

## The Twilight of Equality and the Birth of Fraternity: A Commentary on Chief Justice Chandrachud's Historic "Brandeis Lecture"

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In his brilliant keynote address at the 6<sup>th</sup> International Conference on the Unfinished Legacy of Dr. B.R. Ambedkar: Law, Caste, and Pursuit of Justice at Brandeis University in 2023, Chief Justice Chandrachud delivered hope and inspiration. For a Chief Justice of any modern democracy to admit that constitutions do not live in the ethereal abstraction of principles and concepts but are firmly embedded in societies is both surprising and refreshing. To quote his statement: "As judges we have to be increasingly cognizant of social reality and to understand that the law itself does not exist in a vacuum..." (Chandrachud 2024: 2). In paying homage to the great Dr. B.R. Ambedkar, the chief architect of the Constitution of independent, modern India, Chief Justice Chandrachud acknowledges that the law has a greater responsibility than just addressing current issues where disputes over injustices occur. Rather, the Court must also 'remedy historical wrongs' (Chandrachud 2024: 1), thus paving the way for a bold vision to rethink the role of law in society. Since society is beset with historical and structural inequalities, then what the Chief Justice is asking for is a fundamental rethinking of the relationship between law and justice, which was the theme of the 2023 conference at Brandeis University.

The Chief Justice laid out five major parts to his keynote address. He first addresses what he means by "historical wrongs" (Chandrachud 2024: 1). He then taps the deep knowledge and wisdom of Dr. B.R. Ambedkar whose twin achievements were birthing the modern democratic Indian Constitution while engaging in the lifelong social movement to eradicate the caste system in India, particularly the millennia-long oppression of the most vulnerable, namely the Dalit peoples. In Ambedkar's work, the Chief Justice reads an "alternative framework of emancipatory constitutionalism to address historical wrongs" (Chandrachud 2024: 2). He then argues that although "representation" is essential in any democratic polity, we need to go "beyond" it

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(Chandrachud 2024: 1). What this means is that we need to see the Constitution in a new way, one in a manner where it is possible to envision “social reformation apart from the idea of representation” (Chandrachud 2024: 2). With this courageous step that proffers reformation of society, the ethical call to action transcends “courtrooms, and must be considered in the canvas of [a] larger social discourse on equality” (Chandrachud 2024: 2).

In drawing out the moral consequences of the Chief Justice’s opening remarks on the framework of his keynote address, we can articulate some initial conclusions. Often, we see legal systems, and the judges who occupy them, as inherently conservative, not in terms of political positions per se; but rather, the law demands a fidelity to precedent and tradition. This is the slow blast furnace that invites perpetual scrutiny of such precedents, in which an overturning takes place not because of the passing social and political pressures of the day, but because the law must re-align itself with a new set of facts or advancements in different scientific and social scientific fields when they occur. In other words, the law is slow to change because it is the bulwark that maintains social cohesion, order, and stability so that democracies do not devolve into civil wars or chaos in both realms of ideas and practices. And so, for the Chief Justice of the world’s largest, most vibrant, and perhaps most complex democracy to suggest that ‘reform’ is key to ‘remedying historical wrongs’ (Chandrachud 2024: 1) and engaging in social transformation in the quest for equity and fairness, not just equality and liberty, is quite breathtaking. Like Ambedkar, we do not have to keep apart the great social challenge to not only realize justice for all, but to undo long-standing structural and historical injustice; but instead of seeing law—the glue that holds all representative democracies together—as the enemy of change, it can be seen as an engine for radical transformation.

It was inspiring to see the Chief Justice draw from the powerful theoretical frameworks in the U.S. context, such as Critical Race Theory. Starting in the late 80s, ‘CRT,’ as it is known as an acronym, has questioned basic values that appear sacrosanct and neutral such as colorblind meritocracy in the post-Civil Rights era. In fact, such liberal ideologies based on individual rights conceal the fact that law plays a role in perpetuating social injustices. Such present miscarriages descend from the pasts of slavery and segregation that lead to disparate outcomes in terms of equality and equity across the board—from voting to housing to education, particularly for Black people and other marginalized racial and ethnic groups. Racism is not just embodied in individual acts of hate, violence, and discrimination but is baked into the basic institutions of society down to the microscopic fibers of everyday life (Delgado & Stefancic 2023). Similarly, in the Indian context, the law should not be focused, exclusively, on individual crimes and atrocities. Rather, it must redress the entire historical albatross of the caste system. This basic anatomy of Indian society leads to unfathomable disparities today in terms of what the American philosopher of justice, John Rawls termed as “primary social good”; the latter include “rights, liberties, and opportunities, and income and wealth...and a very important primary good is a sense of one’s own worth” (Rawls 1999: 79).

Seen from a wider conception of social justice, the law has a powerful role, alongside politics, systems of governance, and civil society, in maximizing the fair distribution of these goods. But in the mind of the Chief Justice, representation in democracy may be key, but when a society is saddled with prodigious historical evils, such as slavery in the U.S. or caste in India, then ‘reformation becomes necessary’ (Chandrachud 2024: 6). Passionately, he states that the:

...social life of the constitution goes beyond tokenism and necessitates active engagement, active listening, and taking the perspectives and concerns of oppressed communities seriously. It means acknowledging the unique experiences and challenges faced by these groups and incorporating their input into policy development and implementation (Chandrachud 2024: 15).

The call for ‘activism’ is visionary and to follow through the implications on the Chief Justice’s profound reflection, the law embodies the life of a society. If society is bogged down by historical injustices, then reckoning of the past is required to transform the present. Again, the inspiration of Dr. B.R. Ambedkar is illustrative. The highest ideals of equality and liberty in any democracy are obvious; but what is harder to achieve is the egalitarian dream of ‘fraternity,’ which brings forth a Kantian imperative. Indeed, the act of doing good for others must operate from the contentless law, the instinct as act emanating deep within oneself, of doing such good. Therefore, the highest manifestation of individual freedom is not based on some predetermined injunction or prohibition that one finds outside of oneself, say in religion or a constitutional monarchy. It certainly cannot be based on caste, which forces upon groups a duty that cannot be justified, namely keeping some people at a lower level of the social and human order, for the sake of purity and hierarchy. Rather, it must come from within the individual alone, to which no single substantive moral content can monopolize the free act of the individual to do good without that individual’s free assent to be governed and therefore self-governed as a moral law unto themselves. To achieve this pure democratic ethos in societies that have long-standing historical oppressions, such as the Native American genocide and Black slavery in the U.S. and the caste system and criminalization of tribal peoples in India, is that highest ideal for which we must strive.

In conclusion, we quote the Chief Justice’s words on Dr. B.R. Ambedkar, which resonate far beyond the confines of the courtroom:

Dr Ambedkar had focused on the value of “Fraternity,” which he termed as “another name for democracy.” Fraternity means mutual respect for each other. Fraternity can only be achieved, if the dignity of everyone is recognized” (Chandrachud 2024: 15).

We find these concluding words by the Chief Justice remarkable. They point to an indomitable spirit on the quest to do what is right, blending humility with responsibility given the enormous power of the office he holds. We thank him for inspiring us with what may be recalled by future generations as a historic address.

## References

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