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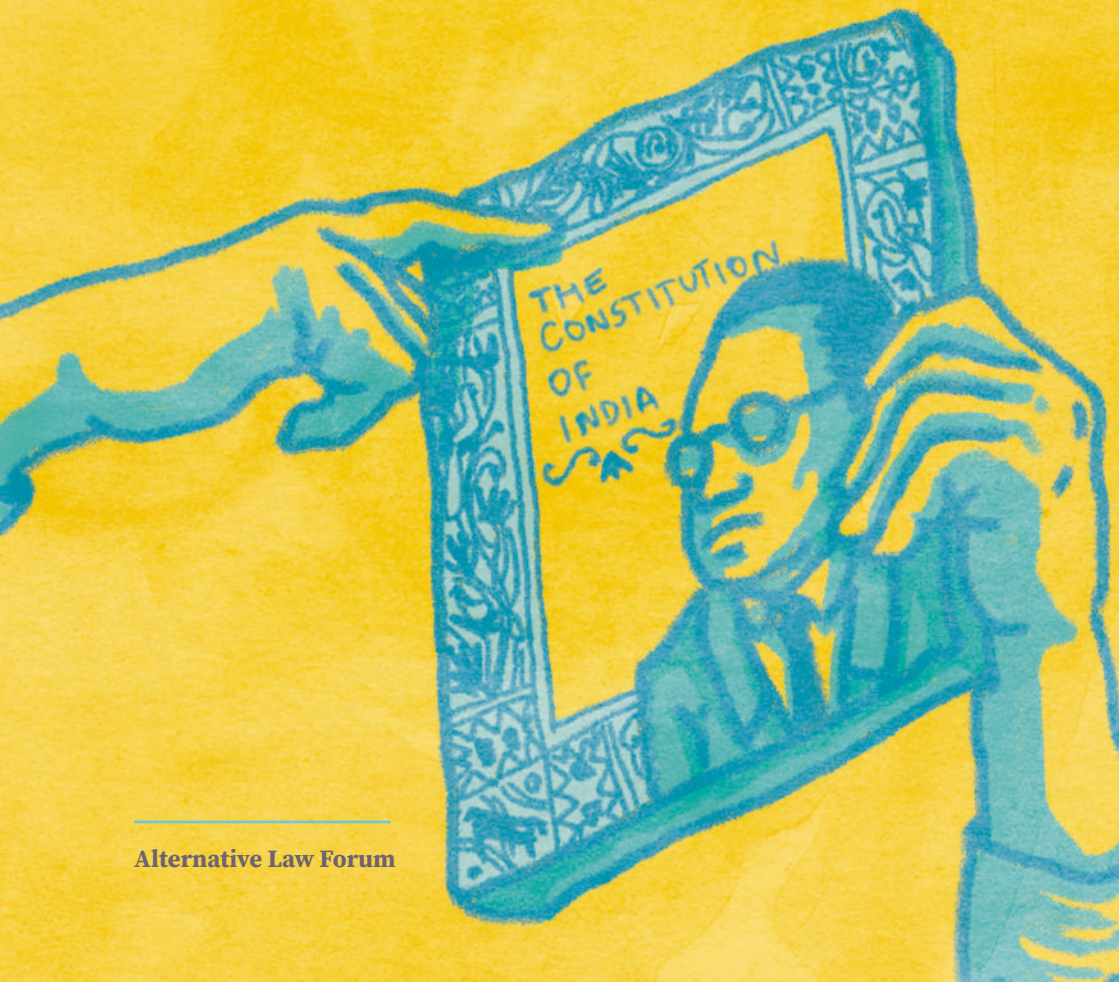
THE PREAMBLE

A Brief Introduction



Alternative Law Forum

THE PREAMBLE :
A Brief Introduction

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THE PREAMBLE: A BRIEF INTRODUCTION

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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
OURSELVES THIS CONSTITUTION.

ABOUT THE AUTHORS

Arvind Narrain is a lawyer and co-founder of the Alternative Law Forum, Bangalore. He was part of the team of lawyers challenging Section 377 of the IPC right from the Delhi High Court in 2009 to the Supreme Court in 2018. He is the author of co-editor of *Law Like Love: Queer perspectives on law* as well as the Co-author of *Breathing Life into the Constitution*.

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EDITOR

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This explainer was inspired by the spontaneous and remarkable interest in the Constitution of India among ordinary citizens during the widespread protests against new citizenship laws in 2020.

The document aims to demystify the core values of the Preamble that lie at the heart of our Constitution, and explore their origin and significance today.

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1 INTRODUCTION

In recent times, the Preamble and other parts of the Constitution of India have become a part of everyday conversations. We have witnessed their use by spirited citizen activists who are trying to reclaim the founders' constitutional vision even as they forge their own relationship with the Constitution's values and ideals.

The anti-CAA protests which began in December 2019 invoked the Constitution as representing the idea of an inclusive nation. At protest sites, demonstrators energetically waved the national flag as they carried posters with the images of Gandhiji and Dr. Ambedkar and a copy of the Preamble.

Unlike earlier, people talking about the Constitution were not just aiming to secure specific constitutional rights, but were also focused on increasing constitutional consciousness and imbibing the very spirit of the Constitution.

For evidence of how the public imagination has absorbed fundamental constitutional values, one only needs to hear how common citizens opposing the citizenship laws passionately speak the language of the constitution and invoke its ideas of equality, fraternity and secularism.

But just how did these values find their way into the Preamble of the Constitution? And how have their meanings changed over time?

This booklet traces the origins and the content of the Preamble through two lenses: (i) the freedom struggle, which first articulated the notions of political, economic and social freedom, and (ii) the Supreme Court and people's movements, and how they have understood and breathed new life into the Constitution.

If we trace a line between the freedom struggle, through the Preamble, to post-independent India and more recent interpretations of freedom by social movements and the judiciary, a consistent vision of freedom emerges. It is this idea of freedom which truly animates India's constitutional democracy.

As the jurist Upendra Baxi said, the Constitution is but a footnote to the Preamble.

2 ‘FREEDOM’ AS A PRODUCT OF STRUGGLE

All rights enjoyed by individuals have emerged from struggle. As well-known human rights activist K. Balagopal[1] 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.*[2]

It is important to understand the Constitution as a product of struggle, and not just ‘dull lifeless words’. As renowned human rights lawyer, K.G. Kannabiran said:

> *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 been acquired, never granted.Freedom was acquired by the people from the British and not granted to us by the Indian Independence Act, 1947.*[3]

In this context, it is valuable to explore the independence movement which birthed the Constitution of India. The freedom struggle comprised many streams of thought and action that articulated three important conceptions of freedom: political, social and economic.

POLITICAL FREEDOM

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.*[4]

Gandhi did not just write eloquently about the freedom of speech and expression, but was prepared to go to jail in its defence. Soon after the Jallianwala Bagh massacre, 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.*[5]

In an article called the 'Puzzle and its solution' he wrote:

> *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.*[6]

The British responded to this criticism of their policy by charging Gandhi with the offence of sedition under Section 124-A of the Indian Penal Code. The law defines sedition as '*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'. He indicted the government for the repressive Rowlatt Act (detailed later), the Jallianwala Bagh massacre and a colonial economic policy which had impoverished millions. He then 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."* [7]

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."* [8]

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*.' [9]

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 the political scholar Sudipta Kaviraj observes, the trial of the rebel was turned into something that appeared more like a trial of theState.[10]

In this trial, Gandhi fundamentally questioned the link of the State to justice. As he demonstrated 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, was at stake, and Gandhi demonstrated that the British state had forfeited its claim on his affection by violating its commitment to the Indian people.

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

If we have a sense of history and respect for Gandhi, sedition should never have continued as an offence in the statute books. It should have been abolished on the achievement of independence itself. Instead the section remains in force, and all governments continue to use it to prosecute critics of their actions.

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

Political freedom has no meaning if the state locks up its opponents. Gandhi fought for the idea that the state had no right to detain its opponents without trial and legal representation. This idea propelled the nationwide civil disobedience movement waged to repeal the draconian Rowlatt Act.

The Rowlatt Act [i.e. the Anarchical and Revolutionary Crimes Act, 1919] ignored fundamental principles of criminal law by removing key safeguards to which an accused person is entitled, including the right to be safeguarded from pre-trial detention; legal representation; and a public trial in open court. The Act also prescribed the death penalty.

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."* [11]

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 – resonate even today. These rights continue to be widely violated. When judges of the Supreme Court and High Courts have ruled that a person cannot be convicted without legal representation, they have referred back to the Anti-Rowlatt agitation.[12] 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)*[13] *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 several Bar Associations across the country restraining their members from representing persons accused of serious criminal offences like murder, sexual assault, and acts of terror. The Court has called these restrictions a gross violation of constitutional norms.[14]

In February, 2020, the Karnataka High Court upheld the right to legal representation for three Kashmiri students accused

of sedition[15] for allegedly raising pro-Pakistan slogans. A district bar association had announced that no lawyers were to represent the accused. But the Court said:

> *It is the duty of the police to ensure constitutional rights of accused. If advocates are not allowed to represent, it is a violation of constitutional rights of accused.*[16]

The court said that any attempt to deny the accused 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 representing the accused. The Court was also reported as saying:

> *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?* [17]

FREEDOM FROM STATE VIOLENCE

Gandhi's agitations against the Rowlatt Act clearly challenged the legitimacy of the colonial government. But his challenge also carried 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.*[18]

> ***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 Indian State has reinforced its relationship with violence and rendered itself increasingly unaccountable. It is this new form of state which poses the biggest challenge in the times ahead. Gandhi would have been extremely unhappy about the militarization of the Indian State and its growing willingness to inflict violence against its own people.

Given these circumstances, In this context, the writ of habeas corpus, which guards against unlawful detention, is supremely relevant. The judiciary is a bulwark against the power of the state to arbitrarily arrest and detain individuals. It is here that we need to see the High Courts and the Supreme Court use their power to protect political freedom.

SOCIAL FREEDOM

The Constitution is not just a product of struggle for political freedom. It is also the result of movements and campaigns. against oppressive social practices such as caste and gender inequality.

As the legal scholar Gautam Bhatia writes:

> *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.*[19]

The idea that freedom has not just political but also social dimensions was perhaps most iconically captured in what is now known as the Mahad Satyagraha led by Dr. Ambedkar. Pre-independence India practiced a form of social apartheid with rigid restrictions on the use of public facilities like tanks, roads, wells, and eating establishments based upon caste. While there were radical traditions within Indian society such as the Bhakti poets, Kabir and the emergence of Buddhism which challenged this form of apartheid, caste-based discrimination remained the social norm.

On 19 March, 1927, at a public conference attended by over 3,000 people in Mahad, Maharashtra, Ambedkar said:

> *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. [20]

In his speech, Dr. Ambedkar noted:

"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." [21]

> ***"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 went on to assert the importance of drinking the water:

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.*[22]

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'.* [23]

After Ambedkar's speech ended, thousands of Dalit participants peacefully marched through the market place of Mahad to the Chavdar water tank. There, Dr. Ambedkar scooped up some water with his cupped hands and drank it, and the others followed. [24]

This quietly radical act was quickly punished. On their way home many of the delegates were assaulted by men from upper castes for having dared to drink the water and "pollute" it. The press carried strong responses to the unprecedented act of publicly defying caste strictures. This simple act, according to the academic Dr. Teltumbde, had unprecedented consequences. He wrote :

> *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 shackled 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. Significantly, in the article addressing the upper castes, he unambiguously said that the removal of untouchability was a matter of self-respect for the Dalit community. He wrote:

> *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.*[26]

He concluded:

> *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.*[27]

The Mahad Satyagraha has become emblematic of the struggle for social freedom. The ideas articulated by Dr. Ambedkar that day - equality, dignity, autonomy and freedom from the confines of caste society – are the very same laid out in the Preamble of the Indian Constitution.

ECONOMIC FREEDOM

For many years, the mainstream Indian national freedom movement did not pay heed to working class movements and their agitations.[28] This only began to change towards the end of the 19th century. Economic freedoms were given their due by the freedom movement in the historic Karachi Resolution passed by the Indian National Congress in 1931.

Marking a transformational moment for socio-economic rights, the Resolution said:

> *"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."*

The passing of the Karachi Resolution was a seminal moment in India's labour history.

Dr. Ambedkar, as a long-time advocate of labour rights, also made significant contributions as a labour member of the Viceroy's Council. He was instrumental in achieving victories such as the eight-hour working day and maternity benefits for women workers. He was committed to the idea of the limited working day, which he felt truly enabled a worker to 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.*[29]

Economic rights find some place in the Fundamental Rights chapter of the Constitution, but have 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", which means that an individual can enforce them by approaching either a High Court or the Supreme Court of India. Directive Principles on the other hand are merely guidelines to the State and are non-enforceable by courts. This distinction has often made it difficult for people to secure their socio-economic rights.

Under the Fundamental Rights chapter, the most significant labour protection is enshrined under Article 23, that prohibits forced labour including traditional practices like begar.[30] In the Supreme Court's interpretation, "forced" is not limited to "physical force" but also encompasses social and economic compulsions exerted by a deeply oppressive system which forces workers to take decisions against their own interest.[31] Article 24[32] 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 some 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), and equal pay for equal work (Art 39).

Court rulings have ended up effectively converting some of the non-enforceable Directive Principles of State Policy into Fundamental Rights. However, there is still a long way to go.

3 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, including The Nehru Report, Purna Swaraj Resolution, the Objectives Resolution and the Proposed Preamble in Ambedkar's *States and Minorities*.

1. PURNA SWARAJ

In 1927, the British government appointed the *Simon Commission* to review the working of the Government of India Act, 1919[33] 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 challenged the Indian leaders to draft their own Constitution if they were displeased with the British's efforts. 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 constitutional reforms[34] which would enjoy popular support. In response to these challenges, an all-parties conference published the Nehru Report (named after Motilal Nehru) which in effect was a Draft Constitution for what would be the Republic

of India. It said that the basis of the Indian Constitution should be a Declaration of Fundamental Rights, and guaranteed the rights to equality, life, and freedom of conscience and included protections against discrimination. It also envisioned India as a secular nation. However, the Report opted for a Dominion Status under the Empire, which meant that India would owe allegiance to the Crown.

Jawaharlal Nehru and other leaders such as Hasrat Mohrani and Subhas Bose were unhappy with the choice of Dominion Status and instead insisted on *Purna Swaraj* or Complete Independence. Accordingly, the Congress in its Lahore session on 19th December, 1929, adopted the Declaration of Purna Swaraj. The opening lines of the brief 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 movement's only honourable goal. This momentous occasion

marked one of the very first times the people of the country had outlined their vision for a free India and publicly articulated it.

The Congress commemorated this day as Complete Independence Day until the transfer of power from the British empire 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.*

The primary text of the Preamble 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

In 1945, the Working Committee of the All-India Scheduled Castes Federation asked Dr. BR Ambedkar to prepare a memorandum on Safeguards for the Scheduled Castes to be submitted to the Constituent Assembly. In response, Ambedkar wrote *States and Minorities,* drafted in the form of articles of a Constitution for the '*United States of India*'.[35]

The Memorandum did not confine itself to protections for minorities but also dealt extensively with the fundamental rights of citizens, and the remedies they could seek when their rights were violated.

It invoked the right to life, right to free speech and the right to equality, among other rights. It 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.*

WE THE PEOPLE

The question of whose name the Constitution of India should be invoked in was fiercely contested in the Constituent Assembly set up to draft the Constitution. Several members of the Assembly put forward the proposal of invoking either 'God' or 'Gandhi' or both to precede or even replace the words '*We the People*'. They argued that the Constitution was not just a political or a social document but also a spiritual one, and so should be written in the name of God and the Father of the Nation.

Other members of the Assembly were deeply opposed. They believed that any reference to God would be akin to imposing the collective view of the Assembly on the Indian people and would violate the very freedom to thought, expression, belief, faith and worship that the Preamble promised. Similarly, the amendment seeking to introduce Gandhi was also discussed and subsequently withdrawn. Members said that the Constitution was not a Gandhian constitution, and so it would be incorrect to invoke Gandhi. Ambedkar famously declared that the *'preamble embodies that this Constitution has its root, its authority, its sovereignty from the people.'*

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'* who resolved to give to themselves a *'sovereign, democratic, republic'*. At its 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 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 term was taken up for discussion by the Drafting Committee, it underwent significant changes. The Committee adopted *'Sovereign, Democratic, Republic'* instead, as it felt that both 'sovereign' and 'independent' were synonymous The essence of sovereignty is that it vests in the people. It is incongruent with monarchy. 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 [..]"* [36]

Admittedly this was a misplaced understanding, because all republics may not necessarily be democratic. But Nehru had faith in India's democratic culture, and said an express

articulation of the idea of democracy was unnecessary as India's past showed that we stand for democratic institutions.

Nehru's 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."* [37]

Democracy as a Preambular value lies not only in the idea of universal adult franchise but also in the building of 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 added a crucial dimension to the constitutional imagination of democracy. Often democracy is thought of as the opinion of the majority. However, the flaws of a democracy based on majority opinion is evident in Indian society, which is dominated by what Ambedkar describes as 'communal

majorities'. In such a democracy, where people vote on the basis of caste and creed, it is likely that communal majorities will be in perpetual power and such societies can become majoritarian democracies. He compared this to a constitutional democracy in which people voted on the basis of their preference for a political programme, and where this fluid 'political majority' can change from issue to issue.

How 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. For example, 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, in *Navtej Singh Johar vs Union of India,* read down section 377 upholding the logic that majoritarianism cannot be a ground for denying a minority their rights. The concurring opinion of J. Nariman read:

> *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 become 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.'*[38]

Ambedkar felt that democracy was 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 ghettoes and there is no *'associated living'*. It is only when people live and work together across religion and caste that it is possible to have experiences in common. Whether a democracy has deeper roots than mere political democracy depends on how its people practice *'conjoint associated living'*. That makes democracy not just a project of the state, but something which citizens must invest in as well.

Taking the viewpoints of both Nehru and Ambedkar, democracy is more than just a matter of periodic elections. It can never be equated simplistically to majority opinion, and we must see the project of cultivating democracy as a task entrusted to us by the Constitution makers. As Ambedkar said:

> *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.*[39]

SECULAR

Secularism was not a part of the original text of the Preamble but was later inserted through the 42nd Amendment[40] in 1976 during Indira Gandhi's regime.

In the Constituent Assembly, a motion by the Congress member Brajeshwar Prasad[41] to include the words *secular* and *socialist* in the body of the Preamble had been explicitly rejected. The economist KT Shah moved a motion to insert the words, *'Secular, Federal, Socialist'*[42] in Article 1 of the Draft Constitution. 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.."*[43] He saw the addition as a safeguard against sectarian violence in the future and also 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 [...]"*[44] This motion too was rejected.

The rejection of these motions was not a rejection of the ideal of secularism. Member after member of the Constituent Assembly spoke of how the idea of secularism was built into the Indian constitutionalism. The only issue was the content of secularism in the Indian context.

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.

The second understanding of secularism sought for religion to be recognized as a public institution, where the State accorded equal respect to all faiths.

It is clear that India is very far from the idea of strict separation between religion and the state. The secularism which is followed in the Indian context is the second one, wherein the state does not prohibit religion from the public place but rather accords equal respect to all faiths.

The writer 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* [45]

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: all persons have the freedom to practice their faith and the state will not discriminate against persons on grounds of religion.

We have built an Indian State that bears no religious colour or offers patronage to any religions, but respects all religions equally.

In 1994, the Supreme Court in *SR Bommai vs Union of India*[46] ruled 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 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....*[47]

“*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 linked to the practice of religion and concluded: *'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.'*

SOCIALIST

The term 'socialist' was not part of the original text of the Preamble adopted by the Constituent Assembly, but was inserted through the 42nd Amendment in 1976.

At the Constituent Assembly, it was the economist K T Shah who moved an amendment to insert *'Secular, Federal, Socialist'* into the text of the Constitution.[48] Dr. Ambedkar opposed the amendment and called it superfluous. About the inclusion of "socialist" in the Preamble, he said:

> *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.*

Ambedkar felt that the spirit of socialism had already been infused into certain Fundamental Rights and Directive Principles of State Policy. In doing so, the Assembly was giving a socialist direction to the Indian polity but not dictating terms to it.

In 1973, the Supreme Court in *Kesvananda Bharati v. State of Kerala*[49] recognized 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, the Court recognised egalitarianism and the welfare state as being integral to the Constitution.

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 poli[t]y, 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.*[50]

JUSTICE

The founders of the Constitution envisaged four primary pillars upon which India's democracy was to be erected: justice, equality, liberty and fraternity.

'Justice, social, economic and political' in the Indian Constitution is an embodiment of the commitment to dismantle historical

inequalities and injustices. This is to be achieved through the Fundamental Rights and Directive Principles of State Policy.

The Supreme Court in Kesavananda Bharati [51] interpreted 'justice' in the light of the Fundamental Rights and Directive Principles of State Policy, and held:

> *It has further been contended that the concepts recited in the preamble, e.g., human dignity, social and economic justice are vague; different schools of thought hold different notions of their concepts. We are wholly unable to accede to this contention. The preamble was finalised after a long discussion and it was adopted last so that it may embody the fundamentals underlying the structure of the Constitution. It is true that on a concept such as social and economic justice there may be different schools of thought but the Constitution makers knew what they meant by those concepts and it was with a view to implement them that they enacted Parts III (Fundamental Rights) and Part IV (Directive Principles of State Policy) - both fundamental in character - on the one hand, basic freedoms to the individual and on the other social security, justice and freedom from exploitation by laying down guiding principles for future governments.*

Commenting on the nature of 'justice' in the Preamble, one of the chief drafters 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.***[52]

The justice clause 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, formed the core of his imagination of freedom. To achieve this freedom, he once again invoked the trinity of *liberty, equality and fraternity*. To him, if the Indian society internalised these values, justice would follow as a natural consequence. In sum, he saw no particular distinction between the idea of justice and notions of liberty, equality and fraternity.[53]

LIBERTY

The Preamble embeds an unwavering commitment to certain core ideas such as the liberty of thought, expression, belief, faith and worship. 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. Below are two examples of how the Courts have interpreted liberty to indicate its many dimensions.

THE CONSTITUTIONALITY OF SEDITION

The colonial-era offence of "sedition" is defined by Section 124A of the Indian Penal Code as any expression that brings about "hatred or contempt, or...disaffection towards the government". In 1962, in the case of *Kedar Nath Singh v. State of Bihar*[54] the Supreme Court upheld the constitutionality of the provision, but clearly ruled that it applied only to speech which had the tendency to incite violence. It 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.*[55]

> ***"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*[56] in 1995, the Supreme Court had to decide whether the raising of slogans such as *'Khalistan Zindabad'* by Sikh men 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 went 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:

> *'the prosecution has admitted that no disturbance, whatsoever, was caused by the raising of the slogans by the appellants and that inspite 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.'*

Unfortunately, the Supreme Court's wide interpretation of what constitutes protected speech has not been accepted by successive governments that have willfully misinterpreted the law to target their critics. Citizens must appreciate the scope of the right to dissent, and press the state to uphold the right of all citizens, as Gandhi said, to give *'the fullest expression to his disaffection, so long as he does not contemplate, promote or incite violence'.*

FREEDOM OF EXPRESSION INCLUDES THE RIGHT TO EXPRESS ONE'S GENDER IDENTITY

In conventional legal texts, freedom of expression is seen as the means through which one expresses one's thoughts and ideas, such as through plays, movies, books or social media posts. But in 2014, the Supreme Court expanded the notion of 'expression' in its celebrated decision in *NALSA v Union of India*, ruling that the right extended to how transgender persons are entitled to all rights under the Indian Constitution including their right to express their gender identity.

The judges said:

> *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.*[57]

The judgement gave new meaning 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 linked the freedom of expression to the notion of dignity and equality, recognizing transgender persons as full citizens of the country.

This judgment is illustrative of the way the Constitution can be interpreted in an evolving society to meet contemporary aspirations. As J. Khanna aptly observed in *Kesavananda Bharati v. State of Kerala*:

Every generation sets before itself some favourite object which it pursues as the very subject of liberty and happiness. The ideals of liberty cannot be fixed from generation to generation; only its conception can be, the larger image of what it is. Liberty fixed in unalterable law would be no liberty at all.[58]

EQUALITY

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 anarchy after independence, as he feared that caste and creed loyalties would take precedence over the solidarity of fellow citizens. He said:

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.[59]

The makers of the Constitution and Dr. Ambedkar in particular envisioned that equality would be not just formal, but substantive as well.

The goal was to flesh out a constitutional scheme that not only acknowledged that everyone be treated fairly, but actively recognised how oppressed communities were discriminated against, and tried to remedy such systemic inequality. The redressal of systematic inequality with deep historical roots which was which could take the form of preferential treatment in the here and now, was an essential component of equality.

It is important to distinguish between *formal* equality and *substantive* equality. A law which conforms to formal notions of equality would, as the poet Anatole France put it, 'in its majestic equality, f*orbid 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 a nation of contradictions and extreme inequalities between persons based on their caste, religion, gender and many other factors. In such an unequal society, how do we achieve equality? If we only have 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. This commitment enjoins the state to reserve seats in educational establishments and government jobs for Scheduled

Castes, Scheduled Tribes and Backward Classes of citizens. As the Supreme Court said in *State of Kerala v N.M. Thomas*[60] in 1975, reservation is not an exception to equality but a means to achieve real or *substantive* equality. It is a tool to address 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.

Another example: Consider section 377[61] under the Indian Penal Code, 1860 (which has now been read down by the Supreme Court) which prohibited all persons from indulging in any form of sexual intercourse other than peno-vaginal intercourse. At first glance, the provision appears to be fair and just, as such a restriction was imposed on all persons without distinction. It would pass the test of formal equality.

But the law, in criminalising certain sexual acts even when consensual, had far graver implications on the LGBTQI community. It failed to recognize that the sexual acts prohibited were more intimately connected to the LGBTQI community, and it arbitrarily stripped the community of the right to make fundamental personal choices without State surveillance. LGBTQI people were compelled to live under constant fear of persecution, with their constitutional right to equal protection of the law violated.

While the provision was seemingly neutral, it violated the right to substantive equality.

This explains why the Chapter of Fundamental Rights in the Constitution contains many provisions that address varying forms of inequality by permitting the Legislature to recognise difference and accord special treatment to certain sections of 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.

Constitutions 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. But the Indian Constitution, deeply influenced by a substantive vision of equality, goes further. It also recognizes certain fundamental rights against private parties, allowing 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, and tanks without discrimination on the grounds of caste, religion, race, caste, sex, place of birth. This right can be enforced against private citizens.

Equality is at the heart of the Indian Constitution, and ordinary people have used this idea of equality in many struggles against injustice. The idea of equality has meant a

lot to ordinary citizens as Rohit De, argues in his remarkable book, 'The Peoples Constitution'. He shows how when the Constitution came into force, marginalized groups such as sex workers, butchers and traders tried to use the language of the Constitution to challenge laws which rendered them unequal.

We will now analyze the constitutional ideal of equality through the lens of gender.

CHALLENGING GENDER STEREOTYPES IN LAW

Indian women often have to fight stereotypes about gender roles that are written into the law. The understanding that gender stereotypes violate the constitutional guarantee of equality was first laid down by the Supreme Court in *Anuj Garg v Hotel Association of India* in 2007.[62] The case involved a constitutional challenge to a section of the Punjab Excise Act which prohibited the employment of any man under 25 years and *"any woman"* in an establishment where liquor was being consumed.

On the face of it, the aim of the Punjab Excise Act may have been to protect women, but the law reinforced an idea that the Supreme Court described as '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 concluded that *'the present law ends up victimizing its subject in the name of protection.'* It struck down the provision as it suffers from *"incurable fixations of stereotype morality and conception of sexual role"* and ended up discriminating against women.

In 2018, in *Joseph Shine v Union of India*[63] the Court struck down Section 497[64] of the Indian Penal Code, which dealt with adultery. The provision criminalized only the man who had sexual intercourse with the wife of another man and not the adulterous woman. Again, it could have been argued that this was a measure meant to protect women as it criminalized only the man's conduct. But the judges found that historically, the reason only the adulterous man was punished was because the woman was considered the property of man. The criminalization of adultery was therefore really a criminalization of a trespass into the property of a married man. The wife in effect exercised no choice in the matter of sexual relationships. The Court struck down Section 497 of the IPC on the ground, stating:

> *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.*[65]

Both *Anuj Garg* and *Joseph Shine* saw the Court taking forward the idea of substantive equality embodied in the Constitution. Similarly, in *Navtej Singh Johar*, the Supreme Court read down Section 377 of the IPC arguing that, among other things, Section 377 perpetuated stereotypes about LGBT persons.[66]

All these developments link 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 all humans.

FRATERNITY

The philosopher Aakash Singh Rathore, in *Ambedkar's Preamble*, says that the key Ambedkarite contribution to the Preamble was the notion of fraternity and dignity.[67] Both notions were notably absent in the forebears to the Preamble, be it the Purna Swaraj Resolution, Nehru's Objectives Resolution or the Declaration of the Experts Committee, 1946.

Fraternity as a concept has received far less attention compared to liberty and equality, and is the least discussed constitutional principle under the Preamble. Its inclusion in the Preamble is due to the initiative of Dr. Ambedkar, who as Chairperson of the Drafting Committee explicitly introduced the concept into the Preamble.

Why was fraternity important to Ambedkar? One can conjecture that it flowed from his experiences of facing social discrimination based on a lack of fellow feeling. In *Waiting for Visa*,[68] Ambedkar writes about how, as a young school boy, he 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 a peon to give him water from a common tap which he was not allowed to touch. On one occasion, he writes, 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'*.[69]

It is against this background that Ambedkar places the notion of fraternity. The concept 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.

In the Constituent Assembly, Ambedkar analysed the relationship between the terms "liberty" and "equality" 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.*[70]

It is only when fraternity has become a way of life, Ambedkar suggests, that the conflict between the interests promoted by liberty and equality can be resolved.

Ambedkar expands 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.[71]

> ***"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 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 we build links between members of different castes such that the feeling of difference ultimately dissolves? To achieve fraternity as a way of national being, our endeavours will have to go outside and beyond the law. In *'What Congress and Gandhi have done to the Untouchables'*, writing about the work that the Gandhi-initiated Anti-Untouchability League should do, Ambedkar indicated the necessity of fostering ***'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.*[72]

Dr. Ambedkar focused on social contact because he was 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.'*[73]

Of course, this idea of love had to acknowledge that Dalits' demands for justice were legitimate. Ambedkar wrote:

> *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.*[74]

To truly achieve this change, one needs to challenge 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 idea that inter-caste marriage can dissolve 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.*[75]

Dr. Ambedkar's advocacy of fraternity carries important lessons for contemporary India, and how we can challenge not just caste but other hierarchies too.

> ***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.***

Serious and sustained attacks on fraternal ways of living have been carried out by gangs parading as defenders of the Hindu faith. One example is reflected in a series of human rights reports produced by the People's Union for Civil Liberties, Karnataka (PUCL-K) which document attacks on social and

romantic relationships between young people of different religions in Dakshina Kannada.[76] What the right-wing tries to curb using violence is not only romantic inter-caste and inter-religious relationships but also social interactions such as visiting each other's houses on religious festivals, attending weddings and socializing together whenever this is done across religious lines.[77]

Romantic relationships and social interactions across caste and religion are not just an exercise of the individual right to love and the right to association; they are about the active promotion and practice of the principle of fraternity.

One significant legislative effort to promote fraternity in modern India is the Special Marriages Act, 1954 which tries to dilute the strong-hold of caste and religion on society.

However, efforts to challenge the influence of the caste system or religion-based prejudice face resistance not only from society but also from the State machinery.

The fact that even today young people who dare to love across lines of caste and religion are killed by their own families is a powerful reminder of the strength of caste and religious prejudices. One emblematic example is the murder of Sankar, a Dalit man in Tamil Nadu who got married to Kausalya, a dominant- caste woman in 2015 against their families' wishes. After their marriage, Sankar and Kausalya braved threats from their families to live together. But a year later, the couple was attacked by armed men at the Udamalpeta bus terminus in broad daylight. Kausalya was severely injured, and Sankar lost his life.

A Tiruppur court convicted Kausalya's father Chinnasamy and five others of planning the murder. But on appeal, the Madras High Court reversed the finding of the lower court, acquitting the father and another person and commuting the other sentences.[78]

The Court held that ***"the prosecution is unable to prove the charge of conspiracy beyond any reasonable doubt."***

Disturbingly, the judgment failed to locate the killing within the larger climate of persecution by Kausalya's family for daring to violate marriage caste norms. The High Court brushed aside evidence presented by the prosecution of Kausalya having approached the police soon after her wedding to seek protection from her family. It also failed to consider the fact that Sankar had filed a missing persons complaint with the police after Kausalya was allegedly abducted by her family.

By erasing the caste context of the murder, the judgment failed to acknowledge 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."***

DIGNITY

What does dignity mean?

Ambedkar captured its essence by contrasting it with 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.*[79]

We get a sense of the deeper philosophical meaning in B.N. Rau's phrasing (which matched Ambedkar's thinking as Akash Singh Rathore persuasively argues) that the phrase 'dignity of the individual' should precede 'unity of the nation. For him, it was important to recognize the idea that individuals are not means to an end but are ends in themselves. He insisted that the fundamental unit on whom rights were conferred was the individual. He emphasized (again mirroring Ambedkar's preoccupations) for instance that:

> *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.*[80]

The lexical priority of the individual was really about the philosophical centering of the individual in the Indian Constitution.[81] The constitutional understanding of the phrase, 'unity and integrity of the nation' was to be seen through the lens of the individual. It is 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.

This notion of dignity has been further developed by the Supreme Court in an extensive jurisprudence, from prisoners' rights to LGBTQI rights to the importance of privacy to preserve dignity.

In *Sunil Batra vs Delhi Administration I*,[82] a writ petition challenged Sec 30 of the Prisons 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 ruled that the provision did not allow police authorities to place prisoners under solitary confinement, stating that *"punishments in civilized societies, must not degrade human dignity"*. It said:

> *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*,[83] the Supreme Court while hearing a habaes 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 commingling 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 autonomy and choice was first enunciated in *Puttaswamy vs Union of India*[84], in which the Supreme Court 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.*

It also explained the role of dignity as a constitutional value:

> *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.*

Dignity is the polar opposite of humiliation, and is a core principle which defines what it means to be human. The value of the concept lies in how it has been interpreted by the Supreme Court. In *Navtej Singh Johar v. Union of India,* the court said that Section 377, which criminalized same-sex relations, violated the rights to dignity, privacy and sexual autonomy and choice:

> *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. This notion has been given new life by the Supreme Court through some rulings. But dignity, like liberty and equality, is a dynamic notion and its content will continue to evolve as social movements articulate new meanings.

CONCLUSION

This booklet has sought to show that the Preamble - which embodies the values of the Constitution - is a product of struggle. We cannot understand the Preamble without the lens of history, because doing so would reduce the Constitution to a lawyers' charter. The Constitution, as Nehru evocatively argued, was 'kidnapped and purloined' by lawyers. It remains a task to restore the Constitution to its true owners, 'we the people'.

The people continue to assert their ownership over the Constitution through contemporary struggles. It is the values embedded in the Preamble which enable us to assert that discrimination on religious grounds is wrong, that women are equal to men and LGBT persons are equal to heterosexual persons in dignity and rights. The repeated claims of diverse groups to their constitutional rights seed constitutional values deeper into minds and hearts. It is these tiny revolutions that have kept the Constitution a live document.

The importance of the Preambular statement of values is that these values can be invoked by different generations seeking to add another dimension to the meaning of liberty, equality, justice or fraternity. We can do no better than quote Justice Kennedy speaking about what the Constitution of the United States means for its people:

> *Had those who drew and ratified the Due Process Clauses of the Fifth Amendment or the Fourteenth Amendment known the components of liberty in its manifold possibilities, they might have been more specific. They did not presume to have this insight. They knew times can blind us to certain truths and later generations can see that laws once thought necessary and proper in fact serve only to oppress. As the Constitution endures, persons in every generation can invoke its principles in their own search for greater freedom.*[85]

It is up to us, the persons of this generation, to invoke these values in our own search for greater freedom.

ENDNOTES

[1] K. Balagopal was a human rights activist and lawyer based in erstwhile Andhra Pradesh. His work can be accessed at: balagopal.org

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

[3] K.G. Kannabiran, *The Wage of Impunity*, Orient Longman, p. 18.

[4] Bipin Chandra, *India's struggle for independence*, Penguin, 2016. p.521.

[5] Homer Jack, Ed., *The Gandhi Reader,* Grove, p191

[6] Ibid. p.193

[7] Id., 119.

[8] Id., 120.

[9] ibid. 6

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

[11] "Report of the Commissioners appointed by the Sub-Committee of the Indian National Congress," 38.

[12] https://indiankanoon.org/doc/1470346/

[13] 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

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

[15] BT Venkatesh and ors vs. State of Karnataka

[16] https://www.livelaw.in/news-updates/every-one-has-right-to-fair-trial-kangaroo-courts-not-permitted-karnataka-hc-on-hubli-bar-resolution-against-kashmiri-students-153985#:~:text=Everyone%20has%20the%20right%20to,of%20the%20Criminal%20Procedure%20Code.

[17] Ibid.

[18] Rajmohan Gandhi, Mohandas: A True Story of a Man, His People and an Empire, Penguin,2007,p.396

[19] https://scroll.in/article/806606/why-the-uniquely-revolutionary-potential-of-ambedkars-constitution-remains-untapped

[20] Anand Teltumbde, Mahad, Aakar, New Delhi, 2016. p.108
(Dr. Anand Teltumbde is an Indian scholar, academic and columnist based in Goa. He is currently imprisoned in the Bhima Koregaon case. 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".)

[21] *Ibid*.

[22] *Ibid*. p. 208.

[23] *Babasaheb Ambedkar Writings and Speeches* , Vol 1, Ambedkar Foundation edited by Vasant Moon Ed.,, Mumbai, 2014. p. 62 ; Teltumbde op. cit.

[24] Anand Teltumbde, *Mahad*, Aakar, New Delhi, 2016, p.126

[25] *Ibid*, page 141

[26] *Ibid*, page 146

[27] *Ibid*, page 147

[28] Bipin Chandra, *India's struggle for independence*, Penguin, 1989 . p. 210

[29] *Babasaheb Ambedkar Writings and Speeches*, Vol 10, Ambedkar Foundation edited by Vasant Moon Ed.,, Mumbai, 2014. p.319.

[30] 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

[31] PUDR v Union of India, https://indiankanoon.org/doc/496663/

[32] 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);

[33] 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.

[34] Bipin Chandra, *India's struggle for independence*, Penguin, 1989 . p. 263

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

[36] Constituent Assembly Debates, Vol I, Dec 13, 1946

[37] Nehru's Address at the All-India Seminar on Parliamentary Democracy in 1956

[38] Dr. B.R. Ambedkar, *Annihilation of Caste*, 1936 (https://ccnmtl.columbia.edu/projects/mmt/ambedkar/web/readings/aoc_print_2004.pdf)

[39] Constitutional Assembly Debates, Vol.VII, November 4, 1948, p.38.

[40] 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 Fundament 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).

[41] Constitutional Assembly Debates, Vol. X , October 17, 1949

[42] Constitutional Assembly Debates, Vol. VII, November 15, 1948

[43] Constitutional Assembly Debates, Vol.VII, November 15, 1948

[44] Constitutional Assembly Debates, Vol.VII, November 15, 1948

[45] KM Munshi, Indian Constitutional Documents, Vol I, Bharatiya Vidya Bhavan, 1967

[46] https://indiankanoon.org/doc/60799/

[47] *Ibid*

[48] Constitutional Assembly Debates, Vol. VII, November 15, 1948

[49] https://indiankanoon.org/doc/257876/

[50] *Ibid*

[51] *Kesavananda Bharati vs State Of Kerala And Anr*

[52] Constituent Assembly Debates, Vol I, 19 Dec. 1946

[53] Aakash Singh Rathore, *Ambedkar's Preamble*, Vintage, New Delhi, 2020, pg. 6

[54] https://indiankanoon.org/doc/111867/

[55] *Ibid.*

[56] https://indiankanoon.org/doc/86852828/

[57] http://supremecourtofindia.nic.in/outtoday/wc40012.pdf

[58] https://indiankanoon.org/doc/257876/

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

[60] https://indiankanoon.org/doc/1130169/

[61] 7 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.

[62] https://indiankanoon.org/doc/845216/

[63] https://indiankanoon.org/doc/42184625/

[64] 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.

[65] https://indiankanoon.org/doc/42184625/

[66] 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 1[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-navtejsingh-johar-v-union-of-india-a-transformative-constitution-and-therights-of-lgbt-persons/)

[67] Aakash Singh Rathore, *Ambedkar's Preamble*, Vintage, New Delhi, 2020. pp.119-149.

[68] Dr. B.R. Ambedkar, *Dr. Babasaheb Ambedkar: Writings and Speeches*, Vol. 12, edited by Vasant Moon (Bombay: Education Department, Government of Maharashtra, 1993), Part I, pp. 661-691. (http://www.columbia.edu/itc/mealac/pritchett/00ambedkar/txt_ambedkar_waiting.html)

[69] *Ibid.*

[70] Constituent Assembly Debates, Vol XI, Nov. 25, 1949, p. 979

[71] Constituent Assembly Debates, Vol XI, Nov. 25, 1949, p. 980

[72] Narendra Jadhav, Ed., Vol. I, 2013, p.97

[73] Ibid

[74] *Ibid.* p.308

[75] Narendra Jadhav Ed., Vol. II, 2014,p.217

[76] http://puclkarnataka.org/?p=72

[77] http://puclkarnataka.org/?p=72

[78] https://www.livelaw.in/pdf_upload/pdf_upload-376839.pdf

[79] Ambedkar, *What Congress and Gandhi have done to the Untouchables*, pg 212-13

[80] B Shiva Rao, Vol IV, p.5.

[81] Aakash Singh Rathore, *Ambedkar's Preamble*, Vintage, New Delhi, 2020

[82] https://indiankanoon.org/doc/162242/

[83] https://indiankanoon.org/doc/78536/

[84] https://indiankanoon.org/doc/127517806/

[85] Lawrence v Texas, 539 U.S. 558 (2003), https://supreme.justia.com/cases/federal/us/539/558/

The Constitution is not just a lawyers' charter but a document which is a product of the freedom struggle. The values which underlay the freedom struggle include the search for justice, liberty, equality and dignity. If there is one place in which these values are best captured it is in the Preamble. The Preamble encapsulates this vision of what Indians were struggling for in their fight against oppression of many hues. It is the endeavor of this booklet to shed light on these values which are fundamental to understanding the Constitution.

This booklet further seeks to demonstrate that the salience of these constitutional values is that they are not lifeless words on a text but rather words which take on new meanings through peoples' movements. Thus, the meaning of 'equality' or 'dignity' evolves with each generation as each generation gives new content to the Preamble.

The purpose of this booklet is to elucidate these constitutional values in simple language so as to show that lawyers have no monopoly over the Constitution but rather its real ownership vests with 'we the people'.

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