

## **Evaluating the Hindu Code Bill in Strengthening Women Empowerment in India**

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### **Abstract**

There was no uniform law for Hindu religion. The law was based on Vedas, Srutis, Smritis and mainly on custom and traditions. These laws were discriminatory against women. The basic rights of women were denied, the women were denied from property rights, succession, inheritance, marriage, right to maintenance etc. The condition of women was very miserable. The Hindu Code Bill brought the drastic changes in the life of women. The journey of Hindu Code Bill was not so easy; there were many hurdles and strong opposition from Hindu fundamentalists. But due to the efforts and great vision of Dr. B.R. Ambedkar, it was possible to pass Hindu Code Bill. Dr. Ambedkar was the first benevolent personalities who raised voice against injustice over women and due to his efforts women are entitled to enjoy equal rights. In this article the researcher discusses the history of Hindu code bill, efforts of Dr. B. R. Ambedkar to pass the bill and the changes brought in the life of women in India.

### **Introduction**

Dr. Ambedkar was not only the father of Indian Constitution; he was a great freedom fighter, political leader, philosopher, thinker, He laid down the foundation of concrete and sincere efforts to pass the Hindu Code Bill. In spite of the strong opposition from various sections of the society and members of the House Dr. Ambedkar strongly stood in favour of Hindu Code Bill. Dr. Ambedkar said, "I should like to draw attention of the house to one important fact. The great political philosopher Burke who wrote his great book against the French Revolution said that those who want to conserve must be ready to repair. And all I am asking this House is: If you want to maintain the Hindu system, Hindu culture and Hindu society, do not hesitate to repair where repair is necessary. This Bill asks for nothing more

economist, editor, social reformer, revivalist of Buddhism and was first Indian to break down the barriers in the way of advancement of women in India.<sup>1</sup> than to repair those parts of the Hindu system which have become dilapidated"<sup>2</sup>.

The laws of Hindus were discriminating, especially against women and more over these laws differ from place to place and society to society. The important school of Hindu law i.e. Mitakshara and Dayabhaga governs the rules regarding succession and joint family. Mitakshara is written by Vijaneshwara and applicable to entire India except Bengal. Dayabhaga is written by Jimutvahana and applicable only in Bengal. The two systems have fundamental difference. The rule of heirship, order of succession, share of female and discrimination was made among female heirs. Apart from this the rules were not

same relating to marriage, divorce, maintenance, guardianship, adoption etc.

### **History of Hindu Code Bill**

The first round of debate over the Hindu Code was initiated by the Indian lawyers within the Legislature in 1921 but the debate failed to make much headway as it was considered too difficult to handle<sup>3</sup>. In 1930, women's movement in India started to raise their voice **relating** to property rights. The Hindu women's right to property became the subject of intense dialogue in legal circles. Women's organisations campaigned for a comprehensive Code of Hindu laws rather than the piecemeal legislation done since the early 1930s. In 1934, the All India Women's Conference passed a resolution demanding that a commission be appointed to enquire into the entire question of eliminating the legal disabilities of women<sup>4</sup>. In 1937, the Hindu Women's Rights to Property Act was passed, giving the Hindu widow, who had previously been excluded from inheritance, a right to succession and same rights of her deceased husband in the Hindu undivided joint families.

In January 1941, the Government appointed "The Hindu Law Committee" and asked them to codify all the Hindu laws and enact the Uniform Hindu Code Bill which will give equal rights to women<sup>5</sup>. The Committee prepared questionnaires regarding the subject of succession and marriage and sent the same to social reformers, fundamentalist and institutes of women to know their opinion. On the basis of suggestion and opinion, the committee prepared a draft and produced two bills regarding marriage and succession on the floor of Central Assembly

on March 1943. Hindu fundamentalist (Sanatan Hindus) attacked and they strongly opposed this bills, they stated that these laws abolish the Hindu religion, Hindu culture and ultimately these bills were rejected.

In 1944, the Government revived the Hindu Law Committee and asks them to codify the Hindu laws. Sir Benegal Narsingrao was appointed as the chairperson of this committee and this committee is known as Rau Committee. The Committee prepared a Draft Code dealing with Succession, Maintenance, Marriage and Divorce, Minority, Guardianship and Adoption. It was that Code which was widely circulated and discussed and given the name "Hindu Code Bill". But prior to this, in 1919 Dr. Sir Harising Gaur on his own, studied in detail about ancient Hindu dharmashastra, custom, traditions, decisions given by various High Courts of British India and Privy Council. On the basis of above study, he prepared a 'Hindu Code' of 290 Sections / Articles with commentary in more than 1000 pages<sup>6</sup>. This Code was also studied by Rau Committee to draft Hindu Code Bill.

In 1948 the Ministry of Law revised the first draft in 1948 and made some small alterations to it, making it more suitable for discussion in the Constituent Assembly, where it was finally introduced. It was referred to a select committee under the chairmanship of law minister Dr. B. R. Ambedkar and the committee made a number of important changes in the Bill. The task was so difficult as Dr. Ambedkar faced lot of opposition from inside and outside the House while passing the bill. Though there were three other members of the Select Committee, Dr. Ambedkar single

handedly answer the queries raised by the members of House. Dr. Ambedkar gave the references of Vedas, Shruti, Smritis and even Kautilya's Arthshastra to House and he finally assures the House that he is not going to make the drastic changes in the Hindu law but only few changes to bring the gender justice.

### **Property Rights of Women**

The researcher already discussed that the two schools of Hindu law i.e. Mitakshra and Dayabhaga governs the rules regarding succession. The two systems have fundamental difference. *Mitakshra* doesn't give any kind of property right to women. This rule changed in 1937 by way of Hindu Women's Right to Property Act. The act gives property right to widow, daughter-in-law of deceased son, grandson and great grandson but act do not give any property right to daughter. The society feels that to give a share to daughter means it invites to divide the property. Some of the members of House argue that, women are emotionally very weak and always come under pressure so women are not able to take care of property or handle the property. Another argument on the part of members of House was that women have right over *Stridhan*, so no need to give any separate share to women. Dr. Ambedkar beautifully replied to this as he stated that it is depend on the status of women. If a woman is married she may possess *Stridhan* but what's about a maiden girl? If a girl earn on her own whether it will be treated as her *Stridhan*? Dr. Ambedkar also gave the reference of Dwarkanath Mittar's book "Rights of Hindu Women", where Mittar states that, the rights which were given to women by the Vedas

were taken away by the *Smritis* and some *Smritis* tried to give them back. It means there were no uniformity among *Vedas* and *Smritis* about the property rights of women. Dr. Ambedkar also stated that after studying and verifying the laws related to succession of Muslim, Parsi, British law and Indian Succession Act, nowhere we found that, the daughter is denied the right of succession.

At present the Hindu Succession Act, 1956 confers equal right of property to women. The right of Hindu female to inherit property has been fully recognized and she has been made entitled to share equal to the male heirs. The Act has abolished Hindu Women's Limited Estate and made her absolute owner of the property. It means any property possessed by a Hindu female is to be held her absolute property and she is given full power to deal with it and dispose it off by will as she likes. The Act makes no distinction between male and female heirs. Unchastity is no longer a ground of exclusion from the inheritance on the part of women. Remarriage is no more a disqualification; it means if a woman remarries after the death of her husband even though she is entitled to inherit the property of her deceased husband.

The Hindu Succession (Amendment) Act, 2005 brought the important changes especially regarding the right of daughter. In a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall, by birth become a coparcener in her own right in the same manner as the son and have the same rights in the coparcenary property as she would have had if she had been a son. It means daughters have a right in her ancestral

property and every daughter, whether married or unmarried, is considered a member of her father's Hindu undivided family (HUF). The Supreme Court also held that this amendment has retrospective effect, means the women who married prior to this amendment entitled to claim their right. However, a daughter can avail of the benefits granted by the amendment only if her father passed away after September 9, 2005. Also, the daughter is eligible to be a co-sharer only if the father and the daughter were alive on September 9, 2005<sup>7</sup>. It revised rules on coparcenary property, giving daughters of the deceased equal rights with sons, and subjecting them to the same liabilities and responsibilities. The amendment essentially furthers equal rights between males and females in the legal system.

### **Marriage and Divorce Rights of Women**

Among Hindus, it is considered as the marriage is a sacrament and ties of marriage are tied in heaven which continues for seven births. The Varna system was prevails in society and persons perform marriages among castes. The tradition of polygamy also exists among Hindus and they opposed for the rule of monogamy. There were three conflicting issues regarding marriage and divorce as the members of House opposed for rule of monogamy, permission for divorce and Caste is no more a condition for valid marriage. Dr. Ambedkar while replying these issues stated that there is no compulsion for inter-caste marriages. Person may perform marriage within his/her caste or sub-caste. But the person who is reformist, he/she may perform the marriage

outside the caste or sub-caste still such marriage is a valid marriage.

With the issues regarding rule of monogamy, Dr. Ambedkar stated that, no where it is mentioned that the polygamy exists or prevails in the society. In South India in Natukuthi Chetiyar Community, the tradition of monogamy exists and if any person performs second marriage he has to take consent of his first wife and give her fixed share in the property. Dr. Ambedkar also gave the reference of *Kautilya's Arthshastra* which restricts second marriage and allows only in exceptional circumstances. Different Provinces or States already had the laws of monogamy i.e. Mumbai, Madras, Baroda and *Marumakkattoyam* and *Aliyasantana* laws (Kerala). Not only this, majority Countries of the world has law of monogamy.

The permission for divorce was the most controversial issue as there was strong opposition from inside and outside the House. According to the Hindu law, the marriage is a sacrament and not a contract so where there is a question of separation? Dr. Ambedkar answered to this issue and stated that divorce is not a new thing for society; this is a tradition which deeply rooted among *Shudras*. According to Dr. Ambedkar, there was 90% *Shudras* among Hindus and he was not having any doubt about that. He further stated that how we can enforce 10% people's law on 90% people<sup>8</sup>. *Narda Smriti* or *Parshuram Smriti* also allows a woman to get divorce from her husband.

At present the Hindu Marriage Act, 1956 regulates the rules of marriage and divorce.

The Act specifies the conditions for valid marriage and as per these conditions monogamy is rule and polygamy is an offence. There are no restrictions for inter-caste marriages, in fact Government promoted inter-caste marriages. The Act also provides the provision for restitution of conjugal rights, judicial separation and divorce. There is a provision of divorce by mutual consent of the parties<sup>9</sup>. The Act mentioned the various grounds for divorce and more over the Apex Court also added new grounds while granting the divorce to parties<sup>10</sup>.

### **Adoption and Maintenance Rights of Women**

Among Hindus it is believed that unless and until son gives the fire to the pyre of his deceased parent, the parent can't get *moksha*. As per this belief, it creates a problem to such parents who don't have son and for such parent's only solution was to adopt a child. This belief use to create lots of problems and invite number of issues. Only the father was having the right to give or take the child in adoption and the caste played the vital role. It means only in-caste, the adoption of child was allowed. After the death of husband, the widow was having right of adoption. The adopted son becomes the absolute owner of property and he denies the property right of widow. Sometimes adopted son run away with property and the adoptive mother becomes helpless. The adoptive mother did not have any right in property except right to maintenance. The adopted son has right to challenge all the prior transactions of his adoptive mother.

The laws relating to adoption and maintenance were discriminatory and create injustice in favour of women. Dr. Ambedkar strongly opposed these laws and stated that the caste is no more a barrier for adoption; law will be same as like law of marriage. The mother may also have a right to give a child in adoption under certain circumstances as if her husband is ceased to be Hindu or completely renounced the world. The widow also has right to take a child in adoption and only half of the property of widow will get to adopted son. Dr. Ambedkar further stated that, if we allow the adopted son to challenge the prior transactions of adoptive mother then such litigations might be more than other kind of litigations. The only solution is that the adopted son cannot get the rights in the property from the date of death of adoptive father but from the date of "*Dattakpatra*". The most important point raised by Dr. Ambedkar was that, to adopt a child is purely a religious thing (to get *moksha*) and adopted son get the property is a subsidiary thing. But instead of that the ultimate object behind the adoption is that, the property should remain in the family itself.

At present father has right to take or give the child in adoption with the consent of his wife unless the wife has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind. Any Hindu female has right to adopt a child but only thing is that she should be major having sound mind and not married, if she is married, she don't have the right to adopt a child unless her marriage has been dissolved or whose husband is dead or has

completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind<sup>11</sup>. At the same time, the mother may give the child in adoption if the father is dead or has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind<sup>12</sup>. There is a growing demand for making laws free from gender bias and to provide legal equality to women in all spheres of life and that is the reason the amendment took place in 2010 which confers the right in favour of women to adopt a child.

### **Minority and Guardianship Rights of Women**

Only father was considered as natural guardian and mother can't become the natural guardian of her ward even the father may cease to be Hindu or completely renounced the world, it makes no difference. Widow was not having the right to appoint a guardian through will, this right was restricted to father. The Select Committee made two changes, the first one was that, the father ceased to be natural guardian if he changes the religion or renounced the world. The second change suggested by Select Committee was that, the woman has right to appoint a guardian through will if it is not done by her husband.

At present the father is the primary guardian for a legitimate boy and unmarried girl and their property, while the mother is the secondary guardian. However, the mother is the primary guardian for all children under the age of five.<sup>13</sup> The Act, preserves the

right of the father to be the guardian of the property of the minor child but not the guardian of his person whilst the child is less than five years old. For illegitimate children; the mother is the primary guardian, while the father is the secondary guardian. A married girl's husband becomes her guardian. For an adoptive son, the adoptive father is the primary guardian, then the adoptive mother<sup>14</sup>. The person shall not be entitled to act as the natural guardian of a minor if he has ceased to be a Hindu, or if he has completely and finally renounced the world by becoming a hermit (*vanaprastha*) or an ascetic (*yati* or *sanyasi*).

The principles of law in relation to the custody of a minor child are well settled. It is true that while determining the question as to which parent the care and control of a child should be committed, the first and the paramount consideration is the welfare and interest of the child and not the rights of the parents under a statute. Indubitably the provisions of law pertaining to the custody of a child contained in either the Guardians or Wards Act, 1890 (Section 17) or the Hindu Minority and Guardianship Act, 1956 (Section 13) also hold out the welfare of the child as a predominant consideration. In fact, no statute, on the subject, can ignore, eschew or obliterate the vital factor of the welfare of the minor<sup>15</sup>. In a landmark judgment the SC driving home the equality of the mother to fulfill the role of a guardian held that 'gender equality is one of the basic principles of our Constitution, and therefore, the father by reason of a dominant personality cannot be ascribed to have a preferential right over the mother in the matter of guardianship since both fall within

the same category<sup>16</sup>. The Act recognizes the advancement in the status of women in all spheres gave them the right to be appointed as guardians.

### **Conclusion**

The Hindu Code Bill is the most apprehensible legislative measure of modern India. We cannot compare the Hindu Code Bill with other reforms in India. It put an end to a variety of marriage systems prevailing in India and legalizes only monogamous marriages. The Code also confers on women the right of property and adoption which had been denied by society. It put men and women on an equal level in all legal matters. The Hindu Code Bill was later split in to four Bills, and the same were put on the Statute Book by Parliament. The Hindu Marriage Act, 1956; The Hindu Succession Act, 1956; The Hindu Minority and Guardianship Act, 1956 and The Hindu

Adoption and Maintenance Act, 1956 are the four enactments which incorporate the ideas and principles of Hindu Code Bill formulated by Dr. Ambedkar. They give independent status to women and endow them with the right of adoption, succession and property, so completely denied by society. Therefore, it is true to say that it is due to Dr. Ambedkar that a large part of the Hindu social law is now on par with the legal system prevailing in advanced western countries.

In the condolence message, on Ambedkar's death in parliament, Prime Minister Jawaharlal Nehru said "Dr. Babasaheb Ambedkar was a symbol of revolt against all oppressive features of Hindu society". His dream of society, based on gender equality is yet to be realized and therefore his thoughts are important for the social reconstruction that favors women empowerment.

### **References (End Notes)**

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<sup>1</sup> Dr. M.R. Singariya, Dr. Babasaheb Ambedkar and Women empowerment in India, Quest Journals, Volume 2 Issue 1 (2014) pp: 01-04.

<sup>2</sup> Dr. Babasaheb Ambedkar Writings and Speeches, Vol.14, Part I, Edited by Vasant Moon.

<sup>3</sup> J.D.M. Derrett, Hindu Law: Past and Present, p. 55.

<sup>4</sup> AIWC, Annual Report, 1934, p. 45. This stand was reiterated by the AIWC in their annual session in 1941. (AIWC, Annual Report, 1941, p. 36).

<sup>5</sup> Report of the Hindu Law Committee, Government Press, Madras, p. 6.

<sup>6</sup> Bharat Waghmare, Speeches of Dr. Babasaheb Ambedkar on Hindu Code Bill, Prabudha Bharat Pustakalaya, Nagpur, p.88.

<sup>7</sup> Prakash and Others v. Phulavati and others 16 oct.2015 by Supreme Court.

<sup>8</sup> Supra Note 6, p.17.

<sup>9</sup> Sec.13B of Hindu Marriage Act, 1956.

<sup>10</sup> Please See Naveen Kumar v. Neena Kohli, AIR 2006 SC 1675, Narendra v. K. Meena, Civil Appeal No.3253 of 2008 decided on Oct.6, 2016 by Supreme Court.

<sup>11</sup> Sec.9 (3) of the Hindu Adoption and Maintenance Act, 1956.

<sup>12</sup> Sec.9 (3) of the Hindu Adoption and Maintenance Act, 1956.

<sup>13</sup> Sec.6(a) of Hindu Minority and Guardianship Act, 1956

<sup>14</sup> Sec. 7 of Hindu Minority and Guardianship Act, 1956

<sup>15</sup> Mausami Moitra Ganguli vs Jayanti Ganguli, AIR 2008 SC 2262.

<sup>16</sup> Ms Githa Hariharan and another v. Reserve Bank of India and another, AIR 1999, 2 SCC 228.

RESEARCH CHRONICLER