

DR. AMBEDKAR'S VISION OF SOCIAL JUSTICE: MYTH OR REALITY

*Dr. Sufiya Ahmed,
Assistant Professor,
Department of Law,
Babasaheb Bhimrao Ambedkar University,
Lucknow.*

ABSTRACT

“ Dr. B.R. Ambedkar made it his life mission to uplift the untouchables and the other downtrodden masses from the unequal position of inferiority to that of equal position of parity in socio- economic status with other high caste Hindus. It was for achieving this goal the reservation policy or the scheme of protective discrimination was advocated and continuously pursued by him to ameliorate the conditions of the various depressed and downtrodden sections of Hindu society. It would be a matter of great significance to note, here, that Ambedkar was against the policy of perpetual reservation system for the simple reason that it would reinforce die-bard inferiority amongst the reserved categories that should, rather, develop themselves on the basis of self-reliance and self-help by developing self confidence but not on the charity of somebody else. According to Dr. Ambedkar Reservation policy is not a matter of charity but a legal obligation on the part of the government to improve the lot of the innocent and historically oppressed sections of Indian society. However, his struggle for fundamental human freedom and the socio-economic emancipation of untouchables, his dream about the creation of an egalitarian social order still remains a wishful thinking despite the repeatedly extended period of reservation for Scheduled castes and tribes. Now there is a need to understand and evaluate Ambedkar's philosophy, vision and mission, and also the relevance of his ideas and thoughts in a proper perspective for an honest movement for removing inequality, casteism, untouchability and hatred giving practical shape to freedom, equality, democratic values and humanistic ideals enshrined in the Constitution of India. This paper is an effort to analyze and evaluate the policy of reservation under the constitution of India and its judicial reconstruction in the light of the vision of Dr. Ambedkar.”

Keywords: Reservation, Untouchability, Minority rights, Justice, Equality.

Introduction

“Ambedkar was basically against social injustice. His Instruments of change legal – political, his anthem Hindu caste exclusivism and his ambition social democracy— His life was a flaming forge, his commitment was to free the ancient unfree, economic law and politics were welded into a

constitutional militancy and geared to a social emancipation movements.”¹

Marc Gallenter described Indian society as a compartmental society within which a vast number of groups maintain distinct and diverse styles of life.

¹ V.R. Krihna Iyer, *Dr. Ambedkar & Dalit Future*, New Delhi, B.R. Publishing Corporation, 1990.

Jati or caste is the factor specifying rank in the Hindu social order. The origin of Varna and *jati* is usually associated with the advent of Aryans on the Indian soil. Indian society is divided into four *varnas*, or castes. The *varna* order had its origin in the *Rigveda*, dating back to 1500-1000 BC. At the top of the hierarchy are the Brahmins, or priests, followed by the *Kshatriyas*, or warriors then the *Vaishyas*, or farmers and artisans and at bottom are the *Shudras*, the class responsible for serving the three higher groups. Finally the untouchables fall completely outside of this system. It is for this reason that the untouchables have also been termed *avarna* (no class).²

Ambedkar's ideology is basically opposed to Hindu society based on Varna, caste and untouchability, which has cruelly crushed the *shudras* or untouchables in India, and that situation still exists in various ways. In his book, *Annihilation of Caste* he expressed the following idea:

- (i) The Hindus have fallen due to caste system and the organization of Hindu Society based upon four classes is impossible to follow as implied in *Varna Vyavastha*.
- (ii) The organization of Hindu Society on the basis of four classes is harmful, because it is the result of a system, wherein people are demoralized by not all allowing them to hold arms.
- (iii) The Hindu society should be re-organized on a religious basis which may accept the principles of liberty, brotherhood and equality as the Pillars of good governance.
- (iv) For achieving these ends, religious consciousness strengthening the existing class system should be obliterated by legal measures.

But if we see the present social structure of our country, we can say that not only social inequality

² Marc Galanter, *Competing Equalities: Law and the Backward Classes in India*, Oxford University Press, Delhi, 1984, p. 11.

but also economic and political inequality is found between the highest and the lowest castes. At present, the power struggle between different dominant castes and between the highest and the lowest caste is very common, which led to caste conflicts. The so called dominant or high castes are not allowing the lower castes to reach up to their level. In villages the lower castes are still economically dependent on the dominant peasant castes. The position of the down trodden communities in villages seems to be very low and they lag behind in many spheres.

The Constitution of India does not permit preferential treatment as a general principle of operation. Such treatment is given only for the limited purpose of advancing the backwards. The Scheduled Castes and Tribes comprises of those who were at the bottom of the Indian social order. Those groups, who because of their low status in hierarchical Hindu order were subjected to disabilities and lack of opportunity. The constitution provides that the Scheduled castes and Scheduled Tribes shall be designated in the first instance, with subsequent modifications only by the Act of Parliament. It further provides that the President shall appoint a special officer to investigate all matters relating to the safeguards for the Scheduled Castes and Schedule Tribe and report to Parliament on their working. Accordingly the office of the commissioner of SC and ST was established in 1950 for the purpose of coordinating and reporting but had not administrative functions. Primarily three categories of groups have been identified (a) Scheduled Castes (b) Scheduled Tribes and (c) other (socially and educationally backward classes).³

Constituent Assembly Debates and Policy of Protective Discrimination

Regarding equality, Dr. Ambedkar stated in the Constituent Assembly:

³ Marc Galanter, *op.cit*, p.8.

"...We must begin by acknowledging the fact that there is complete absence of two things in Indian Society. One of these is equality. On the social plane, we have in India a society based on the principle of graded inequality which means elevation for some and degradation for others. On the economic plane, we have a society in which there are some who have immense wealth as against many who live in abject poverty."

Ambedkar was called upon to play a stupendous role in his capacity as chairman of the drafting Committee of the Constituent Assembly and as Minister of Law in the Nehru Cabinet. He was entrusted with the responsibility of safeguarding the rights of every Indian, including the scheduled castes and providing a form of government and society based on the principle of justice- social, political and economic. He was convinced that justice cannot be secured to one and all unless it was enshrined in the Constitution itself."⁴

Ambedkar with other many leaders lost his seat in C.A. due to partition of Bengal along with the partition of India. But he was again elected by the Bombay Legislature with the help of Congress to fill up the vacancy created by the resignation of Mr. M.R. Jayakar, and thus, the destiny of the scheduled castes in particular and of the Indians in General, favoured his presence and participation in the ensuring proceedings of New India's Constituent Assembly.⁵ Dr. Ambedkar kept in mind the interests of the scheduled castes while participating in the process of drafting of the constitution. In fact he quoted as saying "I came into the constituent Assembly with no greater aspiration than to safeguard the interests of the scheduled castes."⁶

B.R. Ambedkar played two fold roles in the making of constitution of India i.e. as a champion of

⁴ B.A.V. Sharma (ed.) & K.Mdhusudan reddy, *Reservation Policy in India*, New Delhi, Light & Life Pblcation, 1982, p. 30.

⁵ Granville Austin, *The Indian Constitution: The Corner Stone of a Nation*, Oxford, Bombay, 1976, p.13.

⁶ *Constituent Assembly Debate* Vol. IX. pp. 973-4.

untouchable on the one hand and as a Constitutional expert on the other. He was a well known constitutionalist and a man with rich political experience. Though Ambedkar was not free to write the Constitution according to his political and Constitutional philosophy, yet he trove his 'utmost to incorporate into the free Constitution of India such provisions as would help establish a new social order based on the principles of political, economical and social justice for one and all.⁷ Ambedkar, as a champion of downtrodden, was convinced beyond doubt as to the need for a Bill of Rights in the Indian Constitution. He had been pleading continuously for an elaborate system of fundamental rights for the minorities in particular, and for all citizens in general. His fight for social Justice was the main blank in his struggle as the leader of the minorities. He was also convinced that social justice could not be secured to one and all unless it was enshrined in the Constitution itself."⁸

One of the first task of which the Constituent Assembly addressed itself was the formulation of a bill of rights with pride of place accorded to social justice and non-discrimination. Described by Ambedkar⁹ as "the most criticised part" of the constitution, part III dealing with the fundamental Rights was discussed for as many as 38 days-11 in the subcommittee, 1 in the Advisory Committee and 25 in the Constituent Assembly.

In the memorandum submitted to the Constituent Assembly on safeguards for the scheduled castes, the following provisions were proposed by Dr. B.R. Ambedkar:

Right to representation in service

⁷ Lokrajya, *Dr. Baba Sahib Ambedkar*, Apr. 16, 1981, p. 79.

⁸ . M. rajasekhariah, *B. R. Ambedkar. The Quest for Social Justice*, New Delhi, Uppal Publishing House, 1989, p. 199.

⁹ Subhash Ksashyap, *Honest efforts Needed for Social Equality*, Kurukshetra, Vol.39, 1990, p.38.

- a) The quantum of representation of the scheduled castes in the services shall be as follows:
1. In the Union Services: In proportion to the ratio of their population to the total population in India or British India as the case may be.
 2. In the State and Group Services: In proportion to population in the State or Union.
 3. In the Municipal and Local Board Services: In proportion to their population in the Municipal and Local Board Areas, Provided that no minority is allowed to claim more than its population ratio of representation in the services.
- b) Their right to representation in the services shall not be curtailed except by conditions relating to minimum qualifications education, age etc.
- c) The conditions prescribed for entry in services shall not abrogate any of the concession given to the scheduled caste by the Government of India in their Resolution of 1942 and 1945.
- d) The method of filling up the vacancies shall conform to the rules prescribed in the Government of India Resolutions of 1942 and 1946.
- e) On every Public service Commission or a Committee constituted for filling vacancies, the scheduled castes shall have at least one representative.
- castes and shall be required to make adequate provisions in their budgets. Such provisions shall from the first charge on the education budget of the Union and State Government.
- II. (ii) The responsibility for finding money for secondary and college education of the scheduled castes in India shall be upon the State Governments and the different States shall make a provision in their annual budgets for the said purpose in proportion to the population of the scheduled castes to the total budget of the state.
 - III. (iii) The responsibility for finding money for foreign education of the scheduled castes shall be the responsibility of the Union Government and the Union Government shall make a provision of Rs. 10 Lakh per year in its annual budget in that behalf.
 - IV. These special grants shall be without prejudice to the right of the scheduled castes to share in the expenditure incurred by the state Government for the advancement of primary education for the people of the state.

Unfortunately, these clear cut provisions do not find a place in the Indian Constitution. When Ambedkar brought a proposal in Constituent Assembly for safeguards of untouchables, i.e., reservation in services, Lok Sabha and Legislative Assemblies, he was strongly opposed by J.L. Nehru, S.B. Patel, S.P. Mukherjee, K.L. Munshi, etc., on the ground that a provision for abolishing untouchability has already been incorporated in the constitution. Ambedkar said that simply by passing resolution the economic, social and political progress of crores of untouchables could not progress unless the seats in services, legislature were reserved for them in proportion of their population. He stressed on reservation and sounded that he would come in Constituent Assembly as an elected member even after the severe opposition made by Congress. He said that he had laboured for three years in preparing the Constitution on the cost of his health

Special Responsibilities

- I. Governments: Union and state shall be required to assume financial responsibility for the higher education of the scheduled

so that he could do something for the welfare of the down trodden people. When he saw that no one was in his favour, then he finally said that if seats were not kept reserved for Depressed classes and made it as part of the Constitution, he would walkout from the Constituent Assembly so that in the pages of coming history it would remain written that how the Hindus opposed the question of welfare for untouchables, whenever it came before them. After this Ambedkar went out from the meeting and did not attend for 3-4 days. Then, however, Congress leaders agreed on the inclusion of certain provision for the welfare of this class which Ambedkar inserted them in the Constitution. Ambedkar was instrumental in providing reservation, for backward communities, Scheduled caste and scheduled Tribes, in services, Central as well as State Legislatures.

Here the views of the Constituent Assembly members are projected to highlight the then prevailing trend of compassion and concern towards the weaker sections of the country. The over-all theme of the discussion was that those citizens who trailed behind in achieving the social, economic and educational stream of the country for any reason, should be given protection to such an extent that they should be at par with the mainstream of the country. This protection is provided to them by providing the privileges in the employment and in the education.

While discussing the draft Art. 9 (Corresponding to Act, 15 of the constitution) **Prof. K.T. Shah** moved an amendment for inclusion of scheduled castes or backward tribes and commented that:

“ This discrimination is in favour of particular classes of society which owing to an unfortunate legacy of the past suffer from disabilities or handicaps. Those, I think, may require special treatment, and if they do require it, they should be permitted special facilities for some time so that real equality of citizens be established. It is only intended to safeguard, protect or lead to their betterment in general so that the long range

interests of the country may not suffer. In regard to the scheduled castes and backward tribes, it is an open secret that they have been neglected in the past, and their rights and claims to enjoy as equal citizens happen to be denied to them because of their backwardness they need and must be given, for some time to come at any rate, special treatment in regard to education, in regard to opportunity for employment and in many other cases where their present inequality, their present backwardness is only a hindrance to the rapid development of the country. Any section of the community which is backward must necessarily impede the progress of the rest, and it is only in the interest of community itself, therefore, that it is but right and proper that we should provide facilities so that they may be brought upto date so to say and the uniform progress of all be forwarded. I have of course, not included in my amendment the length of years, the term of years for which some such special treatment may be given that may be determined by the circumstances of the day. I only want to draw your attention to the fact that there are classes of our citizens who may need, though no fault of theirs, some special treatment if equality is not to be equality of name only or on paper only, but equality of fact ”.

Shri Damodar Swarup Seth while discussing draft Art.10 (corresponding to Art 16 of the Constitution) stated:

“Who will not believe it, that reservation of posts or appointment in services for the backward classes means the very negation of efficiency and good Government? Moreover, it is not easy to define precisely the term 'backward', nor is it easy to find a suitable criterion for testing the backwardness of a community or class. If this clause is accepted, it will give rise to casteism and favouritism which should have nothing to do in a secular

state. I do not mean that necessary facilities and concessions should not be given to backward classes for improving their educational qualifications and raise general level of their uplift. But Sir, appointments to posts should be only left to the discretion of the public service commission, to be made on merit and qualifications, and no concession whatever should be allowed to any class on the plea that the same happens to be backward."

Pandit Hirday Nath Kunzru had moved an amendment for restricting the reservation of posts for ten years while discussing the draft Art.10 of the Constitution. He commented:

" I am not in principle against the protection of the interests of classes that are at present unable to look after themselves unaided; but this article, as it is, presents several difficulties. In the first place, the word 'backward' is not defined anywhere in the Constitution- whether any class is backward or not should be left to the law courts to decide. It is therefore our duty to define the term 'backward' so that there may be no dispute in the future above its meaning. It seems to me that in fairness to the country, protection can be granted to any class, whether you call it a backward class or a minority, only on the ground that it is backward and it left to itself, would be unable to protect its interest. It was recognized that for the time being they were necessary, but it was insisted on that whatever protection might be considered necessary now, should be granted temporarily only, so that the population of the country might become fully integrated, and no community or class might be tempted to claim special advantages for itself.

Shri R.M. Nalavade contributed a very important aspect to the discussion. He stated:

"---But the words "backward classes" are so vague that they could be interpreted in such a way as to include so many classes which are even educationally advanced. They are found mentioned in the list of backward classes. Our experience in the provinces, though there are provisions for reservation of the services, is bitter. Even though the depressed classes are educated and qualified, they are not given chances of employment under the provincial Governments. Now that we have provided for this in the Constitution itself, there is no fear for scheduled castes."

Dr. Dharam Prakash⁷ threw light on the backwardness. He stated:

"---it is an undoubted fact that "backward" class has not been defined so far and there is no possibility of its being defined in the near future. There are backward people in every community. Personally I believe that if there is to be any reservation for backward classes in the services it is very necessary to see as to what the present position is and what is to be the future of a particular class which has been backward for centuries, whether religiously or economically or socially. I personally hold the view that in this free country it is not proper to make reservation for Hindus, Muslims, Christians and Sikhs on the ground that they are minorities. But in so far as that section of Hindu is concerned who are called Harijans, and they are really backward, it appears to be appropriate that there should be reservation for some time. When they reach the same level of culture as other sections of population, I would be the first person to oppose any reservation whatsoever for them. So long as they do not attain that position, I favour reservation."

Shri P. Kakkan while discussing on Art.10 commented:

"The poor Harijan candidates hitherto did not get proper appointments in government services. The higher officers selected only their own people, but not the Harijans. Sir, even in the matter of promotions, we did not get justice. The Government can expect necessary qualifications or personality from the Harijans, but not merit. If you take merit alone into account the Harijans cannot come forward. I say in this House that the Government Must take special steps for the reservation in appointments for the Harijans for some years."

Shri V. I. Muniswamy Pillay stated:

"---I may tell this House that it is not the object of any of the leaders of the Harijan community to perpetuate the communal bogey in this land forever, but so long as they remain so backward in getting admission into the services, it is highly necessary that they must be given some protection."

Shri T. Channah while discussing the issue narrated that backward communities suffer from two disabilities namely, social disabilities and educational disabilities:

"I am really sorry that the honourable Pandit kunzru should have felt that the backward class should be given this opportunity only for a period of ten years. Sir, I want this reservation for 150 years which has been the period during which opportunities have been denied to them."

Shri Shantanu Kumar Das emphasises on reservation by stating that:

"At present there is reservation in the elections and thereby we get a chance to discuss our problems here. But if there was no such reservation it would not be possible for us to come here as we would not be able to win in general elections. I therefore,

submit that there should be reservation in services and elections. There is one thing more. It has been said that reservation should be kept for ten years, why only for ten years? If we get equal rights within two years all would be on the same level after that period and there would be no need for reservations."

Shri H. J. Khandekar projected the factual condition of the Harijans by stating.

"---if I leave aside the political aspects of the community and come to social, educational, economical and religious aspects, the condition of the scheduled caste in this respects also is more deplorable than that of any man living in this country. As was said here by certain friends of mine, Communalism is going on, and provincialism is going on and other things are also going on and I am afraid if these things are continued even if this clause is brought into operation, the scheduled caste will never get a chance, as the word 'backward' would be interpreted in such a way that we people would get no chance in the services because the people of other castes will also claim to be backward and get the chances on reserved posts."

Mr. Mohamed Islam sahib has criticized the word 'backward' in his speech. He stated:

"The word 'backward' has not been defined at all anywhere in this constitution. But I may tell you it has been defined in certain places. In Madras it has got a definite and technical meaning There are a number of castes and sub-castes called backward communities. The Government of Madras have counted and scheduled more than 150 of these classes in that province and in that province when you utter the word 'backward', it is one of those 150 and adds communities that are meant, and not any community that is generally backward. I submit that it should not in any

way be taken to mean that the backward classes as those of the minority communities such as Muslims, Christians and the scheduled caste people are excluded from the purview of this clause. As a matter of fact, there are backward people amongst the non-majority people as well. The Christians are backward. As a matter of fact, they are not adequately represented in the services of the provinces. So are the Muslims and also the scheduled Castes. If any provision is made, it has to be made for such really backward people."

He has defined word 'backward by stating:

"The backwardness of the people is the result of conditions which have been persisting and in existence for several centuries and ages and it will not die off easily. So the measure really should be the steps that are being taken to liquidate that backward condition, and it should be the forwardness of the people which has resulted as a consequence of those steps. Therefore, when those people advance and have come forward as much as any other community in the land, then these very reservations would automatically disappear. I feel that no period need be stipulated at all for this purpose."

Shri K. M. Munshi while participating in the discussion commented:

"---I cannot also imagine a time when there is any backward class in India which does not include the scheduled caste. What we want to secure is two things. In the first clause we want to achieve the highest efficiency in the services of the state ---- highest efficiency which would enable the services to function effectively and promptly. At the same time, in view of the conditions in our country prevailing in several provinces we want to see that backward classes, classes which are really backward, should be given scope in the

state services, for it is realized that state services give a status and an opportunity to serve the country and this opportunity should be extended to every community even among backward people. We need not, therefore, define or restrict the scope of the word 'backward' to a particular community, whoever is backward will be covered by it---"

Shri T. T. Krishnamachari raised altogether different perspective of backwardness when he said:

"May I ask who are the backward class of citizens ? It does not apply to scheduled caste or to any particular community. I say the basis of any future division as between 'backward' and 'forward' or non-backward might be the basis of literacy. If the basis of diversion is literacy, 80 % of our people fall into the backward class citizens, who is going to give the ultimate award? Perhaps the Supreme Court. It will have to find out what the intention of the framers was as to who should come under the category of backward classes. It does not say 'caste'. It says class, is it a class which is based on grounds of economic status or on grounds of literacy or on grounds of birth? What is it? That the word 'backward is liable to different interpretations is the fear of some of my friends, though I feel that there is no need for such fear, because I have no doubt it is going to be ultimately interpreted by the supreme authority on some basis, caste, community, religion, literacy or economic status."

Against this back-drop Dr. B. R. Ambedkar's discourse is quite significant:

"If members were to try and exchange their views on this subject, they will find that there are three points of view which it is necessary for us to reconcile if we are to produce a workable proposition which will be accepted by all. Of the three points of views, the first is that there shall be equality of opportunity for

all citizens...Another view mostly shared by a section of the House is that if this principle is to be operative ...and it ought to be operative in their judgment to its fullest extent ... there ought to be no reservations of any sort for any class or community at all, that all citizens, if they are qualified should be placed on the same footing of equality so far as the public services are concerned that is the second point of view we have, then we have quite a massive opinion which insists, that, although theoretically it is good to have the principle that there shall be equality of opportunity, there must at the same time be a provision made for the entry of certain communities which have so far been outside the administration ...supposing for instance, we were to concede in full the demand of those communities who have not been so far employed in the public services to the fullest extent, what would really happen is that- we shall be completely destroying the first proposition upon which we are all agreed, namely, that there shall be an equality of opportunity. Let me give an illustration, supposing for instance, reservations were made for a community or a collection of community, the total of which came to something like 70% of the total posts under the state and only 30% are retained as the unreserved. Could anybody say that the reservation of 30% as open to general competition would be satisfactory from the point of view of giving effect to the first principle, namely, that there shall be equality of opportunity. It cannot be in my judgment. Therefore the seats to be reserved if the reservation is to be consistent with sub clause (1) of Article 10 must be confined to a minority of seats. It is then only that the first principle could find its place in the constitution and effective in operation. If honourable members understand this position that we have to safeguard two things, namely, the principle of equality of opportunity and at the same time satisfy the

demand of communities which have not had so far representation in the state, then, I am sure they will agree that unless you use some such qualifying phrase as 'backward' the exception made in favour of reservation will ultimately eat up the rule altogether...Nothing of the rule will remain. Somebody asked me, "What is a backward community?" Well I think anyone who reads the language of the draft itself will find that we have left it to be determined by each local Government. A backward community is a community which is backward in the opinion of the Government. My honourable friend Mr. T. T. Krishnamachari asked me whether this rule will be justifiable. It is rather difficult to give a dogmatic answer. Personally, I think it would be a justifiable matter if the local Government included in this category of reservations such a large no of seats, I think one could very well go to the Federal Court and the Supreme Court and say that the reservation is of such a magnitude that the rule regarding equality of opportunity has been destroyed and the court will then come to the conclusion whether the local government or state Government has acted in the reasonable and prudent manner."

Dr. Ambedkar had discussed the issue of reservation precisely and fully. He had elaborated the entire theme and scheme of reservation in a lucid manner. The members who participated in the discussion discussed threadbare the pros and cons of the provision of reservation. In this discussion of the Constituent Assembly members only two exhibited different Visualization, otherwise all the rest were in favour of reservation. The two members were (1) Shri Damodhar Swarup Seth and (2) Pandit Hirday Nath Kanzru. Shri Damodar Swarup Seth expressed that he would not mind providing facilities to backward classes to improve upon their present position but he was not in favour of reservation in employment. He was of the view that provision of reservation in employment would result in some severe consequences in the society and for this

reason he opposed reservation. Pandit Hriday Nath Kunzru had raised a pertinent point about duration of reservation; whether it should be limited to ten years. Pandit Kunzru had brought the focus on another important point of backwardness. As such except K. M. Munshi and Dr. Ambedkar all other members on discussion of backwardness wanted that the word 'backwardness' should be clearly defined. Pandit Kunzru is of the view that every aspect of reservation had to be made clear in the Constituent Assembly itself so that all other future problems could be avoided and instead of perpetuating the problem, the stability to that effect would be reached. But that was not agreeable to Shri Munshi and Dr. Ambedkar because of the scheme of reservation. And as per the scheme it is the state which decides how much percentage it needs and which communities or castes are to be covered under the reservation. Not only this, but if the state fails in implementing this policy properly, that can be challenged in the court and the effectual remedy sought. Hence, Mr. Munshi and Dr. Ambedkar stated that as per the existing Indian climate, the word 'backward' would be comprehensive. This word covers all the communities, all the religions and all those who trailed behind in the social and economic sphere of life. As per the scheme of reservation which was narrated by Dr. Ambedkar, the word 'backward' suits the scheme, it being the only appropriate word.

In the above manner the provision of reservation was embodied in the constitution, Art 16 (4) incorporated in the constitution, corresponds to draft Art. 10(3). The Constituent Assembly debates indicate that the draftsmen themselves were not sure about the criteria to be adopted in determining "backwardness." They wanted to maintain flexibility in the matter and to leave the matter upon every state government to determine "backwardness" with ultimate review by the court. The Constituent Assembly members were expected to provide a clear, accessible and demarcating scheme of reservation. Instead of providing such scheme they provided a scheme of reservation which is entirely left to the sweet will and pleasure of the state government. The state governments, is expected to

apply and implement this scheme of reservation as per its requirement and necessity. If we view this scheme from the point of view of welfare of the backward people then it suits appropriately, provided the government implements it with sincerity and impartially, otherwise it would mean that the Constituent Assembly members have provided an instrument of politicization in the hands of the government to be utilized by it towards its political end. This also can be called as politics of reservation. And if the government is actively involved in this politics of reservation without preserving the spirit of reservation, then the very purpose of providing the reservation and attaining equality would be defeated. If we analyze the approach of the government towards reservation then it seems that the government has implemented the reservation as a part of its politicization. Above narration highlights various issues involved in the discourse of reservation in the Constituent Assembly and after the detailed debates, provisions in the constitution were implemented.

In this way, the social realities that existed forced the founding fathers to give recognition to the untouchable communities as the scheduled castes. The Reservation policy thus adumbrated in the Constitution in 1950 was based on certain assumptions.

Firstly, it is not a permanent way of bringing the deprived sections of the society into the mainstream of Indian society on the basis of equality, freedom, dignity, self-respect and power. A time limit of ten years was set in the Constitution in 1950, with the hope that the government would implement the policy sincerely and dynamically.

Secondly, it was realized that the problem of untouchability has deep socio-economic roots in the Indian society as well as in the Indian psyche. It was anticipated that with this policy the power and the creative energies of the State and the individual in India will be deployed towards bringing out structural changes such as radical reforms, basic educational reforms, efforts to return to India's cultural and civilizational roots and for building up of a political and economic democracy in tune with the needs of this country.

Thirdly, the majority of the members endorsed the policy as a continuing social duty and as an expression of atonement on their part for the inhuman exploitation of the untouchables. Fourthly, that there will be a national consensus on the issue between all the political parties and that it will not be treated as a political issue to derive political mileage. Finally, backward Classes should strive to develop reliance through this policy and the government will review the policy, making suitable modifications in the light of experience and the prevailing circumstances.

Initially reservation was for 10 years only. It has been extended many times through amendments due to persistent backwardness of these communities. Ambedkar said, on 27 Oct. 1957,

"The reservation of seats is for 10 years only. I wanted that this reservation should remain for such a time as untouchability is there, but the Congress leader Late Sardar Vallabhai Patel opposed me. So the other person who was there in the committee supported Sardar because they belonged to his party. Therefore, we should try to send our true representative to the Assemblies so that they may safeguard our rights and also secure this reservation after 10 years."¹⁰

Ambedkar has strongly defended the First Amendment 1951, which amended Arts 15, 19, 31, 85, 87, 174, 176, 341, 342, 372 and 376. The main purpose of Amendments was the removal of certain practical difficulties experienced in the working of some of the Fundamental Rights. In 1951, there arose a need to counteract the judicial bottlenecks which declared certain articles as invalid. The amendment of Art 15 was necessitated because the Supreme Court in *Srinivasan V. State of Madras*¹¹ declared the communal Govt. order of the Madras Government as invalid. The

Communal Government order of the Madras Government had provision of reserving seats for various communities in certain educational institutions under the state. The Government of Madras argued that it was the duty of the State to protect the interests of socially and educationally backward communities as provided for in the Directive Principles. If they were not given a favoured treatment in such matters as admission to technical institutions, etc. and were placed on a par with members of other communities who were more advanced and if merit alone were made the governing principle for admissions, then they would remain always backward as they would not be able to successfully compete with others. Hence the constitutional amendment made providing for such reservations.

Ambedkar was against any special protection for the scheduled castes and the scheduled Tribes under Art. 15, as he feared that instead of removing the disabilities of the people, it might perpetuate their social aloofness.¹²

On moving the draft Constitution, Dr. Ambedkar said to the constituent assembly-

"The Draft Constitution is criticized because of the safeguards it provides for minorities. In this, the Drafting Committee has no responsibility. It follows the decision of the Constituent Assembly. Speaking for himself I have no doubt that the Constituent Assembly has done wisely in providing such safeguards for minorities as it has done. In this country both the minorities and the majorities have followed a wrong path. It is wrong for the minorities to deny the existence of minorities. It is equally wrong for minorities to perpetuate themselves. A solution must be found which will serve a double purpose. It must recognize the existence of minorities to start with. It must also be such that it will enable majorities and minorities to merge some days into one. The solution proposed by the Constituent Assembly is to be

¹⁰ *Private papers of Ambedkar*, Bombay University

¹¹ 1951 S.C.R 226

¹² G.S. Lokhande, *Bhim Rao Ramaji Ambedkar : A study in Social Democracy*, New Delhi. Intellectual, Publishing House, 1977. p. 202-203

welcomed because it is a solution which serves this twofold purpose. 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 accepts, can blow up the whole fabric of the state. The history of Europe bears ample and appalling testimony to this fact. The other is that the minorities in India have agreed to place their existence in the hands of the majority. In the history of negotiations for preventing the partition of Ireland, Redmond said to Carson: "Ask for any safeguard you like for the Protestant minority but let us leave a united Ireland." Carson's reply was: "Damn your safeguards, we don't want to be ruled by you." No minority in India has taken this stand. They have loyalty accepted the rule of the majority which is basically a communal majority and not a political majority. It is for the majority to realize its duty not to discriminate against minorities. Whether the minorities will continue or will vanish must 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."

Dr. Ambedkar advocated abolition of privileges on the basis of caste or status and vigorously fought for the liberty and dignity of the individual. He sought to achieve these objectives through the constitution of India by incorporating in it the following principles:-

- (i) Making the Indian constitution workable, flexible enough and yet strong enough to hold the country together both in peace and war time.
- (ii) Providing special safeguards to the minorities and certain classes who are socially and educationally backward. Through these safeguards, he sought to instill in the minorities the spirit of nationalism and tolerance to accept the rule of the majority even though the majority in India is a communal majority and not political majority.

- (iii) Incorporating the principle of one man, one value and one vote. Thus, the constitution of India accepted an individual, and not a village, as a unit.
- (iv) Abolishing untouchability and forced labour to achieve the ideal of "one man, one value" and "one man, one vote" and placing all people equal before law; securing equal protection of laws for every citizen as also freedom of profession and equality of opportunity. Thus, untouchability and forced labour are offences punishable under the law of constitution of India, Every citizen of India is equal before the law and there is also equal protection of law for all citizens without any discrimination on the basis of caste, religion, sex or status.
- (v) Incorporating the right to constitutional remedies for making the right real. His aim was to save Indian democracy from confusion and anarchy on the one hand, and communalism and communism on the other.

Practically, even now the constitutional abolition of untouchability and its practice in form with a view to promoting a new pattern of social behaviour has unfortunately not reached the expectations of Dr. Ambedkar. Today, the scheduled castes still remain poor, exploited and subjected social, economic and political disabilities on the ground of untouchability. The clauses relating to equality under the Indian Constitution have special reference to backward classes. Dr. Ambedkar said that political democracy could not survive in the absence of social democracy. In his opinion social democracy assures and implements liberty, equality and fraternity as principles of life. Dr. Ambedkar advised the scheduled castes to safeguard their privileges. It is their right to refuse any change if they felt no guarantee was given to safeguard their rights. Reservation or compensatory discrimination is justified in our social and economic conditions still the weaker section of society are able to compete without any special help. The main problem lies in

the identification of the persons who is educationally and socially backward and is entitled to constitutional benefits. We can summarise the vision of Dr. B.R. Ambedkar regarding the policy of reservation in the following points:-

- (i) Ambedkar's policy of reservation or protective discrimination was designed primarily to remove the scourge of untouchability from Indian society, and with it the role of caste in public life.
- (ii) According to Dr. Ambedkar there shall be equality of opportunity, at the same time there must be a provision made for the entry of certain communities which have so far been outside the administration.
- (iii) He wanted to create a philosophy which would answer the need of the lowest in the society in which he was living.
- (iv) Ambedkar was against any special protection for the scheduled castes and the scheduled Tribes under the constitution, as he feared that instead of removing the disabilities of the people, it might perpetuate the social aloofness.
- (v) Ambedkar said that castes would gradually cease to make any difference in public life.
- (vi) Ambedkar advised the scheduled castes to safeguard their privileges. It is their right to refuse any change if they felt no guarantee was given to safeguard their rights.
- (vii) The clauses relating to equality have special reference to backward classes. Dr. Ambedkar said that political democracy could not survive in the absence of social democracy. In his opinion social democracy assures and implements liberty, equality and fraternity as principal of life.
- (viii) According to Ambedkar the term 'Backward classes' would cover three principal components, the scheduled castes, the scheduled tribes and the other backward classes.

- (ix) Ambedkar said that a Backward Community is a community which is backward in the opinion of the Government.
- (x) According to Ambedkar Reservation policy should be periodically reviewed.

An analysis of Supreme Court Judgement in the Light of Ambedkar's vision

If we start our journey from the very first case relating to Reservation i.e. *the champakam case*¹³ in which the S.C. rejected to countenance any notion of group rights we can say that the court's interpretation in this case achieved the object intended by Dr. Ambedkar when he rejected Prof. Shah's Amendment.¹⁴ But Governments reaction to these verdicts was swift. Clause (4) Of Art.15 were added in 1951 by the Constitution (first) Amendment Act 1951. Dr. Ambedkar as a chairman of the Drafting Committee opposed the amendment as providing an opening for segregate facilities. The first case relating to the problem of identification of backwardness was Balaji¹⁵ case in which the court recognized caste as a relevant factor in determining the social backwardness of a class of citizens. It must be noted that Ambedkar was against of any type of caste criteria and in *Chitralakha case*¹⁶ the court excluded the caste in the identification process of backwardness and occupation and income were made the basis for identification but in the case of *P.Rajendran*¹⁷ the court emphasized that a caste is also a class of citizen and if a caste as a whole is socially and educationally backward, reservation can be made in favour of such a caste. One of the most important case i.e. the case of *N.M. Thomas*¹⁸ where the Apex court clearly held the scheduled

¹³ AIR 1951 S.C. 226

¹⁴ See C.A.D. Vol. VII p.655.

¹⁵ AIR 1963 SC 649.

¹⁶ AIR 1964SC1823.

¹⁷ AIR 1968 SC 1012.

¹⁸ AIR 1976 SC 490.

castes are not castes within the meaning of Art. 16 (2) but they are collection of castes, races and groups and Art. 16 (4) is one mode of reconciling the claims of backward people and the opportunity of free competition for which the forward sections are ordinarily entitled. We can say that the above ruling of the Supreme Court was very similar to Dr. Ambedkar's thinking:

Why Supreme Court gave more importance to the caste criteria? The answer has given is Thomas case where the Apex court was of the opinion that caste is the primary index of social backwardness. The court also recognised that in Indian context the lower castes are to be treated as backward classes. The most important case in this regard is *Indra Sawhney case*¹⁹ where Mr. Justice Jeevan Reddy has opined that the pre-constitution rules operating in various states, treaties and reference works and dictionaries go to show that in pre-independent India the expressions 'class' and 'caste' were used interchangeably and that caste was understood as an enclosed class. He has relied upon the Constituent Assembly debates to exertion the original intent underlying the use of words 'backward class of citizens' and has agreed with the speech of Dr. Ambedkar which he gave at the time of First Amendment to the Constitution that-"backward classes are nothing else but a collection of certain castes."

The learned judge, therefore concludes that class is not antithetical to caste and that a caste can be a class and it can be made a basis for the identification of the backward class of citizens because the word 'class' in Article 16(4) is used in the sense of social class and not in the Marxian sense.

Another point that must be taken into consideration is 'economic criteria'. In this regard Baba Saheb was of the view that Reservation cause upliftment of the lower class in society.

If we analyse the judgement of the Apex Court prior to *Indra Sawhney Case*²⁰ it is clear that barring a few exceptions the court has been uniform

in reaching the conclusion that caste and economic criteria are the relevant factors for identification of the other Backward classes and that neither can be the sole or dominant criteria for that very purpose. Poverty is not linked with the members of lower caste only; they may also be economically better and strong than some of the members of forward castes. Therefore, caste, poverty and occupation must be taken into consideration and the 'means- test' must vary from time to time so that the change economics scenario must be taken care of However, both these tests have been held to have a relative value. *The Indra sawhney Case* has made the caste as a dominant factor ignoring its relevancy.

The Indra Sawhney Case has finally decided that clause (4) of Art. 16 is not an exception to clause (1) of Art. 16 of the Constitution. Art. 16 (4) of the Constitution is an instance of classification implicit in and permitted by clause (1), or an emphatic way of stating a principle implicit in Art. 16 (1). In this case the Supreme Court has relied upon the speech of Dr. Ambedkar and has held that clause (4) of Art. 16 is not an exception and that it would have been permissible for the state to have evolved such a classification and made a provision for reservation of appointment/post in favour of backward classes even without clause (4) of Art. 16. clause (4) merely puts the matter beyond any doubt in specific terms.

According to Dr. Ambedkar backward classes would be that class which would be backward in the opinion of the state.

The identification and designation of backward classes by the Government had to meet the Constitutional requirements of the Fundamental Rights. However, the Governments particularly in South India could not resist the pressure of those castes and communities which used to enjoy the benefit of caste based reservations in pre-constitution days and of such castes and communities which had become economically powerful after land reformations. These castes and communities used their electoral clout to secure reservation in their favour and those who failed took matter to the courts. On the court quashing the reservation scheme, the Government concerned appointed another committee or commission to

¹⁹ AIR 1993 SC 477.

²⁰ Ibid

identify the backward classes. This gave rise to another round of pressure-building and litigation.

The next important issue is claim of merit i.e. performance on test, examinations, interviews etc. rests upon the supposed consequences. In words of *Marc Galanter* the argument of merit is an argument for production of more social well being. Merit depends upon showing of sufficient grit and determination, intelligence, diligence, potentiality and inclination towards job sincerity. Here, Dr. Ambedkar's example is worth citing. In his matriculation examination, he secured only 37.5% of the marks, the minimum passing were 35%. If his potentialities were to be judged by the said marks, the country would have lost the benefit of his talent for all times to come. The obvious conclusion is that reservation is not anti-maritarian.

The divergence between Ambedkar's vision of reservation and that of the Mandal Commission are quite remarkable. Ambedkar's policy of reservation, or protective discrimination was designed primarily to remove the scourge of untouchability from Indian society, and with it the role of caste in public life. In case of *Indra sawhney* the driving logic is that caste identity is a permanent asset to be exploited for political and economic ends. On the other hand, the Supreme Court in *Indra sawhney* case has rejected the argument that making caste as a basis for the identification of backward classes will perpetuate casteism in the society.

Ambedkar was against any special protection to the depressed classes. In other words, he was against any kind of reservation and he believes in the principle of equality but the Governments policy is very opposed to his vision and if we see the govt. reaction to the *Indra sawhney case*. It becomes quite clear that the politics of reservation is based upon the casteism, differentiation and division of society etc.

No doubt, the nation has a special obligation towards the weaker segments of society. In the words of Justice Gajendragadkar:

"Unless the educational and economic interests of the weaker sections of the people are promoted quickly and liberally, the ideal of

establishing social and economic equality will not be obtained --- no one can dispute the proposition that political freedom and even fundamental rights can have very little meaning or significance for the Backward classes and the Scheduled Castes and Scheduled Tribes, unless the backwardness and inequality from which they suffer are immediately redressed."²¹

If we see the basic difference in American and Indian social structure, it attracts different considerations. In America a tiny number of minorities of Negroes had suffered discriminatory treatment at the hands of white people. In India the majority of population had suffered discriminatory treatment at the hands of a handful dominant cast people controlling the levers of power. Thus, American style of justification for positive discrimination of protective discrimination is based on ground of utility whereas the Indian style of justification is based on the ground of constitutional rights under Art.15(4), 16(4), 45 and so on. The moving spirit behind reservational justice is not equalitarian-but equalisational justice.

Conclusion

Ambedkar has now become more meaningful, if an objective reappraisal of his legacy is done and a conscious effort is made to rededicate ourselves to the ideals for which he waged a heroic and valiant struggle all his through life, i.e., upholding the dignity of the individual and complete annihilation of superficial barriers of castes, etc., which are a legacy of an iniquitous social system of Hinduism. Ambedkar's philosophy was the pursuit of liberty, equality and fraternity, which is now more relevant in India, is progress and prosperity. As Ambedkar long ago visualized, our society is still engrossed in casteism, terrorism, communalism, separatism, and provincialism, unrest among the minorities, nepotism, Poverty, inequality, illiteracy, unemployment and untouchability. These evils are hindering development of the nation, our social and

²¹ M.R.Balaji vs State of Madras, AIR 1963 SC p. 661.

national life, unfortunately, has been a victim of many divisive forces and internal conflicts. The need of the hour is to pull down the barriers that bring about unity and overall welfare with a view to fostering social cohesiveness and national integration, irrespective of caste, creed, religion, and place of birth, sharing the value of secularism. Now there is a need to understand and evaluate Ambedkar's philosophy, mission and the relevance of his ideas, thoughts and ideals in a proper perspective for an honest movement for removing inequality, casteism, untouchability and hatred giving practical shape to freedom, equality, democratic values and humanistic ideals enshrined in the supreme law of the land the Constitution of India. On adoption of the constitution Ambedkar said:

"We must make our political democracy a social democracy. 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 recognizes liberty, equality and fraternity as the principles of life. These principles of liberty, equality and fraternity are not to be treated as separate items 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. Liberty cannot be divorced from equality; equality cannot be divorced from liberty. Nor can liberty and equality be divorced from fraternity. 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 Constitution to enforce them; We must begin by acknowledging the fact that there is complete absence of the things in Indian Society. One of these is equality. On the social plane, we have in India a society based on the principle of graded

inequality which means elevation of some and degradation for other. On the economic plane, we have a society in which there are some who have immense wealth as against many who live in object poverty. On the 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 and one vote one value. In our social and economic life, we shall by reason of our social economic structure, continue to deny the principle of one value. How long shall we continue to deny equality in our social and economic life? If we continue to deny it for long we will do so only by putting our social democracy in peril. We must remove this contradiction at the earliest possible moment or else those who suffered from inequality will blow up the structure of political democracy which this Assembly has so laboriously built up."²²

²² *Constituent assembly of India - volume xi, Friday, 25th November, 1949, available on <http://parliamentofindia.nic.in/ls/debates/vol11p11.htm> visited on 8/1/2016*

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