

# PREAMBLE

The Preamble to a Constitution sets out the main objectives, which the legislation is intended to achieve. As the Supreme Court has observed, the Preamble is a key to unravel the minds of the makers of the Constitution. It serves as an introduction to the Constitution and shows the general purpose for which the Constituent Assembly made the several provisions in the Constitution. It also embodies the ideals and aspirations of the people of India.

The Preamble cannot override the express provisions of the Constitution. It cannot be enforced in a court of law. It has limited application and can be resorted to only what there is an ambiguity in the provisions of the constitution. According to the Supreme Court, if the terms used in the provisions of the Constitution are ambiguous or capable of two or more meanings, some assistance can be taken from the Preamble.

According to D.D. Basu, every Constitution has a philosophy of its own. Our Constitution has also a philosophy, which is found in the preamble to the Constitution. The philosophy of the Constitution is co-terminus with the ideals and aspirations of the freedom struggle of India, which are faithfully reflected in the Preamble. It was the historic “Objective Resolution” moved by Pandit Nehru and passed by the Constituent Assembly on the 22nd January 1947, that formed the basis for the philosophy of the Constitution and the Objective Resolution ultimately became the Preamble to the Constitution.

## TEXT OF THE PREAMBLE:

- “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”.

## THE PURPOSE OF PREAMBLE:

- 1. According to the Preamble it is the people of India who had enacted; adopted and given the Constitution to themselves; Thus the Preamble indicates that the Constitution derives its powers from the people and the source of all authority under the Constitution emanates from the people of India. It also means that sovereignty ultimately resides with the people.
- 2. The Preamble also declares the rights and freedom, which the people of India intended to secure to all citizens and the type of Government and polity to be established.

## Main Points of the Objectives Resolution

- India is an independent, sovereign, republic;
- India shall be a Union of erstwhile British Indian territories, Indian States, and other parts outside British India and Indian States as are willing to be a part of the Union;
- Territories forming the Union shall be autonomous units and exercise all powers and functions of the Government and administration, except those assigned to or vested in the Union;
- All powers and authority of sovereign and independent India and its constitution shall flow from the people;
- All people of India shall be guaranteed and secured social, economic and political justice; equality of status and opportunities and equality before law; and fundamental freedoms- of speech, expression, belief, faith, worship, vocation, association and action– subject to law and public morality;
- The minorities, backward and tribal areas, depressed and other backward classes shall be provided adequate safeguards;
- The territorial integrity of the Republic and its sovereign rights on land, sea and air shall be maintained according to justice and law of civilized nations;
- The land would make full and willing contribution to the promotion of world peace and welfare of mankind.

## INGREDIENTS OF THE PREAMBLE

- **Source of authority of Constitution:** The people of India.
- **Nature of Indian State:** A sovereign, socialist, secular democratic and republican polity.
- **Objectives of Constitution:** It specifies justice, liberty, equality and fraternity as the objectives.
- **Date of adoption of the Constitution:** It stipulates November 26, 1949 as the date.

### “Sovereignty”:

- The term Sovereignty refers to the independent authority of a State. It means that the State has the power to legislate on any subject; and that it is not subject to the control of any State or external power.
- Consequently, the term Sovereign in the Preamble of India 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.
- India's declaration to continue her full membership of the Commonwealth of Nations in 1949 does not affect India's sovereignty in any manner. This declaration is extra-legal and there is no mention of it in the Constitution. It is a voluntary declaration and indicates a free association and no obligation. This association was an honourable association between independent states. It accepts the crown of England only as a symbolic head of the Commonwealth and having no claim to the allegiance of citizens of India. As Pandit Jawaharlal Nehru explained: “It is an agreement by free will, to be terminated by free will”

## “Socialist”:

- Even before the 42nd Amendment, the Congress party itself adopted a resolution to establish a ‘socialistic pattern of society’ in its Avadi session as early as in 1955 and took measures accordingly.
- India is democratic-socialist and not communistic-socialist. Democratic socialism aims to end poverty, ignorance, disease and inequality of opportunity.
- The Supreme Court said in 1974: Although the words ‘secular state’ were not expressly mentioned in the Constitution, there can be no doubt that Constitution-makers 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
- Indian state ensures secularism both by non-interference and intervention with religions called ‘principled distance’
- The reason that it is important to separate religion from the State in democratic societies is because we also need to protect the freedom of individuals to exit from their religion, embrace another religion or have the freedom to interpret religious teachings differently.
- The celebration of the religious festival within the school would have been a violation of the government’s policy of treating all religions equally. Government schools cannot promote any one religion either in their morning prayers or through religious celebrations. This rule does not apply to private schools.

# “Secular”

- American Constitution was first to begin with a Preamble.
- The Preamble to the Indian Constitution is based on the ‘Objectives Resolution’ (Moved by Nehru on December 13, 1946 and adopted by the Constituent Assembly on January 22, 1947)
- It has been amended by the 42nd Constitutional Amendment Act (1976), which added three new words—socialist, secular and integrity. (Four if “AND” is included)
- The reasons for the necessity of secularism in India are as follows:
  - India is a heterogeneous society.
  - The idea of India as a secular state has been challenged by states like Pakistan.
  - We may be subjected to international propaganda (terrorism and related problems).

## Constitutional Provisions regarding Secularism:

- The Indian state has no religion.
- All citizens are equal in the eyes of the law. Articles 14, 15 and 27 establish the secular nature of the state. Article 15 is a specific instruction that the state shall not discriminate among the citizens only on the grounds of religion, race, caste, sex or place of birth. Affirmative action is allowed, but not on the grounds of religion only.
- Fundamental Rights mentioned in Arts. 25–28 guarantee to all individuals, the freedom to profess, practice and propagate their religion, and assure strict impartiality on the part of the state and its institutions towards all religions.
- Religion is subordinate to the state rather than the state being subordinate to the religion. It also implies that the state can interfere in religious affairs for the purpose of social reforms.
- A special feature of Indian secularism emerging from historical context is that special protection is granted to the minorities with respect to the conservation of their culture and traditions.

## “Democratic”:

- The ‘democratic republic’, which the Preamble envisages is democratic not only from a political standpoint but also from a social standpoint. Thus, it envisages not only a democratic form of government but also a democratic society, infused with the spirit of ‘justice, equality and fraternity’

## Characteristics of a Democracy:

- Rulers elected by people take all the major decisions;
- Elections offer a choice and fair opportunity to the people to change the current rulers;
- This choice and opportunity is available to all the people on an equal basis
- Exercise of this choice leads to a government limited by basic rules of the constitution and citizens’ rights.

## Direct Democracy v. Indirect Democracy:

- Direct Democracy: Referendum, Initiative, Recall and Plebiscite
- Referendum: proposed legislation is referred to the electorate for settlement by their direct votes.
- Initiative: people can propose a bill to the legislature for enactment.
- Recall: voters can remove a representative or an officer before the expiry of his term, when he fails to discharge his duties properly.
- Plebiscite: obtaining the opinion of people on any issue of public importance. It is generally used to solve territorial disputes.
- Indirect Democracy: Voting for representatives who act on behalf of people

## Parliamentary Democracy

- a) Representation of People
- b) Responsible Government
- c) Accountability of the Council of Ministers to the Legislature
- Presidential Democracy
- India follows Parliamentary form of Indirect democracy.

## “Republic”

- The head is elected and not hereditary (monarchy).
- Vesting of political sovereignty in the people and not in a single individual like a king.
- The absence of any privileged class and hence all public offices being opened to every citizen without any discrimination.

## Other important terms

- **Justice:** Justice, as a concept involves fair, moral, and impartial treatment of all persons. In its most general sense, it means according individuals what they actually deserve or merit, or are in some sense, entitled to.
- The term ‘justice’ as imbibed in the Preamble embraces three distinct forms –social, economic and political. These are secured through various provisions of Fundamental Rights and Directive Principles.
- Social justice denotes equal treatment of all citizens without any distinction based on caste, color, race, religion, sex and so on. It means absence of privileges to any section of the society and at the same time making provisions for the improvement of backward sections (SCs, STs and OBCs) and women.
- Economic justice denotes non-discrimination between people on the basis of economic factors. It involves the elimination of glaring inequalities in wealth, income and property.
  - Political justice implies that all citizens should have equal political rights, equal access to all political offices and equal voice in the government.
- As observed by Pandit Nehru and Dr. Ambedkar, political justice is of no consequence, unless a democracy assures social and economic justices as well.
- **The ideal of justice – social, economic and political has been taken from the Russian Revolution.**
- **The ideals of liberty, equality and fraternity: French Revolution (1789–1799).**

**Liberty:** Democracy cannot be established unless certain minimal rights, which are essential for a free and civilized existence, are assured to every member of the community.

The term liberty means an absence of restraints on the activities of individuals and at the same time, providing opportunities for the development of individual personalities. The Constitution secures to all citizens liberty of thought, expression, belief, faith and worship through Fundamental Rights, which are enforceable in Constitution.

Liberty envisioned is 'Qualified Liberty', not Absolute liberty.

**Equality:** The term 'equality' means absence of special privileges to any section of the society and the provision of adequate opportunities for all individuals without any discrimination.

Guaranteeing of certain rights to each individual would be meaningless unless all inequality is banished from the social structure and each individual is assured of equality of status and opportunity for development of the best in him and the means for the enforcement of the rights guaranteed to him.

## Civic, Political and Economic.

### Civic equality:

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

### Political equality:

- No person is to be declared ineligible for inclusion in electoral rolls on grounds of religion, race, caste or sex (Article 325).
- Elections to the Lok Sabha and the state assemblies to be on the basis of adult suffrage (Article 326)
- Economic: The DPSPs secure to men and women equal right to an adequate means of livelihood and equal pay for equal work.

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

According to the Preamble, fraternity assures two things – the dignity of the individual and the integrity of the nation. The word ‘integrity’ was added by the 42nd Amendment Act, 1976.

According to K.M Munshi, the phrase ‘dignity of the individual’ signifies that the Constitution not only ensures material betterment and maintains a democratic set-up, but that it also recognizes that the personality of every individual is sacred.

The phrase ‘unity and integrity of the nation’ embraces both psychological and territorial dimensions of national integration. Art. 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, secessionism etc.

The dignity of individual is secured through providing equal Fundamental Rights to each individual and Directive Principles, such as “all citizens, men and women equally have the right to an adequate means of livelihood. (Art. 39(a)), “just and humane conditions of work (Art. 42) And “a decent standard of life and full enjoyment of leisure and social and cultural opportunities (Art. 43).

## AMENDABILITY 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 case of **Kesavananda Bharati** (1973).
- It was urged that the Preamble cannot be amended as it is not a part of the Constitution. This contention itself was based on decision of **Berubari Union case** (1960) which had held that even though Preamble enshrines the philosophy of the Constitution, it, nevertheless, is not a part of the Constitution.
- However, in **Kesavananda (1973)**, it was held that Preamble is not only a part of the Constitution but can also be amended like any other part of the constitution.
- Consequent to this, Preamble was amended through Constitution Amendment Act 1976.

### Views on preamble:

- Sir Alladi Krishna swami Iyer: The Preamble expresses what we had thought or dreamt so long.
- K M Munshi: Preamble is the ‘horoscope of our sovereign democratic republic’.
- Sir Ernest Barker: The Preamble is the ‘key-note’ to the Constitution.
- M Hidayatullah, a former President and Chief Justice: ‘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.