



Role of Dr. B.R. Ambedkar in constituent assembly with reference to preamble and DPSPs

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Abstract

The Constitution of India is an embodiment of individual rights and liberties. The struggle for freedom is not an eye wash of the colonial government but, it was the struggle made by the freedom fighter to achieve independence from the colonial unrest in India. The debate in the Constituent Assembly in giving today's mother law was memorable movement. Because the discussion had been took place again and again to the Constitution to be suitable to Indian societal conditions in keeping in mind the various sections of the society. India is a socialist, democratic, secular and republican form of country as the preamble to the Constitution says about. The role played by Dr. B.R. Ambedkar in this field being a chairman of the drafting committee was unforgettable in the history of India.

Keywords: constituent assembly, individual rights and liberties, India

1. Introduction

After the struggle for independence by the freedom fighters against the British Government, the Cabinet Mission ^[1] came to India to announce to set up a Constituent Assembly to frame a Constitution for the future governance of India. Accordingly elections to the Constituent Assembly were held in which members were elected by the Provincial Legislative Assemblies.

Dr. B.R. Ambedkar was failed to get elected from the Bombay Legislative Assembly due to congress opposition, but elected by the Bengal Assembly with the support of Jogendranath Mandal and other Scheduled Castes members. Total 296 members were entitled to take part in the inaugural session ^[2]. The First Meeting of the Constituent Assembly took place in Constitution Hall, New Delhi on Monday 9th December, 1946 at 11^o clock. Acharya J.B.Kripalani requested Dr. Sachidanand Sinha to take the chair as temporary chairman and Shri. Frank Antony as the deputy chairman. On 11th December, 1946 Dr. Rajendra Prasad was elected as permanent chairman of the Assembly.

2. About the Resolution-The Preamble

On 13th December, 1946, Jawaharlal Nehru moved the resolution regarding aims and objects. On 17th December, 1946 Dr. B.R Ambedkar argued on the resolution that, '*As a student of history, I should have preferred this part of the resolution not being embodied in it at all. When one reads that part of the resolution it reminds one of the 'Declaration of rights of Man' which was pronounced by the French Constituent Assembly. I think I am right in suggesting that, after the lapse of practically 450 years the declaration of rights of man and the principles which are embodied in it has become part and parcel of our mental makeup of modern man in every civilized part of the world, and also in our country which is so orthodox, in its thought and its social structure*'^[3]. On 21st December, 1946 a resolution of the Constituent

Assembly was passed 6 members were presented ^[4].

3. About Justiciable Rights

On 23rd April, 1947 Sarada Vallabai Patel ^[5] as a chairman of Advisory Committee on Minorities and Fundamental Rights was presented the justifiable rights like ^[6].

- a) Right to equality
- b) Right to freedom
- c) Rights relating to religion
- d) Cultural and educational rights
- e) Rights to constitutional remedies

One of right like the right to religion was read as, '*All persons are equally entitled to freedom of conscience, and the right freely to profess, practice and propagate religion subject to public order, morality or health or to the provisions of this chapter*' ^[7].

An amendment suggested by Munshi that, 'A child below the age of 18 years have no right to convert to any religion'.

Dr. B.R. Ambedkar argued to the above statement made by Mr. Munshi that, 'Mr. President Sir, I am sorry to say that I do not find myself in agreement with the amendment which had been moved by Mr. Munshi relating to the question of the conversion of minor children. This question was not considered by the fundamental rights committee or minorities sub committee or by the advisory committee. With regard to children there are three possible cases which can be visualized;

- a) Children with parents and guardians
- b) Children who are orphans

If you prohibit the conversion of children below 18 years, the following questions will arise;

- a) What is going to be the position of children who are orphans?
- b) Are they not to have any religious instruction given to

them by someone who happens to take a kindly interest in them?

- c) If parents dies what will be the position of a child below 18 years?

If parents are converted we have to consider the case of their children. Dr. B.R. Ambedkar gave equal importance to the right of children below 18 years of age.

4. About Forced Labour- Clause-11

Clause-11 reads as a) traffic in human beings and b) forced labour in any form including beggar and involuntary servitude except as a punishment for crime whereof the party shall have been duly convicted, are hereby prohibited and any contravention of this prohibition shall be an offence'.

Explanation- Nothing in this sub-clause shall prevent the state from imposing compulsory service for public purposes without the discrimination on the grounds of race, religion, caste or class'.

Dr. B.R. Ambedkar said that, 'I have no objection to the redrafting of sub-clause (a) & (b) in order that they may run in a compact manner, I have a certain amount of doubt as to 'whether the dropping of the consonance with the desire of the majority of the members of the Advisory Committee that, 'the State should not have power in any way for introducing compulsory service. Because beggar is also something which is imposed by the State?. I know in Bombay beggar is demanded by the State for certain public purposes and if the State is prohibited from having beggar it is perfectly possible for anybody to argue that, even compulsory military service is beggar.

Therefore, I am not quite satisfied that the dropping of the explanation is something which is advisable at this stage. My suggestion would be that at this stage we should not drop the explanation, but leave it as it is and have the whole matter reconsidered when the Federal Constitution is drafted in their final form.

5. Rights of Minorities- Clause -18^[8]

Clause- 18 provides that, 'all minorities whether based on religion or language shall be free in any unit to establish and administer educational institutions of their choice'. The state shall not while providing State aid to schools discriminate against schools under religious or language bases.

6. Part-IV – Directive Principles of State Policies^[9]

Dr. B.R. Ambedkar said that, 'Directive Principles of State Policies are more or less only the instruments of instructions. Because, it would be open to the coming generations to have their own pattern. Sardar Vallabhai Patels^[10] report was presented to the Assembly on 30th August, 1947 stated that, 'we have come to the conclusion that in addition to these Fundamental Rights the Constitution should include certain directions of State policy which though not cognizable in any court of law, should be regarded as fundamental in the governance of the country'.

The Fundamental Rights Committee gave title to Part-IV as 'Fundamental Principles of Governance'. But Drafting Committee was changed the title into Directive Principles of State Policies.

Dr. B.R. Ambedkar said that, 'Mr. Vice President I see that there is a great deal of misunderstanding as to the real provisions in the Constitution in the minds of those members of the House who are interested in this kind of directive principles. Our Constitution as a piece of mechanism lays down what is called parliamentary democracy. By Parliamentary Democracy we mean 'one man one vote'. We also mean that every government shall be on the anvil both in its daily affairs and also at the end of a certain period when the voters and the electorate will be given an opportunity to assess the work done by the government^[11].

While we have established political democracy, it is also the desire that, we should lay down as our ideal economic democracy. I understand to mean there are various ways by which economic democracy may be brought about. We have left enough room for people of different ways of thinking with regard to the reaching of ideal of economic democracy. To strive in their way to persuade the electorate that is the best way of reaching economic democracy. The fullest opportunity to act in the ways in which, they wanted to act.

Article 30 - Prohibition of Sale of Intoxicating Liquors.

It stated that, 'the State shall strive to secure transportation or consumption of intoxicating liquors for beverage purposes'. The childhood and youths are protected against exploitation and against moral and material abandonment^[12]. On Monday 22nd November, 1948 article-30 A was again continued.

Article- 31(2) provided that, 'ownership and control of the material resources of the community are so distributed as best to sub- serve the common good'^[13].

Article 31 (iii) provided that, 'there shall be no private monopolies in any form of production of material wealth, social service or public utilities nor shall there be any concentration of means of production and distribution in private hands and the State adopt every means to prevent such concentration or accumulation'^[14].

Article 39 of the present Constitution provides for;

(b) That the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

(c) That the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;

Article 31-A of the drafting Constitution provided that, 'the State shall take steps to organise Village Panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government^[15].

Article 40 of the present Constitution provides for the Organisation of village panchayats as the subject matter of the State under the directive principles of state policies.

Article 34(2) of the drafting Constitution provided that, 'the State shall encourage the use of Swadeshi articles and promote cottage industries, especially in the rural areas with a view to

self-sufficient areas.

Dr. B.R. Ambedkar said that, the particular article 34 shall be read like this, 'and in particular the State shall endeavour to promote cottage industries on individuals or co-operative basis in rural areas' [16].

Article 36 of the drafting Constitution provides that, 'the State shall endeavour to provide within a period of ten years from the commencement of this Constitution for all children until they complete the age of 14 years'.

Dr. B.R. Ambedkar argued that, 'article 18 prohibits/forbid any child being employed below the age of 14. The child must be kept occupied in some educational institution that is the object of article-36' [17].

Article 35 of the drafting Constitution- Personal Law

It provided that, 'any group, section or community of people shall not be obliged to give up its own personal law in case it has such a law'. The State shall endeavour to secure for citizens a uniform civil code throughout the territory of India'. Dr.B.R.Ambedkar said that, 'it is perfectly possible that the future Parliament may make a provision by way of making a beginning that the code shall apply only to those who make a declaration that they are prepared to be bound by it, so that in the initial stage the application of the code may be purely voluntary. The Parliament may feel the ground by such method. This is not a novel method; it was adopted in the Shariat Act of 1937. Therefore there is no substance in these amendments and I oppose them' [18].

Article 44 of the present Constitution provides for the Uniform Civil Code, "The State shall endeavour to secure for citizens a uniform civil code throughout the territory of India." The Triple Talaq Judgement in 2017 was the land mark decision pronounced by the Honourable Supreme Court of India which uphold the Constitutional right to equality of women [19].

It was decided by the Five Judge Bench comprised of Justice J.S. Khehar, U.U Lalit, Kurian Joseph, S. Abdul Nazeer and R.F. Nariman. The Apex court cited the laws of 19 countries which have abolished triple talaq, like Egypt, Pakistan, Turkey, Arab Peninsula, South-East Asia and South Asia etc. Section -2 of the Shariat Act, 1937 to be declared as unconstitutional.

Facts of the case: The Petitioner was left her matrimonial home on 9-4-15 in the company of her father Iqbal Ahmad and maternal Uncle Raees Ahmad with children Mohammed Irfan and Umaira Naaz. On 3-7-2015 the respondent Rizwan Ahmad asked the father of the petitioner to send her back to her matrimonial home. On 7-7-2015 the father brought two children to Allahabad but daughter was refused to go to her husband house. On 10-10-2015 Talaq Nama(deed of divorce) done by the respondent stated that, your dowr (Mehr) and expenses of Iddat (waiting period) I am paying through Demand Draft no 096976 dated 6-10-2015 drawn at Allahabad Bank, a sum of rupees 10,150=00 towards dower and 5500=00 towards Iddat period, you kindly take paid to accept the same.

Honourable Supreme Court of India has been held that, in

view of the different opinions recorded by a majority of 3:2 the practice of Talaq-e-biddat is hereby set aside. And Section-2 of the Shariat Act is void. From the point of above judgement it shows that the same view was also expressed by the Dr. B.R. Ambedkar in the Constituent Assembly debate.

7. Conclusion

The role of Dr.B.R.Ambedkar in drafting the Constitution shows towards the societal concern in empowerment of the weaker, exploited, labour, and welfare of the women in ensuring the minimum human dignity. The dreams of Dr. B.R. Ambedkar were drafted in the form of fundamental rights and the directive principles of state policies.

8. References

1. On, 1946.
2. Out of 926 members only 210 members attended in the preliminary session. The Hindus 155, the Scheduled Castes 30, Sikhs 05, Indian Christian 05, Backward Tribes 05, Anglo Indian 03, Parsis 03, Muslims 04.
3. Constituent Assembly debates, 1,100.
4. Like Nehru, Maulana Abdul Kalam Azad, Sardar Vallabai Patel, Shankar rao Deo, N.Gopalaswami Ayyangar.
5. Appointed on, 1947.
6. *Supra* note no 3, 440.
7. *Ibid*, 1:500.
8. *Ibid* page, 507.
9. Constituent Assembly met in the Constitution Hall, New Delhi at 10 o'clock Mr Vice President Dr. H.C. Mookherjee was in the chair.
10. Advisory Committee on Fundamental Rights.
11. *Supra* note no 7, 494.
12. 6, 496.
13. *Ibid*, 515.
14. *Supra* note no 12, 519.
15. *Ibid*, 527.
16. *Ibid*, 535.
17. *Ibid*, 540.
18. *Ibid*, 551.
19. In *Shayara Bao and others vs. Union of India*, W.P NO 118, 2016.