Babasaheb Dr. B.R. Ambedkar

(14th April 1891 - 6th December 1956)

Courtesy : Artist Prof. Pramod Ramteke, Chitrakala Mahavidyalya, Nagpur

Significance of the Hindu Code

No law passed by the Indian Legislature in the past or likely to be passed in the future can be compared to it (Hindu Code) in point of its significance. To leave inequality between class and class, between sex and sex which is the soul of Hindu society, untouched and to go on passing legislation relating to economic problems is to make a farce of our Constitution and to build a palace on a dung heap. This is the significance I attached to the Hindu Code.

—Dr. Ambedkar on 'Hindu Code'

DR. BABASAHEB AMBEDKAR
WRITINGS AND SPEECHES

Vol. 14
PART ONE
(SECTIONS I TO III)

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by

Vasant Moon

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Kumari Selja

Minister for Social Justice and Empowerment
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MESSAGE

Babasaheb Dr. B.R. Ambedkar, the Chief Architect of Indian Constitution was a scholar par excellence, a philosopher, a visionary, an emancipator and a true nationalist. He led a number of social movements to secure human rights to the oppressed and depressed sections of the society. He stands as a symbol of struggle for social justice.

The Government of Maharashtra has done a highly commendable work of publication of volumes of unpublished works of Dr. Ambedkar, which have brought out his ideology and philosophy before the Nation and the world.

In pursuance of the recommendations of the Centenary Celebrations Committee of Dr. Ambedkar, constituted under the chairmanship of the then Prime Minister of India, the Dr. Ambedkar Foundation (DAF) was set up for implementation of different schemes, projects and activities for furthering the ideology and message of Dr. Ambedkar among the masses in India as well as abroad.

The DAF took up the work of translation and publication of the Collected Works of Babasaheb Dr. B.R. Ambedkar published by the Government of Maharashtra in English and Marathi into Hindi and other regional languages. I am extremely thankful to the Government of Maharashtra's consent for bringing out the works of Dr. Ambedkar in English also by the Dr. Ambedkar Foundation.

Dr. Ambedkar's writings are as relevant today as were at the time when these were penned. He firmly believed that our political democracy must stand on the base of social democracy which means a way of life which recognizes liberty, equality and fraternity as the principles of life. He emphasized on measuring the progress of a community by the degree of progress which women have achieved. According to him if we want to maintain democracy not merely in form, but also in fact, we must hold fast to constitutional methods of achieving our social and economic objectives. He advocated that in our political, social and economic life, we must have the principle of one man, one vote, one value.

There is a great deal that we can learn from Dr. Ambedkar's ideology and philosophy which would be beneficial to our Nation building endeavor. I am glad that the DAF is taking steps to spread Dr. Ambedkar's ideology and philosophy to an even wider readership.

I would be grateful for any suggestions on publication of works of Babasaheb Dr. Ambedkar.

(Kumari Selja)

Collected Works of Babasaheb Dr. Ambedkar (CWBA)

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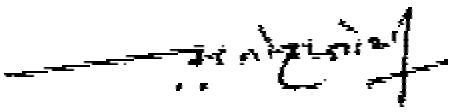
PREFACE

Maharashtra has been fortunate in having a long tradition of social reforms. Just as in Europe, Christianity inaugurated the Era of equality by preaching that a prince and a pauper are equal in the eyes of God, saints like Dnyaneshwar, Namdeo, Tukaram, Gora Kumbhar and Chokhamela brought about a great social change by preaching the Gospel of compassion, equality and liberty of worship. Caste barriers were annihilated. The rise of the Maratha power under Shivaji the Great demonstrated that a popular hero could be crowned as a King. Shivaji heralded the dawn of political equality. These saints of Maharashtra preached the Gospel of democracy in religion, breaking down the barriers of classes and castes. The Warkari cult did not recognise caste. Members of the Warkari cult in procession, marched together eating the same food in the spirit of the true brotherhood. They shared the common quest for God. The Bhakti movement of the Warkaris broadened and deepened the freedom of worship.

Article 25 of the Constitution permits such freedom. The reforms introduced by Dr. Ambedkar in Hindu Law have been accepted by and large. He laid the foundation of the common Civil Code for the Hindus and the principle is capable of extension to other sections of the Indian society. However, reforms in religious beliefs and practices are slow and voluntary. It is hoped that the guidance given by Dr. Ambedkar in this respect will be availed of by leaders of different communities and they will initiate a dialogue within the country so as to facilitate reforms in laws. Reforms, religious and social, had stirred the Maharashtrian society. The soil was fertile for further changes within the framework of the Hindu Law. Over the years, the Hindu Law underwent transformation, opening the channels of communication.

Dr. Ambedkar, by codifying the Hindu Law in respect of marriage, divorce and succession, rationalised and restored it to its glory. Dr. Ambedkar has preserved marriage as sacrament and promoted the growth of family values. Consistent with the Constitution, the Hindu Law as modified permits people to practice and profess their religion. But as Dr. Ambedkar categorically stated, "the state has retained all along the right to interfere in the personal law of any community in this country", and therefore, there is a sound basis for liberalisation of personal laws so as to broaden the freedom of the individual and the unity of the country based on such freedom.



(MANOHAR JOSHI)

Bombay :
November 28, 1995.

Chief Minister,
Maharashtra State.

EDITORIAL

Present volume contains speeches of Dr. Ambedkar in the codification of the Hindu Law. The Bill to amend and codify certain branches of the Hindu Law was referred to the Select Committee consisting of eminent jurists and parliamentarians viz. Sir Alladi Krishnaswami Ayyar, Dr. Bakshi Tek Chand, Shri H. V. Kamat, Smt. G. Durgabai and many others. The list of the members of the Select Committee reads like the directory of eminent Indians.

Before the Hindu Succession Act, 1956 and the Hindu Marriage Act 1955 of which the Bill is a precurser, the Hindu Law was uncodified in a large measure, though certain branches of it were the subject of legislative intervention viz. Hindu Women's Right to Property Act, 1937. Scattered to innumerable decisions of the Indian High Courts and also of the Privy Council, it was a source of legislation and therefore, it was necessary to give a definite shape and form to the Hindu Law by consolidation and codification. The principles of codification covered (1) right to property, (2) order of succession to the property, (3) maintenance, marriage, divorce, adoption, minority and guardianship. The two schools of Hindu Law viz. Mitakshara and Dayabhag, created and sustained inequality. The Mitakshara school treated the property of the Hindu as belonging to a co-parcenary in which by reason of birth sons, grand-sons and great-grand sons had interest. The property passed by survivorship under Mitakshara whereas Dayabhag recognised the rule of personal interest and capacity to dispose of the property having interest in it. Further the Bill had the object of making the widow, the daughter and the widow of a pre-deceased son eligible to inherit property.

It is not fair to reproduce the reasons for introduction of the Bill nor it is necessary to refer to the provisions of the law relating to marriage and divorce as the reader will find them competently explained in the speeches of the distinguished members who along with Dr. Ambedkar contributed to the enfranchisement of women in the Indian sub-continent.

Dr. Ambedkar himself had explained lucidly the reasons for consolidation and codification. The chaotic condition of the Hindu Law was reduced to neat propositions in the form of judicial prenouncements and codification was the legislative recognition of the judge made law. 'Law must be stable and yet it must change to answer the felt needs of changing times', to paraphrase the words of Benjamin Nathan Cardoze in his 'Nature of judicial process'. The unanimous approval of the Constituent Assembly to the principles of the Bill is as much a tribute to the forensic skills of Dr. Ambedkar as to the training and temperament of those who were the members of the Constituent Assembly. The principles of the Bill are in harmony with the constitutional philosophy of equality of men and women.

Needless to add that the Bill was a part of social engineering via law. It was by the standard of the time a revolutionary measure. The debates in the Constituent Assembly provoked sharp reactions. However, by providing such sharp reactions, freedom of speech fulfilled its high purpose viz. to invite discussions and to raise disputes. Now that the dispute is over and women have become as assertive as men, if not more, younger generation may find delightful reading and may well imagine what blessings of freedom they enjoy under our noble Constitution.

Though the proposal for consolidation and codification of the Hindu Law passed through opposition, eventually it came to be approved and applauded.

This could be possible as there was sustained attempt to educate public opinion and to ameliorate the condition of

women. A list of the Acts modifying the Hindu Law relating to women would be instructive :—

(1) The Caste Disabilities Removal Act, 1850.

(2) The Hindu Widow Remarriage Act, 1856.

(3) The Indian Succession Act, 1925.

(4) The Native Convert's Marriage Dissolution Act, 1866.

(5) The Transfer of Property Act IV of 1882 as amended by Act XX of 1929.

(6) The Indian Majority Act, 1875.

(7) The Guardian and Wards Act, 1890.

(8) The Transfer of Property (Amendment) Supplementary Act XXI of 1929. This Act amends the Madras Act of 1914 and 1921 and the Hindu Disposition of Property Act, 1916 which related to transfers and bequests in favour of unborn person.

(9) The Hindu Gains of Learning Act, 1930. This Act makes all acquisitions by means of learning the separate property of the acquirer.

(10) The Hindu Women's Rights to Property Act XVIII of 1937.

So also it may be noted that the Indian Evidence Act, 1872, supersedes the rules of the Hindu Law of Evidence. The Indian Penal Code, 1859 supersedes the whole of the Hindu Criminal Law.

The passing of the measure by the Parliament was, therefore, the slow but sure effect of these legislative measures and was part of the social engineering which found its fulfilment in the Indian Constitution.

This volume comprises complete debate on the Hindu Code Bill introduced by Dr. B. R. Ambedkar in the Constituent Assembly on 11th April 1947. The Bill was moved for referring to the Select Committee on 9th April 1948. This was followed by debate which continued for more than 4 years and still remained inconclusive. In the words of Dr. Ambedkar, it was

killed and died unusept and unsung. This was probably the longest discussion on any single Bill in the free India's Parliament. Dr. Ambedkar felt that the Government and the party in power i.e. Congress were not eager to clear the Hindu Code. He, therefore, tendered his resignation on 27th September 1951 to the Prime Minister Pandit Jawaharlal Nehru but continued to participate in the Parliamentary debates till 10th October 1951 on the request of the Prime Minister. In his letter he expressed that he attached greatest importance to the Hindu Code Bill and would be prepared to undergo any strain on his health to get the Bill through. He wanted the Bill to be taken-up on top priority basis on 16th August and be finished by the 1st of September 1951. However, the opponents of the Hindu Code continued obstructive tactics and delayed the passing of the Bill. Dr. Ambedkar ultimately submitted his statement of resignation on 10th October and left the House in anguish.

The whole discussion on the Hindu Code right from its introduction in the Constituent Assembly till 10th October 1951 is divided into 4 sections in this Book. Section I consists of the introduction of the Bill for referring it to the Select Committee. Dr. Ambedkar's speech explaining the salient features and the speeches of Dr. Pattabhi Sitarammaya, Naziruddin Ahmad, Smt. Hansa Mehta, Shri Ram Sahay, Dr. B. V. Keskar, Begum Aizaz Rasul and Shri R. K. Chaudhary are also included. This part covers discussion between 17th November 1947 to 9th April 1948.

Second section of this volume is the draft Hindu Code as prepared by Dr. Ambedkar and the then existing Hindu Code as amended by the Select Committee. This is presented here with a view to have a glimpse of Dr. Ambedkar's original idea about the reform of the basic structure of the Hindu Law.

Third Section comprises general discussion on the Hindu Code. Some members questioned the authority of the Constituent Assembly to pass this radical legislation, some

objected to the reform of divorce and women's right to inherit property and some discarded the Bill totally as interference in the religious matters of the Hindu Society. However, progressive elements in the Assembly supported the move and praised Dr. Ambedkar for his courageous measure.

The fourth section covers the clausewise discussion on the Hindu Code Bill.

Although the volume is part of Dr. Ambedkar's writings, his attempt for reforming the Hindu Society through the introduction of Hindu Code is the most important event of his life. Discussion on the Hindu Code and Dr. Ambedkar's role played through the debates thereon are very useful for the students of Socio-religious study of the Hindu Society. The members of the Committee therefore felt that the whole discussion should be brought out in this volume rather than mere speeches of Dr. Ambedkar alone.

It is hoped that this compilation will be useful to the scholars, laymen and the historians alike to appreciate the freedom now available to different sections of the Hindu society.

This note will be incomplete without placing on record my grateful thanks to:

* Principal Manohar Joshi, the Chief Minister of Maharashtra and Shri Dattatraya Rane, Minister for Higher Education, Maharashtra State, who have shown keen interest in the thought of Dr. Babasaheb Ambedkar and encouraged this project; and

* Shri Navjeevan Lakhanpal, Secretary, Higher and Technical Education, Government of Maharashtra, whose guidance and encouragement has been always of a great help ;

The work of Editing of this volume has been made possible by the ready help, support and co-operation I have received :

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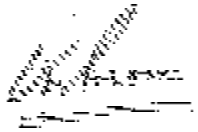

Bombay: (VASANT MOON)

November 28, 1995. Officer on Special Duty.

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