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Ambedkar's Emancipatory Constitutionalism

"Rights are Real only if they are accompanied by Remedies."

—Dr. Ambedkar, 1947

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Chief Justice of India Dr. D. Y. Chandrachud delivered a lecture on the theme of "Reformation Beyond Representation: The Social Life of the Constitution in Remedying Historical Wrongs", at the Sixth International Conference on the "Unfinished Legacy of Dr. B.R. Ambedkar: Law, Caste, and the Pursuit of Justice" at Brandeis University, Waltham (USA). The lecture brought to the forefront insights on the complex issue of the historical wrongs faced by the excluded caste of Untouchables in India and Dr. Ambedkar's role in providing safeguards in the Indian constitution for their upliftment. Justice Chandrachud elaborates on the nature of emancipatory constitutionalism embedded in the Indian Constitution and Dr. Ambedkar's role in its articulation for social justice to the Untouchables and transforming an unequal caste-ridden society towards the goals of equality and liberty to all citizens. The CJI indicated the outcome of the reformatory provisions in the Indian Constitution in the form of legal safeguards against caste discrimination and affirmative action policies. At the same time he also pointed towards the limited impact of reformatory measures due to persisting contradictions between what he termed the "social life and constitution life", the gap that persists in the values of equality, liberty and fraternity enshrined in the Constitution and the traditional values and customs that govern the actual social relations of Hindus towards low caste Untouchables. The CJI referred to the systematic discrimination and structural inequalities in resources and education as a root cause of the persistence of the problem of Untouchability, and proposed solutions outside the courtroom by civil society against caste discrimination and untouchability, particularly by the oppressed castes. On several points, he draws a parallel between the Untouchables in India and the African Americans in USA. The canvas of enquiry is comprehensive and inclusive of crucial legal and constitutional issues. In the brief comments below, I elaborate on the main propositions laid down by Justice Chandrachud in his speech.

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How Harmful are the Historical Wrongs?

Justice Chandrachud began by arguing that "the annals of history are stained with instances of profound injustice. What sets these wrongs apart is that they deny individuals their right to participate and reap the benefits of living together in society based on the identity of the individual. …Thus, when I say 'historical wrongs', it *is social systems and arrangements of identity-based exclusion that go against the grain and idea of human equality and what may be considered a just and fair society.*" Justice Chandrachud goes on to add that, "Unfortunately, the legal system has often played a pivotal role in perpetuating historical wrongs against marginalized social groups in ancient India (BCE 1500-BCE 600), medieval (CE 700-CE 1756) and colonial British India (1758-1947). Law as an institution was practiced to maintain existing power structures, and to institutionalize discrimination, leaving a lasting legacy of injustice that continues to shape the lives of these groups."

What is the nature of this historical wrong to which Justice Chandrachud referred to? The historical wrong has its origin in a period sometime between BCE 1000-BCE 600 in the later Rigvedic time of ancient India. The first definite indication of the social organization of the caste system shaped by graded inequality is mentioned in the Purusha Sukta of the Rigveda (BCE 1000-BCE 600). The Purusha Sukta ordained that, "For the prosperity of the world, He (the creator) from his mouth, arms, thighs and feet created the Brahmin, Kshatriya, Vaishya and Shudra respectively" (Ambedkar 1987). By the end of the later Vedic period (about BCE 600), the Varnas gradually become hereditary, endogamous and birth-based and emerged in its full form with some of its essential features: clear separation of people in groups or castes, crystalized by the practice of endogamy or marriage within caste, restrictions on inter-caste dining and social relations, and residential segregation, which evolved in stages. The caste system involved four castes, but later the fifth caste, namely, Untouchables emerged and was integrated into it. Untouchability had taken a firm and definite shape around CE 200, although its early signs go back to around BCE 600 (Jha 2018).

The practice of caste and untouchability, although it began as taboo, was made legal, the credit of which goes to Manu, the author of the *Manusmriti* codified sometime around BCE 200 (Buhler 1886). The *Manusmriti* comprised the culmination of all the stands in early legal literature and gave it a definite legal shape. Reference to some legal provisions in the *Manusmriti* provides an idea about the harm done to the Shudras/Untouchables:

The legal restrictions related to ownership of property (Buhler 1886: 401)

"No superfluous collection of wealth must be made by a Shudra, even though he has power to make it, since a servile man, who has amassed riches, becomes proud, and, by his insolence or neglect, gives pain even to Brahmins."

"No collection of wealth must be made by a Shudra even though he be able to do it, for [a] Shudra who has acquired wealth gives pain to Brahmins."

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"A Brahmin may take possession of the goods of a Shudra with perfect peace of mind, for, since nothing at all belongs to this Shudra as his own, he is one whose property may be taken away by his master."

The restrictions on occupation (Buhler 1886: 401)

"One occupation only the Lord prescribed to the Shudra; to serve meekly even these other three castes."

"If a Shudra is unable to subsist by serving Brahmins, he may serve a Kshatriya, or he may also seek to maintain himself by attending on the wealthy Vaishya."

"The remnants of their food must be given to him, as well as their old clothes, the refuse of their grain, and their old household furniture."

"But let the Shudra serve the Brahmin."

The restrictions on learning (Buhler 1886: 401)

"A twice-born man who has — (improperly) divulged the Vedas (to a Shudra and women) commits sin, and atones for his offence, if he subsists for a year on barley."

"If the Shudra intentionally listens for committing to memory the Vedas, then his ears should be filled with (molten) lead and lac; if he utters the Vedas his body should be cut to pieces."

"Let the three twice-born castes (that is Brahmin, Kshatriya and Vaishya), discharge (prescribed) duties, study (the Vedas) but among them, the Brahmin (alone) shall teach it, not the other two, that is and established rules.

Privileges of a Brahmin at the cost of Shudra (Buhler 1886: 401)

"But let a Shudra serve Brahmins, either for the sake of heaven or with a view to both this life and next, for he who is called the servant of a Brahmin thereby gains all his end."

"The services of the Brahmins alone are declared to be an excellent occupation for Shudra, for whatever else besides this he may perform will bear no fruits."

"Whatever exists in the world is the property of the Brahmin, on account of excellence of his origin the Brahmin, indeed, is entitled to all."

The Untouchables, like the Shudra suffered from denial of rights but also faced a stigma of "impurity and untouchability" causing defilement to the higher castes. Their impure and polluting status results in complete segregation and separation from the rest of Hindu society. Not only did their touch cause pollution but pollution was also caused through proximity, sight, hearing, and speech. With these ugly disabilities they eked out a miserable existence, and this was the most sickening and pernicious development in the social organization of the Hindu caste system.

An equally deplorable feature to which Justice Chandrachud referred is the slave status of the Untouchable, referring to the work of Sanal Mohan (2015) who has depicted the worst kind of slavery of Untouchables in South India where they were the property of high castes, and hence could be sold and purchased. Children and wife and husband could be sold separately, hired out, physically assaulted, disfigured by

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cropping off the nose and even killed or required to live and work on waterlog farms, known as an "agro-slave" and "soil slave". The Law Commission of 1840 empirically found slavery among the Untouchables as an all-India phenomenon (Banaji 1937). The Hindu laws about slavery leave little doubt about the community-based character of slavery faced by an Untouchable. This became quite obvious from the legal provisions in the *Manusmriti*, codified around BCE 200.

The *Manusmriti* ordains (Buhler 1886: 417; Sahoo 2013: 453):

"*A Shudra, whether bought or unbought, should be reduced to slavery because he is created by God for the service of a Brahmin.*"

Manu further says:

"*Even if a Shudra is made free from the services of a master one should not consider this as his absolute freedom from slavery, because servitude remains in him as (an) integral part of his nature or it is one of his basic tendencies to serve others from which none can actually disassociate him.*"

This was the situation during the ancient Rigvedic period (BCE 1000-BCE 600) on the status of Shudras/Untouchables. The caste system however continued without much interruption in the later period, in what is called the Medieval period that includes the Islamic period as well (CE 700-CE 1400). About caste in the Medieval period, Shireen Moosvi (2011 and 2003) has argued that: "There was no desire at all to declare a war against either the caste system or to undermine it. They (Islamic rulers) continued to regard the caste system as a permanent feature of society. There is no evidence that any of the oppressed castes secured better treatment." Moosvi suggests that "within Islamic thought, there was a strong hierarchical streak, which, for example, greatly distinguished between the free-born and the slave; slaves were intrinsically low-born and subjected to contempt being vain fellows and purchased ones. . . .Thus, the Arab society in which Islam arose had deep rooted concepts of tribal differentiation, which continued under Islam, . . . With this experience in Iran behind them, the Arab policy with regard to caste could well have been predicted." (Moosvi 2003)

Not much changed during the British period (1758-1950). Among the British, who took over India in the second half of the eighteenth century (CE 1757) from the Mughals, it was Warren Hastings, the first Governor of Bengal, who made the following rule in 1772 when he introduced full-scale reforms in the judicial system for the first time in the history of British colonial rule in India.

"*That in all suits regarding inheritance, marriage, caste, and other religious usages as institutions, the Laws of the Koran with respect to Mohammedans and those of the Shaster (Shastras) with respect to Hindoos, shall be invariably adhered to; on all such occasions the Maulvis or Brahmins shall respectively attend to expound the Law, and they shall sign the report & assist in passing the decree.*"

The Hindu Law was, consequently, not the classical Brahminical law itself. It was a law system based on the Brahminical law but readjusted for the British judicial administration (Banaji 1937).

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The British also faithfully carried forward the Hindu and Islamic slavery right from 1772 till 1843, when slavery was delegalized with the adoption of Act V in 1843 and abolished with the adoption of the Indian Penal Code in 1860 (Banaji 1937). Selective legal reforms were introduced under pressure from those against untouchability and other reformers, some of which are mentioned in detail in the book by Manoj Mitta (2023). Commenting on the half-hearted efforts by the British, Dr. Ambedkar in his speech on November 20, 1930 at the First Round Table Conference held in London to frame the Indian (British) Constitution in 1935, in front of the King and Prime Minister of England, observed:

"*When we compare our (referring to the Depressed Classes) position, with the one which it was our lot to bear in Indian society of pre-British days, we find that instead of marching on we are only making time*" — and he goes on to argue that — "*The British government has accepted the social arrangements as it found them, and has preserved them faithfully in the manner of the Chinese tailor who, when given an old coat as a pattern, produced with pride an exact replica, rents, patches and all. Our wrongs have remained as open sores and they have not been righted, although 150 years of British rule have rolled away.*" Dr. Ambedkar goes on to say that: "*The reason why it (the British Government) did not intervene is because it is afraid that its interventions to amend the existing code of social and economic life, will give rise to resistance*" (Busi 2016).

The historical wrong to which Justice Chandrachud rightly referred was the most ugly, sickening, pernicious and vicious byproduct of caste, Untouchability, which has eked out a miserable existence for too long, from BCE 600 to 1950, for about 3000 years, a suffering that is rarely to be found anywhere in the world. It deserves to be rooted out.

Emancipatory Constitutionalism in Indian Constitution

The Indian Constitution adopted in 1950 overturned the legal framework of the *Manusmriti*. Justice Chandrachud rightly observed that: "Dr. Ambedkar advanced a *transformative constitutionalism* and brought values of ideals of Liberty, Equality, and Fraternity in the language of the Constitution itself, from the Preamble across the entire canvas of the Indian constitution. In Dr. Ambedkar's vision, the idea of a constitution goes beyond its traditional role of securing fundamental rights, and extends the constitution's capacity to liberate and empower marginalized and oppressed groups."

Before we analyse Justice Chandrachud's interpretation of Dr. Ambedkar's idea of Emancipatory Constitutionalism as embedded in the Indian Constitution, it is useful to understand the proposition related to an idea of emancipatory constitutionalism conceived by Dr. Ambedkar. In the very first meeting of the Constitution Assembly held on December 1946 which discussed the objective of the Constitution, Dr. Ambedkar observed: "*I find that this part of [the] Resolution, although it enunciates certain rights, does not speak of remedies. All of us are aware of the fact that rights are nothing unless remedies are provided whereby people can seek to obtain redress when rights are invaded. I find the complete absence of remedies . . . . There are certain*

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provisions which speak of justice, economic, social and political . . . . I would have expected some provisions whereby it would have been possible for the state to make economic, social and political justice [a] reality" (Busi 2000).

Thus Dr. Ambedkar's vision for constitutionalism encompasses not only the provision of fundamental rights but also the remedies to enable the citizen to access fundamental rights**.** This vision influenced the making of the Indian Constitution. Justice Chandrachud captures the features of Emancipatory Constitutionalism incorporated by Dr. Ambedkar. He mentions that the Indian Constitution in 1950 provided for fundamental rights, such as the right to equality, equality before law or equal protection of law, equality of opportunity in matters of public employment, prohibition of discrimination on grounds of religion, race, caste, sex or place of birth, right to freedom of speech and expression, freedom of religion, protection of life and personal liberty, and right against exploitation and forced labour. However provisions go much beyond fundamental rights, and also includes the (commitment of) remedies in terms of legal safeguards against discrimination and affirmative action policy to ensure fair share to the discriminated groups in legislature, public service and educational institutions and other public spheres (National Law University 2016). For instance, Article 17 abolishes untouchability, and placed in the chapter on fundamental rights, along with the provisions of equality and non-discrimination *and* the enforcement of any disability arising out of "Untouchability" is treated as an offence. Justice Chandrachud states that Dr. Ambedkar tried to institutionalise "*social revolution through law and through a robust legal framework that would safeguard the rights and dignity of untouchable people*". Beside the key aspect of Dr. Ambedkar's transformational constitutionalism, was the inclusion of affirmative action measures into the Constitution as a remedy to ensure fair share to discriminated classes in legislature, public services, educational institutions, including a provision of National Commission for Scheduled Castes to oversee their progress.

Another significant feature of Dr. Ambedkar's Emancipatory Constitutionalism which needs to be mentioned was the inclusion of "Directive Principles of State Policy" in the Constitution. Justifying the inclusion of directive principles, Dr. Ambedkar on November 4, 1948, while speaking on the Draft Constitution argued that, "*It is a novel feature in a constitution. What are called Directive Principles is merely another name for Instruments of instructions for framing the policies for the wellbeing of the people.*" In 1981, the Supreme Court clarified that the difference between the Fundamental Rights and the Directive Principles lies in that Fundamental Rights seek to assure political freedom to the citizen, while Directive Principles aimed to secure social and economic freedom by appropriate state action. In another instance, the Supreme Court in 1973 clarified: "The purpose of Directive Principles is to fix certain social and economic goals for immediate attainment by bringing about a non-violent social revolution. The constitution seeks to fulfil the basic needs of the common man and to change the structure of our society. The Fundamental Rights and Directive Principles — together, not individually, they form the core of the Constitution. Together, not individually, they constitute its true conscience" (National Law University 2016).

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However the affirmative action as part of the Constitution had to be justified as it did not fall in line with the traditional notion of constitutionalism. For instance, for each provision of fundamental rights, the Constitution states that: "Nothing in these articles 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," for reservation in legislature, public services and education institutions, which the Constitution did. Some contended against these provisions claiming that these were contradictory and interfered with liberty, as they believe that interference by the state holds a negative impact on liberty; liberty is contemplated as freedom from interference by the state. Justice Chandrachud stated that: "Dr. Ambedkar did not view equality or liberty and affirmative action as contradictory." Justice Chandrachud was right in interpreting the mind of Dr. Ambedkar when he says, "The negative conceptions of freedom ignore the ongoing deprivations that can arise out of dominating relationships or societal arrangements — the social, legal, and economic structures that govern their lives may lead to domination on the site of caste, race, gender, disability, or economic well-being." He goes on to add that Dr. Ambedkar took aim at precisely such forms of dominating relations and societal arrangements when seeking to secure freedom as a means of social transformation. He quoted Dr. Ambedkar from his famous book, *Annihilation of Caste*, as saying that, "*He characterises liberty as the destruction of the dominion which one man holds over another*" and adds, "*That is, even where domination is the result of actions by non-State actors or structural societal arrangements, liberty is at risk and must be remedied through by the State. For him, ensuring liberty required ensuring that every person in a society had sufficient standing that they were not dominated, whether that be through economic, social, or religious power. Unlike narrower conceptions of liberty that seek solely to prevent episodic State intervention, conceiving of freedom as non-domination allows the very site of State intervention to be liberty generating, by eradicating sources of dominating power*," observed Justice Chandrachud.
At another instance Dr. Ambedkar had stated that:

> *Liberty to be real must be accompanied by certain social conditions. In the first place there should be social equality. Privileges tilts the balance of social action in favour of its possessors. The more equal are the social rights of citizens, the more able they are to utilize their freedom. If liberty is to move to its appointed end it is important that there should be equality. In second place there must be economic security. A man may be free to enter any vocation he may choose. . . .Yet if he is deprived of security in employment he become a prey of mental and physical servitude incompatible with the very essence of liberty. Without economic security, liberty is not worth having. Men may well be free and yet remain unable to realise the purpose of freedom. Liberty takes root in a milieu of equal social rights and economic security.* (*Dr. Babasaheb Ambedkar: Writing and Speeches*, volume 3, 1987: 39-66)

Thus, "Dr. Ambedkar conceived of a reformative constitutionalism that was simultaneously interventionist yet liberty enhancing", observed Justice Chandrachud.

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In essence, his vision for constitutionalism emphasized not only the protection of fundamental rights but also the active promotion of social equality and justice through state action.

Progress but Limited

Justice Chandrachud mentioned that these affirmative action policies in India have offered crucial support to oppressed social groups by providing them with opportunities for education, employment, and representation that might otherwise be inaccessible due to deeply entrenched inequalities. The representation of constitutionally protected social groups (called Scheduled Castes and Scheduled Tribes) has increased in the government services closely in proportion to their population share during the last seven decades. However, Justice Chandrachud also recognised the limits of this progress as the presence of members of oppressed groups in top positions of policy making is low. Of a total 322 officers in different ministries/departments under Government of India, only 16 belong to Scheduled Castes, which is 4.9 per cent of total posts, and only 13 belong to Scheduled Tribes, which is only 4 per cent, lacking a meaningful voice in the decision-making processes. We may add that most importantly, caste discrimination still persists despite the law. For the period 2001 to 2016, a total of 2,57,961 cases of discrimination were registered by the Scheduled Castes which comes to a yearly average of 16,123 cases per year under the Protection of Civil Rights Act 1955 and Prevention of Atrocities Act 1989. This is only the tip of the iceberg: primary studies revealed that discrimination is deeply embedded in social relations and persists in significant measure in the economic, social, cultural and religious spheres. Justice Chandrachud attributed this persistence to the gap between the aspirational values of the Constitution and the social realities of the day, what he described as a gap between "*social life and Constitution life*". He attributed this gap to "systemic caste barriers" as well as the "structural inequalities in resources and education".

With regard to systemic caste barriers, he referred to Dr. Ambedkar who termed social practices associated with caste system and untouchability as a "*law within itself* imposing social sanctions and violence on those who do not comply." These deeply ingrained social norms and practices run counter to constitutional principles. Justice Chandrachud also recognised that often the legal system gets influenced by caste prejudices. He referred to the proposition of Critical Race Theory in USA which rejected the philosophy of "colour blindness" which implies that racism operates in American law in several aspects. Drawing up a similar situation in India, we could say that the extremely low conviction rate in the cases of caste discrimination and atrocities is closely linked with the caste bias embedded in legal administration engaged in the delivery of legal justice. The Standing Committee of the Ministry of Social Justice and Empowerment confirmed, "*The official attempt to dilute the spirit of the (Protection of Atrocity) Act at every stage — from non-registration of cases, failure to investigate according to due process of law, not filing the chargesheet in court within time, not giving relief and compensation to the victims, not providing protective and preventative measures*" (Thorat 2017).

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Justice Chandrachud attributes structural inequalities in ownership of resources and education as a second reason for the persistence of deprivation among the Untouchable groups. Recent official data on ownership of wealth did support this proposition. It shows that in 2013, the Scheduled Castes (SC) owned only 7 per cent of the country's wealth, which is much less than their population share of 18 per cent, while the share of high castes is 45 per cent, which exceeds their population share of 21 per cent. The average value of wealth per household among the SCs is Rs. 6,00,000/- (six lakh) as compared to Rs. 29,00,000/- (twenty-nine lakh) for higher castes. The SC owned almost six times less wealth per household as compared to high castes. The low ownership of capital assets results in high dependence of Scheduled Castes on wage labour, about 44 per cent as compared to 11 per cent among high castes. Similarly, the educational attainment rate of SC was 20 per cent, which is way behind that of the high castes at 43 per cent and the national average of 26 per cent. This results in low per capita income and high poverty and malnutrition. In 2015/16, the incidence of underweight, and anaemic children, and child mortality among Scheduled Caste children was higher than others. Similarly in cases of housing, about 18 per cent of SC live in bad houses, compared to 6.7 per cent for high castes. About 13 per cent of SC live in slums, which is much higher than 4.6 percent for high castes. The percentage of houses without latrine facilities was 71 per cent for SC, compared to 37 per cent for high castes. The cumulative impact of high poverty and malnutrition is reflected in low life expectancy — the average age at death in 2018 being 55 years among the Scheduled Castes compared to 60 years for high castes (Thorat 2017).

It is precisely for this reason that Justice Chandrachud staked a claim to go beyond the policy of representation — a reformation involving dismantling systemic barriers and addressing structural inequalities. In his view this will have to come from outside the court room by civil society. And for reformation to take place, the initiative necessarily has to come from those who have been oppressors. Society therefore needs a collective agenda, where the power of the historical oppressors is constantly questioned. In the context of the Constitution, this involves a scrutiny of legal practices, which perpetuate discrimination, which require expanding the discourse on constitutionalism.

Ambedkar's Alternative Emancipatory Constitutionalism

Justice Chandrachud's analysis of Ambedkar's reformatory constitutionalism presented above, however, is based on the 1950 Constitution. Obviously this does not carry Dr. Ambedkar's ultimate view expressed in his writings. We know that the 1950 Constitution is the outcome of common consensus developed in the Constitution Assembly by majority members. And this consensus which Ambedkar helped to develop as a Chairman of the Drafting Committee is not entirely his own. Ambedkar was a pragmatic reformer; his staunch pragmatism was shaped by his teacher in Columbia University, John Dewey (Scott 2023). His goal was to incorporate and push through in the Indian Constitution his ideas on Constitution as much as he could to optimise the gains for discriminated communities and for the Nation.

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In my view, Ambedkar's own notion of the Indian Constitution is contained in the Draft Constitution submitted to the Constitutional Assembly in 1947 in the form of "State and Minorities" (Ambedkar 1945). The principles underlying Ambedkar's idea of Emancipatory Constitutionalism were stated by him, as mentioned above, in the very first meeting of the Constitution Assembly held in December 1946 to discuss the objective of the Constitution. To repeat, Dr. Ambedkar had stated that "*rights are nothing unless remedies are provided whereby people can seek to obtain redress when rights are invaded.*" As a follow-up, he outlined a framework of remedies in the Draft Constitution submitted to the Constitution Assembly in 1947. Ambedkar's Draft Constitution, besides fundamental rights, also provides what he called "Remedies against invasion of Fundamental Rights" which include protection against unequal treatment, protection against discrimination, and protection against economic exploitation. Besides, it includes more specially safeguards for protection of Minorities and the Scheduled Castes. However, Dr. Ambedkar could incorporate only some of the remedies against discrimination for Scheduled Caste and religious minorities in the 1950 Constitution. This included a ban on untouchability and affirmative action in legislature, public services, provision for promotion of education of the Scheduled Castes, and setting up of a commission for Scheduled Castes and Directive Principles and certain rights of religious minorities. He was unsuccessful in being able to include the more basic remedies for protection of religious and social minorities as Dr. Ambedkar's proposal on the political and economic structure of the Constitution and safeguards to religious and social minorities went far beyond the framework of the British idea of a Constitution and the notion of Parliamentary Democracy. First, to consider the nature of Parliamentary Democracy: the proposal was outlined in "Communal Deadlock And A Way to Solve It" in an address to the All India Scheduled Caste Federation on May 1945. Two year later this was included in the Draft Constitution, "State and Minorities" in modified form submitted in 1947, as mentioned above. According to him, the British Parliamentary Democracy system gives legislative and executive power to a party which has secured a majority in legislature. The government so formed continues in office only as it can command a majority in the legislature. The British system of government however, rests on the premise that the majority is a political majority which people decide based on the policies. However, in "India the majority is not a political majority. It is communal majority. In India majority is born, it is not made. A political majority is not [a] fixed or a permanent majority. It is a majority which is always made, unmade and remade. A communal majority on the other hand is a permanent majority fixed in its attitude, (based on religion and caste), one can destroy it, but one cannot transform it. That is the difference between a communal majority and a political majority." (Ambedkar 1945)

In India, Dr. Ambedkar argued, with the majority being a communal majority, no matter what social and political programs it may have, the majority will retain its communal character linked to religious and caste identity. Given this fact, it is clear that if the British system was copied it would result in permanently vesting executive

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power in a communal majority, to the advantage of the majority and to the disadvantage of the minorities. In his view, in India, there is perpetual antipathy between majority and minorities and on which account the danger of communal discrimination by the majority against minorities forms an ever-present menace to the minorities (Ambedkar 1945). Dr. Ambedkar therefore proposed a significant reform in the British-type of Parliamentary Democracy for its adoption to the Indian context. He proposed reform both in the quantum of legislature of the majority and minorities and protection against communal Executive. The reforms were to be governed by three principles, that include, principle of Relative Majority, principle of Confidence in Executive and the principle of "Unanimous" Rule.

As regards principle of "Relative Majority", Dr. Ambedkar argued that majority (community) rule is untenable in theory and unjustifiable in practice. Therefore a majority community may be conceded a "relative majority" of representation but it should never claim absolute majority. The relative majority of representation in legislature could be achieved by reducing the (large communal majority) seats of the majority community in the legislature. The seats taken from the majority then should be distributed among the minorities in reverse proportion to their social standing, economic position and educational condition. Thus, a reduction in the number of seats of the majority and corresponding increase in the seats of the minorities will give, what he called a "balanced representation", such that no one community is placed in a position to dominate another by reason of its number. This will give effective representation to the minorities, in so far as the effectiveness of the representation depends upon its being enough to give the minority the sense of not being entirely overwhelmed by the majority.

Ambedkar also proposed the reform in the method of election of the legislature from the minorities. Between the joint electorate and separate electorate method, he preferred the reformed separate/joint electorate. Later he proposed, what he termed "Qualified Joint Electorate", which in his view would ensure the election of true and real representatives of the minorities.

The second principle that Ambedkar proposed as a safeguard against a communal Executive is the principle of "Confidence in Executive". He suggested that the majority party which has secured a majority in the polls is deemed entitled to form a government but only in a manner such that it has the "confidence" of all minorities in legislature. First, the representation of the minorities in Executives should be necessarily in proportion to their share in legislature. Second, the Executive of a majority party in legislature should be constituted in a manner such that it will have its mandate not only from the majority party legislature in House but also from minorities in legislature. For this to happen, the Prime Minister, Cabinet members and Cabinet member of the minority should have the confidence of the whole house. Therefore to gain this confidence, the Prime Minister and members of the Cabinet from the majority community should be elected by the whole house and the representatives of the different minorities in the Cabinet should be elected by each of minority members in the whole house. This will install confidence in the Executive of the majority party.

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The third principle that Dr. Ambedkar proposed was the rule of "Unanimity" wherein mere majority rule is not sacrosanct for an important decision. Citing the example of USA, he said that "…matters included in Fundamental Rights are of such supreme concern that mere majority rule is not enough to interfere with them. . . . The (USA) Constitution says that no part of the Constitution shall be altered unless the proposition is carried by three-fourths majority and ratified by the states. This shows that in the United States Constitution, for certain purposes mere majority rule is not component." Ambedkar also gave the example of The League of Nations which followed the rule of unanimity. Ambedkar's intention in quoting these examples was to emphasize that in important decisions relating to the minorities, the rule of unanimity or of two-third majority should be applied and not the majority rule alone (Ambedkar 1945). These were three serious reforms that he proposed in the British parliamentary system for its adoption into the Indian context. However, these reforms were bypassed by the Constitution Assembly members in the framing of the 1950 Constitution.

Also Ambedkar's remedies against economic exploitation to ensure liberty were not made part of the Constitution, as the Constitution Assembly members did not find them in line with the traditional notion of British constitutionalism.

Deviating from the traditional notion of a Constitution which includes only fundamental rights and the accompanying political structure (with Legislature, Executive and Judiciary) and leaves the reform in economic structure to the legislature, Dr. Ambedkar said that: "*The useful remedy adopted by Democratic countries is to limit the power of the Government to impose arbitrary restrains in the political domain and to invoke the ordinary power of the legislature to restrain the more powerful in the economic field.*" He goes on to add, "*The inadequacy nay futility of the plan has been well established …. The successful invocation by the less powerful of authority of the legislature is a doubtful proposition. Having regard to the fact that even under adult suffrage all Legislature and Government are controlled by the more powerful, an appeal to the Legislature to intervene is very precarious [and] safeguards against the invasion of the liberty of the less powerful*" (Ambedkar 1947: 36). Ambedkar proposed an alternative in his proposed plan. He argued that it, ". . . *seeks to limit the power of the Government to impose arbitrary restraints but also of the more powerful individuals or to be more precise to eliminate the possibility of the more powerful having the power to impose arbitrary restraints on the less powerful by withdrawing from the control he has over the economic life of people*" (Ambedkar 1947: 36). He therefore advocated for a particular type of economic structure to be a part of the Constitution. And the economic structure that he proposed was a modified form of State Socialism, which included state ownership of agricultural land, basic and key industries, insurance, and education and the rest in the private sector. Dr. Ambedkar provided justification both for state socialism as an economic system and also for making it a law of the Constitution. He justified socialist economy to ensure the liberty of the individual and suggested that "the purpose of a socialist economy was to protect the liberty of the individual from invasion by other individuals which is the object of enacting Fundamental Rights. The connection between individual liberty and

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the shape and form of the economic structure of society is apparent." He argued that *"Anyone who studied the workings of the system of social economy based on private enterprise and pursuit of personal gain will realize how it undermines the premise on which democracy rests. People have to relinquish their constitutional rights in order to gain their living and to subject themselves to be governed by private employers.*" In a private economy, both the employed and the unemployed are compelled to relinquish their fundamental rights for the sake of work to survive. This was the justification for the alternative economic structure in the form of state socialism. The proposal was essentially meant to safeguard the liberty of the individual.

Equally relevant was the justification to make socialism a part of the (law) Constitution, what he termed 'constitutional state socialism'. Dr. Ambedkar recognised that the proposal to make the economic structure as part of the Constitution marks a departure from the existing Constitution whose aim is to prescribe the form of the political structure of society and leave the economic structure untouched. According to him, "This happens because Constitutional Lawyers have been dominated by the antiquated conception that all that is necessary for the perfect Constitution for Democracy was to frame Constitutional law with Adult Suffrage and Fundamental rights — the old time Constitutional Lawyers believed that the scope and function of Constitutional Law was to prescribe the shape and form of the political structure of society. They never realised that it was equally essential to prescribe the shape and form of the economic structure of society, if Democracy is to live up to its principle of one man, one value." Dr. Ambedkar therefore urged that the, "*Time has come take a bold step and define both [the] economic structure as well as political structure of society by the law of the Constitution. All countries like India which are late-comers in the field of Constitution-making should not copy the faults of other countries. They should profit by the experience of their predecessor*" (Ambedkar 1947: 38–39).

It emerges from the above discussion that the proposal in Ambedkar's Draft Constitution of emancipatory or socially transformative constitutionalism was far more radical than the one embedded in the 1950 Indian Constitution. The tragedy is that Ambedkar's proposal on economic structure and on safeguards to minorities was not fully appreciated by the Constitution Assembly. The caution issued by Dr. Ambedkar has come true within a short period of 75 years after the adoption of the Constitution.

Justice Chandrachud concluded his speech with this admonition by Dr. Ambedkar. The CJI quotes Dr. Ambedkar who said, "*However good a Constitution may be, it is sure to turn out bad because those who are called to work on it, happen to be a bad lot. However bad a Constitution may be, it may turn out to be good if those who are called to work on it, happen to be a good lot*." Justice Chandrachud did not elaborate on the caution pronounced by Dr. Ambedkar in a speech on November 25, 1949 in the Constitution Assembly (Constitution Assembly Debates 1949). However, we observe Ambedkar's concerns coming true in a short period of time, in the way the Constitution has been misused during the last ten years or so. The (good) Indian Constitution has been moulded with regard to its governing principles of secularism, socialism, and

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democracy on several issues (by "the bad lot in authority", to cite Dr. Ambedkar), and has pushed the Indian nation closer to becoming a majoritarian Hindu theocratic state and (perhaps) a communal democracy (Angana Chatterji, Thomas Hansen & Christophe Jaffrelot, 2019).

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