adoptions, there were many other more liberal types of adoption prevalent in the south, but they were never considered as worthy for adoption for e.g. the 'iltatom' type of adoption allowed for the adoption of the son-in-law, thus making the husband and wife as brothers and sisters, but it was considered as perfectly valid adoption. *The act could not enshrine even the principle of gender justice or equality in this case, the "law did not allowed a married women to adopt in her own right, or even jointly with husband. Only man could adopt, albeit with his wife's consent"*[24].

The most, not-well thought of part was on maintenance, *the patriarchal tendencies present in the legislature have deliberately tried to not to allow a woman to have an independent existence, by way of getting a divorce, and all this is compounded by the unavailability of proper job opportunities for women, and the nature of the social conditions in which they are asked to work, or provide for themselves,* the amount of maintenance that was to be given to the wife is left upon the court to be decided, but an upper limit has been set up which is two-third of the joint family income, the maintenance sum cannot go above this, and if the wife files a case for a divorce, the burden of proving the husbands income falls upon her, and since in India large number of the male population is based on agriculture and other business thus establishing an accurate and fixed monthly income is not easy, and also that the case is a civil one and can take a long time, in being finally heard and leading to a final verdict. *That is why most of the women try to get their maintenance under section 125 of the criminal procedure code, which provides safeguard*

[22] ibid.
[23] Kishwar, Madhu. (1994), 'Codified Hindu law: Myth and Reality'. *Economic and Political Weekly*, August 13, special article.
[24] Ibid.

to all destitute women, children and old parents, being a criminal case it has a greater chance of getting early relief, but under this provision what they can get at its maximum is Rs. 500 per month. "The sum is affixed one and bears no relation to the income of the husband. Even if he is earning in lakhs, she can claim a maximum of only Rs. 500."[25]

Conclusion: The codification and unification which the act has tried to achieve, has definitely had a northern bias and was in conformity with the modern notion of statist reform from above, all this was done without creating much of social consciousness and the necessary working machinery. *The very passing of the act can be hailed by some as progressive, but it is still the first step towards it , the bureaucratic apathy and their patriarchal views have not allowed for the smooth flow of rights from paper to practice.*

With the emergence of new rights based demands, there is also a need to revisit the Hindu code bill, and reconsider the issue of joint ownership titles, the status of marital property, whether it should be considered as a joint conjugal property or as ones individual property, there is also a need to create certain checks and balances against the power of testamentary succession and the Indian legislature needs to have a serious consideration of the maintenance laws.

With the emergence of market relations and the land market, there is an unhappy overlapping of land transactions through open market relations and availing of land through inheritance rights, "changes in production systems, advent of new technology, changes in the market structure… always affected women's…entitlements and visibility" (Mazumdar 1997: 378) with the introduction of this new variable the picture gets complicated, and the state needs to strike a proper balance between the two, especially in the wake of contemporary circumstances where land has become both a contended resource, moving from status and livelihood orientations to interest based configurations. The argument is not for a statist approach, but state acting as a facilitator.

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(1) Kishwar, Madhu. (1994), 'Codified Hindu law: Myth and Reality'. *Economic and Political Weekly,* August 13, special article.
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[25] Ibid.

(5) Debarati, Halder and K. Jaishankar (2008-2009), 'Property Rights of Hindu Women: A feminist Review of Succession laws of Ancient, Medieval, and Modern India'. *Journal of Law and Religion*, Vol. 24, No. 2
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