

**‘Hindu Code Bill’- An Ambitious Dream of Dr. B. R. Ambedkar to Women
Empowerment and its Disastrous Repudiation**

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Abstract

As one of the makers of modern India Dr. B. R. Ambedkar wanted ‘to cleanse the rotten structure of the Hindu society and to reinvigorate it’ as per his ideologies of liberty, equality, dignity and social justice. Ambedkar places Man at the centre of his thinking, and his sole concern was the all-round development of Man irrespective of classes, castes, creed and sexes. He used to believe that solving human problems with the help of rational logic is more reliable than adhering to religious beliefs and dogmas blindly. Out of this feeling Ambedkar’s visions concentrated towards the ill treatment of women in our country and that’s why in his capacity as a first law minister of free India he took the task on his shoulders to liberate the women from their long societal bondage as well as enslavement. Though, his efforts were not materialized due to the vigorous opposition from various corners, in spite of that his whole hearted efforts to frame and pass the Hindu Code Bill is the shining example in the history of women emancipation in India. In this context an attempt has been made to trace out the importance of passing the Hindu Code Bill for the better future of modern India.

Key Words: Interim Government, Empowerment, Manusmriti, Scriptures, Theology, Begum AizazRasul, J.N. Mandal, O.V. Alagesan, ShyamaprasadMookherjee.

Introduction

Dr. B. R. Ambedkar(14th April, 1891- 6th December, 1956) was one of the makers of modern India. His story of life-struggle, thinking and above all activities were qualitatively different from that of his predecessors and contemporaries for which he is still remembering in the hearts and minds of the millions of people even after 64 years of his death. Ambedkar places Man at the centre of his thinking and his sole concern is the all-round development of Man irrespective of classes, castes, creed and sexes. He used to believe that solving human problems with the help of rational logic is more reliable than adhering to religious beliefs and dogmas blindly. Out of this feeling Ambedkar’s visions concentrated towards the ill treatment of women in our country and that’s why he took the task on his shoulders to liberate the women from their long societal bondage as well as enslavement. In that connection his

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whole hearted efforts to frame and pass the Hindu Code Bill is the shining example in the history of women emancipation in India.

What is Hindu Code Bill?

The Hindu Code Bill meant to codify the Hindu Laws as a progressive measure at the aim of liberating women from enslavement so that women are to be treated as ‘human being’ with equal rights and dignity as like as man in all sphere of life. Initially, the Hindu Code Bill was introduced in the Legislative Assembly by J.N. Mandal, the then Law Minister of the Interim Government¹ on 11th April, 1947.² But the Bill was moved by Ambedkar as a revised form incorporating substantial improvements in the content upon the previous Bill in the Constituent Assembly (Legislative) on 17th November, 1947.

Background Which Prompted Ambedkar to Codify Hindu Laws

The word which is much discussed and debated in modern time is ‘Women Empowerment’ that is very much related to our all-round development. No nation can prosper if its women are not empowered or not given proper recognition. In India from times immemorial there were various male centric selfish patriarchal dominating traditions which did not allow women and *Shudras* to read Vedas.³ This so-called Brahmanical patriarchal tradition - dominating the Hindu Society since century after century out of which the position of women gradually lowered in the social strata. In that connection, it may be recalled that at the time of commenting on Charles Fourier, Fredrick Angles once said it was, he (Charles Fourier) who first declared the freedom of common people may be measured on the basis of how much the women are being enjoying freedom and respect of a particular society or country.⁴ It is widely recognized that the women have to pass through three phases of life, first as daughter, second as wife and third as mother. In Indian traditional patriarchal society, which were basically dominating by the doctrine of Manu-who prescribed regarding the position of women in the following way:

**পিতা রক্ষতি কৌমাৰে
ভৰ্তা রক্ষতি যৌবনে
রক্ষন্তি শ্ববিৰে পুত্রা:**

ন স্ত্রী স্বাতন্ত্র্যমর্হতি।⁵

That means women would never be free and self-dependent right from early age to old age because their three phases of life (daughter- wife- mother) and activities would be controlled by father, husband and son respectively.

Necessity of the Codification of Hindu Law

Keeping in mind the above happening in the society and being inspired by his concept of ‘social justice’⁶-with the help of ‘power of reason’ for women empowerment to establish a society on the basis of liberty, equality and fraternity at the aim of putting men and women are on the equal level in all legal matters — Ambedkar went for codification of some important issues through the Hindu Code Bill. Not only that the Hindu Laws remained scattered in innumerable decisions of the Indian High Courts and also of the Privy Council, which formed bewildering manifold to the common man. In that context, Ambedkar felt that it was necessary to give a definite shape and form to the Hindu Law by consolidation and codification.⁷

What Ambedkar Wanted in Hindu Code Bill?

“The Hindu society is an inert society. It has always believed that law-making is the function either of God or the *Smritis* and that Hindu society has no right to change the law.”⁸ Discarding the infallibility of the *Vedas*, *Manusmriti*, scriptures and theology, Ambedkar like the thinkers of the age of enlightenment would believe in the ‘power of reason’ and started advocating that rationality should be the criterion or standard by which all things are to be judged. The existing Hindu Law dealing with succession and inheritance led to discrimination against the female heirs. Therefore, Ambedkar wished to abolish this discrimination in the Hindu Code Bill. The points raised in favor of the Bill for consideration in the House, were as follows:

- i. The abolition of birth-right and to take property by survivorship,
- ii. The giving of half-share to the daughter,
- iii. The conversion of women’s limited estate into an absolute estate,
- iv. The abolition of caste in the matter of marriage and adoption,
- v. The principle of monogamy, and
- vi. The principle of divorce⁹

Objectives of the Hindu Code Bill

The Bill was an interesting and progressive part of legislation. It aimed ‘at changing the basic framework of Hindu Society on more liberal patterns suited to modern times’.¹⁰ It sought to confer on women the right of property and adoption which had been denied to them from ancient times.¹¹ The main objectives of the Bill were to end ‘inequality between class and class, between sex and sex, which is the soul of Hindu society’.¹² The basic tenets of the Bill were in harmony with the constitutional philosophy of equality of men and women. Ambedkar had ‘rebelled against the inhuman elements that were eating into the vitals of Indian society’.¹³ The Bill was really a part of ‘social engineering’¹⁴ aiming to remove the outdated Customary Hindu Law.

Need for Social Repair

Recognizing the need for social repairs, Ambedkar, while introducing the Hindu Code Bill said: “That those who want to conserve must be ready to repair and all I am asking of this House in this: that if you want to maintain the Hindu system, the Hindu culture, the Hindu society, do not hesitate to repair where repair is necessary. This Bill asks for nothing more than repairing those parts of the Hindu system which have almost become dilapidated”.¹⁵

Hindu Code Bill in the Select Committee

After introducing the Bill in the Constituent Assembly by Ambedkar on 17th November, 1947, it was moved for referring to the ‘Select Committee’¹⁶ on 9th April, 1948. The debate in the Select Committee continued for more than four years and remained inconclusive. It has developed an impression to Ambedkar that the Government and the party in power i.e. Congress party were not sincere to clear the Hindu Code Bill.¹⁷

Debate in Provisional Parliament

The Bill came up for clause-by-clause discussion on the floor of the Provisional Parliament. The historic debate centered in favour of the Bill and against the Bill on and from 5th February to 25th September, 1951.

Defenders of the Hindu Code Bill

Although, the Bill was not able to see the light of day, in spite of that there were substantial number of members of the Provisional Parliament (The provisional parliament ceased to exist on 17th April, 1952) were tried their best to defend the Bill through their valuable deliberations. The most important amongst them were:

(i). PattabhiSitaramayya characterized it as an ‘interesting piece of legislation for which the country has been waiting for long’.¹⁸ (ii). Hansa Mehta called it a ‘revolutionary Bill’ and ‘a great landmark in the social history of the Hindus’.¹⁹ (iii). B.V. Keskar said that it was a radical Bill, meant ‘to change the very foundations of Hindu society, a society which has remained fossilized for the last thousand years’.²⁰ (iv). Begum AizazRasul called it radical and far-reaching and its efforts to codify the Hindu Law would ‘certainly be looked upon as one of the most momentous pieces of legislation that has ever been brought forward in this House’.²¹ (v). G. Durgabaistyled it as ‘a great landmark in the social history of India’.²² The other main defenders of the Bill were K.M. Munshi, Deshbandhu Gupta, H. Siddaveerappa, N.V. Gadgil, MahavirTyagi, Upendranath Barman, Col. Ranbir Singh, PanditHirdayNathKunzru, K. Santhanam, AlladiKrishnaswamiAyyar, Acharya J.B. Kripalini, ShrimatiRenuka Ray, H.V. Kamath etc. Among them H.V. Kamath was most passionate defender of the Hindu Code Bill, and he said that the Bill should be named as *Bhim Smriti*.²³

Opponents of the Hindu Code Bill

The Bill met with strong opposition inside the Provisional Parliament also. By centering the Bill the House was practically divided into two warring groups. The climax reached in the third week of September 1951, when the Bill came up for clause-by-clause discussion in the Parliament. In a very tense atmosphere, the debate began on 17th September, 1951. The prominent critics of the Hindu Code Bill were—Dr. Shyama Prasad Mookerjee, Pandit Madan Mohan Malaviya, Pandit Thakur Dass Bhargava, Pandit Lakshmi Kanta Maitra, Mukut Bihari Lal Bhargava, Sardar Hukum Singh, Sardar B.S. Man, O.V. Alagesan, Bakshi Tek Chand, Seth Govind Das, Babu Ramnarayansingh, etc.

Dr. Shyama Prasad Mookerjee, while opposing the Bill said: “The Hindu Code Bill would shatter the magnificent structure of Hindu culture and stultify a dynamic and Catholic way of life that had wonderfully adapted itself to changes for centuries”.²⁴

Pandit Madan Mohan Malaviya said that ‘the Bill was against the spirit of the Hindu *Shastras* and the long-established customary law and that the Provisional Parliament had no business to interfere with the personal laws of the Hindus. He warned the government ‘not to destroy the fabric of respect for law’.²⁵

Pandit Lakshmi Kanta Maitra felt that there was no need for codification. He was not in favour ‘drastic changes’ contained in the Bill. He characterized the Bill as the outcome of Ambedkar’s ‘megalomania’. He said: ‘...I oppose this Bill, because I feel it is a wholly unwarranted measure and that there has been no demand in the country for a legislation of this kind’.²⁶ Pandit Thakur Dass Bhargava described the Bill as ‘a small measure’.²⁷

Mukut Bihari Lal Bhargava, while opposing the Bill tooth and nail, said that ‘the only course for it was to throw out this piece of legislation. ...it could not be accepted’. He more said, “The Hindu Law has come into existence as a result of centuries of development, and the Bill is intended to tamper with its time-honoured institutions, customs and usages”.²⁸

Sardar Hukum Singh and Sardar B. S. Man both opposed the Bill and said that it should not apply to the Sikhs. Sardar Hukum Singh said, “In the Preamble it was stated that the Bill was intended to amend and codify of Hindu Law, but. ... there was nothing of Hindu Law that was being codified here. Divorce was taken from the Christian countries and the law of inheritance from the Muslim Law. The Bill was, therefore, rather a misnomer to call it a codification of Hindu Law”.²⁹

O.V. Alagesan pleaded that the Bill was the result of Ambedkar’s ‘over-ambitions’. He stated: ‘Dr. Ambedkar’s name is sure to go down in history as the able midwife that assisted at the birth of the Constitution of free India. He wants to add a further feather to his cap.... His ambition is to supersede the ancient *Rishis*, *Manu*, *Yajnavalkya* and a host of other ancient law givers’.³⁰

BakshiTek Chandemphatically said that the Bill was ‘a most truncated and half-hearted measure’, and ‘it will do the maximum of mischief act to Hindu society and minimum of good to the members of the female-sex’.³¹

BabuRamnarayan Singhsaid that through the Hindu Code Bill, a conspiracy was being hatched to disrupt the Hindu society; and, in fact, ‘it is something like a preparation to invade the Hindu society’.³²

Sum and Substance of the Opponents explanations

The points raised by the critics of the Bill centered around the following facts:

- i. There was really no necessity of such a Bill,
- ii. The Hindu Society had survived for many centuries, while the ancient society of Rome, Greece and Egypt had disappeared and therefore its laws and social structure must be good,
- iii. The Hindu society had been a very progressive society and it has been changing,
- iv. The Bill is a kind of imitation of the Western Nations,
- v. The Hindu marriages are based on sacramentalideal of marriage.

Ambedkar’s Reply to the Opponents explanations

Responding to the critics, Ambedkar with the help of his eloquent habit based on logic and reason pulled down each of the above arguments.

- i. He said that one point which had been raised by various speakers generally against the whole Bill was that the ancient Hindu society had been survived while some others ancient societies like Rome, Greece and Egypt had been disappeared; therefore, there was really no necessity for the Bill.

Refuting this argument Ambedkar said , ‘When I examine the history of India, I find that we have survived as a people who have been from time to time subjugated; vanquished and enslaved’.³³

- ii. In response to the critics of the Bill that Hindu Society had been a very progressive society and had been changing-

Ambedkar appreciated one of the great qualities of the Hindu society that it absorbed some things from those who opposed it. But his point was: ‘Did the Hindu society change its structure as a result of the absorption of the doctrines of their opponents’?³⁴

- iii. Citing the example of Lord Buddha, Ambedkar said that the Brahminic society accepted his most innocuous dogma of ‘ahimsa’ but it never accepted his belief in ‘equality’ and for that reason the Hindu society remained stagnant. It did not give up its social structure- the enslavement of the ‘*Shudra*’ and the enslavement of ‘women’.³⁵It was for this reason the ‘Codification of Hindu Laws’ was essential.

- iv. Another objection that had risen by the critics that the Bill was a 'kind of imitation of the Western nations'. In response to that-

Ambedkar made it clear that 'his ideals were not derived from the Americans or Chinese or from the ancient *Shastras* or the Ramayana or the Mahabharata; they were derived from the Constitution that we had laid down. The very Preamble of our Constitution speaks of liberty, equality and fraternity. The principles laid down in the Constitution from the bedrock of the Hindu Code'.³⁶

- v. The very significant objection was raised by the critics that 'Hindu marriages are based on sacramental ideal of marriage'. In response to that-

Ambedkar said, 'the institution of sacramental marriage was not fair and honest. It was polygamy for the man and perpetual slavery for the women because under no circumstances could the women get her liberty from her husband, however, undesirable he might have been'.³⁷

Whether the Bill should Apply to the Sikhs, Buddhists and Jains or Not?

There was a lot of controversy whether the provisions of Hindu Code Bill should apply to the Sikhs, Buddhists and Jains or not? In response to this controversy Ambedkar made it clear in the following way:

Ambedkar regarded the application of the Hindu Law and the Hindu Code to Sikhs, Buddhists and Jains as a historical development. In India through the ages religions changed but the laws has remained one. That is why the Sikh, Jains and the Buddhist have been following a single law system.³⁸

Reply to Sardar Hukum Singh

Sardar Hukum Singh alleged that the Bill should not apply to the Sikhs.

In his reply Ambedkar cited the judgments of the Privy Council much earlier than even 1830, that 'the Sikhs were Hindus so far as law is concerned'. He reminded Sardar Hukum Singh: 'Just count from 1830 to 1950 –for how many years you have been regarded as Hindus for legal purposes'³⁹. Not only that citing the evidence of Rau Committee when it toured and went to Lahore, Ambedkar quoted the names of Sikhs like Justice Teja Singh and Sardar Varyam Singh who appeared and made statements before the Committee and did not oppose the Hindu Code Bill.⁴⁰

Reply to Pandit Madan Mohan Malaviya

Pandit Malaviya said that the Bill was 'against the spirit of the Hindu *Shastras*'. In Hindu society from time immemorial 'laws had prevailed without the authority of the State, without the authority of the Police, without the authority of any legislature as such'. Warning the government, he asserted that 'Provisional Parliament should not interfere into the long-established customary law of the Hindus'.

Replying to Pandit Malaviya, Ambedkar said, “I want to assert in this House that I shall hear no argument from any community to say that this Parliament has no right to interfere in their personal law or any other laws. This Parliament is absolutely supreme and we deal with any community so far as their personal law is concerned apart from their religion. Let no community be in a state of mind that they are immune from the sovereign authority of this Parliament’ .⁴¹

Why Ambedkar Resigned

Ambedkar was staying in the Cabinet with the hope of doing some good and considered the Hindu Code as the greatest social reform measure ever undertaken by the Legislature in India. The sole purpose of the Hindu Code was to remove inequality that exists in the Hindu society. Unless and until, this inequality was not removed by law, the Constitution of India would be no more than a farce. But, in spite of his earnest desire and wholehearted efforts, the Bill was not able to see the day light and thereupon Ambedkar ultimately resigned on 10th October, 1951 from the Cabinet with broken heart and left the House in distress. Now, the question arose - what circumstances led him to resign...

Firstly, - Some person tried to establish that he resigned because of his illness. While repudiating any such statements, Ambedkar asserted that he was the last man to abandon his duty because of illness.

Secondly, - Ambedkar refuted the charge of dropping the Bill because of strong opposition. He argued that the Bill had been discussed several times in the Party and lastly out of 120 only 20 were against it.⁴²

Thirdly, - In this connection-Ambedkar referred three of the statements made by Pandit Jawaharlal Nehru, the then Prime Minister of India on the floor of the House.

(i). The first statement was made by the Prime Minister on 21st November, 1949, with the following assurance: ‘What is more, the government is committed to this thing (Hindu Code). It is going through with it’ .⁴³

(ii). The second statement was made on 19th December, 1949 when the Prime Minister said: ‘I do not wish the House to think in the slightest degree that we consider that this Hindu Code Bill is not of importance, because we do attach the greatest importance to it, as I said, not because of any particular clause or anything, but because of the basic approach to this vast problem in problems, economic and social’ .⁴⁴

(iii). Lastly, in his third statement on 26th September, 1951, the Prime Minister said: ‘It is not necessary for me to assure the House of the desire of Government to proceed with this measure in so far as we can proceed with it within possibilities, and so far, as we are concerned, we consider this matter as adjourned till such time as the next opportunity — I hope it will be in this Parliament —offers itself’ .⁴⁵

Fourthly, - The last statement of the Prime Minister (26th September, 1951) amounted to drop the Bill. Ambedkar could realize the gap between the promises and performance of the Prime Minister. He was aware that his exit from the Cabinet might not be a matter of much concern to anybody in this country. But he wanted to be honest to himself and that could be only by going out.

Fifthly, In regard to this Bill, Ambedkar had undergone the greatest mental torture. The Prime Minister gave freedom of vote. But the Chief Whip was deadliest opponent of the Code and was systematically absent when the Hindu Code Bill had been under consideration in the House. Remembering the roles, played by the Prime Minister and the Chief Whip, Ambedkar in his statement of resignation letter, wrote:

‘I have never seen a case of a Chief Whip so disloyal to the Prime Minister and a Prime Minister so loyal to a disloyal Whip. Notwithstanding this unconstitutional behavior, the Chief Whip is really a darling of the Prime Minister.... It is impossible to carry on in such circumstances.’⁴⁶

Lastly, -the debate over the Bill continued for more than four years and remained inconclusive. As per the words of Ambedkar, ‘the Bill was ultimately ‘killed and died unwept and unsung’.⁴⁷Ambedkar was ‘sore at the Prime Minister’s mishandling of the Hindu Code Bill, and that was the main factor for his resignation (10th October, 1951) from Nehru’s Cabinet’.⁴⁸

Hindu Code: A Precursor of Later Acts

Though the Hindu Code Bill was not adopted by the Provisional Parliament in 1951, in spite of that Ambedkar’s efforts did not go in vain. He believed ‘in the efficacy of law and legislation, and he struggled to evolve a codification of Hindu Law in order to fashion India of his dreams, where equality, liberty and fraternity would have an unhindered play’.⁴⁹

Four Enactments

Though, in spite of all efforts of Ambedkar, Hindu Code Bill was not passed by the Parliament, but his thinking of repairing the Hindu society was not altogether fruitless. The Bill proved to be a precursor of four enactments, adopted by the first Parliament; namely-i. the Hindu Marriage Act-1955, ii. the Hindu Succession Act-1956, iii. the Hindu Minority and Guardianship Act-1956, and iv. the Hindu Adoption and Maintenance Act-1956. It is needless to say that all these four enactments were incorporated from the ideas and principles of the Hindu Code Bill formulated much earlier by Ambedkar. Therefore, it would not be exaggerated if one wishes to comment that ‘it is due to Dr. Ambedkar a large part of the Hindu social law is now on par with the legal system prevailing in advanced democracies’.⁵⁰

Conclusion

In conclusion it may be said that ‘to cleanse the rotten structure of the Hindu society and to reinvigorate it’ as per the principles of liberty, equality, dignity and social justice to end the

enslavement of women Dr. B. R. Ambedkar did his heartiest efforts to do the same. Though, he had failed to clear the Bill, in spite of that his resignation from the Ministry for the sake of women liberation as well as empowerment will be considered as the shining example not only in the history of India but also world.

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