

B. R. Ambedkar and the Ideas of Constitutionalism and Constitutional Democracy

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In his address at the Poona District Law Library on 22 December 1952, nearly three years after the Indian Constitution had come into effect B. R. Ambedkar underscored the salience of constitutional democracy, and beginning with a minimal description of democracy as ‘a government by discussion’, citing Walter Bagehot, and as ‘a government of the people, by the people and for the people’, citing Abraham Lincoln. Ambedkar goes on, however, to propose a more emphatic statement of what *he* considered a democracy, that is, ‘a form and method of Government whereby revolutionary changes in the economic and social life of the people are brought about without bloodshed’.¹ Evidently, for Ambedkar, democracy may be said to exist, when those who were running the government could bring about fundamental changes in the social and economic life of the people, and the people accepted those changes without resorting to bloodshed.²

Indeed, fundamental, revolutionary changes were to be achieved through consent and without violence, and this was at the core of Ambedkar’s idea of democracy. The challenge, however, was putting in place enabling conditions, which would make revolutionary social and economic changes without bloodshed, possible. In a society where unequal social structures, buttressed by ritual and caste hierarchy, were deeply entrenched, and two centuries of colonial subjection had established institutions of government, which governed without representation, unconstrained by constitutionalism and rule of law, the task of devising rules to give institutional form to democratic government, was a humongous task. It was the enormity of this task which Ambedkar referred to when he moved a motion for discussion of the draft Constitution of India in

the Constituent Assembly on 04 November 1948. He made it clear that the structural conditions informed by deep-seated inequalities were not only a threat to democracy in India, but also made democracy ‘only a top dressing on an Indian soil which is essentially undemocratic’. It was important, therefore, to make the ‘unfamiliar’, i.e. democracy, work in Indian conditions, and also to make it durable. The burdens of the past – both recent and remote—the debilitating impact of colonial rule and the ritual authority of the caste system, had made India an unlikely candidate for durable democracy. It was this universal value of equality within the framework of constitutional democracy, which Ambedkar cherished, prompting him to declare in the Constituent Assembly on 25 November 1949, that he came to the Constituent Assembly with ‘no greater aspiration than to safeguard the interests of the Scheduled Castes’. He claimed that he did not have ‘the remotest idea’ that he would be called upon to undertake more responsible functions, and would be elected to the Drafting Committee and subsequently its Chairman. For Ambedkar, his election to the Drafting Committee and its chairpersonship, was the manifestation of the trust and confidence which had been reposed in him, and he saw himself in that role as being an instrument of change, and having the opportunity to serve the entire country.³

It is in response to the predicament of making the top-dressing consonant with the soil, that Ambedkar espoused constitutionalism as a democratic value and as a framework of legitimate political process, which would bring about social change. The idea of India which can be seen as congealing in the Constituent Assembly Debates (December 1946–November 1949), is replete with both the promise

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of a democratic future, but also the realization that the present is burdened with the past, which has the tendency to percolate into the future with tenacity, permeating into people's lives in both quotidian and spectacular ways. In the literature on constitutionalism, constitutions are seen not simply as normative texts, but also as emphatic and historic constituent moments of transformation. In the context of postcolonial constitutionalism in particular, constitutions have been seen as transformative in the sense that they manifest a conscious and meticulous sequestering from the past. This process of sequestering is a central motif of transformative constitutionalism.⁴ Indeed, it is the re-figuration of the relationship with the past, which distinguishes the 'temporal register'⁵ on which constitutions are etched, so much so, that constitutions come to embody the momentous present, from where a vision of a future, emphatically different from the past, may be professed.⁶ In this paper an attempt will be made to examine the components of the 'transformative' as they figure in B.R. Ambedkar's speeches in the Constituent Assembly and other public speeches, to see, how they articulate a vision of constitutionalism and democracy for a nation embarking on a journey towards constitutional democracy.

CONSTITUTIONALISM AND DEMOCRACY

The questions, what is constitutionalism and what is the relationship between constitutions, constitutionalism and democracy, are fraught with contests. The promise of constitutionalism in postcolonial societies was not simply one of self-rule, but also the installation of democratic government in which power was derived from the people and was constrained by the constitution, which embodied popular sovereignty. In other words, power could not be exercised arbitrarily, was bound by higher order rules, norms, and principles, and the rule of law, which had been sought and achieved through persistent struggles for democratization of power. Yet, the project of writing a constitution, which was the culmination of these struggles, also produced the legal and institutional ensemble with specific modes of governance and juridical norms, which are continually subjected to political scrutiny, and are, therefore, contested. The conception of constitution making as a contest over forms of power, is significant since it suggests that the commitment to constitutionalism is not a given, that it may weaken or strengthen over time, and may also become a conduit through which political power is expressed and becomes entrenched.

Studies of comparative constitutionalism have shown that constitution-making has taken place in successive waves.⁷ In the twentieth century, post-colonial, post-World-Wars, and post-conflict constitutions were made

with different outcomes, but the promise of democratic transition and consolidation had marked the birth of all of them. The promise was buttressed by the will of a historical collective to constitute itself into a state founded on a constitution. Constitutions have, therefore, also been seen as embodying 'the will to stateness'.⁸ Constitutionalism in India, as a product of the anti-colonial movement, was also inextricably tied to the nationalist project, which then became the source of the political identities of citizenship and constitutional patriotism.⁹ Yet, as Ambedkar admitted in his speech presenting the draft Constitution to Constituent Assembly for discussion, the constitutional text had borrowed from the Government of India Act of 1935, and continued to be, therefore, concerned overwhelmingly with administrative details and the structure of government:

As to the accusation that the Draft Constitution has produced a good part of the provisions of the Government of India Act 1935, I make no apologies. There is nothing to be ashamed of in borrowing. It involves no plagiarism. Nobody holds any patent rights in the fundamental ideas of a Constitution. What I am sorry about is that the provisions taken from the Government of India Act 1935, relate mostly to the details of administration. I agree administrative details should have no place in the Constitution. I wish very much that the Drafting Committee could see its way to avoid their inclusion in the Constitution.¹⁰

Even as he wishes that administrative details should find no place in constitutional texts, Ambedkar believes that they are necessary, and takes recourse to the Greek historian Grote's articulation of the idea of constitutional morality to outline the 'necessity' which justified their inclusion. According to Ambedkar the diffusion of constitutional morality was essential for the peaceful working and sustenance of a democratic constitution, an important and somewhat disputed and often misunderstood relationship, which will be discussed in the section which follows. It is, however, on the relationship between constitutional morality and the necessity of administrative details in constitutions that we shall turn our attention now. Broadly speaking constitutional morality in Grote (concurred to by Ambedkar) refers to 'a paramount reverence to the forms of the Constitution'.¹¹ Following from this, Ambedkar argues that there exists a close connection between the form of the Constitution and the form of administration, which would require that: 'The form of the administration must be appropriate to and in the same sense as the form of the Constitution'. In addition, he argued, it was, 'perfectly possible to pervert the Constitution, without changing its form by merely changing the form of the administration and to make it inconsistent and opposed to the spirit of the constitution':

It follows that it is only where people are saturated with constitutional morality such as the one described by Grote the historian that one can take the risk of omitting from the Constitution details of administration and leaving it for the Legislature to prescribe them. The question is, can we presume such a diffusion of Constitutional morality? Constitutional morality is not a natural sentiment. It has to be cultivated. We must realise that our people have yet to learn it. Democracy in India is only a top-dressing on an Indian soil, which is essentially undemocratic.¹²

Clearly, for Ambedkar, till the time constitutional morality had spread wide and deep among the Indian people and they were saturated with it, the legislatures could not be trusted with prescribing the form of administration. Even though Ambedkar does not elaborate on this, one can read in this his mistrust in the ability of the dominant caste and class to act autonomous of the hierarchically organised social structure marked with ascriptive inequalities, sustained by an unequal distribution of power and resources, entrenched feudal-brahmanical-ritual authority and their collusive dominance with the colonial regime which they expected to replace. Yet, even when the constitutional text was overwhelmed by the logic of government and the desire to establish a strong state, there existed alongside robust commitment to political and socio-economic rights, and adherence to the basic principles of federal design, distribution of powers, an autonomous judiciary, and constitutional innovations to ensure substantive equality through the recognition of diversity. In other words, postcolonial constitutionalism was inscribed in self-rule and shared-rule, which were to be achieved through specific modes of governance, which would usher in democracy within the framework of a republican constitution.

TRANSITION AND CONTRADICTIONS

Vilhena et.al., use the expression ‘aspirational’ to refer to the attempts by India, South Africa and Brazil, to transform their past and present (of colonialism, apartheid, and military regime) through a constitutional process to establish a durable moral order of rights, and the rule of law. If we agree with Vilhena, then the constitutional texts which emerged out of these efforts at transformation, can be seen primarily as normative texts, which lay down a framework for ensuring the ‘ambitious constitutional promises’, especially the universalization of human rights, entrenching thereby transformative constitutionalism in the texts of their own constitutions.¹³ The text of the Objectives Resolution, placed before the Constituent Assembly of India on 13 December 1946, may well be read as ‘aspirational’, or as Jawaharlal Nehru described it ‘in the nature of a pledge’. Indeed, the Objectives Resolution adopted in

the Constituent Assembly as guidelines construed the constitution as a promise and a pledge, and therefore, ‘something higher than the law’. Indeed, if one were to examine the words of the constitution like lawyers, one would ‘produce only a lifeless thing’, since the Resolution laying down the objectives of the Constitution of India was a moment of interlocution, marking the coalescent present. The members of the Constituent Assembly were then standing ‘midway between two eras’ – the old and fast changing old order, ‘yielding place to the new’. The reference by Nehru to a spatial and temporal location of the constituent moment as a promise for change, was followed a few months later by his historic speech on the eve of independence that alluded freedom as marking the end of an age, as the fulfilment of a promise made long ago. Terming the moment ‘a tryst with destiny’, yet again Nehru declares the moment of redemption of a pledge, when the soul of the nation, ‘long suppressed’, will ‘find utterance’.¹⁴

Unlike Nehru, who saw the constituent moment as a movement from one age to another—of assured transition and emphatic break from a colonial past to a future condition of freedom—Ambedkar’s speech in the Constituent Assembly on 25 November 1949, presenting the final draft of the Constitution for its adoption, portrayed the moment as one of contradiction. The contradiction, simply put, was between formal equality in the political domain, amidst a deeply unequal economic structure. This contradiction, if allowed to persist, Ambedkar cautioned, would imperil Indian democracy. The idea that the constituent moment in Ambedkar was not predominantly one of transition, but one which was riddled with contradiction nurtured within it an ethics of transformation. The ethics of transformation which was present at the constituent moment, made postcolonial constitutionalism emblematic of change, and at the same time produced sites of contest which kept alive the imagination and possibility of recreation of new life-worlds. The contradiction in such a reading may be seen as providing the site for constitutional insurgencies,¹⁵ opening up for the teeming multitudes the vocabulary for change, the constitution providing as it were the ‘code of just means’. Yet Ambedkar’s concerns were addressed to both the ‘insurgent’ and those who were entrusted with state power, and it was towards this that he directed his exhortation for constitutional morality and an expansive idea and practice of constitutional democracy.

THE IDEA OF CONSTITUTIONAL DEMOCRACY

On 17 December 1946, B.R. Ambedkar was asked by Rajendra Prasad to participate in the discussion which took place after the Objectives Resolution was moved in the Assembly by Nehru. M.R. Jayakar had moved an

amendment to postpone the passing of the resolution since the Muslim League was not present in Assembly. It was thus in a charged atmosphere that Prasad invited Ambedkar to speak on the Resolution. Ambedkar's speech was described by N.V. Gadgil, who was present at the discussion, as 'historic':

His speech was statesmanlike, so devoid of bitterness and so earnestly challenging that the whole of Assembly listened to it in rapt silence. The speech was greeted with tremendous ovation and he was smothered with congratulations in the lobby.¹⁶

Procedurally speaking, the speech led to the postponement of the consideration of the Objectives Resolution till the next session. For the purpose of this paper, however, the response of Ambedkar is important for taking us along the substantial questions of democracy against what he termed the 'pure pedantry' of the Resolution that he found disappointing. Ambedkar saw the Resolution as divided into a 'controversial' first part which spoke of the territorial and institutional organization of governmental power, federal arrangement and popular sovereignty and 'a non-controversial' second part comprising the various rights to equality and freedom, justice, and minority rights. Ambedkar, however, was dismissive as well of the non-controversial part, which he felt read as remnants of the 450-year-old Declaration of the Rights of Man and Citizen and archaic as 'the silent immaculate premise of our outlook'. Finding it unnecessary to 'proclaim them as forming a part of our creed',¹⁷ Ambedkar would have liked to wrest the rights, out of these archaic and obsolete premises, to articulate them in the form of 'remedies', without which rights were meaningless. Indeed, Ambedkar feared that the complete absence of remedies which recognized that rights and liberties may not be taken away without following the due process of law, while making all rights subject to law and morality, made the Resolution deficient:

Obviously what is law, what is morality will be determined by the Executive of the day and when the Executive may take one view and another Executive may take another view and we do not know what exactly would be the position with regard to fundamental rights if this matter is left to the Executive of the day.¹⁸

Ambedkar's preference for constitutional remedies to assure protection of fundamental freedoms of persons, resonated powerfully in his speech of 9 December 1948, when speaking in the Constituent Assembly, Ambedkar described constitutional remedies as 'the very soul of the Constitution and the very heart of it', indeed an Article (Article 32) so important that without it the Constitution would be 'a nullity'. There could be no rights in the absence of remedies:

It is the remedy that makes a right real. If there is no remedy there is no right at all and I am therefore, not prepared to burden the Constitution with a number of pious declarations which may sound as glittering generalities, but for which the Constitution makes no provision by way of a remedy. It is much better to be limited in the scope of our rights and to make them real by enunciating remedies than to have a lot of pious wishes embodied in the Constitution. I am very glad that this House has seen that the remedies that we have provided constitute a fundamental part of this Constitution.¹⁹

In his speech Ambedkar expresses his happiness at the inclusion of constitutional remedies in the Constitution, and concerns himself largely with the legal procedures pertaining to the writs constituting the remedies. He does not make the connection, which he only has hinted at in his Objectives Resolution response to executive decision-making and the possibility of arbitrary action. Indeed, the complex questions of executive power and authority remain absent as the legal question of protection by law takes precedence. Similarly, the ideas of rule of law and equal protection, which were so salient to the questions of social equalities and democracy, remain absent.

Evidently, in his response to the resolution, Ambedkar was animated by concerns not only for the 'ultimate' – the objectives and goals to be achieved, but also the 'difficulty with regard to the beginning'. It was this beginning of 'becoming willing friends' to 'induce every party, and every section of the country' to come together required 'an act of greatest statesmanship for the majority Party even to make concession to the prejudices of people who are not prepared to march together'.²⁰ While the immediate context of Ambedkar's reference to 'willing partnership' was the absence of the Muslim League in the Constituent Assembly, the idea of partnership had resonance with his idea of Indian polity and society, in particular the relationship between minority communities and the dominant majority. It is also in this context that Ambedkar's apprehensions about the uncertainty of executive decisions and mistrust of legislative power, amidst the absence of a thorough protection of people's rights, becomes significant. His desire is for people to march together as willing friends onto the road of the Republic. It is only then that sovereignty can be seen as drawn from the entire people and not the dominant sections.

Two years after his response to the Objectives Resolution, Ambedkar's speech on the occasion of the presentation of the first draft of the Constitution on 4 November 1948 and a year later on 25 November 1949, when the final draft of the Constitution was presented and adopted, reveal two fairly congealed tendencies. The first, resonating with his Objectives Resolution speech, addressed the question of protection of fundamental rights, in particular the rights

of minority communities, and the second, addressed the complex question of the conditions under which democracy, in particular its institutions which were built painstakingly, could be sustained. It was while addressing the second question that Ambedkar elaborated upon the idea of constitutional morality as indispensable for democracy.

On 4 November 1948, Ambedkar articulated his views on the constitutional safeguards for minorities. It is interesting that the safeguards provided to minorities was one of the several criticisms that had been made towards the first draft of the Constitution which had been in the public domain for eight months. Ambedkar considered it wrong for the majority to deny the existence of minorities, and likewise for minorities to perpetuate themselves as such. He concluded, therefore, that in India both the majority (in denying the presence of minorities) and minorities (in their quest for perpetuation) have followed the wrong path. The solution to this problem of denial and separate existence was to think of ways of living together – a solution which was also ultimately important for the holding the state together:

To diehards who have developed a kind of fanaticism against minority protection I would like to say two things. One is that minorities are an explosive force which, if it erupts, can blow up the whole fabric of the state. The history of Europe bears ample and appalling testimony to the fact. The other is that the minorities in India have agreed to place their existence in the hands of the majority.... It is for the majority to realise its duty not to discriminate against minorities. Whether the minorities will continue or vanish will depend upon this habit of the majority. The moment the majority loses the habit of discriminating against the minority, the minorities can have no ground to exist. They will vanish.²¹

In his speech in the Constituent Assembly on 25 November 1949, Ambedkar links up the quest for popular sovereignty in constitutional democracies and its elusiveness to the persistence of the rule by the dominant groups. He questions the idea that in a democracy power rests in the people, which would require that the source of political power and its legitimacy is drawn from the *entire* people. In actual practice, however, while this appears to be an attractive suggestion, it is flawed, since all democracies, Ambedkar reminds us, are governed through political regimes in which power rests in the *overwhelming* majority. In his 25 November 1949 speech, therefore, Ambedkar argues that democracy is about securing to all the people of India justice, equality and freedom, but providing in particular ‘adequate safeguards’ for minorities, backward and tribal areas, the depressed, and other backward classes.²²

TENETS FOR SAFEGUARDING CONSTITUTIONAL DEMOCRACY

The vast and erudite scholarship on constitutionalism, coming from diverse historical contexts and ideological traditions, shows multitudinous trajectories of constitutionalism. All of them, however, address a common question, which is – why have constitutions? To varying degrees, the responses may be seen as converging on the need to restrict power – modern states being excessively powerful, constitutions provide the basic and higher order rules which compel those who hold political power to govern according to the principles of rule of law. Constitutions are seen as marking the affirmation of popular sovereignty and the idea that power in democracies lies with the people. Moreover, as higher order, overarching and enduring rules, constitutions are expected to protect democracy from the excessively mercurial character of everyday politics.

Presenting the final draft of the Constitution for the consideration of the Constituent Assembly, Ambedkar declared that on 26 January 1950, India would be a democratic country, yet he had apprehensions about the future of constitutional democracy in India:

...What would happen to her democratic constitution? Will she be able to maintain it or will she lose it again. ... It is not that India did not know what is democracy. There was a time when India was studded with republics and even where there were monarchies, they were either elected or limited. They were never absolute. It is not that India did not know Parliaments or Parliamentary procedure. A study of the Buddhist Bhikshu Sanghas discloses that rules of parliamentary procedure were known and observed there.... This democratic system India lost. Will she lose it a second time? It is quite possible that in a country like India—where democracy from its long disuse must be regarded as something quite new—there is a danger of democracy giving place to dictatorship. It is quite possible for this new born democracy to retain its form but give place to dictatorship in fact. If there is a landslide, the danger of the second possibility becoming actuality is much greater.²³

Evidently, the question which animated Ambedkar when the draft Constitution was presented for the first time – pertaining to perversion of the Constitution and the need for constitutional morality – continues to be significant for him a year later. An overriding concern seems to be the ‘loss’ of democracy that the people of India suffered and an estrangement from democratic processes, which would make it an entirely new system. Yet, the danger of democracy sliding into dictatorship, could be mitigated, and Ambedkar ties this up to the question of social and economic change, which was for him imperative for creating enabling conditions for democracy in India. It is

in the pursuit of an answer to these questions that he takes recourse to an ethic of democratic action, which has *four components* of which constitutional morality, as a code of just means, was one.

(a) *Constitutional Morality*

Ambedkar asks a fundamental question – ‘If we wish to maintain democracy not merely in form, but also in fact, what must we do?’ There are according to him, three things that must be done. The first and foremost was the need to ‘hold fast to constitutional methods of achieving social and economic objectives’. Interestingly, however, holding on to constitutional means, would require the abandonment of ‘the methods of civil disobedience, non-cooperation and satyagraha’, all of which we must bear in mind, were inextricably part of non-violent political action against the colonial regime. These means, Ambedkar is quick to add, were justifiable when there was (as under colonial rule) no recourse available to constitutional means. We may construe this to mean that these actions were legitimate, when directed against the (colonial) state and its laws, which did not flow from constitutionalism and the rule of law, but were dictated by the logic of rule of colonial difference. Ambedkar claimed:

When there was no way left for constitutional methods for achieving economic and social objectives, there was a great deal of justification for unconstitutional methods. But where constitutional methods are open, there can be no justification for these unconstitutional methods. These methods are nothing but the Grammar of Anarchy and the sooner they are abandoned, the better for us.²⁴

We may recall here the discussion initiated in the earlier section on the idea of constitutional morality in Ambedkar’s speech of 4 November 1948. In this speech Ambedkar following Grote had stressed the importance of the diffusion of constitutional morality, ‘not merely among the majority of any community but throughout the whole’, as an ‘indispensable condition for a Government at once free and peaceable’.²⁵

What was Constitutional morality, and how could it be achieved? Constitutional morality, as Grote explained it, and Ambedkar quoted him, was,

A paramount reverence for the forms of the Constitution enforcing obedience to authority, which meant working under and within these forms, yet combined with the habit of open speech of action, subject only to defined legal control, and unrestrained censure of those very authorities as to all their public acts, combined too, with a perfect confidence in the bosom of every citizen amidst the bitterness of party contests that the forms of Constitution will not be less sacred in the eyes of his opponents than in his own.²⁶

The ‘unrestrained censure’ of those in authority, was, however subject to legal control, and eventually to the ‘preponderant sacredness of the constitution’. The exhortation to constitutional morality referred to an adherence to a mode of association, which was characterised by freedom and self-restraint, in which self-restraint was ‘a precondition for maintaining freedom under properly constituted conditions’. Indeed, self-restraint was an essential requirement to thwart revolution as a mode of social change, since freedom and democracy could be sustained through ‘constitutional methods’ of achieving the objectives of social and economic change.²⁷ Grote had prescribed, ‘nothing less than unanimity or so overwhelming a majority to be tantamount to unanimity’ on the respect for the forms of the constitution, to make possible the exposure of political authority to the ‘full license of pacific criticism’.²⁸ Following from the assertion that constitutional morality was not natural and had to be cultivated and diffused among the entire citizenry, Grote pointed out that the first creation of constitutional morality in any society ‘must be esteemed as interesting historical fact’. Through the ‘spirit of his reforms – equal, popular, and comprehensive, far beyond previous experiences’, the ruler secures what Grote calls ‘the hearty attachment of the body of citizens’.²⁹ There does not however, exist a ‘self-imposed limit to ambition’ and the means to eliminate beforehand any transgression of the limits must be thought of by the ruler, to avoid the necessity of suppressing it later ‘with all that bloodshed and reaction’, which would also require that the ‘free working of the constitution would be suspended at least, if not irrevocably extinguished’.³⁰ Interestingly, for Grote securing the Constitution and pacific criticism of the ruler, required the security which the ruler provided to ‘call in the positive judgment of the citizens’,³¹ who would guard against ‘momentary ferocious excitement’, against the forms of their own democracy ‘nor against the most sacred restraints of their habitual constitutional morality’.³²

(b) *Politics and Bhakti*

Closely related to constitutional morality is another form of morality, and this in Ambedkar is the second important mode for ensuring the preservation of democracy. Taking recourse this time to John Stuart Mill, Ambedkar cautions against what he called *Bhakti* in politics. Quoting Mill, who asked all those who were interested in the preservation of democracy, not ‘to lay down their liberties at the feet of even a great man or to trust him with powers that enable him to subvert their institutions’, Ambedkar distinguishes between expressing ‘gratefulness’ to those ‘great men’ who have ‘rendered life-long services to the nation’. But gratitude

could not be at the expense of honour, and no nation could remain grateful to the extent of surrendering its liberty. To safeguard the loss of liberty and regression into domestication and servitude, was for Ambedkar especially necessary for a country like India:

For in India, Bhakti or what may be called the path of devotion or hero-worship, plays a part unequalled in magnitude by the part it plays in politics in any other country in the world. Bhakti in religion, may be road to salvation of the soul, but in politics Bhakti or hero-worship is a sure road to degradation and to eventual dictatorship.³³

(c) *Fraternity*

With the articulation of the third mode of preservation of democracy, Ambedkar returns to the fundamental contradiction that he sees in Indian society – a contradiction, which he argued, if unresolved, would imperil Indian democracy. He, therefore, advises that mere political democracy, which is what India has set up with certitude with the Constitution, is not sufficient for democracy. India must strive for social democracy as well, which meant a way of life in which liberty, equality and fraternity, comprised the organizing principles of life, not separately, but as a union of trinity, since the separation of even one component of this trinity, would divest democracy of its substance:

We must make out political democracy a social democracy as well. Political democracy cannot last unless there lies at the base of it social democracy. What does social democracy mean? It means a way of life which recognises liberty, equality, and fraternity as the principles of life. These principles of liberty, equality and fraternity are not to be treated as separate in a trinity. They form a union of trinity, in the sense that to divorce one from the other is to defeat the very purpose of democracy. Without equality, liberty would produce the supremacy of the few over the many. Equality, without liberty would kill individual initiative. Without fraternity, liberty and equality could not become a natural course of things. It would require a constable to enforce them.³⁴

Making the trinity effective in India was, however, difficult since, argued Ambedkar, there was ‘complete absence of two things in India’ – equality and fraternity. Equality was absent on both the social and economic planes. On the social plane, Indian society was based on the principle of ‘graded inequality’, which meant ‘elevation for some and degradation for others’, and on the economic plane there existed an enormous and unbridgeable hiatus between those who had ‘immense wealth as against many who live in abject poverty’. This compelled Ambedkar to remark:

On 26th January 1950, we are going to enter into a life of contradictions. In politics we will have equality and in social and economic life we will have inequality. In politics we will be recognizing 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 so do only by putting our political democracy in peril. We must remove this contradiction at the earliest possible moment, or else those who suffer from inequality will blow up the structure of political democracy which this Assembly has so laboriously built up.³⁵

In a speech delivered a couple of years later at the Poona District Law Library, discussed earlier, Ambedkar yet again underscores the importance of equality, indeed revolutionary but peaceful transformation of society, as essential for sustaining democracy. Ambedkar identifies five pre-conditions for an effective and sustainable democracy: There should be no glaring inequalities in society, there should exist an opposition to make democracy successful, there should be equality in law and administration, there should be observance of constitutional morality, there should be ‘public conscience’. A public conscience, ‘means conscience which becomes agitated at every wrong, no matter who is the sufferer, and it means that everybody, whether he suffers that particular wrong or not, is prepared to join him in order to get him relieved’.³⁶

(d) *Public Conscience*

Here we see Ambedkar’s notion of constitutional morality, characterised by the habit of ‘pacific criticism’ of the state under conditions of self-restraint, meet a different ethic of public action. Unlike constitutional morality, which was directed towards inculcating an attitude of respect and obedience towards constitutional principles and legal provisions which flowed from it, its objective being primarily to ensure the sustenance of the institutional edifice of democracy, public conscience enunciated the need for a moral order animated by human suffering. If reverence for law was given primacy in the moral order of constitutionalism, the moral order spawned by public conscience, demanded a bond of a different kind – one which was founded on a feeling of empathy. The moral order of empathy makes the alleviation of human suffering as a result of injustice its preponderant concern. While articulating the need for public conscience, Ambedkar recognizes the presence of injustice in society. What he emphasizes, however, is the uneven spread of injustice—there are some against whom the impact is small, for some it is great—‘And there are some who are *absolutely crushed* under the burden of injustice’.³⁷ Historical wrongs have occurred because a dominant class has been able to crush some, who have suffered in isolation. But when society is animated by a conscience which is public, it becomes

capable of becoming agitated at the wrongs suffered by another person or group, and eager to join those who have suffered to alleviate their suffering. Interestingly, in the example that Ambedkar sites of public conscience in contemporary times is South Africa and its regime of racial segregation, where he points out ‘a large number of young boys and girls belonging to the white race are also joining the struggle of the Indians in South Africa. That is called public conscience’.³⁸ Ambedkar now dexterously raises the public conscience of his audience referring to South Africa in India:

We are talking about South Africa. I have been wondering within myself whether we who are talking so much against segregation and so on do not have South Africa in every village. There is; we have only to go and see. There is South Africa everywhere in the village and yet I have very seldom found anybody not belonging to the Scheduled Class taking up the cause of the Scheduled Class and fighting, and why? Because there is no public conscience.³⁹

It is here perhaps that one can identify the churnings of constitutional insurgency in Ambedkar which has the capacity to accommodate within it successive constituent moments. Yet, even when he talks about public conscience as a measure of the ability of people to act in contexts of extreme injustice, as an essential precondition for democracy, Ambedkar makes it compatible with constitutional morality. This is evident from his averment that the absence of public conscience, would develop a ‘revolutionary mentality’ which imperils democracy. There would appear, however, in Ambedkar a dissonance at this point between what he considers the essential conditions of democracy and the preservation of constitutional democracy. Yet, the dissonance is not substantial if we were to agree that for Ambedkar the conditions of achieving and sustaining democracy were consistent with its objectives – whereby revolutionary changes could be brought about in the lives of people without bloodshed and democracy would exist only when such changes could indeed be brought about by those entrusted with the task of governing. In such a system, socio-economic inequalities which existed along deeply entrenched caste hierarchies, to even think of a system of fraternity in nationhood was for Ambedkar a great delusion. It was in a fraternity, where caste hierarchies, which Ambedkar termed ‘anti-national’ were erased, that equality and liberty could be actualized. Without fraternity, they would be no more than coats of paint. These conditions were for Ambedkar, essential and integral to a moral order of democracy in which people could live as equal citizens.

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NOTES

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