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## DR. B.R. AMBEDKAR AND THE CONSTITUTION - MAKING IN INDIA

J.P. MISRA\*

### I

- 1.1 The form and spirit of the Constitution of India framed and adopted by the Constituent Assembly soon after independence constitutes the chief source of not only our political institutions but also their utility and efficacy in prescribing the values we cherish. In this stupendous task B.R. Ambedkar played a unique role in his capacity as Chairman of the Drafting Committee and as Minister of Law at the time. He laboured day in and day out for writing the Constitution of free India incorporating into it liberty, equality and justice. The present paper seeks to analyse how Ambedkar emerged as a great constitution maker of our times and put his heart and soul into this task.

### II

- 2.1 Ambedkar had entered the Constituent Assembly with the only hope of safeguarding the rights of the downtrodden. But he was immediately called upon to play much wider role. Ambedkar explained this in the following words:<sup>1</sup>

I came into the Constituent Assembly with no greater aspiration than to safeguard the interests of the Scheduled Castes. I had not the remotest idea that I would be called upon to undertake more responsible functions. I was, therefore, surprised when the Assembly elected me to the Drafting Committee. I was more than

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surprised when the Drafting Committee elected me to be its chairman.

- 2.2 This statement is significant for determining Ambedkar's role in Constitution - making for he not only fully justified his selection but added luster to the work he undertook. It may, however, be pointed out at the very outset, that Ambedkar and the other members of the Drafting Committee were not free agents. They had to work under the guidance of other agencies. In the most fundamental fields the ideas and decisions of Nehru, Patel and the Congress party had to be accommodated. Nehru and Patel, the combination of an idealist and the realist respectively, had the final word in many matters.<sup>2</sup> Ambedkar and the Drafting Committee had the stupendous task of incorporating into the draft of the Constitution the recommendations of various committees and produce a constitution in a coherent and acceptable manner.
- 2.3 The Constitution of free India, as it emerged from the Constituent Assembly, was chiefly the handiwork of this astute constitutionalist. His role in its making and adoption can be appreciated fully by considering, in an objective way, the nature of the political society he provided for free India and secondly, the legal and constitutional restraints upon authority in the form of Fundamental Rights. Thirdly it is also necessary to examine the provisions relating to the minorities. The best way to do it is to base our observations upon his own exposition of the Draft Constitution while he moved it for consideration and further in the light of the observations of the members of the Constituent Assembly. Ultimately it is proposed to make a final assessment of the stand Ambedkar took in respect of these provisions.

### III

- 3.1 The Preamble of the Indian Constitution proclaims India as an "Independent Sovereign Republic". The Objective Resolution, on which the Preamble was based, not only indicates the source of the Constitution but primarily lays down the nature of the polity of free India. Though it is a Federal polity that we have in the Constitution nowhere it is referred to as such. Article I of the Constitution calls India an "Union of States" and the federal character of the polity is, therefore, implied though not explicitly written out. Ambedkar had his own explanation and justification to call our polity as "Union of States" and not a federation. He pointed out:<sup>3</sup>

The Federation is a Union because it is indestructible. Though the country and the people may be divided into different States for convenience of administration the country is an integral whole. Its people a single people living under a single emporium derived from a single source.

In these words Ambedkar emphasized the indestructible character of our Indian Union. He had hoped that with a single judiciary for the entire country and by providing a concurrent list of subjects and finally by providing for an

All India Service recruited on an all India basis with common qualifications it will be possible to achieve the required degree of unity in the life of the newly-born Republic.

- 3.2 It is possible to hold that such an arrangement, as provided in the draft was, to a large extent, also shaped by personal views of Ambedkar on the subject. He was not a votary of a federal system, for he was a believer in a strong central government. It was particularly necessary in a country like India with centripetal and centrifugal tendencies operating. To the critics of the federal system in the constitution Ambedkar had this reply:<sup>4</sup>

Some critics have said that the Centre is too strong. Others have said it must be made stronger. The Draft constitution has struck a balance. However, much you may deny powers to the Centre it is difficult to prevent the Centre from becoming strong. Conditions in modern world are such that centralization of powers is inevitable.

- 3.3 In providing for a less rigid form of federalism, Ambedkar was guided by the principle that a Constitution is, after all, the expression of the will and needs of a people at a given time and he thought it would be fatal if one were to be guided by strict constructions of constitutional principles and patterns, as for example, the pattern of federalism. He was alive to the fact that no federation functioning in the world was an ideal or perfect one. There is nothing like that. I was functioning with innumerable variations. To Ambedkar "the constitution was merely a mechanism for purpose of regulating the work of various organs of the State".<sup>5</sup>
- 3.4 Ambedkar's distinct contribution in this regard lies in the fact that he could overcome the temptation to be guided by rigid principles and provide for a system that would suit and work well. He had also the vision and forethought to look beyond the needs of a society which had a divisive tendency. No wonder Ambedkar provided for a stronger Centre only to overcome difficulties in the future which was the maximum he could do in the given circumstances. While providing a flexible federation Ambedkar was avoiding the extremes and following the golden mean between the unitary and federal forms. This was generally his approach in the making of the Indian constitution. He so designed it that it would be federal when possible and unitary when necessary.<sup>6</sup> He discharged his duty with a great sense of responsibility not only to the House but to the posterity as well.

#### IV

- 4.1 The Constitution of India provides for a parliamentary system of government on the British model, in preference to the presidential form of the American model. The Drafting Committee under the stewardship of Ambedkar recommended after careful consideration the parliamentary system of government with its own justifications. Ambedkar all along defended the parliamentary system with a removable executive. He argued that such a

system with a removable executive provided greater degree of responsibility which was the need of the country.<sup>7</sup>

- 4.2 If Ambedkar's views expressed at this occasion were different from those stated a few years earlier there is need to explain the transformation. In the first place it should be remembered that his proposals as contained in his brochure *State and Minorities* were intended mainly to be the demands of a minority group. He had, therefore, to plead in it for and on behalf of the Scheduled Castes and lay emphasis on such things as would protect their interests at any rate. His plea for an irremovable executive was one such.<sup>8</sup> But as Chairman of the Drafting Committee and as principal architect of the Constitution he could not afford to think only on a sectional basis and give expression to his personal views and preferences. He had to take into consideration various other factors. Secondly, there was the model of parliamentary system already provided for in the Act of 1935, though in a limited way, and Indians had become familiar with parliamentary institutions during the British rule. Thirdly, another important factor was that Prime Minister Nehru had already expressed his preference for the parliamentary system in his speech in the Constituent Assembly.<sup>9</sup> He was the Chairman of the Union Constitution Committee on the basis of whose report the Drafting Committee was obliged to proceed. Ambedkar had, therefore, no alternative but to give legal shape to the parliamentary system with a removable executive by writing it into the constitution and justify its adoption in the Constituent Assembly. Ambedkar gave the following explanation justifying it:<sup>10</sup>

The Parliamentary system differs from a non - parliamentary system. in as much as the former is more responsible than the latter but they also differ as to the time and agency for assessment of their responsibility — The Draft Constitution in recommending the parliamentary system of executive has preferred more responsibility to more stability.

- 4.3 It is possible to hold that had the circumstances permitted him Ambedkar would have provided for a mixed type of executive. He had realised that a removable executive could work only where there was a greater degree of political maturity and constitutional discipline among the people who were called upon to work it. A removable executive could work smoothly and with grace only with sound parliamentary traditions.

## V

- 5.1 Ever since the freedom struggle was launched Indians were attracted towards the American Declaration of Independence. The demand for such fundamental rights for the people of India was one of the important planks all along the course of the freedom struggle. The Indian National Congress and various other organisations were demanding these basic freedoms for one and all. The Nehru Report provided for fundamental rights in 1928.

- 5.2 When the Constituent Assembly met there was complete unanimity among its members regarding the need to provide for Bill of rights in the new constitution. Ambedkar, as the champion of the downtrodden was convinced beyond doubt as to the need for a Bill of Rights in the Indian Constitution. He had been pleading continuously for an elaborate system of fundamental rights for the minorities in particular and for citizens in general. His fight for social justice was the main plank in his struggle as a leader of the scheduled castes. He was convinced that social justice could not be secured to one and all unless it was enshrined in the constitution itself. In the course of the memorandum - *A Scheme of Political Safeguards for the Protection of the Depressed classes in the future Constitution of a self-governing India* that he submitted jointly with R. Srinivasam to the Minorities sub-committee of the First Round Table Conference he had laid down model Articles on Fundamental Rights based mostly on the American, Irish and the Burmese constitutions.<sup>11</sup> His views on fundamental rights are more elaborately expressed in his book *States and Minorities* which is itself in the form of a model constitution. Ambedkar largely depended upon the constitution of other countries where conditions analogous to those in India prevailed.
- 5.3 Ambedkar designed these rights with the chief objective of eliminating and abolishing inequalities. The safeguards he contemplated against a possible invasion of the State or the individual was through the judicial power guided by the due process of law. He had fully realised that rights without legal remedies were of no use. Due to Ambedkar's influence the fundamental rights as provided in the Indian Constitution were more elaborate and comprehensive than in the Bill of Rights in any other Constitution.<sup>12</sup> This was necessitated by the special problems of diverse religious, cultural and social conditions of a heterogeneous Indian society. He thought that these were also intended to provide not only security for an equality of citizenship but also certain standards of conduct, citizenship, justice and fairplay. It is in this part of the Constitution that the lofty principles adumbrated in the preamble were to find fuller expression.
- 5.4 Ambedkar maintained that reasonable restrictions were indispensable if the rights guaranteed were to be fully enjoyed by one and all. In reply to criticisms in the Constituent Assembly Ambedkar said:<sup>13</sup>

The criticism in so far as it seeks to distinguish fundamental rights from non-fundamental rights is not sound. It is incorrect to say that fundamental rights are absolute while non-fundamental rights are not absolute. The real distinction between the two is that non-fundamental rights are created by agreement between parties while fundamental rights are the gifts of the law. Because fundamental rights are the gifts of the law. Because fundamental rights are the gifts of the state it does not follow that the State cannot qualify them.

- 5.5 As to the criticism on the provisions regarding the suspension of fundamental rights Ambedkar said:<sup>14</sup>

In certain cases, where, for instance, the State's very life is in jeopardy, those rights must be subject to certain amount of limitation. Consequently, the superior rights of the state to protect itself in times of emergency so that it may live to discharge its functions in order that the individual under the aegis of the State may develop must be guaranteed as safely as the rights of an individual.

- 5.6 This able defence of the limitations of fundamental rights by Ambedkar is a tribute to the constitutional acumen which set at rest all misgivings and criticisms. Ambedkar's contribution in this regard lies in that he conceived a system of rights with necessary limitations in the interest of the individual freedom with the authority of the state. He evolved and incorporated a philosophy of rights based on the need for balancing individual liberty and the need for social control which alone could provide social justice.

## VI

- 6.1 Ambedkar strove throughout his public life for the emancipation of the untouchables in particular and other minorities in general. He was eminently suited to secure justice and fair play to them and pave the way for their all-round progress in a free and just society. His anxiety was not just to seek some concessions from the Government or to be content with a few more seats for those belonging to scheduled castes. Ambedkar was anxious, on the other hand, to make use of the opportunity of constitution - making for solving the problem of scheduled castes on more enduring grounds and for ever. The attitude he adopted at this juncture was one of mutual efforts and adjustments among the majority and minority communities in a spirit of give and take. He fully supported the provisions in the constitution recognising the rights for the religious and cultural minorities in the country.
- 6.2 In this connection special mention may be made of Article 17 of the Constitution which abolishes the practice of untouchability in any form. In a simple and brief way this article abolished the age-old anachronism of our society. Ambedkar was the man who was destined to emancipate his unfortunate brethren.
- 6.3 It has been pointed out that Article 17 did not create any particular right and privilege.<sup>15</sup> Ambedkar was aware of this fact. But as he had pointed out earlier it was the only effective way in which the determination to eradicate this evil, root and branch, could be expressed emphatically. Untouchability was one of the greatest disabilities suffered mutely by nearly one-sixth of the country's population. If a right meant a remedy against a disability the fundamental right created in Article 17 definitely proved a great charter of deliverance to those people.

## VII

- 7.1 Ambedkar gave a note of warning on the nature and conditions of a true democracy in the country. He posed the question whether the Indian citizen would be having democracy in the real sense, in its economic and social aspects with the ushering in of the Republic. He knew fully well the inadequacies of the Indian society to serve as the base for a full-fledged democratic edifice. One such inadequacy was the "principle of graded inequality" which meant "elevation for some and degradation for other".<sup>16</sup> So also was the situation in the economic field. It is for this reason that he said:<sup>17</sup>

On 26th January, 1950 we are going to enter into a life of contradictions. In politics we have equality and in social and political life we have inequality. In politics we will be recognising the principle of one man one vote one value. In our social and economic life we shall, by reason of our social and economic structure continue to deny the principle of one man one value. How long shall we continue to deny equality in our social and economic life? If we continue to deny it for long we will do so by putting our political democracy in peril.

- 7.2 He also lamented that the absence of fraternity, a sense of common brotherhood of all Indians, that gives unity and solidarity to social life was conspicuous by its absence in India.

## VIII

- 8.1 The making of the Constitution was an enormous task in which several individuals and forces exerted their pressure and influence. As chairman of the Drafting Committee B.R. Ambedkar had greater scope than any other individual for shaping the constitution. But it should be realised that it was a constitution written and finalised by adopting the most democratic method of open deliberation. The task of Ambedkar was to give the required shape to the constitution. He produced a formidable document incorporating the ideas and directives that emanated in the Constituent Assembly. Ambedkar expressed the ideas and directives in a coherent fashion using his unsurpassed constitutional skill and legal acumen. The constitution, therefore, bears his impact from the beginning to end.
- 8.2 There was another aspect, an equally important one, of constitution making with which Ambedkar was directly connected. He had the unique privilege of moving the draft constitution for consideration in the Constituent Assembly. He had to explain every clause of the draft and reply to the criticism from the members. It is in this work of Ambedkar that we have an opportunity to understand his basic political and constitutional ideas.



- 8.3 This formidable edifice that established a democratic machinery could not be the handiwork of one man. So, while we acknowledge gratefully the services of all the participants we have to single out Ambedkar for the honour and credit of being the principal architect of the Constitution of India. His contribution is substantial, significant and spectacular. He should be remembered not only as a great social reformer, a patriot, a vigorous champion of justice and freedom but much more as a great constitution maker that the nation could produce.

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