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SC/STs and the State in the Indian Constitution

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At the outset let me thank Dr BR Ambedkar Research and Extension Center and University of Mysore for doing me the honour by inviting to deliver this special lecture on the Republic Day.

We generally choose problematical themes for such lectures. By that logic, the theme formulated by the organizers implicitly suggest some problematic. I am not sure to what extent you are aware of it, but I am acutely concerned with the problematic associated with all the three constituent elements of this theme. This day 62 years ago we, as the people of India adopted our Constitution to give ourselves a republic. The Constitution has been eulogized as one of the finest constitutions in the world, particularly for its elaborate handling of social justice. Because it took exceptional note of the people called SC/STs and provided them with protective, promotional and developmental care. It was expected that a plethora of measures devised for it would bring them on par with others in course of some time. Indeed it did so, but to a tiny section of them and unleashed the dynamics that has already aggravated the divide existing among these communities. Its republican vision promising people secularism, socialism and democracy is already marred by the consistent antithetical experiences. Over the years the state, which is constitutionally mandated to be in service of people has only shown its fangs to the latter. If they are poorer, it bites them; to Dalits, it bites most. The state which was to protect the SC/STs has become the chief tormentor of them.

This is the most bewildering picture of performance of our Constitution over the last six years. There is this commonplace notion that our Constitution is good but the people who are implementing it are a bad lot. There may be some truth in it but certainly not the complete truth. After all it is the precise role of the Constitution to make the bad lot behave; if the people are good, there perhaps is no need of any Constitution. By the dictum that the test of pudding is in its eating, we may have to problematize even our Constitution for the consistently bad results being produced under its regime.

Indeed, we have to problematize everything, all holy cows around us, perhaps in an Ambedkarite iconoclastic way, to see where the rot lies. That is what precisely I intend doing in brief over the next hour or so.

Making of the SC/STs

Foremost, it is necessary to understand that SC/STs are the administrative identities and they do not correspond to social reality. They were born during colonial times in the process of political reforms towards giving India a responsible self-government. The Morley-Minto Reforms Report, Montagu-Chelmsford Reforms Report, and the Simon Commission Report were some of the initiatives that can be directly associated with this context. One of the hotly contested issues in the proposed reforms was the topic of reservation of seats for the “Depressed Classes”¹ in provincial and central legislatures. In 1935 the British passed the Government of India Act 1935, giving Indian provinces greater self-rule within a national federal structure and incorporated in it the reservation of seats for the Depressed Classes. The Act brought the term “Scheduled Castes” into use, and defined it as “such castes, races or tribes or parts of groups within castes, races or tribes, which appear to His Majesty in Council to correspond to the classes of persons formerly known as the ‘Depressed Classes’”. The Government of India (Scheduled Castes) Order, 1936, contained a list, or a Schedule, of castes throughout the British administered provinces.²

Some provinces and princely states were already using Depressed Class - lists, mainly for extending educational concessions. The 1931 census, the Franchise Committee, and the provincial authorities had deliberated over the matter and came up with somewhat different lists, which were revised more than once before being finalized in 1935. The Scheduled Castes were to be the Untouchable Hindu castes, and were defined as “castes, contact with whom entails purification on the part of high caste Hindus.”³ The Census Commissioner, J. H. Hutton, set forth nine criteria to determine which castes were to be scheduled. The most important criterion, he said, was whether the caste suffered (1) civil disabilities like denial of access to roads, wells or schools. Five more were religious and social criteria: whether the caste (2) caused pollution by touch or proximity; (3) was denied access to the interior of ordinary Hindu temples; (4) was denied the services of “clean Brahmans”; or (5) the services of the same barbers, etc., who served high caste Hindus; and (6) was subject to the rules concerning acceptance of water. These six criteria were meant to include castes; the remaining three were meant to exclude them: the caste was not to be scheduled if (7) an educated member was treated as a social equal by a high caste man of the same education; or if pressed only because of its (8) occupation or (9) ignorance, illiteracy or poverty, “and but for that would be subject to no social disability.”⁴ These criteria were adopted to prepare the schedule for the castes in 1936.

While these criteria were found generally applicable in many areas, they posed problem in some. In parts of the South they broke down because there were too many castes that qualified for inclusion in the schedule. If mechanically done, there would have been huge population of these parts included in the schedule. Therefore, it was decided to apply additional criteria of illiteracy and poverty to bring the number down to a reasonable level. In the northernmost provinces an opposite problem arose. There some castes tended to qualify these criteria but the disabilities they suffered were milder and variable. Therefore, again these ad hoc secular criteria, illiteracy and poverty, were applied for inclusion of certain castes in the schedule.

The process of making schedule was disputed by a number of authorities, especially in U.P. and Bengal, who expressed dissatisfaction mainly because the criteria were social and religious, which were not construed then as a legitimate concern of the government. Some argued that the criteria were fictitious and inappropriate to define and list the scheduled castes by their ritual status. Notwithstanding these objections, the fact remains that the resultant schedule though based on a well defined criteria was not error free. While it largely included 'untouchable' castes, certain castes in South which were considered untouchables and even unseeables got excluded on *ad hoc* criteria. Surely the castes like Nadars in Tamil Nadu and Ezhavas in Kerala may have been these excluded castes. What is notable here is the tremendous progress the Nadars and Ezhavas have made vis-à-vis the castes within the schedule. In view of this observation, can it be hypothesized that the stigma associated with the Schedule rather than helping the scheduled caste has proved harmful to their progress? I do not know for sure but the insight based on these facts is surely plausible and worth exploring.

Whether or not, these excluded castes were technically 'out castes', the empirical fact that they were similarly placed as the untouchable castes that got into the schedule in 1936 but made such progress that none from the schedule could make, may point to a very disturbing proposition that the government 'schedule' rather than helping the untouchables has harmed them. The possible reasons may be hypothesized as follows. The practice of untouchability was a fact but as a part of the life world of people it was hazy and muddled. Inclusion into a schedule, the castes got official stamping of ritual inferiority and universal stigmatization. The castes that did not get included into it in corollary escaped it and in course of time even society forgot that they were untouchables in past. The castes in the schedule on the one hand developed vested interests in preserving their status and on the other hand became subject to bitterness by the rest of the society as undeserving beneficiaries. As a result, the schedule blocked the progress of the scheduled castes whereas the castes outside its pale could progress without this baggage.

There is a scope to speculate that formalization of untouchability through the administration action could be detrimental to the subjects intended to benefit from it. It may be explained in terms of self initiative for building up social capital by communities that were excluded from the

schedule, which gets replaced by reliance on the state in communities which were included in the schedule. The theory of caste as the basis for building social capital got credence by the studies of some castes like Gounders in Tamil Nadu who created Tirupur as the global center for knitwear industry.⁵ The former communities could benefit even from official upgradation of their social status widening social spaces for their development. Of course, one has to take into account the initial endowments of these communities that disqualified them to be in schedule but propelled them soon on to development path.

After independence, the Constituent Assembly adopted the prevailing definition of Scheduled Castes. The term “Scheduled Tribe” however did not exist and came into being only after the Constitution was adopted. The first serious attempt to list these communities as primitive tribes was made during the census of 1931. In the Government of India Act (1935) a reference was made to the “Backward Tribes” and again the Thirteenth Schedule to the Government of India (Provincial Legislative assemblies) Order, 1936 specified certain tribes as backward in the provinces of Assam, Bihar, Orissa, CP and Berar, Madras and Bombay. In the 1941 census these people were recorded as “Tribes” and separate totals were furnished only for a few selected individual tribes.⁶ In pursuance of the provisions under the Art 343 of the Constitution, the president made an order in 1950 specifying certain tribes or tribal communities as scheduled Tribes and consequently another schedule for the tribes along the lines of scheduled castes was created. The actual complete listing of castes and tribes was made via two orders *The Constitution (Scheduled Castes) Order, 1950*, and *The Constitution (Scheduled Tribes) Order, 1950* respectively. The criteria followed for the schedule for tribes were: indications of primitive traits, distinctive culture, geographical isolation, shyness of contact with the community at large, and backwardness. These criteria were not spelt out in the Constitution but were from the definition adopted in the 1931 Census. The 1950 schedules listed 1,108 castes across 25 states and 744 tribes across 22 states.

Unlike the defining criterion of untouchability for the SCs, the criteria for the tribal schedule were vague which were still diluted for the revision of the list based on the subsequent reports: the first Backward Class Commission (Kalelkar) 1955, the Advisory Committee on Revision of SC/ST lists (Lokur Committee) 1965 and the joint committee of parliament on the Scheduled Castes and Scheduled Tribes Orders (Amendment) Bill, 1967 (Chanda Committee) 1969. The tribal communities had three divisions: first, those enjoying fairly high status within the Hindu society, e.g., Raj Gonds – so called because they had actually ruled large tracts in central India; second, partially Hinduized tribes settled in plains and third, those actually inhabited hill sections.⁷ Moreover, there being no stigma of lowliness attached to the tribes, there was no reluctance of communities to accept the tag of a scheduled tribe. Resultantly, many relatively well off communities managed to get into the schedule and deprived the genuine tribes of the benefits intended for them. These communities (e.g., Meenas in Rajasthan, Halba Koshtis in

Maharashtra and most tribes in North East, which were the ruling tribes in past and today are well educated and westernized) have dominated the list of STs leaving the needy high and dry.

Making of the India's Constitution

The long colonial rule had established the benchmark for liberal democratic governance in the country. Its advent, although with colonial logic, had brought in modern institutions of administration, justice and liberal ethos and significantly impacted traditional social institutions in India. Later in response to the freedom struggle, it brought in a sense of self-governance by partially devolving power to provincial assemblies of peoples' representatives. The Bolshevik revolution in Russia in 1917 had opened up new horizons before the world people about the possibilities of self-governance sans exploitation which created pressure on the ruling classes to yield grounds. By the end of World War II, when the colonial powers were so weakened that they were no longer in position to directly govern their colonies, they decided to relinquish power in favour of a representative body of the local people, but not before ensuring protection of their long term interests by the new rulers. The liberal democratic model, which appeared to provide governance by popular will but actually left ample scope for the propertied classes to maintain their control, had become a default model of governance in the non-communist world and as such it was adopted by almost all newly freed countries. India was no exception.

When India attained Independence, naturally the options before the ruling classes were limited as the Congress, their representative body, had been projecting its vision of self rule in response to the aspirations of people and creating noises that raised them further. Liberal democracy meant constitutional democracy, the constitution being the rule book for the state, a mechanism of checks and balances. After the World War II formally ended on 9 May 1945, the Labour government came to power in July 1945 in the UK. It soon announced its India policy and initiated a process of transfer of power. The process included convening the constituent assembly for making the constitution.

Historically speaking, the Constitution evolved through a process which began much earlier than this, as a part of India's struggle for independence from British rule. Way back in 1895 the leaders of India's freedom struggle (Annie Besant and Lokmanya Tilak) had put forward a document called Constitution of India Bill, also known as Home Rule Bill, which envisaged freedom of expression and equality before law for all people. In February 1924 Motilal Nehru introduced a resolution outlining the procedure for drafting and adopting a Constitution for India in the Central Legislative Assembly, which had also passed it. In 1927 Lord Birkenhead, the Secretary of State, challenged Indian leaders "to produce a Constitution which carries behind it a fair measure of general agreement among different sections". The Indian National Congress accepted the challenge and convened an All Parties Conference in 1928 which appointed a committee under the chairmanship of Motilal Nehru to determine the principles of Constitution

for India. The Nehru Report submitted on 10th August 1928 was in effect an outline of a draft Constitution of India. It envisaged equal rights to men and women regardless of caste, class, religion or region, free elementary education, freedom of expression to all, etc. The secular character of the state was also mentioned as one of its fundamental character. The idea of framing the Constitution by a Constituent Assembly elected with widest possible franchise, first propounded by M. N. Roy and Jawaharlal Nehru, began to gain ground. Congress included it in its election manifesto for 1936-37 elections to provincial legislatures. The British accepted it only in 1945 after the end of World War II. However, when the Constituent Assembly came to be formed these ideas were compromised. As an election based on universal adult franchise would require lot of preparations and time, Congress had to agree to the Cabinet Mission's scheme of electing members of the Constituent Assembly by the elected members of provincial assemblies.

Interestingly, the Constituent Assembly was convoked by the British rulers by executive action before India's independence, which even determined its composition. It was the Indian Independence Act, enacted by the British Parliament on 18 July 1947 that gave Constitutional sanction to the Indian Constitution in advance of its formulation.⁸ The total membership of the Assembly thus was to be 389. As recommended by the Cabinet Mission, 292 members were elected through the Provincial Legislative Assemblies, 93 members represented the Indian Princely States and 4 members represented the Chief Commissioners' Provinces. The Congress working committee made great effort to see the members from the scheduled castes and Tribes; Women, Christians, **Parsis** and Anglo-Indians were among the Congress candidates. Congress won a huge majority of seats in the Constituent Assembly. Among the elected, majority were the Hindus although Congress had given due representation to other communities. As to its communal composition, there were 5 Sikhs, 3 Parsees, 7 Christians, 3 Anglo-Indians, 5 Backward Tribes, 31 Muslims and 33 Scheduled Castes. The caste distribution among the Hindus was: 56 Brahmans, 15 Kayasthas, 11 Vaishnava and Marwaris, 9 Kshatriya and Rajput, 3 Marathas, 3 Reddies, 1 Lingayat and 1 Vokkaliga.⁹ There was also an effort to bring in the best available talent irrespective of their political affiliations and as such there were as many as 30 members who were elected on Congress ticket but they were not its members.

Initially, the Constituent Assembly was constituted for the united India. Though the Muslim League had participated in the elections, it boycotted its proceeding to press for its demand for Pakistan. Ultimately this demand was conceded vide the Mountbatten Plan of partition announced on 3 June, 1947. Consequently, a separate Constituent Assembly was set up for Pakistan and representatives of some provinces given to Pakistan ceased to be members of the Constituent Assembly of India. As a result, the membership of the Assembly was reduced to 299.

The Constitution naturally carried the imprint of the Congress vision articulated through the freedom struggle as can be seen through various documents. For instance, it carried much of the content of the Nehru Committee report of 1928 with regard to safeguards relating to fundamental rights. Ten of their nineteen heads were carried almost unchanged in Part III of the Indian Constitution and another three appeared as Directive Principles under Part IV. The Nehru Committee Report was rejected by the Simon Commission of 1927-28 as “abstract declarations” and so “useless” but its essential demand for individual rights was repeated in the Indian Independence Resolution of 1930. Although the Government of India Act of 1935, the direct predecessor of the Indian Constitution, was enacted without any formal bill of rights, it had safeguards against discrimination in the spheres like employment, owning property, and carrying on trade or business. Interestingly, what later proved to be the weakest fundamental right—the right to property—was also included in Section 299. Since the Government of India Act mostly failed to provide effective remedies against executive despotism, the Congress repeated its demand for a bill of rights at the Calcutta session of 1937.¹⁰ World War II put an end to all such initiatives, and only the Sapru Committee Report of 1946 demanded fundamental rights as a necessary standard of conduct for all the organs of state.¹¹ While the Constituent Assembly picked up the concept of justiciable and non-justiciable rights, propounded in this report, it had to take refuge in the Irish Constitution to resolve the tension between “individual rights” and “individual responsibilities or collective rights”. This led to the ultimate adoption of the justiciable—non-justiciable dichotomy of Parts III and IV of the Constitution.¹²

While there is no doubt that the Constitution of India is skillfully crafted by the Drafting Committee into one of the longest and most comprehensive documents in the history of modern legislature, its content is imbued with the ideological hegemony of the Congress and conditioned by its class character. On 13 December, 1946, Jawaharlal Nehru moved the Objectives Resolution, unanimously adopted by the Constituent Assembly on 22 January 1947, which expressed the aspirations and expectations of the people that they had from independence. The Resolution inter alia said that the Assembly would declare India as an independent, sovereign republic; guarantee freedoms of thought, expression, belief, faith and vocation; provide equality and justice to all citizens; and ensure welfare of various sections of the people. It also made it clear that ultimate power would reside in people. The Resolution had thus provided a guideline and a framework for the Constituent Assembly to work out the Constitution. In spite of the ideological differences, almost all the members of the Constituent Assembly agreed with the Objective Resolution. The Constitution as it emerged essentially reflected the spirit of the Objective Resolution. It was quintessentially an exercise in liberal democracy not quite different from the trend existed then. The most distinguishing part of the Constitution was its elaborate scheme of social justice, which reflected the strategic realization of the ruling classes to convince the multitude of have-nots that their interests would be taken care by the Constitutional regime. Despite Nehru’s much publicized love for socialism, the Constitution avoided to touch the

distributional aspects of the society. The dominant class character of the Constituent Assembly itself was deterrent enough to guard off any tendency to impart economic character to the Constitution.

This was briefly exposed by Babasaheb Ambedkar in one of his first speeches in the Constituent Assembly. He was invited out of turn by the Chairman, Rajendra Prasad to make his observation in connection with an amendment proposed by MR Jaykar to the Objective Resolution moved by Jawaharlal Nehru. Dr Ambedkar made a brief speech in the Constituent Assembly on 17 December 1946 wherein he echoed one of the principles propounded in his *States and Minorities* for the nationalization of land and industry:

“Sir, there are here certain provisions which speak of justice, economical, social and political. If this Resolution has a reality behind it and a sincerity, of which I have not the least doubt, coming as it does from the mover of the Resolution, 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 the Resolution to state in most explicit terms that in order that there may be social and economic justice in the country, that there would be nationalisation of industry and nationalisation 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 socialistic economy. Therefore, personally, although I have no objection to the enunciation of these propositions, the Resolution is, to my mind, somewhat disappointing. I am however prepared to leave this subject where it is with the observations I have made.”¹³

It is surprising that while he chose to point out the basic lacunae in the Resolution, he voluntarily added that he would not insist upon it. As a matter of fact, he would not bring it up ever again in the constituent assembly. Being totally left out from the political parleys for transfer of power and without any strength of his party in any provincial assemblies, Babasaheb Ambedkar did not have any hope of entering the Constituent Assembly. In the circumstance the Scheduled Caste Federation, his party had decided to submit a memorandum to the Constituent Assembly to be considered for the future constitution. This memorandum, which had radical provisions for what is called state socialism (with provisions such as nationalization of land and key and basic industries; parcelling the lands to village cooperatives with capital being provided by the state, compulsory insurance to all with the insurance lying in state sector, etc.) was later published in May 1947 as *States and Minorities*, with Ambedkar’s preface dated 15 March 1947. While there was no possibility of such a radical plan being adopted through the legislative process, why Babasaheb Ambedkar should make it in the first place and still not even mention it shall remain a mystery!

When the Constitution was being framed India presented an impossible picture of fragmented polity: it was befogged with the communal divide between Muslims and Hindus, was faced with integration problems of 565 princely states, communist led peasant struggles with all potential to flare up into a conflagration, in addition to pulls and pushes from numerous castes, communities, linguistic and cultural groups. But the biggest long term threat was from its organic proletariat comprising one-sixth population which was totally excluded on account of the caste system. Although fragmented into castes, this huge mass of proletariat could turn into a veritable volcano with a spark of class consciousness. It was therefore necessary for the ruling classes to devise suitable containment policy such that it would neutralize this threat and still not compromise any of its class interests. The Constituent Assembly while proclaiming equality skilfully kept castes, the most menacing contrivance of inequality, untouched. It banished untouchability but not caste, its source. The alibi was to use caste to extend social justice to the caste-oppressed groups like SCs.

The real objective was to keep the proletariat caste bound so as to insure that they never realize their class status. The second objective was to keep them bound within the constitutional system. This dual objective was achieved through a plethora of constitutional provisions in their favour. Since they had existed in some form during the colonial times, it was easy for the constituent assembly to continue them. The task was rather to rationalize and enhance them. It is interesting that there was a kind of unanimity about these provisions in the Constituent Assembly. These provisions fall under the following three spheres:

1. Protective Measures - Such measures as are required to enforce equality, to provide punitive measures for transgressions, to eliminate established practices that perpetuate inequities, etc. (Article 17). A number of laws were enacted to operationalize the provisions in the Constitution, such as Protection of Civil Rights Act, 1955 and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocity) Act, 1989, the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 and the National Commission for Safai Karamcharis Act, 1993, etc.
2. Promotional Measures (affirmative action) - provides preferential treatment (reservation) in allotment of jobs and access to higher education, as a means to accelerate the integration of the SC/STs with mainstream society. Some of the constitutional provisions are: Article 46: Promotion of educational and economic interests. Article 16 and 335: Preferential treatment in matters of employment in public services. Article 330 and 332: Reservation of seats in the Lok Sabha and State Assemblies. The general rule which exempted the scientific and technical posts from the purview of positive discrimination was applicable to the autonomous bodies too.¹⁴

3. Developmental Measures - Provides for resources and benefits to bridge the wide gap in social and economic condition between the SC/STs and other communities. Under it numerous measures can be counted such as freeships to the students to the special component plan.

Generally, Babasaheb Ambedkar is acknowledged as the chief architect of the Constitution. While it is true that he had borne much of the load of drafting the contentious clauses and piloting them in the constituent assembly and making it one of the most comprehensive legislative documents in the world, he should not be held responsible for its contents. Even going metaphorically, the architect does not own up the vision or the content of the house; he merely shapes it up with his skills and knowledge. The constitutional contents were predominantly calibrated by the strategy of the class of emergent bourgeoisie, expressed through their representative party--the Congress. While this strategy was enabled by the framework of liberal democracy, based on the representative structure, it would not be good enough to insure the buy in of the depressed classes. The colonial regime, with its own logic, had already introduced many measures for their development. While there was no option to rethink them, mere continuation of them also would not suffice in view of the rising aspirations of people in general. If these classes of organic proletariats were not duly accommodated, they could pose biggest threat to the structure in course of time. None other than Mahatma Gandhi, the strategist extraordinaire of the Congress was acutely aware of it. Although he couched his arguments in moralistic terms, they were basically driven by this strategic necessity. It was the masterstroke of his strategy to get Dr Ambedkar elected to the Constituent Assembly, when his membership was annulled as a result of the partition Plan in June, 1947, and then to make him the chairman of its most important committee, the Drafting committee. He knew there was little that Dr Ambedkar could do but would contribute immensely in rationalizing the contents the Congress decided and defend it in the constituent assembly with his intellectual prowess and erudition. More than his scholarship and intellectual prowess, he wanted Ambedkar's name to go as the creator of the constitution, which he saw being crucially important for the downtrodden masses upholding it. The sentimental manner in which Dalits view and uncritically uphold the Constitution as the creation of their leader proves the strategist extraordinaire in Gandhi right. Despite Dr Ambedkar's public denouncement and disowning statements¹⁵, and their own bitter experience, Dalits would stake anything to defend the Constitution.

Continuation with the reservation policy for the scheduled castes had an important embedded opportunity. Insofar as the policy took cognisance of caste, albeit with the veneer of social justice, the castes would be kept alive. It is a mute point that in the prevailing situation whether there was any option than making exception of scheduled castes for extending constitutional provisions. Perhaps there wasn't. But in the policy formulation the same could have been confined only to the scheduled castes as victims and transformed it into a challenge to the rest of the society to expiate its crime or in other words the policy could have been termed as the

countervailing measure to make the rest of the society behave by overcoming its disability (and not that of the scheduled castes) of being incapable of treating its own members equal. What instead came through the policy was association of secular backwardness with certain castes. The caste system with its graded inequality caused deprivation or granted privileges in a continuum. Backwardness therefore could not be theoretically associated only with some castes. Backwardness as a multi-dimensional outcome moreover cannot be solely attributed to a single factor like caste. Therefore, prudence demanded that since the scheduled castes were historically excluded as outcastes and a fairly homogenous people, they could be made an exception purely for their social treatment resting onus of that on the larger society.

Making of the Indian State

The Indian state was supposed to be based on India's Constitution. Whatever the limitation of the Constitution, it was an excellently executed liberal document. It distinguished itself by two things: its preamble that gave its vision and its section IV which provided the direction to state policy. The preamble of the Constitution emphasizes its republican character and explicates its vision to be a perfectly egalitarian society. It says including its amendment:

“We the people of India, having solemnly resolved to constitute India into a 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 of opportunity; and to promote among them all Fraternity assuring the dignity of individuals and the unity and integrity of the Nation.”

And the Directive Principles of State Policy outlines measures the state should incorporate into its policies so as to accomplish this lofty vision.

There was no attempt to remodel the state as per the new republican vision. The entire state machinery was inherited from the colonial regime and continued unchanged. It inherited colonial bureaucracy, colonial laws, colonial rules, colonial procedures and colonial operative ethos which were oriented to treat people as subject. With its alien attribution gone off it assumed rather unimpeded powers over people and behaved as such. In effect, it proved perfect antithesis of the Constitutional vision. The duality of the Indian constitution and the state replicated the traditional doublespeak of the Indian ruling classes. While the Indian Constitution professed all liberal ideals in the world, the Indian state supposed to be ordained by this Constitution trampled them all with impunity and became perfectly illiberal and tormentor of people. The state came out in its true character which is only noted in the Marxist school. According to Marx, the state is an organ of class rule, an organ for the oppression of one class by another; it is the creation of “order”, which legalizes and perpetuates this oppression by moderating the conflict between

classes.¹⁶ Muffled by the imperative of long term ruling class interests, the Indian state can be seen as the veritable exemplar of the Marxian definition.

The translation of the constitutional welfare goals into practice have in fact remained a mere constitutional chimera being far off even after six decades of independence. Within the existing socio-politico-economic power structure based on the capitalist model of modernization / framework of market economy which the democratic and constitutional state of India has adopted, it has widened sharpened disparities, frustration, estrangement, deprivation, exploitation, poverty, insecurity, oppression, unemployment, starvation, corruption and injustices of all sorts, affecting adversely the social, political and economic conditions of the vast majority of lower strata. The weaker sections are not only deprived of the development programmes in most cases, they are kept out of development process. Poverty question is a power question; it is rooted in the model of development that produces it and gets in turn reproduced.

State of the SC/STs

In order to examine the behavior of the state vis-à-vis the constitutional provisions in respect of the SC/STs, there perhaps is no better way than looking at the outcome over the republican period under three spheres of constitutional policies as outlined above.

Protective Measures

The caste system was based on the notions of purity and pollution supposedly based on Hindu scriptures. But it is grossly erroneous to treat contemporary castes as the same. The operation of castes today is a combination of several factors possibly unconnected with any scriptural dictum of purity and pollution. The Constitution has banished untouchability as crime and law was enacted to deal with it. But the state willed otherwise and the untouchability is still rampantly practiced all over. Many surveys such as various state level surveys during 1990s, Action Aid Survey of 565 villages in 11 states in 2001-2002¹⁷ and the recent survey of 1589 villages in Gujarat by Navasarjan Trust and Robert F. Kennedy Center for Justice & Human Rights¹⁸ survey have clearly found the instances of untouchability being practiced to a significant extent. The infamous two tumbler system is still extant in some parts of south India. It is not the matter with the backward parts, even in the capitalist Punjab and Haryana the practice is encountered. If one equates untouchability with the discriminating attitude, it prevails everywhere, even in the most globalized sectors of India in the metropolis.

The most concrete manifestation of castes however is caste atrocities. The atrocities are arguably the best proxy for casteism. The government has developed a good system of compiling data on caste atrocities with neat classification, which makes them amenable to statistical analysis. Caste atrocities like castes are not based on scriptural notion but have to do with the changes in power

relations in the countryside, the terrain where they happen. The data on atrocities show a drastic change since late 1960s in quantitative as well as qualitative terms. The atrocities until then happened at individual level, both on victim as well as perpetrator side. But later they increasingly started happening in collective mode—many people coming and attacking a group of Dalits in a very planned and calculated manner so as to teach the entire dalit community a lesson. Kilvenmani in Tamil Nadu marks the beginning of this new genre of atrocities. It took place in the context of agriculture wage struggle led by the Communist party, in which the landlords attacked the entire Dalit locality and burnt some 44 people, mainly women and children alive on 25 December 1968. A spate of atrocities followed thereafter everywhere and flared up in Bihar in 1980s into a virtual caste war. All these atrocities are explained by the changes in political economy and not on the basis of any scriptural basis.

If one analyzed this phenomenon carefully one would find that the state policy has directly is at its root. The so called Nehruvian modernization project undertaken immediately after the independence, marked mainly by the land reforms followed by the Green Revolution pushed out the traditional upper caste landlords from villages and created in their place a class of rich farmers in villages from among the Shudra castes. It transformed traditional production relations into capitalist relations by creating input, output, credit, implements, and labour markets in villages. Consequently, it uprooted the old *jajmani* relations signifying the interdependence of castes, reducing Dalits as landless labourers dependent on the farm wages from the Shudra caste farmers. The economic contradiction between labour and capital, the social contradiction between the outcaste and caste, accentuated by the cultural assertion of dalits and political ascendance of the Shudra castes but their relative lack of cultural sophistication (compared to the traditional upper castes) began manifesting into clashes expressed through the familiar faultlines of castes. This perplexing phenomenon of rising casteism with the spread of capitalism can be explained by the inverse developmental relation between the state and class in India: while elsewhere the emergent class of bourgeoisie created their state, in India it is the state that created the capitalist class. As a result, the creolized class that came into existence would pursue his accumulation objective without discarding its previous feudal advantages.

Alarmed by the rising incidence of atrocities the state enacted supposedly a stringent Act in the form of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989. But even it proved useless in preventing atrocities. The next fillip to the atrocities came since 1990s, with the next wave of change in the economy. This wave was marked by the advent of neoliberal reforms, popularly called globalization. These reforms through their multidimensional operations created crisis in countryside (best manifested by the alarming incidence of farmers' suicides), which began manifesting into atrocities. There has been a consistent rise in atrocity statistics since 1990s in absolute number as well as in the intensity of atrocities represented by more serious kinds such as rapes and murders. The phenomenon may be explained by the general

crisis in the middle level of agriculturists and relatively stable economic condition of Dalits coupled with their rising cultural assertion. It is not that Dalits are not affected adversely by these reforms but as the lot without stake could take any job in growing informal sector and look relatively well off. It has thus accentuated the existing power asymmetry leading to caste atrocities. My book on Khairlanji¹⁹ has explained these processes in greater details.

There are still heinous practices of manual scavenging extant despite there being a specific law to curb it. The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 has been totally ineffective because of the indifferent attitude of the state machinery. Last year the Savanur²⁰ and Gulbarga²¹ incidents in your own state itself have effectively brought these facts to limelight.

With regard to dealing with the caste atrocities, the record as commented by many has been anything than dismal. The police machinery, hand in glove with high caste perpetrators, would not register the crime; if registered, would not investigate it; if investigated, would not present; if presented, it would not be pleaded in the courts by prosecution, and ultimately the case will fail. It is said that only the 10-20 percent of the actual number of atrocities enters the police record and still the total number of atrocities per year have been hovering above 35,000. The dismal rate of convictions that has been less than 10 percent until recently testifies to the bias in state machinery against the victims.

In any case the state has thus been directly causing the rise in caste atrocities and is also guilty of dereliction of responsibility in curbing them.

1. Positive Discrimination

The most celebrated policy of positive discrimination in favour of the SCs and STs has also been lackadaisically operated. Even after six decades the reservations in public sector jobs haven't reached the prescribed percentage in the Class A and B, where only it gains some meaning. The Class C and D being largely low paying working class jobs, dalits will be naturally found in them in significant proportion. It is interesting to note that having agreed to grant reservations equal to the ratio of SC/ST population to total population, the government still goes by the old 15 and 7.5 percent as against the current ratios of 16.23 and 8.2 percent respectively. The reservations in jobs have been rendered meaningless since last two decades. Because of the onslaught of globalization there has been negative growth in the public sector jobs. The statistics reveals that the total number of public sector jobs had reached the peak in 1997 with the euphoria of reforms but have been on consistent decline since then. If there is no net job creation in the public sector, there is no reservation!

With regard to reservation in education, it particularly applied to elite/professional institutions where because of the acute competition Dalit students ordinarily would not have found a place. Moreover, unlike in jobs, the percentage fulfillment of vacancies in educational institutions has been better. These reservations indeed have catalyzed spread of education among Dalits. But with increasing privatization and commercialization of professional education, even this reservation is losing its meaning. The ethos of globalization has raised the cost of education so high even in public institutions that it is ordinarily not possible for an average SC/ST student to dream of educating in these institutions. Generally, it became the domain reserved for the well to do SC/ST persons, which is creating its own problematic for the community. Globalization has created a multi-layered education supply according to socio-economic standing of people, creating thus a neo-caste system in the sphere of education right from nursery to doctoral degrees. The recent ploy to subvert the Constitutional mandate to provide free compulsory education to all children up to the age of 14, in the form of Right to Education Act has formalized the neoliberal development in education. While the best quality education became available in the country for handful elite, the masses are left with useless education to swell the statistics. The entire rural area, with nearly 70 percent of population and with preponderance of Dalits is virtually cut off from education of any consequence. The jobless growth and informalization of jobs has drained off motivation in Dalits for education.

Generally the reservation policy, the way it is formulated, leads to create an increasingly smaller class of beneficiary at the cost of rest of the community. Since caste is the only basis for being eligible for reservation, the people who have already benefitted from reservation stand better chance in grabbing it. At the very theoretical level, it is directly opposite to the intended outcome of the policy. It has already created a rift among the Dalits which is threatening to demolish whatever little they accomplished in forging their political identity. Since reservations are based on sole criteria of caste, this anomaly is also noted in caste terms. The smaller sub-castes of Dalits have accused a populous caste in the region of having grabbed their share of reservation and demanded apportioning of them to various castes. This process has created war like situation among the Dalit castes, as exemplified by Mala-Madiga conflict in Andhra Pradesh, effectively absolving the state or Constitution of its misdoing. Notwithstanding that much of it has been politically prompted to aggravate division among already fragmented Dalits, the fact remains that ruling classes have forged reservations as weapon to divide Dalits asunder. In the context of this problem, I had written by way of intervention proposing a simple solution²² to change the basis of reservation from caste to a family unit over the dalit domain. It was repeated at few times and earned praise from the intellectual circles but the Dalits for whom it was meant, just ignored it.

Reservations originally meant to be an exceptional policy for the SC/STs as the 'exceptional' people has been forged into a weapon by the political class. As Macaulay conceived creation of a

small English educated section imbibing western culture and values for effective governance of the native population in colonies, reservations worked the same way to create a small section of Dalit elite which would uphold the state and the status quo. It will thus hold majority of Dalits at bay, effectively blocking their radical demands. Indeed, reservations, meant for a minority of Dalits, who have come up to certain level so as to compete, have completely hijacked the entire agenda of Dalit masses that may be seen comprising basic issues such as land, health, quality education, and secure employment. At the level of Constitution itself reservations having been deliberately taken as a remedy for backwardness, the ruling classes could easily and skillfully proliferate their misuse. Firstly, they extended the same to the so called backward castes, when as a broad caste group they had already become economically and politically strong. Now, they are fooling people by promising them to every conceivable community in the country. In a country with pervasive backwardness, to identify caste as the marker itself is grossly mischievous. The interesting part of this development is that when practically reservations have come to an end, the reservation discourse is reaching its crescendo.

The only reservations that have worked well as far as implementation is concerned are the reservations in political representations only because they were primarily meant for the ruling classes. Contrary to ignorant notion of most people, these reservations (and not others) were meant only for 10 years, which means they should have ended by 1960. But before they come to an end, they get extended by another term of 10 years, by the political class with exceptional unanimity, without any demand from any corner ever being there. These reservations, which have their roots in the infamous Poona Pact between Gandhi and Ambedkar, have only produced stooges (in Kashiram's language²³) and have rather taken away winds from dalit politics. Babasaheb Ambedkar himself was seriously skeptical about it after seeing its aftermath during his own life time.

2. Developmental measures

In terms of development, there are a plethora of schemes that the government operates in order to bridge the gap between the SC/ST and the non-SC/ST population. Looking at the results over the last six decades, one can only lament at these efforts as misplaced. While the statistics might show positive trend in development indices of the SC/STs, the gap between them and the others does not show the same. Most of these schemes have their genesis in wooing dalit voters in elections. In the context of the fact that 78 percent people live off Rs 20 per day such effort any way lose its meaning.

The most celebrated programme of the government in this regard has been the special component plans. The strategy of Scheduled Castes Sub-Plan (SCSP) which was evolved in 1979 is one of the most propagandized intervention through the planning process for social, economic and

educational development of scheduled castes and for improvement in their working and living conditions. It is an umbrella strategy to ensure flow of targeted financial and physical benefits from all the general sectors of development for the benefit of SCs. Under this strategy, it entails targeted flow of funds and associated benefits from the annual plan of States / Union Territories (UTs) at least in proportion to the SC population. Presently, 27 States / UTs having sizeable SC populations are implementing Scheduled Castes Sub-Plan. Although the SC population, according to 2001 Census, was 16.66 crores constituting 16.23% of the total population of India, the allocations made through SCSP in recent years have been much lower than the population proportion. The data on total State Plan Outlay flow to SCSP as reported by the State / UT Governments for the last few years, especially since the present UPA government is in power, indicates rising allocations, which however still fall short of the prescribed level. It went up from 11.06 percent in 2004-05 to 14.80 percent in 2007-08.²⁴ These bland percentages do not reveal the true story. Firstly, the allocations in government parlance do not mean actual expenditure and secondly, as the experience with Common Wealth Games and many other projects shows, there has been persistent mischief in booking general expenditure under these heads.

Recently, the government has launched a new developmental measure in terms of reserving 4 percent value of all government contracts for Dalit entrepreneurs. The government which has been utterly insensitive to the needs of common masses has rushed with exemplary enthusiasm to support what is being clamored by a handful of Dalits as 'Dalit Capitalism'. Dalits trying out entrepreneurship is not a new development. The very making of the Dalit movement itself could be traced to this phenomenon among the migrant dalits to urban centers. As regards prevalence of rich individuals among Dalits also is not a new phenomenon. For varied reasons certain exceptional individuals in every region had amassed wealth and were extraordinarily rich. This may have naturally increased with spread of education and information among dalits in modern times. But to attribute it to globalization or to colour it new way of dalit emancipation surely smacks of serving the intrigues of global capital. Be it as it may, the state attitude certainly reveals its intention to promote elements that would take pride in its anti-people policies and isolate the masses.

The above discussion may fall under the category of 'omissions' by the state. There are the things that the state does in commission mode too. The state has actively helped the ruling classes in maintaining Dalits in dependent mode, confining them to constitutional frame. Whenever Dalits tried to articulate their independent struggle and tended to drift away from the constitutional frame, it showed its hypersensitivity in dealing with them. The age old strategies of cooptation or repression were deployed every time it happened. The disillusion with the government and the parliamentary politics of the Republican Party had set in among Dalits way back in 1970s which manifested into a rebellious phenomenon of Dalit literature and their political movements like Dalit panthers and

Dalit Sangharsh Samiti (DSS) in this state. These movements partly due to their own weaknesses but to a large extent to the intrigues of the ruling classes splintered into degenerate and opportunistic outfits. This sad aftermath pushed the sincere elements of dalit youth towards the radical left politics in certain states since 1980s. Since this politics defy constitutional boundaries and hence does not make itself available for cooptation, the state of late has taken an unconstitutional offensive to crush it. This has been the strategy to terrorize dalit youth so as to push them back into the morass of constitutional politics. Any Dalit, speaking a radical language is targeted and harassed. The spontaneous initiative of Dalit youth in the wake of Khairlanji was similarly crushed by the state.²⁵ In recent times, scores of Dalit youth known to be active in literary, cultural and social movements have been arrested in Maharashtra labeling them as Maoists.²⁶ They are incarcerated in jails for years fighting dozens of false cases, destroying their families and their own careers. The label works well with the mainstream dalits in conveniently ignoring them. It is not the question of Maoists being right or wrong; the business of passing such value judgements really belongs to history. But what is important is to condemn the state which comes down heavily on the movements of ‘precarious’²⁷ at the behest of the ruling classes and problematize the constitution that permits it.

This brings me to the end of my speech. Much of what I said here may have disturbed the sensibilities of many people basically because it was unfamiliar. I have faulted not only the state but the formation of the SC/ST itself as well as the Constitution. As promised, I tried to do my job in truly iconoclastic spirit, sparing no holy cows. Indeed, I believe the time has come to do ruthless introspection and plain speaking. This brief analysis may indicate that there is no solution within the system for the scores of Dalits, Adivasis, and other such poor people. It is not only in India but in the entire world; the plight of the poor is more or less the same. They are slowly realizing that the trap of liberal democracy has been the basic culprit. It creates illusion of high sounding values but in reality preserves the status quo in favour of the ruling classes. The challenge therefore is to smash this trap as only then the real emancipation of people, including SC/STs may be possible.

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Notes and references

- ¹ This was the official term used for the lower strata of Indian society from mid-19th century.
- ² See, Lelah Dushkin, *Scheduled Caste Policy in India: History, Problems, Prospects, Asian Survey*, Vol. 7, No. 9 (Sep., 1967), pp. 626-636.
- ³ See the discussions of the problem of defining and listing the Scheduled Castes in Census of India, 1931. Vol. I, India, Part I, Report, Appendix I, p. 472. This appendix, slightly abridged, appears in Appendix A of J. H. Hutton, *Caste in India*, 4th Edition (Bombay: Oxford University Press, 1963), pp. 192-222.
- ⁴ Mohinder Singh, *The Depressed Classes* (Bombay: Hind Kitabs Ltd., 1947), p. 2; Government of India Ministry of Home Affairs, Annual Report of the Commissioner for Scheduled Castes and Scheduled Tribes for the Year 1951, p. 10.
- ⁵ R.Vaidyanathan, Caste as Social Capital, http://www.dnaindia.com/opinion/column_caste-as-social-capital_1387350. Last accessed: 23 January 2012.
- ⁶ L.P. Vidyarthi and Binay Kumar Rai, *The Tribal Culture of India*, Concept Publishing, New Delhi, 1985, p. 415.
- ⁷ G S Ghurye, 1963, *The Scheduled Tribes*, Popular Prakashan, Bombay
- ⁸ Kodanda Rao, Critique of the Indian Constitution, <http://www.yabaluri.org/TRIVENI/CDWEB/critiqueoftheindianConstitutionjul60.htm>.
- ⁹ L G Hovanur (Chairman), Report of the Karnataka Backward Classes Commission (Hovanur Report), Ch XVIII: Communal origin and communal composition of the constituent assembly, <http://lghavanur.org/chapter18.html>. Last accessed: 23 January 2012.
- ¹⁰ Singhvi, Abhishek "India's Constitution and Individual Rights: Diverse Perspectives". *George Washington International Law Review*, The. FindArticles.com. 07 Oct, 2011.
- ¹¹ See Constitutional Proposals of the Sapru Committee, 256-57 (Tej Bahadur Sapru et al. eds., 1946).
- ¹² W.H. Morris-Jones, *The Government and Politics of India* 83-84 (2d ed. 1967); Ray, *supra* note 15, at 100-01.
- ¹³ Vasant Moon (Comp), Dr. Babasaheb Ambedkar: Writings and Speeches, Education department, Maharashtra Government, Mumbai, (From Dr. Ambedkar's entry into the Constituent Assembly to the presentation of the Draft of the Indian Constitution to the Constituent Assembly Vol. 13, p. 9.
- ¹⁴ Government of India, Department of Personnel and Administrative Reforms, Office Memorandum No. 9/2/73-Estt. (S.C.T.), 23 June, 1975.
- ¹⁵ To the question that he was a maker of the constitution, Dr Ambedkar himself had replied saying: "Now, Sir, we have inherited a tradition. People always keep on saying to me: "Oh, you are the maker of the Constitution." My answer is I was a hack. What I was asked to do, I did much against my will." See Vasant Moon (Comp), Dr. Babasaheb Ambedkar: Writings and Speeches, Education department, Maharashtra Government, Mumbai, Vol. 15, p. 860.
- ¹⁶ Cited by V. Lenin, *The State and Revolution*, <http://www.marxists.org/archive/lenin/works/1917/staterev/ch01.htm>. last accessed: 23 January 2012
- ¹⁷ The salient findings of the survey were: In 73% of the villages, dalits cannot enter non-dalit homes; in 70% of the villages, dalits cannot eat with non-dalits; in 64% of the villages, dalits cannot enter common temples; in 53% of the villages, dalit women suffer ill-treatment at the hands of non-dalit women. See Sukhdeo Thorat, *Untouchability in Rural India* (Sage Publications, New Delhi, 2006).
- ¹⁸ Understanding Untouchability: A comprehensive Study of Practices and Conditions in 1589 Villages, <http://www.indianet.nl/pdf/UnderstandingUntouchability.pdf>. Last accessed: 23 January 2012.
- ¹⁹ Anand Teltumbde, *Khairlanji: A Strange and Bitter Crop*, Navayana, New Delhi, 2008. Also, *Anand Teltumbde, The Persistence of Caste*, Zed books, London, 2010]
- ²⁰ On 20 July 2010, some manual scavengers of Savanur, a small town in Haveri district of north Karnataka performed a novel act in protest against their helplessness. They smeared themselves with human excreta in public before the municipal council office.
- ²¹ On October 15, 2010, one Dharam Kumar, a Dalit manual scavenger from Gulbarga district in northern Karnataka, poured and smeared human excreta over his head and body in front of the office of the Gulbarga City Corporation to draw attention of the city corporation officials to the issue of contracts for the maintenance of a pay-and-use toilet in Gulbarga City. *The Hindu*, Bangalore Edition, October 16, 2010, p.1.
- ²² For example, See Anand Teltumbde, Reservation within Reservation: A Solution, *Economic & Political Weekly*, vol xlv no 41, october 10, 2009.

- ²³ See Kanshiram, The Chamcha Age (An Era of the Stooges), Available: http://ambedkar.org/research/The_Chamcha_Age.htm. Last Accessed: 23 January 2012
- ²⁴ Information in respect of 14 States/UTs only and as on 31-12- 2007. Source: Network for Social Accountability (NSA) <http://nsa.org.in>. Last Accessed: 23 January 2012.
- ²⁵ See for details Anand Teltumbde, Khairlanji, *Op. Cit.*
- ²⁶ Anand Teltumbde, Yet Another Binayak Sen, *Economic & Political Weekly*, february 5, 2011 vol xlvi no 6
- ²⁷ Anand Teltumbde, The 'Precariat' Strikes, *Economic and political weekly*, Vol XLVII No.1 January 07, 2012.