Chapter II

PREAMBLE

The Objectives Revolution - When the Constituent Assembly met on the 15th November 1948 to discuss the Draft Constitution of India clause by clause, the Vice-President ruled out discussion on the Preamble and adopted the procedure of the House of Commons where the Preamble is taken up last of all. The object of putting the Preamble last was that the Preamble might be in conformity with the constitution as accepted. The Preamble is a declaration of the purposes and the underlying spirit of the constitution. The Preamble also determines and expresses sentiments and aspirations cherished by multitudes of citizens and also helps to sustain the whole constitutional system. Therefore, though the discussion on the Preamble was taken up on the 17th October 1949, it was felt desirable to have the Aims and Objects before the framers of the Indian Constitution, who were not all in a 'happy position' when they met on the 9th December 1946. The representatives of the Muslim league and those of the Princes did not join the Assembly and there was great confusion regarding the grouping of Provinces as announced in the Declaration of May 16th by the cabinet Mission. On 6th December 1946, just three days before the meeting of the Constituent Assembly, the British Govt. issued an official statement that "Should a constitution come to be framed by a Constituent Assembly in which a large section of the Indian population had not been represented, the British Government could not, of course, contemplate...forcing such a constitution upon any unwilling parts of the country".

1. C. A. D., 15th Nov. 1948, p. 397
2. Ibid, 17th Oct. 1949, p. 432
3. Charles A. Beard, the Republic, p. 74
4. Dr. M. V. Pylee has however, stated that "the framers of the Constitution of the Republic of India were in a most happy position" Constitutional Government in India by M. V. Pylee, p. 145
5. V. P. Menon, The Transfer of Power In India, pp. 476-478
6. B. N. Rau, India's Constitution In the Making P. IVI.
Defining the term unwilling parts of the country Sir Stafford Cripps observed in the House of Commons on 12th December 1946 that "...if the Muslim league could not be persuaded to come into the Constituent Assembly, then parts of the Country where they were in a majority could not be held to be bound by the results."¹ This imposed new limitation on the scope of the Constituent Assembly and encouraged the Muslim league to press the demand for Pakistan. But once the Assembly met, Sri Jawaharlal Nehru, the leader of the Assembly, was determined to go ahead with courage and vision. He clearly printed out: "It is at the same time manifest that when a great country starts to advance, no party or group can stop it. This House, although it has met in the absence of some of its members, will continue functioning and try to carry out its work at all costs."² He emphatically asserted the sovereignty of the Constituent Assembly and observed...you must not ignore the source from which this Assembly derives its strength. Governments do not come into being by State papers. Governments are, in fact, the expression of the will of the People. We have met here today because of the strength of the people behind us and we shall go as far as the people—not of any party or group but the people as a whole—shall wish us to go."³ Thus making his stand clear Sri Nehru moved the Objectives Resolution on the 13th December 1946, in the following terms:"⁴

(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) Where in 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

¹ A. C. Banerjee, The Making Of The India Constitution., p. 343.
³ Ibid, p. 55
⁴ It is given as 15th December 1946 in the book "India's Constitution In The Making" by Sir B. N. Rau, p. lxx which seems to be misprint vide C. A. D. Vol. I, No. 5, p. 57.
(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 power and functions as are vested in or assigned to the Union, or as are inherent or implied in the Union or resulting therefrom.

(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 & 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 the civilized nations, and

(8) This ancient land attains its rightful and honoured place in the world and makes it full and willing contribution to the promotion of world peace and the welfare of mankind.¹

Thus India was to be a sovereign Independent Republic wherein all power and authority were derived from the people. It would consist the whole of India where units were to be autonomous and residuary power were to be vested in them.

Sources & Background of Objectives Resolution: This was according to the Cabinet Mission Plan and it kept the doors open for the Muslim League and the Princes to come in. The Resolution emphasized the dignity of the individual and promised to maintain the integrity of the Republic and the sovereign rights. This objective Resolution thus endeavoured to fulfill the dreams of the Indian National Congress which passed the resolution for complete National Independence in 1927.² It was the fulfillment of the nation's pledge taken on January 26, 1930.³

2. The Indian National Congress resolved that "This Congress declares the goal of the Indian people to be complete National Independence." History of The Indian National Congress by B. Pattabhi Sitaramayya, Vol. 1, p. 319
It also fulfilled the dreams of Mahatma Gandhi who had said to a correspondent, enroute to London to attend the Second Round Table Conference in 1931, that "I shall strive for a constitution, which will release India from all Thraldom and patronage, and give her, if need be, the right to sin. I shall work for an India, in which the poorest shall feel that it is their country in whose making they have an effective voice; an India in which there shall be no high class and low class of people, an India in which all communities shall live in perfect harmony... This is the India of my dreams."\(^1\) It also echoed the quit India Resolution of 8th August 1942 when it was declared that the Indian constitution "should be a federal one, with the largest measure of autonomy for the federating units and with residuary powers vesting in these units."\(^2\) On 26th June 1946 the Congress passed its objectives that "The kind of independence the congress has aimed at is the establishment of a united democratic Indian federation, with a central authority, which would command respect from the nation of the world, maximum provincial autonomy and equal rights for all men and women in the country. Taking the proposals as a whole, there was sufficient scope for enlarging and strengthening the central authority and for fully ensuring the right of a province to act according to its choice in regard to grouping, and to give protection to such minorities as might otherwise be placed at a disadvantage. ...The Congress should join the proposed constituent Assembly, with a view to framing the constitution of a free, united and democratic India."\(^3\) In the objectives Resolution Sri Nehru dropped the word 'democratic' and inserted Republic to induce the Princes to join in. This Objectives Resolution may also be traced in the general directives

3. B. N. Rau, India's Constitution In The Making, p. XIII.
prepared by Prof. K. T. Shah in July 1946. The following relevant points are worth mentioning:

"1. The Sovereignty of the State, namely, the Union of India, shall reside in the people of India. They shall be the Supreme authority and final arbiters on all subjects concerning or relating to the constitution and governance of the union of India."

"4. The constitution is ordained and established by and in the name of the people of India and with their authority for the Union of India for the purpose of:

(a) ........................................

(b) Establishing political freedom and civil as well as social equality in all parts of the country, and among all sections of the people, irrespective of any difference of birth, sex, wealth, creed or color.

(c) Ensuring social justice as between the several parts of the country as well as between the several sections of the people, and individuals,

(d) ........................................

(e) ........................................

(f) Promoting the economic welfare and social security of the citizens.

"11. The form of government in the union of India, and in such component part thereof as elect to accept it, shall be Republican; that is to say, the Chief Executive Head of the state shall be elected, for a prescribed term of years; and that there shall be no hereditary or life long Headship vested in any individual or family.

"12. Without prejudice to the preceding article, in the case of existing

Indian States, where Hereditary Princes rule at the present time, arrangements, shall be made by negotiation and agreement to terminate the Hereditary Headship and autocratic Rule and substitute the same by elected Headship of the units concerned. Such election shall be in conformity with the general spirit and specific provisions of the constitution of the country."

Dr. Heinz's Analysis: Analyzing the Objectives Resolution Sri Nehru" said in the Constituent Assembly that "it is a firm and solemn resolve to have an independent sovereign republic. India is bound to be sovereign, it is bound to be independent and it is bound to be a republic. ... Obviously we cannot produce monarchy in India out of nothing. It is not there. If it is to be an independent and sovereign state, we are not going to have an external monarchy and we cannot have a search for some local monarchies... Now some friends have raised the question: "Why have you not put in the word "democratic" here... obviously we are aiming at democracy and nothing less than a democracy... The House will notice that in this Resolution, although we have not used the word 'democratic' because we thought it is obvious that the word 'republic' contains that word and we did not want to use unnecessary words and redundant words, but we have done something much more than using the word. We have given the content of democracy in this Resolution and not only the content of democracy but the content, if I may say so, of economic democracy in this Resolution... some people have pointed out to me that our mentioning a republic may somewhat displease the Rulers of Indian states... If the people of a particular state desire to have a certain form of administration, even though it might be monarchical, it is open to them to have it. The House will remember that even in the British Commonwealth of Nations today, Eire is a Republic and yet in many ways it is a member of the British

Commonwealth, so it is a conceivable thing... There is no incongruity or impossibility about a certain definite form of administration in the states, provided there is complete freedom and responsible government there and the people really are in charge. If monarchical figure heads are approved by the people of the state, of a particular state, whether I like it or not, I certainly will not like to interfere."

The Resolution and the Cabinet Mission Plan. - But this objectives Resolution as analysed by Sri Nehru was certainly not in tune with the plan of the cabinet Mission and it would not have been pleasing to the Muslim league who had hoped to realise their dreams of Pakistan in the grouping of Provinces on religious line.\(^1\) Admitting this position, Sri Purushottam Das Tandon observed,\(^2\) while seconding the Resolution, that "we shall try our utmost not to hurt the cause of the Muslim league; and I point out to you that the Resolution takes note of this fact. There are many of us who are against giving residuary powers to the provinces... Residuary powers and political rights, which may conduce to unity and progress in the country, should lie with the central or federal government. The Resolution, however, gives residuary powers to the provinces so that the Muslim league may not say that we have done in their absence what as we pleased... Our friends in London send us their advice. Sir Stafford Cripps, while speaking of certain principles, advises us to accept the formula that the majority should frame its own constitution, while the minority should also have the right to have its safeguards against any obstructions from the majority.... Sir Stafford warns us of civil war and advises us to cooperate with each other to avoid it... This means that we should accept the division of India... If civil war is unavoidable,

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let it come. We cannot be coerced to do a wrong thing by threats of civil war... I admit that the Congress had come into the Assembly by accepting the cabinet Mission's proposals but I want to point out that Constituent Assembly after meeting may adopt an altogether a different course. In France, people met on the invitation of King Louis. When they saw they could not do what they wanted to do, they began their own procedure. The King who had called them for granting him money, seeing their intentions, wanted to dispense them, but they refused to dispense. Our Constituent Assembly has met on the invitation of the British Government but we are free to carry on the work as we please... In this House we cannot accept the British Government's proposals to divide India into sections and to give the right of framing constitution for provinces into the hands of persons who are bent upon dividing India... In framing the constitution we should remember that whatever plan of progress we make, we should never yield to the proposal of dividing India. India should remain one."

Views of Mr. Churchill & Jinnah- But Sir Winston Churchill was equally bold in his statement in the House of Commons where he said that the declaration by the British government that it could not contemplate forcing such a constitution upon unwilling parts of the country was "the most important milestone in this long journey."¹ He further suggested² "to assert the principle so often proclaimed that the King needs no unwilling subjects, and that the British Commonwealth of Nations contemplates no compulsory partnership, and that, in default of real agreements, partition of India between the two different races and religions, widely differing entities must be faced."³ He also wanted to know whether the Indian Constituent Assembly was a valid authoritative body which represented only one major community in India.³

1. The Indian Annual Register 1946, p. 308
2. Ibid, p. 310.
Mr. Jinnah, at a London Press conference on the 14th December, reaffirmed Pakistan as the goal of the Muslim League and agreed with Mr. Churchill's predictions that things would get worse in India "if Britain did not act boldly and frankly." He added "as between the Hindus and the Muslims there is no such thing as democracy. It is a majority of one nation that can overrule the unanimous decision of any other nation because they are 97 and the congress are 292. In the perilous position that the Muslim will be, we don't want any outside interference in this sense that somebody should tinker with us, but there must be some provision within the scheme itself which will prevent a brute majority taking the bit in its mouth and running away. But to treat it as a Sovereign Constituent Assembly taking decision after decision and then presenting the poor Muslim minority, the British government and the world with a fait accompli-there is the real danger." Asked if the Muslims were placing a veto on the advance of the majority, he said "what majority do you mean? If you mean the Hindus, we wish them godspeed. Go ahead-establish your Hindustan, frame your constitution for the Hindus. Leave us alone and we shall frame a constitution for Pakistan."

The debates of the House of Commons and the Press statement of Mr. Jinnah greatly annoyed the mover of the Objectives Resolution. On 15th December 1946, therefore, Sri Nehru declared in the Town Hall, Benares, that whatever form of constitution was decided in the Constituent Assembly, would become the constitution of a free India, whether Britain accepted that or not. He said that the British government was thinking that the decisions of the Constituent Assembly were not binding on them. "But we have not entered the Constituent Assembly to place our

1. The Indian Annual Register, 1946, p. 315
decisions in a silver dish and dance attendance on the British government for acceptance. We have now altogether stopped to look to London. We know that there are some differences among us but we shall settle them ourselves. We cannot and will not tolerate any outside interference...we have advanced so much on the path to freedom that it is not possible for us to retrieve.«¹

On the other hand the British government was equally firm on its previous stand. On the 16th December 1946, Lord Pethic Lawrence observed in the House of Lords "Although the parties took part in the election of the Constituent Assembly, it is well-known that the Muslim league representatives are not taking their seats at the preliminary sittings which are now being held and which are, therefore, clearly not representative of the two major communities."² He further pointed out that "under the Cabinet Mission's proposals the Constituent Assembly cannot frame a constitution which departs from the form recommended by the Mission unless agreed upon with the approval of the majority, of representatives of each major party."³ He therefore appealed that "our conviction stands that only on a fast agreement can a stable constitution be created. Our intention remains to do all in our power to bring the parties together."⁴

Mr. Jayakar’s Proposal to Postpone the Resolution — It was in this back-ground that Dr. M. R. Jayakar moved an amendment in the Constituent Assembly on 16th December 1946, to postpone the discussion on the Resolution till the Muslim league joins.⁴ The amendment runs: "This Assembly declares it firm and solemn resolve that the constitution to be prepared by this Assembly for the future governance of India shall be for a free and democratic sovereign state; but with a view to securing, in the shaping of such a constitution the cooperation of the Muslim league and the

² Ibid, p. 360,361
³ Ibid, p. 361
⁴ Ibid, p. 362
Indian states, and thereby intensifying the firmness of this resolve, this Assembly postpones the further consideration of this question to a later date, to enable the representatives of these two bodies to participate, if they so choose, in the deliberations of this Assembly.\(^1\) Dr Jayakar contented that the fundamentals of the constitution could not be considered in face of the Cabinet Mission's statement of May 16th, sub-clause (iv) of clause 19. He further pointed out that a fresh concession was given to the Muslim league by way of addition to the statement of May 16th, that if a large section of the people was not represented at the constitution-making, His Majesty's Government would not be willing to force such a constitution upon unwilling parts of the country. Thus the Muslim league secured this right and if they remained absent from the Constituent Assembly, they could make the work futile and fruitless. Appealing to the members of the Constituent Assembly he said "That raises the question whether it will not be wise, merely as a means of saving your trouble and labor, to postpone to a future date, the further consideration of these constitutional points\(^2\) ... you are not in any event going to do anything substantial at least until the 20th January, that is four weeks from now. At least till then you should keep the way clear for the Muslim league to come in and take part in the proceedings."\(^3\) Administering a mild warning he concluded "My duty is to tell you that the course you propose to adopt is wrong, it is illegal, it is premature, it is disastrous, it is dangerous. It will lead you into trouble. As I am elected on your ticket, I am bound to tell you frankly that there is danger ahead, danger of frustration, danger of discord and division, which it is our duty to avoid."\(^4\)

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1. Ibid, p. 71
3. Ibid, p.77.
4. Ibid, p.78.
Determination of Constituent Assembly to go Ahead - But inspite of the stern
warning of Dr. Jayakar, majority of the members were determined to go ahead with
the Resolution. Dr. S. K. Sinha did not like to understand the political ideology
of the Muslim league correctly. He also did not like to understand the cabinet
Declaration correctly and ignored the frequent demands of the Muslim league for
a sovereign Pakistan. He therefore failed 'to understand how this particular
Resolution would stand in the way of their so coming here at a future date.'1
He himself admitted "I have not studied this Declaration of the Cabinet from the
point of view of a lawyer. I spurn to look at it from the point of a lawyer. I
have been a soldier all my life and I would look at it from the point of view of
a fighter... This Constituent Assembly may one day have to go the way the Constituent
Assembly of France in 1799(?), had to go, because of the attitude of the King and
statesman of that time. So before I sit down, I would remind Hon'ble member of
the House that before they make up their minds to vote in favour of this Resolution
they must realise the difficulty that they may have to face in giving effect to
their resolve."2

Mr. M. R. Masani3 welcomed this Resolution inspite of the fact that neither
the word 'Democracy' nor the word 'Socialist' found a place in the Preamble. He
was satisfied that the content of economic democracy was there, although the label
was not there. The word 'Republic' was not adequate as it was conceivable that
a Republic might not be democratic. Therefore clauses 1 and 2 made it clear that
the Indian Republic did not mean a police state, where the secret police could
arrest or liquidate people without trial. It did not mean a totalitarian state
where one party could seize power and kept opposition parties suppressed and did

1. Ibid, p. 85.
not give them the freedom to function freely and with equal facilities. It could
not mean a society or state where an individual was made a robot or where he was
reduced to "a small screw in the big machine of state." Concluding he said
"It is because I believe, Sir, that this Resolution points the direction to a
constitution where the people will be in power, where the individual will occupy
the center of the stage and the development of the individual personality will be
the main aim of our social, good, that I support this part of the Resolution."¹

Dr. Shyama Prasad Mukherjee ² also supported the Objectives Resolution and said
"that the Resolution as drafted does not go against the main features of the Cabinet
Mission's scheme, and also that it does not commit the Constituent Assembly in a
definite manner with regard to the details of the constitution that is yet to come.
I see no reason why any obstacle should be put forward to passing the Resolution
at this stage... If what Dr. Jayakar says had been the correct position, then this
Constituent Assembly should not have been called at all."³ Emphasising the sov-
ereign character of the Constituent Assembly he also observed "After all we are
sitting here not in our individual capacity, but we claim to represent the people
of the great land. Our sanction is not the British Parliament, our sanction is
the people of India. (cheers)."⁴ Posing a question and giving the answer he observed
"But why is the Muslim league being prevented from coming? My charge is that the
Muslim league is not coming because of the encouragement it receives from British
attitude. The Muslim league has been encouraged; to feel that if it does not
come it may be able to veto the final decision of the Constituent Assembly. The
power of veto in some form of another has again passed into the hands of the Muslim
league and that is the danger that threatens the future activities of this great
Assembly?"⁵

¹ Ibid, p.92.
³ Ibid, p. 94.
⁴ Ibid, p.94.
⁵ Ibid, p.95.
Referring to the national character of the Constituent Assembly Dr. Mukherji said that the Muslim, scheduled castes, the Sikhs, Anglo-Indians, Christians, Parsis, the Adibasis were present. "In fact, every element that has been elected to the Indian Constituent Assembly is here barring the Muslim league... it is absolutely false to suggest that this Constituent Assembly consists only of one section of the people, the caste Hindus."  

Objections of Dr. Ambedkar—Dr. B. R. Ambedkar, however, strongly supported the amendment moved by Dr. Jayakar and observed "I do maintain that this Resolution... is bound to have the result of keeping the Muslim league out. In this connection, I should like to invite your attention to paragraph 3 of the Resolution... paragraph 3 says that in this country there shall be two different sets of polity, one at the bottom, autonomous Provinces or the states or such other areas as care to join a United India. These autonomous units will have full power. They will have also residuary power. As I read this point of the Resolution, I do not find any reference to the idea of grouping, an intermediate structure between the Union on the one hand and the provinces on the other. Reading this para in the light of the Cabinet Mission's statement or reading it even in the light of the Resolution passed by the Congress at its Wardha session, I must confess that I am a great deal surprised at the absence of any reference to the idea of grouping of the provinces. So far as I am personally concerned, I do not like the idea of grouping. I like a strong united centre much stronger than the centre we had created under the Govt. of Indi Act of 1935. But Sir, these opinions, these wishes have no bearing on the situation at all. We have travelled a long road... I would like to know why there is no reference in para 3 to the idea of grouping... I therefore say in answer to the two questions which have been passed here in this

1. Ibid, p. 96.
Assembly by the Prime Minister of Bihar and Dr. Syama Prasad Mukherji as to
how this Resolution is inconsistent with the statement of May 16th or how this
Resolution is going to prevent the Muslim league from entering this Constituent
Assembly, that here in para 3 which the Muslim league is bound to take advantage
of and justify its continued abstention."¹ He therefore appealed "I am not asking
you to consider whether you have the right to do so. The question I am asking is
this. Is it prudent for you to do so? Is it wise for you to do so? Power is
one thing, wisdom is quite a different thing and I want this House to consider
this matter from the point of view, not of what authority is vested in this
Constituent Assembly, I want this House to consider the matter from another point
of view, namely, whether it would be wise, whether it would be statesmanlike,
whether it would be prudent to do so at this stage. The answer that I give is that
it would not be prudent, it would not be wise, I suggest that another attempt be
made to bring about a solution of the dispute between the Congress and the Muslim
league. This subject is so vital, so important, that I am sure, it could never
be decided on the mere basis of dignity of one party or the dignity of another party.
When deciding the destinies of nations, dignities of people, dignities of leaders,
and dignities of parties ought to count for nothing. The destiny of the country
ought to count for everything...Sir, I have been hearing from certain members of
the Constituent Assembly that they are prepared to go to War. I must confess that
I am appalled at the idea that anybody in this country should think of solving
the political problems of this country by the method of war...It will be a war on
a combination of the British and the Muslims...Burke has said somewhere that it
is easy to give power, it is difficult to give wisdom. Let us prove by our conduct
that if this Assembly has arrogated to itself sovereign powers, it is prepared to
exercise them with wisdom."²

Referring to paragraph (5) to (7) of this Resolution he felt greatly disappointed. He said "when one reads that part of the Resolution, it reminds one of the Declaration of the Rights of Man and the principles which are embodied in it has become part and parcel of our mental make-up.

To repeat it now as the Resolution does is, to say the least, pure pedantry. It is therefore unnecessary to proclaim as forming a part of our creed. The Resolution suffers from certain other lacuna. I find that this part of the Resolution, although it enunciates certain rights, does not speak of remedies...even the usual formula that no man's life, liberty and property shall be taken without the due process of law, finds no place in the Resolution..." ¹

Defending the Objectives Resolution, Diwan Bahadur Sir Alladi Krishnaswami Ayyar observed: "There is nothing in the term of the Resolution to which either the Muslims or the states can take exception if they decide to come in... A close examination of the Cabinet Mission's statement will point to the conclusion that the formation of groups is not an essential part of the constitutional structure. In the most material parts, the main recommendations are that there should be a Union of India dealing with certain subjects, that all subjects other than the union subjects and residuary powers should vest in the Provinces and in the States. There is nothing in the term of the Resolution to prevent provinces from forming themselves into groups as contemplated by the Cabinet Mission." ²

Thus when time had come to proclaim the independence of undivided India, many members refused to wait and woo the Muslim league. An honourable member³ put it very humorously. "If we adopt the policy of wait and see as had been advocated by Dr. Jayakar and supported by Dr. Ambedkar, we will never reach our goal. Fortunately these two Doctors are not doctors in medicines, otherwise they would have killed the patient by delaying the operation." The honourable member was

¹ Ibid, pp. 97-98.
³ Mr. Damber Singh Gurung: C. A. D. Vol.1, No.9, p. 142.
prepared for the operation and said "Inspite of all this, if Mr. Jinnah goes on throwing the challenge of civil war, I ask the countrymen to accept that challenge and let us fight it out."\(^1\) But the advise of Dr. M. R. Jayakar was duly considered by the Congress Working Committee on 22nd December 1946. Though it defended its interpretation of the grouping clause based on the statement of Lord Wavell, yet it resolved: "The Congress seeks to frame, through the Constituent Assembly, a constitution of a free independent India with the willing cooperation of all elements of the Indian peoples. The working committee regrets that Muslim league members of the Constituent Assembly have refrained from attending its opening session. The Committee, however, appreciate and express their gratification at the presence in the Constituent Assembly of representatives of all the people of India and trust that members of the Muslim league will give their cooperation in this great task. In order to achieve this, the committee have advised Congress representatives in the Assembly to postpone consideration of important issues to a subsequent meeting."\(^2\) Accordingly discussion on Objectives Resolution was postponed till 20th January 1947 as suggested by Dr. Jayakar.

The Non-Participation of Muslim League - When the Constituent Assembly met on 20th January 1947 it adopted a bold attitude as it was no more necessary to wait for the Muslim league which had postponed its meeting for 29th January 1947. Dr. Rajendra Prasad, the President of the Constituent Assembly, boldly refuted the view expressed in British Parliament that the Constituent Assembly represented only one major community in India or was a body of Hindus or caste Hindus. He said \(^3\) "In the course of the debates on India in the House of Commons and in the House of Lords in December last, certain statements were made defraying from the representative character of this

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1. Ibid, p. 143.
Assembly during its last session. Notably among those who spoke in this strain were Mr. Churchill and Viscount Simon. Mr. Churchill observed that the Assembly, as it was meeting then, represented "only one major community in India." Viscount Simon was more specific and referred to the Assembly as a "body of Hindus." He went on further to ask "whether this meeting of caste Hindus at Delhi can be regarded by the Government as the Constituent Assembly they meant at all.

"But these gentlemen have held the highest offices of responsibility and have had a long and intimate connection with affairs of India; and whatever may be their views on current political controversies, they would not, I am sure, like to make statements which are wholly contrary to facts and lead to mischievous inferences.

It is for the reason that I have considered it necessary on this occasion formally to state the facts. Out of a total of 296 members who were to take part in the preliminary session, 210 members attended. These 210 members consisted of 156 Hindus. Out of a total of 160; 30 scheduled castes representatives out of a total of 33; all the five Sikhs, six Indian Christians, out of a total of seven (one of them is also counted as a member of the backward tribes), all the five representatives of the backward tribes, all three Parsis and four Muslims out of eighty. The significant absence is, of course, that of the representatives of the Muslim league... an absence which we all deeply regret. But it is clear from the figures I have pointed that with the exception of representatives of the Muslim league every community in India, whatever the party affiliation of the persons representing that community, was represented in the Assembly; and therefore to describe the Assembly as representing "only one major community in India" or as a body of Hindus or as a "meeting of caste Hindus" is a complete traversity of facts."

Thus members of the Assembly were now determined to go ahead inspite of the
the Muslim league. An honourable member claimed that "we are not here as mere drafters of a constitution or choppers of logic. We are here, as a matter of fact, as a council of action, and this meeting of the Constituent Assembly is a stage in the progress of the struggle for freedom." The Resolution was supported by the Harijans, the Christians, and the Anglo-Indians.

Withdrawal of Jayakar's Amendment & Passage of Resolution - Dr. Jayakar also withdrew his amendment. The Constituent Assembly had practically accepted his proposal. The discussion on the Resolution was postponed to January 20 as he had suggested, and they had gone further, despite the resentment of some members and provinces and accepted the statement of His Majesty's Government of December 6. They having done all that, nobody knew whether the Muslim league would still come in or not. The league had held up their cards up to January 29, knowing full well that the Assembly was meeting on January 20. He therefore felt, in honour bound, not to press his amendment any longer.

Before Sri Nehru replied to the Debate, Sir B. N. Rau sent him the following note for his consideration to clarify some misgivings of the members of the Constituent Assembly regarding the future relations between India and the United Kingdom: "May I take the liberty of suggesting that in your reply on the 'objectives Resolution' you might slightly amplify what you said in your opening speech about the future relation between India and England? Something on the following lines occurs to me, but you would know best what to say.

"The question has sometimes been asked, what will be the relations between the new Indian Republic and the British Commonwealth? The answer is not difficult

1. Mr. N. V. Godgil.
3. Ibid, p. 267, Mr. S. Nagappa supported it on behalf of the Harijans.
7. B.N. Rau, India's Constitution In The Making, pp. IX and Xx.
in the world of today, the relations between states are not governed by labels. The U.S.A. has been a Republic for over 150 years; nevertheless, in two successive world wars it fought on the same side as England to ward off a common peril. Ireland is treated by England as a Dominion and a member of the British Commonwealth; yet, in the last world war, Ireland remained neutral. And so these names have ceased to have much significance as regards mutual relations. The world has entered upon a new era and we have to think in new terms. We are now all of us, part of a new world Organisation—the United Nations, units of a world federation in the making. A vast "multicellular Republic is being formed of which the United Kingdom, the Dominions, India and all the other states of the world are, or will in due course be, members. India's relations with the other members will necessarily be of the friendliest and closest collaboration and cooperation in the pursuit of our common ideals."

Sri Nehru, in a stirring and impassioned reply to the debate, said"...six weeks have passed, and during these weeks there has been plenty of opportunity for those, who wanted to come, to come. Unfortunately, they have not yet decided to come and they still hover in this state of indecision. I regret that, and all I can say is this, that we shall welcome them at any future time when they may wish to come. But it should be made clear without any possibility of misunderstanding that no work will be held up in future, whether anyone comes or not." Referring to the Indian states and the question of Sovereignty, he said "Another point has been raised: the idea of the sovereignty of the people, which is enshrined in this Resolution, does not commend itself to certain rulers of Indian states. That is a surprising objection and, if I may say so, if that objection is raised in all seriousness by anybody, be a ruler or a minister that exists in India. It is a

scandalous thing for any man to say, however highly placed he may be, that he is here by special divine dispensation to rule over human beings today. . . . On this there is going to be no compromise." But he also made it clear that he was not interfering in the internal affairs of the state. He also did not like to interfere with the system of monarchy in the states, if the people of the states wanted it. He gave the example of the Irish Republic in the British Commonwealth and so he conceived the idea of constitutional monarchies within the Indian Republic. Referring to the relation between the Indian Republic and the British Commonwealth he said "for a long time past we have taken a pledge on Independence Day that India must sever her connection with Great Britain because that connection had become an emblem of British Domination. At no time we have thought in terms of isolating ourselves in this part of the world from other countries or of being hostile to countries which have dominated over us. On the eve of this great occasion, when we stand on the threshold of freedom, we do not wish to carry a trail of hostility with us against any other country. We want to be friendly to all. We want to be friendly with the British people and the British Commonwealth of Nations."

Thus the amendments of Dr. Jayakar and of Sri Shyamnandan Sahay having been withdrawn, the objectives resolution was adopted on 22nd January 1947, all members standing.

Reaction of Muslim League to Its Passage - This step was interpreted by the council of the Muslim league, which met on 31st January 1947, as another indication that the Constituent Assembly had decided that the cooperation of the league's representatives was not essential. The council passed a lengthy resolution describing the Assembly's decision as a very vital one because it had laid down the essentials of the new constitution and several features of fundamental importance to the constitution.

1. Ibid, p.300.
2. Ibid, p.300.
3. Ibid, p.301.
The resolution was therefore described as "illegal, ultravires and not competent to the Constituent Assembly to adopt."

British Government Declaration of February 1947 to hand over power—Noting that the differences between the major parties had continued unresolved, and the Constituent Assembly could not function as it had been intended to do in the original plan, the Prime Minister made a policy statement in the House of Commons on the 20th February 1947: 

"His Majesty's Government desires to hand over their responsibility to authorities established by a constitution approved by all parties in India in accordance with the Cabinet Mission's plan. But, unfortunately, there is at present no clear prospect that such a constitution and such authorities will emerge. The present state of uncertainty is fraught with danger and cannot be indefinitely prolonged. His Majesty's government wish to make it clear that it is their definite intention to take necessary steps to effect the transference of power to responsible Indian hands by a date not later than June 1948."

This statement removed all doubts on the intention of the British government to quit India and thus its effect was profound. Sri Nehru welcomed it as 'a wise and courageous decision.' A fresh move towards an agreement between the congress and the league was made. But the league was in no mood to meet the Congress and seek a solution. They remained adamant on their demand for Pakistan and an unprecedented communal riot took place in India.

A further statement by the British Government accordingly followed on June 3, 1947 and the partition of the country was ultimately decided upon. It was 'with no joy' that Sri Nehru agreed to it. Meanwhile majority of the native states decided to join the Constituent Assembly.

2. V. P. Menon, The Transfer of Power In India, p. 507.
4. B. N. Rau, India's Constitution In the Making, p. XXX.
On 15th August 1947 India became independent. Now the task before the framers of the Indian Constitution became much easier and they proceeded fast to frame the constitution of India on the lines suggested in the Objectives Resolution.

The Draft of the Preamble - The Constituent Assembly appointed a Drafting Committee on 29th August 1947 "to scrutinise the draft of the text of the Constitution of India prepared by the Constitutional Adviser giving effect to the decisions taken already in the Assembly and including all matters which are ancillary thereto or which have to be provided in such a constitution, and to submit to the Assembly for consideration the text of the Draft Constitution as revised by the committee." The drafting committee prepared the Draft constitution and submitted it to the President, constituent Assembly of India on 21st February 1948. The committee drafted the following preamble of the Indian constitution:

"We the people of India, having solemnly resolved to constitute India into a Sovereign Democratic Republic and 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; and to promote among them all;

Fraternity assuring the dignity of the individual and the unity of the Nation;

In our Constituent Assembly this—of—(day of May 1948 A.D.), do hereby adopt, enact and give to ourselves this Constitution."

The Objectives Resolution & The Preamble - On behalf of the Drafting committee, Dr. B. R. Ambedkar wrote to the President that "The Objectives Resolution adopted

1. The Drafting committee consisted of:
   i. Sri Alladi Krishnaswami Ayyar
   ii. Sri N. Gopalawami Ayyangar
   iii. The Honourable Dr. B. R. Ambedkar
   iv. Sri K. M. Munshi
   vi. Sri B. L. Mitter
   3. Draft Constitution of India: Prepared by the Drafting Committee (February 1948) pp. iii and iv
by the Constituent Assembly in January, 1947, declares that India is to be a
Sovereign Independent Republic. The Drafting Committee has adopted the phrase
Sovereign Democratic Republic because independence is usually implied in the word
'Sovereign', so that there is hardly anything to be gained by adding the word
"Independent". The question of the relationship between this Democratic Republic
and the British Commonwealth of Nations remains to be decided subsequently.

The Committee has added a clause about fraternity in the preamble, although
it does not occur in the Objectives Resolution. The committee felt that the need
for fraternal concord and goodwill in India was never greater than now and that
this particular aim of the new constitution should be emphasised by special mention
in the preamble.

"In other respects the committee has tried to embody in the preamble the
spirit and, as far as possible, the language of the Objectives Resolution."

Debates on the Preamble. Thus the Preamble along with the Draft Constitution was
introduced in the Constituent Assembly on 14th November 1946 for consideration.¹

In course of the debate that followed Sri Nehru said "Nearly two years ago, we met
in this hall and on that solemn occasion it was my high privilege to move a
Resolution which has come to be known as the Objectives Resolution²...I think that
Resolution in some of the clauses laid down the fundamental and basic content or
what our constitution should be.³ We have, ever since I moved this Objective
Resolution before this House, a year and eleven months ago, almost exactly, passed
through strange transitions and changes. We function here far more independently
than we did at that time. We function as a sovereign independent nation, but we
have also gone through a great deal of sorrow and bitter grief during this period
and all of us have been powerfully affected by it. The country for which we are

¹. C. A. D. Vol.VI, No. 11, p.31.
². C. A. D. 8th Nov. 1946, p.317
going to frame this constitution was partitioned and split into two."^1 Thus many
problems now disappeared. The problem of the native states was fast evaporating.
With the creation of Pakistan there was no necessity for the autonomy of the
Provinces. And instead of proclaiming the safeguards and protection for minorities
and backward classes it was far more essential to bring about emotional integration,
brotherhood and unity of the nation, maintaining at the same time the dignity of
the individual. By achieving independence it was also redundant to make a wishful
proclamation that "this ancient land attains its rightful and honoured place in
the world and makes its full and willing contribution to the promotion of world
peace and the welfare of mankind." Thus para 2, 3, 6, and 8 of the Objectives
Resolution were found redundant and did not find any place in the Preamble.

There was a footnote to the word 'Republic' in the Preamble in the Draft
constitution of India: "This follows the decision taken by the Constituent Assembly.
The question of the relationship between this Democratic Republic and the British
Commonwealth of Nations remains to be decided subsequently."^2 Sri Nehru had this
note in his mind when he said "The House will remember that when I brought that
motion of the Objectives Resolution before this House, I referred to the fact
that we were asking for or rather we were laying down that our constitution should
be framed for an Independent Sovereign Republic. I stated at that time and I have
stated subsequently this business of our being a Republic is entirely a matter for
us to determine of course. It has nothing or little to do with what relations we
should have with other countries, notably the United Kingdom or the Commonwealth
of Nations. That was a question which had to be determined again by this House
and by none else, independently of what our constitution was going to be."^2

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1. Ibid, p. 319.
The Problem of Relationship with the Commonwealth - Discussion on the Preamble was taken up by the Constituent Assembly on 17th October 1949. But long before that date a large number of criticisms and suggestions were received and the Drafting committee sat again on the 23rd, 24th and 27th March 1948 to scrutinise them.1 The committee considered the criticisms and suggestions and recommended that certain amendments be made in the original Draft. The original draft together with the amendments recommended by the Drafting committee and with certain other amendments received thereafter were considered on the 10th and 11th April by a special committee consisting for the most part of certain members of the Union constitution committee, the Union Powers Committee and the Provincial constitution Committee.2 Regarding the amendment suggested by Dr. B. R. Ambedkar in his letter to the President dated 21st February 1948, the Constitutional Adviser submitted "that whether India is to be described as a Sovereign Democratic Republic or by any other name is a question which will need careful consideration. The various alternatives may be indicated thus: - Sovereign/Independent/Democratic/Republic/State/Commonwealth. Whatever description is adopted in the Preamble will not by itself suffice to define India's relationship to the British Commonwealth of Nations. "The Constitution of Ireland (Eire) states that Ireland is 'a sovereign independent democratic State' and De Valera has even described it as 'an independent Republic'. Nevertheless, it has hitherto been treated as a member of the Commonwealth. The Preamble to the status of the Union Act, 1934, refer to the union of South Africa as 'a Sovereign independent state', but the Union is still within the Commonwealth. "Australia is described in its constitution act as a Commonwealth which literally

1. Vide Papers In The President's Secretariat.
2. Ibid, ref. notes on amendments to the Draft Constitution of India, lst. I, para.3.
means the same thing as a Republic (Republican, literally, public property or commonwealth), but, of course, it is part of the British Commonwealth.

"Even in 1939, Prof. Keith was of the view that Dominion members of the Commonwealth were really and unquestionably states of International Law (Keith's 'The Dominions as Sovereign States; 1938 p. 54). Since then the conception of the commonwealth has undergone further development. When Keith wrote he was of opinion that a declaration of neutrality in a British War would really mean a determination to secede from the Commonwealth (op. cit p. 53) But, as is well-known, Ireland (Eire) remained neutral in the last war; nevertheless, in 1912, in the case of Murray v. Parkes, the Lord Chief Justice of England held--

(a) that he was not aware that Eire had ever expressly exercised the right of secession, and

(b) that even if it had, the question would still remain whether secession by Eire could be effective unless and until the other members of the Commonwealth had recognised Eire as a foreign state.

Apparently, then, even neutrality in a British war is compatible with membership of the Commonwealth.

"It would therefore seem that the conception of the commonwealth has been growing rapidly in recent years. Indeed the Cabinet Mission's plan of May 16, 1946, referred in paragraph 13, 'to the attainment of independence by British India whether inside or outside the British Commonwealth, 'implying thereby that there was room for a completely independent state inside the Commonwealth. The very name 'Indian Independence Act' given by Parliament to the statute establishing the Dominion of India affords further support to the view.

"It follows that the mere description of India as a sovereign independent democratic state, Republic, or Commonwealth in the constitution enacted by the
Constituent Assembly will not suffice to define effectively its relationship to the British Commonwealth. This is a distinct question, which will have to be decided separately. Since the question is to be decided separately, it would be inappropriate to use any name which would give the impression that the question has been prejudiced. The term 'Republic' has certain associations which may give such an impression and it may therefore be wise to avoid it.1

Mr. Atul Chandra Gupta,2 Advocate, Calcutta High Court considered the substitution of the word 'Democratic' for the word 'Independent' in the Preamble as proper. But he pointed out that the footnote to the Preamble introduced an element of obscurity: He therefore suggested that definite provision should be made in the Constitution itself prescribing the method by which a decision for remaining in or going out of the British Commonwealth was to be taken.

But the Constitutional Adviser hardly found any necessity for it. India as a Sovereign country could do so by any method which it may chose.3 But the Indian public opinion was greatly agitated over the Republican character of the country and its relation with the British Commonwealth. The confusion was created by Hon'ble Mr. G. S. Gupta, Speaker, central Provinces and Berar, legislative Assembly, Nagpur, who, in his reply to the questionnaire issued by Sir B. N. Rau, said "I am in favour of some sort of voluntary but lasting connection with Great Britain—not by a treaty renewable every so often but an organic connection embodied in the constitution though capable of being terminated at will if circumstances should so dictate...This is not the time to be swayed by old slogans or prejudices. However necessary it may formerly have been to decry the British and their Govt. in order to rouse the Indian masses to fight for Swaraj, that day is over. It will not merely not serve our present purpose but harm us if we

1. Paper In the President's Secretariat: Notes on Amendment to the Draft Constitution of India, List 1, pp. 1 & 2.
3. Ibid, 1.
persist in that attitude of mind. It will only serve to conceal from us our own
defects and weaknesses, and hamper progress and reform. There is another advantage,
and it is with reference to the Indian states. The problem of how to bring about
stable and happy relations between the states and the rest of India may possibly
be more easy of solution if we retain some sort of connection with Britain such
as I have suggested ...when we discuss this connection we perhaps forget that
the Statute of Westminster gives absolute liberty to any member of the Commonwealth
to separate when it likes. Separation is thus available to us at any time; but if
we separate to-day we may find later, if out self interest dictates that we should
seek it, reunion is difficult." He made confusion worse confounded when he
advocated for a Dominion Status for India under the British Commonwealth where the
Governor-General was to be appointed by His Majesty's, on the recommendation of
the Prime Minister of India.

But apparently a republican state has no place in the Commonwealth. Even
Dr. B. R. Ambedkar had observed "the allegiance to a common king is the only link
that holds the members of the commonwealth, the state of 'a Republic' which is
incompatible with the allegiance to a king has, therefore, the effect of terminating
straight-away India's membership of the commonwealth." Admitting the difficulties
for India being a member of the British Commonwealth, Sri K. P. Pillai, Trivandrum,
observed "There are vital differences between India and other partners of the
commonwealth. Although Professor Coupland wants India to remain in the Commonwealth,
he has observed 'that in her (India's) case the greater difference in size and race,
in history and ways of thought and life, and the far wider measure of British control
and its continuance into a period when nationalism became a far more fiery force
in the world than it had ever been before—all that makes it much harder for Indian

1. Vide Paper In the President's Secretariat
2. V. Venkata Rao, Preamble, I. J. P. Sc. 1951 Vol.XII, No. 2.
than it has been for other nations to find full satisfaction within the British commonwealth of Nations. The author posed the questions "Is it possible for India to share these feelings with other dominions, particularly when her nation is treated like serfs in South Africa? How can India feel personal loyalty to the British sovereign in whose name India has been governed in a most autocratic and repressive manner for about a hundred years. Although British and Indian history have been woven together during the last hundred fifty years, there are too many black pages in it, and these are not such as to render easy the task of those who believe in the continuance of India's connection with the commonwealth." But in spite of all these arguments the writer pleaded "Nevertheless a realistic approach to the problems confronting India, problem of industrial development, defence and mitigation of the lot of Indian settler abroad, demands close cooperation with the commonwealth." It may be asked, how can India envisaged as a Republic with an elected President by the Constituent Assembly remain with a commonwealth, the component units whereof are bound together by allegiance to a common sovereign... It appears that the only way for a Republican India to retain her membership of the commonwealth, is to follow the Irish example." Thus the author maintained that "India's membership of the commonwealth is more or less like her membership of the U. N." Sri Akshoy Kumar Ghosal of the Dacca University also expressed "my own feeling is that India would not lose anything but gain much by continuing her membership of the British Commonwealth." Tracing the bitter relations between India and Britain the writer observed "But the Cabinet Mission plan of 16th May 1946 started the process of melting of the ice so far as Indo-British relations are concerned and "the transfer of power opened a new chapter in Indo-British relations."

Sri P. Rajeswara Rao also advocated for Indo-British relations on the ground that some British politician like Macaulay and Henry Lawrence had always been sympathetic towards India's freedom.

The Constitutional Adviser tried to remove certain misgivings about the Indo-British relation and he read a paper on "India and the Commonwealth" in the Indian Council of World Affairs in May 1948.\(^1\) Posing a question Sir B. N. Rao observed "first, is there room within the commonwealth for a state with a republican form of constitution? The conception of the commonwealth, never static, has developed considerably within the last decade. In 1937, after the republican constitution of Eire came into operation, the British government announced that they were prepared to treat the new constitution as not affecting a fundamental alteration in the position of the Irish free state (which was thereafter to be described as Eire), as a member of the British commonwealth of Nations. Indeed, Professor Keith, writing in 1938, observed: "If no place can be found in the British Commonwealth for republics, then the enduring character of the commonwealth may well be doubted."... It is thus clear that the conception of the commonwealth has been steadily growing and has now reached a stage when even states with a republican constitution may well be given a place therein."\(^2\) Referring to the question "In view of the treatment of Indians in certain Dominions of the Commonwealth, would it not be better for her to sever the British connection?" he said "This is an issue on which India will have to fight with all her might and main, whether she remains in the Commonwealth or not. Many countries outside the commonwealth are in the same case: it is, therefore, hardly to be expected that the position of Indians would improve by India's

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1. Letter from Dr. R. Prasad to B. N. Rao, dated May 22, 1948, Paper In the President’s Secretariat.
severance of the British connection. Indeed, the reverse may well be the case.
If India continues in the Commonwealth, she would be in a better position to fight
for a common citizenship with full civil rights and no racial discrimination..."
There remains the question whether India's adherence to the Commonwealth will
weaken the United Nation Organisation. Whatever may have been the position at one
time of the member of the Commonwealth in respect of foreign affairs, the position
now reached "that they enjoy complete freedom in this as in other respects. Eire
remained neutral throughout World War II...Apparently, then, neutrality in a
British War is compatible with continued membership of the Commonwealth. It will
be remembered that the Cabinet Mission's plan of May 16, 1946, refers to "the attain-
ment of independence by British India whether inside or outside the British Commonwealth,"
implying thereby that there may be a completely independent state inside the
Commonwealth. It is, therefore, clear that a state, by being a member of the common-
wealth, does not sacrifice any part of its freedom in respect of its foreign affairs."¹
He further appealed "there is a powerful practical argument in favour of India's
continuing to remain in the Commonwealth, at least for the present. We have not
yet recovered from the formidable difficulties which followed in the wake of the
partition of August 15, 1947. India has still vast and complicated problems requiring
the whole of her attention-refugees, Kashmir, Hyderabad— and there are many who
feel that this is no time for leaving the Commonwealth and venturing into the unknown,
for she may thereby create for herself a new set of problems even more baffling. "²
Meanwhile the British Nationality Act was passed in the British Parliament which
was to come into force on January 1, 1949.³ It claimed Indians to be 'British
subjects'—a name which suggested some kind of subjection to Britain.⁴ Thus the
confusion still remained and on 15th November 1948 Sri Mahavir Tyagi observed in the
Constituent Assembly: "If we remain in the family of the United Kingdom and remain

1. Ibid, pp. 348-350.
2. Ibid, p. 344.
attached to them, sovereignty will probably technically remain with the King.\textsuperscript{1} Therefore the Constitutional Adviser's paper could not go so far in establishing cordial relation between India and Britain. So the Indian National Congress passed the following resolution at the Jaipur session in 1947: "In view of the attainment of complete independence and the establishment of the Republic of India, which will symbolise with the independence and give to India the status among the nations of the world that is her rightful due, her present association with the United Kingdom and the Commonwealth of Nations will necessarily have to change. India, however, desirous to maintain all such links with other countries as do not come in the way of her freedom of action and independence and the Congress would welcome her free association with the independent nations of the Commonwealth for their Commonwealth and the promotion of world peace."\textsuperscript{2}

Further the following statement, at the end of the conference of the Prime Minister of the Commonwealth on 27th April 1949, was issued: "The Government of the United Kingdom, Canada, Australia, New Zealand, South Africa, India, Pakistan and Ceylon whose countries are united as members of the British Commonwealth of Nations and owe common allegiance to the Crown, which is also the symbol of their free association, have considered the impending constitutional changes in India.

"The Government of India have informed the other governments of the Commonwealth of the intention of the Indian people that under the new constitution which is about to be adopted, India shall become a sovereign, Independent Republic. The Government of India have, however, declared and affirmed India's desire to her full membership of the Commonwealth of Nations and her acceptance of the King as symbol of the free association of the independent nations as the head of

\textsuperscript{1} C. A. D. 15th Nov. 1948, p. 414.
\textsuperscript{2} V. Venkata Rao, op. cit.
the commonwealth.

"The Government of the other countries of the commonwealth, the basis of whose membership of the commonwealth is not hereby changed, accept and recognise India's continuing membership in accordance with the terms of this decision.

Accordingly, the United Kingdom, Canada, Australia, Newzealand, South Africa India, Pakistan and Ceylon hereby declare that they remain united as free and equal members of the commonwealth of Nations, freely cooperating in the pursuit of peace and progress."\(^1\)

But it was difficult for a student of constitutional law and practice, to reconcile the proposed status of India as a sovereign independent Republic with the position of the king as the head of the commonwealth. Therefore Mr. R. G. Menzies of Australia remarked on 28th April 1949 that "How a nation can become a Republic by abolishing allegiance to the crown and at the same time retain full membership of a united commonwealth which is and must be basically a crown commonwealth which is and must be basically a crown commonwealth is a complete mystery."\(^2\)

Sardar Vallab Bhaire Patel tried to solve this mystery in the Press-statement on the same day. He observed "India's status of sovereign Independent Republic is, by no means, affected, because there is no question of allegiance to His Majesty the King who will merely remain a symbol of our free association as he would be of other members...So far as our constitution is concerned it will remain republican both in internal and external affairs."\(^3\)

Prime Minister Nehru also stressed this point when he said, in the course of a broadcast from New Delhi on 10th May 1949: "It must be remembered that the commonwealth is not a super-state in any sense of the term. We have agreed to

1. Ibid.
consider the King as the symbolic Head of this free association. But the king has not function attached to that status in the commonwealth. So far as the constitution of India is concerned, the king has no place and we shall owe no allegiance to him.\(^1\)

Mr. M. Ramaswami of the Mysore High Court also observed that the King's Headship of the commonwealth of Nations." is only courtesy arrangement devoid of any constitutional significance\(^2\)

Sir B. N. Rau also wrote an article in May which was broadcast by the U. N. Radio, New York: "How is it possible to find room within the commonwealth for a state with a republican constitution? In my view there is no insuperable difficulty here. The formula agreed upon at the London conference may best be explained by an analogy. The various member-states of the United Nations are completely sovereign and independent, yet they find it possible to recognise certain organisational authorities for the purpose of working together. In just the same way the member of the Commonwealth can, without impairing their sovereignty or independence in any way, recognise His Majesty as the head of the Commonwealth association.

"The King is thus the system of free association for all members and not a link of subordination for any. Accordingly, the government of India has declared and affirmed not only India's desire to remain within the commonwealth, but also her acceptance of the King as the symbol of free association of its independent member-nations and as such the head of the commonwealth." The declaration thus preserves the dignity of the crown without impairing Indian sovereign status.\(^3\)

But the matter did not end there. When debate on the Preamble was resumed in the Constituent Assembly on 17th October 1949 Maulana Hasrat Mohani moved that 'Sovereign Democratic Republic' be substituted by 'Sovereign Independent Republic', as originally drafted in the Objectives Resolution.

1. Ibid., p. 106.
He said "It is quite strange that instead of following the Objectives Resolution, Dr. Ambedkar is passing anything he likes... he has dropped also the word 'independent' for some ulterior motive. There is something secretly going behind the scenes and I pointed out on a previous occasion that when President Jawaharlal Nehru changed the mind and went to England to have some sort of connection with the British commonwealth, then he thought that we shall 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 'Republican Dominion' and France has coined a new word for Vietnam which says that 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 by Holland and by France and do you propose that you will also bring about the same fraud to be enacted here? You said that we have got the word Republic... 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."  

1. Ibid.
Problem of Location of Sovereignty - Though the amendment was negatived, but analogous with the problem of Indo-British relation was also the problem as to where does sovereignty reside in India. It was suggested that the term 'we the people' was not appropriate as the Constituent Assembly did not represent the people. The Constitutional Adviser had explained that the Constituent Assembly was speaking in the name of the people of India. But the explanation could not satisfy many. The Objectives Resolution had clearly stated that all power and authority of the sovereign independent India were derived from the people. Even in the Union constitution committee Report submitted on 4th July 1947 by Sri Nehru himself, the Preamble was described as "We the people of India, seeking to promote the common good, do hereby, through our chosen representatives, enact, adopt and give to ourselves this constitution." Here also it was clearly stated that sovereignty resided in the people of the country. So when the Drafting committee omitted the word 'Independent' and substantially modified para h of the Objectives Resolution and the Prime Minister showed his leanings towards the British commonwealth of Nations, suspicion arose in a few minds. On 15th November 1948 Sri Mahavir Tyagi, while moving his amendment in Article 1, said "...I find that the residence of sovereignty has not been described...I shall be content if the Honourable mover of the Constitution would place before the House either in connection with the Preamble or some other article of the constitution, an amendment which will clearly lay down that the sovereignty shall reside in the whole body of the people...I want also to make one thing clear. If we remain in the family of the United Kingdom and remain attached to them, sovereignty will probably technically remain with the King. I want to save the country from that danger." Though the statement issued

1. NOTSS on the amendments of the Draft Constitution of India: List 1, p.2, Vide Paper In the President's Secretariat.
after the Prime Minister's conference at London on 27th April 1949 saved the country from that danger, fear prevailed. Therefore, Srimati Purnima Banerjee moved: That 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..." In support of this amendment Sri Mahavir Tyagi said "I am keen that the residence of the sovereignty should be defined. I am more keen about it because uptil 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 words, 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. 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."  

But Dr. B. R. Ambedkar pointed out that the idea suggested in the amendment was already contained in the Preamble. To the criticism that 'we the people' meant only the members of the Constituent Assembly elected on narrow franchise, he said that the term was borrowed from the Preamble of the constitution of U. S. A. 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 it on 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. In reply to the speech of Sri Mahavir Tyagi he further observed "some members, I suppose, have a certain amount of fear or appreciation 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 this is a right view to take. Every independent country must have some kind of a treaty with another sovereign country, that country does not become less sovereign on that account." 1 All the amendments were accordingly rejected.

Democratic Republic—Prof. K. R. R. Sastri of the law Dept. of Allahabad, however, questioned the correctness of the expression 'Democratic Republic' used in the Preamble on the ground that there can hardly be any monarchical or autocratic republic. 2 The Constitutional Adviser was convinced with the argument and in his note to the Drafting Committee he observed "the term used in the Hindi translation is apparently Gana-Rajya. Its primary meaning, according to Dr. Jayaswal, is a state where numbers rule: It is necessary to ascertain what was exactly meant by Gana. It means 'members', Gana-Rajya will therefore mean the rule of numbers, the rule by many (Jayaswal's Hindu Policy, 1943, p.24). If we were translating from the Hindi into English, the strict rendering would be 'democratic State'. 3

2. Paper In the President's Secretariat: Meeting to consider the Draft Constitution of India held on 10.1.48.
3. Ibid, Notes on amendments to the Draft Constitution of India, Idst I, p. 2
The Drafting committee accepted this amendment, while the special committee was of the view that the final form of this Preamble should be left at the decision of the Constituent Assembly.\(^1\)

This particular question was never raised in the Constituent Assembly. But Maulana Hasrat Mohani moved that the word 'Democratic' be substituted by the word 'Federal'. He wanted to have provincial autonomy on the pattern suggested in the Cabinet Mission plan of 16th May 1946. But the idea was outdated and the Constituent Assembly did not accept this amendment.\(^2\) He then moved the amendment "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 Socialist Republics to be called U. I. S. R. on the lines of U. S. S. R.' be substituted."\(^3\) That was also negatived.

It had been suggested that the word 'association' be inserted for the word 'belief' in the Preamble. But the reason for omitting 'association' was that it would have seemed odd to stress so prominently freedom of association at a time when certain associations dangerous to the state were being banned.\(^4\)

It was also sought to put the words 'Unity of the Nation' first and then the words 'dignity of the individual' in the line commencing with the word 'fraternity' in the Preamble.

The reason for putting the 'dignity of the individual' first was that unless the dignity of the individual was assured, the nation could not be united. In the Preamble to the Irish constitution the 'dignity of the individual' came before 'the unity of our country'. Therefore the existing order of the phrases were retained.

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1. Ibid
4. Paper In the President's secretariat, Notes on amendments to the Draft Constitution of India, List I, p. 2.
5. Ibid
Mention of 'God' in the Preamble - Members of the Constituent Assembly were, however, greatly embarrassed at the amendments moved by Sri H. V. Kamath and Prof. Shibban Lal Saksena. Sri H. V. Kamath moved that the words 'In the name of God' be added at the beginning of the Preamble, after the pattern of the Preamble of Ireland. Before Sri Kamath was to move the amendment Sri Deshbandhu Gupta requested him not to do so. The President also suggested that the oath or affirmation prescribed for the Ministers and others was such as to give freedom of choice to the believers and the non-believers. So he requested Sri Kamath to put the amendment in the alternative form. Srimati Purnima Banerjee also appealed to the President that the matter of God was not made the subject of discussion between a majority and a minority. She felt greatly embarrassed to vote upon God and requested the mover to withdraw the amendment. But when the amendment was moved, an honourable member observed "It is a matter of the deepest regret that a matter that concerns our innermost and most sacred feelings should have been brought into the arena of discussion...such a course of action is inconsistent with the Preamble which promises liberty of thought, expression, belief, faith and worship to everyone." The amendment was however negatived and Sri Kamath exclaimed "This, Sir, is a black day in our annals. God save India!"

The amendment moved by Prof. Shibban Lal Saksena wanted to insert God and Father of the Nation in the Preamble. At the request of Acharya J. B. Kripalani the amendment was withdrawn.

Passage of the Preamble and Its Importance—Thus the Preamble as framed by the Drafting committee was adopted to the constitution of India on 17th October 1949.

The preamble proclaims to establish Sovereign Democratic Republic in India. Though the Indian Republic appeared to be a contradiction with a king above and Rajpramukhs below, but for that reason I do maintain that it was essential to proclaim India into a Republic. The king had no place in the Indian constitution and the Rajpramukhs were to function as agents of the President and it was expressly stated that sovereignty resided in the people. Thus the Republic was declared to be a democratic one and therefore the Preamble proclaimed liberty of thought, expression, belief, faith and worship. But without social and economic democracy, political democracy was meaningless. Therefore, the Preamble also promised 'to secure to all its citizens, justice, social, economic and political and equality of status and of opportunity.' It also wished to promote among its citizens fraternity, assuring the dignity of the individual and the unity of the Nation. Liberty, equality and fraternity are the three essential ingredients of democracy. Liberty without equality would establish the supremacy of the few over many. Equality without liberty would destroy the dignity of the individual. But liberty and equality without fraternity would lose their significance. Therefore the Preamble emphasized to establish complete democracy in India. Mere political democracy in India would have been a failure as our society is based on the principle of graded inequality both in social status and economic position. So it was very essential to establish social and economic democracy in India. Moreover, in a society based on caste-system and in a country where provincialism was running high and the past history had shown inclination towards disintegration, it was highly essential to establish fraternity.

Thus the Preamble was an express rejection of the Hegelian theory in vogue in certain parts of the world that the state was everything and the individual was a mere part of the state machine. It was also a refutation of the thesis that the social and economic progress could not be made unless individual liberty and democracy were destroyed.
The Preamble was almost unanimously approved by all the political parties in the Assembly. If it received the benediction of Mahatma Gandhi it was also the fulfillment of socialist India as propounded by Sri Jayaprakash Narayan who had said "Thus my picture of a socialist India is the picture of an economic and political democracy. In this democracy, men will neither be slaves to capitalism nor to a party or the state. Man will be free."  

The Preamble no doubt disappointed a few who wanted to proclaim it in the name of God. But as we are to resolve it 'solemnly' so there is, of course, a halo of divinity around it.

Thus the Preamble is one of the best of its kind ever drafted. It has received the greatest compliment from Sir Ernest Barker. "It is a supreme prose poem, nay, it is perfection in itself." But its fulfillment requires men of poetic ideals who alone can lead India to "that Heaven of Freedom" which was the dream of Tagore. But will such men be available?

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2. C. A. D., pp. 91 and 92, quoted by Mr. Masani.
3. M. V. Pylee, Constitutional government In India, p. 152.