

# Polity - Lecture 1

Arun Singh Tomar



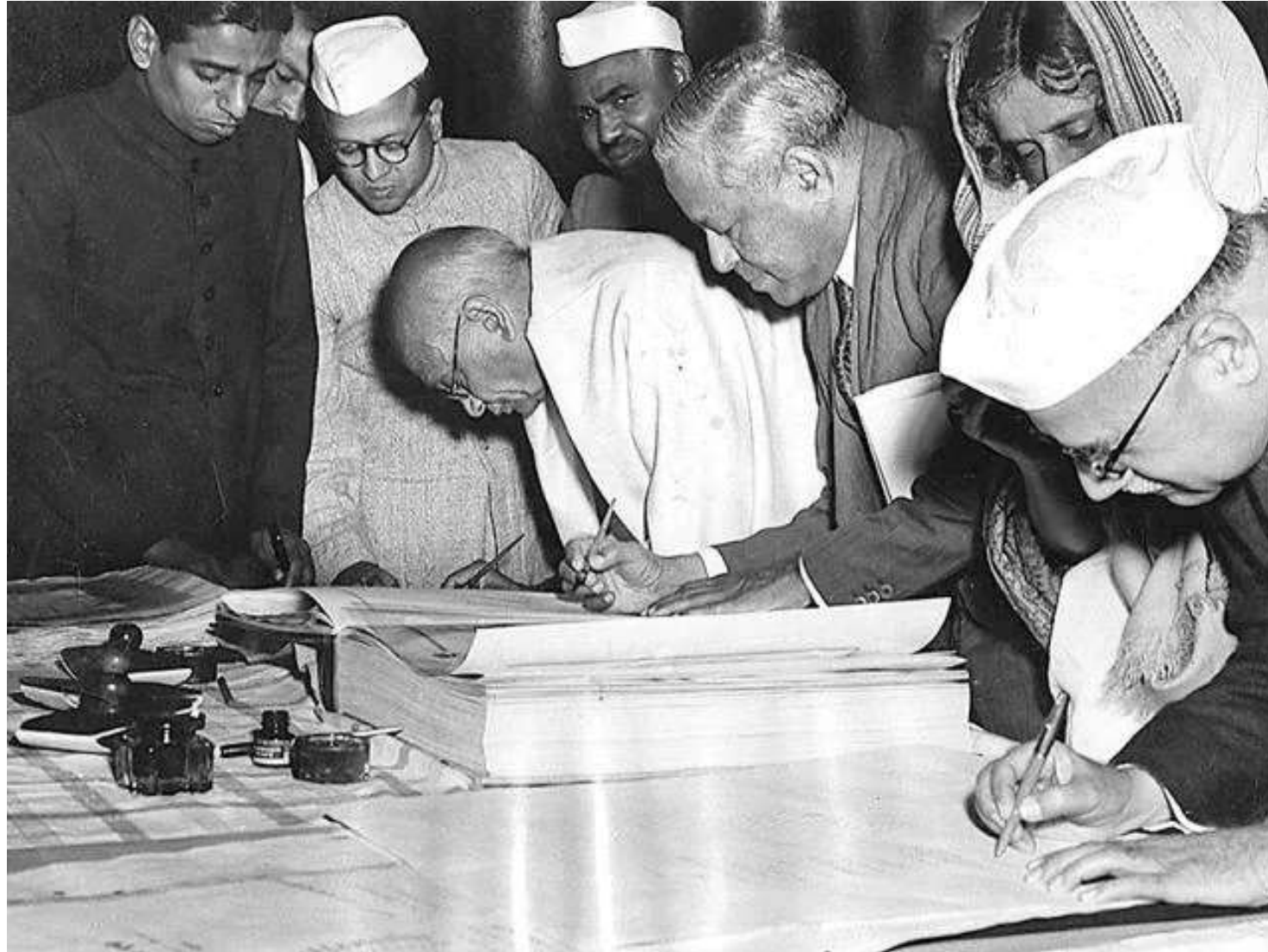
# Lecture 1

1. Making of the Constitution
2. Salient Features of the Constitution
3. Preamble of the Constitution
4. Union and its Territory



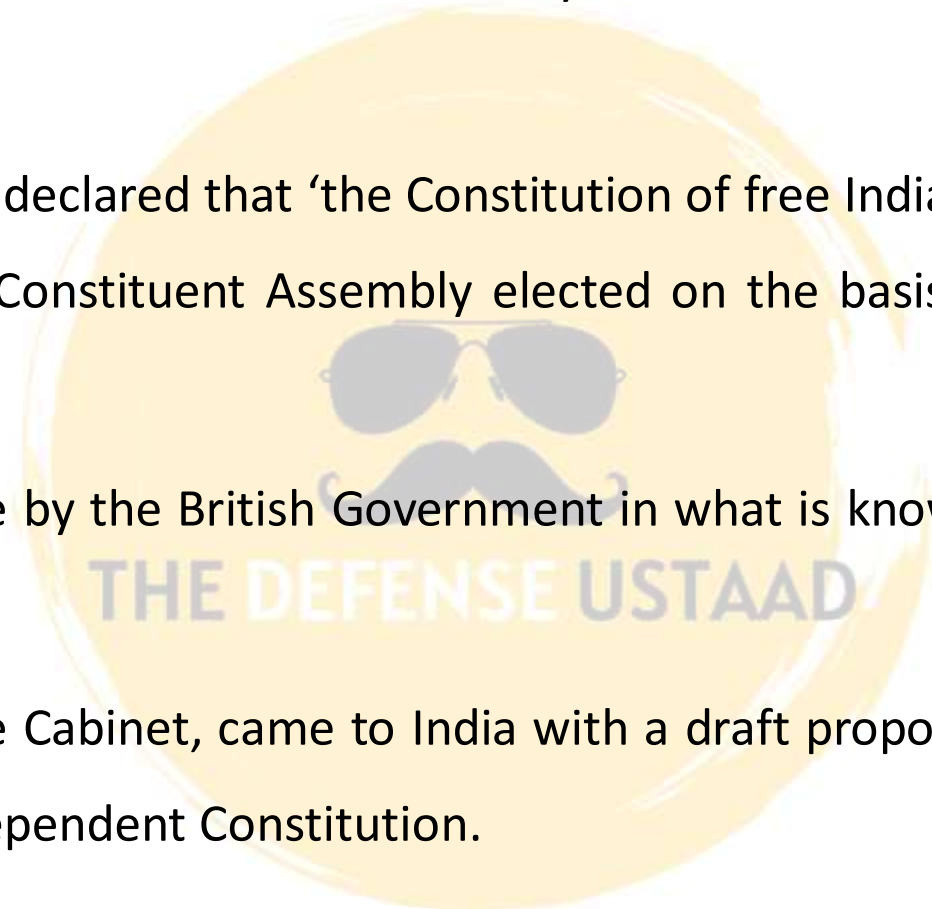
THE DEFENSE USTAAD

# Chapter 1 - Making of the Constitution



# Demand For A Constituent Assembly

- In 1934 that the idea of a Constituent Assembly for India was put forward for the first time by **M.N. Roy**, a pioneer of communist movement in India.
- In 1935, the Indian National Congress (INC), for the first time, officially demanded a Constituent Assembly to frame the Constitution of India.
- In 1938, Jawaharlal Nehru, on behalf the INC declared that 'the Constitution of free India must be framed, without outside interference, by a Constituent Assembly elected on the basis of adult franchise'.
- The demand was finally accepted in principle by the British Government in what is known as the **'August Offer' of 1940.**
- In 1942, Sir Stafford Cripps, a Member of the Cabinet, came to India with a draft proposal of the British Government on the framing of an independent Constitution.



# Demand For A Constituent Assembly

- The **Cripps Proposals** were **rejected by the Muslim League**, which wanted India to be divided into two autonomous states with two separate Constituent Assemblies.
- Finally, a **Cabinet Mission** was sent to India. While it rejected the idea of two Constituent Assemblies, it put forth a scheme for the Constituent Assembly which more or less satisfied the Muslim League.

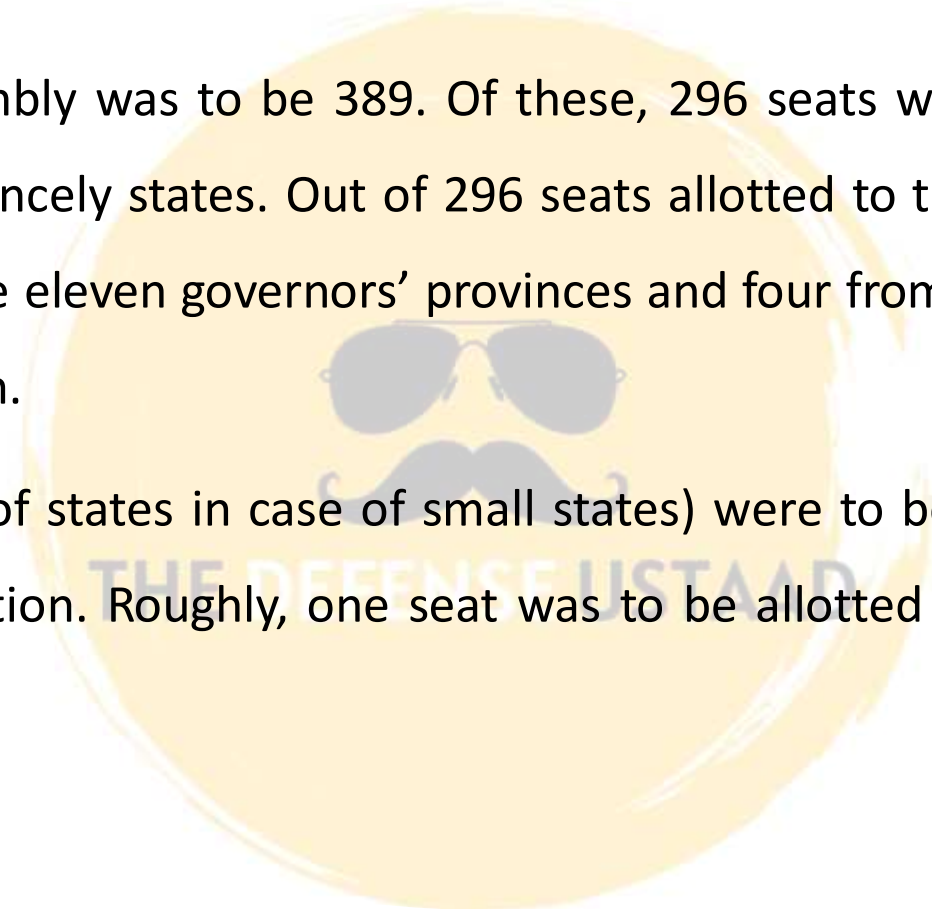


# Composition Of The Constituent Assembly

- The **Constituent Assembly** was constituted in November 1946 under the scheme formulated by the **Cabinet Mission Plan**.

**The features of the scheme were:**

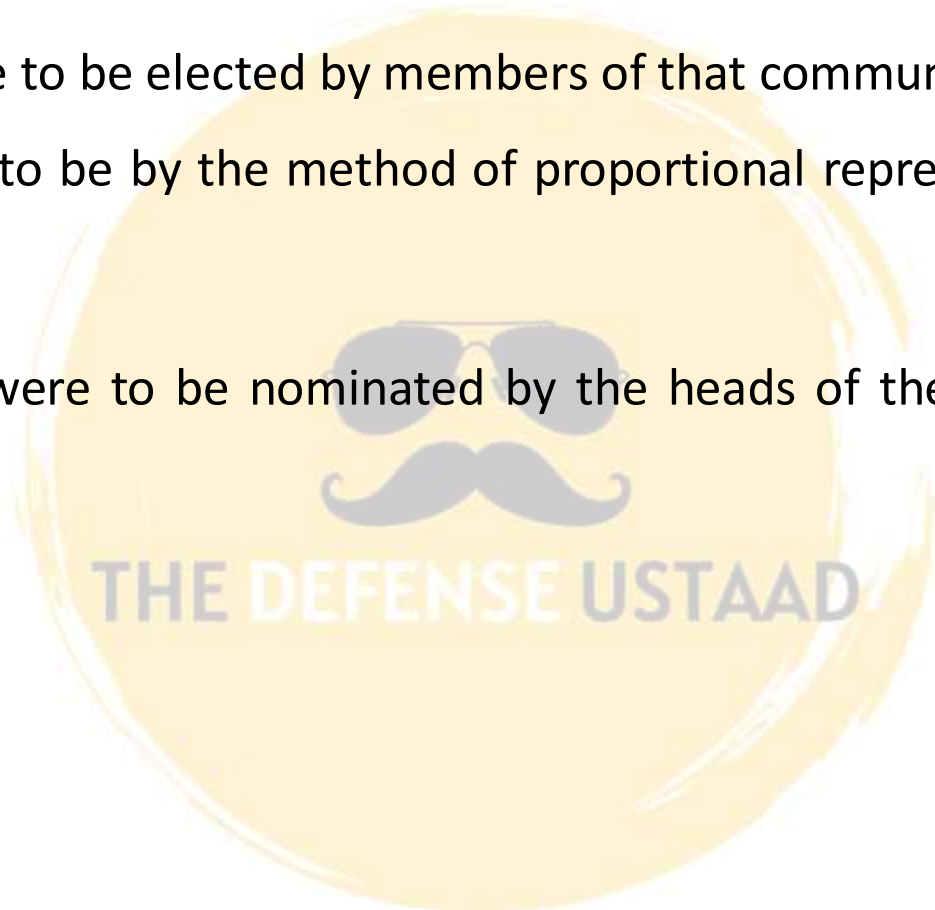
1. The total strength of the Constituent Assembly was to be 389. Of these, 296 seats were to be allotted to British India and 93 seats to the princely states. Out of 296 seats allotted to the British India, 292 members were to be drawn from the eleven governors' provinces and four from the four Chief Commissioners' provinces, one from each.
2. Each province and princely state (or group of states in case of small states) were to be allotted seats in proportion to their respective population. Roughly, one seat was to be allotted for every million population.





# Composition Of The Constituent Assembly

3. Seats allocated to each British province were to be divided among the three principal communities—Muslims, Sikhs and General (all except Muslims and Sikhs), in proportion to their population.
4. The representatives of each community were to be elected by members of that community in the provincial legislative assembly and voting was to be by the method of proportional representation by means of single transferable vote.
5. The representatives of the princely states were to be nominated by the heads of the princely states.



# Composition Of The Constituent Assembly

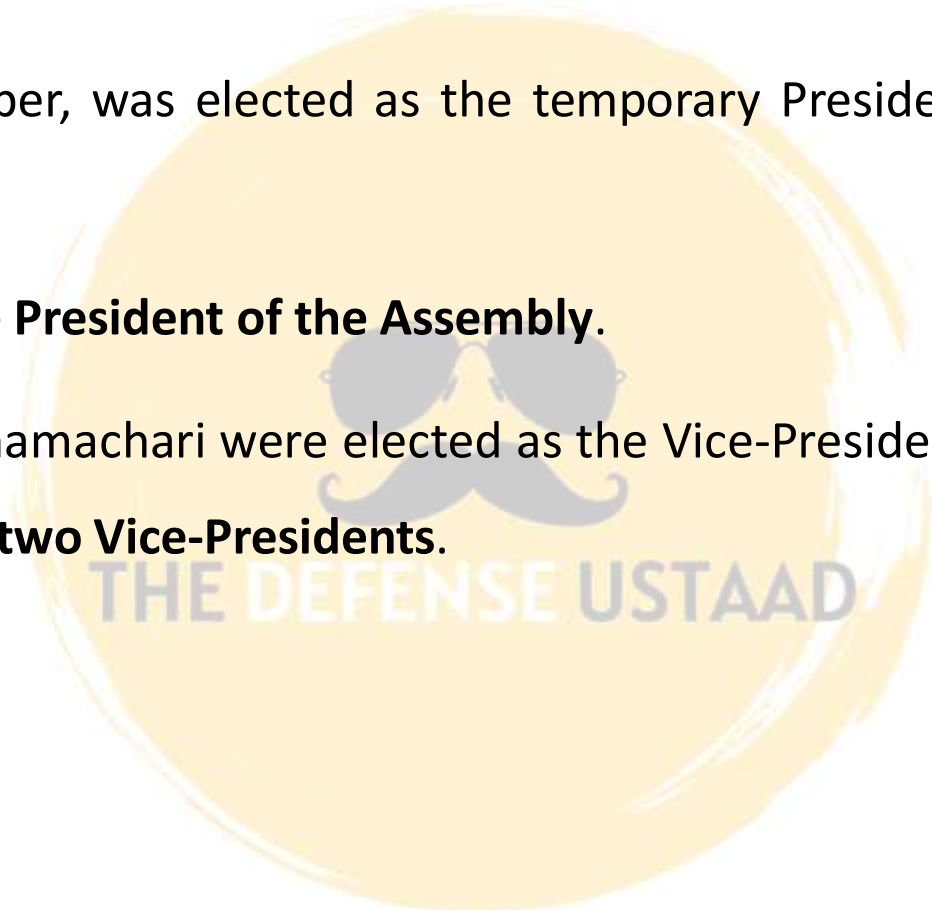
- **Constituent Assembly was to be a partly elected and partly nominated body.**
- The **members were to be indirectly elected** by the members of the provincial assemblies, who themselves were elected on a limited franchise.
- The elections to the Constituent Assembly (for 296 seats allotted to the British Indian Provinces) were held in July-August 1946.





# Working Of The Constituent Assembly

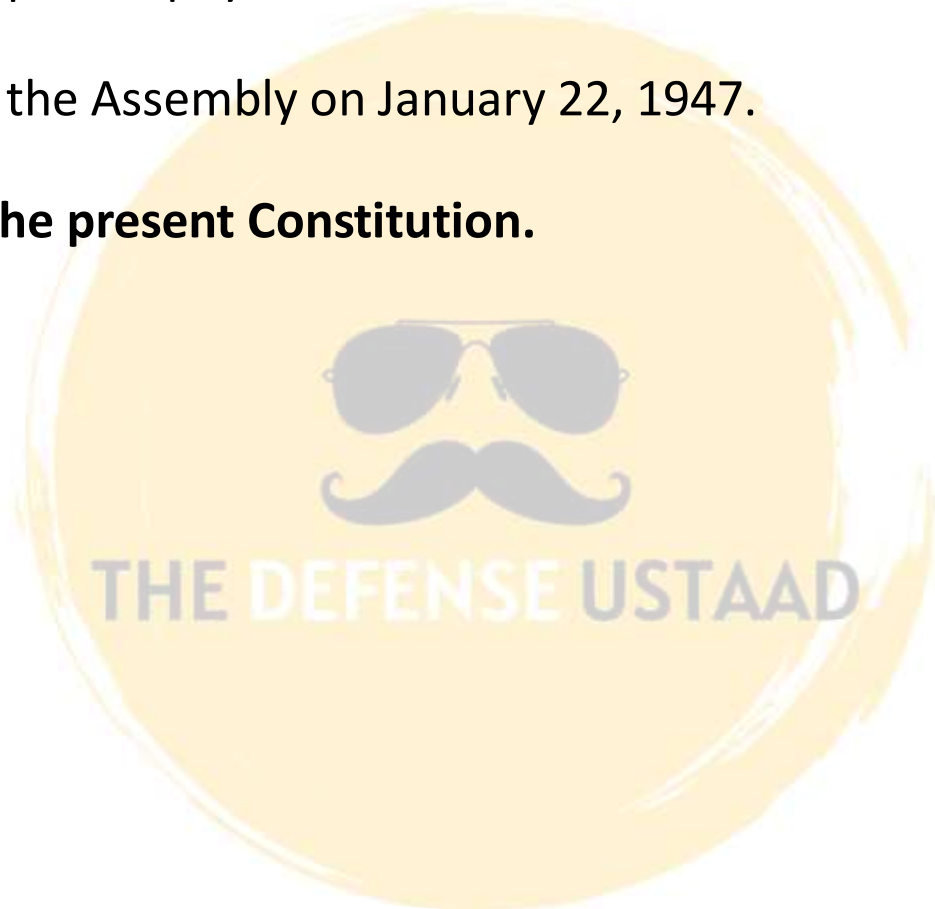
- The Constituent Assembly held its **first meeting on December 9, 1946.**
- The Muslim League boycotted the meeting and insisted on a separate state of Pakistan. The meeting was, thus, attended by only 211 members.
- **Dr. Sachchidananda Sinha**, the oldest member, was elected as the temporary President of the Assembly, following the French practice.
- Later, **Dr. Rajendra Prasad** was elected as the President of the Assembly.
- Similarly, both H.C. Mukherjee and V.T. Krishnamachari were elected as the Vice-Presidents of the Assembly. In other words, **the Assembly had two Vice-Presidents.**



# Working Of The Constituent Assembly

## Objectives Resolution

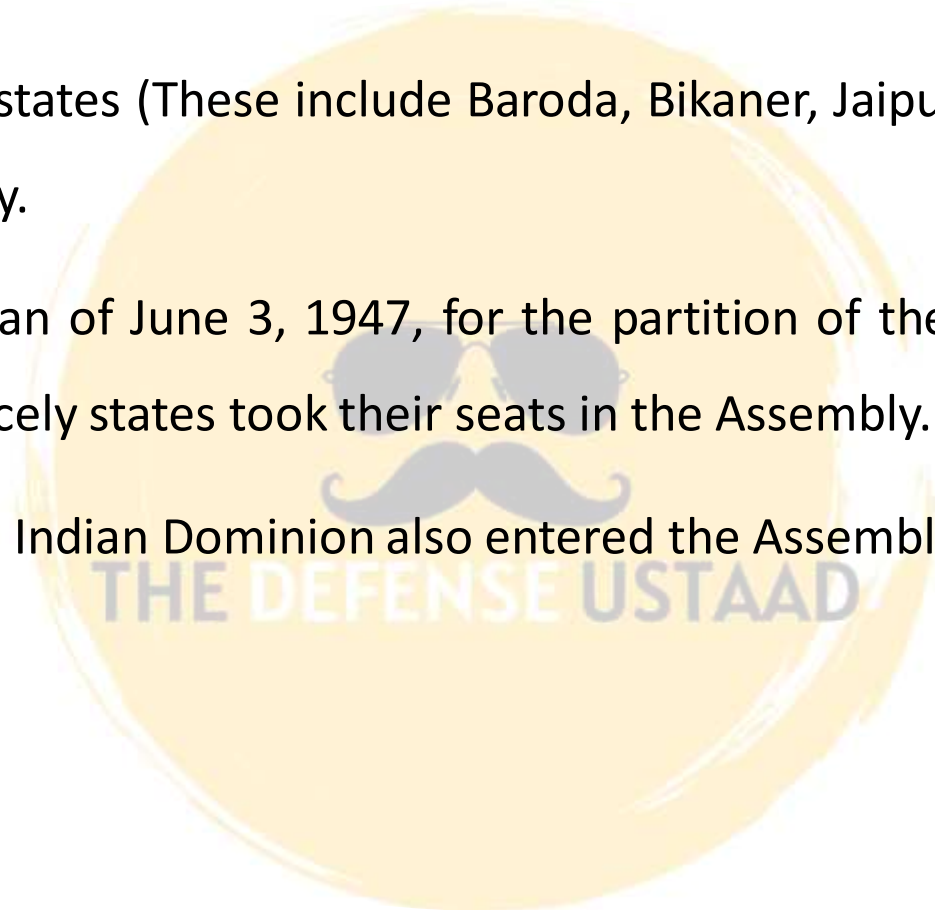
- On December 13, 1946, Jawaharlal Nehru moved the historic 'Objectives Resolution' in the Assembly. It laid down the fundamentals and philosophy of the constitutional structure.
- This Resolution was unanimously adopted by the Assembly on January 22, 1947.
- Its modified version forms the Preamble of the present Constitution.



# Working Of The Constituent Assembly

## Changes by the Independence Act

- The representatives of the princely states, who had stayed away from the Constituent Assembly, gradually joined it.
- On April 28, 1947, representatives of the six states (These include Baroda, Bikaner, Jaipur, Patiala, Rewa and Udaipur) were part of the Assembly.
- After the acceptance of the Mountbatten Plan of June 3, 1947, for the partition of the country, the representatives of most of the other princely states took their seats in the Assembly.
- The members of the Muslim League from the Indian Dominion also entered the Assembly.



# Working Of The Constituent Assembly

The Indian Independence Act of 1947 made the following three changes in the position of the Assembly:

1. The Assembly was made a fully sovereign body, which could frame any Constitution it pleased. The act empowered the Assembly to abrogate or alter any law made by the British Parliament in relation to India.
2. **The Assembly also became a legislative body.** In other words, two separate functions were assigned to the Assembly, that is, **making of the Constitution for free India** and **enacting of ordinary laws** for the country. The Assembly became the first Parliament of free India (Dominion Legislature). **Whenever the Assembly met as the Constituent body it was chaired by Dr. Rajendra Prasad** and **when it met as the legislative body, it was chaired by G.V. Mavlankar.** These two functions continued till November 26, 1949, when the task of making the Constitution was over.

# Working Of The Constituent Assembly

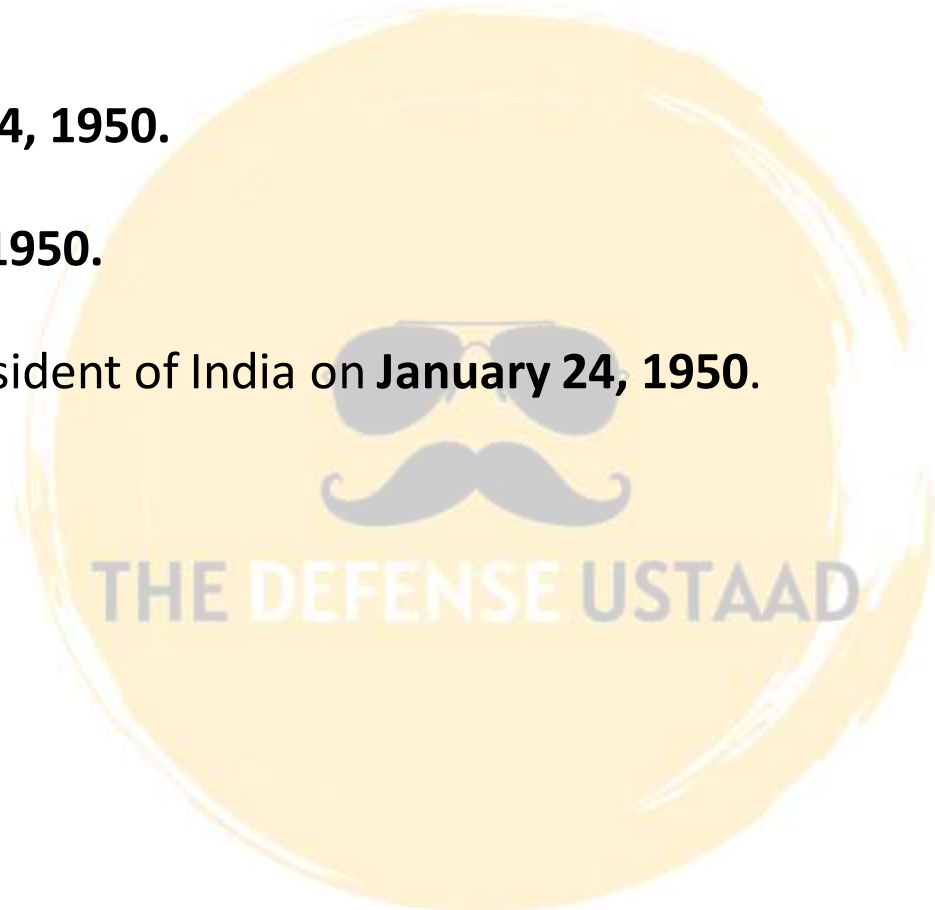
3. The Muslim League members (**hailing from the areas included in the Pakistan - These are West Punjab, East Bengal, NWFP, Sindh, Baluchistan and Sylhet District of Assam. A separate Constituent Assembly was set up for Pakistan**) withdrew from the Constituent Assembly for India.
- Consequently, the total strength of the Assembly came down to 299 as against 389 originally fixed in 1946 under the Cabinet Mission Plan.
  - The strength of the Indian provinces (formerly British Provinces) was reduced from 296 to 229 and those of the princely states from 93 to 70.



# Working Of The Constituent Assembly

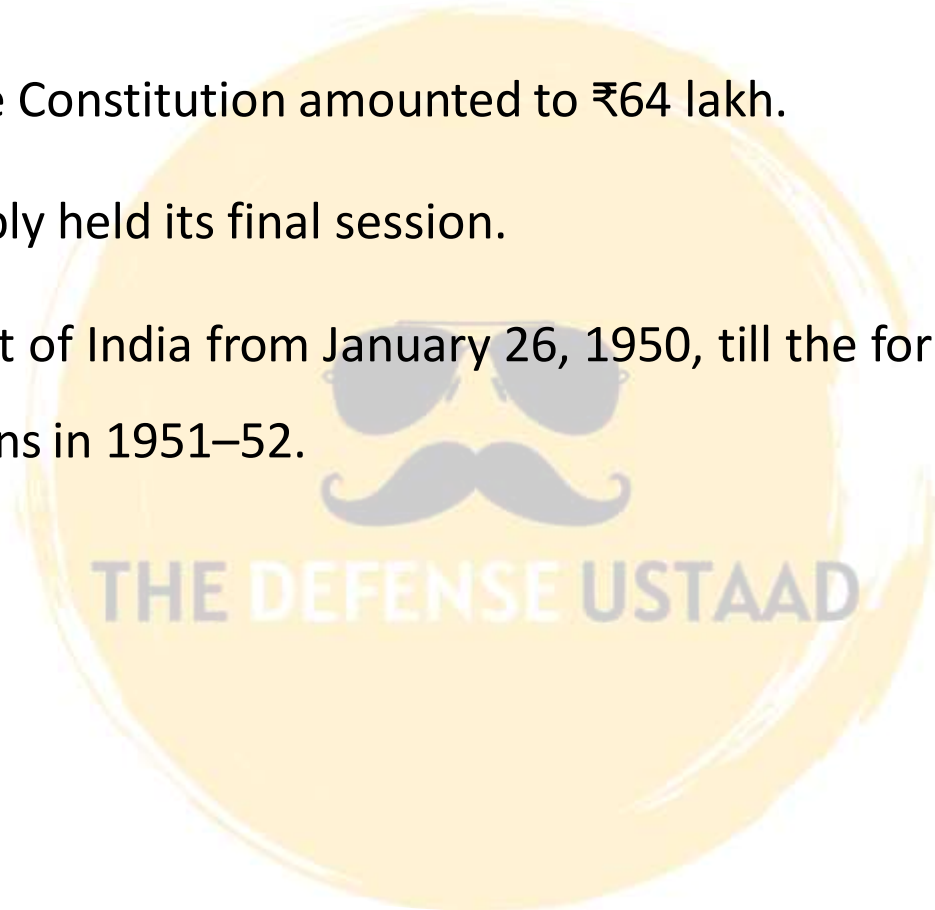
## Other Functions Performed

1. It ratified the India's membership of the Commonwealth in **May 1949**.
2. It adopted the national flag on **July 22, 1947**.
3. It adopted the national anthem on **January 24, 1950**.
4. It adopted the national song on **January 24, 1950**.
5. It elected Dr. Rajendra Prasad as the first President of India on **January 24, 1950**.



# Working Of The Constituent Assembly

- In all, the Constituent Assembly had 11 sessions over **two years, 11 months and 18 days**.
- The Constitution-makers had gone through the Constitutions of about 60 countries, and the Draft Constitution was considered for 114 days.
- The total expenditure incurred on making the Constitution amounted to ₹64 lakh.
- On January 24, 1950, the Constituent Assembly held its final session.
- But it continued as the provisional parliament of India from January 26, 1950, till the formation of new Parliament after the first general elections in 1951–52.





# Committees Of The Constituent Assembly

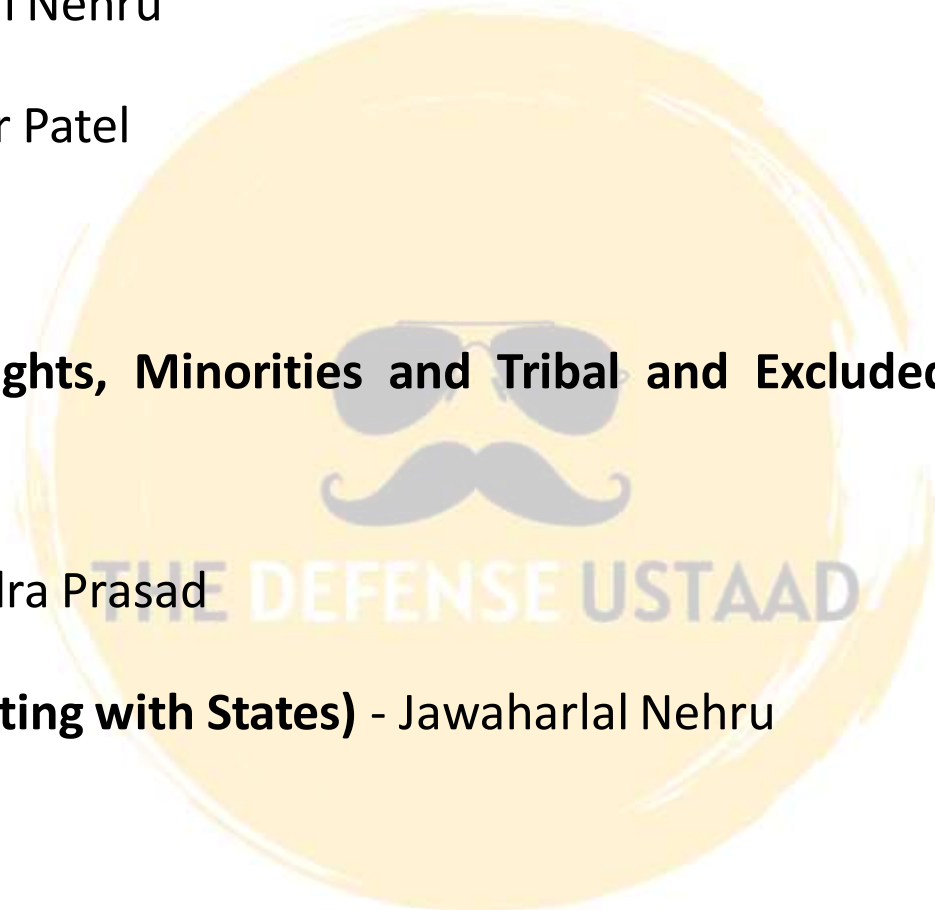
- The Constituent Assembly appointed a number of committees to deal with different tasks of constitution-making.
- Out of these, **eight were major committees** and the others were minor committees.



# Committees Of The Constituent Assembly

## Major Committees

1. **Union Powers Committee** - Jawaharlal Nehru
2. **Union Constitution Committee** - Jawaharlal Nehru
3. **Provincial Constitution Committee** - Sardar Patel
4. **Drafting Committee** - Dr. B.R. Ambedkar
5. **Advisory Committee on Fundamental Rights, Minorities and Tribal and Excluded Areas** - Sardar Patel.
6. **Rules of Procedure Committee** - Dr. Rajendra Prasad
7. **States Committee (Committee for Negotiating with States)** - Jawaharlal Nehru
8. **Steering Committee** - Dr. Rajendra Prasad

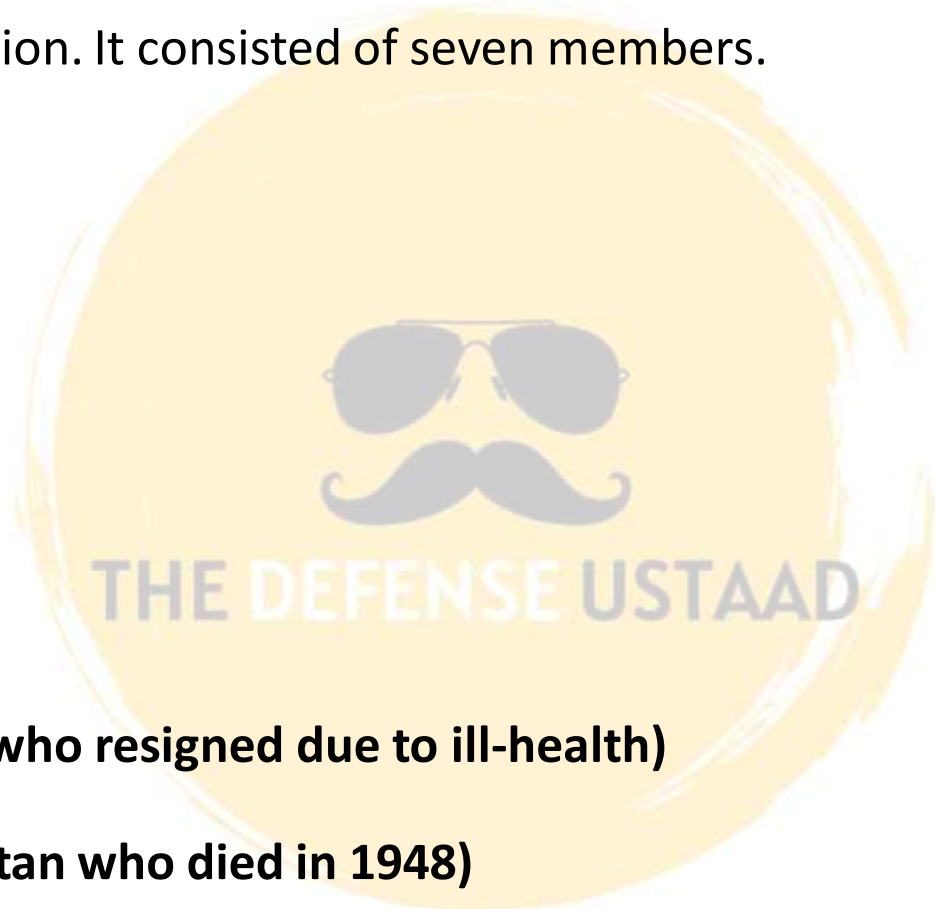


# Committees Of The Constituent Assembly

## Drafting Committee

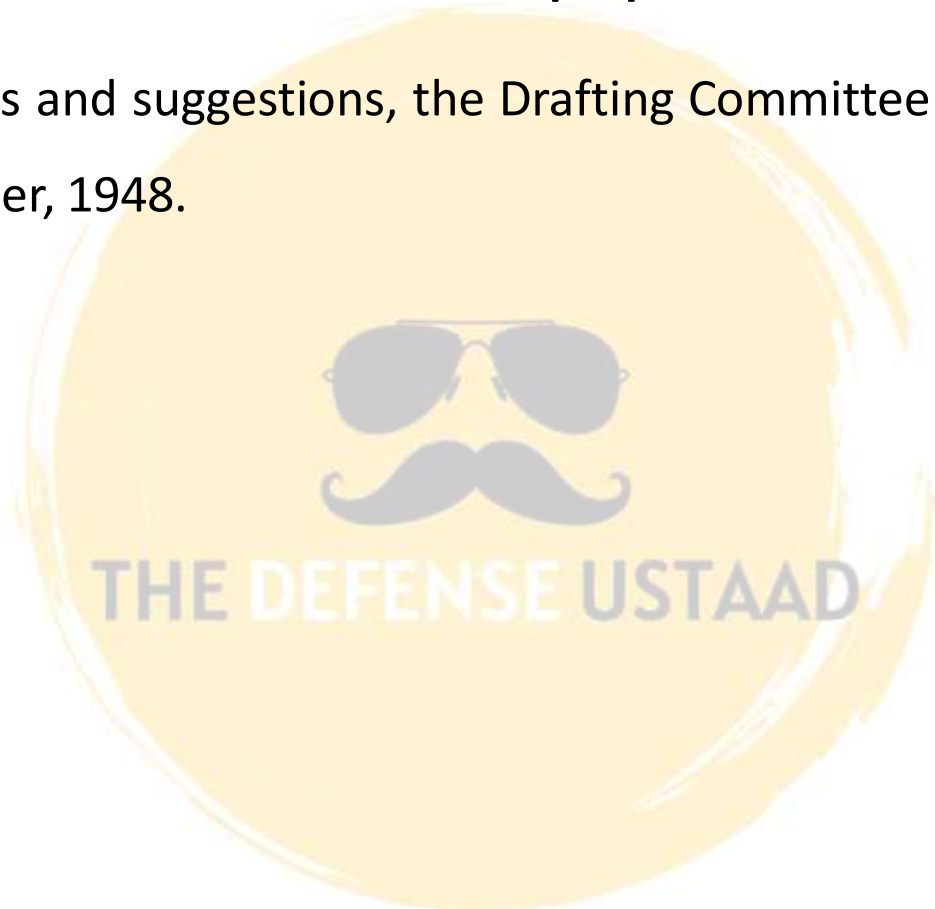
- Among all the committees of the Constituent Assembly, the most important committee was the Drafting Committee set up on August 29, 1947. It was this committee that was entrusted with the task of preparing a draft of the new Constitution. It consisted of seven members.

1. **Dr. B.R. Ambedkar (Chairman)**
2. **N. Gopalaswamy Ayyangar**
3. **Alladi Krishnaswamy Ayyar**
4. **Dr. K.M. Munshi**
5. **Syed Mohammad Saadullah**
6. **N. Madhava Rau (He replaced B.L. Mitter who resigned due to ill-health)**
7. **T.T. Krishnamachari (He replaced D.P. Khaitan who died in 1948)**



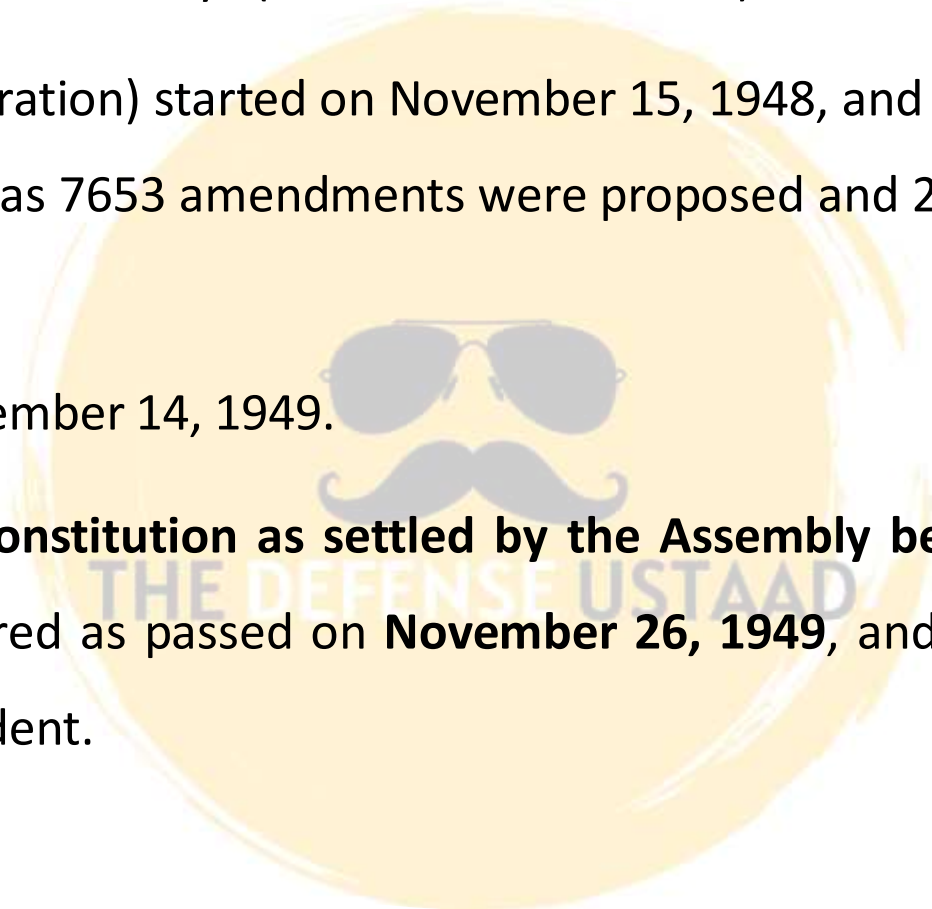
# Committees Of The Constituent Assembly

- The Drafting Committee, after taking into consideration the proposals of the various committees, prepared the first draft of the Constitution of India, which was published in February, 1948.
- **The people of India were given eight months to discuss the draft and propose amendments.**
- In the light of the public comments, criticisms and suggestions, the Drafting Committee prepared a second draft, which was published in October, 1948.



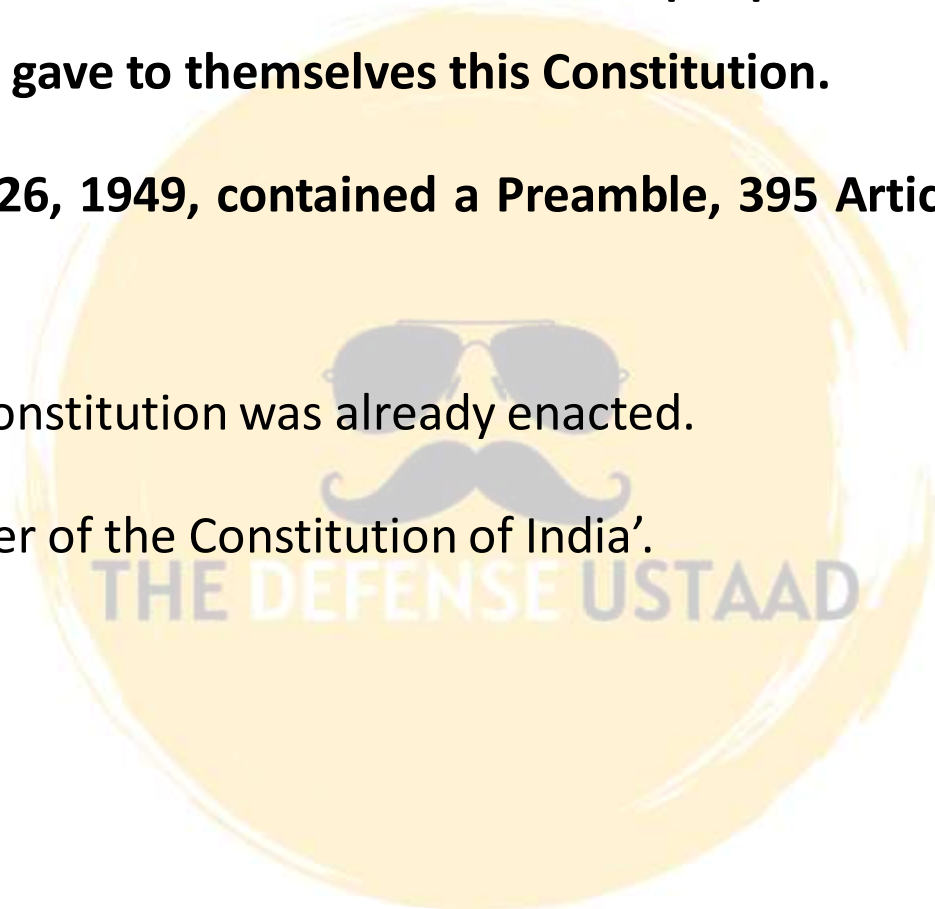
# Enactment Of The Constitution

- Dr. B.R. Ambedkar introduced the final draft of the Constitution in the Assembly on November 4, 1948 (first reading).
- The Assembly had a general discussion on it for five days (till November 9, 1948).
- The second reading (clause by clause consideration) started on November 15, 1948, and ended on October 17, 1949. During this stage, as many as 7653 amendments were proposed and 2473 were actually discussed in the Assembly.
- The third reading of the draft started on November 14, 1949.
- **Dr. B.R. Ambedkar moved a motion—‘the Constitution as settled by the Assembly be passed’.**  
The motion on Draft Constitution was declared as passed on **November 26, 1949**, and received the signatures of the members and the president.



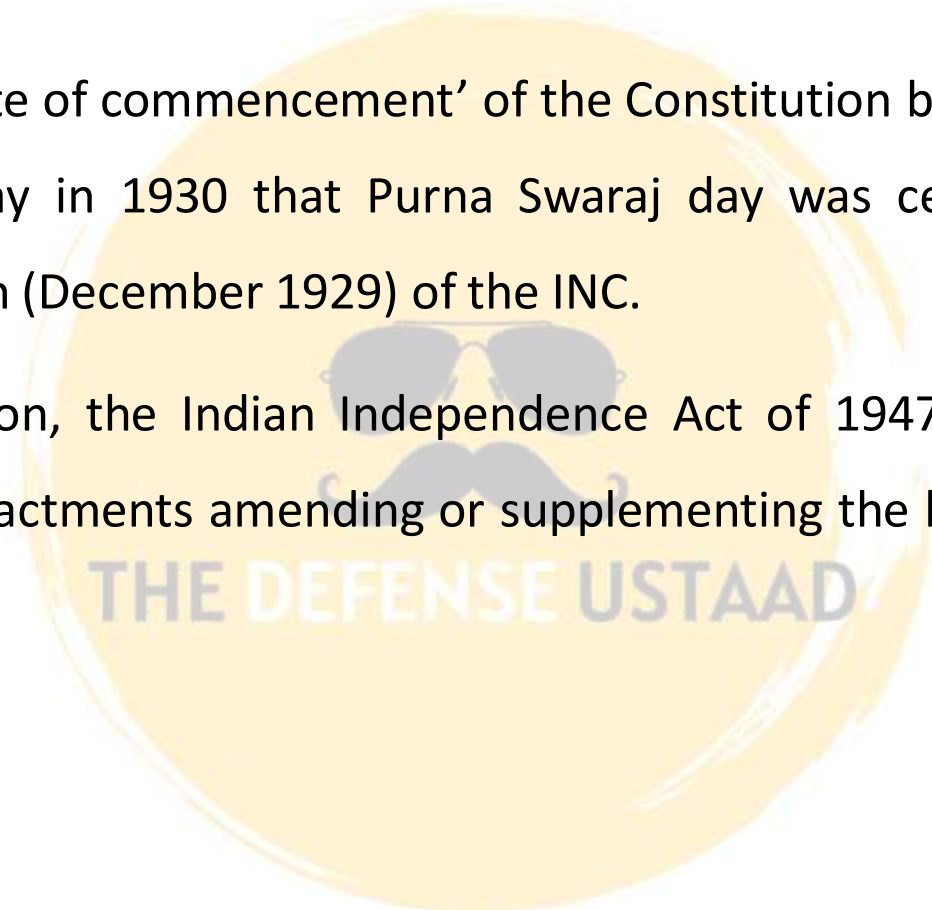
# Enactment Of The Constitution

- Out of a total 299 members of the Assembly, only 284 were actually present on that day and signed the Constitution.
- **This is also the date mentioned in the Preamble as the date on which the people of India in the Constituent Assembly adopted, enacted and gave to themselves this Constitution.**
- **The Constitution as adopted on November 26, 1949, contained a Preamble, 395 Articles and 8 Schedules.**
- The Preamble was enacted after the entire Constitution was already enacted.
- Dr. B. R. Ambedkar, is recognised as the 'Father of the Constitution of India'.



# Enforcement Of The Constitution

- The major part of the Constitution came into force on January 26, 1950.
- **This day is referred to in the Constitution as the 'date of its commencement', and celebrated as the Republic Day.**
- January 26 was specifically chosen as the 'date of commencement' of the Constitution because of its historical importance. It was on this day in 1930 that Purna Swaraj day was celebrated, following the resolution of the Lahore Session (December 1929) of the INC.
- With the commencement of the Constitution, the Indian Independence Act of 1947 and the Government of India Act of 1935, with all enactments amending or supplementing the latter Act, were repealed.

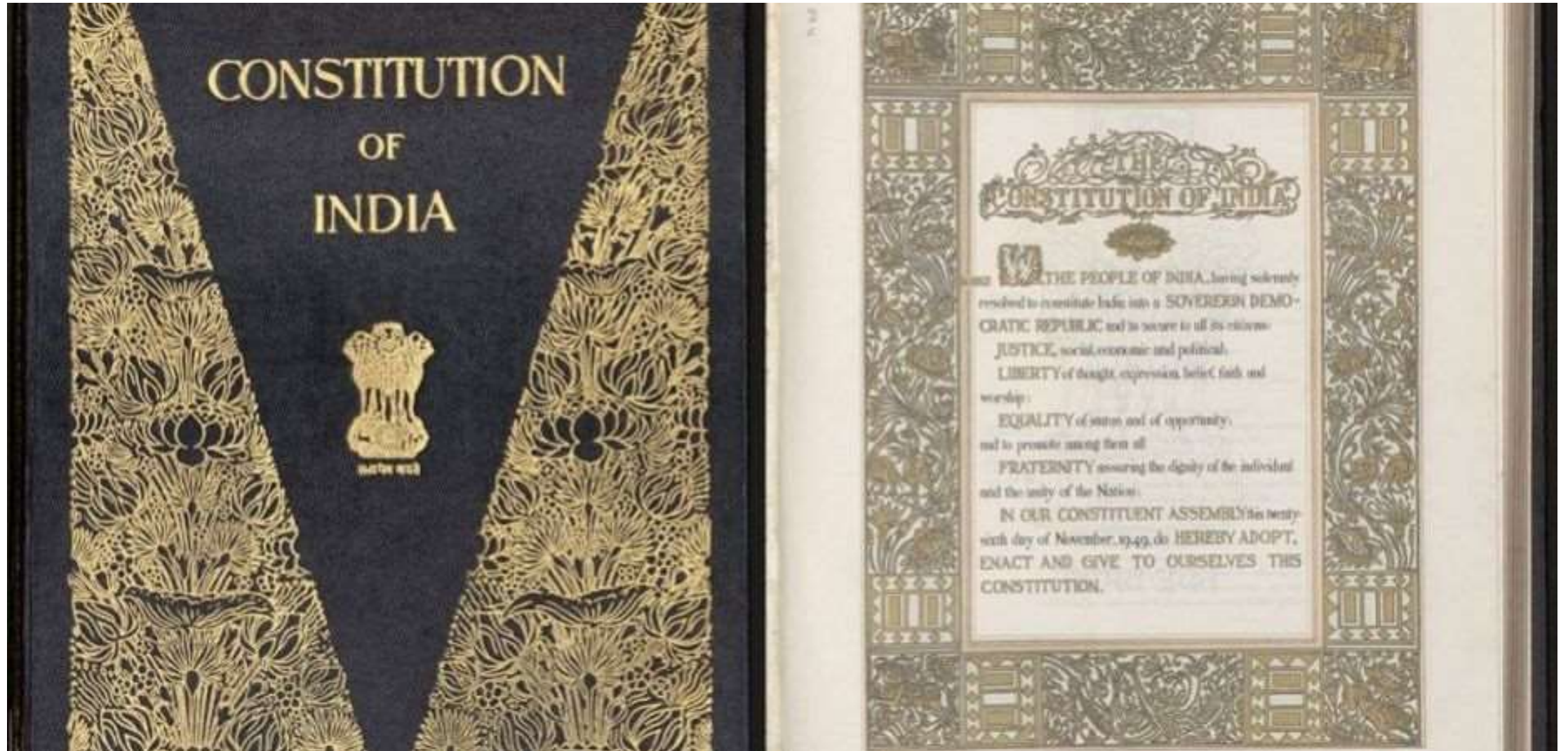




# Important Facts

1. Elephant was adopted as the symbol (seal) of the Constituent Assembly.
2. Sir B.N. Rau was appointed as the constitutional advisor (Legal advisor) to the Constituent Assembly.
3. H.V.R. Iyengar was the Secretary to the Constituent Assembly.
4. S.N. Mukerjee was the chief draftsman of the constitution in the Constituent Assembly.
5. Prem Behari Narain Raizada was the calligrapher of the Indian Constitution. The original constitution was handwritten by him in a flowing italic style.
6. The original version was beautified and decorated by artists from Shantiniketan including Nand Lal Bose and Beohar Rammanohar Sinha.
7. Beohar Rammanohar Sinha illuminated, beautified and ornamented the original Preamble calligraphed by Prem Behari Narain Raizada.
8. The calligraphy of the Hindi version of the original constitution was done by Vasant Krishan Vaidya and elegantly decorated and illuminated by Nand Lal Bose.

# Chapter 2 – Salient Features of the Constitution



# 1. Longthiest Written Constitution

- Constitutions are classified into written, like the American Constitution, or unwritten, like the British Constitution.
- The Constitution of India is the lengthiest of all the written Constitutions of the world.
- Originally (1949), the Constitution contained a Preamble, 395 Articles (divided into 22 Parts) and 8 Schedules. Presently (2019), it consists of a Preamble, about 448 Articles (divided into 25 Parts) and 12 Schedules.

Four factors have contributed to the elephantine size of our Constitution. They are:

- (a) Geographical factors, that is, the vastness of the country and its diversity.
- (b) Historical factors, e.g., the influence of the Government of India Act of 1935, which was bulky.
- (c) Single Constitution for both the Centre and the states.
- (d) Dominance of legal luminaries in the Constituent Assembly.

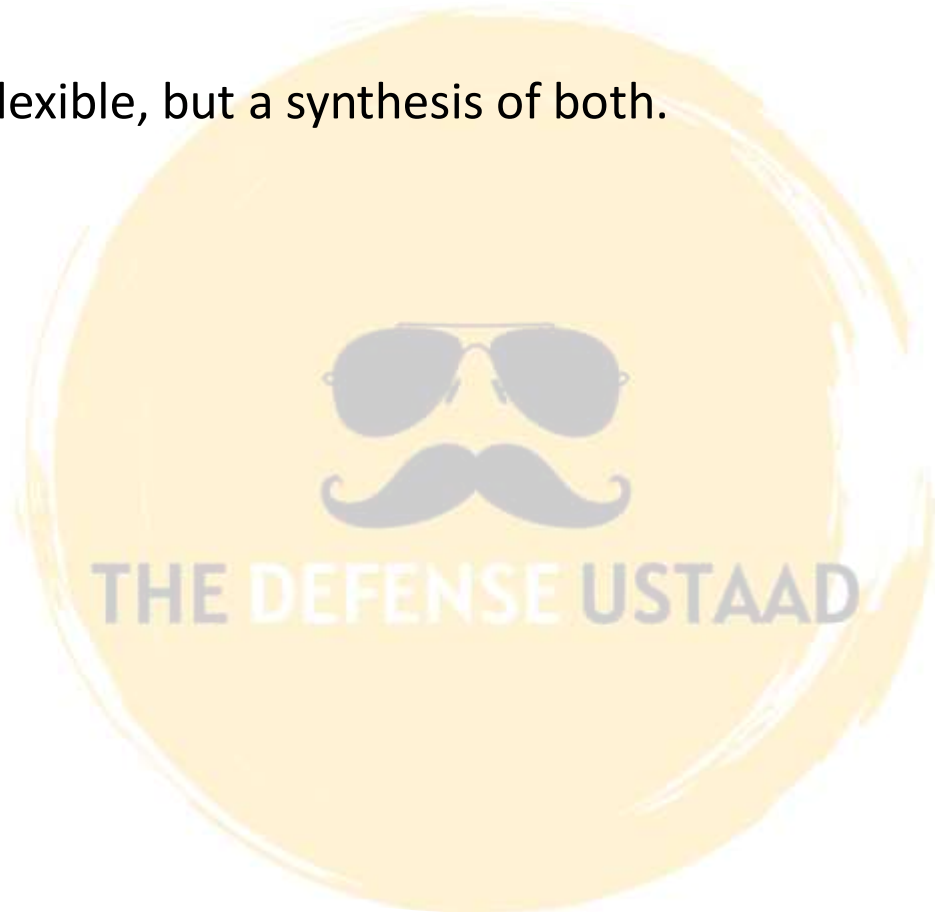
## 2. Drawn From Various Sources

- The Constitution of India has borrowed most of its provisions from the Constitutions of various other countries as well as from the Government of India Act of 1935.
- Dr. B.R. Ambedkar proudly acclaimed that the Constitution of India has been framed after 'ransacking all the known Constitutions of the World'.
- The structural part of the Constitution is, to a large extent, derived from the **Government of India Act of 1935**.
- The philosophical part of the Constitution (the Fundamental Rights and the Directive Principles of State Policy) derive their inspiration from the American and Irish Constitutions, respectively.
- The political part of the Constitution (the principle of Cabinet Government and the relations between the Executive and the Legislature) have been largely drawn from the British Constitution.



### 3. Blend of Rigidity and Flexibility

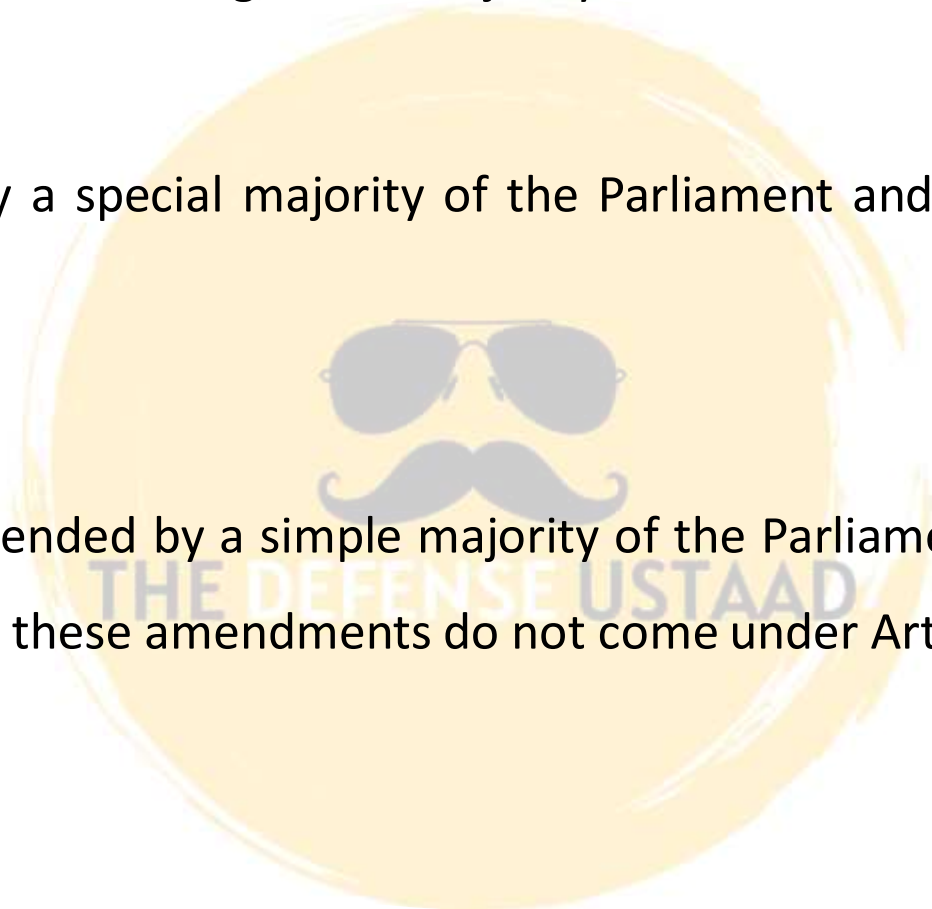
- A Rigid Constitution is one that requires a special procedure for its amendment.
- A flexible constitution, on the other hand, is one that can be amended in the same manner as the ordinary laws are made.
- The Constitution of India is neither rigid nor flexible, but a synthesis of both.



### 3. Blend of Rigidity and Flexibility

- Article 368 provides for two types of amendments:
  - (a) Some provisions can be amended by a special majority of the Parliament, i.e., a two-third majority of the members of each House present and voting, and a majority of the total membership of each House.
  - (b) Some other provisions can be amended by a special majority of the Parliament and with the ratification by half of the total states.

Some provisions of the Constitution can be amended by a simple majority of the Parliament in the manner of ordinary legislative process. Notably, these amendments do not come under Article 368.



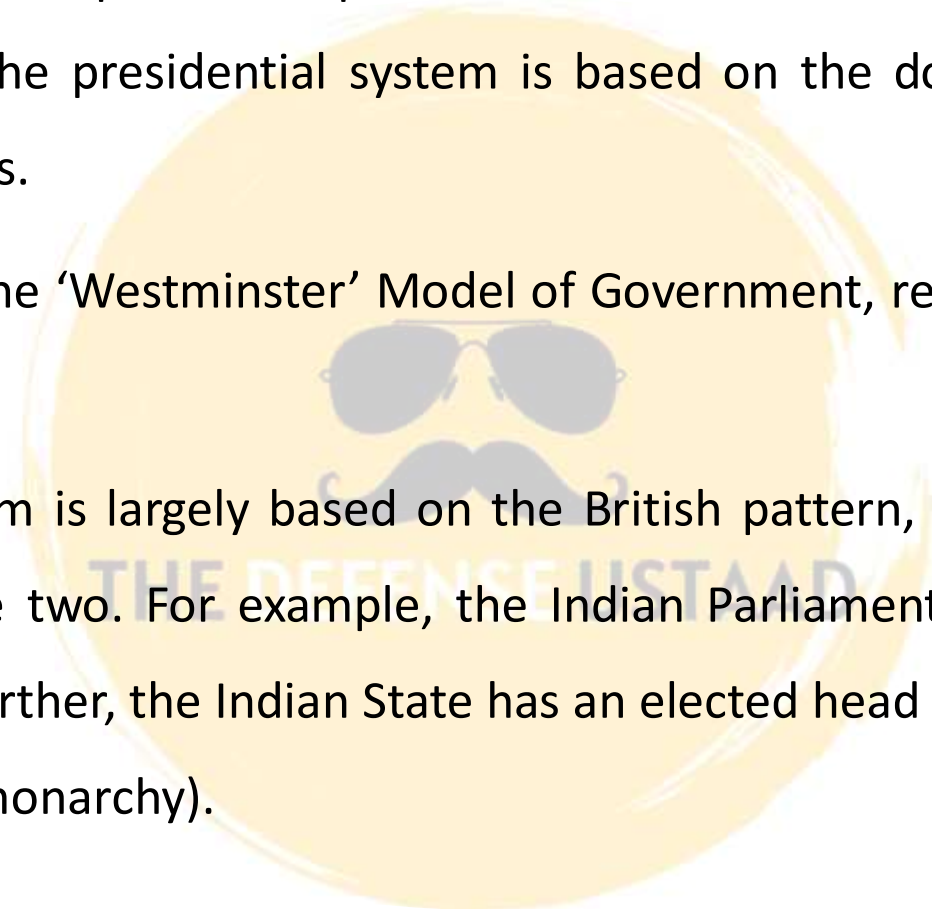
## 4. Federal System with Unitary Bias

- The Constitution of India establishes a federal system of Government. It contains all the usual features of a federation, viz., two Government, division of powers, written Constitution, supremacy of Constitution, rigidity of Constitution, independent judiciary and bicameralism.
- However, the Indian Constitution also contains a large number of unitary or non-federal features, viz., a strong Centre, single Constitution, single citizenship, flexibility of Constitution, integrated judiciary, appointment of state governor by the Centre, all-India services, emergency provisions and so on.
- The term 'Federation' has nowhere been used in the Constitution. Article 1, on the other hand, describes India as a 'Union of States' which implies two things: one, Indian Federation is not the result of an agreement by the states; and two, no state has the right to secede from the federation.
- The Indian Constitution has been described as 'federal in form but, unitary in spirit', 'quasi-federal' by K.C. Wheare.



# 5. Parliamentary Form of Government

- The Constitution of India has opted for the British Parliamentary System of Government rather than American Presidential System of Government.
- The parliamentary system is based on the principle of co-operation and co-ordination between the legislative and executive organs while the presidential system is based on the doctrine of separation of powers between the two organs.
- The parliamentary system is also known as the 'Westminster' Model of Government, responsible Government and Cabinet Government.
- Even though the Indian parliamentary system is largely based on the British pattern, there are some fundamental differences between the two. For example, the Indian Parliament is not a sovereign body like the British Parliament. Further, the Indian State has an elected head (republic) while the British State has hereditary head (monarchy).

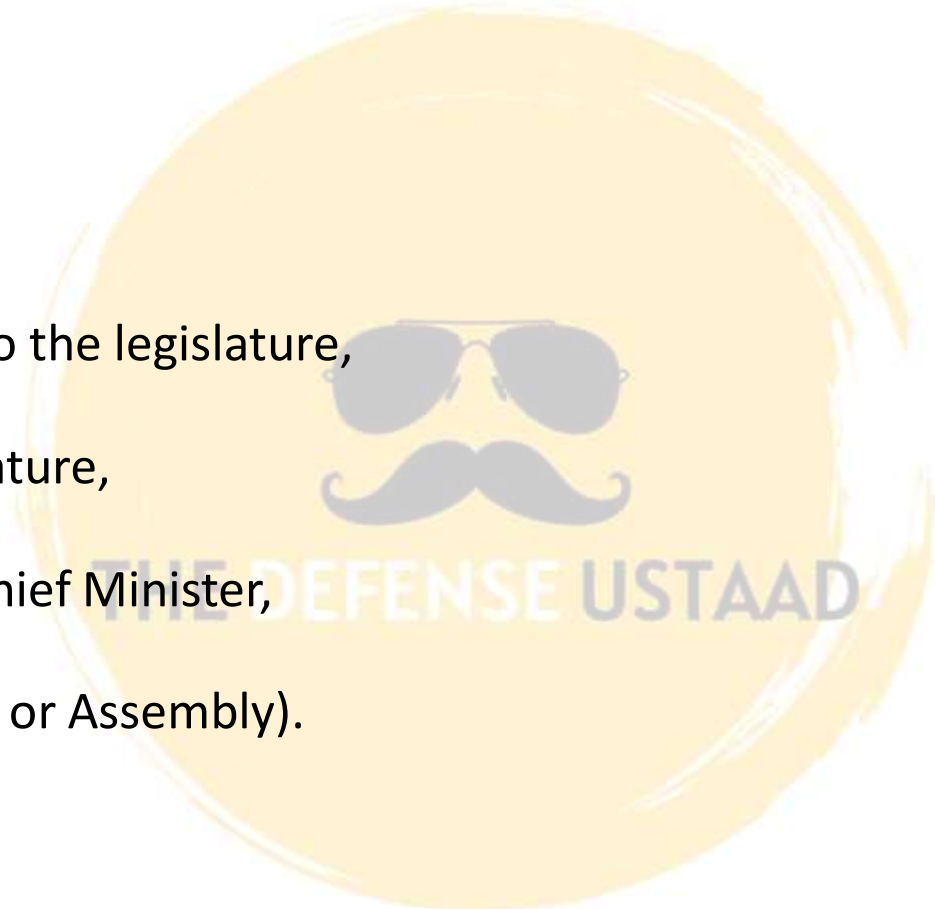


# 5. Parliamentary Form of Government

- The Constitution establishes the parliamentary system not only at the Centre, but also in the states.

The features of parliamentary government in India are:

- (a) Presence of nominal and real executives;
- (b) Majority party rule,
- (c) Collective responsibility of the executive to the legislature,
- (d) Membership of the ministers in the legislature,
- (e) Leadership of the Prime Minister or the Chief Minister,
- (f) Dissolution of the lower House (Lok Sabha or Assembly).



## 6. Synthesis of Parliamentary Sovereignty and Judicial Supremacy

- The Supreme Court, on the one hand, can declare the parliamentary laws as unconstitutional through its power of judicial review.
- The Parliament, on the other hand, can amend the major portion of the Constitution through its constituent power.

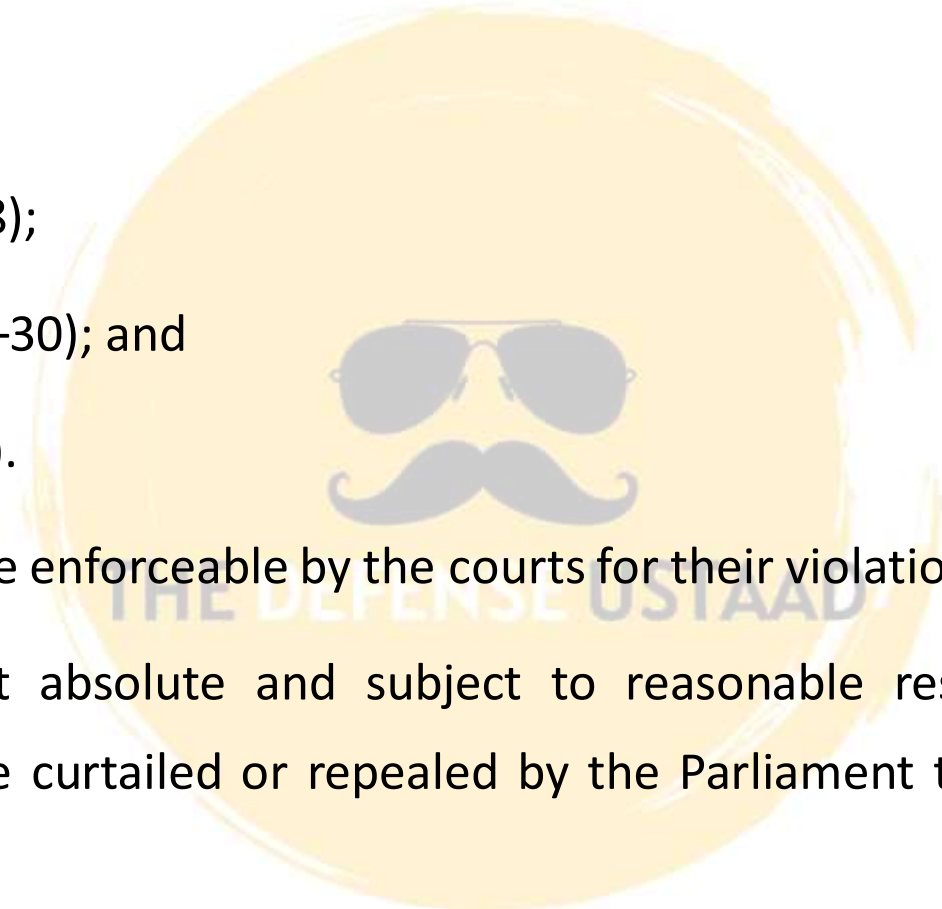


# 7. Integrated and Independent Judiciary

- The Supreme Court stands at the top of the integrated judicial system in the country. Below it, there are high courts at the state level. Under a high court, there is a hierarchy of subordinate courts, that is, district courts and other lower courts.
- This single system of courts enforces both the central laws as well as the state laws, unlike in USA, where the federal laws are enforced by the federal judiciary and the state laws are enforced by the state judiciary.
- The Supreme Court is a federal court, the highest court of appeal, the guarantor of the fundamental rights of the citizens and the guardian of the Constitution. Hence, the Constitution has made various provisions to ensure its independence—security of tenure of the judges, fixed service conditions for the judges, all the expenses of the Supreme Court charged on the Consolidated Fund of India, prohibition on discussion on the conduct of judges in the legislatures, ban on practice after retirement, power to punish for its contempt vested in the Supreme Court, separation of the judiciary from the executive, and so on.

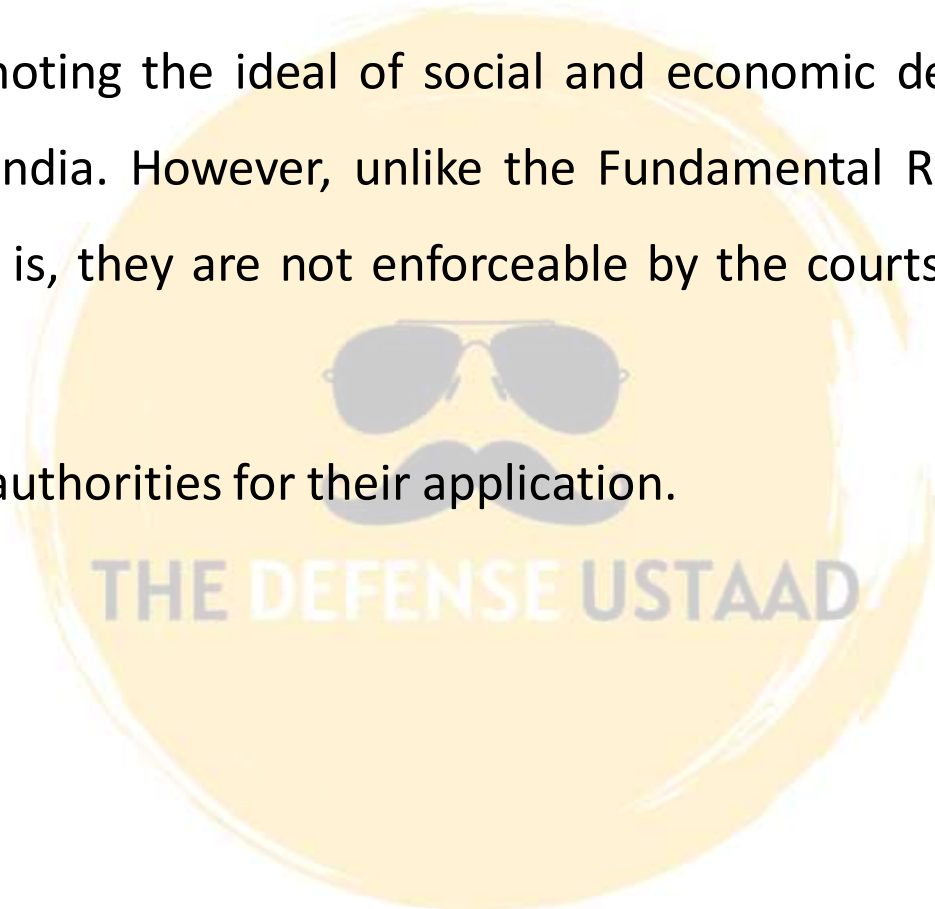
# 8. Fundamental Rights

- Part III of the Indian Constitution guarantees six fundamental rights to all the citizens:
  - (a) Right to Equality (Articles 14–18);
  - (b) Right to Freedom (Articles 19–22);
  - (c) Right against Exploitation (Articles 23–24);
  - (d) Right to Freedom of Religion (Articles 25–28);
  - (e) Cultural and Educational Rights (Articles 29–30); and
  - (f) Right to Constitutional Remedies (Article 32).
- They are justiciable in nature, that is, they are enforceable by the courts for their violation.
- However, the Fundamental Rights are not absolute and subject to reasonable restrictions. Further, they are not sacrosanct and can be curtailed or repealed by the Parliament through a Constitutional Amendment Act.



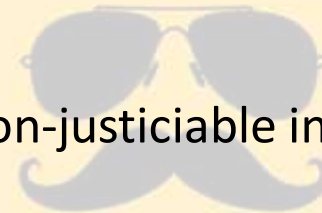
## 9. Directive Principles of State Policy

- According to Dr. B.R. Ambedkar, the Directive Principles of State Policy is a 'novel feature' of the Indian Constitution. They are enumerated in Part IV of the Constitution. They can be classified into three broad categories—socialistic, Gandhian and liberalintellectual.
- The Directive Principles are meant for promoting the ideal of social and economic democracy. They seek to establish a 'welfare state' in India. However, unlike the Fundamental Rights, the directives are non-justiciable in nature, that is, they are not enforceable by the courts for their violation.
- They impose a moral obligation on the state authorities for their application.



# 10. Fundamental Duties

- The original constitution did not provide for the Fundamental Duties of the citizens.
- These were added during the operation of internal emergency (1975–77) by the 42nd Constitutional Amendment Act of 1976 on the recommendation of the Swaran Singh Committee.
- The 86th Constitutional Amendment Act of 2002 added one more fundamental duty.
- The Part IV-A of the Constitution (which consists of only one Article 51-A) specifies the eleven Fundamental Duties.
- However, like the Directive Principles, the duties are also non-justiciable in nature.



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# 11. A Secular State

- The Constitution of India stands for a Secular State. Hence, it does not uphold any particular religion as the official religion of the Indian State.
- (a) The term 'secular' was added to the Preamble of the Indian Constitution by the 42nd Constitutional Amendment Act of 1976.
- (b) The Preamble secures to all citizens of India liberty of belief, faith and worship.
- (c) The State shall not deny to any person equality before the law or equal protection of the laws (Article 14).
- (d) The State shall not discriminate against any citizen on the ground of religion (Article 15).
- (e) Equality of opportunity for all citizens in matters of public employment (Article 16).
- (f) All persons are equally entitled to freedom of conscience and the right to freely profess, practice and propagate any religion (Article 25).

# 11. A Secular State

(g) Every religious denomination or any of its section shall have the right to manage its religious affairs (Article 26).

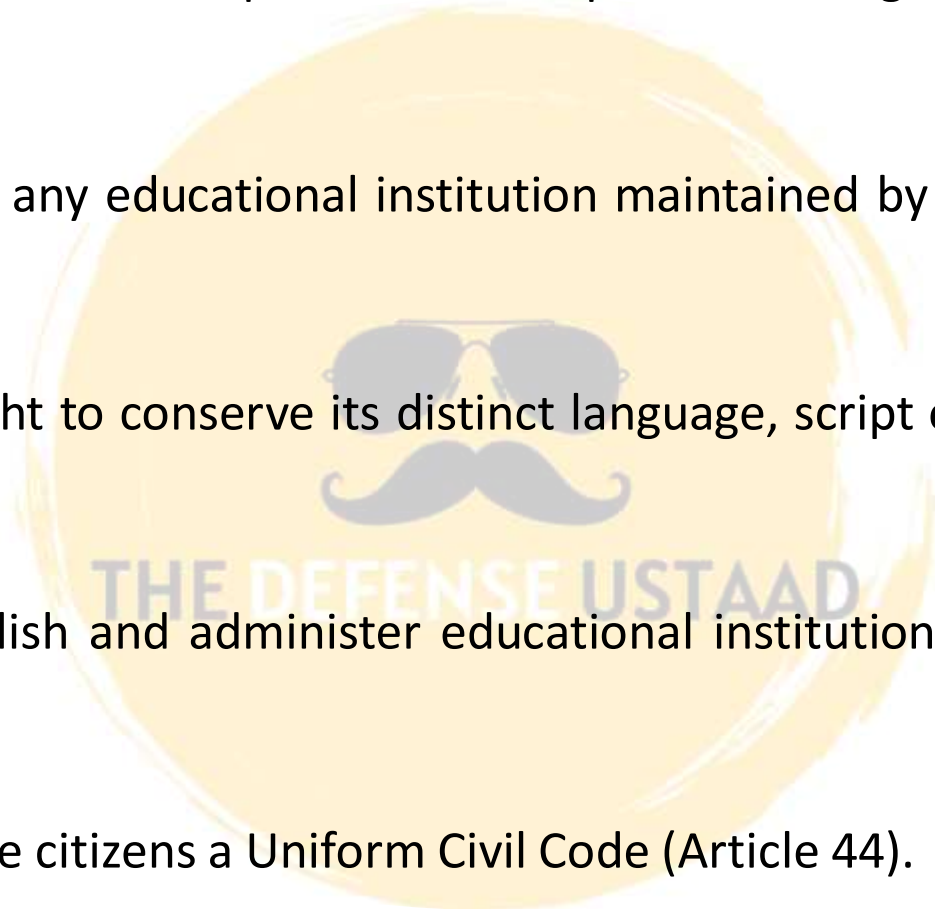
(h) No person shall be compelled to pay any taxes for the promotion of a particular religion (Article 27).

(i) No religious instruction shall be provided in any educational institution maintained by the State (Article 28).

(j) Any section of the citizens shall have the right to conserve its distinct language, script or culture (Article 29).

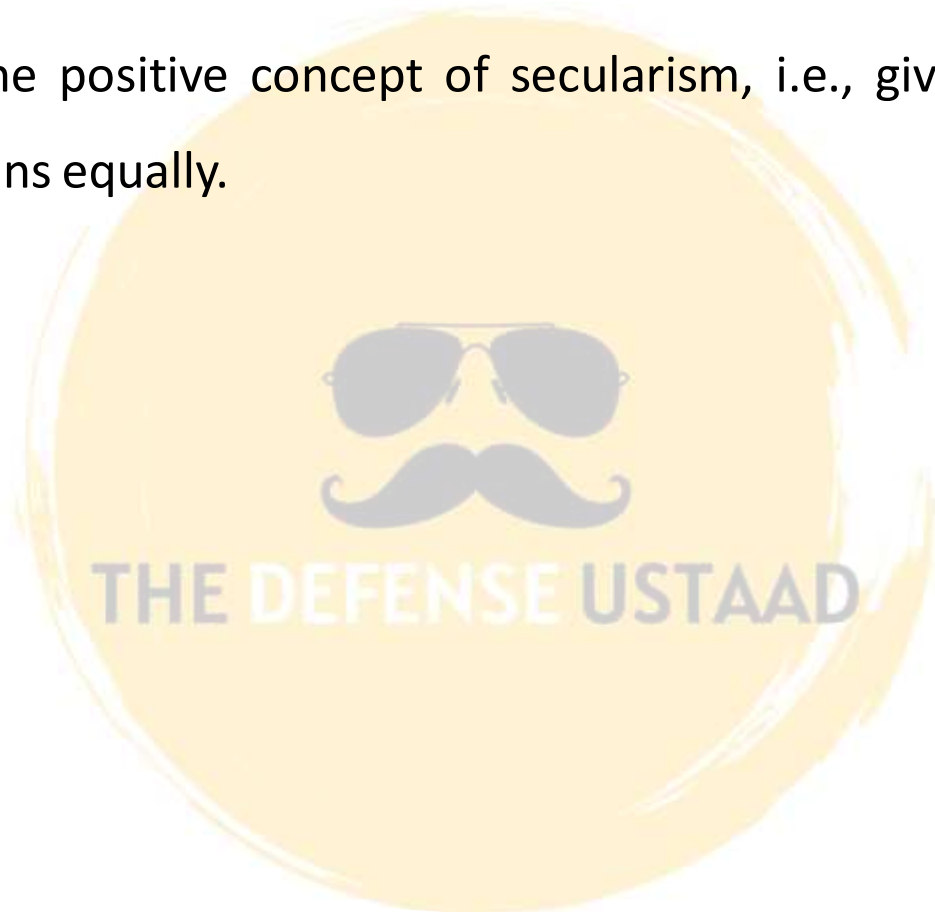
(k) All minorities shall have the right to establish and administer educational institutions of their choice (Article 30).

(l) The State shall endeavour to secure for all the citizens a Uniform Civil Code (Article 44).



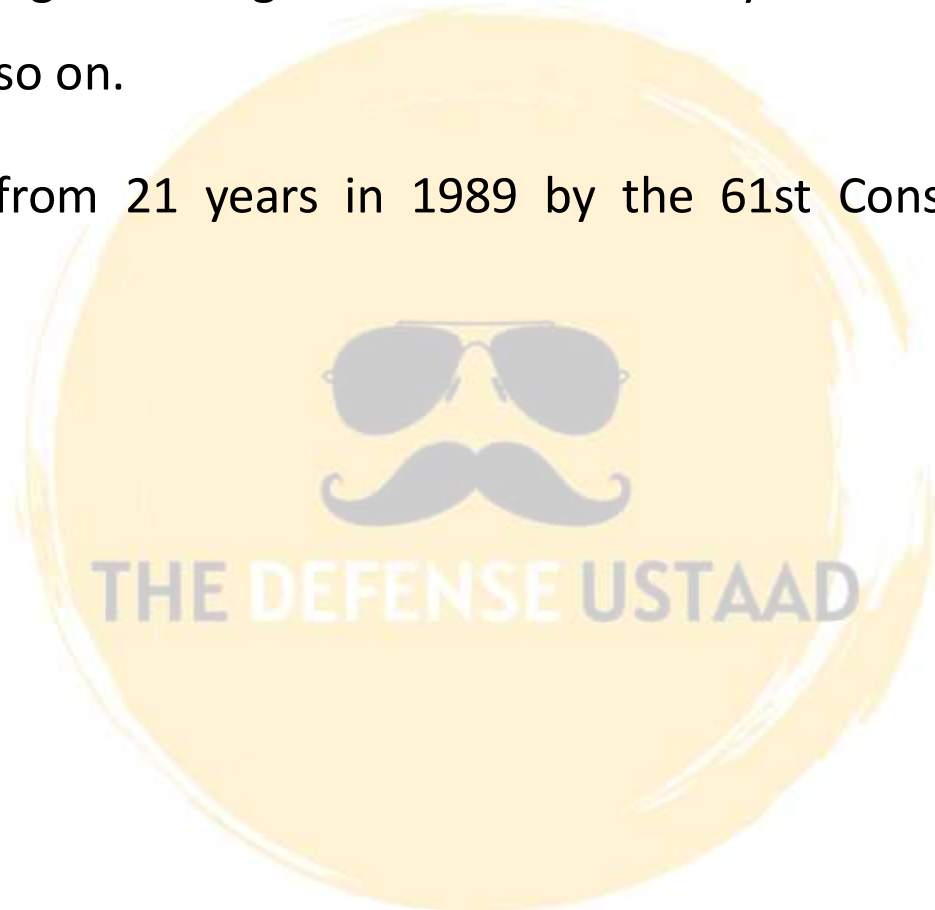
# 11. A Secular State

- The Western concept of secularism connotes a complete separation between the religion (the church) and the state (the politics). This negative concept of secularism is inapplicable in the Indian situation where the society is multireligious.
- Hence, the Indian Constitution embodies the positive concept of secularism, i.e., giving equal respect to all religions or protecting all religions equally.



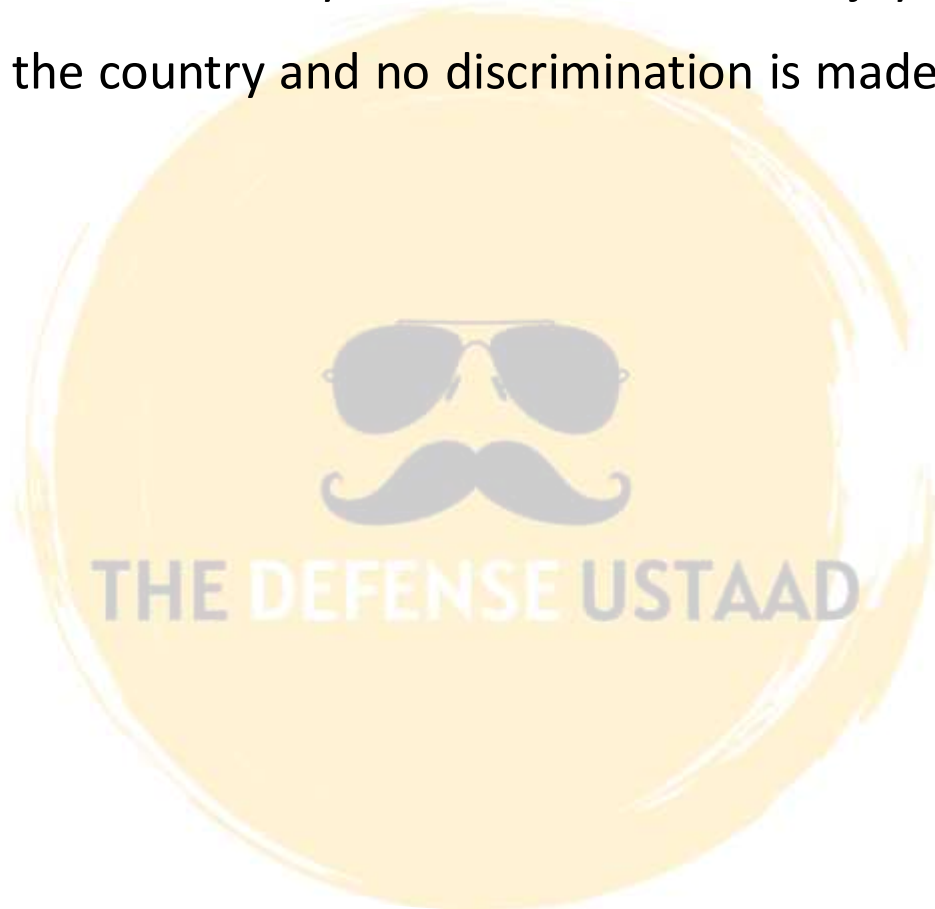
## 12. Universal Adult Franchise

- The Indian Constitution adopts universal adult franchise as a basis of elections to the Lok Sabha and the state legislative assemblies.
- Every citizen who is not less than 18 years of age has a right to vote without any discrimination of caste, race, religion, sex, literacy, wealth and so on.
- The voting age was reduced to 18 years from 21 years in 1989 by the 61st Constitutional Amendment Act of 1988.



# 13. Single Citizenship

- Though the Indian Constitution is federal and envisages a dual polity (Centre and states), it provides for only a single citizenship, that is, the Indian citizenship.
- In India, all citizens irrespective of the state in which they are born or reside enjoy the same political and civil rights of citizenship all over the country and no discrimination is made between them.

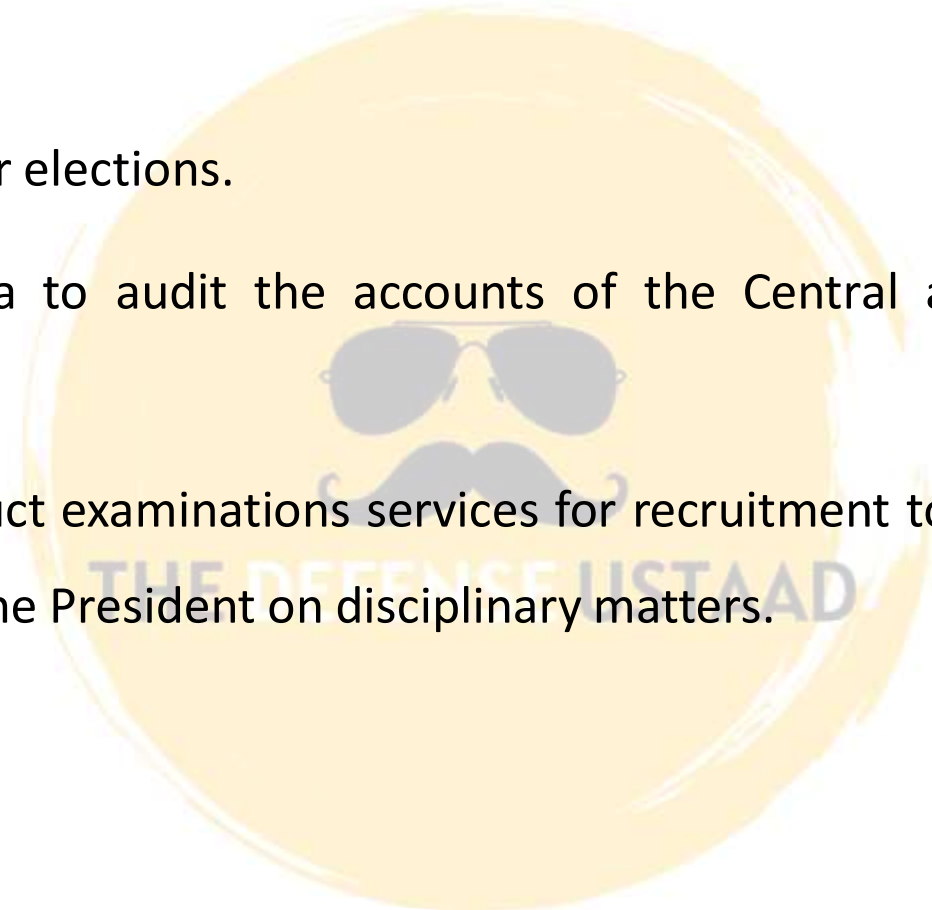


# 14. Independent Bodies

- The Indian Constitution not only provides for the legislative, executive and judicial organs of the Government (Central and state) but also establishes certain independent bodies. They are envisaged by the Constitution as the bulkworks of the democratic system of Government in India.

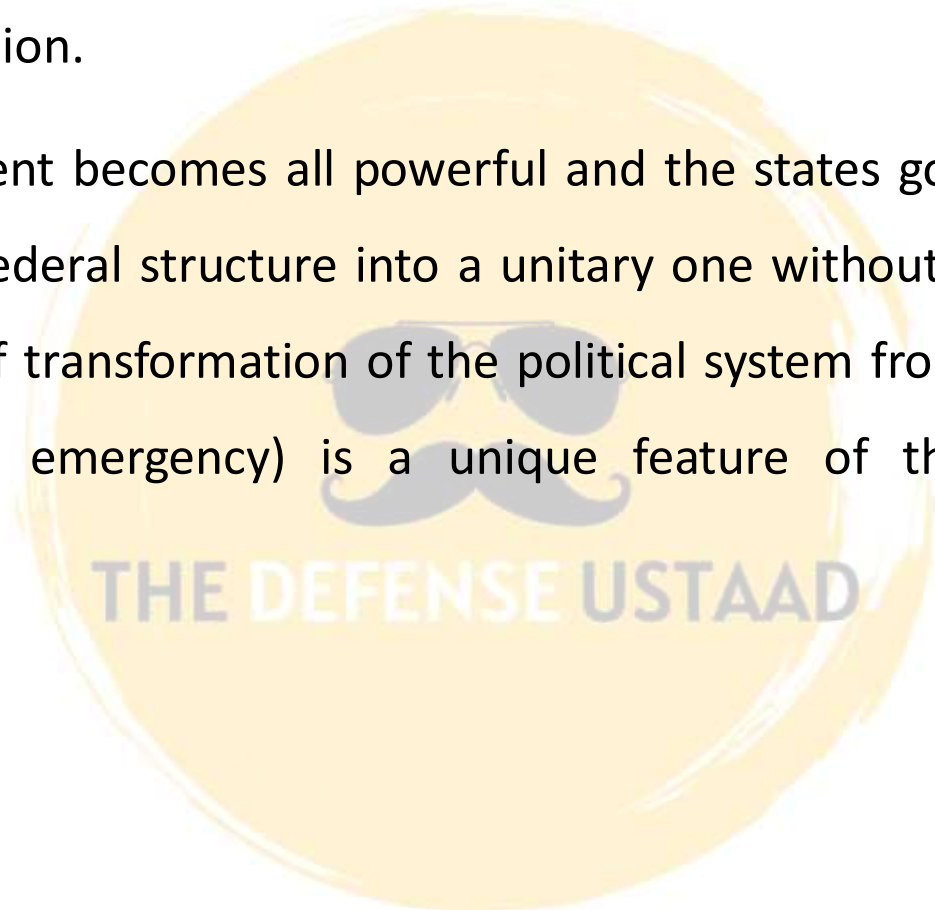
These are:

- (a) Election Commission to ensure free and fair elections.
- (b) Comptroller and Auditor-General of India to audit the accounts of the Central and state governments.
- (c) Union Public Service Commission to conduct examinations services for recruitment to all-India and higher Central services and to advise the President on disciplinary matters.



# 15. Emergency Provisions

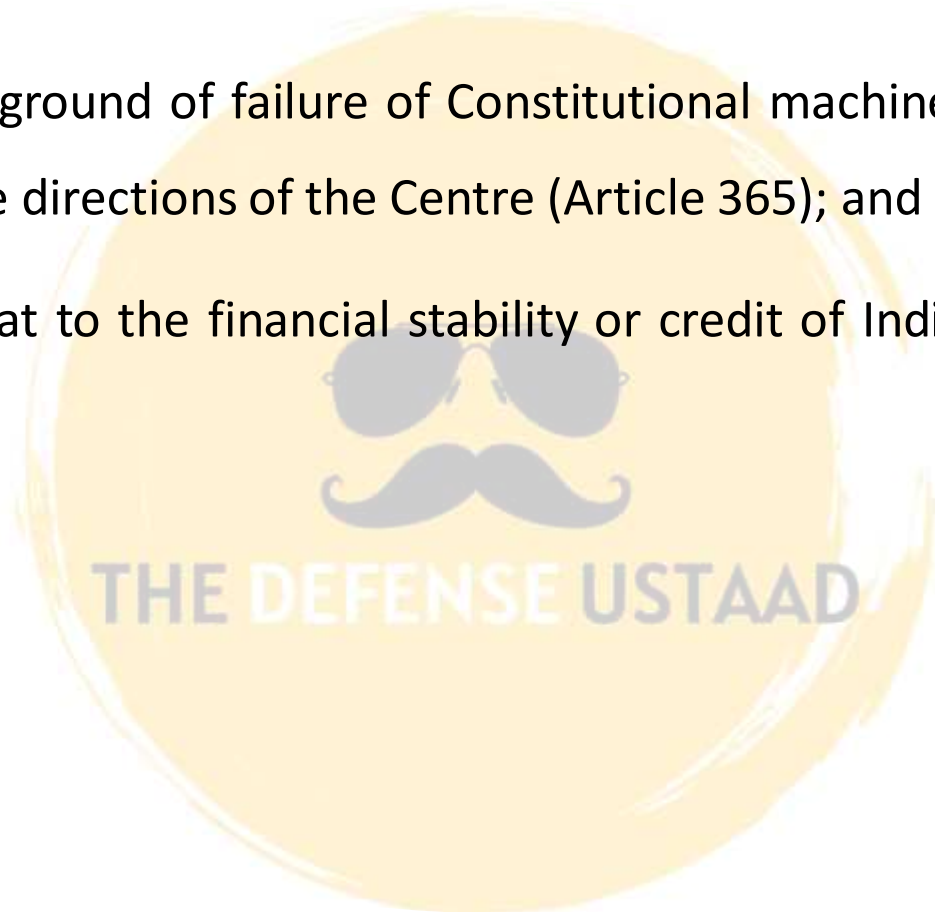
- The Indian Constitution contains elaborate emergency provisions to enable the President to meet any extraordinary situation effectively. The rationality behind the incorporation of these provisions is to safeguard the sovereignty, unity, integrity and security of the country, the democratic political system and the Constitution.
- During an emergency, the Central Government becomes all powerful and the states go into the total control of the centre. It converts the federal structure into a unitary one without a formal amendment of the Constitution. This kind of transformation of the political system from federal (during normal times) to unitary (during emergency) is a unique feature of the Indian Constitution.





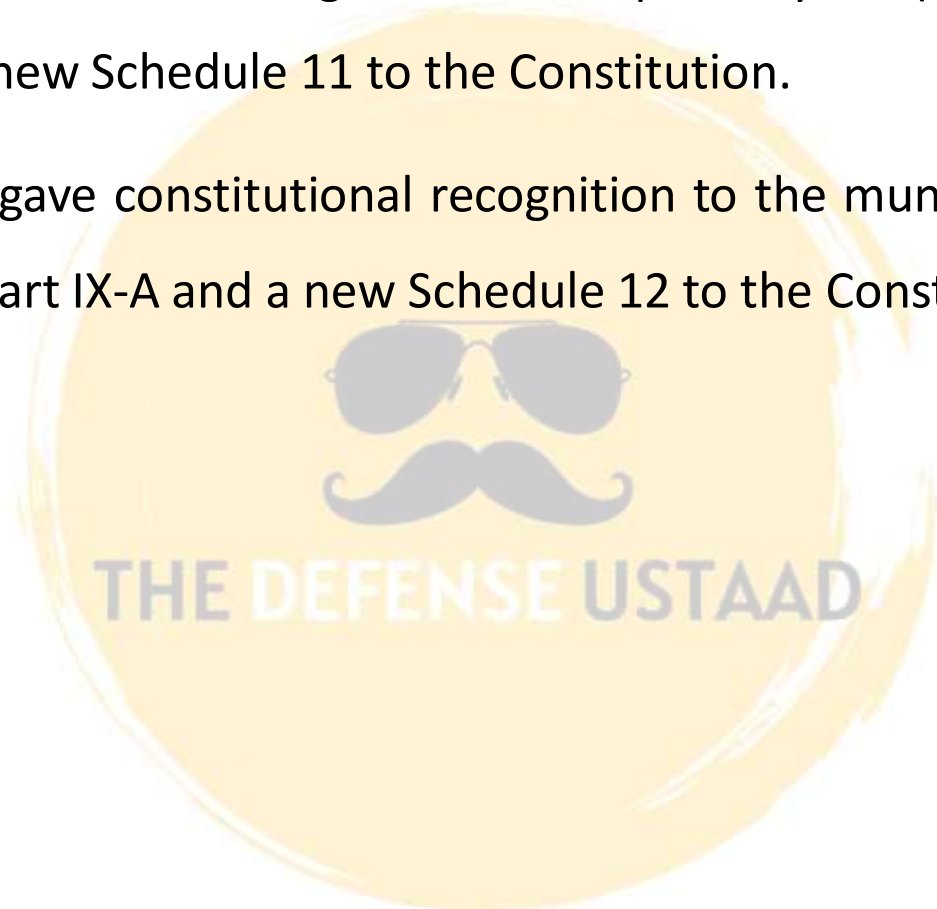
# 15. Emergency Provisions

- The Constitution envisages three types of emergencies, namely:
  - (a) National emergency on the ground of war or external aggression or armed rebellion<sup>16</sup> (Article 352);
  - (b) State emergency (President's Rule) on the ground of failure of Constitutional machinery in the states (Article 356) or failure to comply with the directions of the Centre (Article 365); and
  - (c) Financial emergency on the ground of threat to the financial stability or credit of India (Article 360).



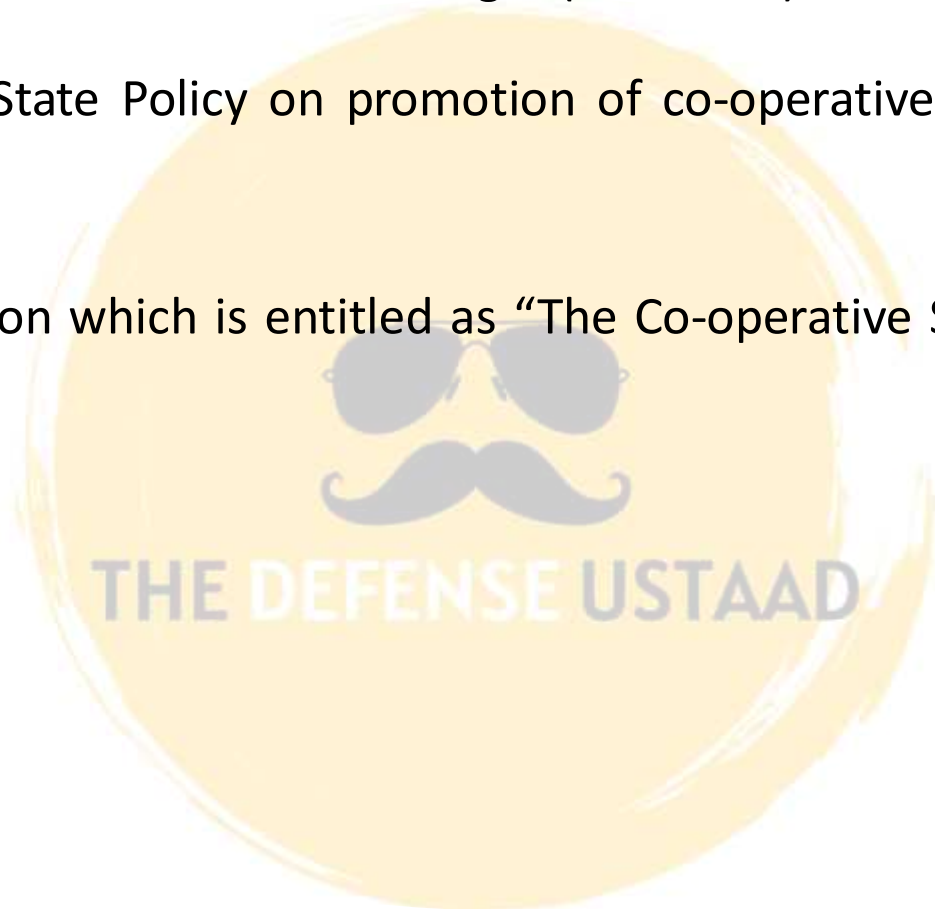
# 16. Three-tier Government

- The 73rd and 74th Constitutional Amendment Acts (1992) have added a third-tier of Government (i.e., local) which is not found in any other Constitution of the world.
- The 73rd Amendment Act of 1992 gave constitutional recognition to the panchay-ats (rural local governments) by adding IX a new Part and a new Schedule 11 to the Constitution.
- Similarly, the 74th Amendment Act of 1992 gave constitutional recognition to the municipalities (urban local governments) by adding a new Part IX-A and a new Schedule 12 to the Constitution.



# 17. Co-operative Societies

- The 97<sup>th</sup> Constitutional Amendment Act of 2011 gave a constitutional status and protection to co-operative societies.
  - i. It made the right to form co-operative societies a fundamental right (Article 19).
  - ii. It included a new Directive Principle of State Policy on promotion of co-operative societies (Article 43-B).
  - iii. It added a new Part IX-B in the Constitution which is entitled as “The Co-operative Societies” (Articles 243-ZH to 243-ZT).



# Sources of the Constitution

| Sources                            | Features Borrowed  |
|------------------------------------|--|
| 1. Government of India Act of 1935 | Federal Scheme, Office of governor, Judiciary, Public Service Commissions, Emergency provisions and administrative details.  |
| 2. British Constitution            | Parliamentary government, Rule of Law, legislative procedure, single citizenship, cabinet system, prerogative writs, parliamentary privileges and bicameralism.          |
| 3. US Constitution                 | Fundamental rights, independence of judiciary, judicial review, impeachment of the president, removal of Supreme Court and high court judges and post of vice president. |

# Sources of the Constitution

| Sources                    | Features Borrowed   |
|----------------------------|---|
| 4. Irish Constitution      | Directive Principles of State Policy, nomination of members to Rajya Sabha and method of election of president.   |
| 5. Canadian Constitution   | Federation with a strong Centre, vesting of residuary powers in the Centre, appointment of state governors by the Centre, and advisory jurisdiction of the Supreme Court. |
| 6. Australian Constitution | Concurrent List, freedom of trade, commerce and inter-course, and joint sitting of the two Houses of Parliament.  |

# Sources of the Constitution

| Sources                                   | Features Borrowed   |
|---|---|
| 7. Weimar Constitution of Germany         | Suspension of Fundamental Rights during Emergency.  |
| 8. Soviet Constitution (USSR, now Russia) | Fundamental duties and the ideal of justice (social, economic and political) in the Preamble. |
| 9. French Constitution                    | Republic and the ideals of liberty, equality and fraternity in the Preamble.                  |
| 10. South African Constitution            | Procedure for amendment of the Constitution and election of members of Rajya Sabha.           |
| 11. Japanese Constitution                 | Procedure established by Law.   |



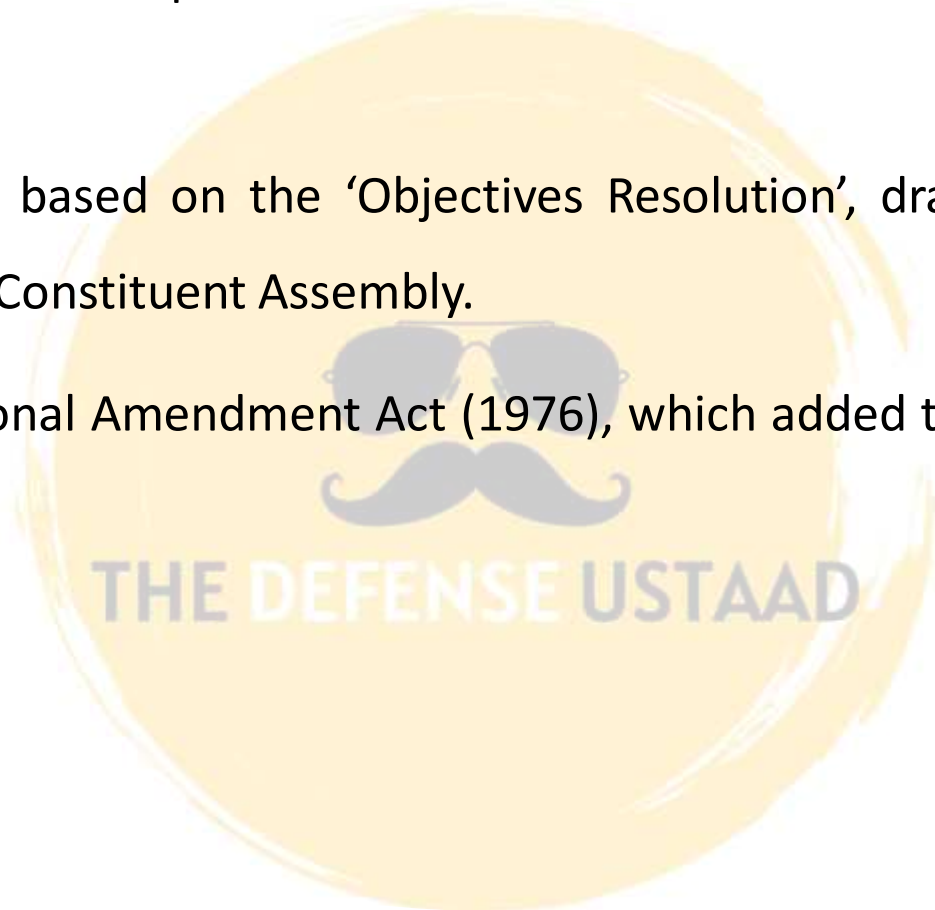
# Chapter 3 – Preamble of the Constitution





# Preamble of the Constitution

- The American Constitution was the first to begin with a Preamble. Many countries, including India, followed this practice.
- The term 'Preamble' refers to the introduction or preface to the Constitution. It contains the summary or essence of the Constitution.
- The Preamble to the Indian Constitution is based on the 'Objectives Resolution', drafted and moved by Pandit Nehru, and adopted by the Constituent Assembly.
- It has been amended by the 42nd Constitutional Amendment Act (1976), which added three new words—Socialist, Secular and Integrity.

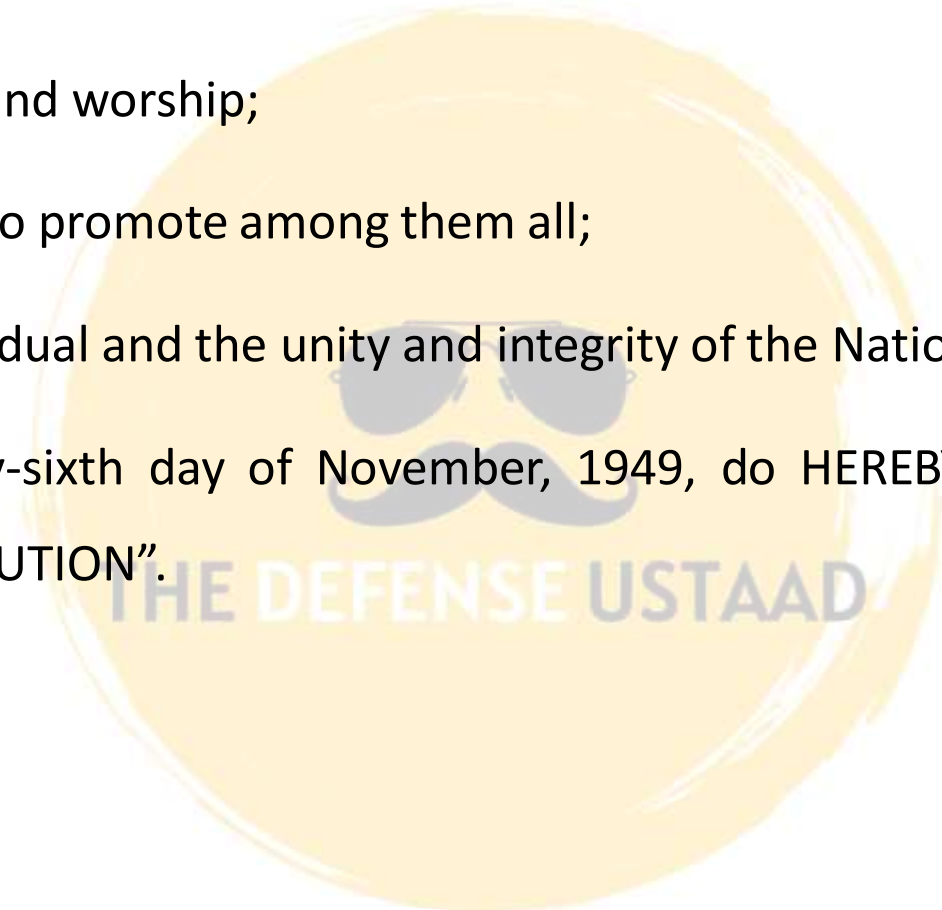


# Text Of The Preamble

“We, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR 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 and integrity of the Nation;

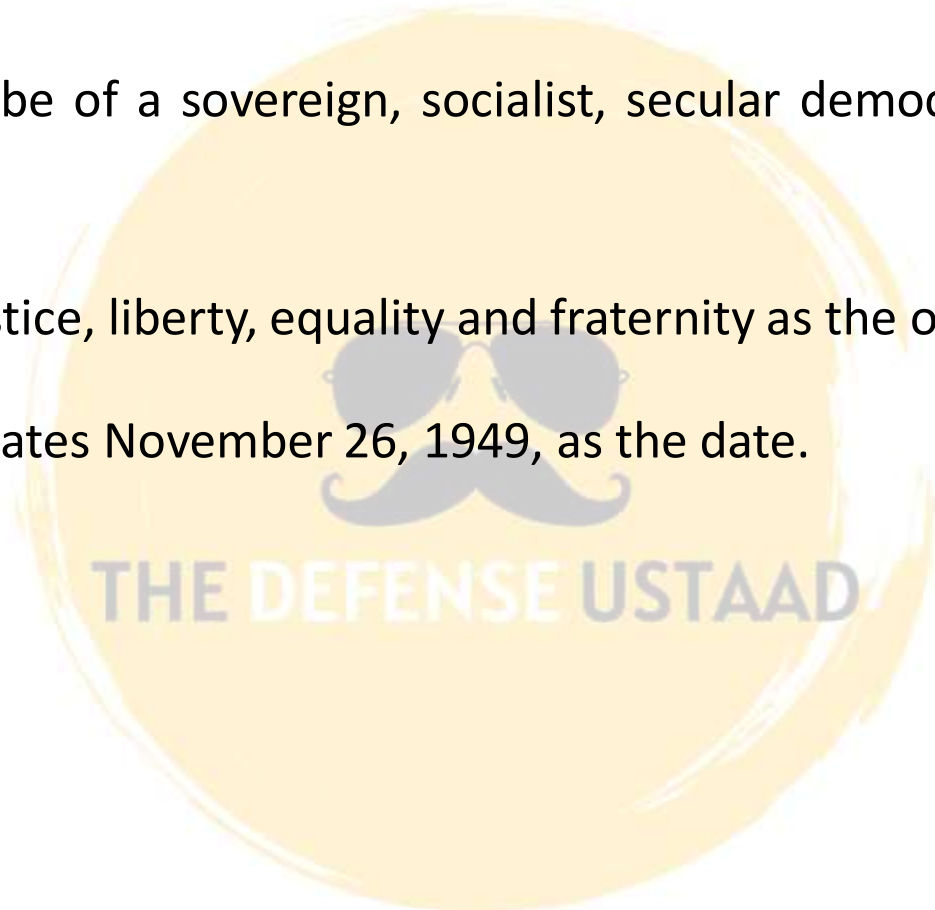
IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION”.



# Ingredients Of The Preamble

The Preamble reveals four ingredients or components:

1. Source of authority of the Constitution: The Preamble states that the Constitution derives its authority from the people of India.
2. Nature of Indian State: It declares India to be of a sovereign, socialist, secular democratic and republican polity.
3. Objectives of the Constitution: It specifies justice, liberty, equality and fraternity as the objectives.
4. Date of adoption of the Constitution: It stipulates November 26, 1949, as the date.



# Key Words In The Preamble - Sovereign

- The word 'sovereign' implies that India is neither a dependency nor a dominion of any other nation, but an independent state.
- There is no authority above it, and it is free to conduct its own affairs (both internal and external).
- Though in 1949, India declared the continuation of her full membership of the Commonwealth of Nations and accepted the British Crown as the head of the Commonwealth, this extra constitutional declaration does not affect India's sovereignty in any manner.



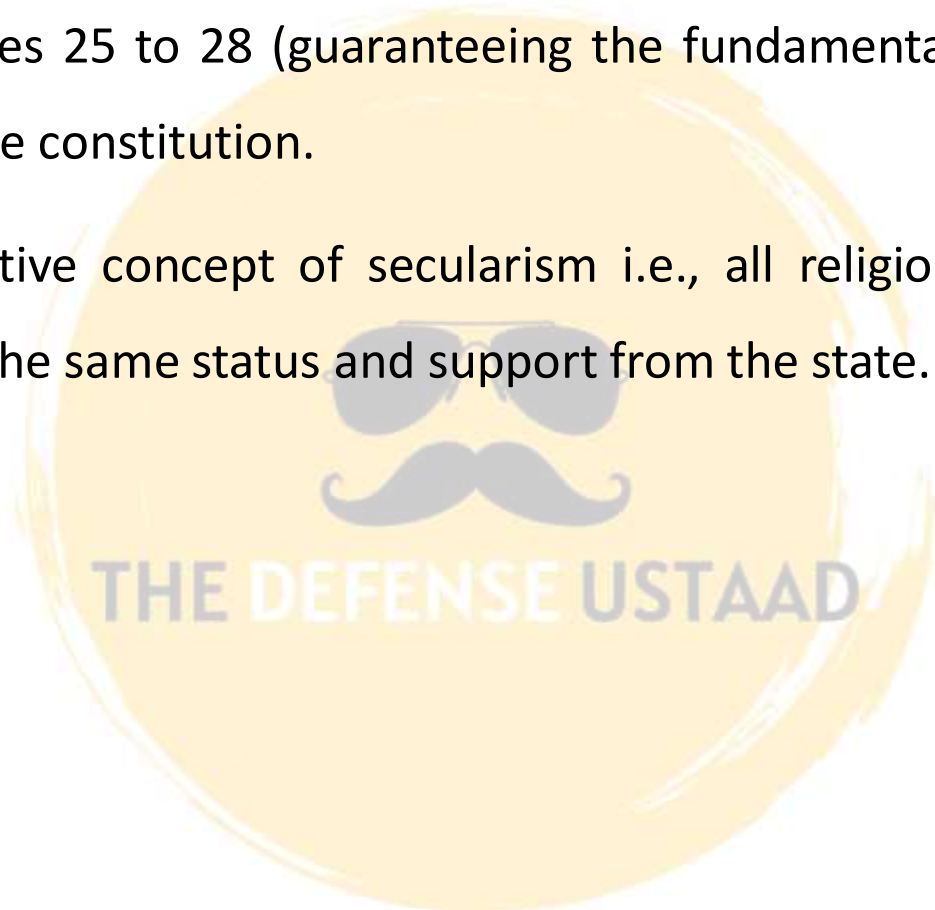
THE DEFENSE USTAAD

# Key Words In The Preamble - Socialist

- Even before the term was added by the 42nd Amendment in 1976, the Constitution had a socialist content in the form of certain Directive Principles of State Policy. In other words, what was hitherto implicit in the Constitution has now been made explicit.
- Moreover, the Congress party itself adopted a resolution to establish a 'socialistic pattern of society' in its Avadi session as early as in 1955 and took measures accordingly.
- Notably, the Indian brand of socialism is a 'democratic socialism' and not a 'communistic socialism' (also known as 'state socialism') which involves the nationalisation of all means of production and distribution and the abolition of private property.
- Democratic socialism, on the other hand, holds faith in a 'mixed economy' where both public and private sectors co-exist side by side.

# Key Words In The Preamble - Secular

- The term 'secular' too was added by the 42nd Constitutional Amendment Act of 1976. However, as the Supreme Court said in 1974, although the words 'secular state' were not expressly mentioned in the Constitution, there can be no doubt that Constitution makers wanted to establish such a state and accordingly Articles 25 to 28 (guaranteeing the fundamental right to freedom of religion) have been included in the constitution.
- The Indian Constitution embodies the positive concept of secularism i.e., all religions in our country (irrespective of their strength) have the same status and support from the state.



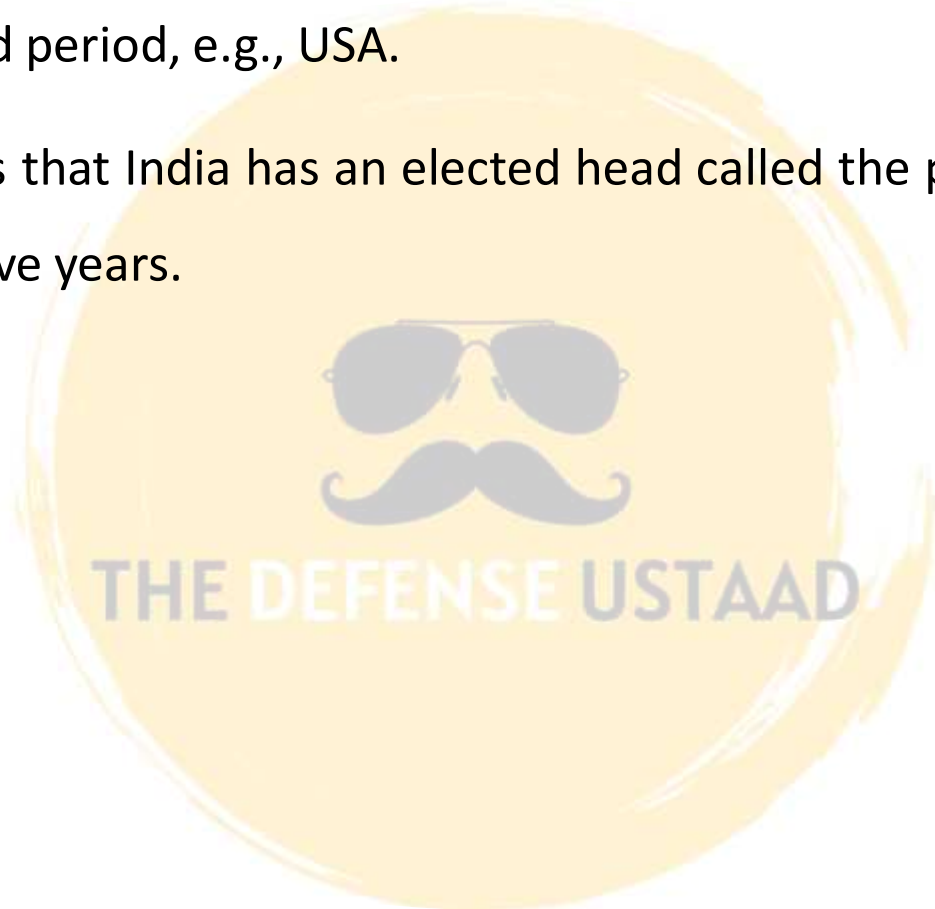
# Key Words In The Preamble - Democratic

- The doctrine of popular sovereignty, that is, possession of supreme power by the people.
- Democracy is of two types—direct and indirect.
- In direct democracy, the people exercise their supreme power directly as is the case in Switzerland. There are four devices of direct democracy, namely, Referendum, Initiative, Recall and Plebiscite.
- In indirect democracy, on the other hand, the representatives elected by the people exercise the supreme power and thus carry on the government and make the laws. This type of democracy, also known as representative democracy, is of two kinds—parliamentary and presidential.
- The Indian Constitution provides for representative parliamentary democracy under which the executive is responsible to the legislature for all its policies and actions.



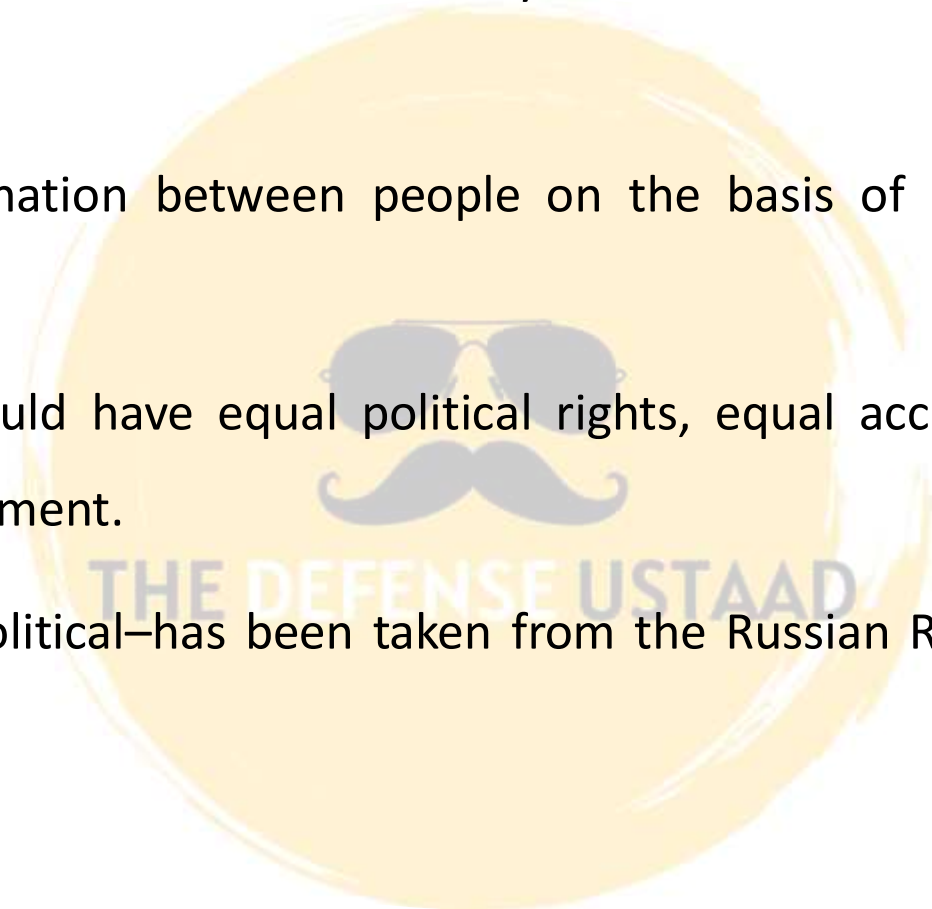
# Key Words In The Preamble - Republic

- A democratic polity can be classified into two categories– monarchy and republic. In a monarchy, the head of the state (usually king or queen) enjoys a hereditary position, that is, he comes into office through succession, e.g., Britain. In a republic, on the other hand, the head of the state is always elected directly or indirectly for a fixed period, e.g., USA.
- The term 'republic' in our Preamble indicates that India has an elected head called the president. He is elected indirectly for a fixed period of five years.



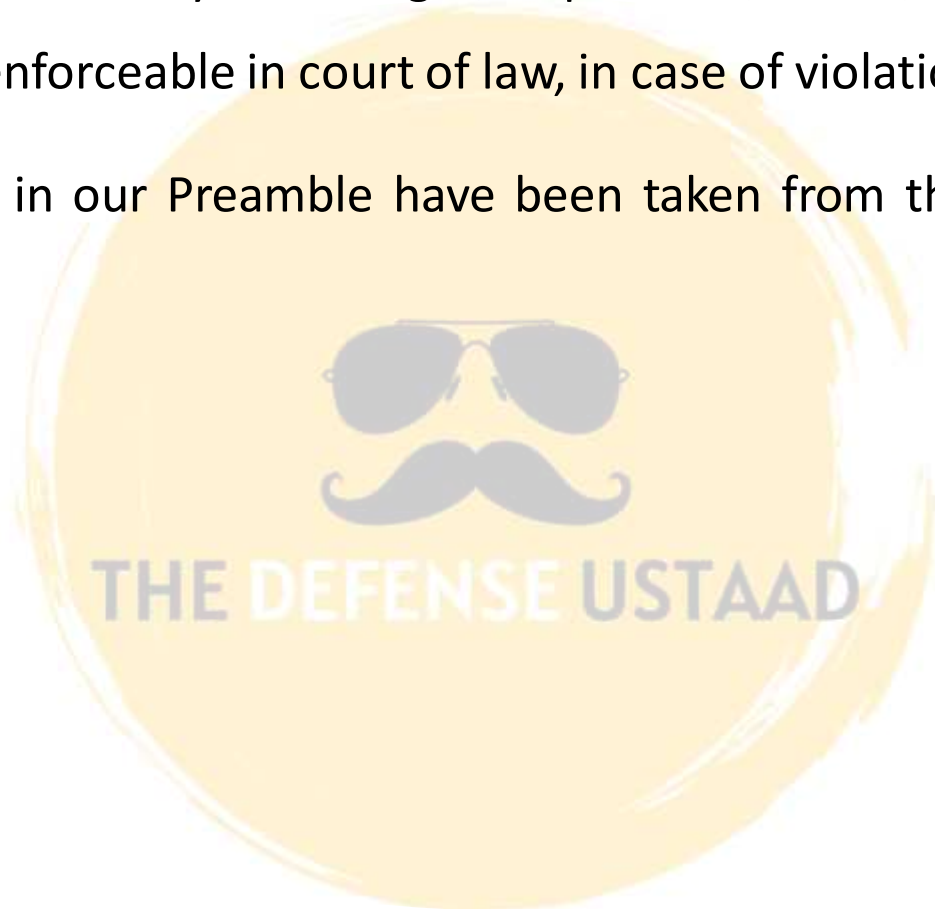
# Key Words In The Preamble - Justice

- The term 'justice' in the Preamble embraces three distinct forms— social, economic and political, secured through various provisions of Fundamental Rights and Directive Principles.
- Social justice denotes the equal treatment of all citizens without any social distinction based on caste, colour, race, religion, sex and so on.
- Economic justice denotes the non-discrimination between people on the basis of economic factors.
- Political justice implies that all citizens should have equal political rights, equal access to all political offices and equal voice in the government.
- The ideal of justice—social, economic and political—has been taken from the Russian Revolution (1917).



# Key Words In The Preamble - Liberty

- The term 'liberty' means the absence of restraints on the activities of individuals, and at the same time, providing opportunities for the development of individual personalities.
- The Preamble secures to all citizens of India liberty of thought, expression, belief, faith and worship, through their Fundamental Rights, enforceable in court of law, in case of violation.
- The ideals of liberty, equality and fraternity in our Preamble have been taken from the French Revolution (1789–1799).



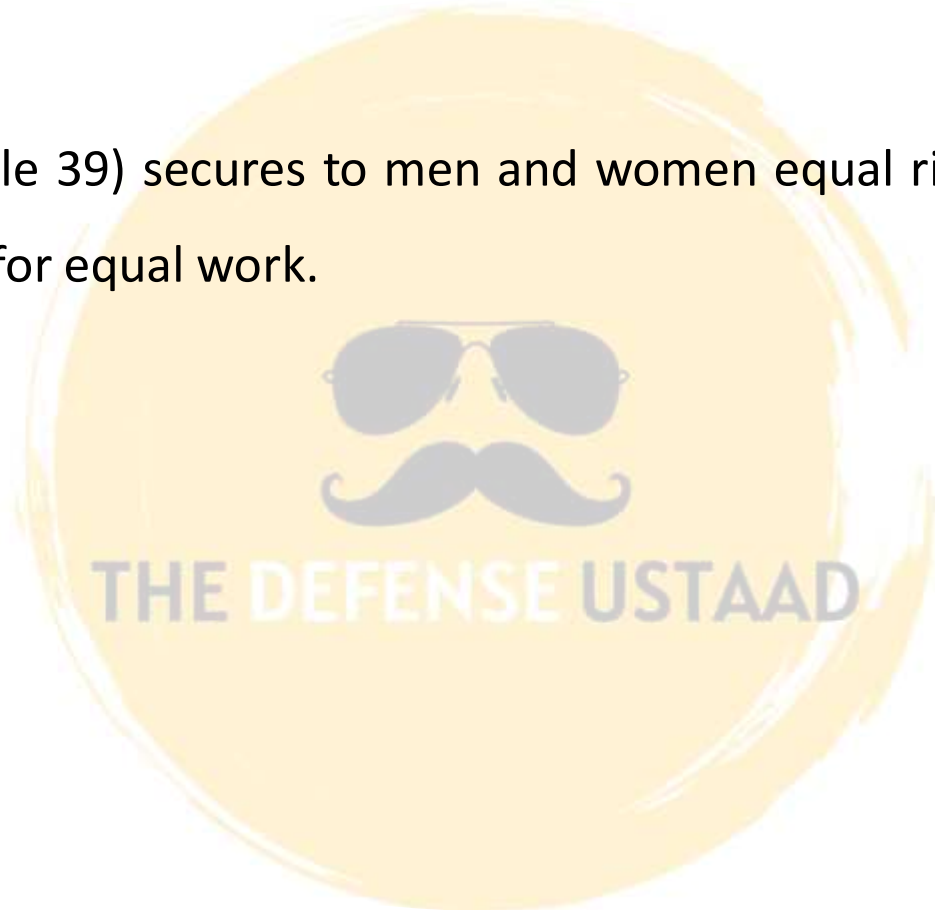
# Key Words In The Preamble - Equality

- The term 'equality' means the absence of special privileges to any section of the society, and the provision of adequate opportunities for all individuals without any discrimination.
- This provision embraces three dimensions of equality—civic, political and economic.
- The following provisions of the chapter on Fundamental Rights ensure civic equality:
  - (a) Equality before the law (Article 14).
  - (b) Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth (Article 15).
  - (c) Equality of opportunity in matters of public employment (Article 16).
  - (d) Abolition of untouchability (Article 17).
  - (e) Abolition of titles (Article 18).



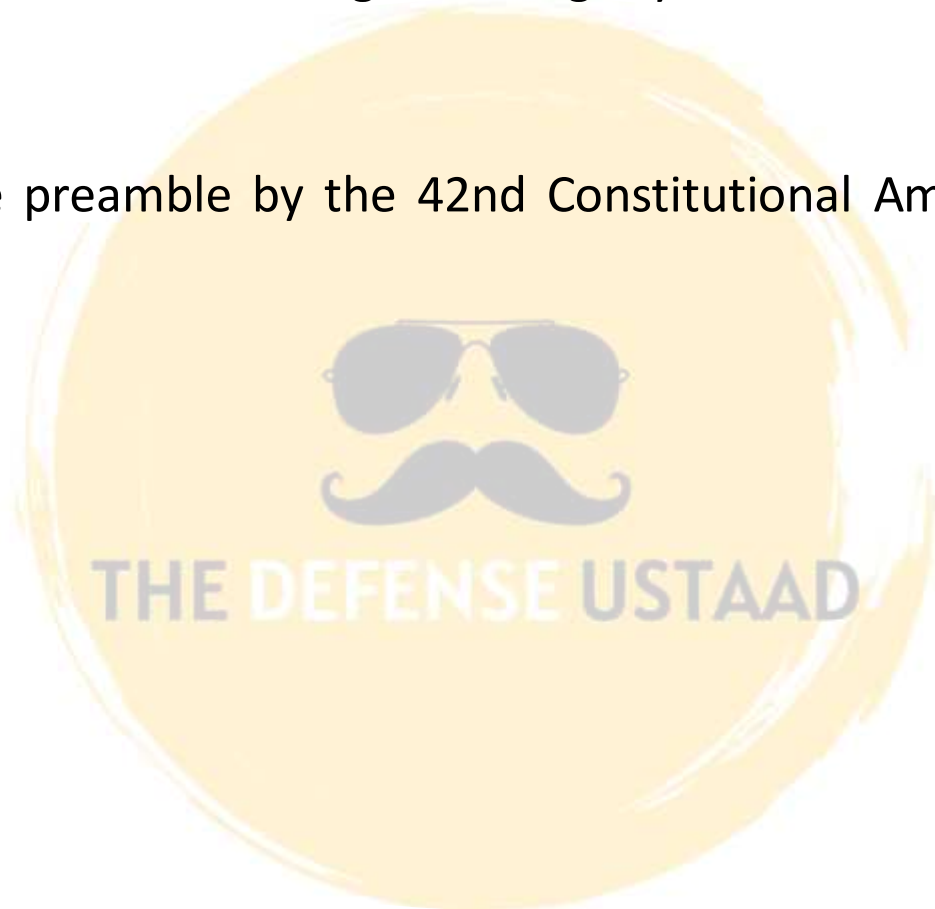
# Key Words In The Preamble - Equality

- There are two provisions in the Constitution that seek to achieve political equality. One, no person is to be declared ineligible for inclusion in electoral rolls on grounds of religion, race, caste or sex (Article 325). Two, elections to the Lok Sabha and the state assemblies to be on the basis of adult suffrage (Article 326).
- The Directive Principles of State Policy (Article 39) secures to men and women equal right to an adequate means of livelihood and equal pay for equal work.



# Key Words In The Preamble - Fraternity

- Fraternity means a sense of brotherhood. The Constitution promotes this feeling of fraternity by the system of single citizenship.
- The Preamble declares that fraternity has to assure two things– the dignity of the individual and the unity and integrity of the nation.
- The word 'integrity' has been added to the preamble by the 42nd Constitutional Amendment (1976).



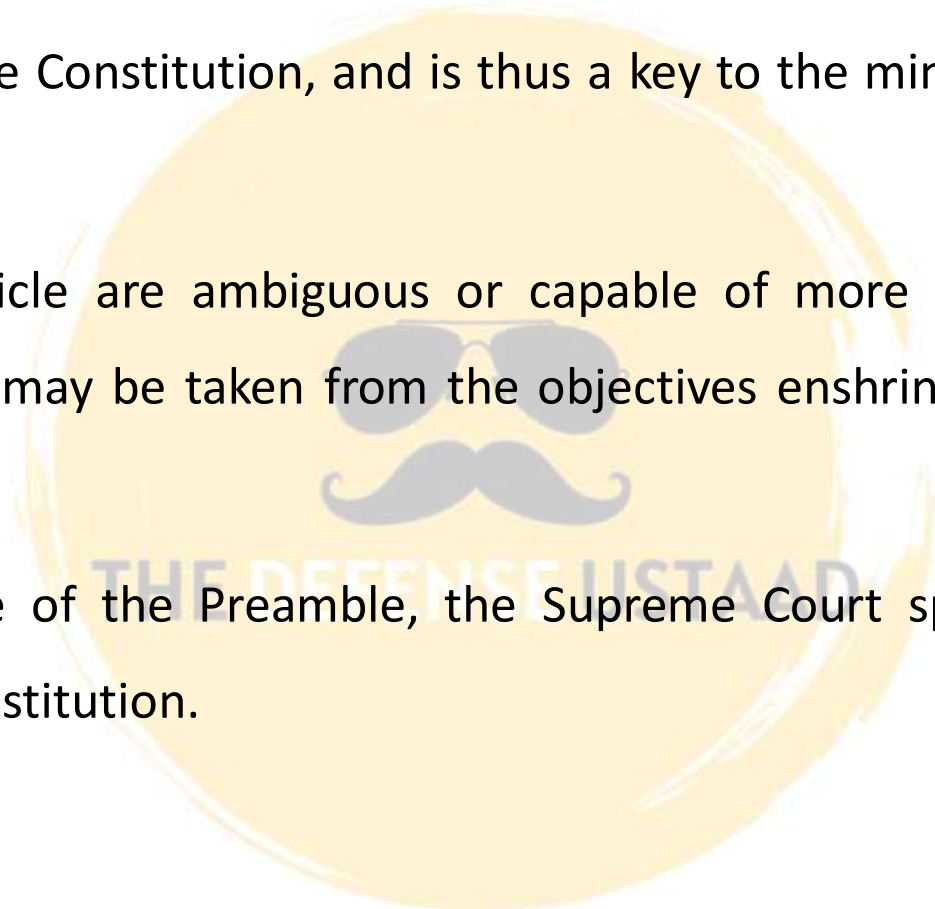
# Significance Of The Preamble

- In the words of Sir Alladi Krishnaswami Iyer, a member of the Constituent Assembly who played a significant role in making the Constitution, 'The Preamble to our Constitution expresses what we had thought or dreamt so long'.
- According to K.M. Munshi, a member of the Drafting Committee of the Constituent Assembly, the Preamble is the 'horoscope of our sovereign democratic republic'.
- Pandit Thakur Das Bhargava, another member of the Constituent Assembly, summed up the importance of the Preamble in the following words: 'The Preamble is the most precious part of the Constitution. It is the soul of the Constitution. It is a key to the Constitution. It is a jewel set in the Constitution. It is a proper yardstick with which one can measure the worth of the Constitution'.



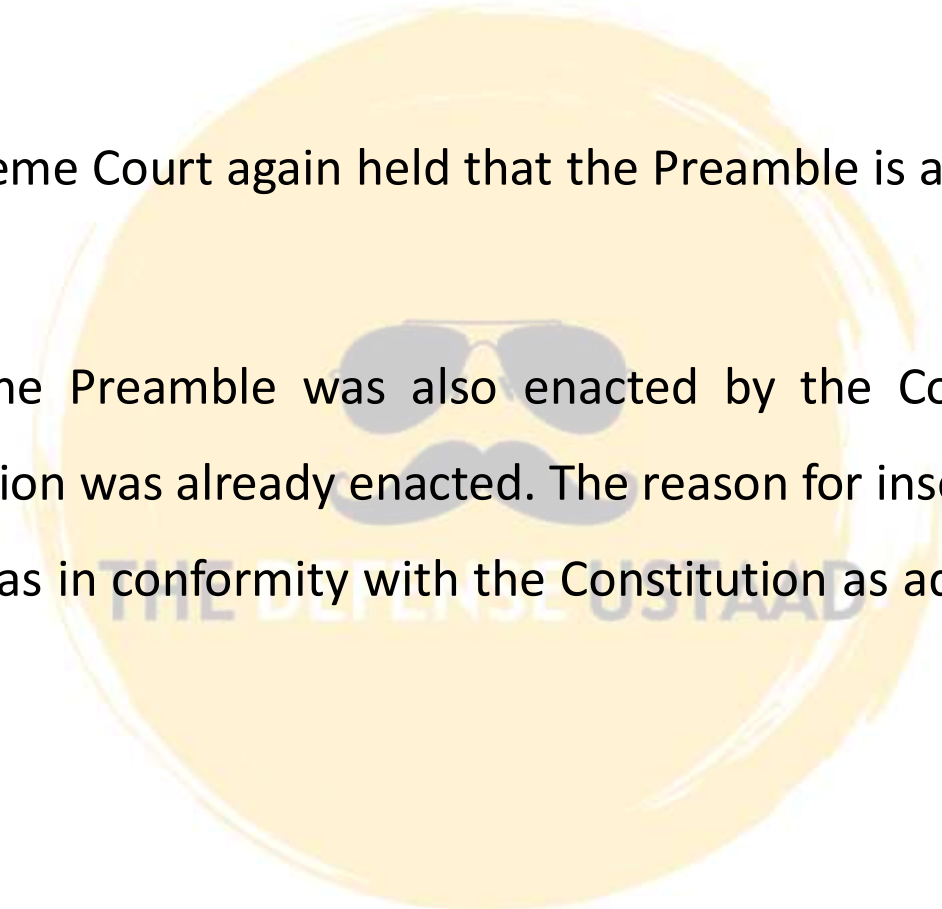
# Preamble As Part Of The Constitution

- One of the controversies about the Preamble is as to whether it is a part of the Constitution or not.
- In the Berubari Union case (1960), the Supreme Court said that the Preamble shows the general purposes behind the several provisions in the Constitution, and is thus a key to the minds of the makers of the Constitution.
- Further, where the terms used in any article are ambiguous or capable of more than one meaning, some assistance at interpretation may be taken from the objectives enshrined in the Preamble.
- Despite this recognition of the significance of the Preamble, the Supreme Court specifically opined that Preamble is not a part of the Constitution.



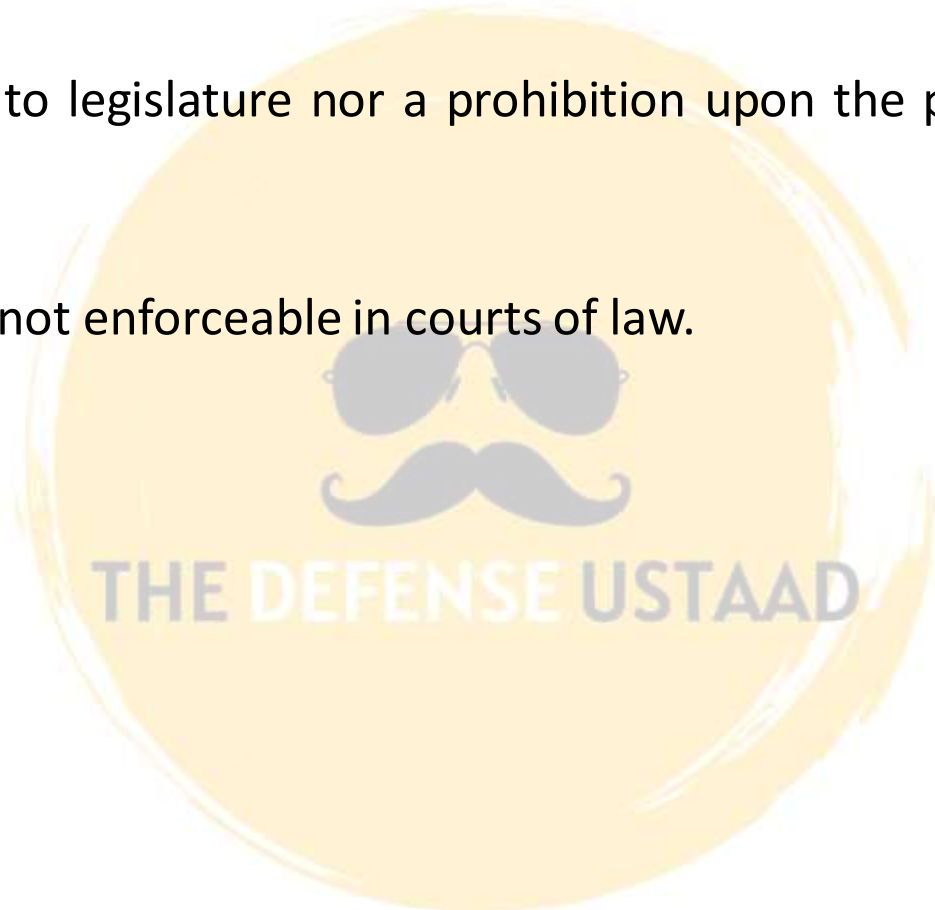
# Preamble As Part Of The Constitution

- In the Kesavananda Bharati case (1973), the Supreme Court rejected the earlier opinion and held that Preamble is a part of the Constitution. It observed that the Preamble is of extreme importance and the Constitution should be read and interpreted in the light of the grand and noble vision expressed in the Preamble.
- In the LIC of India case (1995) also, the Supreme Court again held that the Preamble is an integral part of the Constitution.
- Like any other part of the Constitution, the Preamble was also enacted by the Constituent Assembly; but, after the rest of the Constitution was already enacted. The reason for inserting the Preamble at the end was to ensure that it was in conformity with the Constitution as adopted by the Constituent Assembly.



# Preamble As Part Of The Constitution

- Hence, the current opinion held by the Supreme Court that the Preamble is a part of the Constitution, is in consonance with the opinion of the founding fathers of the Constitution.
- However, two things should be noted:
  1. The Preamble is neither a source of power to legislature nor a prohibition upon the powers of legislature.
  2. It is non-justiciable, that is, its provisions are not enforceable in courts of law.



# Amenability Of The Preamble

- The question as to whether the Preamble can be amended under Article 368 of the Constitution arose for the first time in the historic Kesavananda Bharati case (1973).
- It was urged that the Preamble cannot be amended as it is not a part of the Constitution. The petitioner contended that the amending power in Article 368 cannot be used to destroy or damage the basic elements or the fundamental features of the Constitution, which are enshrined in the Preamble.
- The Supreme Court, however, held that the Preamble is a part of the Constitution. The Court stated that the opinion tendered by it in the Berubari Union (1960) in this regard was wrong, and held that the Preamble can be amended, subject to the condition that no amendment is done to the 'basic features'.

# Amenability Of The Preamble

- In other words, the Court held that the basic elements or the fundamental features of the Constitution as contained in the Preamble cannot be altered by an amendment under Article 368.
- The Preamble has been amended only once so far, in 1976, by the 42nd Constitutional Amendment Act, which has added three new words—Socialist, Secular and Integrity—to the Preamble. This amendment was held to be valid.

