

# Democracy, Constitution, and National Power

धर्मो रक्षति रक्षितः

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## *Dharma protects those who protect it.*

- ▶ *Dharma* here is not religion. It is the contract which holds a society together, the ordering principle.
- ▶ What holds India together? The **Constitution**.
- ▶ Protecting the constitutional order is not a legal nicety. It is the foundation of national power.

## Matsyanyaya and Constitutional Morality

- ▶ In international affairs, *matsyanyaaya* — the law of the fishes — prevails. The strong devour the weak. There is no world government, no enforcer of rules.
- ▶ **Constitutional morality** is what makes domestic affairs fundamentally different. It establishes rules that constrain even the powerful. A “rule of law” » “rule of a man / rule of a woman”
- ▶ It is the precondition for a functioning state — one that can mobilise national power coherently.

# What This Talk IS and IS NOT

IS:

- ▶ A strategic argument for why the constitutional order is a force multiplier
- ▶ A framework for thinking about India's constitutional design
- ▶ An engagement with the Constitution's imperfections

IS NOT:

- ▶ Not a legal commentary
- ▶ Not a partisan argument
- ▶ Not a discussion on civil-military relations

# Nation, State, Government: A Crucial Distinction

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## **Nation**

An 'imagined community' of people bound by shared identity, culture, history, a mental construct

## **State**

The political institution, semi-permanent, held together by constitutional and institutional order

## **Government**

The temporary custodian of state power, chosen by elections

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**The armed forces serve the State, not the government of the day and not any particular vision of the nation.**

## Republic and Democracy emphasise different things

- ▶ **Democracy** is a procedural concept — it answers the question: *who decides?* The people, through elections.
- ▶ A **Republic** answers a deeper question: *what constrains the decision-makers?* What protects the individual against majoritarianism?
- ▶ India is both, but the republic idea comes first from a citizen's perspective. That's why our passport reads "The Republic of India."
- ▶ Majoritarianism without the rule of law is mob rule. The republic is the guardrail.

# Democracy vs Republic

A DEMOCRATIC PROCESS MEANS THAT EVERYONE INVOLVED HAS AGREED TO A PROCEDURE AND THE PROCEDURE HAS BEEN FOLLOWED IN THE DECISION-MAKING.



DEMOCRACY ALLOWS THE PEOPLE TO HAVE A SAY IN THE DECISION-MAKING. BUT, DEMOCRACY ALONE IS NOT ENOUGH.

IN MODERN CONSTITUTIONAL REPUBLICS, THE PEOPLE OF THE REPUBLIC, THROUGH A CONSTITUTION, GIVE THEMSELVES THE FUNDAMENTAL RIGHTS THAT PROTECT THEM AND PLACE RESTRICTIONS ON THE POWER OF THE STATE.



# India's Grand Strategy

- ▶ George K Tanham interpreted grand strategy in the Alexandrian sense
- ▶ The Constitution has many features which highlight the nature of Indian grand strategy
- ▶ To hold the sub-continent together

# Federalism as a Core Tenet

## Why Decentralise?

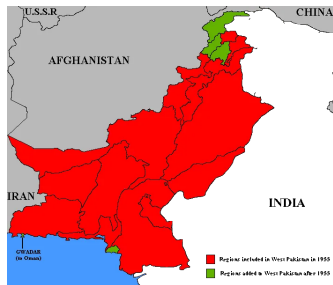
- ▶ Big nation-states have diverse preferences
- ▶ Minimises transaction costs, efficient delivery - strengthens the Wicksellian Connection
- ▶ Encourage innovation through intergovernmental competition

## Alexis de Tocqueville on Federalism

*The federal system was created with the intention of combining the different advantages which result from the magnitude and the littleness of nations*

## “All federal systems are decentralised whereas all decentralised systems are not federal”

*A federal system is the one in which the entire set of powers — legislative, fiscal and regulatory — are divided in the Constitution or conventions between different levels of government. There is a measure of permanency in the assignments and in particular, the powers given to lower level governments cannot be extinguished by higher level governments (Breton, 2000). Thus, checks and balances to safeguard the system is an inherent part of the federal system. — (M Govinda Rao)*



## Centralising Features in Our Constitution (Source: Ambar Kumar Ghosh)

- ▶ “An indestructible Union of destructible states”
- ▶ Union List has more subjects than State List. In case of conflict in Concurrent List, Union Legislation prevails.
- ▶ Appointment of governors in the state & the provision of President’s Rule.
- ▶ Single system of courts, all-India Public Services (IAS, IPS), CAG, CEC.
- ▶ Economic Authority for allocating resources

## Asymmetric Federalism: A Design Choice, Not a Bug

- ▶ Article 370 (J&K), Fifth and Sixth Schedules (tribal areas), special provisions for many states through Article 371 (A - J)
- ▶ These asymmetries were **deliberate**. They were the price of keeping a diverse federation together.
- ▶ Compare with federations that insisted on symmetry — Yugoslavia, the USSR. They didn't survive.
- ▶ The Indian Constitution's genius: accommodate difference within a common framework.

## India's Constitution is Elitist: A Common Myth I

- ▶ The standard narrative: elite-given, top-down project; a result of deliberations of a small number of high-profile people elected to the Constituent Assembly on an extremely limited franchise.
- ▶ The reality is far more interesting. Rohit De and Ornit Shani's research<sup>1</sup> shows:
  - ▶ the elite in many princely states had already created their constitutions for their own jurisdictions.
  - ▶ not a linear process; Assembly met only for a year in Delhi

## India's Constitution is Elitist: A Common Myth II

- ▶ many tribal populations, concerned about their status in the new Republic, were making their own constitutional frameworks and simultaneously making demands from the national Constitution.
- ▶ draft Constitution was a bestseller!
- ▶ The Constitution was a negotiated settlement among an extraordinarily diverse people. Its legitimacy comes not from perfection but from the breadth of its origins and the depth of its reach.

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<sup>1</sup>Ornit Shani, *How India Became Democratic* (2017); Rohit De, *A People's Constitution* (2018); Rohit De and Ornit Shani, *Assembling India's Constitution* (2025)

# The Idea of the Social Revolution I

The Constitution attempted something unprecedented:

- ▶ Not just a **political revolution** (transfer of power from British to Indian hands)
- ▶ Not just an **economic revolution** (planning, public sector, land reform)
- ▶ But a **social revolution** — dismantling caste hierarchy, establishing gender equality, creating affirmative action

This was extraordinarily ambitious. And it produces **genuine paradoxes**:

- ▶ Where laws differ from customs (a) government must prevail over resistance (b) the state & govt get delegitimised

## The Idea of the Social Revolution II

- ▶ Disregard for laws is fungible: Political processes are meant to negotiate and reconcile the contradictions between laws and customs

*“it was equally, and more vexingly, burdened with the challenge of bringing an age to an end and drawing a curtain on the past. In many ways, as the subsequent politics of India has made clear, this was a far greater challenge because the past had a momentum, which no constitutional bookend could simply exhaust or bring to a sudden halt. It has a tenacity to live on in the patterns of everyday life.”*  
(Uday S Mehta, *Indian Constitutionalism: crisis, unity, and history*)

### Paradoxes

## The Idea of the Social Revolution III

- ▶ Competence vs Expectation
- ▶ Ambition vs Comptence

Has the welfare state provided the perfect alibi for the selfish citizen?

## The Constitution is Not Sacred

- ▶ Ambedkar himself said: “I feel that the Constitution is workable, it is flexible, and it is strong enough to hold the country together both in peacetime and in wartime. Indeed, if things go wrong under the new Constitution, the reason will not be that we had a bad Constitution.”<sup>2</sup>
- ▶ The Constitution has been amended **over 100 times**. This is not a weakness — it is the design. The US Constitution has been amended only **27 times in ~250 years**. India’s has been amended **over 100 times in ~75 years**.
- ▶ This is not a flaw. Ambedkar cited Jefferson: “*We may consider each generation as a distinct nation, with a right, by the will of the majority, to bind themselves, but none to bind the succeeding generation.*”

<sup>2</sup>B.R. Ambedkar, Speech in the Constituent Assembly, 25 November 1949

# The Basic Structure Doctrine: India's Middle Path I

Three approaches to protecting a constitution from self-destruction:

Approach	Country	Method
Judicial review of everything, but near-impossible to amend	USA	27 amendments in 250 years
Explicit <b>eternity clause</b> listing unamendable features	Germany	Art. 79(3): dignity, federalism, rule of law cannot be touched

# The Basic Structure Doctrine: India's Middle Path II

**Basic Structure  
Doctrine** —  
judicially crafted,  
open-ended

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India

*Kesavananda  
Bharati* (1973)

## The Basic Structure Doctrine: India's Middle Path III

India's solution is unique: Parliament can amend *any* provision — but it cannot destroy the Constitution's **basic structure** (democracy, secularism, federalism, judicial review, rule of law).

This is India's original contribution to global constitutional thought. It balances flexibility (easy to amend) with an inviolable core (basic structure). A periodical with a soul.

## Officers' Oath

*"I do swear in the name of God that I will bear true faith and allegiance to the **Constitution of India** as by the law established and that I will, as in duty bound, honestly and faithfully serve in the regular Army of the Union of India and go wherever ordered by land, sea or air, and that I will observe and obey all commands of the **President of the Union of India** and the commands of any officer set over me even to the peril of my life."*

Two anchors: the **Constitution** and the **President**. Not the Prime Minister. Not the government. Not a party.

## Why the President? Why the Constitution?

- ▶ The President is the constitutional head, the Supreme Commander — an office, not a personality.
- ▶ The PM leads the government of the day. The President embodies the continuity of the State.
- ▶ This insulates military command from the daily churn of partisan politics.
- ▶ The armed forces answer to a constitutional office. This is what makes professional military advice — including uncomfortable truths — possible.

## The Milley Moment

In November 2020, US General Mark Milley, Chairman of the Joint Chiefs of Staff, said:<sup>3</sup>

*“We do not take an oath to a king or queen, or tyrant or dictator... We do not take an oath to an individual. We take an oath to the Constitution, and we take an oath to the idea that is America, and we’re willing to die to protect it.”*

- ▶ He called the Constitution the “moral north star” for everyone in uniform.
- ▶ The ability of a top general to say this — publicly — is itself a product of constitutional design.

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<sup>3</sup>Gen. Mark Milley, Speech at the opening of the National Museum of the US Army, Fort Belvoir, 11 November 2020

# The Information Advantage

The real national security payoff of a constitutional republic is **not** that democracies always win wars (they don't — ask the Americans about Afghanistan).

It is that constitutional systems produce **better information environments for strategic decision-making**:

- ▶ Professional military advice flows upward without fear of retribution
- ▶ Bad news reaches decision-makers before it becomes a crisis
- ▶ Institutional checks prevent catastrophic misjudgements born of sycophancy

# The Counterfactual: What Happens When This Breaks Down

**Russia, 2022:** Putin invaded Ukraine based on intelligence corrupted by a system where nobody had incentives to tell the truth. The result was a long war born of an information failure.<sup>4</sup>

**Pakistan:** Repeated constitutional breakdowns → military becomes the state rather than serving it → strategic misadventures (1971, Kargil, the strategic depth doctrine in Afghanistan).

The pattern: **when constitutional order erodes, strategic decision-making degrades.**

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<sup>4</sup>Multiple post-invasion analyses suggest Russian intelligence agencies told Putin what he wanted to hear about Ukrainian resistance and Western resolve.

## How India Kept the Army Democratic (Wilkinson) I

India and Pakistan inherited the **same** British Indian Army in 1947. Yet India preserved civilian control while Pakistan did not. Steven Wilkinson's research<sup>5</sup> shows this was not an accident — it was **deliberate constitutional and institutional design**:

- ▶ **Ethnic balancing within the army**: variegated companies within battalions prevented any single group from dominating
- ▶ **Balancing outside the army**: large paramilitary forces served as a civilian-controlled hedge
- ▶ **Co-equal service chiefs** with restricted tenures
- ▶ **Indianisation** of the officer corps

**But Wilkinson is honest about the trade-offs:**

- ▶ These coup-proofing measures weakened the army before 1962

## How India Kept the Army Democratic (Wilkinson) II

- ▶ They created an unwieldy defence bureaucracy
- ▶ The implicit bargain — the military stays out of politics but gets operational autonomy — has its own problems

The Constitution's design for civil-military relations is not flawless. But it has **held** for 75+ years across wars, emergencies, and political crises. That is not a small achievement.

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<sup>5</sup>Steven I. Wilkinson, *Army and Nation: The Military and Indian Democracy since Independence* (2015)

## Dharmo Rakshathih Rakshathah — Revisited

1. The Constitution is India's *dharma* — the ordering principle that holds a diverse nation together.
2. It is not perfect. It was not meant to be. Its genius is that it provides mechanisms for its own correction.
3. The armed forces derive their authority, legitimacy, and operational effectiveness from this constitutional order.
4. Protecting the Constitution is a precondition for national power — because constitutional order produces the information environments, institutional stability, and social cohesion that strategic effectiveness demands.

**Protecting the constitutional order *is* protecting national security.**

## References

1. Steven I. Wilkinson, *Army and Nation: The Military and Indian Democracy since Independence* (2015)
2. Ornit Shani, *How India Became Democratic: Citizenship and the Making of the Universal Franchise* (2017)
3. Rohit De, *A People's Constitution: The Everyday Life of Law in the Indian Republic* (2018)
4. Khyati Pathak, Anupam Manur, and Pranay Kotasthane, *We, the Citizens: Strengthening the Indian Republic* (2024)