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## Democratic Origins I: India's Constitution and the Missing Revolution

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There is a problem that any aspiring scholar of the Indian Constitution must face, but which remains, more often than not, unacknowledged. In the voluminous literature narrating the triumph of the Indian people against the mighty British Empire there exists a curious absence: the word 'revolution'. One frequently comes across the phrases 'independence movement' or 'freedom struggle'. Yet 'revolution' – a term oft-used in the modern political vocabulary to describe an epochal shift in the life of a polity – is conspicuous by its absence from the historical consciousness of Indians when they talk about the end of two centuries of colonial domination and the birth of the world's largest democracy. Whatever terms the new postcolonial political actors chose to describe themselves, 'revolutionaries' was rarely one of them. Perhaps the most paradigmatic case of twentieth century decolonisation left behind no 'memory' or 'spirit' of the revolution.

This curious case of the missing revolution is critical to any analysis of the Indian Constitution. This is due to the fact that modern constitutions are inextricably tied up with revolutions. Revolutions – the extraordinary events that disrupt

the quotidian passage of political time – forge new principles for social and political futures. Constitutions then institutionalise those principles, giving concrete shape to those imagined futures. The bearer and author of these imaginaries is another distinctly modern protagonist: ‘the People’. Forged through revolutionary struggle, a disparate population becomes a People, who can collectively identify themselves as a ‘We’. The People are then the preeminent subject of bourgeois revolutions, and consequently as the author of constitutions are universally recognised as the one true constituent subject. Most texts require an author. A text as authoritative as the constitution cannot do without one. Every constitution, including the Indian one, must therefore include some form of the declarative identification of ‘We, the People’ as the author of the text. The case of the missing revolution therefore inescapably leads to the related mystery of authorial identity.

### *The Missing Revolution*

Following one of the largest mass struggles in history, India achieved its independence without a revolutionary rupture. This is not a simple reiteration of the oft-repeated point about colonial continuity. Rather, it is to highlight a certain mindset that prevailed among the constitution makers. They were not meeting as the representatives of a victorious party of a revolution or different factions of a civil war, or even participants in a negotiated settlement. At the beginning of the Constituent Assembly, Nehru invoked the Tennis Court Oath promulgated by the members of the French Third Estate in 1789. Whereas the French revolutionaries resolved to draft a constitution regardless of whether it received the blessing of

legality from the existing monarchical order, the Indian constitution makers worked under the untroubled shadow of legal authority bestowed by an Act of the British Parliament. Consequently, they never had to draw upon claims of revolutionary or extra-legal legitimacy. Neither were they directly elected by the 'People' to write a constitution in their name. When their lack of representativeness was pointed out, B. R. Ambedkar – Dalit leader and chairman of the Constituent Assembly – would argue that their legitimacy was based on the 'wisdom and knowledge' they brought, which were most likely superior to any representatives chosen on the basis of universal franchise. Many of them alternated as members of interim government, and government departments sent detailed notes on possible constitutional provisions. Congress had been the government-in-waiting for around a decade by this point. The concerns of governance were no longer fully separated from the project of creating a constitutional structure. Theirs was a project of governance, of which drafting the Constitution was the first, most significant, step. The constituent and the administrative standpoint were never fully distinct.

The Constitution recognised 'We, the People' as its author and creator. In 1937, Nehru had said, '[t]he Constituent assembly that we demand will come into being only as the expression of the will and the strength of the Indian people; it will function when it has sanctions behind it to give effect to its decisions without reference to outside authority. It will represent the sovereignty of the Indian people and will meet as the arbiter of our destiny.'<sup>1</sup> Yet the people were conspicuous by their absence in the Assembly. There was no direct election to select the members, nor any protracted public debates on the nature of the Constitution. There were no Federalist Papers,

no referendum campaigns, no participatory forums. Unlike the French or Mexican constituent assemblies, the proceedings were never disrupted by petitioning groups of citizens. Instead, the people were present in the Assembly in another guise: as a population and as subjects to be made into citizens. They were the inhabitants of a society to be modernised; actors in an economy to be developed. They were conceived of as the protagonists of a democracy to come and instability to be avoided. They were the ‘starving people’ and ‘naked masses’ – and it was the ‘first task’ of the Assembly to see to it that they were clothed and fed.

The Constituent Assembly had come into being through a long struggle, but without a revolutionary disruption. Unlike the American founders, who spoke of being faithful to the ‘late revolution’, Indian constitution-makers spoke of revolution in the Assembly – and they spoke of it often – as a future occurrence. In their own minds, they found themselves not at the end, but on the ‘eve of revolutionary changes’. The challenge for them was how to carry out a revolution (through the Constitution) to avoid a revolution (on the ground). Or, to see it from another angle, how to transpose (the threat of) a revolution into a controlled and procedurally guided transformation – ‘a peaceful transference of society’ as a member put it in the Constituent Assembly. Looking back on the work done by the Assembly, Nehru would later remark: ‘People seem to think of revolution as a big war, or a big internal struggle, violent struggle. Rather, revolution is something which changes the structure of the society, the lives of the people, the way they live and the way they work. That is what is happening in India.’<sup>2</sup> It had to be a revolution without a revolution. And the Assembly had to build the architecture for it.

*Constitution and Social Revolution*

This was the architecture of an ambitious social transformation through the Constitution. Ambedkar's much quoted speech at the concluding sessions of the Assembly provides the outline of this project. 'If we wish to maintain democracy not merely in form, but also in fact, what must we do?' Ambedkar asked.

The ... thing we must do is not to be content with mere political democracy. 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 ... On the 26<sup>th</sup> of January 1950 [the day the Constitution was to be adopted] we are going to enter into a life of contradictions. In politics we will have equality and in social and economic life we will have inequality. In politics we will be recognizing the principle of one man one vote and one vote one value. In our social and economic life, we shall, by reason of our social and economic structure, continue to deny the principle of one man one value. How long shall we continue to live this life of contradictions? How long shall we continue to deny equality in our social and economic life? If we continue to deny it for long, we will do so only by putting our political democracy in peril. We must remove this contradiction at the earliest possible moment or else those who suffer from inequality will blow up the structure of political democracy which this Assembly has so laboriously built up.<sup>3</sup>

Ambedkar's speech captures the central themes of the constitutional project. There is the acknowledgement that the social basis for 'political democracy' in India is fragile and unstable. Ambedkar recognised that mere political freedom brought

about by the end of colonial rule or the granting of political and civil rights that followed liberal constitutional models of yesteryear meant little on their own. The Constitution had to – because it *should* and also because it *must* – be concerned with the social question. Transforming the social condition – i.e. planned and managed social revolution – had to be its orienting principle. He reminded the Assembly that there remained a ‘contradiction’ because the social revolution had not yet taken place, the principles of which the Constitution could then embody.

‘We must remove this contradiction’ through the Constitution, Ambedkar argued. The Constitution was not the triumphant coda for a revolution accomplished, but the anxious, uncertain beginning of realising one in a gradual, controlled and deliberate fashion, a process that must begin, according to Ambedkar, ‘at the earliest possible moment’. Otherwise the Constitution, the architecture of power for the new regime that the Assembly has so ‘laboriously built up’, might be ‘blown up’. Orderly transformation would give way to insurgency.

During the debates on the draft constitution, certain members wondered whether the drafters had followed the established formal conventions of constitutions past too closely. Ambedkar responded: ‘One likes to ask whether there can be anything new in a Constitution framed at this hour in the history of the world. More than hundred years have rolled over since the first written Constitution was drafted. [...] What the scope of a Constitution should be has long been settled. Similarly, what are the fundamentals of a Constitution are recognised all over the world. Given these facts, all Constitutions in their main provisions must look similar.’ Yet he clarified that the drafting committee cannot be charged with a ‘blind and slavish imitation’. There had been ‘variations made to remove the faults [of the

established constitutional form] and to accommodate it to the needs of the country'. The 'needs of this country', as we have seen, was to realise a gradual and controlled transformation of the society. But that had to be realised within a constitutional form, which, as Ambedkar reminded the Assembly, had its own history, logic and formal conventions. At the same time, the demands of a transformational constitution – the fact that the Assembly, as one member put it, was 'conducting a revolution' – meant that 'variations' were called for. The crucial question – the crux of formulating the transformational constitutional vision – was to what extent those 'variations' could be made while remaining within the formal constraints of a constitution. Describing the central challenge of this constitutional project, Nehru had reminded his Congress colleagues that 'we have bigger decisions to take, graver choices before us, than those of lawyers' making'. Now some of the most well-known legal and administrative minds in the Assembly had to author a script for a revolutionary transformation – incorporating those 'grave choices' – in a specifically juridical language. Acknowledging the absence of closures that 'late revolutions' are meant to provide, Indian constitution-makers had to task themselves with scripting futures uncertain.

### *The Constituent Administrator*

This scripting demanded a particular kind of author, given the absence of a 'People' forged through a revolution. That author was the administrator, possessing their own sophisticated repertoire of language, techniques and methods of calculations that had developed globally through the nineteenth and twentieth century. In the case of India, their skills had been

honed specifically in the administrative laboratory that was the colonial regime.

The administrative standpoint and its significance regarding the formulation of the Constitution has rarely been afforded the analytical centrality it deserves in our understanding of the document. An interesting example of this relegation is Ambedkar's phrase 'constitutional morality', which has gained prominence in recent decades in scholarly as well as judicial interpretations of the constitution. The contemporary reading of Ambedkar's comments, focused on the conjunction of the terms 'constitution' and 'morality', view him as advancing a normative liberal standard to aspire to. According to this interpretation, constitutional government requires not just adherence to the collection of rules in a document, but certain norms of political action and an orientation towards certain values. This was considered as a wise – and to many contemporary readers prescient – reminder that constitutionalism should be viewed as a part of a larger constellation of 'liberal' values that the post-colonial polity should aspire to embody. However, the context of Ambedkar's speech makes it clear that his goal in pointing out the absence of certain norms of political behaviour was not to make a case for their cultivation, but rather to explain how their absence had shaped the Constitution's drafting process. In other words, his focus was not the desirability of 'constitutional morality', but the challenge of coping with its absence.

Ambedkar's intervention began as a response to criticism that the Constitution borrowed far too much from the Government of India Act, 1935, the putative 'constitution' of the colonial government which became the blueprint for nearly two-thirds of the Constitution. He stressed that such borrowings 'relate mostly to the details of administration'. However, should 'details of administration' find a place in a Constitution meant



to be a document outlining basic and fundamental principles? Ambedkar agreed that normally 'administrative details should have no place in the Constitution', and that he wished the Drafting Committee 'could see its way to avoid their inclusion in the Constitution'. However, in this case, there was a 'necessity which justifies their inclusion'.<sup>4</sup>

It is in the context of this 'necessity' that Ambedkar then quotes George Grote, the Victorian era historian of Ancient Greece. In his monumental *A History of Greece*, Grote had argued that rather than a mindless 'mob-rule', Athenian democracy did succeed in cultivating a 'constitutional morality'. More generally, and this is what was important for Ambedkar, 'constitutional morality' was the 'indispensable condition of a government at once free and peaceable'. The critical element of 'constitutional morality' was 'a paramount reverence for the *forms* of the Constitution'. A respect for the 'forms' of the Constitution would mean a willingness for contending interests to fight their battles in constitutional terms – even if accepting such formal constraints might lead to less favourable outcomes than they might have hoped for. The point of the transformational constitution was to bring the agenda of social transformation – one that would substantially heighten the stakes of contestations – within the constitutional framework. Ensuring that this would happen was a major factor in the minds of the constitution-makers – informing the designs of institutions and the arrangement of legal power.

The force of 'necessity' came from the fact that one could not presume the existence of 'constitutional morality' in India. 'Constitutional morality is not a natural sentiment,' warned Ambedkar. Rather: 'It has to be cultivated. We must realize that our people have yet to learn it.' 'Democracy', Ambedkar remarked, noting the lack of hegemonic consensus forged

through a social revolution, 'was only a top dressing on an Indian soil that was essentially undemocratic.' And this reality harked back to the issue that prompted the discussion of 'constitutional morality' in the first place – the place of administrative details in the constitution: '[I]t is only where people are saturated with Constitutional morality [...] that one can take the risk of omitting from the Constitution details of administration.'

If the authors of the constitution failed to reflect on those details as they went about their task, the Constitution could end up 'inconsistent and opposed' to its original 'spirit'. The high-stakes project of creating a constitutional structure that was flexible and expansive enough to realise a transformational project in social conditions that were neither cohesive nor stable required a particular kind of risk assessment. To manage the transformation, it was necessary to anticipate the possible ways that the transformational constitutional project could unfold in practice – the various authorities that might be involved, the cohesiveness of their actions, the possible interpretations of the text, and the probable obstacles. This required an administrative mindset – a calculation of mechanics, techniques and scenarios. It required comparative analysis of constitutional experiences in different countries, speculating on possible outcomes, specifying details of the administrative structure and apportionment of tasks; as well as working through multiple caveats, clarifications and exceptions in several provisions. All this in order to produce one of the most detailed and lengthy constitutions in history. It also explained the vast shadows of the Government of India Act – which had prompted Ambedkar's comments. That Act – and the manual for an administrative machine that it had produced – was familiar to Congressmen from their experience in government, its strengths and weaknesses having been tested on Indian soil.

The distance between the 'People' outside and the administrators inside surfaced in the conversation in the Assembly in two ways – first, it was something the Assembly needed to be mindful of, in terms of anxieties regarding 'their' (the People's) ire and impatience with 'their' condition. It was also a potential opportunity, providing the Assembly with the needed detachment from the unreliable currents of popular sentiment. N. G. Ayyangar, a former bureaucrat, wrote to his fellow former bureaucrat and 'advisor' to the Assembly, B. N. Rau, approvingly of 'decisions on these issues [regarding the basics of the Constitution] being taken by small numbers of selected people including party chiefs after those issues have been investigated from all points of view with the help of informed persons like you'. After all, 'public opinion on such matters require both a firm lead and skilled guidance'.<sup>5</sup> No matter how we view the representative claims of Congress, the authority of the Assembly members did not simply rest on this claim. Rather, it rested on their competence for the particularly complex task at hand. It was their expertise, one that was only enhanced by being inoculated from the tides of popular passion, that made them suitable to be the drafters of the Constitution. They existed not as representatives of a revolution past, but as skilled technicians of managed future revolutionary change.

The task of the administrators was made vastly more complex than that faced by their colonial predecessors due to the fact that India was now going to be a democracy. Elsewhere, the development of an administrative state apparatus and a mass democracy arose in parallel over the course of the nineteenth and twentieth centuries. Crucially, they arose after the advent of the modern constitutional form. The administrators' relationship with constitutionalism was often fraught, requiring conflicts and adjustments over the course of time. In India,

these developments became part of a singular moment of postcolonial transition. Instead of a gradual process of accommodation, the Constitution had to be formulated with the immediate advent of mass democracy in mind, and with the art of administration being central to formulating the constitutional architecture. Mass democracy and administration were not issues that could be incorporated piecemeal into the constitutional structure. Rather, they were to be the constitutive blocks of the transformational constitutional project.

### *Conclusion*

Ambedkar agreed that details of 'administration' would usually be left up to the legislature. But in the particular 'circumstances' that India faced at the moment of postcolonial transition, it might be 'wiser' to not leave these details unspecified. The anxiety about democratic processes leading to unforeseen and unwarranted use of political power was as old as constitutionalism itself. The two common ways of dealing with it throughout modern history were to either incorporate checks at the point of input (by restricting the franchise) or at the point of output (by keeping certain matters out of reach of democratic legislatures through negative rights or judicial review, or fracturing the process of realisation through separation of powers). Congress' long-standing commitment to universal adult franchise – a commitment that was linked to its claim of being the one true representative of the colonised masses of India – precluded the former. On the other hand, the demands of the transformational project – flexibility, urgency, streamlined state capacity, ability to respond to new developments – precluded (or at least put obstacles in the path of) the latter option. This added a further level of risk to the transformational constitutional for-

mulation. In the uncertain future, the 'essentially undemocratic soil' of India could give birth either to an authoritarianism of the dominant groups or a populism of the poor – both using the expanded state capacity sanctioned by transformational constitutionalism for ends very different from managed transformation. Careful scripting of the transformational project therefore required shaping the nature of the demos, organising the language of democracy, and educating – a term that appeared frequently in the Assembly debates – the masses to speak and think in a certain way about their interests and how to demand them.

Administrators are, however, anxious subjects – and the primary source of that anxiety is the prospect of disorder and chaos. The nascent governors of postcolonial India were wary of the cacophonous masses outside the Assembly, while apprehensive of popular political expression in languages alien to that which had been carefully crafted within the Assembly. This anxiety produced a structure of postcolonial transformation that relied too heavily on careful planning, and too little on generating a political subject that could function as the engine of transformational energy. Viewed as unreliable subjects of parliamentary pedagogy, the masses were denied their role as the bearer of a democratic transformational imaginary and as the authors of a transformational script of their own. The solution to the curious case of the ultimately missing revolution in India, 70 years since the making of the Constitution, might ultimately lie in a demos that was never allowed to be the author it was officially proclaimed to be.