

HINDU CODE BILL AND ITS RAMIFICATIONS ON UCC

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ABSTRACT

The Hindu Code Bill was introduced as the crusader of women rights. But once it was introduced it witnessed unprecedented opposition and criticism. Hindu Code Bill can act as historic evidence of how unification of religious laws happens and perhaps can be a very good indicator of what is in store with the advent of Uniform Civil Code. Religious laws are important for an individual and the State recognizes this importance and endeavours not to interfere in religious practices. Even today we follow the principle of Court not interfering in the essential practices of different religions. Considering the value an individual place on religion, the State only interferes where the religious laws are against Principles of Natural Justice, Equity and Justice. The paper would discuss the ramifications of the Hindu Code Bill in terms of delegitimizing cultures. This paper would also discuss that codification also misunderstands the nuances of religion and hence can unintentionally erode away the essence of the same.

I. INTRODUCTION

The Hindu Code Bill was introduced by the Nehruvian Government in order to modernize the practices of Hindus witnessed unprecedented protests from all fronts. The Hindu Code Bill attempted to codify the heterogeneous practices of Hindus and at the same time modernize it by introducing women centric laws. The new bill introduced provisions wherein women could inherit property and also file for divorce. Its major reform was considered to be abolition of same caste as a precondition for valid marriage.¹ The Hindu Code Bill faced stiff opposition on three main fronts. Firstly, the critics argued that this codification would lead to delegitimizing many practices of different sects of Hindus. This contention was based on the pluralism that existed within the category of “Hindu”. Secondly, that while the bill was introduced under the rhetoric of protecting women rights it might be ill-suited to the objective at hand. It was the passing of the *Hindu Women's Rights to Property Act*, otherwise known as the *Deshmukh Act* in 1937 that brought out this demand for codification.² Thirdly, that the Parliament wanted a Uniform Civil Code it and was only attempting to codify the Hindu laws while not doing anything with the other personal laws.

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¹ Madhu Kishwar, ‘Codified Hindu Law: Myth and Reality’, (1994) 29 Econ & Pol Weekly 2145-2161.

² Reba Som, ‘Jawaharlal Nehru and the Hindu Code: A Victory of Symbol over Substance’, (1994) 8 Modern Asian Studies 165-194.

The need to introduce the Hindu Code Bill was based on many reasons; these included the need to codify the Hindu Laws so as to move towards a Uniform Civil Code. Nehru also argued that there are many practices that exist in Hindu laws that are against women. These include property rights, divorce and even guardianship. After the freedom struggle where women had participated equally in the national movements, there was a need to ensure that the religious laws do not oppress them. It is pertinent to note that the same criticism exists for the Uniform Civil Code and while deliberating on the same it is important to pay heed to the lessons learnt from history where we had made the attempt of unifying Hindu laws. The critical evaluation of the ramifications of codifying Hindu laws can help us meaningfully deliberate on the Uniform Civil Code.

II. HISTORICAL CONTEXT OF THE INTRODUCTION OF HINDU CODE BILL

India in 1940s and 1950s witnessed a massive protest from all fronts against the highly controversial bill introduced by the Parliament known as the Hindu Code Bill. To understand the political debates and discussions that surrounded the advent of the bill it becomes very important to understand the political debates that surrounded the same. Congress tabled the Hindu Code Bill a massive undertaking to codify the personal laws of the Hindus. In 1941 a committee was set up by the government under the chairmanship of Sir B. N. Rau to inquire into problems of legal reform.³ Sir B. N. Rau⁴ committee was to make recommendations regarding the same.

The select committee headed by B. R. Ambedkar made several changes in the already existing practices to ensure that the women rights are protected at the same time there is some homogeneity in the Hindu laws. This was indeed a herculean task as there are two systems of law the *Dayabhaga* and the *Mitakshara*, and even these have their subdivisions and nuances. Along with them is the matriarchal system that flourished in the pre-agricultural age and that still lingered in Malabar and certain other parts of the country.⁵

This was not the first time that an attempt was made to unify the Hindu. During colonial rule the English had to some extent already codified Hindu laws. This was evident through the various judicial interpretations of various courts on Hindu laws. While the British followed a strict no interference policy when it comes to the personal and religious laws, it would at a superficial

³ John A. Banningan, 'The Hindu Code Bill', (1952) 21 Far eastern Survey 173-176.

⁴ Renuka Ray, 'The Background of the Hindu Code Bill', (1952) 25 Pacific Affairs 277.

⁵ *ibid.*

level appear as though they did not have any lasting influence on the religious and personal laws. But if one observes a little further it becomes apparent that the Hindu laws underwent significant changes during colonization. The British established their judiciary system and to mete out justice it became important for them to understand the religious laws that governed the country. Since the British followed Christianity, they were followers of religion of a book that is they believed that Bible is the authority on Christianity and whenever you want to verify anything about the religion you go back to the Bible. The idea is that they believed in reliance on one particular sort of authority, so whatever the book says holds true. When they tried to make sense of Hindu laws, they also tried to find that book where they could place reliance on.

But the problem was that Hinduism was not a religion of the Book, it did not have any supreme authority. The assumption that there ever existed a homogeneous Hindu community is the very first problem.⁶ Hinduism is primarily a religion based on evolution. That is, it did not have rigid rules laid down in one particular book but a variety of rules and customs that develop in a particular society. So when the British tried to make sense of the Hindu laws their reliance on Shastras lead to distorting of the customary practices that existed in India. The English placed reliance on translations of *Manusmriti*, *Dayabhaga* and *Mithakshara*. They also failed to realize that Hinduism did not have uniformity within their practices.

However, in order to make sense of the Hindu religion, the British consciously or unconsciously applied their ideas to the Hindu laws. This was continued by Nehru and the new proposed Hindu Code Bill. The reformed Hindu law is in conformity with 'reforms' initiated during British rule.⁷ So when the Hindu Code Bill was introduced in the Constituent Assembly, it faced massive tussle between Nehru and Ambedkar on one side versus Hindu orthodox and other factions that believed that Hindu Code Bill wasn't based on the customs and traditions of Hindu Code Bill.

Ambedkar believed that State had the right to intervene in the matters of religion especially if those violated the principles enshrined in the Constitution. He also argued that the religious laws had governed the lives of people because there wasn't a Parliament and making the claim that the state can't intervene in religion questioned the integrity and legitimacy of the State itself as religion and its influence on a person's life cannot be overstated. Ambedkar also pointed out that they are not destroying customs but they are evolving new ones. While this argument is understandable

⁶ Nivedita Menon, *Seeing like a Feminist* (Penguin Books 2005).

⁷ cf Kishwar (n-1).

considering that if new laws are to be made it should be made by a formal parliament but it is also important to understand that Hinduism was a religion based on the idea of evolution and change based on time, context and interpretations. To codify these customs and to make it static is against the very idea of Hinduism. The same idea is resonated in the quote by Gandhi,

“That people can overthrow customs that did not conform to principles of equality and justice or went against "good conscience" because he had inherited a tradition whereby the power to change its own customary law rested with each community.”⁸

This tradition that Gandhi refers to is the fluid nature of Hinduism and how it is subject to change and interpretation over time. Law that is the Hindu law must obey the principles of change, in order to be vital, to adapt itself to altered social condition.⁹ In this sense the Hindu law is different from other types of religious laws.

Ambedkar and Nehru faced massive criticism from the religious orthodox of the country. One of the main opponents of Hindu Code Bill was Swami Karpatriji. Swami Karpatriji was known for his in depth knowledge on Hindu shastras and religion. He challenged the Hindu Code Bill by asserting that it was against the customs of Hindu laws. He pointed out that the Hindu Code Bill has banned polygamy but there are provisions in the shastras that allow for the same in special circumstances. The main critique of Swami Karpatriji stemmed from the fact that he questioned the very basis on which the Hindu Code Bill has been introduced by the government when they lack the knowledge of Hindu customs and traditions.

The Hindu Code Bill also brought in fissures present in Congress itself. Dr. Rajendra Prasad our first President also opposed the Hindu Code Bill in the Constituent Assembly. Finally, the Hindu Code Bill was passed by dividing it into four different bills i.e. the Hindu Marriage Act, the Hindu Adoption and Maintenance Act, Hindu Minority and guardianship Act and Hindu Succession Act. The idea was to break down the Hindu Code Bill in four parts to make it easy for the Parliament to discuss the same. But the Acts passed were very different from the Hindu Code Bill that was initially proposed in the Parliament. This was the historical and political context in which the Hindu Code Bill was first introduced and then passed by division of the same in four different acts.

⁸ *ibid.*

⁹ P. K. Menon, ‘Hindu Jurisprudence’, (1975) 9 *The International Lawyer* 209.

III. HINDU CODE BILL FROM A FEMINIST PERSPECTIVE

One of the main reasons for introducing the Hindu Code Bill was to recognize rights of Hindu women. Nehru believed that it was important for the codification of Hindu laws to protect the rights of the women which were subjected to personal laws which were male dominated and extensively patriarchal. While one can appreciate the noble sentiments behind the need for protecting women rights but is important to question whether that was the outcome of the Bill.

Before progressing into how this Bill affected women it becomes important to understand who actually does the Hindu Code Bill govern? The answer seems simple enough that it governs anybody who is a Hindu. But the problem with this definition is that we don't really know who a Hindu is. Section 2(c)¹⁰ of the *Hindu Marriage Act, 1955* tells us about the application of the act. According to the same definition the Hindu laws are applicable to anybody residing in the territory of India who is not a Muslim, Parsi, Jew or Christian. In addition to the above, one must also bear in mind the Jains and the Buddhists, two "heresies" which firmly reject most of Brahmanical Hinduism.¹¹

That is the Hindu definition is based on exclusion rather than inclusion. This in itself gives an idea of the extent of heterogeneity that existed in the religious group that we call "Hindus". The legal definition of Hindus includes Jains, Sikhs and Buddhists. One of the reasons why it was extremely difficult to come up with a definition based on inclusion because of the vast differences that co-exist with the various sects of Hinduism. It is evident where in the matriarchal practices of Nair coexist with the patriarchal set up of North Indian practices. Under the *Aliyasantana* and *Marumakkattayam* systems of law, which are matriarchal in conception, women enjoy rights not only equal to but fuller than those accorded men.¹² Even the schools of *Mithakshara* and *Dayabhaga* have so many varied interpretations that it becomes problematic to codify certain practices that then de legitimizes certain other practices.

The feminist perspective in this case becomes extremely important as when the Hindu Code Bill was introduced it completely neglected to take into account the South Indian practices

¹⁰ To any other person domiciled in the territories to which this act extends who is not a Muslim, Christian, Parsi or Jew by religion, unless it is proved that any such person would not be governed by Hindu Law or by any custom or usage as part of that law in respect of any matters dealt with herein if the act had not been passed.

¹¹ Olivier Herrenschildt, 'The Indians' Impossible Civil Code European', (2009) 50 EJ. Of Sociology 309-347

¹²cf Ray (n-4) 268-277.

in fact what the Hindu Code Bill did achieve was the codification of the vast and heterogeneous practices of communities that were not Muslim/Parsi/Christian, bringing them into conformity with what was assumed to be the 'Indian' and 'Hindu' norm—that is, North Indian, upper-caste practices.¹³ The Hindu Code Bills...did not reform Hindu personal laws but merely codified them, that is, brought them into conformity with what was assumed to be the 'Indian' norm— north Indian, upper caste practices.¹⁴ So when the Hindu Code Bill was sold in the garb of Women Right rhetoric it completely ignored that many Hindu sects had customary practices which were more liberal and women oriented than what the bill introduced. So the bill might have helped in uplifting the position of some women that came from a heavily patriarchal set up but at the same time the 'reformed' law thus worked to the detriment of communities that had better inheritance practices for women than Brahmins.¹⁵

There is almost no principle introduced by the Hindu Code Bill which did not already exist somewhere in India as accepted law. There were, however, there were several liberal customary practices which were decimated by the Hindu code, and have not been restored even today.¹⁶ This is evident from the fact that the matriarchal practices have become a part of folklore and these practices have slowly eroded away with the advent of codification of Hindu Laws. The fact that these communities have slowly lost their culture and traditions because of imposition of a homogenized code is severely problematic on its own. But when feminists analyse the same and witness that the practices that have delegitimized also included women centric provisions.

Another extremely problematic idea was the inclusion of the English Catholic jurisprudence of divorce in Hindu law. Catholic principles which dominate the English Laws are evident from the way their laws operate. Following English law, the Act provides for nullity of marriage, divorce and judicial separation.¹⁷ Catholics believe that marriage is sacrosanct and that once a union is made by God humans shouldn't break the sacred bond. But at the same time it becomes important to note that Hindus are a heterogeneous community. The idea of de facto marriages existed in upper caste Hindus. There were communities in Rajasthan where either the husband or the wife could walk out of a marriage without arousing the collective contempt of the society; the only catch was that the next husband would have to pay the bride price to the earlier

¹³ cf Menon (n-6).

¹⁴ *ibid.*

¹⁵ *ibid.*

¹⁶ cf Kishwar (n-1).

¹⁷ Paras Diwan, 'The Hindu Marriage Act, 1955', (1957) 6 *The International & Comparative L.Q.* 263-272.

one.¹⁸ But when the Hindu Code Bill was being drafted the legislators sub-consciously or consciously adopted the Catholic principle of sanctity of marriage, which emphasized the principles of how a person who has caused the grief can't take benefit of the same and how if both parties want divorce then the court might reject it on the grounds of collusion. These provisions became extremely problematic in a rich Hind society that had sects which followed the principle of divorce or dissolution of marriage on the grounds of incompatibility. Divorce may be effected by a registered instrument of dissolution executed by the parties or by an order of a civil court on a petition presented by a husband or a wife the petition need not allege any grounds.

“The mere desire of either party is considered sufficient. The complete freedom...has not disturbed the domestic tranquillity of the people in anyway¹⁹”

Its major innovations related to the abolition of the requirement that husband and wife are of the same caste as a necessary precondition for a valid marriage, the enforcement of monogamy, and uniform provisions for dissolution of marriage for all castes.²⁰

IV. LESSONS THAT CAN BE LEARNT FROM THE HINDU CODE BILL

The Hindu Code Bill was introduced with the noble intention of protecting women rights from the oppression of organized religion. This is eerily similar to the rhetoric used by the proponents of Uniform Civil Code. The test of any policy is undoubtedly how effectively it can fulfil the objective for which it was legislated. This can be the touchstone to analyse any policy change. The Hindu Code Bill in that regard failed to achieve women justice as it sacrificed Right to religion and completely disregarded the plurality that existed in Hinduism itself. India as a nation is extremely different from the Western idea of a nation. As was famously said by Sir John Strachey that, *“Scotland has more things common with Spain than Bengal with Punjab.”* This line espouses the incredible diversity and pluralism that co-exist in India. Considering that drafting the Hindu Code Bill proved to be a Herculean task can it be possible to amalgamate all religions and cultures into UCC without eroding away the sanctity and uniqueness of each culture.

Another lesson that can be learnt is that when women equality is sought to be improved by unification of laws, it is important to note that this would also lead to putting sects of women in a worse off position as it would delegitimize the liberal practices of their culture. And the last but the most important lesson to be learnt is that one shouldn't sacrifice the principles of equity

¹⁸ cf Kishwar (n-1).

¹⁹ Written Statements Submitted to the Hindu Law Committee, op cit, p 360.

²⁰ cf Kishwar (n-1).

at the altar of uniformity. While the Hindu Code Bill did not seek to impose the North Indian Hindu practices on other sects of Hinduism, but it inadvertently did. The Hindu Code Bill also did not seek to delegitimize cultural practices but again it inadvertently did. So while drafting the Uniform Civil Code one has to be sure that the same mistakes are not repeated.

V. CONCLUSION & SUGGESTIONS

While one can appreciate the noble sentiments behind the introduction of the Hindu Code Bill, it is still a deeply problematic bill. The idea is that religious laws are important for an individual and the State recognizes this importance and endeavours not to interfere in religious practices. Even today we follow the principle of Court not interfering in the essential practices of different religions. Considering the value an individual place on religion, the State only interferes where religious laws are against Principles of Good Conscience, Equity and Natural Justice. So, it was justified when the State intervenes to abolish Sati and Dowry related cruelty that women are subjected to.

At the same time when France banned the *burqa* because it was considered to be oppressive to women it witnessed strong opposition from Islamic feminists and women rights groups all around the world. Islamic feminists argue that their religion is important to them and at the same time it is important for them to have freedom and liberty. So, when the Western liberal idea of freedom is applied to Islam, it is deeply problematic. It is irrelevant that the French government probably had good intentions and wanted to support women rights. But the question is that, did they? The reason for this dichotomy is that the when French view Islam their perspective is coloured with the prevalent Islamophobia and the Western liberal ideals.

Similarly, when the Hindu Code Bill was introduced in the Constituent Assembly the members were mostly upper caste Hindus. They viewed Hindus which were a heterogeneous group in the perspective of only North Indian upper caste Hindus only. So, when the Constituent Assembly attempted to liberalize Hindu laws they forgot to take into consideration that there existed various other customary laws in India that were more liberal than the ones that they proposed. History of codification of Hindu laws teaches us that even the most benign intentions can have adverse consequences. Further while Uniform Civil Code has been on the agenda for the policy makers for decades now, one has to question whether UCC is desirable in a diverse country like India. Furthermore, undoubtedly there are customary practices in all religions that are oppressive and against the constitutional principles. A better way to tackle the same is by outlawing the said practices instead of changing the religion itself.