

The Hindu Code Bill: Revisiting the Intersectional Feminist Legacy of Dr. Ambedkar

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The Hindu Code Bill led by Dr. B. R. Ambedkar pioneeringly recognized women as equal citizens whose rights rest in their individuality. This marked a departure from ways in which women's rights were imagined in the Indian subcontinent. It restricted the constituting elements of "brahmanical patriarchy" like caste-determined marriages, religion-imposed endogamy, and lack of women's right to property. Although the term 'intersectionality' was coined recently, Dr. Ambedkar's work on the Hindu code bill too embodies such an understanding—wherein gender-based oppression was viewed as being intertwined with caste-based oppression—and poses a challenge to Brahminical patriarchy. For the sake of brevity, this article highlights three aspects of the Hindu code bill, namely, the locus of social reforms, the challenges to sustained endogamy and the religious basis of laws of inheritance.

Locating reform in the intersections of religion and gender

Ambedkar codified the Hindu personal law since religion was a site of preservation and reproduction of inequalities in Indian society. The dominant caste groups projected Hindu religion as a matter of identity alone, ruling out the fact how the very bases of their caste and religious identities were built upon the subordination of women on several fronts.

The Bill codified laws around seven different matters all of which had a direct relation with women's autonomy, independence, and rights. It codified the laws relating to the rights of property of a deceased Hindu who died without making a will irrespective of gender. It altered the form of order of succession to the property of the diseased dying intestate. And further, it dealt with the laws of marriage, divorce, maintenance, adoption, guardianship and minority. One may remember that Ambedkar had gone on record, saying that he considered

his work on the Hindu Code Bill to be as important as his participation in the formulation of the Indian Constitution (Sonalkar).

Challenging sustained endogamy

Control of women and sustained endogamy were highlighted by Ambedkar as key elements behind the mechanism of the caste system. The Hindu Code Bill recognized the idea of “civil marriages” too along with the pre-existing “sacramental marriages.” It also dispensed the condition of mentioning the identity of castes and sub-castes. Hence, the inter-caste marriages were re-iterated to be legally valid. Caste as a determining principle was abolished in matters of marriage and adoption. Right to divorce by dissolution of marriage was always made permissible. Any party entering into the marriage contract had three measures to get out of it. They could get the marriage declared null and void, or get it declared invalid or dissolve it. All the three measures had certain grounds for respective declarations. Ambedkar established a rights discourse which should be remembered as a model of real independence. Modern and progressive ideas echoing social democracy as core components became the bedrock of his relentless struggle to ensure women rights.

Subjecting discriminatory inheritance law to progressive legislation

The need for progressive legislation became important at the time since legality lost its rational basis as it was enmeshed in the clutches of discriminatory religious dictates. Therefore, the legislative interference in the form of a Bill was not an arbitrary step; it rather analysed the existing legal order critically. The Hindu Code Bill extensively explained the two different systems of law which governed the Hindus when it came to inheritance and the fundamental differences between the two. The two systems are known as Mitakshara and Dayabhaga. Both these systems were used by the British for the purpose of administration in India. Mitakshara is a legal commentary on the Yajnavalkya Smriti known for its theory of ‘inheritance by birth’. According to this, property of a Hindu is not his individual property. It belongs to a coparcenary consisting of all the male relatives in the immediate family,

emerging as a kind of joint inheritance. The Hindu Code Bill upheld the Dayabhaga rule “under which property was held by the heir as his personal property with an absolute right to dispose of it either by the gift or by will or any other manner that he chose” (BAWS Vol. 14, Part 1).

With regards to the question of inheritance, the Bill gave the same rank to the widow, daughter, widow of pre-deceased son as it was given to the son. Along with this, the daughter was also given a share in the father’s property. The number of female heirs was also now much greater than what was recognized in the previous Hindu systems of law. Unlike the Dayabhaga rule, where the father succeeds before in preference to the mother, the Bill prioritized the mother before the father.

Under the Hindu Law the woman, while inheriting property, got only a ‘life estate’. She could get the income of the property but not the corpus of the property except for legal necessity. The property was required to be passed to the revisioners of the husband. The Bill made two changes in this regard. Firstly, it converted the limited estate into absolute estate just like their male counterparts. Secondly, it abolished the rights of the revisioners to claim the property after the widow (Rege). The property of dowry too was to be treated as ‘trust property’, hence giving women the right to claim the property upon reaching the legal age. The Bill also ensured maintenance for the wife which was till then not applicable if the wife decided to live separately. The draft Hindu Code Bill hence abolished the idea of birthright in terms of property matters and preferred survivorship as a determinant. It clearly called for giving half-share of the property to the daughter and converted women’s limited estate into absolute estate. However, Ambedkar’s gender-sensitive modern outlook received severe backlash from the feudal, casteist, and patriarchal ideologues and parliamentarians.

Backlash against the Hindu Code Bill

The Bill threatened the brahmanical status quo which derived its strength from the caste system - a brutal, hierarchical and rigid social code of conduct. Various sections including the Hindu Mahasabha, religious leaders and political parties such as Congress members opposed the Bill. The President threatened to stall the bill, the Hindu sadhus laid siege to parliament,

and the business houses and landowners warned a withdrawal of support in elections (Rege.) Abolition of caste restrictions in marriages, right to divorce, end of endogamy and women's property rights attacked the core of brahmanical order.

The Hindu Mahasabha argued, "As the Hindu Mahasabha is against legislative interference in religious matters, measures like the Hindu Code Bill would be opposed." The Jan Sangh said, "The party holds that social reform should not come as imposition from above. It should work from within the society. Any far-reaching changes such as envisaged in the Hindu Code Bill, therefore, should not be made unless there is a strong popular demand for them and a clear verdict about them is obtained from the electorate." The Ram Rajya Parishad argued, "Under the Constitution every citizen has been assured of his or her religious freedom, but, in the name of reforms direct interference is being shown in religious matters of the Hindus by adopting such measures as the Hindu Code Bill ... the Hindu Code Bill and such other measures as shall be in direct conflict with our Indian Culture, as well as with the duties towards husband, on the part of women, shall be repealed, if enacted by the present government." A slogan widely used against the bill was, "Brothers and sisters will be able to marry each other if the Hindu Code Bill becomes law!" Most Hindus consider that members of the same clan (Gotra) are related; male and female members of the same clan are therefore considered as brothers and sisters, even if the actual degree of relationship is remote (Banningan, 1952).

The Constituent Assembly debates too were marked by misogynist remarks during this period. Rajendra Prasad, the then President of India argued that his wife would never support the divorce clause and it was only 'over- educated' women who favoured the Bill (Constituent Assembly Debates, Vol. IV). Ambedkar's resignation from the position of the law minister was a rebellious protest for the rights of women. This also highlights that gender justice has historically and ideologically been a constituent element of the anti-caste political discourse. This can be revisited by looking at what Ambedkar said as he resigned when the Bill was not passed by caste supremacists. He wrote, "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 dung heap. This is the significance I attached to the Hindu Code." (BAWS, Vol. 14)

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