How Liberal is India?
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The Quest for Freedom in the Biggest Democracy on Earth

Editor

RONALD MEINARDUS
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Introduction

Allow me to begin on a personal note: It’s been a remarkable journey with lasting memories and learning. A country like no other, a universe of its own, India is singular in diversity and complexity. On this journey, I confess, I have often scratched the surface only, observed from a distance, or in many cases, not seen and understood at all. This being India, for me this is normal. It would be pretentious to say otherwise.

My interactions with India, or correctly with people from India, date back many years before I set foot in summer 2014. I had mingled and socialized with Indians again and again, mostly at political events and conferences related to the work I am doing now: How to make societies better for the people by giving them more freedom and responsibilities—in short, how to make the world a more liberal place.

This may sound a bit like a stereotype, but it’s sincere: Regularly, the speakers from India (and South Asia in general) had impressed me with their eloquence and intellectual proficiency. Eventually, the wish to interact with these people on a more permanent basis, develop projects and promote them became the main driving force for coming here.

While many foreigners from the West go to India in search for spiritual enlightenment and eternal wisdom, my fascination was of a more ephemeral nature initially. Much later only, did I get involved with Yoga and meditation. Now, these have become cherished facets of my times in India. I’ll leave it at that as this goes beyond the scope of this book.

I am grateful that distinguished individuals I have interacted with for many years and who have become friends and partners have
contribute to this book. I am positive their writings will assist in the—collective—effort to provide an answer to a question that, like few others, has been on my mind since first coming here: How liberal is India?

As I write these words in spring 2019, once again the electoral battles are moving towards a climax, and soon a new government will be in place. Nobody knows for sure what will be the outcome. The openness of the contest is admirable, the dynamics of electoral politics in India have always fascinated me.

It’s a platitude to refer to India as the biggest democracy in the world. But as we lament the back sliding of democratic governance and the rise of authoritarianism on a global scale, the relevance of India’s democratic continuity cannot be overstated, particularly from a liberal angle.

My professional career has taken me to numerous countries where I could witness many political systems and cultures. Hardly have I seen this degree of politicization and political mobilization. In India, politics is serious business—for those who earn a living as politicians, and many others who offer their services as middle men (or women) and handlers. And let’s not forget the voters who never seem to give up hope that betting on the right horse (party) will improve their livelihood. For many, electoral politics assumes a nearly existential dimension.

In his book *The Argumentative Indian*, economist and Nobel laureate Amartya Sen (2005) (*Writings on Indian Culture, History and Identity*) uses the term “heterodoxy” to explain “the simultaneous flourishing of many different convictions and viewpoints in India”.

Discourse and arguments are lifelines of democracy, they are conditions for participation, conflict resolution, and also innovation and progress. I am not alone in the observation that the quality of the political discourse in India has suffered in recent years. As other countries, argumentative India has also become increasingly polarized. One highly visible example are the hardly amusing shouting matches of political rivals in the so called talk shows on Indian TV. Mirroring the partisan divide between the government and the opposition, two opposing camps have emerged with fundamentally
different perspectives on the rudiments of the republic—and very little desire to compromise.

Seeking compromise is not the trademark of the political class in a polarized political system. In India also, we witness deliberate polarization as a strategy to mobilize and target electoral groups. Inevitably, this has a detrimental impact on how people feel and think and is not conducive for an open society with a rational discourse.

You may find the title of this book “How Liberal is India?” problematic. Maybe an answer to the query “Is India liberal?” would be much easier. I assume a majority of contributors, me included, would negate this question. I hasten to add that the answer to this question in most countries in the world would deserve a negative response.

The perfect liberal state, the perfect liberal society does not exist and is utopic. Unlike communists who preach a revolution that more or less instantly leads to paradisiac conditions or religious zealots with their apodictic strategy, liberals strive for gradual change, for advances in degrees and step-by-step.

Unlike other political mainstreams, liberalism is not a closed set of ideological values and positions. The rejection of dogmatism and the openness to debate, dissent, and diversity are core features. Some may mistake this as randomness. But this is not the case. I have offered a definition in the introduction of the book “What Does it Mean to be a Liberal in India” (2015) and will share it again here: “Liberal aspirations are always driven by the quest for more freedom for more individuals. Freedom stands at the core of liberal thinking, liberal advocacy, liberal policy design and governance. As the basic principle, it is not negotiable”.

Liberals are of one mind regarding the primacy of the freedom of every individual, they strive for the equality of opportunity, the rule of law and respect for human rights. How to weigh these principles in a liberal strategy of governance, is where the debates start—and will probably never end.

This said, the public perceives liberals not as a politically uniform camp but as a disparate grouping with varying, at times, diffuse ideas and policy proposals. One reason for this “herterodoxy”, to use
Amartya Sens’s term, is the lack of a political homestay for India’s liberals.

In democratic systems political parties usually play that role as a focal point for orientation of politically like-minded citizens. Political parties function as ideological and programmatic clearing houses, as venues for debates that—in the end—result in programmatic positioning. In many democracies, political parties are essential in explaining ideological positions; in their campaigns, they emphasize their ideological programs—and make the electorate aware of these. India is void of a liberal party—and this has been the case for most of the time with a short exception. Why the biggest democracy on earth has done without a liberal party is one of the questions you will find answers to in the ensuing pages.

Partisan politics in India follows different rules than in other countries. With no common political homestay to turn to, Indian liberals have the license (you could also call it the privilege) of their own individual positions. This has led to a plurality of views—and, in the end, even to differing partisan preferences and allegiances.

Some professing liberals are first and foremost proponents of the free market; for them, economic freedom is the priority. For others, respect for civil liberties and a more tolerant society are the utmost concern. At times, these differences go beyond nuances.

In my interactions with Indian liberals, I have come to understand that biographical circumstances have influenced individual political and ideological preferences: Studies in America and exposure to libertarian thinking there has led to different perspectives on liberalism than time spent in Europe with its stronger emphasis on the social dimensions of liberalism.

Ideological influences from outside are an important feature in a globalized world based on international exchanges. Still, it is crucial to have in mind—and highlight—the autochthonous, home-grown traditions of India’s liberalism.

Many of the historical (and also present) proponents of liberal ideas and policies in this part of the world have not used the term ‘liberal’ when propagating the primacy of freedom. This, in my eyes, is at best a ‘cosmetic’ deficiency, “It is more important what is in the
box than what is written on the outside,” has become a mantra in my discussions about liberalism in India. Of course, India has a liberal tradition—only the branding is different!

The objective of this book is to provide an answer to the question “How Liberal is India?” Considering the complexity of the query and the diversity of perspectives this is a challenging undertaking. It is appropriate to tackle this task in a collective effort. In the ensuing pages, experts in their respective fields will share their perspectives on themes and facets of India’s history, politics, the society and the economy with a focus on the overriding question. These essays provide valuable insights into areas of importance for liberal governance. In the end and taken together, the chapters aim at providing a conclusive perspective on the state of liberalism in India.

Our contributors come from different walks of life, the media, academia, civil society. As a common denominator all are or have been associated with educative programs supported by the Friedrich Naumann Foundation for Freedom and, thus, participated in activities aimed at promoting liberal values and principles in India and beyond.

In the course of putting this book together, I have benefitted from the support of Nupur Hasija, Senior Program Manager at the Regional Office in New Delhi. Ms Hasija is an extraordinary networker and has once again demonstrated her special management skills assuring deadlines are met and final texts are in on time. Joining our team more recently has been Angelica Priyamvada Zocchi who has been a great help editing manuscripts and communicating with some of our authors. Lastly, I wish to thank Sanu Kapila of Academic Foundation, our publisher, who has again impressed me with his reliability and professionalism.

This is a liberal anthology. Don’t expect uniformity of arguments and answers from such a diverse group of writers, thinkers, and practitioners. For me as the editor who has gone through the texts multiple times, the book contains an important positive message. While India has a long way to go before she may be termed a liberal democracy, this book also shows that Indian liberals—in spite of
their many arguments—have more in common than what holds them apart.

This is a strong base to move ahead—and continue the never ending quest for more freedom for all.
Liberal Ideas in India’s History of Thought

In Preti Taneja’s *We That Are Young*, a postcolonial adaptation of *King Lear*, a character announces: “One who knows the true value of the mother country can never forgo his bright future.” The novel’s protagonist is a family patriarch by the name of Bapuji. He is the founder of *The Company*, a conglomerate whose tentacles extend to every commercial sector in India. His squeaky clean public image reflects Mahatma Gandhi by the way of Mukesh Ambani, but his illiberal, authoritarian tendencies mirror that of Narendra Modi. It is he who truly reflects the national values of a country looking for a stern father-figure to grasp her future firmly in his claws.

Liberalism has a checkered history in India. Institutions such as courts and propagators of liberal values such as the printing press sprung up as part of the British colonial project in India. Over time, these values were re-authored by public intellectuals to reform Hindu orthodoxy. Raja Rammohan Roy vociferously campaigned against sati, the ritual practice of burning widows, and child marriage (Pillai 2017). Jotiba and Savitribai Phule, crusaders against Brahmin hegemony were among the first to open a school for girls (Harad 2019). These values of human dignity and equal rights permeated the Indian nationalism-driven freedom struggle. With the adoption of the Indian Constitution on 26 January 1949 (The Hindu 2015), India established herself as a sovereign democratic republic, following in the vein of Western liberal democracies.

Yet, since then the Indian democratic project has hobbled, held back by the likes of stronghold leaders and Hindu majoritarianism into one where the electoral process has become a mechanism through which “the spoils of the system are distributed and redistributed on the basis of communal mobilization” (Sharma
2015). This entrenchment of communitarianism even among groups opposed to this hegemony of caste and class resources has become the primary avenue to obtain rights (Sharma 2015). In such a scenario, liberal values seem all the more distanced from the political realities of India.

This essay will delineate a brief history of how Indian liberalism has become silenced and irrelevant under the strain of Hindu nationalism or Hindutva. However, this liberalism while threatened can strengthen its foundations particularly by representing the marginalized and fashioning itself according to their critiques of dominant power ideologies. If liberalism is to succeed in India, liberal activists must focus on its most important value—that of articulating and galvanizing a politics driven by group rights against authoritarianism and majoritarian power.

Encapsulating Liberalism

The Concise Oxford Dictionary of Politics interprets liberalism as “the belief that it is the aim of politics to preserve individual rights and to maximize freedom of choice” (McLean and McMillan 2009). Yet, liberalism is in many ways unquantifiable. In The Lost History of Liberalism, Helena admits that “we are very muddled about what we mean by liberalism” (Rosenblatt 2018). The word itself is a constricting nomenclature for a series of political doctrines that move beyond the limits of institutional authority to expand personal autonomy and liberty. Over the centuries, liberals have also differed on how this liberty is to be protected and emphasized. It’s no wonder liberalism is scapegoated for everything from corporate malfeasance to the rise of the militant right. Edmund Fawcett (2014) in Liberalism: The Life of an Idea offers a more definitive path to what separates liberalism from populism, fascism and libertarianism—the inescapability of “conflict, resistance to power, progress, and respect.”

History of Indian Liberalism

Fawcett’s Eurocentric conception of liberalism has always been an afterthought in India, a country whose masses bonded through the fervour of anti-colonialism. After all, the struggle for an independent
India had to bring all Indians into its fold. Therefore, how could a country embark on a project of atomisation just as it required the strength of the masses? Moreover, “The Enlightenment and liberalism were also deeply implicated with the project of empire” (Mukherjee 2018). It’s no wonder then that key figures in the Indian freedom struggle like Gandhi were averse to political liberalism. *Hind Swaraj*, Gandhi’s political manifesto is vehement in its rejection of all Western models of political, social, and economic institutions, and instead advocates for inhabitants of villages to self-govern themselves; their relation to each other is driven by laws not moral duty (Anjaneyulu 2003).

Post-independence, however, liberalism was a quiet driving force of Indian democracy led by the country’s first prime minister, Jawaharlal Nehru, who emphasized the cabinet form of government, and the architect of the Constitution B.R. Ambedkar. None of these men characterized themselves as liberals in the Western tradition. After all, as historian Ramchandra Guha (2001) notes, “Indian liberalism was a sensibility rather than a theory, a product of empirical engagement rather than an elaboration of principles laid down in canonical texts.” Key to the liberals of the early decades of Indian democracy is that they were idealistic about India’s future, while being critical of the past and were involved with nation-building, actively fostering institutions of civil society.

Liberalism faced its first onslaught with the ascent of Indira Gandhi, Nehru’s daughter, into the country’s highest seat. Her tenure which controversially included the Emergency period was marked by a concentration of powers by the national government, the weakening of the judiciary, and a marked attack on civil liberties such as the right to protest and free speech (Mukherjee 2018). While she initially had the support of several Communist and Marxist groups, that later changed as her illiberalism acquired an apolitical character (Gupta 1981). What was noticeable about Gandhi’s tenure is that she used statutes of liberal democracy to alter or undermine the nature of liberalism itself. After her reelection in 1980, she used President’s Rule to dismiss the Janata coalition which was made up of a group of various political factions that had banded together in opposition
to the Emergency in seven states (Kaufman 1981). A law enshrined in order to maintain state order was instead used to undermine the democratic process. It’s no wonder that Gandhi irrevocably paved the way for a repressive politics that changed the fabric of the country’s democracy, while providing inspiration for a new generation of stronghold illiberal leaders in the country including Narendra Modi.

**The Hindutva Siege on Liberalism**

What’s been particularly noticeable after Modi’s time as prime minister, is a legitimization of a militant form of Hindu nationalism. As the rise of autocratic, populist governments around the world have proved, liberal democracies can give rise to a state governed by the tyranny of the majority. Part of what has characterized the last five years of governance is the prioritization of corporate interests and power consolidation over the interests of the people. Public institutions have also been greatly weakened by the Modi government. In November 2018, the head of the Central Bureau of Investigation (CBI) was fired for his probe into the Rafale deal (The Wire 2018). The Election Commission under government pressure fired 27 MLAs from the rival Aam Aadmi Party, although they were later reinstated by the Supreme Court (Ramachandran 2018). These are just a few among an array of political manoeuvres that have pitted public institutions against democratic and liberal values.

Hindu nationalism, a chauvinistic nationalism, was already present in pre-Independence times. It has only acquired force over the centuries. Its dogmatic and totalitarian nature synthesizes elements from India’s past with the modern apparatus of the nation-state. Its opposition to liberal values particularly religious pluralism and anti-establishment movements is ironically bolstered by continuously redefining India’s Hindu past as a liberal utopia (Smyth 1972). During Indira Gandhi’s authoritarian reign, anti-establishment Hindutva forces were able to tap into the unhappiness of the masses and emerged as viable alternative to the nepotistic rule of the Congress. With the Ram Janmabhoomi movement, which saw the destruction of the Babri Masjid in 1992 and irreversibly destroyed the uneasy secular fabric of the country, the newly formed Bharatiya Janta Party
(BJP) gained national prominence and electoral success by mobilizing the religiosity of Hindu voters (Guha 2008).

Hindu nationalism is an unwieldy mix of militant Hindutva and globalism. While it may rely on populist sentiment, it is a project of the elite (Guru 2011) to reorder India’s economic power and military might and project it to the world. In fact, it erodes India’s heterogenous cultural framework to project a homogenous Hindu one. The Indian Army is a big part of these propaganda efforts as seen by the government’s response to the Uri and Pulwama attacks and the frenzied media reaction towards readily broadcasting anti-Pakistan views (Tripathi 2019). Hindutva has also imbibed corporate ideologies proved by the rapid economic growth and sops provided to conglomerates such as Patanjali and Reliance (Bhatia and Lasseter 2017). It’s a parochial world view backed by massive public and private resources.

This nationalism is an enemy of liberal traditions. It stifles citizens. It prevents from having a rational debate about who Indians are and what Indianness represents. It relentlessly orders country and culture into binaries—upper-caste men positioned against the diametrical forces of almost anyone else—Muslims, Dalits, Pakistanis, and women. In particular, this brand of nationalism is nefarious because it’s so adept at quickly shifting the narrative. The larger worries about Mohammad Akhlaq’s senseless death were side-lined by the question of whether he was illegally killing cows (Mohan 2018). When Dalit activists rallied against Rohith Vemula’s suicide as testament to the ways in which the country’s educational institutions are still cocoons of Brahmanical privilege, the government circumvented the narrative by casting doubt on his caste paternity (Mondal 2017). When students of Jawaharlal Nehru University (JNU) shouted slogans against the death penalty meted out to Afzal Guru and Maqbool Bhatt, even privately-owned news channels fed into the establishment narrative by showing doctored videos that allegedly showed protestors shouting anti-India slogans (The Indian Express 2017). Moreover, Hindutva is remarkably adept at using liberalism itself as a tool to hollow democratic foundations. A Supreme Court ruling mandating women should be allowed to enter
the Sabarimala temple was hounded with protests that it eroded the freedom of religion (Nair 2019).

In this nationalistic quest, our history keeps getting rewritten and sublimated into simplistic narratives. When self-appointed cultural advocates like Mohan Bhagwat talk about what makes India great, it inevitably comes down to the question of Hinduism. This glory of Indian civilization faced a setback during the dark ages of Mughal and British rule. To buttress these fairy tales, history textbooks propel one-sided narratives. Aurangzeb, who built more temples than he destroyed, is a Muslim fanatic (Daniyal 2015). The Marathas, who invaded Bengal, are our national army pre-independence (Vijayan 2015). Historian Sanjay Subrahmanyan sums it up best when he notes that this discourse furthers the notion of a closed India that is a powerful spiritual force on other nations and cultures, but is culturally pillaged by invading forces like the Mughals (Raghavan 2013). Liberals who dare to recognize the messiness of historical narratives such as Romila Thapar are threatened, while iconoclastic journalists like Gauri Lankesh and anti-superstition rationalists like Narendra Dabholkar are murdered before their words fan any more ‘anti-Hindu’ flames of resistance (Gettleman and Kumar 2017).

Nothing aggravates militant Hindutva organisations more than the act of religious freedom outside Hinduism. Conversions, particularly when marginalized caste groups turn to Islam or Christianity are frequently cited by propagandists as evidence of foreign interference by the Vatican or Saudi Arabia. The Madhya Pradesh Freedom of Religion Act (1968) for instance explicitly prohibits people from converting without intimating the district magistrate, failing which they can be jailed. It also makes reference to “social excommunication” as an example of forcible conversion. Yet, this rarely seems to apply to socially driven initiatives that are undertaken by rightwing Hindu organisations like the Vishva Hindu Parishad (VHP) and Rashtriya Swayamsevak Sangh (RSS). For instance, Ghar Wapsi, the moniker for the proselytization efforts by right-wing Hindu groups itself relied on social pressure to mobilize these mass conversions. RSS claimed over 2000 people in Madhya Pradesh reconverted to Hinduism (PTI 2015).
This idea of the Hindu who belongs within the borders and the Muslim who should be outside it is part and parcel of this brand of nationalism. Muslims are painted as everything that we are ‘not’. They are the perennial turncoats; decades of family lineage notwithstanding. Their allegiance to their religion marks them as Pakistan sympathizers and are ever constant threats to Indian unity. Violence takes place with swords on the fields of Nellie as well as with pen strokes in the pages of RSS newsletters. ‘We’ the citizens can only be neatly produced when we know who ‘they’ are. Interestingly, the Citizenship (Amendment) Bill, 2016, which was passed in the parliament earlier this year, is an illiberal response to an already illiberal identity politics in Assam. The bill seeks to provide citizenship to Hindu immigrants from Bangladesh. Yet, it’s opposed by several factions in Assam who are opposed to the idea of illegal settlement and alleged expropriation of the state’s land (Donthi 2018). It’s a prime example of how illiberalism in India isn’t simplistic but has layers.

The Silent Spectre of Liberalism

Where does liberalism fit into this nationalistic framework of messy binaries? Liberal democracy in India emanated out of nationalism after all (Mukherjee 2018), as a response to the anticolonial freedom movement and means of finally enfranchising the Indian people. Yet in many ways, this nationalism seems like a battering ram against the values of civil liberties and pluralism.

Nationalist imagination provided marginalized groups the language of self-respect that undercuts this hegemonic notion of nationalism (Guru 2011). Yet, when thousands of Dalits across Maharashtra congregated at Bhima Koregaon commemorating the 200th anniversary of a battle that saw the victory of a British-led troop of Dalit forces against the Peshwas, a mob unleashed violence on them. This was later intensified by the police arresting people who took part in the protests and prominent activists such as Rona Wilson and Vernon Gonsalves instead of the rioters (Shantha 2019).

As Andrew J. Cohen (2007) emphasizes, “...autonomy and toleration are equi-primary and mutually supporting in a proper
comprehensive liberalism.” This toleration to different beliefs and modes of looking at identity needs to have a liberal polity (Cohen 2017). This should allow for certain acts of state defiance, say the right of Kashmiri dissidents to shout anti-India slogans while preventing the right of right-wing groups from embarking on a violent rampage against them.

Yet the supposed beacons of liberal democracy are beholden to state power and caste and class supremacy, and have often curtailed civil liberties in the country. When Indira Gandhi detained large numbers of political dissidents after the declaration of Emergency, the Supreme Court ruled that no detainee had the right to habeas corpus, a mockery of democratic ideals (Pandey 2016). Or consider a more specious 2016 ruling that made the National Anthem compulsory in front of all movie screenings. Popcorn patriotism if you will (Rangan 2016).

Even while democratic institutions are under attack, the characterization of liberals as out of touch elites sympathetic to foreign interests allows extremist groups to repudiate the same institutions as merely tools of anti-Hindu forces and allows non-state actors such as the RSS to wreak havoc on democratic traditions. Even among the radical left, there is a disdain for liberals as talking up liberal causes but not actively being involved with liberal politics. As journalist Raghu Karnad (2017) noted after the death of the brave iconoclastic journalist Gauri Lankesh, “As madly as they are denounced, liberals are not killed. Denunciation is a kind of publicity, and if liberals were the true threat to the Sangh, we would not receive it.”

Who is an Indian Liberal?

So, how can liberalism become relevant in an India where this nationalistic drive which removes nuance from everything; our political debates, our history and even our national icons? In this era of hyper nationalism, liberals must be those who question the Army’s unchecked siege of Kashmir and stand up for the rights of Muslims before they are lynched or arrested for no crimes of their own. Liberals are a potent force primarily because they push back against
these one-sided narratives. They can recognize the state as both oppressor and upholder of democratic traditions and freedoms. They can perceive the vitality of feminist movements such as Pinjra Tod, while still acknowledging that lower caste women are still marginally represented in it. Liberals can self-critique and evolve.

In a country where fundamental rights have always been under threat, being a liberal means speaking truth to power. Liberals are the last bastion against power politics and particularly the way the powerful or the privileged get to set the agenda. As the journalist Evan Osnos (2016) declared about Mao’s China, “Tyranny does not begin with violence; it begins with the first gesture of collaboration. Its most enduring crime is drawing decent men and women into its siege of the truth.” At every given moment, history gets rewritten when we are not watching. As liberals, it’s our job to stay vigilant and not let silence get construed as complicity.

**How Indian Liberalism Can Reform Itself**

Liberalism needs to be more than ethical creed. It needs to be embedded in the fabric of our country’s institutions. This ethical framework should actively be promoted through law and public institutions. Unfortunately, political leadership is usually reluctant, because it challenges their own authority. One notable law that ushered in a liberal policy of democratic accountability was the Right to Information (RTI) Act of 2005, which allowed citizens to file applications and access information from public institutions. Yet as of 2018, there were over 300 attacks and over 50 murders of citizens who used the RTI (Bhatnagar 2016). The codification of laws matters little in a country where illiberal actions which violate them are only selectively applied to dominant castes (Guru 2011). It’s a reminder of how liberal laws need to be supported through the dissemination of liberal values as well.

The question of how these liberal values are to be disseminated is a knotty one. One approach might be to reach back into one of

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1. Pinjra Tod is a collective of female college students and alumni across Delhi whose demands include removing restrictive curfews for women’s hostels and constituting committees in universities to report sexual harassment, thereby allowing women to reclaim public spaces.
the earliest liberal diktats—encourage Indians to contribute to that of the group by working for their own self-interest. While this view has been attacked in recent years for enabling exactly the kind of capitalistic outlook that perpetually commodifies people and puts them into competition with each other (Howe 1977), it’s an idea that has potency particularly when applied to the marginalized. After all, self-respect movements by the likes of Savitribai Phule emphasized group upliftment by asking the marginalized castes to pursue their hard-won rights to life, liberty and autonomy (Guru 2011). As Joseph Raz (1988) reiterates in The Morality of Freedom, “Autonomous life is valuable only if it is spent in the pursuit of acceptable and valuable projects and relationships. Under a liberal democracy, governments can create the conditions that reward morally valuable choices and eliminate those which are repugnant. If liberal civil society employs its social capital towards elevating the imperiled political class, it might go a longer way to entrenching liberalism in the country.”

Moreover, it’s important as liberals to understand and support liberal values that counter authoritarianism from across the political spectrum. That means understanding that no one is a natural ally or enemy—or like the great Noam Chomsky, being critical of even one’s own views and values. It calls for allowing ethics and restorative justice to take center stage instead of laws. Even liberalism while stressing ideas of autonomy and personal liberty seems to recognize that humankind is best served when there are common notions of collective core values such as free speech, liberty, and tolerance. As Stuart Hampshire (1993) points out about John Rawls, one of the forbear’s of political liberalism, “Rawls’s great achievement in international thought was to restore the notion of justice to its proper place at the center of arguments about politics, the place that it had occupied at the very beginning of theorizing in Plato’s Republic.”

There is even a liberal case for incorporating the lexicon of patriotism, albeit one based on respect for the shared rights under a liberal democracy for all. Liberals are in a truest sense the real patriots because their political advocacy cuts across gender, religion, caste, and nationality. As John P. Anderson (2003) notes, patriotism
can serve as a “political moral sentiment” by motivating citizens to conform and promote “a liberal conception of justice.”

Another important measure for Indian liberalism to evolve is accepting the importance of identity politics and group rights as vital to Indian democracy. There were indigenous anti-authoritarian movements in India that preceded the colonial ‘introduction’ of liberalism. They are best epitomized by uprisings against the physical and social violence inherent to caste hierarchies. In 1927, Ambedkar, who would later on pen the Indian Constitution that established the equality of all Indians, led thousands of Dalit men and women on a Mahad Satyagraha to drink from a well that had historically been out of bounds for the former untouchables (Samel 1999). Centuries before Ambedkar Basava, an anti-caste reformer and poet, was one of the key figures in the Lingayat movement which aimed to form a casteless commune that existed outside the dogmatic tenterhooks of the Brahminical class (Hariharan 2018). The idea of finding strength in solidarity in marginalized identities as a group might seem incompatible with classic liberalism, but liberalism only grows more formidable by expanding its notion of finding individuality through group rights.

Conclusion

Political theorist Rajeev Bhargava (2018) asks if “a new liberalism, different from the one articulated by traditional, metropolitan English-speaking elites, shaped profoundly by Indian cultural conditions, [is] just round the corner.” Arguably that liberalism is already there. It’s in the rural political movements that don’t make it to the front pages of newspapers. It’s in the Farmers March to Delhi that demands government polity that is more responsive to the demands of the rural working class (Dahat 2018). It’s demonstrated by the students who march on to the streets in solidarity with the attacks against free speech in universities (Gowen and Lakshmi 2016). It delineates the politics of Dalit women who ask us to re-examine the ways in which violence against the most marginalized women is ignored by the mainstream (Dhanraj 2018). These liberals aren’t the gilded elite pontificating about the golden age of Indian
liberalism. Instead, they are either reaching back to the histories of liberal movements that existed before they could be articulated as such in vernacular tongues. Liberal democracy is only strengthened when it allows itself to be shaped by these movements of resistance, not be a bulwark against change.

References


Was Gandhi a liberal? For the past couple of years, I have been making the case that among the major political leaders in the world, Gandhi was perhaps the last classical liberal or the first libertarian. Here, I use the word liberal in one of its earlier meanings to depict the political ideal that calls for greater civil, political and economic freedoms for the individual, and less government control or minimum government.

In the process of this exploration of the man, his methods and his mission, Gandhi made me review the state of liberalism in the world today. More pertinently, he made me ask what liberals today may need to realize before they could count someone like Gandhi as their own. This essay is a journey to find some answers to these questions.

My interest in Gandhi was reignited more than five years ago, not so much because of his political philosophy, but because of his capacity to reach out, organize and mobilize millions of people. In the context of the shrinking political space for liberals across the world over the past few decades, Gandhi, the greatest mobilizer of people holds a natural appeal.

Before Gandhi arrived on the Indian political scene in the later half of the second decade in the 20th century, the Indian National Congress was primarily an association of enlightened citizens petitioning the colonial British government for various political and economic reforms. Gandhi transformed Congress into a mass movement of a kind the world had not seen before—or since. He engaged with capitalists and peasants, industrialists and workers, the rich and the poor, the socially privileged and the discriminated, the elite and those at the margins of society, and helped build a national movement that shook the political and moral foundations of colonial
rule. Gandhi attracted the highly talented; equally, he inspired many ordinary people to rise and claim their place under the sun.

**Non-violent Revolution**

Gandhi, the non-violent revolutionary enabled the participation of the marginalized, the discriminated, and women in the political struggle against colonial rule, reaching out to more people than any of his contemporaries.

Seven decades after his assassination, Gandhi’s legacy continues to resonate today with vigorous claims, counter claims, and contests over his impact on India and the world. While it may seem that his political principles have not found much favor among the dominant ideologies of today, the Gandhian methods of non-violent mass mobilization and actions such as boycotts, pickets, strikes, hunger strikes, etc., for political goals continue to fascinate the world and have an appeal across the political spectrum.

An empirical analysis of efficacy of civil resistance in the 20th century from across the world shows that non-violent methods have been twice as successful in changing authoritarian regimes as violent revolutions (Chenoweth and Stephan 2008). Chenoweth’s and Stephan’s study questions some of the common perceptions that non-violent struggles succeed only in a liberal democratic polity or that political struggles ultimately necessitate coercion and violence in some form, implicit or explicit, when all other forms of actions and protests for reforms fail.

Understanding the centrality of non-violence holds the key to appreciating the scope of Gandhi’s political activities. Violence primarily affects people, and can seek to replace those in power, while leaving the institutions of injustice and oppression in place. The focus on people rather than on the nature of the institutions, inevitably raises the personal stake, entrenches the divisions, thus intensifying the conflict. This approach of escalating conflict, on the one hand institutionalizes violence, and on the other normalizes violence in society.

Gandhi, therefore, sought non-violence, not just as a moral force, but looked at its strategic and tactical possibilities as well.
This enabled him to integrate principles and practices of politics in a very creative yet effective way. It helped to keep the focus on reforming the nature of politics, while looking at those holding power as legitimate political opponents, but not as enemies, thus nurturing an environment of possible cooperation with the political opponents.

**Satyagraha or Civil Resistance**

Gandhi’s first experiment in Satyagraha was in South Africa in 1908, on behalf of the migrant and indentured laborers from India against racially discriminatory laws against Asians. Although, greatly influenced by Henry David Thoreau’s (1849) more passive and personal “Civil Disobedience”, Gandhi turned it into active civil resistance.

Involving more people in political action, however, required better control over the nature of the protests, and the passions of the protesters. The distinctive aspect of Gandhian Satyagraha was the central role of the individuals engaged in political action to suffer and sacrifice, moving towards self-mastery and self-discipline. This was intended to help the volunteers turn the focus inwards, to the moral values underlying the political protests, rather than just the object of the protest. The staging of the non-violent protests with discipline and dignity rendered the instances of civil resistance into a more persuasive form of direct action, than either physical violence or other kinds of overt coercion and intimidation involved in traditional forms of mass action (Mantena 2017).

Reforming the self was a key component of social and political reforms, because Gandhi saw society as a sum total of the individuals. This was important since Gandhi sought to engage the people into political movement, rather than organize movements using the masses as mere numbers or props.

Gandhi’s approach to political protests evolved as he experimented with ways of initiating narrower localized issues focused on relatively smaller clearly identified groups of people, like in South Africa and Champaran, to much larger canvas seeking to engage almost every section of society. However, irrespective of the scale and scope of
political action, Gandhi always sought to highlight the justness of the cause, and convert the political opponents for the cause of justice.

Gandhi valued political reconciliation to ensure justice and peace in society and consequently, he was always willing to negotiate once the principle at stake was recognized. He would settle for incremental progress if that helped in placating the former critics along in the process of reforms.

Satyagraha or civil resistance had its share of critics. There had always been apprehensions about civil disobedience that took the modes of protests beyond the institutional and constitutional frameworks. At the dawn of independence, B.R. Ambedkar and others had argued that while civil resistance had a role under colonial rule, it ought not to find any place in independent India.

Other critics look at the public defiance of the law as a recipe for anarchism and breakdown of social and political order. Some point to potential for criminalization by surreptitiously avoiding or breaking the law for personal gains under the cover of civil resistance.

Gandhi was aware of these criticisms. His strenuous rules of Satyagraha were evidence not of disregard for laws but of upholding laws that are ethical and effective. Thus through the rules of Satyagraha, he sought to uphold the institutions of laws that were just. This differentiates Satyagraha from an anarchic disregard of laws or willful avoidance of laws by criminals. Satyagraha was therefore the means to Swaraj, or self-rule, which was the ultimate goal.

An ideal satyagrahi, Gandhi (1959) wrote in his autobiography, is one who “obeys the laws of society intelligently and of his own free will, because he considers it to be his sacred duty to do so. It is only when a person has thus obeyed the laws of society scrupulously that he is in a position to judge which particular laws are good or just and which unjust or iniquitous. Only then does he accrue the right to civil disobedience of certain laws in well-defined circumstances.”

Mechanics of Mass Movements

As Gandhi ventured into his first major national campaign in 1920, he claimed not to be a visionary, but a ‘practical idealist’. He wrote, “The religion of non-violence is not meant merely for the rishis
and saints. It is meant for the common people as well. Non-violence is the law of our species as violence is the law of the brute. The spirit lies dormant in the brute and he knows no law but that of physical might.”  

Gandhi drew from the daily experiences of people where the overwhelming majority interacted with each other peacefully, in the belief that their interactions are just and proper. Conflicts are an exception, rather than the norm.

The continuous stress on non-violence, helped create a conducive environment that encouraged and enabled participation from a wide section of society who earlier would have been daunted by the thought of participation in political processes to confront the power of the state.

The exemplary behavior by the core volunteers, trained for Satyagraha, added a moral halo, helping to diminish the fear of political power. The satyagrahis inspired many more and provided a guide map for the path people could follow. With the decline in fear bolstered by righteousness of the cause, more and more common people came out to claim ownership of the movements locally, and the campaigns went ‘viral’.

Increasing participation in the campaigns provided opportunities to deepen engagement with the specifics of the particular issues, as well enhanced awareness of the fundamental principles at stake. The combination of participation, practices, and principles rapidly built a sense of citizenship along with the attendant rights and responsibilities. No formal education process could have hastened or deepened such claims of citizenship to such large numbers as these mass campaigns did.

Gandhi was very aware of the hazards of passions released once large number of people began to participate in the political campaign. His organizational genius lay in designing constructive programs to channel those passions. His stress on rules such as celibacy, hygiene and food habits, honesty and civility, and spinning the charkha were to impart self-restraint. Such practices helped breed a sense of

1. Young India, 11 August 1920, p.3.
discipline, deepened awareness and commitment, producing a sense of dignity and confidence to take on the might of political power.

Gandhi laid out strenuous set of rules of engagement for satyagrahis participating in various movements. Hartal, typically a day of stoppage or strike, was a common instrument deployed locally and nationally since the Non-Cooperation Movement in the early 1920s. The day of stoppage was announced well in advance to allow the people to prepare for possible inconveniences, even while the volunteers campaigned among the public to drum up support for the cause. But on the day of action volunteers were asked not to forcefully stop anyone from going about their work, or from keeping their establishments open.

Political actions are always pregnant with the possibility of violence. Such restraints on the part of the organizers of the protests significantly helped reduce tension on the actual day of action, thus lowering the potential for provocation and violence.

While the idea of non-violent protest movements have spread far and wide, the gulf seems to have widened between the way Gandhi sought to leverage civil resistance and many of the later generation leaders of non-violent movements.

Gandhi saw civil resistance as a way to accept suffering and sacrifice in order to make the other side realize the justness of the cause, and potentially ‘converting’ to the side of justice.

Many of the contemporary movements on the other hand attempt to force the hands of the authorities to concede the demands by stressing the force of numbers on the streets. Most of Gandhi’s opponents trusted him, even while disagreeing with him. In today’s politics, trust will find hardly any place.

**Politics of Gandhi**

Gandhi was a deeply spiritual person, yet he rarely visited any temple nor worshipped any deity. He followed no rituals, and his prayer meetings were always interfaith stressing on the common bonds of truth and love. Gandhi saw God as Truth, but preferred
Truth as God, since that allowed him to reach out not just to believers, but also to the non-believers, because “not even atheists had demurred to the necessity or power of truth.”

Among the nationalist leaders, across the world, Gandhi was perhaps unique in that he never relied on history to underscore his various social and political battles in terms of any historical narrative.

On a few occasions, he pointed to Emperor Ashoka as someone who had adopted non-violence after realizing the futility of imperial expansion through violence. Nevertheless, Gandhi stressed that his case for non-violence “does not become weak even if it is shown that Ashoka’s State was not based on non-violence. It has to be examined on its merits.”

Gandhi saw politics as a way to manage and mitigate such differences; not by hammering the differences away by claiming any absolute truth, but by finding ways of reconciling the differences through tolerance, enabling all the different shades to seek their truth, without trampling on anyone else.

Today, politics is primarily about accentuating the differences—real or imaginary—and polarizing opinion. It has become merely a tool to capture the levers of the state and use that power to patronize some sections of society—at the cost of others. Polarization of political opinion has become the new normal and consequently a sense of intolerance and dissent has seeped into almost every section of society.

Democracy, rather than providing a platform for debating and managing political differences, has been twisted into an arena where claims of the ‘majority’ are used to steamroll over minority, dissenting opinions.

Gandhi was fully aware of the abuse of state power, under democratic as well as authoritarian regimes. He stated that “while apparently doing good by minimizing exploitation, [state power] does

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the greatest harm to mankind by destroying individuality, which lies at the root of all progress.”

These were not mere preachings; Gandhi found ways of practicing his principles. Following the age-old debate over the protection of cows illustrates how far society has deviated from his ideals.

Gandhi strongly believed in protecting the cow both on economic and ethical grounds. “Cow protection to me is not merely the protection of the cow. It means protection of all that lives and is helpless and weak in the world.”

Yet, he added, “I would not kill a human being for protection of a cow.” Nor would he advise legislation to prevent cow slaughter, “legislative prohibition is the smallest part of any program of cow protection. ...People seem to think that, when a law is passed against any evil, it will die without any further effort. There never was a grosser self-deception.”

This approach of always seeking to integrate both principles and policies in his politics was consistent in Gandhi’s life. Not that he was always right; he acknowledged many of his mistakes, but always sought to learn and prepare his next steps. Gandhi’s attitude towards issues of gender, caste, and race went through a sea of change from his early days in South Africa. In navigating these challenges, Gandhi had a constant guidepost—the search for truth and justice, with the aid of non-violence.

Just as Gandhi saw no contradiction in reaching out to capitalists by integrating ethics and economics, he had no problem claiming to be a socialist while rejecting their negatives like the adoption of violence.

While Gandhi admired the self-denial and spirit of sacrifice of his socialist friends, he acknowledged, “I have never concealed the sharp difference between their method and mine. They frankly believe in violence and all that is in its bosom. I believe in non-violence through

5. *Young India*, 7 May 1925, p.160.
6. *Young India*, 18 May 1921, p.156.
7. *Young India*, 7 July 1927, p.219.
and through....”8 He notes that under socialism “there is no individual freedom. You own nothing, not even your body.”9

Gandhi wrote a year later, “the prince and the peasant will not be equalized by cutting off the prince’s head, nor can the process of cutting off equalize the employer and the employed. One cannot reach truth by untruthfulness.”10

Rejecting the socialist belief in class warfare, Gandhi looked at capital and labor as complementary. “If both labor and capital have the gift of intelligence equally developed in them and have confidence in their capacity to secure a fair deal, each at the hands of the other, they would get to respect and appreciate each other as equal partners in a common enterprise. They need not regard each other as inherently irreconcilable antagonists.”11

Even while agreeing to the Congress resolution in Karachi calling for nationalization of some industries, Gandhi (1959) had noted that he didn’t really visualize what it would mean. “Nor do I want all the means of production to be nationalized. Is even Rabindranath Tagore to be nationalized? These are day dreams.”

Gandhi, of course, had befriended many socialists in the labor movement, and counted many capitalists amongst his friends. He sought to reconcile apparently irreconcilable differences by engaging in dialogue respecting intellectual or political differences, but still building a personal relationship of trust.

Whether in economics or politics, Gandhi was wary of centralization “I do not share the socialist belief that centralization of the necessaries of life will conduce to the common welfare, when the centralized industries are planned and owned by the State. The socialistic conception of the West was born in an environment reeking with violence.”12

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9. Ibid.
According to Gandhi, “The State represents violence in a concentrated and organized form. The individual has a soul, but as the State is a soulless machine, it can never be weaned from violence to which it owes its very existence.” He continues to explain that, “It is [his] firm conviction that if the State suppressed capitalism by violence, it will be caught in the coils of violence itself, and will fail to develop non-violence.”

Gandhi called for federalism, as a way for democracy to grow its roots at the local level, as well as to prevent centralization of power. His call for Khadi meant a “mentality of decentralization of the production and distribution of the necessaries of life” (Gandhi 1948). Not merely for economic sustenance, ‘charkha’ was to instill a sense of dignity in labor, which India had substantially lost with social stratification. Politically, the colonial regime had sought to leverage the divisions on caste, religion or ethnic lines. Gandhi attempted to reconcile the social divisions through his political initiatives.

Ideas of the “village republic” and the self-sufficiency of Gandhi have often been seen as anachronistic, being against modernity and machines as well as isolationist. But Gandhi, in the context of the colonial state dominant at his time, saw through the essence of economic and political interventions that favored some at the cost of others.

In the context of the present—centralization of the power of the state and its attendant consequences, corruption, cronyism, social divisions and violence—Gandhi seems far ahead of his time!

Just a couple of months before his assassination in 1948, while the state was failing to meet its fundamental obligation of providing basic security to people in the aftermath of the communal violence that followed the decision to partition India, Gandhi (1948) noted in his diary, “Government control gives rise to fraud, suppression of Truth, intensification of the black market and artificial scarcity. Above all, it unmans the people and deprives them of initiative, it undoes the teaching of self-help.”

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The various social and political campaigns that Gandhi undertook highlighted the essentials of his politics—non-violence as the means, securing justice for all as the goal, seeking reconciliation between opponents, thus opening the door for possible peace and progress.

Today, politics is a mere instrument to capture the levers of state power, ignoring the intrinsic nature of the state. The endless search for power is fracturing society across innumerable lines, as political combatants look at their opponents as mortal enemies to be vanquished. Consequently, politics has degenerated from the noble vision of Gandhi, to a bottomless pit, where citizens are sinking deeper as their own governments bear down on them unceasingly.

**How Liberals Lost Gandhi**

Over the past few centuries, liberals have played a key role in shaping human history. They were amongst the first to stand up against religious dogma and bigotry. They were undaunted by the temporal or religious authorities and chose to stand their ground against injustice. They cherished the renaissance and saw the birth of modern science by breaking many taboos. They oversaw many political revolutions in the 18th and 19th centuries. Liberal paradigms of tolerance, justice, democracy, pluralism and market economics dominated much of 20th century. With access to political power, liberals increasingly relied on the state to pursue their policies, thus losing their original anti-establishment apprehensions about the nature of the state. As the 20th century rolled on, politics had degenerated into a game of capturing the levers of the state, and liberals found themselves on the margins of society.

The above hypothesis, which is open to correction, vividly illustrates the reasons why liberals lost ground. This is evident also looking at the range of their responses to Gandhi.

Some liberals lost Gandhi because of his apparent religiosity, failing to distinguish his spirituality from their own conception of religion. Gandhi held Truth as God, was devoted to non-violence, and looked at politics as a vehicle for human upliftment for his path to salvation. Gandhi did not claim absolute truth, but only a quest for truth, which provided him an opportunity to claim the true spiritual
values of a universal religion of man. Instead some liberals chose to surrender religion to sectarian charlatans and showmen.

Some liberals lost Gandhi because of his commitment to non-violence. Gandhi was not a pacifist, he was an aggressive civil resister, who repeatedly questioned the legitimacy of the state and defied its diktat. He endorsed non-violence as a matter of moral principle based on self-suffering and self-restraint, instead of aggression towards others. It was a strategy to mitigate political conflicts and make political gains and a tactic to invite the masses into political action, who could afford to participate only in an environment of peace. Gandhi offers ways of principled political mobilization, but many liberals seem to be interested neither in principled non-violence, nor in its practical application in mass mobilization.

Some liberals lost Gandhi because of his politics. Gandhi, the political activist, focused on regaining the principles of politics, and put them into practice. Gandhi, who was not a political scientist, acted as a true scientist, drawing up hypotheses, experimenting to test their validity, learning from mistakes, refining them, and then trying again. He sought to bring politics back to the people through the principle of non-violence. Many liberals, by the time Gandhi died, had lost political ground and preferred to closet themselves and their principles. Devoid of state power, liberals lost the means to practice their principles, leading many to conclude that liberal principles were too precious and fragile to practice.

Some liberals lost Gandhi because of his involvement with the masses. Politics to Gandhi was a vehicle to reach out to people, help secure justice, reconcile differences, and inspire them to claim their space as active citizens. Gandhi sought to legitimize politics by involving people. Some liberals wanted to protect their politics from the people, believing the masses to be irredeemable. Perhaps it is not a coincidence that the liberals find themselves so ill-equipped to face the current challenge posed by populist politicians of every ideological shade, who specialize in politically mobilizing the masses. So many liberals seem to have concluded that their principles are too sophisticated for the common man on the street.
Some liberals lost Gandhi because he was a democrat, who refused to surrender the individual to the mob in the name of majority rule. Gandhi chose to stand his ground to uphold his ideal in the face of majoritarianism, because to him, the essence of democracy was not majority rule, but the protection of individual rights and freedoms. Democracies can survive only when this egalitarian aspect is preserved, without which majoritarian democracy will inevitably degenerate into mobocracy. Some liberals have failed to appreciate this essence of democracy, as a result they find themselves in the margins of majoritarian politics.

Some liberals lost Gandhi because of his insistence on decentralized government. Gandhi was apprehensive about his incumbent’s tendency to centralize political power. It would turn politics into an instrument for disbursing patronage and privileges to the few at the cost of many others. Gandhi was fearful that this approach to politics would turn into an arena for power games with people reduced to mere props to preserve the facade of democratic normalcy. Gandhi wanted democracy to grow at the grass roots with self-governing ‘village republics’, where people could hold their own government accountable. Some liberals continue to cherish the dreams of capturing power at the top and then changing the nature of the game for the sake of the people. But this approach has only entrenched the power game further, enabling the worst of the lot to capture the levers of the state.

Some liberals lost Gandhi because of his view that the means are everything and his warning “that violent means will give violent Swaraj that will be a menace to the world and to India herself.” Gandhi held that the state represents concentrated violence, and therefore must be restrained to the bare minimum, if it was not to devour its own people. Decentralizing the state was a way to limit the threat of an all-powerful centralized government. “Real swaraj will come not by the acquisition of authority by a few but by the acquisition of the capacity by all to resist authority when it is abused,” said Gandhi in

1925. Some liberals continue to believe that the power of the state can be leveraged to do some good.

Some liberals lost Gandhi because of his stress on ethics in economics, and decentralized modes of production. Gandhi stressed on the spinning wheel as a mode of imparting self-discipline and a sense of dignity of labor. He looked at ways of igniting the entrepreneurial spirit of the people at the grass roots by getting the state to withdraw from economic interventions that skewed the market for the benefit of the few. In today’s terminology, Gandhi called for the withdrawal of the state to allow businesses to operate successfully. Some liberals continue to call on the state to improve the ease of doing business oblivious to the fact that state interventions created the chaos in the first place. The state may have no interest in improving the situation, except in some cosmetic sense or by gaming the system for the advantage of the elite. After all, those in power profit from their position and use state power to grant favors.

Liberals may have lost Gandhi along the way as they lost their own intellectual moorings, but Gandhi still provides a way for the liberals to rediscover their own roots and reclaim the lost political grounds.

**Conclusion: Reclaim Gandhi, Forget the Mahatma**

On his 70th anniversary in 1939, Gandhi had hoped, “Let these lines serve as a warning to those who want to honor me by erecting statues and having portraits of my figure, that I heartily dislike these exhibitions. I shall deem it ample honor if those who believe in me will be good enough to promote the activities I stand for.”

Today, by deifying or demonizing Gandhi, the real Gandhi is being lost. The loss is ours, not his, for he showed the true potential of a man, who learned from his follies, turned weaknesses into opportunities, and scaled heights that may seem beyond the reach today.

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Einstein (2015) famously wrote in 1939: “Generations to come, it may be, will scarce believe that such a one as this ever in flesh and blood walked upon this earth.”

Mohandas K. Gandhi was real, it is us who may have lost touch with reality. Yet, it should be possible to reclaim him as our own, not as a historical legacy, but as a beacon of light pointing to the possible road ahead.

References


The Preamble to the Constitution of India 1950 loudly proclaims India to be a sovereign, socialist, secular, democratic republic. Further, it expressly aims to secure liberty of thought, expression, belief, faith and worship for all its citizens. At no point in the Preamble, or anywhere else in the constitution, does the word ‘liberalism’ find a place. So, does a Constitution have to self-identify as ‘liberal’ or should we rely on specific institutional arrangements of state or guarantees of civil and constitutional rights to characterize a constitution as a liberal one? As a full-throttled embrace of electoral democracy in India throws up political formations whose ‘liberal’ commitments are yet to be tested, this is a timely and important question to answer.

There have been some efforts to determine whether the Indian Constitution is properly described as a liberal constitution. However, they appear to assume that the Indian Constitution is liberal and seek to avoid the charge that some features of the Constitution render it illiberal. Chakravarthi (2013) explains why group rights to protect vulnerable groups are not illiberal additions but integral to a multicultural conception of liberalism. Mathew John (2017) is concerned with the failure of Indian constitutional liberalism to draw on “Indian epistemologies regarding identity and community.”

In this essay, I revisit the question of whether one should assume that the Indian Constitution is liberal. Section I examines whether liberalism was invoked by framers of the Constitution either expressly or implicitly in the Constituent Assembly Debates. Section II reviews whether liberalism or liberal justifications have been commonplace in the Supreme Court’s interpretation of the Constitution. In Section III, assesses whether key features of the Indian Constitution are
exclusively justified on liberal grounds or necessary features of a liberal constitution. In a brief conclusion I show that as a liberal society does not require a liberal constitution, it is arguably a mistake to insist that liberalism is produced through a constitution. Instead, those passionate about sustaining a liberal India must engage in a substantive politics that organizes and educates around a liberal politics rather than to passively hope that the constitution will do this for us.

Liberalism in the Making of India’s Constitution

The long history of constitution making in India arguably began with The Constitution of India Bill 1895. This Bill was produced by the initial protagonists of the freedom movement, though its author remains unidentified. It does incorporate institutional features associated with liberalism such as the separation of powers and some fundamental rights, but it does not expressly proclaim its liberal character. While a fuller account of the nature of Indian liberalism Bayly (2011) in constitution making deserves careful study, for the purposes of this essay the analysis is confined to the most intense period of constitution drafting by the Constituent Assembly.

The Constitution of India 1950 was drafted by a Constituent Assembly (hereafter ‘CA’) through 165 days of debates in a little less than three years. A close review of these debates reveals the extent to which the framers of the Constitution invoked the concept of liberalism to describe or defend their constitutional design choices. Significantly, the CA did not engage at any stage in a debate about including the words ‘liberal’ or ‘liberalism’ into the constitutional text. However, there were two debates in which ‘liberalism’ was invoked to support amendments to draft articles of the Constitution.

First, K.T. Shah urged the CA to introduce a new Article 40A to expressly require a full separation of the three organs of government: legislative, executive, and judicial. This he argued was a “very basic requirement of a liberal constitution.”¹ He distinguished sharply between the institutional arrangements’ characteristic of the

¹. CADINDIA, 7.71.11 at https://cadindia.clpr.org.in
'liberalism of the English constitution' and the American 'liberal constitution' to show that a full separation of powers between all three arms of the government in the American model should inspire the Indian Constitution. This amendment was rejected though a slightly modified form of the separation of powers principle that guarantees separation of the judiciary from the executive at the lower levels of government survives as Article 50.

The second debate where liberalism was used to justify a constitutional amendment sought to add the freedom of the press and publication expressly to the current Article 19(1)(a)—guarantee of free speech and expression. Once again it was K.T. Shah who very strongly argued that for the Constitution of India to be called a “progressive liberal constitution”\(^2\); it must expressly provide for the protection of press freedom. Despite his evocative plea, the CA rejected the amendment and it was left to the Supreme Court to incorporate press freedom into the Constitution through interpretation.

To be sure, it was not just K.T. Shah who invoked liberalism in the CA. In very early debate on the draft Constitution, N.G. Ranga commended the drafters for hedging the scope of fundamental rights by allowing sufficient scope for state regulation. For him, limited rights were essential to ensure that partisans of “liberalism at one and communism at the other” cannot “take advantage of these rights to pave the way to totalitarianism.” Ranga alluded to the Weimar experience under the Third Reich to urge that too much ‘liberalism’ was the recipe for constitutional breakdown. For him, limited rights ensured that both citizens and state power would be kept in balance.\(^3\) In this instance, N.G. Ranga was congratulating the CA for avoiding a strong liberal view of rights.

In a similar vein, A.K. Ghosh complains that the draft constitution is shaped by the government’s point of view rather than that of the citizens. In particular, he was concerned that the draft constitution relied too heavily on foreign borrowing and was inadequately liberal

\(^2\) CADINDIA, 7.64.40

\(^3\) CADINDIA, 3.18.50
in its approach to constitutional rights, the structure of government and the economic model it embraced. For Ghosh, the constitution inadequately reflects liberal political values and needed substantive amendment. No such amendments occurred.

This review of liberalism in the CA throws up very surprising conclusions. First, as noted earlier liberalism was barely invoked in the constitution drafting process as an explanation or justification for constitutional choices made in the CA. Secondly, when members of the CA invoked liberalism in support of proposed amendments, they were invariably political outsiders in the CA and their proposals were rejected. Thirdly, where members used liberalism to describe the constitution, they invariably did so to emphasize its absence. While some members commended the move away from constitutional liberalism, others lamented the lack of liberalism in the Constitution. Hence, by paying careful attention to the CA debates we begin to doubt the assumptions that the Indian Constitution is resolutely liberal in character. This drafting discourse suggests an alternative conclusion: that the framers of the Constitution actively avoided describing their efforts to be directed towards a liberal constitution.

A Liberal Constitution in the Supreme Court

After the Constitution was adopted, its authoritative interpretation and characterization were left to the Supreme Court of India. In the section above, we found that the framers of the Constitution did not engage too deeply with liberalism as a political philosophy or with the nature of a liberal constitution. In this section, whether these ideas had greater traction in constitutional argument before the Supreme Court are examined. Do lawyers and judges use this conceptual framework to understand and interpret the Constitution?

A careful review of Supreme Court decisions from 1950 suggests a modest reliance on the concepts of liberalism and a liberal constitution to interpret and apply the Constitution to hard cases.

4. CADINDIA, 11.161.213
The earliest reference to ‘liberalism’ is in *Indira Gandhi v Raj Narrain*,\(^5\) where a Constitutional Bench of the Supreme Court applied the basic structure doctrine to declare the Constitution (39th Amendment) Act, 1975 to be unconstitutional. The court ruled that Parliament could not divest the judicial branch of the power of judicial review over election disputes related to the Prime Minister. Chief Justice C.J. Ray surveyed the historical lineages of the concept of separation of powers\(^6\) and democratic constitutionalism. He approvingly cited Bertrand Russel’s conclusion that ‘19th century liberalism’ was designed to prevent the arbitrary exercise of power by separating out the governmental power into three branches even at the cost of efficiency. Though C.J. Ray canvassed a wide range of academic materials to support his opinion, it’s fair to say that the conclusion on the constitutional principle of separation of powers partially rested on an account of ‘liberalism.’\(^7\)

For the next four decades, the court did not draw on these ideas in any substantive manner. There are stray references to economic liberalism which is more properly described as the policy of economic liberalization.\(^8\) However, in *Bhanumathi v State of UP*\(^9\) Justice A.K. Ganguly upheld a State legislative amendment that permitted a motion of no-confidence in local government leadership as it was essential to maintain a republican form of government. Further, he concluded that this republicanism was consistent with democratic socialism and radical liberalism in the Constitution. Though Justice Ganguly did not develop a full account of these concepts and how they are manifested in the constitution, this is surprisingly only the second substantive reference to liberalism by the Supreme Court in 60 years.

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This neglect of liberalism in the Constitution appears to have changed in the last two years. In *N. Radhakrishnan v Union of India*, Chief Justice Mishra speaking for a three-judge bench denied the request for a ban on a book on the grounds that it offended religiously minded temple goers. He affirmed that the free speech guarantee in the Constitution protected the ‘liberalism’ necessary for artistic expression. For the first time in Indian Supreme Court adjudication, he affirmed liberalism as an epistemic personal requirement for writers and artists to read any material and to express themselves in diverse ways.

In *Indian Young Lawyers Association v State of Kerala* the court had to decide whether the individual liberty of menstruating women to enter a temple would override the religious and customary practices of the priests that barred their entry. Chief Justice Mishra emphatically upholds individual liberty and writes:

> Constitutional democracies do not necessarily result in constitutional liberalism. While our Constitution has adopted a democratic form of governance, it has at the same time adopted values based on constitutional liberalism. Central to those values is the position of the individual. The fundamental freedoms which Part III confers are central to the constitutional purpose of overseeing a transformation of a society based on dignity, liberty and equality.\(^{11}\)

In this opinion, CJI Mishra clarifies the place of liberalism in the Constitution in two distinct ways: first, he finds that fundamental rights in Part III of the Constitution express the political value of liberalism and secondly, he outlines the tension between the simultaneous pursuit of the democratic and the liberal principle in a constitutional regime. This is a significant advance in the recognition and understanding of liberalism in the Constitution by the Supreme Court, albeit by only one opinion in the case.\(^{12}\)

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11. Indian Young Lawyers Association v State of Kerala 2016 SCC OnLine SC 1783, Mishra CJI at p.188.

12. I will not address CJI Mishra’s evocation of ‘egalitarian liberalism’ in *Navtej Johar v Union of India* (2018) 10 SCC 1, CJI Mishra at p.97. CJI Mishra’s use of the phrase egalitarian liberalism would not adhere to any standard account of political liberalism and is best understood on its own terms.
When Justice Chandrachud dissenting in the *Aadhaar* case,\textsuperscript{13} summons liberalism to challenge the Aadhaar scheme he surprisingly relies on a distinction between positive and negative liberty. He rightly points out that liberalism may demand both restraint and positive action from the state, and then remarkably concludes that the direct benefit transfers enabled by Aadhaar are a form of neo-liberalism. In any event, these reasons do not drive his conclusion that the Aadhaar scheme is unconstitutional and are best seen as providing additional support.

The recent heavy lifting of liberalism in the constitutional interpretation of the Supreme Court appears to rest on the shoulders of one judge. CJI Mishra has now retired and with him, it is likely that this trend will witness a quiet demise. When other judges do engage with political liberalism they do so inadequately or in surprisingly obtuse ways. An overall assessment of the trajectories of political liberalism in the Indian Supreme Court based on the discussion above would be that it is a minor aspect of Indian constitutional law doctrine. It appears very rarely to explain or justify a particular interpretation of the separation of powers and the scope of fundamental rights. However, even in these cases, it does not offer a distinctive or indispensable reason for the conclusions reached.

**Liberalism in Constitutional Design**

So far in this essay, the focus has been on the express invocation of the word or the concept of liberalism by the framers to explain or justify their constitutional choices, or by the Supreme Court’s to justify its constitutional interpretation. It is found that both political projects do not extensively use liberalism to make constitutional choices or to interpret the Constitution. In this section, I explore if we should nevertheless describe the Indian Constitution to be a liberal constitution when we locate it in the global family of national constitutions. This exploration would necessarily be comparative and typological. First, one must have an account of the features of a

\textsuperscript{13} K.S. *Puttaswamy v Union of India*, (2017) 10 SCC 1, Justice Chandrachud invoked among others Isaiah Berlin, F.A. Hayek, Amartya Sen, Martha Nussbaum, Henry Shue to discuss liberalism and positive and negative liberty.
constitution that would make it ‘liberal’ and secondly, if the Indian Constitution possesses these features in full or in greater proportion than many other constitutions across the world.

Prof Dieter Grimm’s (2012) effort to develop a typology of constitutions is instructive and the appropriate place to begin this enquiry. He usefully distinguishes between a typology built on the legal features of a constitution—written/unwritten, higher or ordinary law, rigid or flexible—from one that is made by reference to political values—democratic/non-democratic, liberal/illiberal. While there are strong historical linkages between the legal features of a constitution and its political values, this is not a necessary conceptual connection. Hence, we may discover that an unwritten constitution may be properly described to be liberal or illiberal depending on the constitutional norms observed in a particular society. So, it follows that liberalism may be embedded in the legal or non-legal aspects of the constitutional arrangements in any society.

For Grimm, a liberal constitution is one that fully embraces the pluralism of individual opinions and interests. A deep liberal commitment would entail that citizens would have the right to express their political choices not just electorally but at all other times and places. Hence, though the democratic principle would legitimatize and institutionalize majority rule, if any particular group were able to suppress the expression of any other opinions and interests, the liberal character of the constitution would come under threat. While a constitution may be both liberal and democratic, it cannot accommodate the maximalist expression of either principle in institutional design or practice. So as a practical matter, the hyphenated expression ‘liberal-democratic’ constitution must be understood as a mutual compromise between these two political values essential for their simultaneous expression in a modern society.

Before we turn to the institutional expression of political liberalism in a constitution, it is useful to sketch the dimensions along which we may expect the political idea of liberalism to exert
itself. For Mill,\textsuperscript{14} liberalism was committed to protecting individual freedom from social power exercised by traditional societies—with aristocratic or monarchical regimes—and more modern democratic societies through unbridled majoritarian power. Further, he was clear that the paternalistic or feudal exertion of social power even when unrelated to political state power was a core threat to liberty that liberalism must combat. Thirdly, while he endorsed property rights and market arrangements, he was no enthusiast for laissez-faire liberalism with unregulated markets. Above all, he stressed the need for the state to regulate private markets or to directly provide ‘liberal essentials’ like education, work and other public goods essential for an individual to exercise autonomy and self-government. Hence, liberalism is best understood as a political principle that operates in all three spheres where collective authority impinges individual freedom—namely, the social, political and economic spheres.

So now we may ask whether the Indian Constitution is ‘liberal’ along the dimensions identified above. While a full answer to this query requires a comprehensive review of the entire constitutional text and its practice, in this essay I will confine myself to evaluating a few key features of the Indian Constitution—namely, judicial review and fundamental rights. Both these institutional features are identified in the cases discussed in section II, and tightly linked to securing what Grimm describes as a liberal commitment to pluralism. In this section, to show that the Indian Constitution is liberal we will need to show that these key features are necessary for a liberal society both conceptually and in political and social practice.

\textit{Judicial Review}

The Indian Constitution embraces a fully developed version of judicial review. The Supreme Court and High Court are expressly given the power to strike down legislation and executive action that infringes fundamental rights, oversteps subject matter and territorial jurisdiction or otherwise abridges the constitution. The Supreme

\textsuperscript{14} See John Stuart Mill \textit{On Liberty} (CUP 2011).
Court has expanded this power of judicial review to include control over the power to amend the constitution through the doctrine of basic structure and more recently proposed to use a new doctrine of constitutional morality as an implicit limit on political power.

As this brief description of the institutional feature of judicial review suggests, it is primarily concerned with limiting the scope of the political power of the state to constrain individual freedom. While it is occasionally exercised ‘horizontally’ to restrict the civic power of private actors, it is at its core concerned with the vertical political relationship between the state and citizens. When rights are interpreted to generate positive duties on the state or private actors to ensure the achievement of ‘liberal essentials,’ judicial review may be reconfigured to operate as an institution that enhances the autonomy of individuals to fully participate in political and social life.

Judicial review is commonly understood to be an essential feature of a liberal constitution. As liberalism is committed to the protection of liberal rights, it is assumed that it must also be committed to the protection of liberal rights through the robust institutional arrangements of independent judicial review. This view is often associated with the constitutional debates that led to the founding of the Constitution of the United States, 1789. However, in the much-cited Federalist Papers No. 78 Alexander Hamilton reveals that the core motivation for the institution of judicial review was to check the abuse of power by Congress. He emphasized the need to check majoritarian excess rather than any special ability of the judiciary to protect fundamental rights.

Hence, it is more accurate to view judicial review as an institutional mechanism that constrains the full expression of the majoritarian democratic principle rather than to see it as being essential to the protection of liberal freedoms. This is made clearer when we assess whether constitutions without judicial review may be liberal. In the English parliamentary model constitution, the absence of judicial review did not result in the erosion of liberal freedoms. While England has moved away from this model, and its adoption elsewhere in the world is clearly declining, these shifts are not indicative of a shift from an illiberal to a liberal constitutional
arrangement. The adoption of judicial review appears to be critical to demarcate the extent to which the democratic principle may be expressed in a constitutional society. This check on majoritarian democratic expression is compatible with limited protection of liberal freedom.

So far in this section, I’ve shown that while the Indian Constitution adopts a robust version of judicial review, judicial review is not necessarily designed to protect liberal freedom but instead to limit the excesses of majoritarian democratic power. However, I have not addressed whether the practice of judicial review in India has effectively enhanced liberal freedom. The best summary one may offer is that at various points in India’s constitutional history, the courts have been erratic in their protection of liberal freedom. A cumulative assessment of this institutional feature would require a complicated and lengthy enquiry—one that is beyond the scope of this essay.

Fundamental Rights and Directive Principles

The Indian Constitution guarantees a wide array of fundamental rights in Part III as well as a bundle of Directive Principles in Part IV of the Constitution: conventional individual rights to life and liberty, equality and non-discrimination, speech and expression, conscience and profession; unconventional group rights to affirmative action and for the protection of minority religious groups; and a directly applicable right prohibiting caste-based untouchability. These rights impose obligations on the state and under certain circumstances on other citizens. The constitutional guarantee of rights is often seen as the ultimate expression of political liberalism in the constitution, though group rights are often described as an illiberal aspect of the Indian Constitution.

While rights guarantees have become commonplace in post-World War II constitutions, the Indian Constitution goes further to outline a set of directive principles to guide legislation and executive policy-making and implementation. These principles are wide-ranging and include directions to prevent the accumulation of economic power and wealth, regulate the labour markets and to ensure education,
nutrition and public health. The courts have been ambiguous about the legal status of these principles, but in recent years they have gained greater political and legal salience. These principles are often presented as a socialist manifesto and hence unrelated to political liberalism. However, they may be well described as a part of the 'liberal essentials' bundle that extends political liberalism beyond the political to the social and economic spheres. By requiring the state to ensure that the conditions necessary for individuals to exercise their autonomy and self-determination are satisfied either directly by the state or through the regulation of the market and social spheres, directive principles may be seen to be part of the liberal character of the Indian Constitution.

The place of rights in a constitutional order is best understood from a historical perspective. Where a legal order already protects liberal freedoms through ordinary law and political practice, a constitutional guarantee of rights is unnecessary to ensure a liberal society. Hence, English constitutional law did not adopt a bill of rights till 1998 and yet was arguably a liberal society since the 19th century. However, in India, the pre-Independence colonial regime disavowed rights guarantees and preserved an illiberal political regime through the brazen exercise of the police power. Hence, the adoption of the constitutional guarantees of fundamental rights in India coincided with the introduction of liberal legal and political order. So, while constitutional fundamental rights are not conceptually necessary for a liberal society, in India these rights inaugurated the birth of a liberal society.

Rights are a power-shifting device in two senses: they shift power away from the legislature and the executive towards the courts and secondly, they shift power away from the state to the citizen. In this sense, constitutional fundamental rights perform two functions—as a check on democratic majoritarianism and to enhance liberal autonomy. However, the directive principles in the constitution, unlike fundamental rights, are not directly enforceable by the courts. Hence, directive principles don't shift power away from the democratic branches to the courts. Their work in the constitution is
to enhance the ability of citizens to exercise their autonomy in the social, political, and economic spheres.

In this section, I’ve briefly reviewed whether the presence of fundamental rights and directive principles make the Indian Constitution a liberal one. We find that fundamental rights serve a dual function: to enhance liberal autonomy and to simultaneously constrain democratic majoritarianism. Directive principles, on the other hand, I argue prioritize the ‘liberal essentials’ by targeting democratic power to their achievement. This is a novel and uncommon constitutional legal instrument that has been poorly understood in Indian constitutional practice.

In the section above, while discussing judicial review, I observed that a full review of the practice of a constitutional feature was not possible within the confines of this essay. This is truer of the twin features of fundamental rights and directive principles. While the Indian Supreme Court has been awash with fundamental rights litigation, it has disavowed engagement with directive principles altogether. On balance, the court has protected fundamental rights against majoritarian democratic power at critical junctures of Indian constitutional history. However, it has not done so with a keen appreciation of the nature of liberal autonomy.

Despite the tepid evocation of liberalism in the Indian courts, rights talk has permeated deep into Indian social life. It is the lingua franca of all types of protesting groups and social movements. This social and political rhetoric has more often focused on translating the ‘liberal essentials’ in the directive principles into rights claims through legislation. This emphasis on juridification and legal enforcement of the directive principles has ironically enhanced its anti-democratic character. The popular and judicial confusion about the directive principles has arisen primarily from the failure to recognize its critical liberal function.

In this part of the essay, I’ve asked whether the features of the Indian Constitution are exclusively motivated by, or best understood to be an application of the political ideas of liberalism. I’ve analyzed three key features of judicial review, fundamental rights and directive principles. We found that except for directive principles, the other
two features in the constitution responded more to the concerns of the separation of power between the democratic and non-democratic branches rather than affirming individual autonomy.

This is not an exhaustive analysis of all the features of the Constitution that could potentially be understood to be a part of a liberal constitution: the horizontal separation of powers between the branches of government and the vertical division of powers between territorial units are appropriate candidates for analysis. However, even a cursory review of the literature and cases on these features of a constitution, reveal that they’re motivated by several concerns that go beyond political liberalism. The discussion so far confirms that while the Indian Constitution shows liberal features, there is no part of the constitution that can be described as a necessary feature of a liberal constitution. I will conclude this essay by saying more about why this is so.

**Conclusion**

I began this essay with the common assumption that the Indian Constitution is liberal in character. I then explored whether this assumption has a sound basis. Section I showed that the constitutional framers did not set out to create a self-consciously liberal constitution. Next, I demonstrated that the Indian Supreme Court has not mobilized political liberalism to explain or justify their interpretation of the constitution in any significant manner either. Finally, in Section III showed that key features of the Indian Constitution like judicial review and fundamental rights are not conceptually necessary for a liberal society and are primarily motivated by the need to preserve the political value of constitutionalism by constraining democratic majoritarianism. Notably, directive principles are more keenly focused on securing ‘liberal essentials’ necessary to enhance self-determination and autonomy by empowering the democratic branches to undo social and economic barriers to liberty.

By reassessing the liberal character of the Indian Constitution in these three ways I raise several reasons to doubt a full-throated proclamation of the Indian constitution as a liberal constitution.
However, are these Conclusions about institutionally structured Indian constitutional discourse and design a result of oversight or indicative of a need to rethink the relationship between political liberalism and the constitution? It may be that political liberalism in Indian society is not directly encoded in the Indian Constitution but nested in the relationship between state and society that has emerged through the governance and regulatory practices of the post-Independence Indian state. So, while constitutional mechanisms may prevent backsliding in a liberal society under some circumstances, India may become an illiberal society without a change in the constitutional text or its constitutional interpretation. So those concerned with the preservation of political liberalism in India would do well not to rely on its constitutional entrenchment, but rather invest in embedding liberalism in our collective social and political institutions and practices.

References
India is a multi-party democracy. According to the latest notification published by the Election Commission dated 13 April 2018, there are seven national political parties, 59 non-unique state political parties, and a total of 2044 registered but unrecognized parties. Some may say that when it comes to the electoral politics of India, there is too much competition for the political parties, and too many choices for the voters. Ordinarily, this should be a good and healthy situation to be in.

The title of the chapter assumes that India does not have a liberal party today. It needs a bit of qualification. When it is said that India does not have a liberal party today, what is meant is that India does not have a ‘major’ liberal party. A few liberal parties that do exist fall under the classification of ‘registered unrecognized parties’.

We will discount these for the twin reasons that for all practical purposes they have little to no influence or voice today, and that none of their members are represented in the parliament or any of the state legislative assemblies.

It is also important to clarify what is meant by the term ‘liberal’, especially when people and organizations from across the spectrum of ideas and politics have come to claim themselves to be a ‘liberal’. Indeed, it is a desirable word. For the purposes of this chapter, a liberal is someone who stands for the primacy of the individual and the promotion of individual freedom in all spheres of life.

This chapter is an attempt to answer why organized liberalism in India has had such a difficult time and why political parties of liberal orientation are nowhere in sight, and definitely not on the minds of an ordinary voter. It concludes with a few suggestions towards building a successful liberal party.
Liberal Parties in India: Past and Present

The most prominent and successful liberal party after independence has been the Swatantra Party which existed between 1959 and 1974. Founded by C. Rajagopalachari (popularly known as Rajaji), the party stood ‘to oppose socialism of the communist kind’ which the Congress party led by Prime Minister Jawaharlal Nehru was seeking to pursue.

Commemorating the 50th year of the formation of Swatantra Party in 2009, S.V. Raju wrote, “While the Congress emphasized the collective and the primacy of the State, Swatantra stood for the primacy of the individual vis-à-vis the State.”¹ Party’s heyday were in 1967, when it emerged as the single largest party in the opposition securing 44 seats in the Lok Sabha. However, the party suffered huge losses in the mid-term parliamentary elections of 1971. In 1972, the patriarch and the guide of the party, Rajaji passed away and all except the Maharashtra chapter of the Swatantra Party wound up in 1974 when the party leadership decided to merge with Bharatiya Lok Dal.

There can be no better testimony to the importance and success of Swatantra Party than the fact that even today all Indian liberals, and even many non-liberals, fondly reminisce about Swatantra Party.

Returning to the present day, some of the registered but unrecognized liberal political parties are Swatantra Bharat Paksha, Lok Satta Party, Swarna Bharat Party, Liberal Democratic Party, and People’s Liberal Party of India.

The oldest and most successful of the lot is the Maharashtra-based Swatantra Bharat Paksha, founded in 1994 by the farm leader Sharad Joshi. Over the years, a few members of the party have been elected for representation in Maharashtra state assembly. However, they failed to secure any seat in the state assembly elections held in 2014. Mr Joshi himself was a Member of Parliament in the Rajya Sabha (2004-2010). Since his death in 2015, the party has been mostly dormant, but is now seeking to contest a few seats in the upcoming state assembly elections scheduled for October 2019.

¹ Page 12, Report of a meeting held in Mumbai on 1 August 2009 commemorating the 50th year of the founding of the Swatantra Party.
Lok Satta Party is an initiative of physician and ex-IAS officer Dr Jayaprakash Narayan (popularly known as JP). JP has been a member of the Andhra Pradesh legislative assembly. However, the party declared in 2016 that Lok Satta will not take part in electoral politics for some time.²

An initiative of Sanjeev Sabhlok, an ex-IAS officer now based in Australia, Swarna Bharat Party was launched in 2013. As the name suggests, the party offers the vision of a golden India which leads the world in freedom and wealth.³

Assam-based Liberal Democratic Party was launched in 2015 by an ex-BJP member Prodyut Bora and stands for economic and social liberalism.⁴ People’s Liberal Party of India is another initiative from Rajasthan which has been founded on the fundamental principles of liberty, equality, and justice.⁵

Most of these parties are new and are doing their best. While it is good to see new liberal political initiatives, in the absence of a popular demand for such initiatives it looks unlikely that any of them will achieve success anytime soon.

**How Liberal is India**

India’s tryst with government’s increased role in the economy at the time of independence was no accident. Could Jawaharlal Nehru and other Indian leaders have chosen differently? Taking a closer look at events before and after independence, it looks almost inevitable that India went down the socialist route.

A National Planning Committee was set-up in 1938 under the chairmanship of Jawaharlal Nehru by Subhas Chandra Bose, the then Congress president. The committee wanted the post-independence government to play an important role in the economy, especially in industrialization.

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⁵ [http://www.theplp.in/our-party.php](http://www.theplp.in/our-party.php)
In 1944, a group of eight top industrialists drafted a 15-year plan for India. The draft, popularly known as ‘The Bombay Plan’, considered industry as the motor of economic growth and advised the would-be Indian government to play an active role in the economy. Also, in 1944, a Department of Planning and Development was set-up by the Imperial government at the time, under the chairmanship of Sir Ardeshir Dalal, one of the signatories of the Bombay Plan. The statement of industrial policy by this department in many ways foreshadowed the Industrial Policy Resolutions of 1948 and 1956, which awarded the ‘commanding heights’ of the economy to the government.

So, we see that the top leadership of the Congress party, top industrialists and the British government that was on its way out, all agreed on one thing—that the government needs to play a pro-active role in the economy, and state-led industrialization was the way to go.

Moreover, most of the experts that visited India after independence, encouraged and applauded India’s choice of state-led industrialization and centralized planning.6

The Great Depression of the late 1920s and 1930s in the United States had made people around the world sceptical of the ‘free market’. On the other hand, the USSR which adopted the state-led central planning model at the time was seen as a miracle economy which was growing at a rapid pace. It is therefore no surprise that most countries, including India, that gained independence around World War II chose the path of state-led development model.

India continued with this model till the late 1980s. In many ways, this model has not been completely discarded till date. The economic reforms of 1991 and after, were carried out not because of conviction but because of necessity.

6. There were three notable exceptions to this consensus. Prof B.R. Shenoy who wrote the famous 1955 “Note of Dissent” appended to the Majority Report of the government advisory panel of economists on the draft of the Second Five Year Plan. Prof Milton Friedman who visited India in 1955 under the auspices of the U.S. International Cooperation Administration, wrote a memorandum on the Second Five-Year Plan warning about the inefficiency and slow growth that it was sure to cause. And Prof P.T. Bauer who also visited India at the time, questioned India’s embrace of socialism and central planning.
Why is it that as many countries recognizing the failure of the central planning model continued to walk away from the ‘planning consensus’, but not India? One explanation is offered by economist Ruchir Sharma (2019) who has put together his experiences and lessons from more than 20 years of covering major parliamentary and state assembly elections:

One of the most important lessons I have learned on the road is that ideas—particularly economic ideas—do not play the same role in India that they do elsewhere. In more advanced democracies, the main ideological divide involves the role of the state versus the free market in distributing wealth. In India everyone is a statist. The economic debate is about how the state can best help the poor, by developing roads and other infrastructure, by distributing welfare benefits, or a bit of everything. (Sharma 2019: 358).

Many people, including many liberals, had hoped for Narendra Modi to help change the course in 2014. He had all the right rhetoric. Most famous among them being ‘minimum government, maximum governance’ and ‘government has no business being in business’. In recent times, no party has received the kind of mandate that Bharatiya Janata Party (BJP) got in 2014. Why is it then that Mr Modi failed to do the disruptive changes he was elected for?

The real question to ask is why should he? For a career politician, the metric of success and failure is getting elected. Once elected, the goal becomes how to get re-elected. To continue to be in power necessarily also means to not take too many unnecessary risks. Doing disruptive things is a big risk.

Pursuing economic reforms will remain a big risk until there is a popular demand for such a change. No such demand exists today.

**Why India Does Not Have a Liberal Party**

The following list is only an indirect way to explain why India does not have a liberal party. They are broadly the reasons why the liberal voice, the liberal agenda, and the liberal narrative are missing from the mainstream.
India is Essentially not a Liberal Society

More than 70 years of trying state-led development has made India an illiberal society today.

When the majority of the resources are controlled and distributed by a few in the government, as was the case during much of the post-independence period, only a connected few benefit, while everyone else is forced to pay the price which they don’t even realize.

Ruchir Sharma (2019: 361) is spot on when he says, “India’s political DNA is fundamentally socialist and statist.” It is no wonder that economic reform ideas hardly ever find mention in election manifestos of major political parties, and in the election campaign speeches.

First-past-the-post System

To win an election in India, a candidate needs to get more votes than his nearest opponent. This FPTP (first-past-the-post) system along with India’s multi-party system is both a handicap and an opportunity for liberals. So far, it has proven to be a handicap mostly.

Mainstream political parties, especially successful ones, tend to aim for a group based on caste, religion, ethnicity, language, or any other kind of identity. FPTP combined with the multi-party system tends to put the liberals at a distinct disadvantage. While an identity based political party can promise specific sops and subsidies to their identity-based constituency in the near term, a liberal political party promising individual freedom and a limited role of the state whose benefits appear only in the long run can’t hope to match such a promise.

Cost of Doing Politics and the Cycle of Dependence

The Indian state routinely engages in producing and providing private goods, which necessarily comes at the cost of an effective provision of public goods. Take for example the Union Budget presented earlier this year where a few private goods the Finance Minister talked about were LED bulbs, houses, toilets, LPG cylinders, etc. But when it comes to the provision of public goods such as
policing, criminal justice, public infrastructure, it is no wonder the government fails to meet acceptable standard of delivery.

Given that the State engages in so many things, and does them poorly, the rational thing for the people is to try and secure from the government whatever they can, howsoever they can. And this requires the people to be dependent on a facilitator.

The protection and help the local politician from an established party provides from the heavy hand of the state (police harassment, protection from encroachment, etc.) and the provision of mundane local government services (a pothole fixed, a certificate from the local municipality, etc.) is of immense value to the electorate. This protection can’t be substituted easily and is not easy for an independent, an outsider, and a new party to provide. Thus, the voters has no choice but to patronize the one which provides them with the protection and facilitates their daily lives. This makes the cost of doing politics extremely high for an outsider with no connection with the government machinery and no knowhow on how to circumvent the unnecessary hurdles. India’s electoral politics is designed in a manner that it is extremely difficult, if not impossible, for independents and a new party to remain honest and be successful at the same time.

Thus, the rent-seeking economy and the patronage society that has been created over the last 70 years, has put outsiders at a natural disadvantage.

In his address at the Twentieth Lalit Doshi Memorial Lecture on 11 August 2014 at Mumbai, the then Reserve Bank of India Governor Dr Raghuram Rajan described this as follows:

So the circle is complete. The poor and the under-privileged need the politician to help them get jobs and public services. The crooked politician needs the businessman to provide the funds that allow him to supply patronage to the poor and fight elections. The corrupt businessman needs the crooked politician to get public resources and contracts cheaply. And the politician needs the votes of the poor and the underprivileged. Every constituency is tied to the other in a cycle of dependence, which ensures that the status quo prevails.7

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No easy way out of this ‘cycle of dependence’ is visible in the short term. The cycle will keep turning, if it is not broken and replaced with something better.

_A Disconnect from Issues Facing People_

It has been a mistake on the part of liberals to focus on economic reforms alone. Liberals tend to ignore immediate and pressing issues such as caste discrimination. Liberals believe that prosperity brought about by economic reforms and growth will take care of these issues. Caste is a real issue and can’t be wished away. Even though the solution to such issues may seem difficult in the near term, an attempt at communicating liberal solutions must be made.

It is no surprise that successful political parties and their leaders focus on issues that matter to people in the immediate term. They are better aware of what people need. Liberals need to make their case in the language people can understand and see the long-term benefits of.

_A Poor Understanding of how India Really Functions_

Liberal think tanks, authors, columnists, and intellectuals have focussed disproportionately on issues and people living in a few cosmopolitan cities like Mumbai, Delhi, Pune, Bangalore, and Hyderabad. It is true that India is urbanizing at a rapid pace, but a significant part of India still lives in its villages. Liberals can ignore this significant constituency at their own peril.

It is well known that an agriculture crisis is facing Indian farmers. All the conversations surrounding it have been about temporary relief in the form of loan waivers, higher guaranteed prices and some form of income support, especially for the marginal farmers. The long-term solution of agriculture reforms by freeing the farmers is missing from most political conversations.

In March 2018, more than 40,000 farmers walked over 180 kilometres from Nashik to Mumbai to petition the Maharashtra state government on a set of demands. These farmers marched under a sea of red flags. The ‘Kisan Long March’, as it has come to be known,
was organized by All India Kisan Sabha, the farmers group of the Communist Party of India (Marxist).

As one would expect, the thing that was demanded most vociferously from the dias in Azad maidan, the venue in Mumbai where the farmers had gathered, were loan waivers and a higher guaranteed support price for their produce.

However, the farmers’ most important demand was ignored by those covering the issue—the failure of the state to acknowledge rights to their land they have been cultivating for decades and award titles to the same.

The right to property is one of the most sacred of rights for a liberal. There is a huge opportunity to champion this issue for a liberal political party. Unfortunately, this issue is currently being half-heartedly led by parties on the left. The market does exist for a liberal party. Farmers are waiting. It is up to the liberals to take advantage of this.

The same could be said of a large number of people living in cities who do not have the most basic of rights—people who live in the slum without title to their property, or street vendors who live under the constant threat of having their entire investment confiscated by the municipal officers.

**Absence of a Liberal Ecosystem to make a Case for Liberalism**

Building and maintaining a political party is a monumental task, more so in a diverse country like India. Many things are required to make a strong bid and come across as a credible alternative for the electorate.

Especially for the ones who hope to build such a party not on any divisive identity but on an idea, like a liberal party, it requires people and organization to help communicate the liberal message and agenda, it requires think tanks to make the liberal case in public policy debates, etc. And of course, like all other parties, such an endeavor also requires large amounts of money at regular intervals to carry out party activities, a large number of people to work as volunteers and as dedicated party cadres, and many intellectuals who can function as party ideologues.
Reasons for Optimism

Entrepreneur and author Jerry Rao concludes in his essay titled “The Problem with Liberal Parties”,

The chances that a non-identity based classical liberal party will actually have millions of passionate members and will win at the hustings without the veneer of identity politics in any electoral democracy—be it in India, the US, Germany, Japan, or for that matter even in Britain—seems a very low probability event. And in politics as elsewhere, realism must prevail.8

Indian political parties have generally been driven by one or the other kind of identity politics. But it does not necessarily have to be a low probability event for a non-identity based liberal party to succeed.

In India today none of the state and national political parties are liberal parties. But all hope is not lost. Here’s a list of opportunities liberals could take advantage of in building a mainstream liberal party.

Reduced Cost of Doing Politics

The cost of doing politics does not have to be as high as it used to be. The advent of social media and the spread of smartphones present interesting opportunities.

Today, the cost of spreading ideas and messages is extremely low. No longer are expensive spots on television and newspapers or the wide network of volunteers on the ground the only way to get the message across to the electorate. India today has one of the lowest priced mobile data in the world. More than 300 million Indians already have a smartphone, and this figure is growing at a fast pace. It takes little time and money to get a message viral today. This is good news for an outsider.

Effective Communication

Liberals need to understand the voters and speak the language they know and understand; about things that matter to them. There

is no conflict between the ideas and principles of liberalism and the things that matter to people.

If a conflict is observed, chances are it is liberals who have failed to communicate these ideas properly. It is often the people on the left who make the moral case and take the high ground in public debates. Liberals need to learn from the left and beat them at their own game. It often comes across that people of the left who advocate hand-outs ‘care’, while the ones advocating reforms don’t. Liberals need to find a way to fix this problem of optics.

Creating the Demand

It is no surprise that India does not have a mainstream liberal party because there is no demand for liberal ideas and policies.

The task of creating this demand does not fall on any one entity alone. Everyone who believes in the ideas and principles of individual freedom and in an open, free, and fair society needs to do his or her part. All channels need to be worked upon simultaneously, whether it be media, university, research think tanks, or politics. Every freedom-loving individual and institution has a role to play.

There will be opportunities liberals must capitalize on. For instance, the agriculture distress hurting farmers all over the country. There is hardly a liberal political voice today making a case for the liberal alternative to all the short-term solutions presented everywhere by everyone. It is a shame that the liberal story is not told.

Taking Advantage of the FPTP System

There exists a realistic chance for a new liberal party to carve out an idea-and-reform-based constituency. Under FPTP, a candidate is able to win an election even with only 30 per cent of the popular vote, in some fiercely competitive constituencies with even 20-25 per cent.

This is a chance for a liberal candidate. The ‘constituency of reforms’ does not have to be very large to be successful. If worked right, even a 20-25 per cent voter support can pay huge electoral dividends.
Right Identification of the Target Group

In most of the state assembly and general elections, an average of about 60-65 per cent of people vote. Multiple state and national parties are vying for the attention of these voters.

It is safe to assume that 30-35 per cent of voters sitting at home, are not happy with the choices. These become an obvious target for liberals. Also, there are people not registered to vote, others who vote for a party or individual with little to no hope of winning. Only one-third of the voting population is aligned to an existing political party. The two-thirds who are not, are an opportunity for a liberal party.

Conclusion

Liberalism as a credible alternative does not exist in India today. Much work remains to be done to present a credible liberal alternative to the voters. Is it impossible? Certainly not.

Liberals have many things going for them. They have history and evidence on their side, they have theory on their side. Freedom is valued by most people. Else, we would have lost it already. We just need to do a better job making the liberal case.

References


Nine years ago I was travelling in Northern California on a road from East to West. To my right, on the North was the city of Sunnyvale and to my left was the city of Cupertino. My Indian-American friends accompanying me told me the property values in Cupertino were much higher than in Sunnyvale, though they were only separated by a road. The infrastructure in both cities was very similar. Sometimes, human prejudices being what they are, the demand for property and therefore prices change depending on the population mix—the more heterogeneous the population, the less the property values! But the population mix in both cities was similar too. As it turned out, the difference in real estate prices was largely due to outcomes in, and reputation of, schools! The School District Board in Cupertino delivers great results and therefore there was a scramble for housing in Cupertino, which entitles the residents to send their children to good public schools in the district. As zoning regulations are strictly enforced, demand outstripped supply, and real estate prices shot up!

In the 1980s, Alandur Municipality with a population of 80,000 was a suburb of Chennai (now a part of the Chennai city). Like other small towns of India, there was no sewerage system, and households had septic tanks with sullage being let out into open storm water drains. R.S. Bharati, the then Municipal Chairman (currently a Rajya Sabha member) had earlier built the municipal water supply project successfully in 1986 with public contributions and earned public trust and credibility. He took advantage of a World Bank funded sewerage project, convinced the councilors of all parties to unanimously back the project, undertook a massive public awareness campaign, persuaded over 10,000 households to contribute ₹ 5000
each towards initial collection charges, and completed the project on Build-Operate-Transfer model (BOT) with public private partnership in a period of five years. Alandur became the first small town with full underground sewerage system, setting an example for all urban habitats in India. Thanks to the improvement in the quality of life, the property values shot up nearly 10 times in a short span of time. The quality of leadership unleashed by local empowerment, the public trust earned by the leadership on account of past performance resulting in local, tangible benefits to the community, and public participation achieved a miracle we are yet to witness in large parts of big cities in India. As a result, not only did the living conditions improve significantly, but the success was also reflected in rapid appreciation of property values! This is a text book case of synergy between the citizen’s vote and the tangible consequences to voters, between taxes/tariffs paid and services delivered, and between authority exercised and accountability enforced.

Cupertino in California and Alandur in (now part of Chennai city) Tamil Nadu illustrate how real democracy delivers to people. Vote and liberty are essential ingredients of democracy, but there is lot more to running a democracy and delivering outcomes than the right to vote and freedom to protest, both of which we have in abundance in India. True democracy is about establishing in the citizen’s mind the link between their vote and consequences of that vote in a tangible, personal way. When that link is effective voters can transcend primordial loyalties like caste and religion; the personal and family wellbeing as a general rule trumps caste and creed if only it is manifest.

In an apartment complex in a big city, each family is conscious of the maintenance fee it pays every month and is aware of its rights and the services expected to be delivered. If the elevator does not function for days, the residents living in the higher floors feel the tremendous inconvenience and raise their voice to set things right quickly. If the house-keeping staff and managing committee do not respond, the residents quickly demand action, and if need be, will replace the management. We can clearly see the choice (vote) making a difference to the lives of residents in a tangible manner—
elevator, water supply, sewerage, security, power supply, parking etc. Once people perceive the enlightened self-interest, perversions of democratic process—clannishness, tragedy of the commons, incessant politicking and unseemly lust for control and dominance, abuse of collective resources and public trust, corruption—are quickly kept under check. It is this citizen empowerment that is inherent when power is exercised in close proximity and in areas that affect their wellbeing in a direct and demonstrable way which makes self-governance a powerful tool of collective action and citizen emancipation, enhancing freedoms. Things often do go wrong in a democracy—as they do in all collective endeavours, but at the local level citizens are quickly alerted and issues are resolved, providing for self-correcting mechanism.

It is this combination of genuine self-governance, exercise of natural restraint in enjoying liberty to facilitate freedoms of those around us, empowerment that naturally results in a community of stakeholders where our voice is heard, and the inherent propensity for rapid self-correction that makes local governments not only powerful instruments of delivery, but also effective schools of democracy.

**State: Instrument or Deity?**

The nation-state system emerged in the last two centuries as the universal model of exercise of sovereignty as well as global trade, transactions, competition, and power play. The nation-state system, when it is unchecked by localization of power and institutional mechanisms that links citizen’s vote with their wellbeing and taxes with services can easily degenerate into idolatrous patriotism, xenophobia and jingoism making citizens subordinate to the state, and people the mere instruments of the nation’s glory. This paves the way to authoritarianism, arbitrariness, and underperformance.

The central question post-colonial societies like India should address is whether the state is an effective instrument for fulfilling the collective needs of citizens and helping fulfill our potential, or it is the Supreme Being for whose glory citizen’s needs, aspirations, and opportunities can be sacrificed. In other words, is a nation
a piece of geography or a collection of people with their desires, dreams and potential? Clearly, liberty and our notions of limited government, accountability and rule of law can only truly exist when that government is as localized as possible, power is exercised in an accountable manner, and citizens can perceive their collective self-interest and make informed choices.

**Constitutional Goals Versus Instruments**

Why did India opt for a centralized mode of governance while embracing democracy? The national movement for liberation from colonial yoke was dominated by leaders inspired by liberal values and exposed to British practices. Universal franchise and a single, unified electorate were the two goals Indian leaders were committed to, in place of the limited franchise during the British era and separate electorate based on religion. The proposal for separate electorate for the Dalits was opposed by Mahatma Gandhi, and was finally resolved in the Poona Pact with B.R. Ambedkar in 1932, whereby seats were reserved for the depressed castes instead of separate electorate. The national leadership was fiercely committed to fundamental rights and independence of judiciary, and they found pride of place in the constitutional design. However, the Constituent Assembly still opted for a highly centralized State.

There are four reasons for this disjunction between the broadly liberal outlook of the Constitution and the centralized governance it institutionalized.

First, the evolutionary and incremental nature of the Indian State. The Indian Constitution was in many ways a radical experiment in a post-colonial society and the first one to embrace universal adult franchise from its inception. However, the process of transfer of power and Constitution making was largely evolutionary and incremental, continuing the British colonial traditions, practices and structures. Therefore, the high degree of centralization that was the hallmark of colonial rule and reliance on the trusted senior officials and ‘steel frame’ continued seamlessly in independent, democratic India.
Second, overreliance on good intentions and wisdom of leaders instead of institutional mechanisms. The Indian leaders were men of exceptional talent, integrity, compassion and sense of fairness. They were focused on self-rule in place of colonial rule, and liberty and universal franchise, but not on preparing people for self-governance and building grass root institutions to make democracy work. The leaders were confident of their own convictions, integrity, and influence over the masses, and did not adequately recognize the need to build institutions of participative governance to enable citizens understand that democracy is a radical departure from the colonial and earlier feudal modes of governance. The impressive efforts made for the provincial governments elected in 1937 were short-lived as they resigned in protest in the wake of Second World War. As a result, power was suddenly transferred to the Indian elites in 1947, and universal franchise and freedoms were institutionalized by the Constitution without the attendant steps and practices needed to involve the people in self-governance.

Third, the trauma of partition, the anarchy and communal violence unleashed, and the mass migration unnerved most of the leaders and elites; the fear of fragmentation and the need to cement the unity of the remaining India dominated their minds and actions after 1947. The Constitution makers originally envisaged a decentralized, federal India, but that vision gave way to a centralized India preserving the nation’s unity and integrity.

Finally, B.R. Ambedkar and several other leaders feared that strong local governments might see the caste Hindus dominating the levers of power and continuing centuries of oppression of Dalits. Ambedkar gave expression to fears of many in a caste-ridden, hierarchical society when he characterized traditional villages as dens of ‘casteism and corruption’. While Indian villages were always insulated from power struggles at the top and were largely self-contained and self-governing, the village society and polity was based on oppression, inequality by birth, complete denial of dignity and opportunity to the ‘low born’ and ruthless exploitation. Instead of finding viable mechanisms to overcome these traditional obstacles to modern citizenship and democracy, the Constitution makers
chose to centralize the polity and ignore the local governments altogether. Mere lip sympathy to local governments in the form of inclusion in Directive Principles of State Policy, and a patronizing approach to people’s participation prevailed; not the centrality of local governments for participation, citizenship and learning the art of self-governance.

Two of the concerns that drove the national elites towards a centralized state—fear of fragmentation, and traditional upper caste domination in village community—are valid even today, and need to be addressed in any debate on decentralization.

**Fear of Fragmentation**

India is a very vast and diverse land with many ethnic groups and multiple languages. Perhaps erstwhile Soviet Union and Yugoslavia were the only nation-states in modern era that could be compared to India in ethnic and linguistic diversity. The Soviet Union broke up into 15 nation-states in 1991-92 with all the republics that constituted the USSR agreeing peacefully and voluntarily to exercise the constitutional right to secede from the Union and become independent republics. The tumultuous events since 1987 starting with demands for autonomy in the Baltic region, the fall of the Berlin Wall in 1989, the failed coup of 1991 because of popular opposition and military’s refusal to use force against citizens and the manifest failure of centralized economy and authoritarian state led to popular demand for the breakup of the USSR in all the 15 republics.

The breakup of the Socialist Federal Republic of Yugoslavia was a much more tortuous, prolonged, and violent process spread over a 12-year period between 1991 and 2003. In some ways the process of disintegration began in 1980 with the death of Josip Broz Tito, the popular, benevolent authoritarian leader acceptable to all regions. Economic crisis, ethnic tensions, and irreconcilable conflicts of interests among various regional, ethnic and religious groups could not be addressed by the constitutional arrangements of 1974, leading to the eventual breakup of the federation. This break up was turbulent, often marked by war, repression, genocide, blood-shed
and civil wars. Today seven nation-states replaced erstwhile SFR Yugoslavia—six of them are member-states of the United Nations, and Kosovo is partially recognized by the global community as an independent nation.

Unity is Paramount

Given these lessons of history, the concerns about unity and integrity of India are legitimate and need to be addressed honestly. India’s unity is important to maintain order and peace impacting the lives of 1.3 billion people. Given our turbulent history of partition and the mayhem that accompanied it, it is clear that a divided India will most likely lead to anarchy and violence; seriously eroding liberty and human values which all liberals cherish. Peace and order are the prerequisites for protecting liberty and rights, and peace and order are themselves dependent on unity and harmony in a complex, diverse Indian society. Even if fears of anarchy and violence are ignored, balkanization of India will fragment a massive, growing common market, and will undermine the prosperity of all Indians. In a multi-polar world, a collective, united voice of all Indians gives us significant strategic, diplomatic, and economic clout; fragmented India will be weak and inconsequential in the global comity of nations competing for influence and power. Even from the point of view of the rest of the world, in global negotiations and in the quest for a world order one clear, united voice on behalf of a sixth of humanity is far more preferable to a cacophony of multiple, conflicting voices. Finally, modern India is a striking example of pluralism and syncretism, where diverse linguistic and ethnic groups and multiple faiths enjoying equal rights coexist with peace and harmony despite mass poverty and relatively short period of democratic experience. That example of harmony is of great value in a turbulent world. Therefore, preserving unity and integrity of India is of paramount importance even as we improve the content of liberty, self-governance, and democracy by decentralizing power.
Unity is not Uniformity

However, we should recognize that unity is not uniformity. Nations that imposed uniformity out of fear for unity paid a heavy price. The Soviet Union’s collapse was largely because of lack of flexibility and local initiatives in a centralized governance model, coupled with state control of all economic activity giving citizens no space for either decision making or entrepreneurship. China’s prosperity and rise in the past three decades are largely because governance has been substantially decentralized with space for local flexibility of innovation, and citizens are given economic freedom. As a result, the bonds of unity became stronger, not weaker, and China is now an unquestioned global power.

Today’s India is vastly different from the struggling nation beset by forced partition, civil war and mass murder. All of India now has a sense of belonging to one nation, sharing collective memories and aspirations. Only a small proportion of the population—less than one per cent in Kashmir valley and tiny pockets of North-East India—harbours impractical ideas of separate nationhood. Our robust, competitive political process, constitutional freedoms enjoyed by all, strong, independent institutions, apolitical, professional armed forces, broad adherence to democratic norms and rise in prosperity across all sections of society have strengthened the bonds of unity. With all our imperfections as a democracy, our nation made sound choices in dealing with diversity, which ultimately cemented unity. Linguistic reorganization of States, maturing of federalism in the last three decades, common market and consensual decision making have made India stronger and more united than ever. The introduction of the Goods and Services Tax (GST) is a good example of consensus building, negotiation and strengthening common market. Given these circumstances, there is no reason to fear that greater devolution and decentralization will weaken the bonds of unity of India; in fact by enhancing freedom, choice, and flexibility, and by involving citizens and constituent units more in decision making, the sense of nationhood and unity will be strengthened. Nevertheless, all institutional mechanisms needed to enhance the Union’s efficacy in discharging its constitutional role, to preserve unity and integrity
of the nation, and to promote accountability at all levels—national, state and local—should be strengthened even as we decentralize decision making.

**Unitary Bias and Over-centralization**

India is one of the few nations that has successfully built a democratic federation in the post-colonial era. Given the trauma of partition, our federation has a strong unitary bias. Nominated governors, Article 356, the Union's power to reorganize States at will, All-India Services, and a uniform model of political organization are all more unitary than federal in nature. The Seventh Schedule has an inherent unitary bias, with many more subjects under the Union's jurisdiction, giving primacy to the Union in the form of Concurrent subjects in List-III, and all residual subjects allocated to the Union. Rajya Sabha has the power to transfer any item in the State List to the Union List. When Emergency is proclaimed, Parliament has the power to make laws on any State subject. Governors have the power to withhold consent to any legislation or to refer to the President.

In fiscal matters, the Union has all expanding sources of revenue, while States have the responsibility to provide all basic services and amenities. 'Economic and Social Planning' is a Concurrent subject, giving the Union enormous scope for intervention in State subjects.

The centralized mode of planned economic development India adopted, the creation of the Planning Commission, the strict regulation of industrial activity in the form of licensing, permits and quotas, severe regulation of agriculture through law and various control orders, the frequent application of Article 356 to dismiss elected governments in States, nationalization of financial institutions and commercial banks, and near monopoly of power exercised by the dominant Congress Party in early decades acted as strong centripetal forces weakening the States' role and powers, and making India more unitary in practice.

**Some Correctives in Post-1991 Era**

The past three decades have witnessed a series of political, legal and fiscal developments which tended to promote a more balanced
federalism. The rise of political competition in every State, and in particular the emergence of strong regional parties playing a crucial role in Parliament and the Union Cabinet made the polity more sensitive to the needs of States. With the Supreme Court judgment in Bommai Case, abuse of Article 356 has become much more difficult. Finance Commissions have increasingly moved towards rule-based constitutional devolution of funds to States. The Fourteenth Finance Commission erased the distinctions between plan and non-plan grants, and strengthened constitutional devolution. The process of economic liberalization launched in 1991 encouraged entrepreneurship and promoted economic freedom by dismantling much of the centralized licensing system. States are allowed to cooperate and compete to attract investments and pursue policies to promote growth and equity to suit their local conditions and preferences. As the private sector rose, the relative role of the Union public sector enterprises, or the importance of establishing public sector units in favoured States has declined. The abolition of Planning Commission has reduced centralization and States have greater freedom in pursuing economic policies and infrastructure projects, and development programs to suit local needs and conditions.

Win-Win Approach

All these developments have yielded rich dividends in the form of real competition among States, accelerated economic growth, reduction of poverty, more investments, innovation at State level, and greater national cohesion and political consensus. Despite intense and at times corrosive political competition, almost all States and political parties are agreed on the broad approach to economic growth and development. This guarantees continuity of policies and stability which are vital in promoting entrepreneurship and attracting investments. At the same time, the nation’s unity is strengthened. Introduction of GST, strengthening common national market and removal of trade barriers happened by consensus and mutual consent that was possible because of a strengthening of federalism and the confidence and trust resulting from economic liberalization. While States are increasingly coming into their own in pursuing economic
growth and development, the Union too is strengthened. With the dismantling of the licensing system and centralized planning, the Union's role has not diminished; it has become more focused and relevant. The Union has been playing a vital and productive role in strengthening infrastructure, improving communications, ensuring a stable and sustainable fiscal framework, pursuing a stable, growth-oriented monetary policy, encouraging foreign direct investments, removing internal trade barriers, protecting India's interests in the global trading system, leveraging our diplomatic strengths for the nation's economic gain, defending our unity and integrity and enhancing India's role and status in the world. Rebalancing federalism is not a zero-sum game; it strengthens both the States and the Union, and promotes the nation's integrity and prosperity.

**Structural Problems Remain**

However, serious structural problems remain. States and local governments have responsibility for most of the things people need and expect from government on a daily basis—water supply, electricity, sanitation, drainage, police, courts, roads, traffic, schools, colleges, healthcare, and myriad public services. Our politics is centered round the States, and national verdicts are generally a mere aggregate of States’ verdicts. In the first five decades after independence, federalism was eroded by the Union's arbitrary and partisan exercise of power. Now the Union government has much less discretion compared to the earlier period; and yet States are severely constrained in fulfilling their obligations to people. These fetters are no longer partisan and political; they are structural and constitutional. A rigid, uniform political model imposed on all states and local governments disregarding local needs, a dysfunctional bureaucracy protected by Article 311, the generalist, all-purpose all-India services that do not bring specialized skills required to manage various services and enjoy a monopoly of all key public offices, the well-intentioned, but poorly drafted Part IX of the Constitution that created over-structured, under-powered local governments that failed to take roots as the third tier of federalism, needless rigidity in Union legislation on subjects like education with resultant failure
to improve outcomes despite vast expenditure, and the continuing archaic anachronistic role of nominated governors are making states and local governments dysfunctional.

**One-Shoe-Fits-All Model**

Among federal democracies, India is alone in having a single federal constitution, a uniform model of governance in terms of electoral system, form of government and structure of bureaucracy in States, and even the detailed structure of local governments and their manner of election mandated by the federal constitution in the form of Parts IX and IX A of the Constitution. Even cooperatives, falling entirely under State list (list II of Seventh Schedule) are sought to be regulated under Part IX B of the Constitution! Considering the vast continental size, enormous diversity, varying levels of political and social evolution in various regions, economic disparities between regions, a variety of local histories and political traditions, it is clear that our one-shoe-fits-all approach to governance at State and local level is archaic and dysfunctional.

A quick study of the nations of the world shows how incredibly large and complex the States of the Indian Union are. Uttar Pradesh, at 221 million population, is larger than 229 nations of the world, and would have been the fifth largest country on earth if it was independent. Maharashtra, with 112 million population, is larger than 222 nations and only 11 nations of the world are larger than Maharashtra. Even India’s smallest of the States, Assam, is larger than 190 nations of the World. Even a medium sized district of 4 million population is larger than 102 nations on earth, and a larger district of 5 million population is larger than 114 nations! Given our size, diversity and the obvious failure of the current model of stultifying and rigid uniformity, we have to design flexible models of governance to suit the local conditions in each state and local government.

**Flexible Federalism Strengthens Unity**

We need to allow states to choose their own models that suit them best within the broad framework of constitutional values and
democratic norms, and we should give freedom to States to have their own laws even on concurrent subjects and refrain from central imposition. Let States choose their own model of local governments and bureaucracy, their own electoral system—may be direct election of government with no nominated governors, or proportional representation in legislature to eliminate the role of vote-buying and to remove entry barriers. India is a continent; we cannot impose one uniform, inflexible model on all regions of this vast and complex nation. More innovation, experimentation and successful adoption of best practices will strengthen the union, not weaken it. Such reorganization of the government will allow flexibility and participation, and help unleash our energies and unlock our potential.

The obvious solution is giving the States the liberty to choose their own electoral models, forms of government, bureaucratic structures and local government models so that they can deliver on the mandate, while retaining all the powers and functions of the Union as they are, and ensuring that the constitutional and political instruments to build unity and cohesion are further strengthened where necessary. If the larger States are also reorganized with broad consensus, the resultant smaller states will facilitate this process and minimize risks of failure. Unity is not uniformity. In fact rigid, stultifying uniformity undermines unity, denies us the opportunity of innovation, experimentation and replication of best practices, and results in stagnation.

**Fear of Caste Hierarchies**

The second major issue we need to address is the potential dangers posed by local empowerment to liberty and human values emanating from caste oppression and traditional attitudes in villages. Undoubtedly, the traditional caste system based on inequality by birth and vertical fragmentation of society is inimical to notions of citizenship, equality before law, opportunity for all, and human dignity. However, in all societies there is always a clash between traditional beliefs and institutions on the one hand, and democratic practices and constitutional values on the other.
Bridging Gap: Traditional Attitudes Versus Constitutional Values

The design of the governance structure, institutional mechanisms to enforce accountability, rational policies altering behavior and outcomes, and a strong and fair system of rule of law and justice bridge this gap and promote liberty and egalitarianism. In India, the traditional village is too small and fragmented, and with the rise of non-agricultural activity the rural economy’s share is steadily declining. With the resultant migration of talented and ambitious young people to urban India, traditional villages are increasingly depleted of leadership. In addition, decades of government’s failure to integrate rural and urban economies, illiberal policies in agriculture stunting growth, appallingly low levels of education and healthcare, and a culture of competitive populism to attract votes have made rural society heavily dependent on short-term freebies at the cost of long-term growth.

Given these circumstances, it is vital that a cluster of villages with reasonable scale of population and resources becomes the unit of local government instead of the traditional village. This aggregation has the benefit of substantially diluting the traditional caste power; and in a larger, new entity, the power of the vote and strength in numbers will assert themselves against traditional caste hierarchies. Consolidation also has the benefit of scale enabling the rise of leadership and talent in public institutions and politics, and economies in infrastructure building and delivery of services. Kerala State, with about 35 million population, of which about 18 million is urban, has only 941 village panchayats with an average population of nearly 20,000. This aggregation of population in local government units diluted caste oppression, enabled democratic assertion of the traditionally oppressed castes and marginalized sections, facilitated economies of scale, and promoted growth and prosperity.

In addition, local government institutions all over India have statutory quotas for representation of all sections with mandatory reservation of half the seats for women. With adequate safeguards to empower local governments and promote durable leadership, these affirmative action policies in local governments will strengthen
democracy and weaken traditional power structures and caste rigidities. In any case, at all levels, there should be strong and effective institutions of accountability like Independent Ombudsmen to prevent abuse of authority and to check corruption.

**Why we should Disrupt Status Quo**

Finally, we should address one question: India is a reasonable success as an emerging democracy and economy; is it worth risking the potential disruption that may result from decentralization of power and massive institutional change? If the status quo is serving the nation and society well, it would be somewhat imprudent to risk disruptive change for a liberal ideal. But if centralized governance is holding us back, adversely affecting liberty and opportunity to the bulk of the people, then the status quo is not an option.

A centralized State is obviously illiberal; it is also dysfunctional. As the vote is delinked from tangible consequences to the individual and family in a remote, centralized, dysfunctional system, it is no longer an instrument for engineering change for the better. Our democracy is reduced to universal suffrage and perpetual protest against the establishment as the hopes generated before an election are soon frustrated. Elections are reduced to just another Indian ritual, and growth is stunted and opportunity for vertical mobility is limited. With increasing frustration, the status quo is increasingly unsustainable.

**Outcomes are Sub-optimal**

Outcomes for citizens are sub-optimal in India. Among the 49 large nations with over $200 billion GDP (gross domestic product), India ranks among the bottom five in all indicators of economic and human development, in the company of Pakistan, Bangladesh, and Nigeria. This perpetual underperformance is seriously undermining the lives of millions living in poverty. This failure is immoral as it denies opportunity to the bulk of the poor by perpetuating inequality by birth, and it is detrimental to growth by not allowing the majority of the people to fulfil their potential and become effective participants in the economy.
Asymmetry of Power and Burden on Political Machine

In a poor country with over 90 per cent of workers in the unorganized, low-wage sector, there is great asymmetry of power between the bulk of the people who are poor and insecure, and the State employees who are unorganized, well-paid relative to the market, well-educated, secure and well-connected. This asymmetry of power combined with the colonial baggage followed by decades of State control and license-permit-quota raj has made the public servant unaccountable and all-powerful, reducing the citizen to the status of a mendicant. In the centralized state, the collective bargaining power of the public sector employees who constitute over half of all organized workers is formidable, and the governance system is both incapable of, and unwilling to, enforce accountability or ensure delivery of public services. The ordinary citizens are victims of extortionary corruption in daily life, with some global surveys indicating that 65 per cent of households are forced to pay a bribe for delivery of services they are entitled. The resultant denial of rights to the poor, the development of a market for public office, and the corruption cycle mediated by transfers and postings of public officials are perpetuating the patronage based feudal system of bribes, networks, and denial of fruits of development to the bulk of the poor.

A centralized system being incapable of improving delivery of services and public goods is forcing political parties to create a vast machine for intermediation between the state and the voters. This vast political machine functioning round the year imposes enormous burden and economic cost on political parties without improving service delivery, and leads to inevitable abuse of power and corruption to recover costs. As vast resources are needed for running the political machine, in turn there is a huge entry barrier in political recruitment denying effective participation of competent, public spirited citizens in governance. A vicious cycle is thus perpetuated.

Vote Buying and Short-term Freebies

As people are perpetually dissatisfied with the failure of governments to deliver, and given the abject poverty of the bulk of the voters, parties have habitually resorted to vote buying en
masse. This directly results in more corruption and abuse of power, and creates a further barrier of entry for the best and brightest citizens. With time, vote buying alone is not enough; and all parties are resorting to short-term palliatives and freebies to attract votes. Parties that offer long-term, tangible benefits of quality education, healthcare, skills, job creation and incomes tend to lose out as people have no faith in delivery of basic services in a centralized State. In recent times, the tendency to attract votes by offering short-term freebies has accelerated alarmingly in the no-hold barred struggle for power and political relevance. There is a real danger of further diversion of resources from the core functions of the state—rule of law, infrastructure, education and healthcare—seriously retarding growth and opportunity, or mounting public debt and inflationary policies severely undermining the fiscal and monetary health.

In any democratic society there is a tradeoff between the short-term, instant, tangible benefits to the poor, and the slow rate of social pay off and the resultant political price to be paid by pursuing the long-term public good. Wise leadership addresses this dilemma by persuading the people for sustained effort to protect the children’s future, a realistic balance between short-term gain and long-term good, and better delivery at the local and community level to make people see that the tax money is going to build their future. In a centralized, dysfunctional system it is next to impossible to wean people away from short-term, unproductive consumption subsidies, because people do not credibly see the effective alternative utilization of resources for their benefit. The only realistic remedy is localization of power with people’s participation and effective accountability system to check abuse of authority.

A flexible federal model and empowerment of local governments have the potential to unleash creative energies of the people and recruit fine talent into public life at local levels. In a system fast degenerating into plutocracy and kleptocracy, we need effective participation and rise of enlightened citizens into positions of responsibility and leadership. The only antidote to the ill effects of a flawed democracy is more democracy and better democracy. Dependence on centralized, all-powerful leadership only stunts
leadership, makes innovation difficult, and cost of mistakes will be very high. The ill-conceived and poorly executed demonetization is a telling instance of the price a nation pays for over-centralization. In true federalism and a system of strong local governments, the cost of mistakes will be limited, innovation becomes easy, and successful best practices can be replicated swiftly. As long as the consequences of decisions made in a state or local government do not affect people in other jurisdictions, people will learn quickly from their own experience and improve decision making.

No Half Measures

India has immense unfulfilled potential. We are in an age of rapid economic growth and breathtaking technological innovation. If a nation falters for a generation, the cost in terms of lost-opportunity and poverty and misery of people is extraordinarily high. The democratic experiment India’s founding fathers initiated is an extraordinary adventure. We owe it to ourselves to make the experiment bear full fruit for the benefit of the people. There are no half-measures in democracy and liberty. True liberal values, governance and institution building, decentralization of power and genuine federalism recognizing the centrality of citizens, preservation of national unity and integrity without stultifying uniformity, and unleashing people’s energies and talents by letting a thousand flowers bloom are the ways forward for our large, diverse, complex nation.
The idea of justice has been one of the most debated and complex concepts of all time, enigmatic, ambiguous, and imprecise. For the utilitarian, justice lies in the greatest good done for the greatest number of people. However, an inherent flaw lies in ensuring access to justice for those who do not fall into this ‘greatest number’. Karl Marx regarded justice as a mask for capitalist exploitation (Commers 1984). Others believe justice is equality, but that is also a relative concept. For what may be notion of equality for one, may not be equal to another in terms of wages, quality or quantity of education.

Such comparative approaches are needed when it comes to the question of advancement of justice; to a degree, the comparative process makes room for broader debate, admits multiple opinions, and thereby prevents the perception of justice from being either unilateral or unipolar wherein one of the most influential states of the world dictates the main political, economic, cultural, and social vectors.

In order to understand and define justice better, one has to review the context and composition of its reverse: injustice. People turn to the idea or meaning of justice when they themselves have experienced injustice. Indeed, history is replete with such examples, one of the best known being that of Mohandas K. Gandhi, the Mahatma, who began his quest for justice when he experienced the humiliation and sting of racism and apartheid in South Africa. The existence and experience of injustice amplifies and deepens an understanding towards the need for justice. It is an active process which enables decision making to block actions that are viewed as
morally ‘wrong’, by the set of values that humans accept and absorb. In our view, humans, at the very core, are moral beings, imbued with an innate sense of correct conduct. Often, by experiencing injustice, a person tries to restore justice by seeking to rectify what is viewed as unjust. This is what lies in the heart of arguments which Prof Amartya Sen (2010) has made in his contradiction of the Rawlsian concept of justice. Rawls attempts an idea of justice by proposing a new social contract theory. He construed the notion of justice in terms of maximization of liberty, equality, and opportunity with the central theme being ‘justice’ in the light of ‘fairness’. Sen argues that the basic problem with this approach—along with previous theories of social contracts—is that it rests on preconditions like maintaining a perfect arrangement. Such a perfect arrangement of justice being juxtaposed to fairness, he says, is simply impossible as the plurality of opinions will never allow any arrangement to become perfect. In the absence of such an arrangement the concept of justice as such may never be realized.

In Sen’s view, it is necessary to first understand the ‘idea of justice’ and then approach the ‘concept of justice’ in order to mitigate injustice. Consequentially, Sen argues that justice would automatically grow.

According to him, the presence of remediable injustice may well be connected with behavioral transgressions rather than with institutional shortcomings. Justice is ultimately connected with how people’s lives develop, and not merely with the nature of the institutions surrounding them.

Early Indian jurisprudence on the different concepts of justice, ‘niti’ and the ‘nyaya’, helped Prof Sen in his understanding of justice. The idea of niti relates to organizational propriety as well as behavioral correctness, whereas Nyaya, is concerned with what emerges and how, and in particular the lives that people are actually able to lead (Sen 2010: XV). In contrast with niti, the term nyaya stands for a more comprehensive concept of realized justice. In that line of vision, the roles of institutions, rules, and organization, important as they are, have to be assessed in the broader and more inclusive perspective
of *nyaya*, which is inescapably linked with the world that actually emerges, not just the institutions or rules we happen to have

According to Prof Sen (2010: 21) a realization-focused perspective also makes it easier to understand the importance of the prevention of manifest injustice, rather than seeking a perfect balance. He also gives the example of the successful agitation against slavery in the 18th–19th century—not because they were laboring under a belief that abolition of slavery would lead to a just society but because it was seen as intolerable, brutal, obnoxious injustice (Sen 2010: 21). The broader perspective of *nyaya* indicates the necessity of examining what social realizations are actually generated through institutional bases (Sen 2010: 82). Such a system can help to incorporate and accommodate divergent points of view.

Institutions play a major role in enabling us to scrutinize the values and priorities that we can consider, especially through public discourse and reasoning. Democracy is or should be assessed in terms of public reasoning, and how different voices from diverse sections are either heard or not heard. Without that public voice, structures cannot be said to be democratic for ingrained in that notion is the embeddedness of representation and representativeness.

We review this in the next phase of this essay where we look at the mobilization of voices or focus on economic policy and planning for India under a mix of a liberal and left secular political regime or ethos.

During the 1930s and 1940s, numerous plans for India’s economic development appeared. The first emerged in 1934, a brainchild of Sir Mokshagundam Visvesvarayya, an engineer from Mysore; its “essence [...] was industrialization,” with a “proposed doubling of the national income over a period of ten years” (Hanson 1966). In the 1940s came the Bombay Plan, drawn up by a group of industrialists; then came the People’s Plan, crafted by M.N. Roy and encapsulating the position of the more radical communist Left followed by the Gandhian Plan of S.N. Agarwal, which placed a greater emphasis on the preservation of the village and traditional cottage industry. Politicians debated which plan to pursue, but not the question of whether the state should engage in central planning.
With the Second World War, the planning enthusiasm spread to the colonial government as well. In 1944, the colonial government in New Delhi set up a Planning and Development Department under the leadership of Sir Ardeshir Dalal, one of the signatories of the Bombay Plan. In 1945, the department issued "a Statement of Industrial Policy which foreshadowed in many ways the Industrial Policy Resolutions of 1948 and 1956" (Shenoy 1971). More importantly, the war brought with it a host of economic controls, including price controls, distribution controls, and the large-scale rationing of many commodities.

Also introduced were systems of import controls and capital issues controls, and a rudimentary system of industrial licensing, all aimed at constraining inflation and conserving scarce foreign exchange. Most of these controls outlived the war and formed the basis of the future planning apparatus.

The supporters of planning believed that the nation’s dependence on imported capital goods was the chief obstacle in the path of its economic progress.

The designer of India’s Second Five Year Plan (1956-1961) was Prof Prasanta Chandra Mahalanobis, who pioneered what came to be known as the Mahalanobis approach with top priority to be given to investment goods, which were seen as crucial for further economic growth of India. He also designed a four-sector model, retaining the emphasis on investment goods, but created three sub-sectors of industry, agriculture and cottage industry, and finally services, education and health. Only one third of the total investment was to go to the three sub-sectors. The cottage industry, which produces hand-crafted goods, in particular, was singled out as a major potential producer of consumption goods. One highlight was that cottage industry required little capital and was labor intensive. For this very reason one could not expect a surge in savings from cottage industry, a requirement for future economic growth. That was why the big ticket for economic growth, its engine as it were, was seen as heavy industry in the public sector. This became the very symbol of economic independence and was indeed seen as crucial for political independence.
Mahalanobis’ approach was direct: the import of machinery for steel and cement production and other goods required for building the infrastructure of a new nation created dependence on external sources and capital.

... [O]nce we do this, and establish a heavy machine building industry we shall be able to use our own iron ore and with our own hands produce steel; and then use the steel to produce more machinery. ... [O]ur dependence on foreign supplies will be greatly reduced. The main obstacle to rapid industrialization thus removed, we shall be able to increase production and employment quickly (Mahalanobis 1961).

The primary goal of planning was therefore, to diversify India’s production base and industrialize the nation. But this process of indigenization was not to be restricted to the capital and intermediate goods industries. Instead, the plan was to gradually utilize the tools and machines produced domestically to step up domestic production of agricultural and industrial consumer goods. Consumer goods that were being imported would in due course be produced at home, and the state would discourage exports of agricultural commodities and consumer goods. Instead, the supply of these goods was to be reserved for the home market.

But such a model created significant gaps between urban centres and rural spaces. What was needed was a process to connect the grass roots to political and economic power. At the same time that Mahalanobis model was designed and implemented, others were working on a separate process of popular representation for development and economic parity. This was rooted in a non-industrial model, steeped in earlier concepts of village republics which had the backing of Gandhi and those who believed that “India lives in its villages”. Thus, panchayati raj was flagged as a parallel if not alternative growth model. However, it was not until the 1990s that it acquired teeth and significance with empowering legislation, in line with Gandhi’s concept of democratic decentralization based on the approach of ‘Swaraj’, a democracy based upon freedom. Individual freedom in his view, could be maintained only in autonomous, self-
reliant communities that offered opportunities to the people for fullest participation (Roy 1984).

He clarified that concentration of either economic or political power would violate all the essential principles of participatory democracy. In order to prevent centralization, Gandhi suggested panchayats both as institutions of parallel polities and as units of economic autonomy. The village was the lowest unit of a decentralized system and the basic institution of participatory democracy. If the technical skills of the villages were fully developed, there would be no dearth of persons with high degrees of skill and artistic talent (Gandhi 1959).

Gandhi wrote that “Democracy becomes an impossible thing until power is shared by all, but let not democracy degenerate into mobocracy” (Sharma 1987). His view of decentralization meant the creation of parallel politics in which people’s power was institutionalized to counter the centralizing and alienating forces of the modern state. In that philosophy of government, panchayats should be organized so as to identify locally available resources for development in the agricultural and industrial sectors.

When Gandhi discovered that there was no mention of panchayati raj in the earlier draft Constitution, he insisted on its inclusion in the revised draft. In his vision of free India, panchayati raj was an important component wherein economic and political powers were to be decentralized and each village was self-reliant. In one way, his view reflected the Rawlsian model which sought perfect balance—but in this case it was to be the panchayat, which would be the legislature, judiciary, and executive of a village government where perfect democracy would be found based on individual freedom.1

But both the industrialized process and the panchayat system have failed to create a more equal society, and instead have produced great and growing gaps of inequality.

In their research paper “Indian income inequality, 1922-2014: From British Raj to Billionaire Raj?”, Thomas Piketty and Lucas Chancel remarked that: “income inequality is at its highest in the

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last 100 years in India. The top one per cent had around 21 per cent of total income in 1930s, which reduced to six per cent in 1980s and again reached 22 per cent by 2014—reaching the highest level. The period after the 1980s, when we started adopting a neoliberal political economy (officially in 1991), the income share of the bottom 50% reduced considerably and the top one per cent increased consequently”.

Further, according to Anand and Thampi,² in ‘Recent trends in Wealth Inequality in India”, the top one per cent of India had 28 per cent of the country’s wealth by 2012, which was an increase of 11 percentage points since 1991. The same period saw the decline of the share of the bottom 40 per cent from five per cent to less than four per cent.

The Report on Fifth Annual Employment-Unemployment Survey (2015-16) by the Ministry of Labor and Employment, showed that at the all-India level, around 77 per cent of households did not have a single regular/salaried person. More than 67 per cent of households had an average monthly earning that did not exceed ₹10,000. Within the labor force, more than 71 per cent were not eligible for any social security benefits. Only 1.8 per cent of the labor force in India earned more than ₹50,000 a month and 0.2 per cent earned more than ₹1,00,000 a month. This data shows the vulnerability and inequality among the working population of India.

In addition, India occupied the 100th position in the Global Hunger Index (GHI) 2017, out of 119 countries.³ In Asia, only Afghanistan and Pakistan are behind us. The report further states: “At 31.4, India’s 2017 GHI score is at the high end of the ‘serious’ category, and is one of the main factors pushing South Asia to the category of worst performing region on the GHI this year, followed closely by Africa, South of the Sahara”.

Shockingly, according to the GHI India fell swiftly from 55th position in 2014 and to 100th in three years. A deeply worrying aspect

is that the totalitarian regime of North Korea and war-ravaged Iraq are ahead of India in the index. High malnutrition levels among children, women and other vulnerable groups contribute towards the declining GHI position. This further shows how economic and social justice is being denied to a majority of the population, violating the basic ideology of our Constitution.

How can these gaps be bridged? Hope perhaps lies in an example that comes from a village in Rajasthan, where democratic innovation has enabled transparency and good governance through a national law that empowers the citizen.

II

In the modern context, the bridging of state and civil society, institutions, parties, and movements implies two major actions-objectives. Firstly, decentralization and devolution of power to grassroots politics in order to re-center it on the themes promoted by civil society and its actors, and, second, undermine the conditions of self-reproduction of political elitism, thus strengthening a people-centered participatory approach to representation.

This is achieved through the reformulation of political leadership, its accountability, rotation, and representative capacity (its limits, competences, interaction-participatory approach) in order to shorten the gaps within sections of society, re-prioritize the political agenda, and go beyond the demagogy of the electoral politics (Gianolla 2017). Such an approach is characterized by institutional commitment to participation without monopolizing it.

Representatives, as facilitators, translate and stimulate people’s initiatives within state infrastructures with a bottom-up approach because, “having a representative is, or ought to be, only the beginning of citizen input into governmental decision-making” (Wiredu 2007).

Both the global South and North provide several good practices of participation that can be strengthened in the interplay with the state’s politics, both at local and national level.

These are some instances of many different participatory practices showing how civil society may interact very differently
with the state (Avritzer 2012). While active citizenship advocates complete independence, participatory budgeting is increasingly supported by local governments, and questions are thus raised as to the role of the representatives, autonomy of the process and degrees of participation. PB (participatory budgeting) involves a democratic process in which community members decide how to spend part of a public budget. It gives people real power over real money.

This form of budgeting started in Porto Alegre, Brazil, in 1989, as an anti-poverty measure that helped reduce child mortality by nearly 20 per cent. Since then PB has branched out to over 3,000 cities around the world, and has been used to decide budgets from states, counties, cities, housing authorities, schools, and other institutions.

The New York Times calls PB “revolutionary civics in action”—it deepens democracy, builds stronger communities, and creates a more equitable distribution of public resources. In a similar vein, grass roots movements such as the Mazdoor Kisan Sangharsh Samiti (MKSS) are politically independent from parties and state and aim to stimulate their democratization (Mander and Joshi 2001).

Let us return to Rajasthan and the MKSS.

It was 11 years back, in the year of 1987, that three activists of MKSS picked a modest cabin in the little, quaint town of Devdungri in Rajasthan, as their base to share the life and struggles with the provincial poor. The oldest individual from the group was Aruna Roy, who had left the elite Indian Administrative Service a decade earlier. She had worked in a pioneer formative NGO (non-governmental organisation), the Social Work and Research Center, Tilonia, and gained grass roots experience and contact with rural people, however at this point she was looking for work which went beyond the delivery of services to greater empowerment of the poor.

She was joined by Shankar Singh, an inhabitant of a town not far from Devdungri. He floated through 17 occupations—working for the most part with his hands or his wits in a range of small factories and establishments—before he came to Tilonia, to help build up its country correspondence unit. With him was his better half Anshi and three little youngsters. The third activist of the group was Nikhil
Dey, who quit his education in the United States in a search for meaningful rural social activism.

Together they had come to Devdungri, with just a general thought of their objective of work, to assemble an association for the rustic poor. They were much clearer about what they would not like to do: they would not accept funding or set up the conventional institutional structures of buildings and vehicles common to most NGOs, they would not set up the usual delivery systems of services, they would accept not more than minimum wages for unskilled labour, and this too they would derive mainly from small research projects and assistance from friends, they would not accept international or government funding for their work, and they would not live with facilities superior to those accessible to the ordinary small farmer of the surrounding countryside.

In their initial years, the MKSS got drawn in as partners in important local struggles of the poor, relating mainly to land and wages, but also women’s rights, prices and sectarian violence. On May Day, 1990, the organization was formally registered under the name Mazdoor Kisan Shakti Sangathan. Its ranks grew as MKSS built a strong cadre drawn from marginal peasants and landless workers, mainly from the lower socio-economic groupings. MKSS gained recognition for its uncompromising struggle to secure the payment of minimum wages to landless farm workers, and also for integrity and ethical consistency of the life-styles adopted by its activists.

In the winter of 1994, MKSS’s work entered a new phase, breaking new ground with experiments in fighting corruption through the methodology of *jan sunwais* or public hearings. Public hearings came into the public eye in the 1990s, and seem to have multiplied in the 2000s. The notion of *jan sunwai* did exist before the 1990s in the Indian repertoire of collective action, but its meaning was quite vague. It was the MKSS, which gave it a new meaning and relevance. This movement, despite its local character, has had statewide reverberations and has shaken the very foundations of the traditional monopoly, the arbitrariness and corruption of the state bureaucracy. In fact, the movement contains the seeds for growth of a highly significant new dimension to empowerment of the poor, and
the momentous enlargement of their space and strength in relation to structures of the state.

The mode of public hearings initiated by MKSS commences with the premise of the fundamental right to information about all acts and decisions of the state apparatus. In the specific context of development and relief public works, with which MKSS had been deeply involved for so many years, this right to information translates itself into a demand that copies of all documents related to public works be made available to the people, for a people’s audit. The important documents related to public works are the muster roll, which lists the attendance of the workers and the wages due and paid, and bills and vouchers which relate to purchase and transportation of materials.

These are then read out and explained to the people, in open public meetings. The people thus have gained unprecedented access to information about, for instance, whose names were listed as workers in the muster rolls, the amounts of money stated to have been paid to them as wages, the details of various materials claimed to have been used in the construction, and so on. A lot of shocking information has come to light. For instance, it came to public knowledge that a large number of persons, some long dead, migrated or non-existent, were listed as workers and shown to be paid wages which were siphoned away. Citizens were also made aware that as many bags of cement were said to have been used in the ‘repair’ of a primary school building as would be adequate for a new building, along with other innumerable facts of the duplicity and fraud of the local officials and elected representatives.

The movement for the right to information has caught the imagination of disparate sets of people. It has touched the middle classes as well as the poor, because of the despair of their unending interface with a corrupt and unaccountable bureaucracy. It has also reached the middle classes through the consumer and environmental movements. The media have a major professional stake in the right to information because it would greatly aid the investigation of executive action.
For sustained, informed and vigilant advocacy for the passage of such a legislation, a National Campaign Committee for the People’s Right to Information was constituted. This initiative originated from the grass roots activists from Rajasthan, particularly the MKSS, who acutely felt the need for both powerful national-level support for the local movement and for wider legislative backing. The initial group that came together comprised senior activists, media personnel, academics, and civil servants, who were actively committed to transparent, accountable, and pro-people governance.

The Right to Information (RTI) law was passed in 2005 by Parliament and today some 8-to-10 million people use it every year. It has been critical in ensuring transparency in as crucial a service as ration supplies or the wealth of public leaders. It has actively addressed poverty by attacking corruption which expands and worsens poverty and marginalization. There is still a long way to go—over 70 RTI activists have been killed since the law was passed. But, we can remain hopeful because robust civil society responses have blocked efforts by governments to weaken or even roll back the law.

A continuing challenge lies in pressing forward with the application of this right in the struggle for the survival and ensuring justice for the most dispossessed and wretched of our land, as an integral part of a larger movement for equity and people’s empowerment. We see hope again in the way governments have been forced to take action to protect the weak and vulnerable through this process.

Let us take the example of a major challenge to the criminal justice system: the overwhelming number of undertrial prisoners and the absence of adequate legal aid. The overwhelming majority of those accused of criminal acts are from amongst the economically weak and disadvantaged sections of society. Very few of these people know anything about their rights or procedures relating to the police, prosecution, and court, or what the services of a lawyer should entail. Given the indigence of the majority of suspects and accused, their extremely limited education and negligible knowledge of legal rights, it is hardly surprising that two-thirds of the prison population in India are under trial. The complexities of our laws and the procedural
convolutions play an enormous role in this tragedy. In the last five years while the prison population in India has increased by 12 per cent, the undertrial population has gone up by 17 per cent.\(^4\)

The time a magistrate spends on considering each case is often extremely limited. The busiest high courts spend less than four minutes per hearing.\(^5\) The situation in trial courts would likely be worse. In these few minutes magistrates have to decide the prima facie reasonableness of the arrest, ensure the suspect has a lawyer, make sure s/he has not been maltreated, and also make a considered decision about the liberty of the person in custody. This is simply not possible. Several other factors militate against the easy grant of bail. There is routine resistance from the prosecution and limited assistance from defence counsels, who more often than not submit standard bail applications that are easy to reject.

In the absence of permanent addresses, financial stability, employer guarantees or community assurances, the poor have little to offer the courts by way of assurance that they will appear in court. Lack of any objective indicators to assist the court in evaluating the possibility of the accused suborning justice or being a flight risk, forces a judge to invariably prefer to use his/her discretion conservatively and avoid bail in favour of incarceration. So, it has become common practice that bail is not granted, till a charge-sheet has been filed,\(^6\) when it is available at a far earlier stage of proceedings.

Even when there is a lawyer at hand, till bail is granted, interaction is extremely limited and relies to a great extent on briefings from friends and family. With so many frailties weighing against fair outcomes, the role of a competent lawyer becomes crucial. Legal aid is the ‘hope’ that persons in custody get a fair trial. Almost 80 per cent of India’s 1.32 billion population is eligible for legal aid.

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This is by far the biggest coverage of legal aid in the world and India has made provisions to ensure that those who cannot afford it, have legal representation.

To ensure that those who cannot afford a lawyer get proper representation at court, India has enacted a comprehensive framework to provide legal aid. The Legal Services Authorities Act, 1987, has a four-tier structure designed to deliver standardized legal aid nationwide with National Legal Services Authority (NALSA) at the helm and institutions at the state, district, and sub-divisional levels. While the framework is detailed and elaborate, actual delivery falls short. The quality of legal aid has been criticized by civil society and most importantly by its beneficiaries. Prison statistics and prisoners’ experiences demonstrate that a majority of inmates either do not have access to effective legal aid nor have much confidence in the legal aid system.

In order to understand this problem, the Commonwealth Human Rights Initiative’s (CHRI) prison team conducted an elaborate study to look at three schemes in particular to ascertain why comprehensive provisions on paper do not translate into effective legal aid delivery on ground. It looked at the delivery of legal aid to accused persons in police stations, courts, and prisons in India. It also sought to identify good practices of legal aid delivery from different states and districts. In the course of the study, CHRI received information from 24 states and five union territories.

While infrastructural questions were answered by most DLSAs (district legal services authorities), they were more reticent in responding to questions on processes and documents relating to monitoring and reporting of legal aid delivery. The RTI responses were then analyzed and classified thematically. The analysis revealed good practices as well as challenges with the legal aid delivery. CHRI’s RTI responses also contain detailed district and jail-wise information on appointments of legal aid providers, functioning of monitoring mechanisms, outcome of legal aid representation, reporting of legal aid providers, functioning of Joint Legislative Audit Committees (JLACs) and more. CHRI’s report tried to combine the broader, publicly available information, along with the specific information
received through the RTI responses, to give a comprehensive picture as possible.

CHRI has also launched a report titled *Strangers to Justice* which is an outcome of CHRI’s experience across 10 years of working on issues of detention and repatriation of foreign nationals in Indian prisons. The report documents and examines the challenges faced by FNPs (foreign national prisoners) in India. While prisoners, in general, are vulnerable due to asymmetrical power dynamics and the closed nature of places of detention, this report is an effort to understand the special vulnerability of foreign nationals stemming from their non-Indian nationality or statelessness. The analysis is anchored by the data collected from 22 states and four Union Territories through RTI requests filed by CHRI to heads of all 36 state prison departments across the country.

In addition to data, the report documents CHRI’s experience of interacting with FNPs, prison officers, representatives of Foreigner Regional Registration Offices, representatives from Ministry of Home Affairs, and Ministry of External Affairs as well as consular representatives of various embassies (South Africa, Iran, Nepal, Palestine, Ukraine, Bangladesh, Nigeria, Sri Lanka, Somalia, Afghanistan, Austria, and Liberia). The interactions have enabled a better understanding of the nuances of the existing system, identifying bottlenecks and formulating possible solutions.

On a different issue, relating to transparency and governance, the RTI was used to clarify the murkiness surrounding the 8 November 2016 decision by the Central Government to demonetize currency notes of ₹1,000 and ₹500 denomination. In its aftermath, Mr Venkatesh Nayak, who leads the Access to Information Programme at CHRI, filed an RTI application with the Reserve Bank of India (RBI) on this issue. He sought copies of the minutes of all Board meetings of RBI from the date on which the recommendation to demonetize the ₹1,000 and ₹500 currency notes, communications sent in this regard to the Government, representations received from any person.

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or organization suggesting demonetization and all file notings on this subject.

However, the RBI rejected access to its Board meeting minutes and recommendations made to the Government and related file notings under Section 8(1)(a) of the RTI Act. However earlier this year, RBI revealed its intention to disclose these minutes at a hearing in Mr Nayak’s RTI case pending before the Central Information Commission (CIC). The pioneering work of Mr Nayak brought to the forefront meeting minutes of the Board of Governors of the Reserve Bank of India (RBI) which legitimized the Central Government’s initiative to withdraw the legal tender nature of currency notes of ₹500 and ₹1,000 denomination. 8

We wish to draw attention to another successful example of the use of RTI by CHRI which has directly impacted lives and livelihoods of vulnerable groups. According to data tabled in Parliament in April 2018, 9 there are 87.76 lakh (8.77 million) Indians in six Gulf countries: Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates (UAE). On many occasions in the past, families of these Indians were oblivious about their whereabouts in cases of deaths.

Yet another RTI intervention by Venkatesh Nayak and his team and follow-up research of proceedings in Parliament revealed that between 2012 and mid-2018 more than 24,570 Indian workers died in these Gulf countries. This worked out to an average of more than 10 deaths per day. For every US$ 1 billion remitted to India during the same period, there were at least 117 deaths of Indian workers in Gulf countries!

Such examples show us that it is in the practice and implementation of such laws that liberal democracies and structures can grow. For without transparency and good governance there cannot be rule of law. And civil society and its protagonists, without fear or favor, at considerable risk to themselves, must continue to

hold public authorities, corporations and those in and out of power to account. It is a responsibility that cannot be shirked. It is a mandate that must be heeded. And it is a right that government must anchor, protect and sustain, not oppose.

References


Is India economically free? Thirty years back, the answer to this question would have been a resounding no. Today, the answer will be less unequivocal. It will be: “of course it is, though perhaps not as much as it should be.” Ever since 1991, when the first whiff of liberalization swept through the Indian economy, the country has moved in the direction of a free, open market economy from a closed, protected, dirigisme one. But the movement has not been an inexorable one; it has been with fits and starts, and the economic freedoms are under constant threat of being curbed even as new ones are being fought for. It would not be completely out of place to say that Indians have still not learnt to value the concept of economic freedom.

But first, how does one define economic freedom? This definition, in *The Index of Economic Freedom, 2019*, is perhaps the most succinct: “At its heart, economic freedom is about individual autonomy, concerned chiefly with the freedom of choice enjoyed by individuals in acquiring and using economic goods and resources” (Miller et al. 2019: 8).

In short, individuals should be free to engage in any economic activity (a) without the state breathing down their necks; and (b) with this freedom being protected by the state from encroachment or curtailment by non-state actors or, in other words, ensuring that competition is free, fair and based on market principles. This is important because the freedom to make one’s own economic choices, to engage in voluntary exchange with other economic agents leads to individual prosperity and this, in turn, leads to national prosperity.

This is re-affirmed by two indexes of economic freedom that are published regularly: the *Index of Economic Freedom* published
by The Heritage Foundation and the Economic Freedom of the World published by Canada-based Fraser Institute. Both show that the more economically free nations are also the more prosperous ones. According to the Economic Freedom of the World 2018 (EFW-2018), economies in the top quartile of economic freedom, had an average per capita GDP (gross domestic product) of $40,376 in 2016 against $5,649 in economies in the bottom quartile. It also showed that the average income of the poorest 10 per cent in the most economically free countries was almost twice that of the poorest 10 per cent in the least economically free countries. Countries ranked ‘free’ or ‘mostly free’ in the 2019 Index of Economic Freedom (IEF-2019) had incomes that were almost double of all other countries and more than six times higher than average levels in the repressed economies.

India, admittedly, does not fare well on both these indices. In the EFW-2018, it is placed in the third quartile, ranked 96th with a score of 6.63 (on a scale of 1 to 10). In IEF-2019, India is grouped with the ‘mostly unfree’ economies, with a rank of 129 and a score of 55.2 (the higher the score, the more the freedom). But these rankings use an overly broad definition of constraints on economic freedom—size of government, inflation, military interference in rule of law, and politics and corruption. This essay, for its part, will concern itself only with regulatory constraints on economic activity.

The Background

To really understand where India has reached in terms of economic freedom, it is first necessary to get a sense of where it was before 1991, when India finally had its tryst with economic liberalization.

When India achieved independence in 1947, the overwhelming intellectual environment was socialist. Jawaharlal Nehru, the first prime minister, and many prominent leaders of the Congress Party, which was in power, were advocates of socialism, as were most of the opposition politicians. There was even debate in the Constituent Assembly, which framed the Constitution, about declaring India a socialist nation. Fortunately, the chairman of the Constituent Assembly, Dr B.R. Ambedkar, swayed opinion against
this by forcefully arguing that it would be wrong to bind the country permanently to one system of economic management: “What should be the policy of the State, how the Society should be organized in its social and economic side are matters which must be decided by the people themselves according to time and circumstances. It cannot be laid down in the Constitution itself, because that is destroying democracy altogether” (Agarwal 2014).

Though an amendment in 1976 declared India a socialist nation, the lack of such an avowal did not hamper India’s slide into socialism. The ideological bias got exacerbated and institutionalized in economic policy thanks also to the heavy influence of the Soviet Union on the Indian government. India, though a founding member of the non-aligned movement (NAM), was closer to the Soviet Bloc in the Cold War. In the 1950s, India adopted the Soviet-style central planning method of economic management and, over the next five decades, state intervention in the economy kept growing at a steady pace.

Industries could not be set up without licenses and permits. Production volumes were capped. Whole sectors were nationalized and converted into state-owned monopolies. Prices were regulated, as were private sector wages (including discretionary amounts like bonuses). In the name of protecting the farmer and small traders, every aspect of agriculture and retail trade was regulated. Mergers and acquisitions were not possible without prior government nod. Promotional marketing offers were subject to scrutiny. Stringent labor laws regulated every aspect of the management-worker relations. Land ceiling laws put a lid on how much property individuals could own.

There was hardly any intellectual or political opposition worth the name to this. There was one party, the Swatantra Party, that spoke for free markets, but it got negligible support from businessmen and industrialists in its short 15-year-old life. The business community actually chose to make its peace with this state of affairs, preferring to negotiate for sweetheart deals with individual politicians and political parties, or devise ingenious ways of getting around controls, rather than pressing for a directional shift in economic policy.
The Directional Shift

When the directional shift did come about in 1991, it was as a response to a balance of payments crisis and not because of a genuine change of heart on the part of the political establishment. This unenthusiastic, obligatory liberalization—welcome as it was—is the reason why India can still not be called a genuinely free economy.

This does not in any way detract from the fact that what happened in India in 1991 was a tectonic shift in economic policy and management. On 24 July 1991, the Statement on Industrial Policy abolished, at one stroke, industrial licensing in all but 18 sectors. Over the years, this list has been whittled down to just four. Especially heartening was the rationale given for this move:

Major policy initiatives and procedural reforms are called for in order to actively encourage and assist Indian entrepreneurs to exploit and meet the emerging domestic and global opportunities and challenges. The bedrock of any such package of measures must be to let the entrepreneurs make investment decisions on the basis of their own commercial judgment (emphasis added).

Apart from liberalizing foreign investment norms—up to 51 per cent foreign direct investment was now allowed—an extremely significant policy shift in the Statement was to relax the Monopolies and Restrictive Trade Practices (MRTP) Act, 1970, to free companies from having to take prior permission from the government for setting up new ventures, expansion of existing facilities as well as mergers and acquisitions. (The Act was repealed in 2009.) Restrictions on imports of raw material and capital goods were lifted or substantially eased. Similar easing of controls happened in the financial sector and capital markets and specific sectors (foreign investment in the automobile industry and private participation in power generation were allowed). “Suddenly we could breathe,” a leading businessman once told this writer.

This resulted in an explosion of entrepreneurship and economic activity. Data from the Annual Survey of Industries shows that the growth in registered manufacturing units between 1981-82 and 1991-92 was 6.9 per cent, but the growth over the next decade, that
is 1991-92 and 2001-02, was 14.4 per cent, and that between 2001-02 and 2011-12 was 36.6 per cent.¹

The services sector, particularly, saw a boom. New companies came up in new sectors—IT (information technology) and IT-enabled services, telecommunications, healthcare, biotechnology and, more recently, the e-commerce space. Many of these companies were set up by first generation middle class entrepreneurs who often gave up cushy white-collar jobs to take the plunge into business. The freeing of the economy, which facilitated easier access to finance, also broke the hold of a few business families on the economic life of the country.

Entrepreneurship opportunities did not just open up for the well-educated middle classes but to those lower on the socio-economic totem pole as well. People who would have been unemployed or stuck in mind-numbing jobs found they could offer a range of services—courier delivery, repair services, tiffin services, telemarketing, and cab services through ride-sharing platforms. It is true that not all the self-employment avenues are well-paying, but the point is that the avenues are now here; also these could sometimes supplement income from regular jobs.

No Property Rights

Unfortunately, almost nothing has changed when it comes to one of the biggest hurdles to economic freedom in India—namely, the lack of a right to property. The criticality of the right to property to economic freedom is best described thus:

Property rights allow people to be entrepreneurial. And enterprise allows people to create wealth and prosper. The security of property allows people to pursue their enterprise. A farmer, for instance, would not grow crops, or further develop his land if he knows that his land faces the threat of being seized by the government. A businessman would not expand his business if he perceives a credible threat of his business being taken over by the state. Individuals would not undertake risks, or make investments in land improvements if they

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¹ Author’s calculations based on data from the Annual Survey of Industries.
feel that their ownership can be challenged. In the absence of a secure system of property rights, enterprise is throttled.2

This right was one of the fundamental rights guaranteed to citizens in the Constitution of India, under two articles—Article 19, which guaranteed to all citizens the right to acquire, hold and dispose of property and Article 30 which said “no person shall be deprived of his property save by authority of law.” The right was, initially, diluted in stages, enabling the state to acquire land. Then in 1978, the 44th Amendment of the Constitution, abolished it entirely. The provision that “no person shall be deprived of his property save by authority of law” was put in as a new article, Article 300A, but without the protection that a fundamental right would get.

Skin-deep Liberalization

Without in any way belittling the steady freeing of the economy since 1991, what needs to be accepted is that the impulse to intervene in private economic activity is constantly lurking under the skin of the government. A paternalistic state (regardless of the ideology of the ruling party at any point of time) that sees itself as a savior to protect what it believes are vulnerable sections has resulted in the government meddling in everything from prices to wages to labor relations. The 1991 reforms may have brought in de-licensing, but complete deregulation is something that is still a holy grail.

Nowhere is this more evident than in the case of agriculture, the largest private sector activity, which has remained untouched by the winds of reform. The decision on what to grow is perhaps the only one which farmers can take on their own; the state interferes in practically everything else.

But even this freedom to choose what to grow means little when they are unable to get the right price for their produce. Technically, farmers have the freedom to set prices, but that freedom is severely circumscribed since they have no choice about where to sell their produce. There is a law called the Agriculture Produce Marketing

Committee (APMC) Act in each state, which stipulates that farmers can sell their produce only at government-administered designated mandis (wholesale markets), and that too within one state. The eastern state of Bihar is the only one which does not have this law. The pricing in these mandis lacks transparency but farmers, who have incurred the cost of transporting their produce, have no choice but to sell there. Private companies making bulk purchases are not allowed to have their own collection centers or to pick up produce directly from the farm gate.

Repealing or amending the APMC Act in order to allow parallel private markets and let farmers benefit from competition has been on the reform agenda for over a decade now—and that is where it has remained. A few states have legislated a more sensible law but they have not issued the necessary rules to operationalize the changes, rendering the new law meaningless. In 2018, the Western state of Maharashtra issued an ordinance that removed all agricultural produce from the APMC. Barely had the rejoicing subsided, the state government backtracked and refrained from getting the ordinance legislative sanction, in effect killing it. Though the APMC law was brought in ostensibly to protect farmers from ‘exploitative’ traders, in effect it has put them at the mercy of those very traders by severely curtailing their freedom to sell. In addition, whenever domestic prices of certain food commodities rise, export bans or restrictions are imposed, which end up denying the farmers the right to take advantage of high global prices.

Besides, most states either ban or severely restrict the leasing out of agricultural land by land owners to tenant farmers, ostensibly to protect the latter from being exploited by the former. But this has ended up curbing the economic freedom of both sections. Landowners who are not able to cultivate their land are not able to earn an income from it by leasing it out to landless farmers who are looking for some means of livelihood. This has resulted in informal, word-of-mouth tenancies that leave both the landowners and tenants vulnerable. Tenants have the shadow of eviction constantly hovering over them, apart from not being able to secure institutional credit or apply for insurance or even get compensation for crop damage. Landowners,
on their part, have to live with the fear of their land being usurped; tenancy laws in some states allow tenants who have tilled the land for a certain number of years to occupy it, underscoring the weakness of property rights.

Take also the case of the sugar sector where both farmers and mills have to deal with government meddling and micro-management. Sugarcane farmers and mills within a certain area are linked to each other; farmers cannot sell to other mills. For a long time, the government dictated not just prices, but also the quantity of sugar that mills could release into the market every month. Mills also had to give a certain percentage of their production to the government for subsidized distribution through its own ration shops (this was called levy sugar). In 2013, the regulations relating to pricing, open market release and levy sugar were relaxed. However, in 2018, pricing regulation was brought back through a Sugar Price (Control) Order. The only difference was that while the earlier regulation capped prices, in this case mills were not allowed to sell below a certain floor.

Pricing is one area where the freedom of businesses is always at peril. The prices of drugs are controlled by the National Pharmaceutical Pricing Authority through the Drug Price Control Order, 2013. Urea prices are fixed by the government (though the government pays the difference between the retail price and economic cost of a subsidy to the fertilizer companies). Laws enabling regulation of fees charged by private schools have been enacted by the states of Gujarat, Tamil Nadu, Rajasthan, Maharashtra, Karnataka, and Punjab. Though each state has an independent electricity regulator which sets tariffs, state governments have been known to reverse tariff hikes. When the Goods and Services Tax (GST) was introduced in July 2018, an elaborate mechanism—the National Anti-Profiteering Authority—was promptly set up to check if businesses were passing on the benefit of reduction in tax rates to the consumers. The Authority can look into any failure to pass on rate cuts either on its own or in response to a complaint. This means companies will have to explain their costing structure and methodology to the Authority and it can order a price reduction if it is not convinced.
The license raj still thrives in the education arena. Across the country, anyone wanting to set up a school needs myriad permissions and clearances—this is apart from the regulation of fees mentioned earlier. Profiting from education is frowned upon, so schools can only be run by a non-profit trust or society. An essentiality/no-objection certificate is then required; what this means is that the department of education is the final arbiter of whether or not a school is needed in a particular area. The Right of Children to Free and Compulsory Education Act (also known as the Right to Education Act) makes recognition of schools mandatory; unrecognized schools are shut down. In order to get recognition, schools have to conform to various input and infrastructure norms set by the government, including teachers’ salaries.

Public transport is another area where private enterprise faces several shackles. Across states, there are multiple regulations relating to permits, vehicle type as well as fares. Private buses, taxis and auto-rickshaws require permits to ply and in most cities the number of permits are capped. Not only does this create an entry barrier, it also leads to a thriving black market in permits. For a long time in Delhi, only two makes of cars could be used as taxis. Fares for auto-rickshaws and taxis are fixed by state governments. A person with a car cannot use it as a taxi in his free time unless s/he gets a commercial vehicle permit as well as a commercial driving license. The combined effect of all this is that public transport is in a mess in most urban centers, and commuters are denied a choice. What is tragic is that those seeking to earn a living are deprived of one source of self-employment.

This is particularly appalling in the case of street vendors and hawkers across India, most of whom are migrants from the rural areas and form the vast population of urban poor eking out a living by setting up an informal enterprise selling either goods (fruits and vegetables, snacks, soft drinks) or some service (barber, tailor, cobbler). But the public spaces they conduct their enterprise in are owned by the municipal authorities and they cannot just set up shop anywhere. Many of them do, but they live under the constant threat of eviction and confiscation of their carts/vehicles and goods/
tools of trade. A Street Vendors Act 2014 was enacted by the Central Government, which recognizes vending as a legitimate livelihood, allows vendors to get licenses to operate in particular zones and protects them and their tools of trade (Centre for Civil Society 2019). Insisting that they get licenses to operate and confine them to certain areas is also circumscribing their freedom but this is still better than the current regime where they have no rights at all. But a January 2019 study, Implementing the Street Vendors Act, 2014: Judicial Interpretation, Cross-State Compliance and De Facto City-Level Practices by the Delhi-based Centre for Civil Society found that implementation of the Act has been tardy.

On the face of it, urban property owners are better off than their rural counterparts since there are no laws banning tenancy and the Urban Land Ceiling and Regulation Act, which puts a limit on property that could be held, was repealed. But rent control laws that exist in many states severely curtail the freedom of property owners to earn from their property. Enacted in the name of protecting the rights of tenants, these put a cap on rents that house owners can charge and the extent of hike and, in some cases, also make it difficult for house owners to regain control over their property. The unintended consequence is that house owners are reluctant to rent out vacant houses, which reduces the rental housing stock and, in the process, pushes up rents.

**Regulatory Cholesterol**

As already mentioned, de-licensing has not led to complete deregulation. This is particularly true at the level of states and local bodies where there are myriad rules and regulations governing various aspects of enterprise—from street vendors to shops to medium enterprises to large firms. Of course, the burden of these regulations falls disproportionately on the smaller players.

Laws relating to shops and factories specify hours of business, off-days as well as employment of women beyond a certain time (the fact that this curbs the freedom of the employers and employees is considered immaterial). Regulations for everything from setting up a business, permits for construction, electricity and water, labor laws,
state level and local taxes, to name just a few, keep businesses tied up in endless red tape and in constant fear of inspections.

Companies with more than 100 employees cannot retrench workers without prior permission from the government. This provision stands in the way of businesses which are on the verge of closure from either shutting down or even working out a revival strategy. Less than 10 state governments have increased this threshold to 300 employees. There are 40 laws that govern management-labor relations across the country, covering everything from wages to resolving industrial disputes; some of these involve periodic inspections. The Narendra Modi government attempted exhaustive changes in labor laws, but these are more in the nature of easing the compliance burden by reducing inspections or digitizing processes and not a complete overhaul of these laws.

This has also been the problem with the drive to improve the ease of doing business across the country. Prompted by India’s repeated low ranking in the World Bank’s annual Doing Business reports, the Modi government started to push states to cut red tape and make life easy for business. In December 2014, the Central Government drew up a 98-point action plan to cut the regulatory flab. This was followed, in October 2015, by a 340-point Business Reform Action Plan (BRAP). Since then, states have been ranked on the extent to which they conform to this BRAP. While this has led to consciousness among states about freeing businesses from regulatory shackles, even now the focus is on making processes online and transparent, rather than on questioning their very logic or need.

**Conclusion**

Clearly, India’s record on economic freedom is patchy. There is no denying—indeed, it will be ungrateful for Indians to deny—that the post-1991 scenario is nowhere as suffocating as it was in the 45 years before that. However, there is also no denying that the basic philosophy of economic freedom is yet to be internalized by politicians, bureaucrats, and even businessmen and ordinary people.

Politicians and bureaucrats are the biggest obstacles to economic freedom, constantly looking for opportunities to ban or regulate
activities on grounds ranging from national security to public health to morality. Legislation restricting economic freedom gets bipartisan support in legislatures. Let alone assessing the collateral damage, there is little concern for it.

Often these decisions are the result of the state acting in cahoots with politically influential rent-seeking groups to curb the freedom of other groups. The APMC reforms mentioned earlier have come to naught because the *mandis* are controlled by agents who bankroll politicians. There is a Model Tenancy Act which balances the rights of both house owners and tenants, but very few states have adopted it because the tenant community is larger.

Even the courts’ record on upholding economic freedom has been patchy. It was the Supreme Court which, in December 2017, banned hotels and restaurants along highways from serving alcohol, in the name of preventing drunken driving. Courts have also been sympathetic to appeals to regulate fees and prices.

While on the subject of prices, it is pertinent to point out that often the impetus to control prices comes from demands by the public. Parents of school going children want school fees to be regulated. Commuters demand the government should ban or curb surge pricing during peak hours by ride-sharing services. Whenever prices of certain food commodities—from onions to sugar and pulses—go up due to a production shortfall, vocal urban consumers demand that the government should do something to control it; hence the export bans or restrictions on stocking that adversely affect farmers.

This is not confined to prices alone. Ordinary people themselves push for regulations that curb economic freedom. Most complaints about street vendors are from associations of residents; in gated colonies, residents create monopolies of service/goods providers in the name of security or by charging a fee for the ‘privilege’ of providing the service. Bans on dance bars or on liquor come from citizen groups on grounds of morality or public safety.

So economic freedom in India faces challenge not just from the state but from the very people who benefit from it. Till such time
that this changes, the scenario for economic freedom will not be very optimistic.

References


Most activists and intellectuals believe that markets can only exploit and cheat the poor and make the rich richer and the poor poorer, and that the only solution to this is government control and direction of the economy to achieve growth with equity and to eradicate poverty.

We shared this belief, when we started working in the tribal areas of Gujarat in 1980-81. But what we saw in the villages and what we learnt from the villagers soon led us to question this belief, to examine it and eventually to reject it. We soon realized that in the name of protecting the poor, the governments and their policies and functionaries were actually harming the poor the most—treating them not as responsible citizens capable of taking their own decisions, but as illiterate and ignorant drags and often also as criminals who have to be kept under a tight leash!

Realizing that the governments are actually the problem and not the solution is relatively easy and many activists who work closely with the poor soon realize this. But from this, to realize how competitive markets, far from exploiting the poor, actually provide them various economic opportunities to participate in the economic activities and enable them to lift themselves out from the morass of deprivation and hunger is very difficult. One reason is that despite the shocking and counter intuitive outcomes of the planned economic development of 1950-1980 and equally surprising results of economic reforms, there has really been no real debate and discussion on why the state control fails and markets succeed.
We realized this only after we learnt, with great difficulty, from the works of F.A. Hayek, Milton Friedman and others how free competitive markets coordinate the activities of millions of individuals through voluntary cooperation and how voluntary exchanges in the market would truly happen only if both parties to the exchange benefit from them. Even then, we had to see with our own eyes how the poorest tribals of Dediapada, Gujarat, despite all major problems, were transforming their lives by grabbing the economic opportunities created by the post 1991-92 economic reforms, before we appreciated this.

The poor themselves, of course, have no illusions about ‘benevolence’ of the governments or hang ups about the ‘wickedness’ of the market, and as such face no dilemma while taking up the various opportunities provided by the market economy for improving their lives.

**Economic Planning of 1950 to 1980**

Many of us today do not remember the details of the economic policies adopted by the Central Government soon after attaining political independence from the British in 1947 and their consequences. But it is worthwhile to consider them to assess how government control and direction of the economy actually harms instead of benefitting the poor.

The Indian political leadership, especially Prime Minister Jawaharlal Nehru, were of socialist orientation. But we had also adopted parliamentary democracy with universal adult franchise and constitutional protection of fundamental rights, including the right to free speech and press. Hence, unlike the Soviet Union, no wholesale collectivization of private properties was ever attempted. Agricultural lands were kept in the private hands and so were hosts of other industries and establishments. However, the government decided to control and direct the pace and direction of the economic development through: a) creating huge public sector enterprises in a variety of fields—like railroads, airline, steel and fertilizer mills, coal mines, machine tools plants and even hotels, and b) regulating what private enterprises can produce and in what quantities through
industrial licenses and quotas, dubbed as ‘License, permit, quota raj’ by C. Rajagopalachari.

Nothing could be manufactured without an industrial license or imported without an import license. And those licenses were scarce and difficult to get. Any producers who exceeded their licensed capacity faced possible imprisonment for the sin of violating the government’s sacred plan targets. India was perhaps the only country in the world where improving productivity (and hence exceeding licensed capacity) was a crime (Aiyar 2016)

This was carried further in the 1970s, when Prime Minister Indira Gandhi nationalized banks and several major industries in the name of Garibi Hatao (Abolish Poverty) (Aiyar 2016).

**What was the Result?**

Far from a faster rate of economic growth, the Gross Domestic Product (GDP) grew at an average rate of 3.5 per cent per year, derisively called the “Hindu rate of growth”, during the three decades from 1950-1980. The population also grew at the rate of two per cent per year during this period. Thus, per capita growth rate was only 1.5 per cent per year. This was half of what was achieved in the western countries during the comparable period and also half the rate achieved by the east Asian Tigers during the 1960s (Aiyar 2016). Even this growth was illusory to some extent because a large part of the national product was in the form of capital expenditure in public sector enterprises, many of which later became a perpetual drain on the economy.

The proportion of people living in poverty did not change at all during this period and remained as high as just under 60 per cent. Meanwhile the population had virtually doubled, meaning that the number of poor people had actually doubled during this period. Policies enacted in the name of the poor had actually ended up impoverishing them even further.

**The Situation in the Tribal Areas of Gujarat in the 1980s**

This picture is amply corroborated by what we saw in the tribal areas of Narmada (then Bharuch) district in the early 1980s.
We started visiting these villages in early 1980 with a view to understanding the problems faced by thousands of tribal families whose lands and houses were going to be submerged in the reservoir of the proposed Sardar Sarovar Dam on river Narmada, and trying to help them get proper rehabilitation. The Narmada Water Disputes Tribunal had just given its award in 1979 and work of the construction of the dam had just begun. We thought that if we started working from the beginning, we might be able to influence the events and help the tribals get fair resettlement and rehabilitation.

We were all fresh from the colleges and this was our first exposure to rural and tribal life. The villagers aptly called us Nishaliyas (school children), as we were getting our first lessons on agricultural land records and the provisions of Land Acquisition Act, and the Indian Forest Act from living with them. They were naturally not very confident of our ability to help them, but happy to share their problems, experiences with us, not only regarding the dam and the threat of submergence, but also about their experiences in general.

What people told us was quite shocking. They were unanimous that there was no major improvement in their lives during the three decades after independence and that it had in fact worsened in certain aspects. One improvement they all acknowledged was the abolition of the Dumaldari system of land revenue collection that prevailed under the princely state of Rajpipla. Abolition of this system after independence freed the tribal farmers from the forced labor they had to do in the fields of the Dumaldar, without any wages. This was the first taste of freedom for these farmers.

But thereafter, there was no major improvement in their lives. Their villages had no roads, no electricity, no irrigation, no two wheelers, and of course no telephones. One had to walk six to twelve kilometers to reach many of these villages. The Forest Department had taken over all forest lands of these villages and declared them Reserved Forests, without carrying out any proper settlement of the rights of the tribals. During the days of princely state the forests belonged to the state. But there was not much interference from the state and the tribals had more or less free access to the forests. But with the Forest Department taking control, the tribals started
facing all sorts of harassment at the hands of forest officials. The department had carried out clear felling of all trees from the forests of these villages, from which local tribals received no benefits, except wages for their labor.

The main problem, however, was they had no work for six months after the meagre agriculture work was over—not only in their villages and nearby areas, but also in other areas in the cities. Whatever grew in their agricultural fields was the only source of food and income. They had to cultivate government or forest lands that were lying barren after the Forest Department had cut the trees. But this was considered illegal ‘encroachment’ and resulted into frequent destruction of crops and even jail. Most of the families were living a barely subsistence level existence and faced hunger during summer months. Most of the children were malnourished, experiencing both stunting and wasting, and one in four children would be severely malnourished showing symptoms of marasmus. Both infant mortality and under five death rates were quite high. Some school buildings were there, but teachers would come only once a month to collect salaries. Parents too were so preoccupied with day-to-day survival that they simply could not take a long-term view of educating their children.

And then they were facing the threat of losing everything they had due to submergence of their lands and houses in the Sardar Sarovar reservoir. They had already started receiving notices under Section 4 of the Land Acquisition Act of 1894 and had no idea what would happen to them. No government officer had visited the villages and explained to them their options. And there was a talk of getting a compensation of ₹2000 per acre for the lands going under submergence, from which they were supposed to buy alternate lands. This too was available only to those who had titled lands, other ‘encroacher’ families were not to get anything. The government officers were not at all bothered that poor tribals were asked to sacrifice everything for the project that was going to benefit other relatively rich farmers and cities. The general belief was that somebody has to sacrifice for the development of the country, and
since the dam can be built here only, it is the tribals who have to make this sacrifice.

The situation in Dediapada villages, located south of Narmada river and not directly affected by the dam, was even worse. There, in addition to absolute poverty, the tribals were facing the reign of terror by the Forest Department on a daily basis. Nearly 90 per cent of the geographical area of these villages was declared Reserved Forest and then Wild Life Sanctuary, without taking into account the needs of the tribals living in these villages. All tribals entering the forest, taking out any forest produce, including minor forest produce, or cultivating land to meet their basic food requirement, were considered committing ‘grave offences’ under the Indian Forest Act and routinely beaten up or put behind bars by the Forest Department. They would destroy their crops, take away their bullocks and agricultural implements at their will, and the tribals could not do anything about it. The situation was so bad that women working in the fields would run away to the top of the hills, whenever they heard any approaching vehicle, assuming it must be a Forest Department vehicle. The whole community of thousands of families was treated as criminals for trying to earn a livelihood for their families with their own labor.

Ironically, all these villages were part of the Scheduled V areas, where the government has to ensure protection of the members of the scheduled tribes from the exploitation by non-tribals. Accordingly, no non-tribal can buy any land from the scheduled tribal farmers. But these provisions provide no protection against the governments taking away their lands!

Through sustained work for many years, we were able to help the tribals affected by the Sardar Sarovar Dam obtain a decent rehabilitation policy providing land for land of choice, with a provision of minimum five acres of land per family, not only for landed families but also for so called ‘encroachers’ and landless families, and also its proper implementation by the Gujarat Government. Similarly, we were able to help tribal families of Dediapada villages in getting legal protection for their cultivations first from the Gujarat High Court and later by Forest Rights Act of 2006, which recognizes the rights
of the tribals over lands being cultivated by them and also over forest resources of their area.

We have described the situation of these villages in some detail to show how three decades of planned economic development under government control and in the name of the poor had in fact harmed the most poor and vulnerable communities.

**Economic Liberalization and its Impacts**

The 1980s saw a very modest liberalization and a government spending spree. This led to GDP growth of 5.5 per cent per year. But this spending spree was not sustainable, and led to the foreign exchange crisis in 1991.

This paved the way for the economic liberalization carried out by the Prime Minister P.V. Narasimha Rao government. All direct controls in the form of industrial and import licenses were removed, and all internal and external barriers to the trade were removed through sharp reduction in customs and excise duties. These measures gave a fillip to economic growth and after the initial period of stabilization, the growth in GDP jumped to 7.5 per cent during 1994-1997 (Aiyar 2016).

When the reforms began, all opposition parties had slammed them as a sell out to the International Monetary Fund (IMF). Narasimha Rao himself always insisted that he was pursuing a middle path and not radical transformation. But with record growth in GDP, the objections melted away in practice, if not in rhetoric. Every successive government that came to power continued down the path of economic liberalization, despite some steps backward. The reforms have been erratic and half-baked, but have not been reversed.

Liberating the Indian industries from the clutches of ‘license, permit, quota raj’ and setting them free radically transformed the Indian industrial scene, bringing new dynamism and competitiveness.

Once a poor laggard economy, India has now the third largest GDP of 7.98 trillion dollars in purchasing power parity terms after the United States and China. Per capita income is up from $375 per year in 1991 to $1700, taking India out from the tag of low-income country and making it a middle-income country (Aiyar 2016).
The impact of these reforms on poverty has been even greater. The percentage of people living in poverty has come down from 45.3 per cent in 1993-94 to 21.9 per cent in 2011-12. In terms of absolute numbers, the number of people living in poverty came down from 403.7 million in 1993-94 to 269.3 million in 2011-12, indicating that as many as 131 million people came out of poverty during this period. Poverty decline was 0.7 per cent per year between 1993-94 and 2004-05 when GDP growth averaged about 6 per cent per year. And the rate of decline in poverty accelerated to 2.2 per cent per year between 2004-05 and 2011-12 when GDP growth rate accelerated to over 8 per cent per year. This indicates a strong linkage between fast growth and poverty reduction (Aiyar 2016).

Between 2004-05 and 2011-12, the overall poverty ratio declined by 15.7 per cent. The decline was much higher at 21.5 per cent for Dalits and 17.0 per cent for scheduled tribes, traditionally the two poorest groups in India (Aiyar 2016).

The proportion of people saying they faced hunger for some or all months of the year also fell from 17.3 per cent in 1983 to 2.5 per cent in 2003-04, providing a solid proof of falling hunger. Life expectancy in India is up from an average of 58.6 years in 1986-91 to 68.5 years. Infant mortality is down from 87 deaths per 1000 births to 40 (Aiyar 2016).

These improvements are often attributed to the increased spending of government welfare programmes like the Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) providing 100 days of guaranteed work in rural areas. But the main contribution has come from the growing economy that has provided various opportunities to the poor to participate in the economic activities, both in urban as well as rural areas. This has led to an increase in incomes in farm and non-farm sectors, which is the main cause of the record drop in poverty.

**What has Happened in the Tribal Areas of Gujarat?**

We have witnessed this also in the tribal villages of Dediapada, Narmada. As discussed, the situation of the tribals in these villages was quite desperate till the late 1980s, with people living in absolute
poverty and facing constant threats and terror from the Forest Department. We were able to obtain legal protection for their lands by getting stay orders from the Gujarat High Court restraining the Forest Department from evicting these tribals from the lands cultivated by them. These orders drastically reduced the harassment by the Forest Department and increased the confidence of the tribals, who could now cultivate their lands without fear of getting arrested or losing their crops or implements. But this was still subsistence level agriculture, with little scope for major increase in income. They still did not have legal rights over these lands and as such were not in a position to carry out major improvements to increase productivity of these lands. Nor did they have resources to carry out such improvements.

We were aware of the economic reforms initiated by the Narasimha Rao government, but did not expect them to have immediate impact in these remote villages. But then the situation started to change. The news of increasing opportunities for work in the cities and other rural areas started reaching these tribals and they started going out in search of work for four to six months a year. Initially, few people went, but slowly more and more people went out earning substantial incomes, equal to and in many cases even greater than what they were earning from agriculture. With improved earnings, they got a sense of economic security and started eating better food, buying better clothes and importantly sending their children, both boys and girls, to schools, not the village schools, but residential schools, often far from their homes. And in many cases, they even spent large sums of money to give their sons and daughters higher education and specialized skills in nursing, masonry, fire-man, computers, etc. This has resulted in a whole generation of educated and skilled young boys and girls, who are working in all sorts of different jobs and not so much interested in agriculture.

They also started using these incomes to increase productivity of their agricultural lands, by taking up land levelling works and creating irrigation facilities. Initially, this was done for their titled revenue lands. But after the implementation of the Forest Rights Act of 2006 (in 2008), they also started getting titles for the forest lands they
have been cultivating for many years. With these titles in hands, they started investing a large portion of their income for the improvement of these lands—land levelling and terracing with the help of tractors and JCBs, irrigation, using improved seeds, purchasing buffalos for dairying, etc.

With more and more families getting titles, this has become a movement with everybody investing a lot of money for improving the lands, leading to changes in the whole landscapes of these villages. The prime objective is to capture the rain water in the leveled fields, not allowing it to run away, taking a good crop of paddy through planting paddy saplings and also a take a second crop of Chana on the same lands. Where irrigation is available, a third summer crop is also taken. Severe malnutrition has simply vanished. We still see mild and moderately malnourished children in these villages, but these are largely affected by stunting only and not wasting, i.e. their weight for height is okay, but height for age is less than what it should be. But stunting can also be a genetic problem and in any case takes more time to be corrected. Many families now own motor-cycles and almost all have at least one mobile phone.

The Gramsabhas of these villages have also received community rights on forest resources, including right to protect, conserve, regenerate and manage forests of their villages for sustainable use. This includes full ownership of all minor forest products, also bamboo. Many Gramsabhas have started generating income by selling dry bamboo directly to the J.K. Paper Mill. About 30 villages from Dediapada and Rajpipla talukas have sold 160,000 metric tonnes of dry dead bamboo (available because of flowering) to the paper mill in the last five years and have earned about ₹32 crore, from which about ₹21 crore have been paid to the tribals as wages for bamboo cutting work, while the balance of ₹11 crore is with the Gramsabhas as net surplus. Earlier, this amount was taken away by the Forest Department. With such income, the Gramsabhas and the individual tribal families have strong incentives for protection and regeneration of forests and have started taking measures for the same, collectively as well as individually. They are now even growing trees and bamboo
on the high slope parts of their agricultural lands. This has benefited the tribals as well as the forests and the environment.

**What Remains to be Done**

There are still huge problems yet to be resolved. The reforms carried out have brought us up from the category of a poor country to a middle-income country. But if we wish to improve our incomes further and eradicate the remaining poverty, we need to deepen these reforms and extend them to remaining areas, like agriculture. And most importantly to vastly improve the governance and government services and the rule of law.

Political leaders have never been enthusiastic about reforms and as such have not extended the reforms to other areas, after the initial crisis was overcome by removing industrial and import licenses and reduction of custom and excise duties.

Only the industrial enterprises, and here too only the large corporates, are considered as contributing to the economic development and hence all focus is on the ‘ease of doing business’ for these corporate houses.

Agriculture has not been reformed at all and the fields of agricultural inputs, outputs and processed foods are still plagued by extensive controls, starting with Agriculture Produce Marketing Committees, which instead of protecting the interests of the farmers are actually harming them and largely controlled by the traders. Imports and exports of agricultural products are not free, largely because of the Essential Commodities Act; they are controlled to keep the domestic prices of agricultural produces down, which harms the farmers most.

Markets cannot function properly without good governance and the rule of law. And the rule of law is not simply the rule of whatever laws passed by the parliament, but the rule of laws that are manifestly recognized by all citizens as just laws and also recognized as such by our Constitution and the independent courts. These include laws of criminal as well as civil justice, and the law of property and contract.

Land and natural resources are other areas where reforms have not been carried out. The government lands of different categories—
forest lands, revenue wastelands, coastal lands, pasture lands—are all on paper owned by the government. Similarly, natural resources like forests, coal and other mineral resources are owned by the government, even when they are found on or under the private lands.

But in many cases, these resources are being used by the local people and communities, who are often the poorest, to meet their basic needs and they have thus acquired rights over these lands and resources. With the economic boom, the value of these lands and resources have increased tremendously. And governments, instead of carrying out their basic duty of recognizing and recording the rights of these individuals and communities on these resources, are selling away these resources to the favored corporations with massive scams and cronyism, which has led to widespread protests and much resentment.

The same is happening in a big way in cities where old slum settlements are demolished and the freed lands given to corporate entities for developing malls and shops. Infrastructure and telecommunication are other big areas where cronyism and corruption have flourished under public-private partnerships.

This crony capitalism is often called neo-liberalism, where the governments promote interests of specific private corporations or industries at the cost of the interests of the citizens. These are found in areas where the reforms have not been carried out and property rights have not been settled, and as such may be called neo-illiberalism (Aiyar 2016).

The Forest Rights Act of 2006 is the first attempt to recognize the rights of the local communities on forest lands and resources. As the example of Dediapada shows, if properly implemented, it can lead to a win-win situation for the tribals as well as the forests and the environment. However, the forest bureaucracy is so powerful that it has thwarted its implementation in various ways which has led to rejection of as many as two million claims, subjecting them to the threat of eviction, as recently ordered by the Supreme Court of India.

Delivery of all government services from police to judiciary, health and education is pathetic and riddled with corruption. Government servants who deliver these services cannot be sacked
and have no accountability to the people they are supposed to serve and hence have become callous, arrogant and corrupt. Poor people have to pay a heavy price for these failures. No poor can hope to get the benefit of any government welfare program or subsidy without paying bribes and without many visits to the government offices. The daily harassment the poor street vendors or the laborers face at the hands of police and thousands of poor pre-trial accused languishing in jails for years without being tried or convicted demonstrate this. As against this, the rich and powerful can easily get away with anything. All these institutions are so weak and spineless that they easily succumb to the slightest pressure from the rich and powerful, but pounce with all their might on the poor and the weak. What the former governor of Reserve Bank of India (RBI) Raghuram Rajan (2016) said with respect to banking institutions is true for all institutions: “We do not punish the wrong-doer unless he is small and weak …No one wants to go after the rich and well-connected wrong-doer, which means that they get away with even more”.

This brings us to the final question—are the poor of India economically free? The answer is no, they are still substantially unfree, although they have improved their situation from before, with the help of economic opportunities created by the limited reforms that have been made.

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India’s digital policy has taken a conservative turn over the last few years. Where there was a focus on enabling investment, startups, and bringing more people online, a decided shift has been made towards establishing a command and control mechanism for activities on the Internet. This has much to do with the Internet becoming mainstream in India, and digital rollouts being given primacy in governance. Where it was seen as peripheral a decade ago, and the Internet industry was seeking government support for growth, government support is now here, and with it, is increasing government control: over user data, economic activities and even attempts to take ownership over citizens bodies.

Aadhaar, Centralization and Identity

In 2012, Nandan Nilekani, the creator of India’s Aadhaar biometric identity system, said that: “If you do not have the Aadhaar card, you will not get the right to rights.”

Aadhaar is the largest biometric identity system in the world, where every Indian resident is provided a unique identity number, linked to their biometrics. At last check, 1.23 billion Aadhaar numbers had been generated in India.

Residents enrolling for Aadhaar have to get their iris and fingerprints scanned, which are then stored in a centralized database, and used to authenticate government services, and until recently, open bank accounts and subscribe to mobile services. At the core of

1. https://www.thehindu.com/opinion/lead/compulsion-by-stealth/article5646019.ece
Aadhaar was a plan to enable businesses to easily collect data from individuals via biometric authentication, and build databases about them.

The word ‘Aadhaar’ literally means basis. It is a key component of an initiative called India Stack, which is a collection of tools that enables sharing of data, via consent, across domains. While the scheme is supposed to be voluntary, for much of its existence, it has been deemed to be ‘mandatory-but-voluntary’: essential services are denied, but for the provisioning of an Aadhaar number, or a biometric authentication. Since its launch, it has become the central ID for access to government services, banking, financial services, mobile wallets, welfare rations, essential mid-day meals for children, emergency healthcare, insurance, land ownership, school admissions, get married, mobile and Internet access services, and almost every conceivable public and private service, with many of these services being denied to citizens if they don’t have an Aadhaar number. It is likely to form a key component of electronic health records and access to medical-aid, and even access to public WiFi services.

Aadhaar is the centralization of identification across services. Prior to Aadhaar, Indians could use one of several identification cards to authenticate access to services: their drivers license, ration card, PAN card (for tax payment) or a passport. Not every Indian has each of these identity documents, and thus a single service could end up using different identity documents for different people.

While the centralization and digitization of identity, and the usage of biometrics enables streamlining of government services and potentially addressing issues of fraud, enabling real-time tracking of delivery of services, and a digital trail to prevent fraud, it comes with serious challenges for individuals and their rights.

When this centralization of identity was challenged in the Supreme Court, the Union of India argued that Indians do not have a Fundamental Right to Privacy. The Attorney General claimed that the “arguments on so-called privacy and bodily intrusion is bogus“ and “one cannot have an absolute right over his or her body.”

The centralization lends itself to profiling of citizens, and the creation of a panopticon. For example, the Madhya Pradesh SRDH (State Residential Data Hub), which has copies of the Aadhaar database of citizens, has a 360 degree profile of citizens. Its website says that its key objectives are to “Establish a clean, authenticated and de-duplication data repository for all the residents of the State of Madhya Pradesh”, and “View 360-degree profile of a resident.” Some states, in addition to collecting demographic information, also collect marital status, occupation, PAN card number, bank details. As citizens link their usage of government schemes to Aadhaar, the profile of citizens becomes richer.

The Government of India has been largely incompetent when it comes to preventing the leakage of this data. Personal details of individuals have been published online on websites by government

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departments themselves.\textsuperscript{16} Details of school children, with their Aadhaar numbers, have been published by schools.\textsuperscript{17} Unauthorized access to Aadhaar numbers has, in the past, been made available to those willing to pay the equivalent of USD 8.\textsuperscript{18} Non-secure access to the Aadhaar database by a government website allowed a developer to extract data from the database.\textsuperscript{19} Both the Aadhaar number and a user’s biometrics are permanent. You cannot change your fingerprints and iris. It’s like having a permanent username and password: once compromised, users are compromised for the rest of their lives. Cloning of fingerprints has been reported often in India, in Uttar Pradesh\textsuperscript{20} and Hyderabad,\textsuperscript{21} among others. In Surat,\textsuperscript{22} in Gujarat, two were arrested for cloning fingerprints and modifying data of individuals.

These problems get exacerbated when private companies, such as banks, mobile operators, insurance companies, schools and colleges, start collecting data. Parallel databases get created, and as we have seen with Equifax in the US,\textsuperscript{23} dangers of data leaks abound, because it is impossible to maintain security protocols at scale.

A centralized scheme forced upon citizens, with a pervasive, singular, centralized identification, with permanent identifiers, and the perception of irrefutability is a dangerous proposition for individual rights. This centralization also lends itself to the denial of rights. The threat of deletion of Aadhaar is the equivalent of a civil

\textsuperscript{17} https://www.medianama.com/2018/04/223-aadhaar-numbers-school-children/
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death: it lends itself to the denial of many services, or at least, to
great inconvenience for citizens.

Even in the Supreme Court of India’s judgement\textsuperscript{24} which rejected
the idea that Indians don’t have a Fundamental Right to Privacy,
exceptions were established to this right for government welfare, and
for the payment of taxes. The judgement placed certain restrictions
on an “encroachment on privacy or personal liberty”, saying
that it needs to be in accordance with a law, must be backed by a
legitimate state aim and should be non-arbitrary, and proportionate.
The subsequent judgement from the Supreme Court on Aadhaar
disallowed private parties from demanding Aadhaar, and creating
datasets, and thus enabling surveillance. However, since then, the
Government first moved a bill to amend the Aadhaar Act, and upon
that attempt lapsing,\textsuperscript{25} an ordinance,\textsuperscript{26} to enable private parties to
collect Aadhaar related information.

The reason for the necessity of this information is exemplified by
the demands of the financial technology (FinTech) ecosystem. They
had participated in the Supreme Court case on Aadhaar, to ensure
that they are allowed to collect Aadhaar data and create profiles.
Post the Aadhaar judgement, they have lobbied the government
for a solution.\textsuperscript{27} An amendment to the Aadhaar Act was tabled in
Parliament before it dissolved, which enabled businesses to collect
Aadhaar data. That bill lapsed when Parliament was dissolved for
elections, and subsequently the same bill has been promulgated as an
ordinance. In effect, private entities can no longer seek Aadhaar data.

The primary reason why FinTech companies wanted Aadhaar
was because it meant lower costs for collecting customer data. The
great benefit for private companies that Aadhaar enabled, was that
the state took on the cost of verification of data of residents, and an
electronic Know Your Customer (KYC) mechanism enabled transfer

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of demographic information to private parties, with a simple process. Without this system, the cost of collection and authentication of information is prohibitively high for most small businesses. In effect, Aadhaar, a public database of citizens, enables the creation of private databases of customers.

**Privacy and Data as a National Asset**

Aadhaar linked databases form the basis of many public and private databases. For example, FinTech companies, in order to create credit profiling systems, can gain access to vast amounts of data related to mobile phone usage via their mobile application, and link these profiles to demographic information, and perhaps banking information, to form credit ratings for individuals. Indeed, there is a similar plan for an Aadhaar linked public credit registry, which will enable credit information availability to businesses. A similar plan exists for Aadhaar linked electronic health records, with information shareable across a National Health Information network. If “India Stack” is the collection of technology services that enable sharing of information, with consent, with FinTech businesses, there is corresponding collection of healthcare data in Health Stack and a also Drone Stack.

In a way, Aadhaar led to the seeding of the idea that personal information is a public asset. The addition of the various ‘stacks’ which enable sharing of information with private parties, linked to Aadhaar, means that this is the largest exercise in the world of taking personal information, converting it into a public asset, and then privatizing it.

The privatization of personal data is seen as an essential part of economic growth. While one expected that the focus of the government will be on preserving individual rights and liberty, especially after a loss of face in the Supreme Court in the Right to

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31. [https://pn.ispirt.in/building-for-bharat/](https://pn.ispirt.in/building-for-bharat/)
Privacy judgement, which called for the government to create a data protection law to govern data collection by private parties, it has been quite the opposite.

Personal data is being seen by the Indian government as a national asset. Nilekani has led the thinking around the idea of data as a national asset, viewing the acquisition of data and the entry of global Internet companies as a form of Digital Colonization. In its draft e-Commerce policy, the Indian government has identified the data of the country as “a collective resource, a national asset, that the government holds in trust, but rights to which can be permitted.” The analogy of a mine of a natural resource “or spectrum works here”, the document states. This, in effect, is in opposition to the idea of the individual right of citizens over their own data. A white paper that was for proposed data protection bill also focused not only on data protection for citizens, but also pushed the idea of data being necessary for economic growth. It looked at the data protection bill as a means of enabling access to data for businesses. The Minister for IT, Ravi Shankar Prasad has frequently said that “Data is the new oil”, a phrase quoted often by Nandan Nilekani, and industrialist Mukesh Ambani, India’s richest man, who is looking to build large digital businesses around his telecom firm Reliance Jio.

There are two policy approaches that have followed the thinking around data being a national resource. The first approach is that of preventing personal data from leaving Indian shores, or at least retaining a copy of it in India. The draft Data Protection bill has sought to ensure that mirrors of personal data of Indians collected by foreign companies have to be stored in India, and in case data is sent beyond Indian borders, it needs to be as per the norms

approved by a regulator or the government, with the consent of the individual. The Reserve Bank of India, in April 2018, ordered that all payments related data should be stored in India, so that it may get “unfettered supervisory access to data.” The draft e-Commerce policy seeks to ensure that all e-Commerce companies start storing data locally within a three year time-frame, and goes as far as saying that: “Further, by not imposing restrictions on cross-border data flow, India would itself be shutting the doors for creation of high-value digital products in the country.”

The second approach is of enabling the sharing of data with Indian companies. Nilekani refers to this as the democratization of data, saying that, “it is very important that if data is the new oil, then data is democratized (and) that data is available to everybody to use.” The draft e-Commerce policy has sought to enable sharing of data collected on Indian users with Indian businesses. It says that: “India’s data should be used for the country’s development. Indian citizens and companies should get the economic benefits from the monetization of data.” An earlier version of the draft e-Commerce policy sought to enable sharing of data stored in India with Indian startups meeting the stipulated criteria of a turnover of ₹50 crore (approximately $7.2 million). The updated draft seeks to share only data collected by Internet of Things devices, which are essentially devices connected to the Internet collecting ambient data, on traffic etc., with domestic entities for research, and for public policy purposes.

The problem of storage or mirroring of data within India is that it adds to the cost of doing business: many entrepreneurs, self included, prefer to launch digital businesses because of low barriers to entry, and a potential global market, despite a perfect competition scenario. Having to slice data by geography and storing different datasets in different countries becomes a complicated process, and an avoidable burden. It is far easier and more affordable for large centralized platforms like Google and Facebook to localize or mirror data than

38. economictimes.indiatimes.com/articleshow/59703373.cms
a small startup. As such, a localization or mirroring requirement will mean that startups choose not to serve these markets.

This hits right at the heart of the idea of a global Internet, and lends itself to the idea of the balkanization of the Internet: a different Internet for each country. Localization of data also makes it easier for the government to gain access to this data. The draft data protection bill in India\textsuperscript{39} allows non-consensual data processing for all services of the State.\textsuperscript{40} It enables law enforcement access to data, without consent, and yet does not address the fact that intelligence agencies in India are not covered by any statute. Thus, it enables unrestricted access to user data without bringing in surveillance reform. This compromises liberty of citizens.

On 24 December 2018, India’s Ministry of Electronics and Information Technology (MEITY), released a set of proposed changes\textsuperscript{41} to the Information Technology Rules pertaining to Intermediary Liability: among the changes was another attempt at compromising privacy. The amendments seek to force traceability upon platforms, which would force them to abandon end to end encryption. End to end encryption is a form of encryption wherein messaging apps which enable communication cannot themselves gain access to the messages being sent. At best, they can identify the meta-data, which refers to details of who messaged whom, and when. Removing end to end encryption would make users and messages vulnerable to surveillance, and is a disproportionate response to the security requirement of surveilling a few legitimate targets. This is also deeply problematic because the Internet enables marginalized communities to communicate, interact, publish content. These rules seek to be applicable to applications with more than five million users. India has over 500 million Internet connections, and five million is a very small number, and thus they would be applicable to most users.

\textsuperscript{39} https://meity.gov.in/writereaddata/files/Personal_Data_Protection_Bill,2018.pdf

\textsuperscript{40} https://prsindia.org/billtrack/draft-personal-data-protection-bill-2018

\textsuperscript{41} https://meity.gov.in/writereaddata/files/Draft_Intermediary_Amendment_24122018.pdf
Freedom of Expression

Another part of the amendment to the Information Technology Rules was a requirement that intermediaries such as Whatsapp and Facebook shall deploy “technology based automated tools or appropriate mechanisms, with appropriate controls, for proactively identifying and removing or disabling public access to unlawful information or content.” A similar demand was made in the past, in 2011, by India’s then IT Minister Kapil Sibal, who asked social media platforms to pre-censor content. The government hadn’t followed through on that demand, after a pushback from citizens and civil society.

Intermediaries play an important role on the Internet: they allow entities to communicate with each other, and act merely as a conduit for the transfer of information. Apart from messaging services and social networks, intermediaries also include Internet Service Providers (ISPs) who allow us to access the Internet, payment gateways, which enable e-Commerce websites to charge us for purchasing goods and services, e-Commerce platforms themselves, which connect buyer and seller, and many other types of entities which play a role in enabling communications and transactions online.

The amendment in the rules would mean two things: firstly, that all platforms that enable people to interact or transact would have to gain access to private communications between individuals, run the messages or the interaction through algorithms, have algorithms ascertain whether the messages are lawful or not, and if deemed unlawful, they would have to then disable access to the content. If such tools were not deployed, the intermediaries would be held liable for the content or the transaction. Historically when faced with the requirement to censor, intermediaries have overcompensated, and have taken down content even if it wasn’t illegal: given that they process billions of messages and transactions, they cannot afford risking any liability. Algorithms are not evolved and nuanced

enough to be able to ascertain context, and adequately identify illegal content, even as illegality may differ from region to region. This would lend itself to mass censorship via the very platforms that are meant to enable free speech.

However, these aren’t the only attempts in India to censor speech online. In 2017, the government banned 22 social networking websites in the state of Jammu and Kashmir. This was then seen as an alternative to shutting the entire Internet down in the state. This was withdrawn following the demand from two UN experts, David Kaye and Michael Forst, but the shutdowns have continued. In 2018, the troubled state of Jammu and Kashmir reportedly had 65 Internet shutdowns, almost half of the 134 Internet shutdowns in India that year. Shutdowns had increased almost 70 per cent between 2017 and 2018, having a disproportionate impact on freedoms online: they disable wholesale access to communications and services, including critical government services like tax filings. In Darjeeling, where the Internet was shut down for 100 days in 2017, people had to go to hills bordering the neighbouring state of Sikkim, and pick up faint mobile Internet signals from cellular towers across the border.

Internet shutdowns are a tricky proposition. Many shutdowns are owed to the spread of misinformation, and the fear of there being a loss of public order in a town or a village. When there are riots or there is the threat of riots, especially in areas which are communally sensitive, government officials feel compelled to shut down Internet access to prevent situations from becoming unmanageable. Alternatives to shutting down the Internet exist. The shutting down of the Internet for all citizens in a region amounts to

44. [https://www.medianama.com/2017/05/223-internet-shutdowns-kashmir-united-nations/](https://www.medianama.com/2017/05/223-internet-shutdowns-kashmir-united-nations/)
45. [https://internetshutdowns.in/](https://internetshutdowns.in/)
an act of censorship that is disproportionate. It is indicative of a weak government and weak governance capabilities.

Attempts at regulating content aren’t just restricted to shutting down the Internet or censorship of messages. In the past, the law has held users liable for speech. Section 66a of India’s Information Technology Act was such that users were prohibited from transmitting content that is “grossly offensive”, or causing annoyance or inconvenience. These provisions were vague enough to lead to arrests of unsuspecting citizens exercising their freedom of speech, including arrests of the cartoonist Aseem Trivedi, and even two girls, one of whom complained on Facebook about why there had to be a holiday when a politician died, and another who liked the message. This clause was eventually declared unconstitutional by the Supreme Court of India on 24th March 2015, but people are still arrested under this law. In fact, almost immediately after this law was declared unconstitutional, there was talk of bringing it back in another form.51

Last year, there was an attempt to establish control over online content platforms through another means. The Ministry of Information and Broadcasting formed a committee for regulating content online, to recommend appropriate policy formulation for online media, news portals and online content platforms including digital broadcasting, and news and information aggregators. This had followed an attempt to control speech online by controlling the accreditation of journalists: if journalists were determined to have published fake news, their accreditation would be suspended. The order for regulation of journalists for fake news was withdrawn following wide criticism, and the mandate for regulating online


49. https://www.livemint.com/Politics/xnoWOmizd6RYbuBPY2W6nM/Six-cases-where-the-draconian-Section-66A-was-applied.html


content providers was passed to another ministry. Since then, a group of entertainment content providers, among them Netflix, Disney owned STAR India, have come up with a code of conduct for regulating or censoring their own content, thereby limiting the freedom of expression of artists and creators.53

The broad direction that Internet policy seems to be taking in India suggests that there is a threat to individual liberty from multiple perspectives, and the focus of the Government of India is on controlling both content and behavior of individuals, whether it is directly, or through regulations imposed on businesses. Broad trends emerging are: India is looking to establish greater controls over speech, platforms that enable speech and user data.

The line of liberalism in Hinduism starts with the *Rig Veda* and stretches right through to Alexis de Tocqueville.\(^1\)

It is little-understood that while Hinduism has neither a defined book which contains the ‘truth’, nor one prescribed deity, all of this often-caricatured, liberal ideas are founded upon a verse.

The *Rig Veda* is the oldest of the four canonical texts of Hinduism; how old is the *Rig Veda* is a matter of dispute that, depending on who you ask, varies between 1,200 BCE to 4,000 BCE.

This text has the origin hymn of what we today call Hinduism—the oldest tradition of theo-philosophical beliefs known to man—the Nasadiya Sukta.

This short hymn maps out a universe of meaning without the crutches of fixed belief—you read and marvel at the wisdom of the Nasadiya Sukta, you do not need to believe anything.

For what is the Nasadiya Sukta? It is a series of questions and negations. In the beginning, it says, there was neither truth or untruth. Where did the universe come from? Where did it start? It started from the implanting of the seed of desire. Where was it planted? Who knows? Even the gods, it says, and all of creation came later. Who knows the answers? Perhaps the One in heaven.

And then, in the last line, it says—perhaps even the One or He does not know.

If liberalism is the idea of freedom, and belief in god the primal instinct of the restriction of that freedom, then, my argument is that the Nasadiya Sukta ought to be recognized as a seminal—perhaps the seminal—treatise of the, seminal, freedom to believe.

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1. 19\(^{th}\) century French political scientist and theorist.
Any conversation on liberalism must begin with the freedom of belief, and there is nothing more primal in the hierarchy of beliefs as the belief in god.

This freedom is embedded too deeply within Hinduism to ever change—and everything else that follows in Hindu history evolves from this point of freedom.

Why is it that it never bothers most Hindus that the name of their religion may have come from a mispronunciation by Persian invaders? After all, it is the Persians who are said to have mispronounced the word Sindhu, from the river, to refer to people who lived across the Sindhu or Indus river, as Hindu. It ought to be controversial but isn’t.

It is clear that the Hindus—before and after the word Hindu came into being—referred to the big tent of their multitudinous paths to the divine as Sanatan Dharma, but it doesn’t seem to have bothered most of them to let the word Hindu carry on, side-by-side, like those multitudinous gods—after all, the gods did come later, remember?

In fact, consider the phrase Sanatan Dharma. What does it mean? Well, it simply means, to translate broadly, the eternal duty or law, that by which the universe has, does, and shall always function.

This eternalist nature of the Hindu worldview has allowed it to gain a malleability that has helped it survive as the oldest unbroken civilization. Now one may ask, how is it unbroken? Surely, there were invasions, triumphalist rule, conquest, colonialism—but, as historians who care to study history from the bottom rather than that old fashion Great Man, top-down personality oriented format know—society remained in many ways unchanged. It is perhaps the only major system of worship or theological family, a religion, if you will, which could never entirely be converted, conquered, or indoctrinated. The broad society always managed to retain their ways of seeking god—and even if under extreme duress, they transformed and then reverted, in many ways, back to their earlier behavior patterns and ways of seeking. Liberalism is Hinduism’s strength because its core philosophies have the suppleness of true liberalism—it might bend, but it bounces right back.
A backbone of this openness is that the texts that do exist—the most popular among which is today the Bhagvad Gita does not in any shape or form call for a conversion. It does not ask for any indoctrination or any pledge. Its aim is entirely different—the idea is to provide a transcendental message that goes far beyond any sectarianism. No one needs to or has to be a Hindu to be a follower or adopter of the principles of the Gita, and while there might be rituals that add to the sense of belonging in individual Hindu groups, there isn’t and there never will be any definitive, non-negotiable set of practices through which—meaning only through which—one could become a Hindu. The liberalism of Hinduism lies in the fact that one merely follows principles of Hinduism, one does not, in the sense of conversion, become a Hindu.

Emperors came and went, kingdoms rose and fell, and through it all, society resisted where possible, absorbed and accommodated in other places, and continued. This malleability of Hinduism comes from what I have often described as its open-source software nature. It perceives truth to be sought, not beliefs to be propagated—this focus on seeking, rather than promoting makes it liberal. No Hindu can really tell how to ‘become’ a Hindu—its in-built liberalism never formulated a definitive structure of proselytization.

The Hindu worldview is really an ever-evolving negotiation to comprehend the best pathways to analyze the nature of truth. That’s why its philosophical queries are driven by two fundamentally liberal assertions:

a. Where is the truth (or god, if you will) to be found? It is to be found, as the Upanishads, the set of seminal texts apart the Vedas, repetitively assert, within.

b. What is the marker of enlightenment? It is the idea of unification with the universe, the realization that the consciousness of the Self and the universe are indivisible.

This universalism makes any serious idea of proselytization meaningless because at the deepest level of understanding, Hindu philosophy finds the idea of conversion meaningless. Convert who, asks the Hindu philosopher? And to what?
Consider the ‘mahavakyas’ or the four most integral ‘great sayings’ of the Upanishads—Prajnanam Brahma, Aham Brahma Asmi, Tat Tvam Asi and Ayam Atma Brahma. In each case, the undeniable fundamental assertion is the Self and that entity or consciousness that can be described as god.

Some of these ideas are little understood today—beyond scholarly philosophizing or the sermons of monks—because the link to the Sanskrit language, the language of these founding texts, has broken from the wider education system. It is ironic that it is perhaps only in India—with all its ancient treatise and metaphysics—that there is no serious conversation about teaching classics in schools, a process in which the teaching of Sanskrit would be essential. It is my belief that the path to revitalizing the liberal ideals of Hinduism as part of everyday conversation in India lies in the widespread teaching of Sanskrit. The neglect of this has meant the callous neglect of the teaching of classics, which in turn, has led to criminal misuse and propaganda about founding Hindu texts.

These texts were, for thousands of years, passed on orally from generation to generation; they were built to be remembered, recalled, engaged with—not merely revered as some dusty relic.

Hindu society and indeed Indian society have forgotten that almost epochal moment in its civilizational trajectory that lies in the act of questioning—from the Nasadiya Sukta which we encountered earlier, let us move on and consider the questions consistently put by the wise King Janak² to the metaphysician Yagnavalkya³ and the act of philosophizing through questioning (this is not unique of course to Hinduism but dialectical enquiry is a pillar of Hindu reasoning). In fact, Yagnavalkya is questioned not only by Janak but by the philosopher Gargi⁴—one of the earliest mentions of women

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2. Known for his empathy and wisdom; key figure in ancient India.
3. One of the most prominent philosophers in Hinduism; he is said to have propounded the seminal Hindu doctrine of ‘neti, neti’ or ‘not this, not this’ as epistemological doctrine of letting go all that the senses could observe to arrive at the unblemished truth.
4. First among women scholars and philosophers in Hinduism—in fact the primacy of her position is gender agnostic.
philosophers in any tradition—who is considered an intellectual ‘jewel’ in the court of Janak.

And what debate it is! Some of the most intricate questions of consciousness are debated; there is very little mention of any judgemental, petulant god, but the focus is consistently on the widest possible sense of enquiry.

It is Yagnavalkya who formulates the famous exposition of the importance of the Vedas: “As smoke and sparks arise from the lighted fire kindled with damp fuel, even so, Maitreyi (his wife and interlocutor) have breathed forth from the eternal all knowledge and all wisdom—what we know as the Rig Veda, the Yajur Veda, and the rest. They are the breath of the eternal.”

This reaffirmation of the eternal is not merely a theoretical concern, but I see it as a reiteration of the liberal focus of Hinduism, a methodology to keep it from getting fixated to singular causes. That the ‘here and now’ are but transient is a common underlying idea no matter which strain or path of Hindu philosophy you consider, and it is by urging the liberation from the here and now that Hinduism delivers its wisdom of liberalism—a freedom to explore and engage at various planes of existence rather than be trapped by perfunctory oscillation of never-ending cause and effect.

The most common question that arises from all this is of course—well, what about all the numerous gods and rituals in Hinduism? And what about the ills in some of them?

The answer is actually simple—the endless numbers of gods (and goddesses of course) exist because there is no pre-determined formula on how many there ought to be. Every seeker in a sense ‘creates’ her ‘own god’—for which there is even a word, ishta devta or the divinity of the household or kul devta, the divinity of the clan.

In Hinduism, the hierarchies even among the gods are fluid.

It is this fluidity that Hindu society lost when parts of it became trapped in rigid caste hierarchies and prejudice—but alongside the

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vital critique of such prejudice, it cannot be ignored that Hinduism in fact has had an almost endless stream of reformers from within.

From the Adi Shankaracharya\(^6\) who sang: “Chidananda Roopam, Shivoham, Shivoham” (all that is, is Shiva; suggesting once again the indivisibility of the Self and divine consciousness) to Swami Vivekananda’s\(^7\) exhortations against untouchability, to the teachings of the Bhakti saints including Chaitanya Mahaprabhu\(^8\) and Meerabai,\(^9\) there has rarely a been a century which has not seen the emergence of a social reformer within Hinduism. In fact, it is in the story of Meerabai that we can comprehend, what I would term, the liberalism of intimacy in Hindu thought. In the story, Meera leaves her home, family and every other connection to pursue Krishna, the god she believes to be her lover. The word lover takes new meaning and depth here as it operates of course in multiple layers of meaning. In doing so, she resists every norm and social barrier, every societal mooring in fact fails before the power of her love and devotion.

But Meerabai is not the only one—there have been other women saints who have pushed the boundaries even further. One only has to consider the lives of the mystical Kashmiri poetess Lal Ded\(^10\) who not only gave up all elements of earthly life but liberated herself from even the boundaries of modesty by embracing nudity—covered as it were only by the sky, unabashedly. And this kind of freedom was not geographically confined either—the same sort of naked liberation to be covered only by the sky was adopted in southern India by the mystic Akka Mahadevi (12\(^{th}\) century).\(^11\) If for Meerabhai, her desire was Krishna, then for Akka Mahadevi, her search was for Shiva.

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6. Renowned saint who probably lived around the 8\(^{th}\) century CE. Master of the doctrine of Advaita Vedanta, the non-dualist school of Hindu philosophy.
7. 19\(^{th}\) century monk who was the first to propagate Hinduism around the world including at the famous Parliament of World Religions at Chicago in 1893.
8. 15\(^{th}\) century saint in Bengal.
9. 16\(^{th}\) century mystical poet in Rajasthan.
10. 14\(^{th}\) century.
11. 12\(^{th}\) century.
The burning words of Akka Mahadevi would do honor to any feminist canon even today:

Brother, you’ve come,
Drawn by the beauty,
Of these billowing breasts,
This brimming youth.
I’m no woman, brother, no whore.
Every time you have looked at me
Who have you taken me for?
All men other than Chennamallikarjuna (Shiva)
Are faces to be shunned, brother. 12

It is scarcely understood that Hinduism’s liberal pantheon shuns any idea of uniformity—this is often seen as its weakness. What is it, after all, if it is not one thing? But this kind of thought process is exactly what Hinduism seeks to break free from. This uniformity is perceived at the very core of its worldview—antithetical and an anathema to scope and purpose of the multiplicity that it rejoices in.

The poetess and mystics mentioned above give myriad dimension to what it means to be a woman and through the many examples of many lives, Hinduism urges the fundamental liberal point that there is good (or god) to be found in everything but none of it must look or behave in the same way—this message seems ever more urgent today.

“Thou art the fire,
Thou art the sun,
Thou art the air,
Thou art the moon,
Thou art the starry firmament,
Thou art Brahman Supreme,
Thou art the waters – thou,
The creator of all!
Thou art woman, thou art man,
Thou art the youth, thou art the maiden,

Thou are the old man tottering with his staff;
Thou facest everywhere.
Thou are the dark butterfly,
Thou art the green parrot with red eyes,
Thou art the thunder cloud, the seasons, the seas.
Without beginning art thou,
Beyond time, beyond space.
Thou art he from whom sprang
The three worlds.
Filled with Brahman are the things we see;
Filled with Brahman are the things we see not;
From out of the Brahman floweth all that is;
From the Brahman all—yet is he still the same.’ (Swami Pravabhananda 2017)

The lines above from the Upanishads is a perfect rendition of the bi-directionality of the idea of eternity and its various individual manifestations. It is meant to convey a near infinite freedom to choose a manifestation—it does not matter which variety or variation of the manifestation you choose, it seems to suggest, because the source from which it emanates remains the same, now and for eternity.

This line of thinking also allows relentless self-correction from excessive intrusion of society—despite considerable challenges—that has helped Hinduism survive. For all its quarrels with Buddhism at one point—by quarrels one is referring not to massacres, as some might mistakenly imagine, but relentless arguments—the Hindu solution, in essence, was to add the Buddha to the pantheon, one more god in the long line of gods. By all means, a liberal solution, if one may say so. And it is therefore unsurprising that when in danger from the soldiers of Mao, the Dalai Lama sought and received refuge for life in Hindu-majority India.

Even the nature of Hindu ritual has a dialogic openness—this is tradition where gods are bathed and fed, sung to and danced with, quarrelled and loved. Consider the spiritual guru of Vivekananda, the redoubtable Ramakrishna Paramhansa, the unlettered village
bumpkin given to meditative trances and fits of weeping exhortation to the Goddess Kali, his ‘mother’. The story of Paramhansa is of particular interest because this is a man who went through instruction under religious teachers of every type and form and denomination, both Hindu and non-Hindu, and then came up with what he believed was in a sense the answer—joto mot, toto poth (as many as there are opinions, there are paths to god). What can be a more pithy explication of his fundamentally liberal position?

Vivekananda himself was an admirer of both Jesus Christ and the Buddha and in deference to his devotions, the monastic order that he created, the Ramakrishna Mission, celebrates Christmas with special prayers even today.

It is not well understood by most people outside Hinduism that it’s liberalism comes from its ability to consider all paths of worship as equally tenable. Vivekananda was fond of pointing out that tolerance, a much fashionable word in religious peacekeeping in the contemporary world, is really not enough. Mere tolerance was too harsh. What was needed, he argued, was respect. Equal respect for all paths as equally valid.

Now in all this, where does the point where we started from, from Alexis de Tocqueville, fit in?

He fits in not only because he is a pioneering influence in what we today know of as classical liberalism but also because, as the University of Maryland scholar Christopher Kelly (1995) has written, Tocqueville’s lifelong ambition was to bring together the ideas of liberalism and the ideas of, and from, religion in a constructive co-existing dialogue.

Kelly notes that Tocqueville, in his study of Hinduism, is particularly dismayed by what he finds. He sees corrupt institutions and indeed deep-seated corruption within the people. He believes the caste system is much worse than the European hierarchy of aristocracy and believes that the Hindu belief in reincarnation in a sense makes the Hindus unproductive and lethargic. There is excessive ‘belief in an immaterial and immortal principle’ which is ‘indispensable to man’s greatness’, Kelly points out that Tocqueville argues.
According to Tocqueville, the Hindus will always be conquered because the faith teaches people to revere all life and therefore avoid conflict. Also, there are so many rituals in Hinduism, it seems to Tocqueville, that a real evolved sense of morality cannot evolve. Hinduism just does not produce the kind of fire of doing the right thing that leads to revolutions and a fierce fightback against any conqueror. In such a situation, without that flame ablaze, how can the Hindus ever protect themselves or their faith or land? Hinduism seemed too pacifist and too self-serving to Tocqueville—these people, that is the Hindus, were so busy fulfilling the minutiae of ritualism that they had no energy left to really stand up for themselves.

It was the caste system, he pointed out, that seemed to cause many of the problems, and it was unlikely that the caste system would ever allow any real exchange in terms of liberal ideas between India and Europe. Hinduism, he declared, was an “uncivil religion.” The Hindus were, according to him, in no position to engage fruitfully with, as it were, the fruits of European liberalism, nor could they stand up to the powers and pressures of imperialism. The pacifism of the Hindus was bound to bring disaster onto their society—he went to the extent of calling Hinduism an “abominable religion” which had to be eradicated to open India to the illumination of European enlightenment which would bring justice and presumably societal courage to the Hindus. The system, it was clear to him, needed to be demolished for it to really advance.

Presumably Tocqueville had neither heard of the great Hindu empires of the Cholas, Chalukyas, and Pandyas, who built magnificent capital cities and temples, and created many of the trade routes in the Indian Ocean and spread the word of Hinduism across their conquered domains in south east Asia. Nor of course had he read the Bhagvad Gita, which is anything but a treatise to surrender by. That Tocqueville was wrong would be proved in time not only by the liberalism of Mahatma Gandhi, an ardent adherent to the lessons of the Bhagvad Gita, and as liberal a man as one could hope to find.

13. The moral sermon in the Mahabharata, one of the two great epics, along with Ramayana, of Hinduism.
It was under Gandhi, and his Gita, that India would throw off the British Empire in 1947, of course, and yet India’s journey from independence onwards has repeated many of the Tocquevillian tropes including, in its poverty-stricken years, of a ‘Hindu rate of (abysmally low) growth’, a suggestion that there is only so much growth that the Hindus could manage. This of course has been proved entirely inaccurate through India’s surge from the 16th largest economy in 1991 to the current 6th largest economy in the world.

If there is anything that all this proves, it is that the liberal values of the Hindus and of Hinduism are deceptively understated, and to be treated with disdain at your own peril.

References
I am not free while any woman is unfree, even when her shackles are very different from my own.

— Audre Lorde (African-American feminist and writer)

When we talk about the status of women in India, which women are we talking about? A woman is not a homogenous identity—there are various kinds of women with different overlapping identities that must be considered when measuring their status in any society.

Prof Kimberle W. Crenshaw from UCLA was the first to coin the term ‘intersectionality’ in 1989. She theorized how overlapping—or intersecting—social identities like race, gender, religion, sexual orientation, and ability contribute to systemic oppression. In the Indian context, the identity of race can largely be replaced with caste and ethnicity.

Apart from being a woman, we hold different identities that intersect with our caste, class, religion, ability, gender identity, sexual orientation, age, and ethnic identity just to name a few. So for example, a Dalit woman or a Muslim woman will face greater discrimination based on their caste and religious identity than a Hindu upper-class and higher-caste woman. Similarly, a homosexual or transgender woman would face more difficulty in accessing healthcare than a heterosexual woman. And a disabled woman would face difficulty in accessing public spaces, washrooms, restaurants, etc.

Hence, in order to ensure that all women and gender minorities get equal access to rights and opportunities, affirmative action—or positive discrimination—is necessary. This would ensure that people who are at the very margins of society can come to the center and enjoy rights that others already do. Being liberal in India also means recognizing one’s privilege and using it correctly to uplift the marginalized.

This chapter will analyze the status of women in India with respect to five major facets of a woman’s public and private life. It shall also delineate which civil liberties the women of India enjoy, and which they still lack.

**Family**

In her book, *Seeing Like a Feminist*, Prof Nivedita Menon argues that the Indian family system in its current form is an oppressive unit for women.

The family runs on one person’s emotional, mental and physical labor and in most cases it is a woman. This woman could be the wife/mother in the house or a low-paid domestic worker. Women are expected to cook, clean, wash, and provide unpaid labor for the entire family, while in some cases also working full-time. Although many more women are now doing paid work, this gender role reversal remains one-sided. We hardly see men doing household chores and taking care of their children. Menon describes this as sex-based segregation of labor and notes how it ties in with the economy.

The sex-based segregation of labor is the key to maintaining not only the family, but also the economy, because the economy would collapse like a house of cards if this unpaid domestic labor had to be paid for by somebody, either by the husband or the employer.

This domestic work is seen as woman’s work because it is understood that women are ‘naturally’ and ‘biologically’ more nurturing and caring. Of course, this is untrue and domestic work has nothing to do with sex (biological) but everything to do with gender which is socially constructed. As such, women are burdened with tasks in a way to control them.
The family system is also discriminatory towards the girl child. Even today, Indians have a son preference\(^2\) and contrary to popular belief, it is not only in rural areas but very much prevalent in urban areas as well. The *Economic Survey 2017-18\(^3\)* states that about 63 million women go missing from India’s population and for at least two million of them, it is because of sex-selective abortion of female foetuses, disease, neglect, and inadequate nutrition. Son preference is rampant presumably because sons will take care of their aging parents while daughters will be hauled off to another family to cook, clean, bear and rear children, and earn only for the financial betterment of the other family.

The family also contributes to gender-based violence. Sexual abuse of young girls by family members and honor killings of young women who dared to love a person of a different caste, class, religion or gender identity remain quite rampant.

**Health**

If we examine the current state of sexual and reproductive health in India, we will find exclusion and discrimination in its design and implementation. Gender issues are not limited to violence (i.e. domestic, sexual crimes) or markets (i.e. wage gap, unpaid care work) alone, but they operate through everyday norms.

Mostly in India, health concerns are of priority only around fertility (or the lack of) and STDs (that affect all genders). But what about menstruation, childbirth, menopause, sexual health, and well-being?

Many communities in India and South Asia still practice exclusionary practices during menstruation like segregating women on their period into huts, having them sleep on the floor and making them use different utensils. Menstruating people are portrayed as polluted or dirty in religious texts. These kind of practices are deeply alienating and provide an unsafe environment for women.

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The ritual of female genital mutilation still exists in India despite its criminalization. To avoid confrontation with the religious minorities and their ‘faith’, the practice often goes unreported. Even urban educated families are culpable of this painful violating practice, all in the name of raising a girl chaste and devoid of sexual pleasure.

Virginity tests or hymen testing are still practiced in some communities where females suspected of any sexual activity are shut in a room and questioned by the mostly male elders. These girls face ostracism from their communities if they are found ‘compromised’. While these practices are no longer carried out in the traditional name, hymen testing (notoriously referred to as two-finger testing) of to-be brides and rape-victims still exists, despite being scientifically proven to be an unreliable method.

Associating ‘honor’ with hymens has remained an unchallenged mainstream narrative. It instils in young girls a fear of personally touching or exploring their own body as they associate pleasure with ‘sin’, promoting a negative body awareness.

Vaginal reconstruction and rejuvenation also called the ‘husband stitch’ after natural loosening of vagina post childbirth has become a new fad for ‘keeping partners satisfied’, as advertised by many clinics in India. This is in line with the toxic idea that sexual pleasure is limited to vaginal penetration and predominantly portrayed through the male ‘point of view’. Resorting to such a painful and expensive procedure is just one instance demonstrating how female sexuality has been hijacked by mainstream patriarchy.

Recently, there has been a surge of reports where single women have come forward to share their experiences of being shamed by gynaecologists for being sexually active and even for using

contraception and menstrual cups. Clearly this is on the basis of ‘moral codes’ and not medical reasons.\(^7\)

Priority around fertility is evident with the rise of IVF clinics and fertility treatments. However, research and health care coverage for conditions like endometriosis and polycystic ovary syndrome remain neglected even as they are increasingly affecting women throughout the nation.

India has the world’s highest number of maternal deaths.\(^8\) Illiteracy and lack of education, failure of the health system, lack of behavior change communication and violence against women are factors that contribute to a high maternal mortality rate.

In 2013-14, four million sterilizations were performed across the country, of which only 100,000 were performed on men. It is important to remember that India spends 85 per cent of its total family planning budget on sterilization. In 2014, 15 women in Chhattisgarh died due to botched sterilization in government camps.\(^9\)

Research shows increased female autonomy, for instance, leads to better health-seeking behavior among women. Incentivizing delayed pregnancy is more effective than sterilization in bringing down fertility rates. But all of this involves changing patriarchal attitudes towards women and how society as a whole views them.

**Education**

Gender bias prevails in almost every sphere of our life. For instance, teaching and nursing are generally seen as a woman’s profession. It has been perceived that students and patients can connect with them better. This is a gendered stereotype which restricts women’s career options and makes young girls believe that they should only dream this much. Young girls are encouraged to become teachers and nurses while young boys are supposed to be engineers and doctors. Such stereotypical notions cannot be

\(^7\) https://drive.google.com/file/d/1Kr9BY0UQ7y_uENokv2omqFpec6WHMJre/view
\(^8\) https://indianexpress.com/article/india/india-others/india-has-highest-number-of-maternal-deaths/
eradicated from society immediately, but can be gradually weakened. As such, it is essential to bring gender sensitive education into school curricula.

The 2014 Gender Gap Index report published by the World Economic Forum, clearly shows that for every 100 men enrolled in secondary education, there are 79 women enrolled. But, due to the deep gender bias entrenched in our society, female labor force participation is abysmal when compared to that of men. The female to male ratio stands at 0.36—quite appalling for “the fastest growing economy of the world.” Clearly, a huge majority either don’t get to join the workforce or have to leave it—presumably after marriage.

The gross enrolment ratio (GER) in higher education as per the Ministry of Human Resource Development figures, is 26 per cent for males and 24.5 per cent for females. Some other positive developments here would be that the percentage of women enrolled in commerce at the undergraduate level is almost the same as men—around 14.7 per cent and 14.28 per cent respectively. In science and arts though female enrolment overtakes that of men—by almost three per cent and seven per cent respectively.

The National Policy on Education (NPE-1986) states, “Education will be used as an agent of basic change in the status of women. In order to neutralize accumulated distortions of the past, there will be a well-conceived edge in favor of women. The National Educational system will play a positive interventionist role in the empowerment of women”.

The National Curriculum Framework 2005 puts a priority on gender sensitive education. The Central Board of Secondary Education (CBSE), acting under the National Council of Educational Research and Training (NCERT)’s directives, has designed a kit on gender sensitivity. It includes a handbook, cards and a manual for teachers to equip them with required skills to practice gender sensitive learning. Such positive reforms give hope that India is developing a gender-sensitive culture. Yet despite numerous reform policies,

our education system still lags behind—teachers lack professional training. This undoubtedly comes in the way of developing a gender-sensitive curriculum. India first must overcome these basic issues in order to enhance the quality of education.

Secondly, we need to focus on the problems of slipping critical gender issues under the rug. Indian schools have practically no comprehensive sexual education, and biology classes on menstruation and reproduction are hushed up quickly. Thus, the shame and stigma surrounding a female’s natural biology persist and heavily disenfranchise their livelihood.

**Work**

According to The Economist, India would be 27 per cent richer if there was a healthier balance of women working.12 Of course, the assumption here is that women do ‘not’ work. How often have you heard the argument that women would be better off, and the cause of their empowerment greatly furthered, only if they worked?

Is it only work that women do outside of the home where they are monetarily compensated? A recent McKinsey study found out that women in India do almost 10 times as much unpaid work as men—which is much higher than the global average.13 Even then women contribute only 17 per cent to India’s GDP (gross domestic product), excluding them from the formal workforce and from contributing to the economy. The female employment rate in India, counting both the formal and informal economy, has tumbled from an already low 35 per cent in 2005 to just 26 per cent in 2018.14

In 2012, an abysmal 28 per cent of the female working age population was part of the labor force as opposed to 82 per cent of the male working population.15 Clearly, the economic progress in India has not permeated to women.

According to the Economic Survey (2015-16) overall labor force participation rate in general is higher in rural areas (54.7%) than in urban areas (47.2%). Then what is causing the lower female labor force participation (FLFP) rate for India?

There are many explanations. The gap in labor participation is correlated to the education gap. According to the 2011 census, the female literacy rate was 65.4 per cent compared to the male literacy rate of 82.14 per cent. Socially, it is considered unnecessary for women to work if the family is well-off. Other constraints like child care, household duties, late hours are only applied to women. The gender pay gap in India is also very real. Indian women earn 25 per cent less than Indian men, according to the Monster Salary Index (MSI) on gender for 2016.

A lack of skill-based education, occupational segregation bias, and socio-economic barriers inhibit women from gaining formal employment. As a result, women especially from lower castes and classes have to engage in unpaid or low-wage work.

In most cases, they are only able to take on employment in the informal markets that do not fall under the scanner of government regulations and often offer exploitative working conditions. Also, the availability of work is subject to seasonal activities around agriculture and does not offer reliable year-long engagement.

Termed as unorganized workers, these women are devoid of institutional representation and do not receive sufficient attention from trade unions. In rural areas, there is evidence of stratification based on caste and community considerations. In 2013-14, the National Commission for Enterprises in the Unorganized Sector (NCEUS) estimated that across the country a higher percentage of women (95.9 per cent) are employed as unorganized workers as against males (90.7 per cent).

17. http://www.census2011.co.in/literacy.php
However, some women’s rights organizations have helped women workers organize and demand full employment with employee benefits like work security, income security, food security and social security (healthcare, child care and shelter). Case in point are SEWA (Self-Employed Women’s Association) and Penkoottu. Founded in 1972, SEWA is the oldest trade union of women in the informal economy. Today, it has a membership of over 250,000 women. For the past two decades, SEWA has also led an international movement to increase the visibility and voice of women in the informal economy. Penkoottu, on the other hand, is Kerala’s first all women trade union and fights for various rights for women workers like bathrooms for women working on the street, and the right of saleswomen to sit in textile retail stores.

Women all across the country are deterred from pursuing meaningful and long-lasting careers in fear that financial subsistence will eventually breed independence of thought and action. Just as men are discouraged to share the responsibilities at home. The few who share the workload in and out of their homes with their partners are ridiculed for doing so.

Several studies show that corporate spaces often make it difficult for women to work especially if they are pregnant. This discourages many women to persist in their jobs. Women are routinely asked when they are getting married and companies reason that they do not want to hire anyone who would be getting married or getting pregnant and leave soon.

Women face sexual harassment at home and in the streets, and also at work. Sexual harassment at the workplace, a lot of times, is hidden in the subtlest forms that are normalized under the tags of ‘work culture’ which includes ‘liberal views’, and ‘modern attitude’. Sexist comments are garbed as ‘just jokes’ and women are asked

to take it easy and have a more ‘open’ mind. Sexual harassment at the workplace manifests itself in the form of mental and emotional provocation arising out of uncomfortable and sexually abusive incidents or acts. Patriarchal gender relations are tied to everyday workplace interaction as men possess the power to sexually evaluate women at every stage. If women object, they are often met with surprise, disbelief, and utter disregard for their experiences. Moreover, sexual harassment at the workplace comes in many forms and is not limited to physical or sexual abuse only.

Keeping in mind the gender gap at the workplace, the government has put into action various workplace policies specifically for women. The Maternity Benefit Act, 1961 is in place for women working in any establishment with more than 10 people.\textsuperscript{24} According to this Act, the employer should provide paid maternity leave of up to six months to pregnant women and a pre-natal leave up to two months. After a 2017 amendment, this Act mandates that all establishments that employ more than 50 people should have a creche facility either in the office or in a radius that is comfortable for the employees to pick, drop and nurse the child.\textsuperscript{25} According to the Equal Remuneration Act, 1976, an employer should pay equal remuneration to the employees carrying the same task irrespective of caste, class, gender or race.\textsuperscript{26}

Earlier, women were not allowed to work in night shifts, but many states now legally permit them to.\textsuperscript{27} A company must provide proper security and transportation for female employees who work night shifts and a proper and secure network of cab drivers. It also mandates more than one woman employee on the night shift.\textsuperscript{28}

\textsuperscript{24} https://paycheck.in/labour-law-india/maternity-and-work
\textsuperscript{25} https://www.peoplematters.in/article/diversity/all-you-need-to-know-about-the-creche-facility-provision-15571?utm_source=peoplematters&utm_medium=interstitial&utm_campaign=learnings-of-the-day
\textsuperscript{26} https://sheroes.com/articles/5-laws-every-working-woman-should-know-about/MTI1NA==
\textsuperscript{27} https://www.thehindu.com/news/national/other-states/now-women-can-work-night-shifts-in-maharashtra/article7938391.ece
\textsuperscript{28} https://www.thehindu.com/news/national/karnataka/Norms-for-women-working-on-night-shift/article16933612.ece
Thanks to the case of Bhanwari Devi, women in India now have a law to protect them against sexual harassment at the workplace.\textsuperscript{29} According to the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, every workplace with more than ten employees is mandated to have a committee known as the Internal Complaints Committee (ICC) even if there are no female employees.\textsuperscript{30} In December 2015, when the Women and Child Development Minister Maneka Gandhi requested that it be made mandatory for companies to reveal whether they have an Internal Complaints Committee, Finance and Corporate Affairs Minister Arun Jaitley objected stating that “such disclosures may not be desirable.”\textsuperscript{31} Thus, there is no way of knowing if companies are complying with this law unless they come forward and disclose it themselves.

However, policy measures alone will not increase female participation in the workforce. This has to be a collective societal effort—a revolution of sorts—whereby economic independence for women should be sought and encouraged actively.

**Marriage**

The concept of marriage in an Indian society is inherently patriarchal and endogamous. It is exercised to ensure property remains within one’s caste, class, tribe and to control women’s sexuality. This is why arranged marriages remain quite popular today across urban-rural divide.

In his famous work, *Annihilation of Caste* first published in 1936, Dr B.R. Ambedkar emphasizes the role of inter-caste marriages in breaking down the hierarchies of caste and patriarchy.

\textsuperscript{29} https://feminisminindia.com/2017/03/03/bhanwari-devi-essay/


\textsuperscript{31} https://indianexpress.com/article/india/india-news-india/harassment-at-workplace-jaitley-say-no-to-maneka-request-on-disclosure-of-probe-panels/
Where society is already well-knit by other ties, marriage is an ordinary incident of life. But where society is cut asunder, marriage as a binding force becomes a matter of urgent necessity. The real remedy for breaking caste is inter-marriage. Nothing else will serve as the solvent of caste.

Ambedkar’s analysis of inter-caste marriages holds true today. We live in a society where women are treated as property to be passed down from a father to a husband. For example, all government forms will have a column for women, where we have to state our father’s or our husband’s name. For men, it is usually only their father’s name. The mother’s name is not required in either case. Marriages in India are a contract between two families of similar caste, class and religion, and are more a business transaction and less about love.

As young girls growing up, we’re told we are paraya dhan (someone else’s wealth) and one day we will leave our current home to go to our ‘real’ home. Post marriage, women are expected to move into their in-laws’ house and any protest against it is seen as anti-tradition, uncultured and an attempt to ‘break’ the house and ‘snatch’ the son from his family. They are also expected to take their husband’s name and leave education/jobs or move to different cities if required.

When it comes to child care, the picture is quite slim. As mentioned earlier, women are considered the ‘natural’ care takers and hence have to sacrifice their career to prioritize the household. Women who choose to not do so are seen as vamps from a stereotypical Hindi film who are here to ‘break’ the family.

Although the joint family system may have some advantages for a married woman as the in-laws may take care of the child, allowing married women to work, this is not the scenario for every married woman.

Married women do have some rights within the Indian legal system, but there are major flaws as well. Married women are protected against domestic violence and dowry under the Protection of Women from Domestic Violence Act 2005 and the Dowry Prohibition Act 1961 respectively. However, dowry is still widely

practiced across classes, and it is just called ‘gifts’ especially in urban ‘sophisticated’ circles. Traditionally, these gifts were streedhan (wealth of a married woman) that only the wife had ownership of. However, streedhan is very much construed as dowry where married women are harassed, tortured and even murdered for ‘insufficient’ dowry.

A married woman has the right to streedhan (technically), residence in her marital home, right to live with dignity and self-respect, paid child support from the husband, and right to a committed relationship with her husband.

Thanks to an amendment to the Hindu Succession Act 2005, married women now have equal rights to be a coparcener. According to the 1956 Act, a daughter could only claim rights over her parental property until she was married. But the 2005 amendment rules that women have equal rights as their male siblings to inherit their parental property, irrespective marital status. Though this looks good on paper, it is yet to be systematically implemented.

However, the final nail in the coffin of married women’s rights is the Government of India’s blatant refusal to recognize marital rape as a criminal offence.33 Maneka Gandhi, Union Cabinet Minister for Women and Child Development, said in a statement in 2016, “The concept of marital rape, as understood internationally, cannot be suitably applied in the Indian context due to various factors like level of education/illiteracy, poverty, myriad social customs and values, religious beliefs, mindset of the society to treat the marriage as a sacrament etc.”

This is not a new stance—it has been taken up by the government in multiple iterations.34 It is a commonly held concept in India that it will be good for women to be a part of an institution in which she can be forced, against her will, to perform her wifely duties ‘quietly’. Forced sexual activity without the consent of both partners is understood to be rape. The 1993 publication of the Declaration on the Elimination of Violence Against Women by the United Nations High Commissioner for Human Rights established marital rape as a

human rights violation. The importance of a woman’s right to choose her sexual partner was reiterated by High Commissioner for Human Rights Navi Pillay in 2012. Forced sexual activity without the consent of both partners is rape. Marital rape is rape.

Despite the progress we have made over the last century, the gender scale is still leaning heavily on one side, and will continue to do so, until society demands otherwise. One person. One family. One couple at a time.
The year 2018 changed the way we look at gender, sex and sexuality. The judgment of the Supreme Court in *Navtej Johar v. Union of India*¹ holding that consensual same sex under Section 377 of the Indian Penal Code was no longer criminalized was revolutionary in the manner in which it protected the rights of lesbian, gay, transgender persons, and sexual minorities. In protecting their rights, the Supreme Court also gave a broader and more expansive meaning to “sex” within the Constitution to include gender identity and sexual orientation. This expansive meaning has positive implications on how we think about gender beyond the binary of male and female, and beyond social stereotypes of gender roles. This landmark decriminalization makes one ask the question in the context of transgender rights—have we achieved full equality for transgender persons or do we need to go beyond Section 377?

This chapter begins in section I with the history of the legal campaign and litigation against Section 377 of the Indian Penal Code and the role of the transgender community in this litigation. In section II, I go on to examine the path-breaking role of the Supreme Court in the various judgments protecting transgender rights, starting with *National Legal Services Authority v. Union of India*² and culminating with the judgment in *Navtej Johar v. Union of India*. Finally in section III, what is the way forward now for the transrights movement post-*Navtej* is discussed. What are the next steps in the campaign for transgender rights? It is argued that far from being

² (2014) 5 SCC 438.
an end or a culmination of the battle for recognition of transgender rights, *Navtej* is in fact a beginning—from which will emerge a whole new era not only for transgender equality but gender equality in India.

**The History of the Legal Battles of the LGBTI and the Campaign against Section 377**

The history of the legal campaign for the rights of LGBTI persons in India largely started with the legal challenge to Section 377 of the Indian Penal Code. Section 377 is an anti-sodomy provision derived from the Indian Penal Code of 1860, which reads as follows:

377. Unnatural offences.—Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with 1[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. Explanation.—Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.

While Section 377 impacted gay, lesbian, queer and transgender persons, there were many other colonial legislations and legal provisions that specifically criminalized transgender and intersex persons in India. Transgender persons are persons whose gender identity or gender expression does not conform to their biological sex. This includes persons who intend to or have undergone Sex Reassignment Surgery (SRS) to align their biological sex with their gender identity in order to become male or female, transsexual persons, cross-dressers and all other identities. Intersex persons are born with sexual anatomy, reproductive organs, and/or chromosome patterns that do not fit the typical definition of male or female. This may be apparent at birth or become so later in life. An intersex person may identify as male or female or as neither (Office of the High Commissioner for Human Rights 2015). In India, “Transgender” is often used as an umbrella term to include intersex persons and also several identities including Hijras, Kothis, Aravanis, Jogappas, Shiv-Shakthis etc.3

3. NALSA v. Union of India, N 3 supra.
In colonial legislations, transgender persons in India were referred to by the use of the highly stigmatizing and pejorative term ‘eunuchs’. Historically, laws that discriminated based on gender identity were earliest enacted by the British in passing the 1897 amendment to the Criminal Tribes Act of 1873, that applied specifically to ‘Eunuchs’. The Criminal Tribes Act was enacted on the presumption that certain communities were more ‘predisposed’ towards committing a crime (Narrain 2009). A special section for the inclusion of ‘eunuchs’ was brought under the ambit of this legislation in 1897. In this law, “eunuchs” were defined as: “[A]ll persons of the male sex who admit themselves, or on medical inspection clearly appear, to be impotent” and “Local governments were required to keep a register of the names and residences of all eunuchs who were “reasonably suspected of kidnapping or castrating children, or of committing offences under Section 377 of the IPC, or of abetting crimes under these provisions.” Under the Criminal Tribes Act, ‘eunuchs’ were required to be registered with the local authorities, and they were prohibited from being a guardian to any minor, making a gift or will, and adopting a son. They could be punished for imprisonment up to two years for violating these provisions. ‘Eunuchs’ who kept in their charge boys who had not completed 16 years of age could be punished with imprisonment for up to two years. ‘Eunuchs’ were prohibited from appearing ‘dressed or ornamented like a woman’ in a public street or place. They could not dance, play music or take part in any public exhibition.

The Criminal Tribes Act was repealed in 1949, but there were other legislations that used similar language to criminalize and enforce control and surveillance over transgender persons. These laws were the Andhra Pradesh (Telangana Area) Eunuchs Act 1329F, now renamed the Telangana Eunuchs Act, which were enacted in 1919, were identical to the chapter on ‘eunuchs’ in the Criminal Tribes Act. Under Section 4 of the Telangana Eunuchs Act, transgender persons could be arrested without a warrant for being found in
female clothing or performing in a public place. In Karnataka, the Karnataka Police Act 1963, had a provision in Section 36A which also had similar provisions of surveillance and assumption of criminality of ‘eunuchs’. These legislations were very similar to the municipal ordinances that were enacted in the United States from the 1850s onwards which made it illegal for people to appear in public “in a dress not belonging to his or her sex” (Stryker 2017).

Despite all these legislations that criminalized transgender persons, there was no mass transgender rights movement in the country that challenged these laws or fought against them. Although from the nineties, transgender activists were very vocal on the streets and had been the backbone of street protests around LGBTI issues in cities like Bangalore (Narrain 2009), they were not at that time organized into a strong transgender rights movement nor were they too actively thinking of legally challenging any of these legislations including Section 377.

The real legal battle for LGBTI rights started in 2001 with a petition filed by Lawyers Collective on behalf of Naz Foundation challenging the constitutionality of Section 377 in the Delhi High Court. This was not the first time that Section 377 was being challenged. It was first challenged in 1994 by a group called AIDS Bhedbhav Virodhi Andolan, which was working on HIV/AIDS, but their petition however was not actively pursued. Thereafter, in 2001 a public interest litigation (PIL) was filed by the Naz Foundation, which

4. Section 4: “4. Every registered eunuch found in female dress or ornamented in a street or a public place or in any other place with the intention of being seen from a street or public place or who dances or plays music or takes part in any public entertainment in a street or a public place may be arrested without warrant and shall be punished with Imprisonment for a term which may extend to two years or with fine or with both”.

5. Section 36A. Power to regulate eunuchs.- The Commissioner, may, in order to prevent or suppress or control undesirable activities of eunuchs, in the area under his charge, by notification in the official Gazette, make orders for,- (a) preparation and maintenance of a register of the names and places of residence of all eunuchs residing in the area under his charge and who are reasonably suspected of kidnapping or emasculating boys or of committing unnatural offences or any other offences or abetting the commission of such offences, (b) filing objections by aggrieved eunuchs to the inclusion of his name in the register and for removal of his name from the register for reasons to be recorded in writing; (c) prohibiting a registered eunuch from doing such activities as may be stated in the order. (d) any other matter he may consider necessary.
was working actively with the gay community. This was prompted after a police raid in Lucknow where the police arrested many persons on the grounds of suspected homosexuality while they were distributing condoms and other materials, as part of their HIV health rights work (Krishnan 2018).

When this PIL was filed in 2001 challenging Section 377, the LGBTI community and activism had not yet embraced litigation and the use of the law within their work. Critics within the community raised various concerns and often stood against using lawfare as a strategy in tandem with the popular approach in the US. Several argued that the broader goal was social transformation and that law and litigation only have a limited impact. Many felt that the police would harass sexual and gender minorities despite legal changes. There was fear about a negative impact and that India and the courts were not ready.

In 2004, the Delhi High Court declined to consider the petition, stating that the petitioners lacked standing. Thereafter, the petitioners appealed to the Supreme Court and in 2006 the Supreme Court allowed the Petitioner to take up the PIL and sent it back to the Delhi High Court to decide the case.

After this, there was great interest and ownership of the litigation by the queer community. In 2008, several organizations intervened in the case on the side of the petitioners. There were many organizations including a coalition called “Voices against 377”, human rights organizations, women’s organizations and others who joined in the litigation. Even at this time, the transgender community was not really part of the litigation either as individual petitioners or as organizations although there were affidavits filed by transgender persons who were arrested under Section 377 and faced violence at the hands of the police. It was in this limited manner that they were part of the early litigation against Section 377—and that too indirectly.

In 2009, the Delhi High Court passed a landmark judgment in *Naz Foundation v, Govt. of NCT of New Delhi and Others*\(^6\) where Section 377

was read down and was held to be unconstitutional. This judgment led to celebrations all over the country and was a catalyst for change on recognition of LGBT rights in the country. This celebration however was short-lived. Many parties challenged this judgment before the Supreme Court and in a development that came as a serious setback to the LGBTI community, in 2013 the Supreme Court overturned the Delhi High Court judgment in Souresh Koushal v. Union of India. The Supreme Court held that Section 377 could not be read down and it was for Parliament to decide on decriminalization of homosexuality.

Against this judgment, review petitions were filed only to be dismissed. Curative petitions were also filed. The silver lining, however, was that LGBTI mobilization was very high and despite the Supreme Court verdict, the movement on the ground was growing rapidly and social acceptance for LGBTI concerns was increasing. All of this still did not make too much progress for transgender persons, who continued to be the most marginalized and vulnerable group within the LGBTI community. Trans persons were routinely arrested and harassed by police, were sexually abused, and had to bear the brunt of criminal threats as they were on the streets forced into begging and sex work. While trans activists were becoming more visible and active, there still was not a strong and organized transgender rights social movement on the ground.

The Supreme Court Trans-formed

All of this changed in 2014. In April 2014 a bench of Justices K.S. Radhakrishnan and A.K. Sikri of the Supreme Court passed a judgment in National Legal Services Authority v. Union of India holding that transgender persons have the constitutional right to self-identify their gender identity as male, female or transgender even without medical re-assignment and the right

to expression of their chosen gender identity. It was in NALSA that the Supreme Court held that the rights to life, dignity and autonomy would include the right to one’s gender identity and sexual orientation.

NALSA brought with it great excitement and gave momentum to the trans rights movement in India. Transgender persons have been criminalized, discriminated, and deprived of access to education and employment. They have faced sexual and physical violence and even death due to their gender choices. NALSA for the first time gave public recognition to the violence and discrimination that the trans community faces in India and declared unequivocally their entitlement to constitutional fundamental rights. The fight for equality for those who fall beyond the mainstream notions of gender gained momentum with the Supreme Court’s judgment in NALSA (Jos 2017). The judgment became a catalyst for the organization of the transgender movement in the country in a very significant way. This judgment also led to several government authorities providing an additional gender option as “TG” or “Other” in government documents such as passports, driving licenses, PAN Cards etc., and was really in many ways the beginning of the organized transgender rights movement in India.

The NALSA judgment also gave new grounds and indeed new hope to revive the Section 377 challenge. In 2016, two fresh petitions were filed under Article 32 of the constitution. The first petition was by Navtej Johar and others and the second was by Dr Akkai Padmashali, Umi and Sana, three transgender activists from Karnataka. Following this many more petitions by lesbian and gay activists were filed. All these petitions urged the Supreme Court to re-assess the constitutionality of Section 377 on the touchstone of NALSA. This was also the first time that the transgender voices were heard before the Supreme Court.

Thereafter in 2017, came another big judgment by the Supreme Court on the right to privacy in Puttuswamy v. Union of India. In this judgment, the Supreme Court held that there is a constitutional
right to privacy inherent in the right to life, equality and fundamental freedoms. The Court went on to hold that the right to privacy specifically includes the right to have intimate relations of one’s choice and includes the right to sexual orientation and gender identity. Justice Chandrachud went as far as to hold that the reasoning of the Supreme Court in Suresh Koushal that only a miniscule minority was affected was flawed and held that:

A miniscule fraction of the country’s population constitutes lesbians, gays, bisexuals or transgenders” (as observed in the judgment of this Court) is not a sustainable basis to deny the right to privacy. The purpose of elevating certain rights to the stature of guaranteed fundamental rights is to insulate their exercise from the disdain of majorities, whether legislative or popular. The guarantee of constitutional rights does not depend upon their exercise being favourably regarded by majoritarian opinion. The test of popular acceptance does not furnish a valid basis to disregard rights, which are conferred with the sanctity of constitutional protection. Discrete and insular minorities face grave dangers of discrimination for the simple reason that their views, beliefs or way of life does not accord with the ‘mainstream’. Yet in a democratic Constitution founded on the rule of law, their rights are as sacred as those conferred on other citizens to protect their freedoms and liberties.11

After the Puttuswamy decision, more petitions and interventions were filed against Section 377. By this time, it was fairly clear that the doors were closed on Section 377.

In 2018, at a time when the LGBTI and the transgender movement had gained great social acceptance and the community was waiting with bated breath for a decision from the Supreme Court, on 6th September 2018, the Supreme Court in a 5-judge Bench, led by the Chief Justice unanimously held in Navtej Johar that Section 377 was unconstitutional to the extent that it criminalizes consensual relationships of any kind between adults and overruled Koushal. The impact of the Navtej decision is unprecedented. J. Chandrachud recognized that Section 377 had consigned a group of citizens to the

margins and was destructive of their identities and held that lesbians, gay, bisexual and transgender persons have the constitutional rights to full and equal citizenship and protection of all fundamental rights.

The most far-reaching contribution is the elaboration on the right against non-discrimination on the basis of sex, guaranteed in Article 15 of the constitution. The Supreme Court held that ‘sex’ under Articles 15 includes discrimination on the ground of gender identity and sexual orientation. It went even further and held that discrimination on the grounds of ‘sex’ would also include discrimination due to sexual orientation or sex stereotypes. This signifies that being gender non-conforming or not adhering to society’s ‘norms’ of gender roles, be it in the way you dress, speak or behave, cannot be a ground for discrimination. One of the core reasons for violence against trans persons is that they do not conform to gender roles as defined by society. This inclusion of discrimination on the ground of sex stereotyping will go a long way in dismantling gender stereotypes not just for the LGBTI community but also importantly for women in India. Women who do not conform to society’s expectations in the way they dress, speak, work, marry and indeed live their lives as per their own terms, have been punished and discriminated and there was no legal recourse against this, until now.

Chief Justice Misra made specific references to transgender equality in his separate judgments and emphatically noted that: “Bigoted and homophobic attitudes dehumanize the transgenders by denying them their dignity, personhood and above all, their basic human rights” and that: “This stigma, oppression and prejudice has to be eradicated and transgenders have to progress from their narrow claustrophobic spaces of mere survival in hiding with their isolation and fears to enjoying the richness of living out of the shadows with full realization of their potential and equal opportunities in all walks of life.”

The Supreme Court in holding Section 377 to be unconstitutional recognizes the fundamental rights of sexual and gender minorities and Chief Justice Misra categorically declares that the right to life

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and dignity includes the twin aspects of one’s identity and sexual orientation. In this way, with the *Navtej Johar* judgment the Court has gone far beyond the anti-sodomy judgments from around the world that were referred to it. By recognizing these twin aspects of gender identity and sexual orientation, the Court acknowledges the voices of the most vulnerable sexual minorities within the LGBTI community and takes the stand that the constitution protects the rights of all.

**Where do we go from here?**

With Section 377 of the Indian Penal Code decriminalized, is this the culmination of the realization of transgender equality in India? Far from it. It signifies instead that we are now entering a new era for the recognition of transgender rights in India. The first phase for transgender rights was the phase of decriminalization. We have successfully made it through the first phase, with Section 377 being de-criminalized, the operation of the Telangana Eunuchs Act having been stayed by the Andhra Pradesh High Court\(^\text{13}\) and Section 36A of the Karnataka Police Act having been amended.\(^\text{14}\)

The second phase of transgender equality would be for claiming positive rights. These include the right to marry, the right to reservations in education and employment, the right to adopt and have a family, inherit property, to have access to public services and the right not to be discriminated. It would also include the right of transgender persons to be protected from violence and would need criminal law to be reformed and for coverage of trans persons under legislations to protect them from domestic violence.

Some of this work has started, with the movement on getting a separate Transgender Persons Bill. There was a Rights of Transgender Persons Bill 2014 proposed as a private members bill. This draft, however, was not introduced and the subsequent drafts of the


Transgender Persons (Protection of Rights) Bills 2016 and 2018 that were introduced by the government were highly problematic and have been heavily criticized by the transgender community (Jos 2017, Dharmadhikari and Gopinath n.d.).

What is really needed presently is law reform for protection of transgender persons so that they can get full recognition as citizens. We need a detailed gender re-assignment legislation which will enable transgender persons to easily change their name and gender as well as get their legal documents to reflect these changes. This would enable them to access employment, higher education and other services. Transgender persons must be able to self-determine gender without requiring any kind of medical treatment or certification and be enabled by law to change their gender to male, female or the third gender in all identification documents. This has been the compelling demand of the community (Anuvinda P. and Siva 2016).

There is also the need for recognition of violence against transgender persons. The criminal law on sexual assault in India presently is still gender specific. It only recognizes rape and sexual assault where the victim is defined as a ‘woman’. Thus, transgender persons facing sexual violence have no criminal remedy against sexual violence. Trans persons are also not covered under domestic violence protection legislations such as the Protection of Women from Domestic Violence Act 2006 despite them facing family and intimate partner domestic violence. All of these legislations need reform to include transgender persons. In all of this reform we also need to recognize that the biggest challenge facing the more progressive elements within the community is to ensure that the benefits are available to all trans people and not just those privileged by caste, class, religion and ability (Stryker 2017).

**Conclusion**

The Supreme Court decision in *Navtej* has been the tipping point for the realization of transgender rights and after *Navtej* we can see that the transgender movement is leading the campaign for broader

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15. Section 375 of the Indian Penal Code.
LGBTI rights in India. In fact, it would not be too far from the truth to state that transgender battles for equality are leading and have succeeded in trans-forming the women’s rights movement in India as well because it has changed our notions of gender and opened up our minds to gender expression that is non-conforming with mainstream gender stereotypes. A future for India with full equality will be one in which we recognize that all genders are equal. The transgender movement is taking us towards such a goal.

References
What is the right school for our son? This was the start of a new journey for my wife and myself. Twenty years of experience in research and advocacy of education reforms did not prepare us for this. It is this personal journey amongst numerous others that has enabled me to draw conclusions about the education landscape in India.

Instead of writing about the expected topics like laws and regulations, data on learning levels, quality of government versus private schools, or the harassment of honest edupreneurs, I want to share with you a personal account. I wish to convey the story of freedom, choice and accountability through my experiences as a father, a researcher and advocate, a student, a professor, and a catalyzer for budget private school alliance, in India and the United States. These life experiences, I surmise, would give you a deeper and nuanced understanding of freedom in education in India. If still you are interested in more formal lay of the education land, I will gladly point you to my other writings.

As a Student and a Professor

While studying pharmacy in Gujarat, I became interested in philosophy, politics, and economics through the works of Ayn Rand, Ludwig Von Mises, F.A. Hayek and Milton Friedman. The change of heart was strong enough to motivate me to change my course of study. However, no such option existed at that time. The Indian education system did not allow one to change from a science stream
to an arts or commerce stream. The only option was to go abroad. The US student visa norms required that I must seek admission in a pharmacy program since that was my degree. It was only after a year of study that the rules changed, allowing students to shift their course of study. Two years I wasted like this with a significant monetary cost that I doubt many parents could allow or afford.

During Centre for Civil Society (CCS) student programs, I typically meet many engineering students and even a few medical students interested in furthering their liberal arts education. But there are many hurdles to taking a different path. Many colleges now allow change from science stream to commerce and arts, but not the other way around. There exists a socially constructed hierarchy placing science at the top, commerce on a lower tier, and then the arts at the lowest.

Actually, the choice one makes in grade 10 and often in grade 8 decides the course of study for the rest of the life. It is rare even today to meet a student who has changed course of study during her/her college. This is quite an inhumane education system!

After a year in pharmacy, I was able to get a master’s in economics. One year later, I could register as an economics doctoral student. Even though I did not have a single course in economics in college, I managed to obtain a PhD in economics. As graduate students in economics, we were able to design courses on subjects we were interested in and then would find a sympathetic faculty member to offer the course. After some minimum requirements, we had the freedom to plan our own learning. It was a different world from India where I knew from the first day what all the courses are and when I would take them over the next four years. There were no options for electives let alone any freedom to explore courses outside our discipline.

As an assistant professor, I enjoyed similar freedom to design and assess courses and even to create new ones so long as more than 10 students signed up. Students and professors both enjoyed freedom in choosing and offering courses respectively.

Every year the student newspaper published the rating of all professors at times reporting their salaries. The rating really mattered
when a professor offered elective courses. If you were not a higher rated professor, you would end up teaching only required courses!

Even today in India, student feedback to professors is not common. And when it is taken, the feedback is used only for internal purposes and students are not made aware of the summary rating.

This insularity went well beyond lack of interest in student feedback. As a visiting professor at a university in Gujarat, I learned that all the professors, each and every one of them, graduated from the same department. Even young professors were relying on third generation classroom notes.

Some of these experiences have undoubtedly shaped my views on freedom and choice in education. These are such foundational values that it is hard to imagine a system that is not built on them.

**As an Education Researcher and Choice Advocate**

In 2001, we hosted probably India’s first education conference on school choice and school vouchers. Surprisingly it was partially supported by a central government agency. That was the first and last time we received government financial support. We were able to attract some of the top names from the education sector. At the end, every one of them felt that at best we were naïve and did not understand the ground realities in India, and at worst that we were agents of foreign powers. In any case, we began to get a label of ‘school choice wallah’ and “voucher wallah” and later “fund students, not schools wallah”.

There were many downsides to being labelled, but one positive effect was invitations to government committees and taskforces. Discussions on the Right to Education Act had started and the Planning Commission and the Ministry of Human Resource Development had set up separate and joint committees. In the meetings, most members were quite courteous and I always got a chance to speak. As you would guess, I was the only one to talk about teacher accountability, funding students rather than schools, and empowering parents to choose their schools. In one of the meetings, as soon as I mentioned poor attendance and performance of government school teachers, several people simultaneously
shouted “teacher accountability is a code word for privatization.” An economist, and that too trained in the US, could only be thinking about LPG (liberalization, privatization, globalization).

The challenge was the lunch and tea breaks. I would stand or sit all by myself as if I did not really belong there. Once in a while someone would show kindness and walk over to me, usually the chair or the co-chair of the committee. This is how the education establishment treated liberal reform ideas and advocates.

School Choice and School Vouchers in India

In the battle of ideas, victory typically comes through individuals and not through institutions or committees. The first sign of hope came from the head of a large education NGO (non-governmental organisation). He was present at the 2001 conference and had commented that these are American ideas and rather unsuited for India. He argued that school choice in India would mean illiterate parents choosing among ram shackled, low fee private schools, which would never serve the cause of education. How did he change his mind?

They had a new project in one of the state capitals and he had assembled a large team of youngsters from around the country. He had rented a building to house the team and hired a cook to feed them. The team came from different parts of India and had different preferences for food which a single cook was unable to meet. What was to be done?

There was a small dhaba (eatery) near the building and out of desperation he contracted a fixed amount for each breakfast, lunch, and dinner for the team. The food complaints lessened and the work started in full speed. After a few months he came back to the city for a visit and was stunned to find the ram shackled dhaba transformed into a swanky, clean restaurant. He then became a supporter of school choice! A ram shackled ‘education shop’ can become a quality school if only it has enough paying customers and maybe it would try to provide more customized education too.

The idea of school choice found a place in the Right to Education (RTE) Act of 2010. The Act required 25 per cent seats to be reserved
in private schools for socially and economically weaker students. The government would reimburse private schools equal to their fees or per student expenditure in government schools, whichever was lower. The poor parents would now have a choice of a private school and the public money would follow the child to the school—the basic idea of school choice or school voucher. Most supporters of this clause in the Act had rather different motivations. It was not as much about choice for poor parents as the desire to force private schools to take social responsibility of educating the poor. Some wished to put the uppity private schools in their place, some hoped that many would close down since richer parents would object to poor kids being in the same class. I had objection to the compulsory requirement and would have preferred to let schools decide whether they want to take the poor children. In the end, I wrote about India instituting the world’s largest voucher program. Policy reforms do make strange bedfellows.

I often question myself for acquiescing in what critics have called ‘nationalization of 25 per cent seats in private schools.’ However when I am in these schools, I do feel that as long as the government pays private schools on time and in line with what it spends in government schools, both the richer and poorer kids and their families would indeed be better off. Many libertarian friends disagree. However for my rule-utilitarian self or bleeding-heart libertarian self, the real-life impact does ultimately win.

*The Licence Raj of Education*

Our research had shown that one would need more than 30 licences to open a school in Delhi. The first licence was the ‘Essentiality Certificate.’ It required that the applicant should prove to the education department that the new proposed school was ‘essential’ in the area. How does one prove that? The applicant puts together some data on the number of school-age children in the area and the number of seats in the existing schools. The government does not really know these numbers, nobody does, the data just does not exist. Even an honest education officer would have difficulty in making any objective judgement. So it became the first step on the long, unwieldy ladder of extortions and bribes.
India’s licence raj in the industry is well known. The education sector has an even worse system, if one can possibly imagine that. The human cost of this licence raj became poignant in an experience at the Lal Bahadur Shastri National Academy of Administration, the training institute for the highest echelons of Indian bureaucracy. In a talk on education policy I mentioned the essentiality certificate and the number of licences necessary to open a school. In the Q & A, one young probationer who had just joined the service narrated his story. What he really wanted to do in his life was to run a school. He was convinced that school was his calling. He applied for the licence to open a school in his town. While he was waiting for the licence, he took the entrance exam. On two attempts, he passed the exam and was now at the Academy for training. And he did not yet have the school licence! What he said next really moved everyone. With almost tears in his eyes, he said that now even if he gets the licence, he would not be able to run the school since it would be impossible to convince his wife and the family to give up the IAS job. India had lost a true champion of her education cause. How many such young people are lost? This is the unseen cost of the licence raj.

Many Teach for India fellows become passionate about school education through their real life experiences in the fellowship. Some of them could be potentially good school leaders. Only a rare person would be able to get through the gates of the licence raj. Honest, dedicated people find it almost impossible to live their dream and serve the cause of education. Who does then?

Many colleges and schools are partly or fully owned by politicians. One suspects that it is not their concern for education but their contacts in the system that allows them the privilege. When the honest ones cannot get through the eye of the needle, the wily ones do. This is what economists call adverse selection.

The other big hurdle for edupreneurs is access to capital. As per the Supreme Court judgements and state education laws, education must be non-profit. Unless you are independently wealthy, it is impossible to get finance to start a school. There are so many angel investors and venture capitalists even for one more food delivery app, but hardly any for a new school or expansion of an existing school.
What does this say about the society or more accurately about the regulatory system that puts food delivery app above education? India’s education system has long suffered from irrational regulations. As we will see next, this irrationality received strong ‘rational’ support in the form of the Right to Education Act.

**Equity from Uniformity or Diversity?**

The goals of an education system are generally identified as access, quality, and equity. Well before the RTE Act, 2010 was passed, India was well on its way to achieve universal access; schools existed within reasonable distance from habitations. The question now was: How do we achieve equitable quality in such a socially and economically diverse society? This led to the question: What does it take to produce quality education? The educationists answered: well-trained and well-paid teachers, comfortable school buildings with necessary facilities like mid-day meals, separate toilets for girls and boys, drinking water, library, playground, and high-quality syllabus and textbooks. If we provide all these right inputs, quality education would happen. Right inputs lead to right output was the mantra. The real beauty of this premise was that these inputs could be standardized across the state and even the nation. This then became the driving force of the RTE—ensure standardized inputs and infrastructure in all schools to achieve quality as well as equity.

There are at least three different problems with this approach of ‘right inputs lead to right output.’ First, most of the research demonstrates that the most cherished inputs like teacher qualifications, in-service training, teacher salaries, use of laptops, better textbooks do not lead to any lasting improvement in learning outcomes. This research challenges what seems common sense to most people. That is in a way the real service of research. Indian educationists did not make serious use of this research.

The second problem is the assumption that qualifications, training, and reward in terms of higher salaries is all that matters in making teachers effective in the classroom. This is a rather mechanistic view of human behavior and motivation. It is surprising when you realise that most advocates of RTE are very considerate,
empathetic people who have worked on the ground with some of the most deprived communities. But when it comes to policy, they seem to forget their real-life experience of who good teachers were and what made them good.

The third problem, and in my view the most serious challenge, is that the most critical input in the system, if you want to call it that—the children—are not standardized, they are all unique. Once you consider the uniqueness of each child, it is easy to see that uniform, standardized inputs would lead to unequal outcomes.

Unique child + Equal inputs = Unequal outcomes
Unique child + Unique inputs = Equitable outcomes

Education is not an assembly-line process. The RTE endeavored to build similar assembly lines across the country with the hope that it would produce the same quality output. The almost 10 years of experience with RTE is a real proof that the basic premise of ‘right inputs lead to right outcomes’ is false. This would require children and their families also to be ‘standardized’, but we are ruling out such an option.

It is clear that equity cannot be achieved through input standardization and uniformity. The unique child requires unique inputs, personalized and customized to the child. Equity then can be achieved through diversity in inputs—a variety of schools, with different types of teachers and principals, and with diverse pedagogies.

However, the input and infrastructure approach is now enshrined in the RTE law. One impact of this approach is the demand for ‘One Nation, One Board.’ If standardization and uniformity are good for achieving equitable quality then it is logical to think that one single board and thereby same syllabus and examination across the country is a step in the right direction. This RTE premise poses real danger to the variety of schools that does exist in India—Montessori schools, Mirambika, Rishi Valley, Eklavya, Waldorf, Shikshantar, home schooling, just to list a few. It is the diversity in schooling that will serve our unique children and that needs to be protected urgently.
As a Catalyzer for Budget Private School Alliance

Our focus has been on how to make markets work for the poor. Both government schools and the low-fee, budget private schools (BPS) serve the poor. We decided that we do not have the resources nor the stamina to work directly with government schools. Instead, we would do research and advocate for policy reforms in government schools. For BPS however we would work directly to ensure a conducive regulatory environment to help improve learning outcomes.

The basic RTE premise of right inputs lead to right output also explains the general antagonism of the educationists towards private schools. Yes, some private schools had the right inputs but the vast majority of them did not, particularly the low-fee BPS. And these schools are where the poor sent their children. In their view, the BPS were short-changing the poor by providing low quality education since they simply did not have and could not afford right inputs. The BPS provided low quality inputs and also took away money from the poor, often up to one-third of their monthly family income, which could have been spent on better nutrition and health. As long as they existed and poor parents chose them, there was simply no way to ensure high quality and bring equity in the national education system. They concluded that only the system that puts pressure on BPS to close down is the good education system.

This argument against private schools and particularly against BPS has many takers in the media, government and NGO world. Almost all education NGOs, large and small, have been anti-BPS, some more vocally than others. The leader of the pack is the Azim Premji Foundation and the Azim Premji University. The irony is surely not lost on the reader. Mr Premji earns his wealth in the private sector, but his philanthropy is used to undermine private initiative in education. They have put out ‘research studies’ to disparage the reasons given by poor parents for choosing BPS and to disprove that private schools are closing down because of RTE. The research quality of these studies is abysmal; you really have to read them to understand how ideology masquerades as ground research. What dismays me personally is that these two are the most endowed
education entities in India and with all that money, this is the quality of work that is put in the public domain under their name. We indeed have a long road ahead for anything resembling evidence-based education policy.

Under the RTE of 2010, the school recognition and accreditation were based only on inputs and infrastructure. Never was there a mention of learning outcomes. If the schools were going to be recognized by infrastructure, then BPS would be the first to face the axe. Given this serious existential threat, the National Independent Schools’ Alliance (NISA) was born in 2011. The twin objectives of NISA are to build a facilitative regulatory environment and to ensure improvements in learning outcomes.

The state of Punjab gave closure notice to 1,170 schools. Each school received exactly the same notice of closure. The High Court rejected the notices for not following due process. Each school should have been inspected and informed about their deficiencies. Only after these schools had due time to address them could they be given a closure notice. Apparently, all these steps were too much work for the education department officers and many of these schools survived. NISA has been fighting the regulatory battles locally and nationally and has had a very positive impact. It is really David versus Goliath, NISA is the only national entity that gallantly stands against the onslaught of the education bureaucracy, well-funded NGOs, and the very powerful teacher unions.

Improving the quality of BPS has proven to be a far more difficult challenge. Economics simply do not work in their favour. With low fees and low revenues, only low salaries can be offered to teachers. As such, it remains difficult to attract and retain high quality teachers. The quality of government schools is so poor that they are unable to give away free education, pushing the poor towards private schools.

NISA has brought together a large number of service providers to negotiate better deals with the schools. Despite the revenue crunch, some school leaders are dedicated enough to take advantage of these opportunities. To supplement teachers with technology, there have been blended learning pilots. To build parental pressure on schools, NISA has run one experiment to rate all private schools in
a neighbourhood and to provide that information to parents. These varied efforts have had little sustained impact on learning quality. Why is it difficult for NISA to achieve this quality improvement?

The fetish of scale! The private foundations prefer to invest in government schools since they can relatively easily scale the intervention. Get a chief minister, education minister or secretary convinced and you get thousands of schools to work with. Donors want scalable impact. Like each child, each NISA school is unique—with different resources, constraints, and capacities. Each intervention needs some customization to ensure that the school really benefits by it. NISA needs donors who believe in unique schools serving unique children and not obsessing over scale. Helping donors to understand this is a far more difficult task for NISA than bringing one lakh principals and teachers from across the country for a national rally at the Ramlila Maidan in Delhi. This was, by the way, the first-ever national rally by private schools in India! This moral courage is unfortunately insufficient to convince foundations and philanthropists. Without the financial and human resources, school quality would likely remain a mere good intention.

As a Parent of a Young Child

This last section deals with my most critical role and learning. In the search for the right school for our son, my wife visited many more schools than I did. In one brand name school, there was a large room full of toys and another room labelled AV room with a giant TV and a DVD player. Some had classy buildings but very little open space. One school promised that by senior KG our son would be able to read and write the alphabet. These visits began to clarify for us the values we wanted to see in the school—open space, minimum technology, very little instruction and more free play. And our real self-discovery was the value we put on green practices—active engagement with nature, natural products, and no junk food.

Luckily for us, we found a Waldorf school, where the teachers personally believed in these values and also practiced them in their own homes. We attended their training programs, orientation for parents and went through an interview along with our son. In
public schools, interviewing parents is illegal. They recruit students through random selection, typically by lottery. How do you build a community of like-minded parents with similar values and vision by random choice? What seems sensible in an education department office undermines the foundational attribute of a small, successful school—a genuine community of parents.

My work on education reforms focused on systemic changes in terms of incentives, choice, competition, transparency, and accountability. It consciously avoided looking inside the classroom since that should be the domain of teachers and principals, not really of policy. In my view, a good education policy should align the incentives of teachers and principals with those of students and parents.

However, our search for the right school made amply clear that the dominant paradigm of education is itself broken.

**The Education System Needs Values**

What are these values? The search led to Sudbury Valley School in the US and the Summerhill school in the UK. I discovered a whole new way of thinking about the education from the evolutionary psychologist Peter Gray and about unschooling and democratic schools. Engaging in activities together across age groups—whether play or projects—is key to learning as well as practicing what is learned. Peer learning, teaching and governing is the core value. These schools have caring adults but no teachers, no formal syllabus or textbooks and none of the standard assessments. Could we turn our schools into this self-learning, democratic communities? I am determined to find an answer.
From the first discussions about the idea in the Constituent Assembly debates during the time of independence, press freedom in India has been hemmed in by various conditions. Strong judicial support helped expand the principles involved over the years. But the socialist economy and the leverage this provided the state meant Indian media functioned under a heavy governmental shadow more or less until the 1990s. Economic liberalization provided the newspaper industry financial independence, but a combination of corporatization and new media technologies placed a new set of constraints on press activity. The recent fragmenting of the media space and the weakening finances of media companies means the government and even large corporations have again come to hold considerable sway on what does and does not get printed. The true guarantors of press freedom in India are the sheer plethora of platforms, literally too many to control, and the competitiveness among the various media players. Its ultimate weakness is the relative passivity of the larger Indian population to the state of the media and a continuing assumption that the state is more to be trusted than the newspaper or television news show.

A Personal Note

When I began my career as a journalist in 1985, it was at The Statesman newspaper in Calcutta. The newspaper was under siege. The then government of India, the Congress regime of Prime Minister Rajiv Gandhi, was trying to force The Statesman to stop printing exposes regarding bribes paid to unnamed Indian officials over the purchase of Bofors howitzers from Sweden. Two other newspapers that had been pursuing the investigation, The Hindu and the Indian
Express, soon buckled under pressure from the government. The Calcutta newspaper pressed forward.

Even from my junior position, it was evident how the Gandhi government was leaving no stone unturned to force The Statesman to abandon its reporting of the scandal. In a time when private banks barely existed in India, all state-owned banks were calling in all the newspaper’s loans and refusing to extend new finance. The large government corporations had pulled their advertisements and private firms which depended on government contracts were being forced to do the same. I was told to presume every phone and, in those days, telex line was tapped by the police. Indian customs blocked the imports of parts and supplies for The Statesman’s presses. The Congress Party tried to exploit every division within the newspaper, including between the owner and the editor.

The Statesman held its ground. In the 1989 general elections, the Rajiv Gandhi government went down in defeat and most would attribute part of this defeat to the Bofors scandal. It says something about the legacy of the scandal that weapons purchases remain among the most sensitive issues in Indian politics even today.

Based on my conversations with the managing editor, C.R. Irani, and various senior members of the newspaper when I was there, I came to some conclusions as to why The Statesman was able to hold up despite the pressure it was under when other, wealthier, newspapers had surrendered. One was the personal commitment of Irani himself to fighting the Congress Party. Irani had led The Statesman when it had been among the few newspapers to defy Indira Gandhi when, as prime minister, she suspended the Constitution, ended freedom of expression and imprisoned the opposition, and imposed what has come to be known as the Emergency on the country. Two, the newspaper had an unusual ownership structure in that its shares were held by an independent foundation that was led by Irani himself. In effect, the newspaper owned itself. Three, at the state level, Calcutta was under the rule of a leftwing coalition which, while no genuine champion of civil liberties, was strongly opposed to the ruling party in New Delhi. Four was that The Statesman had been
able to secure a financial lifeline from the Hongkong-based HSBC which ignored the threats of the Gandhi government.

But there was another lesson to be drawn. *The Statesman* had suffered financially during its fight with the Congress during the Emergency and suffered even more in its tussle over the Bofors scandal. The newspaper was never to fully recover and is today a pale shadow of its former self, a has-been even in Calcutta, a city it used to dominate. Notably, neither its readers or civil society as a whole ever sought to reward the newspaper financially for its years of defiance. In subsequent years, it struggled to hold onto readers during price wars with its better-funded competitors (Bansal 2012).

**The Constitution**

In keeping with its British constitutional origins and unlike its United States counterpart, the Indian Constitution does not have an explicit guarantee of press freedom. B.R. Ambedkar, the primary drafter of the Constitution, argued that this freedom was subsumed in the larger freedom of expression (Singh 2019).

But the freedom of expression, in turn, was not unconditional. The Constitution laid out that the freedom of expression could be “reasonably restricted” by the government. After independence, India set up a Press Laws Enquiry Committee which laid out what constituted a reasonable restriction when it came to the press. It decided media activity that endangered “the sovereignty and integrity of India; the security of the state; friendly relations with foreign states; public order, decency and morality, or in relation to contempt of court, defamation or incitement to an offence” could be restricted by the government. Much of the legal and political battle over press freedom in India has revolved around defining what exactly is and is not allowable under these sweeping recommendations (Kohli-Kandekar 2017: 38-39).

In addition, independent India inherited a number of laws and regulations from British colonial rule, many of which had been used to suppress the Indian nationalist movement, and which the new Indian leadership decided not to revoke. Among them were a legal
code against sedition, roughly defined as acts designed to incite or cause disaffection against a government, an 18th century concept used by officialdom to clamp down on the media. Sedition fell into disuse in Britain and was legally revoked there in 2009 but remains on the books in India (Ibid.: 38).

The most important defender of the principles of press freedom in the first few decades after independence was the Supreme Court. The court, in a series of rulings over the years, helped define what was and what was not acceptable for the press under the freedom of expression constitutional clause. It also curbed some of the earlier instruments by which New Delhi sought to indirectly influence the media, including regulations on advertising, marketing and printing licenses, and even the size of a newspaper’s pages. The Court, in one case, had to even rule that restrictions on the circulation of a newspaper were against the freedom of speech (Pandey 2017).

**Under Socialism**

The Indian media landscape after independence and until the declaration of Emergency consisted of a few 100 private newspapers, a single government radio station, and a single government television station. The newspapers, especially those in English and in the largest cities, were often owned by wealthy businessmen for whom the newspaper was a source of influence, sometimes family pride but rarely a source of revenue. In fact, return on capital with an Indian newspaper was rarely more than one per cent. Editors were often larger than life personalities modelled on the powerful Fleet Street editors of Britain. Owners tended to see their possession of newspapers as an act of custodianship rather than businesses. A 1951 Press Commission of India report concluded that given the paltry returns of media investment, owners were either parking profits from other businesses or looked at newspapers as a means to “wield influence” (Kohli-Kandekar 2017: 19).

This in turn derived from the relatively cozy relationship that existed between the mainstream media and the post-independence political establishment, dominated as it was by the personality of India’s first prime minister, Jawaharlal Nehru. As the Indian
government’s economic policies moved leftwards from the 1950s and onwards, culminating in the nationalization of almost the entire financial sector in the 1970s, these newspaper owners also found themselves joined at the hip to the government. Strict regulations controlled almost every aspect of the Indian economy and this practice included the newspaper industry as well. State-owned firms provided newspapers the bulk of their financing, extended them insurance coverage, provided the bulk of advertising revenue, and even basic inputs like ink and paper. Telephones and cables were all handled by government monopolies. Stringent customs provisions made imported printing presses and spare parts expensive and ultimately left to the discretion of the government.

A simple example was the Newsprint Control Order of 1962. The provision of newsprint was tightly controlled by the government. Newspapers were given quotas of newsprint which were theoretically based on circulation but which the government could manipulate. Importing newsprint was also regulated and faced import restrictions. Newsprint cost and even wages were determined by government boards. “Get a publisher to recall the 1960s and 1970s and all he will talk about is what a nightmare it was to simply get the newspaper out every morning,” writes on analysis of the industry at the time. (Kohli-Kandekar 2017: 21)

Despite these, there were enough newspapers across the country that debate on policy and criticism of government still remained relatively lively. A lot depended, however, on the general personality of the prime minister. Nehru was relatively benign and saw freedom of the press as an essential component of his vision of a liberal democratic India. His daughter and successor, Indira Gandhi, was far less tolerant. The point is that there were many instruments by which New Delhi and sometimes even state governments could apply pressure on the media. The decision to use them or not and why was left to the discretion of whoever was in charge.

The Emergency

In 1975, an embattled Indira Gandhi used her overwhelming majority in Parliament and control of the judiciary and presidency
to declare a state of emergency. She suspended the Constitution and in effect imposed dictatorial rule on the country for 18 months. Newspaper content became controlled by official censors and criticism of the government in anyway was legally banned across the country (Singh n.d.).

A few regional newspapers, like The Statesman as mentioned above and the *Indian Express*, resisted, but it was financially almost impossible to do so without the newspaper incurring enormous costs. As many were owned by large business houses, the government simply put the squeeze on other business interests of the owners. Even if the latter were inclined to resist, with the Supreme Court and almost every civil society body under the government’s thumb or disbanded, there was no one else to even support such a move (BBC Monitoring 2015).

The *Indian Express* famously was able to resist because its proprietor owned commercial real estate and would get advance rentals from a key tenant, the Indian subsidiary of IBM (Ninan 2007: 265). “Once the Emergency ended, many such journalists took it upon themselves to unearth the stories that had been suppressed, stories that above all denied poor people their rights,” writes one journalist of that time (Sharma 2015). The private newspaper industry saw a large expansion in terms of both circulation and new publications being launched. Input costs fell dramatically as new technologies brought down communications costs (Ninan 2017: 79). For a few brief years, the Indian press enjoyed a hallowed position both among its own practitioners, the Indian public, and even in its relationship with the state structure. However, it was a sentiment that did not last too long. And, as described earlier, the Rajiv Gandhi government’s battle with the press—using many of the same weapons from his mother’s Emergency arsenal—showed that the more things change, the more they stay the same.

**The Liberalization**

The economic reforms of 1991 had a salutary effect on the Indian economy as a whole. But less appreciated is how they were to completely transform the character of Indian media. The various
import restrictions on presses and the newsprint quota system were abolished in 1992. The surge in domestic consumption that followed led to a surge in advertising which, in turn, saw newspaper profits spiral upwards. New forms of financing were also available. (Ninan 2017: 32)

Bennett Coleman, the media firm that owned a number of India’s largest newspapers including the Times of India, is credited with understanding the significance of the reforms and how this would change the face of the media sector. Bennett Coleman was the first major media company to professionalize its marketing and advertising management. Its owners came to see their firm as a huge profit-making machine rather than a calling to public service. And they succeeded to an extent few other businesses anywhere in India did: by 2011-12 the company was generating 25-35 per cent in operating profits (Kohli-Kandekar 2017: 19).

However, the corporatization of Indian media houses was to sow the seeds of a new form of conformity and risk aversion among the private newspapers. The first step in this direction was the decision, sensible in its own way, to lower the cover price of newspapers to almost nothing and depend on advertising revenue for the lion’s share of the earnings. While this helped sustain circulation figures in a highly competitive market, it also had an unusually high dependence on advertisers which, in India, were disproportionately state-owned firms and government agencies. Large corporations, notably in consumer goods, finance and telecom, were also overly important to a newspaper’s advertising revenue.

As revenues rose and the newspapers became wealthier, many proprietors began treating the newspapers as their core business (Ninan 2007: 205). This was a marked difference from the past when it was not uncommon for the newspaper to be cross-subsidised by earnings from other businesses. Increasingly, the largest newspaper owners came to see media as their financial milch cow. However, this in turn meant the newspapers were increasingly dominated by their managements who, in turn, preferred editors who were unlikely to oppose their interventions.
After some attempts by the government to block the idea, foreign investment in newspapers was allowed in two steps in 2002 and 2005. This was a boon for many smaller, cash-strapped newspapers in particular but also “set in motion the process of thinking about surviving in a competitive—rather than a protected—environment” (Kohli-Kandekar 2017: 26). Anyone working in a paper that became partially owned by an investment fund immediately experienced a new managerial environment in which cost-cutting, greater focus on immediate financial returns and the like became the norm. The owners of the biggest media house, Bennett Coleman, took this to its logical conclusion. Editors were marginalized by the firm and, in some publications, done away with altogether. The company’s flagship publication, the *Times of India*, even did away with editorial pages in some of its edition (Ninan 2007: 274).

While corporate influence on editorial policy was neither new in India or necessarily more malign than that of the government, it became much more evident and intrusive from the 1990s onwards.

**The Pressures**

India’s press in the 1990s and the 2000s began to undergo considerable internal transformation as its managers began to assert themselves over the newsrooms. While economically the sector boomed, within a few years it began to face a number of major challenges.

One was corporatization. The enormous economic revenues that media experienced in the 1990s and the 2000s led to a corporatization and managerial takeover of newspapers, and later television made the newspapers more risk averse and conservative. India’s English newspapers in particular became less concerned about investigative reporting, and more focussed on the aspirational desires of their readers and lifestyle reporting. Editors, once seen as larger than life figures in India, became news managers in most newspapers with minimal power and faceless to the wider public.

Two was the shift in circulation and revenues within the industry away from the elite English newspapers to vernacular language counterparts, especially those in the Hindi-speaking parts of the
country. From the early 2000s, a combination of rising literacy, increased individual wealth and expanding political awareness led to a huge surge in newspaper reading and vernacular newspapers in the Hindi speaking areas of north and central India. By 2002, the Indian Readership Survey showed that the two largest Hindi newspapers each had readership that was more than double than the largest English newspapers. It is a gap that has only grown over the years. Between 2000 and 2005, overall growth in newspaper readership in India was 28 per cent. Among Hindi publications the figure was 67 per cent (Ninan 2007: 86, 91).

Hindi language newspapers, often representing individual parties or businesses close to a politician or even a specific community, saw less benefit in objectivity or fact-checking than their mainstream English language counterparts. While the larger vernacular papers often strove for high standards, many took it for granted that they represented a point of view and that this should dominate their coverage. Many publishers were happy to leverage their influence to get other commercial benefits. They were marked with “a cosier relationship with local politicians, and far more give and take than journalistic ethics might dictate. The political linkages were useful to obtain land for their offices and presses as well as commercial ventures” (Ninan 2007: 204). Sectarian and communal prejudice is not unknown among Hindi newspapers, many of which prefer to reflect the biases of their readers rather than ride above them (Ninan 2007: 227).

However, with their circulations and revenues rising, these vernacular papers have been successfully crowding out the older English language press who, in turn, have been steadily losing readers to the Internet and mobile-based news. It is no surprise that many of the newspaper houses best known for their English mastheads have invested in vernacular papers over the past decade, recognizing this is the future.

Third game-changer in the media landscape is the television explosion of the past 30 years. Rather than mimic the slow devolution of Indian newspapers, the television industry quickly developed many of the print’s present ills and did so in a very short
span. The television sector is intensely competitive in India with hundreds of news channels fighting for a few percentage points of viewership share. The sector was originally largely unregulated and remains largely self-regulated in terms of content. In many television channels, right from their creation, owners and editors were often the same with the latter often owning equity in their channels. Television is also much more dependent on government licenses, clearances and even advertisements than newspapers are, a reality that owners always keep in mind. However, Indian private television also faced competition from social media within a decade of its existence and quickly shifted to a format that emphasized opinion over news and, arguably, began to provide debate almost in the form of competitive sports.

Among the first private channels to be launched, for example, NDTV was and remains known for its sobriety. However, it broke with the “old style media company where there was a clear divide” between owners and editorial staff and its principle owner was also its leading anchor (Sanghvi 2017). NDTV also became embroiled in various financial issues because, like most television news channels, it struggled to make a profit in a hypercompetitive market.

Only channels which cross-subsidised their news channels with entertainment channels or found funding through other means could survive. This in turn meant that TV news proprietors were increasingly driven by every motive other than an actual media interest. A cursory analysis by one media commentator concluded that “of the list of 135 channels” about a third “are owned by companies or individuals not interested in building a news brand.” Many of these were largely political instruments or created by a business company to garner influence (Kohli-Kandekar 2017: 150).

Within a few years, one NDTV anchor, Arnab Goswami, concluded that demographic and cultural changes in India meant that the traditional TV format would not work. In particular, as he told an interviewer, he recognized the existence of “a newly emerging middle class which had benefitted from a decade of growth. These were people who had no respect for (and even resented) the old ways.”
Goswami, whose aggressive style of television debate is controversial in India, saw an opportunity in appealing to what he saw as a new Indian character. He deliberately, for example, got speakers on his shows from outside the normal Delhi circles. He also began mixing English and Hindi in his programs, recognizing this was what the general public was used to. Most important, he realized that the mainstream English television channels represented barely 0.4 of the total TV viewership and therefore were vulnerable to a new, more inclusive and aggressive format. He also abandoned the idea that an anchor should not have an opinion, regularly abused some of his guests and made clear his political biases (Sanghvi).

Goswami found a winning strategy for TV news, but the solution was to create a platform that was all abrasive opinion and open political bias. It expressed strong opinions but allowed little in the way of dissent within the parameters of its own programming. The state of Indian news television became evident when almost every other channel began to mimic his corrosive style.

Public and the Press

A number of academic studies have argued that India, over the past few decades, has made a transition from an elite to a mass media market, a process only accelerating with the spread of mobile phones and social media. However, the evidence is that mass readerships and viewships are not necessarily excited at the need for the press to be free and independent. Definitely, the concept of balance is seen as extraneous to debates and arguments in the media.

The spread of Hindi press, for example, was notable for its extreme partisanship and localized roots. Leaders of caste-based parties often reacted to press criticism by claiming that the newspapers were owned and curated by upper caste enemies. The newspapers, at least until the mid-2000s, developed the practice of hiring stringers across the rural and small town landscape to provide inputs. But many of them treated their jobs as part-time duties and learnt to exploit their newspaper’s standing to assist their own agenda. On top of all this, paid news arrived in 2005. While there was
considerable negative discussion about the concept, it had no impact on circulation. But readers did at least cease to pay much attention to paid articles and features. This led many political parties and even politicians to launch their own newspapers and television stations in recent years. (Ninan 2007: 17).

The impact of all this is hard to quantify. But in effect the next generation of Indian newspaper readers, a group who fed newspaper expansion through the 1990s and 2000s, came to assume that the media was biased, corrupt and as incapable of objectivity and truth as the volatile political and cultural milieu that it existed in.

This may explain why, in India at least, the government tends to have far greater credibility than the media among the larger Indian public. Indians are generally generous in their views about national institutions. Their positive rating for Indian media is the third highest in the world of the Edelman Trust Barometer surveys. However, trust in government tends to rank about 10 percentage points higher than media and has done so consistently over the years (Thukral 2018 and Grover 2018). Other surveys come up with similar or worse figures (BestMediaInfo Bureau 2018).

**Conclusion**

The freedom of India’s press rests on three broad pillars.

One is the nature of the media sector itself. The most evident reason why the Indian press does eventually fit all the news fit to print is the sheer number of newspapers, television stations, and websites that exist in the country. This easily runs into tens of thousands. The fierce competition among them ensures that while a government or corporation can hold back a story for a while, it cannot do so forever. And once a story gets out into the larger news ecosystem, it will spread far and wide. This diversity continues to be part of the Indian diversity.

As noted above, India’s media is riddled with political owners, profit driven investors and the like. But it remains highly argumentative and journalists remain among the best informed class of people about their country’s ills.
Two are the institutions that allow the media to function. The most important of them in terms of providing the legal space for the press to work is the Supreme Court, an institution that remains committed on this front and draws continually from the precedents set in other Anglo-Saxon courts. Any major newspaper can face hundreds of lawsuits at a given time and it is common for them to have several legal firms to handle them. But the Court has almost never ruled against the media when it is sued, though it can take its time about making that decision. The second are the self-regulating bodies that govern much of media, including the Press Council, and remain largely in the hands of the media houses themselves.

With newspapers increasingly owning themselves, the corporate influence on them is limited. But advertisers wield considerable clout given the financial model that most newspapers use. Television news floats in red ink because the fragmented nature of their market, something that ensures they also receive a sliver of the total advertising revenue.

The third pillar is public opinion. The Indian public revel in their media and despite everything remain quite confident that the newspapers and television stations are important to the national discourse. But a nation with so many poor is also one that is less concerned about constitutional niceties and political information theory.

The Indian media, when under siege from the government, can expect minimal support from the public.

One change that is starting is the early attempts by wealthy Indians to endow journalism to provide the financial basis for an independent media. This was seen in the donation structure set up by Tehelka magazine when it was launched. The Media Foundation, which has been funded by some of India’s largest tech entrepreneurs, is a more promising organization and already supports a number of websites like thewire.in.

While there has been considerable concern about whether the rise of right wing Hindu nationalist sentiment has proscribed the freedom of the press, the evidence for this is scanty. The number of
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journalists killed in India remains a matter of alarm, but remains within the pattern of the past few decades (Committee to Protect Journalists 2016 and Faisal 2018). A growing public concern about fake news will, hopefully, result in a greater wariness about the problems of social media.

Any Government in India, whether that of a Narendra Modi or an Indira Gandhi, will exert pressure on negative publicity of any variety. Various instruments of state control remain and will remain so long as the government retains a large economic and regulatory footprint. It is the structure of the media industry and the degree of public awareness about this issue that determines the ability of the press to withstand or ride out such pressure.

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There’s an old adage that goes, “If you are not a liberal at 25, you have no heart. If you are not a conservative at 35 you have no brain.” Variations of this cliche usually involve replacing the words liberal and conservative with the ideological divisions du jour, usually in the first half of the sentence. The saying has existed in many forms throughout the last couple of centuries, censuring people for lacking a heart if they were not a socialist or communist or revolutionist at the supposedly pivotal age of 25. This apparently astute aphorism has antecedents ascribing it to an assortment of acclaimed authors and authorities on all affairs administrative. François Guizot, Victor Hugo, George Bernard Shaw, King Oscar II of Sweden, Benjamin Disraeli and of course, Winston Churchill (who, along with Oscar Wilde and Mark Twain, forms the holy trifecta of the final resting places of mis-attributed quotations) have all been cited as the originator of this remark. However, the earliest known version of this bromide comes from Claretie (1875: 55), where it’s referred to as the Burke Paradox.

It purports to use the example of the shifting political stances of Irish author and statesman Edmund Burke, who started off as a Republican—a term that, despite its modern American association with the very conservative Republican Party, was the 18th century equivalent of a liberal—by expressing support for the struggle of Britain’s colonies in what eventually became the United States of America and famously leading the crusade to have Warren Hastings impeached for his crimes against humanity during his reign of terror as the British East India Company’s Governor-General of Bengal.
However, he later abandoned these liberal (for its time) principles as he decried the destruction of the monarchy in revolutionary France and actively urged Britain to go to war with the French Republic for the restoration of the aristocracy. Furthermore, Burke’s expressive and expansive exhortations for the efficacy and indeed essentiality of establishment ideals, such as that universal morality exists and should be solely derived from a state religion, that the role of government should be limited to the enforcement of private contracts, and that social and political injustices and inequalities are not things that need to be remedied but are a natural processes that dictate the course of human history, have led him to become the Father of Modern Conservatism.

In his own time, the great feminist and Republican thinker Mary Wollstonecraft (1790: 88) rebuked Burke in her famous *A Vindication of the Rights of Men*, where she expressed her goal was to show the true colors of Burke’s conservative ideology, “stripped of the gorgeous drapery in which you have enwrapped your tyrannic principles.” Over two hundred years later, Christopher Hitchens (2004) noted that: “if modern conservatism can be held to derive from Burke, it is not just because he appealed to property owners in behalf of stability but also because he appealed to an everyday interest in the preservation of the ancestral and the immemorial.” The interest in the preservation of the ancestral is an often under-rated phenomenon that helps us understand what makes the young people of any country swing liberal or conservative, and is a good starting point to look at why, according to the data, young India is a lot less liberal than their counterparts in other corners of the world.

**New India, Old Ideas**

One of the most important factors to consider when examining the ideas that have emerged from India is a critical facet of the nation’s social structure that is often insufficiently analyzed despite its pivotal role in defining the idea of India. It is the fact that Indian history—particularly India’s social history—is a largely unbroken umbilical cord that stretches back to nearly 3,000 years ago. There have been shocks, upheaval, and the incessant introduction of
new ideas, yes; but unlike the history of the West or the history of other great ancient civilizations, there has never really been a clean break with the past. The introduction of Christianity in Europe, the introduction of Islam in the Middle East, and to a certain extent the introduction of Communism and the Cultural Revolution in China, all resulted in the creation of fractures in the social continuity of these societies. India has no such precedence. Despite the many trials and tribulations of Indian history, social traditions and customs have carried on unabated for millennia, with the occasional incorporation of new ideas and technologies, and the even more occasional rejection of a bad practice. As a consequence, the age-old idea that reverence to the traditional is the beginning of wisdom is not seen as a belief as much as it is accepted as a basic fact of the universe.

A 2017 report by the Centre for the Study of Developing Societies (CSDS) and the Konrad Adenauer Foundation (KAF) surveyed over 6,000 young Indians from the ages of 15 to 34, and from diverse religious backgrounds, spread out over 19 states, and who bridged the various divides that exist within the modern Indian polity viz., urban and rural, wealthy and economically disadvantaged. According to this survey, around 14 per cent of India’s youth identified as ‘very liberal’, while 11 per cent identified as ‘very conservative’, with the majority split in the gray areas between ‘somewhat liberal’ and ‘somewhat conservative’ (CSDS-KAS 2017: 58). Overall, the report highlighted a 52-48 split between liberal and conservative values among young Indians. However, while looking into the individual markers that closely align to liberal values, i.e. recognizing the inherent equality of all people and the promotion of freedom for the individual in all matters of life, liberty, and the pursuit of happiness as they see fit, young Indians still overwhelmingly expressed reservations towards lifestyles and choices that do not conform to traditional social norms as dictated by their parents and ancestors.

53 per cent of young Indians displayed a patriarchal mindset, with the numbers being as high as over 80 per cent for young people from villages (CSDS-KAS 2017: 52). Interestingly, a large number of young Indian women (40% according to CSDS-KAS 2017: 51) displayed a patriarchal mindset in their views, expressing their
agreement (either in part or fully) with antiquated ideas such as it is not right for women to pursue their careers after marriage or that wives should always listen to their husbands and perhaps most surprisingly of all, that girls should not wear jeans—a point that's highly contentious in many conservative parts of India as well as in many colleges in the heartland of supposedly liberal-thinking urban India. When it comes to the issue of homosexuality, young India is as conservative and indeed repressive as many of the world’s worst offenders on the issue of LGBT+ rights, with 75 per cent of young Indians disapproving of same-sex relationships (CSDA-KAS 2017: 54). Perhaps even more surprising is the tendency of young India to disapprove of heterosexual relationships that do not conform to the ideal of an arranged marriage, with 67 per cent of young Indians disapproving of men and women living together before marriage and 53 per cent disapproving of men and women even dating before marriage (CSDA-KAS 2017: 54).

However, one simultaneously witnesses the widespread adoption of Western ideas among young Indians today, such as being fashion conscious, with 61 per cent of young Indians expressing that they were fond of wearing stylish clothes, 59 per cent stating that they were fond of keeping the latest mobile phone, and 58 per cent expressing their fondness for the latest in shoes or sandals (CSDS-KAS 2017: 83). The CSDS-KAS report highlights that their findings appear to echo the idea expounded upon by sociologist Dipankar Gupta 2000 described a superficially modern Indian middle and upper class who can be characterized by their adoption of modern consumer habits and lifestyles, while refusing to imbibe the more critically important modern ideals of equality and acceptance.

Respecting Authority and What Creates A Young Liberal Indian

While most young people in what is loosely referred to as “The West” (an amalgamous conglomeration of societies that consist of Europe, North and South America, and most of Oceania) tend to live separately from their parents at the early stages of adulthood, and indeed actively strive for ideological independence from their parents’ influence much before that, most Indians tend to live with
and actively follow the precepts of their parents well into adulthood. The CSDS-KAS survey highlighted that 94 per cent of unmarried Indians between the age of 15 and 34 live with their parents, and 33 per cent continue to live with their parents after marriage. When combined with a traditional social outlook that emphasizes the importance of listening to authority figures—which is reinforced at every stage of an individual’s life in India, from school to college to the workplace—the end result is that most of the opinions that young Indians perceive to be their own are rarely so.

Young Indians are more likely to imbibe, without question, the ideological biases and views of their parents, teachers, and even their professional mentors, than to question these ideas and form new ones of their own. Indeed, the small percentage of very liberal Indian young people are often first and foremost iconoclasts or products of a liberal-thinking household. Indians who come out of the closet and accept their LGBT+ identity often find that the toughest part of the process is not dealing with prejudice in society or institutional discrimination, but garnering acceptance from their family members and immediate circle of authority figures.

Fighting the system takes many forms, but the first is almost always education. While the number of young Indians with access to education in the form of institutionalized school and college learning is growing everyday, the Indian education system is still largely built on the foundations of the ideals of pre-independent India. The education system created by the British colonial government in India was done so for the express purpose of creating, as Lord Babington Macaulay stated in his 1835 *Minute on Indian Education*, “a class of persons Indian in blood and color, but English in tastes, in opinions, in morals and in intellect.” Thus, Indian school and college education emphasized rote learning across a wide variety of subjects that were seen as and subsequently taught as ideas that were fundamentally un-Indian. This led to most Indian students treating their academic life as a necessary first step in a long journey towards achieving financial self-actualization, rather than as a process of individual self-fulfillment through learning.
Even after India achieved its independence, the education system forged in the cauldron of colonialism remained, and while there have been numerous attempts to inculcate a more holistic pedagogical paradigm, the modern Indian education system has retained this lamentable focus on listening to and parroting the views of their teachers and professors as the only way to truly call oneself educated.

Thus, the social value systems are predicated on the idea that obedience to one’s parents, and other authority figures within the community, is the only path towards achieving moral and ethical realization. This is combined with a formalized system of education that continues to preach an almost blind acceptance of the ideas (academic and otherwise) espoused by one’s authority figures at school as the only true path to education. The result was that vast swathes of educated, young Indians emerging into adulthood were firmly shaped by the views and ideas of the previous generation, who were themselves similarly molded by their preceding generation, and so on. In this climate, it’s no surprise India’s liberal youth are consistently undone by a majority that identifies themselves almost exclusively through the moral and ethical lens of their parents and authority figures.

The West has seen a series of regular rejections of old ideas, perhaps the most famous of which was the consciousness revolution of the 1960s. These movements emerged from a core of constant strife between young and old for the right to reshape the zeitgeist as they see fit. India, where young liberals must first fight their own programing before they can begin to fight ‘The Man’, is only starting to witness the preliminary stages of such a consciousness revolution, and is still some distance away from the kind of social change that was wrought upon Western society in the 1960s.

**Digital Ekalavyas**

The tale of Ekalavya is one of the most famous stories in the sprawling mass of folk tales and half-remembered histories that make up perhaps the greatest epic poem the world has even known, the *Mahabharata*. It tells the story of the archer Ekalavya, whose name
literally means self learned. This is either the most fortuitous example of the phenomenon of nominative determinism or an indication that the character was named for his deeds. After being rejected by Dronacharya (also known as Drona), the greatest guru in the arts of warfare, Ekalavya decides to sculpt a statue of Guru Drona out of mud and proceeds to practice archery in front of it everyday. Eventually, his skill with the bow reaches such a level of excellence that he is able to silence a barking dog by filling its mouth with arrows in such a way that the dog is left unable to make a sound but also unhurt by the arrows. The story of Ekalavya is used as a metaphor in India to this day as an example of a self-taught savant and as a lesson that with hard work, determination, and a good motivational poster (or in this case, a motivational sculpture) one can overcome the absence of an established system of talent identification and nurturing to achieve eminence in your field.

Young Indian liberals must often feel like Ekalavya, as they find themselves in a social, political, and educational paradigm that extols values that are often antithetical to the idea of liberalism itself. In the absence of a strong counter-culture, save for in the elite pockets of India’s urban centres like Mumbai, Delhi, and Bangalore, young Indian liberals—particularly those from India’s smaller towns and villages—often find themselves having to repress or at least be subtle about their liberal leanings. What they lack in a mud statue of Guru Drona they make up for with access to liberal works, usually in the form of books and the odd friend and mentor from whom they can learn (either directly or by ideological osmosis) the core tenets of the liberal philosophy: equality, justice, acceptance, and freedom of thought and expression. Once again, these resources are almost always easier to obtain for young Indians from the middle and upper classes living in India’s major cities. Thus, there existed an ideological gap between a more liberal Indian youth living on islands of enlightenment adrift in a sea of darkness and conservatism. Liberal India is a nation within a nation, a collection of city-states that extend from Bandra in Mumbai to Hauz Khas in Delhi, and Indiranagar in Bangalore.
However, the advent of globalization has enabled the growth of liberalism among young Indians through the unintended consequences of its two biggest impacts on modern India: the economic liberalization of the Indian economy in 1991, and the communications revolution of the 21st century. The opening up of the Indian economy was a result of an IMF and World Bank bail out, which was necessitated by an economic crisis borne out of devaluation of the Indian rupee and a current account deficit, which had its roots in the late 1980s and took India to the brink of economic disaster in the early 1990s. This eventually created the foundation for an economic miracle of sorts, as the Indian economy began to expand rapidly, which set the stage for the communications revolution that is still underway.

From telephones being a rarity even in the houses of India’s urban middle class at the turn of the millennium, India is second-largest market for mobile phones in the world. There are currently nearly 1.2 billion phones in India, of which 98 per cent are mobile phones,¹ which covers nearly 90 per cent of the country’s population. Furthermore, India is also home to the world’s second-largest number of internet users, with over 500 million Indians with broadband subscriptions² and many more accessing the internet through their smartphones. This access to the total of humanity’s knowledge at their finger-tips has enabled the emergence of hundreds of millions of digital Ekalavyas in India, young people no longer limited to learning only from their teachers at school or from their parents at home. Thus, digital Ekalavyas are eschewing established epitomes of education and experiencing an epistemological evolution, enabled by enhancements in easily accessible and economically equitable electronic equipment.

However, the story of Ekalavya has a tragic end. When Guru Dronacharya finds out about Ekalavya’s skill, he worries that this low-born will outshine his star pupil, the prince Arjuna. Ekalavya

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¹. TRAI 2019.
². Ibid.
expresses that he views Dronacharya as his Guru, despite never actually being taught by him. Dronacharya states that if that is the case, he is owed payment for his teaching. Ekalavya obliges and asks his Guru what he can offer in exchange. Dronacharya demands Ekalavya chop off his right thumb, sans which he will be unable to ever fire another arrow. Despite knowing that his teacher’s demand will take away his prodigious skill, Ekalavya obliges. Similarly, while the internet and the communications revolution has given hundreds of millions of young Indians near unlimited access to knowledge, allowing them to learn new ideas about freedom, equality, and their right to pursue a lifestyle they choose, this same medium is being used to spread fear, hate, and disinformation.

Fear and Loathing in Digital India

While the communications revolution and the democratization of access to information has been a largely positive movement on the whole, it has also created a new set of problems that threaten the fabric of liberal societies and indeed the very idea of truth and knowledge itself. The biggest flaw with learning everything on the internet is that there is no way to discern fact from fiction online, as a statement of undeniable fact and the wildest conspiracy theory are equally easy to access, and the latter is usually much more enjoyable to read while pressing the right emotional buttons when it comes to our underlying biases. The fact remains that right-wing fundamentalists were the first to the gun when it came to understanding the potential of the internet in general and social media in particular, and were quick to weaponize it effectively. This has, in turn, led to vast numbers of young Indians being seduced by the promises of ideologies that cloak their agenda of divisiveness and hate under a veneer of nationalism and fear.

All young Indians know of an uncle—for they are almost always uncles—who whenever confronted by a new advancement in science and technology or made aware of new ideas emanating from the wider world in general, proclaims that it was India who actually came up with it first. Thus, the story of the Hindu God Ganesha having an
elephant’s head grafted onto his body after he was left decapitated due to an unfortunate misunderstanding with his father Shiva, the Hindu God of Destruction (even when they are Gods, Indian parents do not react well to their children being insubordinate), is touted as evidence of India being the first to invent plastic surgery. Another popular Indian uncle theory is that the story of flying chariots in the Hindu epic poem, *The Ramayana*, bears evidence of ancient Indian aircraft. However, one aspect where the stereotypical Indian uncle might actually be on to something is the weaponization of social media for political gain.

The election of Narendra Modi in 2014 was an afterthought. His right-wing nationalist government won the biggest mandate seen in India for 30 years. The path to his Prime Minister-ship, however, began with the formation of the IT Cell for the Bharatiya Janata Party (BJP) in 2007 (Dasgupta 2018). It was the first time a political party in India had decided to create a specific wing that would target the digital audience of the country. Young India was lured online by consistently cheaper data rates and the excitement of social media platforms like Facebook and Twitter, as well as by online messaging platforms like WhatsApp (where, it is estimated that today, roughly one in five global WhatsApp users are Indians).

Realizing the exponential growth and untapped potential of the digital Indian audience, and the fact that it consisted largely of sections of the Indian voter base that had historically low turnout numbers but possessed vastly higher capacities for spending power and sharing information, Narendra Modi joined Twitter in January 2009. His populist agenda found its audience early online and over the course of the next five years, the BJP built up its brand across online social platforms, making many young Indians who had been liberal earlier turn towards the ideology of right-wing Hindu fundamentalism. While the liberal Indian politician Shashi Tharoor was a similar early adopter, joining Twitter in March 2009, it took six years for Modi’s supposed political rival, Rahul Gandhi, to join the social networking site. When he finally joined Twitter in April 2015, it was almost a year after Narendra Modi had been sworn in as India’s 14th Prime Minister.
Today, Narendra Modi has 46 million followers on Twitter, the 3rd highest among world leaders, behind Barack Obama (105 million) and Donald Trump (59 million), and 21st in the world overall. With the exception of CNN Breaking News, Prime Minister Modi has more twitter followers than any other news organization in the world. To an increasingly large number of young Indians, their Prime Minister is their first source for everything going on in the world.

The Future for Young Indian Liberals

The internet has nevertheless played a critical and unmistakable role in enabling the growth and proliferation of liberal ideas among young Indians. However, liberal ideas of freedom, justice, and equality are still only part of a fringe movement within India, one that’s predominantly centered on the middle and upper classes and exists within India’s major cities. It appears that liberalism has a long way to go before it can expect to become the dominant ideological foundation of not just the Indian polity but of wider Indian society itself, as it currently is in Europe and North America. Many young Indian liberals are undertaking concerted efforts to sensitize their peers in young India to the benefits and indeed inherent importance of a liberal belief system. And the growth of liberal ideas among young India is visible through surveys, but also through more intangible means, both in everyday life and in the media coming out of India.

Freedom of expression is still not ideal in India, and people are regularly threatened (and very occasionally, even jailed) for art that would be tame by the standards of even prudish Western societies. Right up to the late 1990s, a kissing scene in a mainstream Bollywood film would have been scandalous. In modern-day Bollywood, depictions of pre-marital sex (albeit sans nudity) are common and barely commented upon. In 1998, theaters screening the Deepa Mehta film *Fire* were attacked by members of the currently-incumbent BJP and its associated organizations, the Shiv Sena and Bajrang Dal, for the film’s depiction of a lesbian relationship. Early in 2019, a mainstream Bollywood movie ended with a lesbian couple living happily ever after. The movie was a financial success at the box
office and not a single theater was attacked. In the meantime, there is an explosion of subversive art happening in the Indian underground, from rap music that speaks in the language of the oppressed (and swears as freely as an Eminem song) to spoken-word poetry and storytelling that regularly decries the institutionalized injustices of sexism, casteism, racism, and homophobia.

In everyday life, one sees greater allowances made for individual freedom. Even erstwhile bastions of conservative thought are making way for new liberal ideas. The right-wing Indian government launched a campaign on empowering women through education and encouraging more young women to join the workforce, an idea that was anathema to conservative India a few decades ago. For all the hatred and vitriol of social media, even conservative Indians are slowly adopting liberal ideas such as the equality of all people regardless of gender and are slowly warming to the idea of giving legal status to homosexual relationships. The recent decriminalization of homosexuality in India was a step in the right direction that was admittedly long-overdue, but it was a step nevertheless.

These infinitesimal acts of progress are drops in a flood of liberal ideas that are being spearheaded by young Indian liberals from all backgrounds and walks of life who are transforming and empowering India like never before. The surveys say that young people in India are not liberal, albeit by a small margin. Nevertheless, it is merely a matter of time before the country approaches a tipping point and witnesses the kind of consciousness shift that the West underwent in the 1960s. As numbers of the tribe of liberal young Indians continues to increase unabated, it will undoubtedly help shape the zeitgeist in which the next generation of young Indians will live.

References


To think and speak with reason and take into account as many facts as possible is typical for a person with a liberal mindset. Liberal discourse is guided by rational assumptions, by facts and figures and not by irrational emotions and prejudice. The rationalist perspective is challenged in a political environment in which ignorance and often also deliberate falsification of the truth are on the rise: Fake news and misinformation have become a serious issue with detrimental effects for the quality of the political competition also in this part of the world.

“With the liberal demand for more rational, enlightened, and productive government... came the demand for more statistical knowledge collected and made available for debate in the public sphere,” write Malito et al. (2018: 2) in the introduction to The Palgrave Handbook of Indicators in Global Governance. This collective work provides a comprehensive overview of indices, indicators and rankings, their raison d’etre and controversies surrounding them.

“We seem to be living under a new avalanche of numbers, and in particular an avalanche of indicators beyond the state and purporting to create knowledge on a global scale,” write the authors (Malito et al. 2018: 6). They mention “a frenzy of ratings and rankings” and identify 95 such rankings, ratings and indexes, of which the overwhelming majority has emerged as globalization advanced.

The quoted number is an understatement. The “Catalogue of Indices 2016: Data for a Changing World” published by the International
Peace Institute (IPI)\(^1\) lists more than 200 indices and indicators that provide data-based assessments on a plethora of themes such as the United Nations’ Sustainable Development Goals (SDGs), conflict, the environment, freedom, gender, governance, health, socioeconomics and technology. “These indices give us approximations of where goals have been achieved and where more work needs to be done,” write the authors of the IPI on their website.

The use of empirical data for political and other campaigns has become a preferred instrument also for civil society in India where evidence or research based advocacy has proliferated in recent years. Many groups use research data to argue their cause and denounce grievances. In this regard, India has come a long way also because of the Right to Information Act (RTI) which provides advocacy groups and citizens access to huge amounts of critical data.

In this chapter, we will assess selected international indices which measure parameters relevant for liberal governance. We will have a closer look at how India fares in rankings regarding political and economic freedom, the freedom of the press and on the internet, the ease of doing business and the competitiveness of the economy, the quality of democracy and governance in general and finally perceptions on corruption and the rule of law.

Regardless of their thematic diversity the various indices and rankings more or less all follow a clear—political—objective: with their data, the indicator producers aim at celebrating the achievers and, on the other end of the spectrum, name and shame the underachievers. The assumption is that bad rankings may entice those in power to adjust their policies.

Whether you like the data or not, the indices add an element of objectivity to policy debates that all too often are guided by emotions and irrationality.

**Freedom in the World Report**

A product of the Cold War, the Freedom House’s annual review on the state of freedom in the world started in the 1950s. Following

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\(^{1}\) [https://theglobalobservatory.org/2016/09/catalogue-indices/](https://theglobalobservatory.org/2016/09/catalogue-indices/)
a refined methodology and scoring process (details of which are published in the reports) a team of in-house and external experts from academia, think tanks and the human rights community composes numerical ratings and adds descriptive texts on the state of political rights and civil liberties. Freedom in the World 2019\(^2\) covers 195 countries and 14 territories and categorizes them into three groups: free, partially free, not free.

The Washington D.C. based organization does not hide its ideological leanings: “Freedom in the World operates from the assumption that freedom for all people is best achieved in liberal democratic societies.” The group concedes that “an element of subjectivity is unavoidable,” but adds that “the ratings process emphasizes methodological consistency, intellectual rigor, and balanced and unbiased judgments.”

With the highest possible score possible for “most free” at 100 and the lowest figure (for least free) at 0, India’s “Aggregate Freedom Score” for 2019 was 75. This is a decline by two points compared to the 2018 listing.

Traditionally, India has been the only country ranked “Free” in South Asia. “A robust electoral democracy with a competitive multiparty system”, Freedom House gives top marks for the electoral process. The independent Election Commission earns favorable mention as does the “realistic opportunity for the opposition to increase its support or gain power through elections”.

Less favorable has been the recent outlook on the freedom of expression and belief. “Due to dozens of violent incidents over the past four years in which Hindu extremists have attacked others for the alleged mistreatment or slaughter of cows”, Freedom House downgraded India in this category. One other score has been reduced “because journalists face increasing pressure, harassment, and physical violence”.

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Importantly the numerical ratings do not reflect conditions in what Freedom House terms “Indian-controlled Kashmir,” which is ranked as “Partly Free”.

**Freedom on the Net**

A more recent addition to the annual ranking published by Freedom House is the *Freedom on the Net* report launched in 2009. “As we increasingly rely on the internet, it is important that the rights we enjoy offline are also protected online,” writes the organization on its website. The methodology is very much the same as that of the sister publication.

For India, the results, however, are far less favorable. In this report, India is ranked as “Partly Free” in 2018 with an “Internet Freedom Score” of 43 out of 100. Compared to the year 2013 when the score was 47 (out of 100) this is a significant decrease.

Freedom House highlights “a staggering increase in the number of local internet shutdowns and new rules regulating connectivity restrictions.” The report also says that “misinformation, rumors, and fake news online incited real-world violence.” While the analysts praise the Supreme Court ruling of 2017 that privacy is a fundamental right as a “positive development”, this, in the eyes of the report writers, does not offset the negative developments.

From a liberal Indian perspective, it’s only small comfort that neighbouring Sri Lanka, Bangladesh and Pakistan are even worse off than India regarding freedoms in the digital space.

**World Press Freedom Index**

Founded in France in 1985 by a group of French journalists Reporters without Borders (RWB) is an international NGO that advocates for the freedom of the press and information internationally. "Freedom of information is fundamental in any democracy. Freedom of expression and information is the most important of freedoms,” the organization declares.

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Over the years, the group has expanded to many parts of the world and earned international acclaim for its work monitoring attacks on the freedom of information, its campaigns against censorship and the support for persecuted media workers.

The annual World Press Freedom Index\(^5\) is an important point of reference for advocacy groups, governments and international organizations interested in media freedom. Much like the Freedom in the World Report, RWB gives scores that range from 0 to 100, with 0 the best and 100 the worst. The index is based on a combination of qualitative analysis by correspondents in various parts of the world with quantitative data on abuses and acts of violence against journalists during the period under scrutiny. The questionnaire consists of 87 questions that evaluate criteria such as pluralism, media independence, self-censorship and the legislative environment.

More eye-catching than the scores are the respective national rankings. In the list of 180 countries, India in the past years has hovered around position 140. Compared to the rankings a decade earlier this is a significant deterioration: In 2008, RWB ranked India on position 118 (of 173 nations) and in 2009 the country was given position 105 (of 175 nations).

Apart from the unfavorable ranking, the wording of the World Press Freedom Index report on India is equally damning. Under the header “Deadly Threat from Modi’s Nationalism”, the organization presents a critical assessment of media freedom in India:

With Hindu nationalists trying to purge all manifestations of ‘anti-national’ thoughts from the national debate, self-censorship is growing in the mainstream media and journalists are increasingly the targets of online smear campaigns by the most radical nationalists, who vilify them and even threaten physical reprisals.

The report mentions the murder of three journalists in 2017 and 2018 respectively and ends with references to the difficulties media workers are confronted with in Kashmir:

Coverage of regions that the authorities regard as sensitive, such as Kashmir, continue to be very difficult. Foreign reporters are barred

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\(^{5}\) [https://rsf.org/en/ranking](https://rsf.org/en/ranking)
from the region and the Internet is often disconnected there. When
not detained, Kashmiri journalists working for local media outlets
are often targets of violence by soldiers acting with the central
government’s tacit consent.

Democracy Index

The objective of the Democracy Index compiled and published
by the Economist Intelligence Unit (EIU) since 2006 is to measure
the state of democracy in 167 countries. Based on 60 indicators, the
report quantifies the situation in five different categories. These are:
electoral process and pluralism, functioning of government, political
participation, political culture, and civil liberties.

In addition to the numeric scores, the EIU assigns each country
to one of four regime types: full democracy, flawed democracy, hybrid
regime, and authoritarian regime. The scores are based on a mixture
of expert assessments, public opinion polls, and other empirical data.

In 2018, India was on rank 41 of 167 countries and grouped in
the category of “flawed democracies” together, with among others,
Japan, the USA and EU-members France, Belgium and Italy.

India had reached her best position in 2014 when the country was
ranked on position 27 globally. Falling back more than ten ranks in
four years may be termed a major set-back: “This is the worst ranking
ever on the index for India,” writes former Election Commissioner
S.Y. Quraishi in a commentary in The Indian Express titled “Slipping
on Democracy”. “This confirms the paradox of India as the world’s
largest electoral wonder, but a flawed democracy,” notes Quraishi.

The drop in ranking is attributed to falling scores in all but one of
the five categories measured. The exception is “political participation”
where India’s performance in the past years has been consistent,
according to the survey. In all other categories the report shows
decreasing scores. The drop is particularly sharp in the category “civil
liberties”; here the score fell from a high of 9.41 in 2014 to 7.35 in
2018.


7. 26 February 2019.
This is not a good report card for the performance of the government of Narendra Modi in an area of crucial importance for the liberal credentials of the country.

**Worldwide Governance Indicators**

First published in 1996, the World Bank’s World Governance Indicators (WGI) are “now well established as one of the standard sets of measures that any researcher or policy analyst must consult” (Johnson 2008). Based on an aggregated mixture of expert- and survey based indicators, the WGI captures six key dimensions of governance: voice and accountability, political stability and absence of violence/terrorism, government effectiveness, regulatory quality, rule of law and control of corruption. For their scores the WGI relies on a combination of sources, and aggregates according to a specific formula.

Over the past decade, the scores for India show a relative consistency. The country earns best ratings in the categories voice and accountability, government effectiveness and the rule of law.

Political stability and absence of violence is the category with the lowest scores. In the past decade, the scores for control of corruption have seen the strongest upward movement of all categories moving up from “percentile rank” 40 in 2007 to rank 49 in 2017.

The “percentile rank” indicates the percentage of countries that rank lower than the indicated country, the WGI explains: the higher the value the better the governance. And according to the World Bank Survey, India has made the biggest leap in better governance after 2007 in the field of fighting corruption.

**Bertelsmann Transformation Index**

For researchers interested in political and socio-economic transformation globally the Bertelsmann Transformation Index is the place to go to. “The Bertelsmann Stiftung’s Transformation Index (BTI) analyzes and evaluates the quality of democracy, market

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HOW LIBERAL IS INDIA?

Economy and political management in 129 countries.” It claims to be “the first cross-national comparative index that uses self-collected data to comprehensively measure the quality of governance”.

The term ‘comprehensive’ is justified, as BTI goes well beyond the aggregation of data and the ranking of scores. Rankings, the German think tank concedes, “necessarily reduce complexity in order to highlight particular differences between individual countries.” According to the Bertelsmann Foundation, rankings cannot replace more thoroughly articulated analysis of a country’s strengths and weaknesses. Together with the individual scores, the BTI provides extensive country reports. In the case of India, the report is close to 40 pages long.

The core of the BTI is the ‘status index’; this ranks the countries according to their quality of democracy, market economy and governance.

From an Indian liberal perspective, the Bertelsmann data may be termed sobering: While the ‘governance index’ score has increased marginally (0.02 points) from 2016 to 2018, the ratings for the quality of India’s democracy and the market economy have declined in the same period: India’s democracy status score went back 0.35 points with the countries global ranking falling back from position 21 to 24. The drop in the market economy status score is smaller (6.42 to 6.32) leading to a drop in global ranking from position 39 in 2016 to rank 40 in 2018.

As the BTI combines numerical assessments with text analysis, it is worth to highlight some of the experts’ commentary: “India’s record as a well-established democracy is excellent,” the report begins and soon later mentions “the growing influence of hardline Hindu-nationalist groups.” This, in the eyes of BTI, is a “highly problematic development.”

The progress report regarding economic transformation may be called restrained:

The reforms have transformed India into a vibrant and dynamic market economy, even though some sectors are still closed to private enterprise and international investment.
The report refers to “considerable reform deficits” and highlights “outdated labor laws” and “a lack of sustained progress in privatization”.

In its “strategic outlook,” the BTI notes that “few results have been achieved so far” in the fight against corruption. And: “To successfully proceed on the path of democratic transformation, India will need to improve its civil rights situation.”

**Corruption Perception Index**

“As a global movement with one vision, we want a world free of corruption. We are leading the fight against corruption to turn this vision into reality”, declares Transparency International, the Berlin-based NGO with chapters in many parts of the world on its homepage.\(^{10}\)

“As long as corruption continues to go largely unchecked, democracy is under threat around the world,” write the authors of the Corruption Perception Index (CPI). Since its inception in 1995, the CPI has become “the leading global indicator of public corruption”, claims Transparency International, the publisher of the reports.

Compared with other indices presented in this chapter, CPI may be termed a ‘single purpose”-report with a singular focus on measuring corruption. Today, the index ranks 180 countries and territories by their perceived levels of public sector corruption. As the title suggests this is a “perception” survey based on personal insights of experts and business people. The CPI also draws on other surveys such as the BTI, the Economist Intelligence Unit (EIU) Country Reports and World Bank data.

Each country is awarded a score which reaches from zero (highly corrupt) to 100 (very clean). “More than two thirds of countries score below 50 with an average score of just 43,” says TI describing a world in which corruption remains widespread. With a score of 41, India has just moved above the international average in terms of corruption according to the 2018 report. This is a marginal, one point rise from a year earlier.

\(^{10}\) These and all other references from https://www.transparency.org/
India’s rank in 2018 was 78 (out of 180 nations surveyed). Seen historically, this is a significant improvement in rank: In 2013, India’s CPI rank was 94. In 2014, the year Narendra Modi and the BJP came to power, the country ranked 85 (with a score of 38).

In spite of the statistical improvements, the assessment of the international anti-graft watchdog is not enthusiastic:

We see little significant movement in (India’s) CPI score. Despite spectacular public mobilization in 2011, where citizens demanded that the government take action against corruption ... these efforts ultimately fizzled and fell flat, with little to no movement on the ground to build the specialist anti-corruption infrastructure required.

**Rule of Law Index**

The rule of law is a cornerstone of a liberal democracy. The rule of law protects the rights of the individual and limits the power of the government. No one is above the law: in a liberal order, this is the essence of equality.

The World Justice Project (WJP) Rule of Law Index\(^\text{11}\) claims to be the world’s leading source of original data on the rule of law. The index is based on more than 120 000 household and 3800 expert surveys in no less than 126 countries.

Similar to other indices, the Rule of Law Index uses multiple indicators across “eight primary rule of law factors,” each of which is scored and ranked. These factors are: constraints on government powers, absence of corruption, open government, fundamental rights, order and security, regulators enforcement, civil justice and criminal justice.

The 2019 report highlights “a negative slide toward weaker rule of law around the world” and refers to a global trend towards “rising authoritarianism.” In 2018, the factor score “Constraints on Government Powers” declined in more countries than any other factor worldwide.

Among these countries with a negative trend is also India, whose “factor score” declined marginally from 0.63 in the 2017-18 Index to 0.61 in the 2019 report.

India’s overall score is 0.51 which translates into a slight “score change” in 2019 and a drop in rank by 3 units. More plausible than these figures, which without explanation leave space for differing interpretations, are the rankings, as they show how countries’ performances compare: In 2019, India’s global rank is 68 out of 128. This is just above the international center line. Interestingly, Nepal and Sri Lanka have a better ranking than India in matters of rule of law. Bangladesh, Pakistan and Afghanistan are listed behind India towards the lower end.

**Economic Freedom of the World Report**

Liberalism supports economic freedom. While liberals and socialists usually agree about the importance of the respect for political human rights and civil liberties, they are at odds when it comes to economic freedom. For liberals, freedom is inseparable and must also entail the freedom to operate and compete in the market place.

Numerous studies deal with the impact of economic freedom on investments, economic growth and the reduction of poverty. The *Economic Freedom of the World Report*\(^\text{12}\) provides empirical data on the correlation between economic freedom and economic success: “The cornerstones of economic freedom are personal choice, voluntary exchange, freedom to enter markets and compete, and security of the person and privately owned property,” writes the *Fraser Institute* in the introduction to the Index.

The Index uses multiple data sets all of which come from third party sources such as the World Bank’s *Doing Business* project and others. This, the *Fraser Institute* says, makes sure “that the subjective judgements of the authors do not influence the index.”

The Index measures the degree of economic freedom in five broad areas. These are “size of government”, “legal system and property

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rights”, “sound money”, “freedom to trade internationally” and “regulation”.

Over the years, the Fraser Institute’s reports have provided empirical evidence that countries with a higher degree of economic freedom enjoy higher investment rates, more rapid growth and, importantly, more success in reducing poverty.

The report also demonstrates that countries with high scores on economic freedom do better when it comes to political and civil liberties and gender equality.

According to the 2018 report (with data from 2016), India’s global rank was 95 (of 162 countries surveyed). This is a notable improvement compared to 2014, the year of the change in government. In that year India was ranked 122.

The analysts recorded the most visible changes in the areas “sound money” and “legal systems and property rights”. On the other side, the data show no upward change in the area “Freedom to Trade Internationally”. In this area, India has actually fallen back between 2012 (with a score of 6.17) to a score of 5.57 in 2016.

In order to get a high ranking in this area, a country must have low tariffs, easy clearance and efficient administration of customs, a freely convertible currency, and few controls on the movement of physical and human capital.

These, this and other reports show, are not the strong points of India’s economy.

Doing Business

“The rankings are unusually influential, and because they are influential, the rankings are also controversial,” writes The Economist following the release of the Doing Business Report late 2018.

Arguably, this World Bank publication is the most publicized and also most talked about index of all. Launched in 2002, the report

13. 30 November 2018.
claims to provide “objective measures of business regulations and their enforcement across 190 economies”.

Unlike the Economic Freedom Index of the Fraser Institute which looks at the big picture, Doing Business focuses on the everyday life of “domestic small and medium size companies” and the regulations applying to them. The report claims to provide:

- quantitative indicators on regulation for starting a business, dealing with construction permits, getting electricity, registering property, getting credit, protecting minority investors, paying taxes, trading across borders, enforcing contracts and resolving insolvency.

Another objective is also clearly stated: “Doing Business encourages economies to compete towards more efficient regulation”.

The survey results are based on field interviews with corporate lawyers and company executives in “the 2 largest business cities.” In India, the World Bank chose Mumbai and New Delhi. Critics have picked at this selection and also noted that “the reports do not match the actual experience of entrepreneurs, and that their methods are too unstable to allow anyone to judge countries over time”.15

Despite this and other controversies, Doing Business has established unparalleled influence with decision makers and investors. This has motivated certain governments to undertake special targeted measures aimed at moving their economies up the scale. According to The Economist, in India “perhaps 200 people, plus others working in state-level scorecards” are employed in this field alone.

The outcome of these governmental efforts is measurable—and respectable: India’s rank in the 2019 survey climbed 23 places and reached rank 77 of the 190 countries surveyed. For the second year in a row, India made a huge jump. In the 2018 ranking, India had achieved a record jump of 30 places to reach rank 100.

Seen in context, in the years of the BJP government, India advanced a whopping 65 places from rank 142 in 2014 to rank 77 in 2018.

15. The Economist, 30 November 2018.
The 2019 Doing Business Report is titled “A Year of Record Reforms”. The World Bank report lists India’s reform activities in a detailed manner and in chronological order: 2018 is the year with the highest number of regulatory reforms with 12 mentions. In contrast, Doing Business reports only one single reform measure or a mere two reforms for 2012 and 2013 respectively.

The Global Competitiveness Index

“Objective, data-driven analysis for dispassionate, future-oriented, and rational policy making”, are the words Klaus Schwab, the founder and Executive Chairman of The World Economic Forum (WEF), uses to describe the Global Competitiveness Index 4.0.”16

“Building on 40 years of experience in benchmarking the drivers of long-term competitiveness”, the WEF says the index is “a much needed economic compass.” Comprising over 100 variables, the data is based on own opinion surveys and publicly available sources.

The WEF-report defines 12 “pillars” of competiveness. These reach from “institutions”, “appropriate infrastructure”, “good health and primary education” to “efficient labor markets”, “market size” and “innovation”. The front-runners in the 2018-2019 rankings are the United States, Singapore, Germany, Switzerland and Japan in that order.

India, in 2018 advanced five spots to rank 58 (of 140 economies). The Indian media celebrated this jump quoting the report that “this is the largest gain among all G20 countries.” However, seen in a historical context, the recent advance does not offset earlier declines. Notably, India had held rank 40 in the WEF’s 2016 Index.

The WEF report ranks India’s “ICT adoption” at rank 117 of 140. Terrorism incidence (which tops the negative list), trade tariffs, female participation in labor force, and freedom of the press—these all achieve dismal scores in the report.

In general terms, the report is ambivalent in its conclusion. On the one side, the WEF applauds “sizeable improvements over the past year” and calls India “a remarkable example of a country that

has been able to accelerate on the pathway to innovation”. However, it also notes that “business dynamism is hampered by administrative hurdles” and that “the country would benefit from increased trade openness.”

Finally, and this may be the main challenge to innovating India comprehensively, the report states:

ICT adoption and innovation capacity are the two areas where the region lags even further behind the rest of the world, with the median performance at only one-third of the global theoretical frontier.

Conclusions

The selected international surveys which measure the state of liberalism provide a mixed picture of the situation in India. The country’s rankings in most reports are average—at best. The biggest democracy on earth is far away from a liberal role model.

All sides acknowledge India’s political elections as a strong point. More recently, this asset has been offset by international concerns about the state of freedom of expression and rising influence of Hindu nationalism and majoritarian tendencies leading to downgrades in the scores for political freedom.

Since the early 90ies, India has come a long way liberalizing the economy with beneficial results for very many Indians. In spite of these efforts, the rankings show that India remains far behind the top liberal reformers in the world. The surveys recognize that—small—improvements have been made over the years. They also show that much more needs to be done before the country has a free market economy.

In short, the surveys show that India, in the more recent past, has become more liberal economically and less liberal politically. So, then, how liberal is India today?

In the end, the answer to this overriding query of the book will remain ambiguous—and subjective. Just like so many things in this incredible country.
References
Johnson, Simon in: “Two Comments on ‘Governance Indicators: Where are we, where should we be going”, in The World Bank Research Observer 23(1): 34, Spring.