

# Deconstructing Attributes of Constitutional Legitimacy: A Case Study of Indian Constitution



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## ABSTRACT

This study aims to critically investigate the common perception of constitutional adherence and trace it to the Constitution's legitimacy. However, the existing literature on the subject highlight lacunae in the predominant approaches to legitimacy. Concretizing a theoretical framework to address such lacunas, the authors claim that constitutional legitimacy is a dimensional non-constant and cannot be restricted to one principle or theory. The study adopts a doctrinal research methodology. The study results show that constitutional legitimacy should be understood holistically and not just through the instrumentalities of the 'We the People' paradigm of the Indian Constitution. The representative legitimacy or the idea of 'We the people' is an aspirational ideal; hence, dynamic and aspiration may become a reality as more and more citizens get socialized into the institutions created by constitutional democracy. In this context, the study argues that the legitimacy of the Indian Constitution cannot be put strictly within the brackets of representational legitimacy because it may safely claim legitimacy under reason-based, substantive, negligible, and motivated-consent models.



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## 1. Introduction

The Constitution, being the preeminent legislation and foundational law of the nation, requires absolute adherence to its tenets in order to maintain a stable constitutional government. The prevailing opinion among the populace is that the Constitution is obligatory; however, the pertinent inquiry at hand is to determine

precisely what aspect of this supreme law warrants such adherence.<sup>1</sup> Numerous inquiries are frequently posed regarding the legitimacy of constitutions, given that constitutional legitimacy cannot be presumed as a given. The solution to this question is contained within the prevailing theories that govern assertions of legitimacy. One is that the Constitution possesses legally binding force by virtue of representing the collective will of the people it governs, commonly referred to as "We the People" (popular sovereignty). Additionally, it serves as a reflection of the shared objectives and cultural values of the community it regulates.<sup>2</sup>

There are, according to the authors, fundamentally two perspectives through which to examine issues pertaining to the Constitution and legitimacy. To begin with, an examination of the Constitution's legitimacy must be grounded in its initially established legitimacy. Subsequently, it may originate from the legitimacy that is passed down through generations or from any legitimacy that is newly ascribed via academic debates and discussions. The study begins by attempting to develop a theoretical proposition from this general proposition by addressing the fundamental question of whether the legitimacy of the Constitution can be reduced to a specific model or if it is a multidimensional concept.<sup>3</sup>

The same will be clarified through a review of the extant literature, which comprises a multitude of assertions concerning the legitimacy of the constitution. Subsequent sections of this paper conduct an exhaustive analysis of the challenges to the legitimacy of the Constitution of India as documented in the existing literature, utilizing the developed theory within the Indian context.<sup>4</sup> The legitimacy of constitutions has been a subject of considerable scholarly discourse, frequently the subject of debate within nations, regardless of the constitution itself. It is a tenet that the adoption of a legitimate constitution is contingent upon an adequate degree of democratic support. There are various interpretations of the notion of democratic endorsement; however, one of the most significant is that a constitution can only be considered legitimate if it accurately reflects the people it seeks to govern. Legitimate constitutions are formulated on the basis of theoretical concepts, such as the notion of the original constituent power of the people or

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<sup>1</sup> Wen-Hsun Chang, Fang-Wei Chou, and Peng-Hui Wang, 'Chronic Pelvic Pain and Chinese Medicine Body Constitution Deviation', *Taiwanese Journal of Obstetrics and Gynecology*, 63.1 (2024), 4-5 <https://doi.org/https://doi.org/10.1016/j.tjog.2023.11.002>

<sup>2</sup> Jamie Bologna Pavlik, Israt Jahan, and Andrew T Young, 'Do Longer Constitutions Corrupt?', *European Journal of Political Economy*, 77 (2023), 102319 <https://doi.org/https://doi.org/10.1016/j.ejpoleco.2022.102319>

<sup>3</sup> Thao Thu Le and others, 'Association of Traditional Medicine Body Constitution Types with Five Chronic Diseases in Ho Chi Minh City', *Clinical Epidemiology and Global Health*, 22 (2023), 101340 <https://doi.org/https://doi.org/10.1016/j.cegh.2023.101340>

<sup>4</sup> D A Zuza and others, 'Chemical Constitution of Coatings Deposited Remotely by Activation of Hexamethyldisiloxane in Positive Column Plasma of Glow Discharge in Argon Flow', *Vacuum*, 221 (2024), 112858 <https://doi.org/https://doi.org/10.1016/j.vacuum.2023.112858>

popular sovereignty, which are essentially regarded as fictitious constitution-making processes.<sup>5</sup>

The study examine in this section of the paper a variety of concepts of constitutional legitimacy that have been discussed in the prior scholarly works. A multitude of constitutional legitimacy categories can be distinguished. It is frequently divided into reason-based and representational models. Additionally, legitimacy can be established through negotiated assent. Alternative classifications may be conceptual, normative, procedural, or substantive, among others. These terms have been either identified in prior scholarly works or introduced by the authors in accordance with their conceptions of legitimacy. To provide a visual aid, the identical is depicted below.<sup>6</sup> Constituent power is the extraordinary authority to establish a government. It is a representative manifestation of the nation's political will that is instantaneous and unrestricted in its form. It serves as an indication that constitutional legitimacy is contingent upon its ability to accurately represent the people it governs, which is the prevailing argument. The citizens experience a sense of familiarity and belonging through this representativeness, as governing under the Constitution signifies being governed by the people.<sup>7</sup>

By virtue of its foundation in the ideal of self-governance, any representative constitution can subsequently be proclaimed "our constitution," thereby inspiring the populace to take action. "We, the People" is a preambular phrase that signifies the notion that the Constitution embodies the authentic desires of the people. It is both a vehicle for the individuals to exercise their autonomy and a reflection of the group as a whole. An additional division within the representative model has been deduced by Alon Harel and Adam Shinar: the naturalist representative and the conventional representative. The former approach grants legitimacy to a constitution grounded in popular sovereignty, while the latter presupposes that constitutions ought to mirror the intrinsic cultural values embraced by the populace.<sup>8</sup>

An illustrative instance of a representative constitution is the United States Constitution, which purports to have been ratified by means of substantial public

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<sup>5</sup> Bart Custers, 'Reconsidering Discrimination Grounds in the Data Economy: An EU Comparison of National Constitutions', *Computer Law & Security Review*, 50 (2023), 105851 <https://doi.org/https://doi.org/10.1016/j.clsr.2023.105851>

<sup>6</sup> Jagannath MVK and Debasish Maitra, 'Do Election Cycles, Political Stability, and Government Effectiveness Matter for the Risk of Banks? Evidence from Indian Banks', *Journal of Behavioral and Experimental Finance*, 39 (2023), 100830 <https://doi.org/https://doi.org/10.1016/j.jbef.2023.100830>

<sup>7</sup> Maansi Gupta and Nimesh B Bolia, 'Efficiency Measurement of Indian High Courts Using DEA: A Policy Perspective', *Journal of Policy Modeling*, 42.6 (2020), 1372-93 <https://doi.org/https://doi.org/10.1016/j.jpmod.2020.06.002>

<sup>8</sup> Sathyanarayanan Venkatraman, Rangaraja P Sundarraj, and Ravi Seethamraju, 'Exploring Health-Analytics Adoption in Indian Private Healthcare Organizations: An Institutional-Theoretic Perspective', *Information and Organization*, 32.3 (2022), 100430 <https://doi.org/https://doi.org/10.1016/j.infoandorg.2022.100430>

consensus. While the frequently debated "representativeness" of the United States Constitution is recognized, such discussions are not the focus of this article. In this regard, the South African Constitution serves as an additional illustration, having been ratified by a majority of 66.3% of electors.<sup>9</sup>

This approach establishes legitimacy on the foundations of rationality and equity. It is a well-known assertion by Joseph Raz that a constitution is valid if it adheres to the proper justifications. Notwithstanding the absence of representative legitimacy, a constitution is deemed legitimate if it safeguards the proper values, promotes fairness, rightness, and other societal welfare-oriented ideals, and is conducive to such objectives. Legitimacy grounded in reason presupposes a constitution that is equitable and advances the welfare of the populace it regulates. As a result, it is anticipated that provisions of the Constitution adhere to elevated criteria. It is anticipated that the provisions will safeguard and advance fundamental rights, advance principles of justice and equality, ensure stability, and pursue economic growth and effectiveness.<sup>10</sup>

The remark made by Ackerman regarding "good enough" is pertinent in this context. The term "good enough" is a term borrowed from Ackerman to denote legitimacy grounded in reason. A constitution that satisfies the criteria of justice, impartiality, liberty protection, and ultimately political development is satisfactory to warrant its claim to legitimacy. Thus, legitimacy founded on reason may be considered a solution to the problem of non-consenting individuals. This demonstrates that the Constitution possesses moral force. Barnett had previously stated that the government follows the right. Therefore, in accordance with this framework, the sole determinant is the Constitution's utility. At least during the phase of its adoption, consent is irrelevant and it has no foundation in self-governance. The crucial aspect at hand is the establishment of just standards deserving of allegiance.<sup>11</sup>

Reason-based legitimacy and substantive legitimacy are similar in that they both assume that the Constitution's provisions are just, fair, rational, and efficient. It is founded on the notion that the Constitution embodies various values, such as virtue, fairness, and justice, which ought to be reflected in its substance or content.

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<sup>9</sup> Santosh Ghosh and others, 'Three Decades of Indian Power-Sector Reform: A Critical Assessment', *Utilities Policy*, 68 (2021), 101158 <https://doi.org/10.1016/j.jup.2020.101158>

<sup>10</sup> Hajime Sato, 'The Universality, Peculiarity, and Sustainability of Indian Public Interest Litigation Reconsidered', *World Development*, 100 (2017), 59–68 <https://doi.org/10.1016/j.worlddev.2017.07.032>

<sup>11</sup> Shrawan Singh and others, 'Agro-Morphological and Molecular Diversity Analysis of New Cytoplasmic Male Sterile Lines in Indian Cauliflower for Their Use in Hybrid Breeding', *Scientia Horticulturae*, 301 (2022), 111107 <https://doi.org/10.1016/j.scienta.2022.111107>

However, the crux of the matter is precisely what would qualify as the content of the Constitution in order to meet the necessary criterion.<sup>12</sup>

Civil and political rights that center on ideals such as equality and liberty are frequently regarded as cornerstones of a liberal constitution. Such is the context in which rights may vary. Political liberty, which includes the right to vote and hold public office; freedom of thought and conscience; freedom of speech and assembly; protection against physical assault, oppression, and dismemberment; property rights; and protection against arbitrary arrest and seizure in accordance with the rule of law, are a few of the rights. This is not an exhaustive list; rather, it provides an overview of the general ramifications of these liberties. The aforementioned rights must be evaluated in light of the fact that, according to Locke, they are fundamental in nature or inalienable.<sup>13</sup>

An evident inquiry that arises is: In what manner shall these rights be protected? There have been divergent perspectives regarding this matter. Widespread opinion holds that constitutional democracy, which embraces pluralism and the rule of law, is the most effective method for achieving these inviolable rights in the postliberal era. Put simply, constitutional democracy might be required in order to ensure the efficient enforcement of these fundamental rights. From Jurgen Habermas' presumption that democracy is contingent upon constitutionalism and constitutionalism is predicated upon democracy—a fundamental prerequisite for political legitimacy—this must be analyzed. Constitutional safeguards, according to Hayek, are necessary to prevent the misuse of coercive authority bestowed upon the state in order to achieve substantive civil and political rights. Hayek argues that constitutional enshrinement provides an institutional safeguard that restricts the authority of agencies.<sup>14</sup>

The significance of judicial review of legislative and executive action becomes apparent at this juncture. The very abstraction of these rights requires a judicial remedy; otherwise, they revert to mere standards and provide little in the way of substantial benefit. The constitutional evaluation of legislation, whose primary objective is to safeguard fundamental, inalienable rights, is also applicable in this instance. The legitimacy of the constitutions of Germany, Japan, and Bosnia is attributed to principles grounded in reason. Despite claiming to be legitimate, these

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<sup>12</sup> Deepak Kumar and others, 'Corporal Punishment and Praise in Indian Schools: Caste-Based Heterogeneity on Children's Cognitive Skills', *International Journal of Educational Development*, 89 (2022), 102554 <https://doi.org/https://doi.org/10.1016/j.ijedudev.2022.102554>

<sup>13</sup> Jacqueline R Kanovitz, 'Cases Relating to Chapter 1 - History, Structure, and Content of the United States Constitution', in *Constitutional Law (Twelfth Edition)*, ed. by Jacqueline R Kanovitz, Twelfth Edition (Boston: Anderson Publishing, Ltd., 2010), pp. 539–51 <https://doi.org/https://doi.org/10.1016/B978-1-4224-6326-0.50018-2>

<sup>14</sup> Thaddieus W Conner, 'Exploring Voting Behavior on American Indian Legislation in the United States Congress', *The Social Science Journal*, 51.2 (2014), 159–66 <https://doi.org/https://doi.org/10.1016/j.soscij.2014.01.002>

constitutions are either externally imposed or determined by influential political leaders. In this case, legitimacy is established not on the basis of representation (at least initially), but on the basis of principles grounded in reason.<sup>15</sup>

Diverse political and cultural factors can cause a nation to manifest multiple moral values and high levels of social distinction, resulting in widespread political discord and divergent conceptions of commodities, all of which are prevalent characteristics of contemporary society. Within the liberal constitutional tradition, there is a prevalent assertion that a legitimate political order is characterized by universal acceptance among its inhabitants. Moral divergences are pervasive within societies, and pluralism and diversity have emerged as prevalent attributes in communities across the globe. Moral disputes can arise due to factors such as religion, culture, language, race, and so forth. Kymlicka argues that contemporary societies are comprised of profound diversity and cultural pluralism. In previous civilizations, diversity was disregarded; individuals who diverged from the prevailing norms were marginalized and excluded. In contrast to the past, marginalized societies are no longer suppressed on account of their uniqueness. The desired concept in this context is an inclusive and assimilative practice.<sup>16</sup>

The defining characteristic of democracy, according to Dworkin, is equal regard and care for every member, regardless of their differences. It is imperative that the political institutions and collective decisions mirror this defining objective. These defining objectives are rarely achieved in majoritarian democracies, as sole majority support is sufficient to pass legislation. Here, majority tyranny and rent-seeking are significant threats. In his opinion, the defining objective of this majoritarian democracy is more likely to be advanced by a constitutional democracy that limits and balances it.<sup>17</sup> He supported a constitutional court's right-based judicial review in this instance. The negotiated consent becomes significant in this context. The negotiated consent represents a constitutional-making exercise in which various communities engage in negotiations to establish a constitutional contract in anticipation of a future democratic system. Diverse living communities differ in terms of culture, religion, language, and other aspects. A negotiating consensus between these communities willing to abide by a common law determined by future majorities constitutes the constitutional accord. As a result, the Constitution provides specific guarantees that serve to restrict popular democracy. Such

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<sup>15</sup> Robert A Staley, 'American Indian Treaty Diplomacy in the Papers of the Continental Congress, 1774–1789', *Government Information Quarterly*, 29.2 (2012), 252–60 <https://doi.org/https://doi.org/10.1016/j.giq.2011.09.005>

<sup>16</sup> Preetam Sarkar and others, 'Traditional and Ayurvedic Foods of Indian Origin', *Journal of Ethnic Foods*, 2.3 (2015), 97–109 <https://doi.org/https://doi.org/10.1016/j.jef.2015.08.003>

<sup>17</sup> Charles D Bernholz and others, 'Presidential Vetoes and American Indian Affairs, 1789–2000', *Library Collections, Acquisitions, and Technical Services*, 35.2 (2011), 61–63 <https://doi.org/https://doi.org/10.1016/j.lcats.2010.12.001>

negotiated assent establishes constitutional supremacy in the resulting nation as an element of legitimacy.<sup>18</sup>

The procedural legitimacy is contingent upon the adherence to the adopted standard of procedures. The legitimacy of the Constitution is established when it complies with the procedure specified or adopted therein. The process by which the Constitution might be adopted may involve the establishment of a constituent assembly (CA) and its subsequent ratification. The procedure may additionally encompass considerations such as the method of Constitutional adoption—namely, whether a referendum or a constituent assembly is required for its adoption, among other factors. Therefore, procedures constitute the necessary prerequisite for the ratification of a constitution. A constitution that satisfies that procedure in its entirety is deemed legitimate in accordance with this conception of legitimacy.<sup>19</sup>

The foundation of descriptive legitimacy is the faith held by the populace. The central question at hand pertains to the legitimacy and justification of the Constitution, or more precisely, what constitutes its binding force.<sup>20</sup> What is the definition of the term "public sentiment". Moreover, within what framework does it pertain to the inclination of the populace at large. As determined by this descriptive constitutional inquiry, the legitimacy of the Constitution is predicated on the consent of the people. Moral legitimacy is the concept that pertains to the rationale for adhering to the Constitution. It denotes a seemingly valid rationale for adhering to the Constitution. In this case, the question is why individuals should have faith in the Constitution's legitimacy. It signifies the Constitution's ethical defensibility.

## 2. Results and Discussion

### *The Constitution of India and Challenges to Legitimacy*

The last section emphasized how legitimizing a constitution is characterized by various fictional constitutional-making processes. The expression 'original constituent power' reifies such a fiction, particularly in the context of popular sovereignty, representing a democratic polity created by the "We the people." We the people is a common phrase seen in most written constitutions, especially in the liberal democratic ones. The notion propounded herein is that the people are the

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<sup>18</sup> Muraleedharan M Rohith and others, 'Tattoo in Forensic Science: An Indian Perspective', *Journal of Forensic and Legal Medicine*, 74 (2020), 102022 <https://doi.org/https://doi.org/10.1016/j.jflm.2020.102022>

<sup>19</sup> Khushboo Balani, Sarthak Gaurav, and Arnab Jana, 'Spending to Grow or Growing to Spend? Relationship between Public Health Expenditure and Income of Indian States', *SSM - Population Health*, 21 (2023), 101310 <https://doi.org/https://doi.org/10.1016/j.ssmph.2022.101310>

<sup>20</sup> Rachna Gangwar and G Raghuram, 'Implications of Vertical Unbundling on Indian Railways: Lessons from German Railway Reform', *Transportation Research Procedia*, 25 (2017), 4529–43 <https://doi.org/https://doi.org/10.1016/j.trpro.2017.05.349>

original constituent power, with unlimited, unrestrained authority to adopt a constitution, which is a commonly accepted constitutional theory, fictitious.<sup>21</sup>

The unrestrained power of the people to make a constitution and the creation of the Constitution in the name of We the People is standard in constitutional practice. In that context, it serves no purpose to mention any specific country to explicate the usage of We the People. A famous endorsement of the same can be seen in the US Constitution, and Ackerman argues that it is justified to use We the People in higher law-making (the constitution making) as it deserves to be called the People. For him, the Constitution is an extended process, carrying extraordinary political debate, culminating in different branches of government addressed in the name of We the People.<sup>22</sup>

In constitutional practice, the Constitution is adopted in different ways. It may be through a single referendum or multiple referendums at various stages, through a constituent assembly (elected or nominated) specially created for that purpose or by iteration of majority votes, Or through an elected or established legislature, or an imposed Constitution by an external authority, etc. Each of these would find its exemplar in the different constitutional adoptions of countries.<sup>23</sup> It is a constitutional practice that all the above types of constitutional adoption claim legitimacy in the name of We of the people. Though, We the people, a fictional concept, purported to be a constitutional reality to a certain extent in the modern polity.<sup>24</sup> The necessarily happens in a Constitution-making exercise is that a claim is made on behalf of the entire people under the existing procedures, notwithstanding the dissent aroused in that exercise. In other words, the claim purports that enough people have passively accepted the Constitution. On this pretext, the question would be, how many members actually participated in adopting the Constitution. As Barnett puts forth in extreme detail, it might be appealing to argue that anything less than unanimous consent cannot be binding on non-consenting persons.<sup>25</sup>

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<sup>21</sup> Shreya Sinha, 'From Cotton to Paddy: Political Crops in the Indian Punjab', *Geoforum*, 130 (2022), 146–54 <https://doi.org/https://doi.org/10.1016/j.geoforum.2021.05.017>

<sup>22</sup> Anupam Joya Sharma and Malavika Ambale Subramanyam, 'Psychological Responses to Reservation-Based Discrimination: A Qualitative Study of Socially Marginalized Youth at a Premier Indian University', *International Journal of Educational Development*, 79 (2020), 102298 <https://doi.org/https://doi.org/10.1016/j.ijedudev.2020.102298>

<sup>23</sup> Emma McDonell, 'The Co-Constitution of Neoliberalism, Extractive Industries, and Indigeneity: Anti-Mining Protests in Puno, Peru', *The Extractive Industries and Society*, 2.1 (2015), 112–23 <https://doi.org/https://doi.org/10.1016/j.exis.2014.10.002>

<sup>24</sup> Abhinav Jindal and Rahul Nilakantan, 'Falling Efficiency Levels of Indian Coal-Fired Power Plants: A Slacks-Based Analysis', *Energy Economics*, 93 (2021), 105022 <https://doi.org/https://doi.org/10.1016/j.eneco.2020.105022>

<sup>25</sup> K Sai Jyotheender, Sweety Arora, and Chandan Srivastava, 'Effect of Carbon Nanotube Incorporation on Texture Evolution and Grain Boundary Constitution in NiCo Coatings', *Journal of Alloys and Compounds*, 854 (2021), 157299 <https://doi.org/https://doi.org/10.1016/j.jallcom.2020.157299>



The paradoxes attached to this idea demand a holistic view of constitutional Legitimacy. Zurn rightly argues that constitutional Legitimacy is practically and conceptually impossible due to infinite regress paradoxes. However, a complete avoidance of constitutional Legitimacy is neither possible nor acceptable in constitutional theory and practice. Constitutional Legitimacy is a dimensional non-constant, meaning Legitimacy is a dimensional concept with different attributes. We cannot restrict constitutional Legitimacy to one particular principle or theory.<sup>26</sup> In a liberal constitutional theory, 'We the people' or the people's constituent power is a fiction developed to enable theorists to reject the Legitimacy of monarchical rule and rationalize the norms hierarchy.<sup>27</sup> Hence, in practice, the Constitution is not created univocally with the unanimous consent of the people. It would not be wrong to argue that popular will is not the sole basis of legitimizing the Constitution. Legitimacy can even be grounded in different principles and attributes as well.<sup>28</sup>

The conception of legitimacy exclusively in terms of 'We the people' is an ideal, not a realizable goal in entirety. This is why Zurn argued that constitutional democracy is a complex set of regulative ideals that are aspirational and are never fully realized. A constitutional democracy that establishes a political institution by providing a reflexive learning mechanism and a dynamic self-correcting environment can claim legitimacy. On this pretext, the authors argue that 'We the people' is an aspirational ideal that needs to be achieved over time but never fully realized. It may be an ideal that a portion of the population might have shared or maybe by certain elite classes at the time of its adoption. Still, this ideal reaches its strength as more and more citizens get socialized into the institutional set-up developed through constitutional democracy. Socialization into the institutions is assimilating citizens into these constitutionally developed institutions. Hence, the claim that representational legitimacy is a long-term process that cannot be fixed at a determinate point in time and is a matter of achievement over time. In that context, it might not be ambitious to state that representational legitimacy is a dynamic concept with the quality of progress and change.<sup>29</sup>

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<sup>26</sup> Laxman Singh Bisht and Geetam Tiwari, 'Assessing the Black Spots Focused Policies for Indian National Highways', *Transportation Research Procedia*, 48 (2020), 2537–49 <https://doi.org/https://doi.org/10.1016/j.trpro.2020.08.256>

<sup>27</sup> Vasudha Chhotray, 'Disaster Relief and the Indian State: Lessons for Just Citizenship', *Geoforum*, 54 (2014), 217–25 <https://doi.org/https://doi.org/10.1016/j.geoforum.2014.01.013>

<sup>28</sup> Akhand Pratap Singh and Chandan Srivastava, 'Understanding the Non-Monotonic Variation in the Corrosion Rate of Sn-Ni Coatings with Ni Addition by the Analysis of Texture and Grain Boundary Constitution of the Matrix Phase and Spatial Distribution of the Intermetallic Phase in the Coating Microstructure.', *Corrosion Science*, 211 (2023), 110787 <https://doi.org/https://doi.org/10.1016/j.corsci.2022.110787>

<sup>29</sup> Ahmed Aliyu and Chandan Srivastava, 'Phase Constitution, Surface Chemistry and Corrosion Behavior of Electrodeposited MnFeCoNiCu High Entropy Alloy-Graphene Oxide Composite Coatings', *Surface and Coatings Technology*, 429 (2022), 127943 <https://doi.org/https://doi.org/10.1016/j.surfcoat.2021.127943>

Prolonged engagement in various aspects of the Indian Constitution is so profound. In the introductory part of his book "The Indian Constitution Cornerstone of a Nation," Granville Austin states that the Constitution brought a revolution in India and hoped to bring fundamental changes to Indian society. He submits that Indians had been pressing for a constitution, and when the opportunity came, they framed one. The constituent Assembly assumed the sovereignty and widely claimed that they derived it from the people. Austin alludes to the Constitution to the people, and at the same time, he accepts that the Constituent Assembly was, in fact, a one-party body, the Indian National Congress. The Assembly was the Congress, and the Congress was the Assembly. However, Austin argues that the Assembly represented almost every voice of the country. Austin concludes that though indirectly elected, the Assembly was a highly representative body and a body that was democratic in its discussions and actions. The analysis of Austin reveals that he considers the Indian Constitution to be the expression of the people's will by exercising the original constituent power.<sup>30</sup>

The prolonged freedom struggle and widespread engagement with the anti-colonial struggle underscore the significance of democratic transformation, which was reflected in the Constitution. She says that though certain political elites created the Constitution, the inspiration from the Freedom struggle was profound and expressed in the form of the Constitution by exercising the original constituent power. Compared to Granville Austin, the book comprehensively analyzed the aspect of popular sovereignty or the concept of We the People. The Congress party's majority in the Constituent Assembly rose to 82 % after the partition. There was hardly anyone to oppose Congress, the dominant figure in the Constitution-making exercise. This is why Granville Austin stated that the Constituent Assembly was, in fact, a one-party body, the Indian National Congress, that the Assembly was the Congress, and the Congress was the Assembly. The most significant criticism against the Constitution has been that the CA was constituted of a restricted franchise, comprising 15% of the population, particularly 28.5 % of the adult population. To put it another way, out of 35 crores, only four crores were given suffrage at the time of the provincial election. Hence, it has been criticized that CA must be a representative body. It has been argued that since the Universal adult franchise was not a reality during the provincial election, the constituent Assembly could not claim that it represents India and its people.<sup>31</sup>

In this context, it is pertinent to highlight some of the prevalent challenges to the legitimacy of the Indian Constitution. First, the Constitution's legitimacy, the

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<sup>30</sup> Giribabu Dandabathula and others, 'Exploring the Nexus between Indian Forestry and the Sustainable Development Goals', *Regional Sustainability*, 2.4 (2021), 308–23 <https://doi.org/https://doi.org/10.1016/j.regsus.2022.01.002>

<sup>31</sup> Vikramjit S Kanwar and others, 'Withholding and Withdrawal of Life-Sustaining Therapy in Terminally Ill Children with Cancer: A Position Statement by the PHO Chapter of the Indian Academy of Pediatrics', *Pediatric Hematology Oncology Journal*, 9.1 (2024), 18–23 <https://doi.org/https://doi.org/10.1016/j.phoj.2024.01.002>

Indian Constitution, and the idea of "We the people" get into serious trouble when we look at the Constitution from the angle of representation or when we use the term people-based Constitution. The problem is accentuated in the current times, particularly considering aspects like the ruling party change in India. The then dominant majority political party has become a minority party (or the party has lost its widespread support).<sup>32</sup>

The political section, whose opinions were not heard during the Constitution's adoption, has become India's majority or dominant party. This political shift poses a severe challenge to the legitimacy of the Constitution. Second, the expression "We the people of India" is nothing but a crude joke; Indians never created a constitution, and the Constituent Assembly cannot be said to be indigenous, and the question of culture has been largely undiscussed; the Constitution had imposed many liberal constitutional feelings. Third, the national elites formed a constitution to integrate the masses through a performative act of absorption and neutralization rather than creating active or direct consensus through popular mobilization. Fourth, though the colonial government was undoubtedly annihilated, India's transition to democracy was without the abolition of its Constitution. Though there had been vehement opposition against the colonial state for not heeding the constituent voices of the people, the Constituent Assembly chose to adopt most of the Constitution from the Government of India Act 1936.<sup>33</sup>

In other words, most of the part of the Constitution traceable to London had been retained. This is why Tundawala argued that there was pervasive continuity with the colonial past. For him, the constituent power that created the Constitution cannot be placed in the Western revolutionary constitutionalist tradition. For him, the constituent power rests in the early Indic concept of Swaraj (self-rule), a distinct local articulation of constituent power. Undoubtedly, the issue of pervasive continuity poses a particular challenge to legitimacy. Fifth, the relevance of British provinces and princely states lost its significance after the creation of the Constitution and the subsequent Amendment to the Constitution, which abolished the privy purses. The question would be whether elections from provinces and nominated members from princely states, which no longer exist in the current era, pose challenges to legitimacy.<sup>34</sup>

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<sup>32</sup> Damodaran Nair Divu and others, 'Thermal Tolerance and Environment Adaptability of Indian Pompano: Discovery of a Resilient Candidate Species for Sustainable Mariculture Production in a Climate Change Scenario', *Aquaculture*, 584 (2024), 740665 <https://doi.org/https://doi.org/10.1016/j.aquaculture.2024.740665>

<sup>33</sup> Maansi Gupta and Nomesh B Bolia, 'Factors Affecting Efficient Discharge of Judicial Functions: Insights from Indian Courts', *Socio-Economic Planning Sciences*, 91 (2024), 101755 <https://doi.org/https://doi.org/10.1016/j.seps.2023.101755>

<sup>34</sup> Daniel Raimi and Alana Davicino, 'Securing Energy Sovereignty: A Review of Key Barriers and Opportunities for Energy-Producing Native Nations in the United States', *Energy Research & Social Science*, 107 (2024), 103324 <https://doi.org/https://doi.org/10.1016/j.erss.2023.103324>

## *Integrating the Theoretical Models of Constitutional Legitimacy with the Indian Constitution*

The history of India's constitutional adoption, it would be fundamentally wrong to argue that India has a pure people-based constitution or people's Constitution, considering the fact that a major chunk of the population has not participated (formally or informally) in the voting process to the provincial election, which was the determining election to constitute the Constituent Assembly. Similarly, it needs to be accepted that (at least partially) the Constitution was constructed by elites, more particularly the political elites. The influence of foreign Constitutions was also significantly greater in India. It accedes here that the Indian Constitution was heavily foreign-influenced, not purely indigenous.<sup>35</sup>

The challenges to the legitimacy of the Indian Constitution, such an approach would be myopic. Rather attempt in this paper is to submit that, irrespective of the challenges to legitimacy, the Constitution may still claim legitimacy on different principles and attributes of legitimacy. That constitutional legitimacy is a dimensional non-constant. It cannot be solely restricted to We the people or the original constituent power of the people.<sup>36</sup> The first part that a constitution may be legitimated on various grounds, and the type of legitimacies identified in this paper are interdependent. It means a constitution may claim legitimacy on varied grounds mentioned therein, namely representational, reason-based, procedural, substantive, descriptive, normative, and Negotiated consent legitimacies. It was submitted that the base model is representative and reason-based legitimacy, and the Constitution may claim legitimacy on various other types mentioned. (Based on the theoretical model developed in the first part of the paper)- (Emphasis supplied).<sup>37</sup>

The attribute of representational legitimacy, the question of different principles and attributes of legitimacy is already established in the first part of the paper. It was submitted that constitutional legitimacy is a dimensional non-constant, and the fiction of we the people is an aspirational ideal that a country aims to achieve. In that context, the authors have stated that realising representational legitimacy is a long-term process. The aspirational idea of we the people reaches its strength as

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<sup>35</sup> Roza Sagitova and others, 'Understanding Human Participant Research Ethics: The Perspectives of Social Scientists in Central Asia', *International Journal of Educational Research*, 124 (2024), 102303 <https://doi.org/https://doi.org/10.1016/j.ijer.2023.102303>

<sup>36</sup> Camila Aline Romano and others, 'Seasonal Variation of Essential Oil from *Murraya Koenigii* (Rutaceae) and Insecticidal Potential against *Aedes Aegypti* (Diptera: Culicidae)', *Biochemical Systematics and Ecology*, 112 (2024), 104748 <https://doi.org/https://doi.org/10.1016/j.bse.2023.104748>

<sup>37</sup> Yadlapalli S Kusuma and others, 'Maternal Healthcare Seeking and Determinants of Adequate Antenatal Care and Institutional Childbirth among Indian Tribes: A Cross-Sectional Study from Nine Districts', *European Journal of Obstetrics & Gynecology and Reproductive Biology*, 292 (2024), 163–74 <https://doi.org/https://doi.org/10.1016/j.ejogrb.2023.11.026>

more and more citizens get socialised into constitutionally established institutions. Essentially, the institution of democracy and its three pillars, namely, legislature, executive and the Judiciary, but not solely restricted to these three pillars of democracy. The authors have already stated in the first part due to this possibility of socialisation; it might not be ambitious to state that representational legitimacy is a dynamic concept since it has the quality of progress and change.<sup>38</sup>

The aspect of getting socialised into the institutions established is pertinent here. It can be viewed from a purely empirical sense, establishing the people's role in these institutions, or analysing the existing data available to determine how far people participate in these institutions.<sup>39</sup> Each approach investigates the level of socialisation of the institutions established. An empirical study is outside the scope of this analysis. Rather the analysis here is restricted to the available data to determine how far people participate in these institutions. But again, the question of socialisation is a subjective term, carrying different dimensions.<sup>40</sup> Hence the analysis primarily focuses on two such aspects and further advances other ways of socialisation. The two dimensions are Universal adult suffrage and accessibility or people friendliness of the Supreme Court of India.

**Table 1: Increase or Dip in Turnout**

Election Year	Lok Sabha	Turn out in %	Increase or dip in turnout compared to first Lok Sabha election in %
1951-52	1 <sup>st</sup>	45.70	
1957	2 <sup>nd</sup>	55.42	9.72 % %increase
1962	3 <sup>rd</sup>	55.42	9.72 % %increase
1967	4 <sup>th</sup>	61.04	15.34 %increase
1971	5 <sup>th</sup>	55.27	9.57%increase
1977	6 <sup>th</sup>	60.49	14.79%increase
1980	7 <sup>th</sup>	56.92	11.22%increase
1984	8 <sup>th</sup>	64.01	18.31%increase
1989	9 <sup>th</sup>	61.95	16.25%increase
1991	10 <sup>th</sup>	55.88	10.18%increase
1996	11 <sup>th</sup>	57.94	12.24%increase
1998	12 <sup>th</sup>	61.97	16.27%increase
1999	13 <sup>th</sup>	59.99	14.29%increase
2004	14 <sup>th</sup>	58.07	12.37%increase
2009	15 <sup>th</sup>	58.21	12.51%increase
2014	16 <sup>th</sup>	66.44	20.74%increase
2019	17 <sup>th</sup>	67.40%	21.7%increase

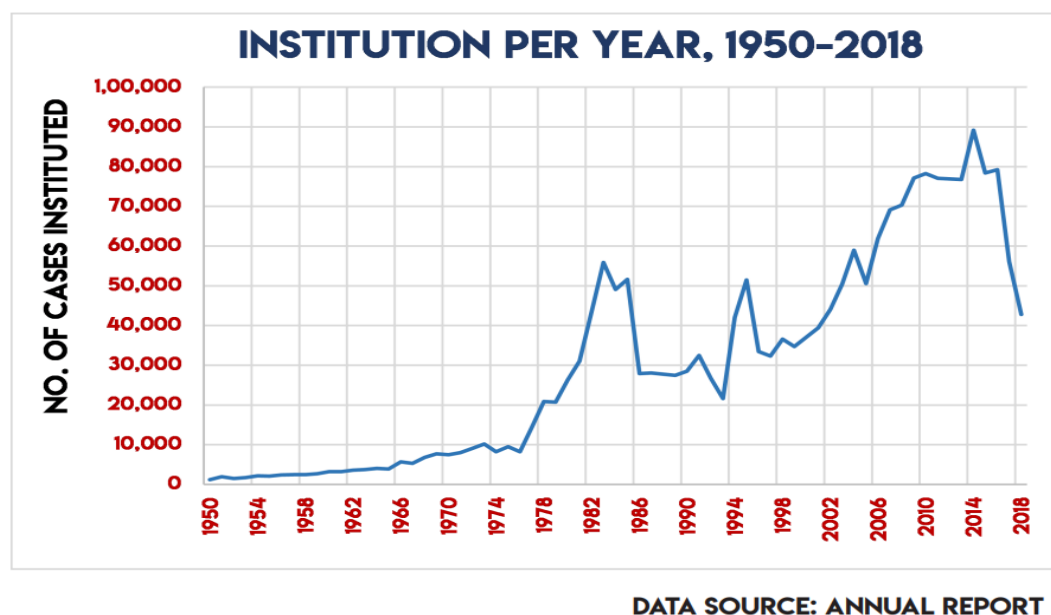
<sup>38</sup> Sushil Kumar and others, 'Chapter 2 - Scope, Importance, and Limitations of Precision-Agriculture-Based Practices for Crop Management: Indian Perspective', in *Remote Sensing in Precision Agriculture*, ed. by Salim Lamine and others, Earth Observation (Academic Press, 2024), pp. 27-40 <https://doi.org/https://doi.org/10.1016/B978-0-323-91068-2.00005-9>

<sup>39</sup> Riti Chatterjee, 'How State Governance Can Offer a New Paradigm to Energy Transition in Indian Agriculture?', *Energy Policy*, 185 (2024), 113965 <https://doi.org/https://doi.org/10.1016/j.enpol.2023.113965>

<sup>40</sup> Kanwar and others.

The above data from the Lok Sabha election stat summary reveals that from the 1950 to 2019 elections, the voting percentage has been variably in a surging phase. The sixteenth and seventeenth Lok Sabha elections notably observed the historic voter turnout ever witnessed since the 1st Lok Sabha election. The trend in the increased voter turnout is undoubtedly an element that asserts the claim that people are getting socialised into the institutions developed by the state. People choosing their representatives is the most crucial aspect of constitutional democracy. Participation increases the bargaining power of the people and makes them more likely to orient towards participatory democracy, thereby positively impacting socialisation.

**Figure 1: Accessibility and People Friendliness of Supreme Court**



The above graphs from the Supreme Court observers (SCO) reveal that there have been exponential and remarkable growth in the number of cases instituted in the Supreme Court from 1950- 2018. The post-emergency period showed a total bump in the institution from less than ten thousand to more than fifteen thousand cases per year. Subsequently, a steady drop in the institution could be observed till 1993. From 1993 to 1995, the post-liberalisation bump could be seen. The institution of cases surged to 51450 cases per year. The significant bump is from 1997 to 2014; a variable surge of up to 90000 cases a year could be observed during this period. A variable dip in the cases could be seen from 2014 to 2018. From 2020 to 2022, we could see a further dip in the institution of cases, particularly in 2020 and 21, due to covid-19 pandemic.

Notwithstanding the inclusion of public interest litigation among the petitions in the institutions, the pattern of case institution indicates that the public has faith in the judiciary. Additionally, it demonstrates the Supreme Court's amicability and approachability, which positively influences socialization. It is impossible to

limit the socialization of institutions to these two components alone. The objective here is to demonstrate that individuals are, in fact, becoming socialized within these institutions. It is worth noting that the analysis fails to provide a definitive answer regarding the exercise of the original constituent power of the people to adopt a constitution. However, according to the authors, the analysis provides assurance that the notion of representative legitimacy is ever-changing.<sup>41</sup>

In India's constitutional practice, the questions of people uniting to form a constitution and the aspirational ideal of we, the people, continue to endure. This must be considered from the citizenry's vantage point in a constitutional democracy. The authors conclude this discourse by posing the following query: Should the people assume a formal constitutional role that extends beyond their electoral participation? The inquiry should be interpreted with the aspirational notion of the people and the legitimacy of the constitution in mind.<sup>42</sup>

In the first section of the paper, the theoretical framework introduces the notion of socialization. Prior to this, two aspects of socialization have been described. Socialization may also occur in the subsequent methods within these institutions: Initially, through the dissemination of knowledge regarding constitutional values and the significance of freedom, liberty, and democracy among the youth. Recall the words that Ambedkar uttered. It is renowned that he asserted that democracy in India is merely a veneer applied to an undemocratic nation. This statement underscores the criticality of fostering a democratic culture among the populace and future generations.<sup>43</sup> This explains how educational policy has evolved to instill constitutional values and the fundamental tenets of democracy. Secondly, public cognizance regarding the Constitution can facilitate socialization by fostering knowledge of individuals' rights, responsibilities, and constitutional institutions. Community-based awareness programs are essential for fostering this type of consciousness among the general populace. Thirdly, socialization can also occur when individuals initiate conversations about the Constitution or when academic forums, universities, and other venues deliberate on different facets of the Constitution while engaging in critical discourses on the subject. Such a culture, according to the authors, has existed in India, specifically in law schools and social science institutions.<sup>44</sup>

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<sup>41</sup> Divu and others.

<sup>42</sup> Aditi Bhatia, 'The Discursive Construction of Legitimacy in the Abrogation of Indian Constitution's Article 370', *Journal of Pragmatics*, 183 (2021), 132-41  
<https://doi.org/https://doi.org/10.1016/j.pragma.2021.07.009>

<sup>43</sup> Shubhashis Gangopadhyay and Swarnodeep Homroy, 'Do Social Policies Foster Innovation? Evidence from India's CSR Regulation', *Research Policy*, 52.1 (2023), 104654  
<https://doi.org/https://doi.org/10.1016/j.respol.2022.104654>

<sup>44</sup> Randall Akee, Miriam Jorgensen, and Uwe Sunde, 'Critical Junctures and Economic Development – Evidence from the Adoption of Constitutions among American Indian Nations',

Since the relationship between reason-based legitimacy and substantive legitimacy was established in the introductory section of the paper, it is not elaborated upon in this section. Both reason-based legitimacy and substantive legitimacy postulate that a constitution can assert legitimacy if its foundation is grounded in sound reasoning and if its provisions possess substantial positive worth. Constitutional provisions must serve to strengthen and safeguard fundamental rights, advance principles of justice and equality, ensure stability, and pursue economic growth and effectiveness. Informing the list of essential civil and political liberties were the writings of Locke and Rawls in the introduction.<sup>45</sup>

It was stated that these rights are fundamental or inalienable, qualities that must be strengthened in every democratic nation. The authors support the contention that constitutional democracy provides the most effective safeguard for these fundamental rights. Drawing inspiration from the work of Jurgen Habermas, we concur that democracy is contingent upon the Constitution, which in turn guarantees the protection of the citizens' invaluable and inviolable rights. Therefore, it is unjust to censure the Constituent Assembly in the Indian context for embracing constitutional democracy as a means to protect and advance the rights of its citizens.<sup>46</sup>

Bidyut Chakrabarty posits that constitutional democracy in India, notwithstanding its foreign theoretical foundations, is not entirely indigenous nor derivative; rather, it represents a distinctive conceptual expression that has developed within a particular context through the accommodation of conflicting ideas and processes, provided they were deemed pertinent, and contestations. The political authorities had engaged in a discourse regarding constitutional democracy, primarily with the intention of dismantling the antiquated politico-ideological system that was detrimental to the human race.<sup>47</sup> Furthermore, he asserted that the establishment of constitutional democracy in India was not an overnight achievement, but rather a lengthy and deliberative process. Notwithstanding the critiques directed towards the Constitution, the Constituent Assembly has successfully formulated one of the most progressive constitutions on a global scale. It is evident from an examination of the Constitution that Part II of the Indian Constitution, which delineates the diverse fundamental rights,

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*Journal of Comparative Economics*, 43.4 (2015), 844–61  
<https://doi.org/https://doi.org/10.1016/j.jce.2015.08.004>

<sup>45</sup> Soeleman Djaiz Baranyanan, Nilam Firmandayu, and Ravi Danendra, 'The Compliance of Regional Autonomy with State Administrative Court Decisions', *Journal of Sustainable Development and Regulatory Issues*, 2.1 (2024), 35–52 <https://doi.org/https://doi.org/10.53955/jsderi.v2i1.25>

<sup>46</sup> Shawn H E Harmon and Dinar Kale, 'Regulating in Developing Countries: Multiple Roles for Medical Research and Products Regulation in Argentina and India', *Technology in Society*, 43 (2015), 10–22 <https://doi.org/https://doi.org/10.1016/j.techsoc.2015.07.002>

<sup>47</sup> Benjamin M Hunter and others, 'Decentred Regulation: The Case of Private Healthcare in India', *World Development*, 155 (2022), 105889  
<https://doi.org/https://doi.org/10.1016/j.worlddev.2022.105889>



contains the most crucial and sacred provisions. This incorporation of fundamental rights serves two purposes, in the opinion of Krishna Swamy: first, to strengthen liberal autonomy; and second, to restrict majoritarian democracy.<sup>48</sup>

In addition to enumerating the fundamental rights, the Indian Constitution guarantees their safeguarding through the establishment of a unique fundamental right to constitutional remedies. Noting this distinctiveness is pertinent. Ambedkar declared that if prompted to select the most crucial article, he would select the right to constitutional remedies as the foundational provision—without which the Constitution would be deemed vacant and void. According to Ambedkar, he is the fundamental essence and driving force behind the Constitution. An alternative perspective is to consider the statement by JC Johari, which states that a simple enumeration of rights is insufficient; effective enforcement of those rights must also be provided for.

In India, the implementation of constitutional democracy is a subject of contention, and it would be an incomplete truth to say that it is an entirely foreign concept. Furthermore, drawing inspiration from Jurgen Habermas, the authors concur with the widespread assertion that constitutional democracy is an indispensability for a democracy to assert its legitimacy. India had ratified one of the most progressive constitutions globally at that time. In cases of violation, it not only enumerates rights but also safeguards them by granting the right to constitutional remedies. In order to achieve substantive realization of civil and political rights, constitutional safeguards are necessary to prevent the abuse of coercive power entrusted to the state, according to Hayek's theory. (Explanation of the theory in the main). The authors conclude that India possesses reason-based and substantive legitimacy in light of this, regardless of the difficulties encountered during the ratification of the Indian Constitution. Furthermore, the authors argue that reason-based legitimacy is a dynamic legitimacy that has persisted in India and may even be dynamic in nature (the dynamic nature of reason-based legitimacy is the subject of distinct academics and is not explored in this paper).<sup>49</sup>

Furthermore, a thorough examination of the most extensive written Constitution reveals that the Directive Principles of State Policy, merely the framework by which the state may enact legislation, were incorporated by the Constituent Assembly. A number of laws have been passed since independence in order to carry out the provisions outlined in Part IV of the Constitution. According

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<sup>48</sup> Abdul Kadir Jaelani, Resti Dian Luthviati, and Muhammad Jihadul Hayat, 'Halal Tourism Sector and Tax Allowance Policy: A Case Study Observed from Normative Problems to Effective Implementation', *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan*, 23.2 (2023), 185–210 <https://doi.org/10.18326/ijtihad.v23i2.185-210>

<sup>49</sup> Jennifer Besserman and Ray A Mentzer, 'Review of Global Process Safety Regulations: United States, European Union, United Kingdom, China, India', *Journal of Loss Prevention in the Process Industries*, 50 (2017), 165–83 <https://doi.org/https://doi.org/10.1016/j.jlp.2017.09.010>

to Krishna Swamy, the integration of DPSP serves to augment the capacity of individuals to exert their own volition in diverse political, social, and economic domains. Additionally, it is imperative to acknowledge the proactive approach taken by the Supreme Court of India when construing the Constitution in response to societal developments.<sup>50</sup>

The characteristic shared by all societies in the world is diversity. It had been asserted that, according to the liberal constitutional tradition, a political order is legitimate if it is accepted by every citizen. Moral divergences are prevalent in society as a result of distinctions in faith, culture, ethnicity, and other factors. The desired framework is one that promotes assimilation and inclusivity. In general, negotiated consent addresses the dilemmas of non-consenting parties and a divergent conception of commodities that were raised in the introduction. The negotiated consent legitimacy posits that the Constitution is the result of deliberations among diverse communities residing in the future constitutional state.<sup>51</sup> The communities would consist of majority and minority groups that are differentiated by factors such as caste, religion, sex, language, and language. As previously mentioned, the constitutional accord is a product of negotiations between these communities that are amenable to a common law determined by future majorities, as stated by the authors. As a result, the Constitution provides specific guarantees that serve to restrict popular democracy. The Constitution, in the words of V.M. Bachal, addresses the threat of majority despotism toward minority groups, given the perplexing nature of minority groups and the sizeable majority in the country.<sup>52</sup>

It is fundamental that the nation's minority groups coexist harmoniously and in peace. Individuals require reassurance regarding their fundamental liberties and safeguarding against despotic majoritarianism. In accordance with Dworkin's assertions, the initial section has already demonstrated that majoritarian democracies fail to achieve the fundamental purpose of democracy, which is to treat all members with equal regard and care. A constitutional democracy in which a constitutional court exercises right-based judicial review is more likely to advance the defining objective. Following the partition, the constituent assembly

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<sup>50</sup> Wenbiao Cai and Manish Pandey, 'Size-Dependent Labor Regulations and Structural Transformation in India', *Economics Letters*, 119.3 (2013), 272–75 <https://doi.org/https://doi.org/10.1016/j.econlet.2013.02.032>

<sup>51</sup> Mayuri Bora and others, 'A Comparative Study on Regulation of HLA-G Expression in Bad Obstetric History and in Head and Neck Squamous Cell Carcinoma from Northeast India', *Human Immunology*, 83.5 (2022), 453–57 <https://doi.org/https://doi.org/10.1016/j.humimm.2022.02.006>

<sup>52</sup> Sufia Rehman, Selim Jahangir, and A Azhoni, 'GIS Based Coastal Vulnerability Assessment and Adaptation Barriers to Coastal Regulations in Dakshina Kannada District, India', *Regional Studies in Marine Science*, 55 (2022), 102509 <https://doi.org/https://doi.org/10.1016/j.rsma.2022.102509>

in India comprised a total of 299 members.<sup>53</sup> Members elected and nominated from British provinces and princely states are included. Notwithstanding the substantial plurality of the Hindu community that was present in the Assembly, there were also representatives of minority religions such as Muslims, Parsis, Christians, and Sikhs. BR Ambedkar, along with a few other notable individuals such as S. Nagappan and Dakshyani Vellayudhan, has significantly amplified the concerns of lower castes, specifically the Harijans. With regards to gender composition, the assemblage was undeniably male-dominated. Women made up only 15 of the 299 members. "As a result of congressional policy, minority communities were adequately represented in the Assembly, albeit predominantly through the selection of their own representatives," as remarked the renowned Granville Austin.<sup>54</sup>

The Indian Constitution's peculiar circumstances are a captivating subject of study. Despite the Assembly being predominantly Hindu, it has addressed the oppression of minority religions and the issue of popular democracy to a significant degree. For this reason, Ram Prasad Chakravarthi posits that when examining the Constitution as a normative document, it presents citizens as independent individuals while also establishing an identity that encompasses various minority groups according to religion, race, caste, and so forth. For him, this justifies the notion that each citizen is an independent individual endowed with equal rights. However, certain provisions are made for the most vulnerable as a result of the existence of numerous organizations and the nature of these groups. These special provisions are an integral part of the liberal philosophy and not an illiberal addition. Additionally, the authors consider this a characteristic of legitimacy.<sup>55</sup>

In regard to the concerns raised by religious minorities, the matter of freedom of practice and propagation of religion was deliberated upon in the Constitution via Article 25, which unequivocally safeguards said freedom. Appropriate recognition has been granted to the wearing and carrying of the Kirpan in order to resolve the concerns of the Sikh faith. In addition to safeguarding freedom of religion, the Constitution grants minority groups the right to establish and administrate educational institutions and the freedom to manage religious affairs. Initiated initially by Article 46, which directs states to enact legislation to advance

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<sup>53</sup> Gagan Chhabra, 'Two Factors, One Direction towards Social Regulation Policy Convergence: Learning from Policy Experts in Norway and India', *Alter*, 15.1 (2021), 29–45 <https://doi.org/https://doi.org/10.1016/j.alter.2020.10.001>

<sup>54</sup> Rahul Singh and Rupa Chanda, 'Technical Regulations, Intermediate Inputs, and Performance of Firms: Evidence from India', *Journal of International Economics*, 128 (2021), 103412 <https://doi.org/https://doi.org/10.1016/j.jinteco.2020.103412>

<sup>55</sup> Aileen Lam and Jean-Francois Mercure, 'Which Policy Mixes Are Best for Decarbonising Passenger Cars? Simulating Interactions among Taxes, Subsidies and Regulations for the United Kingdom, the United States, Japan, China, and India', *Energy Research & Social Science*, 75 (2021), 101951 <https://doi.org/https://doi.org/10.1016/j.erss.2021.101951>

the educational and economic interests of Scheduled Castes, Scheduled Tribes, and other marginalized groups, affirmative action has also been incorporated. Additional support for this claim has been provided by a number of amendments to Part III of the Constitution.<sup>56</sup>

The issue pertaining to the inferior caste, which is distinctive in India, has been resolved by means of Article 17, which outlawed the practice of untouchability. A further provision of the Constitution is affirmative action, which serves to empower those of inferior caste. In a similar vein, Article 29(1) safeguards the interests of various minority groups with regard to their unique language, dialect, or culture by establishing the right to preserve it. Since they emphasized the significance of the right to constitutional remedies, they refrained from reiterating for the sake of conciseness. Fundamentally, it is crucial to comprehend that safeguarding the rights of specific minority groups under Part III permits a broad avenue for their protection via judicial redress in the case of violations. The aforementioned scholarly articles and literature explicate distinct constitutional safeguards for religious minorities, economically and socially disadvantaged classes (including Scheduled Caste and Scheduled Tribe).<sup>57</sup>

### 3. Conclusion

The research presents a scholarly analysis of constitutional legitimacy, commencing with a critique of theoretical frameworks derived from prior scholarly works. According to the theoretical framework, the legitimacy of the Constitution should not be limited to the fictitious assertion of popular will or our collective as a people; instead, a comprehensive viewpoint on constitutional legitimacy is required. In this paper, we argue that constitutional legitimacy is a multidimensional, non-constant concept that is susceptible to various attributes and cannot be bound to a single principle. We have enumerated the various categories of legitimacies and contended that these categories may coexist when examining the legitimacy of a constitution. These discussions allude to the aspirational concept of representational legitimacy, in which we contend that (at least to some degree) as more and more citizens become socialized into the institution established by the Constitution, representational legitimacy may become a constitutional reality. In this regard, we argue that defining representational legitimacy as a dynamic concept is not an audacious claim. Secondly, the Indian Constitution's representative legitimacy could not be established as a result of public indifference. Notwithstanding the Constitution's

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<sup>56</sup> Natalia Van Doren, Nur Hani Zainal, and Michelle G Newman, 'Cross-Cultural and Gender Invariance of Emotion Regulation in the United States and India', *Journal of Affective Disorders*, 295 (2021), 1360–70 <https://doi.org/https://doi.org/10.1016/j.jad.2021.04.089>

<sup>57</sup> Dinesh C Sharma, 'Cough Syrup Deaths Expose Lax Drug Regulation in India', *The Lancet*, 400.10361 (2022), 1395 [https://doi.org/https://doi.org/10.1016/S0140-6736\(22\)02026-8](https://doi.org/https://doi.org/10.1016/S0140-6736(22)02026-8)

lack of representative character, we contend that it may assert legitimacy on the basis of various legitimacy principles and attributes.

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