

Constitutional Equality: From Social Exclusion To Social Inclusion

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ABSTRACT

Dr.B.R.Ambedkar played a multi dimensional role in the modernization process of entire country (India). He was a true liberal who worked for a new political order and envisioned a “United India”. He realized that modernization of the polity remains vague without social change .He had strong determination to fight for social justice. Dr B.R Ambedkar gave people a new hope, awakening and confidence by framing the constitution of India. In this paper it is discussed how constitution opened up opportunities for socially excluded sections of society and helped reduce social imbalance. Dr B.R Ambedkar took almost three years to draft the constitution and he ensured justice, freedom and equality for the people of all communities.

KEY WORDS

Constitution,Fundamental Rights,Scheduled Castes,Untouchability.

What is Constitution

‘Constitution of a country lays down the basic structure of the political system under which its people are to be governed. It establishes the main organs of the state the legislature, the executive and the judiciary.Defines their powers, demarcates their responsibilities and regulates their relationships with each other and with the people’.(Kashyap : 2001)Every constitution represents the vision and value of its founding fathers and is based on the social, political and economic ethos and faith and aspirations of the people. More particularly it is concerned with the basic features of the framework of the distribution of powers between the organs of the state and between the union and the units. However, modern constitutional law lays the emphasis on fundamental human right and the relationship between the individual citizen and the state. Our present constitution the first constitution of India framed and given to themselves by the people of India was adopted by the constituent assembly on 26th November 1949. It came into full operation with effect from 26th January 1950.

‘The Constitution as originally adopted had 22 parts, 395 articles and 8 schedules. Its present text is as amended from time to time. During the last 60 years, there have been as many as 94 amendments. From 8 the number of schedules has gone upto 12 and the number of articles has increased from 395 to 448’(Kashyap : 2001)The constitution of India is the supreme law of India. It is a living document, the permanent instrument which makes the government system work. It lays down the framework defining fundamental political principles, establishing the structure, procedures, powers and duties of government institutions and set out fundamental rights, directive principals and the duties of citizens. It is the longest written constitution of any sovereign country in the world. ‘The nation is governed on the basis of the constitution. Dr Bhimrao Ramji

Ambedkar is regarded as the chief architect of the Indian constitution, but it was the constituent assembly that worked under Dr Ambedkar and his team that drafted the final copy of the Indian constitution.

The constitution starts with a preamble which, though not part of the text of the constitution, sums up its philosophy.

We, the people of India, Having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens:

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity, and to promote among them all;

FRATERNITY assuring the dignity of the individual and the unity and integrity of the nation

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION'

(c.i.t. Pandey 1996)

FUNDAMENTAL RIGHTS

The Indian constitution guarantees certain fundamental rights to protect the individual against arbitrary actions of the state and create conditions in which he can secure social and economic, justice. These rights are fundamental in the sense that an individual cannot have a dignified living in the absence. Fundamental rights can be grouped in six categories.

- I. Right to equality
- II. Right to freedom
- III. Right against exploitation
- IV. Right of freedom of religion
- V. Cultural and educational rights
- VI. Right to constitutional remedies
- VII. Right to life
- VIII. Right to education
- IX. Right to information

RIGHT TO EQUALITY: Right to equality is a fundamental right guaranteed by the constitution of India. It is the basic human right of all citizens of India, put into effect by the courts, subject to some limitations. Right to Equality refers to the equality in the eyes of law, discarding any unfairness on grounds of caste, race, religion, place of birth, sex. It also includes equality in the matters of employment, abolition of untouchability and abolition of titles. Article 14,15,16,17 and 18 of the constitution of India highlight the right to equality. The

fundamental right is the major foundation of all other rights and privileges granted to Indian citizens making easy access to the courts to exercise his/her right to equality.

Various articles under the right to equality are explained as follows:

EQUALITY BEFORE LAW: - Article 14 of the constitution ensures that every citizen shall be likewise protected by the laws of the country. It means that the state will not distinguish any of the Indian citizens on the basis of their gender, caste, creed, religion or even the place of birth.

SOCIAL EQUALITY AND EQUAL ACCESS TO PUBLIC AREAS: Article 16 of the constitution of India clearly mentions that the state shall treat everyone equally in the matters of employment. No citizen shall be discriminated on the basis of race, caste, religion, creed, descent or place of birth in respect of any employment or office under the state. Every citizen of India can apply for government jobs. However citizen of India can apply for government jobs. However there are some exceptions to the right. The parliament may pass a law mentioning that specific jobs can be filled by candidates who are residing in a particular area. Apart from this, the state may also set aside some posts for members of backward classes, scheduled castes or scheduled tribes which are not properly represented in the services under the state to uplift the weaker sections of the society.

ABOLITION OF UNTOUCHABILITY:Article 17 of the constitution of India abolishes the practice of untouchability in India. Practice of untouchability is declared as a crime and anyone doing so is punishable by law. The Untouchability Offence Act of 1955 (and now protection of Civil Rights Act in 1976) states punishments for not allowing a person to enter a place of worship or from taking water from a well or tank.

ABOLITION OF TITLES:Article 18 of the constitution of India prohibits the state from granting any titles. Citizens of India are not allowed to accept the titles from a foreign state. Titles like Rai Bahadur and Khan Bahadur given by the British government have also been abolished. From 15th December 1995 the supreme court of India has sustained the validity of the awards of “Bharat Ratna” and “Padam Vibushan”.

EMERGENCE OF CONSTITUTION :

Fundamental rights have been used to abolish untouchability and this prohibits discrimination on the grounds of religion, race, caste, sex or place of birth. They also forbid trafficking of human beings and forced labour. They also protect cultural and educational rights of ethnic and religious minorities by allowing them to preserve their languages and also establish and administer their own education institutions.

In 1919, the Rowlatt Act gave extensive powers to the British government and police which resulted in the indefinite arrest and detention of individuals. The public eventually opposed this act which led to mass campaigns of non-violent civil disobedience throughout the country demanding guaranteed civil freedom.

In 1928, the Nehru commission [The Nehru report of 10th August, 1928 was a memorandum outlining a proposed new dominion status constitution of India. It was prepared by a committee of the all parties

conference chaired by Motilal Nehru with his son Jawaharlal acting as secretary. There were nine other members in the committee, including two Muslims.] Composing of representatives of Indian political parties proposed constitutional reforms for India that apart from calling for dominion status for India and elections under universal suffrage, would guarantee rights deemed fundamental, representation for religious and ethnic minorities and limit the powers of the government.

In 1931, the Indian National Congress (Indian Political Party) adopted resolutions committing itself to the defence of fundamental civil rights, as well as socio-economic rights. Committing themselves to socialism in 1936, the Congress leaders took examples from the constitution of the Soviet Union, which inspired the fundamental duties of citizens. Task of developing a constitution for the nation was undertaken by the Constituent Assembly of India, composing of elected representatives. The Constituent Assembly first met on December 9, 1946 under the president Dr. Sachidanand later Dr. Rajendra Prasad was made its president. While members of Congress party of diverse political backgrounds took responsibilities of developing the constitution and national laws. Dr. B. R. Ambedkar became the chairperson of the drafting committee, while Jawaharlal Nehru and Sardar Vallabhbhai Patel became chairpersons of committees and sub-committees responsible for different subjects. The universal declaration of human rights on 10th December 1948 had significant effect on the Indian Constitution which called upon the member states to adopt these rights in their respective constitutions. The fundamental rights were included in the first draft constitution (February 1948), the second draft constitution (17th October 1948) and final third draft constitution (26th November 1949) prepared by the drafting committee.

MINORITIES, SCHEDULED CASTES AND TRIBES IN CONSTITUTION

Indian constitution based on the ideals and justice both in the social and political fields, abolishes any discrimination either against or in favour of any class. Fundamental rights for Indians have been aimed at overturning the inequalities of pre-independence social parties. Indian constitution therefore prescribes certain temporary and permanent measures to help the backward sections to come up to the same level with the rest of the nation.

PERMANENT PROVISIONS:

The constitution has abolished representation on communal lines, whereas it has included safeguards for the advancement of the backward classes amongst the residents of India (irrespective of their religious affiliations) so that the country may be ensured of an all round development. These provisions fulfill the assurance of justice, social, economic and political. Which has been held out by the very preamble of the constitution. A major section of such backward classes has been specified in the constitution as scheduled castes and scheduled tribes because of their backwardness is patent. There is no definition of scheduled castes and tribes in the constitution itself, but the president is empowered to draw up a list in consultation with the governor of each state, subject to revision by parliament (Articles 341-342). The president has made orders,

specifying the scheduled castes and tribes in the different states in India which have since been amended by Acts of parliament.

SPECIAL PROVISIONS FOR SCHEDULED CASTES AND TRIBES:-

The constitution makes various special provisions for the protection of the interests of the scheduled castes and tribes thus,

1. Measures for the advancement of the scheduled castes and tribes are exempted [Art. 15(4)] from the general ban against discrimination on the ground of race, caste and the like, contained in Art. 5. It means that if special provisions are made by the state in favour of the members of these castes and tribes, other citizens shall not be entitled to impeach the validity of such provisions on the ground that such provisions are discriminatory against them.
2. On the other hand, while the rights of free movement and residence throughout the territory of India and of acquisition and disposition of property are guaranteed to every citizen in the case of members of the scheduled castes and tribes, special restrictions may be imposed by the state as may be required for the protection of their interests. For instance, to prevent the alienation or fragmentation of their property, the same may provide that they shall not be entitled to alienate their property except under specified conditions [Art. 19(5)].
3. The claims of the members of the scheduled castes and the scheduled tribes shall be taken into consideration, consistently with the maintenance of administration, in the making of appointments to service and posts in connection with the affairs of the Union or a state [Art. 335].
4. Art. 338 of the original constitution provided for the appointment of a special officer to investigate all matters relating to the safeguards provided for the scheduled castes and scheduled tribes under this constitution and to report to the president upon the working of those safeguards.

Article 338 has been substituted by the constitution (65th Amendment) Act, 1990 to set up a National Commission for Scheduled Castes and Tribes (in place of a special Officer, with some additional duties, e.g. to inquire into complaints with respect to determination of the rights and safeguards of the scheduled Castes and the scheduled Tribes.

5. The president may, at any time, and shall, at the expiration of ten years from the commencement of this Constitution, by order appoint a Commission to report on the administration of the scheduled areas and the welfare of the scheduled tribes in the states. The order may define the composition, powers and procedure of the commission and may contain such incidental or ancillary provisions as the president may consider necessary or desirable [Art. 339(1)].
6. The executive power of the union shall extend to the giving of directions to any such state as to the drawing up and execution of schemes specified in the direction to be essential for the welfare of the scheduled tribes in the state [Art. 339(2)].

With a view to associate members of parliament and other members of the public in the due discharge of the above functions by the government of India, three Parliamentary Committees have been set up. Their function is to formulate and review the working of schemes for the welfare of the scheduled castes and tribes and to advise the Government of India on matters relating to these castes and tribes.

7. Financial aid for the implementation of these welfare schemes is provided for in Art. 275(1) which require the union to give grants-in-aid to the states for meeting the costs of schemes of welfare of the Scheduled Tribes and for raising the level of administration of the scheduled areas in a state to that of the administration of the areas of that state.
8. Proviso to Art. 164 lays down that in the states of Bihar, Madhya Pradesh, Orissa, there shall be Minister in charge of tribal welfare, who may also be in charge of the welfare of the scheduled castes and other backward classes.

In practice, such welfare departments have been set up not only in these three states as required by the constitution, but also in other states.

9. Special provisions are laid down in the Fifth and sixth schedules of the constitution, read with Art. 244, for the administration of areas inhabited by scheduled tribes.

Over and above all these, there is a general Directive in Art. 46 that the state shall promote with special care the educational and economic interests of the weaker sections of the people, and in particular, of the scheduled castes and the scheduled tribes, and shall protect them from social injustice and all forms of exploitation.

Besides, there are temporary provisions for special representation of and reservation of seats for scheduled castes and scheduled tribes in the legislatures [Art. 330,332,334] which will be treated separately, hereafter.

Not contented with making special provisions for the scheduled castes, who form a specific category of socially depressed people (generally identifiable with the Gandhian term 'harijan'), the constitution has made separate provisions for the amelioration and advancement of all 'backward classes', in general.

Of course, the constitution does not define 'backward classes'. The scheduled castes and tribes are mentioned together with the expression 'backward classes' in the foregoing provisions shows that there may be other backward classes of people besides the scheduled castes and tribes. The constitution provides for the appointment of a 'Commission to investigate the conditions of backward classes' [Art. 340]. Such a commission was appointed in 1953 (with Kaka Saheb Kalelkar as Chairman), with the following terms of appointment-

- (a) To determine the tests by which any particular class or group of people can be called 'backward'.
- (b) To prepare a list of such backward communities for the whole of India.
- (c) To examine the difficulties of backward classes and to recommend steps to be taken for the amelioration.

This commission submitted its report to the government in 1955, but the tests recommended by the commission appeared to the government to be too vague and wide to be of much practical value; hence, the state governments have been authorized to give assistance to the backward classes according to the lists prepared by the state governments themselves.

TEMPORARY PROVISIONS

- (a) Seats shall be reserved in the house of the people for –(a) The scheduled castes; (b) The scheduled tribes except the scheduled tribes in the tribal areas of Assam; and (c) The Scheduled tribes in the autonomous districts of Assam [Art. 330].

Seats shall also be reserved for the scheduled castes and the scheduled tribes, except the scheduled tribes in the tribal areas of Assam, in the legislative assembly of every state [Art. 332]. Such reservation will cease on the expiration of fifty years from the commencement of the constitution, i.e., in January, 2000 A.D. [Art. 334].

Dr Bhimrao Ramji Ambedkar was as versatile genius who left an indelible mark on social, Political and intellectual life of modern India. His struggle for social justice and political equality remained the key stone of the entire edifice of Indian democracy. Dr B.R Ambedkar for the first thirty five years of his life was subjected to the most appalling humiliations, brutal discrimination and indignities for being an untouchable. Outside India he was respected by all for his intelligence but in India he was reminded in every aspect to be one of the out caste of Hindu society. Dr. Ambedkar believed that no person is low or high but to gain equality for the untouchables called 'Shudras'. He felt the necessity for the struggle of untouchables. Therefore he started various protest movements, organized conferences, started journal Mooknayak for the rights of the depressed section of India. Dr Ambedkar called the replacement of hindu ideology based on hierarchy and pollution with the fundamental principles of liberty, equality and fraternity. Dr Ambedkar's own experiences prompted him to work for a new social order i.e constitution of India. Dr. Ambedkar was the first social reformer who made legal and political approach to the social problems like caste and untouchability. He made a crusade against fundamentalism, traditionalism and dogmatism. He wanted to make Indian politics free from conservative and traditional forces. Article 17 abolishes the untouchability and its practice in any form is made punishable under the law. Though this article does not create a right, yet it gives relief to the particular strata of Indian population from humiliation and disgrace of centuries. To conclude the 'Right to Equality' should be properly exercised otherwise it will lose its importance if all the citizens of India especially the weaker and backward classes do not have equal rights and equality before law.

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Scheduled castes and scheduled tribes form 22 percent of the total population of the country (India 1982, p123)

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