Chapter - II
The country became independent on August 15, 1947. On August 29, 1947, the Constituent Assembly announced the names of the Committee for drafting the Constitution of free India. It was headed by Ambedkar as its Chairman and included such persons of eminence as Sir Alladi Krishnaswamy, Sir B.N. Rau, Syed M. Sadullah, Sir N. Gopalaswami Iyengar, K.M. Munshi, Sir B.L. Mitter and Shri D.P. Khaitan. Subsequently the Drafting Committee was reconstituted when Shri N. Madhava Rao was appointed to replace Sir B.L. Mitter and Shri T.T. Krishnamachari to fill in the vacancy caused by the death of Shri D.P. Khaitan.

Ambedkar was now fully immersed in the task of drafting the Constitution of India, with his characteristic single-mindedness of purpose inspite of deterioration in his health. A speech delivered by Shri T.T. Krishnamachari on November 5, 1948 in the Constituent Assembly shows that Ambedkar was in fact the chief architect of our democratic Constitution. In his speech Shri Krishnamachari drew the attention of the Assembly to the fact that out of the 7 members nominated by the Constituent Assembly to the Drafting Committee, most of them were not doing the work for one reason or the other and, therefore, ultimately the burden of drafting the Constitution fell on Ambedkar.

The draft Constitution underwent three readings by the Constituent Assembly on November 25, 1949, Ambedkar, its principal architect, rose to reply to the debate which followed the third reading. He delivered a 40 minute speech in which he made an impassioned appeal to the people of independent India to defend their freedom with the last drop of their blood. He also cautioned against hero-worship and at the end of his speech he made a fervent appeal to all Indian to be a nation in the true social and psychological sense by totally discarding the caste system. The entire Constituent Assembly, including Prime Minister Nehru, listened to his speech with rapt attention and all the members applauded him when he sat down.1
Rajendra Prasad\textsuperscript{2}. Chairman of the Constituent Assembly, was so impressed that he made the remark: “sitting in the Chair and watching the proceeding from day to day, I have realised, as nobody else would have, with what zeal and devotion the membership of the Drafting Committee and especially its Chairman, Ambedkar, inspite of his indifferent health, have worked. We would never make a decision which was or could be ever so right as when we put him or the Drafting Committee and made him its Chairman”. He has not only justified his selection but has added luster to the work which he has done. Jawaharlal Nehru made the remark: "Ambedkar had played a most important part in the framing of India's Constitution. No one took greater trouble and care over Constitution making than Ambedkar".\textsuperscript{3}

Ambedkar knew well that unless reservation in jobs and legislature was given to the \textit{dalits}, they would never be in a position to be equal partners in the administration of the country and they will remain oppressed and slaves for ever. The conscience of the Constitution found adequate expression on the theme. In his final address to the Constituent Assembly, Ambedkar gave a caution and premonition and derived home this point not to interpret but to illumine the scheme of the equality code and the casteless society plea. He observed, "the third thing we must do is not to be content with the mere political democracy, we must make our political democracy a social democracy as well. Political democracy cannot last unless there lies at the base of it social democracy. What does social democracy mean? It means a way of life which recognises liberty, equality and fraternity as the principles of life. These principles are not to be treated as separate items in a trinity. They form a union of trinity in the sense that to divorce one from the other is to defeat the very purpose of democracy. Liberty cannot be divorced from equality, equality cannot be divorced from liberty. Nor can liberty and equality be divorced from fraternity. Without fraternity, liberty and equality could not become a natural course of things. It would require a constable to enforce them. We must begin by acknowledging the fact that there is complete absence of two things in the
Indian society: one of these is equality. On social plane, we have in India a society based on the principles of graded inequality which means elevation of some and degradation of others. On the economic plane, we have a society in which there are some who have immense wealth as against many who live in object poverty. On the 26th January, 1950 we are going to enter into a life of contradictions. In politics we will have equality and in social and economic life we will have inequality. In politics, we will be recognising the principle of 'one man one vote and one vote one value'. If our social and economic structure continue to deny the principle of one man one value, how long shall we continue to live this life of contradictions? How long shall we continue to deny equality in our social and economic life? If we continue to deny it for long, we will do so only by putting our political democracy in peril. We must remove this contradiction at the earliest possible moment or else those who suffer from inequality will blow up the structure of political democracy which this Assembly has so laboriously build up."^4

There were eminent persons of different walks of life participated in the discussions as members of the Constituent Assembly. Shri P. Kakkan of Madras argued that "the poor Harijan candidates hitherto did not get proper appointments in government services. The higher officers selected only their own people but not Harijans. Even in the matter of promotions we did not get justice. The government can expect necessary qualification or personality from the Harijans, but not merit. If you take merit alone into account, the Harijans cannot come forward. I say in this house that the government must take special steps for the reservation of appointment for the Harijans for same years. I expect that the government will take the necessary steps to give more appointments in police and military services also. For example, in Kashmir the poor Harijans are fighting with great vigour. I say in this house that Harijans must be given more jobs in this government and be encouraged by the government"."^5
Shri T.V. Muniswami Pillai of Madras said that "In the great upheaval of making a Constitution for this country, I feel that the communities that have not enjoyed the leaves and fishes of the services should not be left out. It is for this purpose, I gave notice of an amendment and a further amendment signed by more than fifty members which has been presented to this House, but for reasons well known to you. I specially mean the scheduled caste are given a chance, unless there is an assurance that these communities will at all times be taken into account and given enough and more chance in appointments, their uplift will still stand over. I may tell this House that it is not the object of any of the leaders of the Harijan community to perpetuate the communal bogey in this land for ever, but so long as they remain so backward in getting admission into the services it is highly necessary that they must be given some protection".

Shri T. Channaiah of Mysore (scheduled caste) remarked that "the backward communities suffer from two disabilities, namely, social disabilities and educational disabilities. I want this reservation for 105 years which has been the period during which opportunities have been denied to them". At present there is reservation in the elections and thereby we get a chance to discuss our problems here. But if there was no such reservation it would not be possible for us to come here as we would not be able to win in the general elections. I therefore submit that there should be reservation in the services and elections.".

If we consider the aspect politically, scheduled caste community is not represented anywhere if no reservation of seats is given. If the qualifications for Harijan candidates are not relaxed, our candidate will not be able to compete with the candidates of the Brahmin Community or the so-called Suvarna Hindus.

The question of reservation in services was handled by the Constituent Assembly in the most vacillating manner. In the initial stages of the framing of the Constitution the opinion was in favour of continuation of the
policy of reservation in services to minority communities. The report of the Advisory Committee on Minorities under the Chairmanship of Sardar Vallabhai Patel in 1947 had made recommendation, which reflected this opinion. The Committee while rejecting a Constitutional guarantee of representation in the public services to the minority communities in proportion to their population recommended that "consistent with the need of efficiency in administration, it is necessary for the state to pay due regard to the claims of minorities in making appointments to public service". The Centre and the Provinces, the Committee recommended should appoint 'Special Minority Officers' charged with the duty to enquire into cases in which it alleged that 'rights and safeguards have been infringed and submit a report to the appropriate legislature. Article 296 of the Draft Constitution laid down that "the claims of the minority communities shall be taken into consideration, in the making of appointments to services and posts in connection with the affairs of the Union or a State".

The Advisory Committee on Minorities later modified its view in regard to claims of religious minorities in making appointments to public services. "I can assure the house". Mr. K.M. Munshi stated in the Constituent Assembly that at the time when the Advisory Committee met on the last occasion, there was no question of providing safeguards for any religious minority. The negotiations proceeded on the footing that except the backward classes who are economically and socially backward and scheduled castes and Tribes who have special claim of their own, no other minority should be recognized in the Constitution". An exception was made in the case of the Anglo-Indian community due to certain special circumstances. The committee noted that "as a result of historical circumstances the whole economy of the community is at present dependent on finding employment in certain types of posts in the Railways, the Posts and Telegraphs and the Customs Department". The Committee added that "In view of this we feel that if the existing safeguards in this regard are not continued in some form for some years to
come, the community will be subjected to a sudden economic strain which it may not be able to bear”.

As a social scientist, Ambedkar's views almost bordered on the Marxist frame of a class society with class struggle going an intermittently under a caste facade. Ambedkar sought to identify the class interests of the untouchables. He claimed that under the garb of religion the caste Hindus exploited them. He had recognised, much earlier, this class-caste identity and made it a political issue. It is in consonance with such a principle that he put forth the claims on behalf of the untouchables for Constitutional safeguards to enable them to have due share in the political power of the country. He always maintained that as a political problem it has to be resolved through political means.

Initially thus, the Constituent Assembly was in favour of abolition of separate electorates but was in favour of reservation of seats for minorities for a fixed period. In July 1947, the Minorities sub-Committee recommended the system of reservation of seats for recognised minorities for a period of ten years instead of separate electorates. The Drafting Committee accepted this recommendation and the Draft Constitution accordingly provided for reservation of seats in the Union Legislature for the minorities. After the partition of the country the issue was subjected to re-examination in the changed political context. In May, 1949, a proposal was moved in the Advisory Committee that the system of reservation of seats for minorities in the legislature should be abolished. While it was welcomed by the Muslim members, the representative of the scheduled castes put forward the plea that as they were backward the system of reservation would help in safeguarding their interests and facilitate their advancement. Accordingly it passed the resolution which read: "that the system of reservation for minorities other than scheduled castes in the legislature be abolished". Thus, the Constitution provided for the reservation of seats for the scheduled castes and scheduled tribes in the legislature for ten years.
In the Constituent Assembly the representative of the Sikh community doggedly fought to the end that Constitutional safeguards should extend to all minority communities and that the original provisions of the Draft Constitution which were based on the recommendations of the Advisory Committee on Minorities made in 1947 should be retained. Some of the Muslim members also passionately pleaded for reservation in services to Muslims. Z.H. Lahari made the plea that, "in the Legislature you have got statutory reservations where they are meaningless, but when you come to the services it is merely said that their claims shall be considered. This is a very pious wish. Take away the reservation from the Legislature and for God's sake give us reservation in the services. Here I speak not only for the Muslim of the United Provinces but also for other minority people". He also argued that the concessions made to Anglo-Indian community were a blatant discrimination. The Constituent Assembly was not in favour of reservation of posts to the minority communities except the Anglo-Indian community for a short period. Sardar Patel declared that "this Constitution of India of free India, of a secular state will not hereafter be disfigured by any provision on a communal basis".

The Constituent Assembly was unmistakably opposed to the policy of reservation of posts for the minorities with the exception of Anglo-Indian community. However, it was not against the adoption of the policy of reservation in favour of backward classes and scheduled castes and scheduled tribes. A feeble opposition was put up against this policy as being inconsistent with the concept of secular state. Mr. Damodar Swarup Seth maintained that "It is not easy to define precisely the term "backward"; nor is it easy to find a suitable criterion for testing the backwardness of a community or class.... it will give rise to casteism and favouritism which should have nothing to do in a secular state". Ambedkar defended the policy of reservation in favour of backward classes as presently embodied in the Constitution and argued that it reconciled three points of views expressed in the Constituent Assembly "The first is that there shall be equality of opportunity for all citizens. It is the desire
of many members of this House that every individual who is qualified for a particular post should be free to apply for that post, to sit for examinations and to have his qualifications tested so as to determine, while he is fit for the post or not and that there ought to be no hindrance in the operation of the principle of equality of opportunity. Another view mostly shared by a section of this House is that if this principle is to be operative.... there ought to be no reservations of any sort for any class or community at all, that all citizens if they are qualified, should be placed on the same footing of equality so far as the public services are concerned.... then we have quite a massive opinion which insists that there shall be equality of opportunity, there must at the same time be a provision made for the entry of certain communities which have so far been outside the administration". Thus, the Constitution while adopting the general principle of non-discrimination based on religion, caste, etc. has made an exception in so far as scheduled castes, scheduled tribes and backward classes are concerned.14

In the Constituent Assembly there was a demand for a precise definition of the term "Backward". H.N. Kunzru15 deplored that "the word 'Backward' is not defined anywhere in the Constitution". He pleaded that "whether any class is Backward or not should not be left to the law courts to decide. It is our duty to define the term". T.T. Krishnamachari considered the term to be very vague and susceptible to varied interpretations. "It does not apply to a backward caste.... It says class. Is it a class which is based on grounds of economic status or on grounds of literacy or on grounds of birth?" Quite a few members pleaded for the substitution of the word "scheduled caste" for "backward classes" in Article 16(4) as the latter term was very vague. K.M. Munshi16 contended that "It is perfectly clear that the word 'Backward' signifies that class of people - does not matter whether you call them untouchable or touchables, belonging to this community or that a class of people who are so backward that special protection is required in the services". He referred to the practice in Bombay Province where backward classes were defined in a manner
as to include "not only scheduled castes and scheduled tribes but also other backward classes who are economically educationally and socially backward". He added: "we need not, therefore, define or restrict the scope of the word 'backward' to a particular community. Whosoever is backward will be covered by it...". Munshi's reply is important because it makes clear that "any backward class" in Article 16(4) means not only backward classes but also scheduled castes and scheduled tribes. Further it lays down that backward class is one which is socially, economically and educationally backward.¹⁷

In the Constituent Assembly the scope of Article 16(1) and Article 16(4) also received careful examination. The unequivocal opinion was that the principle of equality of opportunity embodied in Article 15(1) must be effective and for this purpose reservation of posts in public services under Article 16(4) must be restricted. Ambedkar was emphatic on this point, "if reservations were made for a community or a collection of communities the total of which came to something like 70 per cent of the total posts under the state and only 30 per cent are retained as the unreserved, could anybody say that the reservation of 30 percent as open to general competition would be satisfactory from the point of view of giving effect to the first principle, namely that there shall be equality of opportunity? It cannot be, in my judgement. Therefore, the seats to be reserved, if the reservation is to be consistent with sub clause (i) of Article 10 (now Article 16), must be confined to a minority of seats. It is then only that the first principle could find its place in the constitution and effective in operation. We have to safeguard two things, namely, the principle of equality of opportunity and at the same time satisfy the demand of communities which have not had so far representation in the state, then, I am sure they will agree that unless you use some such qualifying phrase as 'backward' the exception made in favour of reservation will ultimately eat up the rule altogether. Nothing of the rule will remain". He believed that the judiciary would provide an effective safeguard if the reservation tended to be excessive. If the local government included in this category of reservations such a large number of
seats, I think one would very well go to the Federal Court and the Supreme Court and say that the reservation is of such a magnitude that the rule regarding equality of opportunity is destroyed and the court will then come to the conclusion whether the local government or the State Government acted in a reasonable and prudent manner.  

Ambedkar's approach was different in respect of its thrust rather than the basic philosophy of safeguards. It was not at all his intention to scoring some concessions from the government or to be content with a few more seats for his people. On the other hand, he made use of the opportunity of constitution making for solving the problem of minorities in India on more enduring grounds. It is also to be noted that he was not for the perpetuation of the minorities but he pleaded for their merger some day into one. He pleaded with the Constituent Assembly that “in this country, both the minorities and the majorities have followed a wrong path. It is wrong for the majority to deny the existence of minorities. It is equally wrong for the minorities to perpetuate themselves. A solution must be found which will serve a double purpose. It must recognise the existence of the minorities to start with. It must also be such that it will enable minorities to emerge some day into one.... The moment the majority loses the habit of discriminating against the minority, the minorities can have no ground to exist. They will vanish.”

When Ambedkar entered the Constituent Assembly, he entered it as a 'protestant'. He had never thought that he was destined to be the 'chief architect' of the Indian Constitution. How could he ever imagine that an untouchable Mahar would be enlisted and marked out for this privilege and honour? When it did come Ambedkar himself was more than surprised. It was all the more great when he was elected Chairman of the Drafting Committee. He had entered the Assembly with the only hope of safeguarding the rights of the scheduled Castes. He was overwhelmed by the gesture and acknowledged his election gratefully. The Constituent Assembly of India, that was entrusted with the task of Constitution making, was composed of the representative
elected from the then elected Legislative Assemblies of the British Indian Provinces and the representative of the princely state, joining at a later stage. It was in no way a body that was elected on the basis of a liberal franchise. It was also true that in view of the special situation in the country, the nominees of the Indian National Congress were predominant, though there were the representative of the other parties too. There were Hindus, Muslim, Christians, Sikhs, Parsis, Harijans and others. A galaxy of freedom fighters led by Jawaharlal Nehru, Patel, Rajendra Prasad and others with the conspicuous absence of Gandhi, took a leading part in the making of the Constitution. The prominent among the lady members were Sarojini Naidu, Vijayalakshmi Pandit, and Durgabai. By and large, the best part of the country's leaders of men, thought and ideas participated in the deliberations of this important and historic Assembly.  

The Constitution has recognised the right of equality for the religious, linguistic and cultural minorities and has stated them fully. In this connection special mention must be made of Article 17 of the Constitution which abolishes the practice of 'untouchability' in any form. Article 17 in a simple and brief way has abolished 'untouchability', and age-old anachronism of our society. It was for that day, on which the Constituent Assembly adopted this Article in one voice, that Ambedkar was anxiously striving for all along his life and was looking forward. Accordingly, the untouchability Offences Act, 1955 provided for specific punishment for particular offences under Article 17. As one of the members of the Assembly observed, "...this clause does not propose to give special privileges and safeguards to some minority community, but it proposes to save one-sixth of the Indian population from perpetual subjugation and despair, from perpetual humiliation and disgrace... for the sake of sustaining our goodwill and reputation beyond the boundaries of India, this clause... must find a place in the Constitution of free and independent India.... Today, the 29th November 1948 is a great and memorable day for us, the untouchables. This day will go down in history as the day of deliverance, as the
day of resurrection of the crores of Indian people... Last of all. I cannot resist the temptation of saving a few words about our great and eminent law Minister and Chairman of the Drafting Committee, Ambedkar. It is an irony of fate that the man who was driven from one school to another, who forced to take his lessons outside the classroom, has been entrusted with this great job of framing the Constitution of free and independent India, and it is he who has finally dealt a death blow to this custom of untouchability, of which he was himself a victim in his younger days.... "

It was pointed out that Article 17 did not 'create' any particular right and privilege. Ambedkar was aware of this fact but as he had pointed out earlier, it was the only effective way in which the determination of the majority communities and also the minorities to eradicate this evil root and branch, could be expressed emphatically. Untouchability was one of the greatest disabilities suffered mutely by nearly, one-sixth of the country’s population. If a 'right' means 'a remedy against a disability', the fundamental right created in Article 17 should be a great charter of a deliverance to those people. Those who had inflicted and perpetuated such a humiliation and disgrace on these unfortunate people, by writing this right into the Constitution could repent of their sins. By providing joint electorate except the reserved seats for a period of ten years, the Constitution sought to establish equality. Sardar Patel observes, ".... it is not our intention to commit the minorities to a particular position in a hurry. If they really have come honestly to the conclusion that in the changed conditions of this country, it is in the interest of all to lay down real and genuine foundations of a secular state, than nothing is better for the minorities than to trust the good-sense and sense of fairness of the majority, and to place confidence in them..... But in the long run, it would be in the interest of all to forget that there is anything like majority or minorities in this country and that in India there is only one community". But a section of the members representing the Sikhs and Muslims were not happy over this, and they demanded some provision for them by which they could get political
safeguards. Some Muslim Members suggested the adoption of the system of Proportional Representation with multi-member constituencies and cumulative system of voting. Though this suggestion was appreciated in principle, it was rejected owing to practical difficulties that beset such a system in a country with such large number of illiterate voters. Further, Ambedkar himself would have preferred a longer period of special protection, to ten years, for the Scheduled Castes. But the consensus was in favour of ten years, which was accepted.

Despite the best intentions of the Constituent Assembly, the deep rooted caste system has sustained the practice of untouchability and discrimination. As Radhakrishnan rightly observes, "the cause of a society's destruction happens not so much in other things as to being gripped by jejune policies and the form of blind beliefs... what the spiritual truth is, may be permanent; all other of rules change according to the requirements of an age, and even moral rules or ideals are not sanatan or eternal. They are relative to the social requirements and circumstances. Whether a moral system is good or bad depends upon the fact that how far it does benefit to mankind. The rules or institutions which have lost their vitality, must be eliminated". 25

The abolition of the caste system seems, however an ideal which is not likely to be realized except in the dim and distant future; and to those who hope for the weakening of its hold upon the people it is disappointing to find that candidates for election to the legislature of one province solicit the votes of their castemen simply on the strength of caste fellowship without regard to other considerations. that a solid caste vote has determined the result of some elections, and that there has been a tendency in the legislature itself for groups to be formed on caste lines. 26

A powerful factor which helped to preserve the essentials of the varna system and to down grade the sudras was the indoctrination of the masses in the theory of karma and of the bad consequences following the non-performance of the varna or jati, ordained by the scriptures. It is argued that
since the masses were widely educated and endowed with critical acumen, they could not believe in the natural superiority of the higher *varnas*, but there is no basis for such a wild claim. On the contrary, the minds of the labouring masses were so strongly enchained by the brahmanical ideology that both direct coercion against the *sudras* and violent revolts on their parts were made extremely difficult. Even Nehru despite his strong secular credentials could not make a dent in the attitude of the high caste Hindus. Once, in Goa when he was coming out of the *Mangesi* temple after *darshan*, he was surrounded by Harijans who were standing at the gate and lamented, "Panditji, we have seen you, but not God in this temple". Nehru was reported to have said, "I am sorry, what can I do? If these Brahman priests allow you, I shall ask them".28
References