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Jadumani Mahanand

Practice of Caste and the Complexities of Constitutional Democracy

JADUMANI MAHANAND

On the one hand, majoritarian upper-caste discourse has dominated in democratic institutions, such as Parliament, executive and judiciary, and on the other, the idea of Hindu law resounds in everyday social lives. The dynamics of law in India are contrasting in two major ways. First, the ancient law that is known as Manu's law (*Manusmriti*) comprises Hindu religious codes/rules, rituals and customs that predominate the modern constitutional law. And second, the modern law is adopted by the democratic state. The modern democratic state is a political contract and agreement among the citizens through the Constitution to secure rights, liberty, and equality as a matter of inalienable fundamental rights. Yet, in the last seven decades, despite having modern constitutional law, the lawlessness of the established Hindu social order sanctifies and validates the persistence of caste, atrocities against Dalits, and subjugation of women that is prescribed in Manu's law in accordance with Hindu religion.

Dag-Erik Berg, a political theorist, scrupulously brings out the complexity of the social inequalities and exclusion in the constitutional democracy. B.R. Ambedkar, in one of his Constituent Assembly speeches, said that the Indian democracy is going to have a life of contradictions in its social and economic life. Interestingly, Berg employs Ernesto Laclau's concept of antagonism to understand the contradictions in Indian democracy. He calls it "mechanism of oppression" in the context of Dalit situation in postcolonial democracy. Berg showcases the protest against the dilution of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) (PoA) Act, 1989, and in that context how two Dalit women went to smear black paint on Manu's statue in the Rajasthan High Court in 2018. In particular, the book *Dynamics of Caste*

Dynamics of Caste and Law: Dalits, Oppression and Constitutional Democracy in India by

Dag-Erik Berg, UK: Cambridge University Press, 2020; pp 243, ₹795.

and Law: *Dalits, Oppression and Constitutional Democracy in India* construes caste and law in the context of Dalits' intricacy with constitutional democracy and the state machinery. Berg explores the concept of political ontology in Ambedkar's philosophy to comprehend Indian society and polity. In this regard, the scholarship on Ambedkar is well articulated as a theorist of democracy and constitutionalism, who fathoms to unravel the social political problem of his time that is explicated in postcolonial democratic state. While building a narrative, Berg locates the historical trajectory of caste atrocity in the purview of law, revealing the ambiguous relationship between caste, untouchability, and equality in the enhancement of law against caste practice in relation to Dalits, such as Article 17, and PoA Act, 1989. He mainly deliberates over two massacres against Dalits, namely the Karamchedu and Tsundururu and the landmark judgment in the related court case, while discussing the Khairlanji episode on the same plane. Berg further demonstrates the caste discrimination in the university campuses and reservations in the context of the movement that emerged after the institutional murder of Rohith Vemula. He names it the modernity of caste in a democracy.

Methodological Questions

In terms of methodology, Berg enters into a complex zone in approaching the book. Studying social and political theory in India raises serious methodological questions. Earlier, scholars have asked if there is a distinct political theory in India. The answer is no. Indian social and political concepts are unpacked through

Western conceptual tools. There are two approaches to bare such nuances. On the one side, scholars like Aishwary Kumar (2015) study Ambedkar from the lens of global comparative political thought in order to contour Ambedkar's philosophical enterprises in global political theory. On the other side, Aakash Singh Rathore (2020) discovers the distinctiveness of Ambedkar's original conceptual historical engagement in the making of the preamble of the Indian Constitution. Berg adopts both approaches in his study. He has categorically used the concepts of Laclau, Chantal Mouffe, and Michael Foucault in relation to Ambedkar's concepts for a comprehensive understanding of the subject. The concepts such as "oppressive mechanism," "antagonism," and "post-foundationalism" are applied in the book.

Berg develops an argument about the caste-based dominance in understanding law in order to provide an account of the interrelated themes such as mechanism of oppression, institution of laws, and institutionalising ideology. The question is, how can one respond to the Dalit problem only through legal mechanisms? "The mechanism of oppression refers to the paradox of how upward mobility among Dalits coexists with enduring atrocity" (p 3). The concept allows us to reconceptualise the enduring problem of oppression of Dalits and also look at the postcolonial development. Broadly, the mechanism of oppression is employed to explain the dynamics of caste and law that is involved in two types of conflict, namely violence and negotiation. Violence generates fear and resentment, whereas negotiation is a part of democratic practice. The reason for such a conflict is that upper castes or caste Hindus do not tolerate Dalits gaining wealth, behaving in a sophisticated way or demanding their rights. Interestingly, Berg employs Laclau's concepts of antagonism in order to advance Ambedkar's theory to argue how antagonism constitutes an ontology of caste.

This is a new trend in studying Ambedkar, because of his conceptual relevance. The question that one would like to ask is: Why is it obligatory to employ such derivative conceptual tools no

matter how useful and intellectually captivating they may be? Interestingly, Berg has provided some original concepts available in Ambedkar's theoretical lexicon. The larger ambiguity of such an enterprise is to elevate the positionality of a thinker who is very often pushed into the corner because of their radical emancipatory "philosophy and praxis." If Ambedkar's theoretical claims are appealing, why can he not be then acceptable to Western scholarship as an original thinker? One can therefore ask: Why are Ambedkar's concepts not being applied universally and useful resource to Western society, while thinking about emancipation, discrimination or democracy? In this regard, the scholarship of Berg develops an Ambedkarite perspective that is worth exploring in foregrounding such complex question, albeit there is no direct answer to such an enterprise.

Context of Caste Atrocities

One of the important arguments in the book could be understood as an answer to the question as to why "practising caste" is not a criminal act according to the Constitution, although caste practices are a violation of fundamental rights, principally the right to equality. Berg's discussion foregrounds this as the crux of the problem. For Dalits, law is a source to protect themselves, whereas Article 17, POA Act, 1989 and fundamental rights are violation of the caste system (status, occupation, and ranking). However, upper castes are ready to face law and Constitution but unwilling to accept Dalits as equal human beings. That is how the impunity of caste is maintained. Berg's study of Karamchedu and Tsundururu exposes such practices. The tragedy of the Indian judicial system is that the lower courts are seemingly impartial, but the higher court's judgment are unfavourable.

Against the backdrop of the prevention of caste in practising constitutional democracy, Berg provides a new insight in analysing the debate between M K Gandhi and Ambedkar. He argues that caste was not taken seriously in the Constituent Assembly Debates as the prevention of caste is limited to untouchability, not the whole caste system. Therefore, practising

caste is a matter of privilege in the Brahminical social order. To capture the practice of caste, Berg develops a phrase, "teaching Dalits a lesson," to understand caste atrocities against Dalits. In my reading, the phrase has two dimensions. The repulsion and hatred of upper castes is expressed when it is called "teaching Dalits a lesson" that Berg has explained throughout the book. But it can be read the other way as Dalits teaching a lesson to upper castes' hatred and violence through the constitutional provisions, notwithstanding the fact that the provisions of Constitution being facilitated through the state are deeply puzzling. Berg has not paid enough attention to this aspect. The concept of lawlessness is explicit in Ambedkar's analysis of caste and law,¹ but Berg has not delved upon it while finding intricacy of caste, law, and state.

The source of modern law is constitutive of constitutional democracy, however, the impact is imperceptible in the Indian society. The law is misused by the ruling class. The caste system is outlawed in India, nevertheless, every 15 minutes, a crime is committed against Dalits. Every day, six Dalit women are

raped. The National Crime Records Bureau (NCRB) figures show that anti-Dalit crimes rose by 25% over the last decade. The conviction rate is very low. Berg discussed three cases, and unsurprisingly, in none of these cases, justice is delivered to Dalits. On the one side, it is the blatant truth of the human rights violation against Dalits exposed by the NCRB, and on the other side, evidences are inadequate for judiciary to convict the casteist criminal (the perpetrator). Caste atrocities against Dalits are normalised as a social act by the non-Dalit society. Ambedkar's prediction is evident in the post-constitutional state:

however good a Constitution may be, it is sure to turn out bad because those who are called to work it, happen to be a bad lot. However bad a Constitution may be, it may turn out to be good if those who are called to work it, happen to be a good lot.²

Berg's scholarship contributes to unpack this complexity in the context of law and caste in a constitutional democracy.

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