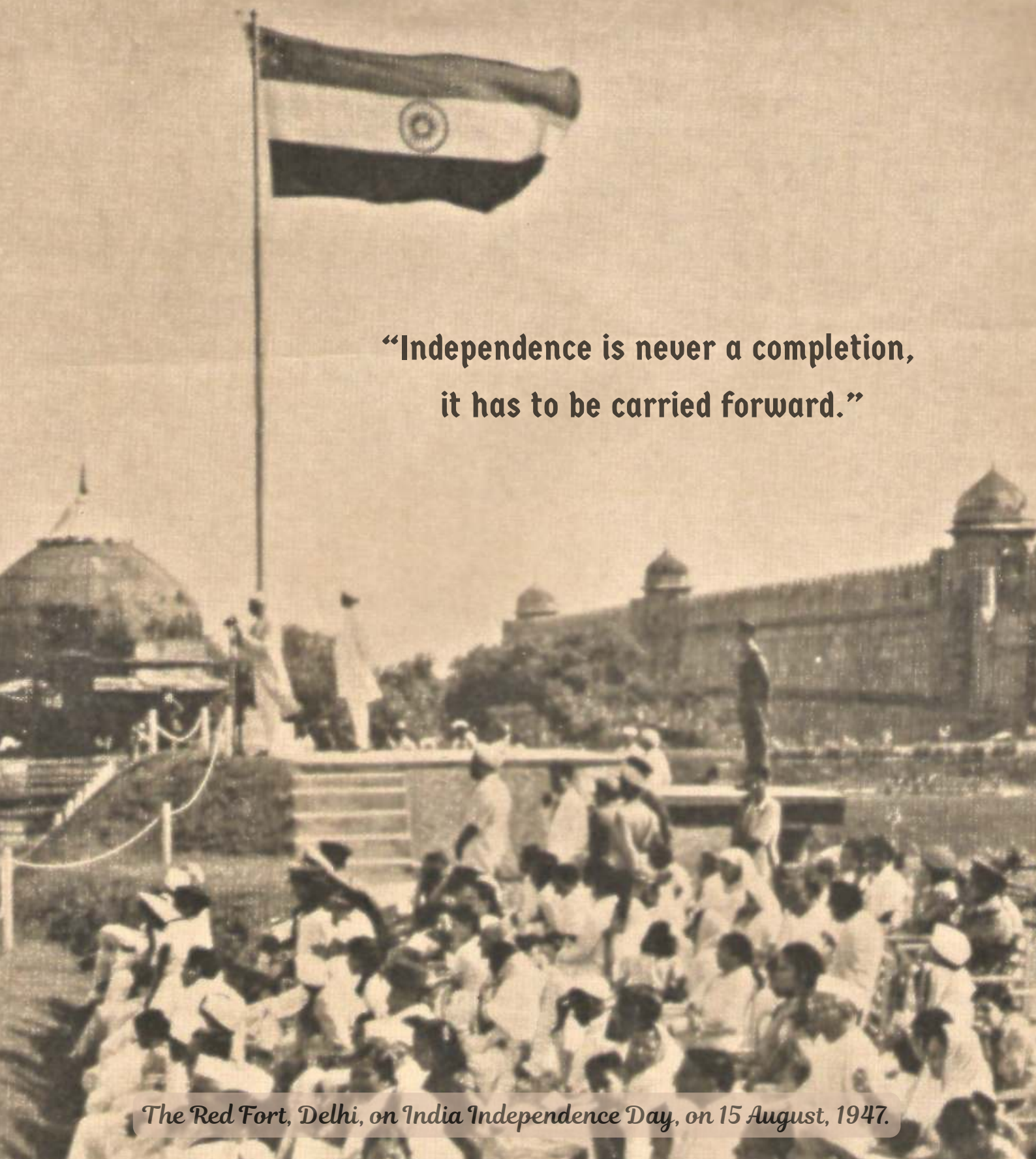

ACADEMIC NEWSLETTER



NYAYAGHOSH

INDEPENDENCE DAY SPECIAL

**“Independence is never a completion,
it has to be carried forward.”**



The Red Fort, Delhi, on India Independence Day, on 15 August, 1947.

Independence at 80: The Unfinished Journey to Justice

Can justice ever be defined? Can it be caged or confined in black and white? Perhaps not. Justice is not merely a legal prescription; it is a continuing constitutional and social aspiration. As India marks 80 years of Independence, we must ask: Have we achieved merely political independence, or have we moved towards a just society?

The ultimate objective of independence cannot be confined to establishing a sovereign State. Political freedom is a means; justice, liberty, equality and fraternity are the larger ends. The Constitution gives institutional expression to these aspirations. Yet constitutional provisions and democratic institutions alone cannot create a democratic society. Justice has to be lived. Democracy has to be practised.

Democracy Is an Exception

Democracy is an exception. Human beings and institutions have historically tended towards acquiring, concentrating and preserving power. Democracy represents a conscious restraint on that tendency. It seeks to diffuse power, make it accountable and recognise the dignity of every individual.

Democracy, therefore, is not merely the arithmetic of numbers. The majority may govern, but the majority cannot own democracy. Democracy must protect the right of the minority to disagree, dissent and participate. The strength of democracy lies not merely in how comfortably the majority governs, but in how securely the minority can disagree.

Freedom, too, is not absolute. My liberty cannot become an instrument for destroying another's liberty. Individual autonomy must coexist with fraternity and social responsibility. Liberty without fraternity can become selfishness; majority without constitutional restraint can become domination; power without accountability can become authoritarianism.

Most importantly, democracy does not maintain itself. Citizens cannot remain bystanders and expect institutions to preserve their freedom indefinitely. Democracy requires participation, vigilance, dissent and respect for those with whom we disagree.

The Constitution begins with "We, the People of India." Government is therefore not the owner of liberty but its custodian. Power belongs to the people and must remain accountable to them.

After 80 years, Independence Day must therefore be an occasion not only for celebration but for introspection.

Are we merely enjoying freedom, or are we protecting the freedom of others? Are we merely choosing governments, or are we restraining power? Independence is not a destination. It is a responsibility. Democracy is not a habit that sustains itself; it is a choice every generation must make—and remake.



ACCESS TO JUSTICE: RECENT JUDICIAL DEVELOPMENTS IN ODISHA



In *Arjun Jani @ Tuntun v. State of Orissa*, the Supreme Court of India considered the case of Arjun Jani, who had been convicted under Sections 302 and 201 of the Indian Penal Code and sentenced to life imprisonment. He preferred an appeal before the Orissa High Court; however, the appeal was instituted with a delay of 3,157 days. The High Court declined to condone the delay and consequently dismissed the appeal without adjudicating upon its merits. Aggrieved by this order, the appellant approached the Supreme Court. The Court took into consideration the exceptional circumstances of the case, particularly the fact that the appellant had undergone more than 22 years of incarceration and had never been granted parole or furlough. His conduct during imprisonment was also reported to be satisfactory. The Supreme Court observed that, in such circumstances, denying relief solely on the ground of procedural delay would result in substantial prejudice to the appellant, considering it as a “collective failure” of the system. Hence, the Hon’ble Supreme Court set aside the trial court judgement and acquit the accused. The bail bond of ₹ 10,000/- was cancelled. Further, it directed the District Legal Services Authority, Koraput to ensure rehabilitation or resettlement with the assistance of District Collector, Koraput. (2026 INSC 802)



In a *Suo Moto Writ Petition (Criminal)* instituted as *In Re: Condition Being Imposed While Granting Bail by High Court of Orissa and District Courts in the State of Odisha and Ancillary Issues*, the Supreme Court of India examined bail conditions imposed by courts in Odisha on persons arrested in connection with protests against land acquisition for a Vedanta bauxite mining project. The Court particularly considered conditions requiring accused persons to clean police stations for about two months as a prerequisite for bail. The Supreme Court found such conditions to be “abhorrent, degrading” and unknown to law, observing that they undermined the dignity of the accused and effectively presumed their guilt. It expressed serious concern that the conditions could reflect caste-based bias, particularly as many accused belonged to marginalised Adivasi and Dalit communities. Emphasising the constitutional guarantees of equality and dignity under Articles 14, 15, 16 and 17, the Court held that such conditions were inconsistent with constitutional values and human rights. It consequently declared the impugned and similar bail conditions null and void, directed all courts in Odisha to remove them from bail orders, and prohibited the imposition of similar requirements for granting bail. The Court further directed that its order be circulated to all High Courts to prevent the replication of such oppressive and “caste-coloured” bail conditions across the country. (2026 LiveLaw (SC) 472).

1. Bail is the temporary release of an accused person from custody, usually subject to certain conditions, while the criminal case is pending.
2. Parole is the conditional release of a convicted prisoner from imprisonment before the completion of the sentence, generally for a specific urgent purpose. (Doesn't count towards serving sentence)
3. Furlough is the temporary release of a convicted prisoner (serving long term sentence) to allow them to maintain family and social relationships, granted periodically subject to prescribed conditions. (Counted as sentence period)



THE FIRST CHIEF JUSTICE OF ODISHA

Justice Bira Kishore Ray – The First Chair, Where Justice Knew No Distinction

In the early years of post-Independence India, 26 July 1948 marked a new beginning in Odisha's judicial history. On that day, the Orissa High Court formally began its journey at Cuttack, giving the Province its own High Court and a distinct institutional forum for the administration of justice. But behind that historic date lay years of demand, discussion and effort.

Behind this historic beginning stood a jurist whose name would become inseparable from the Court's early history—Justice Bira Kishore Ray, its first Chief Justice. But before looking at what he contributed to Odisha's judiciary, it is worth knowing a little about the man behind this historic position.

Born on 21 October 1891, Justice Bira Kishore Ray graduated from Ravenshaw College and obtained his Law degree from Calcutta University. He became a leading figure of the Orissa Bar for more than fifteen years and was appointed the first Advocate General of the new Province of Orissa in 1937. In 1945, he was elevated to the Patna High Court.

His journey, however, did not begin with the establishment of the High Court. His contribution to Odisha's judicial history had already taken shape years earlier.

The demand for a separate High Court gained momentum when the High Court Bar Association at Cuttack passed a resolution on 26 July 1938 seeking one. In 1942, Ray chaired the committee constituted to examine the proposal. Its report, published in 1943, concluded that a separate High Court would “round off the organization of the Province” and lead to “more speedy and convenient administration of Justice.”

Years of discussion and preparation finally reached their destination on 26 July 1948. The Orissa High Court was inaugurated at Cuttack by H.J. Kania,



Picture source- OdishaBytes

Born: 21 October 1891 | First Advocate General of Odisha: 1937 | First Chief Justice of Orissa High Court: 26 July 1948–30 October 1951 | Died: 26 July 1958

then Chief Justice of the Federal Court of India. Justice Ray took charge as the first Chief Justice, with B. Jagannadha Das, L. Panigrahi and R.L. Narasingham as the three Puisne Judges. The Court thus began its journey with just four judges.

THE COURT HE ENVISIONED

An institution is remembered not only for when it was created, but also for the principles on which it was built. In his inaugural vision, Justice Ray spoke of protecting the “rights, privileges and liberties of the people” and standing on the “solid rock of ideal justice tempered with mercy”—justice making no distinction between “the rich and the poor, the subject and the State, and the mass and the class.”

He served as Chief Justice until 30 October 1951. Remarkably, Justice Ray died on 26 July 1958, exactly ten years after the inauguration of the High Court whose foundation he had helped shape.

His story is therefore not simply about being the first Chief Justice. It is about a jurist who was part of the journey that made Odisha's own High Court possible—and who helped give that institution its earliest vision of justice

Monsoon Session 2026: Five Bills, Five Outcomes



Parliament's monsoon session, running July 20 to August 13, 2026, has pushed through four significant bills, with a fifth still under review.

Public Examinations (Prevention of Unfair Means)

Amendment Bill, 2026: Introduced in the Lok Sabha on July 27 and passed by both Houses by July 30. Its key features: individual offenders now face five to ten years in jail and a fine up to ₹50 lakh, up from three to five years and ₹10 lakh. Fines on service providers rise from ₹1 crore to ₹5 crore, with debarment extended from four to eight years. Persons-in-charge of a service provider face a minimum five-year term, and organised crime carries a minimum seven-year term with a minimum ₹10 crore fine. The Bill also empowers a special task force for investigation, sets a two-month investigation deadline, and requires every state to designate a Fast Track Court to try these cases within three months of the chargesheet.

Prevention of Insults to National Honour (Amendment)

Bill, 2026: Introduced in the Rajya Sabha on July 24 and passed by both Houses. It amends Section 3 of the 1971 Act to bring Vande Mataram under the same protection as the National Anthem. Disrupting its singing now draws up to three years in jail, minimum

one year for repeat offenders, closing a gap open since 1971, though it also widens the ground for criminal complaints over political and cultural expression.

Registration of Births and Deaths (Amendment)

Bill, 2026: Introduced July 29, passed by the Lok Sabha on July 31. Delays of one to two years still need a District or Sub-Divisional Magistrate's order; beyond that, a Judicial Magistrate. It tightens verification but adds a hurdle for rural families registering years late.

Supreme Court (Number of Judges) Amendment

Bill, 2026: Introduced July 20, passed by the Lok Sabha on August 3 and Rajya Sabha on August 4. It raises the Court's sanctioned strength from 33 to 37 judges, replacing a May 2026 ordinance. News on Air reports 75,410 new filings last year against just over 65,000 disposed, the backlog it targets.

Foreign Contribution (Regulation) Amendment Bill,

2026: Introduced in the Lok Sabha on March 25, 2026. On August 12, amid Opposition protests, the Lok Sabha referred it to a 31-member Joint Parliamentary Committee for scrutiny, per Deccan Chronicle. The JPC must report by the first week of the Winter Session, so the Bill stays pending.

(Decoding the law for the people it serves)

RIGHT TO INFORMATION: WHEN INFORMATION BECOMES YOUR RIGHT



Why is my application still pending? Where was public money spent? Why was this decision taken? These may sound like ordinary questions, but behind them lies a powerful democratic idea: people should have the right to know what is being done, decided and spent in their name. And this is where the Right to Information gives people a legal voice.

The journey of the Right to Information (RTI) in India was not simply a law made in Parliament; it grew from people's struggles for answers. In the 1990s, workers and villagers in Rajasthan, through the Mazdoor Kisan Shakti Sangathan (MKSS), began demanding access to government records relating to their wages and public works. Among the prominent voices of this movement was social activist Aruna Roy, one of the founding members of MKSS. They asked to see muster rolls, bills and vouchers. When these records were read out in public hearings, known as Jan Sunwais, discrepancies in government spending could be brought before the community. The movement turned a simple demand for access to records into a larger call for transparency, accountability and the right to know. This growing movement, along with similar efforts across India, contributed to the demand for a national law. The Right to Information Act, 2005 received the President's assent on 15 June 2005 and came fully into force on 12 October 2005.

Its purpose was to give people practical access to information held by public authorities and promote transparency and accountability in their working.

So, how can an ordinary person use this right?

A person can submit an RTI application to the concerned Public Information Officer (PIO) and state clearly what information is required. There is no need to explain why the information is wanted. If the application belongs to another public authority, it should ordinarily be transferred within five days. Information is generally to be provided within 30 days; where it concerns the life or liberty of a person, the limit is 48 hours.

But RTI is not an unlimited right. Sections 8 provide exemptions for certain protected information, including specified matters concerning national security, privacy and other legally protected interests.

If information is refused, incomplete or not provided, the right does not end there. A person can file a first appeal and, where necessary, a second appeal before the appropriate Information Commission. In certain cases, the PIO may also face a penalty under the Act.

In simple words, RTI changed the position of an ordinary person from merely asking, "Why?" to having a legal means to ask, "Show me the information."



RIGHT TO INFORMATION



From the “Grammar of Anarchy” to the Grammar of Dissent



Picture source- AI Generate

The recent Gen Z-led protests in India, have brought an old constitutional question into contemporary focus. The protests, which gained considerable momentum through social media and youth mobilisation, have also prompted renewed debate over the place of direct action in a constitutional democracy.

In his address to the Constituent Assembly on November 25, 1949, Dr. B.R. Ambedkar warned that once a constitutional democracy is established, methods like civil disobedience, non-cooperation, and satyagraha lose their justification. He famously called these extra-constitutional actions the “Grammar of Anarchy,” urging the nation to rely strictly on peaceful, legal, and parliamentary methods. Grammar of Anarchy was premised on the availability of constitutional methods for securing political and legal change. His concern was not necessarily with dissent itself, but with substituting extra-constitutional coercion for institutions established by the Constitution.

Yet contemporary constitutional law presents a more nuanced picture. In *Ramlila Maidan Incident, In Re*, the Supreme Court expressly recognised peaceful demonstration as flowing from Articles 19(1)(a) and 19(1)(b), observing that legitimate dissent is a defining feature of democracy.

Thus, Ambedkar’s warning cannot simply be transformed into a constitutional prohibition against protest.

The jurisprudence beginning with *Himat Lal K. Shah v. Commissioner of Police* indicates that the State may regulate the time, place and manner of assemblies in the interests of public order, but regulation cannot become an unreasonable negation of Article 19(1)(b). In appropriate circumstances, authorities may require organisers to intimate the police and comply with reasonable conditions concerning routes, safety and public order. Later, *Amit Sahni v. Commissioner of Police* reaffirmed that protest is protected, while public ways cannot be occupied indefinitely to the detriment of other rights.

The Gen Z protests place Ambedkar’s constitutionalism in conversation with contemporary rights-based dissent. The constitutional tension, therefore, is not simply protest versus law. It is between institutional constitutionalism and democratic dissent where the question remains, how far can dissent travel before it encounters the State’s obligation to preserve public order?

The Constitutional Architecture of Belonging: Rights, Duties and Patriotism

The relationship between Fundamental Rights and Fundamental Duties is often presented as a simple constitutional bargain: rights confer freedoms, while duties impose responsibilities. Indian constitutional jurisprudence, however, suggests something more subtle. Fundamental Duties, though non-justiciable, can operate as interpretive principles in determining the content and limits of constitutional freedom. The question is not whether duties override rights, but how both may be read together within the constitutional scheme.

This becomes particularly significant where national symbols are concerned. Article 51A(a) requires every citizen "to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem." Yet what constitutes respect cannot necessarily be determined by majoritarian expectations. In *Bijoe Emmanuel v. State of Kerala* (1986), three children, for reasons of religious conscience, did not sing the National Anthem but stood respectfully while it was being sung. The Court held that their conduct did not violate Article 51A(a): the constitutional duty to respect the Anthem did not entail a corresponding compulsion to sing it.

The interpretive significance is considerable. The Court effectively adopted a harmonious construction of Articles 19(1)(a), 25 and 51A(a), refusing to allow a Fundamental Duty to become an indirect source of coercion against freedom of expression and conscience. Respect was treated as the constitutional purpose; singing was only one possible mode of participation, not its legally mandatory form.



Picture source- AI Generate

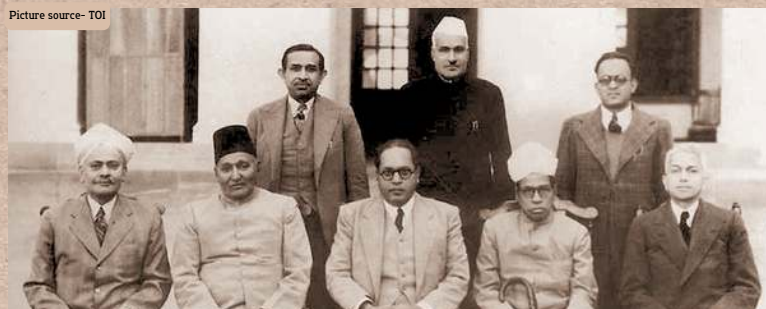
Naveen Jindal v. Union of India (2004) reveals the other side of the same constitutional relationship. The Court recognised the right to fly the National Flag with dignity as an expression protected under Article 19(1)(a), while expressly acknowledging that Parts III and IVA could be read together when balancing individual rights against regulatory measures.

The deeper jurisprudential proposition, therefore, is that Fundamental Duties do not merely demand obedience; they can shape the constitutional meaning of responsible freedom. But that interpretive role has limits. A duty cannot, by itself, create a restriction on a Fundamental Right where the Constitution requires such restriction to satisfy the applicable constitutional conditions.

This is perhaps where the constitutional idea of patriotism acquires its most distinctive character. *Bijoe Emmanuel* protects the citizen whose conscience requires silence; *Naveen Jindal* protects the citizen who chooses symbolic expression. Both demonstrate that constitutional patriotism is not a demand for identical conduct rather a framework in which responsibility towards the nation and freedom of the individual coexist. The Constitution asks the State to respect the constitutional freedom through which patriotism itself is expressed.

The Constitution begins before Article 1: Understanding the Preamble

Picture source- TOI



BR Ambedhkar and other members of the Drafting Committee who devised the Indian Constitution

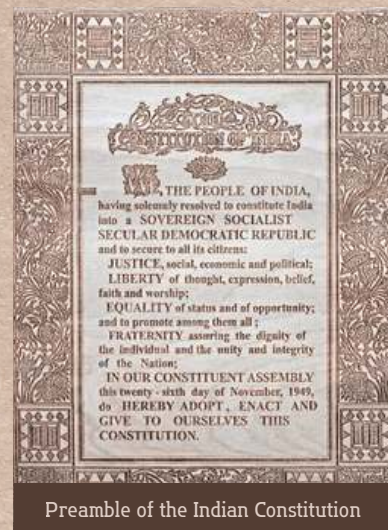
The Constitution does not tell India how it should work, it tells India what India should become.

The Preamble might look on the surface to be a short introduction to the Constitution. Those few lines tell of an extraordinary story, of a newly independent nation trying to establish its identity, its aspirations and values that would shape its future. The Preamble starts with the words “We the People of India” which puts the people at the core of the constitutional development of India.

But why does the Constitution begin with these words? Why doesn't it start with Article 1 which states: India, that is Bharat, shall be a Union of States?

The solution is to comprehend the purpose of a Constitution. Article 1 is the one which tells us what India is. The Preamble is akin to a declaration of what India wants to become.

It speaks of India as a Sovereign, Socialist, Secular, Democratic Republic and assures its citizens Justice, Liberty and Equality, and it promotes Fraternity, the dignity of the individual, and the unity and integrity of the nation. These are not pretty phrases. They are the ideals enshrined in the Constitution and against which the working of the State and society can be measured. Justice questions our social structures and institutions for fairness.



Liberty is a protection of Freedom of thought, speech, belief, and expression. Equality speaks against discrimination and privilege. As Fraternity reminds us, a democracy cannot survive without a feeling of community as well as rights.

The Preamble itself is a testimony to the evolution of the Indian Constitution. The words “Socialist”, “Secular” and “integrity” were added through the Forty-Second Constitutional Amendment in 1976. The Supreme Court in *Kesavananda Bharati v. State of Kerala* (1973) accorded a lot of importance to the Preamble in the context of the core values of the Constitution and basic structure of the constitutional order.

But, the most convincing ones are the first five: “We, the People of India.”

In the context of the Independence Day in India, these words call us to think beyond the Independence from Colonial Rule. Political independence brought freedom to India, the Constitution provided that freedom a constitutional direction.

So, pause at the beginning, before getting to Article 1.

What were the “People” who gave this Constitution, and what is their promise calling upon us, nearly eight decades later?

Maybe Article 1 is not quite the first article of the Constitution because first, a country needs to know what it's for.

How Well Do You Know the Constitution That Shapes Your Everyday Life?

1. The first words of the Constitution are “WE, THE PEOPLE OF INDIA” What does this most strongly imply?

- A. The people are the source of the power of the Constitution
- B. The Constitution can be interpreted by only elected representatives.
- C. The people directly pass every law in Parliament
- D. Citizens can change the Constitution whenever they wish

2. Which of the following words was NOT in the original Preamble, which was adopted in 1949?

- A. Democratic
- B. Republic
- C. Secular
- D. Sovereign

3. Imagine that a person is prevented from expressing an opinion peacefully. Which of the constitutional freedoms is most directly at stake?

- A. The right to vote
- B. Freedom of religion
- C. Freedom from forced labour
- D. Cultural and educational rights

4. Which of the following is NOT a Fundamental Right in the constitution today?

- A. Right to Freedom of Religion
- B. Right to Freedom
- C. The right to property
- D. Right against Exploitation

5. What can occur if an ordinary law is in conflict with a Fundamental Right?

- A. The Constitution is automatically superseded by the ordinary law.
- B. The law can be challenged in court for its constitutionality
- C. If passed by a majority, the law shall be valid.
- D. It is valid only at the discretion of the President

6. The most closely associated constitutional value with treating people as equals irrespective of their status is:

- A. Equality
- B. Fraternity
- C. Sovereignty
- D. Republic

7. What is the importance of 26 January in the history of Indian Constitution?

- A. India attained independence on that date. C. On that date, India gained independence.
 - B. That was the first day of the first meeting of the Constituent Assembly.
 - C. On that day the Constitution was adopted.
 - D. That day is the date of the adoption of the Constitution.
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