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# The Uniform Civil Code from the Lens of the First Law Minister of India

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## ABSTRACT

*Dr. Bhim Rao Ambedkar, the Chairman of the Constitution of India's Drafting Committee, was referred to as "The Father of the Indian Constitution." Additionally, he was India's first minister of law and justice after independence. He was in favor and recommended the adoption of a Uniform Civil Code (UCC) leading from western inspiration. He expressed his desire to reform Indian society by having a secular document for the citizens of India to follow. The Uniform Civil Code aimed to replace personal laws, which are based on the scriptures and customs that belonged to various religious communities, with a standard set of rules to govern every citizen of the country. This aspiration of Ambedkar attracted mixed reactions from different groups of people. Muslims have always taken their Shariat law as a personal responsibility. Hindus do the same when it comes to their religion. All their inheritance, marriage, divorce, or adoption practices are followed as written in Shastras. Hindus and Muslims consider their holy documents of Vedas and the Quran essential to adherence to their religion. In such a scenario, there was vigorous dissent on UCC from the conservative and orthodox Hindus and Muslims.*

*Sensitive comments from Ambedkar on the religion made the conservative members of the Hindu community judgmental towards Ambedkar's beliefs. The proposed revisions altered a major chunk of the Hindu Code Bill regarding marriage and divorce ultimately buried. Even the then-prime minister of the nation, Pt. Jawaharlal Nehru ultimately did not support the UCC. Consequent to these instances, Ambedkar resigned from his office. This episode is an instance that highlights the matter of UCC being close to Ambedkar's heart. It is imminent to note that Ambedkar chose to leave Nehru's Government due to the conflict of opinions on the Hindu Code. Ambedkar believed political pathways were an essential tool in bringing about social reforms.*

**Keywords:** *Hindu Code, Muslim Laws, Personal laws, Shastras, Uniform Civil Code.*

## I. INTRODUCTION

Dr. BR. Ambedkar was described variously as 'Modern Manu,' a great Jurist," an advocate of high repute, 'one of the six brains of India," the messiah of social justice, 'and one of the noblest

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sons of India. He was a historian, an economist, a philosopher, a religious leader, a revolutionary, a political leader and parliamentarian, a sociologist, an academician, an educationalist, and a scholar—a jurist and, above all, a Constitution-maker.<sup>2</sup>

- He made it his mission to fight for social justice and human dignity, which entitles him to a permanent place in the history of modern India.
- He was chosen on August 20 to head the committee that drafted the Indian Constitution. He was a renowned counsel and clever lawmaker.
- He rose to become India's first law minister after independence. Feeling sore over the whole exercise relating to the Hindu code bill, he resigned from the Cabinet on September 27, 1951.<sup>3</sup>

According to Dr. Ambedkar, the law was an instrument for creating a just social order providing the fullest scope for developing human personality. He believed that social sanctions must back legal sanctions to be effective. He favored the creation of a positive social environment and a successful movement by the oppressed with constitutional means to enable the Depressed Classes to liberate themselves from age-old exploitation. <sup>4</sup>This endeavor of his entitled him to the unanimous acclamation as the ‘Manu of Modern India.’

## **II. THE HINDU CODE BILL'S NEED AND GOALS**

The Hindu Code Bill was enacted in an attempt to better a lot of India's Hindu community. Ambedkar's social and political philosophy included identifying areas of injustice and inequality and using effective legislative solutions to get rid of outdated or "lawless laws.", According to him, one could not have constitutional equality along with traditional inequality and injustice prevailing in actual life. This leads to a reorientation of outlook on the sane, rational, and humane lines. Such an approach naturally required re-examining the traditional Hindu institutions of marriage, family, and property. It is imperative to give a place of equality to Hindu women, even as guaranteed by the Constitution. Ambedkar intended to rewrite the Hindu law within the Constitution's framework.<sup>5</sup>

The portions of the Committee (Legislative) report given to the Constituent Assembly were

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<sup>2</sup> H.V. Sreenivasa Murthy, Dr.V.S. Elizabeth, HISTORY OF INDIA PARTY II (first edition 2003, EASTERN BOOK COMPANY) 208

<sup>3</sup> H.V. Sreenivasa Murthy, Dr.V.S. Elizabeth, HISTORY OF INDIA PARTY II (first edition 2003, EASTERN BOOK COMPANY) 209

<sup>4</sup> K.I. Vibhute(Ed.), op. cit.,p.41. (as cited in) H.V. Sreenivasa Murthy, Dr.V.S. Elizabeth, HISTORY OF INDIA PARTY II (first edition 2003, EASTERN BOOK COMPANY) 216

<sup>5</sup> H.V. Sreenivasa Murthy, Dr.V.S. Elizabeth, HISTORY OF INDIA PARTY II (first edition 2003, EASTERN BOOK COMPANY) 216

Introductory, Marriage and Separation, Adoption, Minority and Guardianship, Joint Family Property, Women's Property, Succession, Maintenance, and Miscellaneous.

Only four new provisions were included in the Bill, intended to strengthen Hindu society:

a) the theory of rights by birth was abolished; b) women were granted absolute rights over property; c) the daughter was given a portion, and d) divorce provisions.

The Hindu Code was consistent with the Constitution of India.

However, the orthodox and some nationalists opposed the Bill, which could not ultimately be passed during that term of the Parliament.

The proposed Bill would have affected Buddhists, Sikhs, Jains, Lingayats, and followers of other historically related religions, such as Sikhs, who also practice Hinduism. Except for Muslims, Parsis, Christians, and Jews, all Indian citizens are not considered Hindus.

### **III. THE CODE BILL'S EVOLUTION**

A committee was established by the government in 1941 to look at the difficulties with legal reforms, and Sir B. N. Rau served as its head. Two bills pertaining to Hindu marriage and Hindu intestate succession were written by this committee. The two houses of the national legislature subsequently requested, through a joint committee, that the Rau Committee be revived and given control over codifying all Hindu law. Early in 1944, the committee was re-established. The next year, it carried out a nationwide poll to determine how people felt about the two proposed bills and the codification of Hindu law.

The data and viewpoints gathered from prominent attorneys and representative groups led to the creation of the Hindu Code Bill. Although it was first proposed on August 1, 1946, in the previous central assembly, nothing has come of it. It was re-established in 1947 by the government in the Constituent Assembly following independence. However, it was met with unexpectedly vehement opposition from conservative Hindu groups, who were able to block its passage by using delay strategies.<sup>6</sup>

In the meantime, various laws aimed at enhancing the situation of Hindu women were passed by the federal and several provincial legislatures. The Hindu Marriage Disabilities Removal Act of 1946 made it legal for Hindus from the same clan to be married (Gotra or Pravara). The Hindu Married Women's Right to Separate Residence and Support Act of 1946 gave married Hindu women the ability to demand separate maintenance and residence from their husbands

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<sup>6</sup> RENUKA RAY, "The Background of the Hindu Code Bill", *Pacific Affairs*, Sep., 1952, Vol. 25, No. 3 (Sep., 1952), pp. 272-273

on several defined grounds. The Hindu Marriage Validating Act eliminated caste restrictions from marriage.

The Hindu Code Bill's authors aimed to provide a concise set of guidelines that would bring uniformity to existing Hindu legislation and, in the process, implement certain revisions necessitated by shifting socioeconomic requirements and community perspectives.<sup>7</sup>

#### **IV. AMBEDKAR AND HINDU CODE BILL**

Ambedkar believed that his contribution to the Hindu Code Bill was as significant as the creation of the Indian Constitution. According to the Constitution, citizenship rights are reserved for general political and economic action. The citizen is seen as a secular subject.

But he contended that as long as caste-based discrimination persisted in the religious practices of the Hindu majority, recognizing the right to political and economic equality in a "secular" setting as established by the Constitution was insufficient.

His vision for reforming Hindu society was based on the Hindu Code Bill. Although he did not think that this reform could be implemented solely through legislative fiat, he attempted to establish a few baseline standards within. He explored the customs of minor Hindu communities and the Mitakshara and Dayabliaga systems of Hindu law, which govern inheritance, divorce, and marriage. He wanted the most progressive principles in the existing Hindu codes to be a part of the 'modern' Hindu Code Bill.<sup>8</sup>

Ambedkar insisted on including in the Hindu Code Bill some fundamental principles that should not be subject to negotiation. These included the woman's right to divorce, the outlawing of polygamy for those who were married in accordance with Hindu law, and the granting of some unconditional inheritance rights to widows and daughters.

Additionally, he advocated that inter-caste unions be accepted as legal under Hindu law. Even though there was a Special Marriage Act in place before 1947 that provided these rights and freedoms for individuals seeking to enter into a civil marriage contract, very few people chose to do so. Ambedkar was concerned that these fundamental principles be incorporated into the Hindu Code of Personal Laws so that women who marry for religious reasons would be accorded these rights.

The number of debates that took place in the Lok Sabha between 1947 and the time Ambedkar

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<sup>7</sup> John A. Banningan, "The Hindu Code Bill." *Far Eastern Survey*, vol. 21, no. 17, 1952, pp. 174. *JSTOR*, <https://doi.org/10.2307/3024109>. Accessed December 11, 2022.

<sup>8</sup> Wandana Sonalkar, "An Agenda for Gender Politics." *Economic and Political Weekly*, vol. 34, no. 1/2, 1999, pp. 24–25. *JSTOR*, <http://www.jstor.org/stable/4407543>. Accessed December 10, 2022.

resigned as law minister over the Hindu Code Bill demonstrates how violently orthodox forces opposed these ideas. The discussion of gender and caste somehow sparked a response, one of which was that granting women the freedom to divorce would abolish the traditional family.<sup>9</sup>

Although Nehru supported Ambedkar initially, as general elections drew near, he gave in under pressure from the reactionary forces. Among Ambedkar's supporters were some eminent women M.P.s. When these women questioned Ambedkar over the scope of inheritance rights granted to women under the Bill, he replied that he did not see the Hindu Code Bill as a final answer to the question of women's rights. He responds by saying that it would be the task of future political movements to extend the scope of these rights and push for enacting new laws.

Ambedkar's belief that women were essential to the struggle against the caste system and that the subjection of women was essential to the caste system's operation was the driving force behind his efforts to pass the Bill through Parliament. Therefore, in order to maintain the caste system of oppression and inequality, the brahminical forces that support caste must seize control over these gateways.

Along with the Constitution granting individuals political and economic rights, the requirement to adopt a legal system that would provide for women's liberation in the domains of marriage, divorce, and inheritance was critical.

According to him, the reform of Hindu civil society was essential. Hindu society, to be specific, was divided based on caste along with the Constitution, establishing a 'modern' and 'secular' political society. Moreover, he saw the tile emancipation of women as central to that reform.

In order to establish a legal foundation for future struggles against caste and patriarchy in Indian culture, the Hindu Code Bill recognized their inherent relationship. At the moment of national independence, it was radical to give women full adult franchise rights. This was contrasted with later times when numerous European countries gave women the right to vote. One of the Directive Principles of the Constitution was the idea that men and women should receive equal remuneration for doing the same amount of work. This was insufficient in light of the conflict that ensued, and future events established that it was insufficient.

Ambedkar once recommended inter-caste marriage as the only course of action that could result in the abolition of caste because he understood that the caste system was maintained through endogamy. Later, he appeared to realize how inadequate his action was.

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<sup>9</sup> Wandana Sonalkar, "An Agenda for Gender Politics." *Economic and Political Weekly*, vol. 34, no. 1/2, 1999, pp. 24–25. *JSTOR*, <http://www.jstor.org/stable/4407543>. Accessed December 11, 2022.

With the passage of the Hindu Code Bill, it was made clear that the law of the panchayat would be restricted in an independent India and that this Code for the Hindu majority would take precedence over patriarchal caste panchayats or unofficial caste authority.<sup>10</sup>

Even progressives who were ordinarily in favor of the Hindu Code Bill opposed it on the grounds that all citizens should be subject to the same laws regardless of their religion. All sects could not be subject to the same Code without violating the constitutional guarantee of religious freedom, as the majority of old customary rules had a religious foundation.

In non-religious affairs, many communities that embraced other religions continued to adhere to the old Hindu rules and customs. The actual challenges of implementing a consistent code were overstated. The secular nature of India was highlighted by the Congress government. Therefore, it was practical factors more than a desire to keep people divided along religious lines that led it to adopt a piecemeal strategy for legislative reforms.

Indian customary law applies on a personal, not a territorial, level. Hindus and Muslims, the two largest religious communities, were required to abide by its Code. Each system coexisted alongside custom-based law, and both claimed a divine origin and were deeply entwined with religion. In the beginning, the British in India attempted to make their law public and territorial, applying it to all Europeans and Indians. This was deemed impractical; therefore, in 1780, Parliament approved a Declaratory Act outlining the notion that Muslims should adhere to Islamic law and conventions, whereas Hindus should follow Hindu law and usage. In general, Britain adhered to the principle of minimizing interference with Indian religious rules and practices.<sup>11</sup>

## **V. WOMEN GAIN UNDER PROPOSED CODE**

The Hindu woman was previously legally assumed to be her husband's property and had limited rights and was hence possessed by them. But with the introduction of the Hindu code and its formal passing and becoming the law, women would gain the aforesaid:

- Her husband cannot marry someone else while she is still alive. Prior to now, polygamy was acknowledged by Hindu law, albeit, in reality, its use has been severely constrained by economic concerns and "enlightened conscience."

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<sup>10</sup> Wandana Sonalkar, "An Agenda for Gender Politics." *Economic and Political Weekly*, vol. 34, no. 1/2, 1999, pp. 24–25. *JSTOR*, <http://www.jstor.org/stable/4407543>. Accessed December 11, 2022.

<sup>11</sup> Sheshrao Chavan, "TRUE FACES OF GANDHI AND AMBEDKAR." ATLANTIC (2016, Publishers and Distributors(P)Ltd, 298

- If her husband had changed his faith or if there was any other reason why she should be living separately, she would possess a legal right to demand separate support from him on the basis of his cruelty, infidelity, or abandonment.
- The norms of Hindu law, however, formerly prohibited a wife from requesting maintenance from her husband if she did not reside with him in his home.
- The assets her parents gave her as a dowry for her marriage were to be recognized as trust assets. When she was 18 years old, she would be able to use it. So that neither her spouse nor his family members would have any stake in the property or chance to misappropriate it.
- 4 If her father passes away intestate, she receives a part of his estate. Half of a son's prescribed portion applies to daughters.
- It was decided that her right to inherit property was absolute and unaffected by outside influences. Depending on their financial circumstances, marital status, and status as single or married women at the time of the decedent's death, female heirs are subject to various treatment under current law.
- All of these factors were eliminated by the proposed Bill, nevertheless.
- A woman receives a "life estate" under current Hindu law when she inherits property from a female relative who passes away intestate. She may make use of the inheritance's income, but she is not permitted to engage with the "corpus" of the property unless absolutely necessary.

This restricted estate is transformed into an absolute estate by the Bill, just like in the event of a male heir. These accommodations for Hindu women are but a minor but crucial portion of the proposed Code.<sup>12</sup>

### **(A) Inference**

Women's organizations, orthodox organizations, and other non-lawyers were significant legislative forces throughout the duration of the Bill, but overall, they tended to influence the Hindu Code's legislative debate.

Following independence, the legal professionals' knowledge of the Bill was considered important in the Constituent Assembly-Provisional Parliament.

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<sup>12</sup> John A. Banningan, "The Hindu Code Bill." *Far Eastern Survey*, vol. 21, no. 17, 1952, pp. 174. *JSTOR*, <https://doi.org/10.2307/3024109>. Accessed December 11, 2022.



For the large majority of Indians who follow Hindu law, the Hindu Code Bill aims to equalize the social laws of marriage and property between men and women. It is challenging for an outsider to comprehend why this reform initiative could have sparked such a storm of controversy in modern India, given that the Constitution's founders encountered no resistance while granting women the right to vote and securing a position of legally enforceable equality. The Bill's opponents take an unreasonable stance because they protect unjust social laws whose continued existence violates the Constitution's provisions. Even without the enactment of such a Bill, it is likely that judicial rulings would gradually weaken these prohibitions. But even so, such a judicial procedure would take time, and it would, at least initially, result in inconsistent rulings, which would lead to an unorganized scenario. The Hindu Code Bill's passage would make this process simpler.

The major goal of the Bill, which has spent so much time on the legislative anvil, is to codify and harmonize the Hindu social laws of marriage, property, guardianship, and adoption. In addition to this, it adds a few clauses that are essential for modernizing the laws to reflect the altered social climate. These modifications are supported by historic Hindu texts or forward-thinking legislation in specific regions of the nation. Some of the rules only have a permissive nature. For instance, the Code permits inter-caste unions, which is not unusual.

The Special Marriage Act and the Indian Succession Act, which grant men and women equal rights, form the basis of such a universal law for all communities today, but their observance is optional, and only those who choose to do so fall under their jurisdiction. Even though it might not take very long, there are some logistical and legal challenges that prevent India from enacting a universal code of social regulations. First off, the new Constitution guarantees everyone's right to practice their religion freely. Since social laws are seen to have a religious foundation, each community would need to give up some of its core beliefs before being forced to abide by the same social rule. The Hindu Code will, if it is passed, apply to the vast majority of people and, as a result, will result in the necessary improvements for the largest sector. It is now impossible to predict which method will finally be used in India to equalize the social status of men and women. However, it is obvious that the dynamic impulse of society cannot be completely resisted, regardless of whether the Hindu Code Bill, which is currently back on the anvil of Parliament, is finally passed or the social rules are brought into compliance with the constitutional framework. Imagine those obsolete laws with little purpose nevertheless clog the statutory books. If that happens, they will degenerate into strange artifacts of the past that have no place in the society of a resurgent India and lose all significance. On paper, the contradiction might still hold true, but in real life, something else will happen. The forces of

progress can be temporarily hampered by the law, but not forever.

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