

Democracy, Constitution, and National Power

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Pranay Kotasthane

Takshashila Institution

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Dharma protects those who protect it.

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

Matsyanyaya and Constitutional Morality

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

What This Talk IS and IS NOT

- ▶ A strategic argument for why the constitutional order is India's greatest force multiplier
- ▶ A framework for thinking about civil-military relations
- ▶ An honest engagement with the Constitution's imperfections

- ▶ Not a civics lecture
- ▶ Not a legal commentary
- ▶ Not a partisan argument

Republic Democracy

- ▶ **Democracy** is a procedural concept — it answers the question: *who decides?* The people, through elections.
- ▶ A **Republic** answers a deeper question: *what constrains the decision-makers?* The rule of law.
- ▶ India is both, but the republic idea comes first. Article 1: “India, that is Bharat, shall be a **Union** of States.”
- ▶ Majoritarianism without the rule of law is mob rule. The republic is the guardrail.

Nation, State, Government: A Crucial Distinction

Nation

A community of people bound by shared identity, culture, history

State

The constitutional and institutional order — the enduring framework

Government

The temporary custodian of state power, chosen by elections

The armed forces serve the State — the constitutional order — not the government of the day and not any particular vision of the nation.

This distinction is not academic. It is the foundation of

Not an Elite Project: A Common Myth I

- ▶ The standard narrative: 299 members of the Constituent Assembly, mostly upper-caste elites, drafted the Constitution for 400 million people.
- ▶ The reality is far more interesting. Rohit De and Ornit Shani's research¹ shows widespread participation — petitions, letters, engagement from ordinary citizens during and after the drafting.
- ▶ The Constitution was not imposed. It was a negotiated settlement among an extraordinarily diverse people.
- ▶ Its legitimacy comes not from perfection but from the breadth of its origins and the depth of its reach.

¹Ornit Shani, *How India Became Democratic* (2017); Rohit De, *A People's Constitution* (2018)

Asymmetric Federalism: A Design Choice, Not a Bug

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

The Social Revolution I

The Constitution attempted something unprecedented:

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

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

- ▶ **Equality vs. Equity**: Article 14 (equality before law) coexists with Articles 15(4) and 16(4) (special provisions for disadvantaged groups)

The Social Revolution II

- ▶ **Merit vs. Representation:** Every large organisation in India navigates this tension daily
- ▶ **Individual rights vs. Group rights:** When do community claims override individual freedoms?

These are not failures. These are the **inevitable tensions** of attempting social transformation through law.

The Constitution is Not Sacred

- ▶ Ambedkar himself said: “I feel that the Constitution is workable, it is flexible, and it is strong enough to hold the country together both in peacetime and in wartime. Indeed, if things go wrong under the new Constitution, the reason will not be that we had a bad Constitution.”²
- ▶ The Constitution has been amended **over 100 times**. This is not a weakness — it is the design.
- ▶ It provides the mechanisms for its own correction. It is a **living framework**, not a frozen scripture.
- ▶ The ability to course-correct within the system — rather than outside it — is itself a source of national resilience.

²B.R. Ambedkar, Speech in the Constituent Assembly, 25 November 1949

Easy Amendability: A Pressure Release Valve

- ▶ The US Constitution has been amended only **27 times in ~250 years**. India's has been amended **over 100 times in ~75 years**.
- ▶ This is not a flaw. Ambedkar cited Jefferson: *"We may consider each generation as a distinct nation, with a right, by the will of the majority, to bind themselves, but none to bind the succeeding generation."*
- ▶ Consequence of *immutability*: every political question becomes a judicial question. The US Supreme Court becomes hyper-politicised because it's the only way to update the Constitution. *Roe v. Wade* was overturned not because of a constitutional amendment but because judicial interpretation shifted.

▶ Consequence of *mutability*: grievances can be addressed

The Basic Structure Doctrine: India's Middle Path I

Three approaches to protecting a constitution from self-destruction:

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

The Basic Structure Doctrine: India's Middle Path II

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

India

*Kesavananda
Bharati* (1973)

The Basic Structure Doctrine: India's Middle Path III

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

What makes this remarkable:

- ▶ The list of basic features is **deliberately not exhaustive** — the Court has expanded it case by case
- ▶ It was decided by a **7-6 margin** — the closest possible vote on the 13-judge bench
- ▶ It was *tested* during the 1975 Emergency — and it held

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

The Emergency: The Constitution's Stress Test I

The Constitution provides for its own suspension — Articles 352-360 allow the declaration of Emergency, during which fundamental rights can be curtailed.

The 1975 Internal Emergency showed both the **danger** and the **resilience** of this design:

- ▶ Fundamental rights were suspended; press was censored; political opponents were jailed
- ▶ The Supreme Court, in the *ADM Jabalpur* case (1976), abdicated its role — holding that even the right to life could be suspended during Emergency
- ▶ But the system **self-corrected**: elections were held in 1977, the government was voted out, and the **44th Amendment** tightened emergency provisions to prevent recurrence

The Emergency: The Constitution's Stress Test II

For the armed forces, the lesson is critical: the Emergency is the one moment when constitutional morality was most under threat — and the system's survival depended on institutions (including the Election Commission) holding the line.

Your Oath

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

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

Why the President? Why the Constitution?

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

The Milley Moment

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

“We do not take an oath to a king or queen, or tyrant or dictator. We do not take an oath to an individual. We take an oath to the Constitution.”

He called the Constitution the **“moral north star”** for everyone in uniform.

- ▶ This was not routine. It was said when the constitutional order was under strain.
- ▶ The ability of a top general to say this — publicly — is itself a product of constitutional design.

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

The Information Advantage

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

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

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

This is not a soft, idealistic argument. This is about **strategic effectiveness**.

Multiple Advocacy: The Design Principle (Alexander George) I

Alexander George's research on presidential decision-making⁴ identified two dangers every executive faces:

1. **Excessive conformity** — groupthink, sycophancy, everyone telling the leader what they want to hear
2. **Destructive conflict** — bureaucratic turf wars that produce paralysis rather than good decisions

His solution: **multiple advocacy** — a structured system where competing viewpoints are deliberately surfaced, debated, and resolved before the decision-maker.

This requires:

Multiple Advocacy: The Design Principle (Alexander George) II

- ▶ A **custodian-manager** who ensures all sides are heard (not a gatekeeper who filters)
- ▶ **Balance of resources** among advocates — the dissenter must have access, information, and standing
- ▶ An executive willing to **hear uncomfortable truths** and reward honest disagreement

George showed that Bay of Pigs failed because multiple advocacy was suppressed. The Cuban Missile Crisis succeeded because Kennedy deliberately structured it.⁵

Multiple Advocacy: The Design Principle (Alexander George) III

The constitutional framework is what makes multiple advocacy possible at the national level. Without institutional protections for dissent, the system collapses into conformity — and conformity kills.

⁴Alexander L. George, *Presidential Decisionmaking in Foreign Policy: The Effective Use of Information and Advice* (1980)

⁵George and Stern, “Harnessing Conflict in Foreign Policy Making: From Devil’s to Multiple Advocacy” (2002)

The Counterfactual: What Happens When This Breaks Down

Russia, 2022: Putin invaded Ukraine based on intelligence corrupted by a system where nobody had incentives to tell the truth. The result: a strategic catastrophe born of an information failure.⁶

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

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

⁶Multiple post-invasion analyses suggest Russian intelligence agencies told Putin what he wanted to hear about Ukrainian resistance and Western resolve.

How India Kept the Army Democratic (Wilkinson) I

India and Pakistan inherited the **same** British Indian Army in 1947. Yet India preserved civilian control while Pakistan did not. Steven Wilkinson's research⁷ shows this was not an accident — it was **deliberate constitutional and institutional design**:

- ▶ **Ethnic balancing within the army**: variegated companies within battalions prevented any single group from dominating (e.g., a Punjab Regiment battalion had two Sikh and two Dogra companies)
- ▶ **Balancing outside the army**: large paramilitary forces (~850,000) served as a civilian-controlled hedge
- ▶ **Co-equal service chiefs** with restricted tenures
- ▶ **Intelligence surveillance** of senior officers
- ▶ **Indianisation** of the officer corps

How India Kept the Army Democratic (Wilkinson) II

Pakistan's Muslim League never debated army composition the way the Congress did. The result: an army dominated by West Punjab and NWFP — and the coups that followed.

But Wilkinson is honest about the trade-offs:

- ▶ These coup-proofing measures weakened the army before 1962
- ▶ They created an unwieldy defence bureaucracy
- ▶ The implicit bargain — the military stays out of politics but gets operational autonomy — has its own problems

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

⁷Steven I. Wilkinson, *Army and Nation: The Military and Indian Democracy since Independence* (2015)

Civil-Military Relations as an Information Problem

- ▶ Military leadership in a republic is fundamentally about **surfacing good information** regardless of whether the executive likes it or not.
- ▶ The constitutional structure creates the *space* for this. The oath to the Constitution — not to an individual — is what protects this space.
- ▶ This means:
 - ▶ Managing two worlds of information: what you tell those inside the system vs. what comes from outside
 - ▶ Visualising the President *in spirit* as the person you serve — the constitutional office, the enduring state
 - ▶ Speaking truth to power is not insubordination. It is the constitutional duty.

— Revisited

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

Protecting the constitutional order *is* protecting national

References I

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4. Rohit De, *A People's Constitution: The Everyday Life of Law in the Indian Republic* (2018)
5. Alexander George and Eric Stern, "Harnessing Conflict in Foreign Policy Making: From Devil's to Multiple Advocacy" (2002)
6. Irving Janis, *Groupthink: Psychological Studies of Policy Decisions and Fiascos* (1982)