

# INDIAN CONSTITUTION

## PREAMBLE TO THE CONSTITUTION OF INDIA

- is an **introduction** to the statute containing its essence.
- it embodies in a solemn form of **all the ideals and aspirations** for which the country had struggled during the *British regime*.
- “The Preamble to a Constitution embodies **the fundamental values and the philosophy**, on which the Constitution is based, and the aims and objectives, which the founding fathers of the Constitution enjoined the polity to strive to achieve”

## How preamble was drafted?

- It was the remake of the first resolution on 'Aims and Objects of the Constitution' which was moved on 13 December 1946 by Mr.Nehru and adopted on 22<sup>nd</sup> Jan, 1947.
- Preamble - establish and promote and also aids the legal interpretation of the Constitution where the language is found to be ambiguous.
- The importance and utility of the Preamble has been pointed out in several decisions of the Supreme Court of India.

# PREAMBLE TO THE CONSTITUTION OF INDIA

The preamble declares :

“We, the people of India having solemnly resolved to constitute India into a **Sovereign, Socialist Secular Democratic and Republic** and to secure its citizens:

**Justice**, Social, Economic and political;

**Liberty** of thought, expression, belief, faith and worship;

**Equality** of status and opportunity; and to promote among them all;

**Fraternity** assuring the dignity of the individual and the unity and the 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”

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## COMPONENTS

- (a) Source of authority of the Constitution
- (b) Nature of Indian State
- (c) Objectives of Constitution
- (d) Adoption of Constitution

## Source of authority

- “We the people of India” – **derives its authority** from the people of India
- Purnima Banerji – Part of Constituent assembly- Suggestions to replace as “We on behalf of the people of India”.
- Dr. Ambedkar – As it embodies the desire of the people, which has its roots, authority and sovereignty from the people.
- After assembly deliberations/ debate

# NATURE OF INDIAN STATE

Sovereign, Socialist, Secular, Democratic and Republic in nature.

## 1. Sovereign

- supreme power , independent , absolute and uncontrolled – internally supreme and externally free.

## 2. Socialist- added by 42<sup>nd</sup> Amendment Act, 1976 – Socialist principles were present in Directive Principle of State Policy

- aims at elimination of inequality in income, status and standards of life.
- India follows ‘Democratic Socialism’ and not ‘Communist Socialism’.
- Democratic Socialism’ that holds faith in a mixed economy where both private and public sectors co-exist side by side.

3. **Secular** – added by 42<sup>nd</sup> Amendment Act, 1976.

- Treating all the religions equally with respect.
- State does not recognize any religion.
- Art 25 to 28 of Indian Constitution – Religious freedom to practice, profess and propagate religion of their choice.

4. **Democratic** –

- Demo means 'PEOPLE' , Cracy means 'RULE'
- form of government which get its **authority from the will of the people.**

(a) Direct – Switzerland – Referendum, Initiative, Recall, Plebiscite

(b) Indirect - India



- . 5. Republic – head of the state is not hereditary monarch.
- India has a elected head called the 'President'.

## OBJECTIVES

Justice – Social, Economic and Political

Liberty – of thought, expression, belief, faith and worship.

Equality – of status and opportunity

Fraternity – assuring the dignity of individual and the unity and integrity of the nation.

42<sup>nd</sup> Amendment Act, 1976 -:

1. Secular - **S.R. Bommai v. Union of India**, the supreme court held that “secularism is the basic feature of the Constitution.”

2. Socialist

3. Integrity

- Conclusion:

- Gives a brief idea about the makers of the Constitution
- Key to open the minds of the makers.
- The preamble does not grant any power to anyone but it gives the structure on which the constitution stands.

# INDIAN CONSTITUTION

## TOPIC 2

### Sources of Constitution of India

# Making of Constitution

- Indian constitution is the fundamental document that forms basis of Republic of India.
- Mahatma Gandhi and others suggested for need for a Constituent Assembly on the basis of adult suffrage.
- Its time consuming so, utilize the Provincial Assemblies, already constituted by election, as 'elective bodies' to send suitable members to the Constituent Assembly.

## Working of constitution

Objective resolution

Committees on constituent assembly – sub committees on Fundamental Rights and Minorities.

Drafting committee

Enactment

Enforcement

Criticism

- **1. Working of Constitution:**

- Constituent assembly first meeting was on Dec 9, 1946 – boycotted by Muslim league demanding for separate State of Pakistan.
- Second meeting was on Dec 11, 1946 - Dr.Rajendra Prasad and H.C.Mukerjee were elected as President and vice-president of the Assembly respectively.

- **2. Objective Resolution:**

- Introduced by Nehru as later became the preamble.



- **3. Committees of the Constituent Assembly:**

- Major and Minor Committees
- **Major Committee** – Drafting Committee, Advisory Committee, Union Powers committee etc
- Had sub committees on Fundamental Rights , Minorities, Tribal Areas etc
- **Minor committee** – Finance and staff committee, Hindi Translation committee, Press gallery committee, House committee etc

## 4. Drafting of the Constitution

### 7 Members

1. Dr. Ambedkar
2. Gopalswamy Ayyangar
3. Alladi Krishnaswamy Ayyar
4. Dr. K.M. Munshi
5. Syed Mohammed Saadullah
6. T.T. Krishnamachari
7. N. Madhava Rau

## Sources of Indian Constitution

- 1. The Government of India Act, 1935
- 2. British Constitution
- 3. US Constitution
- 4. Irish Constitution
- 5. Canadian Constitution
- 6. Australian Constitution
- 7. Weimar Constitution (Germany)
- 8. Soviet Constitution
- 9. French Constitution
- 10. South African Constitution
- 11. Japanese Constitution

# HISTORY

- Regulating Act,1773 - Establishment of SC at Calcutta
- Charter Act , 1833 and 1853
- Government of India Act, 1858 - Governor General of India to Viceroy of India
- Indian councils Act, 1861 and 1892 - Indian were associated in the law making process, Initiated the process of decentralisation

- Morley - Minto reforms, 1909
  - Communal Representation for Muslims - 'Separate Electorate'
- Montague- Chelmsford reforms, 1919
  - Demarcating and separating the central and provincial subjects
- Government of India Act, 1935
  - Formation of Provincial Legislative Assemblies based on adult franchise.
  - Creation of three list
  - Separate electorate for depressed class, women
  - Emergency Provisions
  - Public Service Commission
  - Judiciary
  - Federal Scheme

### USA:

- Fundamental Rights
- Judicial Review
- Impeachment of President
- Removal of Supreme Court and High Court Judges
- Preamble
- Independence of Judiciary

### BRITISH:

- Writs – Right to Constitutional Remedies
- Parliamentary form of government
- Single Citizenship
- Parliamentary Privileges
- Rule of Law

### **IRELAND:**

- DPSP
- Method of election of president
- Members nomination to Rajya Sabha

### **GERMANY:**

- Emergency
- Amendment

### **USSR**

- Fundamental duties

### **CANADA**

- Federalism

- **AUSTRALIA**

- Concurrent List
- Freedom of Trade and Commerce

- **FRANCE:**

- Ideals of Liberty, Equality, Fraternity and Republic - Preamble



÷ 1<sup>st</sup> draft – Feb, 1948.

÷ Eight months discussion – 2<sup>nd</sup> draft on Oct, 1948

• Draft constitution has been before the public for eight months.

#### Enactment :-

Final draft on Nov ,1948 and finally adopted on Nov 26,1949.

#### Criticism:-

1. Not a Sovereign body
3. Long time in making the constitution
4. Dominated by congress
5. Lawyer politician domination
6. Dominated by Hindus

## Conclusion

- It is the origin of the state, the government, citizenship, rights, liberty & justice. However, its is often criticized to not be original per se, because many of its provisions are borrowed from other countries.
- **Regardless of criticism**, the constitution because of its borrowed character, is like a **bouquet with best flowers picked up from different gardens**.
- Different legal systems have evolved differently, giving rise to different legal principles as fruit of evolution.