

Constitutional Studies
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Lecture No. 06
Purpose History Preamble

Good day and welcome to constitutional studies week 3. This week we enter the constitutional text. In previous weeks we have focused on some background questions on constitution making and the purposes of a constitution. This week, we will begin our reading of the Constitution of India, 1950 with a place that we should start the Preamble.

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Week 1 and 2 Recap

Week 1 - focused on the tension between majoritarian democracy and a constitution. In particular we explored how a constitution maintains the democratic rules of the game.

Week 2 - focused on constitution making. We asked who should make a constitution and how and examined how the Constituent Assembly made the Indian constitution through a deliberative and consultative process

In Week 3 we begin our enquiry into the Constitutional text and begin where we should: with the Preamble.

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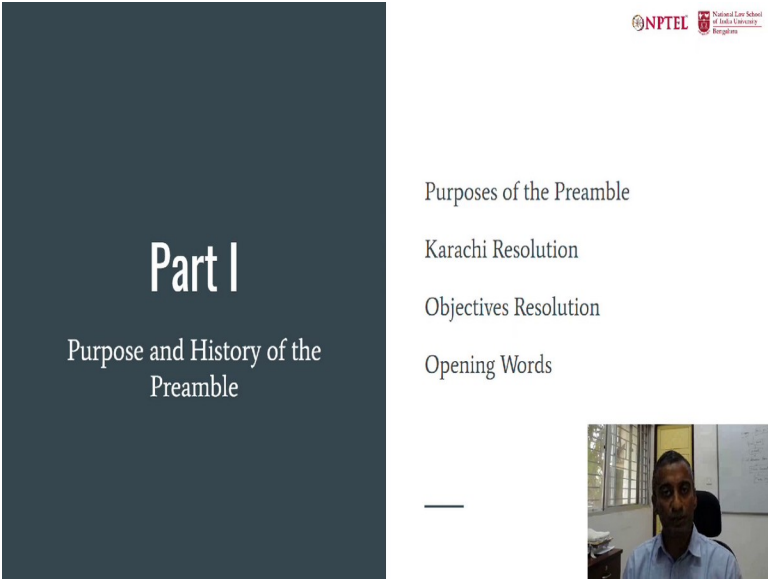
In week 1 and week 2, we covered some preliminary background that is essential for understanding the constitution of India. In week 1, we focused on the tension between majoritarian democracy and a constitution. In particular, we asked that how can a constitution maintain the democratic rules of the game. We explored at some length, why there is a need for a neutral body or room that can contain a deep divided society or a society with deep political, moral disagreements.

How can such a society agree to a common set of rules and the need for the process. We cannot leave that process entirely to the democratic voting, because democratic voting under various conditions requires some basic frameworks. In week 2, we focused on constitution making. If we

indeed make a constitution that plays this role as the neutral body of rules, how and who can make such a constitution and how should we make such a constitution. We looked at Indian experience looking at the Constituent Assembly and deliberative and consultative processes that resulted in the Constitution of India, 1950. That completed the first 2 weeks of the course.

In this week we begin our enquiry into the constitutional text of Constitution of India, 1950 and many of you may know this - it begins with a Preamble. The Preamble as in recent times has become an object of considerable public attention. People consider the reading of the Preamble as a mark of constitutional allegiance, much like the national anthem or the national flag. Why does the Preamble evoke such an emotional connection? What is in that Preamble and what does it mean; that is the purpose of this week's lecture. Let us get started.


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Part I
Purpose and History of the Preamble

- Purposes of the Preamble
- Karachi Resolution
- Objectives Resolution
- Opening Words

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In part 1 of this lecture, I will focus on the purpose and the history of the Preamble. Often times, we tend to think documents like Constitution of India were somehow contrived and put together by some kind of historical accident. As I suggested in week 2 of this course, it is quite the opposite. It is a closely deliberated and a closely drafted constitution where every word is chosen carefully. Moreover, the choice of words and choice of ideas has a long pre-history, not just the history of constitution drafting and constituent assembly between 1947 and 1950, but history going back in some cases 30 in some cases 50, 70 or more than 100 years in time.

So we need to understand how the choices we made have come to be crystallizing the constitution in a historical context. So, let us begin though by outlining what might be considered some very preliminary questions on the purposes of Preamble.

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The slide features a dark blue background with the title 'Why do Constitutions need a Preamble?' in white. Below the title is a list of five bullet points. To the right of the list is a calligraphic version of the Preamble of the Constitution of India. In the bottom right corner, there is a small inset video of a man speaking.

- Preface or Introduction to a Book?
- Goals and ideals that the framers seek to achieve through the Constitution
- Nature and form of polity
- Fundamental values of the Constitution
- Purpose of Constitutional provisions

Why do Constitutions need a Preamble?

• Preface or Introduction to a Book?

• Goals and ideals that the framers seek to achieve through the Constitution

• Nature and form of polity

• Fundamental values of the Constitution

• Purpose of Constitutional provisions

THE CONSTITUTION OF INDIA

WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN, SOCIALIST, SECULAR, DEMOCRATIC, REPUBLIC and to secure to all its citizens:

JUSTICE, social, economic and political;
LIBERTY of thought, expression, belief, faith and worship;
EQUALITY of status and of opportunity;
and to promote among them all
FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation.

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

On the right of the screen in the slide you could notice as I have said before beautifully calligraphed version of the original Preamble of India and we are going to. No, this is not the original Preamble of India, this is the current Preamble. We are going to spend some time reading how we came to this Preamble and reading the bare text of the Preamble. But, how should we think of the Preamble to the Constitution of India? Is it merely a preface or an introduction to a book, is that the way we should think about it?

In most prefaces of a book, the author will tell you why they came to write the book, what supports they received and acknowledged acts of gratitude. An introduction to a book may go further, it might outline the broad contours of the book, main ideas of the book and outline both the intellectual, social or political background that lies behind the writing of the book. The Preamble seems to fuse both the ideas of a preface as well as an introduction.

The Indian constitution is not very historically self-conscious in ways we are going to discuss shortly but it nevertheless operates as a guiding post to the rest of the constitution to follow. It sets out the Preamble sets out primarily 4 or 5 key items. It sets out the goals and ideals that the framers seek to achieve through the constitution. What kind of political society do they want to

construct, constitute in India, what values must drive this political society? We also learned from the Preamble a broad description of the nature of state that India will come to be; will it be a social state, will it be a democratic state, will it be a republic or dominion state, these are all questions that are considered and settled by the Preamble.

The Preamble also sets out some key fundamental values of the society, values that are animated by the specific articles of the constitution to follow but also values that capture and broadly describe where the constitution makers thought India was going and the values that had been embraced by the freedom movement. Many suggest that the Preamble sets out the purposes of the constitution and it is not entirely clear that that description that these are the binding purposes of the constitution is the best way to understand the preamble.

But there is some historical evidence especially in the constituent assembly that some other members influential, important members may have had a similar thought. So, let us get started with the text of the constitution by reading the Preamble as we find it today. The page which is a part of this slide reads like this the constitution of India.

We, the people of India having solemnly resolved to constitute India into a sovereign, socialist, secular, democratic, republic and to secure all its citizens. Justice social, economic and political; liberty of thought, expression belief, faith and worship, Equality of status and opportunity and to promote among them all. Fraternity assuring the dignity of the individual and the unity and the integrity of the nation. In our constituent assembly this twenty sixth day of November, 1949 do hereby adopt enact and give to ourselves this constitution.

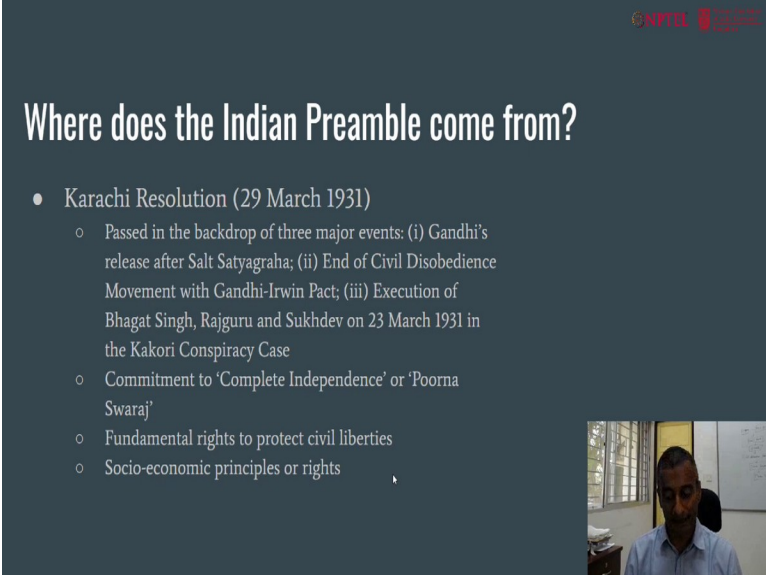
The preamble read in this way already gives us some insight into what is to follow. It is clear from the opening words of the preamble that the actors behind the constitution of India are we the people. I will have something more to say about why we the people but it also when we move directly to the last paragraph, we recognize that it is we the people do something in our constituent assembly. So, there is no fudge there, no pretense that the people have somehow come together and acted in special way.

They have done what they have done in the constituent assembly. They have created a particular kind of Indian political entity, a political entity called India for a particular one might say purpose to secure all its citizens. So, the kind of entity being created in India political entity is

sovereign socialist secular democratic and a republic and it secures to all its citizens justice liberty equality fraternity. Read in this way, one can identify in the preamble to the constitution of India 2 broad 3 broad thematic.

The ways in which we have come to create and adopt a constitution. The nature of the political act, the kind of political society are polity created and its key goals and purposes. So, we will turn to each of these and explore them at length and I trust that many of you have already read this preamble and I hope through the rest of this session you will come to read and re read it in new and interesting ways.

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The slide features a dark blue background with white text. At the top right, there is a logo for NPTEL (National Programme on Technology Enhanced Learning) and the Indian Institute of Technology (IIT) logo. The main title is 'Where does the Indian Preamble come from?'. Below the title is a bulleted list of historical events. In the bottom right corner, there is a small video inset showing a man in a light blue shirt speaking.

- Karachi Resolution (29 March 1931)
 - Passed in the backdrop of three major events: (i) Gandhi's release after Salt Satyagraha; (ii) End of Civil Disobedience Movement with Gandhi-Irwin Pact; (iii) Execution of Bhagat Singh, Rajguru and Sukhdev on 23 March 1931 in the Kakori Conspiracy Case
 - Commitment to 'Complete Independence' or 'Poorna Swaraj'
 - Fundamental rights to protect civil liberties
 - Socio-economic principles or rights

Where does the Indian preamble come from? And here we may now take a historical turn. The Indian freedom movement which as we discussed in the last session was a broad umbrella coalition of political actors, social actors, labor unions and so on developed a commitment to certain core values as a body in various proclamations of the freedom movement. The Karachi resolution is one such proclamation that was issued by the Indian congress which was the leading political formation of the Indian freedom movement. The Karachi resolution which was adopted on twenty ninth of March, 1931 which was passed in the backdrop of 3 major events.

Gandhi had just been released from the Salt Satyagraha and with the Gandhi Irwin Pact concluded a phase of civil disobedience. There was the unfortunate execution of the Bhagat Singh, Rajguru and Sukhdev in the Kakori conspiracy case around this time very close to the

Karachi resolution. The Karachi resolution is very significant. In that it outlines some key ideas which trace which one can trace all the way from 1931 into the constituent assembly debates and the constitution of India, 1950. The first of these is the sharp and unambiguous commitment to complete independence or what was called 'Purna Swaraj'.

'Purna Swaraj' commitment was not one that was continuous across the historical period of the freedom movement. There were times when the Indian freedom movement was committed to forms of freedom that might have allowed for dominion status or might have allowed for some kind of subordinate political status within the British Empire but here we notice in the Karachi resolution a strong affirmation of a commitment to complete freedom. This finds its way into certain sovereign and republican commitments that we find in the preamble.

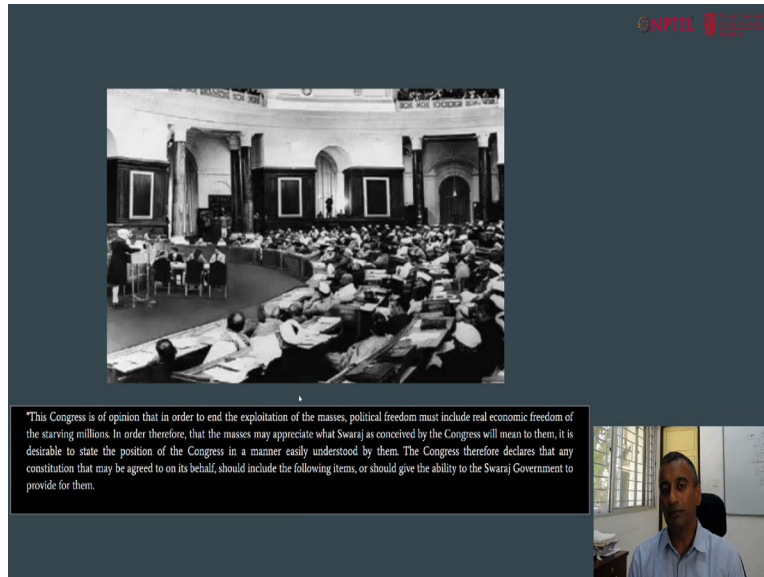
The second is the Karachi resolution commits very clearly too fundamental rights and civil liberties. We understand that the Indian freedom movement was forged on the anvil of civil liberties because of the serious oppression of the colonial state. We know that several leaders of the freedom movement served jail time for expressing their beliefs and for protesting on the streets but the commitment to a model of fundamental rights to protect civil liberties is a striking commitment in 1931 for the reason that the British common law tradition and English common law did not have commitment to fundamental rights based constitutions.

Fundamental rights traditions if at all drew their motivation from American models of constitution making. So, this second core commitment to individual fundamental rights is critical and traceable in the Karachi resolution. Third, socio economic goals principles or rights find their way into the Karachi resolution and we notice that these commitments start to percolate into Indian constitution making at an early stage. So, the idea that India would embrace a socially progressive democracy committed to ideas of social and economic justice find early expressions in the Karachi resolution.

This too is a remarkably salient and early recognition of the need to acknowledge social democracy even before international developments like the universal declaration of human rights or the international covenant on economic social and cultural rights. The Indian freedom movement is already anticipating these developments and making commitments along these

lines. So, the Karachi resolution remains an important historical pit stop for us to trace the antecedents of the preamble to the Indian constitution.

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One, I am going to read a small portion of the Karachi resolution to you, mind you the photograph is of the constituent assembly and later the Indian parliament but I am going to read an excerpt for your attention.

“This Congress is of the opinion that in order to end the exploitation of the masses, political freedom must include real economic freedom of the starving millions in order therefore, that the masses may appreciate what swaraj has conceived by the congress will mean to them. It is desirable to stake the position of the congress in a manner easily understood by them. The congress therefore declares that any constitution that may be agreed to on its behalf should include the following items or should give the ability to the Swaraj government to provide for them”

This kind of early commitment to social democracy is striking in the formation of the Indian political freedom movement and then it is no surprise that our preamble and much of our constitution commits ourselves to similar goals. It is no accident and not the accidental consequence of this or that figure in our political history. It is the it is the function of the evolution and the history of the freedom movement taken as a whole so the ‘Purna Swaraj’

declaration and the Karachi resolution is a very important stepping stone before we get to the actual context of the drafting of the Indian constitution.

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Constitution Assembly Debates - Objectives Resolution

“It is a Resolution, and yet, it is something much more than a resolution. [...]”

It is an undertaking with ourselves and with the millions of our brothers and sisters who live in this great country. If it is passed it will be a sort of pledge that we shall have to carry out”

- Jawahar Lal Nehru, 13 December 1946, CAD

- Introduced on 13 December 1946
- Reflects the resolve to constitute India as a Independent Sovereign Republic, comprising of a Union of Indian States
- Expression of the “will of the People of India”
- Sets out the aims and aspirations, fundamental values and plan for framing of the Constitution
 - Socio, economic and political justice
 - Equality of status, of opportunity, before the law
 - Freedom ensuring civil liberties
 - Safeguarding rights of minorities

In the constituent assembly the debate preceding the preamble was one that was organized around the objectives resolution. For some of you who are familiar with the debates you will recognize that the objectives resolution was the first resolution moved in the constituent assembly as early as the thirteenth of December, 1946. It was moved by Jawahar Lal Nehru; one of the longest and most significant contributions that Nehru makes in the constituent assembly debate.

Discerning among you will realize that Nehru’s presence on the floor of the constituent assembly is not significant while we do know that he was prime minister at the time, was a prolific reader and commentator on the constitution making process, was a lawyer by training. He was not always on the floor of the house guiding the debates and participating in them. Nevertheless, the objective resolution is one where he did participate he did lead the debate and one can get both a signature flare and an impetus that Nehru often provides to political debates.

Let us read a small excerpt and then tease out some of the key ideas of the objective resolution. Nehru saw to pitch the resolution as something much more than a resolution. Let me read. “It is a resolution and yet it is something much more than a resolution. It is an undertaking with ourselves and with the millions of our brothers and sisters who live in this great country. If it is

to be passed it will be a sort of pledge that we shall have to carry out". This is narrow while in introducing the objectives resolution.

Nehru's invocation of the idea of a pledge is similar to Gandhi's invocation of the talisman always focus on what the poorest and the weakest person might want you to do whenever you are placed in a political dilemma as a resolution of any political doubt. For Nehru, the constitution and the objectives resolution in particular also serves as something as something like a pledge. It is a short document the preamble, it is it can be committed to memory, it is written in evocative poetry something that can be recited.

And so Nehru seemed to think that this brief and precise quality of the preamble is something that could make it a sort of pledge. You know that some countries like the United States of America have a civic pledge of allegiance. India does not have such a recognized pledge but arguably Nehru anticipated that the preamble could be precisely that kind of a pledge as a document. What did the objectives resolution secure? The first thing that it made extremely clear is that India would be constituted as an independent sovereign republic comprising a union of Indian states.

Now, independence sovereignty and a republican state were discussed and a key part of various round tables and political discussions of the time but by no means were a foregone conclusion. It is fair to say that independence from the British Empire was without doubt settled by the time objectives resolution was stabled. But India need not have been a sovereign a sovereign country not and there was nothing predetermined about it being a republic. These were choices that were made and presented in the objectives resolution.

The second idea that Nehru presses in the objectives resolution is that the objectives resolution is an expression of the will of the people of India not experts not influenced by British parliamentary practice or parliamentary ideas but of the expression of the will of the people of India a popular expression. The third element of the objectives resolution was to set out the aims and aspirations, the fundamental values and plans for the framing of the constitution. And here much like the Karachi resolution the objectives resolution establishes clearly the goals of a social, economic and political justice and equality of status and of opportunity freedom ensuring civil liberties and safeguarding the rights of minorities.

These sets of choices already emerged in the objectives resolution, 1946. You will recall that when we read the preamble recently a few minutes ago; the objectives resolution clearly anticipates and and and uses the very same phrases that one would find in the preamble. So, the objectives resolution as it was tabled one of the earliest documents and debates in the Indian constitution making is the precursor debate to the preacher.

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The slide features a dark blue background with the title 'Objectives Resolution' in white. A list of six bullet points is centered on the slide. In the bottom right corner, there is a small inset video showing a man in a light blue shirt speaking in a classroom setting.

- Extensive debates were held among the framers of the Constitution on the Objectives Resolution and the political context surrounding it
- Absence of Muslim League
- Princely States and Federalism
- Rights of Minorities
- Socio-Economic Rights
- Adopted on 22 January 1947

What happened at the objectives resolution? There were extensive debates, several members participated in the debates includes a key and sharp concern with the absence of the Muslim League. The Muslim League had already pressed for a separate political state but use the objectives resolution and its emphasis on a strong and an integrated union as a wedge issue to press for partition.

The Muslim League argued and without being in the constituent assembly debates that Nehru had already revealed his hand and that by pushing these questions out of the debate and out of consideration by the constituent assembly made it very clear that the constituent assembly would not have a choice with respect to these core political values and political design decisions.

The second significant debate was about the place of princely states and federalism. Several members argued that the absence of princely states meant that this debate should not take place that there should be no resolution passed on the goals and objectives of the constitution till the princely states were included and participated in the constituent assembly. The third debate was

about the right of a minorities and the members sought to clarify and and confirmed that India would not go down a path of building a religious state.

A fourth element of significant debate was about the scope and extent of social and economic rights necessary in the Indian constitution. As things turned out these debated played out in particular ways what one remarkable observation one would make if unread the objectives resolution debates is the emergence of Ambedkar as a very significant participant interpreter and interlocutor with Nehru in shaping and framing key constitutional ideas. The objectives resolution was debated and finally adopted on twenty second January, 1947. This document, once it was settled, find its way into the preamble of the Constitution of India.

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Preamble to the Constitution of India 1950

'We, the People of India, ... resolved to constitute India'

- Popular sovereignty / popular approval NOT God
- Not castes, communities or religious groups

Constitution of South Africa, 1996

We, the people of South Africa,
Recognise the injustices of our past;
Honour those who suffered for justice and freedom in our land; Respect those who have worked to build and develop our country; and
Believe that South Africa belongs to all who live in it, united in our diversity.

Constitution of Nepal 2015

Remembering the glorious history of historical peoples' movements and armed struggles time and again and the sacrifice made by people for national interest, democracy, progressive change, and recognizing the martyrs, the disappeared citizens and the victims...

I am going to close this section part 1 by turning to the opening words of the preamble and try and emphasize to all of us as we read the preamble that the preamble was not a foregone conclusion. There were choices made, there were phrases chosen, some phrases that had historical antecedents and other constitutions have chosen otherwise and this is important to both recognize and understand. So, let us take a key phrase. We, the people of India resolved to constitute India. What does this phrase communicate?

First and foremost we must notice that if the people of India have constituted India in a particular way the people are the ultimate reservoir of political authority. So, it is popular sovereignty and popular approval that gives the constitution it is political and legal authority. Not god, but mind

you because several other constitutions including the constitution of South Africa that are excerpted below for certain other reasons invoke God in the preamble. There is no such invocation in the Indian constitution.

Secondly, we must notice that the people of India come together not as caste, communities or religious groups. It does not treat we the communities of India or we the religions of India the religious groups of India or be the castes of India. Please remember that it was a significant political discussion in the round table conferences leading up to Indian independence otherwise whether India was best understood to be composed of group identities whether they be of caste community or religion which were far more significant than individuals.

In other words that India was not a nation of individuals better understood as nation of groups. The opening words of the preamble of the constitution of India make it makes it very clear that that choice of individuals and not groups is one that is written into the preamble and the rest of the constitution to follow. However, the constitution of India did not choose to be very historically self-conscious. The constitution could have made significant reference to the political experience of British colonialism, its oppressions, what it had made of the nation and also acknowledged the nature of the freedom movement its key figures and its key values but the preamble does not do that.

Let us pay a little bit of attention to the constitution of South Africa and or the constitution of Nepal, 2015 to understand what a self-conscious preamble might look like. Let me read. The constitution of South Africa, 1996 says we the people of India recognize the injustices of our past, honour those who suffered for justice and freedom in our land, respect those who have worked to build and develop a country and believe that South Africa belongs to all who live in it united in our diversity.

This kind of preamble while it makes no reference to the word apartheid makes a clear historical reference to the injustices of our past. It also takes note that several people have suffered both individually and in groups to liberate the country from the conditions of apartheid. The Indian constitution makes no such reference to colonials or to the sacrifices of the freedom movement. Let us turn to the constitution of Nepal, 2015. Remembering the glorious of historical people's movements and armed struggles time and again and the sacrifice made by people from national

interest democracy, progressive change and recognizing the martyrs, the disappeared citizens and the victims.

Anyone who has even a passing knowledge of the recent history of Nepal would understand that this refers to the Maoist movements in Nepal which led up to the constitution of Nepal, 2015. Not many constitutions make a direct reference to people's movements and armed struggles or disappeared citizens and victims, but the constitution of Nepal, 2015 by adopting that historically self-referential mode makes it very clear that it is a break from the past.

The Indian constitution too is a significant break from India's past, it is a break from the past of colonialism, it is a break from the past of feudalism, it is a break from the past of medievalism, it is a break from the past of caste height bound society towards a modern liberal society with free individuals and a state committed to social, political and economic justice. These are not modest goals, these are in constitutionally, revolutionary goals. So, the Indian constitution makes a radical departure, a radical break for my historical past but it does not do so on the express terms of the preamble or it or in in any other provision of the constitution.

Hence, the Indian constitution relies to a great extent on the quality of our public educational systems to reinscribe and memorialize the sacrifices of the Indian freedom movement that gave us the Constitution of India, 1950 as well as the political values that our inscribed into the preamble. So, I will stop here with lecture 1 and return in lecture 2.

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Sovereign
Democratic
Republic
Socialist
Secular



To part 2 which focuses on key principles of the Indian state.