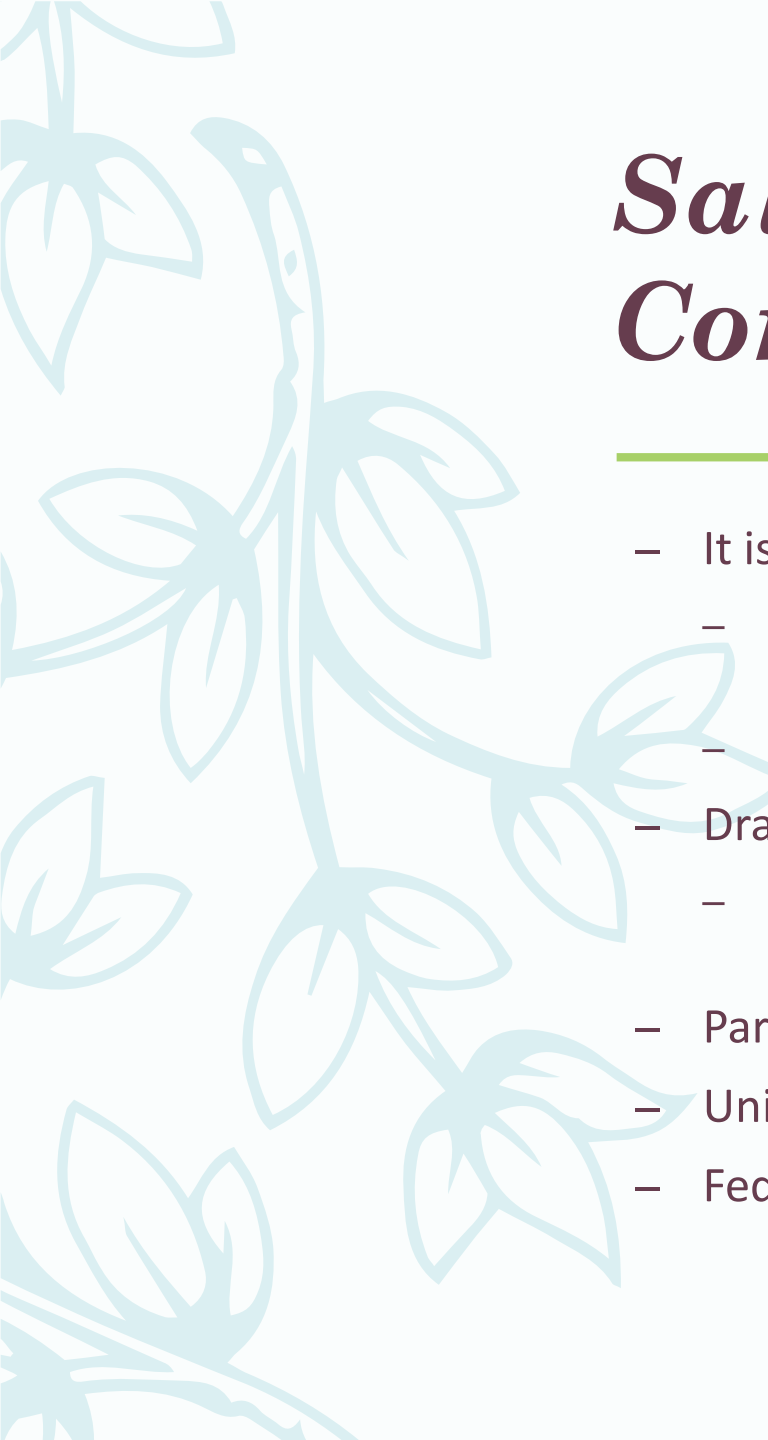





Features of the Indian Constitution

Presented by,
Devjyoti Das



Salient Features of the Constitution

- It is the lengthiest written constitution.
 - Originally (in 1949), it contained a Preamble, 395 Articles (divided into 22 parts) and 8 schedules.
 - Presently, it has about 470 articles, divided into 25 parts and 12 schedules
- Drawn from various sources
 - It derives inspiration from the Constitution of USA, Ireland, Germany, South Africa, Australia, USSR, France and United Kingdom
- Parliamentary form of government
- Unique blend of flexibility and rigidity
- Federal System with Unitary Bias



Salient Features of the Constitution

- Integrated and independent judiciary
 - Supreme court is a federal court, the highest court of appeal, guarantee of fundamental rights of the citizens and the guardian of the constitution.
- Fundamental Rights
- Fundamental Duties
- Directive Principles of State Policy
- A secular state
- Universal Adult Franchise
- Single Citizenship
- Emergency Provisions

Sources

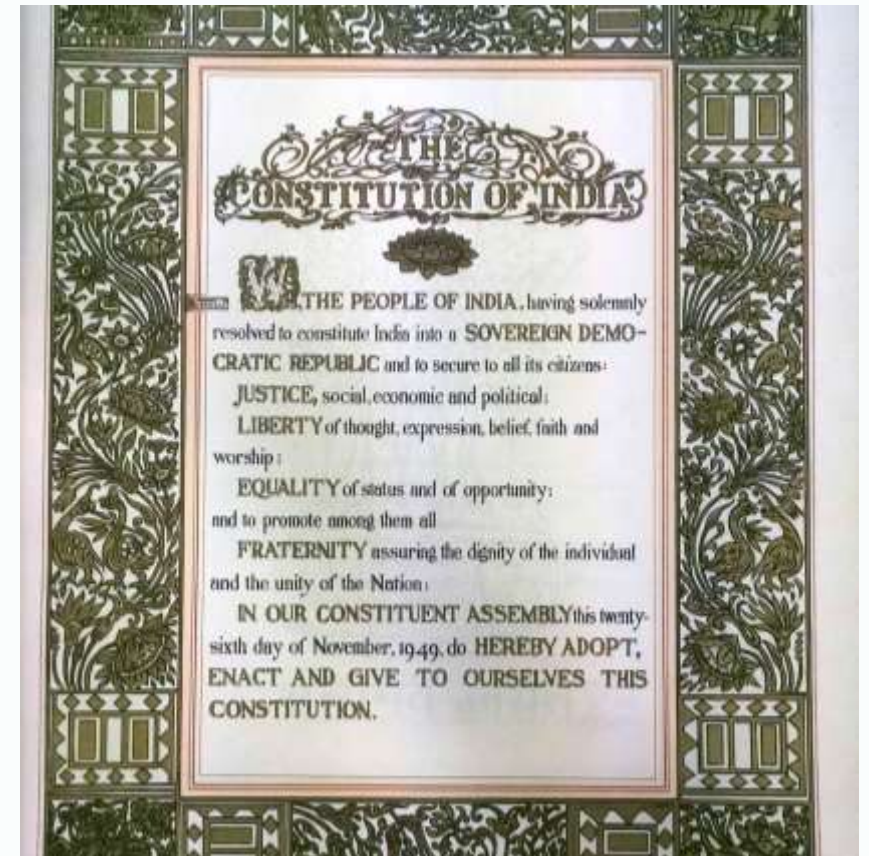
Sources	Features borrowed
Government of India Act, 1935	<ul style="list-style-type: none">• Federal System (More than one level of government)• Office of the Governor• Emergency Provisions• Public Service Commission
British Constitution	<ul style="list-style-type: none">• Parliamentary form of government.• Single Citizenship• Cabinet System• Bicameralism
US Constitution	<ul style="list-style-type: none">• Fundamental Rights• Independence of judiciary• Post of Vice President

Sources

Sources	Features borrowed
Irish Constitution	<ul style="list-style-type: none">• DPSP (Irish borrowed it from Spanish Constitution)• Method of electing President• Nominating members in the upper house (Rajya Sabha)
Canadian Constitution	<ul style="list-style-type: none">• Quasi- Federal form of government
Australian Constitution	<ul style="list-style-type: none">• Concurrent List
Former USSR	<ul style="list-style-type: none">• Fundamental Duties• Five Year Plans
Weimar Constitution of Germany	<ul style="list-style-type: none">• Suspension of Fundamental rights during Emergency
South African Constitution	<ul style="list-style-type: none">• Procedure of election of Rajya Sabha• Procedure of amendment of the constitution
French Constitution	<ul style="list-style-type: none">• Republic• Ideals of Liberty, Equality and Fraternity.

Preamble

- It means introduction or preface of a statute book.
- It is called the gist or summary.
- Constitution framers took the idea of Preamble from the **American Constitution**. It is the first constitution with a Preamble.
- It is based on the **Objective Resolution** of Nehru and was adopted by the constituent assembly on 13th December 1946.
- It contains summary or essence of the constitution.
- It is an integral part of Constitution
- Preamble is not enforceable by law (i.e. not justiciable)



The Preamble in its present form reads:

“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 26th day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.”

Keywords of the Preamble

- **Sovereign:**

- The word 'Sovereign' implies that India is neither a dependency nor a dominion of any other nation, but an independent state.
- Being a sovereign state, India can either acquire a foreign territory or cede a part of its territory in favour of a foreign state.

- **Socialist**

- Indian brand of socialism is a democratic socialism and not a communistic socialism.
- Democratic socialism holds faith in mixed economy where both public and private companies co-exist.
- The new economic policy (1991) of liberalisation, privatisation and globalisation has diluted the socialist credential of the Indian State.
- The term was added in the **42nd Amendment** in **1976**.

Keywords of the Preamble

- **Secular**

- The term was added in the **42nd Amendment** in **1976**.
- All religion in our country (irrespective of their strength) have the same status and support from the state.

- **Democratic**

- A democratic polity, as stipulated in the Preamble, is based on the doctrine of popular sovereignty, that is, possession of supreme power by the people.
- Universal adult franchise, periodic elections, rule of law, independence of judiciary, and absence of discrimination on certain grounds are the manifestations of the democratic character of the Indian polity.

- **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, eg, Britain. In a republic, on the other hand, the head of the state is always elected directly or indirectly for a fixed period, eg, USA, India.

Keywords of 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. It involves the elimination of glaring in-equalities in wealth, income and property. A combination of social justice and economic justice denotes what is known as ‘distributive justice’.
- 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).



Keywords of 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).

Keywords of the Preamble

- **Fraternity**

- Fraternity means a sense of brotherhood.
- The Constitution promotes this feeling of fraternity by the system of single citizenship.
- The Fundamental Duties (Article 51-A) say that it shall be the duty of every citizen of India to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic, regional or sectional diversities.



Criticism of the Constituent Assembly

- *Not a Representative Body*
- *Not a Sovereign Body*
- *Time Consuming*
- *Dominated by Congress*
- *Lawyer-Politician Domination*
- *Dominated by Hindus*

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.
- There were 2 landmark cases which contests the fact whether preamble is a part of the constitution or not.

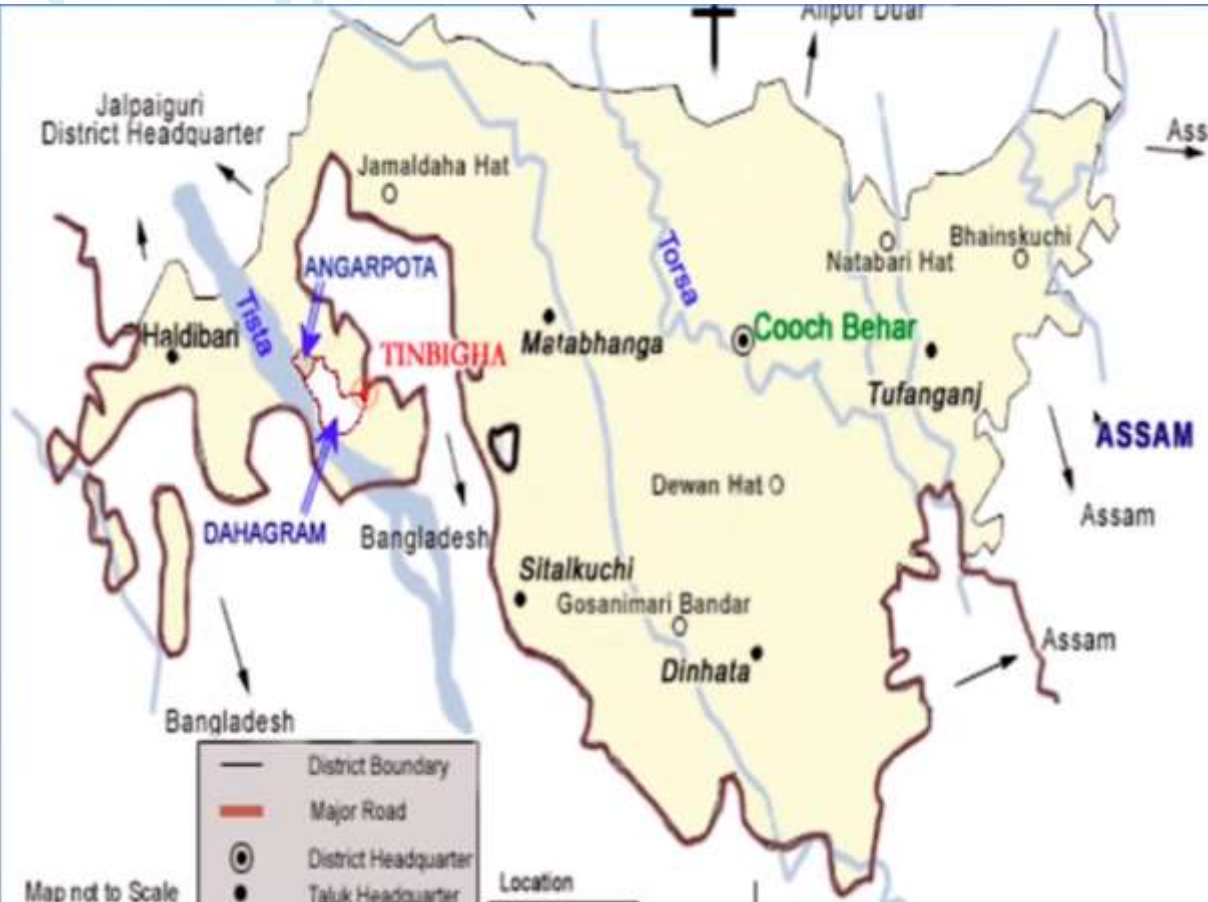
1. Berubari Union Case (1960)

- *In this case, the Supreme Court specifically opined that Preamble is not a part of the Constitution.*

2. Kesavanand Bharati Case vs The State of Kerala (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.*

Berubari Union Case



- Small group of villages in Jalpaiguri, falls under 2 thanas Jalpaiguri and Boda
- Radcliffe merged Berubari in India, but omitted Thana Boda.
- Pakistan claimed it in 1948. Bagge Tribunal was setup and awarded Berubari to be part of India. Pakistan didn't object
- In 1952, Pakistan again started claiming the territory
- CM of West Bengal Bidhan Chandra Roy got State assembly to pass a resolution against the illegal demand of Pakistan
- *"Amra Rakta debo, pran debo, Berubari debona"*
- Nehro- Noon Agreement: Berubari to be divided in to half. Enclave for Enclave exchange to be done to avoid territorial loss.

Berubari Union Case

- President asked whether the parliament of India has the power to give territory to other country. [Under article 143, President can consult with Supreme court for certain issues and ask for suggestion]
- Argument by Govt
 - No cession of land
 - Mere settling boundary disputes by exchanging land, hence no legislative intervention required.
- Arguments against Exchange
 - According to Preamble, Parliament has no power to alter the territory of India (refer term Unity)
 - Article 1(3)© talks about acquiring land, not ceding any territory
- Judgement was passed Preamble is not a part of Constitution
 - Article 368 gives power to amend the constitution, hence Article 1 can be amended by parliament.
 - Land can be ceded only to East Pakistan.

AMENABILITY OF THE PREAMBLE



- **Golaknath vs State of Punjab 1968**
 - Case: Validity of amendment of Punjab Land Security Act 1953.
 - Act said a person can acquire upto 30 acres land. Golaknath brothers had 500 acres land.
 - Under Article 32, the petitioners challenged the amendment of the constitution
 - Constitutional bench: 11 judges to decide whether fundamental rights can be amended or not.

AMENABILITY OF THE PREAMBLE

**PUNJAB SECURITY
AND LAND TENURES
ACT, 1953**



– **Golaknath vs State of Punjab 1968**

- 9th Schedule cannot be challenged in any court of law. Golaknath Brothers didn't think it is legal and challenged their fundamental right.
- Bench pronounced (6:5 majority) that the Fundamental Rights are given as god like status in the Indian constitution and cannot be amended by the parliament.
- Even during emergency, Fundamental rights cannot be suspended except those which are specifically announced by the President of India.
- Parliament can amend constitution under Article 368 without affecting the ambit of Fundamental Rights

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.
- There are certain principles within Indian constitution which are inviolable, hence cannot be amended- **Basic Structure**
- **Article 368:**
 1. *Notwithstanding anything in this Constitution, Parliament may in exercise of its constituent power amend by way of addition, variation or repeal any provision of this Constitution in accordance with the procedure laid down in this article*
 2. *An amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of that House present and voting, it shall be presented to the President who shall give his assent to the Bill and thereupon the Constitution shall stand amended in accordance with the terms of the Bill*

KESAVANADA BHARATI CASE



- Article 26: Religious Freedom- to own and acquire moveable and immovable property
- Kerala Land Reform Act 1963: Consolidate all unacquired land and distribute among poor
- Kasaragod Edneer Math: Appoint Kesavanand Bharati as head seer.
- Surplus land weres acquired by Govt from the Math.
- Petitioner said Article 26 has been breached, along with Article 19 (Right to Property)

SWAMI KESAVANANDA'S CONTENTIONS→



Parliament has only limited power to amend the Constitution of India.

ST. OF KERALA'S CONTENTIONS→



Parliament has absolute and unlimited power to amend the Constitution of India.

Parliament must have unlimited power to fulfill the directions given in the Preamble and DPSPs of Indian Constitution.

KESAVANANDA BHARATI CASE

- A 13 judge bench was set up by the Supreme Court, the biggest so far and the case was heard for 68 working days spread over 6 months.
- Kesavananda Bharati lost the case 7:6.
- This case made Constitution more strong, as the structure of the constitution cannot be changed, but Fundamental Rights can be changed if it doesn't change the structure of the constitution.



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