

Freedom from fear and the fear of freedom

If in Annihilation of Caste Ambedkar imagined the destruction of a religion that perpetuated the fixity of iniquitous relations in society, then in imagining the Constitution he equally overturned conventional understandings of the foundations of a constitution. By ARVIND ELANGO VAN

IN an effort to collectively memorialise Bhimrao Ramji Ambedkar (1891-1956), the designers of his statue interestingly committed a fusion of biographies—those of Ambedkar and of the Indian Constitution. This depiction of Ambedkar, clad in a Western suit with his right forefinger raised and pointed upwards and his left hand holding a copy of the Constitution at once conveys erudition, scholarship, authority and perhaps even ownership of the text that he helped draft as Chairman of the Drafting Committee in the Constituent Assembly. Just observing the statue, it would seem to one that the relationship Ambedkar had with the Constitution was a deeply personal one and, more importantly, one of intimacy. However, as is well known, Ambedkar's life and mission were far too complex to be reduced merely to a single book, even if it is the Constitution (Anand Teltumbde, "An Ambedkar for our times", *The Hindu*, April 2, 2014); in other words, as Arundhati Roy has noted, "Using the Constitution as a subversive object is one thing. Being limited by it is quite another" ("The Doctor and the Saint", *Caravan*, March 1, 2014). Similarly, the complexity of the history of the Constitution cannot be reduced to single authorship, even if it is Ambedkar's. In fact, it is this fusion of biographies, of the leaders of the nation and its Constitution, that has prevented a nuanced understanding of the history of the Constitution, leading Pratap Bhanu Mehta to lament that there is a serious dearth of historiography of the Constitution that can put the text in a proper "historical and philosophical perspective" ("What is Constitutional Morality?", *Seminar*, No. 615, 2010). Hence, it would be helpful to at least symbolically separate Ambedkar from the Constitution, not to undermine his role in its making as Arun Shourie has done but rather to reflect on the pathology that has pervaded the documenting of its history and locating Ambedkar's position within that history.

Documenting the history of the Constitution

Today, for anyone interested in studying the history of the Constitution, the two main primary sources available are *Constituent Assembly Debates (CAD)*, published in five volumes by the Lok Sabha Secretariat, and *The Framing of India's Constitution*, also originally published in five volumes (with a later sixth edition added that discusses constitution making since 1950) as part of a project initiated by the Indian Institute of Public Administration. While these volumes are a fascinating account of the debates leading up to the drafting and adoption of the text on January 26, 1950, they are embedded within a curious and intangible nationalistic template, which is often difficult to escape. One direct consequence of scholars reading these debates and committee proceedings has been a tendency to always craft a wholesome history of the Constitution and thereby overlook the many hidden histories that lie within these texts. Of course, the inimitable scholar Granville Austin's biography of the Indian Constitution is a classic example in this regard (*The Indian Constitution: Cornerstone of a Nation*, OUP, Delhi, 1966). Following Austin's conflation of nationalism with constitutionalism, other scholars too have generally followed the principle of reproducing the history of the Constitution almost as if to serve as an accompaniment to the state-sponsored publications of *CAD* and *The Framing*. In other words, such a narrative of Constitution making reaffirms the integration of nationalism with constitutional history. Of course, this is not to suggest that recent efforts have not been made to approach the history of the Constitution in a non-nationalistic framework. Scholars such as Mithi Mukherjee, Rohit De, Uday Mehta, Arudra Burra, Aditya Nigam and Pratap Bhanu Mehta, to mention a few, have creatively explored non-nationalistic ways to approach the Constitution's history. However, the fact that they are recent and the absence of an alternative viable framework to counter Austin's fundamental thesis of equating nationalism with constitutionalism just demonstrates the enduring power of this framework of nationalism.

Interestingly, this nationalistic fervour operates by not only controlling the narrative of constitutional history but also by regulating the documentation and, importantly, the accessibility of papers relating to the Constitution-making process. At the time that Austin researched, the administration made files easily available to him. In fact, as Austin recounted to this author, President Rajendra Prasad instructed his office to immediately give Austin copies of his personal papers relating to the Constituent Assembly. Austin also researched at the archives of the Law Ministry, where, he notes in his book, though the papers were disorganised, they were nevertheless a treasure trove. However, a visit this author made to the Law Ministry archives a few years ago was met with a less welcome reception than Austin received. The officer in charge was quite reluctant to engage with this author on the status of these files, leaving one to wonder whether they existed at all. A similar inquiry at the National Archives of India, New Delhi (NAI), did not yield any fruitful result either. How is it that a nation and its leadership that constantly celebrate the Constitution, for the most part, have so woefully and wilfully been callous about documenting and preserving the papers relating to its foremost text, the “cornerstone of the nation”?

Within such a history then, how does one locate Ambedkar? Or, more importantly, why must one locate Ambedkar in this nationalistic history of Constitution making?

The constitution of fear

Ambedkar’s entry and exit from the highest decision-making bodies, namely the Constituent Assembly (1946-50) and the provisional government (1947-51), were tinged with moments of success and failure, and indeed more of the latter than the former. At one level, it provided Ambedkar a unique opportunity to guarantee a path of social reformation for which he had fought all his life, and in this he partly succeeded with the provisions of affirmative action inscribed in the Constitution. However, this momentous opportunity to change the course of history also brought with it tremendous disillusionment when Jawaharlal Nehru’s government would not cooperate with Ambedkar on the issue of the Hindu Code Bill. Owing to this obduracy, Ambedkar resigned from the government in 1951, followed by his defeat in the first general election, and though he was subsequently elected to the Rajya Sabha, his excision from high executive-level politics was complete. In 1953, Ambedkar publicly disowned the same Constitution for which only a few years ago the members of the Constituent Assembly had heaped praise on him. Thus, strangely, in fighting for equality against an unjust system, it would seem like the system strategically incorporated Ambedkar in a moment of need and at an opportune moment discarded him, much like the caste system that uses the labour of Dalits only to cast away the recognition of such labour in any nationalist narrative, a process that several scholars have effectively pointed out. However, Ambedkar did not leave the constitutional centre stage without a trace. If anything, his writings on the Constitution provide one of the pivotal points around which a critique of nationalist renderings of constitutional history can be explored.

If in his celebrated work, *Annihilation of Caste* (republished by Navayana, Delhi, and Verso, London, 2014), Ambedkar imagined the destruction of a religion that condoned and perpetuated the fixity of iniquitous relations in society, then in imagining the Constitution, he equally overturned conventional understandings of the foundations of a constitution. Ambedkar’s writings about the Constitution produced before his role as Chairman of the Drafting Committee reveal that in his view some of these inequities of religion could be addressed via the mechanism of the newly independent and empowered state (S. Anand, “Resurrecting the Radical Ambedkar”, *Seminar*, No. 601, September 2009). A full-fledged version of this imagination can be seen in the memorandum Ambedkar prepared in March 1947, in which he outlined the structure of the Constitution and proposed safeguards for the Scheduled Castes and minorities. A brief perusal of this memorandum makes clear not only some of the salient features of Ambedkar’s constitutional thoughts but also, in its eventual non-realisation, his differences with his peers in conceptualising the future role of the Indian state.

Ambedkar's memorandum

In this memorandum, Ambedkar fundamentally imagined a state and society where citizens had the guarantee of the freedoms of life, liberty and the pursuit of happiness and, importantly, lived in a system that abjured socio-economic and political discrimination. This memorandum has at least four striking features. Firstly, the preamble called for rights to be guaranteed to its citizens not on the basis of a non-territorial principle such as a nation but rather as inhabitants of a territory. Secondly, the preamble also called for protection of freedom not only from want but also, and perhaps more importantly, *freedom from fear*. Thirdly, the memorandum outlined in detail the nature of the rights that needed to be protected, and finally, the state and the government itself, as the protectors of these rights, had to be cognisant of these inequalities in its very structure in order to prevent any passage of untoward laws against the interests of the Scheduled Castes and the minorities. In its comprehensiveness, then, Ambedkar's memorandum came close to unmaking the traditional functions of the state and government, in which rights were guaranteed and the judiciary tasked with enforcing them in the event of a violation. In this process of unmaking and remaking the state and the government, Ambedkar's ideal constitutionalism perhaps gives material force to his ideas in *Annihilation*.

In this memorandum, Ambedkar enumerated specific areas of non-discrimination and required their violation to be made a cognisable offence. Thus, he wrote, "inns, educational institutions, roads, paths, streets, tanks, wells and other watering places, public conveyances on land, air or water, theatres or other places of public amusement, resort or convenience", dedicated for public purposes must always be accessible to all. Similarly, individuals could not be disqualified on account of their "religion, caste, creed, sex or social status", and, perhaps more importantly, "subjecting a person to forced labour or to involuntary servitude" should be made an offence. Further, with respect to the Scheduled Castes, Ambedkar called for an auditor to oversee their welfare, called for adequate representation of these castes in the legislature and executive, and made social boycott an offence. (This memorandum is available on www.ambedkar.org. It is also published in Shiva Rao, *The Framing of India's Constitution*, Vol. II, 1966.)

In Ambedkar's view, the task of guaranteeing these rights rested not only with the judiciary but also in fundamentally reorganising the legislature and the executive. The legislature would be prevented from making a law that would interfere with or violate the right of citizens to make contracts, to seek employment in civil and military organisations, to have full access to all public spaces, to seek benefits of religious organisations and to enjoy equality irrespective of "custom or usage". In addition to "owning and running key industries", Ambedkar required the state to control all aspects of agriculture as well as extending to control over all aspects of land ownership (www.ambedkar.org).

In the nationalistic or wholesome renderings of Indian constitutional history, the specificity of Ambedkar's memorandum would be categorised as one of the many drafts submitted to the Constituent Assembly for its consideration. Given that Ambedkar's vision as expressed in this memorandum did not materialise, it would be tempting to overlook these ideas. However, a deeper examination of Ambedkar's memorandum reveals the extent and nature of India's inequality that made Ambedkar specify these particular discriminations in order to prohibit them in a postcolonial India. The enumeration of rights, then, was not simply an exercise in liberal thought but a *historical account of the nature of inequalities expressed in constitutional language*. Of course, Ambedkar in his voluminous writings, and especially in *Annihilation*, has produced many such accounts. However, it is in the realm of Constitution making where history and its lessons had to be translated into a constitutional language wherein Ambedkar, perhaps more than his peers, performed such a translation most faithfully. By foregrounding freedom from fear, Ambedkar fundamentally challenged the fear of freedom that characterised the majority's anxiety at the time of making the Constitution. Indeed, the manner in which the state would be vested with circumscribing

fundamental rights indicated the anxiety of the framers of the Constitution about guaranteeing freedom itself. Although some members did not share such anxieties, the eventual draft of the Constitution adopted in 1950 nevertheless contained them. It is indeed an irony of history that Ambedkar became a part of this process even though his commitments suggested otherwise.

Conclusion

Nationalist renderings of the Constitution, among other things, would only perpetuate an imaginative contest among the framers as to who contributed the most to it. Locating Ambedkar in such histories would simply be fraught with reductionisms and overstatements. Following Ambedkar's own suggestion, both in *Annihilation* and in his memorandum to the Constituent Assembly, one may perhaps be better served to rethink the history of the Constitution by critically questioning not only the events and processes leading up to the making of the Constitution but also seriously rethinking the ways in which the documents relating to it are reproduced and preserved. In this sense, like Ambedkar, one has to engage in a process of unmaking and remaking the meaning of constitutional history. If "Educate, Agitate and Organise" were the principles that Ambedkar bequeathed to his followers, perhaps it is time as scholars and individuals to apply those same principles when studying Ambedkar and the Constitution. In such an endeavour, Ambedkar's vision of freedom from fear against the fear of freedom would indeed be the most faithful guide. On the occasion of the year leading up to the 125th birth anniversary celebrations of Ambedkar, this would be a valuable lesson to bear in mind.

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