



## Administrative Staff College of India

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### Shaping the Constitution

By

**Dr.B.R. Ambedkar**

President of this function, Mr. Narasimham; Hon'ble Minister for Education, Mr. Srihari, my colleagues in the judiciary, distinguished members of the gathering, Ladies and Gentlemen,

From the English version of the Hon' ble l'v1inister, I could gather that the State of Andhra Pradesh would cherish and accomplish the dream of Dr. Ambedkar, by emphasising more on education. Education is considered to be a medium to transmit civilization. It has to surmount the vices and weaknesses of the society. When it surmounts, that is the success of education. When it succumbs to the vices and weaknesses of the society, that is considered to be a defeat of education.

Today, we are on a topic, "Shaping the Constitution by Dr. B. R. Ambedkar". Now, as you know, Dr. Ambedkar being the Chairman of the Drafting Committee has earned recognition as an architect of the Indian Constitution. The question that may come, does it not include also shaping of the Constitution, what is that significant about shaping of the Constitution? Are they synonymous or they different?

My endeavour will be that they are substantially different and in substance, are not synonymous. As an architect, being the Chairman of the Drafting Committee, Dr. Ambedkar had to find out the constitutional measures, devices etc., from the philosophy - - social, political and then to articulate them in legal format. Certainly, according to me, it is a scholarly pursuit of the highest order. That is architecturing - to put that architectural design to test and trial before a Constitutional Assembly. That august body was composed of eminent persons of different convictions, 'isms' and 'leanings' towards 'socio-economic aspect'. To meet the criticism, repel the

attacks, convince the underlying ideas and principles of the draft, design, occasionally to modulate the design as per the deliberation and lastly, to seek a seal of approval for the draft model- - this entire strenuous exercise I consider as 'Shaping of the Constitution'. That is more challenging than the Architecturing.

While appreciating the monumental work, the saga of shaping of the Constitution, you will have to go into the background. You will have to go into the then prevailing 'Socio - Religious' domination which has a bearing on the personality of Dr. Ambedkar. You will have to peep into the legal and constitutional developments which had an impact on making of the Constitution. Now, it is rightly said and it is well-known that Dr. Ambedkar suffered from religious dogma of 'Hinduism'. His suffering naturally developed a hatred for Hinduism. He commented, 'It was alright for Lokmanya Tilak to make a declaration that Independence is my birthright and I am going to achieve it. Ambedkar said that Lokmanya Tilak could make such a declaration because he was borne in an upper class Hindu. Had he been an untouchable, a depressed class person, perhaps, his slogan would have been otherwise. He would have said, to remove untouchability is my birthright and I am going to achieve it. Ladies and Gentlemen, it was said at that time that it is very easy to differ with Dr. Ambedkar but it is very difficult to ignore him. Dr. Ambedkar emerged on the national platform as one of the formidable leaders.

In 1930, before the Round Table Conference, he made a demand for a minority status to the depressed class without having any link with the Hindus. Subsequently, perhaps, it was before the Montague Commission, he asked for a separate electorate for the depressed class. He had a clash with Gandhiji, who was a celebrity of the Indian nation. Gandhiji said, 'I have highest respect for the learning of Dr. Ambedkar but unfortunately his decisions are dominated by bitter experience in the past' and Dr. Ambedkar had to pass as you know through an ocean of anguish.

Very desperately, he canvassed for the claim of a separate electorate for Dalit' but he had to abandon it in 1932 under the Poona pact out of socio-political compulsion. He himself, as I said, had a great hatred for Hinduism. Once he described, that the Hindu society based on *Chaturvarna*, is like a multistoried building. Each floor is allotted to a particular caste. By virtues, the person from ground floor cannot climb the upper floor and by vices, a person from upper floor cannot be sent to the ground floor. Ambedkar remarked that this building has no staircase. That Ambedkar, as a paradox it might be, had to pilot in 1951, the Hindu Code Bill. He earned recognition as a modern *Manu*, who's *Manusmriti*, he burnt publicly. He opposed the formation of Constituent Assembly on the ground that its compositions would be dominated by upper class Hindus and they will discard the interests of depressed. That Dr. Ambedkar was bestowed the honour to be the Chairman of the Drafting Committee of the Constituent Assembly. He entered the Constituent Assembly with a limited purpose - to protect the interests of the depressed.

He was also dominated by the teachings of Gautama Buddha. Gautama Buddha preached, "You don't deprive that man who has denied you". Gautama Buddha gave the message "Bahujan Hitaya, Bahujan Sukhaya". What was conveyed, the largest good of the largest number and that has been condensed in our titution by Dr. Ambedkar. The man. who entered into the Constituent assembly just to protect 11' ' interests of the depressed, he emerged out of the Constitl ~nt Assembly, as the hero of the Republic. These are the paradoxes which Ambedkar had to encounter. While evaluating the task of shaping the Constitution, you will have to look into these aspects.

To transmit the dream and passion of world's greatest democracy was a Herculean task. The task becomes more formidable because of the socio-political events. One such event which created a very critical situation was the partition of the Indian nation. It has caused a perennially bleeding injury to the Nation. Thereafter, there have been continuous clashes between Hindu-Muslim. There was a crisis of regionalism and linguistic fanaticism. Then you know, the assassination of Mahatma Gandhi. This was perhaps a stabbing wound for the Indian nation, which has been beyond the probability of healing. The Constituent Assembly had to proceed through such critical situation. Piloting the draft Constitution in such a precarious condition, one can visualize the predicament of Dr. Ambedkar. Jawaharlal Nehru made a statement on 14<sup>th</sup> August, 1947, that 'we made tryst with destiny long ago and a time has come to redeem our pledge.' And the first step to redeem that faith was the presentation of the draft Constitution on 4<sup>th</sup> of November, 1948, by Dr. Babasaheb Ambedkar. At that time, it was having 315 Articles and 8 Schedules and here begins the saga of shaping the Constitution of India.

At the outset, Ladies and Gentlemen, the draft was condemned throughout. Everybody attacked and criticised saying that 'What he did?'. This is a copy of Government of India Act'. Some other provisions are copied from Constitutions of other Nations'. There was nothing new. Now, here was a trial for Dr. Ambedkar. He, with his ability gave a rejoinder. He forcefully repelled the criticism. He asserted that nobody has a monopoly or patent for basic principles of Constitution. He conveyed that fundamentals of constitutions are well recognised throughout the world. Therefore, main provisions of the Constitution may look similar, but this is not copying. He further stated, if something is precious, one should not be shy to borrow it. Here, Dr. Ambedkar won his first round in the Constituent Assembly.

Ladies and Gentlemen, here what has been significant for which we now pay our tribute to Dr. Ambedkar for 'Shaping the Constitution. The topic involves numerous subjects. Each subject has a mighty dimension. All these subjects cannot be discussed today and each subject cannot be discussed to the fullest extent, because there is a time constraint and} have been allotted only 40 minutes and being a judge, I know a little bit of discipline.

Dr. Ambedkar, who we remember as an architect of the Constitution has gifted to this nation Federal Structure of the Government. He was a champion for federal structure of the Government with its distinguishing features not possessed by any other Constitution in the world. Now, there was a criticism. There was also a debate. What Dr. Ambedkar provided, is it really Federal or Unitary? or it is less Federal and more Unitary? 'Federal', it is broadly understood, as there is a Central Government, and in periphery there are Provincial Governments. Both the Governments work on the principle of division of sovereignty, division of legislative, executive and judicial power. Unitary means, in the pattern Central Government is supreme and State Governments have no power. Then people started debating that it is neither federal nor unitary. It is a remarkable skill of Dr. Ambedkar. He very skillfully brought the unification of federal and unitary patterns of Government in our Constitution. He did it with a purpose. He had a vision to analyse the political situation. Till that time, we had princely states. They were under the British rule without having any common bondage. If we had merely federal structure, then there has been a risk of Provincial States to go out of federalism. To avoid that danger, Dr. Ambedkar said, we want complete merger of the States, not a grouping of the States or what you call, League of the States. Therefore, Article 1 of the Constitution says, 'India is a Union of States' which indicates complete merger.

Now, Ladies and Gentlemen, though broadly it is federal, there are symptoms, which are substantive to suggest that occasionally the Government is also unitary. For instance, we have one Constitution. In a Federal structure, the Central Government and equally the State Governments have a right to have their separate Constitution. In Federal Government, there could be dual citizenship; in a sense that one could be a citizen of the Central as well as of the State, like in U.S.A. Now, Dr. Ambedkar very skillfully made one constitution and one citizenship. Then power for appointment of Governors, as you know who is the Head of the Provincial State, Judges of the High Court and Judges of the Supreme Court lies with the Central Government. There is one single integrated judiciary, which is controlled by the Supreme Court. Article 141 which was very skillfully inducted in the constitution, says, 'the law declared by the Supreme Court will be binding throughout the territory of this country.' There is an all India Service. Now, all these aspects go to suggest that though under the camouflage of federal, the pattern of Government, in fact, is operating on a unitary system.

In emergency, the federal structure is easily convertible into unitary. Perhaps, to those who are not lawyers, I can explain. Legislative power, because of federalism, is divided into three lists in Schedule 7. That on certain subjects given in List I, the Parliament alone can legislate; List II, for the subjects enumerated, the State alone

can legislate; and the third list, Concurrent List, where the Central and State Governments both can legislate. However, in an emergency, the Parliament can even legislate on those subjects covered by the State list, if it is to be done in the national interest. Similarly, Parliament also can legislate on any subject of the State List to enforce an International Treaty, Convention or Declaration.

Now, Dr. Ambedkar defended it, forcefully saying that I have championed for the Federal Government with some character of Unitary, because the country has recently attained independence and earlier to that there was no common bondage. He has further said that "I want to make the Constitution flexible" and he reiterated "by giving more power to the Centre, it does not destroy the federal character of the Government." Now, Ladies and Gentlemen, we have to salute to the memory of Dr. Ambedkar, we have to acknowledge his significant contribution. Without facing a civil war during the last fifty years, we are governing this country in the Federal form of Government.

The next contribution of Dr. Ambedkar is 'Directive Principles of State Policy', under Part Four of the Constitution, which has broadly been described as desirable rights. It is the desire of the nation that the Government should do this. There is a difference between fundamental rights and these desirable rights. But Dr. Ambedkar took a caution and he added Article 37, to say that these 'Directive Principles' shall not be enforced by the Courts. If that is so, there was a comment, if it is left to the will and wisdom of the Legislature, in that eventuality, they are merely decorative. One of the members of the Constituent Assembly has said, may be in a satire that 'the Directive Principles of the State Policy is a "Dust bin of sentiments". Dr Ambedkar said that there is something like Constitutional morality. We have incorporated this, because these are great values to govern the action of the executive and the legislature. But because Constitutional morality is not a natural instinct, it needs to be cultivated by the people and therefore, we cannot safely rely on the wisdom of the legislature; we therefore, are giving this mandate through the Directive Principles of the State Policy. They are decorative and rhetorical, in a sense they cannot be enforced through the Court of Law. Dr. Ambedkar has maintained, 'I have got a complaint of the inaction of the legislature or the executive, I need not go to the Court of Law, but I will go to that Court of the people and make the complaint.

Ladies and Gentlemen, those who are the builders of nations, those who are architects of a deed or treatise normally they do not want, whatever they have evolved with sagacity, great hardship, should undergo any change in the time to come. Dr. Ambedkar asserted that there should not be any rigidity in the Constitution. Dr. Ambedkar being a disciple of Gautama Buddha, who has preached that in the world there is nothing fundamental and everything is under a process of change. Bouddha Dharma according to Gautama is based on logic and experience. He gave a command to his disciples to make the change in my preachings

according to the time and situation and keep it evergreen. Now, that disciple of Gautama Buddha, incorporated Article 368 of the Constitution, i.e., process of amending the Constitution.

Ladies and Gentlemen, Pandit Jawaharlal Nehru has said, 'the word is a magic, but to transmit the passion and dream of a nation, words cannot carry that magic, words are incapable to comprehend that urge and passion. And Dr. Ambedkar did that miracle to comprehend all urges and passions of the Nation. He presented to the independent India, on 26th January 1950, the Constitution.

Now, it is said by Mr. Sahay, one of the eminent statesmen that the credit of Independence if it is to be given to Mahatma Gandhi. then articulating the dream and passion of independent India into a Constitutional Treatise shall go to his rank critic, i.e., Dr. Ambedkar. And, Dr. K. N. Rao, who was his contemporary, said 'Constitution has many, Constitution has many deities and idols, but Constitution has only one mother, viz. Dr. Ambedkar. In the Constituent Assembly, like a mother, Dr. Ambedkar gave a shape to the Constitution of India but the Constituent Assembly also gave a shape to Dr. Ambedkar. The man, who in 1946 made an entry into the Constituent Assembly as a messiah of the 'Dalit', came out of it as an Angel of the Republic. The Constituent Assembly presented to the world the Constitution of India and also Dr. Ambedkar.