

# **HINDU CODE BILL**

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## **INTRODUCTION**

For much of accorded history, the aspirations of the people were subject to the whims of tyrants, peaceful revolts were met with forceful repression, large chunks of people were systematically exterminated, the majority of people did not have any sense of control over their own destiny, Power and wealth was concentrated in the hands of a few, dissidents had no rights and were brutally silenced, people from a different background, religious faith and ideology were persecuted by not only the rulers but their own community, the notion of the government of the people, by the people and for the people was a fantasy.

In the last three centuries, however, the idea of a democratically governed state begun to take root in many parts of the world. Along with it came its own problems, problems to reconcile diversity and harmony, problems as to how the people from different religious and political affiliations can live together in peace, problems of sustaining faith and tradition with the interdependence and complexities of the modern world.

The solutions of those problems alluded to some universally accepted principles, held in high esteem by most but necessity of being followed by everybody. Some of those indispensable principles required a set of laws related to the customs and personal matters of the people to be embraced by everybody irrespective of religion, creed, color and race. Hindu Code Bill, however imperfect, is one of those set of laws.

Falling within social reforms, Hindu Code Bill belongs to the class of a common, universal and uniform civil code, which lays down the rules of behavior to be followed in some

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of the most ancient matters such as Marriage, property, offspring, guardians or more simply interpersonal relationships.

Most of the democratic, secular nation today has respective uniform civil codes. India being the largest and the most diverse democracy surprisingly has no such law.

However, in the aftermath of independence and partition, India did engage in the contentious debate over this issue and finally settled with a Hindu Civil Code encompassing more than 80% of the population of the country.

This research paper is a qualitative study of the Hindu Code Bill using information about its history and structure from various sources and its current status, it takes some liberty in anticipating about the future of this Bill.

### **What is Hindu Code Bill ?**

Hindu Code Bill is a set of laws which was extensively debated and then has to be passed as four separate bills during 1950s, in order to reform Hindu Personal Law, to which a vast majority of Indians had to comply with including Hindus, Sikhs, Buddhists, Jains in the matters of –

- a) Marriage
- b) Divorce
- c) Inheritance
- d) Maintenance
- e) Adoption
- f) Succession

Notwithstanding to the British Policy of Non-interference, the Nehru administration reformed the personal law of Hindus, as a first step towards a broader uniform civil code, despite strong opposition from the vast majority, as it saw it indispensable in reconciling faith and tradition with the needs of the modern society and also to forge a firm and lasting union.

As the name suggests, Muslims were exempted from complying to this law so as not to antagonize them as the minority creed in the newly formed sovereign state, with the prospect of including them in future and subsequently enacting a Uniform Civil Code.

Since the bill was introduced to reform Hindu laws based on the issues related to customs, traditions and religious faith, It was seen by the orthodox Hindus as a conspiracy, unnecessary and inappropriate interference in their personal matters. One of the main opponents of the bill was Karpatri Maharaj<sup>2</sup>, who was highly regarded as a knowledgeable person of Hindu literature, he argued that the bill is inconsistent with the Hindu Scriptures and challenged the Prime Minister for an open debate on Hindu code bill. He and his organization conducted nationwide protests against the draft of Hindu Code Bill.

While inside the constituent assembly SC Mukherjee, Nazeeruddin Ahmed were some of the most vocal opponents of the bill. The main points of objections were-

1. It was only for some communities, not for everybody.
2. Seen as an attack on Hindu traditions.
3. Sikhs, Buddhists, Jains accused it as a ruse to mix them with Hindus.
4. Anti-Hindu image of Dr. BR Ambedkar.
5. Unwanted interference in personal matters.

The supporters argued –

1. Essential for Hindu integration.
2. Major step towards a common civil code.
3. Protects vulnerable individuals within their community.
4. Loosens the grip of traditionalists over a large population.
5. Consistent with India being a secular state.
6. Avoid unnecessary trouble for Muslims initially.
7. Bans polygamy.

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<sup>2</sup>Pradhanmantri, Documentary, ABP News.

The bill was introduced for the first time in the parliament in 1947 by Dr. BR Ambedkar but was turned down by citing reasons that it is not an urgent bill and can be introduced later at a more suitable time. While some wanted the bill to be amended before being passed, while some forthrightly rejected to even consider such a Bill.<sup>3</sup>

However working diligently Dr. B R Ambedkar was able to reintroduce it again in 1951, again it was met with massive opposition from both inside and outside the Parliament and it was again deferred after significant protest.

After the first general elections the bill was broken down into four parts and each was passed separately.

### **Why is it needed?**

In a country as diverse as India, efforts to build a lasting and perfect union are doomed to fail if every sector, community and society is allowed to be governed by its own personal law. Furthermore to protect individuals from persecution and discrimination by their own community it is absolutely essential to have a uniform civil code. Hindu code bill was seen as a step towards achieving uniform civil code by the leaders of the time. This bill includes laws to be abided by, in the contentious civil matters related to marriage, divorce, inheritance etc that often leads to the dispute among the members of a family or society. In order to guarantee them equal rights it is absolutely necessary to free them off from the shackles of their societies based on religion, tribes, culture and tradition. And also to provide a uniform base for the society to thrive and develop, free of fear, intimidation, restriction and marginalization.

In many countries around the world such as America and European nations a secular uniform civil code is in force, while in many Islamic nations of Middle East sharia law is exercised. In a unique case of India different communities were allowed to follow their own personal laws in order to not antagonize minorities. However Hindu Code Bill is highly secular it is seen as a threat by many. Even during its framing and enactment it was met with opposition from strict orthodox traditionalists.

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<sup>3</sup>Nehru by S Gopal.

The ShahBano case made it a politicized open issue concentrated on character legislative issues—by method for assaulting particular religious minorities versus securing its social personality. In contemporary governmental issues, the Hindu conservative Bharatiya Janta Party and the Left bolster it while the Congress Party and All India Muslim Personal Law Board restrict it. Goa has a typical family law, along these lines being the main Indian state to have a uniform common code.

### **Who proposed it?**

In 1941, under the colonial government a four-membered committee was constituted called Rau committee in order to check Deshmukh act. Later the committee reckoned that situation is ripe for Hindu code. Social modernization and progress could only be made by fundamental reforms throughout the country. The code was to be made by the best of current schools of Hindu and ancient scriptures<sup>4</sup>.

The report was followed by 2 bills laid before a select committee of both the houses of parliament. Hindu Law Committee itself was revived in 1944 under its chairman B N Rau.

The committee prepared a draft code in 1947 facing the issues of Succession, Marriage and divorce, Minority and Guardianship and Adoption after extensively touring the country, examining opinions that went far beyond 1941 proposal, coming up with suggestions that property inheritance system be reformed to include Daughter's share in addition to the son's, abrogating restrictions in intercaste marriages, and provision of Divorce for higher castes.

The ministry of law revamped it in 1948 and made some minute changes to it in order to present it before the constituent assembly. Under B R Ambedkar's supervision the committee made a number of changes to it.

### **What does it entail?**

<sup>4</sup> Report B N Rau committee.

Article 44 of the Constitution of India states—

Uniform civil code for the citizens—the state shall endeavor to secure the citizens a uniform civil code throughout the territory of India.<sup>5</sup>—

In Pannalal Bansal Patel v. state of Andhra Pradesh, Supreme Court of India said that Uniform Law for all persons may be desirable but its enactment in one go may be counter-productive to the unity of the nation. The above judgment shows that the court is a little bit reluctant to interfere in the matters of personal law.<sup>6</sup>

This was the judgment of the first government of free India as well therefore it broke down the Hindu Code Bill into four parts and passed each part separately during 1954 to 1956. The four parts acts were-

### **1. Hindu Marriage Act 1955**

This bill amended Shastrik Law to introduce Divorce which was not there in the Shastrik Law.

It applies to

- a) Any person who is a Hindu by religion in any of its forms or developments, including a Varishaiva, a Lingayat or a follower of the brahmo samaj, Praathna or Arya samaj.
- b) Any person who is a Buddhist, Jain, Sikh by religion, and
- c) 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 have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed.

### **2. Hindu Succession Act 1956**

<sup>5</sup> Parliamentary debates on article 44.

<sup>6</sup> Article 44, The constitution of India.

-to amend laws related to intestate succession, among Hindus, Buddhists, Jains and Sikhs.

- outlays a uniform and comprehensible system of inheritance and applies to persons governed by Mitaksara and Dayabhaga schools.

- includes Hindu women eligible for inheritance.

- Part of the bill amended in 2005.

### **3. Hindu Minority and Guardianship act 1956**

-aimed to upgrade the Guardians and Wards act of 1890.

-A guardian is the caretaker of the minor, his or her property, or both.

-defines guardian and minor.

-any former law inconsistent with this act declared void.

### **4. Hindu Adoptions and Maintenance Act 1956**

-under this act only Hindus may adopt subject to the fulfilment of certain criteria.

-adopter have to have the capacity to provide for the adopted.

-men can adopt only with the consent of his wife.

-only Hindu unmarried women can adopt.

-a Hindu woman is provided for by her husband throughout the duration of her lifetime.

-the wife is allowed to live separately from her husband and still entitled to be provided by her husband.

-specific provisions for the maintenance of child and Parents.

This were met with significant opposition too but were passed between the years 1952 and 1956, each was effectively introduced in and passed by the parliament.

## **Major Amendments**

1. The Hindu Marriage act initially include Sikhs but with passage of Anand Karj marriage act, Sikhs now also have their own personal law related to marriage.<sup>7</sup>
2. The guardian ship for marriage was repealed in 1978 after the child marriage restraint was passed.
3. The supreme court of India exercised its powers under article 142 of the Constitution of India to rule that marriages can be ended before expiry of the cooling period of six months with mutual consent as stipulated in the Hindu Marriage act of 1956.<sup>8</sup>
4. In 2010 further amendments were moved to enhance special marriage act of 1954 and Hindu Marriage act of 1956.

## **FUTURE PROSPECT**

With the inauguration of BJP led NDA government at the Centre we have a government with full majority free to take bold decisions and having Uniform Civil Code in the manifesto. We can see in the near future Hindu Civil Code repealed and a Uniform Civil Code been passed.

The Modi Government has already set up a committee to look into the matter and figure out such possibilities to pass an all-inclusive common civil code spanning across the communities. The Supreme Court has sought government's willingness to pass the bill after the Sayra Bano case 2014 , and the unprecedented demand for such a law by Bhartiya Muslim Mahila sangathan. For the first time we are seeing such an urge from within the Muslim community to pass the much needed civil reform. Since for the first time in 30 years a government has absolute majority in Lok Sabha, we can see government taking significant measures on this issue soon. However the government should involve all the stakeholders and engage them in dialogue so as to get a smooth path for the enactment of such a bill.

## **CONCLUSION**

The Hindu Code Bill is a stepping stone towards a broader and comprehensive Uniform Civil Code. It was introduced quite early though it didn't lived up to its founding purpose of

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<sup>7</sup> Hindu Marriage Act 1956.

<sup>8</sup> Special marriage act 1954.

unifying the whole country later on. We are still debating as to the suitability of enacting a Uniform Civil Code. The bill after being passed as four separate bills has been revised many times to include important provisions and upgrades. India at the time of framing of this bill had 80% Hindu population and therefore Hindu Code Bill was the logical and pragmatic choice to start with.

The bill has succeeded to a great extent in unifying Hindus. Time is now ripe to move towards the unifying the whole nation under a common set of laws. The move will surely be met with opposition but that has to be endured in order to fulfil the promise embedded in the bill. The difficulties to be faced are justified by the reduced complexity in the law and increased unity among the citizens.

A civil code not only eases the work of judicial system but also increases protection of the citizens from any form of persecution and discrimination. With the advent of modern technologies and increased global exposure the notion that we can still be governed by separate personal laws is obsolete. The enactment of Hindu Code Bill had not only empowered citizens but provided them a common platform to thrive and advance the cause of peace, justice, liberty, freedom and equality.

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