

Nehru- Ambedkar and the Hindu Code Bill: A Historical Reappraisal

Dr. Sudhi Mandloi

Assistant Professor of History, Visva Bharati, Santiniketan

Abstract: *This paper discusses the discourse on the Hindu Code Bill, which was a collaborative initiative of Nehru and Ambedkar to liberate the Hindu society from the shackles of customary religion-based laws. Both visionaries believed that the codification of Hindu personal laws was needed to make the Indian legal framework more effective. This Paper argues that it was due to the opposition of orthodox sections, Hindu fundamentalist, and resentment within the congress party that this reformatory endeavour of Nehru and Ambedkar to alleviate the status of women and make the Hindu personal laws more progressive, in the context of constitutional ideals, could not become successful, which resulted in the lapse of the Bill.*

Keywords: Hindu, Reform, Personal Laws, Women, Constitution

The Nehru Government introduced the Hindu Code Bill under the chairmanship of the then Law minister B.R Ambedkar. It was the brainchild of the two most prominent leaders of India, Pandit Nehru and Dr. Ambedkar. Both were keen to introduce reforms of Hindu personal laws since the colonial era. The object of the Bill was to bring in modification and codification of Hindu Personal laws relating to property rights of both males and females, succession, maintenance, marriage, divorce, and adoption. This Paper explores the contentious discourse on the Hindu Code Bill which represented divergent deliberation on it. This Paper argues that Nehru and Ambedkar aimed to reform Hindu society through the codification of laws. Still, they could not achieve it due to the stiff opposition of orthodox Hindu members of the Parliament who defended patriarchy and Hindu customary laws for the sake of religion, resulting in the adjournment of the Bill. This paper consists of two sections, and the first section highlights the clauses of the Hindu Code Bill and the views of Nehru and Ambedkar on the Hindu Code. The second section focuses on the controversial debates in the Constituent Assembly to analyze the postponement of the Bill.

Nehru- Ambedkar and the Hindu Code Bill

It was one of the most crucial legislative attempts by the Nehru government in the post-Independence era. Nehru and Ambedkar believed in

parliamentary democracy, liberalism, equality, and secularism. J.L Nehru was entrusted with raising India at a high pedestal through establishing a democratic setup, development and integration. In contrast, Ambedkar was primarily responsible for framing the Constitution to propound the ideals for the governance of the newly independent Republic. Nehru had a scientific temper yet recognised the importance of religion in the spiritual growth of man. Still, he asserted that ancient customs and dogmas leading to the decline of spirituality in India. Ambedkar developed a critique of unequal Hindu social order, and his prime concern was to build a just society based on 'liberty, equality and fraternity. He was determined to alleviate the condition of marginalised sections by incorporating various provisions in the Constitution to safeguard their rights. He always gave utmost importance to social reforms for the restructuring of the Hindu society based on caste. He stood for the rights of untouchables and women, the two most exploited sections of society.¹

Nehru believed in gender equality and tried to give women equal educational, political, and economic opportunities. He saw education as a weapon to remove inequalities to enable the upliftment of the status of women in society. S. Gopal said about Nehru: 'way back in 1928, he asserted that a test of a civilisation is the way it treats its women. And in 1964, a few months before his death, he acknowledged that, looking back on his life, what gave him the greatest satisfaction was not, as one would have thought, the opportunity he had provided for the Indian people to govern themselves, but what he had been able to do to better the status of Indian women.' Nehru's concern for social change was reflected through his speech: 'Our economy and social structure have outlived their day, and it has become a matter of urgent necessity for us to refashion them so that they may promote the happiness of our people in things material and spiritual.'² The fact that women were to quote Nehru, 'shackled and unfree'³ and the fact that different High court interpretations of legal texts created a sense of legal confusion generated a need for bringing about uniformity in legal practices through codification. Nehru desired to eradicate religious rigidities and superstitions, which he regarded as hindrances on the path of modernity. Nehru remarked that 'We talk about five-year plans, of economic progress, industrialisation, political freedom and all that. They all are highly important. But I do not doubt in mind that the real progress of the country means progress not only on the political plane, not only on the economic plane but also on the social plane.'⁴ Nehru wanted parliamentarians to regard the reforms of personal laws as an imperative prerequisite for building a liberal society. Nehru, unlike Ambedkar, was not a sharp critique of the Hindu laws. He said Hindu law had never been rigid and Hindu law had a certain dynamic quality that could easily absorb the prospective socio-legal changes.⁵

In the colonial era, various attempts were made to codify the Hindu personal laws by the British and the Indian reformers. B.N Rau became the

chairman of an important committee constituted in 1941 to organise Hindu personal laws. Before preparing the draft on the Hindu code, it toured the different parts of the country and distributed questionnaires relating to specific pertinent questions to take the public opinion from the different segments of the society. The committee submitted its report and proposed to go ahead with the legislations on maintenance, divorce, inheritance, succession, marriage etc.⁶ India had two divergent legal schools of thoughts- Dayabhaga and Mitakshara based on the interpretation of Yajnavalka smriti were one of the essential sources of the Hindu customary laws. The Mitakshara school is followed in all parts of India except in eastern India, where the Dayabhaga school is prevalent. The indigenous law of India is personal, and each of the major groups in the population- Hindus and Moslems- follow its Code. Both systems claim divine origin and are inextricably interwoven with religion, and each exists in combination with law based on customs.⁷ Nehru and Ambedkar strove to restructure the Hindu legal framework in independent India by inducing uniform laws applicable to all the Hindus across the nation. In the post-Independence period, the Constituent Assembly formed a select committee under the presidentship of B.R Ambedkar in 1948 which aimed at reviewing the draft of the Hindu Code prepared by the Rau Committee. 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 a bewildering motley to the common man.'⁸

Ambedkar modified the draft by amending specific clauses to make it more effective in the context of the needs of modern society. The debate took place in several phases; the first beginning by introducing the Bill in the Constituent Assembly between 17 November 1947 and 9 April 1948. Ambedkar said that the Bill aims to set out the law in the following matters:

1. The law relating to the rights of property of a deceased Hindu who has died intestate without making a will, both female and male.
2. The widow, the daughter, the widow of a pre-deceased son, all are given the same rank as the son in the matter of inheritance, the daughter also is given a share in her father's property.
3. The conversion of the women's limited estate into an absolute estate.
4. The Bill recognises both forms of marriages- sacramental and civil marriages but it emphasised the abolition of caste in the matter of marriage and adoption.
5. The principle of monogamy was made mandatory.
6. The principle of divorce on certain conditions such as if he has abandoned her for two years, cruelty, loathsome disease and infidelity.⁹

The Bill demonstrated the efforts of Nehru and Ambedkar to redeem the society from the shackles of the old customs based on religion via reforms of the legal system to advance the status of women. It was a sincere attempt by them to alter the old set of laws governing the society since time immemorial. Ambedkar, through Hindu Code, wanted to eradicate biases based on caste and uplift women from their subjugated position to extricate them from the intricacies of patriarchal norms. Ambedkar believed that it was imperative to break away from the outdated conventions to reform the social order by enabling changes in all walks of life in modern society. In India, Hindu personal laws varied from region to region. After the transformation of India into a republic, it would have become difficult to administer two systems of laws prevalent within the state. Ambedkar was apprehensive that in the absence of a common unified all-India legislation, many complexities and problems would emerge, making it easier for individuals to break the law of one state and follow the other state's law, especially in matters of divorce and marriage. Ambedkar specifically wanted all-India legislation so that it would become difficult for any person to violate the law across the country.

Ambedkar was a feminist and wanted to arouse gender consciousness in society. Ambedkar said that the Hindu society has enslaved both Shudras and women who had to be rescued by law so that society could move on.¹⁰ Anyone who has studied Hindu Law carefully will have to admit that part from the many defects which the Hindu Law has, there are principles in the Hindu Law which discriminate between a male Hindu and a female Hindu.¹¹ He proposed to give the same share in the paternal property to Hindu widows and daughters to make women independent of patriarchy which suppressed them. He argued that a son would also get an equal share as the daughter in mothers' property. Through the ages, the concept of stridhan was prevalent in the ancient Hindu society that Hindu women received at their marriage. It was debatable whether she had absolute rights over it or not. Still, Manu Smiriti has upheld that the wife depends on the husband after marriage, and the Mitakshara and Dayabhaga schools supported it. Ambedkar asserted that stridhan of dowry given by parents at the wedding must be regarded as women's absolute property in modern times. He was eager to abolish polygamy by making monogamy indispensable to secure the rights of women. By giving women the right to divorce, he intended to free women from the slavery of patriarchal mindset. The Code does not obstruct Hindu marriage outside his caste or enforce anyone to marry within the caste. He promoted inter-caste marriages to abolish caste rigidities, which weakened the ties of kinship in Hindu society. He prioritised social justice and regarded law as an imperative tool to remove the lacuna in the community. Ambedkar argued that there were two preconditions for creating a democratic society: first, the absence of the division of society into groups and discrimination against them; and second, there must be earnestness among individuals and groups in society to accept social change to construct a progressive society.

Ambedkar felt that restructuring social structure was essential to establish a genuinely egalitarian society. Ambedkar remarked that: 'Inequality is the soul of Hinduism. The morality of Hinduism is only social... Those who doubt this or deny this proposition should examine the social composition of the Hindu Society and ponder over the condition of some of the elements in it.'¹² Ambedkar believed that religion should always foster morality and rationality to facilitate changes to make society more just and liberal. The critique of Hinduism exhibited his urge to bring about revolutionary changes to overhaul the Hindu social structure. Ambedkar said: 'In India, unfortunately, ecclesiastical law over secular law... In my opinion, it was one of the greatest disasters in this country. The unprogressive character of Hindu society was due to the notion that laws cannot be changed.'¹³ He understood that the laws of Manu were an obstruction to the growth of Hindu society, and through the Hindu Code, Ambedkar endeavoured to stamp out all the disparities and abuses upheld by Manu. Ambedkar asserted that Shudras and women were oppressed in Hindu society to maintain Brahmanical ascendancy.

Debate on the Hindu Code Bill: Divergent Views

This section focused on the deliberations of members of the Parliament and sought to understand the arguments of different groups, posing an opposition to the Bill. This section essentially represented analysis on the Bill after returning from the Select Committee on 11th February 1949, and then continued in phases till 1951. There emerged four groups who offered divergent opinions in the contentious debates on the Hindu Code. Orthodox sections represent the first group. The Bill created an uproar among the orthodox Hindus, demonstrating a vigorous agitation for the Hindu code. They argued that the Hindu code threatened the Hindu religion and perpetuated Hindu customs, traditions and patriarchal norms. They opined that the Hindu Code would create divisions, resulting in conflicts among family members over inheritance and property rights. They pointed out that monogamy should be made mandatory for all, irrespective of religion. They strongly objected to the divorce clause as they believed it would disrupt the sacramental marriages and proliferate divorce cases as in the United States. They also objected to inter-caste marriages and marriages within the same clan. Sant Karpatriji Maharaj organised powerful demonstrations and rallies to oppose the Bill. Pattabhi Sitaramaya welcomed the legislative endeavour of the law minister as it aimed to reform society, but he has specific objections. He was not convinced that couples should have been given an easy way out in marriages through a divorce. He firmly believed in the institution of marriage and wanted the divorce to be accepted as the last resort taken only when certain conditions are justified. He was also not enthusiastic about the property rights given to women.¹⁴ Naziruddin Ahmad expressed concern that the majority of the Hindu sections were against the Bill, and they believed

that it would lead to disorganisation of the Hindu social structure. He opined that one of the objections was introducing property rights for women, which would cause litigations in the father's family. He argued that many Hindus were against this as it would create fragmentation within joint families, leading to their dissolution. He believed that the joint family system had saved Hindus from the harmful consequences of the disintegration from which Muslims suffered a lot.¹⁵ On divorce Laxmi Kanta Moitra declared that the introduction of divorce was the 'rudest possible shock' which was repugnant to Hindu notions of marriage which the shastras had rendered 'sacred and inviolable.'¹⁶

The second group consisted of those members who protested against the state's intervention in the personal laws of the Hindu community only. Prominent among them were S.P Mukherjee of the Jana Sangha and N.C Chatterjee of the Hindu Mahasabha. They expressed concern that a secular state should refrain from legislating on religious matters solely of Hindus that might pose severe challenges. In addition, the challenge of uniformity was further highlighted by the question of whether tribal communities, classified as Hindu because they were not Muslim, Christian or Parsee, would agree to abide by codified Hindu laws.¹⁷ In various meetings and resolutions, the Hindu Mahasabha Sabha consistently condemned the proposed Code for subverting Hindu ideas, culture, and religion.¹⁸ Hindu fundamentalists like S.P Mookherjee and N.C Chatterjee opposed the Bill on religious grounds and debated a communal angle. By using inverse logic, the Mahasabha leaders tried to suggest that the HC was a communal measure and a uniform civil code should have been made instead to give effect to the secular ideals of the country.¹⁹ The Jan Sangh, the strongest and the most militant right-wing party, said, 'The party holds that social reform should not come as an imposition from above. It should work from within the society. Therefore, any far-reaching changes such as envisaged in the Hindu Code Bill should not be made unless there is a strong popular demand for them and a clear verdict about them obtained from the electorate.'²⁰

S.P Mookherjee urged the introduction of the Uniform Civil Code, making it applicable to and mandatory for all irrespective of religion, which is also one of the Directive Principles in the Constitution. He believed that the Code was attempting to change the customs and traditions of the Hindu culture radically. He wanted that it was imperative to consider public opinion in social reforms since every country's citizens were interested in it. He said that this Code would be disastrous for the country's unity and thus opposed it vehemently. The concern raised by the Hindu fundamentalists was about monogamy which was not a restriction for Muslims. Therefore, it was argued that it would help them increase their numbers and, in turn, surpass the population of the Hindus. Muslim members strongly condemned any legal intervention of the Government in their laws based on religion and expressed resentment against the uniform civil Code. Ambedkar said, 'The proposed Bill

applies to adherents of the Hindu faith and Sikhs, Jains, Lingayats and Buddhists. It applies, in fact, to all the citizens of India except Muslims, Parsis, Christian and Jews.²¹ Ambedkar argued that S.P Mookherjee had charged the Government for being discriminatory against Hindus by imposing purely on the Hindus and keeping Muslims out of the Code. He drew the member's attention towards article 25 of the Constitution, which grants freedom of conscience and the right to freely profess, practise, and propagate religion. He said, 'Because the Constitution allows different communities to practice their religion and incidentally also to have their law, there is nothing discriminatory in allowing one community to have their law or to modify it in the way they like and to treat the law of the other community differently or to modify it.'²² They objected that Hindus had been targeted in the name of reforms, whereas other faith had been given religious freedom in the Constitution. Pandit Malviya expressed his reservations to the Hindu Code as he believed that clauses relating to marriage and divorce would disrupt the socio-cultural practices of Hindus and claimed that the majority of the people in the country were against the Hindu code. He also opposed using the word Hindu and instead suggested it be named the Indian Code. The Sikh community represented by Sardar Hukum Chand was disillusioned with the Hindu Code and did not want to become a part of this change. Ambedkar said that Buddhists, Jains and Sikhs did not have separate law books of their religion. For years they had been following the same legal framework prevalent in the country. Therefore, the application of the Hindu Law and the Hindu Code to Buddhists, Jains and Sikhs is a historical development to which you and I cannot now answer.²³ Ambedkar was keen to make the Hindu Code applicable to the entire nation and did not want any province to be exempted from it. He stated that 'Either I will have that Bill in that form, or not have it at all.'²⁴

The third group was of the Indian women who appreciated the initiative of the Nehru government, wanting the Hindu code to become a law. Hansa Mehta, Durgabai Deshmukh, Sucheta Kriplani etc. represented this group. They wholeheartedly participated in the debate to assert their voices. Hansa Mehta contended that the Code should adopt the principle of equality to frame the Code's provisions and argued that both sons and daughters should get an equal share in parental property. Hansa Mehta favoured monogamy, appreciating the fact that the proposed Hindu code was against polygamy. She was pretty assertive about the age of marriage to prevent child marriage and wanted it to be one of the main requirements of a legitimate marriage. Concerning the child's guardianship, she recommended co-guardianship of the child as the Code did not change and made the father the natural custodian of the child. Hansa Mehta stated,

'The law reflects the society. The law reflects the conditions in which the people live. We have to see that the future generation is not fettered by our own prejudices concerning marriage or divorce or any other

ideas that we may have today. I hope the Select Committee will consider that and produce a Bill which will be a great boon to the future Hindu society.'²⁵

Sucheta Kriplanai was zealous to get the Bill passed and argued that for bringing true democracy, it was essential to give equal rights to men and women and abolish all discriminatory customs and practices that deprived women of their rights. She earnestly supported monogamy, property rights of women, divorce and believed that these clauses in the Bill were in no way a threat to the Hindu religion. Instead, it made society more egalitarian. The Hindu Code Bill is designed to equalise the social laws of marriage and property between men and women for the vast majority of Indians who are guided by Hindu law.²⁶

She stated that, 'Ever since we had a sovereign legislature, no piece of legislation has given rise to greater excitement and controversy than this Hindu Code Bill. If all this controversy had been based on reason and the merits of the changes proposed in Hindu Law, it would have been to the good, but much of the controversy is clouded by irrelevant issues. The argument of religion in danger has inspired much of the propaganda against the Code. Those who put forward such arguments do a great injustice to their religion. The Hindu Code does not seek to disturb the Hindu religion but to amend and modify the Hindu civil law.'²⁷

The fourth group was that of Congress Party members, President of India Dr. Rajendra Prasad, Patel, Tandon, and others, who were quite anxious about the Code because the election was due in 1952 and the Bill had created tremendous controversy. They were worried that losing votes was likely if the Nehru Government imposed the Bill forcefully upon the people because most Hindu communities were against it. Dr Rajendra Prasad was the bitter opponent of Bill's various provisions, which interfere with the personal laws of Hindus. He criticised it roundly and recommended that it be submitted before the opinion of the public before its codification. Dr. Rajendra Prasad stated that he might use the veto to withhold the Bill by not giving assent. He kept reminding Nehru that Congress might face defeat in the forthcoming elections due to the controversial Bill. Patel simply disallowed time in the Parliament for discussion of the Hindu Code Bill summarily dismissed it, saying 'the Government does not propose to ask for any more days for the Hindu code, it is an unnecessary waste of time.'²⁸

'In defence of the opposition raised by the members, Ambedkar argues that 'there is a lot of public opinions which is opposed to this Bill.... When society is in a transitory stage, leaving the past, going to the future, there are bound to be opposing considerations: one pulling towards the past and one pulling 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 the fact that a large majority of our countrymen do not accept it.²⁹

Conclusion

This article has identified certain vital aspects concerning the discourse of the Hindu Code Bill. The Constituent Assembly and Lok Sabha witnessed varied deliberations and discussions on the Hindu Code. This paper attempts to demonstrate that there were three main factors behind the postponement of the Bill. The first was the approach of the conservative sections, adamantly demanding the withdrawal of the Bill as they were alarmed that it would bring about the disruption of Hindu culture known for its diversity. There was also opposition to the cause of women's property rights in the Hindu Code Bill. The conservatives uphold that a woman should not be given a share in parental property because, after marriage, a woman had all the rights in her husband's family. They also claimed that women had already been given ownership over stridhan and husband's property; thus, giving them a share in the parental property meant giving an edge to women over men as far as property rights were concerned. It would create conflicts and unrest in the families. They objected strongly to the clause of divorce and inter-caste marriage and claimed that the Code would destroy the cultural customs and traditions of the Hindus. The patriarchal beliefs of the Hindus were the major impediment in the passage of the Bill. Ambedkar's crusade against the Hindu Shastras and Hindu social order was one of the crucial reasons behind its opposition by the conservatives.

The second factor was the dilemma of the Nehru Government. Nehru considered this Bill significant and understood that the Bill had created resentment, and members remarkably differed in opinion. Nehru explained, 'inheritance, marriage, divorce, are all supposed to be parts of the personal law of various communities and this personal law is supposed to be part of religion. No change can be imposed from the top.'³⁰ He realised that time was not yet ripe for Bill's passage and needed more time to deliberate on the Bill; thus, he recommended postponement of Bill for further consideration. Nehru wanted to bring about social reforms, but the focus of Nehru was more on political and economic reforms after independence. He was involved with other significant challenges such as refugee rehabilitation, integration of princely states, and planned economic development. He could not devote much of his time to consider the Hindu Code. Nehru was aware that it was becoming challenging to get the Bill passed due to its staunch criticism and lengthy size, which he felt required to be divided into several parts. He could not get the support of his party members, especially Rajendra Prasad, Sardar Patel, and P. Tandon; then, the Congress President was against the Code and

warned Nehru to consider the political scene as the first general election was due in 1952.

The third factor was the demand for a Uniform Civil Code instead of the Hindu Code. Hindu fundamentalists refuted accepting the codification of laws solely for the Hindu community and objected that the Bill had nothing for Muslims, Christians and Parsis. They reminded the Government that it was the state's responsibility to promulgate a Uniform Civil Code for the country according to the Directives prescribed in Part IV of the Constitution. Nevertheless, the Muslim representatives of the Parliament opposed the proposal and were unwilling to tolerate the state's interference into their laws based on religion. It is essential to highlight that Dr. Ambedkar was discontented with Nehru, resigned from the cabinet on 27 September 1951, and blamed Nehru for the non-passage of the Hindu code. Ambedkar kept on urging Nehru to allot more time for deliberation. Still, Nehru failed to prioritise the Hindu code and did not provide ample time for discussion by placing it before the House at the end of the session. He said the bill was introduced in the CA in 1947 and sent to the select committee on 9 April 1948. After a life of four years in the House, Ambedkar said the Bill was 'killed and died and unwept unsung.'³¹ The committee presented the report in the House on 12 August 1948. The Constituent Assembly could not start a debate on the Code in the February session in 1949, and it began in 1950. Finally, on 5 February 1951, clause by clause discussion of the Bill started. Ambedkar remarked that,

'As the discussion was going on, the Prime Minister put forth a new proposal, namely, that the Bill as a whole may not be got through within the time available and that it was desirable to get a part of it enacted into law rather than allow the whole of it to go to waste. The Prime Minister suggested that we should select the Marriage and Divorce part. After two or three days of discussion of the Bill, the Prime Minister came up with another proposal. This time he proposed to drop the whole Bill even the Marriage and Divorce portion.'³²

To Ambedkar, 'it was a great shock a bolt from the blue.'³³ He commented Nehru was quite enthusiastic about reforming the personal laws of Hindus relating to marriage, divorce and property rights of women and men but lacked the determination to pass the Hindu Code Bill. Ambedkar argued that 'to leave inequality between class and class, between sex and sex which is the soul of Hindu Society untouched and to go on passing legislation relating to economic problems is to make a farce of our Constitution and to build a palace on a dung heap. This is the significance I attached to the Hindu Code.'³⁴ However, there were other reasons also behind his resignation from the Nehru government. Ambedkar had a Ph.D. in economics but was disappointed that Nehru had not discussed economic planning. He also argued that the Government had not taken any initiative to improve the

condition of the SC and the ST communities. He was not a part of any critical committees and was not satisfied with the Government's stand on foreign policy matters. Finally, the Hindu code Bill could not be enacted as framed by Ambedkar and divided into four parts- The Hindu marriage Act of 1955, The Hindu Succession, Adoption and Maintenance Act, and Minority and Guardianship Act 1956. It was passed with several modifications by the Nehru government. Madhu Kishwar said that 'the real effect of the laws, however, is to give a sense of grievance to the group legislated upon, in this case, the Hindus, although the laws were full of loopholes and did not change anything substantially in Hindu practice.'³⁵

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