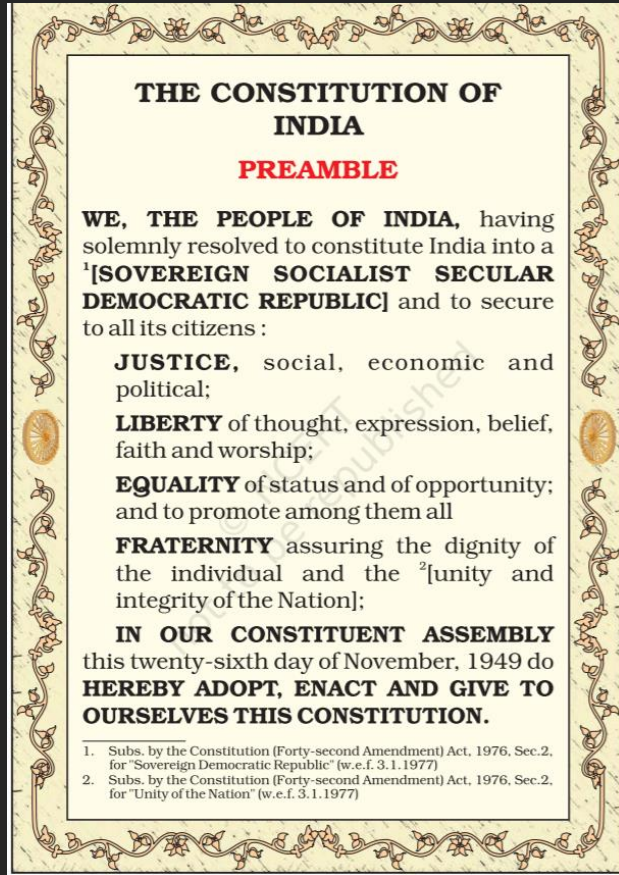




Preamble

Preamble of the Indian Constitution



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What functions does the Indian preamble perform

(1) IT CONTAINS THE ENACTING CLAUSE WHICH BRINGS THE CONSTITUTION INTO FORCE.
INFORMS ABOUT DATE OF ADOPTION

(2) IT DECLARES THE RIGHTS AND FREEDOMS WHICH THE PEOPLE OF INDIA INTENDED TO
SECURE TO ALL ITS CITIZENS.

(3) IT DECLARES THE NATURE OF INDIAN STATE.

(4) LAYS DOWN OBJECTIVES OF INDIAN CONSTITUTION

(4) IT THROWS LIGHT ON THE SOURCE OF THE CONSTITUTION, VIZ. THE PEOPLE OF INDIA.

(5) HELPS IN INTERPRETATION OF THE CONSTITUTION

Can the preamble be amended?

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Can the preamble be amended?

SIKRI, C.J., has observed in *Kesavananda Bharati v. Union of India*

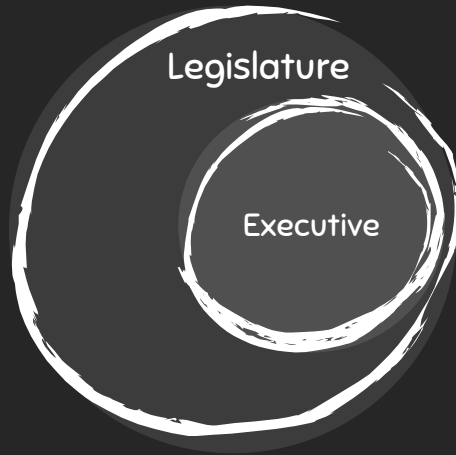
“It seems to me that the Preamble to our Constitution is of extreme importance and the Constitution should be read and interpreted in the light of the grand and noble vision expressed in the Preamble.”

Concept of separation of powers

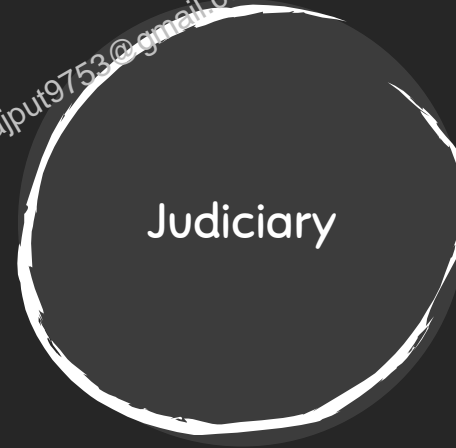
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Organization of State in india



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We the People of the United States,

in Order to form a more perfect Union,
establish Justice,
insure domestic Tranquility,
provide for the common defence,
promote the general Welfare,
and secure the Blessings of Liberty
to ourselves and our Posterity,
We ordain and establish
this Constitution
for the United States of America.

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America

The Constitution of Japan

Promulgated on November 3, 1946

Came into effect on May 3, 1947

We, the Japanese people, acting through our duly elected representatives in the National Diet, determined that we shall secure for ourselves and our posterity the fruits of peaceful cooperation with all nations and the blessings of liberty throughout this land, and resolved that never again shall we be visited with the horrors of war through the action of government, do proclaim that sovereign power resides with the people and do firmly establish this Constitution. Government is a sacred trust of the people, the authority for which is derived from the people, the powers of which are exercised by the representatives of the people, and the benefits of which are enjoyed by the people. This is a universal principle of mankind upon which this Constitution is founded. We reject and revoke all constitutions, laws, ordinances, and rescripts in conflict herewith.

We, the Japanese people, desire peace for all time and are deeply conscious of the high ideals controlling human relationship, and we have determined to preserve our security and existence, trusting in the justice and faith of the peace-loving peoples of the world. We desire to occupy an honored place in an international society striving for the preservation of peace, and the banishment of tyranny and slavery, oppression and intolerance for all time from the earth. We recognize that all peoples of the world have the right to live in peace, free from fear and want.

We believe that no nation is responsible to itself alone, but that laws of political morality are universal; and that obedience to such laws is incumbent upon all nations who would sustain their own sovereignty and justify their sovereign relationship with other nations.

We, the Japanese people, pledge our national honor to accomplish these high ideals and purposes with all our resources.

CONSTITUTION

Le Gouvernement de la République, conformément
à la loi constitutionnelle du 3 juin 1958, a proposé,

Le Peuple français a adopté,

Le Président de la République promulgue la loi
constitutionnelle dont la teneur suit :

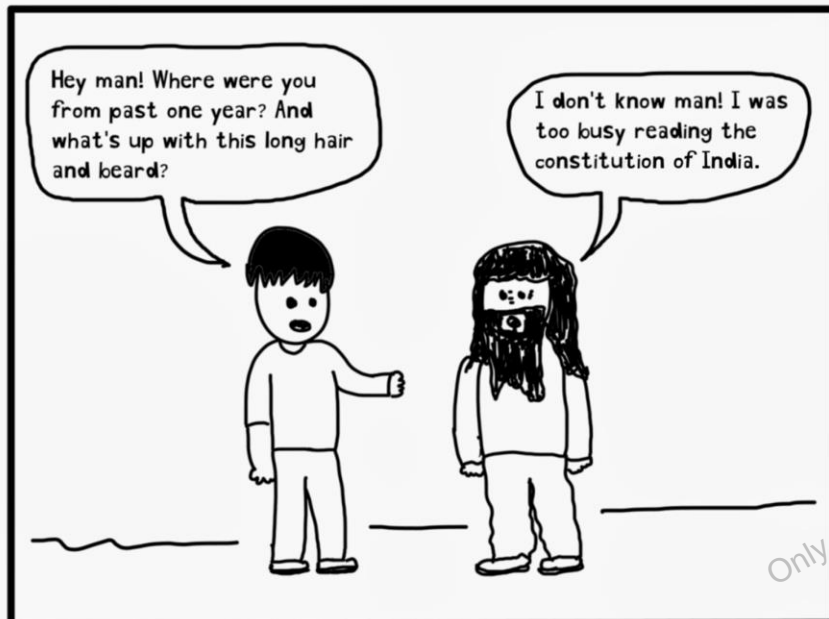
PRÉAMBULE

Le peuple français proclame solennellement son attachement aux Droits de l'homme et aux principes de la souveraineté nationale tels qu'ils ont été définis par la Déclaration de 1789, confirmée et complétée par le préambule de la Constitution de 1946.

En vertu de ces principes et de celui de la libre détermination des peuples, la République offre aux Territoires d'Outre-Mer qui manifestent la volonté d'y adhérer des institutions nouvelles fondées sur l'idéal commun de liberté, d'égalité et de fraternité et conçues en vue de leur évolution démocratique.

ARTICLE PREMIER. La République et les peuples des Territoires d'Outre-Mer qui, par un acte de libre détermination, adoptent la présente Constitution instituent une Communauté.

La Communauté est fondée sur l'égalité et la solidarité des peuples qui la composent.



India's Constitution is the longest in the world containing 444 articles in 22 parts, 12 schedules and 118 amendments, with 117,369 words in its English-language translation.

Q5. 'उद्देशिका (प्रस्तावना)' में शब्द 'गणराज्य' के साथ जुड़े प्रत्येक विशेषण पर चर्चा कीजिए । क्या वर्तमान परिस्थितियों में वे प्रतिरक्षणीय हैं ?

Discuss each adjective attached to the word 'Republic' in the 'Preamble'. Are they defensible in the present circumstances ?

12 $\frac{1}{2}$

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Which one of the following objectives is NOT embodied in the Preamble to the Constitution of India?

- (a) Liberty of thought
- (b) Economic liberty
- (c) Liberty of expression
- (d) Liberty of belief

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The mind of the makers of the Constitution of India is reflected in which of the following?

- (a) The Preamble
- (b) The Fundamental Rights
- (c) The Directive Principles of State Policy
- (d) The Fundamental Duties

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Which one of the following reflects the most appropriate relationship between law and liberty?

- (a) If there are more laws, there is less liberty.
- (b) If there are no laws, there is no liberty.
- (c) If there is liberty, laws have to be made by the people.
- (d) If laws are changed too often, liberty is in danger.

Which one of the following objectives is NOT embodied in the Preamble to the Constitution of India?

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- (c) The Directive Principles of State Policy
- (d) The Fundamental Duties

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MAJOR AMENDMENTS

1951: The 1st Amendment places reasonable curbs on free speech and created the 9th Schedule that protects laws from judicial scrutiny. In 2007, the SC ruled that if those laws violated the basic tenets of the Constitution then they can be struck down.

1956: The 7th Amendment paves the way for reorganisation of states along linguistic lines.

1960: The 8th Amendment extends the period of reservation of seats for SCs, STs and Anglo-Indians in Lok Sabha and state assemblies till 1970. Since then, it has been extended every decade. In 2006, the 93rd Amendment allows 27% quota for OBCs in govt and private educational institutions.

1961: After the 12th Amendment, the former Portuguese colonies of Goa, Daman and Diu become part of India. In 1975, the 35th and 36th Amendments made Sikkim a part of the Indian union.

1971: The 26th Amendment sees the abolition of privy-purse paid to former rulers of princely states.

1975: The 39th Amendment negates the judgment of Allahabad High Court invalidating then PM Indira Gandhi's election to parliament, which partly prompted the declaration of Emergency.

1976: The 42nd Amendment passed during Emergency curbs fundamental rights, imposes some fundamental duties and also adds the words 'secular' and 'socialist' to the Preamble

1977-78: The 43rd and 44th Amendments restore civil



liberties post-Emergency and remove the Right to Property from Fundamental Rights.

1985: The 52nd Amendment allows disqualification of lawmakers in case of defection from one party to another.

1988: The 61st Amendment lowers the voting age from 21 to 18.

1992: The 73rd and 74th Amendments provide for direct election in Panchayats and urban local bodies.

2002: The 86th Amendment provides for Right to Education till the age of 14 and early childhood care till the age of six.

2014: The 99th Amendment creates the National Judicial Appointment Commission. SC strikes it down in 2015.

Absolute majority

It refers to a majority of more than 50% of the total membership of the house. For example, as the total membership of Lok Sabha is 545, an absolute majority in Lok Sabha means – 50% of 545 plus 1, ie. 273.

Cases, where the absolute majority is used: In the normal business of the Parliament or State Legislature absolute majority, is not generally used. But this majority is used during the general election, for the formation of government at Center and States.

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Effective Majority

Effective Majority of the house means more than 50% of the effective strength of the house. This implies that out of the total strength, we deduct the vacant seats. When the Indian Constitution mentions “all the then members”, that refers to the effective majority.

Cases where the effective majority is used:

- **Removal of Vice-president in RS – Article 67(b).**
- **Removal of Speaker and Deputy Speaker of Lok Sabha and State Legislative Assembly.**

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Simple Majority

This refers to the majority of more than 50% of the members present and voting. This is also known as functional majority or working majority. The simple majority is the most frequently used form of majority in Parliamentary business.

Cases where the simple majority is used:

- **To pass Ordinary/Money/Financial bills.**
- **To pass Non-Confidence Motion/Adjournment Motion/Censure Motion/Confidence Motion.**
- **To declare a financial emergency.**
- **Election of Speaker/Deputy Speaker of Lok Sabha and State legislatures.**
- **Constitution Amendment Bill under Article 368 which needs to be ratified by states, require only simple majority at State Legislatures**

Process For Introducing Amendments to the Constitution

Step One:



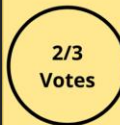
A Bill for the amendment introduced in either Rajya Sabha or Lok Sabha.



Step Two:



The Bill has to pass each house with a majority of the total membership of the respective houses



At least two-third of the members of each house who are present during the voting and are casting their votes.



Step Three:



The President gives final approval and then the Bill becomes an amendment to the Constitution.

Special majority as per article 368 requires a majority of 2/3rd members present and voting supported by more than 50% of the total strength of the house. This type of majority is used for most of the Constitutional amendment bills. To pass a constitution amendment bill in Rajya Sabha, in addition to getting the support of 123 members, the bill should be favoured by more than 2/3rd of the members present and voting.

Cases where special majority as per article 368 is used:

- **To pass a constitutional amendment bill which does not affect federalism.**
- **Removal of judges of SC/HC.**
- **Removal of CEC/CAG.**
- **Approval of national emergency requires special majority as per Article 368 in both houses.**
- **Resolution by the state legislature for the creation/abolition of Legislative Council (Article 169).**

Amendment procedure of the constitution of India .

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Amendment procedure of the constitution of India .

PART XX

AMENDMENT OF THE CONSTITUTION

368. ⁵ [Power of Parliament to amend the Constitution and procedure therefor.]— ⁶ [(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.]

⁷[(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 and by a majority of not less than two-thirds of the members of that House present and voting, ⁸[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:

Provided that if such amendment seeks to make any change in—

- (a) article 54, article 55, article 73, ⁹[article 162, article 241 or article 279A] or
- (b) Chapter IV of Part V, Chapter V of Part VI, or Chapter I of Part XI, or
- (c) any of the Lists in the Seventh Schedule, or
- (d) the representation of States in Parliament, or
- (e) the provisions of this article,

the amendment shall also require to be ratified by the Legislatures of not less than one-half of the States ^{1***} by resolutions to that effect passed by those Legislatures before the Bill making provision for such amendment is presented to the President for assent.

²[(3) Nothing in article 13 shall apply to any amendment made under this article.]

³[(4) No amendment of this Constitution (including the provisions of Part III) made or purporting to have been made under this article whether before or after the commencement of section 55 of the Constitution (Forty-second Amendment) Act, 1976] shall be called in question in any court on any ground.

(5) For the removal of doubts, it is hereby declared that there shall be no limitation whatever on the constituent power of Parliament to amend by way of addition, variation or repeal the provisions of this Constitution under this article.]

Amendment procedure of the constitution of India .

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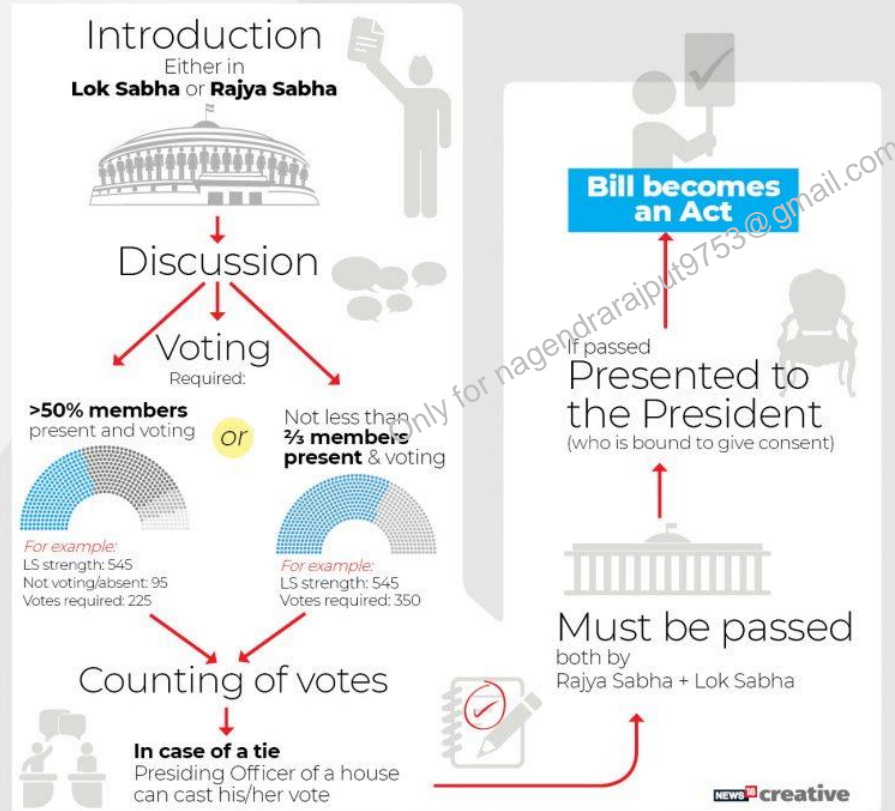
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How a Constitution **AMENDMENT BILL** becomes an Act



May require ratification by state legislatures in some cases; source: Lok Sabha website, news reports



Part I

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Union and its territory

PART I

THE UNION AND ITS TERRITORY

Name and territory
of the Union.

1. (1) India, that is Bharat, shall be a Union of States.

¹[(2) The States and the territories thereof shall be as specified in the First Schedule.]

(3) The territory of India shall comprise—

(a) the territories of the States;

²[(b) the Union territories specified in the First Schedule; and]

(c) such other territories as may be acquired.

Admission or establishment of new States.

2. Parliament may by law admit into the Union, or establish, new States on such terms and conditions as it thinks fit.

³2A. [Sikkim to be associated with the Union.] Rep. by the Constitution (Thirty-sixth Amendment) Act, 1975, s. 5 (w.e.f. 26-4-1975).

Formation of new States and alteration of areas, boundaries or names of existing States.

3. Parliament may by law—

(a) form a new State by separation of territory from any State or by uniting two or more States or parts of States or by uniting any territory to a part of any State;

(b) increase the area of any State;

(c) diminish the area of any State;

(d) alter the boundaries of any State;

(e) alter the name of any State:

⁴[Provided that no Bill for the purpose shall be introduced in either House of Parliament except on the recommendation of the President and unless, where the proposal contained in the Bill affects the area, boundaries

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(Part I.—The Union and its territory.—Arts. 3-4.)

or name of any of the States ^{1***}, the Bill has been referred by the President to the Legislature of that State for expressing its views thereon within such period as may be specified in the reference or within such further period as the President may allow and the period so specified or allowed has expired.]

²[*Explanation I.*— In this article, in clauses (a) to (e), “State” includes a Union territory, but in the proviso, “State” does not include a Union territory.

Explanation II.— The power conferred on Parliament by clause (a) includes the power to form a new State or Union territory by uniting a part of any State or Union territory to any other State or Union territory.]

4. (1) Any law referred to in article 2 or article 3 shall contain such provisions for the amendment of the First Schedule and the Fourth Schedule as may be necessary to give effect to the provisions of the law and may also contain such supplemental, incidental and consequential provisions (including provisions as to representation in Parliament and in the Legislature or Legislatures of the State or States affected by such law) as Parliament may deem necessary.

(2) No such law as aforesaid shall be deemed to be an amendment of this Constitution for the purposes of article 368.

Laws made under articles 2 and 3 to provide for the amendment of the First and the Fourth Schedules and supplemental, incidental and consequential matters.

**“Success is not the key to happiness.
Happiness is the key to success.
If you love what you are doing, you will be
successful.”**

Jatin Gupta





THANKS!

Any questions?

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