

The Indian Constitution as an Instrument of Ambedkar's New Social Order

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Abstract

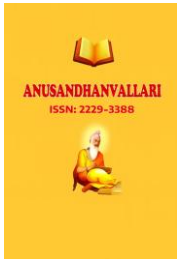
This paper discusses the Indian Constitution as the most important point of the Indian constitution as offered by B.R. Ambedkar as a way of establishing a new social order in a society that was traditionally disorganized with instances of hierarchy, social exclusion and graded inequality based on caste. Having left the perspectives of limited legalistic interpretations, the paper places the Constitution in a wider context of Ambedkar in his political and moral philosophy, where he insisted that political democracy should be based on social democracy. Heavily relying on the Constituent Assembly Debates and Dr. Babasaheb Ambedkar: Writings and Speeches, the paper examines how fundamental rights, reservations, constitutional morality and principle of fraternity were crafted to serve as a tool of substantive equality and not as formal guarantee of law. It also challenges the conflict and constraints of the social change of the constitution, especially the continuity of caste in spite of the constitution. Through the appeal to plausible constitutional scholarship, the paper aims to posit a view that the Constitution was intended to be a dynamic and pedagogical power by Ambedkar that could reform a social relationship although it requires ethical commitment and democratic vigilance. The paper finds a remarkable importance of the constitutional vision of Ambedkar in the modern-day India, and its particular relevance in discussions on constitutional erosion, social justice, and the contribution of institutions and social movements to a democratic life.

Keywords: B.R. Ambedkar; Indian Constitution; social justice; constitutional morality; caste; fraternity

Introduction

The Indian Constitution was created at a time when there were stable caste systems, institutionalized social exclusion and massive inequalities, which were made more traditional by the time of the colonization. The colonial constitutional developments which include Government of India Acts and constrained electoral reforms did not grant attention to structure violence of caste since they were aimed at administrative effectiveness and the representations of elites (Austin, 1999). In the case particularly of historically oppressed populations, including so-called Depressed Classes, political emancipation could not be brought to bear without social change, a new kind of domination would emerge. It is against this background that B.R. Ambedkar saw the Constitution as being not just a law charter, but a social reconstruction tool of radicalism.

The concept of the new social order of Ambedkar was grounded on ethical triad liberty, equality, and fraternity concepts which he never separated. Ambedkar cautioned in his interventions at the Constituent Assembly that political democracy could never live without social democracy which was defined as being a way of life that would acknowledge liberty, equality and fraternity as the guiding principles of life (Constituent Assembly Debates [CAD], 1948/1989). These were not ideals but rather practical remedies to caste inequality, graded order and social alienation. Ambedkar aimed at overcoming hereditary privilege and achieving substantive equality through



the establishment of the provisions on the fundamental rights, affirmative action, and constitutional morality (Ambedkar, 1947/2014).

This paper maintains that the Indian Constitution should be interpreted as being the most far-reaching political action of Ambedkar a bid to institutionalize a new social order that had the power to change massively unequal social relationships. Placing constitutional design in the wider scope of the social philosophy of Ambedkar, the study brings out long-term importance of the Constitution as a device of social justice and not a disinterested set of rules.

Ambedkar's Concept of a New Social Order

The idea of a new social order as developed by B.R. Ambedkar was a result of a long-held criticism of both caste as a division of labour, as opposed to a total failure to differentiate between the roles of classes. To Ambedkar, caste was a hierarchical social order that derived inequality, humility, and exclusion to human beings by attaching varying values to human beings. In the book, *Annihilation of Caste*, he suggested that the caste system was not merely a division of labour, but division of labourers, which was maintained by endogamy, religious sanction and social coercion (Ambedkar, 1936/2014). There was a graded framework in this way that inequality became interiorized and normalized, and reproduced in future generations, so social reform could not be possible except through a complete revolution in caste itself.

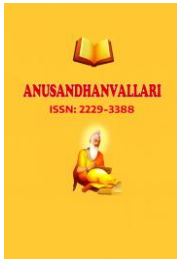
Independent of how constitutional democracy was to be construed as a moral project, Ambedkar could not conceive his new social order without it. He was always alerting that democracy could not be narrowed to campaigns or institutional set ups. In his speech delivered on the Constituent Assembly on November 25, 1949, Ambedkar described social democracy as a form of life where liberty, equality and fraternity are embraced as the guiding principles of life and that these three principals were organic and could not exist on their own (Constituent Assembly Debates [CAD], 1948/1989). Equality without liberty threatened homogeneity and without equality threatened uniformity and both without fraternity were not workable.

The concept of fraternity held its special position in the social philosophy of Ambedkar. Fraternity, as opposed to liberty and equality, was a social reality that had to change social consciousness and this was impossible by adopting legal and political means as it can be partially obtained. Fraternity is a feeling of shared brotherhood by all Indians which was termed fraternity by Ambedkar which was actively sabotaged by caste society through fostering social division and graded allegiance (CAD, 1948/1989). The constitutional guarantees could be easily swept away and derailed without the element of fraternity because the majoritarian instincts and social prejudice defeats could easily cut through it.

Ambedkar thus considered the Constitution as a tool to get started, though not to achieve, the conversion to a new social order. Using basic rights, protection of the discriminated groups, and the matter of basic constitutional morality enabled him to provide the atmosphere in which the concept of fraternity could over time become social reality (Ambedkar, 1947/2014). Institutional design was therefore important but not the only issue in the success of constitutional democracy in the light of Ambedkar, but how willing the society was to rid itself of caste based hierarchies and move towards ethical social relationships, based on the equality of human dignity.

The Indian Constitution as a Socially Transformative Document

B.R. Ambedkar had continuously opposed the notion that political democracy alone would solve the wide social inequalities in India. In his case, a constitutional system, confined to the institutions of representation, and, periodically, to elections, was apt to be empty in a caste-dogmatized society based on social exclusion. Drawing



a straightforward metaphor of a warning that India was entering the age of a political democracy, Ambedkar left no illusions to the Constituent Assembly that India had not realized the goal of social and economic democracy and thus the situation would pose a threat of the constitutional order itself (Constituent Assembly Debates [CAD], 1949/1989). Without social equality, he maintained, the equality of politics would only recreate domination with the help of democracy.

It is on this background that Ambedkar could envisage the Indian Constitution as a machine of expressly transformative document. Compared to the classical liberal constitutions where the main focus of the constitutions is to restrain the power of the state, the Indian Constitution was made to interfere with society in order to rectify past unjustified inequalities. Ambedkar considered the constitutional provisions on fundamental rights, equality before law, abolition of untouchability, and affirmative action as means other than concessions required breaking the caste-based privilege (Ambedkar, 1947/2014). This use of the Constitution was its intended social pedagogical action, to reform the social relations of law and institutional protection.

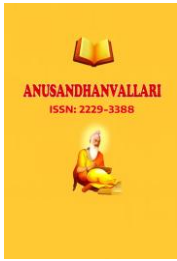
This was a revolutionary aspiration that was a great departure to liberal constitutionalism based on individualism and formal equality. The liberal constitutions largely assume that society is made of relatively equal individuals and also view the liberty as negative and protect against state intrusion. In his turn, Ambedkar was very conscious of the idea that the Indian society was marked by the presence of the so-called graded inequality where only in case of formal rights than substantive justice could be achieved. Through this, the Constitution included clauses of positive discrimination and governmental based redistribution, which echoed the desire of a social revolution contained in the Constitution that was brilliantly scoffed by Granville Austin (Austin, 1999).

The constitutional vision of Ambedkar was, therefore, a mixture of law, as well as morality. He demanded constitutional morality, which is the respect that constitutional values should have over social prejudices in order to maintain the democracy in a caste ridden society (CAD, 1949/1989). The constitution was not meant to overnight turn the society upside down, but rather it was to provide institutional pressures over time in opposition to inequality and exclusion. It is on this front, that the Indian Constitution has remained the most persistent attempt by Ambedkar to put the ideal of a new social order into living constitutional form, beyond the liberal minimalism of the liberal tradition, to the social justice as the constitutional principle.

Fundamental Rights and the Quest for Substantive Equality

Fundamental Rights form the architecture of the Indian Constitution is a testament to the intentions of B.R. Ambedkar to no longer shadow formal equality in any way, but understand what justice can be when it is sensitive to social hierarchies and to historical disadvantage. The normative part of this project is made up of articles 14, 15, 17, and 21. Article 14 including equality before the law and equal protection of the law ensured that all laws were established as equal but Ambedkar was specific that it would not have a mechanical application in a society characterized by “graded inequality based on caste. In the Constituent Assembly, he made a warning which stated that the equal treatment of unequal was only going to reproduce injustice; thus; he needed to treat them differently so as to attain true equality (Constituent Assembly Debates [CAD], 1948/1989).

This insight was operationalized in Article 15 in providing that no one can be discriminated in accordance to specified grounds and at the same time give the state the freedom to treat socially and educationally backward classes in special ways. Those measures were not the exceptions to equality but its logical extension, which was natural to a society of the first degree of inequality (Ambedkar, 1947/2014). This was a clear break away of the concept of formal equality in liberal constitutionalism where a level social field is assumed and neutrality is given priority over redress.



The lifting of untouchability under Article 17 is the smouldering word an nailed non-reality of caste as a moral and social order. Ambedkar did not consider untouchability as a social aspect only but a denial to the constitutional morality and human dignity. In his interventions in the Assembly, he indicated that the abolition of untouchability was necessary in implementing the sanctity of the Constitution on anti-social traditions (CAD, 1948/1989). Article 17 is therefore a representation of the constitutional morality in practice: it stipulates that constitutional values be upheld even in situations where they are in disagreement with the established social norms.

The Constitution is further enlarged by the Art. 21 of the Constitution, as the concept of life and personal liberty is also associated with the sense of dignity and meaningful living. It is, though interpreted to the letter, an expression of the logic that Mirumkar focused on when he demanded rights to guarantee the conditions of equal citizenship rather than the formal freedom (Ambedkar, 1947/2014). All of these provisions make Fundamental Rights more than mere promises to something abstract and more a social change tool.

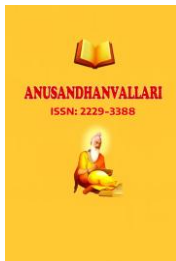
The rights system of the Indian Constitution was designed to result in a social revolution, deinstitutionalization of a former privilege, and the affirmation of the status of marginal groups or individuals to be equal; that is, to enjoy equal access to moral and political rights (Austin, 1999). The same trend is also maintained by Upendra Baxi who notes that the code of equality in the Constitution reflects the transition to the principle of formal equality to the principle of substantive justice, based on historical consciousness and moral responsibility (Baxi, 2012). Read in this spirit, Fundamental Rights become the legal approach to achieving substantive equality by Ambedkar an approach which aims at bringing the constitutional law into joining form with the moral imperative of social emancipation.

Reservation, Representation, and Social Justice

The rationale of reservations as understood by B.R. Ambedkar had nothing to do with any conception of welfare, or compensatory charity. His arguments always included the theory that most historically disadvantaged populations were deprived of social dignity, as well as the power and other decision-making bodies. In Constituent Assembly, in a clarification he made over the Scheduled Castes and Scheduled Tribes is that they needed protection since they had become part of the social life as permanent minorities and could not compete on equal footing with others in society owing to hereditary disadvantage (Constituent Assembly Debates [CAD], 1946/1949/1989). In this meaning, the reservations were not an exception to equality but they were the means of democratic inclusion.

Ambedkar categorically came up with a line between political protection and charity. He opposed using the reservations as gestures of good will by a good majority. Rather he portrayed them as political rights that are necessary to provide representation and self-advocacy in the democratic institutions. Ambedkar in his works and speeches highlighted that the non-representation of the oppressed groups would make such groups voice-less in the legislatures, the administration, and in the rest of the life and hence the promises of equality by the constitution would not work (Ambedkar, 1947/2014). Reservations were therefore interpreted as short-lived yet, needed solutions to right structural imbalances of power.

This stance was strongly connected with the general critique of the formal equality by Ambedkar. He said that the unequal groups should not be treated as equal in the political struggle because it would only serve to cement hegemony since social advantage would effortlessly be converted into a political one. According to Marc Galanter, it is possible to observe that the reservation model of the Indian Constitution bears a sign of competing equalities so the group based remedies were implemented in order to attain substantive equality in a stratified society (Galanter, 1984). This logic is what was foresighted by the advocacy of reservations by Ambedkar who demanded that the aspect of equality expected to be treated differently based on historical backgrounds.



The misconceptions about reservation policy tend to make it look antithetical to merit or even a right at all times. Ambedkar has not meant this when he is read like that. He perceived reservations as a temporary measure that was to be made to allow the marginalized groups to reach the status of being able to participate in an equal manner, and not as a goal by itself. He clearly expressed this in the Constituent Assembly when he said that this was an additional reason why guarantees must not exceed their social utility and that the guarantee of democratic legitimacy could be eroded by the blind acceptance of them (CAD, 1949/1989).

Reservations can however be explained in the framework of Ambedkar as forms of social justice and democracy, which is a constitutional instrument. They want to change the disproportionate social organization by equalizing power distribution, according to which political democracy and moral requirements of equality and dignity will be adapted. Quite on the contrary, by taking these steps, according to Ambedkar, the society could become fragmented only under the conditions when it would be possible to establish the circumstances under which the genuinely autonomous and supportive social order would arise.

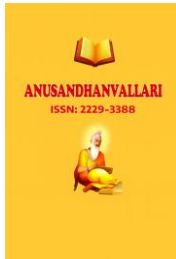
Constitutional Morality and the Principle of Fraternity

The idea of constitutional morality introduced by B.R. Ambedkar is one that takes a central location in his outlook towards a successful democratic order. Ambedkar did not imply constitutional obedience by constitutional morality by which he implied that it entails a cultivated attitude to uphold constitutional value above social practice and political expedience. At the end of his speech to the Constituent Assembly on November 25, 1949, he cautioned him that all the good a constitution could possibly be, it still relied upon the people and those political parties they established in order to implement it (Constituent Assembly Debates [CAD], 1949/1989). Constitutional morality was required in a society where tradition and majoritarian power dared to tyrannize in society and where caste hierarchy and social seclusion were the order of the day.

To Ambedkar, the moral fraternity was the moral aspect of the constitution. Whereas liberty and equality might be formulated in terms of rights and institutional protection, it was fraternity that needed more fundamental transformation of social attitudes. Fraternity, according to Ambedkar, is a sense of brotherhood and without this sense liberty and equality would be weak and formal and no more than an illusion (CAD, 1949/1989). He was a keenly conscious of the fact that caste society was actually undermining such a feeling because it conditioned social distance and graded inequality. Fraternity, therefore, was not a dream value of the constitution printed in the Preamble but a social fact that has secured the lives of the democracy.

Fraternity as insisted by Ambedkar made his constitutional thought different to the liberal traditions which ignore social cohesion by focusing on individual rights. According to the scholars, the emphasis on fraternity in the Indian Constitution was a recognition of the fact that, in a highly plural and unequal society, democracy must be provided with moral integration along with legal assurances (Austin, 1999). In this context, constitutional morality acts as an interface between the law and the society compelling both citizens and institutions to internalise ethical obligations of the Constitution (Baxi, 2012).

The topicality of the ideology offered by Ambedkar to the modern Indian democracy is all the more striking. Constitutional morality is a normative restraint in the exercise of the misuse of power in an age of social polarization, in institutions where the majority has demanded excessive power, and institutions where there is the threat to institutional independence. Fraternity according to the vision of Ambedkar is a balance to exclusionary politics that emphasizes the equal moral value and the equality of civic citizens. These two elements, constitutional morality and fraternity, cannot be disregarded as household to the fulfilment of the transformative potential of the Constitution and the democratic life outside of formality of law.



Limitations and Contradictions in Constitutional Social Transformation

Ambedkar was quite conscious that it had its drawbacks of applying constitutional mechanisms to change a society that was highly stratified. Quite to the contrary, he was in fact a constitutional pessimist since he kept on warning that the Constitution could not in any way assure social change but could merely serve as a model on which change could be implemented. When Ambedkar gave his last speech to the Constituent Assembly on November 25, 1949, he cautioned the people that India might be allowing itself to rest on a framework of social and economic disparities and thus place political democracy in a very precarious position (Constituent Assembly Debates [CAD], 1949/1989). This was one of the warnings that he issued as he feared constitutional democracy could not just be used along with the social order that was not reformed.

One of the major conflicts of the Ambedkarian thought is the fact that there is a gap between the constitutional and social democracy. Although the Constitution guaranteed the ideals of liberty, equality, and fraternity, according to Ambedkar such values needed to be a way of life as opposed to being limited to documents of the law (CAD, 1949/1989). The social segregation, discrimination, and violence that stemmed out of caste practices was an indication of the fact that the constitutional morality was not adequately incorporated in society. Individuals could be limited in their open injustice by law, and such a limitation was the sole option, according to Ambedkar, but it could not collapse without social psychology of caste active and at work (Ambedkar, 1936/2014).

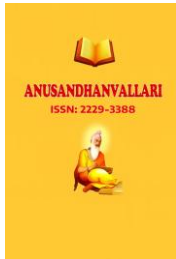
The further persistence of the caste in the wake of the constitutional guarantees indicates a software anomaly in the Indian social project of transforming the society. Though there are stipulations in the constitution to prevent discrimination and untouchability as stipulated in the 15 and 17 articles, it has received a lop-sided application through the process of social force and institutional inertia. It has been noted by scholars that the conservative tendency of the dominant social groups to accommodate constitutional language and oppose the redistribution of power on large scales has tend to nullify the prospective transformational power of the Constitution (Austin, 1999; Jaffrelot, 2003). It has led to a case where equal opportunities of the law go hand in hand with social stratification.

Such restrictions actually uplift the constitutional vision of Ambedkar but they instead highlight its radical honesty. He never thought that the social emancipation would be automatic as a result of constitutional change. Rather he found the ultimate agent of change in the long term social struggle, moral dedication and democratic watchfulness. The Constitution, according to the ideas of Ambedkar, proves itself as being a necessary but non-sufficient precondition of the realization of the new social order it is supposed to create.

Contemporary Relevance of Ambedkar's Constitutional Vision

The constitutionalism of Ambedkar is still a burning topical issue since most of the circumstances mentioned by him as a danger to democracy such as caste hierarchy, social exclusion or the appeal of replacing mass consent with constitutional moderation still define the lives in Indian society. Ambedkar warned in a talk of November 25, 1949 that India was heralding political democracy even in the face of endemic social and economic disparity, an incongruity which might pick constitutional guarantees neglectable in execution (Constituent Assembly Debates [CAD], 1949/1989). It is this warning that we find such a useful tool of analysis in relation to modern fears of constitutional erosion: when constitutional values are considered as optional, when equality is viewed as just a formality, then the constitutional project is put under the threat of being turned into institutional ritual instead of social change.

The second aspect of current relevance is that substantive equality remains a constitutional aspiration even today. The claim on the part of Ambedkar that liberty, equality, and fraternity are an organic unity explains why the right



adjudication may not be disengaged of the social consciousness (CAD, 1949/1989). The recent scholarship on the Constitution has stressed that the Constitution in India was not meant to restrain power but transform the social relations, in particular, the caste-based and mentally set hierarchies of status (Bhatia, 2019; Khosla, 2020). This is especially significant where the issues of equality, dignity and anti-discrimination are reduced to procedural legality, which is set in opposition to the actual circumstances that the Constitution was supposed to address.

The critical part of this picture is that of the judiciary. Ambedkar found the covenantal existence of the constitution not only in the judgship or the document itself, but constitutional morality: fidelity of the populace and the institutions to the constitution, as against the faction (CAD, 1949/1989; Ambedkar, 1947/2014). Modern studies on the constitutional practice of India point out a continuous antagonism between transformative constitutional promises and the daily functioning of the law, where the rights are asserted, negotiated, and, occasionally, thwarted both on an administrative and a judicial level (De, 2018; Thiruvengadam, 2017). Social movements, particularly those organized around the idea of dignity, equal citizenship, and anti-exclusion insurance, therefore, continue to play a major role in ensuring that the Constitution has a life beyond being on paper and is a social, rather than a legal endeavour. When so read, the constitutional vision by Ambedkar can be viewed as a democratic work in progress, one which aims to transform constitutional theories into social realities by way of institutions, constitutional interpretation, and prolonged civic action.

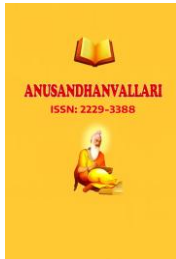
Conclusion

The argument in this paper was that the Indian Constitution should be interpreted as the most significant political interference made by B.R. Ambedkar, in trying to institutionalize a new social order based on liberty, equality, and fraternity. Quite on the contrary, rather than perceiving the Constitution as a neutral and legal framework, Ambedkar sensed it as a social remedial tool, meant to take on caste hierarchy, graded inequality and ingrained exclusion. He tried to make the political democracy meet the moral needs of the social democracy by basing it on fundamental rights, reservations, constitutional morality, and fraternity. Meanwhile, the cautions which Ambedkar gave himself point to the inefficacy of the Constitution itself: unless there is permanent social dedication, constitutional guarantees will be next to hollow.

Reestablishing the Constitution as a social revolution, it is necessary to read it not only by means of courts and institutions of a particular country but also by means of social practice. The directions of future research can be fruitful in investigating, first, the increasingly close correlation between constitutional morality and majoritarian politics; second, the importance of social movement in the realization of substantive equality beyond legal theory; and, third, comparative studies of transformative constitutionalism within the framework of societies whose high levels of social stratification are characteristic. These questions would take the initial project of Ambedkar, which was unfinished, of rendering constitutional ideals into long-term social realities.

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