

## **CHAPTER-5**

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Dr.Ambedkar's main object was to reconstruct the Hindu society into an egalitarian society based on the principle of justice, equality and fraternity. Being the Constitutional maker he was conscious of the prevailing unequal social order of India and therefore laid down the foundations of a socio-liberal welfare democratic state that can ensure a just and equal society for all. Undeniably, the Indian society is confronted with multi-racial, multi-religious and multi-faceted identity problems to which casteism adds a specific role. So many divisions inside a state generate conflicts that are not at all conducive to democracy.<sup>1</sup> Social and economic inequalities stand at the base of these problems, and to the least advantaged, fair equality of opportunity is denied in such a system.<sup>2</sup> As an intellectual giant, Ambedkar was a man of clarity and creativity, who had a clear picture of the problems that the country would face, especially the Depressed Classes of his own country, who had been denied social, economic and political equality because of Varna or Caste Organization of the Brahminic society. Being a member of the Depressed and Suppressed community, he experienced the humiliation, suffering and sorrow of these classes in poverty, and ignorance. That impelled him to rouse them for big fight against all the oppressive forces in order to get themselves rid of the thralldom of slavery and serfdom.<sup>3</sup> Dr.Ambedkar's birth in an Untouchable community and in a system based on the graded inequality and injustice and deprivation of basic human rights to his brethren, was responsible for giving a purpose and mission to his life. Ambedkar was all sound and fury against social injustice. His weaponry was legal-political, his anathema Hindu caste exclusivism and his ambition social democracy... His life was a flaming forge, his commitment was to free the ancient unfree, his economics, law and politics were welded into constitutional militancy and geared to a social emancipation movement.<sup>4</sup>

Dr.Ambedkar noted with pain that the principle of graded inequality is the fundamental doctrine of the Hindu Social Order. This social system is based primarily on classes or Varnas and not on individuals. Originally the Purushasukta, a portion of

the Vedas designated Brahmans as mouth, Kshatriyas as arms, Vaishyas as thighs and Shudras as the feet of the Purusha. The whole society was divided into four classes. Today it consists of five classes, the fifth being called the Panchamas or untouchables. The four classes are not on horizontal plane. They are on vertical plane with unequal status, one standing above the other. In the scheme of Manu, the Brahmin is placed at the first rank and considered to be the best part of the body with monopolization of knowledge and learning. Below him is the Kshatriya assigned with the task of fighting. Below the Kshatriya is the Vaishya who was given the task of trade and business and below Vaishya is the Shudra considered to be the most degraded section of the society; and below Shudra is the Ati-Shudra or the untouchables. They were most disliked and considered to be highly untouchable, impure and unseen persons of the society. There is no sphere of life which is not regulated by this principle of graded inequality.<sup>5</sup> The *Manusmriti* introduced 'graded inequality' in the Hindu society. The superiority of birth and the *Jatis* are described for the first time in *Manu Smriti*. It showed the seeds of segregation and exclusiveness in short the 'touch-me-not-ism' in Hindu society. In due course, the caste structure deteriorated beyond repair. It sealed society into water-tight social divisions isolated from each other by imposing taboos on food, social get-together; fixed occupations and bar against inter-dining and inter-marriages. Primary importance was given to a man's birth. Thus caste became hereditary and inequality started. In every sphere of life, it was Brahmins who enjoyed privileges like education, possessing property and holding high posts in government services while the poor, downtrodden, oppressed and the suppressed classes (untouchables) were denied their basic human rights for centuries. Dr. Ambedkar was so critical of the prevailing caste system that he considered it a stigma on the Hindu society and he reckoned that so long as it would continue in society, no social reform can be imagined. As a social revolutionary he revolted against the social order based on Varna, caste and untouchability. He expressed that the main cause of India's social degradation is Hindu Shastras in general and *ManuSmriti* in particular. In his writings, he came down heavily on Manusmriti for its discriminatory and unjust scheme of laws to govern the Hindus and also regarded all these laws as the blackest laws ever framed by any law-giver. To him, Brahminism means the negation of the spirit of liberty, equality and fraternity. In that sense it is rampant in all classes and is not confined to the Brahmins alone though they have

been its originators. Its effects are not confined to social rights alone. It denies them civic rights and of course affects the field of economic opportunities.<sup>6</sup>

Babasaheb Ambedkar believed that democracy and democratic life, justice and conscience that are sustained by a belief in democratic principles are foreign to the Hindu mind. The Hindu social system is undemocratic not by accident. It is designed to be undemocratic. Its division of society into Varnas and castes and out-castes are not theories but are decrees. They are all barricades raised against democracy.<sup>7</sup> Dr. Ambedkar had his own way of looking at the Hindu social order which seemed not to undergo material change, as evident from the above passages. The principles of graded inequality, he held, had been carried into the economic field. "From each according to his ability; to each according to his need" is not the principle followed in Hindu social order; rather "from each according to his need, to each according to his nobility" is the standing rule. It is opposed to fraternity. It does not admit the principle of equality. It makes inequality its official doctrine. There is no liberty as reflected in the permanent fixed up of class occupation, nor there exit freedom of speech and expression.<sup>8</sup> It is a kind of social order based not on individual but on class graded one above other with their status and functions determined and fixed. He analyses, "the philosophy of Hinduism from the point of view of justice and reveals in a glaring manner how Hinduism is inimical to equality, antagonistic to liberty and opposed to fraternity", and, "therefore, neither satisfies the test of social utility nor does it satisfy the test of individual justice".<sup>9</sup> To him, it is Superman's heaven and the common man's damnation. Nietzsche's supermen were supermen by reason of their worth, Manu's supermen were supermen by reason of their birth. The philosophy of Hinduism, he asserts, is such that it cannot be called a religion of humanity. With inequality as its soul. Hinduism is a moral and inhuman to say the least.<sup>10</sup>

Right from the beginning of the nineteenth century there have been consistent efforts by enlightened Indians to bring about social reforms. A pioneer amongst these reformers was Raja Rammohun Roy followed by other outstanding reformers like D.N. Tagore, Iswar Chandra Vidyasagar, Swami Dayanad Saraswati, Jotirao Phule, Narayana Guru, Periyar Ramasami, Mahadev Govinda Ranade, Keshav Chandra Sen, Rabindra Nath Tagore, Swami Vivekananda, Gopal Krishna Gokhale, Mahatma Gandhi and Aurovinda etc. even the social and political movement of the Indian National Congress, also advocated social changes in nineteenth and twentieth century.

But the importance on the concept of justice, liberty, equality and fraternity not get much attention. The practice of 'Untouchability' and the section which suffered this thralldom of slavery and serfdom over 2000 years still denied human rights, dignity, justice, liberty and equality in day-to-day life.

Dr.Ambedkar as himself experienced 'the pains, sorrows and sufferings of being an Untouchable, the lowest man of Hindu society, he was convinced that the philosophy of Hinduism neither satisfied the test of soul utility nor did it satisfy the test of individual justice. He waged the banner of revolt in his hands against the iniquitous caste system in Indian society. He criticized the existing cast system amongst Hindus and blamed squarely the caste Hindus for the division between man and man which resulted in the political an economic backwardness of these low caste people and the social neglect of the Depressed Classes. He, therefore, organized social revolution throughout the nation for the establishment of justice, liberty, equality, fraternity and human dignity on the basis of the thoughts and works of Gautam Buddha, Kabir, Guru Nanak, Mahatma Joytibarao Phule, Chatrapati Siwaji Maharaj, Tukaram, Rabi Das and Chokhamela. He called upon the Depressed Classes to concentrate on their educational and economic betterment so that they get the necessary way for political participation. He reminded them that they alone are responsible for their growth and development. He also had given nation wide advice and also campaign for the importance of education, agitation and organization which were the overall means of social justice, Economic advancement and political democracy for the oppressed classes. He was exploring a new path aimed at reorganization, reconstruction and rejuvenation of Hindu society. He further cautioned them that their approaches and resolutions carried more gesture than active struggle for breaking the shackles that bound the Depressed Classes. He exhorted them to fight for self-elevations, self-help, and self-respect. He did not join the movement for the political independence of the country rather he concentrated his efforts on social movement.He marched on a different direction. He put forth his efforts toward preparing the heads, hearts and hands of the Depressed Classes to secure human rights and equal growth opportunities. The Indian Press was totally against his moves. Dr.Ambedkar found that the Brahmin and Bania-dominated Press offered no scope towards emancipating Dalits and the most oppressed lots. As a revolt against the caste Hindus, he started a weekly news paper, *Mook Nayak*, the leader of

the Dumb, in 1920. In its first editorial he described that India was a home of inequality and the Hindu society as a multi-storied tower without a ladder or an entrance. In another article he said that it was not enough for India to become independent. But at the same time it must guarantee equal rights-social, religious and political to all its inhabitants and offering every man opportunity to rise in the scale of life and creating conditions favourable to its advancements. In another article he observed that without fundamental rights for all Swaraj would mean a new slavery for the Depressed Classes.<sup>11</sup>

On 3<sup>rd</sup> April 1927, he founded another fortnightly Marathi paper called *Bahishkrit Bharat*, or “ex-communicated India” through which he exhorted the untouchables to raise in revolt against the Shastras which sanctified the oppressive social customs. In 1930, the name of the weekly was changed into *Samata*, which meant, “Equality”, in order to propagate the ideal of equality. Ambedkar played a historic role as a journalist by promoting social reforms. As a prominent journalist, crusader for human rights and emancipator of the downtrodden communities, he set an example by serving the socially weak and the oppressed. His paper became an effective medium of education to Depressed Classes on the happening of the country and awakening about their rights and dignities enabling them to present their grievances, views and reaction before the government. Apart from this mental awakening of the down-trodden, he started educational and social institution and lunched movement for the steady and systematic development of the downtrodden.<sup>12</sup> The purpose of education, to Dr. Ambedkar, is to moralise and socialize the people. He, therefore, emphatically added that “Education is something which ought to be brought within the reach of everyone. The policy of the Department would be to make higher education cheap for the access of the Lower classes. The object of primary education is to see that every child that enters the portals of a primary school does leave it only at a stage when it becomes literate and continues to be literate throughout the rest of his life”.<sup>13</sup> According to him, education could be an effective instrument of mass movement for the safeguard of life and liberty; it could mitigate miseries of ignorance and poverty; and education could encourage the oppressed one to fight against injustice and exploitation. Dr. Ambedkar set up several organizations like the Bharatiya Bahiskrit Samaj Sevak Sangha, Samaj Samata Mandal, Samata Sainik Dal and the People’s Education Society to promote higher education among the poorer

people in general and the Schedule castes, Schedule tribes and Other Backward Classes<sup>14</sup> His philosophy of education was social emancipation which demands equal rights and opportunities of education of all; it stands for self-respect and self-development; and it also means a social revolution against the evils of slavery, Untouchability, casteism and oppressions, etc.along with for removing economic helplessness and disparities in life. The basic thrust of Ambedkar's philosophy of education, in brief, is to inculcate the values of liberty, equality, fraternity, justice and moral character among the boys and girls<sup>15</sup>

The Untouchables and other impure Castes that formed the lowest - strata of the caste-ridden Hindu society were debarred from the right of using public wells and tanks. Dr.Ambedkar, therefore, organized the moment for drawing water from the Chowdar Tank at Mahad in Maharashtra. On 25<sup>th</sup> of December 1927 Dr.Ambedkar while delivering his address at the Satyagraha Conference for drawing water from a public Chowdar tank declared, "This conference is held to unfurl the banner of Equality and thus may be made similar to the National Assembly in France convened in 1789.Our conference aims at the same achievement in social, religious, civic and economic matters. We are avowedly out to smash the steel frame of the Caste System".<sup>16</sup> In1930, Dr.Ambedkar, the father of Indian social unrest, started the famous Satyagraha movement in order to provide entry of the untouchables to Kalaram Temple in Nasik.The Satyagraha was one of the efforts for bringing about a change of heart among the high caste Hindu.<sup>17</sup> He was a great champion of women liberation in India. While addressing a huge meeting of women of Depressed Classes at Mahad, he gave a clarion call for the liberation of women. To him, the progress of a community is measured by the degree of progress which women have achieved. He reckoned that in the eradication of social evils they have rendered great services to the Nation. He advised:

Learn to be clean; keep from all vices. Give education to your children. Instill ambition in them. Inculcate on their minds that they are destined to be great. Don't be in a hurry to marry. Marriage is a liability. You should not impose it upon your children unless financially they are able to carry the liabilities arising from marriage. Those who will marry will keep in mind that to have too many children is crime.....Above all, let each girl who marries stand up to her husband, claim to be her husband's friend and equal, and refuses to be his slave.<sup>18</sup>

Dr. Ambedkar was not a mere Depressed Classes leader but a defender of human right, of weaker and exploited people. So he organized educational institutions to raise the level of consciousness of the serf like people. His argument was, “Tell the slave that he is a slave and he will revolt against his slavery”. So he started journals and educational institutions for Dalits, fight for women’s equality, and labour’s rights to a fair deal. The broad impulse of Bimrao Ramji Ambedkar was to wage bitter battle for human rights.

### **Pre-independence initiation of Constitution making: Organized demands of the untouchables and Ambedkar’s Role:**

It was the Colonial British Rule in India that initiated the course of Constitution-making. Keeping equal pace with the arising aspirations, developed proficiency and ambitions of the Indians to govern themselves, the British Authority gradually introduced Constitutional Laws. In true sense, we may regard the Government of India Act, 1909, as the first Constitutional Act in India. Ambedkar returned to India in 1917 after completing higher education from Columbia University in U.S.A and University of London in UK. It was a time when the British were expanding the participation of various groups in administration and legislatures. It is interesting to note that Dr.Ambedkar was the only Indian who was involved in the constitution-making and framing activities in each of these stages since January, 1919 when he gave evidence before the Southborough Reform (Franchise) Committee, claiming political rights for the Depressed Classes of India. This is the greatest wonder in the history of India that an untouchable Mahar who has been denied even rights to learning gave the country her constitution. Dr.Ambedkar observed:

Unless the Indian people secure political power and this political power concentrates in the hands of the socially suppressed section of the Indian society, it is not possible to completely wipe out all social, legal and cultural disabilities, from which this section suffers.<sup>19</sup>

The Montague-Chelmsford Report on Indian constitution Reforms was published in 1918. The Franchise committee under the chairmanship of Lord Southborough was appointed to deal with Franchise problems in the light of Montague-Chelmsford Reforms.The Southborough Committee allowed the communal representation to Muslim community, and thought it better to have recourse to

nominate in the case of Depressed Classes. Hence Ambedkar was called upon to give evidence. It was in 1919, Ambedkar presented a written statement to the Southborough committee claiming that the untouchables were a distinct community in Indian society against the popular belief that untouchables and Hindus were same, having no separate interests. In this regard his arguments to the Southborough committee were:

1. There was a lack of communality of aims, beliefs, customs etc. among the untouchables and the caste-Hindus.
2. As religion divides the Hindus, Muslims, Parses, Christians etc. similarly caste divides Hindus into low caste and higher castes on the one hand and Touchable and the untouchables on the other.
3. Non-Brahmins may also face the intellectual superiority of Brahmins but the untouchables need protection not from confiscation of their property but from the confiscation of their personality itself.<sup>20</sup>

Apart from this he also fought for the untouchables for their denials of 'citizenship rights'. He understood that it was in the absence of these rights that they were not treated as equals and as a consequence suffered from discrimination, exploitation, seclusion and exclusion in multiple ways in the society. And without having a claim on such rights their position would lack the primary condition of participating in the socio-political developments. Ambedkar argued:

Not only had the untouchability arrested the growth of personality of untouchables but also comes in the way of their 'material well-being'. It deprived them of certain civil rights. The untouchable is not even a citizen. Citizenship is bundle of rights such as (1) personal liberty, (2) personal security, (3) right to hold private property, (4) equality before law, (5) liberty of conscience, (6) freedom of opinion and speech, (7) right of assembly, (8) right of representation in country's government, and (9) right to hold office under the state. The untouchability of untouchables puts these rights far beyond their reach. In a few places they don't even possess such insignificant rights as personal liberty and personal security, and equality before law is not always assured to them. These are the interests of the untouchables. And as can be easily seen they can be represented by untouchables alone. They are distinctively their own interests and none else can truly voice them. A free

trade interest can be voiced by a Brahmin, a Mohammedan or a Maratha equally well. But none of these can speak for the interests of the untouchables because they are not untouchables. Untouchability constitutes a definite set of interests, which the untouchables alone can speak for. Hence it is evident that we must find the untouchables to represent their grievances which are their interests and, secondly, we must find them in such numbers as will constitute a force sufficient to claim redress.<sup>21</sup>

Not only he diagnosed the problems of untouchables but also analysed the cause behind the denial of these basic conditions of human life to them. He found its prevalence in the social code that prevented them from claiming equality in all spheres of life. While presenting the case before the Simon Commission in 1928, he expressed the following sentiments:

The Depressed Classes can't be employed in the army navy and the police because such employment is opposed to the religious notions of the majority. They cannot be admitted in the schools because their entry is opposed to the religious notions of the majority. They cannot avail themselves of government dispensaries, because will not let them cause pollution to their person's or to their dispensaries. They cannot live a cleaner and higher life, because to live above their prescribed station is opposed to the religious notions of the majority. So rigorous is the enforcement of the Social Code against the Depressed Classes that any attempt on the part of the Depressed Classes to exercise their elementary rights of citizenship only ends in provoking the majority, to practice the worst form of social tyranny known to history. It will be admitted that when society is itself a tyrant, its means of tyrannizing are not restricted to the acts which it may do by the hands of its functionaries and lives fewer means of escape penetrating much more deeply into the details of life, and enslaving the soul itself.<sup>22</sup>

Dr. Ambedkar further stated that claims of equality of opportunity have no meaning in Indian social conditions, which don't allow equality to prevail, and effort by untouchables to secure equal rights are vehemently opposed by the so called higher castes. The equality of opportunity is conflicted not only by the common masses of caste-Hindus but also by those in government at various levels of helm of affair of the state. Consequently the remedies lies not merely in having equal rights for the untouchables as possessed by others rather having a device that provides legal ways

and methods to claim the rights if violation take place and impose penalties against infringement of rights as rights without guarantee to exercise them have no meaning if society at large does not allow the rights to be protected.<sup>23</sup> Though, Ambedkar did not talk of remedies against the abuse of rights in his first memorandum to the Southborough Commission but he mentioned about this in 1928:

That the right of the Depressed Classes to appeal to the government of India in case of violation of these rights by the Provincial Government shall be recognised and the Government of India shall be given the power to compel the Provincial Government to conform to the law in the matter..... the benefit of the minorities bear equivalent testimony to the fact that the minorities cannot depend upon the representative form of government but must seek protection in the form of guarantees of their rights.<sup>24</sup>

Ambedkar insisted upon separate political representation through election and to adopt alternative franchise system. With this he also emphasized to take measures to protect their civil rights. The safeguards were also sought in the field of education and employment in the public service with state. He further argued that the Depressed Classes would not insist upon communal electorates if reserved seats were carved out in the general constituency. However, as for franchise, he did not leave it to the wishes of the commission to decide the franchise conditions for the Depressed Classes but argued for adult suffrage and in its absence he insisted upon Separate Electorates.<sup>25</sup> The All-Parties Conference convened by the Congress party met in May 1928, and appointed a committee under Pandit Motilal Nehru to draft a Swaraj constitution for India. This was a first attempt at constitution-making. The Congress Working Committee issued invitations to all prominent Muslim, Parsi, Christian, Sikh, Anglo-Indian organizations and even the non-Brahmin institutions and the Dravida Mahajan Sabha, but not to the Depressed Classes Institute led by Ambedkar or for that matter any Depressed class Institution. Ambedkar resented on the attitude of the nationalist leader.<sup>26</sup> The Committee Report stated that the problem of the “Untouchables” was a social or a religious problem, but not a political problem and, therefore, it made no special provision for the representation of the Depressed Classes in legislatures. Dr. Ambedkar in his editorial in the *Bahishkrit Bharat* of January 18, 1929, wrote:

If the problem of the untouchables is a social problem, is not that of the Muslims also a social problem? The Muslims too suffer from the consequences of the distorted vision of the upper castes of the Hindus, in the same manner as do the untouchable... it is our firm conviction that the Nehru Committee's Brahminical strategy aims at perpetuating the Hindu social hierarchy in their struggle for political power. What else could be the reason for its extending certain facilities to the Muslims and deny similar facilities to the Backward and Untouchable classes of the Hindus?<sup>27</sup>

On 12<sup>th</sup> November 1930, His late Majesty King George V formally inaugurated the Indian Round Table Conference to frame a constitution for India with a view to satisfying the demands of the people. Dr. Ambedkar and Rao Bahadur R Srinivasan represented as the leader of the Depressed Classes. The significance of the Conference has been discussed by Ambedkar in the following terms:

From the point of view of Indians the Round Table Conference was an event of great significance. Indians are to be consulted in the matter of framing a constitution for India. For the untouchables it was a landmark in their history. For, the untouchables were for the first time allowed to be represented separately by two delegates who happened to be myself (Dr. Ambedkar) and Diwan Bahadur R Srinivasan. This meant that the untouchables were regarded not merely a separate element from the Hindus but also of such importance as to have the right to be consulted in the framing of a constitution for India.<sup>28</sup>

In the First Round Table Conference, he claimed that Indians should have the right to self-government. Dr. Ambedkar criticized the role of the British and argued that they had been 'not only indifferent but also incompetent' in taking decision on providing equal right to the untouchables. Taking a strong stand on the issue, he emphatically mentioned that though the problems of Depressed Classes rooted in social mechanism, these need political instead social solutions. During the First Round Table Conference Ambedkar appeared to be in favour of a transfer of power. The following remarks show the kind of disappointment Ambedkar felt during his initial intervention at the First Round Table Conference:

We must have a government in which the men in power will give their undivided allegiance to the best interests of the country. We must have a

government in which men in power, knowing where obedience will end and resistance will begin, will not be afraid to amend the social and economic code of life which the dictates of justice and expediency so urgently call for. This role, the British government will never be able to play. We feel nobody can remove our grievances as well as we can, and we cannot remove them unless we get political power in our hands. No share of political power can evidently come to us so long as the British government remains as it is only in Swaraj constitution that we stand any chance of getting power into our hands, without which we cannot bring salvation to our people.....Depressed by the government, suppressed by the Hindu and disregard by the Muslim, we are left in a most intolerable position of utter helplessness to which I sure there is no parallel and to which I was bound to call attention.<sup>29</sup>

Regarding the status and rights of the Depressed Classes or Untouchables Dr.Ambedkar was clear that this in fact was for him a fundamental issue. He argued:

It is wrong to say that the problem of the untouchable is a social problem. For me, it is quite unlike the problems of dowry, widow re-marriage, age of consent, etc, which are illustrations of what are probably called social problems. Essentially, it is a problem of quite a different nature in as much as it is a problem of securing to a minority liberty and equality of opportunity a the hands of a hostile majority which believes in the denial of liberty and equal opportunity to the minority and conspires to enforce its policy on he minority. Viewed in this light the problem of the untouchables is fundamentally a political problem.<sup>30</sup>

Ambedkar further said:

We, the Depressed Classes, demand a complete partition between ourselves and the Hindus. We have been called Hindu for political purposes, but we have never been acknowledged socially by the Hindus as their brethren.<sup>31</sup>

The Congress boycotted the first Round Table Conference. Dr.Ambedkar did not miss this maiden opportunity, as an Indian to be consulted for the first time in the matter of framing the constitution of India and as an untouchable leader to proclaim their separate political identity .By furnishing his view points on behalf of the Untouchables of India and attending all the three Round Table Conferences held in 1930, 1931 and in 1932; he established his claim for the fathership of the Constitution

of India. The first thing that was required to be done was to formulate the safeguards deemed necessary by the untouchables for their protection against the tyranny and oppressions of the Hindus. To liberate the Untouchable Indians, (the producer servile classes of India), Dr.Ambedkar at the first instance placed a lengthy memorandum in the Minorities Committee of The Round Table Conference:

A scheme of political safeguards for the protection of the Depressed Classes in the further constitution of self-governing India, submitted to the Indian Round Table Conference.

In this memorandum he made the Condition no.1: 'Equal citizenship'. The Depressed Classes must be made free citizens entitle to all rights of citizenship in common with other citizens of the state. To secure the abolition of untouchability and to create the equality of citizenship, it is proposed that the following 'fundamental rights' shall be made part of the constitution of India:

All subjects of the state in India are equal before the law and possess equal civil rights. Any existing enactment, regulation, order, customs or interpretation of law by which any penalty, disadvantage, disability is impose upon or any discrimination is made against any subject of the state on account of untouchability shall, as from the day on which this constitution comes into operation, cease to have any effect in India.

Condition no.11: Free Enjoyment of Equal Rights;

“The Depressed Classes, therefore, propose that the following section should be added to Part XI of the Government of India Act, 1919, dealing with Offences, Procedure and Penalties:

- (1) Offence of Infringement of Citizenship
- (2) Offence of Boycott Defined
- (3) Punishment for Boycotting
- (4) Punishment for Instigating or Promoting a Boycott
- (5) Punishment for Threatening a Boycott

Condition no.111: Protection against Discrimination;

“The Depressed Classes entertain grave fears of discrimination either by legislation or by executive order being made in future. They cannot therefore consent to subject themselves to majority rule unless it is rendered impossible in law for the legislature or the executive to make any invidious discrimination against the Depressed Classes”.

Condition no.IV: Adequate Representation in the Legislatures;

The Depressed Classes must be given sufficient political power to influence legislative and executive action for the purpose of securing their welfare. In view of this they demand that the following provisions shall be made in the electoral law so as to give them-

- (1) Right to adequate representation in the legislature of the country, Provincial and Central.
- (2) Right to elect their own men as their representatives,
  - (a) By adult suffrage, and
  - (b) By separate electorates for the first ten years and thereafter by joint electorates and reserved seats, it being understood that joint electorates shall not be forced upon the Depressed Classes against their will unless such joint electorates are accompanied by their adult suffrage.

Condition no.V: Adequate Representation in the Services.

For this purpose the Depressed Classes have to make the following proposals for statutory enactment as part of the constitutional law:-

- (1) There shall be established in India and each Province in India a Public Service Commission to undertake the recruitment and control of the Public Services.
- (2) It shall be the duty of the Public Service Commission, subject to the tests of efficiency as may be prescribed-(a) to recruit the Services in such a manner as will secure due and adequate representation of all communities, and (b) to regulate from time to time priority in employment in accordance with the existing extent of the representation of the various communities in any particular service concerned.

Dr.Ambedkar, for first time, sought to make it a Constitutional provision to reserve posts for the Castes both in legislature and executive on the basis of proportion to the population.

Condition no.VI: Redress Against Prejudicial Action or Neglect of Interests.

VII: Special Departmental Care.

VIII: Depressed Classes and the Cabinet.

That in the instrument of instructions an obligation shall be placed upon the Governor and the Governor-General to endeavor to secure the representation of the Depressed Classes in his cabinet.

Not only there was a demand for the seats of M.Ps and MLAs he made a demand for reservation for the post of Cabinet Ministers. In the very outset of the eighth condition he pointed out:

Just as it is necessary that the Depressed Classes should have the power to influence governmental action by getting seats in the legislature so also it is desirable that the Depressed Classes should have the opportunity to frame the general policy of the government. This they can do only if they can find a seat in the Cabinet.<sup>32</sup>

There could be no tangible progress due to deliberations at the First Round Table Conference. Winding up the conference, the Prime Minister MacDonald expected co-operation in future from the sections absent from the conference. Though the First Round Table Conference was adjourned without any decision, the representative of the Depressed Classes did succeed in convincing the conference that they were entitled to be recognized by as a separate entity for political and constitutional purposes with other minority groups.<sup>33</sup> Indian National Congress revised their earlier stand to join the Round Table Conference. Mahatma Gandhi attended the Second Round Table Conference as a Congress leader. Naturally he opposed the cause and claims of the untouchables in every possible manner. As the first step of the strategy he wanted to eliminate Dr.Ambedkar, the untouchable leader of the untouchables from the Round Table Conference. As a natural corollary, there started a battle royal between Dr.Ambedkar and Mahatma Gandhi. Eventually the enigmatic Hindu leader was defeated in every respect on the floor of the international- stage at the hands of the articulated ferocity of Dr.Ambedkar. Ambedkar exposed the mind of Gandhiji:

At the Round Table Conference he claimed to be the sole champion of the untouchables and was not even prepared to share the honour with any one else. I remember what a scene he created when his claim was contested.<sup>34</sup>

A lack of compromise between the leaders of Indian groups made the British Prime Minister to adjourn the Second Round Table conference sine die with a suggestion to put a signed requisition authorizing the Prime Minister to attribute and give decision on the communal issue. Gandhi signed this but Ambedkar refused to do so asserting that the demand of the Untouchables were so reasonable having no need for arbitration.<sup>35</sup> Meanwhile, the British Prime minister, Ramsay MacDonald, announced his decision known as Communal Award on 4<sup>th</sup> August 1932 to impart 'Separate Electorates' to the Depressed Classes. Along with it he also declared that he would be glad to accept any other solution of the communal problem acceptable to all communities. The Award conceded Separate Electorates to the Muslims, Sikhs, Indian Christians, Anglo- Indians and Europeans. Labour, Commerce, Industry, Mining and planning, Land holders and Universities were also given separate constituencies and fixed seats. It suggested formation of a general constituency, where all voters except the Muslims, Sikhs, Indian Christians, Anglo- Indians or Europeans were entitled to vote. It was for the first time that Depressed Classes were recognized as a minority.

The notable features of the Communal Award were:

- (1) There shall be Separate Electorates for the Depressed Classes earmarked from the General Constituencies.
- (2) The Depressed Classes will not only vote for the election of Depressed Classes representatives but also for the Hindu candidates of General Constituencies. Thus they will get weightage of having two votes.
- (3) The system of Separate Electorates will last only for twenty years.
- (4) This system can be abolished with the mutually agreed alternative mechanism.<sup>36</sup>

Granting of Communal Electorates to the Depressed Classes touched Mahatma Gandhi so deeply that on 20<sup>th</sup> September 1932; he commenced his 'fast unto death', till the decision was reverted. The only way to save his life was to alter the Communal

Award which Mr. Gandhi said hurt his conscience so much. The Prime minister had made it quite clear that the British Cabinet would not withdraw it or alter it if it was won, but that they were ready to substitute for it a formula that may be agreed upon by the caste-Hindus and the untouchables. Mr. Gandhi opposes Dalit human rights by the stunt of fast. But Dr. Ambedkar reiterates his conviction that 'Separate Electorates' are in the interests of 'Depressed Classes'. He said, "My decision stands and if Mr. Gandhi wants to fight with his life for the interests of the Hindu community, the Depressed Classes also will be forced to fight with their lives to safeguard their interests".<sup>37</sup> On this stand of Mahatma Gandhi, Dr. Ambedkar's people-oriented declaration reveals his zeal for the rights of the people in caste-ridden Hindu Social Order:

I trust the Mahatma will not drive me to the necessity of making choice between his life and the rights of the people, for I can never consent to deliver my people bound hand and foot to caste Hindus for generations to come.<sup>38</sup>

Dr. Ambedkar was not prepared to give up his point. And letters threatening his life came to him. One such letter was like this:

If you do not accept to Gandhi's demand within four days, your life will be in danger. If you want to save your life, you should accept Gandhiji's demand and help ending his fast immediately. This is a warning to you. If you do not give up your vehemence, you will be killed.<sup>39</sup>

He responded to the call of humanity and saved the life of Mr. Gandhi. In this regard Dr. Ambedkar said:

As to me, it is no exaggeration to say that no man was placed in a greater and graver dilemma than I was then. It was a baffling situation. I had to make a choice between two different alternatives. There was before me the duty, which I owed as a part of common humanity, to save Gandhi from sure death. There was before me the problem of saving for the untouchables the political right which the Prime minister had given them. I responded to the call of humanity and saved the life of Mr. Gandhi by agreeing to alter the Communal Award in a manner satisfactory to Mr. Gandhi. This agreement is known as the Poona Pact.<sup>40</sup>

It was on the fifth day of the fast that leader of both sides that is; Hindus and the Depressed Classes agreed and signed the Poona Pact on 25 September 1932. The substance of the Poona Pact was the reservation of seats based on Joint Electorates to the Depressed Classes out of the seats classified as General seats. All members of the Depressed Classes who were registered on the General electoral roll of certain constituencies had to elect a panel of four candidates belonging to their own community and the four persons who received the highest number of votes in this primary election were to be the candidates for election to the reserved seat, but candidate finally elected to the reserved seat was to be elected by the general electorates including the Depressed Classes. However, it is true that the Poona Pact gave the Untouchables 148 seats, while the award had given them only 78. But to conclude from this that the Poona Pact gave them more than what was given by the Award is to ignore what the Award had in fact given to the Untouchables.

The Communal Award gave the Untouchables two benefits:-

1. A fixed quota of seats to be elected by separate electorate of Untouchables and to be fulfilled by persons belonging to the Untouchables;
2. Double vote- one to be used through separate electorates and the other to be used through general electorates. Now, the Poona Pact increased the fixed quota of seats it also took away the right to the double votes".<sup>41</sup>

Dr. Ambedkar by conceding to Mr. Gandhi's demand for Joint Electorate bowed down before humanity and sacrificed the interest of his poor brethren. With regret, he viewed:

The Poona Pact has completely disfranchised the Scheduled Castes in as much as candidates whom they ejected in the primary elections....which is a true index of their will... have been returned in the final election by votes of the caste-Hindus. The Poona Pact is thus fraught with mischief. It was accepted because of the coercive fast of Mr. Gandhi and because of the assurance given at the time that the Hindus will not interfere in the election of the Scheduled Castes.<sup>42</sup>

He further added that the Congress sucked the juice of the Poona Pact and threw the rind in the face of the Untouchables. The Communal Award was intended to free

the Untouchables from the thralldom of the Hindus. But the Poona Pact was designed to place them under the domination of the Hindus. Ambedkar had no time for a national movement dominated by elite and of which the masses were usually the first victims. As he said, in 1943, before the trade union activists, the working classes 'often sacrifice their all to the so called cause of Nationalism. But they have never cared to enquire whether the nationalism, for which they are to make their offering will, when established, gave them social and economic equality. More often than not, the free independent national state, which emerges from a successful nationalism and which reared on their sacrifices, turn to be the enemy of the working class under the hegemony of their masters.'<sup>43</sup> He condemned all kinds of hypocrisy and oppression in the name of religion and nationalism. His view of patriotism and nationalism implied economic, political, social and cultural equality and liberty and so also liberty and moral values. His view of nationalism demanded not only the liberation of every slave country but also the freedom for all subjects and subjugated masses even in free countries.<sup>44</sup> He argued that social equality, justice and liberty were the pre-requisite for Swaraj. And only when Hindu society becomes a casteless society that it can hope to have strength enough to defend itself. Without such internal strength, Swaraj for Hindus may turn out to be only a step towards slavery.<sup>45</sup>

Dr. Ambedkar was not opposed to political freedom for India. He wanted to be a free citizen of a free nation. Along with political independence he stood for social freedom, democracy and dignity of the depressed classes which had been chained in various ways in Hindu society. Long back while attending the Round Table Conference, Ambedkar said:

Our aim is to realize in practice; our ideal of one man and one value in all walks of life, political, economic and social. It is because representative Government is one means to that aim that the depressed classes attached to it.<sup>46</sup>

Thus Ambedkar eventually dissociate himself from Mahatma Gandhi and the Congress-led freedom movement just because all of them belong to the upper castes which never looked into the inhuman conditions of the Shudras and the untouchables. He felt that the way Congress administered the provinces its early record did not augur well for how it would exercise power if the independence struggle was speedily

accomplished. As early as October 1939 he declared in the Bombay Legislative Assembly:

I will not tolerate it. I will shed the last drop of my blood to uproot that position. I will not tolerate it if the social dominance, the economic dominance and the religious dominance which the Hindus exercise over me, is added the political dominance also. I will certainly not tolerate it. I still repeat again that I will never allow it. We shall fight tooth and nail against politics being perverted for the purpose of establishing an oligarchy of a ruling class.<sup>47</sup>

Dr. Ambedkar worked for social integration in India. He believed in the annihilation of the caste system in any form and wanted to get rid of our society of this course. He fought for human dignity, self-respect, social equality, liberty and fraternity. He stood for political independence along with social freedom of the weaker sections of society. It is totally wrong to say that he supported the British regime to stay in India. He was a great supporter of all kinds of freedom. That is why he did not like the dictatorship of the communists and despised the monopoly of the trio-Brahmin, Kshatriyas and Bania, over education, arms and trade. So Ambedkar had two-fold aims during the national movement, i.e., to secure political freedom with social freedom for which he fought against the British Raj as well as the Brahminic hegemony.<sup>48</sup>

In early 1941, he requested, and was granted, expanded recruitment of untouchables in the army and, in particular the reinstatement of the Mahar battalion, whereupon he called on members of his caste to enlist en masse. A year later Ambedkar joined the Viceroy's Executive Council as Member for Labour, a post that he hoped would allow him to improve the conditions of the untouchables. One of the most significant bills that he managed to have passed was the Indian Trade Unions (Amendment) Bill, making compulsory the recognition of a trade union in every enterprise provided it fulfilled certain conditions, particularly in terms of representation. In November 1943, when listing the administrative gains made on behalf of the untouchables, Ambedkar emphasized above all the facts that henceforth 8.33 percent of posts in the national administrations were reserved for the Scheduled Castes, as had been the case previously in the Madras Presidency, that places were also reserved for them in the institutions of technical education in Britain, that the

quota in the Central Assembly had been increased by one seat and that there was now a reserved seat for them in the Council of the State (the upper house of what was meant to be a Parliament).<sup>49</sup> Dr. Ambedkar's main expectations from the British side were to be largely disappointed. In October 1942, he presented to the Viceroy a memorandum that set out the scheduled castes' demands concerning their place in the assemblies, the administration and the educational system. In the political sphere, the picture which he painted was rather bleak because there was only two untouchables in the National Assembly and only one—Ambedkar himself—in the Executive Council. As regards the administration, out of 1,056 members of the Indian Civil Service, only one was an untouchable. In the educational field, by 1940, there were approximately 400-500 untouchable graduates. On this last point the remedy proposed by Ambedkar consisted in granting more scholarships to untouchable pupils and students. The problems of access to the administrative services remained one of his priorities. He thought that the public sector, the state should give jobs to Scheduled castes' youths because business and industry were often inaccessible to them. He also emphasized that opening the administration to untouchables would encourage them to acquire an education. Lastly, he argued that the presence of untouchables in the administration was a mandatory corollary to legislation because it would allow for the effective implementation of laws. The British ignored his proposals, as borne out by the Cripps Mission, which envisaged the election of a Constituent Assembly without giving untouchables any guarantee. On April 1, 1942, Ambedkar and Rajah made common cause in protest against this project, which they claimed was subject to untouchables to the dictat of upper caste Hindus: 'It takes us back to the black days of the ancient past, will never be tolerated by us, and we are all determined to resist any such catastrophe befalling our people with all the means at our command.'<sup>50</sup>

His bitter disappointment did not prompt him to leave the Executive Council. On the contrary, from 1943 to 1945 he redoubled his lobbying of those in power to highlight the untouchables' predicament in Indian society. In May 1945, he proposed his own plan to design a Constituent Assembly: he recommended quotas for untouchables in the Assemblies, where they would be the real arbiters between Hindus and Muslims. The World ignored his suggestions and the indifference of the British was confirmed by the Wavell Plan. The Viceroy, Lord Wavell, having sought a compromise between Hindus and Muslims in 1945, decided on elections, which had

first to test the levels of support enjoyed by the Muslim League, the Congress and other parties. Ambedkar's Scheduled Castes' Federation which achieved poor results in the 1946 election was the first victim of this decision as mentioned above.

### **Stages for the Framing of the Constitution of India:**

After the protracted, a decade long struggle, it was finally decided that representatives of all Political Parties will be elected to constitute the Constituent Assembly to finalise the constitution. The elected member of the Legislative Assemblies of different States will compose the Electoral College for this purpose. In February, 1946 election was conducted to form the governments in the states. Dr.Ambedkar contested the election with great hope, with his newly formed political party, the All India Scheduled Castes Federation. But he miserably failed even to get himself elected. Out of the 30 candidates who contested from all over India as his Party nominees only one member got elected. The winning candidate was *Jogendra Nath Mandal* from *Pirogepur* constituency of Bengal (Now in Bangladesh). This number was quite insufficient for the purpose. To enter into the Constituent Assembly each member was required to secure at least 5 votes. At this crucial and critical juncture the brave untouchables of Bengal showed extraordinary courage, solidarity and ready-wit. Jogendra Nath Mandal, an advocate and a Cabinet Minister of the undivided Bengal, a disciple of Dr.Ambedkar himself refrained from contesting for a berth in the Constituency Assembly but got the nomination papers of Dr.Ambedkar signed. He sacrificed his own claim of contesting a set from Bengal but made all successful arrangements to get Ambedkar elected in the Constituency Assembly.<sup>51</sup> In this regard Shri Mandal narrates the fact:

There was no chance for him to be elected to the Constituent Assembly. I then took up his cause and assured him of my utmost efforts to get him elected from Bengal. But he had become so much despaired that after returning to Delhi he wrote to me that I should give up my efforts for his election as he could not find any possibility of success of my efforts. However, I wrote to him that I would try utmost up to the last, and that he should not be totally disheartened. I personally began to try hard to secure votes for Dr.Ambedkar. Many prominent workers of the Scheduled Caste Federation also began to work for this purpose. Stiff opposition came from

the Congress side. However, Dr.Ambedkar was elected with the highest number of votes.<sup>52</sup>

Having been duly composed, the Constituency Assembly was formally inaugurated in the Constitution Hall, New Delhi on 9<sup>th</sup> December 1946. Now a day, the Hall is known as the Central Hall of the Parliament. In total 296 members were invited to attend the inaugural Session. However, only 207 persons were attended this grand and historical function.<sup>53</sup> The strength of different political parties in the Constituent Assembly was very uneven. Dr.Ambedkar was the only member from his political party named 'All India Scheduled Castes Federation'. The Communist party of India had only four members. The strength of Muslim League was less than seventy. The strength of the Indian National Congress was more than two hundred. Therefore, there was hardly any democratic situation prevailed in the Constituent Assembly. On the eve of the inaugural session of the Constituent Assembly Dr.Ambedkar was in great dilemma whether to participate or not. On 1<sup>st</sup> November, 1946, he declared his project, 'Personally, I feel that if Mr. Gandhi and the congress give them (the untouchables) 'political independence', there will be greater unity, "co-operation and goodwill between the Hindus and the untouchables," but if Mr. Gandhi and the congress seek to bring the untouchables under the political dominance of the Hindus and to make them political slaves of the Hindus, the 'untouchables' would rebel and would endeavors to seek their salvation by joining some other Community". It is observed that achieving reservations in job and in the legislature was not Ambedkar's target. He fought for salvation, which is freedom from any kind of slavery under Hinduism.<sup>54</sup> To the country's fortune he was drafted to various Sub-Committees of the Constituent Assembly and his contribution to those Committees were immeasurable. But unfortunately, the partition of India had brought disastrous impact on untouchables in general and Dr.Ambedkar in particular. Dr.Ambedkar ceased to be a member of the Constituent Assembly as he was elected from a seat which went to East Pakistan. The "very useful" work done by Dr.Ambedkar in various Sub-Committees of the Constituent Assembly convinced the congress bosses beyond doubt that the legislation and solidification of freedom would not be easy without the services of Dr.Ambedkar. The congress party which had earlier opposed tooth and nail his entry into the Constituent Assembly came forward and sponsored his candidature. It is observed that in his letter dated 30<sup>th</sup> June 1947, Dr.Rajendra

Prasad, President of the Constituent Assembly requested Mr.B.G.Kher, the then prime Minister of Bombay to elect Dr.Ambedkar immediately. He wrote:

Apart from any other consideration we found Dr.Ambedkar's work both in the Constituent Assembly and the various Committees to which he was appointed to be of such an order as to require that we should not be deprived of his services. As you know, he was elected from Bengal and after the division of the Province he was ceased to be a member of the Constituent Assembly. I am anxious that he should attend the next session of the Constituent Assembly commencing from the 14<sup>th</sup> July and it is therefore, necessary that he should be elected immediately.<sup>55</sup>

Accordingly Dr.Ambedkar was re-elected in July 1947 as a member of the Constituent Assembly. The principal of government law college, Bombay, T.K.Topey says: After the decision of transfer of power a new cabinet was formed under the leadership of Jawaharlal Nehru. Dr. Ambedkar was included in the cabinet. In this connection, it is worth remembering that it was Gandhi himself who insisted upon the inclusion of Dr. Ambedkar in the cabinet. Ambedkar himself disclosed this to the writer of the article, sometime in the year 1948. Ambedkar was given the portfolio of law.<sup>56</sup> Dr.Ambedkar accepted the invitation of the Prime Minister because, as he said later, 'in the first place the offer was not subject to any condition and secondly it was easier to serve the interest of the Schedule Caste from inside of the government than from outside'. It was Dr.Ambedkar's capability that attracted Nehru. Of course, his own fine record ensured that seat. Of the members of the Drafting Committee, he was the only one called 'learned' by G.Austin.<sup>57</sup> It has been noted that his "explanations were brilliantly lucid". And he could explain a minor point with the air of a Sherlock Holmes making things clear for his Watson.<sup>58</sup>

### **Constitution-Making and Dr.Ambedkar:**

The constituent assembly was set up in accordance with the suggestions of the British Cabinet Mission as outlined in its statements of May 16, 1946. It underwent transformation in its career from July-August, 1946, when it was first elected to November, 1949 which marked the end of its complicated task. The total membership was 389, of whom 207 members participated in the inaugural session on December 9, 1946. On August 29, 1947, the assembly appointed a drafting committee consisting of (1)The honorable Dr.B.R.Ambedkar,(2) Sri. A.K Ayyar, (3) Sri. N.G Ayyangar, (4)

Sri.K.MMunshi, (5) Saiyid M.Saadulla, (6) Sri. B.L Mitter, (7) Sri.D.P.Khaitan. Later on Madav Rao was appointed in place of B.L.Mitter and T.T.Krishnamachari was appointed after the death of D.P.Khaitan. The committee was to 'scrutinise the draft of the text of the constitution of India prepared by the constitutional Adviser, giving effect to the decisions taken already in the Assembly and including all matters which are ancillary thereto, or which have to be provided in such a constitution, and to submit to the Assembly for consideration the text of the Drafting Constitution as revised by the Committee'.<sup>59</sup>The Congress party wanted to secure the largest measure of agreement for the constitution and this was reflected in the composition of the Drafting Committee. Dr.Ambedkar was elected Chairman of the Committee and he 'piloted the Constitution through the Assembly with remarkable skill and ability'. He remarked on his election:

I have entered the Constituent Assembly to safeguard the rights of the Scheduled Castes. I was surprised when the Constituent Assembly elected me to the Drafting Committee. I was more than surprise when the Drafting Committee elected me to be its Chairman. I, therefore, expressed my gratitude to the Constituent Assembly and to the Drafting Committee for reposing in me so much trust and confidence and for choosing me as their instrument and giving me that opportunity for serving the country.<sup>60</sup>

On 11<sup>th</sup> December 1946, Dr.Rajendra Prasad was elected the Permanent Chairperson of the Constituent Assembly. Finally it was on 13<sup>th</sup> December 1946, the work on the future constitution began with an eight point 'Resolution' containing the 'Aims and Objectives' moved by Pandit Jawaharlal Nehru. The proposed 'Resolution' proclaims that the Constituent Assembly had to draw up a constitution for the country, *inter alia*, guaranteeing and securing to all the people of India, 'Justice, Social, Economic and Political; Equality of status, of opportunity and equality before law; freedom of thought, expression, belief, faith, worship, vocation, association, and action, subject to law and public morality', and providing 'adequate safeguards for minorities, backward and Tribal areas and Depressed and Other Backward classes'.<sup>61</sup>The above 'Resolution' was discussed and debated in the Constituent Assembly before it was adopted. Number of questions and doubts were raised by the members. M.R.Jaykar spoke in favour of the participation of Muslim League and even moved an amendment to the Resolution, which created a tense atmosphere in the

Assembly. It is in this situation the President Dr.Rajendra Prasad by passing over more than 20 other persons, invited Dr.Ambedkar on 17 December 1946 to speak to the House on the Resolution dealing with 'Aims and Objects'. Ambedkar pointed out the folly of not waiting till the Muslim League joined the Assembly and criticised Nehru on the grounds that since Nehru was "reputed to be a socialist", the Resolution "although non-controversial was very disappointing". He went on to say:

I should have expected some provision whereby it would have been possible for the state to make economic, social and political justice a reality and I should have from that point of view expected some provision to state in most explicit terms that in order that there may be social and economic justice in this country, there should be nationalization of industry and nationalization of land. I do not understand how it could be possible for any future government which believes in doing justice socially, economically and politically, unless its economy is a social economy....the Resolution is disappointing one.<sup>62</sup>

His speech in the Constituent Assembly in December 1946 was Statesmanlike. He also made a plea for unity which was enthusiastically supported from all quarters of the House:

I have got not the slightest doubt in my mind as to the future evolution and the ultimate shape of the social, political and economic structure of this great country. I know today we are divided politically, socially and economically. We are a group of warring camps and I may go even to the extent of confessing that I am probably one of the leaders of such a camp. But, sir, with all this, I am quite convinced that given time and circumstances nothing in the World will prevent this country from becoming one [Applause]. With all our castes and creeds, I have not the slightest hesitation that we shall in some form be a united people [Cheers]. I have no hesitation in saying that notwithstanding the agitation of the Muslim League for the partition of India some day enough light would dawn upon the Muslim themselves and they too will begin to think that a United India is better even for them[Loud cheers and applause].<sup>63</sup>

A single speech carved out permanent seat for Dr.Ambedkar in the Constituent Assembly and in the hearts of the members. Ambedkar, as Chairman of the Drafting Committee was in a very influential position. He was also a member of the basic

committee on functions, the Fundamental Rights Sub-Committee, the Minority Sub-Committee, the Union Constitution Committee; and the Advisory Committee to the Assembly, the ad hoc Committee on the Supreme Court and the Ad-hoc Committee on the National Flag. While he was doggedly engaged in the policy making activities along with the other members in the Constituent Assembly he prepared, being entrusted to do so by the All India Scheduled Castes Federation, a separate Draft constitution. He submitted it to the Constituent Assembly, on 15<sup>th</sup> March 1947, in the form of a memorandum defining Fundamental Rights, Minority Rights and safeguards to Scheduled Castes under the title, “*States and Minorities What Are Their Rights and How to Secure them in the Constitution of Free India*”. The proposed preamble to the constitution of the United States of India, in the Memorandum provided: “The United States of India, shall be formed as an indissoluble union, and that with a view:

- (1) to secure the blessing both of self-government and good government throughout the United States of India to ourselves and to our posterity;
- (2) to maintain the right of every subject to life, liberty and pursuit of happiness and to the speech and free exercise of religion;
- (3) to remove social, political and economic inequality by providing better opportunities to the submerged classes;
- (4) to make it possible for every subject to enjoy freedom from want, and freedom from fear; and
- (5) To provide against internal disorder and external aggression.

He had strongly proposed for the state ownership of agriculture with collectivized method of cultivation and modified form of State Socialism in the field of industry. Ambedkar’s Plan depicts two features. One, it proposes State Socialism in important fields of life. Secondly, the plan is not left to the will of State Legislature. He wanted to establish State Socialism by the law of Constitution within the frame work of Parliamentary Democracy. In the memorandum he warned:

State Socialisms essential for the rapid industrilisation of India; private enterprise cannot do it and if it did, it would produced the inequalities of wealth which private capitalism has produced in Europe and which should be a warning to India.<sup>64</sup>

At the end Dr.Ambedkar before moving into the Draft Constitution, concluded his introductory address by saying:

No constitution is perfect and the Drafting Committee itself is suggesting certain amendments to improve the Draft constitution. But ...settled by the Draft Committee is good enough to make in this country a start with. I feel that it is workable, it is flexible and it is strong enough to hold the country together both in peace time and in war time. Indeed, if I may say so, if things go wrong under the new constitution, the reason will not be that we had a bad Constitution. What we will have to say is that Man was vile. Sir, I move.<sup>65</sup>

Above all, as President of the Drafting Committee, he was sent all the propositions of the various committees and it was his responsibility, and that of the committee secretary, S.N.Mukherjee, to whom he would later pay warm homage, to reformulate these articles-many of which required clarification. These editorial tasks also rested largely on his shoulders because of the chronic absenteeism that plagued the Drafting Committee. The tribute paid to Dr.Ambedkar for his skill and industry were genuine.T.T.Krishnamachari while congratulating Dr.Ambedkar on the enormous amount of work and enthusiasm he brought to bear on drafting work complained that enough attention was not paid to the work, by the Drafting Committee as whole. Subsequently, in November 1948, he declared before the Constituent Assembly:

The house perhaps aware that of the seven members nominated by you [to the Drafting Committee], one had resigned from the house and was replaced. One died and was not replaced. One was away in America and his place was not filled up and another person was engaged in State affairs and there was a void to that extent. One or two people were far away from Delhi and perhaps for reasons of health did not permit them to attend. So it happened ultimately that the burden of drafting this Constitution fell on Dr.Ambedkar and I have no doubt that we are grateful to him for having achieved this task in a manner which is undoubtedly commendable.<sup>66</sup>

This was no small tribute, paid by a member of the Drafting Committee himself, to Ambedkar. Even Dr. Rajendra Prasad chairman of the Constituent Assembly, was so impressed that he made the remark:

Sitting in the chair and watching the proceedings from day to day, I have realized, as nobody else would have, with rare what zeal and devotion the members of the Drafting Committee and specially its chairman, Dr. Ambedkar, in spite of his indifferent health, have worked (Cheers). We could never make a decision which was or could be ever so right as when we put him on the Draft Committee and made him its Chairman. He has not only justified his selection but has added luster to the work which he has done.<sup>67</sup>

So with the above introductory address Dr. Ambedkar moved the Draft Constitution on 4 November 1948 before the Constituent Assembly. The Constituent Assembly underwent three readings. The first reading was in the form of a brief general discussion on the Draft. The second reading began on 15<sup>th</sup> November 1948 in which the Draft Constitution was discussed clause by clause in detail and the reading went up to 17 October 1949. For the final and third reading the Constituent Assembly had session from 14 November till 26 November 1949 and after this Constitution was declared passed and it was signed by the President of the Assembly.<sup>68</sup> The Draft Constitution was finally adopted by the Constituent Assembly on November 26, 1949. It took two years, eleven months and seventeen days from 9<sup>th</sup> December 1946 onwards. But if one carefully reads the Draft Constitution and Dr. Ambedkar's works, one will find that Indian constitution certainly is the work of Dr. B.R Ambedkar. The former President of India, His Excellency Dr. K.R Narayanan, in his forward to the Volume-13 of Dr. Baba Saheb Ambedkar: Writings and Speeches, affirmed this by Writing: as Chairman of the Drafting Committee and as the one who piloted this historic document through the Constituent Assembly, he was the Principal Architect of the Constitution.<sup>69</sup>

### **Embodiment of Justice and Equality in the Constitution of India:**

Liberalism of the eighteenth and nineteenth centuries emphasized the emancipation of individual as a basis to individual development and the twentieth century democracy provided further recognition of human being as worthy of respect, rights and responsibility. But free India has not been free from the age-old practices of caste, discrimination, injustice and inequality devoid of dignity and humanism. The Hindu Social Order as outlined in the Manusmriti is opposed to justice, liberty, equality and fraternity. Dr. Ambedkar endeavored to help the nation by pulling it from the quagmire of caste, creed, discrimination and communalities by incorporating the

humanistic principles of justice, liberty, equality and fraternity in the Constitution of India.

The Constituent Assembly, which was well acquainted with these issues of social inequalities and injustice, when it decided to 'enact' Constitution on behalf of 'the people of India' had to take into account not only the then prevailing socio politico, economic conditions but also long- proclaimed aims and aspirations of the Indian people. It perceived the constitution not only as a mechanism for governing the country but as a potent instrument of social change, social revolution and a charter of social justice. Social revolution, for the Constituent Assembly, meant 'to get India out of the medieval social structure based on birth, religion, custom and community' and 'to reconstruct her structure on modern foundations of law, individual merit and equality' through constitutional devices.<sup>70</sup> The proceedings and documents of the Assembly depicts the crux of social revolution. The task assigned to, and pledged by, the Constituent Assembly was to have a "socio-economic revolution' (bringing about 'the real satisfaction of the fundamental needs of the common man', abolishing 'distinction and exploitation' and ensuring 'decent conditions of life); to bring about 'a fundamental change' in the structure of Indian society, and 'to render social justice to every citizen through constitution'.<sup>71</sup> So when participating in the Constituent Assembly Dr.Ambedkar expressed, "The Constituent Assembly declares it firm and solemn resolve...to draw up....a Constitution wherein (a) shall be guaranteed and ensured to all people of India justice, social, economic and political, equality of status, and opportunity before law, and (b) wherein adequate safeguards shall be provided for minorities, depressed and other backward classes'.<sup>72</sup> The architects of the Indian Constitution adopted the essence and sprit of the 'Contractarian View' of social justice much before John Raws could propounded his famous wok 'A Theory of Justice' in 1971.This was possible as our ancient Indian legal tradition was built on Supremacy of the Law long ago which was inspired our Constitutional makers to incorporated in the future Constitution of India. That is why Granville Austin regarded Indian Constitution, first and foremost a social document and the core of the commitment to the social revolution lies in Parts III and IV in the Fundamental Rights and in the Directive Principles of State Policy, which he viewed as the 'conscience' of the Constitution. The substances justice, liberty, equality, fraternity and befitting human dignity of individual are made more elaborate in Preamble, Parts-

111(Fundamental Rights), Part-IV(Directive principles of state policies) and Part-XVI of the Constitution.

### **Preamble of the Constitution:**

The Preamble is not an integral part of any Constitution but at the same time it is an essential ingredient of a constitution as it broadly highlights the purpose and objects that the Constitution seeks to achieve. The Preamble is also considered a sort of 'key' to the intentions of the framers of the constitution. It not only depicts the spirit of the constitution, but also speaks of the desires and sentiments of the people of India for social justice and equality. The goal was to achieve a new social order based on justice-political, economic and social. An egalitarian society and equality of opportunity were envisioned as the guiding aspirations. The Preamble to the Constitution of India reads as follow:-

“WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into SOVEREIGN [SOCIALIST SECULAR] DEMOCRATIC REPUBLIC and to secure to all its citizens:

JUSTICE; social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and opportunity; and to promote among them all;

FRATERNITY assuring the dignity of the individual and the unity and [integrity] of the Nation.

IN OUR CONSTITUENT ASSEMBLY this twenty sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.”<sup>73</sup>

The above Preamble is based on the Objectives Resolution adopted by the Constituent Assembly in January 1947. While giving final shape to it, the Draft Committee made two important changes which made the Preamble more meaningful and reflective of the aspirations of the people. The Draft Committee replaced the word 'independent' by the word 'democracy', and added a new clause dealing with 'fraternity' which was not to be found in the Objectives Resolution.

Dr. Ambedkar was not happy with only the provisions of a democratic Government. He preferred a Republican form of government. He wanted not only a government of the majority by the majority. He wanted a government for all. The majority must hear and care the voice of the minority. Tyranny of the brute majority, in course of time throttles democratic situation. He advocated liberty for all people of the country. In the Republican form of government the country belongs to all; not to any particular section, powerful or weak, elite or serf, rich or poor or to any political party or group. As independent is usually implied in the word 'sovereign' the Draft Committee felt that there was no need to add the word 'independent'. So it replaced it by the word 'democratic'.

The Preamble declares India 'a Sovereign, Socialist, Secular, Democratic Republic'. The adjectives, 'Socialist' and 'Secular' were introduced into the Preamble by the 42<sup>nd</sup> Amendment of the Constitution in 1976 to reinforce the Constitutional commitment to social justice. The Preamble has further declared to secure certain basic objectives to all its citizens and amongst these basic objectives pride of place is given to social, economic and political justice. The words, contained in the Preamble, "justice-social, economic and political", "fraternity", and "equality of status" to all the citizens are nothing but harbingers of social change in India. It is really the spirit of brotherhood that the Preamble seeks to achieve. It can be achieved by abolishing all communal, sectional local and caste ridden feelings which are the real bottlenecks in the way of equality, as well as the unity of India. Therefore all the citizens of India will have to develop a feeling that they are all children of the same soil, the same motherland".<sup>74</sup> The preamble assures social and economic equality in the country and constitutes the very life breath of the constitution.

According to Preamble our Constitution is not a mere platitude, the mode of its realization is worked out in detail in the constitution.<sup>75</sup> That is why it is correct to say that the concept of social and economic equality is spread throughout the constitution. The substance of the Resolution was to draw a constitution which would guarantee and secure to all the people of India, Justice-social, economic and political-equality of status, of opportunity and before the law and the freedom of thought, expression, belief faith and worship. The mover of the Resolution declared in unequivocal terms: "The future of India that we have envisaged is not confined to any group and section or province or other but it comprises all the four hundred million people of India".<sup>76</sup>

Social justice, in short is “the harmonisation of the rival claims of the interests of different groups and sections of the social structure by means of which alone it is possible to build up a ‘Welfare State’”.<sup>77</sup> The concept of social justice thus takes within its sweep the objective of removing all inequalities and affording equal opportunities to all citizens in social affairs as well as economic activities.<sup>78</sup> Generally, economic justice means the absence of economic disparities and values between men and women. The framers of the Constitution wanted to remove the economic disparities amongst people so as to uplift these exploited masses of the people. Economic justice, an ideal that has been attempted to be achieved through the Fundamental Rights and Directive Principles of the State policy could only be given to the Indian masses. The economic justice can be illustrated from Article 39 of the Constitution which provides inter alia that men and women equally have the right to an adequate means of livelihood.<sup>79</sup> The ownership and control of the material resources of the community are so distributed as best to sub serve the common good that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.<sup>80</sup> The State shall strive to provide equal pay for equal work for both men and women.<sup>81</sup> The founding fathers thus perceived social justice as the balancing wheel between the haves and the have-nots. In the words of honorable justice Gajendragadkar, “the concept of social and economic justice is a living concept of revolutionary import, it gives sustenance to the rule of law and meaning and significance to the ideas of a Welfare State”<sup>82</sup> Political justice means “the absence of any arbitrary distinction between man and man in the political sphere”.<sup>83</sup> It gives equal opportunities to the citizens to enter in politics with equal voting rights. Also everyone can get appropriate employment irrespective of race, caste, sex and place of birth or religion.

**Liberty:** The Preamble inevitably postulates the significance of individual liberty of thought, expression, belief, faith and worship. It means that the State treats each and every moral person as a free agent, capable of developing his own capacities and therefore, capable of exercising the rights which are the conditions of such development. Accordingly it vests each person with a power of thinking and acting for himself at his own discretion and therefore, on his own responsibility in respect of the exercise of rights. A procedural rule of liberty is also a rule of responsibility to which applies in social, economic and political spheres.

Equality: Dr.Ambedkar's foremost concern was equality. Hence, he was not ready to sacrifice liberty and fraternity. To him, equality must come through non-violence and democratic process. So he said that political democracy must be based on social equality. Along with the necessity of establishing justice and to guarantee liberty to Individual citizen, the Preamble also proclaims with its faith in the doctrine of 'equality of status' and 'opportunity to all citizens'.

Fraternity: In the Preamble, sense of fraternity by which the dignity of the individual and the unity of the Nation will be guaranteed has also been established. Fraternity means "a sense of common brotherhood of all Indians. It is the principle which gives unity and solidarity to social life".<sup>84</sup>This is the principle for providing for all and distributing among all the common equipment, material and mental, which is needed by all as the common background and common basis of their individual lives.

Not only the question of Liberty, Equality and Fraternity was discussed, but Dr.Ambedkar also resorted to declare the beginning of an end to the root cause of socio-economic disparity, the casteism. It has already been mentioned that in accordance with the laws of Manu there was no scope of any type of equality and equal treatment by the State. Therefore, Dr.Ambedkar, primarily wanted to transform the socio-economic structure or the basic structure of the society through the Constitutional provisions. The Preamble, as drafted by the Drafting Committee was considered by the Constituent Assembly on October 17, 1949. In the course of the debate, some member leveled criticism whether the words 'We, the people of India' were appropriate in the Preamble as the Constituent Assembly had not been elected on adult franchise, and hence could not be taken as a representative body. Dr.Ambedkar replied to this charge in clear terms. He said that it was quite true that it was not a Constituent Assembly in the sense that it included every adult male and female in this country. Replying to the debate, he said:

The point under debate is this: Does this Constitution or does not acknowledge, recognize and proclaim that it emanates from the people? I say it does. I say that the Preamble embodies what is desire of every Member of the House that this Constitution should have it root, its authority, its sovereignty from the people.<sup>85</sup>

Dr.Ambedkar believed in the principle of one man, one vote and one vote, one value. Affirmatively and positively speaking, "we the people of India" in the

Preamble mean we the poverty stricken people of India who are forgotten specimen of humanity, thousands of contract labourers, the real makers of modern India, thoroughly exploited by their fellow human beings. Constitution is made in the name of millions and for the millions, but not for the millionaires.<sup>86</sup> The Constitution explicitly expresses the intention of the founding fathers of which Dr. Ambedkar was the chief architect, to reconstruct the existing Indian unequal social order into a just, egalitarian and casteless social order with the principles of justice, liberty, equality and fraternity.

### **Dr. Ambedkar and Fundamental Rights:**

Dr. Ambedkar, as the champion of the downtrodden, was convinced beyond doubt as to the need for a Bill of Rights in Indian Constitution. He had been pleading continuously for an elaborate system of Fundamental Rights for the Minorities in particular, and for all the citizens in general. His fight for social justice was the main plank 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. In the course of the memorandum-A Scheme of Political Safeguards for the Protection of the Depressed Classes in the Future Constitution of a Self-governing India that he submitted jointly with Rao Bahadur R. Srinivasan to the Minorities Sub-Committee of the First Round Table Conference, he had laid down model Articles on Fundamental Rights, based mostly on Amendment XIV of the U.S. Constitution; Government of Ireland Act, 1920; U.S. Civil Rights Protection Acts of April 9, 1866 and of March, 1875; Burma Anti-Boycott Act of 1922 etc. His views on Fundamental Rights are more elaborately expressed in his book 'States and Minorities', which is itself in the form of a model Constitution. Article II of this deal with 'Fundamental Rights of citizens'. The main features of this Article is the specific reference to the protection of minorities, safeguards for the Scheduled Castes, and sanction for safeguards etc, apart from the Fundamental Rights of citizens in general and the remedies against invasions. Dr. Ambedkar designed these rights with the sole objective of eliminating and for abolishing inequalities. The safeguards he contemplated against a possible invasion by the state or the individual was through the judicial power, guided by the 'due process of law'. He had fully realised that rights without legal remedies are of no value. In Article II, sections 1 and II of his model Constitution he provides for the following rights for all citizens:

Any privilege or disability arising out of rank, birth, person, family, religion or religious usage and custom is abolished. No deprivation of life, liberty and property without due process of law; equality before law. Equal access to all citizens to place of public resort or convenience-denial of them to any person shall be an offence.<sup>87</sup>

Subjecting a person to forced labour or to involuntary servitude shall be an offence. The Right to vote for all excepts the young, insane and the imprisoned. No law shall be made abridging the freedom of speech, of the press, of Association and of Assembly except for consideration of public order and morality. No Bill of attainder or ex-post facto law shall be passed. Liberty of conscience including the right to profess, to preach and to convert within limits compatible with public order and morality. The state shall not recognize any religion as state religion. The Fundamental Rights are a must in any modern Constitution. The idea behind these provisions is to ensure certain basic rights to the citizens, so that they are not at the mercy of the shifting opinions of the legislatures. The basic lay-out of the Fundamental Rights guaranteed in our Constitution was prepared by the Advisory Committee. A number of Memorandums were submitted by K.M.Munshi, K.T.Shah to the Committee but the suggestions made by Ambedkar was adopted by the Constituent Assembly. A close look at Article II Section I of his Memorandum reveals that, out of 19 articles dealing with the Fundamental Rights as many as 15 articles are put forward by Dr.Ambedkar.<sup>88</sup>

According to Dr.Ambedkar the Fundamental Rights are the very basis of the Preamble to the Constitution. The Preamble says that this Constitution will have as its basis Liberty, Equality and Fraternity. These objectives of the Constitution are carried out by the Fundamental Rights. And it is therefore, the duty, I should have thought, of every Member of Parliament, apart from personal loyalty; to be critical when any invasion is made of the Fundamental Rights.<sup>89</sup> He viewed Fundamental Rights are necessary because of the peculiar social and economic conditions of the people of India. In this connection he referred to the provisions regarding abolition of untouchability, improvement of the condition of backward classes, prohibition of discrimination on grounds of religion, caste, race, sex and place of birth etc. He maintained that the Constituent Assembly struck a balance between the Legislative

supremacy and Judiciary supremacy. While emphasizing the two-fold objectives of the Fundamental Rights he said:

First, that every citizen must be in a position to claim those Rights. Secondly, they must be binding upon every authority, 'the state' includes the Government and Parliament of India and the Government and the Legislature of each states and all local or other authorities within the territory of India or under the control of the Government of India which has been created by law and which had certain power to make laws, to make rules or to make bye-laws. Of all the rights he regarded equality of opportunity for all citizens as the most important right. <sup>90</sup>

In view of securing to all its citizens social justice and equality our Constitution provides some Fundamental Rights in Part III some of which are available to all persons and some are enjoyable by the citizens of India. They are:

Article 14. Equality of before law-which enjoins upon the state not to deny any person 'equality before law' or 'equal protection of laws', carries special significance in the contexts of the Indian society which was socially stratified, facilitating elevation of some and degradation of others.

Article 15. Prohibit the State from making discrimination on grounds of religion, race, caste, sex or place of birth.

- (1) (1)The state shall not discriminate against any citizen on grounds only of religion, race, caste, sex, and place of birth or any of them.
- (2) no citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to-
  - (a) Access to shops, public restaurants, hotels and place of public entertainment; or
  - (b) The use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of general public.
- (3) Nothing in this article shall prevent the State from making any special provision for women and children.

[(4) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes].<sup>91</sup>

Article 16, of the Constitution guarantees equality of opportunity in matters of public employment.

- (1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the state.
- (2) No citizens are, on grounds only of religion, race, caste, sex descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the state.
- (3) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class citizens which, in the opinion of the State, is not adequately represented in the service under the State.<sup>92</sup>

Article 17, abolishes 'Untouchability' and forbids its practices in any form whatsoever. It also empowers the Parliament to pass a law for punishing those persons who are guilty of offences connected with Untouchability. The Parliament had passed the Untouchability (Offences) Act, 1955. This Act was amended by the Untouchability (Offences) Amendment Act, 1976 in order to make the law more stringent. History reveals that millions of 'untouchables' for centuries were denied access to temples and other public places. They were also deprived of some of the basic human needs like use of wells, bathing ghats, and tanks etc. Article 15 (2), read with Article 17, in essence, secures to millions of untouchables equality of status as human beings and guarantees them equal access to temples and other public places.<sup>93</sup>

Article 19 of the Constitution which is considered to be the backbone of Fundamental Rights originally guarantees seven freedoms to all citizens, one of which, namely, the right to property had been scrapped by the 44<sup>th</sup> Constitutional Amendment Act, 1978. The rest of the six freedoms guaranteed by Article 19 are as follows:

- (a) Freedom of speech and expression.

- (b) Freedom to assemble peacefully and without arms.
- (c) Freedom to form associations and unions.
- (d) Freedom to move freely throughout the territory of India.
- (e) Freedom to reside and settle in any part of the territory of India.<sup>94</sup>
- (f) Freedom to practice any profession or to carry on any occupation, trade and business.

Article 21 promises right to life and personal liberty. It expresses that, “No person shall be deprived of his life and liberty except by procedure established by law”. Article 23 guarantees right against exploitation. It prohibits traffic in human beings, ‘beggar’ and similar forms of forced Labour, such as bonded labour system, essentially embedded in the traditional Hindu religion out of compelling economic needs of the poorer people, generally enmeshed in the quagmire of borrowing. It negates totally the human dignity to which the Preamble to our Constitution refers. Article 23 also makes any contravention of the article an offence punishable in accordance with law.<sup>95</sup> Article 24 of the Constitution expresses Prohibition of employment of children in factories or mines or engaged in any other hazardous employment.

Article 25 gives freedom of conscience and free profession, practice and propagation of religion. Article 25 (2) specially; inter alia, empowers the state to throw, by law, open any Hindu religious institution of a public character to all classes and sections of Hindus.<sup>96</sup>

Article 29 of the Constitution provides that a minority shall have the right to conserve its own language, script, literature and culture. Article 29(2) bars denial of admission to any citizen into any educational institution maintained by the state or receiving aid out of the state funds on grounds only of religion, race, caste, language or any of them. However, Article 15(4), notwithstanding provisions Article 15 (1) and of 29(2), empowers the State to make any special provisions for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and Scheduled Tribes.

The Fundamental Rights enshrined in the Constitution of India have been made justiceable. Article 32 states: ‘the Supreme Court shall have power to issue directions

or orders or writs whichever may be appropriate, for the enforcement of any of the right conferred by this Part'. The provision of this Constitutional remedy, which follows almost literally the provision, suggested by Ambedkar in clause I of Section II, Article II of his Memorandum, is the most effective guarantee for enforcing the Fundamental Rights. But for this provision, the insertion of Fundamental Rights in the Constitution would have been meaningless as "rights are real only if they are accompanied by remedies".<sup>97</sup> Dr. Ambedkar described the importance of Article 32 in these terms on the floor of the House:

I am very glad that the majority of those who spoke on this article have realized the importance and significance of this article. If I was asked to name any of particular articles in this Constitution as the most important an article without which the Constitution would be a nullity I could not refer to any other article except this one. It is the very soul of the Constitution and the very heart of it and I am glad that the House has realized its importance.<sup>98</sup>

The scheduled castes were socially "untouchables" and it was this social stigmas that worried Ambedkar more than anything else. His sense of self-respect would not allow him to realize, or, though he had realized it, would not allow him to beg for economic salvation. He thought that once political and social equality was established and educationally the scheduled castes were advanced, every other difficulty would disappear. For him fundamental rights would mean establishment of equality only. "After all, what are we having this liberty for?", he asked and replied: "We are having this liberty in order to reform our social system, which is so full of inequalities, discriminations and other things which conflict with our fundamental rights".<sup>99</sup> Dr. Ambedkar maintained that reasonable restrictions are indispensable, if the rights guaranteed are to be fully enjoyed by one and all. Reacting to the critics on Fundamental Rights Dr. Ambedkar stated:

I am sorry to say that the whole of the criticism about Fundamental Rights is based upon a misconception. In the first place, the criticism, in so far as it seeks to distinguish fundamental rights from non-fundamental rights is not sound. It is incorrect to say that fundamental rights are absolute while non-fundamental rights are not absolute. The real distinction between the two is that non-fundamental rights are created by agreement between parties while

fundamental rights are gift of the law. Because fundamental rights are the gift of the State it does not follow that the State cannot qualify them. <sup>100</sup>

As to the criticism on the provisions regarding the suspension of Fundamental Rights, Dr.Ambedkar further observed:

In certain cases where, for instance, the State's very life is in jeopardy, those rights must be subject to certain amount of limitation....In times of emergency the life of the state itself is in jeopardy and if the state is not able to protect itself in times of emergency, the individual himself will be found to have lost his very existence. Consequently, the superior right of the state to protect itself in times of the emergency, so that it may.....line to discharge its function in order that individual under the aegis of the state may develop, must be guaranteed as safely as the right of an individual. <sup>101</sup>

To sum up, a glance at the Constitution of India reveals the quest of Dr.Ambedkar for social revolution for the reconstruction of an egalitarian and classless society. The Fundamental Rights as a whole foster the social reconstruction by generating equality, prohibiting discrimination on grounds of religion, race, caste, sex, or place of birth, abolishing untouchability and making its practice in any form an offence punishable under law, and banning trafficking in human beings and forced labour, which furnished a solid basis for social inequalities and injustices. The Constitution of India empowers the state to make any special provision for the advancement of women and children and also for the advancement of any educationally, socially backward classes, the Scheduled Castes and Scheduled Tribes. It also enable the state to make reservation for appointment or posts in favour of any backward class which in the opinion of the state is not adequately represented in the services under the state.

### **Directive Principles of State Policy:**

In the Draft Constitution the Fundamental Rights are followed by what are called "Directive Principles". It is a 'novel feature' in the Constitution of India framed for Parliamentary Democracy as aptly described by Dr.Ambedkar. Directive principles of State Policy contains in Part IV of the Constitution express the objects and vision of the Constituent Assembly about the new social and economic order which it wanted to bring about through the Constitution. The Preamble of the Constitution sets forth

the ideals of socio-economic justice which the Constitution was intended to secure and the Directive Principles of State Policy form a more detailed exposition of these ideas. Explaining the purpose and aims of these 'Principles' in the Constituent Assembly, Dr.Ambedkar said:

Our Constitution as a piece of mechanism lays down what is called Parliamentary democracy. By Parliamentary democracy we mean 'one man, one vote'. We also mean that the every government that will form at the end of certain period the voters and electorate will assess the work done by the government. This is political democracy what we have established in this constitution instead of dictatorship of any particular body of people. While we have established political democracy, it is also desire that we should lay down as our ideal economic democracy. We do not want merely to lay down a mechanism to enable people to come and capture power. We have left enough room for people of different ways of thinking, with regard to the reaching of the idea of economic democracy, to strive in their own way to persuade the electorate that it is the best way of reaching economic democracy, the fullest opportunity to act in the way in which they want to act. Our object in framing the Constitution is really two fold: (1) to lay down the form of political democracy, and (11) to lay down that our ideal is economic democracy and also to prescribe that every Government, whatever, it is in power, shall strive to bring about economic democracy, most of the misunderstanding under which most members are labouring will disappear. Our intention is that even when there are circumstances which prevent the government, or which stand in the way of government giving effect to these Directive Principles, they shall, even under hard and unpropitious circumstances; always strive in the fulfillment of these Directives.<sup>102</sup>

According to Dr.Ambedkar, the Directive Principles were nothing but obligations imposed by the Constitution upon the various governments in this country, that they should do certain thing, although it said that if they failed to do them, no one would have the right to call for specific performance. He said that it was the intention of the Constituent Assembly that in the future both the Legislature and the Executive should not merely pay lip-service "to those principles enacted in this part", but that they should be made the basis of all Executive and Legislative action that might be taken subsequently in the matter of the governance of the country. He remarked that the Directive Principles have no legal force behind them; but he was not prepared to

admit that they had no sort of binding force at all. He was not prepared to concede that they were useless because they had no binding force in law. He said: “what are called Directive Principles in merely another name for Instruments of Instruction. The only difference is that they are instructions to the Legislature and the Executive as to how they should exercise their power”.<sup>103</sup> He vehemently objected to making the Constitution any other than a mere political contrivance. He cited the Directive Principles as giving us the substance of socialist state. He said: “if these Directive Principles are not socialist in their direction, and in their content, I fail to understand what more socialism can be”.<sup>104</sup> Part IV of the Constitution (Articles 36-51) provides the Directive Principles of State Policy. Generally, it shall be the duty of the state to follow these principles both in the matter of administration as well as in making of laws. The policies aim at to establish a ‘Welfare State’ and not merely a ‘Police State’.

Some of the provisions of Directive Principles of State Policy specially deal with socio-economic justice. Article 38 provides, “the state shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice-social, economic and political, shall inform all the institutions of the national life”. (Article 38) The Preamble to the Constitution also sets forth in the forefront of the objectives sought to be secured, justice, social and political. The same ideal is repeated in this Article with an addition in two respects: firstly, the justice is to be translated into the terms of a social order in which justice-social, economic and political shall inform all the institutions of national life; secondly, the object of establishing such a social order is given, such object being the welfare of the people. Thus, the ideal set forth in the Preamble is amplified and clarified in this Article by its being shown what is meant by justice, social, economic and political, and also by stating what is the object of having such justice.<sup>105</sup>

Article 39 lays down the Principles of policy to be followed by the State. The state shall, in particular, direct its policy towards securing-

- (a) that the citizens, men and women, equally, have the right to an adequate means of livelihood;
- (b) that the ownership and control of the material resources of the community so distributed as best to subserve the common good;

- (c) that the operation of the economic system should be such as not to result in the concentration of wealth and means of production to the common detriment;
- (d) that there should be equal pay for equal work for both men and women;
- (e) that the health and strength of workers, men no women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age of strength;
- (f) That childhood and youth are protected against exploitation and against moral and material abandonment.<sup>106</sup>

Thus according to this Article the State is required to ensure for its people adequate means of livelihood, fair distribution of wealth, equal pay for equal work and protection of children and labour.

Article 39-A. directs that the state shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provides free legal aid, suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to by citizen by reason of economic or other disabilities. Article 40 says that the State shall takes steps to organized village Panchants and endows them with such powers and authority as may be necessary to enable them to function as units of self-government.<sup>107</sup> Article 41 also directs the state that, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of underserved want. Article 42 expressed that the state shall make provision for securing just and humane conditions of work and for maternity relief.<sup>108</sup> Article 43 expressed that the state shall endeavour to secure, by suitable legislation or economic organization or any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the state shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas.<sup>109</sup>

Article 44 expressed that the state shall endeavour to secure for the citizens a uniform civil code throughout the territory of India. It is considered that a uniform civil code will bring about uniformity in the way of life of people which in turn will

make national solidarity and unity. <sup>110</sup> Article 45 expresses that the State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.<sup>111</sup> Moreover, Article 46 stipulates socio-economic justice for the weaker sections of the society. The State shall “promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation”.<sup>112</sup>

Article 47 directs the State to regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medical purposes of intoxicating drinks and of drugs which are injurious to health.<sup>113</sup> Dr.Ambedkar was the brain behind the Directive Principles of State Policy in which a form of socialism was perceived by him. There is no doubt; Ambedkar was a socialist in spirit and action he, therefore, left the idea of imposing state socialism by law. It is now the duty of the elected government to restore primacy to the Directive Principles so that social transformation and economic reforms, s a part of the socialist vision of Ambedkar, are not rendered impossible.

The claim by Dr.Ambedkar that the Directive Principles were not mere ‘pious declaration’ has been fully justified in the working of the Constitution over six decades. The Directive Principles have resulted in a number of social welfare measures keeping in view to establish socio-economic justice. The Preamble to the Constitution of India proposes to establish an egalitarian society removing injustice and inequality by Constitutional methods through the Fundamental Rights and Directive Principles of State Policy.

### **Constitutional Provisions Relating To Certain Classes: Concept of Justice revisited:**

Dr.Ambedkar, very carefully drafted many provisions in the body of the Constitution to protect the interests of the Ati-Shudras (untouchables) and the Shudras (Backwards). Several Articles declared the policy of the caste based reservation. Article 15(4); 16(4); 46; 330; 332; 334; 335; 338; 340; 341 and 342 are the prominent amongst the provisions remarkable for declaring the reservation policy. Dr.Ambedkar

realized the Hindu society is founded on such a principle of discrimination, inequality and hatred that the existence of mere affirmative provision of equality before the eyes of law was quite insufficient in protecting the untouchables and the Backwards. Therefore, with a view to ensuring the right to equality, further provisions against the practice of discrimination committed by the Brahmins against others were made in the Constitution.

Many of the scholars have defined this reservation system as “Compensatory Justice”. They mean to say that through this reservation the injustice or wrong which were done to a section of the countrymen for the last centuries, were made to rectify the errors and to do right and justice to the victims. Besides, the victims of the wrong and injustice have been compensated with unequal favour or Constitutional benefits. This idea is not correct. Reservation policy of the new Constitution has no historical evidence that there were demands for providing compensation for not giving services in the past. No carry forward business was available in it. Dr. Ambedkar never demanded separate electorate or the reservation of seats in the Legislatures, Executive and Judiciary as compensation to the damage caused during the past centuries. Nor did the Muslims get their reservation and separate electorate since 1909 as matter of compensation. Sikhs got the same separate electorate facility since 1919. Can the Hindu society compensate the loss which has been inflicted on the humanity of India by declaring teeming millions as subhuman Shudras and untouchables? Where is the scope of compensation? Where is the point of justice in it? Justice has no meaning without punishment. Justice has its inherent punitive aspects. Can the nation or the governing castes agree to punish those who miserably reduced human species to the Shudras and Untouchables? If we go back to the case history of the Constitutional reservation then it becomes obvious that this was an out come of the struggle of the victims of discrimination of unequal treatment for acquiring equal rights paving the way to be the governing class in their own motherland. This reservation is no concession, charity or gift from the governing castes. The Dalits demanded their share in the administration and in the means of production so that they get their share protected from the discriminatory culture and laws of the Hindus. This is the principle of getting share according to the numerical strength of caste, as has been propounded by Manyawar Kanshi Ramji, “*Jiski Jitni Sankhya Bhari, Uski utni Bhagidari*”. It was a question of “Right” to get due share of the property of the motherland as a principle

of “inheritance”. It is not compensatory discrimination or “Compensatory Justice” or a grant of favour or concession. <sup>114</sup>

In a democratic set up the meaning of the Rule of Law is provided by equal treatment by law. Articles 13 and 14 of the Constitution have taken care of this aspect. Article 14 holds: “The State shall not deny to any person equality before law or equal protection of law within the territory of India”. Articles 15 and 16 of the Fundamental rights hold the provisions against “Discrimination”. Out of this provision of equality once again there arose another problem Equality amongst the traditionally unequal, better to say the ‘divine unequal’ was the cruel form of discrimination. Therefore, sub- clause of Article 15 was incorporated; further, in case of the Scheduled Caste and Scheduled Tribes, special treatment by the government was declared and was discriminated.

Article 15 (4) holds that “The State may make any special provision for the advancement of any socially and educationally Backward Classes of citizens and also for advancement of any socially and educationally Backward Classes of citizens or for the Scheduled Castes and the Scheduled Tribes”.

The Article 16 (4) holds, the State may make any provision for the reservation of appointment or posts in favour of any Backward Class of citizens which, in its opinion, is not adequately represented in the services under the State. This Constitutional provision has not specified any time limit as to how long the Constitutional reservation will continue to benefit the Untouchable Dalits and non-Hindu Tribes? Reservation issue emerged out of a historic situation of Indian social structure. Hence it gets its life-span along with the continuance of the social structure of Casteism.

Part XVI of the Constitution contains provisions relating to certain classes-the Scheduled Castes, Scheduled Tribes, Social and educationally Backward Classes and the Anglo-Indians. Article 330 and 332 provide provisions for reservation of seats in the Central and State Legislatures.

Article 330 holds: “(1) Seats shall be reserved in the House of the people for

- (a) the Scheduled Castes;

(b) the Scheduled Tribes (except for Scheduled Tribes in the Tribal areas of Assam and in Nagaland) and

(c) The Scheduled Tribes in the autonomous district of Assam”.<sup>115</sup>

Article 332 states that, “(1) Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes, (except the Scheduled Tribes in the Tribal areas of Assam and in Nagaland), in the Legislative Assembly of every States. (2) Seats shall be reserved also for the autonomous districts in the Legislative Assemblies of the state of Assam”.<sup>116</sup>

Article 331 and Article 333 provide for representation of the Anglo-Indian community by nomination by the President and Governor, in case that community is not adequately represented in the Union and States’ Lower Houses.

Article 334 holds: “notwithstanding any thing in the foregoing provisions of the part, the provisions of this Constitution relating to (a) the reservation of seats for the Scheduled Caste and the Scheduled Tribes in the House of the people and the Legislative Assemblies of the states.... Shall cease to have effect on the expiry of a period of 10 years (initially) from the commencement of the Constitution”.<sup>117</sup>

Article 335 provides the claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in making of appointments to services and posts in connection with the affairs of the Union or of a State. According to this Article it was not enough for one to be a member of the Scheduled Castes and Scheduled Tribes for getting any job in the Government Department. One cannot claim a post until one proves his worth, above a certain standard. He has to come through a competitive examination.<sup>118</sup> With a view to protecting the people belonging to SCs and STs from atrocities, victimization, discrimination and injustice etc. committed on them by Upper Castes a Commissioner for the Scheduled Castes and Scheduled Tribes was appointed in pursuance of the provisions of the Constitution. This institution, having failed to deliver the goods, was replaced by the National Commission for Scheduled Castes and Scheduled Tribes with effect from 12<sup>th</sup> March 1992 by the Constitutional (Sixty-fifth) Amendment Act, 1990, Government Order issued in 1992 to declare:

“.....replacing the Commissioner for Scheduled Castes and Scheduled Tribes appointed under Article 338 of the Constitution, all power exercised by the Commissioner for SCs and STs earlier have been taken by the National Commission for Scheduled Castes and Scheduled Tribes”. Article 338 (6) holds that the President is to cause all reports submitted by the Commissioner, along with a memorandum, explaining the action taken or proposed to be taken on the recommendations and reasons for non-acceptance, if any, of any of the recommendation made by the Commission, to be laid before both houses of parliament.<sup>119</sup> Where such report relates to a matter with which a State Government is concerned, it shall be forwarded to the Governor of the state who shall cause it, along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the state and the reasons for non-acceptance, if any, of any of the recommendations made by the Commission, to be laid before the state legislature.<sup>120</sup> The central and the State Government are constitutionally bound to consult the Nation Commission on all major policy matters affecting the Scheduled Castes and Scheduled Tribes.

Article 341 holds: “ The President may with respect to any State or Union Territory and where it is a State, after consultation with the Governor thereof, by public notification, specify the castes, races or tribes or part of group within the castes, races or tribes which shall for the purpose of this Constitution be deemed to be Scheduled Castes in relation to that State or Union Territory, as Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under Clause 1 any caste, race, tribe or part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said Clause shall not be verified by any subsequent notification”.<sup>121</sup>

The Article 342 expresses the similar provision for the people belong to the Scheduled Tribes.

Dr.Ambedkar, as a Law Minister, was not only eager to uplift the Scheduled Castes, but he was also dissatisfied with the Prime Minister over the protection of the interests of the Scheduled Tribes, Minorities and the Backward Classes. He proposed Nehru to form a National Commission for Backward Classes. When Ambedkar marked that the Prime Minister Nehru was not sincere in safeguarding the interests of the Depressed Classes, he resigned from the Cabinet as the Law Minister.<sup>122</sup>

Article 340 holds: “The President may by order appoint a Commission consisting of such persons as he thinks fit to investigate the condition of the Socially and Educationally Backward Classes within the territory of India and the difficulties under which they labour and to make recommendations as to the steps to be taken by the Union or any State to remove such difficulties and to improve their condition”.<sup>123</sup> The Commission has to investigate the matters referred to them and to submit a report to the President. The President is to cause it, along with a memorandum explaining the action taken on the report, to lie before both Houses of Parliament. Aware of the apprehensions, problems and aspirations of minorities-religious as well as linguistic-Dr.Ambedkar safeguarded the interests of the minorities in order to enable them to conserve their distinct language, scripts and culture. In addition, all minorities have been given the right to establish and administer educational institutions of their choice. For the safeguards of minorities The National Commission for Minorities Act was passed by Parliament in 1992. In 1989, the Rajiv Gandhi government brought a new Act called SC/ST Prevention of Atrocities Act (POA), to overcome the legal impediments to enforcing the Protection of Civil Rights Act 1955. Section 3 (1) (x) of Prevention of Atrocities Act says, “ whosoever intentionally insults or intimidates with intent to humiliate a member of a Scheduled caste or a Scheduled Tribe in any place with public view, he or she may be imprisoned from six months to five years”.<sup>124</sup> But all these efforts still unfulfilled. Metropolitan India has no experience of how Caste operates in small towns and rural India which constitutes over 85 percent of the country. Outside India’s big cities, lower castes have been ill-treated for a very long time, and the caste menace is still very profound. Poverty is not just a low-income category in India. For most poor people, it comes with the denial of human dignity. The largest proportion of the poor in India has historically come from the Dalits, OBCs and Adivasis, groups that have customarily suffered humiliation and discrimination in a vertical Hindu Social Order.

The Constitution of India, mainly authored by Dr.Ambedkar, in its quest of social, economic and political justice offers some special opportunities for the oppressed, neglected and depressed sections of the Indian society such as the SCs/STs, Socially and educationally backward classes, weaker sections of the people and minorities. It is shaped on the values of justice, liberty, equality, fraternity and dignity of man. The Constitution of India prescribes fundamental rights for all and these rights have to be exercised with a view to protecting the public interest

considered to be the essence of justice. It also prescribed to ensure *Liberty* of thought, expression, belief, faith and worship, *Equality* of status and of opportunity, and *Fraternity* which assures the dignity of the individual. Ambedkar strived hard for the inclusion of the Directive Principle of State Policy in the Constitution as a great measure for justice and equality. The Constitution also provides mechanism to ensure protection of the Constitutional rights with a view to creating an egalitarian social order. In order to ensure justice to the most neglected sections of Hindu society, Ambedkar got the untouchability and forced labours abolished, and uphold people's fundamental rights.

To sum up, the Constitution of India stressed the need of a complete social transformation basing on the principles of Justice, Liberty, Equality and Fraternity, which were suppressed by *Manu-Smriti* (laws to govern Hindu society), made by Manu which was unequal, sacred and divine in nature. The Constitution has, therefore, liberated the oppressed, suppressed and depressed sections as well as the backward classes of India from the thralldom of the Shastras, the chains of divine social order and the cruelties of the mediaeval feudalistic domination. It does not give any preference to any particular religion. Every religion, language or culture should have equal rights and equal freedom and none more than what others have. And true to its secular credential, it regards all religions as equal. The Constitution is the core of our national life. Dr. Ambedkar, the builder of modern India, was created an integrated society through the Constitution. He realised that political, social and economic changes can be brought about through Constitutional means. Not only the Scheduled Castes and Scheduled Tribes, but the disadvantages faced by the backward and weaker sections of the society are recognised by the Constitution and the government of India as valid, whatever be the causes. A modern nation, democratic in spirit and corps, cannot function at all in the modern age of Globalisation if a great section of the masses cannot enjoy their rights as citizens. Citizenship means empowerment of the people regarded citizens who have the right to participate in the process of development in which social, economic and political factors are interrelated. Ambedkar spoke for the whole suffering humanity and his concept of justice and equality can be applied generally in the global context and particularly against all oppressive systems- social, economic and political.

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