

Futuristic constitution of India :- From the eyes of

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ABSTRACT

Dr. B.R.Ambedkar in the capacity of the Chairman of the drafting Committee of Indian Institution 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 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 fact 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.

INTRODUCTION

Dr. B.R.Ambedkar was a great philosopher, activist , sociologist, liberalist, statesman economist and on exceptional humanist.

“However good a constitution may be , it is sure to turn out bad because those who are called to work it, happen to be a bad.

However bad a constitution may be, It may turn out good if those who are called to work it, happen to be a good lot.”

Dr. B.R.Ambedkar

In the present parer the endover 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 from as it has today.

Draft Committee Members

The Draft 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. Finally, it is concluded with an observation that Dr. Ambedkar's Contribution to the constitution continues even today.

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.

Longest Contribution of the World

The Indian constitution is the longest constitution of the World. Drafting of the Indian Constitution was a mammoth task. With about 444 articles, 12 Schedules and 22 parts.

DR. AMBEDKAR :- THE HERCULES OF DRAFTING COMMITTEE

The words of T.T. Krishnamanchari, in the constituent assembly are reflective of the stature of reverence acquired by Dr. Ambedkar in the constituent assembly.

Dr. Ambedkar was de-factor recognized as the Chief Architect of Indian Constitution.

According to T.T.Krishnamanchari, "The House of 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 engaged in state of affairs and there was a valid to that extent. On 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” 1

UNIQUE MODEL OF GOVERNANCE : A QUASI FEDERAL STATE :

Ambedkar envisioned nature of Indian Constitution as a unitary with federal features. Sir D.D. Basu, authority of 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”.2

Dr. Ambedkar explained the reason behind such nature of constitution in detail in constituent assembly. He stated that all the federations work in a very “tight mould by 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.

Unitary State

He described the work 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 Articles 275, the whole scene can become transformed and the state becomes a Unitary State” 3

Dr. Ambedkar has 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.

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 U.K.

In U.K. 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 court. **4**

Heart and Soul of the Indian Constitution

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 any 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 Institution. **5**

UNIFORMS CIVIL CODE

Dr. Ambedkar had achieved only partial success in reforming the personal laws. It was in the form of Article 44 in the Directive Principles of the State Policy (D.P.S.P.) that read. “The state shall endeavor to secure for the citizens a uniform civil code through out the territory of India”.

Hindu Code Bill

Bringing to the for a Hindu Code Bill to bring about a reforming 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”.

Everybody equal in Indian Constitution

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 choose 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 success 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 today. **6**

PRESENT 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 Present can do nothing contrary to their advice nor can he do any thing without their advice. **7**

President Must be guided by the Council of Ministers

In the constituent Assembly a proposal was made to include on 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 point of view, which got shaped into Article 74.

However, there was unrest amongst the member of the assembly on the issue as whether the President enjoys on 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, advise and assistance of the Council of Ministers. 8

He enjoys such powers, which would facilitate proper governance without creating interference in the working of the legislature and council of Ministers. During embergancy in the states it is President that would take over. The Powers of the President are woven in such manner in Indian Constitution that when required he can step in as a “Stabilizing Agent”.

DR. AMBEDKAR IS THE TRUE CREATOR OF INDIAN CONSTITUTION

Dr. Ambedkar was a name of synonymous with Liberty, Equality, Justice and fraternity – four preamble of the Indian Constitution. He was the most suitable person of the drafting committee of the Indian Constitution. There was two aspects of his individuality.

Firstly, he was 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.

Constitutional Morality

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 nation of “Constitutional Morality”. 9

In U.K. itself the first comprehensive equality legislation in the form of equality Act, 2010 came almost 60 years after India had set an example by including 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 U.S. 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 States. 10

Democracy should be bring positive changes

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 Constitution. 11

Dr. Ambedkar believed that the goal of Democracy should be to bring positive changes of the social life. 12

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”. 13

More than a legal experts, India wanted a true social reformer and we see also in present life that Dr. B.R. Ambedkar 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.

DR. B.R.AMBEDKAR AS A SOCIAL ENGINEER AND CONSTITUTION HIS ENGINE

Professor 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”. 14

The two important contributions of Ambedkar in the constitution which had an impact on social justice, are discussed below.

Untouchability and Reservation Policy

Article 17 is the most ground-breaking provision made in the constitution which abolishes in any form. It is often considered as the provision which has significantly brought the social revolution in the deeply hierarchical and unequal India, Indian by criminalizing the practices of untouchability and arranging punishment in accordance with law for those follow it. 15

On the issue of reservation in politics Ambedkar had a view that “A representative government is better than an efficient government”. 16

“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”. 17

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 community. 18

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 inequalities.

Conclusion

In the last we can say that the Indian constitution most balanced and encompassing constitution of the world. His ideas on constitutionalism are the touchstones for the Indian Judiciary in deciding any constitutional anomaly. Dr. Ambedkar and the Indian Constitution are inseparable.

Ambedkar’s contribution to the constitution did not end on 26th January, 1950, the day of its adoption. His legacy of “Constitutional Morality” had come to rescue in the case of Kesavananda Bharti. In the end, we can say that Dr. B.R. Ambedkar’s Contribution to the constitution of India still continues.

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