

**UNTANGLING COLONIAL KNOTS: REFLECTING ON  
ARGHYA SENGUPTA'S, *THE COLONIAL CONSTITUTION –  
AN ORIGIN STORY* (JUGGERNAUT: 2023)**

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**INTRODUCTION: DECOLONIZATION'S COMPLEXITIES**

Bibek Debroy's clarion call, last year, for a new Constitution, did not sit well with jurists, the legal fraternity as well as legal academia.<sup>2</sup> He argued, *"We should go back to the drawing board and start from first principles, asking what these words in the Preamble mean now: socialist, secular, democratic, justice, liberty, and equality. We the People have to give ourselves a new Constitution."*<sup>3</sup> In 2023, on the occasion of the Constitution Day, the online legal news portal, Bar and Bench published an article featuring insights from legal experts

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\* Cite it as: Rawat, *Untangling Colonial Knots: Reflecting on Arghya Sengupta's, The Colonial Constitution – An Origin Story (Juggernaut: 2023)*, 9(1) COMP. CONST. L. & ADMIN. L.J. 161 (2025).

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<sup>2</sup> Bibek Debroy, *There's a case for 'we the people' to embrace a new Constitution*, THE LIVEMINT (Aug. 14, 2023), <https://www.livemint.com/opinion/online-views/theres-a-case-for-we-the-people-to-embrace-a-new-constitution-11692021963182.html>; For similar op-ed, see, Alok Bansal, *77th Independence Day: Time is Ripe to Ponder If India Should Switch to Presidential Form of Govt*, NEWS18 (Aug. 15, 2023), <https://www.news18.com/opinion/opinion-77th-independence-day-time-is-ripe-to-ponder-if-india-should-switch-to-presidential-form-of-govt-8537187.html>.

<sup>3</sup> *Id.*

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regarding the demand for a new Indian Constitution.<sup>4</sup> Legal Experts were unanimous in their belief that “*the Constitution of India, as it stands, is capable of enduring future challenges.*”<sup>5</sup>

Discourse concerning the need for a new Constitution or amendments have been around since the making of the Constitution itself. For instance, resolutions were presented in the Constituent Assembly for the formation of a new Constituent Assembly since the existing one had failed in its task and was not perceived to be legitimate.<sup>6</sup> Contemporary legal scholarship has often judged the validity of the Constitution through the lens of legitimacy.<sup>7</sup> On the other hand, any conversations challenging the legitimacy of the Constitution evoke hostility because of its revered nature. Jawaharlal Nehru anticipated this hostility while presenting the first amendment bill in Parliament as early as 1951. In his speech, he stated, “*If we want to kill a thing in this country, we defy it. That is the habit of this country largely. So, if you wish to kill this Constitution, make it sacred and sacrosanct – certainly.*”<sup>8</sup> As post-colonial India navigated through its ‘tryst with destiny’ in the face of capitalism, transnationalism, and globalisation using

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<sup>4</sup> Aamir Khan & Giti Pratap, *Constitution Day 2023: Legal experts decry calls for a ‘new Constitution’*, BAR AND BENCH (Nov. 26, 2023), <https://www.barandbench.com/columns/constitution-day-2023-legal-experts-decry-calls-for-a-new-constitution>.

<sup>5</sup> *Id.*

<sup>6</sup> Damodar Swarup Seth, 7, CONST. ASSEMB. DEB., (Nov. 5, 1948), <https://www.constitutionofindia.net/debates/05-nov-1948/#102170>; To understand the distinction between validity and legitimacy, refer, Upendra Baxi, *Nilbilisms, Contradictions, and Anomie in New Constitutionalisms: A view from India*, in BOAVENTURA DE SOUSA SANTOS, SARA ARAÚJO & ARAGÓN ANDRADE (eds.), *DECOLONIZING CONSTITUTIONALISM* 61 (Routledge, 1<sup>st</sup> ed., 2024).

<sup>7</sup> *Id.*

<sup>8</sup> PARLIAMENTARY DEBATES (OFFICIAL RECORD) 29 MAY 1951, PART II – PROCEEDINGS OTHER THAN QUESTIONS AND ANSWERS, COLS 964-965, [https://eparlib.nic.in/bitstream/123456789/760712/1/ppd\\_29-05-1951.pdf](https://eparlib.nic.in/bitstream/123456789/760712/1/ppd_29-05-1951.pdf).

the yardstick of the Constitution, the revered constitutional text often found itself (and still does) at the center of mainstream discourse.<sup>9</sup>

Often repeated and much-needed criticism is directed towards the colonial nature of the Constitution. Scholarship on Constitutional history is replete with such attacks on the colonial epistemology of the Constitution.<sup>10</sup> In this backdrop, Arghya Sengupta's book, *The Colonial Constitution*<sup>11</sup> is a timely work, which reflects his anticipation regarding increasing interest in decolonial constitutionalism and the possibilities of 'banal homilies'.<sup>11</sup> It becomes evident in his epilogue wherein he urges the readers that, "*India today needs an honest conversation about its colonial constitution and whether it is ready to chart its own constitutional course. The time for banal homilies is over.*"<sup>12</sup>

Reviewing this work becomes significant *first* due to the complexities associated with the conceptual and jurisprudential understanding of decolonial constitutionalism; and *second*, due to the polarising responses to the work. Dr. Moiz Tundawala criticises Sengupta's approach to alternative formulations to representative democracy and calls out his version as Hindutva Constitutional imagination, stating "*The Hindu Mahasabha's constitutional alternative as reasonable and secular is partial, misleading and dangerous.*"<sup>13</sup> He sardonically draws attention towards Sengupta's professional affiliation with the ruling dispensation suggesting that there is a possibility of this aspect impacting narrative choices while discussing

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<sup>9</sup> Pratap Bhanu Mehta, *This Republic Day, fighting the dark*, THE INDIAN EXPRESS (Jan. 26, 2023), <https://indianexpress.com/article/opinion/columns/pratap-bhanu-mehta-writes-this-republic-day-fighting-the-dark-8404865/>.

<sup>10</sup> Sandipto Dasgupta, *Democratic Origins I: India's Constitution and the Missing Revolution*, in ALF GUNVALD NILSEN, KENNETH BO NIELSEN & ANAND (eds.), INDIAN DEMOCRACY: ORIGINS, TRAJECTORIES, CONTESTATIONS (Pluto Press, 1<sup>st</sup> ed., 2019); ARVIND ELANGOVAN, NORMS AND POLITICS: SIR BENGAL NARSING RAO IN THE MAKING OF THE INDIAN CONSTITUTION (2019); For counter-arguments, see Ornit Shani, *The People and the making of India's Constitution*, 65(4) THE HIST. J. (2022).

<sup>11</sup> ARGHYA SENGUPTA, *THE COLONIAL CONSTITUTION* (Juggernaut, 1<sup>st</sup> ed., 2023).

<sup>12</sup> *Id.* at 216.

<sup>13</sup> Moiz Tundawala, *Book Review- Why not to call the Constitution Colonial*, THE NLS BLOG (Jan. 19, 2024), <https://www.nls.ac.in/blog/why-not-to-call-the-constitution-colonial/>; for other scathing criticism of the work, see Haresh B. Narasappa, *An Open & Shut Case*, DECCAN HERALD (Oct. 15, 2023), <https://www.deccanherald.com/features/books/an-open-shut-case-2725310>.

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Hindutva constitutional imagination. Dr. Tundawala curtly dismisses the central theme, stating that “*For better or for worse, its Constitution is national*” and opines that Sengupta’s work is just another decoloniality onslaught for the sake of it.<sup>14</sup> On the other end of the spectrum, reviews by Swapnil Tripathi, Shishir Tripathi and others are of a more celebratory nature, emphasizing that it is a “*must read not just for members of the legal fraternity but also anyone interested in law, politics and history.*”<sup>15</sup> Swapnil Tripathi’s review also defends Sengupta’s work, especially post criticisms directed against him on X (formerly Twitter) for propagating the right-wing Hindutva Constitution. He writes, “*Second, the book does not call for a right-wing Hindutva constitution and, in fact, debunks myths about Hindu Mahasabha’s ideas for a constitution and argues that it was as colonial as the Constitution of India.*”<sup>16</sup>

The engagement with Sengupta’s book is done in three parts. *First*, I will post a summary of the work and assess the merits. *Second*, I will elaborate on critical assessment and limitations of the work. *Last*, I will state my concluding remarks.

## SUMMARY OF THE WORK AND ASSESSING THE MERITS

The book’s prologue sets the tone of what Sengupta tries to achieve by the end. He juxtaposes homages to the colonial legacy by dignitaries in the Supreme Court on the eve of Constitution Day with problems faced by film-maker Deepa Mehta for shooting her film (*Water*) on the plight of

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<sup>14</sup> *Id.*

<sup>15</sup> Swapnil Tripathi, *Book Review: Arghya Sengupta’s ‘The Colonial Constitution*, THE BASIC STRUCTURE (Oct. 15, 2023), <https://thebasicstructureonlaw.wordpress.com/2023/10/15/book-review-arghya-senguptas-the-colonial-constitution/>; Shishir Tripathi, *Beyond hagiography, Arghya Sengupta takes critical look at Indian Constitution*, FIRSTPOST (Oct. 02, 2023), <https://www.firstpost.com/opinion/book-review-beyond-hagiography-arghya-sengupta-takes-critical-look-at-indian-constitution-13193712.html>; T.C.A Raghavan, *A Provocative Argument*, THE TELEGRAPH ONLINE (Dec. 01, 2023), <https://www.telegraphindia.com/culture/books/a-provocative-argument-the-colonial-constitution-author-arghya-sengupta/cid/1983786>.

<sup>16</sup> *Id.*

Indian widows around the same time.<sup>17</sup> He does this to bring out the dichotomy between how Indian civic society, with its deeply entrenched civilisational issues required an autochthonous Constitution and ways in which the erudite, open-minded constitutional framers thought of the Constitution, consequently giving us the ‘*music of an English band*’ when ‘*we wanted the music of veena or sitar.*’<sup>18</sup> He strongly asserts that our Constitution is a colonial document, and something that ‘*has been widely glossed over.*’

The book consists of two parts with each part containing three chapters. Through the first part, he substantiates his core argument of why the Constitution is colonial. In the second part, he engages with then available alternatives during the making of the Indian Constitution.

In the first chapter of Part-I, he traces how and why Government of India Act, 1935 (“**the 1935 Act**”) became a typecast document to adopt and modify, despite the knowledge that the same legislative framework was set in motion to substantiate imperialism. Sengupta argues in the chapter that there were multiple reasons for making the conscious choice of using the 1935 Act as a base document. I am positioning four of them for the purpose of this review.

*First*, tumult of the period (pre and post partition) – The events leading to the partition resulted in the change of immediate priorities for the Constituent Assembly, which became more apparent with the absence of the Muslim League. The immediate concern was to reach a consensus and the 1935 Act was the least bad option available at the time.

*Second*, working knowledge of the 1935 Act by BN Rau and major national parties – BN Rau, who was the Advisor to the Constituent Assembly, had extensive experience of working with the 1935 Act. The

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<sup>17</sup> The film was considered threatening to the cultural integrity of the nation through its negative portrayal of Varanasi and Hindu widowhood, See Edwina Mason, *The water Controversy and the politics of Hindu Nationalism*, 25(3) SOUTH ASIA: J. SOUTH ASIA STUD. 253 (2002). For understanding the controversy, see ABC News, ‘*Water*’ Fires Up Hindu Controversy, ABC NEWS (May 26, 2006), <https://abcnews.go.com/International/Entertainment/story?id=2007642&page=1>.

<sup>18</sup> The author borrows this line from Kengal Hanumanthaiah’s speech in the Constituent Assembly. For the entire speech, see Kengal Hanumanthaiah, 11 CONST. ASSEMB. DEB. (Nov. 17, 1949), <https://www.constitutionofindia.net/debates/17-nov-1949/>.

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author notes that even BN Rau's own survey questions show that his ideas were heavily influenced by this earlier act. Similarly, all parties involved in making of the Constitution had working knowledge of the 1935 Act. Through provincial elections in 1937, the Congress formed governments in Madras, Bihar, Central Provinces, United Provinces, and Bombay. Muslim League also had extensive knowledge of the operation of the Act through its administration of Punjab, Bengal, and Sindh.

*Third*, a lawyerly conservative methodological approach of making the Constitution (every member who served on the Drafting Committee was a lawyer) – The framework relied heavily on established precedents, drawing inspiration from successful governance systems in other countries, particularly those with Commonwealth ties.

*Fourth*, Dr. Ambedkar's strong reliance on modern concepts of liberal and socialist democracy – Dr. Ambedkar considered it commonsensical to do cautious copying from other constitutional designs. He stated while presenting the draft Constitution, "*There is nothing to be ashamed of in borrowing. It involves no plagiarism. Nobody holds any patent rights in the fundamental ideas of a Constitution.*"<sup>19</sup>

In the second chapter, Sengupta traces the dilution of bold, original, post-colonial construct of India as an economic democracy through directive principles, and colonial vestiges of preventive detention framework in Constitution.

When BN Rau conceptualised Directive Principles, he found takers of the concept through Dr. Ambedkar and Professor KT Shah. Sengupta posits that there was a dearth of serious discussions over the binding nature of Directive Principles in the Drafting Committee as well as the Constituent Assembly even by those who ardently supported the concept. He further argues that the distinction between enforceability of civil-political rights and socio-economic rights was always fluid and not acutely clear. This led to a dilution of radical ideas through clever lawyerly formulation of

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<sup>19</sup> B. R. Ambedkar, 7 CONST. ASSEMB. DEB. (Nov. 4, 1948), <https://www.constitutionofindia.net/debates/04-nov-1948/>.

bifurcating them in Part-I rights and Part-II rights and ultimately, making it a ‘dustbin of sentiments’.<sup>20</sup>

Concerning preventive detention, the author traces why framers went for a deep state model even when some of the core demands made during the freedom struggle advocated strongly against overarching influence of the state.<sup>21</sup> He argues that the presence of preventive detention in Part-III further substantiates that the freedom struggle was not the source of the formulation of fundamental rights and legal pragmatism coupled with availability of benchmarking provisions in the Act won hands down.<sup>22</sup> In the third chapter, Sengupta examines the historiography of conceptual foundation for president rule in the Constitution. He argues that the expanded logic of Section 93 of the Act in the form of emergency and failure of State machinery owes primarily to the fears of makers, especially post-partition and the need of maintaining territorial integrity.

In Part II, Sengupta deliberates with three alternate models available in the form of three chapters. In the first chapter of Part II, he talks about the Gandhian Constitution and why it remained an illusive promise irrespective of its radical appeal. Some of the important tenets of the Gandhian model are – village republics as the self-sufficient confederations, duty-centric relationship with State, no separation of powers, no common-law legal system, etc.<sup>23</sup> The author argues that one of the significant reasons for the curt dismissal of the Gandhian Constitutionalism was that neither Gandhi nor those devout Gandhians (for instance, Shriman Narayan Agarwal, and Prof. Shibban Lal Saxena) provided serious thoughts on the pragmatic and applicability of Gandhian conceptual frameworks. More importantly, the author posits that this

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<sup>20</sup> SENGUPTA, *supra* note 11, at 67.

<sup>21</sup> The Hindu Team, *What is ‘Deep State’ in the field of political science?*, THE HINDU (Mar. 22, 2017), <https://www.thehindu.com/opinion/op-ed/what-is-deep-state-in-the-field-of-political-science/article17565975.ece>.

<sup>22</sup> SENGUPTA, *supra* note 11, at 86..

<sup>23</sup> Shriman Narayan Agarwal, *Gandhian Constitution For Free India* (1946), CONSTITUTION OF INDIA, <https://www.constitutionofindia.net/historical-constitution/gandhian-constitution-for-free-india-shriman-narayan-agarwal-1946/>; NARENDRA CHAPALGAONKAR, MAHATMA GANDHI AND THE INDIAN CONSTITUTION (Routledge, 1<sup>st</sup> ed., 2016).

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might be owing to Gandhi's equivocal understanding of Constitutions itself, for which Sengupta calls Gandhi a 'Constitutional realist'.<sup>24</sup>

In the second chapter, Sengupta examines the possibility of a Hindutva constitutional imagination. His core thesis for this chapter is that there was no Hindutva-based alternative to the Colonial Constitution. The Constitutional endeavor of Hindu Mahasabha i.e., the Constitution of the '*Hindusthan Free State*' was heavily borrowed from the West because it endorsed secularism and equal citizenship against the fundamental principles of Hindutva. Sengupta asserts that the Mahasabha's Constitution was "*undoubtedly a sacrifice of ideology at the altar of political acceptability*". He also criticises the document as 'a fanciful wish list'.<sup>25</sup> He traces the 'lack of constitutional imagination' among Hindutva ideologues to the rise of Savarkar and the RSS, for whom the Constitution was never a priority. He briefly engages with Savarkar's revivalist formulations through his work, *Essentials of Hindutva*.<sup>26</sup>

The last chapter of the book dispels the mainstream myth of Ambedkar's singular authorship of the Constitution. Sengupta further asserts that the title of 'Drafting Committee' is misleading because the Committee's main function was to scrutinise the draft prepared by Sir BN Rau and to revise it before presenting it to the Constituent Assembly. He takes the readers through the Constitution of Committees or sub-committees that were primarily responsible for writing the text of the Constitution. He brings out the paradox of attributing authorship to Ambedkar, by stating that most of Ambedkar's suggestions in the form of his work, *Constitution of the United States of India* (which he wrote on behalf of the All India Scheduled Castes Federation) was dismissed by Sub-committee on Fundamental Rights. Some of his suggestions such as separate electorates for scheduled caste, and reserved seats for them in legislature were not discussed in the assembly at all.<sup>27</sup> In the chapter, the author also delves deeper into why Ambedkar was so strongly in favour of the strong Central Government.

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<sup>24</sup> SENGUPTA, *supra* note 11, at 137.

<sup>25</sup> SENGUPTA, *supra* note 11, at 159.

<sup>26</sup> V. D. SAVARKAR, *ESSENTIALS OF HINDUTVA* (Veer Savarkar Prakashan, 1923).

<sup>27</sup> SENGUPTA, *supra* note 11, at 180.

The author compares the same to his lived experiences that made him believe that a strong Centre is a precondition for safeguarding minority's rights. For Ambedkar, the Government of India Act, 1935 was a good base document advocating for a strong union government having overwhelming powers to curtail provincial autonomy.

There are two key merits of the work. *First*, Arghya Sengupta ensures that it is an immersive reading with evocative writing style and lucid analogies. His writing does not succumb to academic writing silos and tries to break free from it.<sup>28</sup> This has also been pointed out by reviewers who praised his work for catering to readership outside academia.

*Second*, it is a sincere endeavor to understand the colonial consciousness of Indian legal thought through the prism of constitutional text. One must acknowledge that most constitutional law textbooks taught in Indian law universities venerate the Constitution and its makers. Similar sentiments are buttressed by innumerable apex court's judgements. Sengupta himself acknowledges the hagiographic lens associated with contemporary scholarship on constitutional history in his prologue. Sengupta's scholarship is a welcome addition to strands of thought which allows us to reflect on the deification of the Constitution.

### **CRITICAL ASSESSMENT AND LIMITATIONS OF THE WORK**

The book provides a comprehensive overview of why the Constitution can be called Colonial. Nevertheless, some of the arguments presented are open to critical engagements. In this part, I will state my four major reservations of the work. They are explained under subheadings as below:

(i) **Constricted engagement with Decolonisation and Plurinational Constitutionalism:** My primary reservation with Sengupta's work lies in his limited engagement with decolonisation and plurality. Decolonisation is an ongoing process which seeks to, *first*, challenge and overcome the legacies of colonialism and imperialism by decentering dominant Western epistemological and ontological perspectives and centering the experiences and knowledges of marginalized and colonized communities and, *second*, acknowledges diversity of cultures, knowledges, and forms of

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<sup>28</sup> Tripathi, *supra* note 15.

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life to promote a more inclusive and participatory form of global governance.<sup>29</sup>

This deprives Sengupta of the richness required to untangle conceptual knots of Colonial Constitution. His entry point of what he understands by colonialism is unfortunately linear. As I stated earlier, decoloniality is a messy knot (owing to multiple coloniality of India including British, Portuguese, French, and Dutch rule as well as internal colonization when looked through the prism of caste and subalterns).<sup>30</sup> Prof. Sudipta Kaviraj concedes this complexity and writes:

*“Colonialism was a vast, internally diverse, phenomenon...European colonial power – in its political, economic and epistemic forms – encountered quite different social and epistemic universes in its path to world conquest. Subjection of each social universe – the Indian, the Islamic, the Latin American, the East Asian, the African – required different types of power strategies, and produced different kinds of eventual configurations of subordination”*<sup>31</sup>

As an example, the work is also premised on an *a priori* assumption that concepts such as liberty, equality, and fraternity are Eurocentric canon. There is a plethora of scholarship that challenges the legitimacy of them being western concepts.<sup>32</sup> Epistemology of South should hold “*constitutional principles up to the cruel mirrors of the colonialist and patriarchal capitalist world in which we live*” as Global South’s postcolonial history is

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<sup>29</sup> BOAVENTURA DE SOUSA SANTOS, *EPISTEMOLOGIES OF THE SOUTH – JUSTICE AGAINST EPISTEMICIDE* (Routledge, 1<sup>st</sup> ed., 2016).

<sup>30</sup> DIPESH CHAKRABARTY, *PROVINCIALIZING EUROPE: POSTCOLONIAL THOUGHT AND HISTORICAL DIFFERENCE* (Princeton University Press, 1<sup>st</sup> ed., 2000); For Internal Colonization, *refer*, B.R. AMBEDKAR *ANNIHILATION OF CASTE* (1936); G C Spivak, *Can the Subaltern Speak?*, in CARY NELSON & LAWRENCE GROSSBERG eds., *MARXISM AND THE INTERPRETATION OF CULTURE*, at 271 (University of Illinois Press, 1<sup>st</sup> ed., 1988).

<sup>31</sup> Sudipta Kaviraj, *On Decolonizing Theory*, 6(1) *KAIROS: A J. OF CRIT. SYMP.* (2021).

<sup>32</sup> Aakash Singh Rathore, *Decolonizing Constitutional Law: An Ambedkarite Perspective*, YOUTUBE (Oct. 06, 2023), <https://www.youtube.com/watch?v=VCpivc2C2Rk&t=13s>.

marked by complicities with colonial legacies, including the adoption of modern law, western institutions and western epistemologies.<sup>33</sup>

Similarly, he uses Constituent Assembly debates as focal points for his core argument perpetuating what Peter Fitzpatrick calls, *Mythology of Modern law*<sup>34</sup> or Griffiths' *Legal Centralism*.<sup>35</sup> It is disheartening that his alternatives do not even mention (i) constitutional texts that were being developed in princely states (Example, *Shahpura State Constitution, Manipur State Constitution*), and (ii) constitutional alternatives posited by plural marginalized sections (tribals/subalterns - *adivasis, etc.*) of India. Rohit De & Ornit Shani's recent contribution is an insightful response to constitutional stories within corridors of Constituent Assembly.<sup>36</sup> They posit:

*"... the storeyed halls of the Assembly were only one of multiple spaces where the Indian constitution was being engaged with, debated, contested and produced. The members of the Assembly, it shows, were not the sole participants in the constitution-making process. The embryonic constitution had vibrant life outside formal legal chambers, which was critical for its future reception and legitimacy. The 5,546 pages of the Assembly debates represent a tiny sample compared with the thousands of pages of wide-ranging deliberations around the making of the constitution outside the Assembly".*<sup>37</sup>

Such scholarship highlights the significance of considering the broader context of constitution-making, beyond the formal Assembly debates, and emphasizes the importance of a more comprehensive and inclusive approach to understanding India's constitutional history.

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<sup>33</sup> BOAVENTURA DE SOUSA SANTOS, SARA ARAÚJO & ARAGÓN ANDRADE (eds.), preface.

<sup>34</sup> PETER FITZPATRICK, *THE MYTHOLOGY OF MODERN LAW* 3 (Routledge, 1st ed., 1992).

<sup>35</sup> John Griffiths, *What is Legal Pluralism?*, 18(24) J. LEG. PLUR. UNOFF. LAW (1986). As per Griffiths, In the legal centralist conception, law is an exclusive, systematic and unified hierarchical ordering of normative propositions predominantly having statist origin.

<sup>36</sup> Rohit De & Ornit Shani, *Assembling India's Constitution: Towards a New History*, 263(1) PAST & PRESENT 205, 248 (2024).

<sup>37</sup> *Id.*

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(ii) Sengupta's Origin story: This criticism flows from the first criticism itself. Sengupta ends his prologue by stating that, "*It is an origin story that begins on the morning of April Fools' Day, 1937*".<sup>38</sup> He establishes this over the period of next three chapters but conspicuously misses out on any engagement with historical constitutional journey prior to the Government of India Act 1935. This becomes major lacuna, especially when he wants readers to believe that the Constitution is 'a case of cautious copying'.<sup>39</sup> He justifies it further by stating that, "*In 1950, the only document that could generate such consensus was a tried and tested colonial one*".<sup>40</sup>

Recent works on historical constitutions like the Swaraj Bill, 1895 and Sir T Madhava Rao's 1874 Constitution for the Princely States might posit direct challenges to Sengupta's understanding of Indian constitutional journey being entirely colonial.<sup>41</sup> As political Scientist, Rahul Sagar recently argued while criticising mainstream constitutional story of India:

*"What this story would miss, however, is that long before 1949, there was on the table another constitution for another India. This constitution was drafted in March 1874. It was the product not of British India, but of Indian India – as the Princely States were termed."*<sup>42</sup>

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<sup>38</sup> SENGUPTA, *supra* note 11, at 14.

<sup>39</sup> SENGUPTA, *supra* note 11, at 48.

<sup>40</sup> *Id.*

<sup>41</sup> Rohit De, *Constitutional Antecedents*, in SUJIT CHAUDHARY, MADHAV KHOSLA & PRATAP BHANU MEHTA (eds.), *THE OXFORD HANDBOOK OF THE INDIAN CONSTITUTION* (Oxford University Press, New Delhi, 2016); S.P. Sathe, *Fundamental Rights and Directive Principles*, in N.M. TRIPATHI (ed.) *CONSTITUTIONAL DEVELOPMENTS SINCE INDEPENDENCE* (N. M. Tripathi Private Ltd., Bombay, 1975); and NIRAJA GOPAL JAYAL, *CITIZENSHIP AND ITS DISCONTENTS – AN INDIAN HISTORY* (Harvard University Press, 2013).; For Madhao Rao's constitution, see Rahul Sagar, *How a researcher found, almost accidentally, the first modern Indian treatise on government*, *THE SCROLL* (Sept. 02, 2022), <https://scroll.in/article/1031818/how-a-researcher-found-almost-accidentally-the-first-modern-indian-treatise-on-government>.

<sup>42</sup> Rahul Sagar, *How, and why, the first Constitution in modern India was written, 75 years before the one we follow*, *THE SCROLL* (Jan. 19, 2020), <https://scroll.in/article/950118/how-and->

(iii) Narrative choices of the author lack substantive context: There are multiple instances when Sengupta throws facts at the readers without providing substantive context. The same has also been pointed out by other critics of this work.<sup>43</sup> For instance, Ambedkar’s swing vote that in his words, “*fundamentally responsible for conceptualizing the preventive detention provision*” does not have enough context especially how other Drafting Committee members viewed preventive detention. (Page 87) As a reader, it leaves you wanting for more, especially when it forms such an integral component of his central thesis.

(iv) Most of his arguments are neither novel nor innovative: His core argument of tracing coloniality of Indian Constitution to the Act of 1935 is tried and tested disquisition. Retd. Supreme Court judge Ravindra Bhatt’s recent lecture titled, *Shedding the Colonial Hangover - Perspectives on Indianising the Legal System* at Kerala High Court dismissed the argument of the Un-Indianness of the Indian Constitution just because of its connection with the 1935 Act.<sup>44</sup> He stated:

*“Our constitution is a living document which cannot but be the answer to what is Indian. Just because it has colonial origins cannot be reason to say it is essentially un-Indian...The blind rejection of the Constitution on the ground that it is a modification of Government of India Act of 1935 is not a well thought out argument...”*<sup>45</sup>

Similarly, he dedicated an entire chapter to dispel the myth of singular authorship of Dr. Ambedkar. However, academic scholarship on the making of the Indian Constitution is characterised by nuanced and complex arguments that extend beyond debates over authorship and Constituent Assembly discussions, even problematizing the notion of

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why-the-first-constitution-in-modern-india-was-written-75-years-before-the-one-we-follow.

<sup>43</sup> RAGHAVAN, *supra* note 15.

<sup>44</sup> Giti Pratap, *Constitution cannot be rejected merely because it is a modification of Government of India Act: Justice S Ravindra Bhat*, BAR AND BENCH (Dec. 06, 2023), <https://www.barandbench.com/cdn.ampproject.org/c/s/www.barandbench.com/amp/story/news/constitution-cannot-rejected-modification-government-of-india-act-justice-s-ravindra-bhat>.

<sup>45</sup> *Id.*

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ARGHYA SENGUPTA'S, *THE COLONIAL CONSTITUTION – AN  
ORIGIN STORY* (JUGGERNAUT: 2023)

'We, the People' as the foundational basis of the Constitution.<sup>46</sup> As an anecdotal evidence, Aditya Nigam in his seminal paper, '*A text without Author*' categorically stated that if we look at Constituent Assembly as an 'event' itself, it will deepen our understanding of "*how different currents and polyphonic voices came together in the forming of the conjuncture within which the assembly took shape - as demanded by the imperatives of a common territory, tradition and history.*"<sup>47</sup>

### CONCLUDING REMARKS

Assessing the merits and criticisms of the work, one can safely comment that Arghya Sengupta's book is an interesting addition to contemporary scholarship on colonial impact in Indian constitutionalism. Decolonisation is inevitable and much needed, especially in the context of State apparatuses which are heavily dipped in the ink of colonial epistemology. With recent attempts at decolonization of laws (For example, *Bhartiya Nyaya Sanhita*, 2024), it becomes a pressing need to understand decolonization and its emancipatory promise.<sup>48</sup>

Frantz Fanon in one of the earliest works on European coloniality urges his fellow citizens thus:

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<sup>46</sup> Kalyani Ramnath, '*We The People*': *Seamless Webs and Social Revolution in India's Constituent Assembly Debates*, 32(1) SOUTH ASIAN RESEARCH (2012).

<sup>47</sup> Aditya Nigam, *A Text without Author – Locating Constituent Assembly as an event*, 39(21) E.P.W. 2107 (2004).

<sup>48</sup> Prof. Upendra Baxi, *Crime & Punishment: Between Mood Swings of Reform*, INDIA LEGAL (Sept. 25, 2024), <https://www.indialegalive.com/magazine/bharatiya-nyaya-sanhita-bill-mob-lynching-sedition-media-freedom/>; Shreya Bansal, *The three new criminal law Bills: Missed opportunities and misplaced priorities*, THE LEAFLET (Sept. 08, 2024), <https://theleaflet.in/the-three-new-criminal-law-bills-missed-opportunities-and-misplaced-priorities/>; Gyanvi Khanna, *New Criminal Laws Are Continuation Of Colonial Logic, Expand Police Powers: Professor Anup Surendranath*, LIVE LAW (Jan. 15, 2024), <https://www.livelaw.in/top-stories/new-criminal-laws-are-continuation-of-colonial-logic-expand-police-powers-professor-anup-surendranath-246737>; Anushka Pandey, Preeti P. Dash, & Mrinal Satish, *Bharatiya Nyaya Sanhita: Decolonising or Reinforcing Colonial Ideas?*, THE NLS BLOG (Jan. 25, 2024), <https://www.nls.ac.in/blog/bharatiya-nyaya-sanhita-decolonising-or-reinforcing-colonial-ideas/>.

*“So, comrades, let us not pay tribute to Europe by creating states, institutions, and societies which draw their inspiration from her. Humanity is waiting for something other than such an imitation, which would be almost an obscene caricature...If we wish to live up to our peoples’ expectations, we must seek the response elsewhere than in Europe.”*<sup>49</sup>

Decolonisation might not be a novel concept but is “worth remembering and repeating.”<sup>50</sup> Jean Paul Sartre in the foreword of the above work asserts that through Fanon’s work, “The Third World finds itself and speaks to itself”.<sup>51</sup> In a similar vein, Sengupta’s work is partially successful for the Indian Constitution to ‘find itself and speak to itself.’

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<sup>49</sup> FRANTZ FANON, *THE WRETCHED OF THE EARTH*, at 254-55 (Grove Press, 1963).

<sup>50</sup> Yogendra Yadav, *India needs to challenge colonialism in its own language. But solution isn’t Hindu worldview*, *THE PRINT* (May 06, 2022), <https://theprint.in/opinion/india-needs-to-challenge-colonialism-in-its-own-language-but-solution-isnt-hindu-worldview/944406/>.

<sup>51</sup> FANON, *supra* note 49, at 9.