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## Decolonizing Democracy

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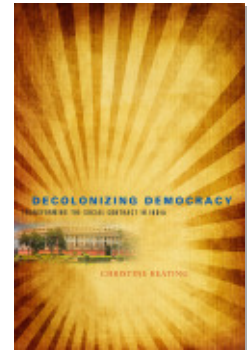
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## Framing the Postcolonial Social Contract

We are aiming at democracy and nothing less than a democracy. What form of democracy, what shape it might take is another matter. The democracies of the present day, many of them in Europe and elsewhere, have played a great part in the world's progress. Yet it may be doubtful if those democracies may not have to change their shape somewhat before long if they [are] to remain completely democratic. We are not going just to copy, I hope, a certain democratic procedure or an institution of a so-called democratic country. We may improve upon it. . . . We stand for democracy. It will be for this House to determine what shape to give to that democracy, the fullest democracy, I hope.

—Jawaharlal Nehru, *December 13, 1946*

In his opening speech to the Constituent Assembly, the nationalist leader and future prime minister of India Jawaharlal Nehru articulated what he saw as the Assembly's task in its framing of a new constitution for India: the forging of a new, more inclusive model of democracy.<sup>1</sup> Such a democracy would abolish discrimination on the basis of sex, race, religion, and caste, and would not only benefit its own citizenry but stand as a model for the world. In the course of the framers' deliberations, these goals were significantly advanced but also compromised. On the one hand, the Assembly framed a constitution that challenged some of the inequities that had long plagued democratic polities elsewhere—polities democratic in name only. In the transition to independence in India, the framers challenged what Carole Pateman and Charles Mills call, respectively, the sexual and racial contracts underpinning liberal democratic theory and instituted a new kind of social contract, a "postcolonial social contract" designed to foster racial, gender, caste, and minority group equality. On the other hand, despite

the explicit constitutional provisions meant to further equality, the framers failed to adequately address the legal subordination of women and the political marginalization of both women and minority groups in the new Indian nation. The postcolonial social contract forged by the Constituent Assembly was thus deeply ambiguous, at once promoting and constraining struggles for caste, minority group, and gender justice in India.

#### DEMOCRACY'S NEW SIGNATORIES

Although the British touted democracy as an ideal, colonial administrators in India allowed Indians only limited access to democratic representation under the Raj. According to the Indian historian Sumit Sarkar, “the realities of a Raj uncompromisingly white and despotic” were thinly veiled by “an ideology of paternalistic benevolence, occasionally combined with talk of trusteeship and training towards self-government.”<sup>2</sup> Even after the colonial government (under immense pressure from the nationalists) began to take steps toward increasing indigenous representation in government, the British jealously guarded the terms and conditions of the political order in India as their racial prerogative. The British government, for example, infuriated nationalists when it sent an all-white delegation, the Simon Commission, to India to consider the appropriate model of government for India in 1928 and designed the Government of India Act of 1935 with little Indian input.<sup>3</sup>

The 1930s and 1940s in India were marked by increasingly vociferous calls for the creation of a Constituent Assembly to frame a constitution for an independent India. In 1934 the INC declared that the only acceptable outcome of negotiations with the British was “a constitution drawn up by a Constituent Assembly elected on the basis of adult franchise.” Later, deeply disappointed by the 1935 Government of India Act, under which Britain granted Indians only limited self-government, the INC resolutely reaffirmed that “the Congress stands for a genuine democratic state in India where political power has been transferred to the people, as a whole. Such a state can only come into existence through a Constituent Assembly having the power to determine finally the constitution of the country.”<sup>4</sup> By 1945 independence was near; wearied by World War II and faced with growing agitation for freedom in India, the British were ready, in the words of the 1942–45 *satyagraha* (civil disobedience) campaign, to “quit India.” The Labour Party in Britain campaigned on the promise to transfer power to India, and soon after taking office declared its support for the creation of an indigenous Constituent Assembly for India. Freedom had been won.

Critical race and feminist theorists have documented the ways in which Western democratic theory has been marked by the exclusion of people of color and women from the social contract. In *The Racial Contract*, for example, Charles Mills argues that people of color are “objects, not subjects of the [social contract] agreement.” He explains that the social contract of Western liberal democratic theory is “not a contract between everybody (‘we the people’), but between just the people who count, the people who are really people (‘we the white people’).”<sup>5</sup> In this context, then, calling for an indigenous Constituent Assembly radically disrupted the logic of the racial contract that underlay colonial rule: Indians themselves could and would set forth the framework of a democratic free India. Indeed, although the Assembly was formed while India was still officially a British colony, the INC declared that it would “function in fact, if not in law, as a de facto independent government leading to the full independence to come. The provisional government must have power and authority and responsibility. . . . The members of such a government can only hold themselves responsible to the people and not to any external authority.”<sup>6</sup>

When the Assembly met for the first time in December 1946, it made good on this promise by passing a clause declaring its sovereignty. In a *Bombay Chronicle* article entitled “White Man’s Burden Gone from 1946!” (January 1, 1947), one commentator noted jubilantly that after the formation of the Assembly, “there can be no return to a state wherein the white men rule the world. . . . Whatever tricks and ruses of champions of the color bar, it is a fact that the oppressed nations have no intention of further accepting the position of political martyrs.” Indeed, India’s independence from British rule was a momentous instance of what Howard Winant calls the “worldwide rupture of the racial status quo” that occurred at the end of World War II, in which the “customary practices and entrenched institutions of white supremacy” were critically challenged and transformed.<sup>7</sup>

Disrupting the racial contract by rejecting British authority over its proceedings was only the first step in decolonizing democracy for the Constituent Assembly. In *The Racial Contract*, Mills writes that although white-nonwhite relations constitute a tremendously important focus of critique, “it is important not to lose sight of the fact that other subordinate Racial Contracts exist which do not involve white/nonwhite relations.”<sup>8</sup> In an independent India, building a truly anticolonial and multicultural democracy would require attention to the mapping of power and privilege along caste, religious, and regional lines, and especially to what were termed “minority and depressed groups” such as Muslims, Sikhs, Avidasis, tribal people, and backward castes. Assembly members were acutely aware

of the failures of Western democracies such as the United States to fully include minority and disadvantaged (often termed “backward”) groups in the polity and were determined to be more inclusive. In the opening session, delegate N. G. Ranga urged the Constituent Assembly to remember that “in America before the law all the people are equal, but yet you know how depressed are the Negroes of that country. We have to prevent a repetition of that sort of thing in our country.” Krishna Sinha echoed this concern, commenting, “it is very necessary that we should set an example by having a state in India which will be a state for the whole of India and at the same time provide safeguards for the fundamental rights of individuals and groups living in this country and for safeguarding the fundamental rights of the minorities.”<sup>9</sup>

The sustained struggles against caste and religious domination in the Indian freedom movement oriented the nationalist leadership toward building a democracy that would be both accountable to and reflective of the concerns of minority and deeply disadvantaged groups within the polity. As a result of these struggles, a variety of approaches were pursued to ensure that minority religious groups such as Muslims, Sikhs, Parsis, Christians, and Anglo-Indians and “backward” or disadvantaged groups such as low-caste and tribal groups had representation in the Constituent Assembly, such as reserved seats and proportional representation measures.<sup>10</sup> Further, nationalist leaders often intervened in the provincial selection process to ensure that low-caste, tribal, minority, and women’s groups would be represented in the Assembly. Such measures helped lay the groundwork for the participation of marginalized groups in the crafting of the new political order. In his opening speech to the Assembly, for example, Scheduled Caste delegate H. J. Khandekar explained his commitment to bringing the concerns of his community to the Assembly’s proceedings: “We are going to frame the constitution of India today. I belong to a community which has been backward and depressed in India for many thousands of years. I am a Harijan and I shall place before you the voice of 90 millions of Harijans in India.”<sup>11</sup> If the history of the racial contract rested on the exclusion of marginalized groups from participation in the construction of the terms and conditions of the social contract, many hoped that the inclusion of representatives from minority and oppressed groups in the framing of the Indian constitution would serve to build a more just, inclusive democratic order.

Not everyone was as optimistic as Khandekar, however. Some, such as Jaipal Singh, a member of the Nagpur tribal people, commented that the representation of minority groups in the Assembly was “only a matter of political window dressing.” Despite his concerns, however, Singh held out

a wary hope that the Assembly would make good on its promises for a new model of multigroup, multicultural democracy. “The house is on trial,” he declared, “let us see what happens.”<sup>12</sup> In addition, the Muslim League and the Indian National Congress disagreed deeply over the terms of independence. The Muslim League, led by Muhammad Ali Jinnah, feared Hindu dominance in an independent India and demanded that the British set up two constituent assemblies, one for a Muslim state of Pakistan and the other for Hindustan. The INC argued for a single assembly that would design a constitution for a secular state in which both Hindus and Muslims would be united as Indians. The British government sent a cabinet mission to New Delhi in 1946 to try to broker a compromise and proposed a plan in which India would be divided into three regions (one Hindu, one Muslim, and one equally mixed) and the Constituent Assembly would be elected by the provincial legislatures, with seats set aside for the three major communal (religious) groups. Both the League and the Congress cautiously agreed to this plan, and the provincial legislatures elected an Assembly in July 1946. By the end of July, however, Jinnah had accused the INC of acting in bad faith with respect to the cabinet mission plan and declared a boycott of the Assembly. Although several attempts were made to reconcile the League and the Congress (attempts that delayed the convening of the Assembly by six months), they all failed, and the Assembly opened without the League’s delegates.

Despite these significant setbacks, the formation of an indigenous Constituent Assembly in India marked a radical disruption of the social contract’s racial exclusivity. Similarly, the presence of several women delegates in the Assembly was evidence of an important break with the social contract’s gender exclusivity. The groundwork for women’s inclusion in the Constituent Assembly was laid both ideologically and institutionally by women’s involvement in preindependence Indian politics. In her analysis of women’s political participation in India, Susheela Kaushik writes that “their close linking with the national movement helped them acquire the right to political participation, to the franchise and to other constitutional rights. There developed a tacit acceptance of women occupying various positions both in the political and professional spheres. It gave them the space, as well as the power to claim their rights and question its non-compliance.”<sup>13</sup>

Reflecting their active participation in the freedom struggle, several key feminist nationalists were chosen to be members of the Constituent Assembly, including Durgabai Deshmukh, Rajkumari Amrit Kaur, Sucheta Kripalani, Hansa Mehta, Sarojini Naidu, Vijayalakshmi Pandit, Begum Aizaz Rasul, and Renuka Ray. In their history of the women’s movement in

India, Aparna Basu and Bharati Ray note that the inclusion of women in the Constituent Assembly “was a unique event in the history of the women’s movement in the world.”<sup>14</sup> Given women’s experience in both the legislature and the movement, however, some were surprised that more women were not members of the Constituent Assembly. Jaipal Singh, for example, exclaimed at the opening of the Assembly, “there are too many men in the constituent Assembly. We want more women.”<sup>15</sup> Further, although women delegates secured important seats on the Fundamental Rights and the Steering subcommittees, there were no women representatives on the Drafting Committee and the Union Powers Committee, the committees that determined the governing framework and distribution of powers of the new republic.

Even with these limitations, however, women’s presence in the Constituent Assembly was tremendously important both symbolically and substantively. Indeed, in her account of her participation in the Constituent Assembly, Renuka Ray remarked that women members “shared equally with the men, perhaps for the first time, the task of formulating ideas in the party meetings and then in the Constituent Assembly itself.”<sup>16</sup> The women delegates had tremendous hopes for the realization of gender justice in the democracy that was to be forged by the Assembly. In her opening speech, delegate Hansa Mehta proclaimed, “it will warm the heart of many women to know that free India will mean not only equality of status but also equality of opportunity. What we have asked for is social, political and economic justice. We have asked for that equality which can alone be the basis of mutual respect and understanding without which real cooperation is not possible between man and women.”<sup>17</sup> These hopes were to be both realized and dashed in the new social contract forged by the framers.

#### TOWARD A NEW SOCIAL CONTRACT

When the Constituent Assembly met in 1946, many members looked forward to the opportunity to craft a more inclusive democratic order—a new social contract—that would not only benefit India but serve as a model for other nations as well. In her opening speech, Vijaylakshmi Pandit predicted that “in an independent India the fullest social, economic, and cultural justice to individuals and groups will be conceded and through our design for living, we shall be helping other nations to decide the pattern of their own lives.” Further, in contrast to heavy-handed British wielding of sovereignty, the Assembly leadership hoped that the authority of the new Indian state

would be based, in the words of Sardar Patel, on “a consent performance, not a command performance.”<sup>18</sup>

Among the first acts of the Constituent Assembly was the establishment of an electorate based on universal adult suffrage. In making this decision, the Assembly enfranchised millions of Indians and removed the gender, tax, education, and property qualifications to voting specified in the 1935 Government of India Act. In doing so, the Assembly made good on the nationalist promise that independence would bring such change.<sup>19</sup> According to Zoya Hasan, “the establishment of democracy and universal adult suffrage in a hierarchical society characterized by unprecedented social inequality, deprivation, and oppression was undoubtedly a revolutionary principle, a bold experiment in political affairs, perhaps the most significant in any country.”<sup>20</sup>

In addition to universal adult suffrage, the Assembly confirmed as a central objective of the new polity that “adequate safeguards shall be provided for minorities, backward and tribal areas, and depressed and other backward classes.” In the initial draft of the constitution, these safeguards included provisions for reserved seats in the legislatures for minority groups, quotas in government employment, and administrative mechanisms to ensure the protection of minority rights.<sup>21</sup> Further, on the recommendation of the Fundamental Rights Subcommittee, the Assembly passed justiciable (legally enforceable) fundamental rights measures that guaranteed equality among the sexes; barred state discrimination on the basis of sex, race, religion, and caste; forbade exclusionary employment or occupational practices on the basis of sex, race, religion, or caste; abolished untouchability; and provided for equality of opportunity and opened up all public offices to women. By lifting formal restrictions to public political life for women and minorities and explicitly recognizing the need to address questions of gender, caste, and minority group equality, the framers challenged the exclusions that had long plagued liberal democratic state formations as well as indigenous hierarchies that were bolstered and consolidated by the British. Reflecting upon these measures, delegate H. V. Pataskar commented that “people of India should feel convinced that the interests of every Indian, irrespective of caste, creed, religion, sex, and social and economic status, will be safeguarded in the future constitution which we propose to frame.” Echoing this sentiment, delegate Begum Aizaz Rasul commented, “as a woman, I have very great satisfaction in the fact that no discrimination will be made on account of sex. It is in the fitness of things that such a provision should have been made in the draft constitution and I am sure women can look forward to equality of opportunity under the new constitution.”<sup>22</sup>



Having established these important measures toward gender, caste, and minority group justice as fundamental to the polity, the framers next turned to the issue of what kind of state—centralized or decentralized—a free India was to be. This was an extremely contentious question, especially given the tensions between the INC and the Muslim League over the terms and conditions of centralized governance. As mentioned above, however, the Muslim League became distrustful of the INC's commitment to the compromise governance framework, in which the central legislature would have very limited jurisdiction, and boycotted the Assembly. In 1947, unable to find a solution, the British partitioned India into two independent states, India and Pakistan. In addition to instigating a massive demographic shift that left the Muslims remaining in India with deeply attenuated political power, partition and partition-related violence formed the backdrop of the Constituent Assembly's proceedings and shaped the framers' approaches to issues of governance, national unity, and minority rights.

From another perspective, Mahatma Gandhi was also an opponent of a strong centralized state, arguing that such a model would undermine the goal of *swaraj* (self-rule) as well as abandon India's own history of decentralized, village-level governance. When asked, in late July 1946, to give a picture of the "kind of independence" that he imagined for India, he replied, "Independence must begin at the bottom. Thus every village will be a republic of *panchayat* [village council] having full powers. . . . In this structure, composed of innumerable villages, there will be ever-widening, never-ascending circles." Gandhi worried, however, that the Constituent Assembly would choose a model of governance based on colonial administrative structures; such a government, he argued, would amount to "English rule without the English, keeping the tiger's nature without the tiger." He noted that although "the Constituent Assembly has all the possibilities for the realization of my picture . . . I cannot hope for much. . . . I know that many would have India become a first-class military power and wish for India to have a strong center and build the whole structure round it."<sup>23</sup>

After partition made moot the compromise governance framework that stipulated a weak central government, the Assembly's leadership endorsed a centralized governance framework, and the constitution proposed by the Drafting Committee was largely drawn, as Gandhi had feared, from the British model of colonial administration, in particular the 1935 Government of India Act. The Assembly was convinced that a decentralized framework of governance would leave the newly independent India weak in the face of potential adversaries and unable effectively to address poverty and internal strife. For Nehru and other Assembly leaders, the magnitude of the

problems that India faced—partition-related communal violence, famine, external threats—required a state strong enough to engineer a social revolution. Nehru, for one, argued that “it would be injurious to the interests of the country to provide for a weak central authority which would be incapable of ensuring peace, of coordinating vital matters of common concern and of speaking effectively for the country in the international sphere.” Speaking on behalf of the Drafting Committee, Nehru announced that “now that partition is a settled fact, we are unanimously of the view that the soundest framework for our constitution is a federation, with a strong center.”<sup>24</sup> In the words of Assembly delegate K. M. Munshi, after partition, the Assembly was “free to form a federation of our choice, a federation with a center as strong as we can make it.”<sup>25</sup>

The political scientist Paul Brass notes that in addition to being motivated by hope and inspiration for a more inclusive democracy, the framers’ deliberations were also animated by a deep fear of disorder. The decision to build a political order based on a strong centralized state was in part a consequence of that fear. After independence, Brass notes, “the fear of disorder and the desire for a strong central government, termed a ‘strong Centre’ in Indian parlance, went together.” Brass suggests that this politics of order has had damaging consequences: “This focus on combating disorder and maintaining order has been part of a whole range of ideologies, policies, non-policies and practices that have been sustaining not just ‘order’ in the abstract, but a particular social and economic order, particular patterns of dominance and subordination, and particular relations of power. For this fear of disorder has preoccupied the minds of India’s dominant upper caste and upper class political, social, and economic elites for the past 50 years. It is a fear not just of disunity, disintegration, decay, and violence, but a fear of the people, of the dangers to their own status and well-being if the poor and the low castes should at last begin to organize and to challenge their dominance.”<sup>26</sup>

The tension between hope for an inclusive, egalitarian democracy and fear of disorder was also reflected in the framers’ decisions on the relationship between national unity and the rights of minority groups. While committed to a pluralist polity, the framers were at the same time deeply worried about the prospect of division and sectarianism in postpartition India. The challenge was thus both to ensure the protection of minority group rights and to build a unified state. In response to this challenge, the framers attempted to build a homogenous, secular public sphere, while simultaneously enabling a heterogeneous private sphere that would allow for group difference and autonomy. Strategic use of a rhetoric of fraternity maintained a precarious balance between the two spheres.

The first moves toward a homogenous public sphere occurred after partition, when, in what Rochana Bajpai calls a “remarkable reversal,” Assembly members overturned measures they had passed earlier to safeguard the political inclusion of religious minority groups, such as reserved seats and separate electorates, while leaving them in place for low castes and tribal groups.<sup>27</sup> These arguments often drew upon the language of fraternal kinship to describe the relationship between groups in India, in particular between Hindus and Muslims. Assembly member Biswanth Das, for example, urged his fellow Assembly members to remember that “my Muslim brothers are blood of my blood and bone of my bones. They are mine and I belong to them and they belong to me.”<sup>28</sup> Bajpai notes that in these debates the majority Hindus cast themselves in the role of the “responsible, easy-going, benevolent and self-sacrificing elder brother, indulgent, protective, and accommodating of even the excessive and unreasonable demands of his younger and weaker brothers, the minorities.”<sup>29</sup> Those who opposed reversing the measures—mostly members of minority group—argued that ensuring minority group representation through political safeguards would be compatible with a secular, democratic framework and would enhance rather than disrupt fraternal relations. “No danger or harm can follow,” argued delegate Naziruddin Ahmad, “if the elder brother listens to the grievances of the younger brother.”<sup>30</sup> Despite these pleas, those advocating a homogenous political sphere prevailed, and the Hindu-dominated Constituent Assembly overturned the protective measures it had passed earlier to ensure the robust inclusion of minority groups in the political sphere.

In invoking the concept of fraternity in these debates, Assembly members appealed to an ideal of fraternity based not only on shared kinship among groups but also on the idea of masculinist solidarity. For example, when the Assembly voted to abolish the system of separate electorates for minority groups, delegate Pattabhi Sitaramayya explained, “We are entering upon a new period in the development of our country. . . . When new joint electorates are formed . . . I can go to Janab Mahboob Ali Beg’s [a fellow Muslim Assembly member] house and address his mother and he may come to my house and address my wife, we can invite each other to dinner, we can exchange the best of cordialities in life and become brothers once again.”<sup>31</sup> Sitaramayya’s invocation of a fraternalism grounded in gestures toward each other’s wives and mothers suggests the close linkages between moves toward an allegedly homogenous political sphere and the preservation of gender roles and masculinist authority in the home. It is in each other’s homes, Sitaramayya suggests, that he and his fellow Assembly member can best recognize each other as brothers. The home, of course, is not a neutral place; indeed, it was in the

home that masculinist authority was legally entrenched under British colonial rule through the system of personal laws specific to different religious groups in India—laws that discriminated against women in such matters as marriage, divorce, and inheritance. As much as legal gender discrimination contradicted the framers' pledge of gender equality, the Assembly's debates over attempts to abolish, challenge, or modify this system of personal law point to the extent to which fraternal solidarity depended on the preservation of control over women in the family.

Delegates made several attempts to overturn or reform the system of personal laws that had been established by the British. The first such attempt originated in the Fundamental Rights Subcommittee, when Hansa Mehta, Rajkumari Amrit Kaur, B. R. Ambedkar, and Minoo Masani recommended that separate personal laws be eliminated and a uniform civil code that would be progressive with respect to caste and gender rights and applicable to all communities be instituted as a fundamental right.<sup>32</sup> The measure was defeated in the subcommittee in a 5–4 vote, the majority arguing that enacting such a provision would exceed the authority of the committee.<sup>33</sup> Mehta, Kaur, Ambedkar, and Masani reluctantly agreed to a compromise in which the provision for a uniform civil code was included in a list of “directive principles” that would be legally unenforceable but would guide the legislators of the new state toward more just social arrangements.

Having failed to institute a uniform civil code, proponents of personal law reform next attempted to use the constitution's equality clause to challenge inequities within the legal system. Renuka Ray tried to persuade her fellow Assembly members that it should be made clear that constitutional provisions for gender equality would apply to each community's personal laws:

With regard to fundamental rights, equal rights have been prescribed. Quite rightly, it has been laid down that the State shall not discriminate against any citizen on grounds of religion, race or sex. But in view of conditions in this country . . . I think it is necessary to have an explicit provision that social laws of marriage and inheritance of the different communities shall not also have any disabilities attached to them on grounds of caste or sex. It is of course true that the right of equality includes this [idea] but there may be different interpretations and much confusion and I therefore appeal to the House to have a proviso to explain this.<sup>34</sup>

Ray's appeal, like the earlier attempt in the Fundamental Rights Subcommittee, was rebuffed.

Proponents of personal law reform also attempted to pass reforms that would ameliorate caste and gender subordination within Hindu personal law in particular. Based largely on the Rau Committee report, the Hindu Code Bill would have made sweeping changes in the laws governing marriage and inheritance. Ramachandra Guha explains that Hindu Code Bill had two main purposes: “first, to elevate the rights and status of Hindu women; second, to do away with the disparities and divisions of caste.” Among other measures promoting caste and gender equity, the Hindu Code Bill would have abolished caste restrictions on marriage and adoption, such that “all marriages between Hindus would have the same sacramental as well as legal status, regardless of the castes to which the spouses belonged [and] inter-caste marriage could be solemnized in accordance with the customs and rites of either party.” The bill would also have outlawed polygamy and increased women’s inheritance rights.<sup>35</sup>

When presented to the Assembly in 1949, however, the bill faced immense opposition. As Assembly member Sucheta Kripalani observed, “Ever since we had a sovereign legislature, no piece of legislation has given rise to greater excitement and controversy than this Hindu Code Bill.” In his argument against the bill, Pandit Lakshmi Kanta Maitra claimed that the measure would “give rise to bitterness, disunion, and discord in our families leading to the disintegration of society. . . . It will completely unsettle a well settled order of things.”<sup>36</sup> After weeks of conflict and filibustering, Assembly leaders decided to withdraw the bill from consideration. By relegating the uniform civil code to a nonjusticiable directive principle and failing to challenge the caste and gender inequities embedded in the personal laws themselves, the framers of the constitution reinforced caste hierarchy and control over women as crucial elements of fraternity in the new Indian polity.

The proposals to abolish or reform the system of personal laws caused a tremendous uproar in the Assembly. While supporters of maintaining protective legislation for group representation couched their arguments in the language of fraternity, speeches opposing a uniform civil code tended to emphasize that such a code would deeply disrupt harmonious fraternal relations in the new polity. In arguing against the interference of the new Indian state in different communities’ personal laws, for example, Assembly member Mohammad Ismail threatened that any interference in matters of marriage and succession would engender “disharmony,” but he reassured the Assembly that “if people are allowed to follow their own personal law there will be no discontent or dissatisfaction.”<sup>37</sup> Delegate Pocker

Bahadur argued that noninterference had been the “secret of success” in British rule in India:

The House will note that one of the reasons why the Britisher, having conquered the country, has been able to carry on the administration of this country for the last 150 years and over was that he gave a guarantee of following their own personal laws to each of the various communities in the country. This is one of the secrets of success and the basis of the administration of justice on which even the foreign rule was based. . . . In saying this, I am voicing forth the feeling of ever so many sections in this country who feel that it would really be tyrannous to interfere with the religious practices, and the religious laws, by which they are governed now.<sup>38</sup>

Given that the religious laws in question consolidated masculinist authority in the family, Bahadur articulated a particularly stark portrayal of the fraternal bargain underpinning colonial rule: Control over women was offered in exchange for acquiescence in British rule. In Bahadur’s view, threats to masculinist authority would have a destabilizing effect; indeed, if the Constituent Assembly withdrew the fraternal bargain set in place by the British, he suggested, men might withdraw their obedience to the state.

#### COMPARING THE CONTRACTS

Although the preamble to the new constitution had been passed by the Assembly in 1946, in May 1948 the Drafting Committee revisited the question of the preamble, replacing the clauses that had provided for autonomous provinces with an appeal to “fraternity, assuring the dignity of the individual and the unity of the nation.”<sup>39</sup> Constituent Assembly historian Panchanand Misra wrote that since the Drafting Committee believed that the “partition and disintegrating forces necessitated the establishment of a strong central government . . . the committee had felt that there was a great need for fraternal concord and goodwill in India and that this particular aim of the new constitution should be emphasized by special mention in the preamble.”<sup>40</sup> In *The Sexual Contract*, Pateman urges her readers to pay close attention to the deployment of the rhetoric of fraternity in democratic discourses. For Pateman, fraternity is an underacknowledged component of the resolution of the democratic authority problematic in social contract theory. In her account

of the sexual contract that underlies Western political theory, a central reason why men who were ostensibly equals—political brothers—agreed to be governed was so as to preserve and enhance their power over women. In part to resolve the contradiction between democracy’s ethos of equality and assertions of masculine power, Pateman argues, Western political theorists separated the public and private spheres: The public sphere would be the arena in which principles of equality and freedom would operate, and in the private sphere relations of domination and subordination would legitimately prevail. Men could move freely between both spheres, but women were excluded from the public sphere and dominated the private sphere.<sup>41</sup> In *The Racial Contract*, Mills argues that the brotherhood Pateman describes is severely circumscribed by race. The racial contract, Mills claims, generates a political order that legitimates and consolidates white supremacy and is geared toward the exploitation of the land and labor of people of color.

In contrast to the racialized and gendered fraternities of Western democracy, however, the framers of the Indian constitution were committed to the principle, forged in the freedom struggle, that national liberation would mean emancipation for women, low-caste, and minority religious groups as well. Even the most socially conservative members of the Assembly asserted their support for universal suffrage, and there was very little dissent in the debate over the passage of the fundamental rights clauses that called for gender, racial, religious, and caste equality in the public sphere. By orienting the polity toward justice for women, the disadvantaged, and minority groups, the framers challenged the exclusions of democracy’s social contract and established new frameworks of gender and racial governance in what, in critical contract terms, could be called a “postcolonial social contract.” Comparing and contrasting the gendered and racialized frameworks articulated in the postcolonial social contract with Pateman’s description of the sexual contract and Mills’s account of the racial contract reveals the ways in which the framing of the Indian constitution both advanced and compromised the struggle for a more egalitarian democracy.

According to Pateman, the story of the sexual contract in Western liberal democratic theory is “a story of women’s subjection.”<sup>42</sup> By contrast, the story of the postcolonial sexual contract embedded in the postcolonial social contract is a story at once of women’s emancipation and of their subjection. Indeed, in the process of forging the new Indian polity, the framers reconfigured the sexual contract by formally providing for women’s participation in the public sphere; but they also maintained men’s dominance in the family by preserving the system of personal laws developed under the British. This contradictory resolution of the “woman question” underlies

the postcolonial sexual contract in India. Under its terms, women were no longer restricted from entering, and indeed were guaranteed equality in, the public sphere. This formal recognition of equality represents an important step toward a more egalitarian model of democracy. In its landmark 1974 report *Towards Equality*, for example, the Committee on the Status of Women in India paid tribute to the framers' inclusion of political equality for women in the constitution, writing that their "recognition of political equality of women was a radical departure not only in India but also in the context of the political evolution of even the most advanced countries of that date." Such a constitutional endorsement of women's political rights, the committee explained, meant that they could assert the importance of women's political equality "as a settled fact, for which no discussion was necessary."<sup>43</sup> This achievement can be contrasted to the long and ultimately unsuccessful struggle for passage of the Equal Rights Amendment in the United States. Indeed, the notion of gender equality as a fundamental right codified in the constitution has remained available to feminists and other progressive activists in India who have called upon this heritage to contest discriminatory personal laws and women's political marginalization, and thus to destabilize the postcolonial social contract. However, by maintaining personal laws that discriminated against women in terms of property ownership, inheritance, marriage, and divorce, the Assembly perpetuated the legal subordination of women in the family in the postcolonial polity. Agreeing to a compromise that created a uniform civil code as a nonbinding directive principle, even nationalist leaders firmly committed to women's emancipation sanctioned the continuation of discriminatory laws.

When compared to the racial contract that Mills describes, the postcolonial racial contract advanced notions of racial and minority group equality by radically disrupting the exclusionary logic of colonial rule, which held that people of color were either not entitled to or not ready for democratic self-rule. Furthermore, by formally barring discrimination based on caste, race, ethnicity, or religion, the framers laid the groundwork for a democracy that addressed indigenous racialized hierarchies as well. As Zoya Hasan notes, India was "one of the few countries in the post-colonial world that took up the challenge of building an inclusive democracy in a highly diverse, multicultural, multilingual, and multi-religious society."<sup>44</sup> In addressing hierarchies of caste, tribe, and religion, the framers of the constitution developed two contrasting but interacting approaches, one for minority religious groups and one for low-caste groups, each shaped by the postindependence political context and each advancing and compromising the goals of equality and social justice in different ways.



For minority religious groups, the framers instituted measures that would protect differential group identity formation. These measures included constitutional guarantees of freedom of religion, the freedom to establish religious educational institutions, and legal pluralism. Rajeev Bhargava explains that the framers attempted in this way to “contain discrimination and rectify perception of disadvantage among minorities . . . by granting groups a degree of control over their affairs by different rights of self-government, including the rights to express cultural particularity.”<sup>45</sup> Particularly important among these measures was the recognition of different communities’ personal laws, for such recognition protected a group’s jurisdictional autonomy.

While these provisions for legal pluralism and religious freedom ensured a degree of autonomy over group cultural and religious life, the framers’ decision to withdraw measures that would have ensured the political strength of minority groups (such as reserved seats and communal electorates), in favor of a homogenous political sphere, cemented majority group domination in national political life. Hasan suggests that in addressing questions of justice for minority groups, the framers made a “trade-off” between cultural recognition and political representation. One consequence of that trade-off, she explains, is that debates about “minorities and their rights were cut off from the discourse of disadvantage and social justice” and located in the realm of cultural diversity. As a result, “minority rights were often conceived in the language of respect and protection, but social and economic rights were missing from this framework.”<sup>46</sup>

For minority religious groups, then, the postcolonial racial contract was marked by autonomy or group sovereignty in the spheres of the family and religion, and by marginalization in the national political sphere. This formulation of the postcolonial racial contract was closely intertwined with the postcolonial sexual contract: Given that minority group personal laws discriminated against women, control over women functions in this framework as a marker of group sovereignty.

In addressing the question of how to work toward justice and equality for low-caste and tribal groups, the framers took a different approach, establishing a system of reservations to facilitate their participation in processes of national decision making. The Constituent Assembly also recommended affirmative action measures to ensure the castes and tribes access to educational institutions and state employment. Finally, the framers abolished untouchability and outlawed discrimination in public places on the basis of caste. Hasan explains that the adoption of these measures “marked a turning point in India’s political history with regard to the constitutional

design and state policies of inclusion and affirmative action for Scheduled Castes, Scheduled Tribes, and backward classes more generally,” and provided mechanisms for these groups and their supporters to work against entrenched social and economic disadvantages.<sup>47</sup>

For low-caste and tribal groups, then, the configuration of the postcolonial racial contract was marked by the legal abolition of caste discrimination and the provision of measures for substantive inclusion in the political sphere. While these measures represented substantial advances in the struggle for caste and tribal justice, they were nonetheless limited. For one thing, the framers rejected a more comprehensive reform of caste hierarchy that would have abolished “any privilege or disability arising out of rank, birth, person, family, religions, or religious usage and custom.”<sup>48</sup> In addition, they explicitly linked the notion of “backwardness” to the Hindu caste system rather than to a more capacious understanding of social disadvantage more generally, thus excluding other minority religious groups from the avenues of redress and inclusion that the constitution provided for low-caste and tribal groups.

Despite the ways in which the Assembly used religion to circumscribe social redress on the basis of caste, the significant success of these measures for the political inclusion of castes in postcolonial India has inspired women and minority groups to press for such measures as well. Indeed, the variegated nature of the framers’ approach to caste, gender, and minority group justice enables groups to compare and contrast approaches that are particularly efficacious in challenging domination and marginalization. Further, when compared to the justificatory rhetoric of both the racial and the sexual contracts, these iterations of the postcolonial racial and sexual contracts differ in an important way: They leave uncovered the contradictions that the racial and sexual contracts hide. In the sexual contract that Pateman describes, for example, the paradox of freedom for men and subordination for women in a supposedly egalitarian democratic order is submerged by insulating the public sphere from women’s participation and by portraying women as irrational and in need of protection. Similarly, according to the rhetoric of the racial contract that Mills describes, the contradiction between the democratic ethos of equality and the reality of the exclusion and subordination of people of color was concealed by casting them as either unfit or unready for self-rule and by marginalizing their participation in political life. Under the postcolonial social contract, however, because gender, race, religious, caste, and ethnic equality are enshrined as constitutional principles, the contradiction between the democratic ethos of equality and the reality of subordination and political

marginalization of these groups is exposed, leaving the contract itself more open to challenge.

In the chapters that follow, I explore challenges to the postcolonial social contract in present-day Indian politics. I argue that if these challenges are to be successful, it is important to disrupt the logic that keeps struggles for minority group, gender, and caste justice in opposition to one another. If these struggles can be linked, I suggest, then challenges to women's legal subordination and efforts to enhance women's participation in electoral politics have the potential to destabilize the postcolonial social contract in ways that open the door for democratic configurations more conducive to groups that have been denied the promises of decolonization.