

# Hindu Code Bill vis-a-vis Base of Hindu Women Succession: A Socio-Legal Analysis

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## Abstract

Hindu social system based on *Smritis* and *Shrutis* placed women at lowest strata of society, denied her all basic rights. The plight of Hindu woman was a result of discrimination practiced against her. Undoubtedly, colonial rule has made sizeable scope available to done away with the practices of discrimination, denial, deprivation of Hindu women. However, in independent India, discourse of equality to rise up strata of Hindu women was resisted by mainstream leadership. Dr. Babasaheb Ambedkar, had close concern with this cause, he brought Hindu code Bill and fought the battle for right of Hindu women in succession at the cost of his position in cabinet. He generated the discourse of women equality; legal sanctity to women succession. The mainstream leaders were resisting it on the basis of religious mandates. Of late, the government passed the Hindu Succession Act, but, provisions for women succession were absent. Subsequently, amendments were carried out therein and provisions pertaining to women successions were incorporated based on the arguments of Dr. Babasaheb Ambedkar.

Key words: Hindu women, succession, right, equality, women empowerment.

## Introduction:

The bases of Hindu law are *Shrutis*, *Smritis* and customs. Beside this, *Vedas* are also considered to be the base of Hindu law. The basic *smritis* are *Mitakshara* and *Dayabhaga*. So far as *Dayabhaga* is concerned it is flexible in granting succession to the Hindu women. The nineteenth and twentieth century have witnessed women empowerment through education and law. Law is also used as medium of strengthening the democracy and protecting public interest. The propagators of women empowerment have played a pivotal role in bringing about social change by various means to achieve stipulated goal. Granting right to succession to Hindu women was amounting to recognize women a status of human being. However, in patriarchy woman was discriminated denying her requisite basic human independent sanctity. The conservative leaders have opposed the succession of Hindu women on amongst various grounds including religion. In the cause of empowerment of women, contribution of Dr. Babasaheb Ambedkar is commendable. He in capacity of Law Minister had prepared Hindu Code Bill with great hardship and sincerity so as to grant right to succession to the Hindu woman. But, orthodox Hindu leaders resisted this Bill saying it to be contrary to religious sanctions. Dr. Babasaheb

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Ambedkar had fought this battle at the cost of his position in the cabinet. He has generated a legal discourse to legalize right to succession to Hindu women, though it took decades together to come it into reality, in democratic, republic India. Hence, upon meticulous observation it seems that, the Hindu Code Bill drafted by Dr. Babasaheb Ambedkar is the base of succession of Hindu Women prevailing in India today.

### **Historical Glimpses of Hindu Women Succession**

Before codification of law, Hindu Succession was dealt exclusively with by two schools, namely, *Mitakshara* and *Dayabhaga*. The *Mitakshara* School was prevailed in rest of Bengal Provinces, it has denied right to succession to Hindu women absolutely, whereas *Dayabhaga* School prevalent in Bengal Provinces exclusively, it had granted right to maintenance to the Hindu women. In order to get rid of right to succession the so called protector of religion suggested and implemented several tactics, the most inhuman and illogical *Sati* system is one of them. *Sati* system sanctifies inhuman sacrifice of living women with dead husband by getting burned with his dead body. Resultantly, as compare to other parts of India, epistemological data shows numbers of *Sati* cases are higher in Bengal Provinces. *Sati* system was one sort of tool of deprivation to the women from exercising right to succession. Astonishingly this inhuman tradition was religiously sanctified as if it was gospel truth. It was forcefully implemented as if it is a mandate of religion. The *Manu Smriti* imposed certain restrictions on women and made her dependent on male on logic that, “her father protects her in childhood, her husband protects her in youth, and her sons protect her in old age; a woman is never for independence”<sup>2</sup>. Enforcement of *Manusmriti* was prevailed over for centuries together uninterruptedly. Such long tenure of implementation has dragged Hindu women to peril; hence, it became a prime cause of fall of Hindu women. It is therefore Dr. B. R. Ambedkar upon getting annoyed with it, he had set *Manu Smriti* on fire at Mahad proving it to be inhuman and places barricades in the way of emancipation of human beings at large.

### **Analyzing Hindu Code Bill**

The promulgation of the Constitution of India assured liberty, equality, fraternity, and justice to the citizens of India. It otherwise promised to its people to have rule of law. During the prevalence of ‘rule of law’ it is legitimately expected that, every issue must be solved with the help of law. Law is treated as an instrument to regulate human behavior and subjects are ought to obey it as a mandate. Hence, when the differences and difficulties regarding succession of Hindu women were made known to the social reformers and women organizations, they were of the opinion to bring about the reforms in the law relating to succession of Hindu women. Consequently, there were certain Bills brought in to the Central legislation. There were certain efforts taken by the social reformers in bringing the law, ‘the leaders namely Akhilchandra Dutta, A. N. Chattopadhyaya, Kailash Bihari, N. V. Gadgil and Dr. V. G. Deshmukh had tried in Central Legislation to have

<sup>2</sup> Dr. Babasaheb Ambedkar Writings and Speeches Vol. 17 2003

law in regard to the succession of Hindu women but all efforts gone in vain<sup>3</sup>. As there was apathy of the ruling class to this noble cause having close nexus with core idea of humanism and woman emancipation. That apart the cause of resistance was religious interpretation of denying equal status to women to that of man in Hindu society.

But vibrant struggle was remained continued by the staunch supporters of women succession to have it a legal sanctity. Consequently, in the year 1937 law relating to property right of Hindu women was enacted but it could not satisfy the legitimate aspiration of the social reformers as it was ineffective in nature to give absolute legal right of property to the Hindu women. Therefore again in the year 1941 the 'The Hindu Code Committee' was established to codify Hindu Law, giving thereby equal rights to Hindu women<sup>4</sup>. After receiving opinions of different sections of society, two respective Bills were placed before the Central legislation in the year 1943, but these both the Bills could not be passed due to strong oppose by the orthodox Hindus. The prominent leaders of those days, Gandhiji was also of the opinion that, "true they are equals in life, but their functions differ". Gandhiji had reservations on sanctifying women's equality at par with men hence he justified, "As nature has made men and women different, it is necessary to maintain differences between the education of two"<sup>5</sup>. Further, "He was unable to view her as an equal participant in the process of production but saw as 'the embodiment of sacrifice and suffering'<sup>6</sup>. Again supporters got defeated and opponents became winner in the struggle of humanity and bringing about equality for women in our society.

However the relentless efforts of reformers compelled to have revival of Hindu Law. Hence, in 1944 the Hindu Law Committee was revived under the Chairmanship of Sir Benegal Narsingrao. This committee prepared a draft which was called as Hindu Code. The orthodox Hindus started strong movement to oppose it. They went to the extent to say it as "Ambedkar Smriti". Dr. B. R. Ambedkar was Law Minister, by virtue of position he shouldered with the responsibility to mould it in legal framework. He being enthusiastic and committed for the cause of salvation of women, considered this task as golden opportunity to offer this ornament to our society. Therefore he finalized the Hindu Code Bill by putting constant tremendous hard work. However, there was strong resistance by the orthodox caste Hindus to the Hindu Code Bill.

Being staunch supporter of humanism Dr. Babasaheb Ambedkar was of the firm opinion that, the Hindu Code Bill would be more beneficial to India than the Constitution<sup>7</sup>. Upon meticulous observation it seems that, Babasaheb Ambedkar got education in abroad particularly on the soil where the seeds of liberty, equality,

<sup>3</sup> khairmode, C. B. khand 10, Dr. B. R. Ambedkar, Sugava Prakashan, Pune, 2010. page 71.

<sup>4</sup> ibid

<sup>5</sup> O. Chinnappa Reddy, The Court and the Constitution of India Summits and Shallow OUP New Delhi 2008 p.116.

<sup>6</sup> ibid.

<sup>7</sup> ibid page no. 81.

justice, brotherhood were sowed. Hence, Babasaheb Ambedkar had experience of equality, liberty which people of USA had been enjoying with. He could witness it as he was student there for seeking higher education, by virtue of this he had opportunity to interact rather discuss with scholars who were deeply influenced with philosophy of egalitarianism. Beginning of his career as leader is traced as social reformer. His struggle at Mahad and Nashik were aiming at to get equal status to untouchables in Indian society. He insisted to get equality to untouchables on social platform as they were human being.

He was convinced with gospel principle that political democracy in isolation is futile unless it is accompanied by social democracy. He therefore was earnestly working to establish social democracy in India seeking thereby strength in political democracy. While speaking about importance of social inequality he on 26<sup>th</sup> November 1949 has specifically warned, “on 26<sup>th</sup> January 1950 we are going to enter into the life of contradictions. In politics we will have equality and in social and economic life we will have inequality...we must remove this contradiction at the earliest moment, or else those who suffer from inequality will blow up the structure of political democracy which this assembly has laboriously built up”<sup>8</sup>. Alarming, social inequality is threat to political democracy. It was anticipated by Dr. Babasaheb Ambedkar, in order to avoid this threat, he was planning to bring social legislation assuring thereby social equality in Indian society. Hindu Code Bill which was ensuring women succession was one of them.

Therefore, he was interested to bring this social legislation for seeking emancipation of Hindu women from clutches of irrational and discriminative *smritis*. Hindu women were denied equality on absolute illogical and unscientific assumptions. He wanted thereby to restructure Indian society as just society in the world instead of unjust society. It was a black spot to our society which was carried for centuries together. In Hindu Code Bill the provisions of succession were made as, “the rules of succession have simplified by recasting the chapter on succession. Elimination of what may be regarded as distant heirs has also been affected. An attempt has also been made to make the law of succession uniform for all Hindus”<sup>9</sup>. Thus Hindu Code Bill had tried to bring about uniformity in the Hindu succession so as to sustain equality in our society.

Initially Nehru was supporter of this Bill, “Premier Nehru had vehemently declared, on his return from America that his Government would resign if the Hindu Code Bill was not passed by the Parliament”<sup>10</sup>. Though he alone was posing himself to be reformer and pro-women empowerment but his close associates were not supporting him in this cause,” up to now Nehru seemed to throw his weight in favour of the Bill; and Sardar Patel and Dr.

<sup>8</sup> Keer Dhananjay, Dr. Babasaheb Ambedkar Life and Mission, Popular Publication, Mumbai, p.415.

<sup>9</sup> Khairmode, C. B. khand 10, Dr. B. R. Ambedkar, Sugava Prakashan, Pune, 2010. page 73

<sup>10</sup> Keer Dhananjay, Dr. Babasaheb Ambedkar Life and Mission, Popular Publication, Mumbai, p.426.

Rajendra Prasad were against it”<sup>11</sup>. More to speak about Sardar Pater he was instrumental to get Princely States merged into India, such high level statesmanship he possessed. However, his role in Hindu woman’s succession was negative. Despite of such non conducive atmosphere Dr. Babasaheb Ambedkar introduced the Hindu Code Bill on February 5, 1951. Opposition to the Bill started by seeking exemption from application of the Bill by Thakurdas Bhargava, and Sardar Hukum Singh raised objection of having Sikh included in Hindus. To all of them Dr. Ambedkar gave logical reply and satisfied them. However, the so called socialist leader, those who were carving sketch of modern India, bowed heads in front of religious orthodox and took u turn on the cause of making law for granting succession to the Hindu women. As this Bill did not get requisite support on the floor of the house, in result it could not turn into a law.

Babasaheb Ambedkar being man of great morality could not tolerate this mischief as he wanted to do justice to the women who were subjecting to agonies and atrocities in the name of Dharma since centuries together. Women were made subservient for lack of right to succession. He had vision to portray India as just and egalitarian society but his aspiration could not come into reality. Dr. Babasaheb Ambedkar visualized the prosperity of the nation in uniformity of law therefore, “Dr. Ambedkar is believed to be keen on getting the Bill passed as early as possible, but the opinion in the House is so sharply divided that it is held rather doubtful whether it would be taken up during the present session”.<sup>12</sup> Upon getting disappointed, Babasaheb Ambedkar embarked on resignation of the position of Law Minister in the cabinet of Nehru and he resigned for the cause of women emancipation. He fought this battle for bringing about equilibrium in irrational Hindu society. Notably, his sincere efforts laid a path for upcoming developments in regard to Hindu women succession. Be late better than never, after few years this Bill was segregated in to different Acts, Hindu Succession Act, 1956 was one of them. But this Act had put certain restrictions on the right to succession of the Hindu women.

Unavoidably, whispering of the Constitutional provisions is mentioned. Equality of status between sexes is guaranteed, women have been assured to have access to public employment, equality before law and equal protection of laws equally applies to women and men. However, when we look at social realities, these provisions are nothing but used to maintain glory of the papers in case of Hindu women particularly in India.

### **International instruments on women’s right against discrimination (CEDOW) 1979**

It is imperative to take into consideration the surrounding international developments so far taken place for protection of women. The UNO is the international organ empowered to ensure equality to international community. The United Nations Organization has been at forefront of eradication of discrimination and bringing about equality. On 10<sup>th</sup> December 1948 the UDHR was resolved on the floor of the General Assembly; it is nothing but a charter of human rights of all human being of the world. Particularly, Article 1of the

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<sup>11</sup> ibid.

<sup>12</sup> khairmode, C. B. khand 10, Dr. B. R. Ambedkar, Sugava Prakashan, Pune, 2010. page 74

Universal Declaration of Human Rights 1948 assures 'all human beings are born free and equal in dignity and rights'<sup>13</sup>. Concept of human being includes man and woman, to whom freedom and equality has been accorded.

This instruments roars voice of equality of status to every human being including women. Therefore, in the cause of women the covenant was passed by the General Assembly to eliminate all forms of discrimination against women. India being one of the member states, it became binding to maintain it as obligation. "The General Assembly on November 7, 1967 adopted a Declaration on Elimination of Discrimination against Women, and in order to implement the principle set forth in the Declaration, a Convention on the Elimination of All Forms of Discrimination against Women was adopted by the General Assembly on December 18, 1979"<sup>14</sup>. It came in to force in the year 1981, there were 165 or more parties to this convention. this international instrument compelled India to eliminate all forms of discrimination against women including succession of Hindu women. Therefore, it might be the cause to insert necessary provisions in the Hindu Succession Act, by amendments granting thereby right to succession to the Hindu women which was not provided earlier in law.

### **Hindu Succession Act and Posthumous Development of Women Succession**

Ultimately the government enacted the law titled as Hindu Succession Act, 1956 that came into force on June 17, 1956, governing succession of Hindus. It was aiming at dealing with the intestate and testamentary succession among Hindus equally to whole of India except the State of Jammu and Kashmir. The Act of 1956 enacted to amend and codify the law relating to intestate succession applicable to *Budhist, Jains, Sikhs* and *Hindus*. It laid down a uniform system of inheritance and succession. It protects right to property of women which she possessed, she is at liberty to dispose of it. This Act provides right to share in property to male as soon as he is born, but not to the woman. Little assurance was given by this Act to Hindu women, before this Act, *smritis* do not allow daughter to inherit from her father along with her brothers. But, this Act, remedied the situation and on the death of Hindu, his widow and his children, sons and daughters, take separate property in equal shares. There seems discrimination in inheritance, son is allowed to get right as soon as he is born but, daughter inherits in her father's property after father is died.

Slowly and steadily after almost fifty years, the time compelled to Indian leadership to have legal sanctity given to Hindu women as a successor equal to male. Hence in the year 2005 this Act was amended by the legislature. Hindu Succession (Amendment) Act, 2005 has removed gender discriminatory provisions in the Hindu Succession Act 1956. The changes made in this Act are based on the touchstone of equality. This amendment considered Hindu women as coparcener entitled to a share in the joint family property along with her brothers. This amendment has been instrumental to consider Hindu women (married) eligible to get succession equal to

<sup>13</sup> Agrawal H.O. Human Rights, Central Law Publication, Allahabad. 2001 p. 225.

<sup>14</sup> Agrawal H.O. Human Rights, Central Law Publication, Allahabad. 2001 p. 89.

son in ancestral property. She also is made eligible to become *karta* of Hindu family. \This Act grants the same rights and duties, liabilities and disabilities which were limited to the sons. There was logic behind this discrimination that, after marriage she becomes a part of life of her husband and his family, therefore on this illogical base she was denied succession but in fact it was the teaching of *Manu smriti* which placed Hindu women at lowest level and put her peril by denying all human rights required to lead life as human being in society like India without her fault. Until carrying out amendment in 2005 the right of sons and daughters regarding succession to property were different.

Son had absolute right on father's property and daughter enjoyed this right until they get married. Further the Supreme Court has ruled that, the amendment is applicable to all partition suits though they are filed before 2005 and pending when amendment was framed. This amendment has synergy with Article 14, 15, and 21 of the Constitution of India<sup>15</sup>. Hence it is to be inferred that, Dr. Babasaheb Ambedkar was such visionary that, he could foresee that it is need of time to treat Hindu women equal to men far early in the year 1951 which our legislation has felt needed to bring it into reality in the year 2005, had it been accepted when Babasaheb was insisting then definitely the scenario of today could have been different altogether. It is pertinent to mention that, Hindu Code Bill drafted by Dr. Ambedkar became the basic stone on which these all the developments have structured.

## Conclusion

Women being consisting of fifty percent share of population of society are of great significance. Ultimately their social emancipation would enable to achieve national development. The social development is the base of national development, therefore, to consider woman at par with man is a sign of social development, in result it strengthen the national development. This justifiable and equally proper foresight was possessed by Dr. Babasaheb

Ambedkar as he had reasonable understanding due to deep understanding of past, present and future of India. The Hindu Code Bill was drafted and intended to give right of succession of Hindu women in India. Therefore he fought the struggle of women emancipation and insisted to have piece of legislation to provide them right to succession in the property of father. In Indian society *smritis* as a whole have proved to be the causes of derogatory position of Hindu women, as they have imposed disabilities on them. Hence, in the context of present discourse of egalitarianism one must adopt, support and implement forward thoughts which voice for equality, liberty and justice to every sections of the society. Considering equality of women beneficial for the larger section of society it must be accepted. As a result near about majority of the Hindu population is benefited. Further, it would be matter of independent inquiry to look at the aspect of practical implementation of this right by the Hindu women today.

<sup>15</sup> India Today feb. 6<sup>th</sup> 2018 New Delhi. ([www.indiatoday.in](http://www.indiatoday.in) dated 6<sup>th</sup> November 2019 at 4.48 p.m.)

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