

THE LAW AND THE PROPHETS

Some of these progressive movements have a great fascination for Nehru. He always likes to be looked upon as a modern; he wants to be a Picasso hung up in the Royal Academy, looking upon the classical forms around him with a supercilious air.

D. F. KARAKA, journalist, 1953

It is a settled fact that every country and every nation has its own character. It is inborn and instinct with it. It cannot be changed. Shakespeare and Kalidas are both great poets and dramatists . . . India . . . could not produce a Shakespeare [nor] similarly England a Kalidas. I ask the sponsors of the reform, with all force and self-confidence, where is the necessity of *Europeanisation of Hindu Law?* . . . In codifying it there is danger of hurting seriously the susceptibilities and devotional feelings of millions of people.

Hindu lawyer, 1954

I

THE FRENCH WRITER André Malraux once asked Jawaharlal Nehru what had been his ‘greatest difficulty since Independence’. Nehru replied: ‘Creating a just state by just means’. Then he added, ‘Perhaps, too, creating a secular state in a religious country’.¹

Secularism was, indeed, an idea that underlay the very foundations of free India. The Indian national movement refused to define itself in religious terms. Gandhi insisted that the multiple faiths of India can and must co-exist peaceably in a free nation. This was a belief shared by Gandhi’s most prominent follower, Nehru, and by his acknowledged mentor, Gopal Krishna Gokhale.

Congress nationalism suffered a body blow at Independence. Freedom came not, as Gandhi and his colleagues had hoped, to one nation, but to two. Secularism now faced afresh set of challenges. One pertained to the domain of personal laws. In colonial times, the whole of India had come under a common penal code, drafted in the 1830s by the historian Thomas Babington Macaulay. But there was no attempt to replace the personal laws of various sects and religions with a common civil code. Here, as the British saw it, the colonial state’s role was restricted to adjudicating between different interpretations of religious law.

After Independence, among those favouring a common civil code were the prime minister, Jawaharlal Nehru, and the law minister, Dr B. R. Ambedkar. Both were of a modernist cast of mind, and both were trained in the Western legal tradition. For both, the reform of personal laws became an acid test of India’s commitment to secularism and modernization.

II

Article 44 of the Constitution of India reads: ‘The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.’

When this article was discussed in the Constituent Assembly, it provoked much agitation, particularly among Muslim members. During the two centuries of their rule, the British interfered little with personal laws; why could not the successor state follow their example? One member pointed out that ‘as far as the Mussalmans are concerned, their laws of accession, inheritance, marriage and divorce are *completely dependent* upon their religion’. A second felt that ‘the power that has been given to the state to make the civil code uniform is in advance of the time’. A third believed that the clause contravened another clause in the constitution: the freedom to propagate and practise one’s religion.²

These arguments were forcefully refuted by B. R. Ambedkar. As he saw it, ‘if personal laws are to be saved, . . . in social matters we will come to a standstill’. In traditional societies, religion presumed to hold a ‘vast, expansive jurisdiction so as to cover the whole of life’. But in a modern democracy this licence had to be curtailed, if only ‘in order to reform our social system, which is so full of inequities, so full of inequalities, discriminations and other things, which conflict with our fundamental rights’. To assuage the misgivings, Ambedkar said that the state might choose to apply a uniform civil code by consent, that is, only to those who chose voluntarily to submit to it.³

As it happened, during the last years of their rule the British had belatedly initiated the framing of a uniform code for Hindus. This sought to reconcile the prescriptions of the two principal schools of law – the Mitakshara and the Dayabhaga – and their numerous local variations. A committee had been setup in 1941 chaired by Sir B. N. Rau, who was also to play a crucial role in drafting the Indian Constitution. The committee toured India, soliciting a wide spectrum of Hindu opinion on the changes they proposed. Their progress was interrupted by the war, but by 1946 they had prepared a draft of a personal law code to be applied to all Hindus.⁴

That the Hindus were singled out was in part because they were the largest community, and in part because there was a vigorous reform movement among them. Mahatma Gandhi, in particular, had challenged the discriminations of caste and gender, by seeking the abolition of untouchability and bringing women into public life. Although there remained an influential orthodox section, modernist Hindus had campaigned strongly for laws that would make caste irrelevant and enhance the rights of women.

In 1948 the Constituent Assembly formed a Select Committee to review the draft of a new Hindu code. It was chaired by B. R. Ambedkar, the law minister. The code drafted by the Rau Committee was revised by Ambedkar himself, and then subjected to several close readings of the Select Committee.

Despite its name, the ‘Hindu’ Code Bill was to apply to Sikhs, Buddhists and Jains as well as all Hindu castes and sects. Introducing the new bill, Ambedkar told the Assembly that its aim was to ‘codify the rules of Hindu Law which are scattered in innumerable decisions of the High Courts and of the Privy Council, [and] which form a bewildering motley to the common man and give rise to constant litigation’. The codification had a dual purpose: first, to elevate the rights and status of Hindu women; second, to do away with the disparities and divisions of caste. Among the notable features of the proposed legislation were:

1. The awarding, to the widow and daughter, of *the same share as the son(s)* in the property of a man dying intestate (which in the past had passed only to his male heirs). Likewise, a Hindu woman’s estate, previously limited, was now made absolute, to be disposed of as she wished.

2. The granting of maintenance to the wife who chose to live separately from the husband if he had a 'loathsome disease', was cruel to her, took a concubine, etc.
3. Abolition of the rules of caste and sub-caste in sanctifying a marriage. All marriages between Hindus would have the same sacramental as well as legal status, regardless of the castes to which the spouses belonged. An inter-caste marriage could now be solemnized in accordance with the customs and rites of *either* party.
4. Allowing either partner to file for and obtain divorce on certain grounds, such as cruelty, infidelity, incurable disease, etc.
5. Making monogamy mandatory.
6. Allowing for the adoption of children belonging to a different caste.

These changes went very far in the direction of gender equity. Later, much later, feminist scholars were to argue that they did not go far enough, that they exempted agricultural properties from their provisions, for example, or that the advantages conferred on female heirs by the new laws were greater in the case of self-acquired property as compared to property that was inherited.⁵ But from the viewpoint of Hindu orthodoxy the changes had already gone far enough. They constituted radical departures from the main body of Hindu law, where the son had a much larger claim on his father's property as compared to the wife and daughter, where marriage was considered a sacrament and hence indissoluble, where the man was allowed to take more than one wife, and where marriage was governed strictly by the rules of caste.

In defending these changes, Ambedkar was at times rather defensive. Thus he argued that the Shastras, the Hindu holy texts, did not give the husband 'an unfettered, unqualified right to polygamy'. The 'right to marry a second time has been considerably limited by the [ancient law maker] Kautilya'. Again, the customary law of the various low castes, or *shudras*, had always allowed divorce. As for the woman's right to property, some schools allowed her a quarter share in her father's property; all Ambedkar had done was to 'raise [the daughter] up in the share of heirs', by making her share full and equal to that of the son.⁶

Ambedkar was here putting the best possible, or most liberal, spin on Hindu texts and traditions. But alternative interpretations were possible, and certainly more plausible. Not surprisingly, Ambedkar's proposals provoked 'loud denunciations' from the orthodox, who viewed them as 'a complete abrogation of the Hindu customs and traditions', an unacceptable interference with the rules of caste and the traditional relations between the sexes.⁷

A doughty opponent of the bill was the Constituent Assembly's own president, Rajendra Prasad. In June 1948, shortly after the Select Committee had been set up, Prasad warned the prime minister that to introduce 'basic changes' in personal law was to impose the 'progressive ideas' of a 'microscopic minority' on the Hindu community as a whole. Nehru answered that the Cabinet had declared itself in favour of the bill, that 'personally, I am entirely in favour of the general principles embodied in it'. To scrap the legislation now would be to give rise to the suspicion that the Congress was 'a reactionary and a very conservative body'; nor would it go down well 'in the mind of foreigners outside India'. Prasad shot back that the opinions of the 'vast bulk of [the] Hindu public' were more important than the views of foreigners.⁸

Within the Assembly there were other opponents as well. They stalled and thwarted the proceedings until Nehru, in high dudgeon, told them that to him the passing of the bill had become a

matter of prestige. Prasad, in response, drafted a letter warning the prime minister that this would be ‘unjust and undemocratic’, as this ‘fundamental and controversial legislation’ had never been considered by the Indian electorate. Fortunately for him, Prasad consulted Vallabhbhai Patel before sending Nehru the letter. The timing is crucial here, for it was now December 1949, and soon the Congress would choose the first president of India from a shortlist that comprised Rajendra Prasad and C. Rajagopalachari. With this in view, Patel told Prasad not to send the prime minister his criticisms of the Hindu code, lest it ‘prejudice your position within the party’.²

So Prasad kept quiet (and was duly elected the first president of the Indian Republic). But outside the Council House the cries grew louder. Already, in March 1949, an All-India Anti-Hindu-Code-Bill Committee had been formed. This held that the Constituent Assembly had ‘no right to interfere with the personal laws of Hindus which are based on Dharma Shastras’. Sixty (male) members of the Delhi Bar issued a statement objecting to the codification of Hindu law, on the grounds that ‘the mass of the Hindus believe in the Divine Origin of their personal laws’.

The Anti-Hindu-Code-Bill Committee was supported by conservative lawyers as well as by conservative clerics. The influential Shankaracharya of Dwarka issued an ‘encyclical’ against the proposed code. Religion, he said, ‘is the noblest light, inspiration and support of men, and the State’s highest duty is to protect it’.

The Anti-Hindu-Code-Bill Committee held hundreds of meetings throughout India, where sundry swamis denounced the proposed legislation. The participants in this movement presented themselves as religious warriors (*dharmaveer*) fighting a religious war (*dharmayudh*). The Rashtriya Swayamsevak Sangh threw its weight behind the agitation. On 11 December 1949, the RSS organized a public meeting at the Ram Lila grounds in Delhi, where speaker after speaker condemned the bill. One called it ‘an atom bomb on Hindu society’. Another likened it to the draconian Rowlatt Act introduced by the colonial state; just as the protests against that act led to the downfall of the British, he said, the struggle against this Bill would signal the downfall of Nehru’s government. The next day a group of RSS workers marched on the Assembly buildings, shouting ‘Down with Hindu code bill’ and ‘May Pandit Nehru perish’. The protesters burnt effigies of the prime minister and Dr Ambedkar, and then vandalized the car of Sheikh Abdullah.

The leader of the movement against the new bill was one Swami Karpatriji Maharaj. We know little of this swami’s antecedents, except that he was from north India and appeared to be knowledgeable in Sanskrit. His opposition to the Bill was coloured and deepened by the fact that it was being piloted by Ambedkar. He made pointed references to the law minister’s caste, suggesting that a former Untouchable had no business meddling in matters normally the preserve of the Brahmin.

In speeches in Delhi and elsewhere, Swami Karpatri challenged Ambedkar to a public debate on his interpretations of the Shastras. To the law minister’s claim that the Shastras did not really favour polygamy, Swami Karpatri quoted Yagnavalkya: ‘If the wife is a habitual drunkard, a confirmed invalid, a cunning, a barren or a spendthrift woman, if she is bitter-tongued, if she has got only daughters and no son, if she hates her husband, [then] the husband can marry a second wife even while the first is living.’ The swami supplied the precise citation for this injunction: the third verse of the third chapter of the third section of Yagnavalkya’s *smṛiti* (scripture) concerning marriage. He did not, however, tell us whether the injunction also allowed the wife to take another husband if the existing one was a drunkard, bitter-tongued, a spend-thrift, etc.

For Swami Karpatri, divorce was prohibited in Hindu tradition, while ‘to allow adoption of a boy of any caste is to defy the Shastras and to defy property’. Even by the most liberal interpretations, the woman’s inheritance was limited to one-eighth, not a half as Ambedkar sought to make it. The bill

was altogether in violation of the Hindu scriptures. It had already evoked ‘terrible opposition’, and the government could push it through only at its peril. The swami issued a dire warning: ‘As is clearly laid down in the Dharmashastras, to forcibly defy the laws of God and Dharma very often means great harm to the Government and the country and both bitterly rue the obstinate folly.’¹⁰

III

In December 1949, having agreed upon a constitution, the Constituent Assembly made way for a provisional Parliament, which was to be in place until the first general election. Through 1950 and 1951, Nehru and Ambedkar made several attempts to get the Hindu Code Bill passed into law. But the opposition was considerable, both within Parliament and outside it. To quote J. D. M. Derrett, ‘every argument that could be mustered against the project was garnered, including many that cancelled each other out’. The ‘offer of divorce to all oppressed spouses became the chief target of attack, and the cry that religion was in danger was raised by many whose real objection to the Bill was that daughters were to have equal shares with sons’.¹¹

Within the provisional Parliament, orthodox members claimed that the Hindu laws had stayed unchanged from time immemorial. ‘The rules of conduct and duties of men in our country are determined by the Vedas’, said Ramnarayan Singh. Despite the challenges down the ages – posed by Buddhism, Islam and Christianity – ‘the Vedic religion did not perish’. . . [the] Vedic religion is still there’. But now, complained Ramnarayan Singh, ‘we have Pandit Nehru’s administration whose representative Dr Ambedkar wants to abrogate with a single stroke all those rules which have existed since the beginning of the world’.

Some parliamentarians argued that the government should frame and have passed an Indian code rather than a specifically Hindu one. ‘I do not believe that only Hindu women are oppressed’, said Indra Vidyavachaspati. By passing the bill in its present form, the state would ‘give encouragement to [the] evil of communalism’. If it was not made applicable to all sections of the populations, insisted Vidyavachaspati, then ‘the feeling of communalism will arise and what should have been a boon will turn into a curse’.

Other members were happy enough with the bill as it was. ‘While I admire those who want to have one Civil Code for the whole of India’, said Thakur Das Bhargava, ‘I do not think that it would be a practical proposition to have one Civil Code for Muslims, Christians, Jews, etc.’. For Muslim members had already expressed their opposition to any tampering with their personal code, which they believed to be the revealed word of Allah himself. To ask at this stage for a uniform code was seen as a stalling tactic, diverting attention from the reform so urgently required within the majority community. As Dr Ambedkar put it, ‘those who until yesterday were the greatest opponents of this Code and the greatest champions of the archaic Hindu Law as it exists to-day’, now claimed that they were ‘prepared for an All-India Civil Code’. This was because they hoped that while it had already taken ‘four or five years to draft the Hindu Code [it] will probably take ten years to draft a Civil Code’.

Ambedkar knew that while there were enough influential Hindus – such as Jawaharlal Nehru – who were behind progressive legislation, among the Muslims the liberal contingent was nowhere near as strong. The government, he said, could not be so ‘foolish’ as ‘not to realize the sentiments of different communities in this country’. That was why the code at present dealt only with the Hindus.¹²

Of course, not all Hindus were of the liberal party either. The reservations of the orthodox, as

expressed in Parliament, were carried forward in the streets by the cadres of the Rashtriya Swayamsevak Sangh. They brought batches of volunteers into New Delhi, to shout slogans against the Hindu Code Bill and court arrest. Among their larger aims were the dismemberment of Pakistan and the unseating of Jawaharlal Nehru – as they shouted, ‘Pakistan tod do’, ‘Nehru Hakumat Chhod Do’.

The main speaker at these RSS-organized shows was usually Swami Karpatriji Maharaj. Addressing a meeting on 16 September 1951, the swami challenged the prime minister to a debate on the proposed bill. ‘If Pandit Nehru and his colleagues succeed in establishing that even one section of the proposed Hindu Code is in accordance with the Shastras’, said Karpatri, ‘I shall accept the entire Hindu Code’. The next day, in pursuance of this challenge, the swami and his followers marched on Parliament. The police prevented them from entering. In the ensuing scuffle, reported a Hindu weekly, ‘police pushed them back [and] Swamiji’s *danda* [stick] was broken, which is like the sacred thread, [the] religious emblem of the sannyasis’.¹³

Coincidentally, just two days before Swami Karpatriji’s march, the president had written the prime minister along letter of protest against the bill. As in 1948 and 1949, now too Rajendra Prasad felt that the present Parliament, based like its predecessor on a restricted franchise, was ‘not competent to enact a measure of such a fundamental nature’. The bill, argued the president, was ‘highly discriminatory’, for it applied to only one community, the Hindus. Either the same laws governing marriage and property should be applied to all Indians, or else the existing customary laws of the different communities should be left untouched. Prasad wrote ominously that ‘he proposed to watch the progress of the measure in Parliament from day to day’. If the bill was still passed, he would insist on his ‘right to examine it on its merits. . . before giving assent to it’.¹⁴

Nehru wrote back saying that in his view there was ‘a very widespread expression of opinion in the country in favour of the Bill’. But the president’s opposition had him worried, for it presaged a possible stand-off between the government and the head of state. He showed Prasad’s letter to several experts on the constitution. They assured him that the president was bound to act with ‘the aid and advice of the Council of Ministers and cannot act independently of that advice’. As they saw it, the position of the president of India was even weaker than that of the British monarch.¹⁵

Despite this advice, Nehru chose not to challenge the president. In any case, the progress of the bill in the provisional Parliament had been painfully slow. An immense number of objections and amendments had been tabled. It took the better part of a year to have a mere four clauses passed. In the end ‘the session ended, the bill was virtually talked out, and it lapsed’.¹⁶

The man who was most hurt by this failure was the law minister. Dr Ambedkar had staked his reputation on the bill, meeting criticism and calumny with equal resolution. That Nehru had finally chosen to give in to the opposition pained him deeply. In October 1951 he resigned from the Union Cabinet. He intended to announce his decision in the House, but when the Deputy Speaker asked for a copy of his speech beforehand, he walked out in a huff and released it to the press instead.

Ambedkar gave several reasons for his decision to resign. He had been in poor health, for one. For another, the prime minister had failed to repose adequate trust in him. Despite having a PhD in economics (from the London School of Economics, no less) he had been left out of discussions on planning and development. A third reason was his growing reservations about the government’s foreign policy, particularly with regard to Kashmir. A fourth reason was that the condition of his fellow Scheduled Castes continued to be wretched. Despite the coming of political independence, and a constitution protecting their rights, they faced the ‘same old tyranny, the same old oppression, the same old discrimination’.

Ambedkar came in the end to the issue which had finally provoked him to resign. He had, he

said, set his cap on having the Hindu Code Bill passed before the end of the Parliament. He had tried hard to convince the prime minister about the urgency of the matter. But Nehru did not give him the kind of support he had hoped for. Facing opposition within his own party, the prime minister, complained Ambedkar, had not ‘the earnestness and determination’ required to overcome it.¹⁷

IV

In the first months of 1952 the recent debates on the Hindu Code Bill cast their shadow as India held its first general election. Feeling let down by the Congress, Dr Ambedkar had founded his own Scheduled Caste Federation in opposition to it. As for the prime minister, in his own constituency of Allahabad he was opposed by a leader of the now notorious Anti-Hindu-Code-Bill Committee.

This was Prabhu Dutt Brahmachari. He was an ascetic and celibate, to signal which he wore saffron. Brahmachari’s candidature was supported by the Jana Sangh, the Hindu Mahasabha and the Ram Rajya Parishad. His campaign was run on a single-item agenda – no tampering with Hindu tradition. He printed pamphlets detailing the prime minister’s attempts to interfere with that tradition, challenging him to an open debate on the subject.¹⁸

Nehru sensibly refused. He won his seat with a massive margin, while the Congress got a comfortable majority overall. Nehru saw this, in part, as a mandate for his campaign against communalism. Soon after the Parliament was convened he resurrected the Hindu Code Bill.

Keeping the earlier protests in mind, the original bill was now broken up into several parts. There were separate bills dealing with Hindu marriage and divorce, Hindu minority and guardianship, Hindu succession, and Hindu adoptions and maintenance. These component parts retained the rationale and driving force of the original unified proposal. The main thrust was to make caste irrelevant to Hindus with regard to marriage and adoption, to outlaw polygamy, to allow divorce and dissolution of marriage on certain specified grounds and to greatly increase a woman’s share of her husband’s and her father’s property.¹⁹

The prime minister was in the vanguard of the pro-reform movement, telling Parliament that ‘real progress of the country means progress not only on the political plane, not only on the economic plane, but also on the social plane’. The British had allied themselves with ‘the most conservative sections of the community they could find’. The conjoining of tradition and colonialism meant that ‘our laws, our customs fall heavily on the womenfolk’. Thus ‘different standards of morality are applied to men and women’. Men were allowed more than one wife, but when a woman wished for a divorce she was challenged by men, only ‘because men happen to be in a dominant position. I hope they will not continue in that dominant position for all time.’

Hindu customs and laws were hypocritical as well as unjust. Women were urged to model themselves on mythic figures of devotion and fidelity but, said Nehru, ‘I do not seem to remember men being reminded in the same manner of Ramachandra and Satyavan, and urged to behave like them. It is only the women who have to behave like Sita and Savitri; the men may behave as they like.’²⁰

Nehru worked hard to convince his colleagues of the importance of these measures. He wrote to one of his senior ministers, a Brahmin who tended towards the orthodox, that ‘we have to remember that in the acknowledged social code and practice of India, as it has existed thus far, there was no lack of moral delinquency as well as extreme unhappiness. There were two codes, one for the man and the other for the woman. The woman got the worst of it always.’ To a young first-time MP Nehru

wrote that ‘we should concentrate on the passage through Parliament of the Marriage and Divorce Bills and the Succession Bill. These are the really important ones. The bills dealing with adoption and guardianship, etc. are relatively unimportant.’²¹

By now the Anti-Hindu-Code-Bill Committee had lost its momentum. After the 1952 election the names of Swami Karpatriji Maharaj and Prabhu Dutt Brahmachari do not appear in the newspapers or police records. There were no longer any protests on the streets, but there were still criticisms aplenty in Parliament. The orthodox MPs saw the new bills as designed to destroy Hindu culture. For them, the laws of Manu and Yagnavalkya were immutable and unchangeable, as relevant in 950 BC as in AD 1950.²²

But there was also an opposition that was less vulgar and more considered; representing what we might call Hindu conservatives rather than Hindu reactionaries. Consider thus the views of the distinguished historian Radha Kumud Mookerji. He felt that the new proposals, particularly the provisions allowing divorce, were

against the very spirit of Hindu civilization . . . The Bill is inspired by the western view of life which attaches more value to the romance of marital relations and married life than to parenthood in which marriage attains its fruition. The Hindu system conceives of parenthood as something that is permanent, unchangeable, and inviolable . . . The Bill seeks to change popular psychology as to the sanctity of marriage and family and loosen the ties of family as the very foundations of society. It thinks more of husband and wife than the father and mother in whom they are to be permanently merged to protect the child and the future of the race.²³

This argument did not go uncontested. A woman member felt that ‘the effect of a broken home is less injurious than that of a disharmonious home. Children are of a very receptive mind and the scenes that they may see of neglect and quarrel between the parents . . . are bound to leave their mark. If ‘the home has lost peace’, remarked another member, there was no point ‘forcing [husband and wife] to live together’; it was better to allow ‘separation in a respectable fashion’.²⁴

In the Lok Sabha the opposition to the reforms was led by the brilliant Hindu Mahasabha lawyer N. C. Chatterjee. If this was indeed a secular state, argued Chatterjee, what was the need for a ‘Hindu’ Marriage and Divorce Act? Why not make the same law apply for all citizens? Thus, if the government honestly believed in the virtues of monogamy, that ‘this is a blessing and polygamy is a curse, then why not rescue our Muslim sisters from that curse and from that plight? ‘You have not the courage’, Chatterjee told the law minister, ‘to be logical and to be consistent.’²⁵

The socialist J. B. Kripalani likewise felt that by prescribing monogamy only for the Hindus, the government was being hypocritical. ‘You must bring it also for the Muslim community,’ said Kripalani. ‘Take it from me that the Muslim community is prepared to have it but you are not brave enough to do it.’ But his own wife, the Congress MP Sucheta Kripalani, thought that the Muslims were not yet ready. For ‘we know the recent past history of our country. We know what trouble we have had over our minority problem. That is why I think the Government today is not prepared to bring one Uniform Civil Code. But I hope the day will soon come in the future when we shall be able to have one.’²⁶

The election of 1952 had returned to Parliament an array of articulate and confident women Congress MPs. These, naturally, saw the opposition to the legislation as the work of reactionaries. Subhadra Joshi, speaking in Hindi, launched abroad side against the custom of arranged marriages, which virtually sold women into *sharm ki zindagi*, a life of shame and degradation. Shivrajvati

Nehru noted that, while male politicians talked grandly of economic and political reform, they were not willing to make a single change in the sphere of social life and custom. In Hindu society the man was free and sovereign (*purn swatantra*); but the woman was bonded – to him. Even now, the husband was prone to treat his wife as a pair of slippers on his feet, to be discarded at will.^{[27](#)}

In support of the reforms were several Scheduled Caste members, who knew better than anyone else how Hindu ‘custom’ masked a multitude of sins. One MP said that if the orthodox had their way, they would

start amending the Constitution so as to do away with all the mischief done by this Congress Government, and certain new fundamental rights will be added. The first of them will be that all Hindu women will have the wonderful and glorious right of burning themselves on the funeral pyres of their husbands. The second fundamental right would be that the cow will be declared a divine being, . . . and all Indians, including Muslims, Christians and so on will be compelled to worship the cow.^{[28](#)}

The communists, for their part, thought the new laws were not radical enough. In the Lok Sabha, B. C. Das termed them ‘a mild, moderate attempt at social reform with all the hesitancy and timidity characteristic of all social measures sponsored by this Government’. Still, those who opposed this ‘moderate measure’ had ‘seventeenth-century minds’. In the Rajya Sabha, Bhupesh Gupta noted the delay in introducing the legislation owing to the fact that ‘the Congress Party . . . functions on many occasions like a Rip Van Winkle’.^{[29](#)}

Finally, one must take account of those Muslim members who were effusive in their thanks to government. One, speaking in Hindustani, praised it for keeping their laws intact and not allowing the slightest change in it. Another thanked the government ‘for showing their great consideration to the views and the feelings of the Muslim community, and for having exempted them from the operations of this [Marriage] Bill, because there is the personal law for them, based on, and part of, their religion, and they hold religion as the most sacred and valuable thing in their life’.^{[30](#)}

V

After a bruising battle extending over nearly ten years, B. R. Ambedkar’s Hindu Code Bill was passed into law; not, as he had hoped, in one fell swoop, but in several instalments: the Hindu Marriage Act of 1955 and the Hindu Succession, Minority and Guardianship, and Adoptions and Maintenance Acts of 1956.

These acts were piloted through Parliament by the new law minister, H. V. Pataskar. He lacked both the stature of his predecessor and his scholarship. Once, when he suggested that the Hindu sacramental marriage permitted divorce, N. C. Chatterjee remarked that there was no basis for that statement, adding: ‘If Shri Pataskar had sat for a Hindu Law examination in any University he would have been ploughed and he would have got zero.’^{[31](#)}

This might have been accurate, but was anyway irrelevant. For, as one dissenter recognized, the new bills constituted a ‘direct attack on the Hindu *shastras* and Hindu customs’.^{[32](#)} The right of a woman to choose her partner or to inherit property were ‘un-Hindu’; but not undemocratic, since the men had those rights all along. As Pataskar observed, the new laws were based on the constitutional

recognition of 'the dignity of person, irrespective of any distinction of sex'.³³

Another member of the Congress Party put it more eloquently. Women must have the right to choose (and discard) their husbands, he said, because 'we [Indians] were fighting for freedom. After liberating our country, our motherland, it is our responsibility to liberate our mothers, our sisters, and our wives. That will be the greatest culmination of the freedom that we have attained.'³⁴

Towards that end the new laws were indeed a notable contribution. Sixty million Hindu women came under its purview. But the changes were significant in moral as well as numerical terms. As a leading American expert on Indian law has written, this was a 'wholesale and drastic reform' which 'entirely supplants the *shastra* as the source of Hindu law'. A leading British scholar of the subject goes further: 'For width of scope and boldness of innovation', he says, the series of acts considered here 'can be compared only with the Code Napoléon.'³⁵

The radical changes in the Hindu law pertaining to marriage and property were principally the work of two men: Jawaharlal Nehru and B. R. Ambedkar. Sadly, in the last, crucial stages of the struggle Ambedkar was a bystander. Having failed to win his seat in the direct elections to Parliament in 1952, he then entered the Upper House. There he observed, silent, as the bills were discussed and passed between 1954 and 1956.³⁶ He was already a very sick man, with chronic diabetes and complications thereof, and in December 1956 he passed away. His sometime colleague Jawaharlal Nehru spoke in tribute in Parliament. Ambedkar, said the prime minister, would be remembered above all 'as a symbol of the revolt against all the oppressive features of Hindu society'. But he 'will be remembered also for the great interest he took and the trouble he took over the question of Hindu law reform. I am happy that he saw that reform in a very large measure carried out, perhaps not in the form of that monumental tome that he had himself drafted, but in separate bits.'³⁷

This was a generous tribute, especially when we consider the bitterness that lay behind Ambedkar's resignation in 1951. Then, Ambedkar thought that Nehru was too weak to fight the opposition within and outside his party. From his point of view the prime minister was going too slowly, but, of course, from the point of view of the orthodox Hindu he was going too fast. In 1949 and 1950, when the bill was first introduced, Nehru was not even in effective control of the Congress. It was only after Vallabhbhai Patel's death that he really took charge, overcoming the conservatives in the Congress and leading his party to a convincing victory in the general election. With the party, and country, now behind him, he was prepared to introduce, and steer through, the legislation once proposed by Ambedkar.³⁸

Nehru was determined to effect changes in the laws of his fellow Hindus, yet prepared to wait before dealing likewise with the Muslims. The aftermath of Partition had left the Muslims who remained in India vulnerable and confused. At this stage, to tamper with what they considered hallowed tradition – the word of Allah himself – would make them even less secure. Thus, when he was asked in Parliament why he had not brought in a uniform civil code immediately, Nehru answered that, while such a code had his 'extreme sympathy', he did not think that 'at the present moment the time is ripe in India for me to try to push it through. I want to prepare the ground for it and this kind of thing is one method of preparing the ground.'³⁹

Others viewed this caution more cynically. As Dr Shyama Prasad Mookerjee pointed out in the provisional Parliament, 'it is nobody's case that monogamy is good for Hindus alone or for Buddhists alone or for Sikhs alone'. Why not then have a separate bill prescribing monogamy for all citizens? Having asked the question, Dr Mookerjee supplied this answer: 'I am not going to tread on this question because I know the weaknesses of the promoters of the bill. They dare not touch the Muslim minority. There will be so much opposition coming from throughout India that government will not

dare to proceed with it. But of course you can proceed with the Hindu community in any way you like and whatever the consequences may be.'

At this point C. Rajagopalachari interjected: 'Because we are the community'.⁴⁰ 'We' were the Congress, particularly its reformist wing, represented by Nehru and rather ably by Rajagopalachari as well. One can appreciate their hesitancy to take on people of faiths other than their own. For it had taken them the better part of ten years to 'proceed with the Hindu community in any way they liked; that is in away that would help bring their personal laws somewhat in line with modern notions of gender justice'.⁴¹