

Hindu Code Bill

It wedged open the divide of “personal/private” spheres to democratic debate.

Earlier the Woman’s Question was considered as a private matter.

On the day of 25 November 1949, the day the Constitution was adopted Dr. Ambedkar emphasised the lack of “equality” and “fraternity” in Indian society.

Dr.Ambedkar emphasised that women should not be seen as the bearers of “honour of the family, kinship and community”.

In 1948, Dr. Ambedkar was appointed as the head of the sub- committee entrusted with the responsibility of drafting the Hindu Code Bill by Nehru.

The Hindu Code Bill sought to codify the diverse systems and property practices relating to women and men.

The Hindu Code Bill sought to alter the order of succession and design new laws of maintenance, marriage divorce adoption guardianship and the minorities.

In summarising the main provisions of the Bill, Ambedkar touched upon the issues such as abolition of birth right to property, property by survivorship, half share for daughters, conversion of women's limited estate into an absolute estate, abolition of caste in matters of marriage and adoption, and the principle of monogamy and divorce.

Even a brief perusal reveals that the proposed legal reforms were aimed at to undermine and limit practices that reproduced Brahminical patriarchy.

These included compulsory endogamy, absence of women's absolute right to property, indissolubility of marriage for women, and the threat polygamy presented for woman.

The Hindu Code Bill faced vehement opposition from Congress, Hindu Mahasaba and other Hindu religious leaders.

Rajendra Prasad , then President and Chairman of Constituent Assembly of India , argued that his wife would never support the divorce clause and it was only “over educated women” who favoured the Bill.

Most of the uproar was caused by clauses referring to the abolition of caste restrictions in marriage, monogamy, divorce and equal share in property for women.

But Ambedkar argued that lifting caste restrictions in marriage and adoption was not tantamount to a ban on these practices within a caste.

The Bill would not disable the right of orthodox communities to continue to do what they thought was right by their dharma, and by that logic would also assist those impelled by reason and consciousness to transcend caste restrictions.

Here, the object was clearly to make kinship, or partner selection and adoption, so far policed by caste boundaries, subject to debate.

To critics of the Bill, who faulted his defence of polygamy, for being too Western, Ambedkar offered the Hindu *smritis* and *shastras*, which he argued pro-polygamists implicitly conservative.

Brahmanic Codes, he maintained, never designated unfettered polygamy as the rule of law.

Rather , monogamy was the ideal , and polygamy was advised only under certain conditions.

Citing laws in the princely states and countries across the world, he argued for monogamy as a pan – cultural principle of modern states.

When he directed attention to the successive Brahmnisation of laws in India he was essentially making a case for the clause regarding the right to divorce that was virulently opposed for its potential to fracture to Indian society.

Given that divorce was a customary practice /law among *Shudras* who constituted 90 per cent of Indian society, he questioned the imposition of minority law on the majority.

Dr. Ambedkar drew upon Kautilyas's political treatise *Arthashasthra* to demonstrate that if stringent in marriage practices existed, they were later additions.

In essence, unanimity between Hindu law givers was far less absolute than was commonly understood.

In conclusion, he took up the issue of women's property, or *stridan*, a core focus in the *smritis*.

Dr. Ambedkar launched off with a characteristically humorous reprimand of the ancient Brahmins for having made the framing of the *smritis* their paramount occupation.

He marked the issue of women's property among the most complicated and intricate issues, as there was at least 137 *smritis*, variously opinionated on *stridan*.

Ambedkar identified a difference between stridan acquired before and after the marriage, widow's property and daughter's share.

He addressed arguments against women earning absolute estate rather than limited estate.

Specifically, Dr Ambedkar encountered the notion that women are stupid and gullible, and likely to manage and transfer property in ways detrimental to themselves and their families.

Placing the burden of proof on his critics, Dr Ambedkar challenged them to demonstrate how it was that women trusted to dispose of stridan could not be adequately to dispose of widow property?

In defence of the daughter's share in the property, he said that arguments in favour of this position could be made in terms of a critique of son preference in Hindu society.

Ambedkar clarified that he was proposing a lower level of reasoning by only reiterating the share granted to the daughter by two Smritikaras, Manu and Yagnyavalkyas.

In all, his gamble transcended the simplistic binary logic of Indian/ Western modernity tacit in his critics' charges.

Dr. Ambedkar used the democratic appeal to of Western idealism to challenge the forced

homogenisation of Indian tradition under Brahmic law.

Ultimately, while the Hindu shastras proved useful to pin down his critics' inconsistencies Ambedkar was none the less differentiating his position (I belong to the other caste) in referring to Brahmanic texts as "*your shastras*".

This was necessary distinction, not only because it was true but also because it enabled Ambedkar to defend the Bill against what his opponents termed a manifesto of unfettered freedom for women.

The Resignation in Protest

The Hindu Code Bill was introduced in the Constituent Assembly on the 1 April 1947 and referred to a Select Committee after one full one year.

The motion for consideration for the report of the Select Committee was made by Ambedkar on 31 August 1948.

Discussion, albeit not a continuous one, began in February 1948 and finally the House adopted Ambedkar's motion that Bill as reported by the Select Committee was to be taken into consideration on 19 December 1949.

No time was given to discuss the Bill in the year 1950 .Next, the Bill came up in the House for three days in February 1951, when a clause- by- clause consideration of the Bill was taken up .

The Bill was placed on agenda once again only in September 1951.

Ambedkar requested Nehru that the debate on the Hindu Code should begin immediately and at least the part dealing with marriage, divorce and monogamy be enacted.

Nehru agreed, but pointed out that discussion could start only on 5 September. Actually it began only on 10 September.

Seven days later, as the discussion was under way, Nehru put forth a new proposal – that the Bill as whole may not be passed within the time available, so it should be presented in parts.

It became clear that the Congress party did not want to adopt any part of the measure before the general election.

After four years in which four clauses had been passed, the Bill – which remained for consideration with the constituent assembly and later the provisional parliament- was dropped.

However, it could not be passed before the dissolution of the Constituent Assembly in September 1951.

The opposition continued to openly lobby and rally against the Bill arguing that it was based on ideas and concepts foreign to Hindu Law and susceptible to dividing every family.

Dharma Sangh (Association of Dharma Sangh), a cultural association for defence of traditional Hinduism, organised numerous demonstrations against the Hindu Code Bill.

Rajendra Prasad , then President of India , argued that the proposal for reform should first be included

in the party's election manifestos and placed before the voters before any discussion in parliament.

Some opinions in the Congress party expressed apprehension at alienating the propertied classes prior to the general elections.

Subsequently, the elected parliament again took the Bill up in 1952, but broke it down into three specialised Bills.

In various speeches during this period, Ambedkar highlighted the importance of the Bill for women's freedom.

In 1952, for instance, at a meeting organised by the Belgaum district branch of Scheduled Caste

Federation in Kollapur, he claimed: “On wealth depends independence and a woman must be very particular to retain her wealth and rights, to help retain her freedom”.

A decade earlier, addressing the second session of the All India Depressed Classes Women’s Conference in Nagpur, he had advised:

“ Give education to your children. Instill ambition in them.....Don’t be in a hurry to marry: marriage is a liability. You should not impose it upon your children unless financially they are able to meet the liabilities arising from them.....Above all let each girl who marries stand up her husband, claim to be her husband’s friend and equal, and refuse to be his slave”.

It is clear that within the Ambedkarite women's organisations the issue of equal rights for women in private sphere was gathering momentum.

The All India Depressed Classes Women's Conference passed several important resolutions among which were a divorce law and another against polygamy.

However, as a disconcerted Ambedkar commented at a 1952 meeting in Kollapur, prominent women leaders were not interested in promoting the Bill and consequently in social progress. In a lighter vein, he added that if women wanted the Hindu Code Bill to be passed, they would have to find two overweight women prepared to go on fast.

Although Nehru initially declared his government would resign were the Bill opposed, tabling it was nonetheless delayed.

Finally, impelled by Ambedkar, the Bill was introduced on 17 September 1951, but only after it was split into four parts to diffuse opposition.

In a statement appending his resignation as Law Minister, Ambedkar refers to the Hindu Code Bill as the issue that led him to resign.

He explained that the reason he continued in office, despite being traumatised by the machinations of the Prime Minister and the Congress Party whip, Satyendranath Sinha, an open opponent of the Bill, had to do with the potential of the Hindu Code Bill. For Ambedkar, it was the greatest reform measure passed by the legislature.

Interestingly enough , for Ambedkar , the Bill was “neither a revolutionary measure nor a radical measure” . Yet intense opposition came from all quarters.

For one the President threatened to stall the Bill’s passage into law.

Hindu *saadus* laid siege to parliament. Business houses and landowners warned a withdrawal of support in imminent elections.

We may therefore conclude that Hindu Code Bill posed the imminent threat of women gaining access and control over resources and property, the possibility of removal of restrictions of caste in

marriage and adoption , and the dawn of the right to divorce.

All this seemed to intimidate the structural links between caste, kinship and property that form the very core of Brahminical patriarchy.

In theory, the Hindu Code Bill opened up the possibility of mixed marriages, dissolving upper caste male control over divorce and polygamy, and inheritance and guardianship.

The Bill promised to give all women greater space to negotiate , transact, defy , and rework norms of Brahminical patriarchy.

Men subordinated in the caste hierarchy could in principle disrupt the gendered boundaries of caste while the privileged caste men's dispensation of polygamy stood challenged.

In sum, responses to the Bill are best framed by the potential the Bill held for disrupting established caste and patriarchal controls over processes of production and reproduction.

Latent in the Bill is threat to the ascending scale of social validity for male promiscuity and descending scale of sexual vulnerability for women in the Hindu Social Order.

Explaining his resignation, Ambedkar 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.”

We may recall here the sexual contract described by feminist political theorist Carol Pateman as intrinsic to the very existence of a democratic social contract and for securing men’s authority over women.

The sexual contract binds men in ways excluding women from the democratic contract.

Further, according to feminist historian V Geetha, in Indian society a kinship contract is essentially a

contract between male kin to manage the world outside the home and to keep women confined to certain spaces. Such a contract while offering women protection on the one hand arrogates all power to kinsmen on the other.

We could therefore see the unsung death of the Hindu Code Bill as a case of suspension of democratic social contract by the caste-mediated kinship contract.

In this setting, Dr. Ambedkar's resignation- a protest against the suspension of the democratic social contract- became a landmark in the history of women's rights in India.

Dr. Ambedkar's statements in Parliament in defence of the Hindu Code Bill and his statement in explanation of his resignation from the cabinet need to be given their due recognition in the history of democratic struggles for women's rights against social and patriarchal hierarchy of the state.

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