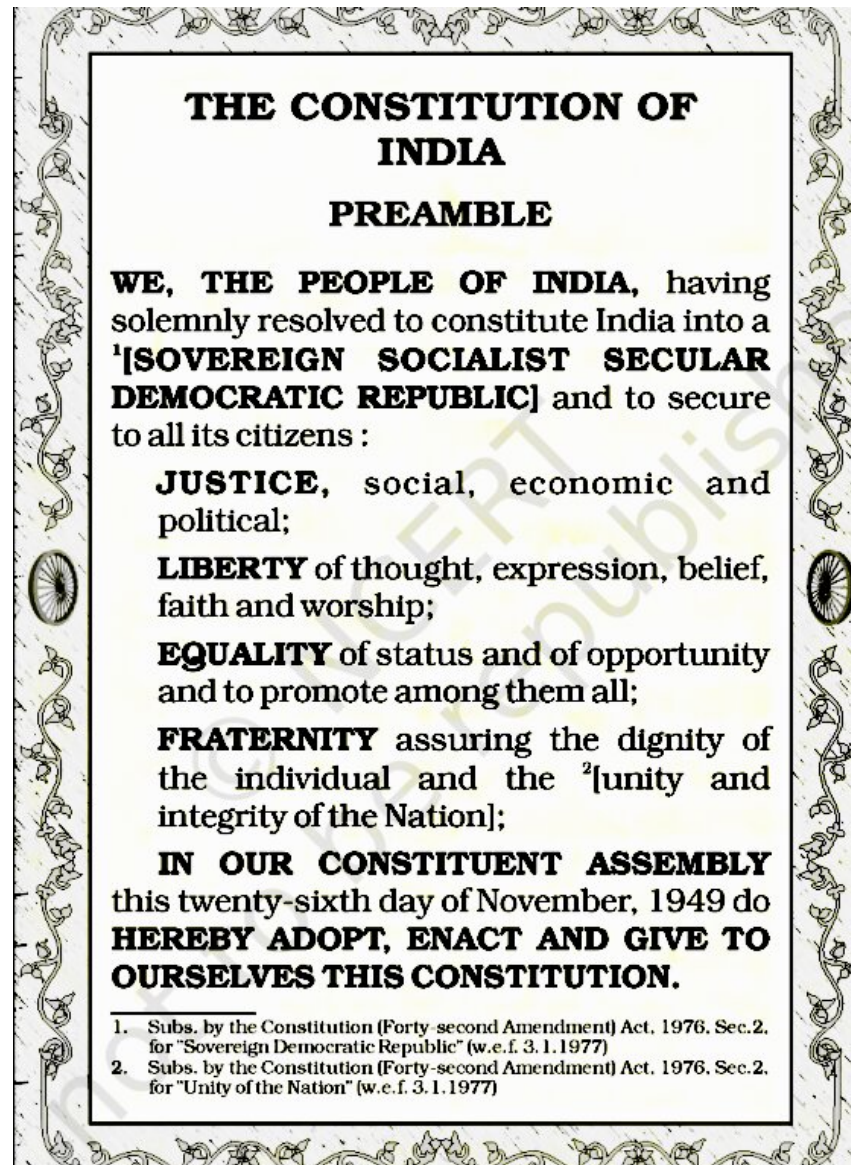


Preamble



- **Definition** : Preamble refers to the introduction or preface to the Constitution. It contains summary or essence of the Constitution. It indicates the Sovereign of Indian Constitution.
- **Who drafted the Preamble** : **Jawaharlal Nehru**. And this draft is known as '**Objectives Resolution**' which he had presented on 13th Dec 1946. This same Objective Resolution has been adopted as Preamble on 22nd Jan 1947.
- Till date this Preamble has been amended only **once** i.e. through **42nd Constitutional Amendment Act, 1976** in which added three new words – **Socialist, Secular and Integrity**.
- The ideals of liberty, equality and fraternity enshrined in the Preamble of the Constitution of India were adopted under inspiration from **The French Revolution**.

Key words in the Preamble

- **Sovereign** : It means the Independent authority of the state. India is an Independent country which can **manage its internal matters** on its own. No external power can interfere in the internal matters of India.
- **Socialist** : Its objective is that a '**Welfare State**' must be established. This means Poverty, Unemployment, Inequality of opportunity, Ignorance these problems should be ended from society.

- **Secular** : The constitution states India as a secular state because as the **state has no official religion**. All religions in India irrespective of their strength have the same status and support from the state.
- **Democratic** : The term 'democratic' is derived from the Greek words where 'demos' means people and 'kratos' means authority. Which concludes that Government is constructed by the people. India is a democratic state as the **people elect their government**.

- **Republic** : India has a republic form of government, as the **head of state is elected** and not a hereditary monarch like king or queen. 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.
- In the **Berubari union case** the Supreme Court specifically opined that Preamble is not a part of the Constitution.
- In the **Kesavananda Bharati case** the Supreme court rejected the earlier opinion and held that Preamble is a part of the Constitution.

Objectives of the Preamble/Indian Constitution

- The main objective of the Indian Constitution is to promote harmony throughout the nation. The factors which help in achieving this objective are :

1. Justice

- **Social** : It denotes Equal treatment of all citizens without any social distinction based on caste, colour, race, religion, sex and so on
- **Economic** : It denotes the non discrimination between people on the basis of economic factors i.e. Their wealth, income, status. It means wealth must be distributed on the basis of their work.

- **Political** : It implies that all the people have an equal free and fair right without any discrimination to participate in political opportunities. It means everyone have/has equal rights to access political offices and have equal participation in the processes of the government. Chief source of political power in India is we **The people**.

2. **Liberty**

The preamble secures to all citizens of India liberty of thought expression, belief, faith and worship through their fundamental rights.

3. **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. It means removing all types of discriminations from society to build a healthy environment for the people to live in. **Everyone is equal before law.**
4. **Fraternity** : The term fraternity means a sense/feeling of **brotherhood** and an emotional attachment with the country and all the people. The constitution promotes this feeling of fraternity.

Salient Features of Constitution

- Longthiest written Constitution
- Drawn from various sources
- Blend of Rigidity and Flexibility
- Parliamentary form of Government
- Independent Judiciary
- Secular state
- Single Citizenship/Universal Adult Franchise
- Emergency provisions
- Three tier Government

Fundamental Rights

- The Fundamental Rights are enshrined in **Part III** of the Constitution from Art 12 to 35. The framers of the constitution derived inspiration from the **Constitution of USA** i.e. Bill of Rights. Fundamental Rights of citizens were incorporated in the original constitution.
- The Fundamental Rights are described as the **Soul** of Indian Constitution and it is the basic human freedoms that every Indian Citizen has the right to enjoy for a proper and harmonious development of personality.
- Part III of the constitution is described as the **Magna Carta** of India.
- Magna Carta is a written legal document, royal charter of rights agreed by King John of England in 13th century assuming liberties award to citizens of Britain.
- The Fundamental Rights of Indian Citizens can be suspended by the President during national emergency. Fundamental rights are **legally enforceable**.
- The fundamental rights under **Art.19** are automatically suspended during national emergency and **Art.20, Art.21** of the Constitution could not be suspended during emergency.

- Originally, the Constitution provided for seven Fundamental Rights :

1. Right to Equality : Art.14 - Art.18

- Equality before Law (Art. 14) - The state shall not deny to any person equality before law or the equal protection of the laws within the territory of India.
- Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth (Art. 15)
- Equality of Opportunity in matters of Public Employment (Art. 16)
- Abolition of Untouchability, related to Caste Discrimination (Art. 17)
- Abolition of Titles (Art. 18) e.g. Lord

Right to Freedom

- Art. 19 - Protection of certain rights regarding freedom of speech - All citizens shall have the right-
- 19(1)a - to freedom of speech and expression
- 19(1)b - to assemble peaceably and without arms
- 19(1)c - to form associations or unions
- 19(1)d - to move freely throughout the territory of India
- 19(1)e - to reside and settle in any part of the territory of India
- 19(1)g - to practise any profession, or to carry on any occupation, trade or business

Restrictions and Limitations in different complex situations

- Accordingly under Art. 19(2) the state may make a law imposing 'reasonable restrictions' on the exercise of the right to freedom of speech and expression in the interests of security of state, friendly relations with foreign states, public order, decency, morality, sovereignty and integrity of India, contempt of court, defamation or incitement to an offence i.e. urging someone to behave unlawfully.
- The power to impose reasonable restrictions on the Fundamental Rights of Indian citizens rests with the Supreme Court.
- The courts have been vested with the power to decide whether the restrictions imposed on the Fundamental Rights of Indian citizen are reasonable or not.

- Art. 20 : Protection in respect of conviction for offences - Rights/Protections which safeguards the rights of those people who have committed crime or anybody's trial is pending in courts.
- Art. 20(1) - Protection from ex post facto laws, i.e. passing criminal law with retrospective effect. This means in today's date a law is existing and it says you have committed an offence for e.g. Theft and it is a criminal act according to existing law and you will be held for that law, in future if law changes it is not going to matter.
- Art. 20(2) - Double Jeopardy (No one shall be punished twice for the same offence)
- Art. 20(3) - Protection against Self Incrimination (No man should be bound to accuse himself)
- Art. 21 : Protection of Life and Personal Liberty (Right to Life)
- Art. 21. A : Right to education
- Art. 22 : Protection against arrest and detention, under Art.22 there is a concept of Punitive detention & Preventive detention.
- Punitive detention is to **punish a person for an offence committed by him after trial and conviction in court.**
- Preventive detention is its **purpose to prevent a person from committing an offence in near future.** Right to freedom is restrained by Preventive Detention Act.
- Art. 23 : Right against exploitation, Prohibition of traffic in human beings, begar and forced labour
- Art. 24 : Prohibition of employment of children in factories

Right to Freedom of Religion

- Art. 25 : Freedom of conscience and free profession, practice and propagation
- Art. 26 : Freedom to manage religious affairs
- Art. 27 : Freedom as to payment of taxes for promotion of any particular religion
- Art. 28 : Freedom as to attendance at religious instruction or religious worship in certain educational institutions

Cultural and Educational Rights

- Art. 29 : Protection of interests of minorities
- Art. 30 : Right of minorities to establish and administer educational institutions
- Art. 31 : Right to Property, this was dropped from the list of fundamental rights by the 44th Amendment Act of 1978

Art 32 : Writs (Remedy)

- About protecting/enforcement our fundamental rights. 5 types of writs have been issued. **Right to Constitutional Remedies** described as **Heart and Soul of Constitution**.
- 1. Writ of **Habeas Corpus** : Have the person physically before the court. To bring in the body. The person arrested has to be produced before Magistrate within **24 hours**.
- 2. Writ of **Mandamus** : To Command/Order to perform public duties to any public officer.
- 3. Writ of **Certiorari** : SC & HC can command to lower courts that they submit their records to them for review. To be certified.
- 4. Writ of **Prohibition** : It means to forbid. It is often issued by a superior court to a lower court to prevent the latter from exceeding its jurisdiction that it does not possess.
- 5. Writ of **Quo Warranto** : By what authority or warrant. An order issued by the court to restrain a person from holding an office to which he is not entitled.

Directive Principles of State Policy

- The DPSP are enumerated in **Part IV** of the constitution from **Art. 36 to 51**. The framers of the Constitution borrowed this idea from **Ireland**. Dr. B.R Ambedkar described these principles as '**novel features**' of the Indian Constitution.
- DPSP are social rights they are not mandatory **non justiciable** and **legally not enforceable**, they are guidelines/instrument of instructions to the government.

Classification of Directive Principles

- **Socialistic Principles** : These principles reflect the ideology of Socialism.
- **Gandhian Principles** : These principles are based on Gandhian ideology.
- **Liberal-Intellectual Principles** : The principles included in this category represent the ideology of liberalism.
- Socialism is the political idea i.e. based on the belief that all people are equal.
- Liberalism is based on liberty, equality before law.

Socialistic Principles

- Art.38 : To promote welfare of the people.
- Art.39 : The right to adequate means of livelihood to all citizens, equal pay for equal work. Protection of youth and children from exploitation.
- Art.39A : To promote equal justice and to provide free legal aid to poor.
- Art.41 : To secure the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement.

- Art.42 : To make provision for just and humane conditions of work and maternity relief.
- Art.43 : To secure living wage, a decent standard of life and social and cultural opportunities for all workers.
- Art.43A : To take steps to secure the participation of workers in management of industries.
- Art.47 : To raise the level of nutrition and the standard of living of people and to improve public health. e.g. - Poshan Abhiyan scheme.

Gandhian Principles

- Art.40 : To organise village panchayats (**Democratic Decentralization**), Local Self Government.
- Art.43 : To promote cottage industries on an individual or co-operation basis in rural areas.
- Art.43B : To promote voluntary formation, autonomous functioning of cooperative societies.
- Art.46 : To promote educational and economic interests of SCs, STs and other weaker section of society.
- Art.47 : To prohibit the consumption of intoxicating drinks and drugs which are injurious to health.
- Art.48 : To prohibit the slaughter of cows, calves and other milch and draught cattle and to improve their breeds.

Liberal-Intellectual Principles

- Art.44 : To secure for all citizens a uniform civil code throughout the country. UCC is a **codified law applicable to all person of India irrespective of their religion.**
- Art.45 : To provide early childhood care and education for all children until they complete the age of six years.
- Art.48 : To organise agriculture and animal husbandry on modern and scientific lines.
- Art.48A : To protect and improve the environment and to safeguard forests and wild life.
- Art.49 : To protect monuments, places and objects of artistic or historic interest which are declared to be of national importance. e.g. - Hampi, Belur, Halebeedu.

- Art.50 : **Separation of Powers**, To separate the judiciary from the executive in the public services of the state.
- Art.51 : To promote international peace and security and maintain just and honourable relations between nations, to foster respect for international law and treaty obligations, and to encourage settlement of international disputes by arbitration.

Fundamental Duties Art. 51A

- The fundamental duties in the Indian constitution are inspired by the Constitution of erstwhile **USSR**.
- In 42nd Amendment Act 1976, the fundamental duties of citizens were added through the recommendation of **Swaran Singh Committee report**. It falls under **Part IV A**. Fundamental Duties are **not legally enforceable**.
- According to this article, it is the duty of every citizen to abide by the constitution respect the National Flag, National Anthem, to defend the country render national service, protect and preserve the natural environment, promote harmony, value and preserve rich heritage culture, to cherish and follow the noble ideals that inspired the national struggle for freedom.
- Provide opportunities for education to his child or ward between the age of six and fourteen years. This duty was added by the **86th Constitutional Amendment Act, 2002**.

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