

Bharat Ratna Dr B.R. Ambedkar & Dr Babu Jagjivan Ram

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*on*

**Constitutional Democracy and Social Justice**

*by*

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# Constitutional Democracy and Social Justice

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The Constitution of India in its preamble pledges to secure Justice, social, economic and political; Equality of status and opportunity; and to promote Fraternity assuring the dignity of the individual. Each of these pledges is directly or indirectly linked to social justice.

We all know that India is incredibly diverse. Many elements of our diversity are a reflection of the strength of Indian society embracing all faiths and cultures, being inclusive and integrating all strands seamlessly. But one element, the caste system, is completely antithetical to this approach of inclusiveness and integration. The 'Varna' and 'Jati' system divided human beings by birth and vertically fragmented our society. The notion that people are unequal at birth and by birth, and that this inequality can never be overcome by an individual's ability and hard work has been the bane of our society for centuries. Caste system had institutionalized inequality by birth and made our society morally neutral to such inhuman and cruel oppression. Even those who do not practice caste and abhor oppression are often unconsciously influenced by the 'psychology of caste' as Myron Weiner described. Many of us who treat our domestic workers or drivers with kindness and affection are often blind to the lack of decent educational opportunities to their children, and think of it as 'natural'. The contrast between flaunting our commitment to casteless society and the indifference to our failure as a society to ensure quality school education to every child irrespective of birth, parental education, income and status is glaring.

Dr Ambedkar made a historic speech in Agra on 18th March, 1956, a few months before his passing. He said, "For the past 30 years, I'm (sic) struggling to secure political rights for you people. I have got for you reserved seats in parliament and in state assemblies. I have got for you proper provision for education of you children. Today, we can progress. It is now your duty to continue the struggle unitedly for removal of educational, economic and social inequality."

He said the following of government employees: "There is some progress in education in our society. By acquiring education some people have reached to the higher positions. But these educated people have deceived me. I was hoping from them that after acquiring higher education they would serve the society. But what I am seeing is that a crowd of small and big clerks has gathered around, which is busy in filling their belly."

He appealed to the students and youth as follows: "My appeal to the students is that after acquiring education, instead of doing some clerical job, he should serve his village or

locality people, by which, exploitation and injustice arising out of ignorance can be stopped. Your emancipation lies in the emancipation of the society.”

Babasaheb's comments about six years after the Constitution came into effect are remarkable for their insights and candour. He clearly recognized that while normative rights were important, constant struggle was needed to remove educational, economic and social inequality. He also noted that a few people who benefited from the rights he fought to confer in the Constitution were busy feathering their nests, ignoring the pervasive inequality and lack of opportunity to millions in society. And he admonished the youth that looking for a government job would not emancipate society, and exploitation and injustice arising out of ignorance need to be ended.

Since then, more than six decades have elapsed. The foreboding of Dr Ambedkar proved to be prophetic. We built normative institutions to promote equality and opportunity and to secure justice. But in reality true equality, opportunity and justice are denied to the bulk of our people. It would be productive if we identified the deficiencies in the state's institutions and functioning and worked to set them right in a systematic manner.

The state has been created by human society to serve its collective needs which an individual or family cannot fulfill in isolation. The state's efficient and honest functioning is especially critical for the lives and livelihoods of the poor and disadvantaged sections of the population. As many perceptive observers noted, the rich and powerful, the well-educated and well-heeled, the 'elites' of the society have largely seceded from the state and rest of society. They have their own gated communities with security guards; they have separate water supply and sanitation; they have their own power generators and uninterrupted power supply with storage batteries; they have expensive, exclusive private schools and tertiary care private hospitals with high end insurance cover; they can access powerful officials and politicians instantly and get things done to address their complaints. The rich and powerful do not need an efficient and honest government; they have means of surviving and flourishing despite bad governance. It is the poor and the oppressed, those who continue to suffer disadvantages of birth because of government's failure who require a competent, honest and humane government.

There are many areas that need to be addressed in today's India. However, I wish to focus on five critical areas of the state's functioning and its institutions which contributed hugely to perpetuation of inequalities by birth.

The first is delivery of basic services – water, sewerage, storm water drainage, sanitation, etc by the state. The state's failure in these critical areas of daily life makes the life of the poor especially difficult, making the struggle to create a better future that much harder. On top of that, the asymmetry of power between the ordinary citizen and even a lower

level government employee is stark. We are a nation in which nearly 90% of all workers are in the low paid, insecure, unorganized or self-employment sector. As a result, even the ordinary government employee is more economically secure, is better educated and informed and has greater access to influence and power than the bulk of our population. Our failure to ensure effective service delivery to ordinary citizens made our people helpless mendicants, and our public servants the masters. This reversal of roles, coupled with a colonial mindset and exacerbated by misplaced license-control-permit policies have done immense harm to the poor and continue to hold back our nation. Surveys suggest that every year about 65% of all households are forced to pay a bribe for basic services they are entitled to get. These victims of extortionary corruption are not seeking any favour or patronage; they are forced to endure delay, harassment, humiliation, uncertainty and sometimes irreparable loss. Bribes are extorted from the poor habitually, and they are forced to seek the help of some intermediary, making them dependent on local political workers and influence-peddlers. This in turn keeps them in perpetual political bondage, diluting the power of universal franchise and democracy.

What we need is a service guarantee framework to ensure speedy, time-bound delivery of basic services with provision for compensation for delay. The Citizen's Charters of this kind have been institutionalized by John Major's government in the UK, and the practice spread to many countries. In India however, serious efforts have not yet been made to improve service delivery except in a few areas where technology can solve the problems, and accountability mechanisms have not been institutionalized. The asymmetry of power and poor delivery of services therefore continue. Instead, the Indian state came up with an extremely perverse and counterproductive response to service delivery crisis. In 2018, the parliament unanimously amended the Prevention of Corruption Act, and two striking and revealing provisions of law are now added. First, instead of creating a service delivery and accountability framework, the helpless bribe giver and victim of extortionary corruption is now liable to be punished with a prison term of seven years, with a mandatory minimum of three years! When corruption is collusive, and the bribe giver and bribe taker defraud the state for undue benefit of the bribe giver, or when fair competition is undermined, or when public interest is compromised in some manner, the bribe giver is as guilty as the bribe taker, and should be dealt with sternly by the law. But the helpless victims of extortionary corruption are forced to pay a bribe to get what they are entitled – a birth or income or caste certificate, a land record or record of rights document, water supply, or power connection. Punishing them with a mandatory minimum of three years' prison term when they are actually victims of state's failure and extortion is a cruel irony. Such an approach only perpetuates poverty and social and economic inequality. Babasaheb hoped that the state would strengthen the poor and the weak in fighting the caste oppression and disadvantages of birth; instead we created a Leviathan which extorts from the poor and oppresses them further. The second, grotesque amendment of law is to the effect that while the bribe giver would be punished

severely, the bribe taker would not even be investigated without prior government consent! Earlier this protection was available in respect of prosecution of a public servant. Now it is extended to even investigation. There cannot be a greater illustration of the asymmetry of power between the poor, hapless citizen and the public servant! We need real accountability and a service guarantee framework, and repeal of this monstrous legal provision that seeks to cruelly punish the victim of extortionary corruption. Or else, the poor will continue to be victims of the cruelty and perfidy of the state machinery.

The second issue that I wish to address is rule of law. Normatively we have rule of law – the Constitution ensures equality before law and supremacy of law, the courts are independent of executive interference, and the police and prosecution are expected by law to act impartially and independently. But let us look at the reality. About 75% of the 400,000 prisoners in India are under-trials who are mostly accused of minor offences and are too poor to post a bail and get competent legal help. Most of our conviction in courts are based on confessions of the accused, often extorted from the poor by third degree methods and torture. Without confession, our conviction rate at about 10% is among the lowest in the world. And there are over 30 million cases – two-thirds of which are criminal and one-third are civil – pending in courts. Complicated and dilatory legal procedures, endless adjournments, expensive litigation, years or decades of delay in settling civil disputes and inaccessibility of justice system deter most of the poor and middle classes from approaching courts to settle a civil dispute or enforce their rights. The poor often swallow injustice and suffer silently, or pay a bribe in the hope of some justice, or approach a local muscleman or criminal to get rough and ready justice by brutal methods for a price.

In all these eventualities justice suffers, the poor pay a heavy price and poverty is perpetuated. A society that does not ensure justice to its poorest and weakest in real terms - not merely by normative declarations – cannot end poverty, discrimination or oppression. The state's first duty is to enforce rule of law. We need far reaching reforms of the police – crime investigation in particular, prosecution, procedural law and judiciary, if we are to ensure a modicum of social justice.

The third critical issue I would like to highlight is the state's failure to ensure quality education to every child and quality healthcare to every family without the burden of out-of-pocket expenditure. Our school education is in shambles. The law guarantees free and compulsory elementary education, and it will soon extend to secondary education. The state is investing considerable sums on our schools. The per child expenditure in the Southern states is of the order of Rs 50,000 to Rs 70,000 per year in government schools. But most of the children get little real education. Out of desperation, the poor are increasingly sending their children to private schools spending large amounts disproportionate to their income. But in most government and private schools the

outcomes are pathetic. Very credible surveys like ASER show year after year that among children in 8th class – in government or private schools – 25-30% cannot read, 30-40% cannot do a simple two-digit subtraction, and 50-60% cannot divide a three-digit number by a single digit, let alone understanding simple concepts and applying them. The 2009 PISA survey of fifteen-year olds in 74 countries/entities puts Indian children at second from bottom – just above the lowest placed Kyrgyzstan! The response of Indian government is not to improve the outcomes, but denial; the government withdrew India from the global PISA survey! Clearly educational failure almost always affects the poor, and guarantees perpetuation of poverty and caste oppression.

Our health care is even more of a horror story. Every year 1.2 million children below 5 years of age die in India, mostly due to preventable causes; Annually over 60 million people who were marginally above poverty descend back into poverty due to ill-health or costs of healthcare; and ill-health is the biggest cause of impoverishment and indebtedness in India. Again the worst sufferers of poor healthcare delivery are the poor and the marginalized sections.

The good news is we can significantly improve the quality of school education even at current levels of expenditure, and radically improve healthcare by increasing public health expenditure from 1% to 2% GDP in a judicious manner. Yet the decades of apathy and criminal neglect of our governments continue. The biggest private and multi-national investments in India are in school education and tertiary healthcare! These investors realize that the demand for quality education and tertiary healthcare will continue to grow, and people will be forced to spend more and more in future. They are essentially betting that the Indian state will not improve education and public health and therefore these sectors are excellent profit centres! Unless we ensure quality education and healthcare to every single child and family, we cannot enhance the capacities and productivity of the deprived sections; poverty and disadvantages by birth will continue.

The fourth area that needs to be addressed is local governments. Centralization of power guaranteed poor service delivery, lack of accountability and snapping of the links between vote and outcomes, and taxes and services. Dr Ambedkar feared that local governments in traditional villages would further exacerbate caste oppression and discrimination. He rightly called Indian traditional village habitats “dens of casteism and corruption”. The Indian state should have created larger entities like countries by conglomeration of traditional villages with a population of, say 20,000 - 30,000 as primary units of local government. Instead, the well-meaning Constitutional amendments (73rd and 74th) created over structured, underpowered ineffective local governments. We need to radically restructure local governments by disregarding the traditional caste-ridden, segregation - prone villages and creating larger entities. This will ensure economies of scale and infrastructure and adequate managerial talent, and help dilute caste

inequalities by the power of universal franchise in a larger entity. Real empowerment and devolution to such local governments with a strong system of accountability through independent Ombudsmen will improve services and give real leadership and power to the local leaders who represent the scheduled castes, scheduled tribes, backward classes and women in large numbers thanks to a system of reservations. Giving representation in a small, traditional, caste-ridden village, with inadequate resources and no power made the whole third tier of government and local reservations ineffective.

Finally, we need to look at the nature of our politics and electoral system after nearly seven decades of the working of the Constitution. Over centralization of power at the union level and the first-past-the-post system of elections have exacerbated the worst features of a flawed democracy. Today vote buying, large consumption subsidies without addressing the structural problems of poverty and income deprivation, and increasing mobilization of votes by polarizing society on caste, region and religion have become the key features of our electoral democracy. We have political freedoms, fierce electoral competition, and largely peaceful transfer of power which make us a functioning democracy. Thanks to Ambedkar's genius and the vision and foresight of the Founders we could preserve unity and liberty in a diverse country, promote linguistic harmony in a multi-lingual nation, strengthen federalism to some extent, and achieve moderate economic growth. But we are not fulfilling our potential, and the Constitutional promise of justice, equality and fraternity are far from realized to the bulk of the 100-deprived sections oppressed by the twin burdens of caste and poverty.

There is always bound to be a gulf between the traditional attitudes of a society and the Constitutional values and vision. The political, administrative and judicial processes, and state machinery and functioning should act as the bridge between tradition and modernity, between caste oppression and egalitarianism, between deprivation and opportunity, and between division and harmony. While Ambedkar's work bore some fruit, we are far from realizing his dream. We have a long way to go; but there are practical, realistic, affordable, achievable, acceptable institutional, administrative, judicial and political reforms based on our experience and the best practices elsewhere. Status quo is not an option if we believe in justice and opportunity. I believe that unfulfilled potential and avoidable suffering are our greatest scourges. We can end them if we are inspired by the vision of our founding fathers and innovate with practical wisdom.

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