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Ambedkar's Constitution and the Manusmriti: The Law He Built and the Law He Burned



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On 25 November 1949, the day before the Constitution was formally adopted, Ambedkar said something that is often overshadowed by his better-known warnings. “On the social plane,” he told the Assembly, “We have in India a society based on the principle of graded inequality, which means elevation for some and degradation for others.” It is usually read as a caution about democracy’s fragility. It was also something else, a description of a specific normative system, one with a text, a lineage, and a century-long legal history, that his constitutional project had just been written to defeat. Those two things, the Constitution and what it was written against, have been in contest ever since.

That system is the Manusmriti. Why Ambedkar remains relevant today, and will remain so tomorrow, cannot be understood without taking seriously what he was up against.

What Manu Built

Most people come to the Manusmriti as a theological or historical document. Ambedkar came to it as a lawyer, and that, he would have said, is the only honest approach. The text is a dharmashastra, meaning dharma is understood as law rather than philosophy, and it constructs a legal order in which rights, duties, and punishments are all calibrated by birth rather than approximated by birth. Calibrated. The gradations are the point.

Chapter 8, verse 124: the Brahmin “shall depart unscathed” from ten forms of corporal punishment applicable in full to the three lower varnas. The same offence. Different bodies. Different consequences. Verse 279 sharpens this: whatever limb a low-caste man uses to injure someone of the three higher castes, that limb is to be cut off. The identity of the victim, not the severity of the act, determines the punishment. The law does not pretend to be neutral. It sees caste before it sees anything else.

On women, Chapter 9 is equally methodical. Verses 2 and 3 establish permanent male guardianship: “day and night, women must be kept in dependence by the males of their families,” and “a woman is never fit for independence.” The sequence is fixed: father, husband, son, but custody is never released. A woman here is not a legal subject with rights that the state is bound to protect. She is a

Note:

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ward, her juridical existence mediated through male authority at every stage of her life. Verse 20 of the same chapter adds one more exclusion: a Shudra may not pronounce judgment in the king's court. Keeping people outside the sources of authoritative knowledge is not incidental to the hierarchy. It is how the hierarchy sustains itself.

None of this stayed safely in the past. Warren Hastings, reforming the Indian judicial system in 1772, formally mandated that "in all suits regarding inheritance, marriage, caste and other religious usages, the Laws of the Shaster with respect to Hindoos shall be invariably adhered to." The British did not merely tolerate Manusmriti-derived custom; they reinstated it in active judicial use and kept it there for nearly 180 years. When Ambedkar burned the Manusmriti at Mahad on 25 December 1927, the act was as much a legal judgement as a symbolic one. By 1950, what he was writing against was not an ancient text but a legal order that had been deliberately and recently maintained.

The Constitution's Counter-Text

The Constitution did not attempt to reform this order. It repudiated it. Reform works from inside a framework, adjusting its provisions while leaving its premises intact. Repudiation rejects the premises. That is what Ambedkar was doing. Article 13 is where this repudiation operates with the most precision, and it is probably the constitutional provision least discussed in accounts of his achievement. Clause (1) voids pre-constitutional laws inconsistent with fundamental rights. Clause (3) defines "law" to include "custom or usage having the force of law."

That third clause is the surgical move. By 1950, no Indian court was formally citing Manusmriti verses as statute. The text had no official standing. What it had was custom, the deep accumulation of social practice derived from

its logic, which, over centuries, had acquired the practical force of binding law in matters of caste, marriage, property, and access. Article 13(3) voids that. Not the text as text, but the customary infrastructure through which the text had been reproducing itself without needing to announce itself.

What follows is more visible. Article 14 establishes equality before the law without qualification, cutting directly against Manu's scheme, in which legal consequences vary by the parties' caste. Article 15 prohibits discrimination on grounds of caste and sex, dismantling the two axes on which the Manusmriti's system of disabilities rests. Article 17 abolishes untouchability and makes its enforcement a punishable offence. Article 23 prohibits forced labour, answering the prescription that Shudras are created for Brahmin service and that servitude runs deeper than circumstance, into nature itself. Article 19(1)(g) guarantees the right to practise any profession, negating the occupational lock: "one occupation only the Lord prescribed to the Shudra." These are not generic rights. They are specific answers to a specific text, written by someone who had read it carefully and with antagonism.

The Constitution that emerged was nevertheless not Ambedkar's complete vision. It was what survived. His 1947 draft "States and Minorities" had proposed constitutional socialism, reformed parliamentary representation for minorities, and the abolition of caste as a legal category. None of it was adopted. Three Constituent Assembly members asked a question nobody wanted to answer: how can untouchability be abolished while caste remains institutionally intact? They were not answered. The Assembly's silence was a decision. Ambedkar resigned as Law Minister in September 1951 when the Hindu Code Bill, his attempt to carry constitutional

repudiation into personal law, was blocked. His resignation statement made no concessions, leaving caste and gender inequality untouched in personal law, while constructing a political democracy above it was, he said, building a palace on a rotten foundation.

Unfinished Mandate: The Gap That Remains

Ambedkar anticipated the problem before drafting had seriously begun. At the Constituent Assembly's very first meeting in December 1946, he said: "rights are nothing unless remedies are provided whereby people can seek to obtain redress when rights are invaded." Later, in "Ranade, Gandhi and Jinnah," he put the limit more starkly: "fundamental rights ought to be protected by the social conscience of the citizens, because 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." A constitution operates inside society, not above it. The Manusmriti had spent centuries constructing a social conscience that the Constitution needed to overcome.

What made that social conscience so stubborn was the structure of graded inequality itself, not simply a hierarchy, but one that distributed enough superiority at every level to give people a stake in its continuation. The normative consensus of inherited hierarchy adapts. It finds new institutional environments, new vocabularies, and new procedural forms that allow it to persist inside frameworks built to prohibit it. A constitution can void a text. It cannot, by itself, dissolve the psychology that the text produced across centuries of lived practice. This is the gap between de-legalisation and de-institutionalisation, and it is the central unresolved problem of Indian constitutionalism since 1950.

Ambedkar saw this clearly. On the eve of the Constitution's adoption, he said: "Democracy in India is only a top-dressing on an Indian soil which is essentially undemocratic." Not modesty.

A diagnosis. The de-legalisation of 1950 was real and has been used. Marginalised communities across India turned the constitutional text into a weapon, celebrating Constitution Day before the government declared it, reciting the Preamble at sites of democratic resistance, invoking Articles 14, 15, and 17 wherever the old order reasserts itself. That is a genuine political achievement. But the NCRB's 2023 data records 57,789 registered cases of crimes against Scheduled Castes in a single year. Women are formally equal and materially subordinate across property, wages, and safety. The caste coefficient in educational and occupational outcomes has not been moved by seventy-five years of constitutional guarantees. The Constitution abolished a legal order. The social order, the legal order that had been codified, is still standing.

What Ambedkar expected, and what his 1951 resignation protested, was the institutional will to attempt what had not yet been done. That will has been, repeatedly and sometimes spectacularly, absent. The argument he was making in 1949 remains open. The contradiction he identified on the eve of the republic, political equality and social inequality in the same state, has not been resolved. It has deepened.

His relevance is not commemorative. It is diagnostic. The Constitution he built is an instrument of de-legalisation in a society still resisting de-institutionalisation. The Manusmriti was burned once. Its logic has not been. That is the work that remains, and that is why the argument continues.

