CUSTOMS AND GENDER IN THE CONTEXT OF HINDU LAWS

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Abstract

There has been an influence of customs in the evolution of Hindu Laws. Hindu laws at times confronted, in other instances incorporated and in few cases overrode customary laws of different regions, however it could not in any way change the caste based social prejudices. With the context of Haryana in the backdrop this article looks into the influence of customs in the region in the construction of gender identity and to what extent could Hindu Law influence the customs followed.

Key words: customary laws, gender, hindu, dayabhaga, mitakshara, inheritance

Hindu Law in the Pre-colonial period

Origin of Hinduism has given rise to various interpretations. However, there could not be any denying that the consciousness of Hinduism as a religion among its followers arose in countering the identity of Muslims or Islamic presence in different parts of the country with the rise of the Sultanate followed by the Mughal rule. The word Hindu is a Persian term which was used to refer to the inhabitants across river Indus. This reference, points out a strong ethno-geographic² connotation attached to the rise, development and continuance of Hinduism. The distinctions separating one religion from the followers of the other finally culminated into the partition of the country and eventual division of land based on the religion of its followers. Against this backdrop of the political invasion of the country and conflict among the religious groups, there was also the presence of laws influencing the social spheres of the family and community. The term denoting Hinduism had a geographical connotation. Hindu instead of being all encompassing divided individuals based on their birth. Behind this birth-based distinction of individuals was the imposition of the orders of Brahmins having been given the highest position in the social order over the rest below them with the position of the Shudras outside the four varnas. The internal division of the religion based on the castes of individuals further led to different ways of practice. Distinguishing Hinduism from other religions was a part of its creation of an identity. Hinduism as a religion was not a homogenous one with internal divisions based on its caste. And the caste affiliation along with restrictions in mixing with other caste through separateness, created division of geographical space which were also

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² See Robert Eric Frykenberg, ‘Constructions of Hinduism at the Nexus of History and Religion’, Journal of Interdisciplinary History, XXIII: 3 (Winter 1993), 523-550. It has been mentioned that distinction has to be made between Hindu as a geographical concept designating anything and everything native to India, and Hindu as a category of ideas and phenomenon more specifically cultural, social and religious referring to individuals who lived within the geographical regions beyond the Indus. However, the author further identified Hinduism as (1) Logic of Brahmanical, or Bio-Social (Purity/Pollution); (2) Logic of Regal/Imperial (Non-Brahmanical), or Contractual Integration; and (3) the Logic of Constitutional, or Indo-European (Orientalist) synthesis, all these together produced Hinduism.
imposed over interactions among caste members forcing them to avoid social interaction---marriage and inter-dining---as given in religious scriptures. Caste groups worked as a community in themselves which barred the entry of any outsider within this group unless being born into it. This group affiliation gave rise to a strong kindred feeling and sense of brotherhood. As a result the practices of these groups were also equally different from one another. Distinctive features of Hinduism distinguished it from the other groups of religions.

The internal cleavages within Hinduism were a culmination of the Vedic period (c.1500-800 B.C.) of ancient Indian history. This phase made the internal divisions explicit with the entry of Aryan race from central Asia to India. It was at this time that four-fold divisions of the Hindu society became well pronounced along with the emphasis on the status of Brahmins. The source of Hindu law then was the Veda with Rig Veda being a prominent one to mention the Aryan way of life, role of land and types of its measurement, kinship, tribal structure---tribal assemblies sabha and samiti carrying out the judicial and political functions.

Women held a higher social position at the time of Rig Veda which was diminished in the subsequent historical phase. There was a transgression towards strict kinship practices, patriarchal order and emphasis was on exogamy with preference given to birth of sons over daughters. Sati (self-immolation of a widow in her husband’s pyre) and Niyoga (marriage of a widow with her deceased husband’s younger or elder brother) became accepted practices. These practices of the social, which arose in the later phase of the Vedic age, gave rise to conformities defining the lives of individuals based on their gender. Sruti, mnemonic texts became the reference for the Aryan and it was passed on from one generation to the other. However, customs of different groups continued to exist and were also incorporated by the shastras. Interestingly, the imposition of shastra was seen as “Hinduising tendencies of the ruler” Hindu law which, at times confronted also incorporated in other instances and in few cases overrode customary laws of different regions, could not in any way change the caste based social prejudices over customs of Brahmins being given the highest authority over others. Dharmashastras continued to be the book for reference for Hindus under different rulers starting with the Muslim rule when it was realised by them that except for taxation and criminal law, the social practices of Hindus ought to be left to the rules of shastras. Dharmashastras continued as a legal text for Hindus while there were certain social changes as found in the account of Abul Fazl,

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4Among Pathare Prabhus of Maharashtra, widow remarriage has been a custom. This custom of widow remarriage was looked upon as a mark of social inferiority by some members of the caste especially it was contrary to the custom prevalent among the Brahmins. With the object of raising the status of their community some Pathare Prabhus sought to stop this practice of widow remarriage that was prevalent in their caste. Ibid., p.325.


6Ibid., pp.50-57.

7Mnemonic: a system such as a pattern of letters, ideas, or associations which assist in remembering something.

8J.Duncan M.Derrett, Religion, Law and the State in India (Delhi: Oxford University Press, 1999).

9Ibid., p.163.

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where the first position was given to the warrior class, with *Brahmins* been given the third position below the class of merchants.\(^{10}\)

Despite the preference given to one caste over the other, caste structure remained an unchanging factor both under the Arabs\(^{11}\) and the Ghaznavids. There were cases of Brahmins being exempted from paying *jizya* (poll tax paid by non-Muslims under the Muslim rule). Under the regime of Alauddin Khilji (1296-1316), the caste discrimination in public domain was in open with lower caste given a peripheral position and referred to as ‘*bhangi,bhangi,khurafati*’.\(^{12}\) Continuance of Hindu religion and law governing Hindus remained static under the Muslim rulers as the Hindu subjects continued to follow their religion within groups placed in remote areas from the capital of the country. In some areas like Punjab, the religion and religious laws had negligible impact in the lives of people who were bound together by the customary laws practiced there. While Islamic law was the official law of the land, Hindu law became personal law for non-Hindus. Certain regions followed customary laws and in some places in southern India among some followers of Islam like the Khojas, Memons, Moplas and Mapillas succession law based on Hindu principles.\(^{13}\)

Geographical regions for the sake of administration under Mughal rule were divided into *sarkars* and *parganas*. Changes in the position of men especially; of *Brahmins* in public led to the imposition of strict rules for women and outcastes in private spaces giving rise to movements that worked towards removing all kinds of barriers: gender, caste and religious, thereby, leading to the rise of *Bhakti* movement which connected individuals from the lower castes and women across castes with the transcendental power of the unknown and unquestionable authority of the divine God. While the aim was emancipation from barriers imposed by religious practices, it could not resolve the societal divisions which remained unaltered. Movement became the cause for individuals to leave the institution of family and community which imposed rules over outcastes and gender leading to a further divide between the public and the private domains. Despite the limitation of the movement in trying to overhaul the institutional processes, it brought into prominence the work and teachings of Meera and Kabir. While Meera questioned the familial institutional impositions, the syncretic identity of Kabir\(^{14}\) led to influencing both followers of Islam and Hinduism as well as, outcastes.

Despite these influences and movements, Hindu Law for governing Hindus became the law as ascertained in the *Dharmasastras*\(^{15}\), a text passed from one generation to the other without being


\(^{15}\)Patrick Olivelle’s translation of Manava Dharmashastras that “according to the manavadharmashastras , the creator of the world taught this to his son Manu, he in turn taught it to his pupils, including Brghu. It is Brghu who becomes the spokesman and recites the treatise to the gathered seers. The view that the creator should have produced a text for governance of his creatures is found also in other texts.” See, Patrick Olivelle, *Manu’s Code of Law* (New Delhi: Oxford University Press, 2005).
scrutinised. When protecting Hindu religion became a matter of identity coupled with the fear of losing ground in the midst of the rise of other religions, Hinduism came to be associated with Brahminism and those following Buddhism and Jainism were referred to as Shudras. The internal divide further increased with Brahmins attaining superior authority and having gained support for their rule in the Laws of Manu. In the process, the Hindu law without concrete texts was based on invisible order of things which were beyond human control with its multiple interpretations at various levels. This invisible order of things and multiple interpretations in Hindu law were more closely tied to the customary laws practiced at the local levels. Thus, theologians like Donald R. Davis, JR (2005) focusing on intermediate realms of law focused on the laws as developed by different corporate groups: merchants, traders, religious specialists, soldiers etc., in the medieval period of Indian history. The account of the laws in this phase was uncodified; oral laws without any texts were found in the practices within communities as epigraphs across different regions. The derived authority of law was then the practices within communities over the command of an external authority such as a king. With the focus given to maintaining order within the community, the law was based on the command or rules followed.

Texts, Customs and Practices

Laws without texts and its multiple interpretations at various levels—family, community and society — led to emphasis being laid on ‘maintaining order’. This order was termed as dharma as followed in various enclaves with different interpretations. In addition to this, there were several prescribed orders by the sages in the form of Dharmaastras. Robert Lingat (1973) in his seminal work states, “Dharma rests primarily and essentially upon the Veda or rather upon Revelations (smriti). The Vedic texts are really revealed texts, divine words gathered directly by the inspired bards, the risis. They consists of three collections of liturgical texts particularly named “Vedas”: the Rg Veda, the Sama-veda and the Yajur-veda, to which a fourth collection, the Atharva-veda, was added at some later date”. In Hinduism, the concept of dharma differed from one to the other. The Laws of Manu which influenced Hindu society survived through tensions between continuity and discontinuity. Hindu society was an aggregation of epistemic realities of human beings, order and chaos; pattern and disjunctures. And in order to look for a commonality among different individuals, religions like Hinduism have struggled to resolve the unending conflict between the mundane and transcendental orders.

Mundane orders of life change with the differences in realities of a human being, his/her location, inherited practices, reference points and in other words the life-experience in its entirety. On the other hand, transcendental order would mean a standard presented over the years as something

16 Ibid.


19 Epistemic reality means something which has emerged from the knowledge of cognition.

20 S.N. Eisenstadt, The Great Revolutions and Civilizations of Modernity (Boston: Brill, 2006).
which is metaphysical, unquestionable and continues without interruption/modification. Orderliness within societies was based on the authority of rulers who claimed their authority from the metaphysical reality embedded in religious tenets and customs practiced.

Apart from religion which was thought to be a binding factor, the common base in land held people together. Land gave rise to structures of kinship and became the centre of formation of rules, implicit as well as explicit, and ensured survival of communities. When survival became the core of human settlement, institutions formulated customary laws and family laws to ensure maximum utilisation of available resources through kinship structure. Control over resources within societies by members of a particular kinship led to sustaining power structures based on inequality. Laws ensured order and at the same time, forced women to become the keeper/upholder of order while resources came to be controlled by men. This control over resources has often been linked to the transcendental order of things. In Hinduism inheritance of immovable property like land was based on several schools of thought with Mitakshara and Dayabhaga schools among the prominent ones. The Dayabhaga school of inheritance influenced the devolution of property based on the right of an individual to perform religious rites for the ancestors. As a result, the inheritance rights of women were placed outside the scope of discussion. Firmly grounded in a belief system of following God and abiding by the moral rules, individual rights then were not seen as separate from it. With the aim of continuing the divine law in the classical Hindu phase, emphasis was laid more on morality over rights. Thus, the unexplained divine order became the source of rules influencing individual lives within a community and society. And when Hinduism came to be associated with Brahminism, the customs of the tribal regions were overpowered by the practices of the Hindu religion.

Laws of Manu then became a starting point of inequality in the society with its underlining contradictions and sanctity given by linking it to the divine orders. With birthright under Mitakshara and survivorship under Dayabhaga, devolution of property in both the cases had taken for granted the patriarchal arrangement of passing on the property from fathers to the sons either by virtue of birth or by offering the religious rites to the ancestors. Inheritance of property by women was placed outside the discussions on property rights under both Mitakshara and Dayabhaga schools. Rather proposal for change ensuring women’s right to property was seen as a threat to the Hindu social fabric.  

Nyaya-Dharma Interface

21 Metaphysical reality is a reality beyond what is perceptible to the senses.

22. “The property should belong to each successive man who is immediately next to his co-feeding relative (the co-feeding relative is either the sapinda who would normally inherit, or the dead man himself is regarded as the close relative of the potential heir), and after that it should belong to a member of the same family and then to the teacher of the pupil. See, Wendy Doniger and Brian K. Smith, The Laws of Manu (Gurgaon: Penguin Books, 2000).

23 Brahmins held the highest position in the Hindu caste system (caste of the priest), and they were being granted the powers to read the ancient Hindu texts. They interpreted it to safeguard their interest within the society. Hindu Laws as prepared by them gave rise to Brahminism in the society.

Human life has often been a struggle to understand the reality. In doing so, it confronts certain given situations like being born in a particular family and a particular community and others being the outcome of their chosen preferences in life. When confronted with two opposite yet interlinked situations: given and chosen, an individual attempts to search the truth keeping in mind two closely linked yet opposite situations. The truth behind such a situation could be known either through a philosophical or through a religious approach. Whereas, the philosophical tradition is based on individual capacity to infer truth, in case of religion, the truth is a revealed truth of an unquestionable authority. Hindu law, by establishing its strong linkages with religion, acquired obedience of individuals which in other cases would have been difficult to garner. This close association of Hindu law with religion came to be known, at present, as personal laws governing certain aspects of individual life like marriage, succession, inheritance, adoption and guardianship. Personal laws of Hindus, as it is, reflect more of religious duties and customs over philosophical basis of Hinduism. Although rationality formed the basis of philosophical approach in Hinduism, it found no reference in its religious teachings. By making law a continuation of religion, philosophical speculation was somewhere lost. Four systems-Nyaya, the Vaisesika, the Sankhya, the Carvaka schools- out of six systems (other two being Mimamsa and Vedanta) of classical Hindu philosophy unlike classical Hindu law, do not pay any attention to authoritative texts. “The Nyaya system seems to say that doubt is the origin (or “chief incentive”) of philosophical speculation, because thinking must take place where there are differences of opinion. Even as far back as the Rg Veda, we find the questioning mind of the Indian thinker expressing doubts and asking questions–of a strictly philosophical nature–and posing challenges to traditional points of view.”

This speculative and questioning aspect of classical Hindu philosophy was missing from classical Hindu law. Truth in Nyaya tradition is based on “pramanas”. In Sanskrit the word pramanas mean: “that by which true cognition is reached. Cognition excludes any form of knowledge caused by past cognition, as well as, verbal knowledge. Deliberately overruling the philosophical aspect of Hindu religion, which emphasised a rational basis in its search of truth, the emphasis was laid on customs.

The codes of Manu with its definition of dharma then stand in contradiction to this theory of knowledge based on nyaya. Whereas nyaya embarks upon individual perception of knowledge, dharma is based on social behaviour of the community. Classical Hindu law’s emphasis on transcendental connection pushed aside individual capacity to question the issues of rights etc. Forming the basis of adjudication, Nyaya philosophy is known for forming the basis of science of inference in reaching a decision. “The Nyaya is primarily concerned with epistemology and logic, and secondarily with ontology, psychology, ethics and theology. It deals with the sources of knowledge, viz., perception, inference, comparison and testimony, and conditions of their validity, and the nature of the world, souls and God.”

The basis of Nyaya had been following certain universally accepted rules as in order to prove a case; there is a need to have evidence or pramanas. There are four pramanas such as (1) perception, (2) inference, (3) comparison and (4) testimony.


26 Cognition according to Nyaya is then caused by "the contact of sense organs with their (respective) objects. The Nyaya adds that for the cognition to arise, two more contacts are needed: contact of the mind (manas) with the senses (the sense-object contacts, in the absence of attention, may not cause cognition) and the contact of self with the mind (which is absent in deep sleep).” Ibid.,p.17.


28 Ibid.,p.484.
These four aspects of pramanas to decide for a case depended on valid knowledge based on perception. Jamini (an ancient scholar and commentator) stated that perception had to be based on cognitive knowledge: knowledge which is produced through the interaction of individual's sense-organ with the objects of the real world, and it is not dependent on Dharmic or moral laws. Nyaya philosophy in Classical Indian Philosophical tradition found close connection with the epistemological framework of the western philosophy.

Pre-eminence given to Dharma over Nyaya led Hindu law to focus on customary laws of communities which made male patriarch situated within the household and the community more powerful. Dharma, in the process, produced a power structure where the outcastes and women remained voiceless, unable to criticise the laws that were passed on to them since time immemorial. Recognition of customary law did not encourage an epistemological approach in the understanding of law. The classical Hindu law's failure to strongly incorporate the principles of Nyaya also resulted in colonial rulers supporting customs for their uninterrupted rule over India. Despite the presence of Mimamsa and Nyaya philosophies of Hindu law, adjudication in the hands of customary heads of a group and kings guided by Brahmins interpreted the laws. Hindu Law, by focusing on social orderliness, overlooked knowledge based on consciousness and cognition present in the classical Hindu philosophy.

Colonial Influence on Hindu Law

When British rule started in India, rulers felt the need to move beyond looking at the Hindu law simply as a governing law for a race of people mostly unlettered and ritualistic. However, it could not be denied that the first interface with the Hindu law observed by rulers from outside India including Alexander the great, left them with an image of Hindu laws to be innumerable as practised in different kingdoms governed by different kings and princes. In the process, the approach taken up by colonial rulers in understanding the classical Hindu law was to give the Brahmins, the task of interpreting the shastras written in Sanskrit. Brahmins were chosen for claims being made by them to be the direct descendants of God. "...the word Bramah meant creator, and represents what the Brahmins call the first great attribute of God- his power of creation. Bramah is the title solely appropriated to the promulgator of Shastah, and implies the spirituality and divinity of the mission and doctrines; hence it is, that his successors assumed the name of Brahmins, supposing them to inherit the same divine spirit." Brahmins who were considered to be the descendants of God or Bramah himself, were later on given the task of translating Shastra and they came to interpret it in the later stages with the aim of controlling the society. Brahmins, by

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29 Ibid., p.505.
32 Ibid., p. 94, At five of the clock on the morning of the 4th February, 1742-43, died Rhaam Chund Pundit of the Mahahrattor tribe, aged twenty eight years; his widow (for he had but one wife) aged between seventeen and eighteen, as soon as he expired, disdaining to wait the term allowed her for reflection, immediately declared to the © Universal Multidisciplinary Research Institute Pvt Ltd
having a higher position and authority in the society as interpreters of shastras, on many instance allowed prevalence of customary practices over the interpretations of Hindu shastras based on Mimamsa and nyaya philosophy. Brahmans attained this high position in the society over kings. The kings could only in certain cases attain this highest position if they could claim “universal sovereignty, as ‘lords of all lords’, and the manifestation of his greatness through temples and monuments attested to the power and distinctness of political authority.” It is not just the case with Hindu law, similar cases of laws were found to be prevalent in other primitive societies as mentioned in the work of Henry Maine. Under the western legal tradition, decision of the judges in law courts in defining cases that eventually shaped Hindu law, also allowed traditional prejudices to continue. Instead of asking the question as to whether western law was modern or not, the question which needed to be asked was whether western law is a secular law or not; and could western legal tradition severe its links from church, customs and local practices. Unlike Hindu law where philosophy found no reference in shaping the law, western legal tradition often searched for its base in philosophical tradition and projected its arguments setting aside the influence of God or the church. Appearance of secular tradition did not lead to withdrawal of the law of church rather church laws continued to influence certain aspects of life: ‘in matters of marriage and family relations, inheritance, spiritual crimes, contract relations where faith was pledged’.

While inception of law in the west has often been referred to be a modern, as well as, rational, it cannot be denied that law in the west has lived through a phase of growth and decay; from revolution and discontinuity to finally claiming its strong roots in the positivist tradition of Austin; thereby, ascertaining the rule of law to be the basis of government. It also needs to be seen whether western law was simply the law of England, or was it the law of Rome and Germany as well. Those laws which survived as part of the western legal tradition were: “Some Roman law, to be sure, survived in the Germanic folk law and more important, in the law of the church; some Greek philosophy also survived, also in the church; the Hebrew Bible, of course, survived as the Old

Brahmins and witnesses present her resolution to burn; as the family was of no small consideration, all the merchants of Cossimbazaar, and her relations, left no arguments unessayd to dissuade her from it...The body of the deceased was carried down to the water side, early the following morning, the widow followed about ten o'clock, accompanied by three very principle Brahmins, her children, parents, and relations and a numerous concourse of people. The order of leave for her burning did not arrive from Hosseyn Khan, Fouzdar of Morshadabad, until after one, and it was then brought by one of the Soubah's own officers, who had orders to see that she burnt voluntarily. Similar observations on Sati has been made by Tanika Sarkar in Rebels, Wives and Saints: Designing Selves and Nations in Colonial Times (Ranikhet: Permanent Black, 2009) where she tries to answer a question on sati through a question posed to her while researching on this topic “But who was the sati? Or, to be more exact, when did women become a sati? The literal meaning of sati was ‘virtuous woman’ rather than ‘self-immolating woman’....this was a transient, in-between figure, a bit of both but fully neither...Her selfhood was fugitive, inhabiting neither of the two phases entirely, slipping in and out of them, gaining a fleeting identity for herself only momentarily at the point of extinction of her unstable flickering self.”

33Eisenstadt, op.cit.,p.60.

34See, Henry Maine, ‘Ancient Law’, The Crayon, Vol.8, No.4 (Apr.,1861),pp.77-80. In this paper Henry Maine said that: The rigidity of primitive law, arising chiefly from its early association and identification with religion, has chained down the mass of the human race to those views of life, and conduct, which they entertained at the time when their usages were first consolidated into a systematic form.

Testament. But such survivals only account for a small part of their influence on Western law, Western philosophy, and Western theology.\textsuperscript{36} It was not just in England but France, as well, that western legal system has grown in the midst of local customary laws; in certain areas the growth of one legal structure overpowered the growth of local laws, and in other cases customary laws were allowed to survive. In the eighteenth century in Grenoble in France, the parliament of the region gave the court of the region the right to differ from the Roman law as per the discretion of the magistrate to allow the practice of local customary laws.\textsuperscript{37} This lack of distinction was similar to what was considered to be the dark ages in the English legal history\textsuperscript{38}.

If English law was modern, rational and universal following procedures to uphold justice; why was the same approach not applied in adjudicating cases or framing laws in colonial India? In case of India, customary laws with no distinction between public and private laws were applied. Western legal tradition emerged through a process of struggle between diversities.\textsuperscript{39} The distinction between native laws and English law was based on laws framed by the sovereign and the presence of legal pluralism. Interestingly, legal pluralism was also a part of the evolution of English legal tradition, the only difference being English legal tradition went through a succession of laws based on the political and religious changes. When colonial rulers reached India, they found a combination of different phases of English legal history to be prevailing here; such as, the customary laws of Punjab and Haryana which was similar to the evolutionary phases of English legal history from the Anglo-Saxon influence of customary laws to the Norman Conquest by William Normandy setting the institution of feudal laws. These influences focused on issues of land ownership, hierarchy between lord and serfs, landlords and tenants, compensation etc.

**Customs and Practices under the Common Law Tradition**

Colonial rule started in India with the emergence of economic rule by the British East India Company. The company was started in England through a charter by Queen Elizabeth I on 31 December, 1600. Powers of the company were established to start trade relations with India and were limited to economic relations over any interest shown towards understanding indigenous rules of the country. Peter de Cruz\textsuperscript{40} stated that this also marked the beginning of Indo-British jurisprudence with company being granted by the British crown the powers to make laws in consonance with the laws, statutes and customs of England. These laws formulated by the company were implemented in presidency towns with powers given to governor and council to rule the presidency towns.\textsuperscript{41} In initial days of the settlement in the first provincial town of Madras, the

\textsuperscript{36}Ibid.,p.3.


\textsuperscript{39} According to Blackstone, legal diversity was present in England with the presence of: “natural law, divine law, the law of nature, the English common law, local customary law, Roman law, ecclesiastical law, the law of merchant, statutory law, equity.” Berman, op.cit.,p.7

\textsuperscript{40} Peter de Cruz, *Comparative Law in a Changing World* (USA: Routledge-Cavendish, 2007).

jurisdictions of the court system were divided into Agent and Council for taking decisions in the cases involving individuals of British origin while for natives it was the Choultry courts. Despite introduction of the court system, many changes could not be brought about as the Mayor and Alderman-created through the court system—could be removed by the Governor and Council established by the East India Company. And in order to ensure an improved administration another Charter was introduced by George I of England in 1726 and with it started the Crown's Court. However, the Mayor's court was also not clear about the law for governing the natives in India. Although jurisdictions were unclear with regard to the kind of law to be implemented, India had law both in its codified and uncodified form. Due to the jurisdictional controversies, it became clear to the Colonial rulers that there was a need to look into family law comprising marriage, inheritance, adoption and guardianship along with mercantile and criminal law. In order to fill this gap, Britain tried to implement Roman law as interpreted by them to issues of family in India, when Hinduism and Islam already had their personal family laws. The aim of the British was not to ensure individual rights and equality through law.

Later on, restructuring of the judiciary did not ensure changing the rules of social hierarchy. Rather the East India Company, in the process of ruling the country, took up the task of understanding the law governing the society of the natives. This approach safeguarded the indigenous proceedings and parochial law. In case of India, the British did not adopt ahistorical approach towards understanding of family law. British rule in India moved away from the ahistorical approach of Benthamite utilitarian rule. The local beliefs and customs were given prominence over universal standards. In the course of its rule, colonial rulers influenced the evolution of Hindu law. There are multi-faceted opinions over the rise of Hindu law. According to some sources, the pandits were engaged in formulating the Hindu law and were given unaccounted powers with regard to it. The colonial rulers under their guidance enforced the Hindu law. However, in an obverse view it has been pointed out that there was a clear divide between the colonial rulers ruling India and those were bestowed with the powers of interpreting laws and building the institution of judiciary. This divide also led to a shift from complete dependence on pandits or simple imposition of English rule to following a politics of balance that came to be implemented by the colonial rulers at every stage of the colonial rule in India.

In 1772, Hastings came up with “A Plan for the administration of Justice in Bengal”, after a year in 1773. “Hastings and his colleagues in Calcutta commissioned a committee of pandits to consolidate the rules of Dharmasastras into a code, which became the first in a series of Sanskrit texts produced. Hastings also obtained that East India Company sponsor the publication in London of an English version, A Code of Gentoo Laws, by Nathaniel Brassey Halhed.” However, the Code did not receive complete support from all sections of the colonial rulers. Sir William Jones, who had knowledge of the original texts in Sanskrit, dismissed the Code formulated under the supervisory of Hastings. Interestingly, in discrediting the version adopted by Hastings and after translating the law

42 Ibid., p.5.

43 See Flavia Agnes, Sudhir Chandra and Monmayee Basu, Women & Law in India (New Delhi: OUP, 2004), Chapter 4&6.

from Sanskrit, Jones ended up reiterating similar prejudices that happened to evoke in the writings of the Code. What he concluded as the social practices only ended up supporting caste and gender based discriminations embedded in the ancient texts of Hindu law. However, in 1788, after gaining support from Governor-General Cornwallis, he started working on translating Sanskrit texts into law with the name, A Digest of Hindu Law on Contracts and Successions. Before the Digest could be completed Jones died and finally it was given shape by Henry Thomas Colebrooke.

Partha Ghosh quoting Cohn brings an interesting point as to how the knowledge of Jones and Colebrooke impacted interpretations of Hindu law: Jones’s knowledge of Roman law influenced his interpretation of Hindu law, which was in contrast to Colebrooke's approach, where differences in law in regions led to codification of laws as per regions. Social inequality and hierarchies continued. Practice of non-interference could only give them political stability. As far as achieving certainty was concerned with regard to legal cases concerning Hindus, it led them to enter a domain of convoluted cases in the court rooms. Spirit of Hindu law which was based on dharma gave Hindu law a certain kind of uniformity, absence of which had led to the jurists facing problems with regard to application of law. Finally courts with not much knowledge of Sanskrit and solely depending on the Brahmans realised that only way to decide the cases was to base their judgments on common law tradition as and when they came up. Apart from the translations made by the pandits of the Hindu texts, issues also arose with regard to proving customs practiced in various communities. In order to bring uniformity at some level of implementation of Hindu law, several attempts were made to come up with a Code on Hindu law. This could not change the situation with regard to application of Hindu law by the judiciary. Faced with innumerable challenges in interpreting the Hindu law, without one particular text, the case laws became the basis of deciding future cases coming up in the courts. In the dilemma of whether to support the laws framed by pandits or translating from the original texts, there was a realisation on part of the administrators that there was an increase in the dependence on pandits, which in turn did not guarantee any form of clarity in Hindu law. All these led to changing the complete dependence on pandits in interpreting the laws through the implementation of Act XI of 1864.

In this conflict of whether to achieve legal uniformity or political stability in its rule, colonial rulers preferred to follow a “politics of balance”, which at times allowed path-breaking laws to be framed and at other times ensured that individuals remained confined under an overarching influence of community and religious scriptures. On one hand, where there was an attempt to push individual

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46 Ibid.


48 Ibid.,p.53.

49 See Ludo Rocher, ‘Indian Response to Anglo-Hindu Law’, Journal of the American Oriental Society, Vol.92, No.3 (Jul.-Sep., 1972), pp.419-424. Rocher in this paper ‘The Courts and, following them, the jurisprudential literature moved farther and farther away from the original Sanskrit texts, which were supposed to be the basis of the Hindu law.’

50 Rocher, Indian Response to Anglo-Hindu Law, op.cit.,p.83.
within the strict codes of community, and on the other hand, through this there was a practice of
divide and rule by individuals in determining issues encompassing their lives from marriage to
inheritance to be determined solely by the laws of the religion. This resulted in the rise of
overlapping jurisdictions in civil cases which was further supported by colonial administrators to suit
the political control. Even within the Hindu law itself, one finds that there is diverse interpretations
under different schools. The Privy Council of London in 1868 stated that the duty of English judges
was to emphasise whether the law followed had been accepted as per the school governing the
districts.\textsuperscript{51} After the removal of Pandits from the authority of interpreting the laws as per the
\textit{Dharmashastras} in 1864, the focus of the colonial administrators shifted to customary laws being the
basis of Hindu law. This approach led them to control new areas and administer law strictly
following the customary laws over Hindu or Islamic laws in matters of marriage, succession,
adoption, maintenance and guardianship. For instance, in case of Punjab, colonial rulers started the
task of codification of customary laws followed by peasant community.\textsuperscript{52} Lack of uniformity in
Hindu law and challenges faced by the English judges in resolving disputes also had its impact upon
issues of gender. This further led to the rise of personalised laws governing issues of marriage,
inheritance etc; as the working of the law in these spheres was kept outside the domain of the state.
Further, the binaries\textsuperscript{53} which could have remained subdued in uniformity became distinct, through
personal laws such as of Hindus and Muslims, men and women.\textsuperscript{54}

Law making procedure in Britain was based on a Common law tradition. Limits of reason\textsuperscript{55} of the
Common law allowed the irrationalism of Hindu law to continue. Reason in Common law tradition
was limited by the use of custom, tradition and precedent by judges, instead of interrogation being
done by them in finding the reasonable argument to support a judgment. Collapse of reason was not
lack of it, but preferring the wisdom of the past especially; the wisdom of the male patriarch in order
to achieve equilibrium in the society. This evolutionary aspect of law, transferred since ages
remained undisturbed. This also presented the Burkean paradox\textsuperscript{56} of whether to follow the inherited
knowledge system of the past or to add something new from the present epistemic standpoint. With
this backdrop much of the legislative changes in the Hindu law during the colonial period were part
of this paradox. However, judicial precedent also could not ensure uniformity in Hindu law. There
continued to be lack of confidence with regard to certain aspects of inheritance laws, for instance,

\textsuperscript{51} loc. cit.


\textsuperscript{53} Rachel Sturman, ‘Marriage and family in colonial Hindu law’ in Timothy Lunbin et.al (ed.) \textit{Hinduism and Law: An

\textsuperscript{54} The binaries in turn divided individuals as different legal subjects.

\textsuperscript{55} This phrase “Limitation of reason” is taken from Adrian Vermeule, \textit{Law and The Limits of Reason} (New York:
Oxford University Press, 2009). I have used this phrase in order to explain the approach of judges during colonial
times in deciding cases of Hindu Law. This has been used to distinguish law making based on
common law tradition from other institutions such as the legislatures, executive officials and administrative agencies.

\textsuperscript{56} Ibid., p. 5.
the inheritance by cognates.\textsuperscript{57} When codification of law through legislated Acts was presumed to be a step forward towards uniformity; the colonial law makers faced a situation of conflict between different laws. While Hindu Women's Right to Property, 1937\textsuperscript{58} intended to change the situation of women, difficulty arose with regard to women's right to property over agricultural land\textsuperscript{59}. As per the Government of India Act, 1935 the powers given to the provincial legislatures restricted the decision making powers of the central government; wills, intestacy and succession all were brought under the concurrent jurisdiction falling under both the governments.\textsuperscript{60} Similar issues arose with inconsistencies in two different legal schools the \textit{Dayabba\textsuperscript{a}} and \textit{Mitakshara}. Gender of the successor became a decisive factor in inheriting property. FitzGerald in his work on succession of collaterals\textsuperscript{61} showed how the collaterals became successor to property under Hindu law over women whose rights based on propinquity of the relationships could not make much difference. In its judicial administration in colonial India, British/colonial rulers found an obverse tradition in place. Under \textit{Mitakshara} these rights of agnates extended to as far as the fourteenth ancestor while in \textit{Dayabba\textsuperscript{a}} this was extended even beyond this. This structure of cognate succession also gave rise to the concept of the right of \textit{bandhu/s}\textsuperscript{62}.Inheritance by \textit{Bandhus} was justified in the name of being \textit{sapinda}'s\textsuperscript{63} or for being sagotra sapinda's, however, nowhere such a stand supported the inheritance rights of women. This led to further confusion in the minds of the judges


\textsuperscript{58} See Paras Diwan, \textit{Modern Hindu Law} (Faridabad:Allahabad Law Agency, 2009),p.384 which states that though Hindu women were given the right to property by the 1937 law, the Act did not immediately make them the collaterals in the joint family property. However, it cannot be denied that the Act made it explicit: that the widow of the deceased coparcener would have “the same interest as he himself had”. This was irrespective of the fact whether the deceased coparcener left behind a son or not. This virtually means abrogation of the rule of survivorship.”

\textsuperscript{59}Hindu Women’s Right to Property Act, 1937 was not valid in the devolution of agricultural land. This was because agricultural property fell in the ‘jurisdiction of provincial legislation’ while the Hindu Women’s Right to Property Act of 1937 was a central legislation. Provincial reforms were also necessary to bring into its fold the crucially important property of agricultural land in an agrarian society like India. It further divided devolution of property on the basis of agricultural land and others. See Chitra Sinha, \textit{Debating Patriarchy The Hindu Code Bill Controversy in India (1941-1956)} (New Delhi: Oxford University Press, 2012).

\textsuperscript{60} Fitzgerald, op.cit.,pp.23-24.


\textsuperscript{62}“Bandhus are of three kinds, the Atmabandhu (or his own bandhus-the sons of his father's sister, sons of his own mother's sister, sons of his own maternal uncle), the Pitr-bandhu (or his father's bandhus-the sons's of his father's paternal aunt, the sons of his father's mother's sister, and sons of his father's maternal uncle), and the Matr- bandhus (or his mother's bandhus-sons of his mother's father's sisters, the sons of his mother's mother's sister, and the sons of his mother's maternal uncle).”Ibid.,p.681.

\textsuperscript{63} Sapinda: (i) with reference to any person as far as the third generation (inclusive) in the line of ascent through the mother, and the fifth (inclusive) in the line of ascent through the father, the line being traced upwards in each case from the person concerned, who is to be counted as the first generation; (ii) two persons are said to be “sapindas” of each other if one is a lineal descent of the other within the limits of sapinda relationship, or if they have a common lineal ascendant who is within the limits of sapinda relationship.
in the process of interpreting such cases.\textsuperscript{64} Inheritance of property on the one hand and denial of property to women was linked to the joint family system\textsuperscript{65} in India. There was no difference in joint family and the succession laws under these two schools. Whether the former protected the latter, or was it vice-a-versa could be debatable; nonetheless; it ensured that property remained in the hands of the male agnates except for certain exceptional situations. The practice deliberately or not gave rise to a system of property control, alienation, use and transfer which resulted in unchanging inequality between men and women over control of property.

When resource was in plenty, monopoly over land by the male head of the family pushed the innumerable property-less women to the backdrop, which in the present time of scarcity of landed property, led to blatant exposition of inequality along the lines of gender.

**Post-colonial Codification of Hindu Laws**

On India attaining independence the onus was on its leaders to ensure the creation of a secular India to reaffirm the faith of minority communities in the emerging nation-state. In the process, the Constitution framed was made the fundamental source of law and no law could override the fundamental principle or rather the tenets of the Constitution. In this context, allowing personal laws to function to oversee marriages, inheritance, adoption based on the religious beliefs, was seen to be a proposed policy for ensuring a secular basis of the Constitution building. The tenets of the Constitution would only be taken cue from to ensure that all the citizens of the country were guarded against any form of injustice. However, the politics and policy often led to conflict of interests with the politics interfering in the religious practices in different contexts. In the larger contexts though, it remained questionable whether personal laws, in protecting its religious tenets, ensured gender equality or not. In the process of protecting the secular interests, the private and public divide increased especially; in the contexts of rights for women. Hinduism could not also do away with the customary moorings which overrode the changes made in the Hindu law in 1956. The process of codification tried to bereft law from the religion in case of Hinduism. By putting aside UCC (Uniform Civil Code) in order to allow religious and cultural pluralism, the question of gender was not given a greater space rather it allowed the private/public divide to widen.\textsuperscript{66}

It only gave rise to “multiple patriarchies”\textsuperscript{67}, placing women between the state and community. Legislations framed by the state were often challenged by the customs or practices of personal law. For instance, despite changes made in the Hindu Succession Act, 1956 women under Punjab customary law faced challenges from men and women within the community on claims over property both as widowed daughter-in-law and daughters. Thus, codification of Hindu law could not become a source for women to counter caste-based, community-ordained practices or laws that continued to impede every process of change.

\textsuperscript{64}Ibid., p.684.


Colonial law’s attempt\textsuperscript{68} to make changes in the Hindu law led to forsaking its policy of non-interference with the laws governing marriage and inheritance. This shift in the colonial policy intimidated some of the traditionalists like representatives of Hindu Mahasabha who felt that amendment made would disrupt the joint family structure and result in damaging the social cohesion among followers of Hinduism. Taking forward these changes which emerged in the colonial phase, the post-colonial state initiated the process of codification of Hindu Law to overhaul the system of inheritance that earlier restricted ownership rights of women. Such extreme reactions against changing the Hindu law emerged because attempts were made to change laws to forbid the practice of sati and removal of caste discriminations, both supported the creation and continuance of a Brahminical society. Attempts were made to put forth a strong connection between inheritance rights and religious practices. And the cases of conversion of individuals to other religion became a strong ground for taking away inheritance rights\textsuperscript{69} of the person. This was further made stronger by connecting the funereal rights of an individual with ownership rights over land as under the Dayabhaga School of Inheritance. While the debate was between the traditionalist and liberals, the colonial attempts to change the law supported by Hindu reformers were seen as a process of proselytisation undertaken by the colonial rulers as an attempt to bring the colonial subjects within the fold of Christianity. As a result, any attempt by the rulers became an issue of a divide over the religious beliefs of the ruler and the ruled.\textsuperscript{70}

With secular attempts to standardise the entire space governed by Hindu law, the demarcation was lost between public and private domain of Hindu law. Opening spaces for debating and discussing Hindu law in legislature and judiciary pushed the influences of law beyond the constricted domain of the family. Institutions such as the Constituent Assembly debated issues of enlarged scope of the codified Hindu Law for women that would free them from the shackles of religious control imposed by the Laws of Manu which—explicitly supported the low status of women in society. Thus, the search for connection between the mundane and transcendental orders resulted in questioning the unchallenged authority of the Brahmins within the Hindu society. Pandit’s role of interpreting Dharmashastras was completely taken over by the state and legislature. However, the heterogeneous society that India is, the impact of these changes was different across the country. Especially, in places that followed customary laws, the change in inheritance law was accepted after much deliberation depending on the political system of the areas. Ideological basis of the parties further led to social consequences in the regions. For instance, the reactions to these changes in Kerala and Haryana were completely different.

With different dynamics at play, there was continuance of customary laws despite an attempt to secularise the text of law impacting the social lives of people. Even the changes in the succession law itself were not uniform. The consequence of this change, through section 14 of the Hindu


\textsuperscript{70}Ibid.
Succession Act, 1956, transformed the position of women as limited owners of their land holdings to absolute owners of property giving rise in legal battles with their male collaterals. It also led to reinforcing the strict gender divide in southern India through section 17 of the succession act and protecting the Marumakkattayam system among the Nairs of Kerala. The devolution of property under this system protects the tarawad property, the matrilineal succession of property, which is passed among mother's ‘Thazavi’ comprising mother and mother's descendants along female line. In the process, there were various court cases over conflict of interest between provisions under section 15 and section 17. This also led to rise in court cases that brought the issue of male relative of the women and those representing the tarawad system. In the process, upholding the rights of women in South through maintaining of customary law left behind a larger issue of whether such a devolution of property was indeed making women equal and absolute owners as would have been in the case of men in agnatic structure. While the customs of the Nairs found precedence, those of the Ezhavas were lost in these unending conundrums of overlapping laws in the same geographical region itself. Similar overlaps were also found in Haryana which influenced a parallel situation differently based on the customary law of the place.

While changes in the Hindu law through codification was a step ahead to move away of aspects that protect institutional inequality, diversity in customary laws itself accepted the changes of Hindu law differently. The law itself while overpowering the varied customs through section 4 of the Hindu Succession Act, 1956, left spaces open and unchallenged certain other customary laws such as; the Marumakkathayee law of Kerala which while protecting the matrilineal transfer of property through female line also gave rise to gendered inequality and sustained certain institutions. The law which apparently might seem to be all encompassing ended up protecting caste based distinctions. Marumakkatayam system benefitted from the differences between Nambudhri men and Nair women, where the former being Brahmans followed primogeniture system of succession in which the lack of succession by other sons except the elder son could be linked to matrilineal succession of property for the other sons. Following this system, Nambudhri men could also have access to the Nair women behind the façade of protecting and safeguarding their interest in the matrilineal succession. In the process, there continued to be a hierarchised land ownership and practices of customary laws in complete divergence to the changes in the Hindu law. Similar to the agnatic structure followed in Haryana giving rise to the Karewa tradition, the tarawad structure gave rise to following of Marumakkatayam traditions. In the process, consequence and influence of the 1956 Act were different, depending upon various customary laws, some protecting the interest of succession rights of women and other leading to their limited ownership.

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71Section 17 of The Hindu Succession Act,1956: Special provisions respecting persons governed by marumakkattayam and aliyasantana laws.

72Chellamma Kamalamma and Ors.vs Narayana Pillai Prabhakaran Nair 17.12.1992, AIR1993Ker146, ILR1993(2)Kerala1, 1993(1)KLJ187


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On one hand, section 14\(^{75}\) of 1956 Act, made women absolute owners of their property from their previous status of limited ownership over landed property on the other hand, Nambudri women in south were not placed in a better position compared to Nair women (despite section 17 of 1956 Act). It also took away rights of women, if any, out of the devolution based on Sambandham. This attributing to cases of conflict over claims of property by the husbands ---especially shares of Nair women--- and the members of tarawad. In these cases, the courts had to share whether to allow devolution of property as per section 15\(^{76}\) of the Act or follow section 17. This left open issues of whether situation of women in such societies was alleviated or there continued to be a conundrum of conflict, by virtue of being ruled by the Marumakkatayam customary law, which though was given special mention in the Act, found it difficult to settle claims of rights of wives and daughters in their father’s/husband’s share; which otherwise would have been possible following section 4 of the Act. Apart from continuance of the conflict of interests among women across castes-- Nambudris and Nairs-- it also led to same issues within the same caste; the differences between Nambudris, Brahmins of Malabar and Ezhavas, the tenants became sharper. This brings to the fore the question of whether it was maintaining a pattern/order in the devolution of property that led to matrilineal tradition being followed, or institutionalising a land relation that led to following of a structure where class as well as, caste distinctions remain untouched.

In 2005, the changes introduced in Hindu Succession Act were: (a) introduction of birth right for daughters; (b) inclusion of daughters in the coparcenary and its influence on the joint family system. Implicit in the law as construed was the accession in the autonomous decision-making capacities of

\(^{75}\)Section 14 of The Hindu Succession Act,1956---(1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner. 

\(^{76}\)Section 15 of The Hindu Succession Act, 1956: General rules of succession in the case of female Hindus. -

(1) The property of a female Hindu dying intestate shall devolve according to the rules set out ill section 16,-

(a) Firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;

(b) Secondly, upon the heirs of the husband;

(c) Thirdly, upon the mother and father;

(d) Fourthly, upon the heirs of the father; and

(e) Lastly, upon the heirs of the mother.

(2) Notwithstanding anything contained in subsection (1),-

(a) Any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the father; and

(b) Any property inherited by a female Hindu from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in subsection (1) in the order specified therein, hill upon the heirs of the husband.

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woman particularly daughters to question the decision of the karta (head) over devolution of property. Whereas, the Hindu Succession Act, 1956, made woman absolute owners without bestowing them with the freedom to question the process of devolution of property by the male coparcenaries, with daughters placed at a subordinate position outside the structure of coparcenary. Thus, there was a change in the position of woman from being on the side of 'accept/submission' to finding themselves on the other side with other coparcenaries and sharing the right of 'questioning' the process of devolution of property.

Conclusion:
Conflict between Hindu Laws and competing interests of the society in most of the cases led to the latter becoming the deciding force in changing the laws. Despite this, Hindu laws evolved from a scattered law to a codified law in the post-independence period. Parallel to this evolution was the continual presence of customary laws followed in different parts of the country. While some customs found place in the codified Hindu laws, others were abrogated with the aim of removing inequalities from the social structures. Despite claims of severing the influence of Laws of Manu from Hindu Laws, the law at many places continued with the traditions of the past. Thus, ensuring equal ownership rights was compromised in order to establish order; hence, Dharma continued to overpower the principle of Nyaya as it was in the past. In all this, claiming equality over ownership rights continued to remain a struggle.

The gap between textual law and law in practice continued, as complete overhauling of the Hindu law did not take place under the overarching impact of politics. Whether it was the politics of the Brahmmins or that of the colonial/post-colonial ruling class, their aim was to secure their position of control. This control often led to the rise and continuance of gender divide in the society over land ownership. The outcome of Hindu Laws influencing social structures led to different consequences across India. For instance, the influence of Hindu Laws was different in Haryana and Kerala. While Kerala abolished the joint family system, Haryana allowed the customary control over land to continue. These different approaches to the legislative changes could not bring in uniformity guaranteeing property rights for Hindu women. In order to retain its hold over Haryana for military support, the colonial rulers codified the customary laws. Codification of customs protected the interests of agricultural tribes over land and several acts in tandem with it. While this protected the interests of males of the dominant castes, women of the same castes had to bear the brunt of institutional inequality that arose as a result of acts sanctioned by the colonial state. However, the codification of customs in the colonial period could not annihilate ascendancy of land market. Agricultural economy, debt, demands for irrigation, rise of canal colonies led to land being seen as a commodity to be sold for protecting the interests of groups primarily dependent on land. Despite this, landed proprietors in the colonial period resisted the rise of any other class/caste in the region. In the process, the colonial government was forced to implement laws which would impede the process of sale of land to strangers. The influence of inalienability was just not restricted to economic sphere of life it also transgressed the social sphere as well. Social structure shaped by the land relations led to rise of gender division within the society.

In the post-colonial period, Haryana’s economic growth, while alienating many, has been the site for economic expansion and growth. Industries find the state favourable for its growth with faster acquisition, conversion and availability of land. While the need for economic growth cannot be missed, the rise in investments also has to go hand in hand with social development. Society has to be part of economic growth and cannot move in a parallel trajectory. However, in this respect, the
gender question becomes imminent as men despite changing social, political and economic situation continue to hold powers within family and community.

Changes made in the law by the central government continued to be surpassed ever since the time of land reforms. Lack of political far-sightedness and overarching impact of customs failed the process of land reforms in the state. Representing different political spectrum, parties in power as well as in opposition preferred to interfere with land laws only to the extent of ensuing investments without changing the social order based on land. With politics influenced by customary laws and Jats dominating the political space for long, the changes in the gender rights over land remained only a textual shift with absence of the same from the social space. Caste and custom continued to remain building blocks of the state, surpassing other distinctions. State government of Haryana following the precedent set by its colonial predecessors was reluctant to interfere with customs practiced since ages.

In Haryana, the acceptance of these changes at the social level had to counter the presence of customary laws in the region. Overpowering diverse customs through legal changes gave rise to either resistance or acceptance of Hindu Law. The rise in cases of judicial appeal was a result of resistance within society—which conformed to customary practices. However, the judicial interventions were not uniform with contradictions emerging between judgments of the lower courts and that of highest court of appeal. The lower courts often emphasised on the customary laws as given in the revenue records compiled in Riwaj-i-am. Simultaneous political changes at the centre and state also had an impact on the implementation of these laws. Ideology of the party in power and their political base also had an indelible impact on the success of legislative changes. The difficulty in implementation of Hindu personal laws arose with state legislated laws implicitly supporting customary laws. The continuance of laws of pre-emption along with succession laws made it difficult for women to lay their claims over agricultural land. With two-pronged approach of the state over land laws, one in support of land acquisitions and other reinforcing customary control there was a rise in cases of adverse possession, benami transactions and land grabs through misinterpretation of facts.

Securing absolute ownership over land rights by women became increasingly difficulty from the time of land reforms to land acquisition. Whenever there was a case of restoring of ownership rights it was an outcome of customary support for it.