

Indian Constitution

DEMAND FOR A CONSTITUENT ASSEMBLY

It was 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'.

Although the Constituent Assembly was not directly elected by the people of India on the basis of adult franchise, the Assembly comprised representatives of all sections of the Indian society—Hindus, Muslims, Sikhs, Parsis, Anglo-Indians, Indian Christians, SCs, STs including women of all these sections. The Assembly included all important personalities of India at that time, with the exception of Mahatma Gandhi.

Sources of IC

Constitution is the system of basic principles which governs a country, state, company, or the like. It is the backbone of our country's democracy. Indian Constitution is the longest written constitution in the world containing 395 Articles, 22 Parts and 12 Schedules. India's constitution was drawn up by a Representative Assembly. The Assembly, under the chairmanship of Dr. B.R.Ambedkar, formed a drafting committee to create a constitution for India. The first meeting of the Assembly was on 9 December 1946. On 26 November 1949, the Indian Constitution was adopted and came into force on 26 January 1950. The constituent Assembly completed the work in two years eleven months and eighteen days.

After ransacking all the world's major constitutions, the Indian Constitution was formed. The sources of the Indian Constitution are:-

1. United States of America

- **Impeachment of president:-** Article 61 of the Constitution calls for the President of India to be impeached. The President may be disqualified from office for breach of the Constitution by impeachment. Impeachment proceedings may be levied at any Parliament house.
- **Removal of judges:-** Article 124(4) of the Constitution allows the President to remove a judge for proven misconduct or incapacity if the parliament approves a majority of the total membership of each house for impeachment and not less than two-thirds of the members of each house present.
- **Fundamental Rights:** Articles 12 to 32 of the Constitution of India include all the fundamental rights:- Basic rights are the fundamental human rights given to the country's people in order to ensure them of an equal place in society.
- **Judicial independence:-** The idea of judicial independence is that the judiciary should be separate from other government branches.
- **Preamble:-** The Preamble is an introduction to the Constitution. It guarantees justice, freedom, equality for all Indian citizens, and fosters fraternity among the people.
- **Judicial Review:** The Judicial Review provision gives the judiciary an upper hand in interpreting the Constitution. Therefore, the judiciary can annul any order by the legislature or executive if that order conflicts with the country's constitution
- **Functions of president and Vice president:-** The President of India, is the head of state of and the commander-in-chief of the Indian Armed Forces.
- Article 63 of the Indian Constitution states that "There shall be a Vice President of India." The Vice President shall serve as President in the absence of a President by reason of death, resignation, impeachment or other circumstances. India's vice president is now ex officio secretary of Rajya Sabha.

2. The United Kingdom

- **Single citizenship:-** India's constitution grants the country's residents single citizenship. The residents of the country are all citizens regardless of the states or territories in which they live.
- **Legislative procedure:-** Legislative proposals shall be brought in the form of a bill before either Parliament House of India. A bill is the draft legislative legislation that, when passed by both parliamentary houses and approved by the President, becomes a parliamentary act.
- **Rule of Law:** This essentially states that a State is governed by the laws of that country, not by the representatives or the citizens and it states that everybody is equal before the law; including the ones who make it. Article 14 of the Constitution of India codifies the rule of law
- **Cabinet system:-** A group of persons appointed by a head of state or a prime minister to head the government's executive departments and serve as official advisers.
- **Parliamentary form of government:-** The President is the head of state, and the head of government is the Prime Minister. In such a form of government, a cabinet of ministers, headed by the Prime Minister, governs the country. The Parliament consists of two houses – Lok Sabha and Rajya Sabha.

3. Ireland

- **Directive Principle of State Policy:-** The Directive Principle of State Policy is stated in Part IV of the Indian Constitution, and it explicitly states that it is the State's responsibility to follow certain principles in the law-making process. There are three major types of these concepts – Democratic Guidelines, Gandhian Guidelines and Liberal Intellectual Guidelines. Ireland is also borrowing the process for appointing members to the Rajya Sabha

- The method of the election of the head of the state i.e the President

4. Australia

- **Article 108:-** The joint sitting of both the houses in some cases.

- **Concurrent list:-** It includes the power to be considered by both the union and state government.

- **Freedom of trade and commerce:-** Trade and commerce freedom within the nation and between States. Sections 301 to 307 of the Indian Constitution set down the same provisions

5. France:- The Indian preamble borrowed from the French Constitution its principles of liberty, equality and fraternity. In the tradition of France's Constitution, the Indian state came to be known as the 'Republic of India.'

6. Canada

- Federal system with a strong central government.
- Power-sharing between the central government and state governments
- The advisory jurisdiction of the Supreme Court
- Appointment of State governors by the Centre

7. Soviet Union (USSR)

- A Constitutionally appointed Planning Commission to supervise the economic growth.
- The Fundamental Duty, given in Article 51 A(g):- Mentions the duty of the citizen to protect the environment.
 - Idea of Social, Economic, and Political Justice in Preamble.

8. South Africa :- Gave us the provisions of the amendment process and the election of Members of Rajya Sabha

9. Germany:- Gave us an immediate clause for the suspension of the fundamental rights.

11. Government of India Act 1935

- Federal Legislature: The act stated that there should be two houses of the legislature, i.e. the Council of States and a Federal Assembly
- Provincial Autonomy:- Federal Legislature: The act stated that there should be two houses of the legislature, i.e. the Council of States and a Federal Assembly

Framing of the Constitution

India's Constitution was adopted by a Constituent Assembly formed under the 1946 Cabinet Mission Plan. The Constituent Assembly formed 13 commissions to frame the Constitution. A draft Constitution was drafted by a seven-member drafting committee under the chairmanship of Dr B R Ambedkar on the basis of the reports from these committees. In January 1948, the drafting Constitution was released and citizens were given eight months. After the citizens, the press, the provincial assemblies and the Constituent Assembly had debated the draft in the light of the suggestions received, the same was finally adopted on November 26, 1949, and signed by the President of the Assembly. Thus it took 2 years, 11 months and 18 days for the Constituent Assembly to complete the task. And as I have discussed above the Indian Constitution is borrowed Constitution. The legislative system, common citizenship, rule of law, Directive state policy etc. all are borrowed features of the Indian Constitution. The Constitution of India incorporated the best features of a number of existing constitutions.

Salient features of IC

The Indian Constitution is unique in its contents and spirit. Though borrowed from almost every Constitution of the world, the Constitution of India has several salient features that distinguish it from the Constitutions of the other countries. It should be noted at the outset that a number of original features of the Constitution (as adopted in 1949) have undergone a substantial change, on account of several amendments, particularly 7th, 42nd, 44th, 73rd, 74th, 97th and 101st Amendments. In fact, the 42nd Amendment Act (1976) is known as 'Mini-Constitution' due to the important and large number of changes made by it in various parts of the Constitution. However, in the Kesavananda Bharati case¹ (1973), the Supreme Court ruled that the constituent power of Parliament under Article 368 does not enable it to alter the 'basic structure' of the Constitution.

1. Longthiest constitution in the world: Indian constitution adopted by the constituent Assembly on November 2, 1949 is the lengthiest constitution originally containing 395 Articles, divided into 22 parts and 9 schedules. It is described as 'elephant size' constitution. We have incorporated 93 Amendments to the constitution on January 2003. It has been a model, for many developing countries. Now it has 397 Articles and 12 schedules. The length of the constitution is because of several factors: -

- It incorporates the experience of all leading constitution.
- It prescribes constitution for the union as well as for the states.
- It incorporates detailed provisions regarding centre – state relations.
- It incorporates special provisions for Jammu Kashmir.
- It includes justifiable and non – justifiable rights.
- It contains special provisions to meet regional problems.

2. Sovereignty resides in the people: The introduction of the constitution declares that the constitution of India was adopted and enacted by the people of India and they are the custodians of the republic.

3. Parliamentary form of Government: The constitution of India establishes parliamentary form of government both at the centre and the states. In a Parliamentary form of government, the Prime Minister and council of Ministers are responsible for all their actions to the government, particularly to the Lower house, Lok Sabha. The Parliament keep control on executives by various means i.e. by asking questions by no confidence motion etc. Also in Parliamentary system there are two types of head; one is nominal and one is real. In India President is nominal and Prime- Minister is real head.

4. Unique blend of Rigidity and Flexibility: Though India has a written constitution; the Indian constitution is not as rigid as the American constitution. It has incorporated the flexible nature in the procedures for amendments. There are three methods by which the constitution is amended. The procedure for amendment is simple.

5. Fundamental Rights: The fundamental Rights are guaranteed by the constitution to all its citizens through Part III of the constitution. The fundamental Rights. It guarantees Right to Equality, Right to freedom, Freedom of religion, Right against Exploitation, Educational and Cultural right and Right to constitutional Remedies. One can approach the Supreme Court directly in case of violation of Fundamental Rights. There are certain restrictions on fundamental rights in the interests of public order, the sovereignty and integrity of India, public decency, morality etc.

6. Directive Principles of the state Policy: Part IV of the constitution deals with Economic and cultural Rights. However, they are not justifiable in the court of law. The idea of a 'welfare state' envisaged in our constitution can only be achieved if the states try to implement them with a high sense of moral duty.

7. Quasi – federal in nature: The nature of the Indian state is federal, in the sense that the powers are distributed between the Union and the state. But in times of emergency Government assumes a unitary character. **It is federal because:**

1. It has two sets of government.
2. There is division of powers between the centre and the states.
3. There is independent judiciary.

It is unitary because:

- It is described as “union of states”.
- There is single citizenship.
- 3 There is single integrated judicial and administrative system.
- There is integrated machinery for elections, audits.
- State Governors are appointed and removed by President,
- States depend upon the union's grant – in – aid.
- During emergency, it can be converted into unitary system.

8. Adult Suffrage: All adult citizens above 18 are given the right to vote. There are no separate electorates for people belonging to different communities. Thus in India there is Universal Adult Franchise without Communal Representation.

9. Independence of Judiciary: The constitution has made Judiciary independent from legislature and executive. Judges are free from the interference of other organs of the government, so that judges can give judgement without fear and favour. The Indian Judiciary is independent as per the norms of separation of powers. The feature that goes with the independence of judiciary are direct appointment by the President, given decent salaries and perks, judges can not be removed simply by executive.

10. Judicial Review: It means the power of the courts to declare any law passed by the legislature and any act of executive as void, if it violates any provision of the constitution. It emphasise supremacy of judiciary.

11. Fundamental Duties: The Fundamental Duties are incorporated in the constitution through the 42nd amendment. A set of ten duties are incorporated as fundamental Duties under Article 51.

12. Sovereign: India is a free and independent country. India is no more under the domination of any foreign country and any external force cannot influence its decisions. India is a member of commonwealth Nation. But its membership does not affect the sovereignty of India.

13. Democracy: India has representative and responsible government. Democracy has been introduced with a view to realize the political, economic and social democracy.

14. Republic: It means that the head of the state, president, will be periodically elected by the people. Citizens' partnership in the affairs of the state is ensured.

15. Secular: The constitution of India has created a secular state. It means

- The state gives equal protection to all religions.
- The state does not uphold any particular religion as the state religion.

- Freedom of Religion is guaranteed in the constitution.
- Equal respect for all religions.

16. Single Citizenship: The constitution of India confers single Indian citizenship. This helps in creating feeling of oneness.

17. Uniformity in Basic Administration: There is uniformity in most important matters of administration. e.g. single integrated judicial system, uniformity in civil and criminal laws, All India services.

18. Revolutionary: The constitution of India has abolished several unjust practices and at the same time has provided special opportunities for the upliftment of the weaker sections.

19. Lawyer's paradise: The constitution of India is very complex for the common man to understand. The complexity gives rise to litigation and constitutional amendments. Lawyers gain importance from this.

20. Judicial Review and Parliamentary Sovereignty Compromised: The constitution of U.S.A. recognized judicial supremacy. The British system recognizes Parliamentary sovereignty i.e. the court can not declare any law of parliament as cancelled on any ground. The constitution of India compromises between the two, it empowers the judiciary the power of declaring any law as null and void if it violates the Basic framework of the constitution. But the judiciary does not have the power of judicial review over the wisdom of any legislative policy i.e. important questions of public policy are to be decided on the floor of the House. Constitution gives the legislature the power to amend the constitution without destroying the basic structure.

CONCLUSION The constitution of India is one of the most remarkable constitutions in the world. It is a confluence of East and the West.

Preamble of the Constitution

The 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. N.A. Palkhivala, an eminent jurist and constitutional expert, called the Preamble as the 'identity card 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 Assembly¹. It has been amended by the 42nd Constitutional Amendment Act (1976), which added three new words—Socialist, Secular and Integrity.

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

Certain key words—Sovereign, Socialist, Secular, Democratic, Republic, Justice, Liberty, Equality and Fraternity—are explained as follows:

1. 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).
2. Socialist- Democratic socialism, on the other hand, holds faith in a 'mixed economy' where both public and private sectors co-exist side by side⁶. As the Supreme Court says, 'Democratic socialism aims to end poverty, ignorance, disease and inequality of opportunity⁷. Indian socialism is a blend of Marxism and Gandhism, leaning heavily towards the Gandhian socialism'.
3. Secular- The Indian Constitution embodies the positive concept of secularism ie, all religions in our country (irrespective of their strength) have the same status and support from the state.
4. Democratic- Democracy is of two types—direct and indirect. In direct democracy, the people exercise their supreme power directly as is the case in Switzerland. 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.

5. 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. Therefore, 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.

6. 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. It means absence of privileges being extended to any particular section of the society, and improvement in the conditions of backward classes (SCs, STs and OBCs) and women.

7. 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.

8. 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. The Preamble secures to all citizens of India equality of status and opportunity. This provision embraces three dimensions of equality—civic, political and economic.

9. Fraternity- Fraternity means a sense of brotherhood. The Constitution promotes this feeling of fraternity by the system of single citizenship. Also, 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. 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

The Preamble embodies the basic philosophy and fundamental values—political, moral and religious—on which the Constitution is based. It contains the grand and noble vision of the Constituent Assembly, and reflects the dreams and aspirations of the founding fathers of the Constitution. 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.

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.