



# Role of Indian Constitution in Promoting Social Justice

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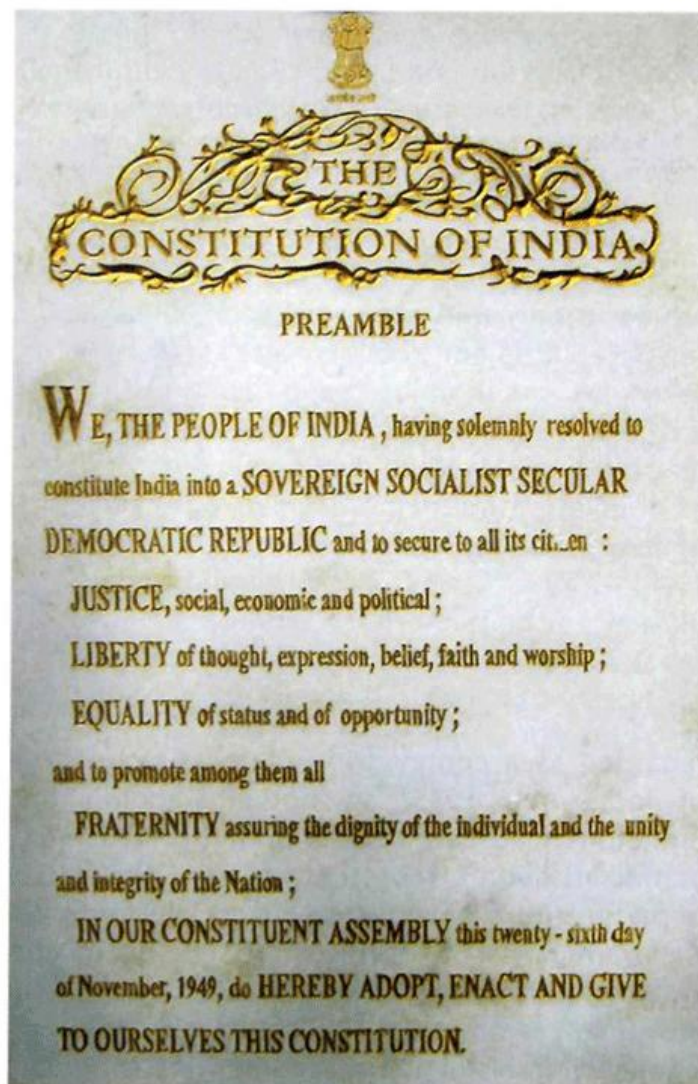
**The impetus of 'transformative constitutionalism' necessitates state intervention in society to achieve social justice. The focus on the examination of Constituent Assembly debates and discussions throughout the nationalist movement is based on the belief that ideas are significant in history. The Fundamental Rights aimed to promote social revolution by establishing a society in which all citizens would have equal freedom from compulsion or constraint, whether imposed by the state or by society at large. The ability of the state to establish the prerequisites for a just society is one of the constitution's key purposes. The idea of transformative constitutionalism revolves around the ideal of social justice.**

**T**he Indian Constitution has been characterised as a social revolution instrument by scholars like Granville Austin. To set Indian constitutionalism apart from the limited concerns of liberal constitutionalism, Kalpana Kannbiran (2012)

and Upendra Baxi (2008) have developed the frameworks of 'insurgent constitutionalism' and 'transformative constitutionalism.' The members of the Constituent Assembly have highlighted how the Constitution of India has the power to reshape society.



The literature on Indian constitutionalism places emphasis on how it differs from liberal constitutionalism's limited objectives. Uday Mehta (2010) makes a distinction between Indian constitutionalism (representing the twentieth century) and American constitutionalism (representing the eighteenth century). The foundation of American constitutionalism was a profound mistrust of authority, of which the absolutist prince was but one example. Thus, the justification for this constitutionalism was to restrict, distrust, and limit the scope of political power. Mehta contends that constitutionalism in most of the twentieth century—and in India especially—clearly does not adhere to such a chastened notion of power and politics. This constitutionalism expands and celebrates the scope of authority in addition to defining it. According to him, the Indian constitution alone represents a really revolutionary movement of rupture because it upends politics' relationship to time and history and subjects historical customs like caste and religion to political power's transformation. Rajeev Bhargava (2008) similarly notes that the Indian Constitution was intended to free society from the constraints of established social hierarchies and to usher in a new period of liberty, equality, and justice. In his opinion, the Indian Constitution represents a significant advancement in constitutional theory since it gives individuals who have historically been denied power a reason to exist in addition to disabling others.




According to Kumar (2014), the 1940s saw a lot of expectations and requirements placed on the process of writing a new constitution. It was thought that this would end the ongoing patterns of exploitation based on gender, caste, and religion and bring about the much-needed changes to the deeply unequal and hierarchical social structure that would allow every citizen to live in dignity and have equal rights under the law. Millions of people's lives changed when the Indian Constitution was ratified; in particular, those living in impoverished areas saw it as the first time they would likely be granted equal rights and treatment.

Khosla (2020) highlights the instructional function of the constitution in fostering the development of a democratic citizen, in addition to its traditional role in distributing authority and establishing rules and regulations. This argument is based on Ambedkar's claim that constitutional morality must be fostered in India. He further argues that the Constitution should not be

**DEPARTMENT OF SOCIAL JUSTICE AND EMPOWERMENT**  
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**DR. B.R. AMBEDKAR: ARCHITECT OF INDIAN DEMOCRACY, AND ADVOCATE FOR SOCIAL EQUALITY**

- Born on 14 April 1891 in Mhow, Madhya Pradesh
- Was an ardent patriot and the saviour of the oppressed, women and poor
- Set up the 'Bahishkrit Hitkarini Sabha (Outcastes Welfare Association), for spreading education and culture amongst the downtrodden
- Attended all the three Round Table Conferences in London
- Was elected as Chairman of the Drafting Committee of the Constitution of Independent India and known as the architect of Constitution of India
- Became the first Law Minister of Independent India  
Advocated democracy in every field: Social, Economic and Political





**UNDER THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS) ACT, 2019, THE FOLLOWING PENALTIES ARE OUTLINED FOR VIOLATIONS OF THE RIGHTS OF TRANSGENDER PERSONS**

- **Discrimination:** Any person or establishment discriminating against transgender persons in matters such as employment, education, healthcare, and access to public spaces is punishable under the Act.
- **Physical, Sexual, Verbal, Emotional, or Economic Abuse:** The Act criminalizes any kind of abuse towards transgender persons and provides for punishment, which can include:
- **Imprisonment:** Imprisonment for a term of six months to two years.
- **Fine:** The convicted person may also be liable to a fine, the amount of which is determined by the court.



regarded as a continuation of the Government of India Act, 1935, as, notwithstanding the numerous clauses included from the 1935 Act, democratisation represented a substantial departure from previous practices. The focus on the examination of Constituent Assembly debates and discussions throughout the nationalist movement is based on the belief that ideas are significant in history. Khosla contends that Indian Constitution founders were radicals, as they repudiated imperial philosophy and sought to cultivate democratic citizens through codification, a centralised state, and the liberation of individuals from the constraints of caste and religion.

The impetus of 'transformative constitutionalism' necessitates state intervention in society to achieve social justice. This contrasts with the Gandhian concept of social justice. Austin observes that Gandhi posited that the attainment of social justice must originate with the moral transformation of each individual, emanating from the heart and mind of every Indian and extending outward to society at large. Reform should not be imposed from above by the government; rather, a transformed society would require no governmental regulation or oversight. Gandhians in the Constituent Assembly, such as SN Agarwal, argued for a state that is as small as feasible. Agarwal proposed a Gandhian Constitution for Free India, advocating for little government intervention and heightened individual responsibility for personal well-

being. The Assembly's alternative to a Gandhian Constitution was one rooted in European and American traditions, facilitating a directly elected administration. Although these constitutions may have been *laissez-faire* at their inception, they have gradually assumed greater responsibility for citizen's welfare over time. Consequently, the Assembly members needed to determine whether conventional or non-traditional institutions would most effectively facilitate a social revolution capable of profoundly transforming the structure of Indian society.

The 'Objectives Resolution' underscored the objective of social revolution but did not delineate the means to attain this goal. KM Pannikar asserted that "the Constitution is a solemn commitment to the people of India that the legislature will endeavour to reform and reconstruct society based on new principles." (Austin 1972: 46) Austin asserts that adult suffrage empowered millions who once relied on the caprices of others for the representation of their interests. He notes that while Fundamental Rights safeguard people and minority groups from arbitrary and discriminatory official actions, three provisions under the Fundamental Rights part of the constitution are intended to protect individuals from the actions of other private citizens. Article 17 abolishes untouchability; Article 15(2) stipulates that no citizen shall experience any discrimination in the use of shops, restaurants, wells, roads, and other

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for Prevention of Atrocities on Members of SCs and STs

- Report atrocities and seek help
- Confidential and prompt assistance
- Support for victims of caste-based crimes
- Guidance on legal rights and procedures
- Connecting victims to local resources and services

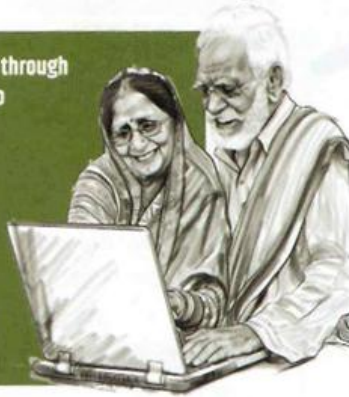


## Reporting of Crime Becomes Easy

**e-FIR** – Provision to submit complaint through electronic medium; victim should go to police station within three days and sign the complaint

**Zero FIR** – Provision to register complaint against crime in any police station

Electronic/digital evidence is now as valid as other evidences



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public spaces due to religion, race, caste, sex, or place of birth; Article 23 prohibits practices that, although previously endorsed by the state, predominantly involved conflicts between landowners and peasants. Consequently, the state, in addition to adhering to the constitution's prohibitions on infringing upon specific liberties of citizens, must also fulfil its affirmative duty to safeguard citizen's rights from societal encroachment.

The Fundamental Rights aimed to promote social revolution by establishing a society in which all citizens would have equal freedom from compulsion or constraint, whether imposed by the state or by society at large. Baxi asserts that the Indian constitution broadens the concept of rights beyond the state to encompass civil society. This is seen in the prohibition of behaviours related to untouchability (Article 17) and the banning of bonded labour and human trafficking (Article 23). He asserts that the Indian constitution exemplifies a modern instance of enabling state intervention against manifestations of cruelty inside civil society. Furthermore, the Indian constitution serves as a mechanism for the empowerment of Scheduled Castes and Scheduled Tribes by granting them legislative reservations and mandating quotas in education and state employment for these groups, as well as for socially and educationally disadvantaged classes.

Some of the important provisions of the Constitution of India prompting the goal of social justice are as follows:

- a. **'We the People':** This line from the Indian Constitution's Preamble captures the transformative goal. 'We the People' creates a new identity that equalises opportunities and status for those whose identities were previously shaped by caste, religious, and ethnic systems. An 'individual' detached from the principles generated from the framework formed the basis of this identity. It has legal significance in addition to being a significant declaration of independence from colonial control. By decree of the Cabinet Mission Plan, the Constituent Assembly of India was established, responsible for drafting the Constitution for Independent India. 'We the People' is a significant departure from the 1947 Independence Act and the Cabinet Mission Plan's legal restrictions.
- b. **Universal Adult Franchise:** In a hierarchical society, the establishment of the Universal Adult Franchise, which was founded on the tenets of 'one person, one vote, one value,' was revolutionary. According to Rajeev Bhargava, full citizenship in India is awarded based solely on the requirement of being an adult member, a concept known as the categorical principle of inclusion.
- c. **Abolition of Untouchability:** Untouchability is outlawed in all forms under Article 17 of the Indian Constitution. It aimed to break with the past by putting an end to the long-standing humiliation that some castes had to endure.
- d. **Right to Equality:** According to academics like Martha Nussbaum, the Constitution of India explicitly recognises the idea of substantive equality by going beyond the idea of formal equality and stating that special protective laws that advance the interests of marginalised groups are not to be interpreted as unlawful discrimination.
- e. **Directive Principles of State Policy:** The Directive Principles of State Policy provide a more concise definition of social revolution. According to Austin (1972), the intention behind these concepts was to liberate the Indian masses—that is, to free them from social and natural constraint.



## New Criminal Laws

# Safeguarding Rights & Strengthening Justice



Police cannot detain without explanation for more than 24 hours



An arrested person can be produced before any magistrate, regardless of jurisdiction



Section 170 of BNS provides that detention should not exceed 24 hours when police makes an arrest to prevent commission of a cognizable offense

seem that the constitution's goal of social change was not achieved. However, from the standpoint of the liberal communitarian model, group rights have aided in uniting disparate populations under a democratic framework. As a result, religion has become institutionalised, and caste has become more democratic.

While the core of liberal constitutionalism is restricting the authority of the state, transformative constitutionalism emphasises giving the state the power to change society in an egalitarian manner. This is because oppressed people need the state to actively intervene in order to be released from the historical bonds that have kept them down, rather than relying solely on non-intervention. □

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## Conclusion

In the dominant framework of liberal constitutionalism, it means structural power differentiation to safeguard citizen's rights. The state is viewed as an impartial arbitrator with no power to influence people's lives. The focus shifts from a neutral state and structural power differentiation to the state's capacity for transformation in transformative constitutionalism. In addition to systematising the political order, constitutions are also tasked with adjusting the social order to make it harmonious with the political order. Rebuilding society on new foundations is transformative constitutionalism's main theme. The ability of the state to establish the prerequisites for a just society is one of the constitution's key purposes. The idea of transformative constitutionalism revolves around the ideal of social justice. Transformative constitutionalism's urge demands that the government impose social fairness and social regulation on society.

To what degree was the aim of transformation achieved by Indian constitutionalism? There are two different perspectives from which we can try to answer this. From the standpoint of the liberal modernist model, people have, on the one hand, become more ingrained in the identities that were supposed to be abandoned in order to usher in a modern society during the course of the previous seven decades. Therefore, it would

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