CHAPTER 3.

SOCIAL WELFARE AND CONSTITUTIONAL FOUNDATION

The history of India's struggle for independence and the debates of the Constituent Assembly show how deeply our people value their personal liberties and how those liberties are regarded as an indispensable and integral part of our Constitution.

The demand for inalienable rights traces its origin in India to the 19th Century and flowered into the formation of the Indian National Congress in 1885. Indians demanded equality with their British rulers on the theory that the rights of the subjects cannot in a democracy be inferior to those of the rulers. Out of that demand grew the plants of equality and free speech. Those and other basic rights found their expression in Article 16 of the Constitution of India Bill, 1895. A series of Congress resolutions reiterated that demand between 1917 and 1919. The emergence of Mahatma Gandhi on the political scene gave to the freedom movement a new dimension: it ceased to be merely anti-British; it became a movement for the acquisition of rights of liberty for the Indian Community. Mrs. Besant's Commonwealth of India Bill, 1925 and the Madras Congress resolution of 1928 provided a striking continuity for that movement. The Motilal Nehru Committee appointed by the Madras Congress resolution said: “It is obvious that our first care should be to have our Fundamental Rights guaranteed in a manner which will not permit their withdrawal under any circumstances. Another reason why great importance attaches to a Declaration of Rights is the unfortunate existence of communal differences in the country. Certain safeguards are necessary to create and establish a sense of security among those who look upon each other with distrust and suspicion. We could not better secure the full enjoyment of religious and communal rights to all communities than by including them among the basic principles of the Constitution”.

India represents a mosaic of humanity consisting of diverse religious, linguistic and caste groups. The rationale behind the insistence on fundamental rights has not yet lost its relevance, alas or not. The Congress Session of Karachi
adopted in 1931 the Resolution on Fundamental Rights as well as on Economic and Social change. The Sapru Report of 1945 said that the fundamental rights should serve as a "standing warning" to all concerned that: What the Constitution demands and expects is perfect equality between one section of the community and another in the matter of political and civic rights, equality of liberty and security in the enjoyment of the freedom of religion, worship, and the pursuit of the ordinary applications of life.¹

India is a welfare state. The fact that the preamble of the Constitution itself envisages India to be a 'socialist' state bears enough evidence for this. Socialism, as envisioned in the Indian Constitution, aims at elimination of inequality in income, status and standards of life. In many decisions, courts have interpreted 'socialism' to mean a kind of social democracy which comes closer to the conception of a social welfare state.

The Preamble to the Constitution enunciates the great objectives and the social goals for the achievement of which the Indian constitution has been established. There objectives are: to secure to all citizens of India social, economic and political justice, to secure to all Indian citizens liberty of thought, expression, belief, faith and worship; to secure to them equality of status and opportunity; and to promote among them fraternity so as to secure the dignity of the individual and the unity of the nation. The Indian constitution having been conceived and drafted in the mid-twentieth century an era of the concept of social Welfare State is pervaded with the modern outlook regarding the objectives and functions of the State. It embodies a distinct philosophy of government, and, explicitly, in articulate terms, declares that India will be organized as a social Welfare state, i.e. a state which renders social services to the people and promotes their general welfare. In the formulations and declarations of the social objectives contained in the Preamble, one can clearly discern the impact of the modern political philosophy, which regards the state as an organ to secure the good and welfare of the people.

Although the words "Welfare State" are not specifically mentioned into the Constitution, the aims and objectives clearly point to such an entity. Moreover, what is not specifically stated in the Preamble is mentioned in the Directive Principles of State Policy.

Pandit Jawaharlal Nehru had distinct concept of a Welfare State and gave some vital clarifications in this regard. Apart from the generally accepted stipulations, he said in Parliament, once on February 2, 1953, and again on February 17, the same year that "a Welfare State has no meaning unless every individual is properly employed and takes part in nation-building activities. When there is unemployment, he felt, there could be no Welfare State. In any case the unemployed people and their number runs into millions are not parties to the Welfare State but "outside its pale". He also affirmed that "to realize the ideal of a Welfare State requires hard work, tremendous effort and cooperation". According to his concept India may not become a Welfare State for many decades yet because the unemployment problem was unlikely to be solved for many years to come.

Pandit Nehru also drew a distinction between a Welfare State and the Socialistic pattern of society. It is true that a socialistic economy must provide for a Welfare State but it does not necessarily follow that a Welfare State must also be based on a socialistic pattern. "We cannot have a Welfare State in India", he added "with all the socialism or even communism in the world unless our national income goes up substantially. Socialism or communism might help you to divide. Your existing wealth, if you like, but in India there is no existing wealth for you to divide, there is only poverty to divide.

The people's happiness is the ultimate aim of a Welfare State and can be assured only when every one has enough to eat, some shelter in the form of a house, or at least a modest roof over his head, some work to do so as to able to earn a living and some opportunities to contribute to nation-building, which implies constructive activity. Besides, everyone must also have the means to satisfy his basic needs, consumer goods etc. Everything, as Pandit Nehru said, has ultimately
to be judged in terms of human welfare, and the only worthwhile yard stick we can employ is the happiness of our people.²

It is significant that though Parts III and IV appear in the Constitution as two distinct fasciculus of articles, the leaders of our independence movement drew no distinction between the two kinds of State's obligations -- negative and positive.

"Both types of rights had developed as a common demand, products of the national and social revolutions, of their almost inseparable intertwining, and of the character of Indian politics itself."³

This chapter is an effort to revisit the ideals of the founding fathers of the Constitution of India and the relevant factors which led the majority of the members of the Constituent Assembly to make India a welfare state and imbibe the constitutionalism of the Constitution with a socialist philosophy. It deals with the ideals of the members of the Constituent Assembly in drafting the Constitution. Social Welfare was the need of the hour so the Constitutional foundation stands on the ideology of establishing a welfare state.

What is the Constitutionalism of India?

One needs to know the ‘Constitutionalism’ and “Constitutional Law” before understanding the philosophy of Constitution of India. Having a Constitution itself is not Constitutionalism. Even a dictator could create a rulebook calling it Constitution, which never meant that such a dictator had any faith in Constitutionalism. Recognizing the need for governance, the Constitutionalism equally emphasizes the necessity of restricting those powers. The Constitutional law means the rule, which regulates the structure of the principal organs of the Government and their relationship to each other, and determines their principal functions. The rules consist both of legal rules enacted or accepted as binding by


³ Granville Austin, “The Indian Constitution: Cornerstone of a Nation”, p. 52.
all who are concerned in Government. All the Constitutions are the heirs of the past as well as the testators of the future\(^4\).

Constitution of Indian Republic is not the product of a political revolution but of the research and deliberations of a body of eminent representatives of the people who sought to improve the existing system of administration.\(^5\)

Thus the Constitutionalism, in brief, is specific limitations on general governmental powers to prevent exercise of arbitrary decision-making. Unlimited powers concentrated in a few hands at the helm of affairs and their exercise would jeopardize the freedom of the people. These powers have to be checked and balanced with equally powerful alternatives in a system, where it will be nearly impossible for dictators to emerge. In one word ‘Limited Governance’ is the Constitutionalism, which is supposed to reflect in the Constitutional Law of a democratic state. Constitution of India is the Constitutional Law incorporating the Constitutionalism. The listed fundamental rights and guaranteed remedies, creation of judiciary as an impartial arbiter with all independent powers besides broad based legislative check on the executive are the reflections of such constitutionalism. From these essential characters the doctrines of judicial review, rule of law, separation of powers, universal franchise, transparent executive, fundamental right to equality and quality of life emerged and consolidated. At the same time, the rulebook has a responsibility to check anarchy and possibility of people misusing freedom to resort to violent means of overturning the constitutionally governing institutions. That responsibility is undercurrent in the reasonable restrictions placed on the exercise of fundamental rights of the people. The founding fathers of the Constitution made restrictions specific while the rights appear in general terms, paving a way for independent judiciary to expand the scope of freedoms and reading emerging rights into the sacred statements of rights under fundamental rights chapter. At the same time specification of restrictions operate as powerful restraints on the powers of the rulers. The right as the individual power in the hands of people and authority as the ruling power in the


hands of institutions cannot go arbitrary and anarchic undermining the democratic peace.

The democratic constitutionalism is three pronged in Indian Constitution, one- guaranteeing freedoms, two- restricting governing institutions, three- empowering the independent arbiter of judiciary with power to review the executive and legislative orders affecting the interests of people in general or afflicting basic norms of rule of law.\(^6\)

Basic Philosophy Mr. Justice H. R. Khanna in his ‘Making of Constitution said: “The framing of a Constitution calls for the highest statecraft. Those entrusted with it have to realize the practical needs of the government and have, at the same time, to keep in view the ideals, which have inspired the nation. They have to be men of vision, yet they cannot forget the grass roots”\(^7\). A Constitution at the same time has to be a living thing, living not for one or two generations but for succeeding generations of men and women. It is for that reason the provisions of the Constitution are couched in general terms, for the great generalities the Constitution have a content and significance that very from age to age and have, at the same time transcendental continuity about them. A constitution states, or ought to state, not the rules of the passing hour, but the principles for an expanding future.\(^8\).

A Constitution is a rule of book of a nation, codifying rule of law. Constitution is a legal document having a special legal sanctity, which sets out the framework and the principal functions of the organs of the government of a state, and declares the principles governing the operation of those organs.\(^9\). Like every

\(^6\) ibid


\(^8\) Ibid.

other Constitution, the Indian Constitution also seeks to establish the fundamental organs of government and administration, lays down their structure, composition, powers and principal functions, defines the inter-relationship of one organ with another, and regulates the relationship between the citizen and the state, more particularly the political relationship. The states have reasserted certain principles of law through written Constitutions. As a democratic Constitution, the Indian masterpiece also reflects the fundamental political values in substantive ways by guaranteeing Fundamental Rights to the citizens, and in procedural ways by providing remedies. It mirrors basic values about who shall govern, and in what direction. Constitution means the structure of a body, organism or organization, or we can also say what constitutes it or what it consists of. Because the nation is one of the biggest in the world with most of varieties of the people and the cultures, India needs an expressly written code of governance, more specifically when the people chose to have different institutes, estates, mechanisms and levels of sovereignty. And thus we have the longest written constitution, which is one of the essential features of democratic federation.

The Indian Constitution is based on the philosophy of evolving an egalitarian society free from fear and bias based on promoting individual freedom in shaping the government of their choice. The whole foundation of constitutional democracy is building a system of governance in systematic machinery functioning automatically on the wheels of norms and regulations but not on individual whims and fancies. It is easy to dream such a system of rule of law than framing a mechanism for it. The Indian Constitution is a marathon effort to translate philosophical rule of law into practical set up divided into three significant estates checking each other exercising parallel sovereignty and non-egoistic supremacy in their own way. Apart from excellent separation of powers to avoid the absolute concentration, the Constitution of India envisages a distinct distribution of powers between two major levels of Governments- central and provincial with a fair scope for a third tier the local bodies. However, the operation of the system came in contrast with men and their manipulations leading to different opinions and indifferent options. Whatever may be the consequential aberrations, the system of rule of law is perfectly reflected in framing of the Constitutional norms codifying
the best governing mechanisms tested and trusted in various democratic societies world over.

The genesis and development of the concept of the welfare state lay in the interaction of ideas, mainly, conservatism, liberalism and socialism, in the unique British historical setting of a qualitative change from administrative to ameliorative legislation. The formative period of the concept involved an interesting application of empiricism and ideology to the problem of poverty. The welfare state, conceived within the liberal framework, involved a social consensus on a wide spectrum of socio economic policies. Two sociological factors largely contributed to the growth of the concept: first, increasing prosperity that produced a revolution of rising expectations; and second, the hope and the fear generated by the newly acquired manhood franchise. The faith in piecemeal social engineering, bereft of dogma, set the precedent for expanding municipal activity and government’s interest in social reform. This, indeed, was an ominous beginning.

3.1. CHALLENGES BEFORE THE CONSTITUENT ASSEMBLY.

The achievement of Independence was itself a mammoth task, now on gaining Independence the challenges before the Constituent Assembly for making an acceptable Constitution was of a great magnitude.

A reference to the history of British rule and Indian Independence struggle provide basic idea of self-governance that emerged into a people’s participative democracy. The last emperor of Moghul dynasty did not mind to delegate the civil administration authority to the East India Company, which was the first historic blunder that paved the way for the Company rule. The merchants who came for tea and other such things were granted not only the business rights but the revenue power to collect their dues from the clients. After some years the Company also could bargain power of administering justice within its colony and started applying the law of their own developing islands of their own sovereignty in India. This means the power of governance and the civil administration. Then imperialistic interests improved making it a sovereign with active support of the British Crown.
When the officers of the company looted the innocent people and cheated the company too, the British Administrators realized that it was no longer good to leave the Indian nation in the hands of company and conveniently took over the reigns of governance. It encouraged the independent princely states if the princes subjugate to British, and if not, they won them over in battles fought by Indian born Crown soldiers backed by English captains. Till 1947 they tried to create several states within India and gave them all courage to opt out of acceding to Indian Union apart from inciting communal dissentions. Unification of scattered Indian states within the sub-continent was Herculean task, which made the present Indian Union possible after a violent partition into three pieces.

That was not any easy task, may well be judged from the problems with which the framers of the Constitution was faced. Firstly they had to provide a Constitution which would unite the population of over 300 million people. The population was not homogeneous. There were many communities living in this country, and many languages prevalent in different parts of it. There were other kinds of differences also. Provisions also are to be made for backward people and areas, like tribes and tribal areas. The countries of Europe could not be able to join together or coalesce even in a confederacy, much less under one unitary government. In India, in spite of the size and diversity of the country, we succeeded in framing a Constitution which covered the whole of it.¹⁰

Next there was two fold problem of the Indian Princely States. Firstly the British declaration on the lapse of paramountcy had freed the Indian States from the suzerainty of the British Crown. The general control which the Crown had so long exercised over the Indian States came to an end all of a sudden. A central authority which could keep the princes in order thus disappeared. In law it became open to any prince or combination of princes to assume independence and even to enter into negotiations with any foreign power and thus become island of independent territory within the country. In fact such tendency was visible. The White Paper on Indian States, dated March 15, 1950, observed; ‘The dangers inherent in the situation were underlined by the attitude of some of the princes who

¹⁰ Dr Rajendra Prasad, speech in the Constituent Assembly, dated November 26, 1949.
were inclined to sacrifice the national interest of the people on the altar of personal ambition. The events in certain states such as Junagadh and Hyderabad had come as pointers in that direction’. These States, therefore, were to be brought within the orbit of one Central Authority. Secondly, the patent vulnerability of the smaller States, most of which had no form of popular representation and governed completely autonomously, had to be eliminated. Indian Independence would have no meaning, if the people of the States did not have the same political, social and economical freedoms as enjoyed by the people of the Provinces. A positive and bold approach alone could avert the explosive situation towards which the States were heading. The Constitution solved both these aspects of the States’ problem. The States were brought under one common authority, integrated and formed into Unions of States. Autocracy in every form was completely eliminated from the Unions.11

The communal problem was another hurdle which had to be solved. It was one pretty long standing. The Second Round Table Conference failed, because the communal problem could not be solved, and inspite of several subsequent attempts to solve it, no settlement could be arrived at. Finally it led to the partition of the country. With the division of India, the problem ceased to be of the same magnitude as before, but the Constitution had yet to guard against its reappearance. The Constitution got rid of separate electorates which had poisoned our political life for so many years. It could also be possible to give up reservation of seats in the legislatures for different communities except for two classes of person, namely the depressed classes and tribal people. The reservation was namely for a period of ten years from the commencement of the Constitution.12

The framers of the Constitution intended to secure the hard-won freedom with integrity and preferred a strong union within a federation, which otherwise appear contradictory. They had in their minds the horrific memories of the two world wars. The horrendous thought of extermination of millions of people in gas chambers revealed in Nuremberg trials, war crimes, crimes against humanity,

12 Ibid.
inhuman and barbaric violence over the civil population during wars and civil strife in partition which left a permanent scar reminded the humanity of the need for human life and dignity. Cruelties and infamies during Nazi regime influenced making of the Constitution. The sole task of the Constituent Assembly was framing of the Constitution for Independent India. The search for providing a legal frame and incorporating important systems relevant to India began. The framers looked forward to international documents, progressive democratic constitutions, and constitutional doctrines prevailing in Britain. The concept of a republic is not alien to India, as there are evidences of its existence in ancient times. But a truly democratic republic came into existence, only after India became independent. After centuries of despotic rule, both alien and indigenous, India had the chance of adopting a truly representative democracy, guaranteed by a constitution. Though a lot has been borrowed from the earlier Government of India Act of 1935, the present constitution has a lot of new features. But the reason for adopting the British parliamentary system was because of the familiarity of both the electors and elected of the working of a democratic government.  

3.2. CONSTITUENT ASSEMBLY: A SOVEREIGN BODY.

The first meeting of the Constituent Assembly of India, took place in the Constitution Hall, New Delhi, on Monday, the 9th December 1946, at Eleven of the Clock. The first meeting of India’s Constituent Assembly in New Delhi on 9th December 1946, was for many of its 296 members the fulfillment of a long cherished hope. The business before the meeting was purely formal, the swearing in of members and the election of a temporary President to conduct business until the installation of the permanent head. But the meeting symbolized an event of unique significance, namely the commencement of a great task of framing free India’s Constitution without outsides interference or pressure.  

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14 *Constituent Assembly Debates*, Book 1, Lok Sabha Secretariat.

15 B.Shiva Rao, *The Framing of India’s Constitution*, A Study, p 1, Tripathi
December, it elected Dr. Rajendra Prasad as its permanent president. The membership of the Constituent Assembly included all eminent Indian leaders. Though the Constituent Assembly consisted of 296 members, the first historical session was attended by only 210 members. Amongst the 210 members who attended the first historical session of the Constituent Assembly, there were 155 high caste Hindus, 30 Schedule Caste representatives, 5 Tribals, 5 Sikhs, 5 Indian Christians, 3 Anglo Indians, 3 Parsis and 4 Muslim members. Though the Constituent Assembly had 80 Muslim members out of total 296 members, their attendance was very poor as because the Muslim league had called upon the Muslim members to boycott the first historical session of Constituent Assembly.

The roots of the formation of the Constituent Assembly and the framing of the Constitution are relevant to understand its philosophy and evolution. The Constituent Assembly was formulated under the Cabinet Mission Plan prior to Independence. The elections to the Constituent Assembly were conducted under the system of separate electorate based on the community. After such an election too, it could not become a sovereign body. Thus its authority was limited in respect of the basic principles and procedure. The British Government brought it into existence in their process of conceding less and retaining the most of the authority with itself as counter strategy to the revolutionary raising. The Constituent Assembly was expected to work within the framework of the Cabinet Mission scheme alone. However, these limitations were removed by the Indian Independence Act, 1947 under which it was made free to frame any constitution it pleased. Evolution of the Constitution of India Dr. Rajendra Prasad was elected the permanent Chairman of the Constituent Assembly. It met on December 9, 1946. The Muslim League members were not understanding the reason and not agreeing to any viable proposition.

The British Authorities were not in a mood to control or convince them. Thus in the initial days, the Constituent Assembly could not deliberate or decide any considerable thing. However, Jawaharlal Nehru moved the Objective Resolution on December 13, 1946 and that was passed on January 22, 1947. It was the expression to the ideals and aspirations of the people of India and so the objectives of the Constitution. These fundamental objectives guided the drafting
members in framing a rulebook for the governance of the new nation. This ultimately became the very significant preamble of the Constitution of India. After the Independence the Drafting Committee was appointed by the Constituent Assembly in accordance with the decisions on the CA on the reports made by the various Committees. Dr. B.R. Ambedkar was appointed the chairman of the Drafting Committee consisting of Sir Alladi Krishnaswamy Iyer, K.M. Munshi, T.T.Krishnamachari, and Gopalaswami Ayyangar. Sir B.N.Rau prepared the original Draft on which the work of the committee was based. Several eminent personalities were elected to the Constituent Assembly through the indirect method of elections from the members of the Provincial legislatures. In fact, no prominent personality of the country was left out of the Assembly. The members include Jawaharlal Nehru, Rajendra Prasad, Sardar Patel, Maulana Azad, Gopalaswami Ayyangar, Govind Ballabh Pant, Abdul Gaffar Khan, T.T. Krishnamachary, Alladi Krishnaswami Ayyar, H.N. Kunzu, H.S. Gaur, K.V.Shah, Masani, Acharya Kripalani, Liaquat Ali Khan, Khwaza Nazimuddeen, Sir Feroze Khan Noon, Suhrawardy, Sir Zafarullah Khan, Dr. Sachchidananda Sinha. Except Mahatma Gandhi and Jinna almost all prominent public figures figured in this August body.

At the time of its establishment, the Constituent Assembly was not a sovereign body. It stood organised on the basis of the Cabinet Mission Plan. Its powers were derived from the sovereign authority of British Parliament. Some Indian leaders held the view that the Constituent Assembly was not a sovereign body. However Sardar Patel and Pandit Nehru believed that it was a sovereign body. The Assembly resolved this issue by adopting: "The Assembly should not be dissolved except by a resolution assented to by at least 2/3rd of the whole number of members of the Assembly. Once constituted it could not be dissolved even by Britain." When on 15th August, 1947, India became Independent, the Constituent Assembly became a fully sovereign body and remained so till the inauguration of the Constitution of India. During this period, it acted in a dual capacity, first as the

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16 Glanville Austin, ‘The Indian Constitution: Cornerstone of a Nation’, p 3088
Constituent Assembly engaged in the making of the Indian Constitution, and secondly as the Parliament of India, it remained involved in legislating for the whole of India.

On a historic Friday, the 13th December, 1946, Hon'ble Pandit Jawahar Lal Nehru places the Aims and Objects of the Constitution in the Constitution Hall, New Delhi. Pandit Nehru said:

‘The Resolution that I am placing before you is in the nature of a pledge. It has been drafted after mature deliberation and efforts have been made to avoid controversy. A great country is sure to have a lot of controversial issues; but we have tried to avoid controversy as much as possible. The Resolution deals with fundamentals which are commonly held and have been accepted by the people. I do not think this Resolution contains anything which was outside the limitations laid down by the British Cabinet or anything which may be disagreeable to any Indian, no matter to what party or group he belongs. Unfortunately, our country is full of differences, but no one, except perhaps a few, would dispute the fundamentals which this Resolution lays down. The Resolution states that it is our firm and solemn resolve to have a sovereign Indian republic. We have not mentioned the word 'republic' till this time; but you will well understand that a free India can be nothing but a republic’.

‘I desire to make it clear that this Resolution does not go into details. It only seeks to show how we shall lead India to gain the objectives laid down in it. You will take into consideration its words and I hope you will accept them; but the main thing is the spirit behind it. Laws are made of words but this Resolution is something higher than the law. If you examine its words like lawyers you will produce only a lifeless thing. We are at present standing midway between two ears; the old order is fast changing, yielding place to the new. At such a juncture we have to give a live message to India and to the world at large. Later con we can frame our Constitution in whatever words we please. At present, we have to send out a message to show what we have resolved to attempt to do. As to what form or shape this Resolution, this declaration will ultimately take, we shall see later. But one thing is, however, certain: it is not a law; but is something that breathes life in
human minds. I hope the House will pass the Resolution which is of a special nature. It is an undertaking with ourselves and with the millions of our brothers and sisters who live in this great country. If it is passed, it will be a sort of pledge that we shall have to carry out. With this expectation and in this form, I place it before you.

I beg to move:

"(1) This Constituent Assembly declares its firm and solemn resolve to proclaim India as an Independent Sovereign Republic and to draw up for her future governance a Constitution;

(2) WHEREIN the territories that now comprise British India, the territories that now form the Indian States, and such other parts of India as are outside British India and the States as well as such other territories as are willing to be constituted into the Independent Sovereign India, shall be a Union of them all; and

(3) WHEREIN the said territories, whether with their present boundaries or with such others as may be determined by the Constituent Assembly and thereafter according to the Law of the Constitution, shall possess and retain the status of autonomous Units, together with residuary powers, and exercise all powers and functions of government and administration, save and except such powers and functions as are vested in or assigned to the Union, or as are inherent or implied in the Union or resulting therefrom; and

(4) WHEREIN all power and authority of the Sovereign Independent India, its constituent parts and organs of government, are derived from the people; and

(5) WHEREIN shall be guaranteed and secured to all the people of India justice, social, economic and political; equality of status, of opportunity, and before the law; freedom of thought, expression, belief, faith worship, vocation, association and action, subject to law and public morality; and
(6) WHEREIN adequate safeguards shall be provided for minorities, backward and tribal areas, and depressed and other backward classes; and

(7) WHEREBY shall be maintained the integrity of the territory of the Republic and its sovereign rights on land, sea, and air according to Justice and the law of civilised nations, and

(8) this ancient land attains its rightful and honoured place in the world and make its full and willing contribution to the promotion of world peace and the welfare of mankind."

"Sir, this is the fifth day of this first session of the Constituent Assembly. Thus far we have laboured on certain provisional and procedural matters which are essential. We have a clear field to work upon we have to prepare the ground and we have been doing that these few days. We have still much to do. We have to pass our Rules of Procedure and to appoint Committees and the like, before we can proceed to the real step, to the real work of this Constituent Assembly, that is, the high adventure of giving shape, in the printed and written word, to a Nation's dream and aspiration. But even now, at this stage, it is surely desirable that we should give some indication to ourselves, to those who look to this Assembly, to those millions in this country who are looking up to us and to the world at large, as to what we may do, what we seek to achieve, whither we are going. It is with this purpose that I have placed this Resolution before this House. It is a Resolution and yet, it is something much more than a resolution. It is a Declaration. It is a firm resolve. It is a pledge and an undertaking and it is for all of us I hope a dedication. And I wish this House, if I may say so respectfully, should consider this Resolution not in a spirit of narrow legal wording, but rather to look at the spirit behind that Resolution. Words are magic things often enough, but even the magic of words sometimes cannot convey the magic of the human spirit and of a Nation's passion. And so, I cannot say that this Resolution at all conveys the passion that lies in the hearts and the minds of the Indian people today. It seeks very feebly to tell the world of what we have thought or dreamt of so long, and what we now hope to achieve in the near future. It is in that spirit that I venture to place this Resolution before the House and it is in that spirit that I trust the House will
receive it and ultimately pass it. And may I, Sir, also, with all respect, suggest to you and to the House that when the time comes for the passing of this Resolution let it be not done in the formal way by the raising of hands, but much more solemnly, by all of us standing up and thus taking this pledge anew.

We have just come out of the World War and People talk vaguely and rather wildly of new wars to come. At such a moment this New India is taking birth-renaissance, vital, fearless. Perhaps it is a suitable moment for this new birth to take place out of this turmoil in the world. But we have to be cleared at this moment, we, who have this heavy task of constitution building. We have to think of this tremendous prospect of the present and the greater prospect of the future and not get lost in seeking small gains for this group or that. In this Constituent Assembly we are functioning on a world stage and the eyes of the world are upon us and the eyes of our entire past are upon us. Our past is witness to what we are doing here and though the future is still unborn, the future too somehow looks at us, I think, and so, I would beg of this House to consider this Resolution in this mighty prospect of our past, of the turmoil of the present and of the great and unborn future that is going to take place soon. Sir, I beg to move.17

Apart from what has been stated above, we find that both before the dawn of independence as well as during the course of debates of the Constituent Assembly stress was laid by the leaders of the nation upon the necessity of bringing about economic regeneration and thus ensuring social and economic justice. The Congress Resolution of 1929 on social and economic changes stated that "the great poverty and misery of the Indian people are due, not only to foreign exploitation in India but also to the economic structure of society, which the alien rulers support so that their exploitation may continue. In order therefore to remove this poverty and misery and to ameliorate the condition of the Indian masses, it is essential to make revolutionary changes in the present economic and social structure of society and to remove the gross inequalities". The resolution passed by the Congress in 1931 recited that in order to end the exploitation of the masses, political freedom must include real economic freedom of the starving millions.

17 13th December, 1946, ‘Constituent Assembly Of India Debates’- Vol-1
This Objectives Resolution which was moved by Pt. Nehru in the
Constituent Assembly on December 13, 1946 and was subsequently passed by the
Constituent Assembly mentioned that there would be guaranteed to all the people
of India, "justice, social, economic, and political; equality of status, of opportunity
and before the law; freedom of thought, expression, belief, faith, worship,
vocation, association and action subject to law and public morality". It would,
therefore, appear that even in the Objectives Resolution the first position was given
to justice, social, economic and political.

Pt. Nehru in the course of one of his speeches, said:

‘The service of India means the service of the millions who suffer. It means
the ending of poverty and ignorance and disease and inequality of opportunity. The
ambition of the greatest man of our generation has been to wipe every tear from
every eye. That may be beyond us, but as long as there are tears and suffering, so
long our work will not be over. Granville Austin in his book "Extracts from the
Indian Constitution: Cornerstone of a Nation" after quoting the above words of Pt.
Nehru has stated:

Two revolutions, the national and the social, had been running parallel in
India since the end of the First World War. With independence, the national
revolution would be completed, but the social revolution must go on. Freedom was
not an end in itself, only 'a means to an end', Nehru had said, 'that end being the
raising of the people...to higher levels and hence the general advancement of
humanity'.

The first task of this Assembly (Nehru told the members) is to free India
through a new Constitution, to feed the starving people, and to clothe the naked
masses, and to give every Indian the fullest opportunity to develop himself
according to his capacity.\(^{18}\)

The Preamble of the Constitution embodies all the ideals which were listed
in the objectives Resolution. The objective Resolution was designed to declare the

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\(^{18}\) Glanville Austin, ‘The Indian Constitution: Cornerstone of a Nation’,

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resolve to make India a sovereign, Independent, Republic and to secure all its citizens, fundamental rights, justice, secularism and welfare state as well as to preserve the unity and integrity of the nation. It declared the resolve to make India a democratic Union with an equal level of self government in all constituent parts. It affirmed that all power and authority of the Government is derived from the people. It affirmed the resolve to frame a Constitution which should secure for India a due place in the country of Nations.19

In the making of the Constitution, a very valuable role was played by the Drafting Committee. The Committee was constituted on 29th August, 1947 with Dr. B.R. Ambedkar as its chairman. The members of this committee included its versatile chairman Dr. Ambedkar, as such legal luminaries as B.L.Mitter, N. Gopalswami Ayyanagar, Alladi Krishnaswami Ayyar, K.M. Munshi, Saiyid Mohd Saadulla, N. Madhab Rao and D.P. Khaitan. After the death of Mr. D.P. Khaitan, T.T. Krishnamachari was made its member. Dr. B.N. Rau worked as the Chief Constitutional Advisor attached to this Committee. In all it held 11 plenary sessions and discussions were held for 114 days. Rs.6,396,273 were spent in this exercise.20

The members of the Constituent assembly were elected on a limited franchise. But they were also elected on adult franchise in the first general elections held in 1952. The draft Constitution was published in January 1948 and the people of India were given 8 months to discuss it and suggest changes. On November 4, 1948, the general discussions on the draft commenced in the Constituent Assembly and continued for five days. Then there was a thorough discussion clause by clause for about 32 days. As many as 7635 amendments were proposed and 2473 were actually discussed before a third reading was given for another 12 days. The Constitution of India was adopted and signed by the Chairman Dr Rajendra Prasad on November 26, 1949. The draft was considered for 114 days and the Constituent Assembly sat for 2 years 11 months and 18 days. Initially some important Articles came into existence, but the entire Constitution

19 ibid

20 http://orissa.gov.in accessed on 17.07.2010

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came into force from January 26, 1950. There is a criticism that the Constitution would have been adopted by means of a referendum as was done in Ireland. Several old members of the Constituent Assembly were elected to either Parliament or State Assemblies vindicating their contribution to the drafting of the Constitution and accepting the principles enshrined therein. Glanville Austin wrote: “With the adoption of the Constitution by the members of the Constituent Assembly on November 26, 1949, India became the largest democracy in the world. By this act of strength and will, Assembly members began what was perhaps the greatest political venture since that originated in Philadelphia in 1787”.

Constitution of India is indeed the highest and most valuable contribution of the Constituent Assembly to the Indian Political System.

3.3. THE PREAMBLE- SOVEREIGN DEMOCRATIC REPUBLIC

The Preamble of the Constitution sets out the aims and aspirations of the people of India and these have been translated into the various provisions of the Constitution. The objectives before the Constituent Assembly were to constitute India into sovereign democratic republic and to secure its citizens, justice equality liberty and fraternity. The ultimate aims of the makers of the Constitution was to have a welfare State and an egalitarian society projecting the aims and aspiration of the people of India who made the extreme sacrifice for attainment of the country’s freedom. It is worthwhile to note that the Preamble was adopted by the Constituent Assembly after the draft Constitution has been approved.

The idea was that the Preamble should be in conformity with the provisions of the Constitution and express in a few words the philosophy of the Constitution. After the transfer of power, the Constituent Assembly became sovereign, which it reflected in its words “give to ourselves this Constitution” in the Preamble. It is

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21 Glanville Austin, ‘The Indian Constitution: Cornerstone of a Nation,’

22 By the 42nd Amendment it has been substituted to read ‘Sovereign Socialist Secular Democratic Republic’.

23 B. Shiva Rao, ‘Framing of India’s Constitution- A Study’, p-32.
also implied that the Preamble emanated from the people of India and sovereignty lies with them.\textsuperscript{24}

The Preamble was extensively debated in the Constituent Assembly\textsuperscript{25}, and various members had moved in amendments for deletion and addition of various wording of the Preamble that was submitted by the Draft Committee before the Constituent Assembly. Reference to the debates of the Constituent Assembly shows that there was considerable discussion in the said Assembly on the provisions of the Preamble. A number of amendments were moved and were rejected. A motion was thereafter adopted by the Constituent Assembly that "the Preamble stands part of the Constitution." Let us for better understanding have a study of some of the amendments moved in by the Members of the Constituent Assembly.

\textit{Maulana Hasrat Mohani}: I have three amendments. I want to move them separately, not in one bundle.

\textit{Mr. President}: Which one do you want to move first?

"That for amendment No.8 of the List of Amendments (Volume I), the following be substituted :-

"That in the Preamble, for the words "We, the People of India, having solemnly resolved to constitute India into a Sovereign Democratic Republic" the following be substituted :-

"We, the People of India having solemnly resolved to constitute India into a Sovereign Federal Republic."

\textit{or alternatively}

\textsuperscript{24} V.N. Shukla, \textit{Constitution of India\textquoteright}, 10\textsuperscript{th} edn., Eastern Book Company.

\textsuperscript{25} \textit{Constituent Assembly Debates\textquoteright}, Vol. X, p. 429-456.
"We, the people of India, having solemnly resolved to constitute India into a Sovereign Independent Republic."

I shall just now give my reasons for proposing these amendments. In view of the proverbial shortness of public memory, I want first to remind the Members about a very fundamental fact that has been brought into the present Constitution and in the Draft prepared by Dr. Ambedkar. I refer to Volume IV No.6 of the official report of the proceedings of this Assembly - list 738, Part I: Federal territory and jurisdiction. Under "name of territory and federation" it is said that the Federation hereby established shall be a sovereign independent republic known as India. So it is clearly laid down that we will have only a Federation and it will be a federation of Indian republics. But my friend, Dr. Ambedkar has cleverly, I suppose, dropped the word "Federal" altogether and the word "independent" also has been dropped and he has aid "democratic State". I objected to that when I spoke the other day.

Shri Deshbandhu Gupta: May I draw the attention of the Chair to the point of order moved by me? I am serious about it.

Mr. President: He is moving amendment No. 453 which runs thus:

"That in the Pramble for the words 'We, the people of India, having solemnly resolved to constitute India into a Sovereign Democratic Republic' the following be substituted: -

'We, the people of India, having solemnly resolved to constituted India into a Sovereign Federal Republic'. "

Or

'We, the people of India having solemnly resolved to constitute India into a Sovereign Independent Republic'. "

So far as this amendment is concerned, I do not see anything in it that is out of order. You are taking only this one, Maulana Sahib?
Maulana Hasrat Mohani: I have been given some sort of promise. Very well, Sir. According to that report the Committee appointed for framing the constitution was given a clear directive that the Constitution should be framed in accordance with the Objectives Resolution passed by this Assembly. It is quite strange that instead of following the Objectives Resolution, Dr. Ambedkar is passing anything he likes. He wants the Objectives Resolution to be in conformity with his erroneous decision. He has reversed the order and this is what I object to most because it has changed the character of the Constitution. As I pointed out here, what was the object of the Objectives Resolution and the Report. They said that it will be a Federation of sovereign Independent Republics. Mark this plural form "Republics". Now he has reversed the whole thing. He has dropped the word ‘Federation’; he has dropped the word Republic and he has dropped also the word, ‘independent’ for some ulterior motive which I am not going to disclose at this moment. I reserve it for a future occasion when I will throw it in his face when the time comes. For the present I say that according to the Objectives Resolution and according to the instructions given by Pandit Jawaharlal Nehru they should at least change this article in this way, that the spirit of what he suggested may be included in the article proposed by Dr. Ambedkar. He in fact, accepted this thing; he drops the word ‘independent’. For the word ‘independent’ I want to put the word ‘Federal’ that is, a sovereign federal Republic, it does not matter if it is not a Republic. When I say a Sovereign Federal Republic, it means a Republic and the State units of that will also be Republics or it will be a Federation. I say ‘No’. He takes that word only because it implies also a sort of a unitary system, and whatever he wants he has reversed and changed the whole character of this Constitution. We mean and the Objectives Resolution means that India will be made a Federation of Independent Republics and he now says "No". India will be transformed and in the place of the British Empire you will create an Indian Empire which will consist only of States which will have got no power and in the States you have also included and brought down the Provinces also. Formerly, I thought that the States will get the benefit of this inclusion but you have brought down the provinces also and you have deprived them of everything and even the sort of provincial autonomy has been taken away and in fact you have allowed nothing for the Provinces. You decided that you will have elected governors for the
provinces. I objected to the word ‘governors’ in the very beginning and when Pandit Jawaharlal Nehru said "I cannot satisfy the Maulana; he is a very deep man. He is afraid of this word ‘Governor’, I suggested that instead of the word ‘Governor’ we may put the word "president’’ also in regard to the provinces. They said that they need not do that. I did not press that matter to the provinces. They said that they need not do that. I did not press that matter at that time but now I find on hearing the explanations given by Dr. Ambedkar that he has reversed the whole picture and he has let the cat out of the bag. He has clearly said: "What will be India that is Bharat? It will be a Union of States". What does this mean? You have discarded the word ‘Republic’; you have discarded the word "Federation"; you have discarded the word "Independent", and my honourable friend, Dr. Ambedkar says: "Well, what does it matter? It does not matter when we say Republic. It is immaterial whether you call it independent or not’’. I say if this is immaterial why is he so anxious to change that word ‘independent’ into ‘democratic’? There is something secretly going behind the scenes and I pointed out on a previous occasion that when Pandit Jawaharlal Nehru changed his mind and went to England to have some sort of connection with the British Commonwealth, then he thought that we will have a Republic and also ‘independent’. So he wanted to create a loophole for himself because he can now say: "We are already a Republic". We are not an independent Republic. What sort of a Republic are we? Some sort of Republic that these European countries, these imperialists, who are past-masters in this jugglery of words, have coined new phrases; and what are these new phrases? Holland has invented a phrase a Republican Dominion’ and France has coined a new word for Vietnam which says that it will be a colonial Republic. We admit that Vietnam is a Republic and Holland says that they have accepted Indonesia as a Republic but it says it is a Republican Dominion. Instead of the Dominion it will be included in an imperial regime and that fraud was brought about by Holland and by France and do you propose that you will also bring about the same fraud to be enacted here?

Maulana Hasrat Mohani: You said that we have got the word Republic. You have dropped the word Federation. You will also say that of course Pandit Jawaharlal Nehru has agreed to remain in the British Commonwealth because they
accept we are independent. But, what sort of independence? It will be a republican dominion. Because if it is a real republic and not a republican dominion, you should have nothing to do with any king or Emperor directly or indirectly in any manner. When once Pandit Jawaharlal Nehru has agreed to remain in the British Commonwealh, I think he has forfeited his right to call India as a Republic. It is not a republic. If it is a republic, it is a republican dominion, as I said just now.

So, my alternative proposal is this. Either introduce the word ‘Federal’ instead of the word "Democratic”. It will make something clear. If you do not want to introduce this word ‘federation’, if you are afraid of it, I will grant a concession to Dr. Ambedkar and you stick to the original wording of the Objectives Resolution which is given here. It will be "Independent Sovereign Republic”. I say, drop this word ‘democratic’ and keep to the actual words used in the Objectives Resolution. If you use the words "independent Republic’’ my object will be served. I come forward and say that whatever has been done by Pandit Jawaharlal Nehru is absolutely a false policy.

Mr. President: Does any one else wish to say anything about this amendment? I will put it to the vote. First alternative.

The question is:

"That in the Preamble for the words, ‘We, the people of India, having solemnly resolved to constitute India into a Sovereign Democratic Republic’ the following be substituted:-

‘We, the people of India, having solemnly resolved to constitute India into a Sovereign Federal Republic’.

The amendment was negatived.

Mr. President: I shall put the second alternative.

The question is:
"That in the Preamble, for the words, ‘We, the people of India, having solemnly resolved to constitute India into a Sovereign Democratic Republic’ the following be substituted:

We, the people of India, having solemnly resolved to constitute India into a Sovereign independent Republic’.”

The amendment was negatived.

Maulana Hasrat Mohani: Mr. President, I move:

"That in the preamble, for the words ‘We, the People of India, having solemnly resolved to constitute India into a Sovereign Democratic Republic’ the words ‘We, The People of India, having solemnly resolved to constitute India into a Union of Indian Socialistic Republics to be called U.I.S.R. on the lines of U.S.S.R. ’ be substituted".

Shri Deshbandhu Gupta: May I now raise the point of order again and submit that it is out of order because it goes counter to the Constitution we have passed?

Mr. President: A point of order has been raised that the whole Constitution that has been framed and accepted by this house is inconsistent with this amendment of the preamble and therefore it should be ruled out of order.

Mr. President: Then I will put it to vote.

The question is:

"That in the Preamble for the words ‘We, the People of India, having solemnly resolved to constitute India into a Sovereign Democratic Republic’ the words ‘We The people of India, having solemnly resolved to constitute India into a union of Indian Socialistic Republics to be called U.I.S.R. on the lines of U.S.S.R. be substituted”.

The amendment was negatived.
Mr. President: Now we have got a large number of amendments of which notice is given by other Members. Some of these amendments relate to two things. In some of them the name of God is brought in some form or other in this preamble. In some others, the name of Mahatma Gandhi is brought in some form or other. Then there are some in which some amendments are suggested to the wording. But those are rather minor things, and the main amendments are really those in which the name of God is brought in, or the name of Mahatma Gandhi is brought in or both together. Now, I would like to know from Members if they insist upon these amendments being moved, because I cannot prevent them from moving them; but I would suggest that neither God nor Mahatma Gandhi admits of a discussion in this House.

Smt. Purnima Banerji: (United Provinces: General). Mr. President, I would beg of you to see that the matter of God is not made the subject of discussion between a majority and a minority. It is most embarrassing. To most of us, believers and non-believers, it will be difficult to affirm or deny God. Let us not try to invoke his name in vain. It should not be brought up in this form and the members compelled to vote one way or the other. The name of God is invoked by every nation upon earth and god is an Impartial Entity and he should be allowed to remain so. With these words, I appeal to Mr. Kamath not to put us to the embarrassment of having to vote upon God.

Shri H. V. Kamath: I regret I cannot accept the appeal. I shall move amendment No. 430 standing in my name. Sir, I move:

"That in amendment no. 2 of the list of Amendments (Volume I), the following be substituted for the proposed preamble:-

In the name of God,
We, the people of India,
Having solemnly resolved to constitute India into a Sovereign democratic republic, and to secure to all her citizens Justice, social, economic and political;
Liberty of thought, expression, belief, faith and worship;
Equality of status and of opportunity; and to promote among them all;
Fraternity, assuring the dignity of the individual and the unity of the nation;

In our Constituent Assembly do hereby adopt, enact and give to ourselves this Constitution”.

Mr. President: It is exactly the same as the Preamble except that it begins with ‘In the name of God’.

Shri Rohini Kumar Chaudhuri: (Assam: General): May I move an amendment to that of Sh. Kamath that, instead of ‘In the name of God’, would he be pleased to accept ‘In the name of Goodess’? (laughter).

Shri H.V. Kamath: Mr. President, all that we have done in this House has been done on behalf of and for the people of India, and all decisions have been taken here by the vote of the House. Whether this becomes a matter for the vote of the House or not, I am sure in their heart of hearts the people of India for whom we have been working and toiling here for the last three years would endorse this amendment in toto. That is so far as the point raised by Mr. Pillai is concerned.

I have taken only a slight liberty with the text of the Preamble. As I have pointed out, I am sticking to the wording of the Objectives Resolution moved by Pandit Jawaharlal Nehru in December, 1946. In the first part of it, the future with reference to the governance of the country the words used are "her future governance", here being apt for the motherland. That being so, we should say ‘her’ and not ‘its’ citizens in the preamble. I would leave this however to the Drafting Committee.

As regards the substance of the motion I do not propose to make a long speech. In this august House, the first Constituent Assembly of India, of our Bharata Varsha, in this land, ancient but ever young, which has through the ages renewed itself at the Divine Fountain, let us consecrate this Constitution by a Solemn dedication to God in the spirit of the Gita. Whatever our shortcomings, whatever the defects and errors of this Constitution let us pray that God will give us strength, courage and wisdom to transmute our baser metal into gold, through hard work, suffering and sacrifice for India and for her people. This has been the
voice of our ancient civilisation, has been the voice through all these centuries, a
voice distinctive, vital and creative, and if we, the people of India, heed that voice,
all will be well with us.

**Shri Rohini Kumar Chaudhuri:** We should remember that when we started
our political movement, we started it with the singing of Bande Mataram. What
does Bande Mataram mean? It means an invocation to a Goodess. It means belief
in a Goodess. Sir, we who belong to the Sakthi cult, protest against invoking the
name of God alone, completely ignoring the Goodess. That is my submission. If
we bring in the name of God at all, we should bring in the name of the Goddess
also. As I said, this amendment should not have been brought. But as it has been
brought, this is my point of view.

**The Honourable Shri Satyanarayan Sinha:** (Bihar: General): Sir, the
question may now be put.

**Mr. President:** There are so many others who are wanting to speak. But it
has now been suggested that the matter be closed.

The question is:

"That the question be now put".

The motion was adopted.

**Mr. President:** Now I have to put the amendment moved by Mr. Kamath to
vote. There is no alternative left to me.

**The Honourable Dr. B.R. Ambedkar:** He may be asked to withdraw it.

**Mr. President:** I suggested to him not to move it. It rests with him to
withdraw it.

**Shri H.V. Kamath:** I am not withdrawing it.

**Mr. President:** He says he does not withdraw it.

The question is:
"That in amendment No. 2 of the List of Amendments (Volume I), the following be substituted for the proposed preamble:-

'In the name of God,
We, the people of India,
Having solemnly resolved to constitute India into a Sovereign democratic republic, and to secure to all her citizens,
Justice, social economic and political;
Liberty of thought, expression, belief, faith and worship;
Equality of status and of opportunity; and to promote among them all;
Fraternity, assuring the dignity of the individual and the unity of the nation;
in our Constituent Assembly do hereby adopt, enact and give to ourselves the Constitution’’.

Shri H.V. Kamath: I claim a division.

Pandit Govind Malaviya: I want a division on this question.

Maulana Hasrat Mohani: I also want a division on this question.

Pandit Govind Malaviya: I want a division because I feel that we are doing an injustice to this country and to its people and I want to know who says what on this matter.

The Assembly divided by show of hands.

Ayes: 41

Noes: 68.

The amendment was negatived.

Shri H.V. Kamath: This, Sir, is a black day in our annals. God save India.
Prof. Shibban Lal Saksena: Sir, I beg to move:

"That for the Preamble, the following be substituted:-

'In the name of God the Almighty, under whose inspiration and guidance, the Father of our Nation, Mahatma Gandhi, led the Nation from slavery into Freedom, by unique adherence to the eternal principles of Satya and Ahimsa, and who sustained the millions of our countrymen and the martyrs of the Nation in their heroic and unremitting struggle to regain the Complete Independence of our Motherland,

We, the People of Bharat, having solemnly resolved to constitute Bharat into a Sovereign, Independent, Democratic, Socialist Republic, and to secure to all its citizens:

JUSTICE, social, economic and political,
LIBERTY of though, expression, belief, faith and worship,
EQUALITY of status and of opportunity; and to promote among them all;
FRATERNITY assuring the dignity and freedom of the individual and the unity of the country and the Nation:
In our Constituent Assembly this;........day of Vikrami Samvat 2006 (the 26th day of January, 1950 A.D.) do hereby enact, adopt and give to ourselves this Constitution’‘.

I have been very much pained to see the attitude of some of our friends regarding the introduction of the holy name of God and the Father of the Nation at the beginning of our Constitution. While they have a right to have their say, other people also have a full right to have their say. This country has always prided on its discoveries in the realm of the spirit and we are now afraid even to put in God’s name at the commencement of our Constitution. I am one of those who think that we have produced a great piece of work by preparing this Constitution. There may be some defects in it. But I am sure we have done some very great
things. It is only meet and proper that the name of God and the name of the Father of the Nation should be put at the beginning of our Constitution. I am sorry that some people should have thought that we are forcing it on them. There are other Constitutions in the world – the Irish Constitution, for instance – wherein in the very beginning in the Preamble God has been mentioned and homage has been paid to the martyrs who won their freedom. I have therefore been very much pained to feel that some Members merely at the mention of the name of God or the Father of the Nation feel that something is sought to be forced upon somebody. If they feel that way, they are at liberty to have their opinion, but why force others who feel intensely in the matter to eliminate God’s name? I greatly regret the attitude of my friends. I hope they will reconsider it. This Constitution will probably build our country on a new pattern and on the basis of the ideals set by the Father of the Nation. It is therefore meet and proper that we should humble ourselves before God and pay homage to the Father of the Nation by incorporating their names in the very beginning of the Constitution.

Shri Brajeshwar Prasad: (Bihar: General): Mr. President, I rise to oppose the amendment moved by my friend Prof. Shibban Lal Saksena. I do not want that the name of Mahatma Gandhi should be incorporated in this Constitution, because it is not a Gandhian Constitution. The foundation stones of this Constitution are the decisions of the American Supreme Court. It is the Government of India Act, 1935, repeated again. If we had a Gandhian Constitution, I would have been the first to offer my support. I do not want that the name of Mahatma Gandhi should be dragged in the rotten Constitution.

Mr. President: I will now put this amendment to vote.

Acharya J.B. Kripalani: (United Provinces: General): May I request the Mover of the amendment to withdraw it? It is not behoving us to vote on this amendment. We must be very sparing of the use of the name of the Father of the Nation. My friend Shibban Lal knows that I yield to nobody in my love and respect for Gandhiji. I think it will be consistent with that respect if we do not bring him into this Constitution that may be changed and reshaped at any time.
Prof. Shibban Lal Saksena: Sir, in response to the appeal of Acharya Kriplani, I beg to withdraw my amendment.

The amendment was, by leave of the Assembly withdrawn.

(Amendment No. 4 was not moved).

Shri Brajeshwar Prasad: Mr. President, Sir, there are eight amendments standing in my name. I refer to amendments Nos. 313, 314, 316 and 317, 318, 319, 320 and 323. Sir, I would like to move only one amendment.

I refer to amendment No. 313. Mr. President, Sir, I move:

"That for amendment No. 1 of the List of amendments (Vol. 1), the following be substituted:-

That for the Preamble the following be substituted:

"WE THE PEOPLE OF INDIA, having resolved to constitute India into a SECULAR CO-OPERATIVE COMMONWEALTH to establish SOCIALIST ORDER and to secure to all its citizens-

1. adequate means of livelihood.
2. Free and compulsory education
3. Free medical aid
4. Compulsory military training

do hereby ordain and establish this Constitution for India".

Dr. P.S. Deshmukh: What about a camel and motor cycle?

Shri Brajeshwar Prasad: It is for you to suggest those things. Sir, this word secular has not found any place in our Constitution. This is the word on which the greatest stress has been laid by our national leaders. I do submit that this word ought to be incorporated in our Preamble because it will tone up the morale of the minorities and it will check the spirit of loafers that is rampant in politics. I have laid stress on another word. I refer to the word ‘Socialist’. I believe that the future of India is in Socialism. I believe in a Socialist order. When I say that I believe in a socialist order. I do not mean that I accept the Marxian interpretation of History.
I do not believe in class war nor in the materialist Philosophy which is so widely prevalent among the socialist circles. By socialism I mean an equalitarian social order. Equality of opportunity without equality of income is a mere shibboleth. I believe that in India we have to evolve a new type of socialism consistent with the tradition and history of this land. The theory of materialism is a well-knit dogma. I think that we people in India have not to learn anything from Germany on philosophical speculation.

Now I come to some other words which have found place in the Preamble. There seems to be a confusion of thought. I hold the opinion that the word ‘liberty’ and ‘equality’ do not go together. They are incompatibles. They are the enemies of one another, the one can only triumph at the expense of the other.

I do not want to place impossible ideals before the nation. Sir, it is only in a class-less society that we can achieve a reconciliation of the two concepts of liberty and equality.

I have suggested that instead of these ideals laid down in the preamble we should have some pragmatic ideals before us. If we succeed in providing an adequate means of livelihood, free and compulsory education, free medical aid and compulsory military training I would think that our efforts have borne fruit. I do not want to place impossible ideals before the nation which we know well that neither in our life-time nor in the life-time of our children or our grand children we will not be able to achieve. I would like to refer to another point before I conclude. I object to the word ‘sovereignty’ in this Preamble. I hold the opinion that the whole concept of Austrian sovereignty has been exploded. A legal concept must have some relation with real facts. If it is not so, it has got no value.

I hold the opinion that this ideal is neither necessary nor desirable because sovereignty leads to war; sovereignty leads to imperialism. (Clapping and interruption).

*Shri Brajeshwar Prasad:* Sir, I will now deal with only one aspect of the question. The word ‘sovereign’ has found a place in this Preamble. I am rather thick-skinned. I will never resume my seat. I will speak and then take my seat. I
feel that this word ‘sovereign’ is entirely misplaced. A State consists of individuals. Are individuals sovereign in any sense of the term? If individuals are not sovereign, how can a State which consists of individuals be sovereign. It is a very well-known fact that man has no free will of his own, that he is circumscribed by factors of heredity and environment. Both qualitatively and quantitatively he holds a very insignificant place in the universe. If man is so insignificant, if man is a non-entity in the world how can a State which consists of individuals be a sovereign State? Therefore, Sir, I am opposed to this idea of sovereignty.

We are sovereign. We are a sovereign State to the extent it is possible for a modern State to be sovereign. We do not aspire to rise to those Austrian heights because, as I have already stated, it is a frivolous concept, it is a mischievous concept. The deletion of the word ‘sovereign’ will not in any way deter us from exercising the functions of sovereignty which are vested in the Government of India. It will not detract one iota of sovereignty but by the retention of this word ‘sovereign’, we are placing a false ideal, a mischievous ideal before the nation. Therefore, I am opposed to this Preamble. Let us have some pragmatic ideals, ideals which we may be capable of achieving in our own life time and in the life time of our children.

Mr. President: Does any one wish to say anything about the amendment? I shall put this amendment to vote.

The question is:

"That the amendment No. 1 of the List of Amendments (Vol. I), the following be substituted:-

"That for the Preamble, the following be substituted:-

"WE THE PEOPLE OF INIDA-having resolved to constitute India into a SECULAR CO-OPERATIVE COMMONWEALTH to establish SOCIALIST ORDER and to secure to all its citizens-

- an adequate means of LIVELIHOOD
- FREE AND COMPULSORY EDUCATION

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• FREE MEDICAL AID
• COMPULSORY MILITARY TRAINING

do hereby ordain and establish this Constitution for India”.

The amendment was negatived.

Smt. Purnima Banerji: Sir, I move:

"That in amendment No. 2 of the List of Amendments (Volume 1), for the first paragraph in the proposed preamble, the following be substituted:-

"We on behalf of the people of India from whom is derived all power and authority of the Independent India,

With your permission, Sir, I would like to drop the word "sovereign" here.

"its constituent parts and organs of Government, having solemnly resolved to constitute India into a Sovereign Democratic Republic and to secure to all its citizens: -

Sir, my honourable friend Mr. Tyagi has given point to my amendment and further strengthened my hands. I feel that the Preamble that we are now dealing with forms one of the most important parts of the Constitution and to persons like us who are not of a legalistic bent of mind, it stands as a charter of our freedom and as a measure of our success or our failure. It lays down the goal to which we are going and therefore at this moment if members of this House will allow us to express what we feel on this subject with a little more patience, then, I personally will be very grateful.

Sir, I feel that the Constitution which we have drawn up has invested the President and Parliament with wide powers. At this moment, I do not think we should be content with considering the masses of our people as the sovereign authority from all power is derived and in whom all sovereign authority rests by merely believing that because they once to to the polls once in five years their
sovereignty is secured. Therefore, I feel that, in the Preamble, mention of that sovereignty should be made. I have not gone beyond what the House has already passed. The wording which I have quoted here is taken almost verbatim from the Objectives Resolution which was first passed in this House in January 1947. As I said before, the three parts of the Constitution or rather three incidents in the Constitution, one, the Objectives Resolution, second the statement of Objectives of State policy and the Preamble are supposed not to have any legal binding upon the Constitution. But they, in fact, constitute the very life-breath of the Constitution which we have here framed. I do not wish to take more of your time. I would strengthen my argument with the speech quoted by my honourable friend Mr. Tyagi From the speech made by Dr. Ambedkar when he moved the Preamble. At that moment, I was not present in the House. But that has borne my contention out that the sovereignty of the people should be mentioned somewhere in the Constitution. With these words, I move my amendment.

_Shri Mahavir Tyagi: Sir_, in supporting the amendment of my honourable friend Smt. Banerji, I have to remind the House of the proceedings of 15<sup>th</sup> November, 1948, when a similar amendment was moved by me. It was worded like this that the sovereignty will vest in the whole body of people. It was discussed thread-bare and I was assured that the article to which I was moving that amendment was not the proper place for that amendment and I was promised that this amendment would be considered when the Preamble was discussed. Now is the occasion when I beg to remind the House of the promise the Chairman of the Drafting Committee gave me. I am keen that the residence of the sovereignty should be defined. I am more keen about it because up till today the sovereignty vests in His Majesty the King of England. There is an Englishman in whom we have vested the sovereignty for a century past. So if we do not say in so many word, as to where the sovereignty would vest in future it will go on vesting in an Englishman. We want to break it away from him. Therefore, we must definitely say that there is no more sovereignty attached to the King of England.

Then, I also do not want to let remain any doubt or danger of any Government, this or future, to bargain or barter away the sovereignty of the country in the name of Commonwealth or common brotherhood or common
citizenship or whatever it be. So the sovereignty must be vested in so many words in the people as a whole. In China in their Constitution they have put it that the sovereignty vests in the whole people of China. Whether the Communists take China or not, the people will remain. People will not be animals if they become communists or if they adopt any party label. People will remain in India as well and the sovereignty will vest in the people of India. It must be defined so that the Govt. might not misuse it. It does not vest even in the Govt. Govt. only represents the people. Because Dr. Ambedkar has agreed to put it in the Constitution, I do not want to dilate upon it and I hope he will kindly accommodate these words and make it clear once for all that the sovereignty vests in the people and not in any foreigner as it does today, nor in the state even though it has the title of being a "sovereign state".

Acharya J. B. Kriplalani: Mr. President, Sir, I was not my intention to speak but some friends wanted that at this last moment when practically we are finishing our Constitution I should speak a few words. Some of my friends said that I began, by a formal speech, the proceedings of this House and that I should, at this time of its Second Reading which is for all practical purposes the final reading, finish the proceedings.

Sir, you like a good host, have reserved the choicest wine for the last. This Preamble should have come in the beginning of the Constitution even as it is given in the beginning of the Constitution. There was a reason for that because it would have been before us in every detailed provision that we made in the Constitution. It would have cautioned us that we were not deviating from the basic principles which we have laid down in the Preamble. As I have sat in this House from day to day, I have seen that very often we have devastated from the basic principle laid down in the preamble only recently we want against the great principle of democracy. This unfortunate land is divided into many castes and economic classes. There are innumerable divisions. I think it was the first time in the history of World’s Constitutions that a new caste of administrators was created, and it was placed in a privileged position. It was placed in the position where even the chosen representatives of the people could not touch its special
privileges as against the people,. This, I submit, was going against the first basic principles of our Constitution.

Sir, I want, at this solemn hour to remind the House that what we have stated in this Preamble are not legal and political principles only. They are also great moral and spiritual principles and if I May say so, they are mystic principles. In fact these were not first legal and constitutional principles, but they were really spiritual and moral principles. If we look at history, we shall find that because the lawyers and politician made their principles into legal and constitutional form that their life and vitality was lost and is being lost even today. Take democracy. What is it? It implies the equality of man, it implies fraternity. Above all it implies the great principle of non-violence. How can there be democracy where there is violence? Even the ordinary definition of democracy is that instead of breaking heads, we count heads. This non-violence then there is at the root of democracy. And I submit that the principle of non-violence, is a moral principle. It is a spiritual principle. It is a mystic principle. It is a principle which says that life is one, that you cannot divide it, that it is the same life pulsating through us all. As the Bible puts it. "we are one of another," or as Vendanta puts it, that all this is One. If we want to use democracy as only a legal, constitutional and formal device, I submit, we shall fail. As we have put democracy at the basis of your Constitution, I wish Sir, that the whole country should understand the moral, the spiritual and the mystic implication of the word "democracy". If we have not done that, we shall fail as they have failed in other countries. Democracy will be made into autocracy and it will be made into imperialism, and it will be made into fascism. But as a moral principle, it must be lived in life. If it is not lived in life, and the whole of it in all its departments, it becomes only a formal and a legal principal. We have got to see that we live this democracy in our life. It would be inconsistent with democracy to have it only in the legal and political field. Politically, we are a democratic people but economically we are divided into such classes that that the barriers cannot be crossed. If we have got to be democratic we have got to be economically so too.

I also say democracy is inconsistent with caste system. That is social aristocracy. We must do away with castes and classes. Otherwise we cannot swear
by democracy. And we must remember that economic democracy does not merely mean that there should be no classes, that there should be no rich and poor; but the State itself should live in a manner that is consistent with the life of the poor, if people happen to be poor. It is not economic equality if for pomp and pageant, we spend thousands and lakhs of rupees. It is again not democracy if at every corner of the Govt. House human beings are made to stand statue like and unmoving. Such things are against the dignity of the individuals, if we establish democracy, we have to establish it in the whole of our life, in all its departments, whether it be in administration, or in society or in the economic field. This we must know and understand.

Then we have said that we will have liberty of thought, expression, belief, faith and worship. We must understand the implications of this also. All these freedoms can only be guaranteed on the basis of non-violence. If there is violence, you cannot have liberty of thought, you cannot have liberty of expression, you cannot have liberty of faith or liberty of faith or liberty of worship. And this non-violence should go so far as to make us not only what is popularly called tolerant of other people, but to a certain extent, we should accept their ideas as good for them. Mere tolerance will not carry us far. Many people are merely tolerant. Why? Because they are indifferent. They say "this man's worship is different from ours. It is wrong. The man is sure to go to hell; but let him, it is none of my business". That is not tolerance. That is intolerance, if violence is not used physically, it is because it is not possible always to use violence, but there is mental violence. We have to respect each other's faith. We have to respect it as having an element of truth. No religion in the world is perfect, and yet there is no faith without some element of God’s truth.

Then we have said that there should be equality of status and opportunity. This implies that in our public affairs, we should be absolutely above board that there should be no nepotism, there should be no favouritism, there should be no "mine" and ‘not mine’. This can be done. We can give equality of opportunity and equality of status only when what is considered as "Ours" is put behind and what is considered as "Not Ours" is put before. Unless we do these things, we will not be able to fulfil the aims of our Constitution.
Again I come to the great doctrine of fraternity which is allied with democracy. It means that we are all sons of the same God, as the religious would say, but as the mystic would say, that there is one life pulsating through us all, or as the Bible says, "We are one of another". There can be no fraternity without this. So I want this House to remember that what we have enunciated are not merely legal, constitutional and formal principles, but moral principles; and moral principles have got to be lived in life. They have to be lived whether it is private life or it is public life, whether it is commercial life, political life or the life of an administrator. They have to be lived throughout. These things, we have to remember if our Constitution is to succeed.

Sir, one word more and I have done. I think the amendment proposed by Smt. Purnima Banerji should be accepted, because it really describes the true position and as such it should be enunciated in the Preamble. On formal occasion, on great occasions, on important occasions, we have to remind ourselves that we are here as the representatives of the people. More than that, we have to remind ourselves that we are the servants of the people. We often forget that we are here as the representatives capacity. We often forget that we are the servants of the people. It always happens that our language, because of our thoughts and actions, gives little countenance to this basic idea. A Minister says "Our Government" not "The People’s Government". The Prime Minister says "My Government". Therefore, on this solemn occasion, it is necessary to lay down clearly and distinctly, that sovereignty resides in and flows from the people. (Cheers) I hope therefore, this House will carry Smt. Purnima Banerji’s amendment.

Mr. President: Are there some other people who want to speak?

Mr. Naziruddin Ahmad: Mr. President, Sir, the eloquent words of Acharya Kripalani require one explanation. He seems to think—and I speak with great respect—that the success of a democracy depends upon the introduction of some sweet and palatable words in the Constitution. I however, submit that the success of a democracy depends on how it is practically worked. It has nothing to do whatever with what we may state in the Preamble or in the Constitution. On the actual working of democracy its success depends.
Mr. President: I take it that closure is accepted. I shall now ask Dr. Ambedkar to reply.

*The Honourable Dr. B.R. Ambedkar*: Mr. President, Sir, the point in the amendment which makes it, or is supposed to make it, different from the Preamble drafted by the Drafting Committee lies in the addition of the words "from whom is derived all power and authority". The question therefore is whether the Preamble as drafted, conveys any other meaning than what is the general intention of the House, viz...that this Constitution should emanate from the people and should recognise that the sovereignty to make this Constitution vests in the people. I do not think that there is any other matter that is a matter of dispute. My contention is that what is suggested in this amendment is already contained in the draft Preamble.

*Maulana Hasrat Mohani*: Then why don’t you accept it?

*The Honourable Dr. B.R. Ambedkar*: I propose to show now, by a detailed examination, that my contention is true.

Sir, this amendment, if one were to analyse it, falls into three distinct parts. There is one part which is declaratory. The second part is descriptive. The third part is objective and obligatory, if I may say so. Now, the declaratory part consists of the following phrase: We the people of India, in our Constituent Assembly, this day, this month...do hereby adopt, enact and give to ourselves this Constitution’. Those Members of the House who are worried as to whether this Preamble does or does not state that this Constitution and the power and authority and sovereignty to make this Constitution vest in the people should separate the other parts of the amendment from the part which I have read out, namely the opening words ‘We the people of India in our Constituent Assembly, his day, do hereby adopt, enact and give to ourselves this Constitution’ Reading it in that fashion........

*Shri Mahavir Tyagi*: Where do the people come in? It is the Constituent Assembly Members that come in.
The Honourable Dr. B.R. Ambedkar: That is a different matter. I am for the moment discussing this narrow point: Does this Constitution say or does this Constitution not say that the Constitution is ordained, adopted and enacted by the people. I think anybody who reads its plain language, not dissociating it from the other parts, namely the descriptive and the objective cannot have any doubt that that is what the Preamble means.

Now my friend Mr. Tyagi said that this Constitution is being passed by a body of people who have been elected on a narrow franchise. It is quite true that it is not a Constituent Assembly in the sense that it includes every adult male and female in this country. But if my friend Mr. Tyagi wants that this Constitution should not become operative unless it has been referred to the people in the form of a referendum, that is quite a different question which has nothing to do with the point which we are debating whether this Constitution should have validity if it was passed by this Constituent Assembly or whether it will have validity only, when it is passed on a referendum. That is quite a different matter altogether. It has nothing to do with the point under debate.

The point under debate is this: Does this Constitution or does it not acknowledge, recognise and proclaim that it emanates from the people? I say it does.

I would like honourable Members to consider also the Preamble of the Constitution of the United States. I shall read a portion of it. It says: "we the people of the United States"-I am not reading the other parts-"We the people of the United States do ordain and establish this Constitution for the United States of America". As most Members know, that Constitution was drafted by a very small body. I forget now the exact details and the number of the States that were represented in that small body which met a Philadelphia to draw up the Constitution. (Honourable Members: There were 13 States). There were 13 States. Therefore, if the representatives of 13 States assembled in a small conference in Philadelphia could pass a Constitution and say that what they did was in the name of the people, on their authority, basing on it their sovereignty. I personally myself, do not understand, unless a man was an absolute pedant, that a body of
people 292 in number, representing this vast continent, in their representative
capacity, could not say that they are acting in the name of the people of this
country. (‘Hear, hear’).

**Maulana Hasrat Mohani:** I do not think. It is only a community.

**The Honourable Dr. B.R. Ambedkar:** That is a different matter, Maulana. I
cannot deal with that. Therefore, so far as that contention is concerned, I submit
that there need be no ground for any kind of fear or apprehension. No person in
this House desires that there should be anything in this Constitution which has the
remotest semblance of its having been derived from the sovereignty of the British
Parliament. Nobody has the slightest desire for that. In fact we wish to delete
every vestige of the sovereignty of the British Parliament such as it existed before
the operation of this Constitution. There is no difference of opinion between any
Member of this House and any Member of the Drafting Committee so far as that
is concerned.

Some Members, I suppose, have a certain amount of fear or apprehension
that, on account of the fact that earlier this year the Constituent Assembly joined
in making a declaration that this country will be associated with the British
Commonwealth, that association has in some way derogated from the sovereignty
of the people. Sir, I do not think that that is a right view to take every independent
country must have some kind of a treaty with some other country. Because one
sovereign country makes a treaty with another sovereign country, that country
does not become less sovereign on that account. (Interruption). I am taking the
worst example. I know that some people have that sort of fear. (Interruption).

**The Honourable Dr. B.R. Ambedkar:** I say that this Preamble embodies
what is the desire of every Member of the House that this Constitution should
have its root, its authority, its sovereignty, from the people. That it has.

Therefore, I am not prepared to accept the amendment. I do not want to say
anything about the text of the amendment. Probably the amendment is somewhat
worded, if I may say so with all respect, in a form which would not fit in the
Preamble as we have drafted, and therefore on both these ground I think there is
no justification for altering the language which has been used by the Drafting Committee.

Mr. President: The question is:

"That in amendment No. 2 of the List of Amendments (Volume I), for the first paragraph in the proposed Preamble, the following be substituted:-

'We, on behalf of the people of India from whom is derived all power and authority of the Independent India, its constituent parts and organs of government, having solemnly resolved to constitute India into a Sovereign Democratic Republic and to secure to all its citizens".

The amendment was negatived.

Mr. President: There is no other amendment. The Preamble, as it is now open to discussion, if any Member wishes to say anything.

Honourable Members: The question may now be put.

Mr. President: If nobody is willing to speak, I shall put the Preamble to the vote. The question is:

"That the Preamble stand part of the Constitution".

The motion was adopted.

The Preamble was added to the Constitution.

The Preamble begins with the words “WE THE PEOPLE OF INDIA” and ends with the words “..adopt, enact and give to ourselves this Constitution”. It indicates that ultimate sovereignty lies with the people of India who collectively constitute the supreme source of authority in the country. The Constitution of India now proclaims India to be Sovereign, Socialist Secular Democratic Republic. The Constitution of India is republican in character as the executive head of India is not any hereditary monarch. But the more significant aspect is that the Republic is democratic. Justice, liberty, equality, and fraternity which are
the essential characteristic of a democracy are declared in the Preamble, as well as the very objectives of the Constitution.

For some time it was assumed that like the preamble of a statute, the Preamble of the Constitution was not a part of the Constitution. But the *Kesavananda Bharati case*\(^\text{26}\) held that it is the part of the Constitution.

This resolve reflected in Resolution passed on the 22nd January 1947 and inspired the shaping of the Constitution into a dynamic document. This resolution is the inner theme of the Preamble, which should be read, referred and remembered.

We, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizen: JUSTICE-social economic and political; LIBERTY of thought, expression, belief, faith and worship; EQUALITY of status and of opportunity; And promote among them all FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation;

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

The concept of “We the people…” being the source and authority for drawing up the Constitution was also taken from the US model and preamble begins with those words. Though the Constituent Assembly had legal power to enact the Constitution, the Preamble followed the American example and claims that We the people of India, do hereby adopt, enact and give to ourselves this Constitution” and declared that objective of the Constitution were justice, liberty, equality and fraternity. Though there was broad mention of objectives in the Preamble, the framers chose to include detailed goals and objectives in Part IV entitled “Directive Principles of State policy” on the lines of Irish Free State, mentioning that they were not enforceable like Fundamental Rights. Preamble is a

\(^{26}\) *Kesavananda Bharati v. State of Kerela*, (1973) 4 SCC 225
statement of objects, which are expected by the Constitution makers to be realized through the implementation of the Constitution. 27

In Berubari Union and Exchange of Enclaves28, the Supreme Court considered the preamble a key to open the mind of the Constitution makers. It is a guide to interpretation of the provisions of the Constitution. Preamble made it clear that Constitution emanated from the people of India and not from any external authority or any less authority than the people of India.

Many Constitution experts and the Supreme Court stated that it is a conclusive assumption and a legal fiction, which cannot be tested or questioned in any court. Supreme Court held that the preamble was part of the constitution and it could be amended except the basic features in the Preamble. 42nd Amendment inserted three "Secularism, Socialism and Integrity" in Preamble. As these concepts were already implied in the Constitution, the addition was not considered to be the amendment of the basic features.

Dr. B.R. Ambedkar in his concluding speech in the Assembly stated that “Political democracy cannot last unless there lies at the base of it social democracy. What does social democracy mean? It means a way of life, which recognizes liberty, equality and paternity, which are not to be treated as separate items in a trinity. They form a union of the trinity in the sense that to divorce one from the other is to defeat the very purpose of democracy. Liberty cannot be divorced from equality; equality cannot be divorced from liberty. Nor can liberty and equality be divorced from fraternity”29

3.4. SECULAR STATE.

India is the second most populous country of the world. The people inhabiting this vast land profess different religions and speak different languages.


28 AIR 1960 SC 845,

Despite the diversity of religion and language, there runs through the fabric of the nation the golden thread of a basic innate unity. It is a mosaic of different religions languages and cultures. Each of them has made a mark on the Indian polity and India today represents a synthesis of them all. The closing years of the British rule were marked by communal riots and dissensions. There was also a feeling of distrust and the demand was made by a section of the Muslims for a separate homeland. This ultimately resulted in the partition of the country. Those who led the fight for independence in India always :aid great stress on communal amity and accord. They wanted the establishment of a secular State wherein people belonging to the different religious should all have a feeling of equality and non-discrimination.  

Although the words secular state are not expressly mentioned in the Constitution, there can be no doubt that our Constitution-makers wanted establishment of such a state. The provisions of the Constitution were designed accordingly. There is no mysticism in the secular character of the state. Secularism is neither anti-God, nor pro-God; it treats alike the devout, the agnostic and the atheist. It eliminates God from the matters of the state and ensures that no one shall be discriminated against on the ground of religion. The Constitution at the same time expressly guarantees freedom of conscience and the right freely to profess, practise and propagate religion. The Constitution-makers were conscious of the deep attachment the vast masses of our country had towards religion, the sway it had on their minds and the significant role it played in their lives. 

Although it was through the Constitution (Forty-second) Amendment Act, 1976 that India was announced a secular republic by inserting the word SECULAR, in the Preamble of the Constitution, nobody have ever doubted that the republic was conceived and made secular from the very beginning. Since secularism does not have a universal agreed definition or form, the Indian Constitution and State have been constantly examined in respect of the model of secularism they provide and practice and the strength and weakness of such model

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30 B. Shiva Rao, ‘The Framing of India's Constitution -Select Documents’, Vol. II

31 ibid
and practice have been pointed our in the light of experience gained from other systems and the peculiarities of the Indian society. Among the varying conception of secularism, the common element is the absence of State sponsored or State favoured religion. This element has always been present in the background, making and final provision of the Constitution. Barring some extreme views, which had no role shaping the Constitution, at no stage India was conceived either a theocratic or an anti-religion State. It is amply supported by the core provisions of the Constitution which have remained unchanged since its inception.\(^{32}\)

Prof. Upendra Baxi\(^{33}\) says that "Secularism" in the Indian Constitution connotes:

"(i) The State by itself, shall not espouse or establish or practice any religion;
(ii) public revenues will not be used to promote any religion;
(iii) the State shall have the power to regulate any 'economic, financial or other secular activity' associated with religious practice [Article 25(2)(a) of the Constitution;
(iv) the State shall have the power through the law to provide for social welfare and reform or the throwing open of the Hindu religious institutions of a public character to all classes and sections of Hindus' Article 25(2)(b) of the Constitution;
(v) the practice of untouchability (insofar as it may be justified by Hindu religion) is constitutionally outlawed by Article 17;
(vi) every individual person will have, in that order, an equal right to freedom of conscience and religion;
(vii) these rights are however subject to the power of the State through law to impose restrictions on the ground of 'public order, morality and health',


(viii) "these rights are furthermore subject to other fundamental rights in Part III;"

Indian concept of secularism means "the equal status to all religions". That "no one religion should be given preferential status or unique distinction and that no one religion should be accorded special privileges in national life". That would be violative of basic principles of democracy. No group of citizens can so arrogate to itself the right and privilege which it denies to others. No person shall suffer any form of disability or discrimination because of his religion, but also alike should be free to share to the fullest degree in the common life. This is the basic principle in separation of religion and the State. The Constitution makers intended to secure secular and socialist goals envisaged in the preamble of the Constitution. 34

In Kesavananda Bharati case 35 and Indira Nehru Gandhi v. Raj Narain 36 case the Supreme Court held that secularism is a basic feature of the Constitution.

Though the concept of "secularism" was not expressly engrafted while making the Constitution, its sweep, operation and visibility are apparent from fundamental rights and directive principles and their related provisions. It was made explicit by amending the preamble of the Constitution 42nd Amendment Act. The concept of secularism of which religious freedom is the foremost appears to visualise not only of the subject of God but also an understanding between man and man. Secularism in the Constitution is not anti-God and it is sometimes believed to be a stay in a free society. Matters which are purely religious are left personal to the individual and the secular part is taken charge by the State on grounds of public interest, order and general welfare. The State guarantee individual and corporate religious freedom and dealt with an individual as citizen

34 Granville Austin, 'The Indian Constitution : Cornerstone of a Nation'.


irrespective of his faith and religious belief and does not promote any particular religion nor prefers one against another. The concept of the secular State is, therefore, essential for successful working of the democratic form of Government. There can be no democracy if anti-secular forces are allowed to work dividing followers of different religious faith flying at each other's throats. The secular Government should negate the attempt and bring order in the society. Religion in the positive sense, is an active instrument to allow the citizen full development of his person, not merely in the physical and material but in the non-material and non-secular life.

Dr Ambedkar believed that Buddhism is the religion best suited to the Indian soil. Mahatma Gandhi, Father of the Nation, spoke for the need of religion thus: “The need of the mankind is not one of religion, but mutual respect and tolerance of the devotees of different religions. We want to reach not a data level, but unity in diversity. The soul of all religions is one, but it is encased in the multitude of forms. The latter will persist to the end of the time.”

The Constitution Bench, after a detailed discussion, summarised the true concept of secularism under the Indian Constitution as under: "It is clear from the constitutional scheme that it guarantees equality in the matter of religion to all individuals and groups irrespective of their faith emphasising that there is no religion of the State itself. The Preamble of the Constitution emphasises this aspect and indicates that it is in this manner the concept of secularism embodied in the constitutional scheme as a creed adopted by the Indian people has to be understood while examining the constitutional validity of any legislation on the touchstone of the Constitution. The concept of secularism is one facet of the right to equality woven as the central golden thread in the fabric depicting the pattern of the scheme in our Constitution.”


38 Dr. M. Ismail Faruqui v. Union of India, (1994) 6 SCC 360.
3.5. FUNDAMENTAL RIGHTS.

The Constitution of India declares certain fundamentals to the individual. Some of this can only be claimed by the citizens of India, others apply equally to non-citizen also. The fundamental right is inviolable in the sense that no law, ordinance, custom, usages, or administrative order can abridge or take away a fundamental right. A law which violates any of the fundamental right is void. They are binding on the legislature as well as the executive. A fundamental right cannot be taken even by a constitutional amendment if it forms the basic structure of the Constitution.39

The committee on fundamental right had presented a draft of the list of rights intendent to be treated as fundamental rights before the Constituent Assembly of India40 on 29th April 1947. The list are enumerated as follows for making a study:

Justiciable Fundamental Rights

Rights of Equality

4. (1) The State shall make no discrimination against any citizen on grounds of religion, race, caste or sex.

(2) There shall be no discrimination against any citizen on any ground of religion, race, caste or sex in regard to:

(a) access to trading establishments including public restaurants and hotels, (b) the use of wells, tanks, roads and places of public resort maintained wholly or partly out of public funds or dedicated to the use of the general public:

Provided that nothing contained in this clause shall prevent separate provision being made for women and children.


40 Constituent Assembly Of India’, Tuesday, the 29th April, 1947.
5. There shall be equality of opportunity for all citizens in matters of public employment and in the exercise of carrying on of any occupation, trade, business or profession.

   Nothing herein contained shall prevent the State from making provision for reservations in favour of classes who, in the opinion of the State, are not adequately represented in the public services.

   No citizen shall on grounds only of religion, race, caste, sex, descent, place of birth or any of them be ineligible for public office or be prohibited from acquiring, holding or disposing of property or exercising or carrying on any occupation, trade, business, or profession within the Union.

   Nothing herein contained shall prevent a law being made prescribing that the incumbent of an office to manage, administer or superintend the affairs of a religious or denominational institution or the member of the Governing Body thereof shall be a member of that particular religion or denomination.

6. "Untouchability" in any form is abolished and the imposition of any disability on that account shall be an offence.

7. No heritable title shall be conferred by the Union.

   No citizen of the Union and no person holding any office of profit or trust under the State shall, without the consent of the Union Government, accept any present, emoluments, office, or title of any kind from any foreign State.

Rights of Freedom

8. There shall be liberty for the exercise of the following rights subject to public order and morality or to the existence of grave emergency declared to be such by the Government of the Union or the Unit concerned whereby the security of the Union or the Unit, as the case may be, is threatened:-
(a) The right of every citizen to freedom of speech and expression: Provision may be made by law to make the publication or utterance of seditious, obscene, blasphemous, slanderous, libellous or defamatory matter actionable or punishable.

(b) The right of the citizens to assemble peaceably and without arms: Provision may be made by law to prevent or control meetings which are likely to cause a breach of the peace or are a danger or nuisance to the general public or to prevent or control meetings in the vicinity of any chamber of a Legislature.

(c) The right of citizens to form associations or unions: Provision may be made by law to regulate and control in the public interest the exercise of the foregoing right provided that no such provision shall contain any political, religious or class discrimination.

(d) The right of every citizen to move freely throughout the Union.

(e) The right of every citizen to reside and settle in any part of the Union, to acquire property and to follow any occupation, trade business or profession:

Provision may be made by law, to impose such reasonable restrictions as may be necessary in the public interest including the protection of minority groups and tribes.

9. No person shall be deprived of his life, or liberty, without due process of law, nor shall any person be denied the equal treatment of the laws within the territories of the Union:

Provided that nothing herein contained shall detract from the powers of the Union Legislature in respect of foreigners.

10. Subject to regulation by the law of the Union trade, commerce, and intercourse among the units by and between the citizens shall be free:

Provided that any Unit may by law impose reasonable restrictions in the interest of public order, morality or health or in an emergency;

Provided that nothing in this section shall prevent any Unit from imposing on goods imported from other Units the same duties and taxes to which the goods produced in the Unit are subject;
Provided further that no preference shall be given by any regulation of commerce or revenue by a Unit to one Unit over another.

11. (a) Traffic in human beings, and
(b) forced labour in any form including begar and involuntary servitude except as a punishment for crime whereof the party shall have been duly convicted; are hereby prohibited and any contravention of this prohibition shall be an offence.

Explanation.-Nothing in this sub-clause shall prevent the State from imposing compulsory service for public purposes without any discrimination on the ground of race, religion, caste or class.

12. No child below the age of 14 years shall be engaged to work in any factory, mine or any other hazardous employment.

Explanation.-Nothing in this clause shall prejudice any educational programme or activity involving compulsory labour.

Rights Relating to Religion

13. All persons are equally entitled to freedom of conscience, and the right freely to profess, practise and propagate religion subject to public order, morality or health, and to the other provisions of this Chapter.

Explanation 1.-The wearing and carrying of Kirpans shall be deemed to be included in the profession of the Sikh religion.

Explanation 2.-The above rights shall not include any economic, financial, political or other secular activities that may be associated with religious practice.

Explanation 3.-The freedom of religious practice guaranteed in this clause shall not debar the State from enacting laws for the purpose of social welfare and reform.

14. Every religious denomination shall have the right to manage its own affairs in matters of religion and, subject to the general law, to own, acquire and administer property, movable and immovable, and to establish and maintain institutions for religious or charitable purposes.
15. No person may be compelled to pay taxes, the proceeds of which are specifically appropriated to further or maintain any particular religion or denomination,

16. No person attending any school maintained or receiving aid out of public funds shall be compelled to take part in the religious instruction that may be given in the school or to attend religious worship held in the school Or in premises attached thereto.

17. Conversion from one religion to another brought about by coercion or undue influence shall not be recognised by law.

Cultural and Educational Rights:

18. (1) Minorities in every Unit shall be protected in respect of their language, script and culture and no laws or regulations may be enacted that may operate oppressively or prejudicially in this respect.

(2) No minority whether based on religion, community or language shall be discriminated against in regard to the admission into State educational institutions, nor shall any religious instruction be compulsorily imposed on them.

(3) (a) All minorities whether based on religion, community or language shall be free in any Unit to establish and administer educational institutions of their choice.

(b) The State shall not, while providing State aid to schools, discriminate against schools under the management of minorities whether based on religion, community or language.

Miscellaneous Rights

19. No property, movable or immovable, of any person or corporation including any interest in any commercial or industrial undertaking, shall be taken or acquired for public use unless the law provides for the payment of compensation for the property taken or acquired and specified the principles on which and the manner in which the compensation is to be determined.
20. (1) No person shall be convicted of crime except for violation of a law in force at the time of the commission of that act charged as an offence, nor be subjected to a penalty greater than that applicable at the time of the commission of the offence.

(2) No person shall be tried for the same offence more than once nor be compelled in any criminal case to be a witness against himself.

21. (1) Full faith and credit shall be given throughout the territories of the Union to the public acts, records and judicial proceedings of the Union and every Unit thereof, and the manner in which and the conditions under which such acts, records and proceedings shall be proved and the effect thereof determined shall be prescribed by the law of the Union.

(2) Final civil judgements delivered in any Unit shall be executed throughout the Union subject to such conditions as may be imposed by the law of the Union.

Rights to Constitutional Remedies

22. (1) The right to move the Supreme Court by appropriate proceedings for the enforcement of any of the rights guaranteed by this part is hereby guaranteed.

(2) Without prejudice to the powers that may be vested in this behalf in other courts, the Supreme Court shall have power to issue directions in the nature of the writs of habeas corpus, mandamus, prohibition, quo warranto and certiorari appropriate to the right guaranteed in this part of the Constitution.

(3) The right to enforce these remedies shall not be suspended unless when, in case of rebellion or invasion or other grave emergency, the public safety may require it.

23. The Union Legislature may by law determine to what extent any of the rights guaranteed by this part shall be restricted or abrogated for the members of the armed forces or forces charged with the maintenance of public order so as to ensure fulfilment of their duties and the maintenance of discipline.
24. The Union Legislature shall make laws to give effect to those provisions of this part which require such legislation and to prescribe punishment for those acts which are declared to be offences in this part and are not already punishable.

Speaking on the debates on fundamental right Dr. B. R. Ambedkar the Chairman of the Drafting Committee of the Constituent Assembly on Thursday, the 4th November 1948 said: The most criticized part of the Draft Constitution is that which relates to Fundamental Rights. It is said that Article 13 which defines fundamental rights is riddled with so many exceptions that the exceptions have eaten up the rights altogether. It is condemned as a kind of deception. In the opinion of the critics fundamental rights are not fundamental rights unless they are also absolute rights. The critics rely on the Constitution of the United States and to the Bill of Rights embodied in the first ten Amendments to that Constitution in support of their contention. It is said that the fundamental rights in the American Bill of Rights are real because they are not subjected to limitations or exceptions.

I am sorry to say that the whole of the criticism about fundamental rights is based upon a misconception. In the first place, the criticism in so far as it seeks to distinguish fundamental rights from non-fundamental rights is not sound. It is incorrect to say that fundamental rights are absolute while non-fundamental rights are not absolute. The real distinction between the two is that non-fundamental rights are created by agreement between parties while fundamental rights are the gift of the law. Because fundamental rights are the gift of the State it does not follow that the State cannot qualify them.

In the second place, it is wrong to say that fundamental rights in America are absolute. The difference between the position under the American Constitution and the Draft Constitution is one of form and not of substance. That the fundamental rights in America are not absolute rights is beyond dispute. What the Draft Constitution has done is that instead of formulating fundamental rights in absolute terms and depending upon our Supreme Court to come to the rescue of Parliament by inventing the doctrine of police power, it permits the State directly to impose limitations upon the fundamental rights. There is really no difference in
the result. What one does directly the other does indirectly. In both cases, the fundamental rights are not absolute.  

Fundamental rights are undoubtedly conferred by the Constitution upon individuals which have to be asserted and enforced by them, if those rights are violated. But, the high purpose which the Constitution seeks to achieve by conferment of fundamental rights is not only to benefit individuals but to secure the larger interests of the community. The Preamble of the Constitution says that India is a democratic Republic. It is in order to fulfil the promise of the Preamble that fundamental rights are conferred by the Constitution, some on citizens like those guaranteed by Articles 15, 16, 19, 21 and 29 and, some on citizens and non-citizens alike, like those guaranteed by Articles 14, 21, 22 and 25 of the Constitution. No individual can barter away the freedoms conferred upon him by the Constitution. A concession made by him in a proceedings, whether under a mistake of law or otherwise, that he does not possess or will not enforce any particular fundamental right, cannot create an estoppel against him in that or any subsequent proceedings. Such a concession, if enforced, would defeat the purpose of the Constitution.  

The whole object of Part III of the Constitution is to provide protection for the freedoms and rights mentioned therein against arbitrary invasion by the State. Its is the basic foundation of the Constitution. Part-III dealing with 'Fundamental Rights' which represent the core of the Indian Constitutional philosophy envisage the methodology for removal of historic injustice and inequalities -either inherited or artificially created - and social and economic disparity and ultimately for achieving an egalitarian society in terms of the basic structure of our Constitution as spelt out by the preamble.

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41 ‘Constituent Assembly Of India Debates’ - Vol. VII, Thursday, The 4th November 1948

Our Constitution is unquestionably unique in its character and assimilation having its notable aspirations contained in 'Fundamental Rights' in Part III through which the illumination of Constitutional rights comes to us not through an artless window glass but refracted with the enhanced intensity and beauty by prismatic interpretation of the Constitutional provisions dealing with equal distribution of justice in the social, political and economic spheres.

The founding fathers of our Constitution have designedly couched Articles 14, 15 and 16 in comprehensive phraseology so that the frail and emaciated section of the people living in poverty, rearing in obscurity, possessing no wealth or influence, having no education, much less higher education and suffering from social repression and oppression should not be denied of equality before the law and equal protection of the laws and equal opportunity in the matters of public employment or subjected to any prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

To achieve the above objectives, the Government have enacted innumerable social welfare legislations and geared up social reformative measures for uplifting the social and economic development of the disadvantaged section of people. True, a rapid societal transformation and profusion of other progressive changes are taking place, yet a major section of the people living below the poverty line and suffering from social ostracism still stand far behind and lack in every respect to keep pace with the advanced section of the people. The undignified social status and subhuman living conditions leave an indelible impression that their forlorn hopes for equality in every sphere of life are only a myth rather than a reality. It is verily believed - rightly too - that the one and only peerless way and indeed a most important and promising way to achieve the equal status and equal opportunity is only by means of constitutional justice so that all the citizens of this country irrespective of their religion, race, caste, sex, place of birth or any of them may achieve the goal of an egalitarian society.

The Supreme Court has laid down a series of landmark judgments in relation to social justice by interpreting the constitutional provisions upholding the cherished values of the Constitution and thereby often has shaped the course of our
national life. Notwithstanding a catena of expository decisions with interpretive semantics, the naked truth is that no streak of light or no ray of hope of attaining the equality of status and equality of opportunity is visible.\(^{43}\)

3.6. DIRECTIVE PRINCIPLES OF STATE POLICY.

Part IV of the Constitution enumerates certain Directives Principles of State Policy which are declared as fundamental in the governance of the Country. These principles are intended to be the imperative basic of State policy. These are really in the nature of instructions issued to future legislatures and executives for their guidance.

The resolution taken by the Constituent Assembly\(^{44}\) on Saturday, the 30th August 1947, has set out the fundamental principles of governance as follows:

**FUNDAMENTAL PRINCIPLES OF GOVERNANCE**

**PREAMBLE**

1. The principles of policy set forth in this part are intended for the guidance of the State. While these principles are not cognizable by any court, they are nevertheless fundamental in the governance of the country and their application in the making of laws shall be the duty of the State.

**PRINCIPLES**

2. The State shall strive to promote the welfare of the whole people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

3. The State shall, in particular, direct its policy towards securing:

   (i) that the citizens, men and women equally, have the right to an adequate means of livelihood;

\(^{43}\) *Indra Sawhney v Union Of India*, 1992 Supp (3) SCC 212

\(^{44}\) *Constituent Assembly of India Debates* – Vol. V, Saturday, 30th August 1947.
(ii) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

(iii) that the operation of the competition shall not be allowed to result in the concentration of the ownership and control of essential commodities in a few individuals to the common detriment;

(iv) that there shall be equal pay for equal work for both men and women;

(v) that the strength and health of workers, men and women, and the tender age of children shall not be abused and that citizens shall not be forced by economic necessity to enter avocations unsuited to their age and strength;

(vi) that childhood and youth are protected against exploitation and against moral and material abandonment.

4. The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in case of unemployment, old age, sickness, disablement and other cases of undeserved want.

5. The State shall make provision for securing just and humane conditions of work and for maternity relief for workers.

6. The State shall endeavour to secure, by suitable legislation, economic organisation and in other ways, to all workers, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities.

7. The State shall endeavour to secure for the citizens a uniform civil code.

8. Every citizen is entitled to free primary education, and it shall be the duty of the State to provide within a period of 10 years from the commencement of this Constitution for free and compulsory primary education for all children until they complete the age of 14 years.
9. The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the aboriginal tribes, and shall protect them from social injustice and all forms of exploitation.

10. The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of Public health as among its primary duties.

11. It shall be the obligation of the State to protect every monument or Place or object of artistic or historic interest, declared by the law of the Union to be of national importance, from spoliation, destruction, removal, disposal or export, as the case may be, and to preserve and maintain according to the law of the Union all such monuments or places or objects.

12. The State shall promote international peace and security by the prescription of open, just and honourable relations between nations by the firm establishment of the understandings of international law as the actual rule of conduct among governments and by the maintenance of justice and the scrupulous respect for treaty obligations in the dealings of organised people with one another.

Speaking on the debates on fundamental right Dr. B. R. Ambedkar the Chairman of the Drafting Committee of the Constituent Assembly on Thursday, the 4th November 1948 said: In the Draft Constitution the Fundamental Rights are followed by what are called "Directive Principles". It is a novel feature in a Constitution framed for Parliamentary Democracy. The only other constitution framed for Parliamentary Democracy which embodies such principles is that of the Irish Free State. These Directive Principles have also come up for criticism. It is said that they are only pious declarations. They have no binding force. This criticism is of course superfluous. The Constitution itself says so in so many words.

If it is said that the Directive Principle have no legal force behind them, I am prepared to admit it. But I am not prepared to admit that they have no sort of binding force at all. Nor am I prepared to concede that they are useless because they have no binding force in law.

The Directive Principles are like the Instrument of Instructions which were issued to the Governor-General and to the Governors of the Colonies and to those of India by the British Government under the 1935 Act. Under the Draft Constitution it is proposed to issue such instruments to the President and to the Governors. The texts of these Instruments of Instructions will be found in Schedule IV of the Constitution. What are called Directive Principles is merely another name for Instrument of Instructions. The only difference is that they are instructions to the Legislature and the Executive. Such a thing is to my mind to be welcomed. Wherever there is a grant of power in general terms for peace, order and good government, it is necessary that it should be accompanied by instructions regulating its exercise.

The inclusion of such instructions in a Constitution such as is proposed in the Draft becomes justifiable for another reason. The Draft Constitution as framed only provides a machinery for the government of the country. It is not a contrivance to install any particular party in power as has been done in some countries. Who should be in power is left to be determined by the people, as it must be, if the system is to satisfy the tests of democracy. But whoever captures power will not be free to do what he likes with it. In the exercise of it, he will have to respect these instruments of instructions which are called Directive Principles. He cannot ignore them. He may not have to answer for their breach in a Court of Law. But he will certainly have to answer for them before the electorate at election time. What great value these directive principles possess will be realized better when the forces of right contrive to capture power.

That it has no binding force is no argument against their inclusion in the Constitution. There may be a difference of opinion as to the exact place they should be given in the Constitution. I agree that it is somewhat odd that provisions which do not carry positive obligations should be placed in the midst of provisions
which do carry positive obligations. In my judgment their proper place is in Schedules III A & IV which contain Instrument of Instructions to the President and the Governors. For, as I have said, they are really Instruments of Instructions to the Executive and the Legislatures as to how they should exercise their powers. But that is only a matter of arrangement.

Social, economic and political justice is the objective set out in the Directive Principle and it is this objective which is made fundamental in the governance of the country and which the State is laid under an obligation to realise. This Directive Principle forms the base on which the entire structure of the Directive Principles is reared and social, economic and political justice is the signature tune of the other Directive Principles.

The Fundamental Rights are no doubt important and valuable in a democracy. but there can be no real democracy without social and economic justice to the common man and to create socio-economic conditions in which there can be social and economic justice to every one, is the theme of the Directive Principles. It is the Directive Principles which nourish the roots of our democracy, provide strength and vigour to it and attempt to make it a real participatory democracy which does not remain merely a political democracy but also becomes social and economic democracy with Fundamental Rights available to all irrespective of their power, position or wealth. The dynamic provisions of the Directive Principles fertilise the static provisions of the Fundamental Rights. The object of the Fundamental Rights is to protect individual liberty, but can individual liberty be considered in isolation from the socio-economic structure in which it is to operate. There is a real connection between individual liberty and the shape and form of the social and economic structure of the society. Can there be any individual liberty at all for the large masses of people who are suffering from want and privation and who are cheated out of their individual rights by the exploitative economic system ? Would their individual liberty not come in conflict with the liberty of the socially and economically more powerful class and in the process, get mutilated or destroyed ? It is axiomatic that the real controversies in the present day society are not between power and freedom but between one form of liberty and another. Under the present socio-economic system, it is the liberty of the few
which is in conflict with the liberty of the many. The Directive Principles therefore, impose an obligation on the State to take positive action for creating socio-economic conditions in which there will be an egalitarian social order with social and economic justice to all, so that individual liberty will become a cherished value and the dignity of the individual a living reality, not only for a few privileged persons but for the entire people of the country. It will thus be seen that the Directive Principles enjoy a very high place in the constitutional scheme and it is only in the framework of the socio-economic structure envisaged in the Directive Principles that the Fundamental Rights are intended to operate, for it is only then they can become meaningful and significant for the millions of our poor and deprived people who do not have even the bare necessities of life and who are living below the poverty level.46

The Indian Constitution is first and foremost a social document. The majority of its provisions are either directly aimed at furthering the goals of the socio-economic revolution or attempt to foster this revolution by establishing the conditions necessary for its achievement. Yet despite the permeation of the entire Constitution by the aim of national renascence, says Granville Austin47, "the core of the commitment to the social revolution lies in the Fundamental Rights and the Directive Principles of State Policy." These are the conscience of the Constitution and, according to Granville Austin, "they are designed to be the Chief instruments in bringing about the great reforms of the socio-economic revolution and realising the constitutional goals of social, economic and political justice for all. The Fundamental Rights undoubtedly provide for political justice by conferring various freedoms on the individual, and also make a significant contribution to the fostering of the social revolution by aiming at a society which will be egalitarian in texture and where the rights of minority groups will be protected. But it is in the Directive Principles that we find the clearest statement of the socioeconomic revolution. The Directive Principles aim at making the Indian masses free in the positive sense, free from the passivity engendered by centuries of coercion by

46 Minerva Mills Ltd. v. Union Of India, AIR 1980 SC 1789.

47 Granville Austin, 'The Indian Constitution : Cornerstone of a Nation'.
society and by nature, free from the object physical conditions that had prevented them from fulfilling their best salves.

The Directive Principles, therefore, impose an obligation on the State to take positive action for creating socio-economic conditions in which there will be an egalitarian social order with social and economic justice to all so that individual liberty will become a cherished value and the dignity of the individual a living reality, not only for a few privileged persons but for the entire people of the country.

Thus, the Directive Principles enjoy a very high place in the constitutional scheme and it is only in the framework of the socio-economic structure envisaged in the Directive Principles that the Fundamental Rights are intended to operate, for it is only then they can become meaningful and significant for the millions of our poor and deprived people, who do not have even the bare necessities of life and who are living below the poverty level.

3.7. SALIENT FEATURES OF THE CONSTITUTION.

The Constitution of India can be briefly ascertained by having a study of its basic salient features. Though there are many feature which lay down the constitutional foundation of the Constitution, we study the most significant features of the Constitution without which the Constitution would not have acclaimed the heights it has today.

The constitutional foundation of the Indian Constitution and the basic philosophy of our Constitution can be summed up in the Preamble, which declares India to be a Sovereign Socialist Secular Democratic Republic. It is the bulkiest written Constitution. As the framers wanted to remove difficulties during the working of the Constitution, they incorporated several details to avoid loopholes

and defects. They framed the Chapter on Fundamental Rights on the model of the American Constitution, and adopted the parliamentary system of Government from the United Kingdom, they took the idea of the Directive Principles of State Policy from the Constitution of Ireland, and added elaborate provisions relating to Emergency in the light of the Constitution of the German Reich and the Government of India Act, 1935. It lays down the structure not only of the Central Government but also of the States, while American Constitution left the aspect of drafting the provisions of governance to the States. The vastness of the country and diversity in the society with peculiar problems is another reason for bulkiness of the Constitution.

According to Preamble, India is a Sovereign, Socialist, Secular, Democratic Republic. The word Sovereign emphasises that India is no more dependent upon any outside authority. The term "Socialist" has been inserted in the Preamble by the Constitution 42nd Amendment Act, 1976. In general, it means some form of ownership of the means of production and distribution by the State. India has chosen mixed economy and now drifting towards privatisation.

The term Secularism means a State which has no religion of its own as a recognised religion of State. It treats all religions equally. In a secular State the State regulates the relation between man and man. It is not concerned with the relation of man with God. The term "democratic" indicates that the Constitution has established a form of Government which gets authority from the will of the people. The rulers are elected by the people. Justice, liberty Equality and Fraternity are the essential features of the democracy.

The term Republic signifies that there shall be an elected head of the State who will be the Chief Executive Head. The President of India, unlike the British King or Queen, is not a hereditary monarch but an elected person chosen for a limited period. It is an essential ingredient of a Republic.

The Parliamentary form of Government is practiced in the country. Both at the Centre and States, the Constitution established a parliamentary form of Government. The British model has been adopted in toto, in this regard. The essence of the parliamentary form of Government is its responsibility to the
The Council of Ministers is collectively responsible to the Lower House i.e., Lok Sabha. In States the Council of Ministers is responsible to Legislature, and therefore it is called responsible Government. On the other hand the American Government is a Presidential form of Government, where the President, the real executive and elected directly by the people for 4 years. All executive powers are vested in him. He is not responsible to the Lower House, i.e., the Congress. The members of his cabinet are not members of Legislature. They are appointed by the President and therefore, responsible to him. Parliamentary democracy has three important characteristics namely,-- (i) the executive is responsible to the Lower House; (ii) the Lower House has a democratic basis (i.e. it is elected by the people; and (iii) the ultimate legislative and financial control is vested in this Lower House. The Parliamentary system of Government in India is based on adult suffrage, whereby all citizens of India who are not less than 18 years of age and are not disqualified on certain grounds like non-residence, unsoundness of mind or corrupt practices have the right to be registered as voters in any election to the Lok Sabha and to the Legislative Assemblies of the States.

The Constitution of India is partly rigid and partly flexible. There are certain provisions which can be amended by a simple majority in Parliament, while there are certain other provisions whose amendment requires not only a special majority in Parliament but also ratification by at least one half of the State Legislatures. A written constitution is generally said to be rigid. But the Indian Constitution despite being a written one is not rigid and it is sufficiently flexible.

The incorporation of a formal declaration of Fundamental Rights in Part III of the Constitution is deemed to be a distinguishing feature of a democratic State. These rights impose limitations on the powers of the State. The State cannot take away or abridge these Fundamental Rights of the citizen guaranteed by the Constitution. If it passes such a law it may be declared as unconstitutional by the Courts. Besides declaring the fundamental rights, the Constitution provided a machinery to enforce them.

The Supreme Court is empowered to grant most effective remedies in the nature of Writs of Habeas Corpus, Mandamus, Prohibition, Quo Warranto, and
Certiorari whenever these rights are violated. However, the Fundamental Rights are not absolute. They are subjected to certain restrictions, based on some social interests. Thus, our Constitution tries to strike a balance between the individual liberty and the social interest. This idea of incorporating Bill of Rights has been taken from the Constitution of the United States.

The Directive Principles of State Policy contained in Part IV set out the aims and objectives to be taken up by the States in the governance of the country. Unlike the Fundamental Rights, these rights are not justiciable. Though by their very nature they are not justiciable in the Court of law, yet the State Authorities have to answer for them to the electorate at the time of election. The idea of the welfare state envisaged in our Constitution can only be achieved if the States endeavour to implement them with a high sense of moral duty. The support to villages and rural economy called Gram Swaraj, one of the ideals of Mahatma Gandhi could be found only in Directive Principles of State Policy. Ideals which could not be guaranteed as enforceable rights were accommodated in this Part after much deliberations in the Constituent Assembly.

The Constitution (42nd Amendment Act, 1976) has introduced a Code of ten "Fundamental Duties" for Citizens. The fundamental duties are intended to serve as a constant reminder to every citizen that while the Constitution has specifically conferred on them certain fundamental rights, it also requires the citizens to observe certain basic norms of democratic conduct and democratic behaviours. These duties, like the Directive Principles of State Policy cannot be judicially enforced. However they remind the responsible citizen what Constitution expects from them.

In the place old communal franchise, the uniform adult suffrage system has been adopted. Under the Indian Constitution every man and woman above 18 years of age has been given the right to elect their representatives for the legislature. The adoption of the universal adult suffrage under Article 326 without any qualification of sex, property, taxation, or the like is a bold experiment in India having regard to vast extent of the country and its population, with an overwhelming illiteracy.
An Independent Judiciary is one of the most important foundation of the Constitution. After a thorough deliberation in the Constituent Assembly, the founding fathers created an independent judiciary with a power of Judicial Review as the custodian of the fundamental rights of the citizen. It plays a significant role in determining the limits of power of the Centre and States. Single independent judiciary to interpret the Union and State Laws, vibrant judicial review of executive and legislative action are other basic features of the Indian Constitution which secure the philosophical foundations of the rule of law and democracy. The judiciary is the only resort for a citizen to enforce the constitutional provisions and secure the rights.

Speaking on the nature of the Draft Constitution. Dr. Ambedkar in his speech delivered On November 4, 1948, in the Constituent Assembly\(^4^9\) said:

All federal systems including the American are placed in a tight mould of federalism. No matter what the circumstances, it cannot change its form and shape. It can never be unitary. On the other hand the Draft Constitution can be both unitary as well as federal according to the requirements of time and circumstances.

There is another special feature of the proposed Indian Federation which distinguishes it from other federations. A Federation being a dual polity based on divided authority with separate legislative, executive and judicial powers for each of the two polities is bound to produce diversity in laws, in administration and in judicial protection. Up to a certain point this diversity does not matter. It may be welcomed as being an attempt to accommodate the powers of Government to local needs and local circumstances, But this very diversity when it goes beyond a certain point is capable of producing chaos and has produced chaos in many federal States. One has only to imagine twenty different laws -- if we have twenty States in the Union -- of marriage, of divorce, of inheritance of property, family relations, contracts, torts, crimes, weights and measures, of bills and cheques, banking and commerce, of procedures for obtaining justice and in the standards and methods of administration. Such a state of affairs not only weakens the State

\(^4^9\)Constituent Assembly Debates, Vol. 7, pp. 34, 36-37.
but becomes intolerant to the citizen who moves from State to State only to find that what is lawful in one State is not lawful in another. The Draft Constitution has sought means and methods whereby India will have Federation and at the same time will have uniformity in all the basic matters which are essential to maintain the unity of the country. The means adopted by the Draft Constitution are three.

(1) a single judiciary,

(2) uniformity in fundamental laws, civil and criminal, and

(3) a common All India Civil Service to man important posts.

A dual judiciary, a duality of legal codes and a duality of civil services, as I said, are the logical consequences of a dual polity which is inherent in a federation. In the U.S.A. the Federal Judiciary and the State Judiciary are separate and independent of each other. The Indian Federation though a Dual Polity has no Dual Judiciary at all. The High Courts and the Supreme Court form one single integrated Judiciary having jurisdiction and providing remedies in all cases arising under the constitutional Jaw, the civil law or the criminal law.

Judicial Review is another feature that commands significance. Look at the national emblem, the chakra and satyameva jayate. The chakra is motion, satyam is sacrifice. The chakra signifies that the Constitution is a becoming, a moving equilibrium; satyam is symbolic of the Constitution's ideal of sacrifice and humanism. The Court will be doing its duty and fulfilling its oath of loyalty to the Constitution in the measure judicial review reflects these twin ideals of the Constitution.

The country is a Secular Socialist State. The Citizens of our country are free to follow any religion and they enjoy equal rights without any distinction of caste, creed religion or sex. The word "secular" has been included in the Preamble by Forty Second Amendment. Article 15 (1) prohibits any discrimination based on religion, and Article 25 (1) provides that subject to public order, morality and health and to the other provisions, all persons are equally entitled to freedom of
conscience and the right freely to profess, practice and propagate religion. Secularism is also subject to democratic socialism. Religious freedom cannot therefore be used to practice economic exploitation. The right to acquire, own and administer property by religious institutions is subject to the regulatory power of the State.

The concept of single citizenship is the law of the country. Though the Constitution envisaged a dual polity i.e., Centre and States, it provides for a single citizenship for the whole of India. The American Constitution provides for dual citizenship i.e., the citizen of USA and a State citizenship. Every Indian has a citizenship throughout the country with the same rights.

Recently Indian citizenship is given to the non-resident Indians permitting them to retain the foreign citizenship.

In sum, the National Movement was committed: (1) to work for social, economic and political equality of the weaker sections of the people; (2) to disperse concentration of wealth in any form in a few hands; and (3) to acquire property in accordance with law. Payment of compensation would be determined by equitable considerations and not by market value. The men who took the leading part in framing the Constitution were animated by these noble ideals. They embodied them in the Preamble to the Constitution; they proliferated them in the Directive Principles of the State Policy; they gave them ascendancy over the rights in Part III of the Constitution. They made them 'fundamental' in the governance of the country. Pandit Govind Ballabh Pant called them 'vital principles'. And indeed so they are, for when translated into life, they will multiply the number of owners of fundamental rights and transform liberty and equality from a privilege into a universal human right.

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50 Constituent Assembly Debates, Vol. 9, p. 1288.
3.8. CRITICISM TO THE CONSTITUTION.

The Constitution have been subjected to several criticism and some members have seriously raised doubts on the efficacy and working of the Constitution in the Constituent Assembly. A few extracts of the severest and harsh criticism of the Constitution by few members and their concerns that were raised in the debates of the Constituent Assembly\textsuperscript{51} are put up below for study and for better understanding.

\textit{Seth Damodar Swarup (United Provinces: General):} Mr. President, the Second Reading of the Draft Constitution has ended and the Third Reading is going on which will also conclude in three or four days. After that the inauguration of this Constitution will be held over till the historic day of the 26th January. All this is good and for that the Honourable Dr. Ambedkar and his other colleagues of the Drafting Committee deserve the congratulations of the whole House, because they have drafted this Constitution with great skin and labour.

Sir, ordinarily it would be expected of me who is a Member of this House that I should have a feeling of satisfaction for the successful completion of our labours. But Sir, permit me to say that at this moment when I am speaking on this Constitution in this House, far from having any sense of satisfaction I am feeling extremely depressed. The fact is that it appears to me as if my heart were sinking at this moment and a slow palsy is overtaking me This is due to my realisation that in spite of the fact that the British rule ended more than two years ago, the misfortune of the country and its people is that they have not yet perceived in the least any improvement in their conditions as a result of this change. I am afraid that the masses instead of finding any improvement in their lot are beginning to suspect that their lot is becoming worse as a result of this political change. They are unable to perceive as to where all this will end. The fact is that the general public, in whose name this Constitution has been framed and would be passed, sees only despair and darkness around them.

\textsuperscript{51} ‘Constituent Assembly of India’ - Vol. XI, Saturday, 19th November 1949.
Mr. President, some of our friends thought that so far no change has been apparent in the condition of the general masses, because so far the Constitution and the laws framed by the British Government are in force. They believed that when our Indian constitution is ready, the masses would definitely feel that they are on the way to progress.

But, Mr. President, I wish to be excused for placing the hard reality before you. The people of this country would not at all be satisfied or happy even after this Constitution is completed and enforced. Because what is there for them, in this Constitution, as it has evolved now, and is soon going to be enforced? You may go through it from the beginning to the end, you will not find anywhere in it any provision for bread for the poor, starving, naked and oppressed people of India. What attempt has been made in this constitution for solving their day to day problems? Besides this, it does not contain any guarantee of work, or employment for them. Far from ensuring to them wages according to their work, there is no guarantee in it even for a living wage, even for a minimum wage and payment for subsistence.

In these circumstances, Mr. President, even though this Constitution may be the biggest and bulkiest constitution in the world, may even be the most detailed one, it may be heaven for the lawyers, and may even be the Magna Charta for the capitalists of India, but so far as the poor and the tens of millions of toiling, starving and naked masses of India are concerned, there is nothing in it for them. For them it is a bulky volume, nothing more than waste paper. It is a different matter whether we accept this fact or not, but we would have to admit that even if we ignore the views of the public, we would have to pay attention to the opinion of the great people.

I wish to invite your attention to the opinion of the honourable the Speaker of our Indian Parliament. He says that constitution that has been framed does not at all contain any shade of Indian genius, and is quite contrary to that. If I am not mistaken the General Secretary of the Congress, Shri Shankarrao Deo has also expressed his views about this Constitution in this House. He says that this Constitution is bound to be rejected if a referendum is taken. So even he leaving
aside the views of the general public about this Constitution and only taking into consideration the views of such respectable people how can we claim, that the public will be satisfied with it?

Mr. President the reason is clear. This Constitution has been framed by the people who are not the true representatives of the general masses. I have stated previously that the framers of this Constitution at best represent 14 per cent of the Indian masses. This is a bitter fact. We, who are here in this House as the representatives of the public have failed to fulfill our duty for which we had assembled here due to various reasons and causes such as party politics. It is for this reason that the people of India are particularly faced with disappointment again, as they had seen after the change of Government. Then, we have to consider, what is in store for us? There is no doubt that the Indian masses will never accept this Constitution in the words of respected Shri Shankarrao Deo. This Constitution cannot work permanently in this country. We have seen that there are some good things too in this Constitution and some nice principles have been enunciated in this, e.g. there is a mention of general franchise and joint electorate, abolition of untouchability. But so far as the principles are concerned, they may be, quite all right. But how far they would be enforced in practice, will be seen when they are put into practice. We see that the mention of Fundamental Rights in the Constitution is a significant matter. But Mr. President, have we really got some Fundamental Rights through this Constitution? I can say emphatically that the grant of Fundamental Rights is a mere farce. They have been given by one hand and taken away by the other. We have been told in plain words that this guarantee about the fundamental rights will not apply in the case of the Acts at present in force, and in respect of libel slander, or contempt of court and the Government is authorised to enact such laws even in future. Besides this, so far as the right of association or the right to go from one place to another is concerned, the Government will have the right to enact any law to take away these rights in the name of public interest so the grant of Fundamental Rights is a farce.

Then, Mr. President, we see that the law regarding property is identical with that contained in the Government of India Act of 1935. The result would be that it would be impossible to nationalise property and there would be many
obstacles in effecting such economic reforms as may be in the interest of the public.

Mr. President, it is a matter of surprise, of pain indeed, that while speaking on the Objective Resolution our Prime Minister had said emphatically that he was a socialist. He had also expressed the hope that the Constitution would be of a socialist republic. We listened to all his speech, but when the amendment seeking to add the word 'socialist' with the word 'republic' was moved in the House, it was rejected.

Mr. President, on the one hand we desire that today's social structure should be maintained without any alteration, and on the other hand we also wish that, poverty and unemployment should vanish from this country. Both these things cannot go hand in hand. While in America our Prime Minister said that socialism and capitalism cannot go hand in hand; it is surprising as to how it can be expected to maintain status quo, to maintain capitalism and also to remove the poverty and unemployment of the masses. Both these things are quite incompatible. It is felt therefore that starving, naked and oppressed people of India would perhaps continue to be in the same misery as they are today. Besides this even viewing this from other points of view too we do not arrive at any happy conclusion. Nowadays there is a lot of talk about co-operative commonwealth in our country. But what is the actual fact? It is no direction to say in the Directive Principles that the Governments would establish any such thing. To give directives in round about words is different from giving clear directive for establishing such a order. Still the Congress President wants us to cherish the hope that a classless society will be established in this country within five years. A lay man like me is however unable to understand as to how to reconcile the two statements, the one that we hate socialism and want to maintain the status quo the other that we wish to establish a classless society in our country while preserving the exploiting group. I cannot see how these two objects which are mutually opposite can be realised. Besides this there are several minor things which could be accomplished but have not been done.
The demand for the separation of the executive and the judiciary is a very old one—perhaps as old as the Indian National Congress is believed to be. But this Constitution does not contain any definite plan, any adequate provision to separate the executive and the judiciary as soon as possible.

Looking at States, I can say that no decision has yet been taken to end the Jagirdari system. The result would be that millions of peasants of the States would continue to be slaves of the Jagirdars. Besides this, the farm labourers would continue to be the slaves of the money lenders. Along with this we see that this Constitution contains so many things which are far more reactionary and backward than the provisions of the Government of India Act of 1935. It was provided in the first draft of this Constitution that the Governor would be elected direct by the voters. Later on another proposal was made saying that the Government would be appointed by a panel. But now the President has been given the right to select the Governors and also to fix their tenure of office himself. It is right that the President will as far as possible use his right properly, but this may lead to a tug of war between the provincial government and the Governor. It is just possible that the provincial government may have a different ideology from that of the Central Government and that conflict in ideologies may lead to conflict between the provincial government and the Governor. Besides this the discretionary powers of the Governor are even more reactionary than those contained in the 1935 Act. The Act of 1935 gave the powers of individual judgement to the Governor but it was essential for him to consult the cabinet. But now the Governor need not consult the cabinet regarding the discretionary powers. So, we see that in respect of Governors and three powers too we have gone backward instead of advancing forward.

Again the President has been given greater powers than necessary in the name of emergency powers, and the centre too has been given greater powers to interfere in the provincial affairs more than necessary. Our Constitutional structure is federal in name, but so far as the administrative sphere is concerned, it has become completely unitary structure. We do realise that centralisation is to some extent essential, but over-centralisation means more corruption in the country. Mahatma Gandhi advocated decentralisation throughout his life. It is surprising
that we have forgotten that lesson as soon after his departure, and are now giving undue powers to the President and the Central Government.

Mr. President, the structure of a modern State is generally based on division of powers, between two compartments- Provinces and the Centre. This system is already over-centralised. If we wish to end corruption, bribery and nepotism, the system of two compartments does not seem to be appropriate. For this we needed a four-compartment system. As I had once proposed, there should have been separate village republics, separate city republics and separate provincial republics and they should be federated into a central republic, that would have given us a really democratic federal structure. But as I have just said we have framed a unitary constitution in the name of a federation. This would essentially result in overcentralisation, and our Government which ought to have been the Government of the people, would become a fascist conclusion that the Constitution framed for our country will neither lead to the welfare of our country nor to the protection of those principles on the basis of which we have ostensibly proceeded. This seems to be the reason why the socialist party of India has declared that if and when they happen to capture power, the first things they would do will be to set up a new Constitution Assembly on the basis of general franchise and that constituent Assembly either change this whole constitution totally or would make necessary amendments in it. Mr. President, I would therefore not take any more time of the House and would only say that from the point of view of the interest of the people, high constitutional principles, this Constitution does not deserve to be passed. We should reject this Constitution. But Mr. President we may do it or not, I would submit, and fully believe in what my respected Friend Shri Shankarrao Deo has said, that even though we may accept this Constitution, the people of the country will never accept this. For them this Constitution would not for of greater value than other ordinary law books. The hopes of the people for the Constitution would remain unfulfilled just as they had remained fulfilled by the change of Government. If, therefore, we wish to retain the confidence of the people, there is still a change to do so, but if we do not succeed in this task, I am sure, Mr. President, the masses of India and the posterity too will not remember us by any good or respectable name.
Shri H. V. Kamath: I was saying that this Constitution is a Federal Constitution with a facade of Parliamentary democracy. Mahatma Gandhi wanted India to be a decentralised democracy. He told Louis Fischer, the eminent American publicist some years ago that "there are seven hundred thousand villages in India each of which would be organised according to the will of the citizens, all of them voting. Then there would be seven hundred thousand votes and not four hundred million votes. Each village, in other words, would have one vote. The villages would elect the district administration; the district administrations would elect the provincial administration and these in turn would elect the President who is the head of the executive. Louis Fischer, to whom he propounded this plan, interjected": 'That is very much like the Soviet system'. And Gandhiji replied: ' I did not know that. I do not mind.'

Sir, for good or for ill.-I hope for good-we have deviated from his plan and we have evolved a different plan, partly because we are passing through a difficult transition period. A time will arrive when India is stabilized and strong, and I hope we will then go back to the old plan of the Panchayat Raj or decentralised democracy, with village units self-sufficient in food, clothing and shelter and interdependent as regards other matters. I hope we will later go back to that Panchayat Raj Sir, to my mind the only system that will save India and the world is what I may call spiritual communism; I have in mind not the communism of the materialist brand. I have in mind spiritual communism. That is what Gandhiji had in mind when he based his conception of the future form of Government on the spirit of Divinity controlling human affairs. This meant spiritual communism. That alone will save the world. Today, in the conflict between the atom bomb and the atman it is only atma shakti that will prevail.

Now to go back to the preamble and the Constitution, I find that so far as justice is concerned, the Constitution amply provides for those who adorn the seats of justice. They are better provided for than those who will resort to the Temples of justice. The Drafting Committee had a soft corner for those eminent dignitaries who will preside in those Temples of justice and not to the humble votaries in the temple. As the Constitution was drafted by lawyers, perhaps it was inevitable that it should be so, as in the Sanskrit sloka Nalikagatamapi kutilam na bhavati saralam
shunah puchham. The lawyers' bias could not be avoided and therefore it is that in
the Constitution the judges have been unduly pampered.

_Shri T. Prakasam (Madras: General)_ : Mr. president, Sir, this is not the
Constitution which I expected for the people of our country, the Constitution which
I was expecting along with many others who have been labouring for attaining the
freedom of this country, the constitution planned out by Mahatma Gandhi, not only
planned out, but also endeavoured to be put into practice. Panchayat Raj was the
one which he planned out and recommended to the nation. Before his advent and
before his programme was placed before the country nobody ever dreamt that the
people divided as they were in every respect, would come together under our
leadership, under one banner, and carry out the orders given by him and the
Congress. He was the one man who should have been framing constitution, a
simple Constitution for the people of this country that would give relief to all, to
the millions. His plan was to educate the millions and to make the fight carried on
by them to attain freedom ever since he set his foot on this country after coming
from South Africa. You know more about Mahatma Gandhi than myself or than
anybody else in this country and you, Sir, were good enough to send a reply while
the drafting of the Constitution was in progress, to a letter written to you by one
ardent constructive worker, an advocate, an educated man who has spent his time
in the villages for a good time. In that letter he suggested about this Panchayat
organisation of Mahatma Gandhi and you replied to him in detail and you were
impressed by that because you were one of the foremost followers of Mahatma
Gandhi and a copy of that letter was given to me by that friend and that letter was
referred by you to Shri B.N. Rau, the Constitutional Adviser. I raised that point
elsewhere when we were discussing and everybody was impressed there, but I
myself found it difficult to introduce the Panchayat Constitution-the framework of
that-into the Constitution that had made considerable progress. So, we dropped it
and the leadership then suggested that there would be the directive principles
introduced into the Constitution. We have got that here now. Therefore, the
Constitution which I was longing to have was that Constitution. It is only that
Constitution that would give really food and cloth and all the necessaries of life to
the millions. The millions were ignored during the British Raj and they were
ignored in our country even after the British left and we also ignored them and we are proceeding with this Constitution.

The Constitution is a great document and the friends who have been in charge of this framing of this -Dr. Ambedkar- is a great lawyer, is a very able man. He has shown by the work he has done here, how he would be competent to be a King's Counsel of Great Britain, to be perhaps competent to sit on the Woolsack only; but this is not a Constitution that we, the people of this country wanted Mahatma Gandhi when he took up the organisation of this country in the name of the Congress at once saw how this country could be helped and how the millions could be helped. Therefore, he decided that the whole country should be divided on linguistic basis so that the people of each area would be competent to develop themselves. He not only laid that down as a rule for preaching purposes but he put it into force, carved out the whole country into 21 linguistic areas and he made the people work under that Constitution. As a matter of fact after he had been taken away from us and after we have been enabled to send away the English people from our country to their own country, we should not have discarded the basis on which this country had been educated by him, not only educated but the people of each area had been enabled to carry out the work. What about the Congress work which had been carried out under his direction and under the direction of the Congress and under your leadership and other leadership? The whole thing, how to make their own cloth, their own food and carry out all the items of constructive programme- that had been carried out for 26 years - it is nowhere now. Therefore, I have been sitting here with a painful thought that we had been drifting, avoiding the soul of it as it were.

The Constitution is very carefully drawn up. I have been a student of Constitutional law for a very long time, for over 40 years or 45 years. I have understood the principles of the Constitutions of the various countries of this world. The legal expert here and the Chairman of the Drafting Committee were referring us so often to the American Constitution. What is there in the American Constitution? We can see the essence of it-how 13 different colonies or units came together, and were determined to carry on the war against the British, carried on the war and after completing the war, evolved their own Constitution. When such
was the case, what was the fear in the minds of the Chairman of the Drafting Committee and also of the legal expert-who has been a learned man and who has been on the top of the legal profession? Their mind was not there as they were not in it. Therefore, this Constitution started on the basis of the English Constitution. The Act of 1935 became the basis of this Constitution. We embodied many provisions bodily as it were. They are not of a very extraordinary character, they are not new inventions for the first time by Great Britain. Why should we have been ready to say that we adopt this Constitution of Great Britain of 1935?

**Shrimati Renuka Ray (West Bengal: General):** So far as the fundamental rights of this Constitution are concerned, I think in the case they bring equality. It is very unfortunate that although the political rights are in these fundamental principles, the economic rights of citizens have not been able to be put in as justiciable rights today. Conditions in our country are such that it has not been possible for us at the present moment to have them as fundamental rights which are enforceable through courts of law. They have been put in as directives of State policy. Sir, it is also all the more unfortunate that among these directives of State policy are some to the most vital rights of citizens and along with them are lumped many matters of much lesser moment. At the same time, I do not think there is anything to despair because it is possible for the parliament and the Government of the future to bring these rights which are now directives as economic rights, in the near future.

Sir, finally I would like to say that may it be given to us to be able to work this Constitution in this generation and in the generations to come, in such a manner, that the lofty ideas that the Father of our Nation laid down, may indeed become a living reality for the people of this land. May Gandhian socialism be a practical contribution of this country to the world of man.

**3.9. CONCERN OF THE CONSTITUENT ASSEMBLY.**

Before we finish the study of our constitutional foundation that led to the ultimate adoption of our Constitution, it's important to understand the significance of the famous concluding speech of Dr. B.R. Ambedkar in which he had raised several concerns and left a message to the future legislatures and to all the citizens
of the country. The extracts of the concluding speech of Dr. Ambedkar in the Constituent Assembly\textsuperscript{52} are reproduced below.

On 26\textsuperscript{th} January 1950, India will be an independent country (Cheers). What would happen to her independence? Will she maintain her independence or will she lose it again? This is the first thought that comes to my mind. It is not that India was never an independent country. The point is that she once lost the independence she had. Will she lose it a second time? It is this thought which makes me most anxious for the future. What perturbs me greatly is the fact that not only India has once before lost her independence, but she lost it by the infidelity and treachery of some of her own people. In the invasion of Sind by Mahommed-Bin-Kasim, the military commanders of King Dahar accepted bribes from the agents of Mahommed-Bin-Kasim and refused to fight on the side of their King. It was Jaichand who invited Mahommed Gohri to invade India and fight against Prithvi Raj and promised him the help of himself and the Solanki Kings. When Shivaji was fighting for the liberation of Hindus, the other Maratha noblemen and the Rajput Kings were fighting the battle on the side of Moghul Emperors. When the British were trying to destroy the Sikh Rulers, Gulab Singh, their principal commander sat silent and did not help to save the Sikh Kingdom. In 1857, when a large part of India had declared a war of independence against the British, the Sikhs stood and watched the event as silent spectators.

Will history repeat itself? It is this thought which fills me with anxiety. This anxiety is deepened by the realization of the fact that in addition to our old enemies in the form of castes and creeds we are going to have many political parties with diverse and opposing political creeds. Will Indian place the country above their creed or will they place creed above country? I do not know. But this much is certain that if the parties place creed above country, our independence will be put in jeopardy a second time and probably be lost for ever. This eventuality we must all resolutely guard against. We must be determined to defend our independence with the last drop of our blood.(Cheers)

\textsuperscript{52} ‘Constituent Assembly of India’, Vol. XI Friday, 25th November, 1949.
On the 26th of January 1950, India would be a democratic country in the sense that India from that day would have a government of the people, by the people and for the people. The same thought comes to my mind. What would happen to her democratic Constitution? Will she be able to maintain it or will she lost it again. This is the second thought that comes to my mind and makes me as anxious as the first.

It is not that India did not know what is Democracy. There was a time when India was studded with republics, and even where there were monarchies, they were either elected or limited. They were never absolute. It is not that India did not know Parliaments or Parliamentary Procedure. A study of the Buddhist Bhikshu Sanghas discloses that not only there were Parliaments-for the Sanghas were nothing but Parliaments – but the Sanghas knew and observed all the rules of Parliamentary Procedure known to modern times. They had rules regarding seating arrangements, rules regarding Motions, Resolutions, Quorum, Whip, Counting of Votes, Voting by Ballot, Censure Motion, Regularization, Res Judicata, etc. Although these rules of Parliamentary Procedure were applied by the Buddha to the meetings of the Sanghas, he must have borrowed them from the rules of the Political Assemblies functioning in the country in his time.

This democratic system India lost. Will she lost it a second time? I do not know. But it is quite possible in a country like India – where democracy from its long disuse must be regarded as something quite new – there is danger of democracy giving place to dictatorship. It is quite possible for this new born democracy to retain its form but give place to dictatorship in fact. If there is a landslide, the danger of the second possibility becoming actuality is much greater.

If we wish to maintain democracy not merely in form, but also in fact, what must we do? The first thing in my judgement we must do is to hold fast to constitutional methods of achieving our social and economic objectives. It means we must abandon the bloody methods of revolution. It means that we must abandon the method of civil disobedience, non-cooperation and satyagraha. When there was no way left for constitutional methods for achieving economic and social objectives, there was a great deal of justification for unconstitutional methods. But
where constitutional methods are open, there can be no justification for these unconstitutional methods. These methods are nothing but the Grammar of Anarchy and the sooner they are abandoned, the better for us.

The second thing we must do is to observe the caution which John Stuart Mill has given to all who are interested in the maintenance of democracy, namely, not "to lay their liberties at the feet of even a great man, or to trust him with power which enable him to subvert their institutions". There is nothing wrong in being grateful to great men who have rendered life-long services to the country. But there are limits to gratefulness. As has been well said by the Irish Patriot Daniel O'Connel, no man can be grateful at the cost of his honour, no woman can be grateful at the cost of her chastity and no nation can be grateful at the cost of its liberty. This caution is far more necessary in the case of India than in the case of any other country. For in India, Bhakti or what may be called the path of devotion or hero-worship, plays a part in its politics unequalled in magnitude by the part it plays in the politics of any other country in the world. Bhakti in religion may be a road to the salvation of the soul. But in politics, Bhakti or hero-worship is a sure road to degradation and to eventual dictatorship.

The third thing we must do is not to be content with mere political democracy. We must make our political democracy a social democracy as well. Political democracy cannot last unless there lies at the base of it social democracy. What does social democracy mean? It means a way of life which recognizes liberty, equality and fraternity as the principles of life. These principles of liberty, equality and fraternity are not to be treated as separate items in a trinity. They form a union of trinity in the sense that to divorce one from the other is to defeat the very purpose of democracy. Liberty cannot be divorced from equality, equality cannot be divorced from liberty. Nor can liberty and equality be divorced from fraternity. Without equality, liberty would produce the supremacy of the few over the many. Equality without liberty would kill individual initiative. Without fraternity, liberty would produce the supremacy of the few over the many. Equality without liberty would kill individual initiative. Without fraternity, liberty and equality could not become a natural course of things. It would require a constable to enforce them.
We must begin by acknowledging the fact that there is complete absence of two things in Indian Society. One of these is equality. On the social plane, we have in India a society based on the principle of graded inequality which we have a society in which there are some who have immense wealth as against many who live in abject poverty. On the 26th of January 1950, we are going to enter into a life of contradictions. In politics we will have equality and in social and economic life we will have inequality. In politics we will be recognizing the principle of one man one vote and one vote one value. In our social and economic life, we shall, by reason of our social and economic structure, continue to deny the principle of one man one value. How long shall we continue to live this life of contradictions? How long shall we continue to deny equality in our social and economic life? If we continue to deny it for long, we will do so only by putting our political democracy in peril. We must remove this contradiction at the earliest possible moment or else those who suffer from inequality will blow up the structure of political democracy which is Assembly has to laboriously built up.

I do not wish to weary the House any further. Independence is no doubt a matter of joy. But let us not forget that this independence has thrown on us great responsibilities. By independence, we have lost the excuse of blaming the British for anything going wrong. If hereafter things go wrong, we will have nobody to blame except ourselves. There is great danger of things going wrong. Times are fast changing. People including our own are being moved by new ideologies. They are getting tired of Government by the people. They are prepared to have Governments for the people and are indifferent whether it is Government of the people and by the people. If we wish to preserve the Constitution in which we have sought to enshrine the principle of Government of the people, for the people and by the people, let us resolve not to be tardy in the recognition of the evils that lie across our path and which induce people to prefer Government for the people to Government by the people, nor to be weak in our initiative to remove them. That is the only way to serve the country. I know of no better.
We conclude with the observation that the concept of a welfare state, signifying a regime which seeks to ensure the maximum happiness of maximum number of people living within its territory, is by no means new. Several Kings and Emperors in the course of history have given the highest priority to the people happiness and welfare, even as there have been numerous rulers in all ages who proved to be tyrants and concentrated all their efforts and most of the State revenues on their personal comforts and luxury. The State of Mauryas and Emperor Vikramaditya for instance, were largely a Welfare State. The golden era of Emperor Ashoka in the ancient days and emperor Akbar during the Mughai period are two outstanding instances of rulers establishing a truly Welfare State in their lifetime.

A Welfare State also implies an efficient administration, speedy justice for the people, a regime totally free from graft, corruption, inefficiency, sloth and the frustrating complexities of red tape etc. in modern times a Welfare State means all this and much more. Among the measures which the people of such a State expect are social Welfare legislation, adequate health and medical facilities especially for the poor, the weak, the old and the disabled in other words, the admittedly weaker sections of society.

In India the concept of a Welfare State was accepted decades ago. During the British regime, social Welfare was not among the principal objectives of the government. The emphasis then being on maintaining law and order and also on facilitating the economic exploitation of the Indian people by British economic interests. But since the dawn of independence in 1947, the Indian leaders have earnestly sought to establish a Welfare State. The constitution of India, which was drafted after a good deal of discussion in the constituent assembly by the country's ablest people of all communities, seeks to establish a Welfare State. The Preamble of the Constitution clearly indicates "general welfare" of the people as one of the objectives of the Union of India. The Preamble aims "to secure to all its citizens justice, social, economic, and political, liberty of thought, expression, belief, faith and worship, equality of status and of opportunity."
The Indian constitution having been conceived and drafted in the mid-twentieth century an era of the concept of social Welfare State is pervaded with the modern outlook regarding the objectives and functions of the State. It embodies a distinct philosophy of government, and, explicitly, in articulate terms, declares that India will be organized as a social Welfare state, i.e. a state which renders social services to the people and promotes their general welfare. In the formulations and declarations of the social objectives contained in the Preamble, one can clearly discern the impact of the modern political philosophy, which regards the state as an organ to secure the good and welfare of the people.