

CONSTITUTION OF INDIA



**Justice M. S. Sonak
High Court of Bombay**

Constitution

A constitution is the set of the most important rules and common understandings in any given country that regulate the relations among that country's governing institutions and also the relationship between those governing institutions and the people of that country.

- **A King**

Originally an English transplant with Anglo - Saxon roots, the legal system in India has grown over the years, nourished in Indian soil: what was intended to be an English oak has turned into a large, sprawling Indian Banyan, whose serial roots have descended to the ground to become new trunks.

- **Fali S Nariman**

What is the constitution

- A living organ, not a fossil
- Source of legislation, not a product
- A fundamental norm
- Touchstone with which to test other laws
- Documents aspirations, social values, commitments
- Political philosophy, path to future
- Stable yet flexible





**17th July 1945
to
2nd August 1945**

Potsdam Conference

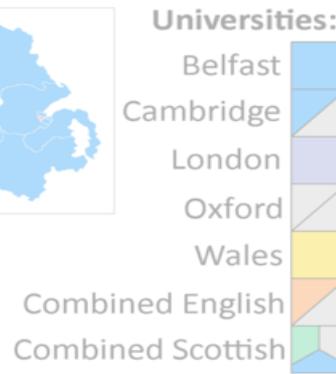
5th July 1945

1945 U K Election

To

26th July 1945

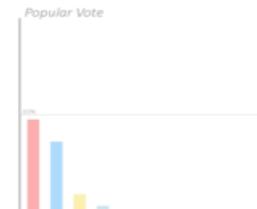
1945 General Election



Clement Atlee, Labour PM 1945 - 1951



Winston Churchill, Conservative PM 1940 - 1945; 1951 - 1955



6th Aug 1945 : Hiroshima

9th Aug 1945 : Nagasaki

15th Aug 1945 : World War II ends



Clement Atlee - Election promise to grant independence to colonies



Aug 1945: Lord Wavell, Viceroy of India submits report to British Cabinet

- ❖ Britain ravaged by War, militarily and economically weak
- ❖ Differences between Muslim League and Congress
- ❖ Difficult to maintain Law and Order

March 1946

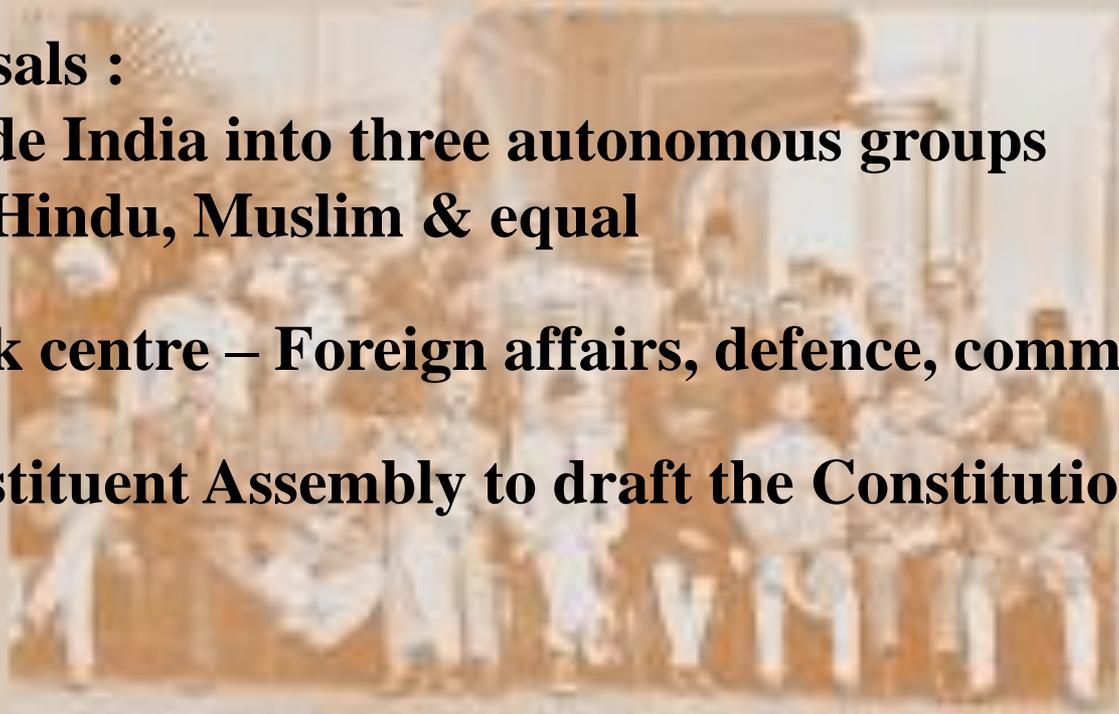
- **Cabinet Mission Plan (CMP)**
- **Cripps, P. Lawrence & Alexander**

1946 Cabinet Mission to India

16th May 1946

Proposals :

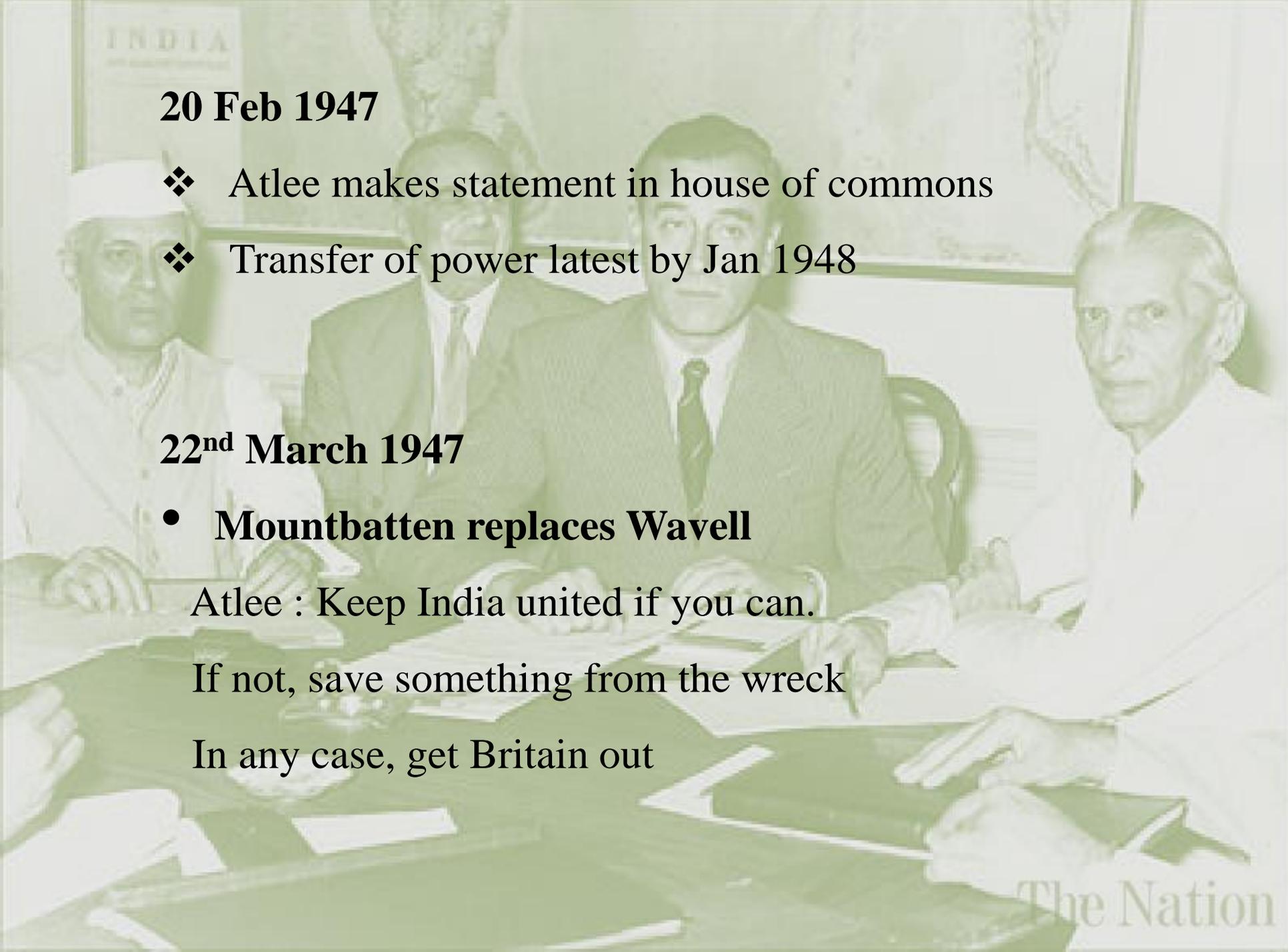
- **Divide India into three autonomous groups**
 - **Hindu, Muslim & equal**
- **Weak centre – Foreign affairs, defence, communications**
- **Constituent Assembly to draft the Constitution.**



29th July 1946

- Constituent Assembly meets for the first time (preliminary)
- Muslim League boycotts
- 217 members elected through the provincial legislatures
- 6th Schedule to Government of India Act
- No universal adult franchise
- 28.5% of population eligible to vote
- Matriculates, Taxpayers and landed property owners

- ❖ Differences between Muslim league and Congress over partition
- ❖ Demand for an independent Pakistan
- ❖ 31 Jan 1947 Jinnah issues ultimatum



20 Feb 1947

- ❖ Atlee makes statement in house of commons
- ❖ Transfer of power latest by Jan 1948

22nd March 1947

- **Mountbatten replaces Wavell**

Atlee : Keep India united if you can.

If not, save something from the wreck

In any case, get Britain out

3rd June 1947

❖ **Mountbatten plan**

- **Partition of India**
- **Independence by 15th August 1947.**



Indian Independence Act

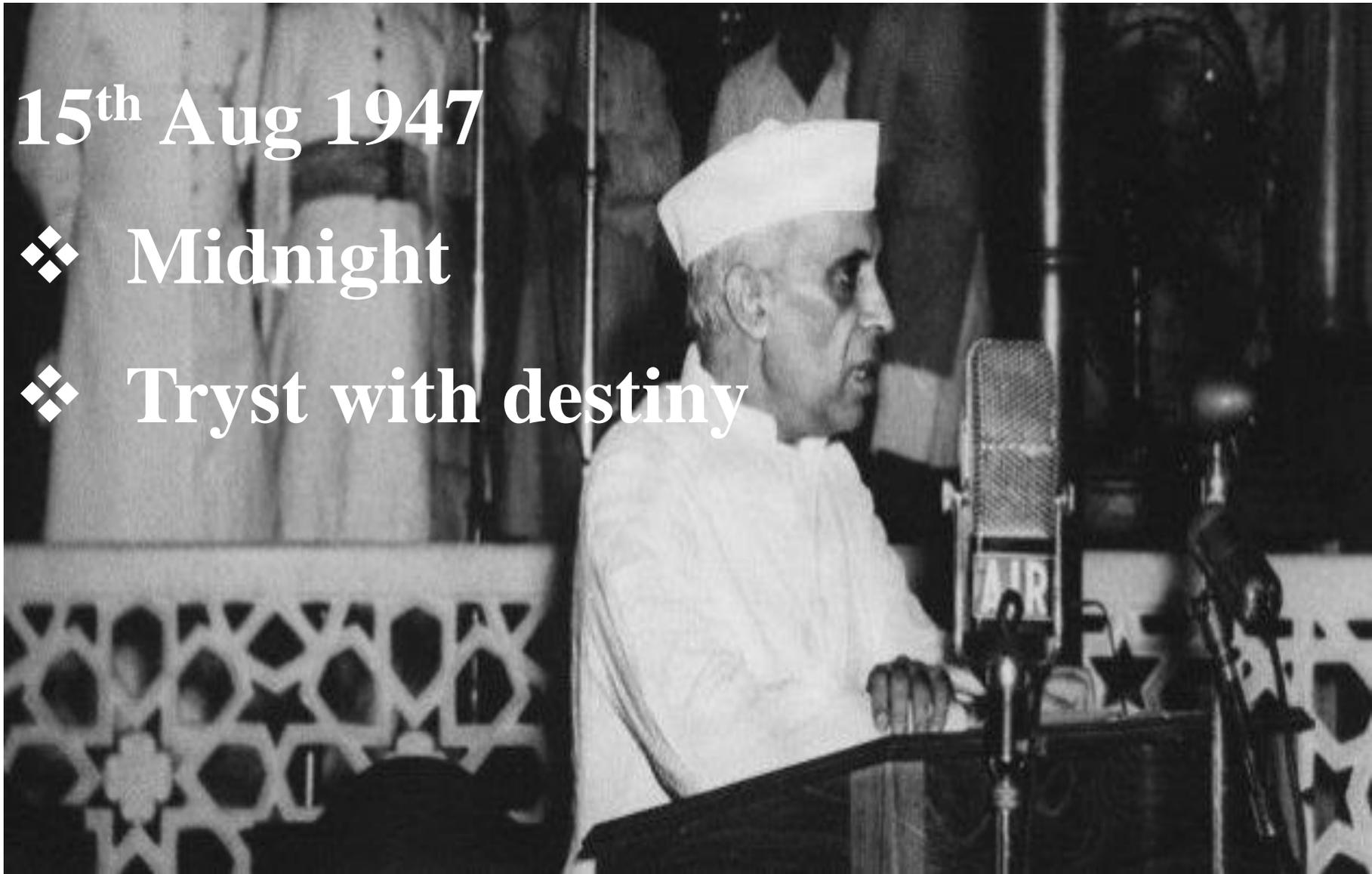
- ❖ Two independent States from 15th August 1947
- ❖ Partition of Bengal and Punjab
- ❖ Two separate Constituent Assemblies, which shall become the legislatures of the two independent Nations
- ❖ This marked the end of British Rule on Indian subcontinent and birth of two sovereign Nations – India and Pakistan.



15th Aug 1947

❖ Midnight

❖ Tryst with destiny



October 1947: Draft Constitution prepared by Dr B N Rau Reddy



Feb 1948: Draft Constitution approved by Dr B R Ambedkar committee

Oct 1948 to Oct 1949: For 11 months CA in session

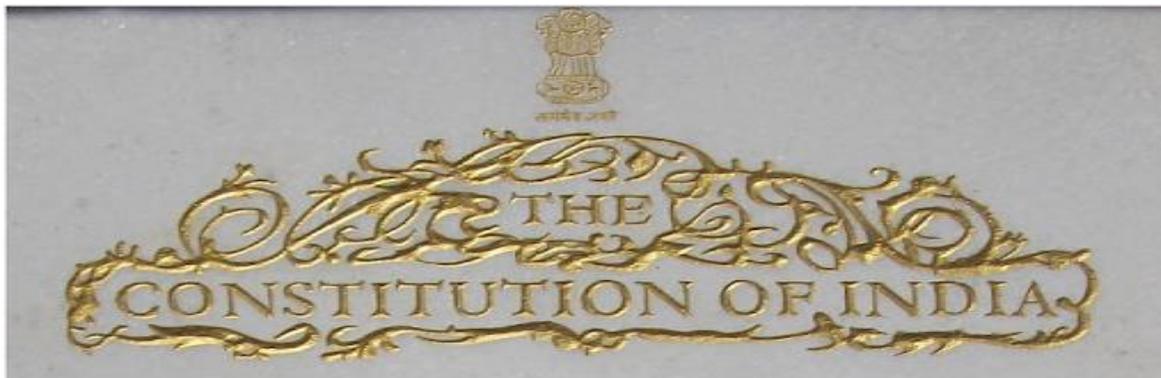
Clause by clause consideration of Draft Constitution

- **No separate electorate for minorities**
- **Special protection of SC/ST**
- **Distribution of power between Centre and State**
- **Draft revised Constitution – 395 Articles and 8 Schedules**



Constituent Assembly :

- Statesmen and visionaries
- Conscious that they were representing hardly 28.5% of the population
- Constitution has to reflect best in the **past** traditions of the nation
- Constitution has to provide considered response to the needs of the **present**
- Constitution has to possess enough resilience to cope with demands of the **future**





No generation can claim monopoly over wisdom or put fetters on future generations.

“Each generation must be considered as a distinct nation, with a right of the will of the majority to bind themselves, but none to bind the succeeding generations more than the inhabitants of another country”.

-Jefferson



A Constitution states, or ought to state, not the rules of passing hour, but the principles for an expanding future.

- Chief Justice John Marshall

**MAGNA
CARTA**

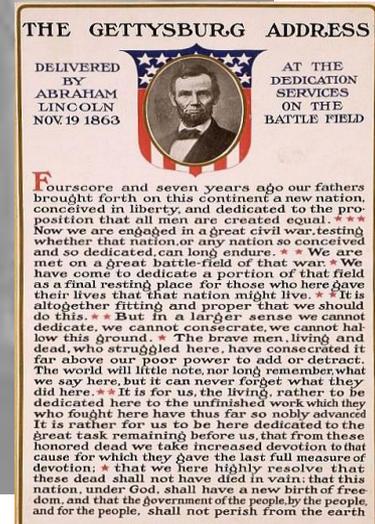
The Foundation of Freedom
1215-2015



- Constitution represents the will of the people
- The real sovereign in a democracy is the people
- Democracy is nothing but the government by the consent of the people

Democracy is government of the people, by the people and for the people.

- Abraham Lincoln



- ❖ People have inalienable rights.
- ❖ However, in order that such rights can be effectively enjoyed, there is necessity of some form of government, which not only recognizes such rights, but, if need be, enforces such rights.
- ❖ Order without liberty and liberty without order are mutually destructive - Ted Roosevelt
- ❖ Freedom without boundaries is like river without banks.

Impact of

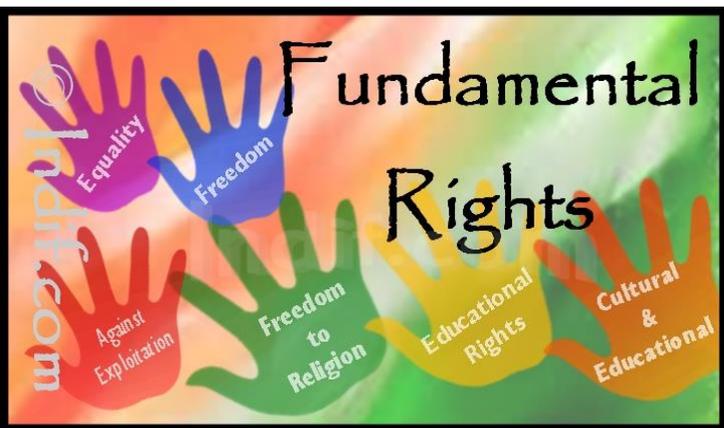
- **Great traditions of this great nation**
- **National freedom struggle**
- **Social and economic divisions**
- **Magna Carta : 1215**
- **French revolution: 1789 – 1799**
- **U S Constitution : 1787**
- **Bill of rights: 1791**
- **Montesquieu theory of separation of powers :**

Impacts of

- **British North America Act, 1861 (Canada)**
- **The Commonwealths of Australia Act, 1900**
- **Government of India Act, 1935**
- **Constitution of Free State of Ireland**
- **Constitution of Japan**

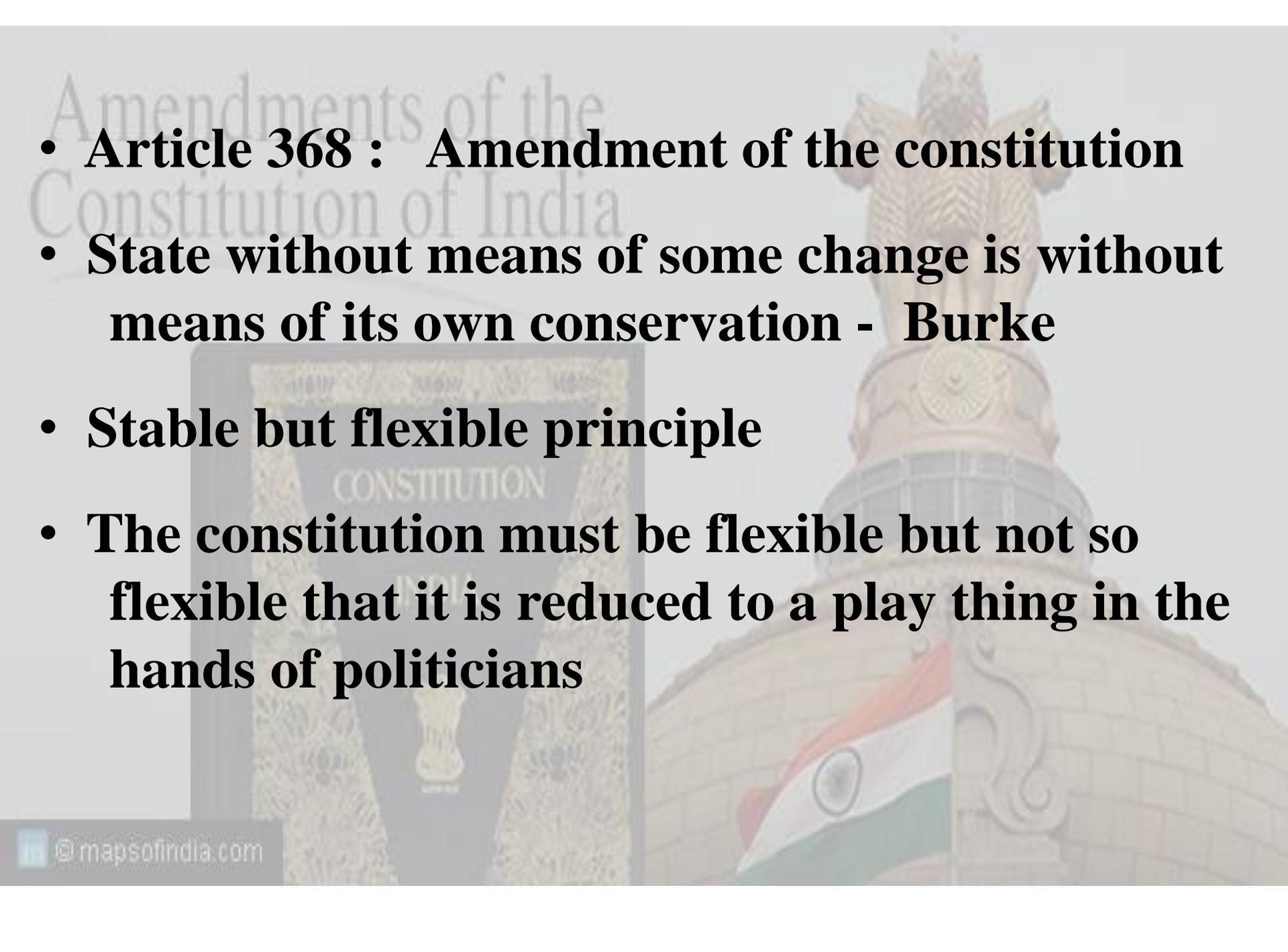
- ❖ **Part III Fundamental rights**
- ❖ **Part IV Directive Principles of State Policy**
- ❖ **Delicate balance between idealism (Part IV) and practicalities (Part III)**

FUNDAMENTAL RIGHTS & DIRECTIVE PRINCIPLES OF STATE POLICY



 Directive principles of state policy in India



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- **Article 368 : Amendment of the constitution**
 - **State without means of some change is without means of its own conservation - Burke**
 - **Stable but flexible principle**
 - **The constitution must be flexible but not so flexible that it is reduced to a play thing in the hands of politicians**

Liberty means responsibilities.

That is why most men dread it.

- G B Shaw

