

## THOUGHTS OF DR. BABASAHEB AMBEDKAR AND CHALLENGES IN THE IMPLEMENTATION OF FUNDAMENTAL RIGHTS

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### **Key Word:**

1. Fundamental Rights 2) Reservation Policy 3) Manusmriti 4) Democracy

### **Introduction:**

If one goes by the nomenclature of Fundamental Rights they seem to be universal in nature and content. In fact they differ from society to society. They have their own history. The Fundamental Rights enumerated in Part-III of the Constitution of India are although inspired from the American Bill of Rights, their content and nature is rooted in Indian conditions while placing the constitution before the Constituent Assembly Dr. B.R. Ambedkar raised some serious questions which by nature are concern and cautions of this maker of modern India put before its people. On the 75<sup>th</sup> year of our independence it is now appropriate time to reflect upon the cautions of Dr. Babasaheb to understand the hurdles coming into the way of realisation of the Fundamental Rights. Present study is an attempt in this direction.

Dr. Babasaheb cautioned, with old enemies of caste and creeds we are going to have many political parties with diverse and opposing political creeds. Will Indians place the country above their creed or will they place the creed above country?<sup>1</sup> Let us try to understand this question with illustrative examples related to the Indian form of State Sponsored Affirmative Action popularly known as reservation policy in India.

The basic objective of reservation policy in India was to provide representation to hitherto deprived sections of the society. To serve justice to the class of people who by the very nature of India's social and economic structure remained oppressed, discriminated and unrepresented in public life. It was a means of providing special circumstances and equality of status and opportunity. In pre-independence period special provisions for SC's political representation was vehemently opposed by Mahatma Gandhiji. Instead of separate electorates reservation policy was a compromise accepted. In post independent India the policy always faced opposition from caste Hindus. It intensified in 1991 when the Janata government under V.P. Singh accepted the Mandal Commission recommendations and implemented it by granting 27% reservation to OBCs in public employment. As a counter to this process and to derail it the Congress government under P.V. Narsimha Rao added economic criteria to decide backwardness to the existing socially and educationally backwardness criteria. It introduced the concept of Creamy Layer (economic criteria). It also introduced reservation of 10% in public employment to economically backward class.<sup>2</sup>

In the famous *Indira Sawhney vs Union of India*, 1992 case popularly known as the Mandal Case the Supreme Court has rejected the 10% economic backward reservation.

However it upheld the concept of Creamy Layer.<sup>3</sup> The judgement indirectly paved the way for introduction of economic criteria in India's reservation policy.

Thirty years after the judgement the Supreme Court in a five Judge Bench declared in a 3:2 verdict, in favour of reservation for the Economically weaker section amongst upper castes. In *Janhit Abhiyan vs Union of India 2022* case challenging the constitutional validity of the BJP Government's 103<sup>rd</sup> Constitutional Amendment which provided for 10% reservation in public sector jobs and educational institutions to economically weaker sections from the upper caste community only.<sup>4</sup> The five judge constitutional bench was headed by CJI Uday U. Lalit. While justifying the introduction of economic criteria, Justice Bela M. Tripathi expressed the need to revisit the system of reservation in the larger interest of society, as a step forward towards transformative constitutionalism. Justice J.B. Pardiwala said reservation should not be allowed to become a vested interest and as backward class members attain acceptable standards of education and employment, they should be removed from the backward categories.<sup>5</sup>

In the acceptance of economic criteria as the basis for providing reservation lies the seeds of destruction of reservation policy. A blow to delegitimize and dismantle the entire idea of reservation. Even the two dissenting judges held the view that the amendment should be struck down. The economic criteria goes against the very idea of affirmative action meant to provide special opportunities to the historically marginalised and exploited class. In the words of Justice S. Ravindra Bhat, SC, ST, OBC reservations are not a 'Free Pass' but a Reparative and compensatory mechanism. The inclusion of forward castes and exclusion of disadvantaged class from the ambit of EWS reservation militates against Art. 14 which guarantees equality before law.<sup>6</sup> A point to be noted is that both the dissenting judges negated the EWS criteria of reservation saying it excludes disadvantaged class. However none out rightly rejected the overall idea of granting reservation on economic grounds.

This attempt to delink reservations from class to individuals. From social and educational backwardness arising out of historical caste oppressions to individual economic distress. From a policy of justice to a policy of poverty alleviation is nothing but a blow to the idea of reservation and thus to the idea of Fundamental right to equality.

Dr. Babasaheb in his caution warned us not to be content with mere political democracy. He warned us all to make our political democracy social democracy as well. A way of life in which we recognise liberty, equality and fraternity as the principles of life.<sup>7</sup> Contrary to this caution, the ultimate objective of the ruling majority, irrespective of their political party affiliations, is to give a big blow to the reservation policy.

The Kshatriyas were rulers and the Vaishya's were rich in material terms. In spite of this fact both suffered from Varna discrimination favouring Brahmanical Supremacy. During 6th century BC discrimination was one of the reason why these two classes reacted against Brahmanical Varna System and embraced Buddhism which taught Equality and Fraternity.<sup>8</sup> In the medieval times the Brahmins negated Chh. Shivaji Maharaj Kshatriya Status during his coronation ceremony.<sup>9</sup> In modern times Chh. Shahu Maharaj experienced caste

discrimination as is well known due to Vedokta Prakaran (issue)<sup>10</sup>. This historical fact is enough to demonstrate that economic and political status of an individual was never a criteria for getting social status and ensure treatment of respect and dignity in India. It was never individual but always based upon collective identity of a person determined by his birth in a particular Varna or Caste. A man can become rich and poor overnight from rags to riches and vice versa. Such an unstable criteria receiving constitutional validity is a foul on the constitution.

The Most interesting unconceivable question is that how can a numerically lower 5 judges SC constitutional bench can in the Janhit Abhiyan 2022 case disagree, dissent or overrule the judgement of the 9 judges SC bench in Indira Sawhney case 1992, numerically greater as well as socially inclusive. Does the verdict not go against the judiciary's own rule of discipline and doctrine of precedents?

Another aspect which leaves room for raising questions on the intent of EWS reservation is that, most social groups such as Jats struggled to secure reservation. Some groups such as the Marathas, Dhangars etc. are still struggling. Either their demands are entangled in Judicial procedures or unheard by the ruling government. While the upper caste poor are getting it just like that.

The thing that exposes the double standard attitude of caste Hindus is that they vehemently oppose the inclusion of meritorious persons from reserved categories into the General Merit Quota. It seems they want to apply the social principle of Varna tower without any staircase into legal classification of reservation as well.

Other practical considerations which makes the SC verdict stand on fragile ground are, firstly, the 8 lakh annual income criteria is not understandable when in India income taxable income starts from 3 lakhs per annum. The students of SC, ST category are disqualified from getting educational scholarship with this income limit. Secondly, the 10% quota without any supportive empirical data is arbitrary. On the one hand the government is avoiding conducting caste based census and on the other hand is providing a reservation quota of 10% without any conclusive study. All these facts clearly indicate the caste Hindu majoritarian anti-equality mind set.

Dr. Babasaheb points to the complete absence of two things in Indian society one is equality and other one is recognition of the principle of fraternity. According to him on 26<sup>th</sup> January, 1950 Indian people are entering into a life of contradiction. In political life we will be recognising one man one vote, one vote one value. The same we continue to deny in our socio-economic life by reason of our social and economic structure. How long shall we continue to deny equality in our social and economic life?<sup>11</sup>

Let us see the recruitment advertisement of Banaras Hindu University's Department of Dharmashastra Mimansa, Published in the month of February 2023 on its official website. Accordingly, BHU is looking for human resources to be deployed in its research project titled "Applicability of Manusmriti in Indian Society."<sup>12</sup> Later Vedic period the Purusha Sukta hymn 10<sup>th</sup> Mandal of Rigveda gives the theory of origin of Varna which establishes

hierarchical society. The 6<sup>th</sup> C BC Sutra literature established the Varna system on the basis of birth. The post Mauryan Smriti literature particularly the 'Manusmriti' lays down codification of laws for establishing, maintaining, and preserving caste divided society.<sup>13</sup>

Manusmriti legitimates caste system and its maintenance by violent means. It suggests violence against Shudras, untouchables and women. Due to this reason Dr. Babasaheb burnt it during the Mahad Satyagraha on 25<sup>th</sup> December, 1927.<sup>14</sup> In his 'Annihilation of Caste' Dr. Babasaheb firmly concludes mere inter-caste marriages and commensality are not enough means to Annihilate Caste System. It is the total destruction of religious literature called Dharmashastra which sanctions caste will lead to annihilation of caste system in India.<sup>15</sup> Nowhere in the world is discrimination sanctioned in religious text, no religious text sanctions violent ways of implementing oppression of man against man.

In the constituent assembly speech he clearly said it is difficult to establish fraternity in India because in India there are castes. The castes are anti-national. They bring about separation in social life. They generate jealousy and antipathy between caste and caste. No fraternity, no nationality. He said establishing fraternity in India is a much more difficult task than in the United States, because it doesn't have caste.<sup>16</sup> Babasaheb also warned wherever Hindus will go they will take the caste system along with them. Caste-System by its very nature has the potential to become a global concern. Seattle became first U.S. city to pass anti-caste discriminatory legislation,<sup>17</sup> while in India BHU is conducting research to see ways and means for the applicability of Manusmriti in India.

Dr. Babasaheb warned not to remain in a delusion of India being a nation. How can people divided into thousands of castes can become a nation was his concern.<sup>18</sup> The step of BHU to see the applicability of Manusmriti in Indian Society seems to be BJP- RSS led union government's step taken in the direction of establishing in India a caste divided Hindu Rashtra, in which the present constitution and the fundamental rights it guarantees will be redundant. There is a danger of Indian democracy giving place to violent dictatorship.

Dr. Babasaheb was very critical of Hero worship. Bhakti in political life, he saw in it a sure road to degradation and eventual dictatorship.<sup>19</sup> Dictatorship has the potential to subvert the democratic institutions. Its natural inclination is towards violence and towards lawlessness. Not rule of law but rule of people. Nomination of retired Chief Justice of India as a Rajya Sabha member. Appointment of Chief Election Commission of India within 24 hours with procedural lapses. Misuse of state agencies like CBI and ED to harass and curb political opposition can be seen as examples of subversion of these institutions. Lawlessness is antithetical to fundamental rights.

An undeclared censorship exists within India where dissenting voices are silenced using state machinery. Murders of thinkers such as Narendra Dabholkar, Gauri lankesh, Govind Pansare M. M Kalburgi remain still unresolved. In a list of 180 countries India ranks 150<sup>th</sup> in World Press Freedom Index 2022. India slipped 8 places below its 2021 rank of 142.<sup>20</sup> The example of income tax raids on BBC news channel offices at Mumbai and Delhi, Corporate takeover of NDTV channel, ownership of media by corporate houses affiliated to

ruling classes, Arrests of journalist under UAPA law, illegal detention of persons and activist belonging to dissenting organisations, like that in Yalgaar Parishad, demonstrate the pathetic condition of freedom of expression and thoughts in India.

Since last decade caste Hindus are becoming more assertive in imposing their ethos over the minorities. Minorities especially Muslims are targeted and lynched in the garb of cow protection by the cow vigilantes. Unfortunately in the most recent incident in which The Haryana government, in 2021, had formalised the involvement of cow vigilantes in law enforcement by notifying a special cow protection task force, in which members of local gau rakshak committees were included. The gruesome murder of Junaid and Nasir in Bhiwani, Haryana puts the spotlight on the state government's cow protection agenda and the impunity enjoyed by vigilante groups.<sup>21</sup> A fake narrative of national, anti-national is created by the media. There are incidents of Churches under attack. Cabinet rank minister Rajendra Pal Gautam had to resign due to pressure from right wing organizations over the issue of public swearing of Dr. Babasaheb's 22 Vows. Religious Institutes are still feeling it their pious duty to deny women their right to faith and devotion. Sabarimala temple in India's most literate state of Kerala and Shani Shingnapur temple in India's most developed state Maharashtra are classic examples of how the country's half population still struggles for the exercise of their Fundamental rights. The Principle of Secularism and the Fundamental Rights of the minorities are constantly violated and threatened.

Dr. Babasaheb in his, State and Minorities, submitted to the Sub Committee of Fundamental Rights, advocated for democratic socialism. Where in as a way to establish equality he put forth the idea of nationalisation of countries natural resources including agricultural land and industrial resources including financial institutions.<sup>22</sup> Today after about 30 years of Implementation of the LPG Policy by P.V. Narsimha Rao government we see that the Narendra Modi government under the Pradhan Mantri Garib Kalyan Yojana is required to feed 80 crore Indian's free of cost.<sup>23</sup> India ranks 107<sup>th</sup> out of 121 countries in the Global Hunger Index 2022. It ranks below some of the world's poorest countries like Rwanda, Ethiopia and Sudan. Poverty.<sup>24</sup> Income disparity and concentration of wealth are a hurdle in the implementation of The Fundamental Rights.

Rule of Law is integral to Fundamental Rights. Today more than Punishment the procedure of trial is becoming the real punishment. Among the 5,54,034 inmates across India's prisons 77.1% were under-trials and 22.2% were those who had been convicted by a court of law according to NCRB data of 2022.<sup>25</sup>

Dr. Babasaheb called Article 32 which provides for judicial remedy as a soul of constitution. It is itself a fundamental right. The judicial system in India is under tremendous pressure. As of May 2022, over 4.7 crore cases are pending in courts across different levels of the judiciary. Of them, 87.4% are pending in subordinate courts, 12.4% in High Courts, while nearly 1, 82,000 cases have been pending for over 30 years.<sup>26</sup> We see a tug of war between executive and the judiciary over the appointment of judges. In such a situation common man remains as a mere silent spectator, victim of denial of justice.

**Conclusion:**

The chapter on Fundamental Rights and the provisions therein are in a state of invisible suspension. While looking back at 75 years of independence we see how difficult it is for the people of World's biggest democracy to accept the ideals of Liberty, Equality and Fraternity in its life. If still keep on ignoring the warnings of Dr. Babasaheb Ambedkar it will be at the cost of India's democracy.

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