
UNIT 20 RIGHTS AND REPRESENTATIONS

Structure

- 20.0 Objectives
- 20.1 Introduction
- 20.2 Ambedkar's Idea of Rights
- 20.3 Ambedkar's Contribution to the March of Rights on the Indian Soil
- 20.4 Let Us Sum Up
- 20.5 Questions to Check Your Progress
- Suggested Readings

20.0 OBJECTIVES

This unit would enable you to understand:

- Ambedkar's idea of rights;
- Ambedkar's effort in expanding the frontier of rights;
- Ambedkar's contribution in the evolution of rights in India; and
- Ambedkar's idea on the relationship between rights and representation.

20.1 INTRODUCTION

In this unit, we will discuss Babasaheb B. R. Ambedkar, our nation builder, in the context of rights and representations. Rights are so deeply embedded in our lives that a world without rights is unimaginable. 'But there have been worlds without rights'. None of the ancient societies such as Greek, Roman, Arab, and Indian had a concept of rights. What they had was an idea of right conduct called righteousness. However, rights are not only modern concept but also product of modernity.

The political theorists define rights as either 'natural rights' or 'human rights'. The idea of natural right is based on the assumption that the nature has given certain rights like Life, Liberty and Private Property (John Locke) to all human beings, and all such rights are governed by the law of nature. Natural rights are supposed to be universally applicable and hence cannot be infringed by the state, society or individual. Whereas, the idea of human rights is built on the assumption that human being is entitled to certain basic rights by the virtue of being human. These basic rights are applicable across the territorial boundary of nation-states.

Categorization of Rights

On the basis of applicability, rights can be broadly classified into the following:

- moral
- legal
- civil-political

- socio-economic
- culture

These rights have further evolved in Four Generation –

- The First Generation Rights were the civil and political rights, which served to protect the individual from the excess of state. They originated in the Magna Carta (1215) but incorporated substance from the Petition of Rights (1627), the Bill of Rights (1688), the Declaration of the Rights of Man and Citizens (1791), the French Revolution (1789) and the Philadelphia Constitutional Convention (1787).
- The Second Generation Rights consisted of economic and social rights. They were ushered in by the Russian Revolution (1917). Derived from the Soviet Bill of Rights and inspired by the Bolshevik slogan of ‘bread, land and all power to the Soviets’, the second generation rights also laid the foundation of conflict with the first generation rights because it accorded precedence to economic and social rights over civil and political rights (Gurjar, Kumar 2015).
- The Third Generation Rights consisted of right of self-determination of nations. The First World War introduced the doctrine of self-determination in the arena of international relations. However, anti-colonial struggles imported this doctrine and laid down the foundation of the Third Generation Rights. The implicit concern of these rights was decolonization and freedom from imperialism. The new social movements added more teeth in these rights by bringing concerns like racial discrimination, hunger, disease and malnourishment.
- The Fourth Generation Rights are taking shape in the post-Cold War period. Intergenerational right is central concern of these rights. These rights include issue of inclusive and sustainable development, ecology and environment, gender justice, minority rights, rights of refugees and displaced persons.

The last three generations of rights were added only in the 20th century. The reason behind this addition was the churnings caused by the World Wars, communist revolutions, the Great Depression, anti-colonial struggle, and New Social Movements. The natural rights discourse was unable to respond to the challenges caused by such churnings. As a result of which, a ‘paradigm shift’ happened in the discourse of rights, and the discourse moved away from ‘natural rights’ to ‘human rights’. The United Nations’ Universal Declaration of Human Rights (1948) made a formal announcement about this shift.

Modern democracies have been evolving through continuous incorporation of these rights and this process is still going on. But this incorporation has made ‘rights’ indispensable to modern democracy. India has incorporated these rights in the Constitution under the sections of the Fundamental Rights and Directive Principles of States Policy. B.R. Ambedkar played a seminal role in the incorporation of these rights which has lead to the march of rights on the Indian soil. In this unit we will explore his contribution towards the realization of rights in our country in addition to his idea of rights.

20.2 AMBEDKAR'S IDEA OF RIGHTS

Any discussion on rights requires a comprehensive understanding of the meaning of rights.

The classical analysis of Wesley Hohfeld (1919) defines rights in four different forms of entitlement – claim, liberty, power, and immunity. There have been numerous attempts to capture the features unifying all these four forms of rights, but according to Peter Jones all such attempts have not only failed but have also produced two rival schools of thought namely; benefit theory and choice theory:

- The benefit theory claims that having a right is essentially a matter of enjoying a benefit or of having something addressed to one's interest.
- The choice theory claims that having a right is essentially a matter of having a choice or maximising choice.

Though there is no unity of meaning between these theories of right but both agree on the ground that all four forms of rights are applicable only when the individual is taken as a unit of entitlement. The strong relation of rights with individual opens up vistas of criticizing rights for promoting individualism and atomism which destroy community values/ goods. In recent decades, communitarian school has accelerated such criticism and argued for replacing rights with goods. To rescue rights from these critiques, a section of communitarian liberals have added the conception of community rights that has ushered us into an era of group rights. But this addition has further infused tension between individual and community/group rights, instead of solving the previous one.

Throughout his life, Ambedkar demanded group rights through the modes of communal representation but in reality he was a great champion of individual rights. His demand for recognition of communities through communal representation was distinct from the communitarians because he envisaged elimination of social conflicts as the main objective of communal representation. This is contrary to communitarians who demand group rights for protecting intrinsic values embedded in the community/society. Ambedkar did not see any intrinsic value in the social and communal divisions of Indian society that needs to be preserved. Instead, he saw social and communal divisions based on race, religion, caste, ethnicity and nationalities, promoting different codes and conducts for governing life of individuals, leading to social conflicts, and resulting in the violation of individual rights.

The conventional wisdom was that either individual or state violates individual rights through an undue intervention but Ambedkar argued that social groups also violate individual rights in two ways:

- Members of one group perpetrate violence against members of another group, which is a violation of individual rights of the members of the latter group.
- Members of one group perpetrate violence against the fellow members of their own group when the latter refuses to comply with the codes and conducts prescribed for them. This is also a violation of individual rights.

Social groups sustain on the belief of possessing certain sacred value. To preserve that sacredness, every group prescribes codes and conducts for its members and

the members of other groups, a violation of which implies destroying the very idea of sacredness. Social groups resist preserving the idea of sacredness which results in creating social conflicts. Ambedkar sees such social conflicts as the prime reason behind the violation of individual rights. The incubation of this idea can be traced back to his evidence before the Southborough Committee, in which he argues:

Men live in a community by virtue of the things they have in common. What they must have in common in order to form a community are aims, beliefs, aspirations, knowledge, a common understanding; or to use the language of the Sociologists, they must be like-minded. But [...] how do they become like-minded? Certainly, not by sharing with another as one would do in the case of a piece of cake. [...] To be like-minded with others is to be in communication with them or to participate in their activity. Persons do not become like-minded by merely living in physical proximity, any more than they cease to be like-minded by being distant from each other. Participation in a group is the only way of being like-minded with the group. Each group tends to create its own distinctive type of like-mindedness, but where there are more groups than one to be brought into political union; there would be conflict among the differently like-minded. And so long as the groups remain isolated the conflict is bound to continue and prevent the harmony of action. It is the isolation of the groups that is the chief evil (Ambedkar 2005).

Social conflicts promote tyranny of society; therefore, buying argument from Edmund Burke, Ambedkar adds society as the third enemy of rights, in addition to the state and the individual. He argues that rights must be in conformity with the society since society is the real custodian of rights instead of political institutions. To cite him again:

...rights are protected not by law but by the social and moral conscience of society. If social conscience is such that it is prepared to recognize the rights which law chooses to enact, rights will be safe and secure. But if the fundamental rights are opposed by the community, no Law, no Parliament, no Judiciary can guarantee them in the real sense of the word. [...] Law can punish a single solitary recalcitrant criminal. It can never operate against a whole body of people who are determined to defy it. [...] A democratic form of Government presupposes a democratic form of society. The formal framework of democracy is of no value and would indeed be a misfit if there was no social democracy. The political never realized that democracy was not a form of Government: it was essentially a form of society. It may not be necessary for a democratic society to be marked by unity, by community of purpose, by loyalty to public ends and by mutuality of sympathy. But it does unmistakably involve two things. The first is an attitude of mind, an attitude of respect and equality towards their fellows. The second is a social organization free from rigid social barriers. (Ambedkar 2005)

Nowadays, we are aware that rights are indispensable to modern democracy. But what does modern democracy really connote? Is it merely political, social or economic as well? Democracy with rights in political spheres but devoid of those rights in economic and social spheres remains in continuous churnings; and hence, cannot sustain for a long period. And if political democracy does not exist, rights too would cease to exist. This unfortunate situation will arrive if political

democracy is not transformed into social democracy. In his historic speech in the Constituent Assembly on 25 November 1949, Ambedkar reiterated:

We must make our political democracy a social democracy as well. Political democracy cannot last unless there lies at the base of it social democracy. What does social democracy mean? It means a way of life which recognises liberty, equality and fraternity as the principle of life. [...] On the 26th of January 1950, we are going to enter in to a life of contradictions. In politics we will have equality; in social and economic life we will have inequality. [...] We must remove this contradiction at earliest moment, or else those who suffer from inequality will blow up the structure of political democracy which this assembly has so laboriously built up. (Ambedkar 2005)

From the above speech, we can infer that Ambedkar saw social democracy as the groundwork for sustaining rights. And for establishing social democracy, he seems not only to be advocating for strong intervention of state in society but also for restructuring society per se on the principles of equality, liberty and fraternity. In this way, he argued for reconstruction of the whole society by eliminating inter and intra group domination through the instruments of adult franchise and communal representation. He argues that

where the groups allowed endosmosis, the evils of social conflict cease to exist there. The endosmosis among the groups makes possible a re-socialization of already socialized attitudes. In place of the old, new like-mindedness is created, which is representative of the interests, aims, and aspirations of all the various groups concerned. Like-mindedness is essential for a harmonious life, social or political and, as has just been shown, it depends upon the extent of communication, participation or endosmosis (Ambedkar 2005)

The resonance of restricting Indian society, so that violation of individual rights could be arrested, can be seen in all his manuscripts including the seminal one, *Annihilation of Caste*. In this way, the creation of democracy- political, social and economic, for sustaining rights, was the future project for Ambedkar.

20.3 AMBEDKAR'S CONTRIBUTION TO THE MARCH OF RIGHTS ON THE INDIAN SOIL

In the march of rights on the Indian soil, Ambedkar's contribution can be seen in three distinct phases of his life- Social Reformer, Statesman and Religious Renouncer.

Social Reformer

Though there is heavy overlap between these three phases, his role as a social reformer can be traced from the point when he was not a direct part of state institutions. This phase begins with his engagement with the Southborough Committee when he asked for equality of opportunity for the ex-untouchables in power-sharing. As power is a form of rights, Ambedkar demanded for power-sharing through communal representation and variation in criterion for franchise. While asking for power-sharing rights, he argued for applying the 'self-determination' doctrine at the societal level. Self-determination, Ambedkar says is,

a principle which enunciates the rule that every people must be free to determine the conditions under which it is to live. It would be a sign of imperfect realization of the significance of this principle if its application were restricted to international relations, because discord does not exist between nations alone, but there is also discord between classes from within a nation (Ambedkar 2005).

Ambedkar started Mahad Satyagrah (1927) and Kalaram Temple Entry Movement (1930) for civil and political rights of the ex-untouchables, which are classified as claim- rights. He struggled for adult franchise for both men and women along with communal representation before the Simon Commission and at the Round Table Conferences which shows his commitment for right to moral equality as adult franchise which implies one person, one vote and one value, is one instrument in modern democracy to affirm the right to moral equality.

Statesman

As a statesman, the contributions of Ambedkar began with his appointment at various constitutional positions:

- As labour member in Governor-General's Executive Council, Ambedkar was instrumental in enacting those legislations which were meant for protecting working class/labours from exploitation; and for applying right to moral equality in India, such as the principle of *payment to the position instead of persons*. The principle of payment to the position instead of person has been incorporated in the Indian constitution with the name of *equal pay for equal work*.
- As the chairman of Drafting Committee of the Constituent Assembly, he was instrumental in insertion of the Fundamental Rights and the Directive Principles of State's Policy, Special Provisions for Protection of Minorities and Weaker Sections of Society, and Adult Franchise in Indian constitution.
- In the Constituent Assembly, he emphasised turning formal political rights (fundamental rights) into substantive rights, that is, socio-economic rights so that equality can be realised in every sphere of life. His vision for socio-economic rights for the welfare and emancipation of ex-untouchables, minorities, depressed classes, marginalised and women can be seen in the *State and Minorities*, a memorandum which he submitted to the Constituent Assembly on behalf of All-India Scheduled Castes Federation.

In addition to these contributions, Ambedkar advocated for inbuilt self-corrective mechanisms in the constitution for materialising the objective of constitution enshrined in the preamble. He envisioned following self-corrective mechanisms:

- 1) Power Rights with implementation of equality of opportunity in power sharing and decision-making processes, in addition to communal representation. This was also necessary for preventing reproduction of inequalities and institutionalization of social prejudices and biases.
- 2) Application of adult franchise for which he argued for waging a 'relentless war', so that moral equality can be affirmed time and again.

- 3) Presence of a strong opposition in Parliament to check the arbitrary use of legislature power by the party in power.
- 4) Presence of the Supreme Court for providing constitutional remedies to citizens. He termed right to constitutional remedies as soul of the Indian constitution.

Ambedkar had firm belief that '*rights are nothing unless remedies are provided whereby people can seek to obtain redress when rights are invaded*' (2005). For providing these remedies, he argued for enacting appropriate legislations. As law minister, he introduced the Hindu Code Bill and battled for the Uniform Civil Code. Both were meant to bring gender equality but unfortunately only the former could be introduced in Parliament during his tenure. Though he failed to get the Bill passed in Parliament, different provisions of the bill came into existence subsequently in parts. The Hindu Code Bill ushered us into an era of property and inheritance rights of women, right to divorce, adult marriage, provisions for special marriage, marriage allowance and so on. Nowadays Indian women have more or less all these rights, but most of these ideas were first endorsed by none other than Babasaheb Ambedkar.

Religious Renouncer

Throughout his struggle for equality, liberty and fraternity; Ambedkar never denied indispensability of religion in human life. But he argued for *religion of principle rather than religion of rule*. Contrary to the religion of rule, the religion of principle recognises the importance of individual and remains open for rational interpretation. This gives a lot of scope for teaching equality, liberty and fraternity in the religion of principle. In addition to this, intermediation between god and human being is also not required in the religion of principle that gives individual rights of moral consciousness. Ambedkar struggled for finding out such religion for his followers. Towards the end of his life, he converted into Buddhism along with his followers, but with modification in ancient Buddhism.

10.5 LET US SUM UP

Ambedkar envisioned community (group) rights leading to individual rights. He saw communal representation as an instrument in realization of the individual rights. He advocated for equality of opportunity in power-sharing (power-rights) so that reproduction of inequalities and institutionalization of prejudices could be prevented. His struggle for implementation of universal adult franchise that affirms right to moral equality of individuals by providing one person, one vote, one value, irrespective of race, religion, caste, class, gender, ethnicity and nationality is worth applauding.

The right to moral equality in political sphere also referred as formal rights often creates churning in society if inequality remains alive in social and economic spheres of human life. This churning poses direct danger to natural rights like life, liberty and property, and indirect danger to the idea of rights because political democracy that guarantees formal rights always remains vulnerable to be thrown away. Ambedkar was aware about this fact; therefore, he argued for expanding frontiers of rights in the social and economic spheres of human life by establishing social democracy through redesigning society on the principles of equality, liberty and fraternity. For redesigning society, he further envisioned strong nation-state

which can also rescue individual from the tyranny of society. For his reliability on state and state institutions, Ambedkar is projected as a propagator of positive liberty which is nothing but liberty-rights.

20.5 QUESTIONS TO CHECK YOUR PROGRESS

- 1) Discuss the contradictions between rights and society as mentioned by Ambedkar.
- 2) Discuss the different forms of rights and how does Ambedkar envision implementation of those rights in India?
- 3) Discuss the self-corrective mechanisms that Ambedkar envisioned for realization of fundamental rights in India?
- 4) Discuss the relationship between rights and democracy. Why did Ambedkar ask for making political democracy into social democracy?

SUGGESTED READINGS

Ambedkar, B.R. Dr Babasaheb Ambedkar Writings and Speeches, ed. Hari Narake. Vol. 1, 2, 14 (1), 15 & 17 (1 & 2). Mumbai: Dr Babasaheb Ambedkar Source Material Committee Government of Maharashtra, 2005.

Baxi, Upendra. The Future of Human Rights. New Delhi: Oxford University Press, 2008.

Jones, Peter. Rights. New York: Palgrave Macmillan, 1995.

Rodrigues, Valerian (ed). Essential Writings of B R Ambedkar. New Delhi: OUP, 2004. Thorat, Sukhdeo & Kumar, Narender (ed). B R Ambedkar: Perspectives on Social Exclusion and Inclusive Policies. New Delhi: OUP, 2008.