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Jawaharlal Nehru and The Hindu code bill

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Abstract

Jawaharlal Nehru was the most outstanding leader of the twentieth century. A true patriot, a valiant freedom fighter, an outstanding statesman, he was the maker of modern India. The prominent role played by Nehru in the freedom movement, along with other great leaders, did not end with the attainment of freedom. As the first Prime Minister of the country he then threw himself into what he used to call “the adventure of building new India.” And in the new India Nehru wanted that women should not “occupy a secondary place in the world in relation to men.” He believed that real and rapid progress in India would only come when the womenfolk would get really moving and rid themselves of everything that suppressed them and kept them back. His objective had always been a society based on equal rights and opportunities. In this context, this paper attempts to examine Nehru’s role in getting the Hindu Code Bill passed for bringing about the empowerment of women in India.

Keywords: Jawaharlal Nehru, Hindu code bill, B.N. Rau, The Hindu marriage act, Hindu succession Act

Introduction

Jawaharlal Nehru is credited for having recognized the need formally to grant equality between the sexes and to enshrine it in the Fundamental Rights drawn up at the Karachi Congress of 1931 ^[1]. (Som, 165). The Hindu Code Bill which was passed during Nehru’s Premiership was the outcome of his strong concern for womenfolk and his strong advocacy for equality between sexes, women emancipation, economic content of women rights and obligations. Nehru loudly proclaimed: “I have the greatest admiration.... for the women of India today. I have faith in them. I am not afraid to allow them freedom to grow, because I am convinced that no amount of legal constraint can prevent society from going in a certain direction. And if you put too much legal constraint, the structure breaks.” Nehru was of the strong belief that women themselves had to fight for their rights and force their will on the men folk before they can succeed.

Nehru and Hindu Code Bill

Nehru wanted to break the socio-legal restraints on women. But however it took Nehru several years as he had to face stiff opposition from the orthodox group in his bid to carry forward progressive legislation affecting personal laws. In this context the battle for the Hindu Code Bill marks a close of a long chapter of struggle and the beginning of a new era. Nehru remarked in 1962: “The one thing which I consider to have been my greatest contribution to India is getting the Hindu Code Bill passed into Law. It was not easy you know. Everybody was against it. I had to be patient, bide my time, wait for the opposition to weaken and it passed bit by bit.”

In the early years Hindu Law was unwritten. The role of custom was regarded as one of the important sources of law. Within the Hindu law there were two major schools- Mitakshara and Dayabhaga. Apart from that there were a number of sub-schools and different customs with diverse application in different parts of the country. “The British policy of non-interference in indigenous personal law and the rigidity of the British judiciary had created a situation where the evolutionary growth of Hindu law had become arrested.” Moreover women faced inequality in all matters governing personal law like marriage, maintenance, inheritance and guardianship. So there was a need for bringing about a uniformity in legal practices through codification.

It was the passing of the Hindu Women’s Right to Property Act also known as the Deshmukh Act, in 1937 that “brought out the legitimacy of this demand for codification.” The Hindu Code Committee which was set up in 1941 under the chairmanship of B.N. Rau,

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a former judge of the Calcutta High Court, after examining the responses received from different quarters, prepared its report. It was opposed to piecemeal legislation and suggested a complete code should be prepared blending the best of all schools and sub-schools. The committee met again in 1944 under B.N. Rau, and it prepared a Draft Code dealing specifically with Succession, Maintenance, Marriage and Divorce, Minority and Guardianship and Adoption. This came to be known as the Hindu Code Bill. Not only this a Draft Code was also translated into twelve regional languages and given a great deal of publicity.

Nehru who throughout his life fought for women emancipation, had realized that women should have a share in the property of their fathers and husbands. According to him after the death of her father an unmarried woman would have to remain at the mercy of her brothers, who would not always treat her properly. Similarly a widow had no other option but to depend upon her husband's family. Therefore, Nehru was bent upon removing this legal disability so that woman could have a better status in society. Hence B.N. Rau was asked to submit the Draft Code for new suggestions. In 1948, under Nehru's Premiership, the draft report was submitted to the Select Committee under the Chairmanship of B.R. Ambedkar, the Law Minister at that time. While introducing the Code in the Constituent Assembly, Ambedkar reiterated that the aim of the Bill was "to codify the rules of Hindu Law which are scattered in innumerable decisions of the High Courts and the Privy Council, which form a bewildering motley to the common man." He introduced several important changes in the Bill including equal property rights for women, abolition of customary law, and specification of grounds for divorce.

After the Bill was introduced by Ambedkar, many members welcomed it, Hansa Mehta referred to the Bill as a revolutionary one. Even though as she remarked: "we are not quite satisfied with it, it will be a great landmark in the social history of the Hindus ^[2]." B.V. Keskar, while welcoming the Bill, remarked: "I do not think there has been any bill so radical and so revolutionary which is trying to change the very foundations of Hindu society, a society which has remained fossilized for the last thousand years." Begum Aizaz Rasul in welcoming the Bill also warned the House that orthodox opinion would garner full strength to resist all changes and stated: "There is no doubt that this being such a fundamental measure and also connected in many ways with religion, there will be certain sections of society amongst the Hindus who will oppose it, but, Sir, it needs courageous minds to bring forward courageous measures and therefore, I hope that orthodox opinion in the country which looks with disfavor upon this legislation will not stand in the way of its being passed ^[3]..."

Paradoxically when the Bill was reintroduced in the Constituent Assembly on April 1948 with the major changes, it could be seen that the same members of the Assembly, which had just accepted the principles of equality and removal of discrimination based on sexes in the new Constitution, opposed tooth and nail the Hindu Code Bill. According to Reba Som: "Their opposition opened up the Pandora's box of age-old superstitions, complexes, patriarchal feelings and deep-rooted prejudices running along caste, class, religious and regional lines ^[4]."

Nehru strongly denounced the delaying tactics adopted by his opponents and firmly remarked: "We stand committed to the broad approach of the Bill as a whole ^[5]" and the

Government "will stand or fall on it." Only a few Congress members came forward strongly in support of the Bill.

In a speech at a women's meeting in Ahmedabad on 31 January 1951, Jawaharlal Nehru said: "The Hindu Code Bill is not a revolutionary measure. The Code has been pruned of many of its controversial sections. This was done because it was felt that in some respects of social reform at least we should go forward. Ultimately, women themselves will have to agitate to win their rights... Some Members of Parliament are deadly opposed to it. But I cannot see any sense in that opposition, whatever they say about the inviolability of old Hindu ideas ^[6]."

It may be pointed out here that when the Hindu Code Bill was debated, Renuka Ray, who was one of the members of the Constituent Assembly played a leading role in articulating the position of women's movement on Hindu law reform. She argued that the equal rights promised by the Constitution was meaningless without inheritance rights. But as the discussion on the Bill could not be completed due to lack of time and the session ended, therefore the Bill lapsed and it remained in hibernation for three years until 1952, when Nehru came out victorious in the 1952 elections and this provided him with an opportunity to implement his vision of empowering Hindu women of India. Therefore, the Hindu Code Bill was taken out of the shelves and debated during 1953-56. Nehru decided to break up the Code into four separate parts to facilitate their early passage. Ultimately in May 1955, the Hindu Marriage Act was passed, followed by the Hindu Succession Act in May 1956; the Hindu Adoption and Maintenance Act in December 1956 and the Dowry Prohibition Act in July 1961. The series of laws greatly improved the status of Hindu women who constitute the majority of women of India ^[7].

The Hindu Marriage Act of 1955 was possibly the most important part of the Acts passed in favour of women's rights between 1954 and 1961 which "brought about a truly revolutionary change." The Act brought to an end of marriage being a one-sided sacrament and men were also now bound by monogamy. It also provided for the first time provision for divorce. One could sought for divorce on the grounds of adultery, desertion, cruelty, insanity or incurable disease. Till 1955 Marriage Act, the Hindu women had no right to divorce on any grounds- even if the husband took a second wife. But now the legislation provided relief to the wife as she could end the marriage if the marriage proved unhappy. On 5 May 1955, Nehru stated in Parliament that in the small State of Saurashtra, there was "on average one suicide a day among the women because of mal-adjustments in human relationships ^[8]." Therefore with the Hindu Marriage Act the Hindu wife remained no longer a slave to her husband and got full equal rights.

The Hindu Succession Act which came in force from June 1956 gave the daughter, mother and the widow full share of succession to the property of the deceased Hindu male. Till this Act, only sons had the right to inherit father's property. But now with this Act, women not only have the right to own their property, but also have the right to sell, mortgage, or give away the property if they so wish. This was indeed a landmark measure passed by Nehru as it raised the position of the Hindu women at par with men.

By the Hindu Adoption and Maintenance Act, 1956 the wife was entitled to claim maintenance from the husband in case of divorce. The Hindu Minority and Guardianship Act gave rights to father to be the natural guardian of a child and it

also gave mother guardianship rights if the father neglected the child.

The Dowry Prohibition Act prohibits the giving or agreeing to give any property or valuable security “by parents of either party or by any other at or after the marriage as consideration for the marriage.” Thus, giving or demanding dowry is punishable with imprisonment, fine or both ^[9].

Expressing satisfaction over the passage of the Bills, Nehru said at the celebration of the birth centenary of Karve in Bombay on 18 April 1958:

“... I should like to say that the laws which have been passed in regard to women have given me a sense of achievement. I look upon these laws as measures which had long been due, and which would liberate the women of India and give them freedom to grow. I am now convinced that if the opportunity is given to them to grow, the women of this country can render great service to this country and to the world.”

Conclusion

Therefore Nehru was credited of having had the Hindu Code Bills passed. All these important pieces of legislation bestowed several legal rights to women and created the base for women empowerment in India which had been Nehru’s desire for a long time. Though the passage of this legislation was fraught with difficulty and whatever be its limitations, the fruits it yielded has certainly empowered the Hindu women of yesterday and today in many respects, which is indeed a matter of pride for them. Raj Kumari Amrit Kaur while commending Nehru stated: “The social reforms, that are now on the Statute Book. would have been talked out if it had not been for Jawaharlal’s powerful advocacy of and insistence on them.” ^[10]

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