

**WOMEN EMANCIPATION AND EMPOWERMENT: EFFORTS  
OF DR. B. R. AMBEDKAR TOWARDS THEIR  
INSTITUTIONALIZATION**

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**5.1 Constitution Making and the Process of Institutionalisation of Ideas**

In the preceding chapter, it has been mentioned that Ambedkar held '*social, economic and political*' equality as the basic or fundamental norm for bringing about empowerment of women. He also prescribed legal reforms to bring in social, economic and political equality in the society which would lead to emancipation of women and empowering them. Being an ardent supporter of the functional theory of the state, he also argued and accepted the notion of the state as a legal and Constitutional creature. He held a general view that the state is not only the source of law but also a creature of law. For him the state is a legal and Constitutional system that represents the principle of equality.

Social justice is considered as a fundamental right in the Constitution of India. Social justice can be ensured by removing social imbalances through appropriate laws and legislation. A welfare state can realise this goal by harmonising the rival claims or interests of different groups or sections present in the social structure. The Preamble of the Constitution enshrines the concept of social justice in the form of '*Justice, Liberty, Equality and Fraternity*'. In the Constitution of India, the trinity is secured and protected with social justice and economic empowerment and political justice to all the citizens under the rule of India<sup>1</sup>.

The Preamble not only provides complete equality between the sexes before the law, but also in the political sphere. Political justice, that is, absence of any arbitrary distinction between man and woman in the political sphere, is ensured by the principle of 'one man, one vote'<sup>2</sup>.

The Preamble grants equality to women as Fundamental Rights and empowers the State to adopt measures of positive discrimination in favour of women for ensuring social, economic and political equality<sup>3</sup>. The essence of the Constitution reflects the dream of a new social, economic and political order, the soul of which was social justice<sup>4</sup> which led Austin (2006) to remark that the Constitution can be seen as "*a vehicle for social revolution*". There are specific provisions in the Constitution of India those which take care of the liberty and equality of the citizens and its principles bridges the gap of social, economic and political inequalities between the well-off and the worst-off of society. In fact the founding fathers thought it wise to construct the philosophy of the Constitution on the basis of egalitarianism. The philosophy of the Constitution of India is based on the idea that liberty should be coupled with social restraints and subordinated to the liberty of the greatest number of common happiness. However, guaranteeing of certain rights to each individual would be meaningless unless all inequality is banished from social structure and each individual is assured of equality of status, opportunity for the development and means for the enforcement of rights guaranteed to him. This object is secured in the body of Constitution in various provisions and articles<sup>5</sup>.

The *Fundamental Rights and the Directive Principles* provide the principles and operative guidelines to secure social justice and bring down socio-economic inequalities in the society. While Fundamental Rights are political in nature, Directives Principles embody social and economic principles. By the process of banishment of poverty, not by expropriation of those who have, but by multiplication of the national wealth and resources and an equitable distribution thereof amongst all who contribute towards its production, the Constitution of India, through establishment of economic democracy, aims at providing economic justice to all citizens of India<sup>6</sup>. It forbids sexual discrimination and guarantees social and economic justice to women.

The Constituent Assembly adopted the Objective Resolution on January 22, 1947 pledging itself to draw up a Constitution guaranteeing and securing to all the people of India, justice, equality, and freedom and providing adequate safeguards to minorities and backward classes as spelt out in the Objective Resolution moved by Nehru<sup>7</sup>. The Constituent Assembly aimed at 'socio-economic revolution'; to bring about 'a fundamental change' in the structure of Indian society and 'to render social justice to every citizen through the Constitution'. Therefore the Constituent Assembly intended to draft the Constitution of India that would not only establish major political institutions but also bring about social revolution which itself hints at social justice<sup>8</sup>.

The Indian Constitution can be called a social document which implies that justice to all citizens –social, economic and political being its keynote<sup>9</sup>.

The Constitution was framed as a symbol of national aspiration and a modernising instrument whose primary function was intended to be one of bringing about a dynamic and purposive future. The framers tried to incorporate elements of dynamism in the form of the Preamble, Fundamental Rights and Directive Principles of State Policy. The Fundamental Rights are to foster the social revolution by creating an egalitarian society to the extent that all citizens are to be equally free from coercion or restriction by the State, or by society in private space, liberty was no longer by the privileges of the few. On the other hand, the Directive Principles aim at liberating Indian citizens in the positive sense, free from the passivity engendered by centuries of coercion by society and nature, free from abject physical conditions that prevented them from fulfilling their best selves<sup>10</sup>.

The Constitution is a monumental example of social re-engineering of Indian society. Ambedkar being the chief architect of the Indian Constitution prescribed for bringing social, political and economic equality that would lead to empowering women and emancipating them.

The role of Ambedkar in Constitution making has to be examined in the wider perspective of nationalism, democracy, humanity and justice. As the chief draftsman of the Constitution, he was playing the role as a great Constitutional expert<sup>11</sup>. His

expertise went a long way in enshrining the concept of political democracy in the Constitution of India.

## **5.2 Women Empowerment and Emancipation: Constitutional Scheme.**

The Preamble to the Constitution provides insight to the ideology of the Constitution of India. The objectives of the state such as socio-economic and political justice, liberty of thought, expression, faith, belief and worship; equality of status and opportunity; fraternity promoting dignity of the individual are embodied in the Preamble<sup>12</sup>.

Constitutional provision which aimed at preventing discrimination, improving the status of women to compete with their male counterparts and promoting social justice, are the Fundamental Rights that ensure 'equality before the law and equal protection of law (Article 14)', 'prohibition of discrimination on grounds of .....sex..... (Article 15)', 'equality of opportunity in matters of public employment (Article 16)', 'prohibition of traffic in human beings and forced labour (Article 23)'. Moreover, in order to ensure civic equality, the Constitution seeks to achieve political equality by providing for universal adult franchise (Article 326) and by reiterating that no person shall be either excluded from the general electoral role or allowed to be included in any general or special electoral role, only on the ground of his religion, race, caste or sex (Article 325)<sup>13</sup>.

Apart from the general provisions there are special provisions in the Directive Principles (part IV) which enjoin the state to place the two sexes on an equal footing in the economic sphere, by securing to men and women equal right to work and equal pay for equal work for both men and women (Article 39, Clause (a) and (d)). The Constitution of India also makes provisions so that the state shall guarantee within its economic limits to all the citizens, the right to work, to education and public assistance in certain cases. (Article 41) The Right to humane conditions of work and maternity relief (Article 42) and the state to provide a Uniform Civil Code to all the citizens throughout the territory of India. (Article 44)<sup>14</sup>.

It is clear from the above provisions that the founding fathers made genuine efforts to constitutionally guarantee equality to the disadvantaged sections of the population. These provisions made a concerted effort “to abolish social inequity, social stigma and social disability in our society”<sup>15</sup>

### **5.3 Constitutional Setting and the Role of B.R. Ambedkar**

B. R Ambedkar has been hailed as a Constitutional pundit for his role in the making of the Constitution of India. He is also considered as the chief architect of the Constitution of India, which defines the will, goal and the visions of the Nation. He is regarded as the father of the Constitution and thus whatever principles have been incorporated in it, Ambedkar can be considered as a source of it<sup>16</sup>. He laboured days together for writing out the Constitution of free India, incorporating into it liberty, equality and justice. In this stupendous task Ambedkar played a major role in his capacity as chairman of the Drafting Committee<sup>17</sup>. Although, the process of making the Constitution of India had seen several individuals and forces exerted their pressure and influence, as Chairman of Drafting Committee, Ambedkar had greater scope than any other individual for giving final shape of the Constitution<sup>18</sup>. He has shown to the citizens of India that the goal under the fabric of Constitution is nothing but to establish social, economic and political democracy for the betterment of all Indians<sup>19</sup>.

It would be a pertinent question to ask as to why Ambedkar was elected as the Chairman of the Drafting Committee when there were other equally competent members in the Constituent Assembly. Ambedkar was given this honour due to his competence, intellectual acumen and deep insight into Constitutional issues.<sup>20</sup> He had the onerous responsibility of moving and defending the appropriateness of various provisions of draft Constitutions. Ambedkar with his capacity of forceful articulation and profound knowledge on Constitutional matters provides the basis of his major contribution towards shaping the Constitution of India.

Though Ambedkar entered the Constituent Assembly with the only hope of safeguarding the rights of downtrodden. In his own words: “I came into the

Constituent Assembly with no greater aspiration than to safeguard the interests of the Scheduled Castes."<sup>21</sup>.

However a review of the related literatures suggests that the philosophical basis of the Constitution of India is largely the product of the ideas of Nehru, Gandhi and the ideology of Congress. The contribution of Ambedkar as chairman of Drafting Committee can be regarded as articulation of the socio-political and economic ideas of Nehru, Gandhi and that of Congress party<sup>22</sup>. Although, as a member of Constituent Assembly and the chairman of Drafting Committee, Ambedkar contributed significantly with his deep knowledge of Constitutional principles and practices of most of the leading Constitutions in the world, he had no part in decision making. Instead of germinating ideas, his role was limited to advocate the ideas of others<sup>23</sup>.

The Drafting Committee was elected by the Constituent Assembly on 29<sup>th</sup> August 1947. The task of the Drafting Committee under the chairmanship of Ambedkar was to prepare the draft Constitution on the basis of suggestions and recommendations of the various sub-committees of the Constituent Assembly and an original draft prepared by Sir B N Rau, the Constitutional advisor. Beside these, the ideology of congress party was another dominant factor in the process of decision making in the Constituent Assembly. As the chairman of Drafting Committee, the role of Ambedkar was reduced to a highly skilled technocrat who would transcript the ideas and visions of others. Thus, he had very little scope to influence the Constitution of India with his Constitutional philosophy<sup>24</sup>. Nehru and Patel were the focus of power of Constituent Assembly. Beside them, Azad, Purushottam Das Tandon and Rajendra Prasad exercised much influence in the shaping the provisions of the Constitution of India<sup>25</sup>.

The helplessness in Ambedkar for failing to influence the provisions of Constitution of India is also reflected in his speech in the Council of States on 2<sup>nd</sup> September 1953 where he stated that he drafted the Constitution on the request of the majority party and that he was compelled to incorporate those provisions which he disliked most.

However, when opportunities came into his way in the debate session for arguing in favour of women equality, Ambedkar never allowed them to go in vein.

While debating clause by clause of Article 39 (Originally Article 31) which reads as follows:

*"The state shall in particular direct its policy towards securing:*

- a) that the citizens, men and women equally have the right to an adequate means of livelihood*
- b) that there is equal pay for equal work for both men and women".*

Mr. Naziruddin Ahmad proposed to delete the words "men and women equally" on the pretext that citizens include both men and women. Ambedkar opposed it and was successful in preventing any amendment in this regard. The words citizen, men and women, were specifically mentioned by Ambedkar to emphasise equality between men and women. <sup>26</sup>

Ambedkar was aware of the existence of economic inequalities in Indian society and of its potentials to ruin others. When Shri Damodar Swaroop Seth suggested that the following may be added at the end of Article 18: "Nor shall women be employed at night in mines or in industries detrimental to their health". Ambedkar protested this amendment on the ground that if the amendment was made, mines and industries might find excuses to exclude women labour under the pretext that the work if of hazardous nature of that the women are not to be employed in night etc. He was so much conscious about the welfare of women that he did not want to amend the article to Act as disqualification in their employment opportunity, which is a significant means for economic empowerment<sup>27</sup>.

He was also concerned with establishing a social democracy as the base of political democracy. While participating in a debate in the Constituent Assembly, he stated:

*"Political democracy cannot last unless there lies at its base of it social democracy. What does social democracy mean? It means a way of life which recognises liberty, equality and fraternity as the principles of life; these principles are not to be treated as separate items in a trinity. They form a union of trinity in the sense that to divorce one from the other is to defeat the very purpose of democracy..."<sup>28</sup>*

However, the Constitution of India does not provide any such justiciable economic rights. Specific economic rights such as right to work, right to an adequate living wage, and right to decent standard of living are not embodied into the Constitution in the form of Fundamental Rights. They are listed as non-justiciable rights intended to direct state attention towards the realisation of the objectives while formulating state policy. He had difference of opinions in formulating the scope and function of Constitutional laws. He stated:

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*"... old time Constitutional lawyers believed that the scope and function of Constitutional law was to prescribe the shape and form of the political structure of the society, They never realised that it was equally essential to prescribe the shape and form of the economic structure of the society, if democracy is to live up to its principle of one man, one value.."*<sup>29</sup>

The inability of Ambedkar to inscribe into the Constitution of India the principles and structure of the economic life of people can be understood realising that neither the Drafting Committee nor its chairman was free to write the provisions of the Constitution according to their own philosophy. They were the agents of the Constituent Assembly, as such were bound by the advice and guidance of its various sub-committees. The Drafting Committee had to take note of the various discussions and comments and give them a legal shape for incorporation into the final draft. Thus, Ambedkar had to play mostly the role of a technocrat applying his legal skills and acumen in drafting the Constitution<sup>30</sup>.

In many ways, Ambedkar created the kind of Constitution which the Congress wanted him to create. Before he got involved in the task of Constitution making, his politics had an uncompromising realism about it, which, in retrospect, is totally at variance with the provisions that actually exist in the Constitution of India. The Constitution represents the value preference of the educated middle class- many of whom were members of the Congress. It does not reflect the real values and expectation of the Indian people, and ignores the over-riding significance of the social fabric of Indian society. Ambedkar was taken over by the euphoria generated by the process of Constitution making and by the powerful concepts like democracy, liberty, equality, representative government etc. The Constitution contains all the lively rhetoric of

modern liberalism without paying too much attention to the social delivery system by which it can be translated into social reality<sup>31</sup>.

The Preamble represents the quintessence of Ambedkar's social and political thought. Even though there is a close relation thematically and ideologically between the Preamble and Ambedkar's perception of justice, Ambedkar had no decisive role to play in shaping and piloting the Preamble. It was the handiwork of Nehru who through his historical resolution<sup>32</sup> on the Aims and Objectives moved at the assembly's first session during December, 1946 that subsequently paved the way for the adoption of the Preamble that adorns the Constitution of India<sup>33</sup>.

#### **5.4 Hindu Code Bill: Legal, Institutional and Rational Base**

The Hindu Code Bill, which sought modern interpretation of classical Indian religious law and local custom, with strong traces of English common laws, resembled to the famous codification of French law in the early nineteenth century, and to Egypt's codification of Islamic law in mid twentieth century. It was a legal instrument for social reengineering that sought equal rights for all citizens irrespective of religion, caste, sex, and race, or nationality, equal pay for equal work, irrespective of sex. It proposed to abolish social disabilities from which women suffer and in turn provided protection to secure and exercise equal rights with men in such matters as inheritance of property, marriage and divorce laws, entrance into professions and services, etc.<sup>34</sup>

The genesis of Hindu Code Bill can be traced back in 1832 when a Royal Commission headed by Lord Macaulay was appointed to codify Hindu and Muslim laws. Although, no fruitful result was obtained by this effort, the movement to revise and codify the 'somewhat vague and contradictory laws governing the Hindu home, especially as they affect marriage, divorce, inheritance rights etc.', gained momentum in the beginning of 20<sup>th</sup> century. The Hindu Women's Right to Property Act, enacted in 1937 by the Indian Central Legislature gave Hindu Widows for the first time the right to claim a share in their husbands' property and to demand portion of his estate<sup>35</sup>.

Between 1937 and 1950, the central and some provincial legislatures had passed several Acts aiming to improve the condition of Hindu women. The Hindu Marriage Disabilities Removal Act of 1946 legalized marriages between Hindus belonging to the same clan (Gotra or Pravara). A married Hindu woman was enabled to claim from her husband, on certain grounds, separate maintenance and residence through the Hindu Married Women's Right to Separate Residence and Maintenance Act of 1946. Caste barriers were removed from the sphere of marriage by the Hindu Marriage Validating Act of 1949, and even Pratilema marriages (marriage between men of one class and women of a higher class, which have generally been considered unnatural) were validated. The Child Marriage Restraint (Amendment) Act of 1949 raised the marriage age for girls from fourteen to fifteen years. Bigamy was outlawed in the state of Bombay by the Prevention of Hindu Bigamous Marriage Act of 1946, and dissolution of marriages by divorce was allowed under certain conditions by the Bombay Hindu Divorce Act of 1947.

The Bill had its origin in 1937 legislature of "Married Women Property Act" and from various comments, judgements and visions that enumerated while implementing the Act. In 1941, the Rau committee reported on the Women's right to property as per 1937 Act. In 1942 two draft Bills, one on succession and one on marriage were presented. A Hindu succession Bill was presented in 1943 but was referred to joint committee but were eventually allowed to lapse because of the opposition from the conservative elements that constituted the main support of the British Government in power at that time. The two houses of the Central Legislature then recommended, through a joint Committee, that the Rau Committee be revived and entrusted with the task of codifying all Hindu law. The committee was reestablished early in 1944, and during the following year it made a tour of the country to elicit public opinion on the two proposed Bills and on codification of Hindu law as a whole. Evidence and opinions were gathered from representative organizations and from prominent lawyers, and on the basis of this investigation the Hindu Code Bill was drawn up. It was introduced on August 1, 1946 in the old Central Legislature, but not acted on. After independence it was reintroduced by the Congress Government in the Constituent Assembly in 1947. In 1948, under Nehru's leadership, the draft Code was referred to a Select Committee under the Chairmanship of the Law Minister, Dr B. R. Ambedkar. While introducing the code in the Constituent Assembly, Ambedkar

pointed out that the main aim of the Bill was to codify the rules of Hindu Law which are scattered in innumerable decisions of the High Courts and the Privy Council, which form bewildering motley to the common man.<sup>36</sup>

The Parliament of India considered the Hindu Code Bill in 1950 and as a Law Minister Ambedkar was given the responsibility to present the Bill, explain various provisions of the Bill and answering queries and defending the concept of equality for women in marriage, divorce, adoption and property rights that were enumerated in the Bill<sup>37</sup>.

The object of the Hindu Code Bill was to draw up a compact set of rules which would bring uniformity to existing Hindu laws, and, in the process, to introduce certain amendments dictated by changing social needs and opinions of the community. It would also seek to combine all piecemeal efforts initiate by the central and Provincial Legislatures towards improvement of conditions of women.

The purpose of the Bill was to 'codify and modify certain branches of Hindu Laws'<sup>38</sup>. Moreover, the Bill also proposed to ensure three basic characteristics of a law: 'Certainty: The Bill should remove all ambiguities about the provisions', 'Unity: The Bill should be uniformly applicable irrespective of territorial jurisdiction and from one citizen to other', 'Accessibility: The provisions should be well-known and easily accessible to citizens in need and it should not depend upon varied opinions or explanation of lawyers concerned'<sup>39</sup>.

Besides codifications of the existing Hindu customs and laws, the proposed Bill attempted to introduce modifications in the following areas: i) *Non-recognition of caste in cases of marriage and adoption*, ii) *legalising monogamy*, iii) *Provision of divorce under defined grounds*, iv) *To have uniform law (Dayabhaga) regarding succession of property and v) Assigning property rights to women*.

A significant attempt at empowering Indian women was visible in the efforts towards formulation of Hindu Code Bill. In a significant change from the extant laws relating to marriage, the Bill provided greater individual freedom for women to choose their husbands in a more relaxed domain of prohibited relationships. Moreover, the

provisions of divorce represented a major social re-engineering where it enables women and provide recourse to escaping turmoil and violence in their private space<sup>40</sup>.

Another provision for women empowerment was that of proposed removal of polygamy. A Hindu man would not be allowed to take another wife while the first wife was alive. A married woman would have legal remedies against polygamy. The report of Hindu Law Committee, 1947 commented that the provision of monogamy in the law would "prevent the husbands from deserting the wife"<sup>41</sup>.

Moreover, wife would have the legal right to claim separate maintenance from her husband on grounds of infidelity, cruelty, or abandonment, or if he changed his religion, or if there was any other cause justifying her in living separately. Hitherto, under the provisions of Hindu law, a wife was not entitled to claim maintenance from her husband if she was not living with him in his house<sup>42</sup>.

The Hindu Code Bill proposed a significant expansion in the property rights of Indian women. It attempted to provide economic empowerment for women by assigning absolute property rights to them. In order to contain certain oppressive practices associated with dowry, the Bill proposed that the dowry given at the time of the marriage would remain a trust property till the bride reaches at the age of 18 years, to ensure that neither the husband nor any other relatives could exploit the situation<sup>43</sup>.

The proposed Bill provides that a woman would be given a share in the property of her father if he dies intestate. A daughter's share was prescribed as half that of a son. Her right to inherit property would be declared to be absolute and not dependent on circumstances. Under the existing law there was discrimination among female heirs according to whether they were rich or poor, married or unmarried, at the time of the decedent's demise. The proposed Bill would abolish all these considerations. Moreover, under existing Hindu law, when a woman inherited property from a female relative dying intestate, she would get only what was called a "life estate." She could enjoy the income of the inheritance but could not deal with the "corpus" of the property except in case of legal necessity. The Bill proposed to convert this limited estate into an absolute estate as in the case of a male heir. These concessions to the

Hindu woman although represented only a small part of the draft code but it was significant and vital towards economic empowerment of women<sup>44</sup>.

The Hindu Code Bill also proposed removal of the law of inheritance through agnates, and stressed relationships in determining inheritance. With regard to adoption, the Hindu Code Bill empowered women especially mothers by restricting the right of adopted son to take away all property accrued to the widow from the deceased husband before adoption. This provision along with provision of property rights strengthened the position of women (widow) in the family by making her an absolute owner of her deceased husband's property even in the presence of an adopted son. Although, the proposed Bill remained the orthodox patriarchal stance regarding some provisions, the Bill was progressive and some of them were path-breaking, regarding granting rights to Indian women<sup>45</sup>.

The Hindu Code Bill set out to achieve the most challenging task of empowering women in the private sphere of Hindu family through codifying and modifying the provisions of Hindu customs and laws.

Many scholars believed that the Hindu Code Bill was a catalyst for liberation of women. The Bill attempted to change the doctrine of Manu, which had reduced women to commodities and denied justice, equality and freedom to them<sup>46</sup>.

It was the first step towards the justice, freedom and gender equality in the Hindu Society. It aimed to give female members of Hindu family full rights in matters relating to property, marriages, adoption, inheritance and guardianships. The Bill attempted to provide women freedom and social equality and protection from evils of dowry, deprivations and hungers by empowering them economically. It attempted to align the basic structure of Hindu laws with the spirit of Preamble and provisions of Constitution of India, that is, 'liberty, equality, justice and fraternity' and dignity of individuals<sup>47</sup>.

The image that the law projected of women was of "liberated" in nature and the law wanted to transform Indian women from its domestic confines with an exclusive focus of child bearing role to a much broader role with presence in both private and public

sphere. By providing an opportunity to the Indian society to debate intensely on the issues of women's role in family, the Hindu Code Bill succeeded to provide an ideal platform for subsequent Hindu law reforms that took place in mid 1950's<sup>48</sup>.

Therefore, it would be relevant to discuss the efforts of Ambedkar in regard to formulating and piloting Hindu Code Bill as an institutional measure for empowerment of Indian women.

### **5.5 Hindu Code Bill: Debates and Discussions**

On September 22, 1951, Jawaharlal Nehru, the then Prime Minister of India, dropped the Hindu Code Bill that aimed at removing all the constraints imposed on Hindu women by the patriarchal and Brahminical social order that was based on the dictates of Manu. The Manu dictum has historically denied political, social and economic rights to women in Hindu society. Brahminical texts denied women education and the customs like 'Sati', 'Child marriage' etc. was cunningly used to deny women their rights to property<sup>49</sup>.

As Independent India's first Law Minister, Dr. Baba Saheb Ambedkar undertook the responsibility of propelling this Bill which sought to free women from the clutches of Manu's laws. Under his leadership the Select Committee drafted and introduced the Hindu Code Bill for discussion on 31<sup>st</sup> August 1948. The drafting of the Bill which was primarily based on the report of Hindu Code Committee was carried out within four months after it was referred to Select Committee on 9<sup>th</sup> April 1948. Among various provisions, the Bill aimed to put an end to a variety of marriage systems prevailing in India and legalize only monogamous marriage. But most importantly, the Bill sought to confer on women the right to property and adoption. It also sought to give equality to men and women in all legal matters, which was in tune with the Fundamental Rights as enshrined in the Constitution of India.

Although the Bill was introduced and presented in the Legislature in April, 1947 with an objective of enacting the same by 1<sup>st</sup> January 1948, the Bill could not find its way due to political circumstances marked by partition and later of Independence. On 9<sup>th</sup>

April 1948, Ambedkar in his capacity as the Law Minister moved the motion for referring the Bill to the Select Committee. The motion was adopted and the Bill was referred to Select Committee comprising of Ambedkar and sixteen other members. The drafted Hindu Code Bill was presented to the Parliament of India on August 12 1948. The Bill contained the following sections: Preliminary, Marriage and Divorce; Adoption; Minority and Guardianship; Joint Family Property; Women's Property; Succession; Maintenance and Miscellaneous.

The process of enacting the Hindu Code began on 31 August 1948 when Ambedkar moved that "the Bill to amend and codify certain branches of the Hindu Law, as reported by the Select Committee, be taken into consideration." However, the very introduction of the Bill was stalled as some members objected<sup>50</sup> to the motion on the plea that they had not seen the report of the Select Committee. The Bill could be re-introduced only on 24 Feb 1949. Even then the motion was not allowed to have a continuous discussion; it was distributed over 10 months. Discussion<sup>51</sup> on the Hindu Code Bill took place on 25.2.1949 and 1.3.1949, again<sup>52</sup> on 1.4.1949, 2.4.1949, and then<sup>53</sup> one day was given to the Bill on 12.12.1949.

No time was given to the Bill in the year 1950. The Hindu Code Bill was again taken up on 5 February 1951 when clause by clause consideration of the Bill was taken up. Ambedkar, the Law Minister appealed for the early passage of the Bill. He intervened<sup>54</sup> in the debate on 6 February 1951, he once again pleaded for the early passage of the Bill as his deteriorating health was causing anxiety to him and before submitting himself to the doctor he wanted to see the Bill passed. He therefore requested Nehru in a letter dated August 10 1951, for giving the Bill a higher priority by taking it up in the Parliament for consideration on August 6, so that it could be completed on 1<sup>st</sup> September. Nehru replied calming Ambedkar that since there was opposition to the Bill therefore the Cabinet decided to take up the matter at the beginning of September 1951.<sup>55</sup>

The debate<sup>56</sup> continued for three days, that is, on 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> February 1951 and then it was decided on 9.2.1951 that the Bill was to be postponed to the next session.

Since the year 1951 was the last session of the first Parliament of India. The Cabinet decided that the Hindu Code Bill should continue to be discussed in the present Parliament. Therefore the Bill was put on the agenda once again. The debate<sup>57</sup> began on 17 September 1951 for further clause by clause consideration. Nehru, the Prime Minister of India, apprehending the tensed situation and trying to diffuse the opposition suggested to split the Bill into separate parts and to consider the Marriage and Divorce Bill first.

However, after three days of debate, only four clauses were passed. The 'truncated' Bill was finally dropped on 25<sup>th</sup> September 1951. Ambedkar resigned from Cabinet on September 27, 1951.

Although, the Hindu Code Bill enshrined those principles of equal rights for men and women that were passed as resolution without any difficulty and opposition in the Karachi Congress of 1931, it faced stiff opposition in the Parliament of free India. Pandit Nehru who played the pioneer role in initiating this Bill apprehended the resistance and commented that 'many of them who silently voted for the Karachi resolution might not have meant what the resolution laid down. They might have had mental reservations. The question was bound to arise again'.<sup>58</sup>

What Nehru feared could be seen in its worst form right from the beginning when the Hindu Code Bill was introduced in the Constituent Assembly till the fall of the Bill.

Hindu Code Bill which attempted to emancipate and empower women, got the entire Indian society polarised, bar associations divided, political parties segmented across liberal and conservative ideologies. Social associations took drastically different stances even the women's associations looked at the issue from diverse positions of liberal conservative spectrum.<sup>59</sup> The Bill raised numerous controversies and arguments in the Parliament. Opponents of the Bill defended the customary social laws even though at times it was found that it violated the principles of equality enshrined in the provisions of the Constitution of India under Article 14, 15 and 16. The caste Hindu "leaders" and "intellectuals", not prepared to respect women as equals, opposed this Bill calling it an attack on their religion. So-called liberal Congress leaders such as Rajendra Prasad, Govind Vallabh Pant and Madan Mohan

Malviya joined hands with reactionary RSS leaders to oppose the Bill. Even Sarojini Naidu threatened to go on a hunger strike if the Bill was not dropped<sup>60</sup>. Some of the noted supporters of the Bill were H.V Kamath, N.V Gadgil, Pandit Hirday Nath Kunzru and women members like Renuka Ray, Kamaladevi Chattopadhyay, G Durgabai, Smt Hansa Mehta etc. The other camp opposing the Bill comprised of members like Dr. Shyama Prasad Mukherjee, Naziruddin Ahmed, V. Patel, J. B Kripalani, Renuka Chaudhury, Congress party President, Pattabhi Sitaramayya etc. The opposing group even ignored the fact that the genesis of the Bill was in the chaos created by conflicting judicial judgements that were originating from existing piecemeal judicial legislations.<sup>61</sup>

The absence of time limit on the speeches made the debates very long. Moreover, the Bill was not on the agenda for months together from December 1949 to September 1951 till the Bill was allowed to be lapsed.<sup>62</sup> The debates were lengthy as many members reiterated certain points again and again, on occasions for hours and even days on end. Since the Bill involved social reform measure the Nehru government was also hesitant about moving closures which helped the opposition<sup>63</sup>. On the other hand, the focus of Parliamentary debates kept on changing from time to time as priority was shifted from one Bill to another.

The Hindu code Bill was debated at different levels of reasoning. There was a conflict between traditional thinking and the principles of modern society. The Bill was opposed on the ground that it interfered with Hindu religious law breaking the age old custom and tradition. The opposing members such as *Shyama Prasad Mukherjee, N. C Chatterjee, Pandit Thakur Das Bhargava, Lakshmi Kanta Moitra and others* felt that sins of the western society were being copied in the name of codification of Hindu law which would lead to endless litigation over inheritance rights thereby breaking up the joint family. Some members such as *Pandit Thakur Das Bhargava, Lakshmi Kanta Moitra and others* argued that women do not need equality because in many respects in family relations they are considered superior by Hindu custom.

The provision of Monogamy was contested by Aiyangar, Anand Mohan Dam (Bengal General), Naziruddin Ahmed, Dr. Rajendra Prasad and others on the ground that it would prevent a Hindu man from having a son which is essential for salvation. Some

members such as Pandit Thakur Das Bhargava, Lakshmi Kanta Moitra, Dr. Radha Binod Pal etc. pointed out that setting up of specific grounds for divorce would lead to a condition of promiscuous marriages and divorces as in the United States. They also pointed out that court Action required for divorce by the Code Bill would be beyond the financial means of the tribal and low-caste peoples, whose present customary procedures involve only simple formalities and little expense. Shyama Prasad Mukherjee, N. C Chatterjee and others argued that the Muslim personal Law remained untouched and thus the Bill could not be termed as secular.<sup>64</sup>

Dr. Rajendra Prasad, a conservative Hindu found the Hindu Code Bill 'extremely distasteful' as this would largely invalidate Hindu personal law<sup>65</sup>. He and other members felt that in order to affect important socio-legal changes, the tradition of customary laws serve better than legal interventions. Therefore, the proposed legislation would merely have a disruptive impact almost on all families<sup>66</sup>.

He also opposed the Bill on technical ground. He pointed out that the Constituent Assembly had been elected primarily to frame a Constitution therefore the provisional Parliament did not have the authority to enact such major legislation of fundamental importance and controversial in nature as it was indirectly elected and its members lacked the public mandate of a general election<sup>67</sup>. He even threatened to refuse presidential assent to the Bill. He objected to the fact that the Bill was introduced without the consent of A.I.C.C. (All India Congress Committee) and thus it amounted to lapse in the procedure and also that it was not properly discussed, circulated and presented for public opinion.<sup>68</sup> Prasad campaigned against the Bill in private with Nehru. He engaged himself into lengthy correspondence with Nehru trying to persuade him to withdraw the Bill. He avoided such forceful arguments in public.

He also told Nehru that he had discussed the Bill in detail with more than half the Member of Parliament (M.P) s and had discovered that majority of them supported his views. Prasad tried to challenge Nehru government's bid to pass the Hindu Code Bill giving a legal and Constitutional angle to the debate by pointing out that the code should be incorporated into the election manifesto of the first general election of the party and place it before the electorate. He tried to explain Nehru that his hastiness may 'affect the chances of the congress at the next general election'<sup>69</sup>

Sardar Patel on the other hand had declared his 'unmistakable opposition' to the Bill declaring that it would not be taken into consideration at all<sup>70</sup>. He attempted to stall the Bill by not allowing time for discussion in the Parliament. He termed the Bill as 'unnecessary waste of time'<sup>71</sup>

A major leader of the movement against the Hindu Code Bill was a Swami named Karpatri. In his speeches in Delhi and other places, he challenged Ambedkar to a public debate on the new Code. To the Law Minister's claim that the Shastras did not really favour polygamy, Swami Karpatri quoted Yagnavalkya: "If the wife is a habitual drunkard, a confirmed invalid, a cunning, a barren or a spendthrift woman, if she is bitter-tongued, if she has got only daughters and no son, if she hates her husband, (then) the husband can marry a second wife even while the first is living." The Swami supplied the precise citation for this injunction: the third verse of the third chapter of the third section of Yagnavalkya's *Smriti* on marriage. He did not however tell us whether the injunction also allowed the wife to take another husband if the existing one was a drunkard, bitter-tongued, a spendthrift, etc<sup>72</sup>.

Similar argument was also put forward by Ananthasayanam Aiyangar, Deputy Speaker who belonged to the Congress Party opposed Monogamy on the ground that in the case of dearth of children, there was no harm in allowing polygamy<sup>73</sup>. Many members termed this provision as 'racial suicide' because if implemented, Muslim population would outnumber that of Hindus<sup>74</sup>. Anand Mohan Das (Bengal General) compared the ill-effects of monogamy with the Roman Empire where Monogamy lead to Concubinage which was responsible for the fall of Roman Empire.<sup>75</sup>

Active opposition came from the extreme right-wing parties (like RSS, Hindu Mahasabha etc) which drew their main support from the Indian orthodox, ultra-nationalist, and reactionary religious elements. In a single year in 1949, the Rashtriya Swayamsevak Sangh (RSS) organised as many as 79 meetings in Delhi where effigies of Nehru and Ambedkar were burnt, and where the new Bill was denounced as an attack on Hindu culture and tradition<sup>76</sup>. Opposition also came from members of Hindu Mahasabha and its women wing, which criticized the Bill stating that it would threaten the religious foundation of Hindu society. Prominent members like S P

Mukherjee, N C Chatterjee and others also demanded uniform code that would be applicable to all religion instead of targeting only Hindus<sup>77</sup>.

Voices of opposition were also seen in the members of other religious communities like Sikh and Muslim<sup>78</sup>. Sardar Mann Singh, Sardar Hukum Singh became the spokesman of the Sikh group who disliked bringing the Sikh Community under the Hindu Code Bill.<sup>79</sup> The Muslim group was represented by Naziruddin Ahmed (West Bengal). Opposing the Bill he said that the Bill should not be considered by a mixed legislature consisting of members from various communities as they would support the Bill and spoil the cause of orthodox Hinduism. He stated that the introduction of women's share would introduce litigation leading to excessive fragmentation destroying the joint family system amongst the Hindus from which the Muslims are suffering. He said that the Srutis and Smritis have a divine origin but the present Bill goes against the very structure of religious basis and structure of Hindus.<sup>80</sup> Ambedkar termed Nazir as being encouraged either 'for fee or out of pure generosity' represented the fundamentalist group within the Congress to support their opinion.<sup>81</sup>

Strong resentment could be seen among some members due to the fact that the government did not attempt to reform Muslim Personal Law. N.C. Chatterjee, a judge of Calcutta High Court and member of Akhil Bharatiya Hindu Mahasabha challenged the Bill arguing that why one uniform civil code was not framed. He also termed the Bill as communal legislation<sup>82</sup>. He also opposed the Bill on the point that the essence of Indian Civilisation which was 'the purity of family life, the great ideal of chastity and the great ideal of Indian womanhood' was being threatened to be sabotaged by the intended legislation. He considered Manu, Yagnavalkya and law makers of India as 'God -given, God intoxicated men' and thus government had no right to initiate such Bills which would shake the roots of Indian Civilisation shaped by personal law which has stood the test of centuries and thousands of years.<sup>83</sup>

The Ram Rajya Parishad maintained that in the name of reforms direct interference was being shown in religious matters of Hindus by adopting the Hindu Code Bill. The Hindu Code Bill would be 'in direct conflict with Indian Culture, as well as with the duties towards husband, on the part of women, would be repealed, if enacted by the government'.<sup>84</sup> Shayama Prasad Mukherjee of RSS criticised the Bill on the basis that

the "Hindu Code would shatter the magnificent structure of Hindu Culture & Stultify a dynamic & Catholic way of life that had wonderfully adopted itself to changes for centuries". Whereas, Pandit Mohan Malviya warned the government "not to destroy the fabric of respect for law."<sup>85</sup>

Even the women Parliamentarians did not spare the Bill. Those who opposed the Bill argued that mere passing of Hindu Code Bill would not bring equality as without economic equality and education, legislation would have no effect.<sup>86</sup> Hansa Mehta commented that the Succession Bill did not go far enough as sons were regarded as being more equal than daughters<sup>87</sup>.

On the issues of divorce, there was stiff opposition. Pandit Lakshmi Kanta Maitra said that Hindu Marriage is a sacrament and not a civil contract therefore divorce is absolutely foreign to its concept. According to him Hindu Shastras have rendered union by marriage as something sacred and absolutely indissoluble. Therefore he termed the very concept of divorce as a 'rudest possible shock' which was 'repugnant to Hindu notions of marriage'.<sup>88</sup>

Shri O.V Alagesan, said that he wanted Monogamy without the provisions of Divorce. Defending it he said that the prospect of divorced woman is as bleak as the deserted woman. A Divorced man can easily marry again but not a divorced woman.<sup>89</sup>

Members also voiced their opinion stating that divorce would result in a miserable life for women since they would have to face injustice and cruelty with divorce<sup>90</sup>. The provision of getting marriages registered was also condemned linking with the provision of granting divorce (P B Gole)<sup>91</sup>.

Opposition was very strong on the issue of giving women an absolute estate in property. Members objected on the ground that in order to keep property in the family marriages between Sapindas would become prevalent. It would also lead to fragmentation of property, giving women greater property rights would lessen the moral obligation by the brother to maintain and marry off his sister. Since women are weak physically so they are incapable of managing property.<sup>92</sup> Thakur Das Bhargava protested by explaining his point by citing that if the lady dies the husband and child

will succeed. But when there are no husband and child then the father and the mother of the lady would succeed. He found this situation intolerable as this was in conflict with the cultural practice of Hindus.<sup>93</sup> Rajendra Prasad opposed the provision on property on the ground that induction of son-in-law to share the property with sons would result in a 'most heterogeneous conglomeration which would definitely lead to conflict and litigation.'<sup>94</sup>

Rohini Kumar Choudhuri (Assam General) said that by enacting the Hindu Code the whole structure of Hindu Law and Custom will be revolutionalised but the large mass of people who depend on agriculture and agricultural property would be kept outside the pale of this legislation. He termed the Bill as meant for the 'enlightened section of people'. He also pointed out that the custom of tribal people was not taken into consideration.<sup>95</sup>

Ambedkar was heavily criticized for standing in favour of women's rights. He was dubbed a traitor to the country and an enemy of Hinduism, a "great" religion that kept two-thirds of its population in slavery. The orthodox elements together with "moderate" Congress leaders whipped up communal passion in the country by raising the cry of "Hinduism in Danger" in the hands of an "untouchable". Many members abhorred the very idea of Ambedkar, an "untouchable", drafting and piloting this Bill. There was constant opposition and attempts to sabotage the efforts of Ambedkar to proceed with the legislation. The fact that Ambedkar was outside the Congress Party made it more difficult for him to maneuver the simmering party politics from within<sup>96</sup>.

Thus, the Bill faced stiff resistance as it questioned the different customs governing the lives of Hindus. It stirred great emotion among various sections of society.<sup>97</sup>

## **5.6 Hindu Code Bill: Role of B. R. Ambedkar**

The extensive Debates on the Hindu Code Bill brought forth different ideas, which the members of the Legislative Assembly bore as they looked into the issue differently. The issue ranges from holistic approach such as rejection of the Bill altogether, technical issues such as not deliberated properly, objections to various provisions of

the Bill. An analysis of the dominant mentalities of the members is a key to the understanding of the contribution of Ambedkar and the opposition he faced in propelling the Bill in the Legislative Assembly<sup>98</sup>.

The Hindu Code Bill attempted to re-engineer the Hindu Society while fulfilling the dreams of modernity and to remain compatible with the core values and custom of Hindu society<sup>99</sup>.

Ambedkar was aware that although the Bill was 'in no sense a revolutionary or radical measure'<sup>100</sup>, he would face stiff oppositions in passing the same. He was convinced that people, mentally enslaved by deep rooted social value framework inculcated over generations, could not take easily such measures even though these are not radical or revolutionary in nature<sup>101</sup>. However, this did not prevent him from shouldering the responsibility of presenting the Bill in the Parliament, explaining and defending the Bill in details and making the way for smooth passage of the same.

In the beginning of the discussion, Ambedkar highlighted the major provisions of the Bill. However given the kind of challenges the Bill would have to face, he defended the Bill by underplaying its radical edge and linking it with the Shastras, usages, customs and simple reasonableness<sup>102</sup>.

He projected an image of the Bill which was moderate and in conformance with customary laws. This was a clever and well-thought position taken by the 'Untouchable' Law Minister as he thought this might be the only way to propose the Bill among a diverse and divided group of legislators.

Ambedkar in the beginning defended the codification of Hindu Laws by drawing instances of 'bewildering motley to the common man' and cases of 'constant litigation' that arose due to 'innumerable decisions of the High Courts and of the Privy Council' related to Hindu laws<sup>103</sup>. He then proceeded to explain in brief the various provisions of Hindu Code by citing the proposed changes the Bill attempted to bring about vis-à-vis customary Hindu laws<sup>104</sup>. Although the motion was moved at fag end of the session, Ambedkar was able to garner sufficient support for referring the Bill to Select Committee according to the motion, he moved as Law Minister

earlier in the day. (9.4.1948) This can be considered as an achievement on the part of the Law Minister as he could adopt the motion within such a small time. This was also an example of his profound knowledge about the provisions of the Bill, by virtue of which, he could convince the fellow members of the Constituent Assembly for referring it to the Select Committee.

In order to make the task easier for the Select Committee, the Law ministry under the leadership of Ambedkar prepared the revised draft Hindu Code Bill that was placed before the Select Committee. Revision of Hindu Code that was originally prepared by the Rau Committee was necessary as the Bill 'drafted by the Hindu Law Committee did not conform to the canons of a code'. The ministry undertook the task of re-arranging the parts and divisions of the original Bill in consecutive sections and in a logical sequence. It also made some further suggestions as they thought proper for consideration by the Select Committee. As the chairman of the Select Committee, Ambedkar played a pivotal role in revising the Bill by suitably adding to or deleting from or to improve upon provisions of the Bills as referred to<sup>105</sup>. The Bill thus transformed by the Select Committee, led under the chairmanship of Ambedkar, was the most formidable legislative measure of modern India. The efforts of Ambedkar to unify the Hindu Code; to make it progressive and in tune with the modern thought were laudable. Many progressive Hindu leaders speaking in support of his effort termed the code as Bhim Smriti (H. V. Kamath)<sup>106</sup>.

While introducing the Bill in the Parliament after it was revised and drafted by the Select Committee, he once again, attempted to strike a chord in the hearts of the member saying that the proposed Bill asked nothing more than to repair those parts of the Hindu system which had become 'dilapidated'.<sup>107</sup>

A review of the proceedings of debate on this Bill that spanned more than four years reveals that Ambedkar took upon himself the task of getting the Bill through as a crusade against the bastions of the tyrannical upper caste stronghold over Hindu society. He engaged himself in the in-depth research of Hindu Shastras so that he could relate and quote them easily in defending the Hindu code Bill. He concentrated his tremendous energies on the Bill. He found a golden and unique opportunity to change under law the basic framework of Hindu society on more liberal patterns suited to modern conditions and times. For some months he had been inspired by the

one single and thrilling idea, the idea of a Mahar reorganising the basic framework of Hindu society.<sup>108</sup> He was so emotionally involved with the Bill that when he was reminded of a probable backlash in the forthcoming election, he commented: 'I care more for the Code than for my election'<sup>109</sup> (07.02.1951). He was willing to put his political career at stake for the code.

The preparation of the Bill had involved extensive studies in the scriptures, long discussions with a host of pundits and jurists, and a vast collection of materials, books and manuscripts with which a whole room was filled<sup>110</sup>. Ambedkar, a scholarly person he was, made a whole hearted effort to gather evidences in favour of the Bill so that he could successfully convince members in the Parliament. Many times during the discussion he referred to Stephen's Digest of English law<sup>111</sup> (21.09.1951), reviews in the newspaper and other such related sources for garnering support for the Bill.

He was so passionately involved that he became impatient during clause by clause discussion. Many a times, he interrupted the discussion reminding constraints of time<sup>112</sup>. "*You may abuse me as much as possible, provided you do not take much time. I am concerned more with the time than with the abuse*": was his comment during the debate (22.09.1951)<sup>113</sup>.

Ambedkar was known for his ability of arguing logically and for putting forward evidences and supports in a convincing manner. The legislative and Constituent Assembly witnessed good examples of very sound arguments even though some of them were complex, however, as time passed by during the discussion of Hindu Code Bill, he became impatient and started his speech hitting right and left and calling those who had moved amendments and made speeches in support of them as being absurd and as being foolish and devoid of common-sense<sup>114</sup>.

He began illustrating weaknesses in the Hindu social system and at times ridiculed many of its socio-religious practices by virtue of his deep understanding of Hindu customs<sup>115</sup>. During the debate he commented that to his judgement, the ancient ideals of Hindu society were most archaic and impossible for anybody to practice. He also mentioned that the Hindu society did not allow liberty and equality to all citizens and

as such the institution did not conform to the Constitution of India and therefore a change was needed<sup>116</sup>.

After the burning of the Manusmiriti in public in 1927, as a Law Minister he found this opportunity of passing of the Hindu Code. As he put it, Hindu society had enslaved both Sudras and women, who had to be rescued by law so that the society can move on<sup>117</sup>. He also argued that Hindu society was 'inert and static' which believed that Law making is the function of either God or the Smriti. This is the reason why the Hindu Society has remained as it was. He pointed out to the failure of the society to accept its own power and responsibility in moulding its social, economic and legal life. He further argued on the issue of majority of public opinion which were against the Bill. He said:

*"When the society is in the transitory stage, leaving the past going to the future, there are bound to be opposing considerations: One pulling towards the past, and one putting towards the future and the test that we can apply is no other than the test of one's conscience. I have not the slightest doubt in my mind that the provisions of this Bill are in perfect consonance with the conscience of the community, and I have therefore, no hesitation in putting forth this measure although it may be as a matter of fact that a large majority of our countrymen do not accept it."<sup>118</sup>*

He was so much involved in the Bill that he was most reluctant at having had to agree to the original code being split up. He even wrote a note to Nehru, the Prime Minister, stating that he attached great importance to this measure and would be prepared to undergo any strain on his health to get the Bill through<sup>119</sup>.

His approach towards the Bill in 1951 generated more enemies than friends. Even those not opposing the provisions of the Bill determined to vote down the Bill as an expression of anti-Ambedkarism. Pandit Thakur Das Bhargava made a personal attack on Ambedkar by pointing out that he was keen to get the Marriage & Divorce Act passed just to legalize his own marriage<sup>120</sup>. Dr. Pattabhi Sitaramaya denounced the professional, pedagogic and pontifical attitude of Ambedkar saying that it would only alienate people those could have been grouped for support. Naziruddin Ahmed

commented that the approach of Ambedkar perhaps called up an opposition where there was none<sup>121</sup>.

Ambedkar's messianic approach and aggressive stance provoked a lot of opposition. During the debate proceedings, Pandit Maitra commented that provisions could have been defended by the Law Minister without injuring the religious susceptibilities of members. Dr.C.D Pande criticised Ambedkar saying that 'how far the Hon. Minister is justified in dealing with this subject and restoring to such invectives'. Similar opinions were also aired by several members of the Legislative Assembly<sup>122</sup>.

His loud denunciations of the Hindu social system, his abuses and invectives and his attempts to vilify the Hindu religion hurt the sentiments of a large number of the members of the Legislative Assembly. His opponents became equally determined that he should not be allowed to have the distinction of being called the 'Modern Manu'. Some members openly declared that as long as Ambedkar was piloting the Bill, they would not allow it to pass<sup>123</sup>.

The last attempt made by Ambedkar to convince the members by drawing parallel with the recently adopted Constitution. Concluding his forceful speech in defence of the Bill, he said in a challenging voice:

*"if you mean to give liberty and you can not deny that liberty in view of the fact that you have placed it in your Constitution and praised the Constitution which guarantees liberty and equality to every citizen- then you can not allow this institution to stand as it is. That is the reason why we are proceeding with this Bill and not because we want to imitate any other people or we want to go in for our ancient ideals which are to my judgement, most archaic and impossible for anybody to practice."*<sup>124</sup>

Ambedkar's approach to the issue of Hindu Code Bill, towards the end of the debate was a case of abhorrence, revulsion and disgust. He started dwelling on the static quality of the Hindu society and in the process he used provocative languages causing hurt to the members of the Legislative Assembly. Even Nehru wanted to reform his Cabinet with a more congenial Law Minister. He was so apprehended that he insisted

a copy of the resignation speech of Ambedkar before he was allowed to deliver the same in the assembly. In his spell of abuse, Ambedkar did not even spare Nehru, who was the pioneer of the Hindu Code. Ambedkar criticised Nehru stating that "I got the impression that the Prime Minister although sincere, had not the earnestness and determination required to get the Hindu Code Bill through"<sup>125</sup>.

Ambedkar cited the fate of the Hindu Code Bill as the primary reason that led to his resignation from the Cabinet of the Nehru Government. The frustration of his mind was vividly expressed in his resignation speech. In his resignation speech he put greater emphasis on the fact that Bill was not given sufficient time for discussion. He termed the event associated with the Bill as 'greatest mental torture' and even though he was not keeping good health then, he pointed out that he would be the last man to abandon his duties on account of illness<sup>126</sup>. In no uncertain terms he expressed his utmost willingness to pass the Bill even though in parts: "For a long time I had been thinking of resigning my seat from Cabinet. The only thing that held me back from giving effect to my intention was the hope that it would be possible to give effect to the Hindu Code Bill before the life of the present Parliament came to an end. I even agreed to break up the Bill and restricted it to Marriage and Divorce in the fond hope that at least much of this labour may bear fruit. But even that part of the Bill has been killed. I see no purpose in continuing to be a member of your Cabinet."(27.09.1951)<sup>127</sup>

The Hindu Code Bill was eventually passed in segments and under the stewardship of a new Law Minister, C. C. Biswas. The credit of this amazing feat goes to Nehru and as Parliamentarians like R. K. Chaudhuri, while differing with Nehru on the details of the legislation, conceded that to Nehru went the entire credit of having had the Hindu Code Bill passed<sup>128</sup>. Raj Kumari Amrit Kaur said as much when she commented: 'The social reforms that are now on the Statute Book would . . . have been talked out if it had not been for Jawaharlal's powerful advocacy of and insistence on them'<sup>129</sup>.

## 5.7 Summary and Conclusion

Thus, the evidences point that Nehru who began with the vision of a uniform Civil Code ended up by accepting a fragmented and truncated version of the same but, for him, it was not, however, a surrender of principles but merely the pragmatic recognition of the volume of opposition that was pitted against him<sup>130</sup>. Whereas, for Ambedkar, the attempt was honest, emotional and forceful but it unfortunately ended in unceremonious surrender through resignation. Therefore, while acknowledging the effort put forward by Ambedkar for passing the Bill is commendable, it can be argued that he failed to bring forth the social re-engineering that he aimed for women empowerment and emancipation through Hindu Code Bill.

Pandit Nehru summed up the effort of Ambedkar in his obituary speech in the Lok Sabha:

*"He will be remembered also for the great interest he took and the trouble he took over the question of Hindu Law reform....he used languages sometimes which hurt people. He sometimes said things which were perhaps not wholly justified. But let us forget that. The main thing was that he rebelled against something against which all ought to rebel..."*

*" He was not a person of soft speech, But behind all that was this powerful reaction and an Act of rebellion against something that repressed our society for so long....that perseverance, that persistence and that, if I may use the word, sometime virulence of his opposition to all this did keep the people's mind awake and did not allow them to become complacent about matters which could not be forgotten, and helped in rousing up those groups in our country which had suffered for so long the past..."<sup>131</sup>*

Although, Ambedkar could not see the Hindu Code Bill find its place in statute book while in Cabinet, his contribution towards institutionalising of measures towards women empowerment is summed up by noted Parliamentarian and women Activist, Brinda Karat. In reference to Hindu Code Bill and subsequent legislative reforms in terms of various Bills she said:

*"There is no Ambedkar in the Indian Government today to assert the principles of accountability and commitment to the struggle to eliminate discrimination against women. But it would be better to wait for a more sympathetic Parliament and Prime Minister than to push through a so-called alternative that brings little benefit to women."*<sup>132</sup>

Ambedkar strongly argued in favour of the Bill and called on the liberal intelligentsia and the media to come forward in support of the Bill, but most failed to respond to his call being unable to see beyond their caste prejudices. Hurt by the lack of commitment to positive change by the Member of Parliament and the Prime Minister, Ambedkar resigned from the Union Cabinet. The mainstream media, including feminist writers are silent about the single handed fight of Ambedkar for women's rights. This incident has been erased from the collective memory of the nation deliberately in order to ghettoize Ambedkar as only a Dalit leader and not a nation builder who also fought for women, tribal and minority rights. Otherwise, the efforts of Ambedkar in promoting the Hindu Code Bill would have been remembered as a landmark in the making of a free India<sup>133</sup>.

## Notes and Reference

- <sup>1</sup> Basu, D D. 2001. *Introduction to the Constitution of India*. (19<sup>th</sup> Edition). Nagpur: Wadhwa & Co, Law Publishers, p.25.
- <sup>2</sup> Ibid. p.24.
- <sup>3</sup> Bagchi, K K. 2004. Women Empowerment in India: Legal and Program based Approaches. In Bhumali, Anil. (ed.) *Education, Employment and Empowering Women*. New Delhi: Serials Publications, pp.286-311.
- <sup>4</sup> Purohit, B R. 2003. Social Justice and India's Constitution. In Purohit B R & Joshi S (ed.) *Social Justice in India*. New Delhi: Rawat Publication, p.18.
- <sup>5</sup> Basu, D D. 2001. *Introduction to the Constitution of India*. op.cit., p.25.
- <sup>6</sup> Ibid. p.25.
- <sup>7</sup> *Constituent Assembly Debates*. (hereafter referred as C.A.D.) Vol. 2, p.304.
- <sup>8</sup> C.A.D. Vol. 2, p.1. & pp.269-273; C.A.D. Vol.5. pp.1-2. & p.11. & p.367.
- <sup>9</sup> Austin, Granville. 2006. *The Indian Constitution Cornerstone Of Nation*. (10<sup>th</sup> edition.) New Delhi: Oxford University Press, p.50.
- <sup>10</sup> Ibid, p.51.
- <sup>11</sup> Rajasekhariah, A M. 1999. *B R Ambedkar- The Quest for Social Justice*. New Delhi: Uppal Publishing House, p.230.
- <sup>12</sup> Patil, V.T, Narayana. 1995. Ambedkar's Perception Of Justice under the Constitution—An Overview In Patil, V.T. (ed.) *Studies In Ambedkar*. Delhi: Devika Publications, pp.383-384.
- <sup>13</sup> Basu, D D. 2001. *Introduction to Constitution of India*. op.cit., pp.87-115.
- <sup>14</sup> Ibid. p.26.
- <sup>15</sup> C.A.D. Vol. VII, p.666.
- <sup>16</sup> Mane, Suresh. 1995. Some reflections on the Constitutional philosophy of Ambedkar. In Patil, V T. (ed.) *Studies in Ambedkar*. Delhi: Devika Publications, pp.67-74.
- <sup>17</sup> Mishra, J P. 1995. B R Ambedkar's contribution towards the shaping of the Indian Constitution. In Patil, V T. (ed.) *Studies in Ambedkar*. Delhi: Devika Publications, pp.59-66.
- <sup>18</sup> Ibid. p.65.
- <sup>19</sup> Mane, Suresh. 1995. Some reflections on the Constitutional philosophy of Ambedkar. In Patil, V T. (ed.) *Studies in Ambedkar*. op. cit., p.73.
- <sup>20</sup> Patil, V T, Narayana. 1995. Nehru, Gandhi, Congress ideology and Ambedkar's role in the making of the Indian Constitution. In Patil, V T. (ed.) *Studies in Ambedkar*. op. cit., pp.39-58.
- <sup>21</sup> C.A.D. Vol. XI, p.973.

- <sup>22</sup> Patil, V T, Narayana. 1995. Nehru, Gandhi, Congress ideology and Ambedkar's role in the making of the Indian Constitution. in Patil, V T. (ed.) *Studies in Ambedkar*. op.cit., p.40.
- <sup>23</sup> Mane, Suresh. 1995. Some reflections on the Constitutional philosophy of Ambedkar. In Patil, V T. (ed.) *Studies in Ambedkar*. op. cit., p.73.
- <sup>24</sup> Ibid. p.68.
- <sup>25</sup> Austin G. 2006. *The Indian Constitution-The cornerstone of a Nation*, op.cit., p.315.
- <sup>26</sup> C.A.D. Vol.VII, p.504.
- <sup>27</sup> Ibid. p.504.
- <sup>28</sup> C.A.D. Vol. XI, p.979.
- <sup>29</sup> For further details see, Ambedkar, B R. 1989. *State and Minorities- What are their rights and how to secure them in the Constitution of Free India*. Vol. 1, B.A.W.S.
- <sup>30</sup> Jeevan, Kumar D. 1995. Ambedkar Quest for social justice through Constitutional rights and safeguards; An analysis. In Patil, V T. (ed.) *Studies in Ambedkar*. op.cit., p.118.
- <sup>31</sup> Dhavan, Rajeev. 1997. Fighting for rights. In Shabbir Mohd (ed.) *B R Ambedkar study in law and society*. Jaipur: Rawat Publication, p.186.
- <sup>32</sup> C.A.D. Vol.I, p.56.
- <sup>33</sup> Patil, V.T, Narayana.1995. Ambedkar's Perception of Justice under the Constitution--An Overview. In Patil V.T. (ed.) *Studies In Ambedkar*. op. cit., p.383-384.
- <sup>34</sup> Banningan, John A. 1952. The Hindu Code Bill. *Far Eastern Survey*. Vol. 21, No. 17. (December 3, 1952), pp. 173-176.
- <sup>35</sup> Ibid. pp.173-176.
- <sup>36</sup> Som, Reba. 1994. Jawaharlal Nehru and the Hindu Code: A Victory of Symbol over Substance? *Modern Asian Studies*. Vol. 28. No. 1. (Feb., 1994), pp. 165-194.
- <sup>37</sup> Chavan N, Kidwai J Q. 2006. *Personal Law Reforms and Gender Empowerment: A Debate on Uniform Civil Code*. Hope Publication India, pp.90-105.
- <sup>38</sup> In his speech on Hindu Code Bill, Dr. Ambedkar at Siddharath College, on the eve of students Parliament, 11 Jan. 1950. cited in Janata dated 14 Jan. 1950.
- <sup>39</sup> Chavan N, Kidwai J Q. 2006. *Personal Law Reforms and Gender Empowerment: A Debate on Uniform Civil Code*. op.cit., pp.90-105.
- <sup>40</sup> Sinha, C. 2007. Images of Motherhood: The Hindu Code Bill Discourse. *Economic and Political Weekly*. Vol. XLII, No.43.(October 27-November 2), pp.49-57.
- <sup>41</sup> Government of India, Report of Hindu Law Committee, 1947, p.23.
- <sup>42</sup> Banningan John A. 1952. The Hindu Code Bill. *Far Eastern Survey*. op.cit., pp. 173-176.
- <sup>43</sup> Ibid. pp. 173-176.
- <sup>44</sup> Ibid. pp. 173-176.

- <sup>45</sup> Sinha C. 2007. Images of Motherhood: The Hindu Code Bill Discourse. *Economic and Political Weekly*. op.cit., pp.49-57.
- <sup>46</sup> Pradeshi, Pratima. 2003. The Hindu Code Bill for liberation of Women. In Anupama, Rao. (ed.) *Gender and Caste*. New Delhi: Kali for women, pp. 346-360.
- <sup>47</sup> Chavan N, Kidwai J Q. 2006. Personal Law Reforms and Gender Empowerment: A Debate on Uniform Civil Code. op.cit., p.105.
- <sup>48</sup> Sinha C. 2007. Images of Motherhood: The Hindu Code Bill Discourse. *Economic and Political Weekly*. op.cit., p.57.
- <sup>49</sup> For details please see: Kumar Anoop. 2005. Hindu Code Bill: A case of collective amnesia. *Insight*. New Delhi: Ambedkar Study Circle. JNU.
- <sup>50</sup> C.A.D. Vol. VI. No. I. Part II, pp. 775-581.
- <sup>51</sup> C.A.D. Vol. II. No. I. Part II, pp. 842-936. and. pp. 989-1030.
- <sup>52</sup> C.A.D. Vol. III. No. I. Part II, pp. 2197-2289.
- <sup>53</sup> C.A.D. Vol. VI. No.V. pp. 464-621.
- <sup>54</sup> *Parliamentary Debates*. (hereafter referred as P.D.). Vol. VII. No. I. Part II. pp. 2462-2473.
- <sup>55</sup> Keer, Dhananjay. 1971. *Dr Ambedkar-Life and Mission*. Bombay: Popular Prakashan, p.432.
- <sup>56</sup> P.D. Vol. VII. No. I. Part II. pp. 2356- 2695.
- <sup>57</sup> P.D. Vol. XV. pp. 2674-2937.
- <sup>58</sup> Gopal, S.(ed.)1972. *Select Works of Jawaharlal Nehru*. Vol.VII. New Delhi. p.236.
- <sup>59</sup> Sinha, C. 2007. Images of Motherhood: The Hindu Code Bill Discourse. *Economic and Political Weekly*. op.cit., p.53.
- <sup>60</sup> For details see. Kumar, Anoop. 2005. Hindu Code Bill: A case of collective amnesia. *op. cit.*
- <sup>61</sup> Ray, Renuka. 1952. The background of the Hindu code Bill. *Pacific Affairs*. University of British Columbia. Vol. 25. No.3. September, p.269.
- <sup>62</sup> Levy, Harold Lewis. 1969. Lawyer-Scholars, Lawyer- Politicians and the Hindu Code Bill- 1921-1956, *Law & Society Review*. Vol. 3. No.2/3. Special issue. (November1968-February 1969). pp.303-316.
- <sup>63</sup> Ray, Renuka. 1952. The background of the Hindu code Bill. op.cit., p.274.
- <sup>64</sup> Banningan, John A. 1952. The Hindu Code Bill. *Far Eastern Survey*. op.cit., p. 175.
- <sup>65</sup> Austin, G. 2006. *The Indian Constitution- The cornerstone of a Nation*. op.cit., p.140.
- <sup>66</sup> Munshi, K M. 1967. (ed.) Note from Rajendra Prasad to Jawaharlal Nehru, 15 Sept. 1951. *Indian Constitutional Documents*. Vol. I.
- <sup>67</sup> *The Hindu*, 01.05.1949.

- <sup>68</sup> Durga, Das. 1973. Note of Rajendra Prasad, 31.07.1948. In *Sardar Patel's Correspondence: 1945-1950*. Vol. VI.
- <sup>69</sup> Durga, Das. 1973. Rajendra Prasad to Jawaharlal Nehru, 24.07.1948, In *Sardar Patel's Correspondence: 1945-1950*. Vol. VI.
- <sup>70</sup> Keer, Dhananjay. 1971. *Dr Ambedkar-Life and Mission*. op.cit., p.126.
- <sup>71</sup> *C.A.D.* 1949. Vol.III.
- <sup>72</sup> Ramchandra, Guha. Past & Present, Reforming the Hindus, *The Hindu*. 18.07.2004. url: <http://www.thehindu.com/thehindu/mag/2004/07/18/stories/2004071800120300.htm>.
- <sup>73</sup> *Legislative Assembly Debates*. 1946. p. 3407.
- <sup>74</sup> Ananga, Mohan Dam. *Legislative Assembly Debates*. 1944. Vol. III.
- <sup>75</sup> Ibid.
- <sup>76</sup> Guha, Ramchandra. Past & Present, Reforming the Hindus. *The Hindu*. op.cit.
- <sup>77</sup> Naziruddin, Ahmed. *C.A.D.* 1948, Vol.V.
- <sup>78</sup> *C.A.D.* 1949. Vol. III.
- <sup>79</sup> Keer, Dhananjay. 1971. *Dr Ambedkar-Life and Mission*. op.cit., p.427.
- <sup>80</sup> *Dr. Babasaheb Ambedkar Writings And Speeches*. (Hereafter referred as *B.A.W.S.*). 1995. Vasant Moon (ed.) Vol.14. part -I. Sec -I. Mumbai: Education Department Government of Maharashtra, p.24.
- <sup>81</sup> *B.A.W.S.* 1995. Vol.14. Part-I. Sec-I. p.37.
- <sup>82</sup> *C.A.D.* 1948. Vol.V.
- <sup>83</sup> N.C, Chatterjee. 26 April 1955. *Lok Sabha Debates*. 1955. Vol. IV. Part- II.
- <sup>84</sup> Banningan, John A. 1952. The Hindu Code Bill. *Far Eastern Survey*. op.cit., p. 175.
- <sup>85</sup> *P.D.* 17-09-1951 to 19-09-1951. Vol. XV. pp. 2674-2937.
- <sup>86</sup> *P.D.*1955. Vol. IV, pt II.
- <sup>87</sup> *C.A.D.* 1948. Vol. V.
- <sup>88</sup> *B.A.W.S.* 1995. Vol. 14. Part-I. Section -3. p.417.
- <sup>89</sup> *B.A.W.S.* 1995. Vol. 14. Part-I. Section -3. p.759.
- <sup>90</sup> Som, Reba. 1994. Jawaharlal Nehru and the Hindu Code: A Victory of Symbol over Substance?. op. cit., p.176.
- <sup>91</sup> Gole. *Legislative Assembly Debates*. 1947. Vol.I.
- <sup>92</sup> *Legislative Assembly Debates*. Vol. II. March 24, 1943. pp.1414-1418.
- <sup>93</sup> *B.A.W.S.* 1995. Vol-14. Part-I. Section III. pp.349-350.
- <sup>94</sup> Munshi, K M. 1967. (ed.) Note from Rajendra Prasad to Jawaharlal Nehru, 15 Sept. 1951. *Indian Constitutional Documents*. Vol. I.
- <sup>95</sup> *B.A.W.S.* 1995. Vol.14. Part -I. Sec-I. pp.35-37.

<sup>96</sup> Som, Reba. 1994. Jawaharlal Nehru and the Hindu Code: A Victory of Symbol over Substance?. op. cit., pp.165-194.

<sup>97</sup> Jaffrelot, Christophe. 2005. *Dr. Ambedkar and Untouchability : Analyzing and Fighting Caste*. Delhi: Permanent Black, p.116.

<sup>98</sup> Som, Reba. 1994. Jawaharlal Nehru and the Hindu Code: A Victory of Symbol over Substance?. op. cit., p.171.

<sup>99</sup> For further information see, Sinha, C. 2007. Images of Motherhood: The Hindu Code Bill Discourse. *Economic and Political Weekly*. op.cit.

<sup>100</sup> *B.A.W.S.* 1995. Vol.14, Part-I. Section III: p.269.

<sup>101</sup> For more details see, Khan, N H. 2001. *Ambedkar on Gender Equality: Myth and Reality*. In Khan, N H. (ed.) *B R Ambedkar on federalism, ethnicity and gender justice*, New Delhi: Deep and Deep Publications Pvt. Limited.

<sup>102</sup> Rodrigues V. 2002. *The Essential Writings of B.R Ambedkar*. New Delhi: Oxford University Press, p.470.

<sup>103</sup> *C.A.D.* Vol. IV. 09.04.1948, p.3628.

<sup>104</sup> *Ibid.* p.3628.

<sup>105</sup> *B.A.W.S.* 1995. Vol. 14. Part-I. Section III. p.250.

<sup>106</sup> D C Ahir. 2007. *Dr. BabaSaheb Ambedkar, Writing and Speeches*. Delhi: B R publishing Corporation, p.338.

<sup>107</sup> *B.A.W.S.* 1995. Vol. 14. Part-I. Section-III, p.283.

<sup>108</sup> Keer, Dhananjay. 1971. *Dr Ambedkar-Life and Mission*. op.cit., p.424.

<sup>109</sup> *P.D.* Vol.VIII. Part-II. 07.02.1951. pp.2488-2499.

<sup>110</sup> Keer, Dhananjay. 1971. *Dr Ambedkar-Life and Mission*. op.cit., p.424.

<sup>111</sup> *P.D.* Vol.V. Part-II 21.09.1951, pp.2974-3008.

<sup>112</sup> *P.D.* Vol.VIII. Pt-II. 06.02.1951, pp.2425-2483.

<sup>113</sup> For details see, *P.D.* Vol.V. Part-II. 22.09.1951.

<sup>114</sup> *P.D.* Vol.VIII. Pt-II. 07.02.1951, pp.2488-2499.

<sup>115</sup> Som, Reba. 1994. Jawaharlal Nehru and the Hindu Code: A Victory of Symbol over Substance?.op.cit., p. 186.

<sup>116</sup> *B.A.W.S.* 1995. Vol.14. Part-II. Section-IV. p.1162.

<sup>117</sup> *Ibid.* p.1160.

<sup>118</sup> *B.A.W.S.* 1995. Vol.14. Part-I. Section- I, p.41-42.

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<sup>119</sup> C.A.D. 1951. Vol XVI, Part-II. 10.08.1951.

<sup>120</sup> *Legislative Assembly Debates*. Vol.I. Part-II.

<sup>121</sup> C.A.D. 1950. Vol. VII.

<sup>122</sup> B.A.W.S. 1995. Vol-14. Part-II, pp.1162-1163.

<sup>123</sup> Deogirikar. Twelve years in Parliament, pp.100-1001, cited in Som Reba. 1994. Jawaharlal Nehru and the Hindu Code: A Victory of Symbol over Substance?. op. cit., p.186.

<sup>124</sup> B.A.W.S. 1995. Vol.14. Part-II. Section-IV. p.1162.

<sup>125</sup> Ibid. p.1324.

<sup>126</sup> Resignation Speech of Dr. Ambedkar. 10.10.1951. cited in B.A.W.S. 1995. Vol.14. Part-II. Section-IV. p.1325.

<sup>127</sup> Karat, Brinda. Alternative as dilution. *The Hindu*. 15.05.2003.  
<http://www.hinduonnet.com/2003/05/15/stories/2003051500371000.htm>, 15.05.2008

<sup>128</sup> P.D. 1955. 29 April 1955. Vol. IV. Part-11.

<sup>129</sup> Kaur, Amrit. *A Friend without Friends*. cited in Som Reba. 1994. Jawaharlal Nehru and the Hindu Code: A Victory of Symbol over Substance?. op. cit., p. 194.

<sup>130</sup> Som, Reba. 1994. Jawaharlal Nehru and the Hindu Code: A Victory of Symbol over Substance? op. cit., p. 193.

<sup>131</sup> P.D. Vol.VIII. Pt-II. 06.12.1956, pp.2059-2068.

<sup>132</sup> Karat, Brinda. *Alternative as dilution*. *The Hindu*. 15.05.2003. op.cit.

<sup>133</sup> For details see. Kumar, Anoop. 2005. Hindu Code Bill: A case of collective amnesia. op. cit. .