

Dr. Ambedkar and Drafting of Indian Constitution: A ‘See Through’ into the Making of a Masterpiece from the Eyes of its Architect

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Abstract

Dr. B.R. Ambedkar in the capacity of the chairman of the drafting committee of Indian constitution had made a very significant contribution to give the Indian Constitution the shape and form as it has today. In this paper it is argued that all the modern principles inculcated in the Indian constitution are materialization of Ambedkar's modern thoughts on Governance and Democracy. The paper also argues that owing to his social bent of thought, only Dr. Ambedkar could have done justice to the concept of ‘Social Democracy’, which is a very important and distinguishing facet of the Indian Constitution. This is so, as he was not just a jurist but also a social reformer. The Articles of the Indian constitution for the inclusion of which, Dr. Ambedkar had to plunge in and convince other members of the constituent assembly are emphasized and discussed. In conclusion it is remarked that the greatest gift of Dr. Ambedkar was not only the constitution itself but also his philosophy of constitutionalism.

Keywords: Ambedkar, Indian Constitution, Democracy, Reservation, Caste.

1. Introduction

Dr. B. R. Ambedkar was a great jurist, statesman, philosopher, activist, sociologist, economist, liberalist and an exceptional humanist. Some may add even more qualities to what has been stated above, as it would always be less to describe him within few words. This dichotomy would be faced by anybody describing him, as he was not an individual but an ‘institution’ in himself. In the present paper, the endeavor is to provide an insight into Ambedkar as a jurist. His contribution in framing of India's constitution is phenomenal. In the pages to follow, an attempt has been made to analyze and examine the contributions of Dr. Ambedkar in drafting of the constitution and giving it a shape and form as it has today.

Drafting of the Indian constitution was a mammoth task. With about 444 articles and 12 schedules, Indian constitution qualifies as the longest constitution of the world. Indian constitution came into force in 26th January 1950; it was drafted during the time period of three years from December 1946 to December 1949 and debated in the constituent assembly.

Eminent Indian historian Ramchandra Guha describes the process of drafting of Indian constitution as follows: “The proceedings of the Constituent Assembly of India were printed in eleven bulky volumes. These volumes some of which exceed 1,000 pages - are testimony to the loquaciousness of Indians, but also to their insight, intelligence, passion and sense of humour. These volumes are little known treasure-trove, invaluable to the historian, but also a potential source of enlightenment to the interested citizen. In them we find many competing ideas of the nation, of what language it should speak, what political economic systems it should follow, what moral values it should uphold or disavow”.

The drafting committee, chaired by Dr. B. R. Ambedkar along with six other members was responsible for the drafting of Indian constitution. In the present paper an attempt is made to highlight the contributions of Dr. B. R. Ambedkar in framing of Indian Constitution. It is argued that considering the backdrop of India at that time, political and otherwise, Ambedkar was the best person who could be vested with the job of drafting Indian Constitution. The paper tries to justify that only Ambedkar could have come up with the constitution that India has today. Subsequently, his role as a chairman of the drafting committee and his contribution to the constitution as a civil rights expert is also discussed. Finally, it is concluded with an observation that Dr. Ambedkar's contribution to the constitution continues even today.

2. Only Dr. Ambedkar could have come up with such Constitution

Babasaheb Ambedkar was a name synonymous with Justice, Liberty, Equality and Fraternity - the four ideals of the Preamble of the Indian Constitution. He was the most suitable person to be appointed as the chairman of the drafting committee of the Indian constitution. This suitability was with respect to two aspects of his individuality. Firstly, he was amongst the most qualified jurist of India at that point of time, whose works were recognized by legal stalwarts like Ivor Jennings. Secondly, being a "Dalit", Dr. Ambedkar was the best person to know the cruel realities of caste system and suggest any constitutional reforms for removing social inequality.

He was a mixed balance of a Social Reformer and Legal Scholar. The idea of justice as envisaged by him was based on the utilitarianism. 'It is the greatest happiness of the greatest number that is the measure of right and wrong'. This was against the positivist school of legal thought that argued that 'society operates according to its own laws, much as the physical world operates according to gravity and other laws of nature'.

His greatest gift to the constitution was not the tangible constitution itself but a notion of "Constitutional Morality"¹ which would help the constitution to remain preserved in most difficult circumstances. He stated - "Constitutional morality is not a natural sentiment. It has to be cultivated. We must realize that our people have yet to learn it. Democracy in India is only a top dressing on an Indian soil which is essentially undemocratic"². He was ahead of his contemporaries in terms of his ideas on Democracy. His ideas on democracy were different from what India and World had accepted at that point of time. He was well aware about the realities of India and the non-workability of imported ideas of western democracy in the Indian set-up. The following words of writer Rudyard Kipling would provide a glimpse of pre-independence India. When he was asked about the possibility of self-government in India. 'Oh no!' he answered: 'they are 4000 years old out there, much too old to learn that business. Law and order is what they want and we are there to give it to them and we give it them straight'³

The above words truly reflect the wanting state of India at that time, but at the same time it also reflects the British ideology on the needs of India, which they very shallowly determined. They provided only 'law and order' and not 'social order'. Their complacency towards 'social order' was reflected in the Government of India Act, which was devoid of any 'Bill of Rights'⁴. In UK itself the first comprehensive equality legislation in the form of Equality Act 2010, came almost 60 years after India had set an example by inculcating fundamental rights in Part III, in the Indian constitution. In United States also there was no equality legislation as such. What we see today as 'affirmative action' in US came in 1961, after Indian constitution had come into force. Moreover, system of providing 'quota' is considered to be illegal by the Supreme Court of United States⁵ whereas Indian Constitution guarantees reservation to certain under privileged sections.

The loopholes of implementing tailor-made model of Governance and Democracy of the above-mentioned countries were well understood by Ambedkar. Therefore he added dimension of 'Social Democracy' to Indian constitution, which is absent in most other constitutions⁶. Dr. Ambedkar believed that the goal of democracy should be to bring positive changes to the social life⁷. Therefore the constitution that he gave India is not merely a legal framework for India's governance but as Glanville Austin describes it, it's a "social document"⁸. According to him "The majority of India's constitutional provisions are either directly arrived at furthering the aim of social revolution or attempt to foster this revolution by establishing conditions necessary for its achievement"⁹. More than a legal expert, India wanted a true social reformer who could bring about a constitution, which deals with social issues India such as caste-system and social inequality. Dr. Ambedkar truly was a social reformer and therefore none but only he could have come up with a constitution with social empathy towards the underprivileged sections of the Indian Society.

3. Dr. Ambedkar: The Hercules of Drafting Committee

"The House is perhaps aware that out of the seven members nominated by you (to the drafting committee), one had resigned from the house and was replaced. One died and was not replaced. One was away in America and his place was not filled up and another person was engaged in state of affairs and there was a void to that extent. One or two people were far away from Delhi and for the reasons of Health did not permit them to attend. So it happened that the burden of drafting this constitution fell on Dr. Ambedkar and I have no doubt that we are grateful to him for having achieved this task in a manner which is undoubtedly commendable"¹⁰

The above words of T. T. Krishnamachari, in the constituent assembly are reflective of the stature of reverence acquired by Dr. Ambedkar in the constituent assembly. Dr. Ambedkar was *de-facto* recognized as the chief architect of Indian constitution. The Herculean contributions of Ambedkar towards giving us this constitution are discussed below.

3.1 Judicial Review and Constitutional Supremacy

Articles 32 and 226 of the constitution provide for judicial review, such provision of judicial review gives teeth to various rights provided in the constitution. In India constitution is considered to be supreme, unlike UK. In UK the parliament is considered to be supreme. This shows that in India the will of the ‘We the people of India...’ as provided in the preamble of the constitution, is the supreme will. Therefore any law, which goes against the constitutional principles, would be subject to Judicial Review and would be declared null and void by the court¹¹. In constituent assembly, Dr Ambedkar defended the provisions of Judicial Review as being very necessary¹².

Dr Ambedkar was a great visionary who foresaw the need of enforcing mechanism of the constitutional rights at state level and also at the level of the Union. Therefore, he provided under Article 226 mechanism to approach High Court for any constitutional breach and Article 32 enabled an individual to approach Supreme Court. He described these provisions which enabled an individual to file a writ as “Heart and Soul” of the Indian Constitution¹³.

3.2 Parliamentary Democracy along with Socialistic Safeguards and Directive Principles of the State Policy (DPSP)

Dr. Ambedkar was a liberal democrat and the constitutional values, which he had incorporated in himself while studying abroad, time and again got reflected in his discussions in the constituent assembly. He defined democracy as ‘one man, one vote’

According to him, our ideal should be to establish such political democracy, where there is a room for establishment of ‘economic democracy’ also. His idea of democracy was very liberal and therefore he advocated that the elected representatives should adopt any such routes as considered to be fit by them to achieve this economic democracy. He does not ignore even socialism as a means of achieving ‘economic democracy’. He pointed out “There are various ways in which people believe that economic democracy can be brought about; there are those who believe in having a socialistic state as the best form of economic democracy; there are those who believe in the communistic idea as the most perfect form of economic democracy”¹⁴ Ambedkar’s greatest contribution towards achieving this ‘economic democracy’ is the part IV of the Indian Constitution, ‘Directive Principles of State Policy’.

The Directive principles are the constitutional guidelines, which the state government and the central government have to keep into consideration while framing laws and policies. These principles are not enforceable by the court. But it is the duty of the state to consider these principles as fundamental for the governance. There were several misconceptions in the house regarding DPSP, which Ambedkar cleared by explaining the nature of the language of DPSP. He explained that the language of DPSP is “not fixed or rigid”. The scope and ambit of DPSP is wide enough to include within itself people of any ideology (including socialist), to strive in their own best manner to persuade the electorate to adopt the best way as per them to achieve ‘economic democracy’.

He had to face vehement opposition from various members of the assembly, especially Shri Mahavir Tyagi, as the DPSP are not directly enforceable by the court and the words used are state shall “strive to”¹⁵ His answer to him summed up the whole debate. He thus answered: “We have used it because our intention is that even when there are circumstances which prevent the Government, or which stand in the way of the Government giving effect to these Directive Principles, they shall, even under hard and unpropitious circumstances, always strive in the fulfillment of these Directives. That is why we have used the word ‘strive’. Otherwise, it would be open for any Government to say that the circumstances are so bad, that the finances are so inadequate that we cannot even make an effort in the direction in which the Constitution asks us to go”¹⁶.

It is sheer brilliance of a liberal democrat like Ambedkar, that he also gave liberty to socialist thought and ideology to find its way in Indian democratic set-up. Ambedkar was against the ‘Socialist State’ but was not against the idea of ‘Socialism’. He opposed the Left, which wanted to redefine the Indian Republic, from the first article of the Constitution onwards, as ‘Socialist’. He thought this would have an effect of simply destroying the democracy. But on the other hand he supported the socialist ideas as safeguards for enforcing DPSP¹⁷.

3.3 Unique Model of Governance: A Quasi Federal State

Dr.

Ambedkar envisioned nature of Indian Constitution as a unitary with federal features. Sir D.D. Basu, authority on Indian Constitution, very aptly describes Indian Constitution in the following words “The Constitution of India is neither purely federal nor unitary, but is a combination of both. It is a union or a composite of a novel type”¹⁸. Dr. Ambedkar himself described Indian constitution in the constituent assembly as follows “Our constitution would be both unitary as well as federal according to requirements of time and circumstances”¹⁹

Dr. Ambedkar explained the reason behind such nature of Constitution in detail in the constituent assembly. He stated that all the federations work in a very 'tight mould of federalism'. Such a tight structure would not allow state to change into a unitary form when it is required and necessary. Therefore Dr. Ambedkar devised a middle path. He framed draft constitution in such a way that it has features of Unitary as well as Federal constitution. He described the working of Indian constitution as follows: "In normal times, it is framed to work as a federal system. But in times of war it is so designed as to make it work as though it was a unitary system. Once the President issues a Proclamation, which he is authorized to do under the Provisions of Article 275, the whole scene can become transformed and the State becomes a unitary State"²⁰.

Dr Ambedkar explained how the federal system of governance is weak. He says: "There are two weaknesses from which Federation is alleged to suffer. One is rigidity and the other is legalism. That these faults are inherent in Federalism, there can be no dispute"²¹. While differentiating the federal features in Indian constitution from American and Australian Constitution, Ambedkar clarifies: "What is to be noted is that it (draft constitution) has added new ways of overcoming the rigidity and legalism inherent in federalism which are special to it and which are not to be found elsewhere"²².

On the opposition from critics as to why India is described as "Union" in Article I of the draft constitution Ambedkar explained that "The Drafting Committee wanted to make it clear that though India was to be a Federation, the Federation was not the result of an agreement by the States to join in a Federation and that the Federation not being the result of an agreement no State has the right to secede from it. The Federation is a Union because it is indestructible"²³. Dr. Ambedkar had showed his exceptional drafting craftsmanship, and had come up with a unique constitution, which is flexible enough to have features of both, unitary as well as federal constitutions.

3.4 Uniform Civil Code and Fight for Hindu Code Bill

Dr.

Ambedkar had a view that the Indian personal laws are not valid on the basis of established legal principles and are in some way very traditional and discriminatory against women. To bring a reformation in personal laws he proposed a Uniform Civil Code, which would replace all the personal laws (which were religiously guided) and will be applicable to all the people irrespective of their religion, caste or creed. Article 44 of the Indian constitution provides for a Uniform Civil Code. As this article is in the form of the Directive Principle, the state is not obligated to come up with a Uniform Civil Code. In the constituent assembly while presenting his views on Civil Code he stated: "I personally do not understand why religion should be given this vast, expansive jurisdiction, so as to cover the whole of life and to prevent the legislature from encroaching upon that field. After all, what are we having this liberty for? We are having this liberty in order to reform our social system, which is so full of inequities, discriminations and other things, which conflict with our fundamental rights."²⁴ Ambedkar had achieved only partial success in reforming the personal laws. It was in the form of Article 44 in the DPSP that read: "The State shall endeavor to secure for the citizens a uniform civil code throughout the territory of India."

Bringing to the fore, a Hindu Code Bill to bring about a reformation in Hindu personal laws, was a fight Ambedkar had to fight single handedly with only superfluous support from Nehru. The Hindu Code Bill aroused profound opposition not only from traditionalists like Hindu Mahasabha but also from big congress figures like Rajendra Prasad and Sardar Patel. Prasad in a letter to Patel criticized the bill as one whose "new concepts and new ideas are not only foreign to the Hindu law but are susceptible of dividing every family".

Finally successive amendments made to the bill, killed it. Ambedkar who had lived up his life as a true social reformer could not absorb the shock that his proposal was so vindictively negated. He chose to leave Nehru government on this issue. For him it was more important to uphold constitutional values, rule of law and equality than the position in the government. A Uniform Civil Code is still a dream. But the primary purpose of the Hindu Code Bill, which was removing discrimination against women in personal laws, is achieved as now Hindu Succession Act provides 'equal' inheritance rights to women also. Thus, Dr. Ambedkar might have lost his fight then but with the amendment of personal laws, upholding the principles of equality, he has succeeded today²⁵.

3.5 Presidents Power under Indian Constitution: Titular Head

Article 74 of

the Indian Constitution provides that, for the exercise of power by the President, there must be a Council of Ministers with the Prime Minister as the Head, to aid, assist and advise the President. The President is also vested with certain executive powers and the scope of such executive power embraces the residue of powers after the powers of the

legislative or judicial organs are exhausted or taken away. In constituent assembly Dr. Ambedkar emphasized on the President's power as a Titular head of the state. Dr. Ambedkar doubtlessly emphasized that the President, will not have any independent powers of administration at all since, as a matter of convention, he will be bound by the advice of the Council of Ministers. The President can do nothing contrary to their advice nor can he do anything without their advice²⁶. In the Constituent Assembly a proposal was made to include an Article in the Constitution which provided that the President must be "guided" by the Council of Ministers. Ambedkar rejected this proposal as being unacceptable. He put forth his stand that the President must act on the "advice" of council of minister. It is Ambedkar's point of view, which got shaped into Article 74. However, there was unrest amongst the member of the assembly on the issue as to whether the President enjoys an unbridled power for formulation of ordinance or he would have to follow the aid and advice of the Council of Ministers while promulgating an ordinance.

To settle this issue, there was a deliberation between Dr. Ambedkar and Dr. Rajendra Prasad, President of the Constituent Assembly. Ambedkar explained that the ordinance would be promulgated only if the President is satisfied that there are compelling circumstances during the recess of the house but he further clarified that the 'satisfaction of compelling circumstances' would be dependent on the aid, advice and assistance of the council of ministers.

Ambedkar ensured, that India has a President as the head of the state but not of the executive²⁷. He enjoys such powers, which would facilitate proper governance without creating interference in the working of the legislature and council of ministers. During emergency in the states it is President that would take over. The powers of the President are woven in such a manner in Indian constitution that when required he can step in as a "stabilizing agent".

4. Ambedkar as a Social Engineer and Constitution his Engine

The constitution of India is a remedial answer to the system of age-old social injustice in the form of caste system. It also provides special rights and protection to women children and other weaker sections of the society²⁸. Prof. A.M. Rajasekhariah has rightly stated, "He (Ambedkar) strove his utmost to incorporate into the Constitution of India such provisions as would help establish a new social order based on the lofty principle of political, economic and social justice for one and all. He tried to bring in about all the necessary changes in the Hindu society in order to make it more democratic one"²⁹. The two important contributions of Ambedkar in the constitution, which had an impact on social justice, are discussed below.

4.1 Fundamental Rights

Part III of the Constitution, which provides for Fundamental rights is the greatest gift of the constitution makers, especially Ambedkar. In his book, 'Ranade Gandhi and Jinnah', Ambedkar has expressed his view that the idea of making a gift of fundamental rights to every individual is no doubt very laudable. But the essential question, which has to be answered, is how to make them effective? . According to him the rights would be recognized and enforced only if there is a 'Social Conscience' to do the same. The judiciary, parliament and law all together would not come to rescue the Fundamental Rights if there is an opposition from the community³⁰.

4.2 Eradicating Untouchability and Reservation Policy

Ambedkar himself had to face the evil of untouchability. The abolition of untouchability, was one of the important goals of his life. Article 17 of the Indian Constitution abolishes untouchability. The practice of untouchability is considered to be a punishable offence. The contribution of Ambedkar in removing untouchability was aptly lauded by Dr. Mono Mohan Das, member of constituent assembly as follows: "I cannot resist the temptation of saying a few words about our great and eminent Law Minister and Chairman of the Drafting Committee, Dr. Ambedkar. It is an irony of fate that the man who was driven from one school to another, who was forced to take his lessons outside the class room, has been entrusted with this great job of framing the Constitution of free and independent India, and it is he who has finally dealt the death blow to this custom of untouchability, of which he was himself a victim in his younger days"³¹. On the issue of reservation in politics Ambedkar had a view that "A representative government is better than an efficient government"³². 'Objectives Resolution', of the draft constitution itself guaranteed equality, basic freedoms of expression, together with "adequate safeguards for minorities, backward and tribal areas, and depressed and other backward classes."³³ These principles acted as guideline for the draftsmen throughout the Constitution-making process and provided a strong foundation for inclusion of reservations for the underprivileged, which was essentially aimed at removing inequality.

5. Conclusion:

It can

thus be concluded that Ambedkar's herculean efforts in the drafting committee have resulted in one of the most balanced and encompassing constitutions of the world. Dr. Ambedkar and the Indian Constitution are inseparable; therefore, when any provision of constitution comes up for interpretation, the court heavily relies on what was stated by Ambedkar in the constituent assembly. His ideas on constitutionalism are the touchstones for the Indian Judiciary in deciding any constitutional anomaly. Ambedkar's contribution to the constitution did not end on 26th January 1950, the day of its adoption. Even after his death, his ideas on constitutionalism have helped in the interpretation of the constitution. His legacy of 'constitutional morality' had come to rescue in the case of Kesavananda bharti. In this case the Indian Judiciary had to grapple with the biggest constitutional question ever encountered – Can the basic structure of the constitution be amended. While delivering the judgment the courts relied upon his speeches in the constituent assembly and his views on constitutional principles. It was the constitution that saved the constitution. The thirteen-judge bench, with the ratio of 7:6, decided that basic structure couldn't be amended. Thus, Dr. Ambedkar's contribution to the constitution of India still continues.

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¹According to Grote, the historian of Greece, on constitutional morality. It meant "a reverence for the forms of the Constitution, enforcing obedience to authority acting under and within these forms yet combined with the habits of the speech of action subject only to defined legal control, and unrestrained censure of those very authorities as to all their public acts combined too with a perfect confidence in the bosom of every citizen, amidst the bitterness of party contest, that the forms of the Constitution will not be less sacred in the eyes of his opponents than in his own."

² CONSTITUENT ASSEMBLY DEBATES: OFFICIAL REPORT VOL. VII 38 (Lok Sabha Secretariat 1949).

³See - http://www.the-tls.co.uk/tls/reviews/arts_and_commentary/article734847.ece (March 3, 2013) quoted in the 'NB' column of the times literary supplement on March 9, 2011.

⁴ RATHIN BANDYOPADHAYAY, HUMAN RIGHTS OF THE NON-CITIZEN: LAW AND REALITY 181 (Deep and Deep Publications 2007).

⁵ *Affirmative Action* <http://labor-employment-law.lawyers.com/employment-discrimination/Affirmative-Action.html> (April 6, 2013).

⁶ Ronki Ram, *Dr. Ambedkar, Neo-Liberal Market-Economy and Social Democracy in India*, 5 Human Rights Global Focus, 12-38 (July-December 2010).

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⁸ GLANVILLE AUSTIN, *THE INDIAN CONSTITUTION: CORNERSTONE OF A NATION* 50 (2nd ed. Oxford University Press 1999).

⁹ *Id.* at 50.

¹⁰ CHRISTOPHE JEFFRELOT, *DR AMBEDKAR AND UNTOUCHABILITY: ANALYZING AND FIGHTING CASTE* 189 (C. Hurst & Co. 2005).

¹¹ Article 13(2) of the Constitution of India provides that any law in violation of Fundamental Rights will be considered void.

¹² *Supra* note 2, at 700

¹³ *Id.* at 953.; Also see - B. SHIVA RAO, *THE FRAMING OF INDIA'S CONSTITUTION* 311 (N.M. Tripathi ed., 1968).

¹⁴ *Id.* at 494-95.

¹⁵ *Id.* at 492.

¹⁶ *Id.*

¹⁷ JEFFRELOT, *supra* note 10, at 108.

¹⁸ Global Jurix (Advocates and Solicitors), *Indian Constitution- Federal or Unitary*, LEX VIDHI, <http://www.lexvidhi.com/article-details/indian-constitution-federal-or-unitary-79.html> (March 7, 2013).

¹⁹ *Supra* note 2, at 34.

²⁰ *Id.*

²¹ *Id.* at 35.

²² *Id.* at 36.

²³ *Id.* at 43.

²⁴ Christophe Jaffrelot, *Ambedkar And The Uniform Civil Code*, OUTLOOK, <http://www.outlookindia.com/article.aspx?221068> (March 7, 2013).

²⁵ Section 6, Hindu Succession (Amendment) Act, 2005; *Hindu Women Entitled to Equal Property Rights: SC*, THE INDIAN EXPRESS, <http://www.indianexpress.com/news/hindu-woman-entitled-to-equal-property-rights-sc/859545/> (March 7, 2013)

²⁶ *Supra* note, 2 at 32.

²⁷ *Necessary to elect a non political figure*, THE STATESMAN, June 24, 2012, at AL, available at http://www.thestatesman.net/index.php?option=com_content&view=article&id=414527&catid=51 (March 13, 2013).

²⁸ INDIAN CONST. art. 15 cl. 3.

²⁹ BHUPINDER KUMAR AHLUWALIA & SHASHI ALHUWALIA, *BR AMBEDKAR AND HUMAN RIGHTS* 72 (Vivek Publishing Company 1981).

³⁰ DR B. R. AMBEDKAR, *RANADE GANDHI AND JINNAH* 31 (Gautam Book Center 1943).

³¹ *Supra* note 2, at 666.

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