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## Constitutional Patriotism: The Indian context

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*In the last few years, we came across a not-so-common term in the Indian discourse: Constitutional patriotism. Whenever this term comes into any conversation, the implicit assertion is that it is the Constitution and only the constitution that must decide what must be the fate of the nation. The Constitution is kept at a higher pedestal subsequently making the legitimacy of the Constitution supreme. It became a symbol of the collective voice of the people on many occasions. In the article, we would understand this creature known as Constitutional patriotism in quite depth. Firstly, it would trace and decode its origin and history with its purpose. Then it would be seen and by contemplating its usage by people and judiciary in popular examples in the Indian environment. On the face of it, the idea seems noble and worth engaging but, most importantly, how identical is the idea with the actual functioning of the Constitution and intention of the Constitutional makers is something which also must be looked into.*

**Keywords:** *constitution, patriot, India.*

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### INTRODUCTION

“The Preamble is the moolbhav (core idea) of the Constitution. It speaks of equality for all, of secularism. The CAA is trying to destroy it. How can the government keep out one religion from the citizenship act? It is important to read the Preamble so that everyone knows what it says. And if the prime minister has forgotten the Preamble, he needs to be reminded of it.”

Bhim Army chief Chandra Shekhar Azad said this to Economic Times Magazine during the period when he read out the Preamble on the steps of Jama Masjid in Delhi.<sup>1</sup> Not just the Bhim Army Chief, but the common people too took the streets holding the constitution and chanting the Preamble as a hymn to protest against the alleged discriminatory citizenship laws. The underlying motive was to depict their allegiance and faith in the constitution rather than any government. The protesters made slogans, held placards, sang songs, and performed skits and plays but everything was either in the presence of a physical copy of a Constitution of India or under the essence of constitutional ideas and constitutional morality. This is what is known as **constitutional patriotism**, where people or citizens of a country trace the origins of their patriotism in the constitution or constitutional ideas and principles which have liberal democratic values and norms. Constitutional patriotism might have taken a front seat in the current socio-political discourse for quite some time but this school of thought has not originated in India.

The idea was born in post-war West Germany. The political philosopher Dolf Sternberger, a pupil of Hannah Arendt's, coined it in the late 1970s; it was subsequently taken up by Jurgen Habermas, and through his work became better known in the English-speaking world. In Germany, it has often been criticized as a poor substitute for a proper national identity—a substitute that was born to become superfluous after the country's unification. Nevertheless, while the idea was born in a post-war Germany—a state where an unproblematic understanding of the nation was simply no longer available after Nazism—the potential uses of constitutional patriotism have been proffered, as a solution to the difficult issue of political allegiance within increasingly multicultural societies. Jurgen Habermas himself repeatedly has advanced the idea that it might be possible to decouple a political culture characterized by shared universalist principles—constitutional principles, in short from the “majority” culture of a given polity, thereby promoting political inclusiveness. Moreover, constitutional patriotism

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<sup>1</sup> Charmy Harikrishnan 'Anti-CAA protests: People hold up Constitution as the only document that matters' (*Economic Times*, 26 January 2020)  
[https://www.google.com/amp/s/m.economictimes.com/news/politics-and-nation/anti-caa-protests-people-hold-up-constitution-as-the-only-document-that-matters/amp\\_articleshow/73618451.cms](https://www.google.com/amp/s/m.economictimes.com/news/politics-and-nation/anti-caa-protests-people-hold-up-constitution-as-the-only-document-that-matters/amp_articleshow/73618451.cms) accessed 06 January 2022

has been advanced as a way of conceptualizing political integration at the supranational level- most prominently in the context of the draft Treaty establishing a Constitution for Europe.<sup>2</sup>

Such a vision seems a good idea for Germany not just to recover from the post-nazi guilt but to unite the people living in a territory with an intangible thread called constitutional patriotism which makes the constitution symbolic. This symbolism validates the citizenship of the people irrespective of their religion, culture, and ethnicity. It becomes crucial to understand how credible and suitable is a patriotic view that took birth after the terrifying event which occurred under fascist rule- the holocaust<sup>3</sup> in the Indian context where diversity exists concerning religion, culture, caste, language, and above all definition regarding nation and nationalism.

## THE INDIAN VERSION

A country like India consisting of several communities trying to live under a roof peacefully and where people are alleged to be communally charged up and divided into several other such lines, constitutional patriotism is touted as a panacea that could solve such rifts. Constitutional patriotism is a modern concept anchored in the salience of the nation-state, offering the sugar substitute of state-nation. What is sought is to imitate the affective capacity of the exclusivist orientation of nationalism with an equally effective enthusiasm for the state.<sup>4</sup> People are aspired to believe in the constitutional ideas which came to be known after 26<sup>th</sup> January 1950 so that they could find unanimity as to what is the source of their nationalistic values. Citizenship is made to be the criteria to become eligible for one to be a constitutional patriot as a citizen becomes bound by the constitution and its provisions. The proponents call this a viable option for unification in a country like India which has witnessed partition on religious lines. A constitutional patriot would refrain from accepting something which is either

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<sup>2</sup> Jan-Werner Muller, 'A general theory of constitutional patriotism' (*International Journal of Constitutional Law*, 20 December 2007) <<https://doi.org/10.1093/icon/mom037>> accessed 6 January 2022

<sup>3</sup> Michael Berenbaum, 'Holocaust' (*Britannica*) <<https://www.britannica.com/event/holocaust>> accessed 06 January 2022

<sup>4</sup> Aakash Singh Rathore & Ashish Nandy, 'Hate is hot in India. Colder ideas like constitutional patriotism must work harder to win' (*The Print*, 4 February 2020) <<https://www.google.com/amp/s/theprint.in/pageturner/excerpt/hate-is-hot-in-india-colder-ideas-like-constitutional-patriotism-must-work-harder/359421/%3famp>> accessed 07 January 2022

not explicitly or implicitly mentioned in the constitution of India or is at loggerheads with the basic structure of the Constitution<sup>5</sup>. Since the Constitution came into force after the independence and for independent India, 15<sup>th</sup> August 1947 is considered as the date of the creation of the nation. The constitutional patriotism of one thus does not exceed before the date of independence. Constitutional patriotism is a type of territorial nationalism in which the inhabitants of a particular territory share a common national identity based on the constitution.

A popular example of constitutional patriotism in the Indian discourse could be seen in the National Anthem controversy. Whether a person going to watch a movie in a cinema theatre should stand up for the national anthem or not? The counter-argument to standing for the national anthem inside a movie hall was no person should be forced to be on her feet to prove her patriotism for her nation especially when she has signed up for just watching a movie. When the case<sup>6</sup> reached the Supreme Court, it ruled on 30<sup>th</sup> November 2016: “.....when the National Anthem is sung, the concept of protocol associated with has its inherent roots in National identity, National integrity, and *constitutional patriotism*. All the cinema halls in India shall play the National Anthem before the feature film starts and all present in the hall are obliged to stand up to show respect to the National anthem.”

On 9 January 2018, the Supreme Court modified the 2016 judgement: “The order passed on 30<sup>th</sup> November 2016, is modified to the extent that playing of the National Anthem prior to the screening of feature films in cinema halls is not mandatory, but optional or directory.”<sup>7</sup> The fact that makes this case curiously peculiar is that the conflict regarding constitutional patriotism was *within* the *judiciary*, the organ of the state which works within the four corners of the constitution, the same book from which the patriots find the source of their patriotism. Constitutional patriotism is often loosely understood as constitutional morality. The former chief justice Dipak Mishra defined it as adherence to the core principles and subtext of the constitution. He also cites B.R. Ambedkar, who, he said, insisted on the commitment by

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<sup>5</sup> *Kesavananda Bharati Sripadagalvaru & Ors. v State of Kerala & Anr.*[1973] 4 SCC 225

<sup>6</sup> *Shyam Narayan Chouksey v Union of India* [2016]

<sup>7</sup> *Shyam Narayan Chouksey v Union of India* [2018] 2 SCC 574

citizens to constitutional morality. In Ambedkar's view, he said, nobody should treat the constitution as alien or that he does not belong to the Constitution. Over time, when Ambedkar spoke about constitutional morality, he hoped that one day he would see the concept encompass every field and all rights guaranteed by the constitution.<sup>8</sup>

## THE IDEA OF THE MAKERS

It would do grave injustice to constitutional patriotism without talking about the creators who made the creation to which people trace the origin of their public spirit and the creation itself. This becomes important to analyze whether the makers and the preachers share similar visions, goals, and objectives. B.R. Ambedkar in his last speech to the Constituent Assembly said: "If we wish to maintain democracy not merely in form, but also in fact, what must we do? The first thing in my judgment we must do is to hold fast to *constitutional methods* of achieving our social and economic objectives. The second thing ..... not to lay liberties at the feet of even a great man, or to trust him with the power which enables him to subvert their institutions. The third thing we must do is not to be content with mere political democracy. We must make our political democracy a social democracy as well."<sup>9</sup>

It is pretty clear in his last speech that Dr. Ambedkar was severely against unconstitutional methods and hero-worshipping of people holding political power but rather advocates constitutional ideas and building a social democracy. In *The Discovery of India*, Jawaharlal Nehru suggests that India was a nation in the making throughout the annals of history despite the fact that *there was no such political entity as India before the constitution* in other words, the

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<sup>8</sup>Priyanka Mittal 'Everyone must follow constitutional morality, says former CJI Dipak Misra' (*Mint*, 5 October 2018)

<<https://www.google.com/amp/s/www.livemint.com/Politics/C9xHmVAvoUW7ziiNhORNAO/Everyone-must-follow-constitutional-morality-says-formerCJ.html%3ffacet=amp>> accessed 08 January 2022

<sup>9</sup>BR Ambedkar 'Why BR Ambedkar's three warnings in his last speech to the Constituent Assembly resonate even Today' (*Scroll.in*, 26 January 2016) <<https://www.google.com/amp/s/amp.scroll.in/article/802495/why-br-ambedkar-s-three-warnings-in-his-last-speech-to-the-constituent-assembly-resonate-even-today>> accessed 08 January 2022

secular and liberal values instantiated in the Constitution were constructed as valuable and viable in terms of a hoary.<sup>10</sup>

The *Preamble*<sup>11</sup> is considered to be the essence of the constitution. The heartbeat of the great organic document encapsulates the characteristics of aspirations of the people and sets out the ideals of identifying the nature of the state the constitution intends to have and further epitomizes the fundamental philosophy of an egalitarian society. Therefore, the principles of justice, equality, liberty, fraternity, are core to the constitution. Not just these, but, words- sovereign, democratic, secular, republic, socialist hold utter importance even though added after twenty-seven years of the enactment of the constitution.

### A TRUNCATED VISION

Rejecting RSS chief Mohan Bhagwat's suggestion for infusing patriotism, AIMIM leader Asaduddin Owasi said he won't chant 'Bharat Mata ki Jai' (Victory for Mother India). "I don't chant that slogan. What are you going to do, Bhagwat sahib? Nowhere in the Constitution, it says that one should say: Bharat Mata ki Jai", he said.<sup>12</sup> Parliamentarian Mr. Owaisi in one go slammed Kiran Chandra Bandyopadhyay's creation<sup>13</sup> which was incorporated into the national struggle by many freedom fighters by calling it absent in the constitution. One of the major fallouts of constitutional patriotism is that it refrains from looking outside the constitution as if whatever doesn't find its mention in the Constitution of India is eventually, antithetical to it.

Another drawback in constitutional patriotism is that it somehow interprets that the independence from the white man coloniser and subsequently, the adoption of the constitution presses a restart button which disconnects the past from its present. It refrains

<sup>10</sup>Aakash Singh Rathore & Ashish Nandy (n 4)

<sup>11</sup>Constitution of India, 1950

<sup>12</sup> 'Won't say Bharat Mata ki Jai: Owaisi' (*The Hindu*, 14 March 2016)

<<https://www.google.com/amp/s/www.thehindu.com/news/Won%25E2%2580%2599t-say-Bharat-Mata-ki-Jai-Owaisi/article14155038.ece/amp/>> accessed 08 January 2022

<sup>13</sup> Elizabeth Roche 'The Origins of Bharat Mata' (*Livemint*, 18 March 2016)<[https://www-livemint-com.cdn.ampproject.org/v/s/www.livemint.com/Politics/ISOX1BWMcgypBUV8mUb8cJ/The-origins-of-Bharat-Mata.html?amp\\_js\\_v=a6&amp\\_gsa=1&facet=amp&usqp=mq331AQKKAFAQrABIIACA%3D%3D](https://www-livemint-com.cdn.ampproject.org/v/s/www.livemint.com/Politics/ISOX1BWMcgypBUV8mUb8cJ/The-origins-of-Bharat-Mata.html?amp_js_v=a6&amp_gsa=1&facet=amp&usqp=mq331AQKKAFAQrABIIACA%3D%3D)> accessed 08 January 2022

from looking beyond 1947 as if whatever happened before independence is completely unrelated to modern independent India. The places of worship act<sup>14</sup> fall on similar lines as except Ram Janma Bhumi-Babri Masjid it provides for the maintenance of the religious character of any place of worship as it existed on the 15<sup>th</sup> day August 1947. If the constitution is believed to be the rulebook after 1947 then, the rulebook also recognizes justice<sup>15</sup> and justice can never be achieved without presenting the unadulterated truth. It somehow masquerades the denial of India before 1947. The following facts (articles, Constituent Assembly debates, and Objective Resolution) present a picture that the Constitution makes the utmost effort not to diminish the history or to be at loggerheads with the civilisational ethos of the land.

**Article 1<sup>16</sup>:** (1) India that is *Bharat*, shall be a Union of States. The reason why the makers chose Bharat as the name of the country can be accurately described by Kamalapati Tripathi during the Constituent Assembly debate regarding article 1: “Even after thousands of years, our country is still known as ‘Bharat’. Since Vedic times, this name has appeared in our literature. Our Puranas have all through eulogised the name of Bharat. The moment we pronounce this name, the pictures of *our ancient history and ancient glory and our ancient culture* come to our minds.”<sup>17</sup>

**Objective Resolution:** “I (Jawaharlal Nehru) beg to move: (8) this *ancient land* attains its rightful and honoured place in the world and make its full and willing contribution to the promotion of world peace and welfare of mankind”<sup>18</sup> The Constituent Assembly sat for the first time on 9<sup>th</sup> December 1946. Over the next 2 years and 11 months, the Assembly sat for a total of 166 days to frame the Indian Constitution. The final session of the Constituent Assembly took place on 24<sup>th</sup> January.<sup>19</sup> On being criticized for the delay and too much time consumption for drafting the constitution, Dr. B.R. Ambedkar said “If the Drafting Committee

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<sup>14</sup> Places of Worship Act, 1991

<sup>15</sup> Constitution of India, 1947

<sup>16</sup> Constitution of India, 1950, art 1

<sup>17</sup> ‘Constituent Assembly Of India Debates (Proceedings)- Volume IX’ (*Constitution of India, 18 September 1949*)

<[https://www.constitutionofindia.net/constitution\\_assembly\\_debates/volume/9/1949-09-18](https://www.constitutionofindia.net/constitution_assembly_debates/volume/9/1949-09-18)> accessed 08 January 2022

<sup>18</sup> *Ibid*

<sup>19</sup> *Ibid*



was drifting, it was never without mastery over the situation. It was not merely angling with the off chance of catching a fish. It was searching in known waters to find the fish it was after. To be in search of something better is not the same as drafting.”<sup>20</sup> The “known waters”, Dr. Ambedkar mentioned could be either the land of India or the legal work of documentation since he was a reputed scholar of law and political science<sup>21</sup>. The interpretation on this could vary but it is hardly debatable that Dr. Ambedkar was talking about something with which he was acquainted. That is to say, he was not on an unknown venture but continuing the progress with something familiar.

## CONCLUSION

People with a shared vision shared history, and shared aspirations make up a nation. The constitution is a product of collective will. It was made to bring people within a single umbrella. Constitutional patriotism is presented with similar noble intentions but the fallacy lies in its misinterpretation of the document. There is no doubt that the Constitution is the supreme document and every other legislature has to be in consonance with it. The problem is that the Constitution is mistaken to be a “holy book” sent by the gods and goddesses which is unaffected by political will. The 42<sup>nd</sup> Amendment<sup>22</sup> and the Right to Education Act<sup>23</sup> are a few examples to show that the Constitution is not a sacrosanct document but at the same time, there is a basic structure doctrine that can’t be perturbed by Article 368. Let’s say if the basic structure doctrine judgment is overruled by a higher judge bench then what patriotic source would be the people left with? Another question that the people must ask themselves is if, the word ‘secular’ was inserted only in 1976 then what was the character of the state from 1950 to 1975? These are the questions that the people of this nation must ask to be certainly aware of the nature and character of the Constitution but until then we can conclude that the

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<sup>20</sup> Sonakshi Awasthi, ‘When BR Ambedkar defended time taken for drafting constitution’ (*The Indian Express*, 6 December 2017) < <https://www.google.com/amp/s/indianexpress.com/article/research/when-ambedkar-defended-time-taken-for-drafting-constitution-4970935/lite/> > accessed 06 January 2022

<sup>21</sup> Prasun Sonwalkar, ‘Archives released by LSE reveal BR Ambedkar’s time as a scholar’ (*The Hindustan Times*, 9 February 2016) < <https://www.hindustantimes.com/india/archives-released-by-lse-reveal-br-ambedkar-s-time-as-a-scholar/story-N2sq6Bm6OlXwQZkz6vBzvM.html> > accessed 06 January 2022

<sup>22</sup> Constitution of India, 1976

<sup>23</sup> Right to Education Act, 2009



Constitution is a semi-fluid document. Constitutional patriotism does grave injustice to history, law, sociology, and collective psychology by treating the book as a document that disconnects the present from the past. The reason I have emphasized so much on the tenses is that without having a clear picture of the past no nation can carve out a pellucid future for her people. This is not at all my case to counter the legitimacy of the Constitution and it is also not at all my position to call one's faith in the Constitution dubious or in some way vacuous but blindly conforming to it without understanding its true intent is as good or as bad as hero-worshipping of a political leader.