

4 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**.

TEXT OF THE PREAMBLE

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 twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION”.

INGREDIENTS OF THE PREAMBLE

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**². There is no authority above it, and it is free to conduct its own affairs (both internal and external).

Though in 1949, India declared the continuation of her full membership of the Commonwealth of Nations and accepted the British Crown as the head of the Commonwealth, this extra-constitutional declaration does not affect India's sovereignty in any manner³. Further, India's membership of the United Nations Organisation (UNO) also in no way constitutes a limitation on her sovereignty⁴.

Being a sovereign state, India can either acquire a foreign territory or cede a part of its territory in favour of a foreign state.

2. Socialist

Even before the term was added by the 42nd Amendment in 1976, the Constitution had a socialist content in the form of certain Directive Principles of State Policy. In other words, what was hitherto implicit in the Constitution has now been made explicit. Moreover, the Congress party itself adopted a resolution⁵ to establish a 'socialistic pattern of society' in its Avadi session as early as in 1955 and took measures accordingly.

Notably, the Indian brand of socialism is a **'democratic socialism'** and not a 'communistic socialism' (also known as 'state socialism') which involves the nationalisation of all means of production and distribution and the abolition of private property. 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'⁸.

The new Economic Policy (1991) of liberalisation, privatisation and globalisation has, however, diluted the socialist credentials of the Indian State.

3. Secular

The term 'secular' too was added by the 42nd Constitutional Amendment Act of 1976. However, as the Supreme Court said in 1974, although the words 'secular state'⁹ were not expressly mentioned in the Constitution, there can be no doubt that Constitutionmakers wanted to establish such a state and accordingly Articles 25 to 28 (guaranteeing the fundamental right to freedom of religion) have been included in the constitution.

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 state¹⁰.

4. Democratic

A democratic¹¹ polity, as stipulated in the Preamble, is based on the doctrine of popular sovereignty, that is, possession of supreme power by the people.

Democracy is of two types—direct and indirect. In direct democracy, the people exercise their supreme power directly as is the case in Switzerland. There are four devices of direct democracy, namely, **Referendum**, **Initiative**, **Recall** and **Plebiscite**¹². 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.

The Indian Constitution provides for representative parliamentary democracy under which the executive is responsible to the legislature for all its policies and actions.

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.

The term 'democratic' is used in the Preamble in the broader sense embracing not only political democracy but also social and economic democracy.

This dimension was stressed by Dr. Ambedkar in his concluding speech in the Constituent Assembly on November 25, 1949, in the following way:

"Political democracy cannot last unless there lies at the base of it social democracy. What does social democracy mean ? It means a way of life which recognises liberty, equality and fraternity. The principles of liberty, equality and fraternity are not to be treated as separate items in a trinity. They form a union of trinity in the sense that to divorce one from the other is to defeat the very purpose of democracy. Liberty cannot be divorced from equality, equality cannot be divorced from liberty. Nor can liberty and equality be divorced from fraternity. Without equality, liberty would produce the supremacy of the few over the many. Equality without liberty, would kill individual initiative".^{12a}

In the same context, the Supreme Court observed in 1997 that: "The Constitution envisions to establish an egalitarian social order rendering to every citizen social, economic and political justice in a social and economic democracy of the Bharat Republic".

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.

A republic also means two more things: one, vesting of political sovereignty in the people and not in a single individual like a king;

second, the absence of any privileged class and hence all public offices being opened to every citizen without any discrimination.

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.

Economic justice denotes the non-discrimination between people on the basis of economic factors. It involves the elimination of glaring inequalities 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).

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.

Liberty as elaborated in the Preamble is very essential for the successful functioning of the Indian democratic system. However, liberty does not mean 'license' to do what one likes, and has to be enjoyed within the limitations mentioned in the Constitution itself. In brief, the liberty conceived by the Preamble or Fundamental Rights is not absolute but qualified.

The ideals of liberty, equality and fraternity in our Preamble have been taken from the French Revolution (1789–1799).

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.

The following provisions of the chapter on Fundamental Rights ensure civic equality:

- (a) Equality before the law (Article 14).
- (b) Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth (Article 15).
- (c) Equality of opportunity in matters of public employment (Article 16).
- (d) Abolition of untouchability (Article 17).
- (e) Abolition of titles (Article 18).

There are two provisions in the Constitution that seek to achieve political equality. One, no person is to be declared ineligible for inclusion in electoral rolls on grounds of religion, race, caste or sex (Article 325). Two, elections to the Lok Sabha and the state assemblies to be on the basis of adult suffrage (Article 326).

The Directive Principles of State Policy (Article 39) secures to men and women equal right to an adequate means of livelihood and equal pay for equal work.

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).

According to K.M. Munshi, a member of the Drafting Committee of the Constituent Assembly, the phrase 'dignity of the individual' signifies that the Constitution not only ensures material betterment and maintain a democratic set-up, but that it also recognises that the personality of every individual is sacred. This is highlighted through some of the provisions of the Fundamental Rights and Directive Principles of State Policy, which ensure the dignity of individuals. Further, the Fundamental Duties (Article 51-A) also protect the dignity of women by stating that it shall be the duty of every citizen of India to renounce practices derogatory to the dignity of women, and also makes it the duty of every citizen of India to uphold and protect the sovereignty, unity and integrity of India.

The phrase 'unity and integrity of the nation' embraces both the psychological and territorial dimensions of national integration. Article 1 of the Constitution describes India as a 'Union of States' to make it clear that the states have no right to secede from the Union, implying the indestructible nature of the Indian Union. It aims at overcoming hindrances to national integration like communalism, regionalism, casteism, linguism, secessionism and so on.

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'.

Pandit Thakur Das Bhargava, another member of the Constituent Assembly, summed up the importance of the Preamble in the following words: 'The Preamble is the most precious part of the Constitution. It is the soul of the Constitution. It is a key to the Constitution. It is a jewel set in the Constitution. It is a proper yardstick with which one can measure the worth of the Constitution'.

Sir Ernest Barker, a distinguished English political scientist, paid a glowing tribute to the political wisdom of the authors of the Preamble. He described the Preamble as the 'key-note'¹³ to the Constitution. He was so moved by the text of the preamble that he quoted¹⁴ it at the opening of his popular book, *Principles of Social and Political Theory* (1951).

M. Hidayatullah, a former Chief Justice of India, observed, 'Preamble resembles the Declaration of Independence of the United States of America, but is more than a declaration. It is the soul of our Constitution, which lays down the pattern of our political society. It contains a solemn resolve, which nothing but a revolution can alter'¹⁵.

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.

In the *Berubari Union*¹⁶ case (1960), the Supreme Court said that the Preamble shows the general purposes behind the several provisions in the Constitution, and is thus a key to the minds of the makers of the Constitution. Further, where the terms used in any article are ambiguous or capable of more than one meaning, some assistance at interpretation may be taken from the objectives enshrined in the Preamble. Despite this recognition of the significance of the Preamble, the Supreme Court specifically opined that Preamble is *not* a part of the Constitution.

In the *Kesavananda Bharati* case¹⁷ (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. In the *LIC of India* case¹⁸ (1995) also, the Supreme Court again held that the Preamble is an integral part of the Constitution.

Like any other part of the Constitution, the Preamble was also enacted by the Constituent Assembly; but, after the rest of the Constitution was already enacted. The reason for inserting the Preamble at the end was to ensure that it was in conformity with the Constitution as adopted by the Constituent Assembly. While forwarding the Preamble for votes, the President of the Constituent Assembly said, 'The question is that Preamble stands part of the Constitution'¹⁹. The motion was then adopted. Hence, the current opinion held by the Supreme Court that the Preamble is a part of the Constitution, is in consonance with the opinion of the founding fathers of the Constitution.

However, two things should be noted:

1. The Preamble is neither a source of power to legislature nor a prohibition upon the powers of legislature.
2. It is non-justiciable, that is, its provisions are not enforceable in courts of law.

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.

The Supreme Court, however, held that the Preamble is a part of the Constitution. The Court stated that the opinion tendered by it in the *Berubari Union* (1960) in this regard was wrong, and held that the Preamble can be amended, subject to the condition that no amendment is done to the 'basic features'. In other words, the Court held that the basic elements or the fundamental features of the Constitution as contained in the Preamble cannot be altered by an amendment under Article 368²⁰.

The Preamble has been amended only once so far, in 1976, by the 42nd Constitutional Amendment Act, which has added three new words—Socialist, Secular and Integrity—to the Preamble. This amendment was held to be valid.

NOTES AND REFERENCES

1. Moved by Nehru on December 13, 1946 and adopted by the Constituent Assembly on January 22, 1947.
2. Till the passage of the Indian Independence Act, 1947, India was a dependency (colony) of the British Empire. From August 15, 1947 to January 26, 1950, India's political status was that of a dominion in the British Commonwealth of Nations. India ceased to be a British dominion on January 26, 1950, by declaring herself a sovereign republic. However, Pakistan continued to be a British Dominion until 1956.
3. To dispel the lurking fears of some members of the Constituent Assembly, Pandit Nehru said in 1949 thus:

‘We took pledge long ago to achieve *Purna Swaraj*. We have achieved it. Does a nation lose its independence by an alliance with another country? Alliance normally means commitments. The free association of the sovereign Commonwealth of Nations does not involve such commitments. Its very strength lies in its flexibility and its complete freedom. It is well-known that it is open to any member-nation to go out of the commonwealth if it so chooses’. He further stated, ‘It is an agreement by free will, to be terminated by free will’.

4. India became a member of the UNO in 1945.
5. The Resolution said: ‘In order to realise the object of Congress and to further the objectives stated in the Preamble and Directive Principles of State Policy of the Constitution of India, planning should take place with a view to the establishment of a socialistic pattern of society, where the principal means of production are under social ownership or control, production is progressively speeded up and there is equitable distribution of the national wealth’.
6. The Prime Minister, Indira Gandhi, said, ‘We have always said that we have our own brand of socialism. We will nationalise the sectors where we feel the necessity. Just nationalisation is not our type of socialism’.
7. *G.B. Pant University of Agriculture and Technology v. State of Uttar Pradesh* (2000).
8. *Nakara v. Union of India* (1983).
9. On the basis of the attitude of the state towards religion, three types of states can be conceived of:
 - (a) *Atheistic State*: The state is anti-religion and hence, condemns all religions.
 - (b) *Theocratic State*: The state is pro-religion and hence, declares one particular religion as the state religion, as for example, Bangladesh, Burma, Sri Lanka, Pakistan, and so on.
 - (c) *Secular State*: The state is neutral in the matter of religion and hence, does not uphold any particular

religion as the state religion, as for example, USA and India.

G.S. Pande, *Constitutional Law of India*, Allahabad Law Agency, eighth edition, 2002, P. 222.

10. The then Union Law Minister, H.R. Gokhale defined this concept as: 'There will be freedom, liberty of faith and worship, whatever religion you belong to. The State will not have anything to do, as a state, with any religion excepting to treat every religion equally, but the State will not have any foundation of religion'. Similarly, P.B. Gajendragadkar, a former Chief Justice of India, defined secularism as in the Indian Constitution in the following way: 'The State does not owe loyalty to any particular religion as such: it is not irreligious or anti-religious; it gives equal freedom to all religions'.

11. The term 'democracy' is derived from two Greek words, namely, *Demos* and *Kratia* meaning 'People' and 'rule' respectively.

12. *Referendum* is a procedure whereby a proposed legislation is referred to the electorate for settlement by their direct votes.

Initiative is a method by means of which the people can propose a bill to the legislature for enactment.

Recall is a method by means of which the voters can remove a representative or an officer before the expiry of his term, when he fails to discharge his duties properly.

Plebiscite is a method of obtaining the opinion India's of people on any issue of public importance. It is generally used to solve the territorial disputes.

- 12a. B. Shiva Rao, *The Framing of India's Constitution: Select Documents*, Volume IV, P. 944.

13. He said that the Preamble of the Indian Constitution states 'in a brief and pithy form the argument of much of the book; and it may accordingly serve as a key-note'.

14. He wrote: 'I am all the more moved to quote it because I am proud that the people of India should begin their independent life by subscribing to the principles of a

political tradition which we in the west call western, but which is now something more than the western’.

15. M Hidayatullah, *Democracy in India and the Judicial Process*, p. 51.
16. Reference by the President of India under Article 143 of the Constitution on the implementation of the Indo-Pakistan agreement relating to Berubari union and exchange of enclaves (1960).
17. *Kesavananda Bharati v. State of Kerala* (1973).
18. *LIC of India v. Consumer Education and Research Centre* (1995).
19. ‘*Constituent Assembly Debates*’, Volume 10, P. 450–456.
20. The Court observed, ‘The edifice of our Constitution is based upon the basic elements mentioned in the Preamble. If any of these elements are removed, the structure will not survive and it will not be the same Constitution or it cannot maintain its identity. An amending power cannot be interpreted so as to confer power on the Parliament to take away any of these fundamental and basic characteristics of the polity’.