THE PREAMBLE
A Brief Introduction
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The spontaneous and remarkable interest in the Constitution of India among ordinary citizens is what inspired this concise explainer on the Preamble to the Constitution. This document was evolved with the intention of demystifying core Preambular values that form the basis of our Constitution and exploring their origin and significance in contemporary India.

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THE CONSTITUTION OF INDIA

PREAMBLE

WE, THE PEOPLE OF INDIA,
having solemnly resolved to constitute India into a
SOVEREIGN SOCIALIST
SECULAR DEMOCRATIC REPUBLIC
and to secure to all its citizens:
JUSTICE, social, economic and political;
LIBERTY of thought, expression,
belief, faith and worship;
EQUALITY of status and of opportunity;
and to promote among them all
FRATERNITY assuring the dignity of the
individual and the unity and
integrity of the Nation;

IN OUR CONSTITUENT ASSEMBLY
this twenty-sixth day of November, 1949, do
HEREBY ADOPT, ENACT AND GIVE TO
OURSSELVES THIS CONSTITUTION.
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INTRODUCTION

In recent times, the Constitution of India has become a part of popular discourse. We have witnessed the use of the Preamble and other parts of the Constitution by spirited citizen activists with a goal to reclaim a constitutional vision. This has led to people enthusiastically debating the values enshrined in the Preamble, and in so doing forging an independent relationship with the ideals embodied in the Constitution.

The Anti-CAA protests which began towards the end of December 2019 have invoked the Constitution as standing in for the idea of an inclusive nation. The protest sites had protestors energetically waving the national flag even as they carried posters with the images of Gandhiji and Dr. Ambedkar as well as a copy of the Preamble.

These developments have certainly refashioned the manner in which the average citizen imagines the role of the Constitution in her life. The spontaneous and resounding interest in the Constitution varies distinctly from past engagements with the document. These recent engagements are not limited to securing specific constitutional rights but are focussed on increasing constitutional consciousness, and imbibing the spirit of the Constitution.
That fundamental constitutional values were seeded more deeply in public imagination as a result of these protests is evidenced by the fact that common citizens passionately and organically spoke the language of the constitution to invoke ideas of equality, fraternity and secularism in their opposition to the citizenship laws. One enduring lesson that we have learnt during this period is that all rights enjoyed by individuals are products of struggle. As well-known human rights activist Balagopal put it, ‘[..] without some struggle or agitation, rights do not accrue. A right first takes shape in some people’s minds and in their thoughts. It then spreads into the social consciousness subsequently gaining recognition in political practice. At a future phase, it registers political victory. This means that the law, the constitution, the traditions, and the culture - all legally and socially acknowledge and validate this right.

It’s important to understand the Constitution as a product of struggle as compared to thinking of it as nothing but ‘dull lifeless words’. As renowned human rights lawyer, K.G. Kannabiran put it:

   A constitution is a political document which gives legal content to a set of pre-existing rights, secured politically by people’s struggles. Rights have always never been acquired, never granted. Freedom was acquired by the people from the British and not granted to us by the Indian Independence Act, 1947.

In this context, it will be valuable to explore the independence movement whose inspired progeny was the Constitution of India. The Constitution continues to serve as an inspiration for struggles today and that marks a continuity with the ideals that inspired the independence struggle. This short booklet will focus on the ideals embodied in the Preamble, because the Constitution itself in the words of Prof. Upendra Baxi, is but a footnote to the Preamble.
With this as the primary theme, this booklet seeks to understand the provenance and content of Indian constitutional values, refracted through two lenses: (i) the freedom struggle and (ii) the Preamble to the Indian Constitution as interpreted and understood by the Supreme Court and popular movements.

The ideals of the Indian constitution were forged in the fire of the freedom struggle. The freedom struggle itself should be viewed broadly as comprising of many streams of thought and action that articulated three important conceptions of freedom: political freedom, social freedom and economic freedom.

This conception of freedom now finds expression in the Preamble. Jawaharlal Nehru while moving the Objectives Resolution which is the precursor to the Preamble implored the members of the Constituent Assembly to not look at the resolution like lawyers as then ‘you will produce only a lifeless thing’. He urged the members to understand the spirit of the Resolution as embodying the ideals of the independence movement. As he put it, ‘Words are magic things often enough, but even the magic of words sometimes cannot convey the magic of the human spirit and of a Nation’s passion.’

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4 Nehru. 1949. ‘Words are magic things often enough, but even the magic of words sometimes cannot convey the magic of the human spirit and of a Nation’s passion.’
Taking inspiration from Nehru, one could argue that the words of
the Constitution may not fully capture the spirit of the freedom
struggle and the poetry of the freedom struggle may be lost when
translated into Constitutional prose. However, the text of the
Constitution gets re-imbued with the spirit of the freedom struggle
through contemporary peoples’ movements and on occasions
judgments of the Supreme Court. It is struggle which ‘breathes life
into the Constitution’.

If we trace a line between the freedom struggle, through the
Preamble, to post-independent India, and the more recent
interpretations of freedom by civil society, social movements, and
the judiciary, there is a consistent vision of freedom which emerges.
It is this idea of freedom which gives substantive content to India’s
constitutional democracy.
When one thinks of freedom one fundamentally thinks of political freedom. After all the national movement was, at its core, a cry for emancipation from Britain’s colonial exploitation. One of the exemplary figures we can go back to in order to understand the content of political freedom is Mahatma Gandhi. He understood that political freedom has many important dimensions.

**RIGHT TO FREEDOM OF SPEECH AND ASSOCIATION**

Freedom of speech and expression is an essential dimension of political freedom according to Mahatma Gandhi. As he put it:

> We must first make good the right of free speech and free association before we can make any further progress towards our goal. [...] We must defend these elementary rights with our lives. Liberty of speech means that it is unassailed even when the speech hurts; liberty of the press can be said to be truly respected only when the press can comment in the severest terms upon and even misrepresent matters.... Freedom of association is truly respected when assemblies of people can discuss even revolutionary projects.
Civil liberties consistent with the observance of non-violence are the first step towards Swaraj. It is the breath of political and social life. It is the foundation of freedom. There is no room there for dilution or compromise. It is the water of life.\textsuperscript{5}

Gandhiji did not just write eloquently about the freedom of speech and expression as an integral and key aspect of the idea of freedom but was prepared to go to jail in its defence. In opposition to the colonial regime, especially after the Rowlatt Bill was introduced and the Jallianwala Bagh massacre had been committed by General Dyer, there were strong condemnations by Gandhi of the injustice of the British action in his own paper.

In an article titled, ‘Tampering with Loyalty’, he noted that he ‘shall not hesitate at the peril of being shot, to ask the Indian sepoy individually to leave his service and become a weaver. For has not the sepoy been used to hold India under subjection, has he not been used to murder innocent people at Jallianwala Bagh....has he not been used to subjugate the proud Arab of Mesopotamia. [...] The sepoy has been used more often as a hired assassin than as a soldier defending the liberty of the weak and helpless. [...]’

He goes on to say:

[...] sedition has become the creed of the Congress. Every non co-operator is pledged to preach disaffection towards the government established by law. Non-cooperation, though a religious and strictly moral movement, deliberately aims at the overthrowal of the government and is therefore legally seditious in terms of the Indian Penal Code.\textsuperscript{6}
In an article called the ‘Puzzle and its solution’ he writes:

We are challenging the might of this Government because we consider its activity to be wholly evil. We want to overthrow the Government. We want to compel its submission to the peoples’ will. We desire to show that the Government exists to serve the people, not the people the government. Free life under the Government has become intolerable, for the price exacted for the retention of freedom is unconscionably great. Whether we are one or many, we must refuse to purchase freedom at the cost of our self respect or our cherished convictions.7

The British responded to this criticism of their policy by charging Gandhi with the offence of sedition as defined in Section 124-A of the Indian Penal Code. Gandhi was tried under Section 124-A of the IPC on the charge of ‘exciting disaffection towards the government established by law in India’.

When Gandhi was arrested and produced before the Court, instead of entering a plea of ‘not guilty’, he pleaded guilty and went on to make a statement which put the entire colonial system on trial. After indicting the government for the Rowlatt Act, the Jallianwala Bagh massacre and colonial economic policy which had impoverished millions, he put forward a staunch defence of the freedom of speech and expression.

"Section 124-A under which I am happily charged is perhaps the prince among the political sections of the Indian Penal Code designed to suppress the liberty of the citizen. Affection cannot be manufactured or regulated by law. If one has no affection for a person or system, one should be free to give the fullest expression to his disaffection, so long as he does not contemplate, promote or incite violence... I have no personal
ill will against any single administrator; much less can I have any disaffection towards the King's person. But I hold it to be a virtue to be disaffected towards a Government which in its totality had done more harm to India than any previous system”

Though the judge convicted Gandhi, his statement indicates the impact Gandhi had upon him. J. Broomfield noted:

“The law is no respecter of persons, nevertheless, it will be impossible to ignore the fact that you are in a different category from any person I have ever tried or am likely to try. It would be impossible to ignore the fact that, in the eyes of millions of your countrymen, you are a great patriot and a great leader. Even those who differ from you in politics look upon you as a man of high ideals and of noble and of even saintly life. I have to deal with you in one character only. It is not my duty and I do not presume to judge or criticise you in any other character. It is my duty to judge you as a man subject to the law, who by his own admission has broken the law and committed what to an ordinary man must appear to be grave offence against the state.”

As one of the contemporary accounts of the trial noted, ‘for a minute everybody wondered who was on trial. Whether Mahatma Gandhi before a British Judge or whether the British Government before God and humanity.’

In the sedition trial, Gandhi converted the charge against him of ‘causing disaffection’ into a powerful statement on why ‘exciting disaffection’ against the government was ‘the highest duty of the citizen’. In short, as Sudipta Kaviraj observes, the trial of the rebel was turned into something that appeared more like a trial of the
State. In this trial, what is contested most seriously is the link of the State to justice. As Gandhi demonstrates in eloquent prose, not only has the ‘law been prostituted to the exploiter’ but even more grave is the ‘crime against humanity’ of an economic policy that has succeeded in reducing people to ‘skeletons in villages’ ‘as they sink to lifelessness’. The concept of justice, both economic and political, is what is at stake and Gandhi demonstrated that the British state had forfeited its claim on his affection having completely violated its commitment to the Indian people.

*The trial of the rebel was turned into something that appeared more like a trial of the State.*

What is clear from this in-depth engagement with Gandhi’s prosecution for sedition is that if we have a sense of history and a sense of respect for Gandhi, sedition should never have continued as an offence in the statute books. In the light of the enactment of the Constitution, it should have died a natural death. It should have been abolished on the achievement of independence itself. Instead the section continues to be in force and all governments have been happy to use it to prosecute opinion critical of itself.

**FREEDOM FROM PRE-TRIAL DETENTION AND RIGHT TO LEGAL REPRESENTATION OF THE ACCUSED**

Political freedom had no meaning if the state continued to lock up its opponents. Gandhi fought for the idea that the state had no right to lock up its opponents without trial and without legal
representation. This was the impetus behind the nationwide civil disobedience movement which was waged to repeal the draconian Rowlatt Act.

The Rowlatt Act [i.e. the Anarchical and Revolutionary Crimes Act, 1919] departed from the principles of criminal law by removing all the safeguards to which the accused were entitled, including the right to be safeguarded from pre-trial detention; legal representation; and a public trial in open court. The death penalty was prescribed under the Rowlatt Act as well.

Not surprisingly, the Rowlatt Act outraged Indian public opinion and led to a series of protests and demonstrations across India. A report authored by Gandhi on the Acts concluded: “[I]t is this Act, which raised a storm of opposition unknown before in India. [...] In our opinion, no self respecting person can tolerate what is an outrage upon society.”

The Anti-Rowlatt Act agitation which was a defence of the right to be free from the scourge of pre-trial detention and the right to legal representation have a strong resonance today. When judges of the Supreme Court and High Courts have ruled that a person cannot be convicted without legal representation, they have harkened back to the Anti-Rowlatt agitation and the struggle against a law which encoded the idea – na vakeel, na daleel and na appeal. As the Supreme Court noted in 2011:

*The Founding Fathers of our Constitution were themselves freedom fighters who had seen civil liberties of our people trampled under foreign rule, and who had themselves been incarcerated for long period under the formula ‘Na vakeel, na daleel, na appeal’ (No lawyer, no hearing, no appeal). Many of them were lawyers by profession, and knew the importance of*
counsel, particularly in criminal cases. It was for this reason that they provided for assistance by counsel under Article 22 (1)\textsuperscript{14} and that provision must be given the widest construction to effectuate the intention of the Founding Fathers.

The Apex court has also taken serious objection to the conduct of several Bar Associations across the country that have restrained their members from holding the brief of persons accused of heinous criminal offences like murder, sexual assault, sedition, acts of terror etc and termed it a gross violation of all norms of the Constitution\textsuperscript{15} as it takes away the fundamental guarantees afforded to every individual by the constitutional scheme.

The recent order of the Karnataka HC, in the case of three Kashmiri students who were accused of sedition\textsuperscript{16} after a video of them raising pro-Pakistan slogans went viral on social media, adopted a very similar logic on the inviolability of the right of an accused to be represented by a lawyer. It said:

\textit{It is the duty of the police to ensure constitutional rights of accused. If advocates are not allowed to represent, it is the violation of constitutional rights of accused.}\textsuperscript{17}

The court further stated that any attempt to deny them the right to legal counsel may amount to interference in the course of judicial proceedings. To ensure that this right was protected the Court directed police protection to the advocates who were representing the accused. The Court was also reported as saying:

\textit{If lawyers don't protect Article 22 (1) of the Constitution of India, if they don't protect the accused by representing them, who will then protect the legal system?}\textsuperscript{18}
FREEDOM FROM STATE VIOLENCE

While Gandhi in both the agitation against the Rowlatt Bills as well as the sedition trial was clearly challenging the legitimacy of the colonial government, there is embedded in his challenge a critique of the state as a whole. As he put it elsewhere:

_The state represents violence in a concentrated and organized form. The individual has a soul, but as the state is a soulless machine, it can never be weaned from violence to which it owes its very existence._

_I look upon an increase of the power of the state with the greatest fear, because although while apparently doing good by minimizing exploitation, it does the greatest harm to mankind by destroying individuality, which lies at the root of all progress._

_The state represents violence in a concentrated and organized form. The individual has a soul, but as the state is a soulless machine, it can never be weaned from violence to which it owes its very existence._

In recent times the State has reinforced the link between violence and itself, and rendered itself increasingly unaccountable. It is this new form of state ever willing to deploy brute violence against its own people which poses the biggest challenge in the times ahead. Gandhi is perhaps the strongest critique of state violence in the nationalist pantheon and would have been extremely unhappy that the Indian State is today more militarized and more willing to deploy violence than ever before against its own people.
It is in the context of the militarized state which is even more intolerant of criticism that the writ of habeas corpus is of supreme relevance. One bulwark standing between the overwhelming power of state to arbitrarily arrest and detain individuals is the judiciary which is tasked with the job of ensuring the freedoms guaranteed in the Constitution. A key constitutional responsibility vested in the judiciary is that of ensuring the freedom of individuals from arbitrary and unlawful state detention. It is here that we need to see the power of the High Courts and the Supreme Court to issue the writ of habeas corpus to state authorities to determine if the detention is lawful as the master key to political freedom.

**SOCIAL FREEDOM**

It is important to note that the Constitution is not just a product of struggle for political freedom but equally the result of a struggle against oppressive traditions and practices such as caste and gender inequality.

As Gautam Bhatia put it:

*Ambedkar’s revolutionary insight: that the denial of human dignity, both material and symbolic, is caused not only by public power, but by private power as well – and the task of constitutionalism is not limited to satisfactorily regulating public power in service of liberty, but extends to positively guaranteeing human freedom even against the excesses of private power.*

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Perhaps the iconic moment of the idea of freedom as not just having a political content but also a social content is what has come to be known as the Mahad Satyagraha led by Dr. Ambedkar. Pre-independence India practiced a form of social apartheid with rigid separation of the use of public facilities like tanks, roads, wells, eating establishments etc. based upon caste. While there were radical traditions within Indian society such as the Bhakti poets, Kabir and most certainly the emergence of Buddhism which challenged this form of apartheid, it remained the social norm.

On 19 March, 1927 the Mahad Conference began with over 3,000 people attending the same. Ambedkar in his speech at the conference noted that:

One cannot say for sure what kind of space was available for untouchables to realize their destiny before the advent of British rule. But, those days the notions of touchability and untouchability were so strong that the untouchables had to take long diversions in order to avoid their shadow falling on touchable people. They had to walk with an earthen pot tied around their neck to contain their spit lest it should pollute roads and had to tie a black thread around their wrist to identify themselves as Untouchables so as to alert others from getting polluted.  

In his speech Dr. Ambedkar in his usual forensic manner identified the ban on recruitment in the military as the reason for the destitution of the community and put forward the idea that the community must push to not only get the ban revoked but also push to open up white collar jobs and farming for the community.
After concluding the speech, it was proposed by Chitre that since ‘the Mahad Municipality has already declared all of its tanks to be open for the people of all castes by adopting a resolution to that effect’, ‘however, the practice of taking water from these tanks is yet to be established by the Untouchable people [..] Therefore, I propose that all of us along with the President should march to the Chavdar tank to drink its water’ 22

They began marching in a long procession through the market place of Mahad with utmost discipline even as they shouted slogans such as, 'Mahatma Gandhi ki jai!', 'Shivaji Maharaj ki jai!' and 'Victory to equality!'. They stopped at the Chavdar tank and followed Dr. Ambedkar who entered it and picked up its water with his cupped hands. They all shouted ‘Har har mahadev’ and drank its water. After this the Conference was declared as concluded.23

On the way home many of the delegates were assaulted by the upper castes for having dared to drink the water and in their opinion polluting it. There were strong responses in the press on this unprecedented act of publicly defying caste strictures. This simple act, according to Dr. Anand Teltumbde,24 had unprecedented consequences. As he put it:

The Mahad Satyagraha created a wave of awakening among the 'Untouchables' and lent them strength and confidence to work for their emancipation. The notion of inferiority instilled in them by the Hindu religious scriptures which had shacked their existence for millennia suddenly began cracking and freeing their self-confidence. 25
Following the Mahad Satyagraha, Ambedkar wrote three articles addressed to the 'Untouchables', upper castes and government. What was significant was that in the article addressing the touchables, he unambiguously makes the point that the removal of untouchability is a matter of self-respect for the Dalit community. As he put it:

*We wish to say that until today, like Mahatma Gandhi, we also consider that untouchability is the biggest blot on the Hindu religion. But now we have changed our opinion; now we consider it to be a blot on our own body. When we thought it to be the blot on Hindu religion, we had relegated the task of its eradication upon you. Now that we have realized that it is a blot on ourselves, we have accepted the task of washing it off ourselves.*

He goes on to conclude:

*If it is our destiny to wash off the blot you brought on to the Hindu religion with our blood, we would consider ourselves very fortunate. We have become fearless with the notion that we are the agents to accomplish this noble work. ..But we have never looked at this issue as a riot. We consider it as the first battle in the war for establishing equality.*

Post the Conference, Ambedkar launched the Bahishkrut Bharat as the organ of the Bahishkruth Hitkarni Sabha which would play a big role in mobilizing support for the second Conference. Massive propaganda was launched through public meetings, handbills, wall paintings, and pamphlets in Mumbai and all over the Marathi speaking provinces. People began donating money generously to the Satyagraha funds. This was the first such extensively planned event of the untouchables ever in history.
The awakening among the Dalit community provoked a counter response by the State with the Mahad Municipality itself passing another resolution stating the Chavdar tank must not be open to the 'Untouchables'. Some members of the upper caste community then moved the District Court to get an injunction preventing the 'Untouchables' from using the water in Chavdar tank.

Ambedkar in his speech at the Satyagraha Conference notes:

*The Touchable people of Mahad do not let the Untouchables drink water from the Chavdar tank not because the water would get putrid or dirty or evaporate away with their touch. The reason for not letting them drink is that they do not want to admit that these castes (Untouchables) which have been established as inferior in the Dharmashastras (scriptures) are equal to theirs.*

*The assembly of the French people was called for the purpose of reorganizing the French society. This conference of ours is called with the same purpose of reorganizing Hindu society.*

He goes on to assert the importance of drinking the water as:

*It is not that you and I will become immortal by drinking the water of this tank. We are not dead because we have not drunk water of the Chavdar tank till today. Therefore, if we march to the Chavdar tank, it is not merely to drink the water of this tank. We go there to establish that we are human beings like others. That should make it clear that this conference has been*
called to make a beginning towards establishing equality. If one conceives this conference in this manner, I am quite confident; no one would have any doubt that it is unprecedented. I do not think that this day will have any parallel in the history of India. If you want to see a comparable meeting in the past, you may have to enter the history of France in the European continent.\(^{30}\)

[...] The assembly of the French people was called for the purpose of reorganizing the French society. This conference of ours is called with the same purpose of reorganizing Hindu society.\(^{31}\)

In his speech, he explicitly saw the Mahad Satyagraha as similar to the National Assembly in France convened in 1789. As he put it, ‘Our Conference aims at the same achievement in social, religious, civic and economic matters. We are avowedly out to smash the steel-frame of the caste-system.’ He goes on to say that ‘Our movement stands for strength and solidarity; for equality, liberty and fraternity’.\(^{32}\)

The conference then wound up with the burning of the Manusmrithi which again symbolized the source of oppression of the Dalit community. It was a symbolic rejection of the social strictures of Hinduism.

The Mahad Satyagraha has become emblematic of the struggle for social freedom. The ideas articulated by Dr. Ambedkar are fundamentally the idea of equality, dignity, autonomy and the struggle for freedom from the confines of caste society. All of these ideas are articulated in the Preamble of the Indian Constitution and find a place in the text of the Constitution.
For the longest time, the mainstream national movement did not pay heed to working class movements across the country. It was only towards the end of the 19th century that working class struggles gradually gained the attention of the freedom movement. This was inspite of the fact that the workers had continuously undertaken several unorganised agitations for their economic grievances. It was in this background that the historic Karachi Resolution was passed. It was a transformational moment insofar as it was the first time socio-economic rights were being explicitly articulated.

The idea that freedom should also have an economic dimension is best articulated in the Karachi Resolution of 1931.

"This Congress is of opinion that in order to end the exploitation of the masses, political freedom must include real economic freedom of the starving millions. In order therefore, that the masses may appreciate what Swaraj as conceived by the Congress will mean to them, it is desirable to state the position of the Congress in a manner easily understood by them. The Congress therefore declares that any constitution that may be agreed to on its behalf, should include the following items, or should give the ability to the Swaraj Government to provide for them:

3. A living wage for industrial workers, limited hours of labour, healthy conditions of work, protection against the economic consequences of old age, sickness and unemployment.

4. Labour to be freed from serfdom or conditions bordering on serfdom.

5. Protection of women workers, and especially adequate provisions for leave during maternity period.
6. Prohibition against employment of children of school going age in factories.

7. Right of labour to form unions to protect their interests with suitable machinery for settlement of disputes by arbitration.

8. Substantial reduction of land revenue and rent and in case of uneconomic holdings exemption from rent for such period as may be necessary.

9. Imposition of a progressive income-tax on agricultural income above a fixed income.

10. A graduate inheritance tax.

19. Control by the state or key industries and mineral resources.”

If the passing of the Karachi Resolution was a seminal moment in India’s labour history, Ambedkar as a long-time advocate of labour rights made an equally significant contribution as a labour member of the Viceroy’s Council. As the member of the Viceroy’s Council he made many interventions on the nuances and intricacies of Factories Bills, Payment of Wages as well as on the welfare and social security of workers. He was instrumental in achieving victories such as the eight hour working day, maternity benefits for women workers etc. He was committed to the idea of the limited working day as it was only on the basis of reduction of the working day that the worker could become a citizen. As he put it:

The Labour Department’s memorandum on the reduction of working hours pointed out that it was both unjust and unwise to deny the workers a reasonable amount of spare time away from the factory, which was indispensable for the building up of citizenship and for the maintenance of his physical efficiency.34

The issue of economic rights finds some place in the Fundamental Rights but has mainly been relegated to the Chapter on Directive Principles of State Policy (Art 36-51). Under the Indian
Constitution, only the rights contained under the Fundamental Rights Chapter are justiciable i.e., an individual can enforce these rights against the State by approaching either a High Court or the Supreme Court of India. The Chapter on the Directive Principles of State Policy are guidelines to the State and are non-justiciable i.e., no court is empowered to provide relief to a person against the State for non-compliance with these provisions. Therefore, the non-enforceable nature of Directive Principles has added a layer of complexity to the challenge of achieving socio-economic rights.

Under the Fundamental Rights, the most significant labour protection is enshrined under Art 23 that prohibits forced labour including traditional practices like begar. In the Supreme Court’s interpretation, “forced” is not limited to “physical force” but also encompasses a multitude of social and economic compulsions that is exerted by a deeply oppressive system thereby forcing workers to take decisions against their interest. Art. 24 prohibits the hazardous employment of children under the age of 14. Art 19(1) (c) gives workers the right to form unions and thereby enables collective action.

There are also significant Directive Principles of State Policy which mandate the contours of economic freedom such as allowing worker participation in industries (Art 43-A), just and humane working conditions (Art 42), a living wage (Art 43), duty to raise the standard of living and improvement of health of workers (Art 47), equal pay for equal work (Art 39) etc. Judicial interpretation has converted some of the non-enforceable Directive Principles of State Policy into Fundamental Rights. However, there is still a long way to traverse to convert key Directive Principles of State Policy into a living mandate for a majority of India’s population.
THE PREAMBLE TO THE INDIAN CONSTITUTION

PRECURSORS TO THE PREAMBLE

The Preamble to the Constitution of India drew inspiration from previous articulations of the aspirations and vision of the people of India which includes The Nehrus Report, Purna Swaraj Resolution, the Objectives Resolution and the Proposed Preamble in Ambedkar’s States and Minorities.

1. PURNA SWARAJ

In 1927, the Simon Commission was appointed to review the working of the Government of India Act, 1919 and propose constitutional reforms. However, leaders from the Indian freedom movement were irked with the composition of the Commission as it had no Indian representatives. When questioned, the British refused to remedy the shortcoming and instead challenged the Indian leaders to draft their own Constitution if they were displeased with the British’s efforts. Previously, Lord Birkenhead, the Conservative Secretary of State responsible for the appointment of the Simon Commission, had constantly harped on the inability of Indians to formulate a concrete scheme of constitutional reforms which would enjoy popular support. It was in response to these challenges that the Nehru Report (named after Motilal
Nehru) was brought out which in effect was a Draft Constitution for what would be the Republic of India. It laid out that the basis of the Indian Constitution should be a Declaration of Fundamental Rights and guaranteed right to equality, right to life, right to freedom of conscience and also protections against discrimination. It also envisioned India as a secular nation. However, the Report opted for a Dominion Status under the Empire thereby, meaning that India would owe allegiance to the Crown.

But Jawaharlal Nehru and other leaders such as Hasrat Mohrani and Subhas Bose were unhappy with Dominion Status as India’s preferred mode of governance and instead insisted on Purna Swaraj or Complete Independence. In this light, the Congress in its Lahore session on 19th December, 1929, adopted the Declaration of Purna Swaraj. The opening lines of the briefly worded resolution read:

_We believe that it is the inalienable right of the Indian people, as of any other people, to have freedom and to enjoy the fruits of their toil and have the necessities of life, so that they may have full opportunities of growth. We believe also that if any government deprives a people of these rights and oppresses them the people have a further right to alter it or to abolish it. The British government in India has not only deprived the Indian people of their freedom but has based itself on the exploitation of the masses, and has ruined India economically, politically, culturally, and spiritually. We believe, therefore, that India must sever the British connection and attain Purna Swaraj or complete independence._
The session also decided that 26th January would henceforth be observed as Complete Independence Day. Accordingly, massive gatherings and meetings were held across the country on 26th January, 1930 where collective readings of the Declaration affirmed *Purna Swaraj* or Complete Independence as the only honourable goal to strive for. This was a momentous occasion in the history of India’s freedom movement as it marked one of the very first times the people of the country had outlined their vision for a free India and even publicly articulated it.

The Congress commemorated this day as Complete Independence Day until the transference of power was completed in 1947. In honour of the public declaration of the goal of *Purna Swaraj* on this date, the Constitution of India was adopted on 26th January, 1950.

### 2. OBJECTIVES RESOLUTION

The historic Objectives Resolution was moved in the Constituent Assembly on 13th December, 1946 by Jawaharlal Nehru and detailed the values upon which the Assembly was to frame the Indian Constitution. The Resolution stated that India would be an *Independent Sovereign Republic* and all territories under the *Republic* would be *autonomous Units*. It also promised to the people of India *justice, social, economic and political; equality of status, of opportunity, and before the law; freedom of thought, expression, belief, faith worship, vocation, association and action, subject to law and public morality*.

A reading of the Resolution would reveal that the primary text of the Preamble that now forms a part of the Constitution was largely inspired by Nehru’s Objectives Resolution.
The Resolution read:

(1) This Constituent Assembly declares its firm and solemn resolve to proclaim India as an Independent Sovereign Republic and to draw up for her future governance a Constitution; [.]

(4) WHEREIN all power and authority of the Sovereign Independent India, its constituent parts and organs of government, are derived from the people; and

(5) WHEREIN shall be guaranteed and secured to all the people of India justice, social, economic and political; equality of status, of opportunity, and before the law; freedom of thought, expression, belief, faith worship, vocation, association and action, subject to law and public morality; and

(6) WHEREIN adequate safeguards shall be provided for minorities, backward and tribal areas, and depressed and other backward classes; and

(7) WHEREBY shall be maintained the integrity of the territory of the Republic and its sovereign rights on land, sea, and air according to Justice and the law of civilised nations, and

(8) this ancient land attains its rightful and honoured place in the world and make its full and willing contribution to the promotion of world peace and the welfare of mankind."
3. STATES AND MINORITIES BY DR. B R AMBEDKAR

Dr. BR Ambedkar drafted *States and Minorities* after being requested by the Working Committee of the All-India Scheduled Castes Federation to prepare a Memorandum on the Safeguards for the Scheduled Castes for submission to the Constituent Assembly on behalf of the Federation. *States and Minorities* was carved out in the form of articles of a Constitution and was almost akin to a mini-constitution drafted for the ‘United States of India’.

The Memorandum was not a document that confined itself to the protections that can be afforded to minorities but also dealt extensively with the Fundamental Rights of Citizens and the Remedies against invasion of Fundamental Rights (including the unequal treatment, discrimination, economic exploitation etc).

It invoked the right to life, right to free speech and the right to equality, among other rights. Its stated that the Unites States of India shall work with the view:

(i) to secure the blessings both of self-government and good government throughout the United States of India to ourselves and to our posterity,
(ii) to maintain the right of every subject to life, liberty and pursuit Of happiness and to free speech and free exercise of religion,
(iii) to remove social, political and economic inequality by providing better opportunities to the submerged classes,
(iv) to make it possible for every subject to enjoy freedom from want and freedom from fear, and
(v) to provide against internal disorder and external aggression, establish this Constitution for the United States of India.
The question about whose name the Constitution of India should be invoked in was not unanimously decided but was fiercely contested in the Constituent Assembly. Ambedkar had famously declared that the ‘preamble embodies that this Constitution has its root, its authority, its sovereignty from the people.’ This was in response to several members of the Assembly who put forward the proposal of invoking either ‘God’ or ‘Gandhi’ or a combination of both to either precede or even replace the words ‘We the People.’ The argument advanced was that the Constitution was not only a political or a social document but also a spiritual one. In this light, members opined that it was only right that the Constitution be written in the name of God as also the name of the Father of the Nation.

Nonetheless, other members of the Assembly were deeply opposed to this idea as they believed that any reference to God would be akin to imposing the collective view of the Assembly on the people and would therefore, violate the very freedom to thought, expression, belief, faith and worship that the Preamble promises. Similarly, the amendment seeking to introduce Gandhi was also discussed and subsequently withdrawn as members opined that our Constitution was not a Gandhian constitution and hence, it would be incorrect to invoke Gandhi.

A look at the Preamble that was eventually adopted by the Assembly makes it amply clear that the Constitution is founded in the fact that it is ‘we the people’ who ‘adopt, enact and give to ourselves’ this Constitution. The essence of the founding moment
of the Indian nation lies in the fact that it does not make allusions to a misty past but remains firmly tethered to the idea that the people of the country have given themselves the Constitution.

The text and the tone of the Preamble makes us acutely aware that the Constituent Assembly was merely a representative of ‘the People’ which resolved to give to themselves a ‘sovereign, democratic, republic’. At the core, the Constitution sets in place the republican idea that the source of authority is the people and not the monarch. The ideas by which we are governed and the institutions which form the warp and weft of our life are not divinely ordained but are made by ‘we the people.’

SOVEREIGN DEMOCRATIC REPUBLIC

The Objectives Resolution that was introduced by Jawaharlal Nehru in the Constituent Assembly proposed that the task of the Assembly be to help build an ‘Independent, Sovereign, Republic’. However, when this was taken up for discussion by the Drafting Committee, it underwent significant changes. The Committee adopted ‘Sovereign, Democratic, Republic’ instead as it opined that both ‘sovereign’ and ‘independent’ denoted the same thing. The essence of sovereignty was that it was incongruent with monarchy, with sovereignty vesting in the people. It encapsulates the Indian people’s right to self-governance.

Nehru’s imagination of an Indian Republic was an India that departed from monarchical regimes. On the absence of the word ‘democratic’, he said:
... we have not used the word ‘democratic’ because we thought it is obvious that the word ‘republic’ contains that word and we did not want to use unnecessary words [...]” Although this was a misplaced understanding of what constitutes a republic for all republics may not necessarily be democratic, Nehru reposed unwavering faith in India’s democratic culture and said an express articulation of the idea of democracy was unnecessary as the whole of our past is witness to the fact that we stand for democratic institutions.

However, his vision on what constitutes Indian democracy is critical: “Democracy has been spoken of chiefly in the past, as political democracy, roughly represented by every person having a vote. But a vote by itself does not represent very much to a person who is down and out, to a person, let us say, who is starving and hungry. Political democracy, by itself, is not enough except that it may be used to obtain a gradually increasing measure of economic democracy, equality and the spread of good things of life to others and removal of gross inequalities.” It is important to note that democracy, as a Preambular value, lies not in the idea of Universal Adult Franchise but in building a society where social and economic justice are a lived reality.

“The fundamental rights chapter is like the north star in the universe of constitutionalism in India. Constitutional morality always trumps any imposition of a particular view of social morality by shifting and different majoritarian regimes.”
Ambedkar adds a crucial dimension to the constitutional imagination of democracy. Very often democracy is thought of as the opinion of the majority. However, in a society ruled by what Ambedkar called ‘communal majorities’, when people vote on the basis of their caste or religion and not ‘political majorities’, when people vote on the basis of a political programme, minorities were in perpetual danger of being marginalized by a ‘fixed’ majority. Such societies become majoritarian democracies, whereas the imagination of Ambedkar is India as a constitutional democracy.

How then does one seed a constitutional democracy in India?

Firstly, Indian democracy places certain limits on the power of the majority through the fundamental rights chapter. It is the responsibility of the judiciary to ensure that the fundamental rights of ‘despised and unpopular minorities’ are not sacrificed at the altar of majoritarian prejudice. One such minority is the LGBTQI community that went to court challenging the constitutionality of section 377 of the Indian Penal Code, 1860. The Supreme Court read down section 377 upholding the logic that majoritarianism cannot be a ground for denying a minority their rights.
The very purpose of the fundamental rights chapter in the Constitution of India is to withdraw the subject of liberty and dignity of the individual and place such subject beyond the reach of majoritarian governments so that constitutional morality can be applied by this Court to give effect to the rights, among others, of ‘discrete and insular’ minorities. One such minority has knocked on the doors of this Court as this Court is the custodian of the fundamental rights of citizens. These fundamental rights do not depend upon the outcome of elections. And, it is not left to majoritarian governments to prescribe what shall be orthodox in matters concerning social morality. The fundamental rights chapter is like the north star in the universe of constitutionalism in India. Constitutional morality always trumps any imposition of a particular view of social morality by shifting and different majoritarian regimes.

Secondly, democracy has to move beyond periodic elections to becoming a way of life. As Ambedkar put it:

'Democracy is not merely a form of government. It is primarily a mode of associated living, of conjoint communicated experience. It is essentially an attitude of respect and reverence towards fellow men.'

What could Ambedkar have meant by ‘associated living’ and ‘conjoint communicated experience’? In Ambedkar’s understanding democracy is really about cultivating a commonality of experience born out of living together. The reality of a society fractured by caste and religion is that people live in ghettos and there is no ‘associated living’. It is only when people live together across lines of religion
and caste and people work together that its possible to have experiences in common. Ultimately a democracy with deeper roots than mere political democracy depends upon *conjoint associated living* and that makes democracy not just a project of the state but something which citizens must invest in as well.

Taking the viewpoint of both Nehru and Ambedkar together, democracy is more than just the question of periodic elections. It can never be equated simplistically to majority opinion and we have to see the project of cultivating democracy as a task enjoined upon us by the Constitution makers. As Ambedkar put it:

*The question is, can we presume such a diffusion of constitutional morality? Constitutional morality is not a natural sentiment. It has to be cultivated. We must realise that our people have yet to learn it. Democracy in India is only a top dressing on an Indian soil which is essentially undemocratic.*

## SECULAR

Secularism was not a part of the original text of the Preamble but was later inserted through the infamous 42nd Amendment in 1976 during Indira Gandhi’s regime.

A motion by Brajeshwar Prasad to include the words *secular* and *socialist* in the body of the Preamble was explicitly rejected. Another amendment by Prof KT Shah was moved to insert the words, *Secular, Federal, Socialist* in Article 1 of the Draft Constitution. Speaking of why he chose to propose this addition, he invoked the memory of Partition by referring to the “the unhappy experiences we
had last year and in the years before and the excesses to which, in the name of religion, communalism or sectarianism can go."

Not only did he see this addition as a safeguard against sectarian violence in the future but also as an explicit promise the Constitution was making to its people about how “[…] the relations between man and man, the relation of the citizen to the state, the relations of the states inter se may not be influenced by those other considerations which will result in injustice or inequality […]” This motion too was rejected.

Nonetheless, this was hardly driven by a rejection of the ideal of secularism. A close reading of the Constitutional Assembly Debates makes it amply clear that member after member spoke of how the idea of secularism was in-built in Indian constitutionalism. The only point of contention was pivoted on the content of secularism in the Indian context. This gave rise to divergent opinions and two distinct and paradoxical conceptions arose:

The first interpretation of secularism was based on the European Model of having a definite line of separation between State and religion. This meant that religion had no place in public life but individuals were free to observe and practice their religion in their private confines. Tajamul Husain moved an unsuccessful motion to this effect seeking that the Constitution expressly state that individuals had the right to practice and profess their religion but only privately.

The second understanding of secularism as a constitutional ideal sought for religion to be recognized as a public institution wherein the State accorded equal respect to all of them.
KM Munshi said: We are a people with deeply religious moorings. At the same time, we have a living tradition of religious tolerance — the results of the broad outlook of Hinduism that all religions lead to the same god... In view of this situation, our state could not possibly have a state religion, nor could a rigid line be drawn between the state and the church as in the U.S.  

Thus, the Constituent Assembly did not agree to include secularism in the Preamble, but as speaker after speaker demonstrated, there was no disagreement on the fundamental premise underlying secularism, namely that all persons have the freedom to practice their faith and that the state will not discriminate against persons on grounds of religion.

We therefore, have built an Indian State that bears no religious colour but respects all religions equally. By extension, no religion will receive the patronage of the State.

The Supreme Court in SR Bommai vs Union of India came to the finding that secularism was part of the basic structure of the Indian Constitution and specifically concluded that the 42nd Amendment only made explicit what was implicit in the Indian Constitution. 

Notwithstanding the fact that the words 'Socialist' and 'Secular' were added in the Preamble of the Constitution in 1976 by the 42nd Amendment, the concept of Secularism was very much embedded in our constitutional philosophy. The term 'Secular' has advisedly not been defined presumably because it is a very elastic term not capable of a precise definition and perhaps best left undefined. By this amendment what was implicit was
made explicit. The Preamble itself spoke of liberty of thought, expression, belief, faith and worship. While granting this liberty the Preamble promised equality of status and opportunity. It also spoke of promoting fraternity, thereby assuring the dignity of the individual and the unity and integrity of the nation. While granting to its citizens liberty of belief, faith and worship, the Constitution abhorred discrimination on grounds of religion. 

"Notwithstanding the fact that the words ‘Socialist’ and ‘Secular’ were added in the Preamble of the Constitution in 1976 by the 42nd Amendment, the concept of Secularism was very much embedded in our constitutional philosophy. By this amendment what was implicit was made explicit."

The Court then went on to list the fundamental rights with regard to the practice of religion and strongly concluded that ‘These fundamental rights enshrined in Articles 15, 16, and 25 to 30 leave no manner of doubt that they form part of the basic structure of the Constitution.’
The term ‘socialist’ was not part of the original text of the Preamble that was adopted by the Constituent Assembly but was one of the three terms inserted through the 42nd Amendment in 1976.

Going back to the Constituent Assembly, it was Prof K T Shah who moved the amendment to insert ‘Secular, Federal, Socialist’ in the text of the Constitution. Dr. Ambedkar was opposed to the amendment as a whole and called it superfluous, his response specifically explained his unwillingness to incorporate ‘socialist’ into the Preambular text.

What should be the policy of the State, how the Society should be organised in its social and economic side are matters which must be decided by the people themselves according to time and circumstances. It cannot be laid down in the Constitution itself, because that is destroying democracy altogether. If you state in the Constitution that the social organisation of the State shall take a particular form, you are, in my judgment, taking away the liberty of the people to decide what should be the social organisation in which they wish to live. It is perfectly possible today, for the majority people to hold that the socialist organisation of society is better than the capitalist organisation of society. But it would be perfectly possible for thinking people to devise some other form of social organisation which might be better than the socialist organisation of today or of tomorrow.

He also felt that the spirit of socialism has already been imbibed in certain provisions of the Fundamental Rights and Directive Principles of State Policy. In doing so, the Assembly was giving a socialist direction to the Indian polity while also not dictating terms to it.
The Supreme Court in *Kesavananda Bharati v. State of Kerala*\(^55\) recognizes some of the elements of socialism as part of the basic structure of the Indian Constitution. To protect those who would otherwise be at the receiving end of an economically powerful political majority, *Kesavananda* recognises egalitarianism and the welfare state as part of the basic structure.

As Justices Hegde and Mukerjea opined:

> On a careful consideration of the various aspects of the case, we are convinced that the parliament has no power to abrogate or emasculate the basic elements or fundamental features of the Constitution such as the sovereignty of India, the democratic character of our polity, the unity of the country, the essential features of the individual freedoms secured to the citizens. Nor has the parliament the power to revoke the mandate to build a welfare state and egalitarian society. \(^56\)

**JUSTICE**

The founders of the Constitution envisaged four primary pillars upon which the India’s democracy was to be erected namely, justice, equality, liberty and fraternity. ‘Justice, social, economic and political’ regulating the Indian Constitution is an embodiment of the constitutional commitment to dismantle historical inequalities and injustices by deploying the Fundamental Rights and Directive Principles of State Policy.

Commenting on the nature of ‘justice’ in the Preamble, one of the chief draftsmen of the Constitution, Alladi Krishnaswami Ayyar, remarked:
There was a further comment as to the reference to 'justice, social, economic and political', being too thin. The expression 'justice, social, economic and political' while not committing this country and the Assembly to any particular form of polity coming under any specific designation, is intended to emphasise the fundamental aim of every democratic State in the present day. The Constitution framed will, I have no doubt, contain the necessary elements of growth and adjustment needed for a progressive society. 57

Another view of the Supreme Court 58 on the Preambular idea of justice:

The word 'justice' envisioned in the preamble is used in broad spectrum to harmonise individual rights with the general welfare of the society. [...] Justice in the preamble implies equality consistent with the competing demands between distributive justice with those of cumulative justice. Justice aims to promote the general well-being of the community as well as individual's excellence. The principal end of society is to protect the enjoyment of the individuals subject to social order, well-being and morality. Establishment of priorities of liberties is a political judgment.

Interestingly, the justice clause also invited minimal discussion and debate during its proceedings. Ambedkar was a fierce proponent of social justice and strove to establish a just social system that eradicated social disabilities and promoted equal opportunity. This coupled with his understanding of economic justice as elucidated in the Chapter titled ‘Economic Freedom’, formed the core of his imagination of the struggle for freedom. To achieve
The Preamble gives an unwavering commitment to certain core ideas such as the liberty of thought, expression, belief, faith and worship. We have to note the encompassing nature of liberty- It is not just religious freedom but equally freedom of thought and expression. The people of India have the freedom to think, to express to believe and to worship. This broad concept of liberty has now become part of a wider cultural, social and legal consciousness. We will give just two examples of how the Courts have interpreted this notion of liberty to indicate its many dimensions.

**THE CONSTITUTIONALITY OF SEDITION**

When it comes to the freedom of speech and expression we referred to the sedition trial of Mahatma Gandhi under the colonial provision of Section 124-A of the IPC. In *Kedar Nath Singh v. State of Bihar* the Supreme Court has upheld the constitutionality of the provision but has clearly delimited the use of Section 124 A to only speech which had the tendency to incite violence. As the Supreme Court clearly stated:
But the section has taken care to indicate clearly that strong words used to express disapprobation of the measures of Government with a view to their improvement or alteration by lawful means would not come within the section. Similarly, comments, however strongly worded, expressing disapprobation of actions of the Government, without exciting those feelings, which generate the inclination to cause public disorder by acts of violence, would not be penal. In other words, disloyalty to Government established by law is not the same thing as commenting in strong terms upon the measures or acts of Government, or its agencies, so as to ameliorate the condition of the people or to secure the cancellation or alteration of those acts or measures by lawful means, that is to say, without exciting those feelings of enmity and disloyalty which imply excitement to public disorder or the use of violence.  

It’s important that citizens appreciate the scope of the right to dissent and keep pressing the state to ensure that the right of all citizens to give expression to their disaffection is protected.

In Balwant Singh v. Union of India the Supreme Court adjudicated the question as to whether the raising of slogans including, ‘Khalistan Zindabad’ in a crowd the day Indira Gandhi was assassinated amounted to sedition. The Supreme Court noted: ‘We find it difficult to hold that upon the raising of such casual slogans, a couple of times without any other act whatsoever the charge of


sedition can be founded.’ The Supreme Court goes on to chastise the policemen who filed the case noting that, ‘It does not appear to us that the police should have attached much significance to the casual slogans raised by two appellants, a couple of times and read too much into them.’

The Court concluded that, ‘the prosecution has admitted that no disturbance, whatsoever, was caused by the raising of the slogans by the appellants and that in spite of the fact that the appellants raised the slogans a couple of times, the people, in general, were un-affected and carried on with their normal activities. The casual raising of the slogans, once or twice by two individuals alone cannot be said to be aimed at exciting or attempt to excite hatred or disaffection towards the Government as established by law in India, Section 124A IPC, would in the facts and circumstances of the case have no application.’

It’s unfortunate that the Supreme Court’s interpretation of the wide meaning of speech has not been appreciated or understood by successive governments all of whom have willfully misinterpreted the scope of the sedition law and used it to target legitimate speech which is critical of the government of the day. It’s important that citizens appreciate the scope of the right to dissent and keep pressing the state to ensure that the right of all citizens, as Gandhi put it, to give ‘the fullest expression to his disaffection, so long as he does not contemplate, promote or incite violence’ is protected.
In conventional legal texts, freedom of expression is seen as the means through which one expresses one’s thoughts and ideas, be it through plays, movies, books or social media posts. However, the Supreme Court expanded the notion of ‘expression’ in its celebrated decision in *NALSA v Union of India* in which the Court recognized that transgender persons are entitled to all rights under the Indian Constitution.

In the judges’ opinion:

> Article 19(1) (a) of the Constitution states that all citizens shall have the right to freedom of speech and expression, which includes one’s right to expression of his self-identified gender. Self-identified gender can be expressed through dress, words, action or behaviour or any other form. No restriction can be placed on one’s personal appearance or choice of dressing, subject to the restrictions contained in Article 19(2) of the Constitution."^{63}

The judges in this case gave a new content to the idea of freedom of expression by recognizing transgender persons right to express their gender through ‘dress, words, action or behaviour’. The judges explicitly link the freedom of expression to the notion of dignity and equality and recognize transgender persons as full citizens of the country.
In his closing address to the Constituent Assembly, Dr. BR Ambedkar highlighted the significance of striving to achieve a social democracy in order to sustain a political democracy. This, he said, can be realized only if we recognize liberty, equality and fraternity as the principles of life. However, he was deeply anxious that India would descend into complete anarchy post-independence as he feared that caste/creed solidarities would take precedence over the notion of belonging to one country. He further observed:

*We must begin by acknowledging the fact that there is complete absence of two things in Indian Society. One of these is equality. On the social plane, we have in India a society based on the principle of graded inequality which we have a society in which there are some who have immense wealth as against many who live in abject poverty. On the 26th of January 1950, 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. [...] 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 laboriously built up. ⁶⁵

For the makers of the Constitution and for Dr. Ambedkar in particular, the vision of equality was not restricted to mere formal equality but it encompassed substantive equality. Their conception of equality acknowledged that difference and special treatment does not preclude equality but were actually integral components of it. The goal, therefore, was to flesh out a constitutional scheme that not only acknowledged that everyone be treated fairly but one that actively recognised the grounds on which oppressed communities were discriminated against and resolutely strove to remedy such systemic inequality.

From the perspective of the Indian Constitution, it is very important to appreciate the distinction between formal equality and substantive equality. A law which conforms to formal notions of equality would, as Anatole France put it, ‘in its majestic equality, forbid the rich as well as the poor to sleep under bridges, to beg in the streets, and to steal bread.’ A commitment to substantive equality on the other hand should contemplate measures which will ensure that the poor do not have to ‘sleep under bridges, beg in the streets or steal bread.’
India is, as we know, a nation of contradictions with extreme inequalities between persons based on the caste, religion and/or gender that they come from. In such an inequal society, how do you then achieve equality? If you continue with a formal commitment to equality, will it give those at the bottom a chance to compete equally with those at the top?

These are some of the questions which the Indian Constitution attempts to answer through its commitment to substantive equality. It is this commitment to substantive equality which enjoins the state to reserve seats in educational establishments and reserve posts in government employment for Scheduled Castes, Scheduled Tribes and Backward Classes of citizens. Thus, in the opinion of the Supreme Court as expressed in *State of Kerala v N.M. Thomas*, reservation is not an exception to equality but a means to achieve real or substantive equality. Reservation is a tool to addressing structural inequalities like class and gender by giving those at the bottom an opportunity to participate in education and employment. Therefore, reservation for oppressed groups is a way of both recognizing and redressing structural disparities between persons. This is an example of the Indian Constitution’s commitment to substantive equality.

Another example to better understand the difference between formal and substantive equality: Consider the now amended provision of section 377 under the Indian Penal Code, 1860 wherein the text of the law prohibited all persons from indulging in any form of sexual intercourse other than peno-vaginal intercourse. At first instance, the provision appears to be fair and just as such a restriction was imposed on all persons without distinction. Therefore, it would pass the test of equality if one were to look at it through a formal equality perspective.
However, a closer reading would reveal that the law in criminalising certain sexual acts even when consensual had far graver implications on the LGBTQI community. The law failed to appreciate that the sexual acts prohibited were more intimately connected to the LGBTQI community and thereby, arbitrarily stripped the community of the right to make fundamental personal choices without State surveillance. The community was compelled to live under constant fear of persecution as a result of this deeply discriminatory provision that violated the right to equal protection of the law under Art. 14.

Therefore, while the provision was seemingly neutral, it violated the right to *substantive* equality.

This explains why the Chapter of Fundamental Rights in the Constitution enumerates a series of provisions that address varying forms of inequality while also permitting the Legislature to recognise difference and accord special treatment to certain sections of the society. For example, Article 14 guarantees equal treatment and protection of the law, Art. 15 is a safeguard against discrimination, Art. 16 promises equality in opportunity while also allowing for special treatment of some individuals and groups, Art 15(4) and 16(4) permit the State to provide reservation in educational establishments as well as State employment for backward classes of citizens. Art. 17 abolishes untouchability, Art. 23 prohibits bonded labour and Art. 24 renders child labour unconstitutional.
It is pertinent to note that Constitutions routinely mediate the relationship between the State and the citizen and bestow certain elementary rights on the individual which can be enforced against the State. This is known as the vertical application of rights. Deeply influenced by the substantive vision of equality however, the Indian Constitution goes a step further and also recognises fundamental rights against private parties which allow for the horizontal exercise of fundamental rights.

For example, Article 15(2), recognizes the right of citizens to access public spaces like shops, public restaurants, hotels, places of public entertainment, wells, tanks etc without discrimination on grounds of caste, religion, race, caste, sex, place of birth and this right can be enforced against private citizens.

Equality is at the heart of the Constitution of India. As Rohit De argues in his remarkable book, *The Peoples Constitution*, over 70 years of the working of the Indian Constitution have shown, the deep investment that ordinary people have made in the idea of equality including marginalised groupings like sex workers, butchers and religious minorities.

We will now analyze the constitutional ideal of equality through the lens of gender.
CHALLENGING GENDER STEREOTYPES IN LAW

As noted above, the mandate of equality applies equally against both discrimination by society as well as by the State. This section will address how the Supreme Court has interpreted equality in the context of gender by addressing one of the key problems faced by women namely stereotypical perceptions of women’s roles which are then encoded in the law.

The issue of gender stereotypes as violating the principle of equality was first declared by the Supreme Court in Anuj Garg v Hotel Association of India. In Anuj Garg, the constitutional validity of Section 30 of the Punjab Excise Act, which prohibited the employment of any man under the age of 25 years and any woman, in any part of an establishment in which liquor or any other intoxicating drug was being consumed, was challenged.

While on the face of it, the aim of the Punjab Excise Act may have been to ‘protect women’, this provision of law reinforced an idea which the Supreme Court called ‘romantic paternalism’. The Court cited a US Supreme Court decision to make the point that,

> Traditionally, such discrimination was rationalized by an attitude of ‘romantic paternalism’ which, in practical effect, put women, not on a pedestal, but in a cage. As a result of notions such as these, our statute books gradually became laden with gross, stereotyped distinctions between the sexes.

The Court in Anuj Garg concluded that ‘the present law ends up victimizing its subject in the name of protection.’ The court struck down the said provision as it suffers from incurable fixations of stereotype morality and conception of sexual role and, as a result, ends up discriminating against women.
In *Joseph Shine v Union of India* the Court struck down Section 497 of the Indian Penal Code, the provision which criminalized adultery. The provision criminalized only the man who had sexual intercourse with the wife of another man and not the adulterous woman. On the face of it, it could have been argued that this was a measure meant to protect women as it criminalizes only the man who committed adultery and not the woman. The judges however do a deeper excavation of the meaning of this provision from the IPC of 1860. They find that historically the reason only the adulterous man was criminalized, and not the woman, was because the woman, as per the old British law, was the property of man and the criminalization of adultery was really a criminalization of a trespass into the property of a married man, i.e. his wife. The wife being a property of her husband, she exercised no choice in the matter of sexual relationships. The Court struck down Section 497 of the IPC on the ground that:

> A woman’s ‘purity’ and a man’s marital ‘entitlement’ to her exclusive sexual possession may be reflective of the antiquated social and sexual mores of the nineteenth century, but they cannot be recognized as being so today. It is not the “common morality” of the State at any time in history, but rather constitutional morality, which must guide the law. In any democracy, constitutional morality requires the assurance of certain rights that are indispensable for the free, equal, and dignified existence of all members of society.
Section 497 [the provision criminalizing adultery] denudes the woman of the ability to make these fundamental choices, in postulating that it is only the man in a marital relationship who can consent to his spouse having sexual intercourse with another. Section 497 disregards the sexual autonomy which every woman possesses as a necessary condition of her existence. Far from being an equal partner in an equal relationship, she is subjugated entirely to the will of her spouse. ..The ability to make choices within marriage and on every aspect concerning it is a facet of human liberty and dignity which the Constitution protects. In depriving the woman of that ability and recognising it in the man alone, Section 497 fails to meet the essence of substantive equality in its application to marriage.71

Both Anuj Garg and Joseph Shine embody the role of the Court as taking forward the idea of substantive equality as embodied in the Constitution. Similarly, in Navtej Singh Johar, the Supreme Court read down Section 377 of the IPC arguing that, interalia; Section 377 perpetuated stereotypes about LGBT persons.72

All these developments in the law link back to the radical promise of equality in the Preamble and further back to the fact that the freedom struggle was in its essence a struggle for the full equality of human beings without discrimination on any ground.

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*among other things
Aakash Singh Rathore, in Ambedkar’s Preamble, demonstrates that the key Ambedkarite contribution to the Preamble was the notion of fraternity and dignity. Both notions were notably absent in the forebears to the Preamble be it the Purna Swaraj Resolution, the Objectives Resolution or the Declaration of the Experts Committee, 1946.

Why was fraternity important to Ambedkar? One can conjecture that the importance of fraternity flows for Ambedkar from his life experiences of social discrimination based fundamentally on a lack of fellow feeling. In Waiting for Visa, Ambedkar narrates his personal experiences of caste discrimination. He speaks of his experience as a young school boy who was required to sit apart from his classmates on a gunny bag he had to himself carry to school because he was an ‘Untouchable’. If he was thirsty, he was to wait for the peon to give him water from the common tap which he was not allowed to touch. In another such example, he speaks of how tonga walas refused to ferry him and his three siblings who were on their way to meet their father in Koregaon as they felt ‘repulsion’ upon learning of Ambedkar’s caste and wanted to avoid being ‘polluted’.

It is against this background that Ambedkar places the notion of fraternity. The notion of fraternity is the counter to his lived experience of a form of social apartheid within Hindu caste society. Through the inclusion of fraternity as a Preambular value, Ambedkar sought to encourage and promote radical love, compassion, empathy, mutual respect and social solidarity.
Ambedkar analyses the relationship between the terms – Liberty and Equality in the Constituent Assembly through the lens of Fraternity.

*These principles of liberty, equality and fraternity are not to be treated as separate items in a trinity. They form a union of trinity in the sense that to divorce one from the other is to defeat the very purpose of democracy. Liberty cannot be divorced from equality, equality cannot be divorced from liberty. Nor can liberty and equality be divorced from fraternity. Without equality, liberty would produce the supremacy of the few over the many. Equality without liberty would kill individual initiative. Without fraternity, liberty and equality could not become a natural course of things. It would require a constable to enforce them.*

The insight that Dr. Ambedkar provides is that it is only when fraternity has become a way of life that the conflict between the different interests that liberty and equality seek to promote can be resolved. Fraternity has received step sisterly treatment when compared to her more famous kin, liberty and equality and has been the least discussed constitutional principle under the Preamble. In fact, ‘fraternity’ was even omitted from the precursor to the Preamble, namely the Objectives Resolution moved by Jawaharlal Nehru. The reason ‘fraternity’ found its way into the Preamble owes a lot to the initiative of Dr. Ambedkar. As Chairperson of the Drafting Committee he explicitly introduced fraternity into the text of the Preamble.

He expands in greater detail on why fraternity was the key term in this trinity.
Fraternity means a sense of common brotherhood of all Indians....It is the principle which gives unity and solidarity to social life. It is a difficult thing to achieve... [This is because] In India there are castes. The castes are anti-national. In the first place because they bring about separation in social life. They are anti-national also because they generate jealousy and antipathy between caste and caste. But we must overcome all these difficulties if we wish to become a nation in reality. For fraternity can be a fact only when there is a nation. Without fraternity, equality and liberty will be no deeper than a coat of paint.78

These developments in the law link back to the radical promise of equality in the Preamble and to the freedom struggle that strove for full equality.

The challenge of course is how does one promote the value of fraternity? How can the law build a common culture where fraternity becomes a way of life? How do you build links between members of different castes such that the feeling of difference ultimately dissolves? To achieve fraternity as a way of national being, one’s endeavours will have to go beyond the law.

In ‘What Congress and Gandhi have done to the Untouchables’, Dr. Ambedkar gestures towards a social space outside the law when it comes to the struggle to bring about social change. Talking about the work that the Gandhi-initiated Anti-Untouchability League should do, he indicates the necessity of fostering what he calls ‘social intercourse’.
I think the League should attempt to dissolve the nausea, which
the Touchables feel towards the Untouchables and which is the
reason why the two sections have remained so much apart as
to constitute separate and distinct entities. In my opinion, the
best way of achieving it is to establish closer contact between
the two. Only a common cycle of participation can help people
to overcome the strangeness of feeling, which one has when
brought into contact with the other...."  

The reason for focus on social contact is because Dr. Ambedkar is
convinced that, ‘the Touchables and the Untouchables cannot be held
together by law, certainly not by any electoral law substituting joint
electorates for separate electorates. The only thing that can hold them
together is love.....’  

Of course, this idea of love is premised upon an acknowledgment
of the legitimacy of the just demands of the Dalits.

He said:

Outside the family, justice alone, in my opinion can open
the possibility of love and it should be the duty of the Anti-
Untouchability League to see that, is made to do justice to
the Untouchable. Nothing else, in my opinion, can justify the
project or the existence of the League.  

In Dr. Ambedkar’s writing one finds a clue that to achieve this
change one needs to challenge the prejudice in the intimate sphere.
“Do not be under the wrong impression that untouchability will be removed only by removal of a ban on personal meetings and drawing of water from wells..... it will remove untouchability at the most in the outer world, but not from the inner world. For that the ban on inter-caste marriage will have to be removed. Once that happens untouchability will vanish from inside the house.”

The question of inter caste marriage as a solvent of caste appears forcefully again in Annihilation of Caste:

I am convinced that the real remedy is inter marriage. Fusion of blood can alone create the feeling of being kith and kin, and unless this feeling of kinship, of being kindred, becomes paramount, the separatist feeling- the feeling of being aliens-created by caste will not vanish. The real remedy for breaking Caste is intermarriage. Nothing else will serve as the solvent of caste.\(^{82}\)

Dr. Ambedkar’s advocacy of the concept of fraternity has important implications for contemporary India not only with respect to challenging caste hierarchy but also other hierarchies in Indian society.

“Using an Ambedkarite lens, we need to understand love relationships and social interactions across lines of caste and religion as not just an exercise of the individual right to love and the right to association, but really as an active promotion of the principle of fraternity.”
There have been serious and sustained attacks on fraternal ways of living by the vigilante elements parading as defenders of the Hindu faith. An example (among myriad such threats) of a threat to fraternity due to the actions of the right-wing is reflected in the series of human rights reports produced by the People’s Union for Civil Liberties, Karnataka (PUCL-K) which document a series of attacks on social as well as romantic relationships between young people belonging to different religious communities in the context of Dakshina Kannada. What the right-wing tries to curb using vigilante violence is not only romantic relationships across lines of caste and religion but also social interactions including visiting each other’s houses on religious festivals, attending weddings and socializing together whenever this is done across religious lines.

Using an Ambedkarite lens, we need to understand romantic relationships and social interactions across lines of caste and religion as not just an exercise of the individual right to love and the right to association but really as an active promotion of the principle of fraternity. These relationships of love and association formed across lines of caste and religion are really nothing less than a people’s action to implement the preamble’s promise of fraternity.

One significant legislative effort in the promotion of fraternity in modern India is the Special Marriages Act, 1954 which endeavours to dilute the strong-hold of caste and religion on the society. However, efforts to challenge the influence of the caste system or prejudices based on religion meet with resistance not only from within the society but also the State machinery.
The fact that even today young people who dare to love across lines of caste and religion are being killed by their own families is a powerful reminder of how strong the prejudices of caste and religion are. Emblematic of this is the murder of Sankar, a dalit man who choose to marry Kausalya who belonged to a dominant caste in 2015. After their marriage, Sankar and Kausalya were living together in spite of repeated and persistent threats by the family aimed at intimidating them into breaking the relationship. However, in 2016, the couple was attacked by a murderous group at the Udamalpet bus terminus in broad daylight. While Kausalya was left severely injured, Sankar sustained close to thirty-two brutal injuries and eventually lost his life. Chinnasamy, Kausalya’s father and Annalakshmi, her mother were seen to be the masterminds who planned and executed the murder of the man who married their daughter as they were allegedly incensed about Kausalya’s inter-caste marriage that brought disrepute to the family.

A Tiruppur court had sentenced Chinnasamy to death, awarded death sentences to five others, a double life term to one and five years of rigorous imprisonment to another while acquitting Annalakshmi. The Madras High Court however, reversed the finding of the lower court and acquitted the father along with another accused person and commuted the sentence of the remaining.

The most important aspect of the judgement is the acquittal of the prime accused and the reasoning behind it. Acquitting Chinnasamy as the key conspirator, the Court held that “the prosecution is unable to prove the charge of conspiracy beyond any reasonable doubt.”
What is particularly disturbing in the judgment is that it completely fails to locate the killing within the larger climate of persecution by the family for daring to marry violating caste norms. Thus, the evidence presented by the prosecution of Kausalya having approached the police soon after her wedding to file a petition for protection from her family or of Sankar having filed a missing complaint with the police after Kausalya was allegedly abducted by her family days after the wedding as evidence of violent acts by the family were brushed aside by the High Court.

With the erasure of the caste angle as its striking feature, the judgment erred in not acknowledging the threats posed by the caste system to the constitutional notions of liberty, equality and fraternity.

“The fact that even today young people who dare to love across lines of caste and religion are being killed by their own families is a powerful reminder of how strong the prejudices of caste and religion are.”
What does dignity mean?

Ambedkar captured its essence by contrasting it with addressing economic want:

*If I may say so, the servile classes do not care for social amelioration. The want and poverty which has been their lot is nothing to them as compared to the insult and indignity which they have to bear as a result of the vicious social order. Not bread but honour is what they want.*

We get a sense of the deeper philosophical meaning in Ambedkar's insistence that the phrase 'dignity of the individual' should precede 'unity of the nation. As Ambedkar notes:

*This is a purely drafting amendment. It seeks to put the words 'unity of the nation' first and then the words 'dignity of the individual' in the line commencing with the word 'Fraternity' in the Preamble. The reason for putting the dignity of the individual first was that unless the dignity of the individual is assured, the nation cannot be united. In the Preamble of the Irish Constitution, 'the dignity of the individual' comes before 'the unity of our country'. We may therefore retain the existing order of the phrase.*

What Ambedkar puts forward is the idea that individuals are not means to an end but are ends in themselves. Ambedkar insisted that the fundamental unit on whom rights were conferred was the individual. The lexical priority of the individual was really a key to the philosophical centering of the individual in the Indian
Constitution. The constitutional understanding of the phrase, ‘unity and integrity of the nation’ is thus to be seen through the lens of the individual. Its only when the dignity of the individual (including the autonomy of expression, the freedom of choice and the freedom from humiliation) is protected that the unity and integrity of the nation becomes possible. The unity of the nation is not therefore at the cost of individual autonomy but rather builds upon the idea of autonomy.

This notion of dignity has been further developed by the Supreme Court in an extensive jurisprudence. We will indicate below some of the directions in which this jurisprudence has developed rights from prisoners’ rights to LGBTQI rights to the dignitarian importance of privacy.

In Sunil Batra vs Delhi Administration I, a writ petition challenging Sec 30 of the Prisoners Act, 1894 which stated that all prisoners awarded a sentence of death shall be placed in a cell different from all other inmates. The court while holding that the said provision of law does not allow police authorities to place prisoners under solitary confinement, it said that punishments in civilized societies, must not degrade human dignity. It went on state thus:

Part III of the Constitution does not part company with the prisoner at the gates, and judicial oversight protects the prisoner’s shrunken fundamental rights, if flouted, frowned upon or frozen by the prison authority. Is a person under death sentence or undertrial unilaterally dubbed dangerous liable to suffer extra torment too deep for tears? Emphatically no, lest social justice, dignity of the individual, equality before the law, procedure established by law and the seven lamps of freedom (Art. 19) become chimerical constitutional claptrap.
On the question of keeping prisoners in bar fetters, the court held:

[...] we cannot be oblivious to the fact that the treatment of a human being which offends human dignity, imposes avoidable torture and reduces the man to the level of a beast would certainly be arbitrary and can be questioned under article 14.

In Francis Corallie Mullin vs. Administrator, Union Territory of Delhi, the Supreme Court while hearing a habeas corpus petition filed by a detenue contending among other things that she was not allowed to meet her lawyer or her family, held that dignity was an integral part of the right to life. Arguing that the right to life embodies a constitutional value of supreme importance in a democratic society, the Court stated that any injury caused to an individual’s dignity would constitute a violation of the right to life under Article 21:

We think that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessaries of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing one-self in diverse forms, freely moving about and mixing and comingling with fellow human beings.[...] it must, in any view of the matter, include the right to the basic necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the human-self. Every act which offends against or impairs human dignity would constitute deprivation protanto of this right to live and it would have to be in accordance with reasonable, fair and just procedure established by law which stands the test of other fundamental rights. Now obviously, any form of torture or cruel, inhuman or degrading treatment would be offensive to human dignity [...]

The idea of dignity being associated with that of autonomy and choice was first enunciated in *Puttaswamy vs Union of India* which upheld privacy as a fundamental right and asserted that dignity was a facet of privacy. It demonstrated Ambedkar’s argument that the values of equality, liberty and fraternity complement each other:

*Life and personal liberty are inalienable rights. These are rights which are inseparable from a dignified human existence. The dignity of the individual, equality between human beings and the quest for liberty are the foundational pillars of the Indian constitution. Life and personal liberty are not creations of the constitution. These rights are recognised by the constitution as inhering in each individual as an intrinsic and inseparable part of the human element which dwells within.*

Further, the role of dignity as a constitutional value was explained thus:

*To live is to live with dignity. The draftsmen of the Constitution defined their vision of the society in which constitutional values would be attained by emphasising, among other freedoms, liberty and dignity. So fundamental is dignity that it permeates the core of the rights guaranteed to the individual by Part III. Dignity is the core which unites the fundamental rights because the fundamental rights seek to achieve for each individual the dignity of existence. Privacy with its attendant values assures dignity to the individual and it is only when life can be enjoyed with dignity can liberty be of true substance. Privacy ensures the fulfilment of dignity and is a core value which the protection of life and liberty is intended to achieve.*
We can see dignity as the other of humiliation and as a core principle which defines what it means to be human. The value of the concept lies in the way the notion has been interpreted by the Supreme Court. In *Navtej Singh Johar v. Union of India* the court saw dignity with its implication of autonomy and choice as violated by Section 377:

*Section 377 insofar as it curtails the personal liberty of LGBT persons to engage in voluntary consensual sexual relationships with a partner of their choice, in a safe and dignified environment, is violative of Article 21. It inhibits them from entering and nurturing enduring relationships. As a result, LGBT individuals are forced to either lead a life of solitary existence without companion, or lead a closeted life as “unapprehended felons”*  

The protection of the dignity of the individual is the cornerstone of the Constitutional edifice. It was key to Ambedkar’s way of thinking and this notion has been given new life by the Supreme Court through some of the interpretations outlined above. Dignity like liberty and equality is a dynamic notion and the content of what is dignity will continue to evolve as social movements articulate new meanings of the elusive yet constitutionally vital phrase, ‘dignity of the individual.’
K. Balagopal was a human rights activist and lawyer based in erstwhile Andhra Pradesh. His work can be accessed at: balagopal.org

Interview by Janam Saxi with K. Balagopal (Oct. 17, 2009)


Ibid. p.193

Id., 119.

Id., 120.

ibid. 6

Sudipto Kaviraj, *Gandhi’s Trial and India’s Colonial State in CF. Experiencing the State* 308 (Lloyd Rudolph & John Kurt Jacobsen eds., 2006).


Art 22(1): No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice

AS Mohammed Rafi vs State of Tamil Nadu, AIR 2011 SC 308

BT Venkatesh and ors vs. State of Karnataka


Ibid.


22 In the Bombay Legislative Council, a member S.K. Bole moved a resolution on 4th October, 1923 which stated, ‘The Council recommends that the Untouchable classes be allowed to use all public water sources, wells and dharmshalas which are built and maintained out of public funds or administered by bodies appointed by the Government or created by statute, as well as public schools, courts, offices and dispensaries’ In 1926, the Bombay Legislative Council added a provision that municipalities depriving Depressed Classes or access to public amenities would suffer loss of government funds’ Anand Teltumbde, *Mahad*, Aakar, New Delhi, 2016, p. 108

23 Ibid. p. 126.

24 Dr. Anand Teltumbde is an Indian scholar, academic and columnist based in Goa. Some of his books include “Mahad: The Making of the First Dalit Revolt”, “The Persistence of Caste: The Khairlanji Murders and India’s Hidden Apartheid” and “Republic of Caste”.

25 Ibid. 141.

26 Ibid. p 146

27 Ibid. p. 147

28 Ibid. p. 174.

29 Ibid.

30 P. 206

31 P. 208


23. Prohibition of traffic in human beings and forced labour
(1) Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law
(2) Nothing in this article shall prevent the State from imposing compulsory service for public purpose, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them


37 Art 24, Constitution of India: Prohibition of employment of children in factories, etc. No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment. Provided that nothing in this sub clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub clause (b) of clause (7); or such person is detained in accordance with the provisions of any law made by Parliament under sub clauses (a) and (b) of clause (7)

38 The Government of India Act, 1919 was passed by the British Parliament to increase Indians’ participation in the Government and was one of the legislations passed to further constitutional development in India.


40 Dr. B R Ambedkar, States and Minorities, 1945 (Can be accessed at: https://drambedkar.co.in/wp-content/uploads/books/category2/11states-and-minorities.pdf)

41 Constituent Assembly Debates, Vol I, Dec 13, 1946

42 Nehru’s Address at the All-India Seminar on Parliamentary Democracy in 1956


45 The Constitution (Forty-Second) Amendment Act, 1976 was one of the most controversial amendments for the following reasons:

1. The Statement of Objects stated that the Directive Principles of State Policy were to be given precedence over Fundamental Rights. Given that the Fundamental Rights Chapter is considered to be the heart of the Indian Constitution, the Amendment was not congruent with the letter and spirit of our Constitution.
2. The Amendment allowed for the Parliament to make laws to prevent/prohibit what it called ‘anti-national’ activities and these laws could not be challenged even if they violated Articles 14 and 19 (through the insertion of Article 31D).

3. The whittling down of the powers of the judiciary was a hallmark of this Amendment. The Indian Constitution is framed such that both the Supreme Court of India and the various High Courts have the same judicial powers and one is not sub-ordinate to the other. In the event of any infringement of Fundamental Rights, either the Supreme Court or any of the High Courts may be approached under Article 32 or Article 226 of the Indian Constitution, respectively. However, the 42nd Amendment dislodged this structure and diminished the powers of the Supreme Court and the High Courts as constitutional courts. It stated that Supreme Court may not be approached for violation of Fundamental Rights by a State law unless the Central law also violated these rights (through the insertion of Art. 32A) Similarly, the High Courts were permitted to hear matters concerning constitutional validity of only State laws and added a new provision to this effect (Article 226A) These amendments were a direct attack on the independence of the judiciary and clearly fell foul of the constitutional scheme.

4. It sought to confer unfettered power on the Indian Parliament to amend the Constitution and stated that courts will have no power to call these amendments into question to test the constitutional validity of such amendments (by amending the Article 368 which gives powers to the Parliament to amend the Constitution).

46 Constitutional Assembly Debates, Vol. X, October 17, 1949
47 Constitutional Assembly Debates, Vol. VII, November 15, 1948
49 Constitutional Assembly Debates, Vol.VII, November 15, 1948
52 https://indiankanoon.org/doc/60799/
53 Ibid.
54 Constitutional Assembly Debates, Vol. VII, November 15, 1948
55 https://indiankanoon.org/doc/257876/
Ibid.

Constituent Assembly Debates, Vol I, 19 Dec. 1946

Suresh Kumar & Ors. Dalmia Cement vs Union Of India & Ors [(1995) 3 SCC 42]

Aakash Singh Rathore, *Ambedkar’s Preamble*, Vintage, New Delhi, 2020, pg. 6

https://indiankanoon.org/doc/111867/

Ibid.

https://indiankanoon.org/doc/86852828/

http://supremecourtofindia.nic.in/outtoday/wc40012.pdf

https://indiankanoon.org/doc/257876/

Constitutional Assembly Debates,, Vol. XI, Nov. 25 1949, pp. 972-981


Section 377 of the Indian Penal Code, 1860. Unnatural offences: Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years or with a death penalty, and shall also be liable to fine.

https://indiankanoon.org/doc/845216/

https://indiankanoon.org/doc/42184625/

497. Adultery.—Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case the wife shall not be punishable as an abettor.

Ibid.

Section 377 of the Indian Penal Code, 1860: Unnatural offences.—Whoever voluntarily has carnal inter-course against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. Explanation.—
Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section. (This section was read down by the Supreme Court in 2018) Right to Love: Navtej Singh Johar v. Union of India: A Transformative Constitution and the Rights of LGBT Persons, Page 50, (can be accessed at: http://altlawforum.org/publications/right-to-love-navtej-singh-johar-v-union-of-india-a-transformative-constitution-and-the-rights-of-lgbt-persons/)


76 Constituent Assembly Debates, Vol XI, Nov. 25, 1949, p. 979
77 Constituent Assembly Debates, Vol I, December 13, 1946, pp. 57-65
78 Constituent Assembly Debates, Vol XI, Nov. 25, 1949, p. 980
80 Ibid
81 Ibid. p.308
83 http://puclkarnataka.org/?p=72
84 http://puclkarnataka.org/?p=72
85 https://www.livelaw.in/pdf_upload/pdf_upload-376839.pdf)
86 Ambedkar, What Congress and Gandhi have done to the Untouchables, pp212-13
87 B Shiva Rao, Vol IV, p.5.
88 Aakash Singh Rathore, Ambedkar’s Preamble, Vintage, New Delhi, 2020
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