

GENDER JUSTICE AND COPARCENARY RIGHTS OF HINDU WOMEN IN DR. AMBEDKAR'S HINDU CODE BILL

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Abstract—Traditionally women in the Hindu law were unfit to inherit any property as only male members of a joint Hindu family can be the coparceners. Thus, the ancestral property continues to be governed by a wholly patrilineal regime. There were some legislative attempts during colonial period such as 'Hindu law of Inheritance Removal of Disability Act' of 1928 and its amendment in 1929 and Hindu Women's Right to Property Act of 1937. The measures were incoherent and defective in many respects and therefore after multiple attempts, 'The Hindu Code Bill' was presented by Dr. Ambedkar addressing the age-old issue only to find an equally intense resistance from the House. Unfortunately, Hindu Code Bill did not pass but it laid the foundation of equality for the women of Indian all spheres of life.

Keywords: Coparcenary rights, Gender justice, Hindu Code Bill, Dr. Ambedkar, Inheritance.

Concept of Coparcenary Right

In India, the rights and obligations of a Hindu are framed within separate regimes of religious law. Hindu Law is the most ancient pedigree of any known system of jurisprudence. Sources of the Hindu law comprised of shrutis, smritis, commentaries and digest and customs.

It was an article of belief with the ancient Hindu, that his law was revelation, immutable and eternal. Shruti, which strictly means the Vedas, was in theory the root and original source of Dharma. It was the fountainhead of his law. Shruti means, literally, that which was heard. It was supreme to the early Hindu like the Decalogue to the later Christian. The Vedas, however, do not contain much that alludes to positive of municipal law. Smriti literally means recollection. The Shruti was accepted as the original utterings of the great power. The smritis, though accepted as precepts emanating from that source, were couched in the words of the sages of antiquity, who saw or received the revelations and proclaimed their recollections.ⁱ

Owing to the obscurity, incompleteness and not infrequent conflicts in the rule of the smritis and the desirability of interpretation of the injunctions of smritis in a manner so as to suit prevalent customs and usages of the different parts of the country, there was the necessity to reconcile them on the points of difference. In this process, there arose what constitutes the most significant source of Hindu Law, namely the commentaries. The commentaries and the digests were also the records of the traditional customs recorded in the smritis as well as the new customs claiming for and found worthy of recognition. The commentaries, though professing and purporting to rest on smritis, explained, modified and enlarged the traditions recorded therein to bring them into harmony and accord with prevalent practices of the day to suit the felt necessities of the time.ⁱⁱ

Commentaries were used to be written on a particular smriti. Gradually a new trend caught up that is to write commentaries on different smritis together. These commentaries came to be known as digests.

Some of the principal commentaries are as following:

1. Dayabhaga by Jimutvahana,
2. Mitakshara, a commentary on Yajnavalkya Smriti by Vijnaneshwara,
3. Viramitrodaya by Mitra Misra,
4. Vivada Chintamani, by VachaspatiMisra,
5. Vivada-Ratnakara, by Chandeshwara,
6. Dayatattwa, by Raghunandana,
7. Dayakramasangraha by Sri Krishna,
8. Smriti Chandrika, By Devan Bhatta

9. ParasharaMadhaviya, Commentary on Parashara, by Madhavacharya and

10. VyavharaMayukha by Nilkantha.

Out of all the commentaries the Mitakshara and Dayabhaga occupy a very high position from the point of their acceptability as authoritative sources of law. Dayabhaga is confined to Bengal and Assam, while Mitakshara enjoys dominion over rest of India with many regional variations. The main point of the difference between them is particularly in the law of inheritance and the joint family system. Traditionally, a joint hindu family consists of every person lineally descended from a common ancestor including wives and unmarried daughters. Coparcenary refers to a narrower body consisting of male members only within a joint family who holds common ownership property which devolves survivorship. The primary purpose of coparcener was spiritual in nature. A coparcener is a person who can offer funeral cake to his father. This capability to offer spiritual salvation was with the son, grandson, great-grandson and as a consequence of it they were conferred a right by birth in the property of the father.ⁱⁱⁱ Thus ancestral property continues to be governed by a wholly patrilineal regime. Since a woman could not be a coparcener, she was not entitled to a share in the ancestral property by birth. Daughters do not possess proprietary interest and are only entitled to maintenance until their marriage and marriage expenses. This disparity in property rights pertaining to gender is characteristically patriarchal hindu society where a woman was not deemed as fit to own any property as she herself was an item in the moveable property of the husband or the patriarch. In later Vedic period literature, we come across the view that women have no right of inheritance. There was no possibility of their acquiring any estate either by inheritance or by partition. This is further proved by the concept of *stridhana* showing that its only by the way of gifts from relatives that woman could get property at marriage or subsequent to it.

Laws Impacting Coparcenary Rights in Pre-Independence Era

Gender equality stood compromised in several personal laws in India. Devoid of any property and education, women had to depend upon the men leading them to further subordination. This dependence led to shifting the entire hindu woman-kind to the weaker section of society. The status of a female member in joint hindu family was minimal in nature having no independent rights. She was not even recognized in the coparcenary. As the property law evolves gradually, it continued to be complex and discriminatory against women. There were some attempts during the colonial period striving for gender sensitization and for the betterment of status of women. The laws were enacted bringing women into the ambit of inheritance. Earlier legislation, as per the Law Commission report, was the Hindu Law of Inheritance (Removal of Disabilities) Act of 1928 and its amendment in

1929. The Act enabled a Hindu to receive share in partition by removing difficulties in the way of inheritance. The Amendment Act of 1929, admitted the son's daughter, the daughter's daughter, the sister and the sister's son as heirs next after father's father and before the father's brother.^{iv} The most important single measure was the Hindu Women's Right to Property Act of 1937, known as the 'Deshmukh Act' after Dr. G. Deshmukh, its physician-social reformer author. It gave right of inheritance to widows, and strikes at the root of a Mitakshara Coparcenary. It gave better rights to Hindu women in respect of property but gave her a limited estate, which is held by her during her lifetime and it reverts back to her husband's heirs. She had no right to dispose of such property.^v With this act, significant changes were brought in the Law of partition, alienation of property, inheritance and adoption. But the laws enacted were not enough to recognize the rights of Hindu women in joint Hindu family although it did show the feeble attempt of lawmakers in the pre-independence era to codify the vast and vivid Hindu law. The impact was not visible in the women's right in the family and there was no tangible upliftment of the women in society in general.

The career of this measure illustrated that Government itself was included in the growing number of those championing Hindu women's legislative cause and of those criticizing the technical disadvantages of piecemeal legislation. It also illustrated that Government, nevertheless, had not abandoned its caution in dealing with either codification or legislative reform of Hindu family law. Government's 1935 compromise, which permitted this Act to pass, also excluded from it the more advanced reforms provided by Dr. Deshmukh's original bill. Government's 1940 promise to appoint a small committee of eminent lawyers to rectify the legal confusion caused by such piecemeal legislative "tinkering" was given within the context of considering legislative correction of the glaring technical defects of the Deshmukh Act alone.^{vi}

Coparcenary Right in The Hindu Code Bill

Gajendragadkar J. observed: Since the said commentaries were written, several centuries have passed by and during this long period, the Hindu mode of life has not remained still or static. Notions of good social behavior and the general ideology of the Hindu society have been changing; with the growth of modern sources and as a result of the impact of new ideas based on a strictly rational outlook of life, Hindu customs and usages have changed.^{vii} The laws passing before were found to be incoherent and defective in many respects and gave rise to a number of anomalies. 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. This committee drafted two bills, dealing with Hindu intestate succession and Hindu marriage. The two houses of the central legislature then recommended, through a joint committee, that the Rau Committee be revived and entrusted with the task of codifying all Hindu law. The committee was re-established early in 1944, and during the following year it made a tour of

the country to elicit public opinion on the two proposed bills and on codification of Hindu law as a whole. Evidence and opinions were gathered from representative organizations and from prominent lawyers, and on the basis of this investigation the Hindu Code Bill was drawn up. It was introduced on August 1, 1946 in the old central legislature, but not acted on. After independence, it was reintroduced by the Government in the Constituent Assembly in 1947, but encountered unexpectedly strong opposition from conservative Hindu groups which succeeded in preventing its passage by delaying tactics.^{viii} The Hindu Code Bill when presented by Dr. Ambedkar, was introduced as an attempt to codify the rules of Hindu Law. Until then, there was not one concrete structure which could be addressed as the Hindu law, instead it was scattered in uncountable decisions of the High Courts and Privy Council. It was real befuddling to the common man and lead to constant litigation. As Ambedkar himself stated that the first law the bill seeks to codify is the law related to the rights of property of a deceased Hindu (male and female both) who had died intestate. Secondly, it stipulates a reformed structure of order of succession among the different heirs to the property of the deceased dying intestate. Another matter that the bill dealt with was personal laws namely maintenance, marriage, divorce, minority and guardianship.

Ambedkar started the discussion with the question of Inheritance proving its significance for an egalitarian code of Hindu law. He proceeded by explaining the Mitakshara and Dayabhaga as the two different systems of law governing inheritance among hindu and the fundamental difference between them. As Mitakshara follows the rule of survivorship and the death of any member of this coparcenary (male members only) passes to the members remaining and not to the heirs of deceased. The Hindu code bill adopted the rule of Dayabhaga under which the property is held by the heir as his personal belonging with an absolute right to dispose it by any manner he chooses be it gift or will or other. This change was fundamental as it universalizes the law of inheritance. The bill also adopted the rule of the Dayabhaga to that of the Mitakshara when the question of the order of succession arises. Another basic change that the bill trying to make was the order of succession among the heirs. Under the Mitakshara rule the agnates of a deceased are preferred to his cognates; under the Dayabhaga rule the basis of heirship is blood relationship to the deceased and not the relationship based on cognatic or agnatic relationship.^{ix} Dr. Ambedkar aware of the pathetic condition of women and determine to change the same, proposed further four reforms through the bill. The first one was to give the widow, the daughter, the widow of a predeceased son same rank as the son in the matter of inheritance. The daughter will have her share in her father's property prescribing it to be half of the property of the son. He reiterated that these were not really new changes as these rights were already given to female heirs by the Hindu Women's Right to Property Act of 1937, except the right conferred to the daughters. Second change present in the bill

was related to the number of female heirs recognized which was much greater than both Mitakshara and Dayabhaga. The third change proposed was to abolish the discrimination to the female heirs by considering her situation at the time of the death of the testator. The fact that she has a right to inherit must be recognized as an heir irrespective of whether she is rich or poor, married or unmarried, has issue or not. The fourth and last change which the bill makes relates to the rule of inheritance in the Dayabhaga where the father comes before in preference to the mother and alters it so that now mother succeeds before the father.

After making provisions for the order of succession of heirs to a deceased male hindu, Dr. Ambedkar touched intestate succession to females as well. Under the then existing hindu laws the property owned by a hindu female divides into two categories viz. 'stridhana' and 'woman's property'. He clarified regarding the various subcategories stridhana further falls into, and their different law of succession than another. These rules were applicable to both Mitakshara and Dayabhaga. Dr. Ambedkar intended to consolidate the different categories into a single category of property and to lay down a uniform rule of succession through the bill. The second change proposed regarding the heirs was to grant son equal right to inherit the stridhana and to give half the share which the daughter takes. This showed his intension to maintain an equality of status between the son and the daughter. The hindu law did not allow the woman to deal with the corpus of property except for legal requirements. She can inherit property that is 'the woman's estate' but she gets only a 'life estate' meaning she can enjoy the income of property only and after her death the property must pass to the reversioners of her husband. Through the bill, Ambedkar converted this limited estate into an absolute estate. Secondly, it abolishes the right of the reversioners to claim the property after the widow.

Reception of the Hindu Code Bill

As is discernible from the bill itself that Dr. Ambedkar were resolute about subrogating traditional structures of domination with political modernity but he founded equally intense resistance to the bill from the House. During discussion Dr. Shyama Prasad Mukherjee declared 'The Hindu Code Bill would shatter the magnificent structure of Hindu culture---.' The opponents objected that the bill was a blind imitation of 'uncontrolled western modernity' and poses the impending threat to ancient Hindu social structures. Rajendra Prasad stated that his wife would never support it and it was only 'over-educated' women who approved the bill. Anathasayanam Ayyangar, the speaker of the Constituent Assembly was also against this Hindu Code Bill. They pointed towards the antiquity of Hindu civilization and claimed the inherent rectitude being the cause behind the subsistence through time. To that Dr. Ambedkar reasoned,

'I believe, I have a sufficient understanding of the Indian history and the point that I would like to raise is this. Is survival enough or whether it is necessary for us to consider whether the plane on which we survived is more important than the mere survival itself? A man who mixes with his opponent in battle vanquishes him, obtains victory on him also survives. A man who meets his opponent, runs away from him like a coward and he also survive. Is the survival of the victor of the same value, of the same character as the survival of a coward? I think we ought to consider this question on what plane has the Hindu society survived.'^x

The principal objections advanced by the opposition to the Hindu Code Bill were: (1) It interfered with Hindu religious law. (2) It broke with custom and tradition. (3) It would lead to endless litigation over inheritance rights. (4) It would break up the joint family. (5) Women do not need equality because in many respects in family relations they are considered superior by Hindu custom. (6) Monogamy would prevent a Hindu man from having a son (which according to orthodox Hindu belief is essential to salvation) if his wife were barren. (7) The setting up of specific grounds for divorce would lead to a condition of promiscuous marriages and divorces as in the United States (8) The court action required for divorce by the Code Bill would be beyond the financial means of the tribal and low-caste peoples, whose present customary procedures involve only simple formalities and little expense. 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!' This is true if one believes, as most orthodox Hindus do, that members of the same clan (Gotra) are related; male and female members of the same clan are therefore looked upon as brothers and sisters, even if only the family name is the same and the actual degree of relationship is remote.^{xi}

Conclusion

The Hindu Code Bill was the most controversial Bill considered by the Provisional Parliament. It was presented in the House twice and both the times no progress could be made on the bill. The Hindu Code Bill was the protest against Manu's code. Bitter opposition from congress members, the Hindu Mahasabha, and other Hindu religious leaders reiterates the Bill's challenge to the very basis of Brahmanical patriarchy. They termed this code a manifesto of unfettered freedom for women and susceptible to dividing every family. He resigned from the cabinet law ministry on Sept., 27, 1951. In his resignation, he explained the delay for the action he took as well as the reasons why he relinquished. Ambedkar's statements in parliament in defense of the Hindu Code Bill and his statement in the 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 the Brahmanical patriarchy of the state. In various speeches during this period, Ambedkar highlighted the importance of the bill for women's freedom. In 1952, for instance, at a meeting organized by the Belgaum district of Scheduled Caste

Federation in Kolhapur, he claimed: 'on wealth depends her independence and a woman must be very particular to retain her wealth and rights, to help retain her freedom.' Although Dr. Ambedkar could not succeed in getting passed the full Hindu code Bill, he successfully put the ball rolling & laid the foundation of equality for the women of India in all spheres of life. The bill as prepared by Dr. Ambedkar was later split into four bills and these were passed as the Hindu Marriage Act, 1955; the Hindu Succession Act, 1956; the Hindu Minority and Guardianship Act, 1956; and the Hindu Adoption and Maintenance Act, 1956.

References

- [1] ⁱMulla D.F; Hindu Law, Ed. 21st (updated) pp. 7
- [2] ⁱⁱ Bhattacharjee, A.M., Hindu Law and the Constitution Ed. 2nd, (1994), pp. 36
- [3] ⁱⁱⁱSaxena, Poonam Pradhan. (2011). Property Law. New Delhi: Lexis Nexis Butterworth's.
- [4] ^{iv}Rights of Women in Hindu Joint and Coparcenary property after 2005 Amendment- Effects of recent Judicial Pronouncements, http://mja.gov.in/Site/Upload/GR/Workshop_280215_Civil.pdf
- [5] ^v ibid
- [6] ^{vi}Levy, Harold Lewis. (Nov., 1968 - Feb., 1969). Lawyer-Scholars, Lawyer-Politicians and the Hindu Code Bill, 1921-1956. *Law & Society Review*, 3(2/3), pp. 303-316.
- [7] ^{vii}Madhavrao Raghavendra v. Raghavendrarao (1946) 48 Bom. L.R. 196 at 224.
- [8] ^{viii}Banningan, John A. (1952). The Hindu Code Bill. *Far Eastern Survey*, 21(17), 173-176.
- [9] ^{ix}Rodrigues, Valerian. (2011). The Essential Writings of B. R. Ambedkar, (pp.495-516). New Delhi: Oxford University Press.
- [10] ^xDr. Babasaheb Ambedkar: Writings and Speeches, BAWs, vol. 14 part two, Government of Maharashtra, Department of education, Bombay, 1995, pp. 1158-59
- [11] ^{xi}Banningan, John A. (1952). The Hindu Code Bill. *Far Eastern Survey*, 21(17), 173-176.
- [12] Buxbaum D.C. (1968) Codification of Hindu Law. In: Buxbaum D.C. (eds) Family Law and Customary Law in Asia. Springer, Dordrecht