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WHAT IF, AMBEDKAR WOULD HAVE RE-APPEARED AND SEEN THE COUNTRY AS PRESENTLY IT IS?

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Abstract

Deep down the history when every ambit of the society was encumbered with illness of social stratifications, the person named Bhimrao Ramji Ambedkar taken his birth in the year 1891 on 14th April in Madhya Pradesh. Thawed in its acceptability, the society turned against Ambedkar because of his strata, stationed as the lower one in the chronology of the caste system. Sheer deprivation and indignation was the only glory left for him. Every steps of his life was shackled with exploitations, left with only one identity that he was a person belonged from the Dalit community. Being deprived of the very essence of life in terms of enjoying the spirit of life and liberties, Ambedkar stood strong in acknowledging the pain of the society. He later stood as one of the tallest person of the time being envisioned with justice, liberty and equality. India when ruffled its feather of independency, the man who in his past had tasted the misery of the country was given the work of mastery. He fostered the temper of constitutionalism in the practice of creed and nationalism, voiced towards having an incognito effect of creed within nationalism. Or castrated with rationality he had seasoned the time by unfolding the greatest ever document in the history of the world itself. In creating the lengthiest constitution he envisaged in its spirit the ethos of humanity. A lot has happened prior to the master's passing away and today in the country of pluralism many challenges has erected, combating to which rest forth the Ambedkar's views. Whether one fundamental right does have an opportunity to subsume the other fundamental rights as per as right to religion and right to life is concerned or on appointment of the judges prima facie view of the Chief justice will rest over the President, all these are the issues needed serious introspections through the eyes of Ambedkar. The present article concerned with all the issues presently hobnobbing across the horizon in addressing of which Ambedkar's ramification in a virtual reincarnated form is the urge and cry of all the anticipations.

Introduction

Society when was ruined with the fact of stratifications, India in gaining its independency, tried to stand strong through the hands of the most experienced person. Dr Ambedkar then had become the most prominent person in the eyes of the Pandit Jawaharlal Nehru. India, the maiden country was considered to have given the shape of a democratic nation where people would consider its fate in the long run. The question with this aim conceived was that when for so many years people had been deprived of their lives and opportunities how they could be equally considered to have given their opinion towards driving this country forth. Considering thrust of the question attempt was taken in the name of reservation in respect of all those who were backward by their positions and in their mandates. People of lower castes were then simply defied from drinking any drop of water which the upper castes people used to access. The work of mastery therefore taken by such hands that had underwent the pain of indignation of the society at large. A caste then was not devoid of religion in acceptance of which therefore only the upper castes people would have opportunities to avail the God. Ambedkar found creed in such light to be the most dangerous practice which apprehends to divide the people in large. He therefore has proposed to keep nationalism upon creed otherwise unity

within diversity the goal envisioned would be a practice in futility. A democracy without equality in approaches and opportunities would be a complete fallacy. In nucleus of it, fraternity lies, upon the ethos of which liberty and equality prevails. These were the reasons therefore resting before the master to be considered in facing the challenges of time while crafting the biggest democracy of the world. More than seventy two years has passed this nation has gained its independency, the repels of impact through his effort has been left over in giving him the tallest position in the country but the question lies in the same manner, does the aim and the goal envisioned by Ambedkar has reached successfully in pressing down the problems of the then time being or they are still looming across to trace around. The answer to this question is assertive in form when Ambedkar's reincarnation would be the call to face the vernacular ties.

The challenges today resting are in the same vigour, in the same ethos but have been graduated in practices, the root of which is lying with the fraternity which today has become a subject of maze.

Caste Atrocities

Independency witnessed to have unveiled the largest constitution of the world with provisions specially framed for the minorities and backward classes of people but was fated to be a fallacy in the long run of maintaining their securities. Letters of the P.S Krishnan, the former civil servants in addressing the present prime minister of the country, has unveiled various incidents of atrocities being practised against the Schedule Castes and Schedule Tribes since independency for crafting stringent laws in favour of protecting them. Specific legislation in the name of SC and ST (Prevention of Atrocities) Act was brought into force in the year 1989 under the Rajiv Gandhi governance. The spirit of the Act was later activated in practice under the regime of V.P Singh's government. With time in spite of having an Act in play offences against the minorities are in rampant practices. Citing therefore lacunae in the administrative system, empirically the former civil servant had projected through the letter the cause that has fostered the atrocities high in its happening. In pursuance to that some of the amendments in the Act were sought forth and in response to the said proposals amendments were done. The said endeavour was later challenged in the Apex Court and on 20th March 2018 a judgement disappointing the spirit of the said Act passed contending the said amendments as in fructuous.¹ The judgement later being corrected and restored the true spirit of the amendments being done in the said Act.² Indian constitution in its preamble talks about "we the people", the saying that reflects the unity amongst the people of the country, irrespective of caste, class, creed, sex, religion and place of birth. The need still therefore propelled to have special mentioning of the provisions meant for the specific communities of the societies who are backward in character. In light of such, worthy it would be in tasting some aspirations from the debates took place on 30th November, 1948 in the Constituent Assembly while incorporating Art 16 in the constitution. T.T Krishnamachari, in concerning the clause (3) of Art 16 had a special mentioning on asking the meaning of the word "backward" in the clause. He interpreted upon saying that "backwardness" could only be determined through understanding the literacy rate of the persons and in such circumstances when India got its independency only 20% of the country were educated and the rest 80% were illiterate. Prof. Ivor Jennings, the Vice-Chancellor of the Ceylon University criticized the clause and said it a loose drafting which would be a paradise for the lawyers. Contending strongly in oppose to both the saying, Ambedkar marshalled the fact that in the whole world no constitution could be found which is not subjected to judicial interpretations and as per as the term "backward" is concerned it is to be remembered in this context that from the time unknown this society has been a paradise for few in commanding sway over many where liberty and equality are not in correct proportion to strive through for living the life of a human hood. The Association for welfare of the outcastes, known as "Bahishkrit Hitkarani Sabha" was founded by Ambedkar had marshalled the "Mahad March", convened against atrocities being practiced in the society where it was contended for opening up of the places for public utility services irrespective of caste and creed. The movement started with burning of the Manusmriti and ended up by getting into the Court where Ambedkar won. On harking

¹ The Wire Staff, Dilution of SC/ST Atrocities Act Will Have a Crippling Effect on Social Justice, The Wire (Mar. 23, 2018), <https://thewire.in/law/dilution-of-sc-st-atrocities-act-will-have-a-crippling-effect-on-social-justice>

² Neerad Pandharipande, SC verdict upholding Centre's amendments to SC/ST Atrocities Act restores law's original intent, corrects flawed 2018 judgment, First Post (Feb. 13, 2020, 12:43:13 IST), <https://www.firstpost.com/india/sc-verdict-upholding-centres-amendments-to-scast-atrocities-act-restores-laws-original-intent-corrects-flawed-2018-judgment-8034431.html>

back the stringencies suffered by the outcastes, Ambedkar suggested for having their places in the public services otherwise clause(1) of Article 16 won't get complied with the spirit of providing equal opportunities in employment irrespective of caste, class, sex and religion.³

Today in the spirit of this struggle of maintaining equality across the horizon, incident in count of the others would make understanding of the present situation much clear, when a PhD scholar in Hyderabad University in pursuit of his being the member of the "Ambedkar Student Association", committed suicide on 17th January, 2016, with a note in store that his birth was a fatal accident and he claimed to be a happy dead than being alive. The incident toiled the society with ruckus atrocities.⁴

Ambedkar's reappearance in this situation is disappointing and disheartening. The effort and the goal for this nation he has envisioned, would have found to have met with complete fallacy. His theory of trinity in keeping justice, liberty and equality has completely succumbed to have frailed. He in his reincarnated form would have said that life is at present consumed by slow decay.

Secularism in different shades of colour

India has witnessed to be a soil of different shades of colour as per as religious practices are concerned. People rooted with various creeds could be traced to have buoyant across the surfaces. Reckoning from the past the soil of this nation has harboured various people of different creed came from different corners, at different times of the world. The colour in such is different so as the tastes. In so much of diversity, the unity prevails in its fraternity. In pursuance to that people of different creed follows their respective personal laws. The conduct they subscribed is based upon their personal laws by which they are governed. On practising to which several kinds of exercise they performed in effects to which some rights are subsumed which are fundamentally given by the constitution itself. In conflict to such, the conundrum lies with the fact that whether personal law does have the right to override the fundamental rights guaranteed by the constitution itself. A judgement from 1951 could be well recognized to state that personal laws were out of the ambit of the fundamental rights and therefore justified in placing those out of any personal practices of religion and if any curtailment of fundamental right takes place such could be well justified in action. The judgement was well recognized as being flawed. Art 13 of the constitution which clearly says that any law which comes in conflict with the fundamental rights would turn to be an ultra vires one and such includes personal laws also.⁵ India on gaining its independency states in its Art 1, India that is Bharat is a union of states. At first the word secularism was not there in the preamble of the constitution. It was incorporated through 42nd amendment Act but the sense of secularism prior to the incorporation was already there in the constitution. Well construction can unfold the meaning of the provisions when read in a whole so. Art 14, 15, 21, 25, 26 and 29 and 30 are the provisions when grossly constructed would unleash the meaning of secularism in the constitution. The challenge today soaring in maturity therefore is on practicing religious practices can other fundamental rights be subsumed. The conflict is sheer, demanding at present serious introspection. Religion is made of practices and every practices from the past, if be reckoned, it would be pertinent then to note that women in such has always been relegated to inexorable inferiority.

The practise of triple talaq in this context could be well analysed. Triple talaq, the practise by which a Muslim husband can divorce his wife only on mere pronouncement of talaq three times spontaneously. The practice comes to have conceived out of the Muslim personal law, an uncodified law. As per as constitution is concerned, starting from the preamble, "we the people", includes every person of every religion. Art 14 in furtherance to such sanctioned equality before law and equal protection of law. On being challenged on the grounds of gender justice and equality, the practice was said to be unconstitutional. The pronouncement came on 22nd of August, 2017 from the Supreme Court of India in protecting the Muslim women at large who from the past has been subjected to such practice to which they were subjugated thoroughly. Though the practice often claimed to be non religious but the practice generally performed in authentication of the religious call.

⁶ Prior to the triple talaq case in the 1956-1957 Pandit Jawaharlal Nehru amended the Hindu Marriage Act 1955 and inserted the practice of

³ H.V Hande, Ambedkar & The Making Of The Indian Constitution: A Tribute To Babasaheb B. R. Ambedkar, 62 (First Published, Macmillan Publishers India, 2009, Reprinted 2012).

⁴ The Wire Staff, My Birth is My Fatal Accident: Rohith Vemula's Searing Letter is an Indictment of Social Prejudices, The Wire (Jan. 17, 2019), <https://thewire.in/caste/rohith-vemula-letter-a-powerful-indictment-of-social-prejudices>, 17th January, 2017, republished on 17th January, 2019

⁵ The State Of Bombay vs Narasu Appa Mali on 24 July, 1951, Bombay High Court.

⁶ Triple Talaq Shayara Bano v. Union of India, The Supreme Court Observer, <https://www.scoobserver.in/courtcase/triple-talaq-case>

monogamy otherwise before such amendment Hindu's were also allowed to have practiced multiple marriages. In the year 2000, certain discriminatory practices in Christian community were noticed in respect of inheritance between men and women which were resolved by amending the Indian Divorce Act 1869. Later in the year 2007 under the governance of Dr Manmohan Singh steps in respect of the Hindu Undivided Property were taken as per as inheritance in Hindu succession is concerned where men and women were given equal rights in inheriting their properties obtained from their ancestors. Every corner of our lives therefore encumbered with a deep impact of religion in pursuance to which we drive our action based solely upon the belief system.

Art 25 and 26 gives religious freedom to the people of India. They profess, practise and propagate their respective religions. Upon this some restrictions are also hangs around. These Articles begin by saying "Subject to public order, morality and health....and subject to other provisions", which actually construed to be the limitations of this right. In this kind of practice therefore nothing could be performed by which limitations set by the article cannot be overridden. Art 25 in its saying "all persons equally entitled to freedom of religion", means all persons are equally entitled to freedom of religion, not only entitled to religion.⁷A practice in this context be well discussed, an ages old practice devoid women from 10-50 years of ages from entering into a temple, named Sabarimala. It's a custom coming into being performed from the time unknown and the practice certainly characterised in denying women from entering into the temple. The practiced based on belief that on doing so it would be a virtue. A practice, if be tested in the spirit of "justice, liberty and equality" would then happened to be a fallacy. A depreatory conduct hitting the spirit of humanity is on floor rampantly hovering for years in an independent country. The practice declared to be unconstitutional. In September, 2018, the Apex court said such practice to be in flaws on having access to God.⁸

Dr Ambedkar was always of the view of apprehending religion in its practices in long run. He piqued in implementing uniform civil code in future. He wished to give this country a code followed by all the people irrespective of their religion, caste, creed and sex. The tussle of belief and religion has a long tail to derive. The aim therefore is to bring discipline in order as per as religious practices are concerned. Art 44 of the Directive Principles of State Policy states about Uniform Civil Code. Part IV of the constitution is the vision and fundamental rights in Part III is the course to be taken. All in cocktail of which secularism prospers and this nation becomes the greatest and the largest democratic place in this planet earth.

Facets of Judiciary

Judiciary is the third organ of the country, work as sentinel qui vive for the constitution. It is the ultimate place from where right at its best determined to be sought. A place of scholarship and probity is certainly what the expectation speaks for the institution. The place therefore has always presumed to have possessed by someone who is ahead of the most, whose integrity and scholarship heads high to determine what is best for the country. Appointment in regards to such position has always been a chequered affair. The persons by whom appointment to be guided so that independency of the institution gets secured is a process that bears the ethos of democracy. In the early history before India gained its independency, concept of an independent judiciary took time to have its grace. The situation of England prior to 1701 was certainly at the whims and caprice of the Crown itself. The judge was considered to be a subservient of the executive prerogative. The situation could be evident from the *Hampden's case* (the Ship Money case) where seven out of the twelve judges held that without parliamentary approval the Crown can collect money. Sir Edward Coke the then Chief Justice in the Queen's Bench was removed for voicing against the Crown. "Be you ever so high, the law is above you", the principle then was raised to hatch out the principle of rule of law. But post to the Act of 1701, it was held that a judge if to be removed from the office then approval of both the houses required to be given. The position of the judges thereby became secured.⁹

Today with time after securing independency with the spirit of separation of powers, we have reached to a situation where independency of judiciary is a fact accompli. Post to independency some of the tallest judges appointed from the field of executive, Justice Krisna Iyer was a minister before being elevated to a position of high esteem. The super ceded Judge; Justice Hedge was from the executive. But a situational

⁷ Narayanan Nambudripad v. State of Madras, AIR 1954 Mad 385

⁸ ANI, Sabarimala verdict: A timeline of temple entry issue ahead of SC verdict today, The Economic Times (Nov. 14, 2019, 09:06 AM IST), <https://economictimes.indiatimes.com/news/politics-and-nation/sabarimala-verdict-a-timeline-of-temple-entry-issue-ahead-of-sc-verdict-today/articleshow/72049026.cms?from=mdr>

⁹ M.P Jain, Indian Constitutional Law 309 (8th ed. Lexis Nexis)

aghast followed by an emergency when serious interferences from the executive into the judicial parlance could be noticed. The *Habeas Corpus case*, a notable incident in the history of judicial understanding, when a faulty frame work of legal mind had reached to its nadir, the principle of rule of law was throttled to strip down constitutionalism from democracy. J Khanna's dissenting opinion in a 4:1 majority flagged high in later times, through which rule of law has been secured to get a benevolent place in democracy. Post to that through the eyes of Justice Verma collegium system was given effect, where the chief justice with his fellow judges would decide who would be the next judge. The intention was to protect judiciary from executive coup. Since then with the *Three Judges Cases* the collegiums has subjected to various kinds of controversy as per as its partiality and biasness is concerned. One of such example could be noticed from the case of Justice Soumitra Sen's impeachment done in 2011 for his proven misconduct while being the judge of the Calcutta High Court. In pursuance to that therefore, National Judicial Appointment Commission was construed in the year 2014 and given effect in the form of law. Certainly the Act was challenged before the Supreme Court on 2015 in the case of *NJAC v Supreme Court Advocate on Record Association* in claiming that such law is in actual contravention of independency of the judiciary. It was contended to be against the basic structure of the constitution and stood ultra vires and void. Being criticised enough across the horizon, it was felt from the judgement that the interpretation given to the articles 217 and 124(2) of the constitution is exactly opposite of what the Ambedkar's had viewed. Therefore it stands completely opposite to what the spirit of the provisions has to say. A democracy is viewed to be in the hands of tyranny of the unelected.

In such view the stand of Ambedkar on 24th May, 1949 required to be lighted. Upon discussion in the house for prolonged six hours and after passing several amendments in such regards, Ambedkar stood to give a befitting reply. He stated that from the discussion being made the construction that emerges based on three heads. In respect of the questions how the judges of the Supreme Court and High Courts be appointed, whether concurrence of the Chief Justice with the President shall prevail or the Executive decision for appointment shall be sanctioned by the Legislature or in case of appointment regards shall be given to the opinion of the council of states, Ambedkar perched upon the procedure being followed in other countries regarding appointment of the judges. In Britain, upon consent of the Crown the appointments are made of the judges, where executive plays solely the key role. In America, opposite to Britain, appointments in the office of the Supreme Court and of the states are made in concurrence with the Senate. India then contended to have not reached such stage of heights that the appointment to be left upon solely in the hands of either the President or of the legislature. A midway was taken to give effect the appointment making procedure where it should takes place through a consultative process through an ex hypothesis mechanism where eminent persons involve in such procedure.¹⁰ Judiciary consumes power to function from the constitution and credibility from the faith of people. Today a situation has arisen where beyond independence of judiciary, credibility of the judiciary in demand. As per as appointment making procedure is concerned it is required to be done in the spirit of separation of powers where checks and balances would prevail and an inter-institutional courtesy should be maintained through which the very fabrics of an egalitarian society could be met.

Conclusion

Dr B.R Ambedkar if today would have re-appeared he would have thought that a murky cloud has come and steered across the society put in threats the constitutionalism of this country. In confronting this situational cocktail he would have first endeavored to make a call for credibility where men of echelons would hold the organs of the country in guiding the country towards meeting the dream he had seen much before from ashes of the time. Today in the scenario of being in the "hornet's nest" of time, Ambedkar's last speech in the parliament on 25th of November, 1949, is of worth remembrance. He quoted in maintaining the country's independency in long run while combating with the old enemies in the form of caste and creed, that many political parties of diversified caste and creed will come and govern the country but to maintain the country's independency whether they will place nationalism over creed or creed above nationalism, Ambedkar didn't know of it but he was specific in saying that unless nationalism is kept above creed, the country will again lose its independency. He further stated in maintaining the democratic ethos of the country and in doing so he had proposed to hold fast to the constitutional methods for achieving

¹⁰ H.V Hande, *Ambedkar & The Making Of The Indian Constitution: A Tribute To Babasaheb B. R. Ambedkar*, 105 (First Published, Macmillan Publishers India, 2009, Reprinted 2012).

social and economic objectives otherwise in following of any other means would led up to hatch the grammar of anarchy and the sooner that be abandoned, better that would be for the country.¹¹



¹¹ V.D.Kulshrestha's Landmarks in Indian Legal and Constitutional History, B.M. Gandhi (9th ed. Eastern Book Company, 2009)