



## **HISTORICAL DEVELOPMENT AND EXPANSION OF FUNDAMENTAL RIGHTS UNDER THE INDIAN CONSTITUTION**

Vaibhav Yadav\*

### **ABSTRACT**

*The Indian Constitution has granted certain rights to the people that are referred to as "Fundamental Rights" These rights can be enforced through the use of the legal system. However, the government has cited these rights as "obstacles" to its policies on a number of occasions, particularly those pertaining to state security and those pertaining to social welfare legislation. As a result, the Parliament has updated these rights on an as-needed basis over time. In fact, Part III of the Constitution, which contains the Fundamental Rights, is one of the most often modified sections of the document.*

**Keywords:** Fundamental Rights, UDHR, Constitution, Mandamus, Quo Warranto, Certiorari

### **INTRODUCTION**

It is the purpose of rights-based democratic constitutions to identify and safeguard the conditions that allow for the flourishing of human life. Social institutions, it is claimed, are important for a life that is worth living since they offer the basic needs of a civilised human existence, which are provided by them. Throughout history, the ultimate aim of human existence has varied, but it has always contained some element of pleasure for those who seek it in the pursuit of it. The enhancement of one's physical and mental capacities has long been considered to be the ultimate goal in one's journey through life. It is believed that human beings are collections of creative impulses that must be nurtured and developed in order to

live a fulfilled life. Growth and development of a person's inner self are essential to their overall development and evolution.<sup>195</sup> All these are tied around the rights and respects that once is accorded in the society and primarily at the hand of the state. In challenging conditions, such as those that limit their freedom of movement or jail them unjustly, people who are unable to completely develop their initiative will be disadvantaged. Nobody can reach their full potential unless they have the freedom and equality that all people enjoy in our world. The actual self of a person will be strangled by constraints on their freedom of movement, speed, and activity, among other things. This means that we will not be able to enjoy our rights unless we comply with these requirements. The notion of basic rights, on the other hand, is a very new addition to the legal landscape. Since the beginning of time, governments have recognised that safeguarding and defending people's basic rights is a vital issue, and this has been the case for hundreds of years. Since its inception during the Medieval Era, the weight of authority has strangled human individuality throughout the whole length of that era. Personal liberty was often seen as an impossible goal for the majority of people as soon as the Modern Era began and governments were established. Contrary to popular belief, despite the expansion of humanism and the ethos it represents,<sup>196</sup> there has been a pervasive disregard for human existence and individuality throughout history, despite the advancement of humanism and the ethos it symbolises. A half-century ago, political developments were taking place all across the globe. These developments need to be located in the Indian subcontinent and these developments need to be understood in an elaborate manner.<sup>197</sup> This paper seeks to do the same.

## Hypothesis

This paper hypothesises the unique Indian history that went into the cultural adoptions of fundamental rights from across the world and from the internal conflicts that India itself saw with the advent, presence, and the conclusion of the British Rule here and the movements that led to emancipation of the Indian polity.

## Research Questions

1. Whether there exists some continuity in the entire discourse of Fundamental Rights in their development in India?

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<sup>195</sup> R Blower, "*Rights and Wrongs*", (FR, 1997).

<sup>196</sup> A Kapuskasing, "*A Remedy worse than the Disease*," (HP, 1998) 16.

<sup>197</sup> H Khari, "*Judicial Activism: The Good and the Not So Good*" (HP, 1997) 11.

2. Whether this continuity points to the broader populist factions getting into the political powers?

### **Research Objectives**

The objective of the paper is to produce a fairly elaborate historical comment on the development of Fundamental Rights in India and how these have been looked at by the general populace, courts, and the workers of the constitutions.<sup>198</sup>

### **THE LATE COLONIAL ERA**

There have been a number of new states founded as a result of the Second World War's conclusion and the breakup of the British Empire. For vanquished nations like Germany, Italy, and Japan, as well as newly independent former colonies in Asia and Africa, establishing governments based on the rule of law after they had been defeated was a time-consuming and difficult task. When Japan, Italy, Germany, and India created their own constitutions, they did it in accordance with a Western-influenced paradigm (1950). Following the Holocaust and other heinous tragedies, a number of countries have come up with innovative methods to ensure the continuation of international peace. In the history of the world and the modern human rights movement, there have only been a handful of governments that have had a major effect. The United Nations General Assembly approved the Universal Declaration of Human Rights on December 10, 1948, and it has been in effect ever since (according to the Universal Declaration of Human Rights.).<sup>199</sup> Many basic human rights, as described in the Universal Declaration of Human Rights, were being infringed or neglected prior to the outbreak of World War II. As a result of their establishment and steady implementation in newly independent countries, it was believed that these essential rights would serve as a starting point for genuine constitutionalism across the globe once they were implemented. Many of the newly independent governments of the former Soviet Union currently adhere to constitutions, bills of rights, and the rule of law, according to international standards.<sup>200</sup> When it comes to Great Britain, a nation that has historically supported the authority of parliament, the debate over the need of having an official document that contains the constitution and a bill of rights is still raging. An internationally recognised Western export, 2 is one of the most well recognised Western exports. In the last

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<sup>198</sup> A Kapuskasing, "A Remedy worse than the Disease," (HP, 1998) 16.

<sup>199</sup> H Khari, "Judicial Activism: The Good and the Not So Good" (HP, 1997) 11.

<sup>200</sup> S Sorabjee, "Protection and Promotion of Fundamental Rights by' Public Interest Litigation in India" 51 R. INT'L CJ 31, 37 (1993).

half-century,<sup>201</sup> there has been a tremendous comeback of constitutionalist thought. As already stated, this is the central theme of the paper whereby it will examine strategies for building on the accomplishments made over the preceding half-century in terms of strengthening India's constitution for the next hundred years, with an emphasis on the country.<sup>202</sup>

## **THE INDIAN CONSTITUTION AND ITS BIRTH**

The Indian Constitution was established decades ago, marking a significant milestone in the country's history. One piece of paper, the National Charter of Liberties, contains the basic rights of one billion individuals, encapsulated in a single document. Within this group of individuals, there is a diverse range of social and theological backgrounds represented. The fact that India's Constitution has been in existence for more than 50 years is a monument to how far the nation has come in terms of democratic development since independence. For the sake of world peace and security, the progress of India's constitutionalist movement must be properly observed. Because it combines many of the most basic characteristics of American constitutionalism, the Indian constitution may be utilised as a testing ground for difficult constitutional law issues in the United States. As a result, it is an excellent choice for such a role. There are five fundamental elements in this "five-point" set of guidelines: constitutional liberty, written constitutions, and the supremacy of the constitution. The United States Constitution has had a "major" and "direct" effect on society in terms of human rights protection, according to those who have studied the subject. Following the lead of "the American judicial institution and its constitutional purpose," the founding fathers of India believed that the only way to establish a more open, fair society was to model it after the "American legal system." While their different constitutions differ, the United States and India have a number of aspects that make them similar in nature. In recent years, intellectuals, lawyers, and judges in North America have paid insufficient attention to international constitutionalist concepts, despite their importance.<sup>203</sup> However, although studying the constitutions of other nations might be very beneficial, it is not a pre-requisite. As this article convincingly argues, there are various lessons to be learned from India's history and modern practises of constitutionalism, which include the questions of feasibility. Is it feasible that our

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<sup>201</sup> U Baxi, "Dialectics of the Face and the Mask," 35 J. INDIAN L. INST. (1993) 6.

<sup>202</sup> N. Palkhiwala, 'OUR CONSTITUTION DEFACED AND DEFILED' (LZ, 1981).

<sup>203</sup> U Baxi, "Dialectics of the Face and the Mask," 35 J. INDIAN L. INST. (1993) 6.

nation's founding fathers were already aware of the need of maintaining Indians' human rights prior to our country's freedom from the British Empire? It was the core of Tilak's address to the British administration in 1895. There are certain former British colonies in India whose constitutions do not have a bill of rights, which is a source of contention between the two countries. In 1928, the idea of enshrining fundamental political rights in the Constitution was floated about for consideration. As a result, when the members of the Constituent Assembly met to draught Article III of the Constitution, it was clear that the United States Bill of Rights was being referred to in the document. There are some excellent metaphors for human rights in this book when it states things like "Potomac, not Thames, fertilised the flow of Yamuna."<sup>204</sup> The terminology of India's "basic rights" has been strongly impacted by American legal thought, as has the wording of the Indian Constitution. As a consequence of India's unique history, the country's commitment to civil rights has left a lasting influence on the whole world. The imposing of particular limits on basic rights does not invalidate the constitutional protections afforded to such rights under the Constitution.<sup>205</sup>

## **THE CONTENT OF RIGHTS**

People's rights are safeguarded by Articles 14 to 32, which are numbered 1 through 32 in Part III of the Constitution, which covers a broad variety of topics and concerns a wide range of issues in general. Non-citizens are entitled to the same protections as citizens in the United States. The following section provides a succinct overview of the most important rights categories in India, as they are classified and fought over in the courts. Historically, European kings believed that as their kingdoms evolved in tandem with the Divine, they would be able to wield unrestricted sovereignty over the affairs of humankind.<sup>206</sup> Upon taking power, absolute monarchs implemented unreasonable restrictions and punishments that only served to further deteriorate the state and the people over which they governed, as well as themselves. A movement was created to solve these issues as a result of these circumstances, since it became more difficult to recognise the worth of a person while still creating socially organised living entities. Incorrectly implemented policies that have been re-configured to function in new ways. Consequently, the upheaval of absolute monarchy provided as an inspiration for

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<sup>204</sup> A VA naik, 'THE FURIES OF INDIAN COMMUNALISM: RELIGION, MODERNITY AND SECULARIZATION' (OP, 1997).

<sup>205</sup> A Kapuskasing, "*A Remedy worse than the Disease*," (HP, 1998) 16.

<sup>206</sup> S Sorabjee, "*Protection and Promotion of Fundamental Rights by' Public Interest Litigation in India*" 51 R. INT'L CJ 31, 37 (1993).

the novel.

With the exception of rights pertaining to the myriad ways in which individuals desired to express their human identity, this resulted in essentially little change in social standing. This has resulted in a large number of tutorials covering a wide range of topics related to tuition, many of which are seen as essential for self-realization by many individuals. As stated in the Polish Constitution, "the secret of letters and other communication may only be disturbed in cases provided by law," and "Children denied proper parental care, respect for education, have a right to public support and protection," and "Children denied proper parental care, respect for education, have a right to public support and protection," and "Children denied proper parental care, respect for education, have a right to public support and protection," respectively. People will be protected against unjustified searches and seizures of their personal property, houses, and documents, and every accused individual will be entitled to a speedy hearing in all criminal proceedings. In the United States, it is against the law to seize property as a means of punishing a criminal offender. It is stated that "the right to freedom of expression is safeguarded." Petitioners may submit petitions to public authorities signed by one or more individuals from any location in the globe, including their home country. Private teaching should not be outlawed, and any activities that block it should be treated as unlawful violations of the law. It is the responsibility of the Riksmal, when it nominates persons to construct the yearly market rate table, to ensure that the table is followed until a regular revision is sought and achieved. The Riksmal employs appropriation law assessors, who are not held responsible for their work under Swedish law. Global constitutions demonstrate that basic rights apply in a wide range of circumstances, no matter where or when they are experienced. Because of the wide range of topics covered in this book, it seems to cover the whole spectrum of human experience, even the most prosaic elements of day-to-day existence.<sup>207</sup> As far as history is concerned, eliminating obstacles to a person's spiritual growth was unquestionably one of the primary goals of the civil rights movement.<sup>208</sup> However, even if it is always vital to address the most basic demands of human growth, the issue mother is negatively influenced by the current conditions.<sup>209</sup>

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<sup>207</sup> A Kapuskasing, "A Remedy worse than the Disease," (HP, 1998) 16.

<sup>208</sup> M. Abel, "American Influences on the Making of the Indian Constitution," 1 J. CONST. PARLIAMENTARY STUD. (1967) 35.

<sup>209</sup> A Kapuskasing, "A Remedy worse than the Disease," (HP, 1998) 16.

The meaning of the term underwent a considerable transformation in the late twentieth century. Because of the rapid growth of the industrialised world, the scope of basic rights has also increased rapidly. As a consequence of this growth, the scope and complexity of basic rights have also increased through time as well.<sup>210</sup> At first, it seemed that the situation was hopeless, but as time went on, the scenario became more positive. In the same way, as the threats of authoritarianism recede, so does the requirement for retaliatory measures. When you consider the importance of a person's basic rights, it is essential to guarantee that a country's educational system is protected.<sup>211</sup> This is especially true in developing countries. Example: A written constitution or a grouping of written constitutions may comprise "a collection of prescriptions defining and protecting the political rights of the people, as well as guidelines for how those rights might be protected via the exercise of government power." When it comes to state laws, they must meet a higher level of sanctity and certainty of enforcement than normal laws if they are to be more powerful than regular laws. Incorporating mental health provisions into the Constitution makes them more easily administered and has a greater impact<sup>212</sup> on society as a result of their increased influence. Since the beginning of the progressive movement and its unique historical epoch, every clause of the constitution has been scrutinised. Once they have been included into the constitution, it is very difficult to have them changed later on. Having these three characteristics in place when dealing with something as intimate as human rights is vital to a successful outcome. Taking into consideration this viewpoint, it is feasible to assess India's constitutional safeguards for basic rights and freedoms. This real scenario has been blamed in large part for the lack of basic rights in India, which is largely composed of a collection of Parliamentary Acts that were pushed on the nation in order to maintain peace during the British colonial era. Since India was a British colony until relatively recently, the needs of the Indian people have received little attention from the authorities of the country.<sup>213</sup> In spite of the fact that the 1919 Act was supposed to represent a watershed point in India's march toward responsible governance, the preamble of the Act has remained almost intact for nearly one hundred years. Discrimination in the public sector on the basis of caste, creed, or skin colour became outlawed after a series of royal proclamations rendered it unlawful. Unlike these pronouncements, which were made

<sup>210</sup> G. A. Christenson, "Using Human Rights Law to Inform Due Process and Equal Protection Analyses," 52 U. CIN. LR. (1985).

<sup>211</sup> R Kothari, "India: The Growing Courage of the Poor (T Press, 1997) 13.

<sup>212</sup> A VA naik, 'THE FURIES OF INDIAN COMMUNALISM: RELIGION, MODERNITY AND SECULARIZATION' (OP, 1997).

<sup>213</sup> M. Abel, "American Influences on the Making of the Indian Constitution," 1 J. CONST. PARLIAMENTARY STUD. (1967) 35.

without the power that comes from being inscribed in the constitution. Sections 298 and 299 of the 1935 Government of India Act were modelled after Sections 298 and 299 of the United States Constitution, respectively. When India was ruled by the British, Indian citizens were not subjected to any type of discrimination on the basis of their religion, ethnic heritage, or lineage. Indian residents of British India are prohibited from being discriminated against on the basis of their race or national origin by Section 298 of the Indian Residency Act of British India. While the above observations were made in 1935 (according to the citation). They behaved in an unreasonable manner.<sup>214</sup> The following three categories may be used to categorise wards in most cases:<sup>215</sup> A second point of worry is whether or if lawmakers are willing to expose themselves to a more rigorous legal system that may result in constitutional safeguards for these rights being established. However, they were more concerned with the inclusion of basics than they were with the significant psychological influence they had on those who were exposed to them, which was a worry for them as well. Prof. Arnold Zurcher says that, despite the fact that rights are integrated into the constitution as political nostrums, they may cause problems since they are as applicable to India as global basic rights while not providing any difficulties for the Indian constitution's framers. It is critical to limit the authority of the legislative branch in order to avoid it from becoming a totalitarian and potentially dangerous institution in the future. Following the adoption of the Constitution in 1935, the fundamental rights of citizens were carefully safeguarded. Despite the fact that the Constituent Assembly of India ratified the new Indian Constitution in 1947, it took more than a century for India's long-held desire for basic rights to be eventually realised in the new Constitution. This committee, which is directed by Sardar Vallabhbhai Patel and was established by the Constituent Assembly on January 24, 1947, has been in existence ever since. The Committee on Minorities and Fundamental Rights was established by the Constituent Assembly in 1947 and has been in existence ever since.<sup>216</sup> The Committee gave its recommendations to the president of the Assembly on April 23, 1947, which was the 23rd of April in 1947. According to the Committee, one set of rights should be legally enforceable, while the other set of rights should just serve as guidelines for social policy. In order to be consistent with the professed goals of democratic freedom and equal opportunity, the state was needed to act in accordance with the principles of democratic freedom and equal

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<sup>214</sup> S Sorabjee, "Protection and Promotion of Fundamental Rights by Public Interest Litigation in India" 51 R. INT'L CJ 31, 37 (1993).

<sup>215</sup> U Baxi, "Dialectics of the Face and the Mask," 35 J. INDIAN L. INST. (1993) 6.

<sup>216</sup> R Kothari, "India: The Growing Courage of the Poor (T Press, 1997) 13.



opportunity, as well as the Constitution.<sup>217</sup> In its report, the committee recommended that all inhabitants over the age of 21 should have equal access to political participation, including the right to vote and the ability to run for elective office in the municipality. What matters is that you have as many members of the Dominion as possible working for you. No discrimination is tolerated in the provision of public services such as public restaurants, hotels, entertainment, wells, tanks, and highways to the general public, so long as they are available to all people regardless of their religious, racial, or sexual orientation affiliations. They also work to eradicate any inaccessibilities in order to ensure that everyone has an equal opportunity to hold public office.<sup>218</sup> Anyone who suffers a physical disability as a result of their own heinous conduct shall be held accountable by the law. Honorary titles or emoluments for anyone in the Union are prohibited by international treaties, and it is also prohibited by international treaties for anyone in a position of profit or trust to offer or accept honorary titles or emoluments for anyone in the Union without first obtaining the consent of the Government of the Union.<sup>219</sup>

The freedoms of assembly, association, travel, and settlement in any area of the United States, as well as the right to acquire, preserve, and dispose of property, are among the rights guaranteed under this category.<sup>220</sup> A person's life and liberty cannot be taken away from them unless and until the necessary legal processes have been followed. It is expected that any hazardous employment in the Units will have at least six children under the age of fourteen working in it. This is in accordance with federal regulations. In order for a religion to exist or advance, the freedom of conscience of its believers must be balanced against societal order and morality, among other things. In accordance with international human rights legislation, the rights to freedom of speech, opinion, and education are all safeguarded. It is important to preserve those who speak and write in minority languages, scripts, and traditions, and it is as important for educational institutions to prosper without intervention from the state.<sup>221</sup>

Property rights, criminal convictions, and legal rulings are just a few examples of things we

<sup>217</sup> U Baxi, *"Dialectics of the Face and the Mask,"* 35 J. INDIAN L. INST. (1993) 6.

<sup>218</sup> M. Abel, *"American Influences on the Making of the Indian Constitution,"* 1 J. CONST. PARLIAMENTARY STUD. (1967) 35.

<sup>219</sup> A VA naik, 'THE FURIES OF INDIAN COMMUNALISM: RELIGION, MODERNITY AND SECULARIZATION' (OP, 1997).

<sup>220</sup> G. A. Christenson, *"Using Human Rights Law to inform Due Process and Equal Protection Analyses,"* 52 U. CIN. LR. (1985).

<sup>221</sup> R Kothari, *"India: The Growing Courage of the Poor* (T Press, 1997) 13.

take for granted in our society. Additional benefits are available in addition to the ones listed above. No matter whether the property is moveable or fixed, it is against the law to take or acquire it for public use before paying a decent price for it first. To summarise, civil judgements obtained in any of the Union's units will be enforceable throughout the others, subject to any restrictions set by the Jaw on their applicability.<sup>222</sup> There are no criminal charges that may be brought against anybody, with the exception of situations in which an existing law has been violated. Additionally, when it came to the Committee's suggestions for remedies, these justiciable basic rights were set out in great detail. The Supreme Court has the authority to compel lower courts to follow its orders via the use of writs such as Habeas Corpus, Mandamus, Quo Warranto, and Certiorari. Following 10 years, plans were put up to combine electorates with seats designated for minorities, after which the whole situation would be re-evaluated in light of minority rights. Upon completion of its study, the Committee recommended that this course of action be taken. It is specified in a document named The Government Of India Act, 1935, that the Governor of the country shall make<sup>223</sup> his best efforts to appoint council members from among the migrant population; nevertheless, in line with paragraph VII of the legislation, which specifies that the Governor of the nation should: Taking into account attributes such as talent and production,<sup>224</sup> it is advocated that minorities be given a fair share of the workforce, in accordance with the Committee's recommendations.<sup>225</sup>

Despite the fact that India's Constitution was heavily affected by the constitutions of other countries, it seems that the country's unique circumstances were not taken into consideration when it was drafted.<sup>226</sup> In spite of the fact that they cover a wide variety of topics and have many characteristics with other constitutions, it does not seem that they were created with Indian concerns in mind.<sup>227</sup> There is no reputable research to back up any of these assertions, hence they are all false. In all constitutional constitutions, the basic rights have always prioritised human dignity above all other factors, including social, economic, and political issues, in their deliberations. In India, basic rights are protected, however the second condition

<sup>222</sup> U Baxi, *"Dialectics of the Face and the Mask,"* 35 J. INDIAN L. INST. (1993) 6.

<sup>223</sup> A Kapuskasing, *"A Remedy worse than the Disease,"* (HP, 1998) 16.

<sup>224</sup> A VA naik, 'THE FURIES OF INDIAN COMMUNALISM: RELIGION, MODERNITY AND SECULARIZATION' (OP, 1997).

<sup>225</sup> A Kapuskasing, *"A Remedy worse than the Disease,"* (HP, 1998) 16.

<sup>226</sup> G. A. Christenson, *"Using Human Rights Law to inform Due Process and Equal Protection Analyses,"* 52 U. CIN. LR. (1985).

<sup>227</sup> M. Abel, *"American Influences on the Making of the Indian Constitution,"* 1 J. CONST. PARLIAMENTARY STUD. (1967) 35.

is awful, according to the Constitution. When compared to other industrialised nations, the programmes of these countries to attain economic equality, social reform, and the recovery of the industrial sector are badly underdeveloped. Despite the fact that agriculture is the country's most important source of income, the agricultural sector is not included in the country's basic rights constitutions or laws. When it comes to addressing basic rights in India, these factors must be taken into mind. In accordance with the Committee's work, the situation has worsened substantially in recent months. It should not be necessary to prioritise the safety of minorities at the expense of other, more pressing issues.<sup>228</sup> In a society with such a vast range of interests and concerns as the United States, basic human rights should have been defined far more broadly than they actually were. On the other hand, it would be unfair to hold our forefathers responsible for everything that has transpired. Because of the short amount of time available, a more substantive discussion was ruled out. In order to adequately answer the true demands of the Indian populace, Indian government officials must take a seat and educate them when the country is in a more peaceful state.<sup>229</sup>

## **CONCLUSION**

When the nation's founding fathers convened in New Delhi to finalise the country's constitution, which had been the product of decades of struggle, the country's independence was looming closer than it had ever been before. However, instead of battling with bayonets or rifles, they fought bravely for freedom, armed only with the great concepts of nonviolence and truth, in order to rebuild India into a just and loving society. They were entirely fearless of the consequences of their actions. In order to provide equal opportunity and religious freedom to all of India's residents, the nation's founding fathers created the country as a republic with a constitution in the year 1947. A draught of the Indian constitution was regarded to be one of the most significant political decisions of the twentieth century at the time it was prepared. In the absence of it, Indians would not be able to enjoy the kind of liberty that they already enjoy. Today, despite tyranny, poor government, and religious intolerance, this core devotion still shines through brilliantly. For Indians, regardless of their political party allegiance, the debate over the Preamble's appropriation of constitutional principles, as well as the lessons it sends to the next generation, should serve as a warning tale to them.

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<sup>228</sup> R Blower, “*Rights and Wrongs*”, (FR, 1997).

<sup>229</sup> A Kapuskasing, “*A Remedy worse than the Disease*,” (HP, 1998) 16.

"Republics are established by virtue, civic spirit, and intelligence of the people." It is the knowledgeable who are expelled from public councils for their honesty, and the extravagant who are rewarded for their dishonest seduction of the masses, which bring these tyrants to an end. Particularly at this time in history, when the Republic is endangered not just by its own corruption but also by the ignorance and indifference of its people,<sup>230</sup> Joseph Story's perceptive warning is especially relevant for Indians.<sup>231</sup>

Hence, in the due course of this thesis, we do note that certain continuities existing across the entire discourse and many more breaks whereby the populist factions were able to have their own voice in the political adoptions and developments.<sup>232</sup>

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<sup>231</sup> G. A. Christenson, "Using Human Rights Law to inform Due Process and Equal Protection Analyses," 52 U. CIN. LR. (1985).

<sup>232</sup> A Kapuskasing, "A Remedy worse than the Disease," (HP, 1998) 16.