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"Bargaining" and legal change: toward gender equality in India's inheritance laws

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Summary

This paper outlines an analytic framework for understanding legal change, using as an illustration the process by which India's inheritance laws (in particular the Hindu Succession Act (HSA) of 1956) have moved toward gender equality. The HSA sought to transform the major inheritance systems that governed Hindus from a situation of gross gender inequality to quite substantial equality. Prior to it the majority of Hindu women could only inherit their father's (or husband's) property after four generations of agnatic males, and even then only as a life interest. The HSA gave them inheritance rights on a par with brothers (or sons) in relation to most property. It is argued here that such change (or its lack) can be understood as the outcome of contestation or "bargaining" between different interest groups enjoying varying degrees of bargaining power *vis-à-vis* the State. The paper spells out the broad parameters of the bargaining framework and in the light of this framework analyses both the formulation of the HSA in the 1950s, and contemporary struggles for changing inheritance laws in India. Among the factors identified that affect people's bargaining power with the State are the size and cohesion of the group seeking change; support from elements within the State, as well as from civil society actors; entrenched property and political structures; social perceptions; and social norms.

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1 Introduction

Few legislative changes have embodied as notable a shift in the vision of gender equality in Indian society as the Constitution of India 1950 and the Hindu Succession Act (HSA) of 1956. The Constitution promised equality before the law and protection against discrimination on the basis of sex as a fundamental right. The HSA sought to transform major inheritance systems governing the Hindus from a position of gross gender inequality to quite substantial equality. Whereas earlier the majority of Hindu women could only inherit their fathers' (or husband's) property after four generations of agnatic males, and even then only as a limited interest, the HSA gave them rights of inheritance on par with brothers (or sons) in relation to most property. Both legislative changes envisioned equality between women and men, even though the HSA, as formulated, fell rather short of that aim.

How can we understand such shifts in legal rights and more generally the process of legal change? In this paper, I present an analytical framework to address this question and demonstrate the workings of that framework by focusing on the process by which India's inheritance laws have moved toward gender equality. In particular, the HSA of 1956 (and subsequent changes therein) serves as an illustrative example. In broad terms, I suggest that such legal change (or its lack) could be understood as the outcome of contestation or bargaining between different interest groups enjoying different degrees of bargaining power *vis-à-vis* the State.[1] The complexity of factors likely to affect a person's or a group's bargaining power are also outlined. Among these factors, I argue, social norms and social perceptions need particular attention. Although these factors are given attention here to explain the formulation of Hindu inheritance law, a similar analysis could be attempted for laws governing other religious and regional groupings in India, where inheritance laws vary both by religion and, for some religious communities, also by region and type of property.

The paper is confined to the formal aspects of law and does not address the equally substantive issue of the gaps between law and practice. This issue is, however, dealt with extensively in Agarwal (1994). Moreover, analysing the process of legal change reveals a great deal about gender relations that is also relevant for understanding why gender progressive laws, once passed, continue to be implemented in such a limited manner.

The paper does not seek to theorise about social movements – a subject on which there is a notable literature.[2] Rather it seeks to theorise about what factors might impinge on gender-progressive legal change. In this, a collectivity constituting some form of social movement might be one factor among several.

In the sections below, I briefly spell out the bargaining approach which provides the conceptual framework for the paper; outline the nature of gendered inequalities in Hindu inheritance systems prior to

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1 The term State is used in the paper in the political economy sense of the word, while the term "state" relates to administrative divisions within the country.

2 The literature on social movement theory is substantial and cannot all be referenced here, but some notable publications include: McAdam, Tarrow and Tilly (2002), Tarrow (1994); Marwell and Oliver (1993); Morris and Mueller (1992); McAdam *et al.* (1988); and Larana *et al.* (1994).

the HSA and the broad features of the Act; examine the process by which the HSA was formulated; and analyse that process in the light of the bargaining framework. Finally, I focus on contemporary struggles for gender equality in inheritance laws, again assessing these in terms of the factors that tend to affect women's bargaining power *vis-à-vis* the State.

2 Bargaining with the State: an analytical framework

A bargaining framework offers a promising analytic lens through which to understand legal change. Bargaining is, broadly speaking, an interaction between two parties characterised by elements of both cooperation and conflict. Both parties cooperate insofar as cooperative arrangements make each of them better off than noncooperation. However, many different cooperative outcomes are possible that are beneficial to the negotiating parties relative to noncooperation. And among the set of cooperative outcomes, some are more favourable than others to each party – hence the underlying conflict between those seeking to cooperate. Which outcome emerges depends on the relative bargaining power of the parties. Insights into what determines bargaining power can thus be key to understanding why some parties stand in persistent disadvantage and how that disadvantage could be overcome.[3]

Traditionally, economists have formalised these concepts within game theoretic models, applying them largely to market interactions or to employer-employee relationships, and with little attention to gender. This has changed somewhat in recent years, and an emerging interest in intra-household gender dynamics has yielded some interesting formulations of household bargaining models.[4] But these ideas have been applied little to arenas such as the State; and inadequate attention has been paid to qualitative and historical factors that can affect bargaining outcomes. As elaborated in Agarwal (1994; 1997), for extending the bargaining framework to gender interactions in extra-household arenas and for incorporating qualitative factors, it appears necessary to move beyond formal modeling. Here it is useful to distinguish between a "bargaining *approach*" and game-theoretic bargaining models. A bargaining approach that is not constrained by the structure that formal modeling requires, would allow us to more freely develop and apply the concepts of cooperation-conflict and bargaining power to the noted extra-household arenas. It would also allow a freer engagement with the complexities of gender analysis and with qualitative factors (such as social norms and perceptions) that impinge on bargaining outcomes.

It needs emphasis here that the process of bargaining need not always involve *explicit* contestation or open discussion. A given party could arrive at a favourable outcome simply because the other party, constrained say by social norms, is unable to contest, indicating the former's considerable *implicit* bargaining power.

Consider how we might apply the bargaining approach to interactions between citizens and the State. Take the State's relationship with gender-progressive organisations (including women's organisations).

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3 See also Agarwal (1994; 1997), and Sen (1990).

4 For an overview of these models, see especially discussions in Haddad *et al.* (1994), Doss (1996), Katz (1999), and Seiz (2000).

The former has the power to enact laws and formulate policies in women's favour; to increase women's access to productive resources; to promote social objectives that gender-progressive individuals might value, such as enhancing women's education, empowering poor women as a necessary element of development, or ensuring women's greater participation in political governance. All these are potential reasons for gender-progressive groups to cooperate with the State.

Similarly, the State on its part would have an interest in cooperating with gender-progressive groups and responding sympathetically to their demands for several reasons. Such groups could build up political pressure, perhaps with the support of opposition parties and the media. The State might fear losing the votes of such groups and the votes of others that such groups could influence, or it may wish to avoid "disruptive" activities such as demonstrations, pickets and strikes. There could also be international pressure, either explicit through donor agencies, international organisations, international women's networks, and so on, or implicit arising from a concern with the nation's image abroad. Moreover, the State might need such civil society actors for furthering certain social objectives that it is unable to fulfil effectively on its own, such as female adult literacy or effective poverty reduction.

At the same time, the State may be more willing to cooperate with civil society actors over certain types of programmes, such as those seeking to deliver better health care and education to the disadvantaged and less willing to cooperate on programmes that call for a significant redistribution of economic resources such as land, insofar as such programmes could adversely affect other important political constituencies that the State values. This latter situation would be one of potential conflict between the State and gender-progressive groups. Other such situations could include the following: the State while passing gender-progressive laws could stop short of full equality or fail to implement the laws in practice; or it could launch micro-level programmes for economically benefiting women while pursuing macro policies that could reduce women's livelihood options; or it could (through its policies and resources) reinforce existing gender-retrogressive biases within the family and community. It is also likely that the State would seek to balance demands by various civil society groups depending on their perceived importance within the polity.

Moreover, the State itself can be seen as an arena of cooperation and contestation between parties with varying degrees of commitment to promoting gender equality. These contestations can be at multiple levels: between State officials within a department, between different tiers of the State apparatus, and/or between different regional elements of the State structure, with some arms of the State pursuing gender-progressive policies even if the overall State structure is gender-regressive. Similarly, there can be key gender-progressive individuals within State departments: in every South Asian country, for instance, it is possible to name individual policy makers (men and women) who, driven by personal convictions, have played important roles in this respect. The elements of the State more committed to gender equality would be the ones that a group of women (or a group representing women's interests) could effectively cooperate with, even while being in conflict with other elements.

Such a conceptualisation implies that the State is not being seen here as a monolithic structure which is inherently, uniformly or trans-historically "patriarchal", as characterised by some scholars.[5] Rather we need to see it as a differentiated structure within which and through which gender relations are constituted, via a process of contestation and bargaining. This conceptualisation also underlines the possibility of the State being subject to challenge and change.

What factors might affect a person's bargaining power with the State in seeking legal change? I would like to suggest the following as being especially important:

- Whether s/he acts as an individual or through a group, and the size and cohesiveness of the group
- Support from the State
- Support from civil society groups, social reformers, etc.
- Entrenched property and political structures
- Social perceptions
- Social norms.

For women, we would expect change to be more possible where there is a large and cohesive gender-progressive group negotiating change. Such a group's bargaining power would be the greater the more support it can muster from elements of the State and from other civil society actors seeking reform; the less the degree of entrenched interests wanting to maintain the status quo (especially interests embedded in existing property distributions and political institutions); and the more conducive social perceptions and social norms are to gender equality. The importance of the first four factors is, to some extent, self-evident. Social perceptions and norms need some elaboration.

Perceptions, for instance, can define the social legitimacy of a person's claim to property. Social understanding of who deserves to inherit a person's property is mediated not just by well-recognised factors such as ties of blood and kinship, but also by perceptions regarding, say, the potential heir's ability to contribute to the well-being of the property owner, her/his ability to manage the property, her/his need for such property (which would relate to the person's actual or potential role in society); her/his likelihood of minimising the dispersion of property; and so on.

Gender, age and marital status can all impinge on these perceptions. Hence, for instance, in societies where women marry out patrilocally and at a distance, they are often seen as less able to contribute to the well-being of parents and therefore less deserving of inheritance than sons. It is clear that this gender difference has more to do with perceptions than with the practical difficulties of providing parental support from a distance, since job-related migration by sons is seldom seen as a similar constraint.[6] Or women are constructed as dependants rather than as managers of families and therefore perceived as less in need of independent access to property in general, and immovable property such as land in particular.

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5 E.g. MacKinnon (1989); Sangari (2000).

6 See also Sen's (1990) discussion on "perceived contribution response".

Or women's abilities to deal with extra-household institutions, including legal institutions for managing the property are often perceived to be less than their actual abilities. And younger, unmarried women are often perceived as less able in this respect than older married women.

Similarly, social norms can impinge on the social legitimacy of women's claims. Norms of female seclusion, for instance, or norms which require women to marry outside the close kin network and in distant villages (as is often the case in rural north India) reduce women's ability both to manage property, and to look after parents in old age. (And negative perceptions, as noted, compound this disability.) Again where norms forbid parents from accepting any kind of material help from married daughters (as is the case among upper-caste communities in north India) parents would be less willing to give women an inheritance share.

Moreover, norms can give considerable *implicit* bargaining power to parties whose interests the norms favour. Hence, for instance, in communities practising high female seclusion women are less in a position to protest unequal situations or to join social movements. They are also more dependent on mediation and support from male relatives such as brothers, and thus less likely to contest their own share in family property against that of their brothers and other male relatives. That women in South Asia often give up their claims in their father's property in favour of brothers, even without the brothers asking, shows that the latter have considerable implicit bargaining power.

It may be noted that norms and perceptions can be both *enabling* and *disabling*. Norms that allow in-village marriages, for instance, or allow women freedom of movement and of interacting with men, can be seen as enabling, and norms which forbid such marriages or which insist on female seclusion can be seen as disabling. Similarly social perceptions that women are capable of independent action (economic and political) are enabling, and perceptions that women are dependants are disabling. Whether norms and perceptions tend in one or other direction can vary culturally across regions and religious groups, as well as historically. Also they shape attitudes not just among families and communities but among legislators and legal institutions as well. Contesting and changing disabling norms and perceptions would thus be an important part of the process of legal change.

Consider how these aspects were played out in the formulation of the HSA of 1956.

3 Inheritance laws before and under the HSA, 1956

Prior to British colonial rule and for a substantial stretch of that rule, Hindu women's property rights were extremely restricted. Basically local customs, influenced in varying degree by the Dharmashastras[7] and the many commentaries on them, formed the basis of Hindu law. The most influential of these commentaries were the Mitakshara and Dayabhaga legal doctrines, dated around the twelfth century AD. These also strongly influenced the interpretation of Hindu law by the British and the subsequent

[7] Ancient legal treatises dated sometime between 200 BC and AD 300 (Kane 1930).

formulation of the HSA. It is therefore pertinent to examine these two systems. While their complex details cannot be spelt out here, their broad features are indicated below.[8]

The Mitaksara system distinguished between separate property and joint family property. Over his separate property a man had absolute rights of disposal.[9] In this property, the widow had an inheritance claim, but only in the absence of sons, agnatic grandsons, and agnatic great-grandsons, and if she remained chaste. Moreover, she could receive only a limited estate, that is, she could enjoy the property during her lifetime but after her it reverted to her husband's heirs. She could not alienate the property except under highly restricted circumstances. Daughters could inherit only in the absence of the widow (with unmarried daughters preceding married ones) and again as a limited estate.

Joint family property, by contrast, was held jointly by (a maximum depth of) four generations of male members – a man, his sons, son's sons and sons' sons' sons – all of whom were designated as coparceners. Devolution was by survivorship, and property alienation was subject to strong restrictions. But each coparcener had the right to demand partition unilaterally at any time. Women could not be coparceners in the joint family property. They only had rights of maintenance as wives, widows, or unmarried daughters.

Under the Dayabhaga system a man was absolute owner of all his property and could dispose of it as he wished. Division took place only at his death, and the property went in the first instance equally to his sons. The shares of predeceased sons went to the sons' sons, or failing this to the sons' sons' sons. A "chaste" widow could inherit in the absence of these male heirs, but again took a limited interest, with the right to manage and not alienate the property. Daughters came after the widow, unmarried ones getting first preference and inheriting only a limited interest.

Under both systems, there was also some recognition of female property rights in the concept of *stridhan* (literally, a woman's property) but its scope was limited. Under *Dayabhaga* although a woman had absolute control over her *stridhan*, this effectively included only movable gifts that a woman received from parents and brothers, from relatives and others at the time of marriage, and from her husband after marriage. And under *Mitakshara* although by some interpretations *stridhan* could include (in addition to such movable gifts over which she had absolute control) immovables, received as inheritance or on partition of the deceased husband's estate, these could only be held by her as a limited interest (for details see Agarwal 1994).

According to both systems therefore, Hindu women could inherit immovable property, such as land, only in very restrictive circumstances, and (with some regional exceptions, as under the Bombay subschool of Mitaksara) at best enjoyed a limited interest in it. Men, in contrast, enjoyed a primary right to

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8 For greater detail, see Chapter 3 in Agarwal (1994).

9 This included property which was self-acquired (if acquired without detriment to the ancestral estate); property inherited from persons other than his father, paternal grandfather, or paternal great-grandfather; specified categories of gifts received by him; and his share of ancestral property on partition, *provided* he had no son, son's son, or son's son's son; in the presence of any of these members, the partitioned share was deemed as ancestral property in his hands.

inherit and control immovable property, and although they too faced restrictions in their power of disposal over joint family property, these restrictions related to their rights as individuals and not to their rights as a gender.

As detailed in Agarwal (1994), actual practice deviated from the noted shastric prescriptions to some extent. For instance, women in wealthy patrilineal households in some regions (e.g. in south and west India) sometimes possessed and transacted in landed property, as revealed, for instance, by temple inscriptions of land donations by women especially between the tenth and fifteenth centuries. But women's extent of control and degrees of freedom over the use of such property outside the religious context were severely limited.[10] In addition, there were small pockets of matrilineal and bilateral systems in the south (especially Kerala) and the northeast.

The HSA of 1956 constituted a substantial move forward. The Act sought to unify the Mitakshara and Dayabhaga systems, and to lay down a law of succession whereby sons and daughters would enjoy equal inheritance rights, as would brothers and sisters. Under the Act (with some exceptions for prior matrilineal communities), for a Hindu male dying intestate, all his separate property devolves equally on his sons, daughters, widow and mother. If previously governed under Dayabhaga this rule applies also to his ancestral property. However, for those previously governed by Mitakshara, the concept of joint family property has been retained. In the deceased man's 'notional' share in the Mitaksara coparcenary, sons, daughters, widow and mother are entitled to equal shares. But men as coparceners can demand partition of the joint family estate while women cannot. Hence for their claim in the "notional" share, women have to await a demand for partition by a male member. And sons in addition get a direct share in the joint estate, as coparceners, which women do not. All heirs (male and female) enjoy full rights of control and disposal over the property they inherit.

While the Act significantly enhanced women's inheritance rights, two major sources of inequalities have persisted (see also Table 3.1 and Agarwal 1994; 1995; 1998a):

1 ***Unequal shares***. Females effectively have rights in a smaller part of the property. Since, as noted, aspects of the Mitaksara joint family property were retained, sons as coparceners have a right by birth to an independent share in the joint family property, in addition to their shares in their father's portion, while female heirs (daughter, mother, widow) have a right only in the deceased man's "notional" portion of the joint family property which they may never see. Moreover, a man can declare any part of his separate property as joint family property, thus reducing women's potential shares.

2 ***Agricultural land***. The Act exempts from its purview significant interests in agricultural land: it leaves untouched the provisions of tenurial laws which deal with the fixation of ceilings or the

[10] Donations to temples were for the spiritual benefit of specific relatives (e.g. husbands, sons, or brothers) and thus constituted a special category of wealth alienation. This did not imply that women were free to use their wealth for any purpose they desired.

fragmentation of agricultural holdings, or the devolution of tenancy rights with respect to such holdings.[11] Since agriculture is a state subject, these tenurial laws vary by state.[12] Hence, interests in tenancy land devolve according to the order of devolution specified in the tenurial laws of each state. In the southern states, as well as in most of the central and eastern ones, these tenurial laws do not specify any order of devolution, so inheritance can be assumed to be according to the HSA. In a few states, the tenurial laws explicitly say that the HSA or the 'personal law' will apply.[13] But, in the northwestern states the tenurial laws do specify the order of devolution and these are highly gender unequal. Here primacy is given (as under the ancient Mitakshara) to male lineal descendants in the male line of descent and women are placed very low in the line of heirs. Also, a woman gets only a limited estate, and loses the land if she remarries (as a widow) or fails to cultivate it for a specified period (usually a year or two). Moreover, in UP and Delhi, a "tenant" is defined in such broad terms that this unequal order of devolution effectively covers all agricultural land.[14]

In addition, the First Amendment to the Constitution of India, enacted in 1951, provides under Article 31b that none of the Acts mentioned in the Ninth Schedule of the Constitution can be declared void on the ground that they infringe on the fundamental rights granted by the Constitution, such as the right of no discrimination on the basis of sex, etc. All the major tenurial laws have been placed under the Ninth Schedule. This constitutional amendment, enacted to protect the validity of land reform legislation, has effectively also protected such legislation from being challenged on grounds of gender discrimination![15]

Moreover, the Act gives a person unrestricted testamentary rights over his or her property. Although in principle the provision is gender-neutral, in practice it can be used to disinherit female heirs.

Since the passing of the HSA, the southern states and Maharashtra (in west India) have amended it. Kerala (also in South India) abolished joint family property altogether in 1976 thus removing any advantage that sons had over daughters and other female heirs in the joint family property of traditionally patrilineal communities. The other three southern states (Andhra Pradesh, Tamil Nadu and Karnataka in 1986, 1990 and 1994 respectively) plus Maharashtra in 1994, included daughters as coparceners. But in the northern states the original Act, with all the noted inequalities, still applies.

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11 See Section 4 (2) of the HSA.

12 The division of legislative jurisdiction by subjects, between states and Center, is discussed further on.

13 The term "personal law", as used in these laws, means that for Hindus the HSA of 1956 will apply, for Muslims The Muslim Personal Law (Shariat) Application Act, 1937 will apply, and so on.

14 For details see Agarwal (1995).

15 Hence, for instance, the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act 1973, explicitly mentions in its Explanation to Section 4 (3): 'The constitutionality of discriminating against unmarried [major] daughters cannot be questioned as the Act is now included in the Ninth Schedule of the Constitution.'

Table 3.1: Hindu women's inheritance rights under Mitakshara and the HSA of 1956

Hindu women's inheritance rights under Mitakshara*	**Hindu women's inheritance rights under the HSA of 1956 (for those previously governed by Mitakshara)**
In a man's separate property	*In a man's separate property*
• Women could inherit as widows and daughters only in the absence of four generations of agnatic males. The chaste widow came before the daughter and the unmarried daughter came before the married daughter. • A woman could get only a limited interest in this property. After her death it reverted to the source. • A woman could not alienate the property except in highly restricted circumstances. • A woman could receive *stridhan* over which she had absolute control, but typically *stridhan* could not include landed property. And the interpretations of Mitaksara that allowed *stridhan* to include immovables, only gave women a limited interest in such property.	• The widow, daughter, mother, and son can inherit equal shares. • A woman gets her portion as an absolute estate, over which she has a full right to dispose off or bequeath. • A woman can inherit landed property except in the case of "tenancy" land, the devolution of which is subject to state-level tenurial laws that supersede the HSA.
In joint family property	*In joint family property*
• Women could not be coparceners in such property. They only had maintenance rights as wives, widows or unmarried daughters.	• In a man's "notional" share of the undivided joint family property, the widow, daughter, mother and son have claims to equal shares. But women do not have the right to ask for partition of the joint estate. • The son, as a coparcener, has an independent right by birth in the joint family property, while a daughter does not.

Note: [1] The Hindu Women's Right to Property Act of 1937 expanded widows' rights from those listed here, but with some critical limitations, and affecting only a small percentage of women, since it did not cover daughters.

Despite persisting inequalities, however, the HSA still represents a fairly dramatic improvement from the situation prevailing before (see Table 3.1). How did this come about? Equally, how do we explain the substantial regional differences in legal amendments toward gender equality? The section below describes how the HSA was formulated, and the subsequent section analyses the process in the light of the bargaining framework and also focuses on the regional variations.

4 Formulation of the Hindu Succession Act, 1956 [16]

Contemporary inheritance laws in India emerged through a complex process of interaction between the colonial and pre-colonial systems and different segments of the population, the interplay of varying ideologies and interests, and the conflicting pulls of scriptural rules and local custom (Agarwal 1994). Around the early part of the twentieth century while India was still under colonial rule, these interactions

16 For more details, see also Agarwal (1994) from which sections of this narrative are condensed.

increasingly took the form of explicit contestation – a process revealed most prominently in the formulation of the Hindu Code Bill which formed the basis of the HSA of 1956.

Amongst the principal actors in this contestation were several women's organisations which emerged in the early twentieth century and which concertedly took up the issue of women's property rights. Among the notable ones were the Women's India Association (WIA) established in 1917, the National Council of Women in India (NCWI) initiated in 1925, and the All India Women's Conference (AIWC) set up in 1927. These organisations worked systematically for social reform legislation, opened schools for girls, and campaigned for women's suffrage. After extended efforts at getting the Child Marriage Restraint Act of 1929 successfully passed, they focused more directly on women's rights to divorce and to inherit and control property.

As Forbes (1981: 71) notes:

> Throughout the 1930s the women's organisations formed committees on legal status, undertook studies of the laws, talked with lawyers, published pamphlets on women's position, and encouraged various pieces of legislation to enhance women's status. At first these demands were presented as part of the organisation's general efforts to uplift women, but by 1934, the AIWC passed a resolution demanding a Hindu Code that would remove women's disabilities in marriage and inheritance.

The late 1920s and 1930s were also periods of expansion for these organisations, both geographically and in numbers. According to Everett's (1979: 71–74) figures, by 1927, WIA had 80 branches and 4,000 members. During the latter part of 1926, local WIA branches organised 22 conferences attended by over 5,000 women. The NCWI, by 1934, had eight provincial councils, 180 appointed societies and some 8,200 members. The AIWC was, however, the most prominent and by the 1930s was recognised as India's most important women's organisation with close ties with political and professional leaders. In 1941 it established a quarterly newsletter and by 1945 had 177 elected delegates, 41 constituent organisations and 25,000 members. These women's organisations were national in scope with branches spread across several provinces. In addition, a large number of women's organisations also emerged in the provinces, mostly to join the nationalist cause, but some also subsequently took on the cause of women's emancipation. In some provinces, such as Bombay, a notable number articulated what Forbes (2000: 155) terms a distinctly "feminist nationalism". More particularly while the national organisations were constituted largely of educated middle class urban women, women in the national movement represented a wider constituency and background.[17]

This was also a period when the colonial government was opening up to greater Indian representation in the government. The complex constitutional history of this period has been covered extensively by historians, but the broad parameters need mention by way of background.[18] Although there

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17 See e.g. Forbes (2000: chapter 5).

18 See especially, Brown (1994); Robb (1976); Sikri (1960); and Sharma (1974).

had been a very limited move toward including Indians in legislative and executive bodies in the latter part of the nineteenth century, the substantive changes took place only in the early part of the twentieth. The 1919 Government of India (GOI) Act enlarged the Central and Provincial Legislative bodies, and sought to establish a form of parliamentary government in which Indians could participate through elections, even if in limited measure. The Central Legislature was divided into a Council of State and a Legislative Assembly, both of which were to have elected and nominated members. The elected members (although split into communal electorates by religion, etc) were largely Indian, as were a certain number of those nominated. Hence, for instance, of the 60 members in the Council of State, 30 of the 33 elected members were to be Indians. Given that some of the nominated non-officials were also to be Indians, this constituted an Indian majority.[19] Similarly, in the Provincial Legislatures (Provincial council) at least 70 per cent were to be elected. However, the power of the legislatures was extremely limited. The Viceroy and the provincial governors kept reserved powers; and under the principle of "dyarchy", the British kept control over certain subjects, while others were transferred to Indian ministers in the provinces. Among the transferred subjects were agriculture, public works, Indian education and local self-government (Brown 1994). The immediate response to the Act was far from positive. The Governor General and Governors retained overarching powers, the electorates were extremely restricted (based on property ownership and taxes paid, etc), and all in all the Act did little to satisfy growing Indian aspirations for self-rule. The period was also marked by the launching of the non-cooperation movement led by Mahatma Gandhi. Over time, however, the impact of the Act is noted to have been significant, especially in the provinces, (Brown 1994).[20] Elections in the 1920s brought in Indians in fair numbers into the provincial legislative councils as well as into the central legislative assembly, where they could debate on issues of government policy.[21]

The scope for Indian participation in governance expanded further with the Government of India Act of 1935. While the claim that the Act gave the provinces virtual autonomy from the Centre and from London has been seriously disputed (Sikri 1960), the Act did bring about substantial changes, including an increase in provincial autonomy, the abolishing of dyarchy in the provinces, making Ministers directly responsible to the legislatures, and expanding the scope of enfranchisement. Although still based heavily on property ownership, enfranchisement was enlarged and over 14 per cent of the population of British India, relative to about 3 per cent previously could now vote for provincial assemblies. Indian presence in the central government also grew. For legislation, a three-fold division of subjects was made (Sikri 1960: 144–5): a federal list of subjects on which the federal legislature could enact laws; a Provincial list on which the Provinces could do likewise; and a "concurrent list" on which both federal and provincial

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19 Figures taken from Sikri (1960: 120). The number of Indians in the 145 member Central Legislative Assembly is more difficult to calculate, since half the elected members were to be in the "general" category, but the 43 seats specified for Indians among the 104 elected gives us at least 30 per cent Indians.

20 Brown (1994) observes that India was the first non-white part of the Empire to experience constitutional devolution of power.

21 Indians in the Indian civil service also grew in number, rising to about 29 per cent in 1929 and to just over 50 per cent in 1940 (Brown 1994: 247).

legislatures could enact laws. In case of conflict, the federal government law would prevail. Before Federal laws became Acts, they had to be passed by both the Council of State and the Central Legislative Assembly and further receive the assent of the Governor General. Similarly, bills on subjects in the Provincial or concurrent lists once passed by the Provincial legislatures needed the Governor's assent, and could still be disallowed by London. While subjects such as agriculture and land tenure came under the purview of the provinces, marriage, divorce and succession fell within the concurrent list. This division of legislative jurisdiction by subjects was to play itself out in the formulation of the HSA of 1956, and continues to affect attempts at amendment, since under the 7th schedule of Independent India's Constitution this three-fold division of subjects was retained (although the contents of each list did not exactly match those of the 1935 Act).

The 1935 Act was much criticised by Indian nationalists on many counts. The Governor General and Governors still wielded excessive power, the franchise was still highly restricted, and the Act stopped far short of the aim of *swaraj* or self-rule. The nationalist demand was now for a Constituent Assembly composed entirely of Indians for framing a Constitution for Independent India. This was only to come about in 1946, but in the interim, what the Act of 1935 did do was draw an increasing number of Indians into a form of restricted Parliamentary governance.

Parallel to this, women had been campaigning for enfranchisement and for representation in the legislatures. Over time these campaigns proved successful. In the 1920s Indian women won the right to vote in several provinces (Forbes 2000:101). And in the Provincial legislative Assembly elections in 1937, 4.2 million women were eligible to vote, constituting 14 per cent of the 30 million electorate. Enfranchisement was, however, based either on their husband's tax status or on being literate, and efforts by women's groups for universal adult suffrage failed (Singer 2002).[22] Finally about 1 million of the eligible women voted. In large part women voted for women in specially designated constituencies. But it was for most a new experience, and 'the number of [eligible] voters was numerous enough that most villages and urban areas became the site of campaigning' (Singer 2002), thus drawing larger numbers into the political experience. Equally important, in the 1920s women gained some restricted eligibility to membership (through election or nomination) in some of the Provincial Councils, and women especially in Madras and Bombay held positions in local government. Many of these were WIA members (Everett 1979: 112). The scope for women's entry into the legislature expanded more notably under the 1935 GOI Act. Provinces had a degree of autonomy in setting up separate electorates based on religion, class, and gender, and a number of provinces reserved seats for women, although some women also stood from general electorates.[23] In the 1937 elections, 56 women entered the provincial legislatures (most on reserved seats and nominations, but some on unreserved seats), making up 3.7 per cent of these

[22] For the 1937 elections, some 43 per cent of the adult males and only 9 per cent of the adult females were enfranchised (Everett 1979: 137)

[23] While the major women's organisations such as AIWC and WIA opposed separate electorates for women, there were also dissenting voices against an absolutist stand, on the argument that enhancing women's voices in the legislature was important as well (Singer 2002).

legislatures (Everett 1979: 138). In the Federal legislatures, again, women had by then been given entry, albeit very limitedly: six seats were reserved for them in the 260 member Council of State and nine in the 375 member Federal Assembly (Sikri 1960: 156–7).[24]

Although the percentage of women both in the provincial and central legislatures was small, it was a significant beginning. It provided women with experience in voting, political campaigning, and participating in legislative debates, and it gave them a voice in those debates. It also gave women more direct links with potential supporters for their causes in the Legislative Assemblies.

By the mid-1930s the national women's organisations had initiated concerted efforts to enhance women's legal rights in property. In their efforts, they received support from a group of liberal male lawyers elected to the government's Central Legislative Assembly. Concerned with social and legal reform, a number of male legislators sought to introduce bills supporting Hindu women's right to divorce and a Hindu widow's right to a share in her husband's property. The bills, however, encountered strong opposition from the orthodox Indian members of the Assembly and were defeated a number of times. To by-pass this opposition the reformers then sought support from members of the colonial government. Ultimately the Hindu Women's Rights to Property Act of 1937 was passed, but with some critical limitations. The Act gave the Hindu widow a right to intestate succession equal to a son's share in the man's separate property among those governed by Mitakshara, and to all property among those governed by Dayabhaga. It also gave her the same interest as her deceased husband in the undivided Mitaksara coparcenary, with the same right to claim partition as the male coparcener. But she could hold this share only as a limited interest, enjoying it during her lifetime, after which it went to her deceased husband's heirs and was also subject to forfeiture on remarriage. Most importantly, *the Act explicitly excluded agricultural land; and daughters were left out altogether from the purview of the Act.*

This was far from the comprehensive legislation that women's organisations were seeking. As a first step toward more wide-ranging legal reform and the codification of inheritance laws, women's organisations called upon the government to set up a commission that would suggest measures to make existing "personal laws" governing Hindus more gender-equal. These were laws relating to inheritance, marriage, divorce, guardianship and adoption which were specific to different religious groups, and at times specific even to region and community. Public opinion was mobilised by publishing articles in English language periodicals, meeting with politicians, attending legislative assembly sessions when bills on women's status in Hindu law were introduced, and presenting resolutions to government officials. Individual male reformers also played a role in furthering this process. Among the leading figures was V.V. Joshi, sanskritist and member of the Baroda committee for Hindu law reform, who wrote an influential pamphlet arguing for comprehensive legislation on women's property rights (Basu and Ray 1990; Everett 1979).

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[24] Singer (2002) notes that women's entry into the Council of State was only possible after Resolution 3 of 1936, and was not integral to the 1935 Act as initially formulated.

In 1941, the government set up the Rau (Hindu law) committee to suggest how the Hindu Women's Rights to Property Act of 1937 should be amended to clarify the rights of the widow and to enhance the rights of the daughter (GOI 1941). Women's organisations supported the move, even while they protested the absence of women on the committee. The timing of the committee's appointment was far from ideal. Soon afterward the Congress party intensified its civil disobedience movement and boycotted the legislatures, and large numbers of Congress members were jailed. Supporting a committee appointed by the British government was interpreted as cooperating with the colonisers. Women faced a difficult choice between their struggle for gender equality and the call of nationalism. This posed a special dilemma for the women who were members of both the AIWC and the Congress. The AIWC members had, however, come to realise that not many among the nationalists were their allies when it came to codifying Hindu law, since giving women legal rights in property and divorce posed a serious threat to male authority. As some women argued: 'Today our men are clamouring for political rights in the hands of an alien govt. Have they conceded [to] their wives, their own sisters, their daughters, "flesh of their flesh, blood of their blood", social equality and economic justice?' (Forbes 1981: 74). Many women went on to support the Rau Committee.

The Rau Committee however felt that the 1937 Act was deeply flawed and recommended the preparation of a new comprehensive Hindu code rather than making piecemeal changes in that Act (GOI 1941). In January 1944, the government reconstituted the Rau Committee, this time for preparing a Hindu Code. AIWC launched a countrywide campaign in favour of codification and submitted a draft memorandum to the Committee. In August of the same year, the Committee produced a draft code. Its main provisions in relation to inheritance were equal property shares for the sons and widow of the deceased; half the son's share for the daughters in all intestate inheritance; and an absolute estate for the widow. Agricultural land was however excluded from the scope of the Draft code on the ground that this issue fell within the purview of the provinces, under the Government of India Act of 1935.

There were "black flag" demonstrations opposing the code in five cities. The AIWC supported the draft code, as did the NCWI and several women's organisations and individual women, but women from orthodox associations, such as the all India Hindu Women's Conference, opposed it. Among men, some supported the code, but the majority argued against it on grounds such as: women are incapable of managing property and are likely to be duped by male relatives if given an absolute estate; married daughters already receive a property share as dowry; unmarried daughters only need maintenance and provision for their marriage expenses; and so on. Only about 7.5 per cent of those whose views were recorded by the Second Rau Committee were women or women's organisations, but there was a marked gender divergence in those views: 71 per cent of the women (or women's organisations) and only 35 per cent of the men (or organisations other than women's) supported the bill (Table 4.1).

Table 4.1: Oral and written opinions on the Draft Hindu Code received by the second Rau Committee, 1945

	Draft Hindu Code		Absolute estate for widows		Monogamy		Divorce *	
	No	%	No	%	No	%	No	%
Total								
For	224	37	49	31	75	43	108	36
Against	375	63	107	69	99	57	195	64
Women **								
For	32	71	10	59	21	68		
Against	13	29	7	41	10	32		
Men ***								
For	192	35	39	28	54	38		
Against	362	65	100	72	89	62		

Notes:
* On this clause the data from most regions were not disaggregated by sex.
** Includes both individual women and women's organisations.
*** Includes both individual men and organisations other than women's organisations.
Source: GOI (1947): *Report of the Hindu Law Committee*, compiled from pp 82–181.

Despite opposition from the orthodoxy, the Rau Committee submitted a revised draft of the Hindu Code Bill which was introduced in the Central legislative assembly in April 1947. Four months later, India became independent. In April 1948, a further revised Hindu Code Bill was introduced and was again subject to intense debate in the Constituent Assembly (set up in 1946 to draft the Constitution of Independent India) and subsequently in the Provisional Parliament. In 1947, women constituted 15 (that is 5.1 per cent) of the 296 elected members of the Constituent Assembly,[25] a number which declined to 11 thereafter. Seven of them subsequently became members of the Provisional Parliament set up in 1950 (Hansa Mehta who had argued for the Hindu Code in 1949 was no longer a member in 1950).[26] Male opposition to the Bill was strong. Many saw it as misguided and as representing the views of a minority. One Congress legislator from West Bengal who was especially vociferous in his opposition, characterised those supporting the bill as 'a few ultra modern persons who are vocal, but who have no real support in the country' and argued that only women of 'the lavender, lipstick and vanity bag variety' were interested in the Bill.[27]

There was also a widespread fear that Indian families would break up if women were given substantial rights in parental property. In 1948, at an All-India Anti-Hindu Code Convention, it was argued that 'the introduction of women's share in inheritance' would cause a 'disruption of the Hindu family system which has throughout the ages acted as a cooperative institution for the preservation of

25 The number of women has been calculated from the list of members given in Rao (1966: 302–10) and Banerjee (1947).
26 Personal communication, Wendy Singer, Kenyon college, 2001.
27 See statements by Pandit Laxmi Kanta Maitra, in the Constituent Assembly of India (Legislative) Debates on the Hindu Code, 1 March 1949 (GOI 1949: 996–7).

family ties, family property and family stability' (Kumar 1993: 98). Similar fears were expressed in the Constituent Assembly debates on the Code in 1949. For instance, Pandit Lakshmi Kanta Maitra, Congress legislator from West Bengal, asked: 'Are you going to enact a code which will facilitate the breaking up of our households?' (GOI 1949: 1011); and Pandit Thakur Das proclaimed that giving property shares to daughters would lead to 'endless trouble' and 'spell nothing but disaster' (GOI 1949:917). Two years later, in the 1951 Parliamentary debates on the Code, Mr M.A. Ayyangar, Congress Legislator, similarly argued that if daughters inherited property it would 'ultimately break up the family'. In fact, women would choose not to marry at all: 'May God save us from . . . having an army of unmarried women' (GOI 1951: 2530). This was a sad and ironic commentary on the Indian family since it implied that family stability depended on maintaining sharp gender inequality. It also suggested that with the economic independence promised by property ownership, women would either choose not to marry at all or abandon their spouses forthwith!

In September 1951, of the legislators who spoke on the Bill ten supported it and 19 (all men) opposed it. Women constituted only about 3 per cent of the 335 legislators in 1951 and only 6 of the 11 women legislators participated in the debate, one or two in particular acting as spokespersons for the rest. However, as I have argued further below, at that juncture, the "politics of ideas" overcame to some degree the disadvantages associated with the sparseness of women's presence.[28] And although most top male Congress leaders of Independent India were against the Bill, including the Home Minister, Vallabhbhai Patel, and India's first President, Rajendra Prasad (who threatened to withhold his signature on the Bill), several influential leaders, in particular Prime Minister Jawaharlal Nehru and Dr. B.R. Ambedkar (then Law Minister and one of the principal architects of India's constitution), were strongly committed to the Bill. In 1949, Nehru had stated: 'We stand committed to the broad approach of the Bill as a whole and the Government will stand or fall on it' (cited in Som 1994: 181). Nehru's commitment stemmed from the belief that the reform embodied in the Bill was critical for national development and 'intimately connected with any progress on any front that we desire to make'.[29] He also held a personal belief in women's claims to equal property rights. On inheriting his father's considerable property after the latter's death, for instance, he wrote to his sister Krishna that he saw himself only 'as a joint sharer', 'the other sharers being mother and you . . . Indeed mother and you are the real sharers. I am a trustee for the family property . . .'[30] For Ambedkar, apart from the gender angle, the caste angle was also significant, the Bill embodying a challenge to upper caste Hindu customs. According to Som (1994: 185–6), Ambedkar, belonging to the dalit Mahar caste, 'took upon himself the task of getting the bill through as a crusade against the bastions of the tyrannical upper caste stranglehold over Hindu society . . . [which] enslaved both Sudras and women, who had to be rescued by law so that society could move on.'

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28 For an excellent discussion on the debates concerning the "politics of presence" as versus the "politics of ideas", especially from a feminist perspective, see Phillips (1998).

29 Nehru to Ambedkar in 1951, cited in Som (1994: 188).

30 Cited in Som (1994: 183).

However, faced with the hardcore conservatives within the Congress, and with the argument that by pushing the Bill through at that point he might jeopardise the Congress party's chances of winning the general election which was a few months away, Nehru temporarily shelved the Bill. Ambedkar resigned in protest. It is only after 1951, riding on the strength of a Congress electoral victory, that Nehru was finally able to win passage for the important aspects of the Hindu Code Bill in four separate Acts. Of these the HSA of 1956 forms the basis of Hindu Succession laws today.[31]

Some scholars, such as Som (1994), argue that the HSA was basically a symbolic victory. I disagree. Som uses as the point of comparison full gender equality, rather than the situation prevailing prior to the HSA (Table 3.1). Although the Act, as noted, did not provide full gender equality, it was a significant step forward compared with the weak property rights Hindu women enjoyed earlier.

What factors impinged on this change?

5 Bargaining power: the enabling factors

In Section 2, I had suggested that the following factors, in particular, are likely to affect the bargaining power *vis-à-vis* the State of those seeking legal changes in their favour: whether they act as individuals or as a group, and the size and cohesiveness of the group; the support they receive from the State and from non-traditional agents such as civil society groups, social reformers, etc; the extent of entrenched political and property structures; social perceptions; and social norms. These factors are clearly revealed in the story on how the HSA came into being.

Acting as a group, and the group's size and cohesiveness. To begin with, women's organisations, in particular the AIWC and WIA, formed a fairly large, cohesive and well-organised collectivity acting in women's interest. In the early part of the twentieth century, they clearly played a crucial role in bringing women together as a force in this respect. They strategise and campaigned consistently in favour of codification, sought to widen their support base by carrying the debate to many parts of India, attended legislative assembly debates, and mobilised support from sympathetic external agents such as liberal lawyers and social reformers. All in all, they mounted a relentless campaign for women's property rights.

Most notably, they upheld their gender interests in the face of attempts by Congress nationalists to argue that women were being divisive and in some senses anti-national, by pushing for this reform with the aid of the colonial government, at a time when the Congress had launched a civil disobedience campaign against the British. I see this aspect as being of particular importance, since the argument that gender is a divisive issue has been made time and again to undermine gender interests in many mass movements. Left-wing political parties and groups, for instance, have often argued that raising gender concerns in the face of class struggle is divisive. Minority groups (based on religion or ethnicity) have argued similarly during their movements for autonomy and identity. In other words, class, religious, or

[31] With the passing of the HSA of 1956 the Hindu Women's Right to Property Act of 1937 was repealed.

ethnic identities have typically been given primacy and women have often been unable to deflect or oppose the argument. The experience of peasant movements such as the Tebhaga and Telangana movements of the 1940s also reveal this. In these sharecroppers' movements for land rights women were significant actors, but the issue of their independent rights in land, or of unequal gender relations within the home and in the movement's decision-making bodies, received little attention (Agarwal 1994). However, in the case of the Hindu Code Bill, as noted, many women in the AIWC challenged this argument, revealed its digressive nature, and upheld gender interests by supporting the Rau Committee at a critical juncture.

There was also a lesser-known but significant mobilisation by some prominent women when the Constitution for Independent India was being drafted by the Constituent Assembly. Hansa Mehta, in her Presidential address to the AIWC in December 1945, argued for a 'Charter of Indian Women's Rights'. Such a charter was subsequently formulated, advocating that equality between the sexes should be the basis of citizenship in India, and demanding, among other things, equal inheritance rights for women and men (Mehta 1981). As a member of the Constituent Assembly, Mehta also noted that there could be possible contradictions between the proposed constitutional clause promising freedom of religious practice (which could be read as including religiously sanctioned inegalitarian property and marriage laws), and the aim of social reform toward gender (and caste) equality. This again was subject to contestation. The matter was finally resolved in women's favour by recognising in the Constitution (and through the First Constitutional Amendment of 1951), that freedom of religion did not preclude measures for social reform.[32]

Support from the State. Here the picture was clearly a mixed one. On the one hand there were many elements of the State apparatus, members of the legislative and Constituent Assemblies, and prominent individuals, including India's first President, which strongly opposed the Bill. On the other hand, there was notable support from specific elements of the State, including sections of the colonial government, liberal Indian lawyers elected to the legislative assembly, and major political figures such as Nehru and Ambedkar. As noted, both Nehru and Ambedkar played pivotal roles in the passing of the Act. For Nehru, strongly influenced by elements of both socialism and liberalism, progress toward gender equality was an integral part of building a modern India: '. . . real progress of the country means progress not only on a political plane, not only on the economic plane, but also on the social plane. They have to be integrated, all these, when the great nation goes forward' (cited in Som 1994: 181). And his commitment did not waver despite the opposition, although a range of political considerations impinged on the Bill's timing and the final form it took. He assured the women leaders and women's organisations seeking reform that he would see the Bill through. Nehru's support, as a towering figure in India's freedom

[32] Specifically, the Constitution in its Article 15 notes: 'Nothing in this article shall prevent the State from making any provision for women and children'; and the First Amendment added the following proviso to Article 15: 'Nothing in this article . . . shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens . . .'

movement and the first Prime Minister of Independent India, was clearly crucial to the passing of the legislation. Also his having waited till after the elections, which gave the Congress a fresh mandate, helped, since at least political considerations could no longer be used as an excuse for stalling the Bill by those opposing it within the Congress.

The Parliament's composition in the 1950s, in terms of the occupational background of those elected to the first Lok Sabha (the lower house of Parliament), was also relatively more favourable than it is in the present period. For instance, in the first Lok Sabha some 64 per cent of the members belonged to professional/legal/service backgrounds (Table 5.1).[33] Agriculturists, traders/ industrialists/businessmen, and ex-Princes, that is those who could be expected to have a particular stake in maintaining existing property structures and to be especially reluctant to include new claimants (women) to that property, were in a relative minority – 36 per cent. In addition, the overall climate of reform, the vision of building a modern society and polity in a post-colonial context, the fact that the treatment of women was an issue that loomed large during the colonial period, a concern for India's image abroad,[34] and the substantial visibility of women in the freedom struggle which gave women's claims social and moral legitimacy, were all factors that enhanced women's political bargaining power *vis-à-vis* the State.

These positive enabling factors, nevertheless, had their limits, as revealed by the compromises in the contents of the HSA which, as noted, stopped rather short of granting full gender equality.

Support from civil society groups, social reformers, etc. To begin with, the social reform movement of the late nineteenth and early twentieth centuries created a climate of receptivity for change in women's favour. A number of male reformers pursued issues such as female education, the legalisation of widow remarriage, condemnation of sati and child marriage, and so on. Although most did not envisage women playing a role beyond hearth and home, the steps they took and the debates they generated, as Forbes (2000: 31) argues, 'linked improving women's status with the modernisation agenda'. It also laid the ground for women themselves to further this project, as they did subsequently, by defining their own priorities for their enhancement. In addition, in particular regions, significant individuals played important strategic roles in relation to the issue of women's property rights: V.V. Joshi (mentioned earlier) is a case in point.

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33 This includes all the categories in Table 5.1 other than agriculturists, traders/ industrialists/businessmen, and ex-princes.

34 See, e.g. Forbes (2000: 114) who notes that as India's visibility in international organisations increased, the reform-minded legislators who were aware of women's issues also became concerned with India's image in these organisations.

Table 5.1: Occupational background of Lok Sabha Members, 1952–1998 (percentages)

Occupation (prior) Lok Sabha No.	1952	1957	1962	1967	1971	1977	1980	1984	1989	1991	1996	1998
	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	12th
Agriculturists	22.4	29.0	27.4	30.6	33.2	36.0	39.3	38.3	44.1	32.1	38.7	49.1
Political and Social workers	_	_	18.7	22.9	19.0	20.0	17.2	16.0	17.1	18.1	19.4	18.0
Lawyers	35.4	30.2	24.5	17.5	20.4	23.4	22.2	19.0	15.4	16.3	12.2	10.3*
Traders, Industrialists and Businessmen	12.0	10.3	10.6	7.5	6.8	3.3	6.3	6.8	3.6	7.7	8.4	3.7
Educationists	10.0	11.3	5.7	6.6	7.1	8.4	6.7	7.7	8.1**	9.6	8.2**	5.5**
Writers and Journalists	10.4	10.3	5.7	4.8	6.3	2.1	2.9	1.3	2.7	2.2	1.5	1.3
Doctors and Engineers	4.9	3.5	3.9	4.2	3.0	2.9	3.0	4.8	5.5	6.3	4.7	4.3***
Police, Civil and Military service	3.7	3.9	0.9	3.2	3.4	1.7	1.0	3.0	1.8@	4.0@	3.2@	2.3@
Ex-princes	1.1	1.4	2.1	1.4	0.4	0.6	0.2	0.6	0.4	0.6	_	0.4
Industrial workers & trade unionists	_	_	0.2	0.2	_	1.7	0.8	1.3	0.4	0.8	0.8	2.1
Others	_	_	0.2	1.0	0.4	_	0.4	1.1	1.0	2.2	3.0	3.1

* includes a judge
** includes an economist
*** includes a veterinarian
@ includes diplomats
Sources: Calculated from the absolute numbers of members given in Lok Sabha Secretariat (2000), since in some cases the percentages given in this text were incorrect.

Entrenched property and political structures. That this was clearly a notable disabling factor is indicated in the compromise versions that were passed of both the Hindu Women's Property Act of 1937 and the HSA of 1956: in the former, daughters as claimants and all agricultural land were excluded; in the latter, tenancy land was excluded, and vestiges of the Mitaksara joint family property were retained. For the majority of the population, agricultural land was the most significant form of property, contributing both to economic and political power and to social status. Interests in joint family property were also deeply entrenched. This made for strong opposition to the inclusion of women particularly in agricultural landed property. In Parliament, although agriculturists were in a minority, they were still a significant minority (22.5 per cent: Table 5.1). Hence while they could not entirely dominate the proceedings, they could certainly influence the outcome in critical ways. Also there was a political dominance of men in all rural institutions and levels of decision-making down to the village level, which provided men significant advantages over women in the voice and power they had to push their preferences at the state and national levels. For instance in village, block and district level institutions women had little or no presence.[35]

[It is notable that similar considerations prevailed in the reform of Muslim inheritance laws although my discussion here is focused on Hindu inheritance laws. The Muslim Personal Law (Shariat) Application Act, 1937 was also a compromise in relation to agricultural land. In the discussions leading to the Act there was stiff resistance, especially from the landowning classes of the Punjab, on the ground that it would ruin agriculturists. The Act, as passed, abrogated custom in favour of the Shariat and substantially expanded most Muslim women's property rights from those they had held under customary provisions.[36] However, agricultural land was left out completely from the purview of the Act. Such land continued to devolve on the basis of highly gender unequal customs. And till date only the four south Indian states have amended the Act to include agricultural land.][37]

Social perceptions. Social perceptions impinged on this process of legal formulation in various (albeit not entirely consistent) ways. They shaped understandings of the likely impact of property ownership on women's roles in society; fuelled fears that if women inherited property the family would break up; and caricatured the women who advocated gender equal property rights.

To begin with, the supporters and opponents of the Bill held contrasting views on what would constitute the ideal Hindu woman. Everett (1979: 166–7, 181) provides some interesting insights on this:

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35 Historically, in rural India, women had little authority or presence in public decision-making bodies, not only in patrilineal communities but even in matrilineal ones (Agarwal 1994). This has since changed, especially after the passing of the Constitution (Seventy-third Amendment) Act, 1992, which reserved seats for women in local bodies (as discussed further below).

36 In much of India, Muslim communities followed customary inheritance practices similar to those of the local patrilineal Hindu communities, among whom (as noted) women's property rights were highly restricted. The exceptions were women belonging to matrilineal Muslim communities (as in Kerala) who, like their Hindu counterparts, customarily enjoyed substantial property rights, and whose rights were reduced through this Act (Agarwal 1994).

37 For details see Agarwal (1994; 1995).

> From the [1940s and 1950s] debates [on the Hindu Code Bill: HCB] two different images of ideal Hindu women emerged. The opponents' image resembled the view of women presented in the Manusmriti: she needed the protection of men during all the periods of her life (thus never capable of independently looking after property) . . . The proponent's image … was [of] a competent, autonomous human being interacting with others on the basis of equal rights and individual freedom. This image stemmed from Western liberal thought, however imperfectly it had been achieved in practice in the West.
>
> The HCB opponents believed that the interests of men and women were better served when women occupied a dependent position and men and women played different social roles. The HCB supporters believed that everyone's interests were better served when men and women were independent and enjoyed equal rights . . . The HCB operated within the equal rights perspective which had emerged as the dominant women's movement ideology since the 1930s.

Such divergent views apart, many among the orthodoxy perceived the women who were advocating gender equality in law as westernised, privileged, superficial and self-seeking: the "lavender, lipstick and vanity bag variety". Such a woman, it was argued, could have little understanding of the needs or preferences of the majority of Indian women. This perception was at sharp variance with the personas and contributions of the women who actually constituted the women's organisations; who campaigned across the country for women's rights; and who in myriad ways demonstrated their long-standing commitment to India's freedom struggle.[38] This contrast comes across strongly, for instance, in Padmaja Naidu's passionate plea during the Parliamentary debates over the Hindu Code Bill in 1951:

> [T]housands of sensitive Hindu women . . . for the first time in their lives left the precious sanctuary of their sheltering homes [during India's freedom struggle]. They came to the battlefield and stood beside their brothers and faced jail and lathi charges and often enough, humiliation worse than death. If today . . . [they] who fought for the independence of India are to be denied their just rights, then our hard-earned freedom is no more than a handful of dust.

Perceptions (rather than actual evidence) again underlay the noted pervasive fear expressed by many legislators that Indian families would be beset with conflict and break up if women gained independent property rights.

Social norms. Although the effect of social norms on the formulation of the HSA is revealed less directly than that of social perceptions, it can still be pinpointed. For a start, social norms guided social perceptions in that those who supported the HSA clearly had in mind different norms from the traditional ones regarding women's potential and desirable roles in society.

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[38] See e.g. Forbes (2000) and Everett (1979).

More strikingly, variations in social norms are an important factor explaining regional differences both in traditional inheritance laws and in the amendments to the HSA since 1956. For instance, social norms regarding acceptable marriage partners and post-marital residence among Hindus are quite different in north and south India. In the South, traditionally, marriages with close kin, especially cross-cousins, are accepted and among some communities preferred. In the northern states, marriages with close kin are forbidden among most communities. Similarly, in South India in-village marriages are allowed, while in the northern states they tend to be forbidden or strongly disapproved.[39] Both close-kin and in-village marriages reduce the possibility of property dispersion outside the family and geographically, if the daughter inherits land. The states in middle India, including the western state of Maharasthra, present a mixed picture: here a number of communities have marriage practices similar to those in the south. These features have impinged on both the traditional and contemporary patterns of inheritance.

Traditionally, for instance, it is from south India and in lesser degree from west India that we find evidence of women (even if in limited degree) possessing landed property, such as the noted evidence from temple inscriptions of the medieval period. And even today opposition to daughters inheriting is much less in the southern and western states. It is significant that the south Indian states were the first to amend the HSA by bringing the rights of daughters on par with sons in joint family property. Moreover, in these states the amendments appear to have been carried out with no notable public opposition. In other words, *enabling* social norms in the southern states appear to have given women considerable implicit bargaining power; while *disabling* social norms in the northern ones have had the opposite effect. Maharashtra appears to be somewhere in between. Here the HSA has been amended, as noted, but this required substantial contestation by feminist lawyers and progressive lawyers' groups, among others.

In sum, therefore, an analysis of the process by which a significant legal change, such as the HSA of 1956, was brought about, suggests a rather good fit with the bargaining framework and the factors identified as likely to affect the bargaining power of those seeking such change. Let us turn briefly now to the contemporary period to examine how enabling these factors continue to be.

6 Contemporary struggles for reforming inheritance laws

The struggle over reforming inheritance laws in a more gender equal direction continues. To examine this within the bargaining framework, consider the situation in relation to the six broad factors noted above as affecting women's bargaining power *vis-à-vis* the State. In which direction have these moved?

[39] See Agarwal (1994) for a mapping of these regional variations in norms, preferences and practice of close-kin and in-village marriages in India.

Acting as a group, and the group's size and cohesiveness. Since the 1930s when the first major women's organisations emerged in India, the women's movement has changed in form, substance and strength. From one perspective, there are today several enabling features. In particular, especially since the 1970s, there has been a marked swell in the number of women's organisations and groups across the country. Although there is no comprehensive estimate of such groups, by most assessments the number would run into several thousand, and by one estimate, if the proliferation of rural women's self-help groups and other women's community groups is taken into account, the count of women's groups would be over a million.[40] Alongside, the major national women's organisations have grown in their spread and membership. For instance, the AIWC today has 555 branches across India and 0.1 million members; the National Federation of Indian Women, founded in 1954, has 22 branches and 1.7 million members; the All-India Democratic Women's Association (AIDWA) set up in 1981 has 26 units across the country and a membership of 6.2 million; and the YWCA (Young Women's Christian Association established in 1896) while much smaller in membership than these others (it has 10,000 members and 75 branches) has, since the 1980s, played a notable role in national campaigns for women's rights and increasingly linked up with other women's organisations in this regard.[41] In addition, there are a large number of groups which are not solely women's groups but are actively committed to improving women's situation, economically, socially and politically. Moreover, the period since the 1970s has been marked by an emergence of large numbers of women's rights initiatives and of women's coalitions and networks internationally, including CEDAW (Convention for the Elimination of All Forms of Discrimination Against Women) which came into force in 1981 and has been ratified by 167 countries, including India; The Beijing Platform for Action 1995; and The Asia-Pacific Women in Law and Development.

As a result of the many campaigns carried out over the years by Indian women's organisations and autonomous women's groups, the rapid growth of academic research and analysis on gender, and the impact of international coalitions, there is today a widespread recognition in India of the need to address gender inequalities on many counts, even though a huge gap remains between acceptance of gender equality as an idea and its realisation.

From another perspective, however, the picture looks less cheerful. The groups concerned with gender justice in India embody a diversity of issues, approaches and strategies. Legal reform is only one element, and within that the reform of property laws is a sub-element. Although in recent years there has been some recognition that it is important for women to own land and assets in their own right to ensure their economic and social security, this has yet to catalyse a notable mobilisation for the reform of inheritance laws. It is the issue of violence against women that has been the stronger unifying force for both legal and social reform within the women's movement. Indeed, the issue of women's property rights has largely been neglected, and has failed to occupy centre stage in the way it did in the immediate pre-

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40 Personal communication from a senior office bearer of the Voluntary Action Network India (VANI), Delhi, June 2002.

41 The figures of membership and branches given above are the latest figures provided by the office bearers of these different organisations (personal communication, June 2002).

and post-Independence period. One important reason for this (detailed in Agarwal 1994) is that most women's organisations that are concerned with women's economic situation, are largely preoccupied with employment, wages, and small income-generating schemes, and more recently with micro-credit, as *the* means of enhancing women's economic well-being. Women's lack of property ownership has received relatively little attention. In fact, none of the national level women's organisations are today focusing on this question. There has also been a long-standing view among some left-wing women's groups – a view which still finds some advocates – that promoting individual property rights would go against their vision of a socialist society (although, interestingly, this argument has seldom been made against redistributive land reform through which landless male heads of households became small peasant owners).

Meanwhile, the issue of reforming "personal laws" has become enmeshed with questions of religious and community identity, and with the politicisation of identity issues (widely expressed as "identity politics"). This is especially apparent in the debate over the Uniform Civil Code (UCC), namely a code that would apply uniformly to all religious groups and communities in the country, which today are governed by a diversity of laws. The demand for the UCC was in fact first put forward in the 1930s by the All India Women's Conference, and remained prominent till India's Independence. In the Constitutional Assembly, women representatives sought to have the UCC included as a justiciable right, but without success. It was incorporated into the Constitution within the Directive Principles of State policy, that is as non-justiciable and as something that the State would "endeavour" to secure, in effect putting it in the back burner. Within pre-Independence feminist discourse, the UCC was viewed as a Code that would provide gender equality to women irrespective of religion and community, and so help bypass the gender inequalities that were likely to persist if religion and custom remained the basis for defining personal laws.

Today, however, the UCC has been overlaid with additional meanings, which were at worst dormant earlier. In particular, the Code is seen as a means of promoting national unity, and of integrating diverse communities, deflecting it from the central question of gender equality (see also Hasan 2000). The UCC has also increasingly become associated with the agenda of the Hindu right-wing political groups in the minds of many intellectuals who have, as a result, distanced themselves from the demand for an UCC (Sangari 1995; 2000; Working Group on Women's Rights 1996). Moreover, some fear (unwarrantedly in my view) that a drive toward uniformity may result in uniformly gender *unequal* laws, in an attempt to define a minimal acceptable to all religious groups. Basically, as noted, this discussion has sharpened political divisiveness with a rather unfortunate mingling of the issue of legal reform with that of religious and ethnic identity and conservative political agendas. In the process, it has resurrected the old presumed conflict of interest between freedom of religion and gender equality.

Out of these complex debates, it is possible to broadly glean three positions held by individuals/groups interested in gender equality in personal laws: (i) those that argue that personal law reform should proceed from "within" each religious group, with each group being left to pursue legal

reform separately;[42] (ii) those that argue for a package of gender-just laws (rather than an UCC) which applies to all citizens by birth, but which coexists with personal laws, so that on adulthood each person can choose whether to be governed by the one or the other (Working Group on Women's Rights 1996); and (iii) those that argue for a gender-just/gender-equal civil code that applies to all citizens without option and which is based on the Constitutional promise of gender equality, rather than on religious decree or custom.

The first position, however, is the one that persists by default, since there is little active mobilisation for (ii) or (iii). And the absence of consensus among women's groups, in addition to the absence of a concerted focus on this issue, means there is no critical mass of women to push this demand forward or even to propel it to the level of a national debate. The first position leaves the onus of reform on each religious group, privileges religion over every other basis of identity, and is likely to fragment women as a group, thus undermining attempts at building women as a cohesive force. As Sangari (1995: 3297) notes: 'Apart from the risks of isolation and failure, a struggle to reform personal laws from within puts the onus on a small number of persons'. Implicitly, the first position also incorrectly assumes that religion creates homogenous communities with fully shared interests, ignoring both the intra-community divisions based on gender, class, caste, or geographic location, and the ability of particular groups to transcend religious boundaries. Given that communities are typically characterised by male dominance in decision-making, and seldom give primacy to women's interests, we might ask: what would propel each community to work for such legal reform in a gender-progressive direction? Moreover, this position artificially divides women by religion. As Sangari (1995: 3294) persuasively argues: '. . .differences in religious faith [cannot] in themselves produce equally significant divisions between women. The particularity of religious belief need not in itself either constitute division along lines of power or alter the distribution of social power . . . It is only when religious affiliation is translated into politics and is aligned with institutions that maintain forms of power and privilege that it has the capacity to divide women.' My own empirical research into women's situation in South Asia reveals that cultural geography rather than religious difference explains variations in women's social and economic status (Agarwal 1994), and further that the markers of divisions among men, in particular class and political ideology, do not divide women in quite the same way (Agarwal 1994; 2000a).

All said, despite a vibrant women's movement in India today, whose scope, reach and influence has grown since the 1940s and 1950s, the very diversity of concerns, approaches, and ideologies that the movement embodies reduces its cohesiveness and undermines its effectiveness in relation to particular issues. Indeed, the Indian women's movement can be seen as having many different "centres" and there are several centrifugal tendencies at work. This reduces the bargaining power of women as a group since it does not provide the unified thrust necessary to pressure the State into eliminating persisting inequalities such as in the HSA (or in other inheritance laws).

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42 See also the discussion in Gandhi and Shah (1991: 252–9).

Support from the State. For reforming inheritance laws there are two levels at which we need to examine support from the State: one, at the level of the central government and two at the level of state governments. Efforts at both levels impinge on the gender inequalities that persist in Hindu inheritance laws, namely unequal rights in agricultural land and unequal shares in joint family property. After Independence, India adopted a federal structure of government, with a division of power and responsibilities (both executive and legislative) between the Center and the states. And, as noted earlier, under the Constitution, legislative jurisdiction was divided by subjects into three parts (similar but not identical to the lists in the GOI Act of 1935): a Union (or centre) list, a state list, and a concurrent list. Agriculture and land-related legislation fall under the "state list", while laws relating to property succession fall under the 'concurrent list' (GOI 1990). If the state legislature wants to modify any laws on topics which have been included in the concurrent list, and which have already been passed by an Act of Parliament, the modifications need the assent of the President of India. And the HSA of 1956 is such a central government enactment.

If legal reform has to emerge from the states, then to remove inequalities in the devolution of agricultural land each state would need to amend its tenurial laws. And to remove inequalities in the inheritance of joint family property, it would need to amend the HSA. The latter amendment would first need to be passed by each state legislature separately and then sanctioned by the President of India.

Alternately, if reform were initiated by the Central government, it could amend the HSA by bringing agricultural land on par with other forms of property, and abolishing the concept of joint family property altogether. This would remove both types of inequalities comprehensively, at one go, and for all states simultaneously.

So far reform has been at the initiative of the states rather than of the Centre, and the patterns of reform interestingly reflect variations in cultural geography and women's status across India. States in India mark cultural and linguistic boundaries and therefore (as noted earlier) serve as broad definers of cultural geography and women's status. Both historically and in the contemporary period, women's social position has been much better in the southern states than in the northern, with western, central and northeastern India coming in between.[43] On average, the southern states, compared with the northern, have higher female literacy levels (and a lower gender gap in literacy); lower total fertility rates; an absence of purdah and hence higher female mobility among most communities (compared with a strong emphasis on purdah in the northwest, even among Hindus); higher female labour participation rates in work outside the home; and social norms that permit women to marry within the villages and within the extended family, which strengthens their fall-back positions and hence intra-marital bargaining power.[44]

These cultural patterns have also played out in the form that inheritance laws have taken. For example, as we had noted earlier, inequalities in the devolution rules for agricultural land persist basically

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43 Within this broad characterisation, some variations have emerged in recent years. For example, Himachal Pradesh, has improved enormously on gender indicators over the past decade or more. But on average, the southern states still perform better than the northern.

44 For a mapping of these differences across India, see especially Chapter 8 in Agarwal (1994).

in the tenurial laws of the northwestern states. In other parts of the country the tenurial laws either do not specify any order of devolution, so that by default the HSA applies also to agricultural land, or they specify that the HSA (or personal law) applies.

Similarly in amendments to reduce inequality in property shares, cultural geography has clearly played an important role. The five states that we noted have amended the HSA to make rights in joint family property more gender equal all lie in southern and western India. Kerala amended the HSA Act in the most radical form by abolishing joint family property altogether. The remaining three southern states and Maharashtra followed, although they amended the Act differently, by including daughters as coparceners on par with sons: as a result, daughters are privileged at the cost of other class I female heirs, namely the widow and mother of the male deceased (Agarwal 1995). Whatever the nature of the amendment, however, what is notable is that none of the northern states have sought any change, and in all of them, all female heirs including daughters are disadvantaged in relation to sons.

In the states where gender inequalities in the HSA persist, measures to bring about equality in the inheritance of both joint family property and agricultural land need to be taken, either by each state government separately or by the central government comprehensively. For instance, the lead provided by the five states that have amended the HSA could be followed by others. On agricultural land, similarly, state legislatures could amend the tenurial laws such as to make the devolution of agricultural land gender equal. Reform at the level of the states, however, is likely to move very unevenly and prove difficult on at least four counts. First most states lack the gender-progressive groups that have either shown a systematic concern for this issue or that have the numerical strength to mobilise effectively on it. [In Maharashtra – the only non-southern state to amend the HSA so far – there were (as noted) progressive lawyer's groups and women's groups who took up this cause.] Two, since HSA amendments proposed by state governments require the President's sanction, this introduces an extra step in the chain of decisions and could take additional time, creating, for instance, a notable time gap between the state government's recommendation for amendment and the President's approval. Three, especially in relation to agricultural land, locally entrenched landed interests are likely to obstruct amendments at the state level. So far attempts to change the tenurial laws in this respect have not gone far. Four, the northwestern states where inequalities persist in greatest degree are likely to put forward the most resistance, given the prevailing marriage patterns and strong male bias. The more effective move toward reform would thus be to seek change through the central government.

Interestingly, at the level of the central government, there are indications of support from some significant elements within the State that would be willing to undertake measures (indeed have initiated measures) toward reforming Hindu inheritance laws in a gender-equal direction. But these initiatives have remained low key and largely ineffective so far, especially, in my view, from a lack of adequate local mobilisation by civil society.

A case in point is the attempt by the Ministry of Rural Areas and Employment to reform the rules governing the inheritance of agricultural land. The Ministry set up a Committee for Gender Equality in

Land Devolution in Tenurial Laws in November 1997 under my chairpersonship (with Prof. Lotika Sarkar and the late Prof. Sivaramayya as members). The Report of the Committee (Agarwal, Sivaramayya and Sarkar 1998) recommended full gender equality in the devolution rules and outlined in detail exactly which changes were needed in existing tenurial laws. Implementation of the Report's recommendations, however, still awaits the response of various state governments. I understand that one state, UP, has gone some way toward reform by bringing the widow on par with sons in the inheritance of agricultural land, by amending the UP Zamindari Abolition and Land Reform Act of 1950. But there has been little move from the other states. And there are few indications of local mobilisation that might make such moves likely in the near future.

A second example of the central government's efforts to reform Hindu inheritance law is the mandate given to the Indian Law Commission in 1999 to recommend amendments to the HSA for making it more gender equal.[45] As a result, in the summer of 1999 the Law Commission sent out a questionnaire to NGOs and to individuals with legal or social science backgrounds asking for their responses to proposed alternative amendments. These covered a range of aspects, including the possibility of bringing all agricultural land under the purview of the Act and either doing away with joint family property altogether (as done by Kerala) or making daughters coparcerners on the same basis as sons (as done by Maharasthra and the three southern states). Some 67 responses were received.

In some ways the Law Commission's attempt was akin to that of the Rau Committee in 1945, which too solicited opinions from selected individuals and organisations on aspects of the Hindu Code Bill. However, unlike the Rau Commission which while taking serious note of the received opinions recommended changes that were radically in favour of women, the Law Commission's recommendations (Law Commission 174th Report 2000) are limited and conservative even when the weight to opinions favours radical change. For instance, the Report does not make any recommendations at all regarding agricultural land, although 81 per cent of those who responded to the questionnaire favoured abolishing the inheritance rules on agricultural land which discriminate against female heirs. Dropping the special provisions on agricultural land in the HSA would have brought all agricultural land on par with other forms of property. Similarly, instead of recommending the abolition of joint family property altogether which a large per cent of the respondents supported, the Commission only recommended that daughters be included as coparceners.[46] There has been little comment or protest from women's groups on the restricted nature of these recommendations. It is an opportunity lost, especially in relation to agricultural land, since drawing on

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45 Apparently, the Government of India's Department of Women and Child Welfare had also requested various states and Union territories to propose necessary amendments to the HSA to ensure that daughters get their due share of the coparcenary (Law Commission Report 2000).

46 The Law Commission Report justifies this on the argument that if joint family property were abolished today, then only sons would receive it, whereas if daughters first became coparceners like sons, they would also receive a share. This does not, however, take care of the problem posed earlier, namely of widows losing out as a result of such an amendment. Nor is any future course of action recommended leading to the abolishing of joint family property altogether.

the support provided by the survey results, the Commission could have made bolder recommendations for full gender equality.

What all this suggests is that on the one hand Indian women have built up a fair degree of *implicit* bargaining power with the State, in terms of legitimising their claim to gender-equal property rights, at least in Hindu law. The kinds of initiatives taken by the Ministry of Agriculture and by the Law Commission illustrate this shift. On the other hand, there is insufficient *explicit* pressure from women's groups to ensure the greater effectiveness of these initiatives. Although over the years women's groups have mobilised quite successfully for pressuring the central government to bring about some types of legal reform, such as in dowry and rape laws, mobilisation on the issue of women's property rights has been scattered and limited.

Support from civil society groups. In terms of numbers, civil society groups have burgeoned over the past two decades. There are an estimated two million citizen's organisations in India today (Mitra 2001), while estimates of development NGOs range from 3,700 (Development Alternatives 1998), to 25,000 (VANI 2000). But in terms of taking up the cause of inheritance laws the picture is a very mixed one. On the one hand, apart from some women's groups and key individuals there are few civil society actors that have explicitly taken up the case of amending inheritance laws, except in a limited way in the discussions around the UCC. On the other hand, there are today some notable civil society actors who are deeply interested in the question of women's access to land for strengthening their livelihood options, and who have sought to increase that access, although through means other than inheritance. For instance, since 1989, the Deccan Development Society in Andhra Pradesh has been helping poor low caste women purchase or lease in land in groups and cultivate it collectively, using the state government's scheme of subsidised credit for this purpose (Menon 1996; Agarwal 2001). Similarly, there are NGOs in Kerala helping poor women lease in land seasonally for vegetable cultivation, and an NGO in Maharashtra working with Santal tribal women in their struggle for land rights. More recently Action India (a Delhi based NGO), along with some other groups in north India, has begun to focus on women's land rights (Bharti 1999–2000), and several NGOs working in rural Gujarat now want to do the same.[47] Also notable are the experiences of some larger peasant movements and organisations, in particular, the Chatra Yuva Sangharsh Vahini which catalysed the Bodhgaya movement in Bihar in the late 1970s and early 1980s, and the Shetkari Sanghatana, a farmer's organisation founded in Maharashtra in 1980 (for details see Agarwal 1994). As a result of the Bodhgaya movement landless women received land in their own names in two villages; and in Maharashtra, the Mahila Aghadi (women's front) of the Shetkari Sanghatana took up the issue of women's rights in family land in a variety of ways, including by persuading husbands to gift small portions of their fields to their wives (Gala 1990; Omvedt 1990). In addition, there are urban groups

[47] In a workshop on women and land rights that I conducted in June 2002 these NGOs drew up concrete action plans to enhance rural women's land rights, in their respective areas of work.

seeking to enhance women's rights in dwelling houses, some of which also have links with larger international initiatives through the United Nations Center for Human Settlements.

What this indicates is an emerging awareness of the importance of women's rights in property, in a dwelling house, and especially in arable land for economic security, reducing poverty, and improving livelihood options. While these groups have not come together for amending women's legal rights in inheritance, one can legitimately see them as potential forces for mobilisation on this question. In this endeavour, another potentially significant link (but one with which legal awareness raising may be necessary) are the women elected to the Panchayati Raj institutions (institutions of rural local self-government). In 1998 there were over 800,000 women so elected.[48]

Entrenched property and political structures. Rural families continue to have high stakes in agricultural landed property, as they did when the HSA was framed. Indeed, since the HSA was passed, some states (notably in northwestern India) have tried to amend it retrogressively, by seeking to exclude daughters altogether from shares in agricultural land. For instance, in 1969, a Bill tabled before the Punjab Legislative Assembly argued that daughters should have no share in agricultural land on the grounds that it would cause fragmentation, and daughters received a dowry anyway. This attempt was strongly opposed by women in the state. The then President of the AIWC, Tara Ali Baig, noted that fragmentation took place even when sons inherited, and that dowry had been legally prohibited since 1961. The Bill was not passed (Mies 1980). Again, around 1979, the Haryana legislature sought a similar amendment to the HSA, but the President of India refused his assent to the proposed amendment (personal communication from Prof. Sivaramayya 1992).

Moreover, there have been significant changes in the occupational backgrounds of Lok Sabha members, with an increasing shift toward a rural base (Table 5.1). Agriculturalists, for instance, constituted 22.4 per cent of the members in the first Lok Sabha in 1952. In the Twelfth Lok Sabha in 1998 their percentage more than doubled to 49.1. In contrast, persons with professional/legal/service backgrounds have declined dramatically. The percentage of lawyers has fallen from 35.4 to 10.3. These changes suggest a substantially more gender-conservative Parliament, with half the members coming from rural backgrounds with many of them having strong stakes in landed property. One might indeed speculate whether the HSA, as passed in 1956, would have been subjected to even more compromise, or been passed at all, had it been introduced in the more recent period.

Social perceptions and social norms. In terms of mass awareness of gender inequalities there have clearly been substantial strides. There is also a growing social acceptance of the idea of gender equality in some spheres that affect women's economic well-being, such as greater equality in educational

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[48] As noted earlier, following the 73rd amendment to the Indian Constitution, 33 per cent of the seats in the Panchayati Raj institutions were reserved for women at the village, block and district levels. The number of women elected in 1998 is taken from Kaushik (1998: Appendix II) and is an aggregate of the women elected at all three levels.

opportunity, including in technical education, the opening up of occupational avenues which were earlier the preserve of men, and so on. But this acceptance does not extend to equality in property.[49]

While it cannot be predicted for sure how elements in the Parliament will respond to gender-egalitarian amendments to the HSA today, the gendered attitudes encountered by women in their demand for reservation of seats in the Indian Parliament suggests that the passage of HSA reform too may not be smooth. Indeed some comments by male members of Parliament during the parliamentary debate on the women's reservation bill two years ago strongly echoed those made by male MPs during the Legislative Assembly and Constituent Assembly debates on the Hindu Code Bill. For instance, echoing the noted "lavender and lipstick bag variety" comment by a male MP during the Hindu Code debate, one male MP caricatured the women supporting the reservation Bill as women of the "short hair variety" who were incapable of leading the nation. Indeed, he argued: 'women with short hair are not women at all'. Ironically, as the journalist, Ananya Chatterjee, reporting on this 1997 debate pointed out, the only woman Prime Minister that India has ever had belonged to precisely this "short hair variety".[50]

There is also the larger question of the link between the passing of gender-progressive legislation such as reforming the inheritance laws, and women's presence in the legislatures. Some argue strongly in favour of the 'politics of ideas', others in favour of the 'politics of presence' (Phillips 1995). There are of course dangers in extreme positions on both counts. For instance, at an extreme, the former could be argued to mean that the presence of the disadvantaged is unnecessary in the structures of decision-making as long as those making the decisions share the same overall ideas and vision. Similarly at an extreme, the latter position could be argued to mean that none can represent an experience not identical to one's own. Usually what is needed in something in between – a reliance on representation and on coalitions with those who share similar ideas, as well as the presence of those closely affected by the issues in question.[51]

In the campaign for the Hindu Code in the first half of the 20th century, women had to rely quite substantially on the politics of ideas, since their direct presence in the legislatures was extremely sparse. But at that historic juncture such reliance served them reasonably well, since as noted, the idea itself had some highly influential male supporters with the commitment and stature to carry it forward. Today, women's presence in the legislatures remains equally sparse, and in addition, given the noted shifts in the composition of Parliament they can no longer rely on a similar support through the realm of ideas. Women's presence in the state and central legislatures thus appears especially important today for pushing gender-progressive legal change.

Numbers also gain in significance for countering the persistence of negative social attitudes and because it is difficult to replicate today the public stature and associated voice enjoyed by many of the

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49 For a discussion on why there is greater acceptance of education and employment for women than of equality in property, see e.g. Agarwal (2000b).

50 See the report on the Parliamentary debate in May 1997; in particular, Sharad Yadav's comment reproduced in *the Indian Express*, 17 May 1997, p 9; and the response by Ananya Chatterjee in *the Pioneer*, May 27, 1997.

51 Women's enhanced presence in political decision-making, for instance, is found by a number of studies to affect policy outcomes: see e.g. Pande (2001) for India; Dahlerup (1988) for Scandinavia; and studies cited in Pande (2001) for the USA.

women leaders who fought alongside men in India's freedom struggle. Moreover, the conscious push to structure a modern India in which there would be no discrimination on the basis of religion, race, caste and sex that followed the struggle against colonial rule, no longer appears to be as strong. Rather such pressure as exists today stems more from forces such as urbanisation, exposure to mass media (with its complex universalising of values), a strengthening of international coalitions, and even aspects of globalisation, all of which broaden local understandings of universally desirable rights.

All in all, many of the factors that were present in the 1940s and 1950s and enabled a significant shift toward gender equality in women's inheritance rights, do not appear to be present in the same strength today. In particular, there is an absence of the focused engagement with this issue that characterised the intellectual and political agendas of women's organisations at that time. Also, given the noted linking of personal laws with religious identity and with identity politics, there appears to be little reason for optimism that a gender-equal inheritance code, applicable to all communities, will be adopted any time soon.

At the same time, prospects appear reasonably bright for the reform of Hindu inheritance laws *on certain counts*. For instance, it is likely (if the Law Commission's recommendations on the HSA are accepted), that the rights of sons and daughters in Hindu joint family property will move toward equality in all the states. In time, joint family property itself may decline in importance, for instance as children of business families choose other career options. This would effectively remove a significant source of gender inequality for Hindu women. It is less clear when the issue of agricultural land, which affects the livelihoods of millions of rural women, might receive attention. In this context, I believe what would help is a focused attention on this issue not just from the perspective of gender justice but also centrally from the perspective of livelihoods, given the critical link between economic security (especially food security), reduced risk of poverty, and possessing a piece of arable land.[52] As elaborated in Agarwal (1994; 1998b), not just women's well-being but the well-being of the whole family, and of children in particular, is likely to improve through a more gender-equal access to land and assets. That is, there is a need to supplement the legal rights approach with a livelihood approach in arguing for further reform in the HSA. This would also help mobilise the noted civil society actors concerned with poverty reduction and women's situation who are today seeking ways of improving women's access to land through the market, and through other means.

[52] See the detailed discussion on the relationship between livelihood security and land access for women in Agarwal (1994; 1998b).

7 In conclusion

In this paper I have suggested a framework for understanding both legal change and the process by which such change may be furthered. For reforming laws in a more gender-equal direction it would be necessary to improve women's bargaining power with the State (where the laws are largely formulated), as well as with the community (where the ground is laid for legitimising the legal changes being considered). A number of factors are likely to determine women's bargaining power, not least of which being women's cohesive strength and the socially recognised legitimacy of their claims. Indeed, women's collective group functioning and sense of group identity would be a critical element in affecting change toward gender equality, both by giving weight to women's claims and by challenging gender-disabling norms and perceptions.

This paper sought to demonstrate how these enabling factors came together in the formulation of the HSA 1956 and helped overcome the strong opposition from elements of the State and from men's entrenched economic and political interests. While some of these factors are more favourable today (e.g. more positive attitudes to gender equality, or the proliferation of women's groups in general) others are less so (e.g. a lack of single-minded focus on the issue by such groups, a more conservative Parliamentary composition, etc). The prospects for future change will depend in substantial part on the ability of divergent women's groups and the wider civil society to mobilise nationally, and to link up with the more supportive elements of the State apparatus, spearheading the campaign not just through arguments for justice and rights but also through arguments for livelihood enhancement.

It is this paper's contention that the bargaining framework, used here to make these broad assessments, could also be applied to examine past processes and future prospects for legal change in other gender-unequal laws, both in India and elsewhere.

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