



**THE CONSTITUTION OF INDIA**  
**PREAMBLE**

Constitutions all over the world generally have a preamble. The form, content and length of the preamble differ from constitution to constitution. Irrespective of these differences, the Preamble generally sets the ideals and goals which the makers of the constitution intended to achieve through that constitution. In the case of **In re Berubari Union**, SC 1960, the Supreme Court held that preamble is a key to open the mind of the makers of the constitution which may show the general purposes for which they made several provisions in the constitution.

**Ques. What is the difference between preamble of the constitution and preamble of an Act?**

**Ans.** The preamble of an Act is not enacted by the legislature. Therefore, it cannot be used for interpreting an Act except for removing any ambiguity in the enacted provisions of that Act. The preamble of the constitution of India, unlike the preamble of an Act or the preamble of any other constitution was enacted and adopted by the constituent assembly by the same procedure as the rest of the constitution.

The Constituent Assembly first met on 9<sup>th</sup> December 1946 and soon after that on 13<sup>th</sup> December the Objective Resolution (**drafted by Pt. Nehru**) declaring and defining the aims and purposes of the Constituent Assembly was moved. The basic aspirations contained in the Resolution have found expression in the Preamble, so beautifully yet concisely worded. The Preamble embodies the lofty principles in a charming lucid manner.

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.* The preamble to a Constitution is expected to embody the fundamental values and the philosophy on which the Constitution is based and the aims and objectives which the founding fathers enjoined the polity to strive to achieve. The preamble contains in a nutshell the ideals and aspirations of the people. It states the objects which the Constitution seeks to establish and promote and also aids the legal interpretation of the Constitution. **N. A. Palkhivala**, an eminent jurist

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and constitutional expert, called the preamble as the identity card of the constitution. It reveals four components:

1. It indicates the source of authority of the Constitution.
2. It defines the objects which the Constitution seeks to establish and promote.
3. It declares nature of Indian States.
4. Date of adoption of the constitution.

### **Utility of Preamble**

Preamble represents the quintessence, the philosophy, the ideals, the soul or spirit of the entire Constitution of India. It has the stamp of “deep deliberation”, was “marked by precision”: it was “an epitome” of the broad features of the Constitution which were an amplification or concretization of the concepts set out in the Preamble. (Madhlokar, J. in **Sajjan Singh v. State of Rajasthan**, AIR 1955 SC 845)

The preamble does not grant any power but it gives a direction and purpose to the Constitution. The utility of the Preamble is as follows:

- It contains the enacting clause which brings the Constitution into force.
- It indicates the source of Constitution.
- It declares the basic type of Government and polity which is sought to be established in the country
- A statement of objectives of the Constitution – which the legislation is intended to achieve (e.g. implementation of Directive Principles). It epitomizes principles on which the Government is to function.
- It serves as a challenge to the people to adhere to the ideals enshrined in it (Justice, Liberty, Equality, Fraternity, etc.)
- It is a sort of introduction to the statute and many a times very helpful to understand the policy and legislative intent. It is a ‘key-note’ i.e., key to the minds of the framers of the Constitution.
- Several decisions of the Supreme Court pointed out the importance and utility of it. By itself, it is not enforceable in a Court of law, yet it states objects and aids legal interpretation of the Constitution, where language is ambiguous.... Construction which fits the preamble may be preferred. (However, the preamble cannot override the express provisions of an Act.)

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The preamble read as under:

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 words used in the Preamble of our Constitution are some of the noblest. They embody the highest values that human ingenuity and experience have been able to devise thus far.

The words '**We the People**' indicate that India is a republican polity which means it shall have no hereditary ruler and the people shall elect their government. The legislatures will be elected bodies and the President of the Republic will also be elected. It also tells us that the people have enacted this Constitution unlike the Act of 1935 or earlier Acts which were passed by the British.

### **Sovereign**

'Sovereignty' is considered to be one of the essential attributes of a State and connotes absolute and supreme power not subject to control by any internal or external authority. 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.

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In the case of **Keshvananda Bharti v. State of Kerala**, (1973) 4 SCC 225, Justice Mathew said that the Republic of India was “sovereign” because it could make or unmake any decision with respect to itself without any interference from outside.

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 manner. Pt. Nehru said that being the member of commonwealth does not destroy the sovereignty of India as it is an agreement by free will, to be terminated by free will. Further, India’s membership of the United Nations Organisation (UNO) also in no way constitutes a limitation on her sovereignty.

The Constitution of India does not contain any specific provision in regard to the vesting of sovereign powers. The only place from where the residence of sovereignty and the source of the Constitution itself can be ascertained is the Preamble. Unlike the United States and Australia, where sovereignty is divided between the Union or the Commonwealth and the States, each being sovereign in the sphere assigned to it by the Constitution, in India, despite the division of powers between the Union and States, there is no division of sovereignty.

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

### **Socialist**

The word ‘socialist’ was not in the Preamble as enacted by the Constituent Assembly but was inserted by the 42<sup>nd</sup> Amendment Act. Even before the term was added by the 42<sup>nd</sup> Amendment in 1976, the Constitution had a socialist content in the form of certain Directive Principles of State Policy. The addition of “socialist” indicates the incorporation of the philosophy of “socialism” in the Constitution, which aims at elimination of inequality in income and status and standards of life, and may enable the courts to lean more and more in favour of nationalisation and state ownership of industry and private property. And the right to equal pay for equal work. But the preamble did not contain the word ‘socialism’ because the Constitution does not

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commit the Country to any particular form of economic structure. The word 'socialism' was purposely avoided though many of the tenets of socialism were included as the Directive Principles of State Policy.

Notably, the Indian brand of socialism is a 'democratic socialism' and not a 'communistic 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 private and public sectors co-exist side by side. As the Supreme Court in **G.B. Pant University of Agriculture and Technology v. State of Uttar Pradesh**, SC 2000, says 'democratic socialism aims to end poverty, ignorance, disease and inequality of opportunity.'

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

### **Secular**

'Secular' is another word which was inserted in 1976 by the 42<sup>nd</sup> Amendment Act. The word 'secular' recognises the concept of secularism as manifested in the guarantee of freedom of religion as a fundamental right in the Constitution. Thus, secularism was as much part of the Constitution before the word "secular" was inserted in the Preamble. The Constitution did not set up a State religion. It guaranteed equality of treatment of all persons under Article 14. A secular state deals with the individual as a citizen irrespective of his religion, is not connected to a particular religion nor it seeks to promote or interfere with religion.

Before 42<sup>nd</sup> Amendment Act, the only mention of the word 'secular' in the Constitution was in Article 25(2) wherein state had been empowered to regulate or restrict any 'secular activity' associated with religious practice.

Delivering his judgment in **Zyauddin Burhanuddin Bukhari v. Brijmohan Ramdass Mehra and Bros**, 1975 SCR 453, Justice M.H. Beg said: 'the secular state, rising above all differences of religion, attempts to secure the good of all its citizens irrespective of

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their religious beliefs and practices. It is neutral or impartial in extending its benefits to citizens of all castes and creeds.'

In the **Keshavananda Bharti case**, 'secularism' was held to be a part of basic structure. In the case of **S.R. Bommai v. Union of India**, AIR 1994 SC 1918, the Supreme Court dwelt at length on the basic feature of secularism in the Constitution and justified the proclamations under Article 356 imposing President's rule in the BJP ruled States in the aftermath of Babri Masjid demolition on the ground of threat to 'secularism' which it held to be a basic feature of the Constitution and one that was there even before the word 'secular' was inserted in the Preamble by the 42<sup>nd</sup> Amendment Act.

In the case of **Ismail Faruqui v. Union of India**, AIR 1995 SC 605, (**Ayodhya case**) the Supreme Court explained 'secularism' as: "it is clear from the constitutional scheme that it guarantees equality in the matter of religion to all individuals and groups irrespective of their faith emphasizing that there is no religion of the State itself."

**Justice Gajendragadkar** defined 'secularism' of the Indian Constitution to mean equality of rights to all citizens as citizens with their religion being entirely irrelevant in the matter. "The state" he said, 'does not owe loyalty to any particular religion as such, it is not irreligious or anti particular religion as such, it gives equal freedom to all religions.' **M.C. Setalvad** also believed that under a secular state all citizens are to be treated alike and not discriminated against on account of their religion.

Thus, there is no official religion in India. Several fundamental rights guarantee freedom of worship and religion as well as outlaw discrimination on the ground of religion and, thus, by implication prohibit the establishment of a theocratic state. The state does not identify itself with, or favour, any particular religion. The state is enjoined to treat all religions and religious sects equally. No one is disabled to hold any office on the ground of religion. The essential basis of the Indian Constitution is that all citizens are equal, and that the religion of a citizen is irrelevant in the matter of his enjoyment of fundamental rights. The Constitution ensures equal freedom for all religions and provides that the religion of a citizen has nothing to do in socio-economic matters.

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## **Democratic**

Literally, the Greek word 'demos' meant 'the people' and 'kratos' meant 'government' or 'rule'. Democracy therefore, meant government by the people as against monarchy or dictatorship which were autocratic rule of one person, oligarchy or aristocracy being rule by the few. Its basic postulates are that the sovereign power resides in the people, that irrespective of religion, caste, creed, colour or sex and irrespective of the level of economic, educational or professional background, all are equal in the eyes of law and that each individual is capable of governing oneself and of managing one's own affairs the way one deems fit. In a democracy the people are supposed to be their own masters. They have an inalienable right to rule themselves, or to be ruled in the way they like and by the people they choose.

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 manifestation 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. The founding fathers tried to provide for the fullest representation by enfranchising all the vast adult population of the country without any literacy, property, income tax, or sex criteria.

Democracy is a method of government by discussion and persuasion. The core of democracy is choice. There may be a number of ideas or lines of action proposed by different individuals or groups. These groups come together with a view to find some conclusion agreeable to all or most of the groups. It entertains plurality of ideas and arrives at an agreed line of action by comparing them, ironing out the difference and forming a composition. So, democracy is a process of selecting objectives for the State.

**Abraham Lincoln** in his famous speech at **Gettysburg** described democracy as 'government of the people, by the people, for the people'. This is a beautiful and concise description of representative democracy. Democracy is slightly more than

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that. Apart from political it is social also. It envisages not only a democratic form of government but a society in which there is free exchange of ideas and each individual enjoys the same status in society.

For our founding fathers, however, democracy did not mean merely political democracy or the people's right to periodically vote to elect their representatives. Without social and economic democracy, political democracy had no meaning in a poor country like India. For **Dr. Ambedkar**, social and economic democracy was the real aim and ultimate goal. He said that parliamentary democracy was meaningless unless it was geared to achieving the real goal of economic democracy.

### **Republic**

The concept of republic is that of a State in which the people are supreme, there is no privileged class and all public offices are open to every citizen without any discrimination. There is no hereditary ruler and the head of the State is elected by the people for a fixed term. In the words of Justice Hidayatullah, "A Republic is a state in which the supreme power rests in the final analysis with the people and not with a single individual like a king or the like."

Therefore, the term 'republic' in our Preamble indicates that India has an elected head called the President. He is elected indirectly for a fixed term of five years. Democratic Republic may, therefore, broadly mean a State with an elected head and a government by the representatives of the people. With the commencement of the Constitution on 26<sup>th</sup> January 1950, India ceased to be a dominion and no more owed any allegiance to the Crown.

Even though after independence, India decided to remain a member of the Commonwealth of the Nations, it did not in any way compromise her position or imply any diminution of her status as a sovereign nation or as a Republic. The Commonwealth specifically recognised India's status as a sovereign independent republic.

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According to Madison in **The Federalist**: “Republic is a government which derives its powers directly or indirectly from the great body of the people, and is administered by persons holding their offices during pleasure, for a limited period, or during good behaviour.”

It is in the widest sense that the Preamble speaks of India being a Republic.

## **Justice**

The Preamble promises justice to all citizens. Justice means harmonization of interests between the individuals, between groups and between the individuals and groups on the one hand and interests of the community on the other. The term ‘justice’ in the Preamble has three distinct forms, namely, social, economic and political, secured through various provisions of Fundamental Rights and Directive Principles.

Social justice implies that all citizens are treated equally irrespective of their status in society as a result of the accident of birth, race, caste, religion, sex, title etc. it means absence of privileges being extended to any particular section of the society, and improvement in the conditions of backward classes and women. Article 38 enjoins the State to strive to promote the welfare of the people “by securing and protecting as effectively as it may a social order in which justice social, economic and political shall inform all the institutions of the national life.”

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’. Economic justice would require that the rich and the poor are treated alike and that efforts are made to bridge the gap between them.

Political justice means equal share to all citizens in the rights to participation in the political process without any distinction of race, caste, creed, religion or place of birth. Article 16 guarantees equality of opportunity in matters of public employment and Articles 325 and 326 provide for equal rights to all adults to participate in elections. Political justice implies that all citizens should have equal political rights, equal access

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to all political offices and equal voice in the government. Founding fathers like Nehru and Ambedkar were quite clear in their minds that political justice was meaningless without economic justice. In our society ridden with religious, caste and creed discriminations, even economic justice was not enough unless it was coupled with social justice.

### **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 successful functioning of the Indian democratic system. However, liberty does not mean 'license' to do what one likes, and is 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.

### **Equality**

'Equality' does not mean that all men and women are equal in all circumstances. There are bound to be physical, mental and economic differences. The concept embodied in our Preamble is only that of equality of status and opportunity. This has legal, social, political and economic aspects. 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.

All citizens are equal before law and enjoy equal protection of laws of the land. There can be no discrimination between one person and another on grounds of religion, race, caste, sex or place of birth in the matter of access to public places and public employment. All citizens are equally entitled to enjoy the political rights to vote and participate in the process of governance without any distinction. In the economic field,

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equality means that for the same ability and same labour, the salary would also be the same. Also, one man or one class would not exploit other men or classes. The concept of equality of status and opportunity has been given concrete substance and shape in Articles 14 to 18.

### **Fraternity**

Fraternity means a sense of brotherhood. The Constitution promotes this feeling of fraternity by the system of single citizenship. Also, the Fundamental Duties, 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 Fundamental Rights guaranteed to all citizens without any discrimination and the Directive Principles directed at achieving social and economic equality are also designed to promote fraternity. Dr. Ambedkar remarked in the Constituent Assembly: "what does fraternity mean? Fraternity means a sense of common brotherhood of all Indians - of Indians being one people. It is the principle which give unity and solidarity to social life."

The Preamble declares that fraternity has to assure two things - the dignity of the individual and the unity and integrity of the nation. Fraternity was expected to preserve and promote the **dignity** of the individual. In the minds of the founding fathers, dignity of the individual was of supreme importance. The objective was to improve the quality of life for the individual by guaranteeing the fundamental rights of freedom, equality etc. and by issuing guidelines to the State in the form of Directive Principles to so orient its policies as to provide to all citizens, inter alia adequate means of livelihood, just and humane conditions of work and a decent standard of life.

### **Unity and Integrity of the Nation**

In order to safeguard the dignity of the individual, we need to build the nation and protect its unity and integrity. It was only through a spirit of common brotherhood and fraternity that we could hope to build national unity in a highly pluralistic and

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heterogenous society. Also, without unity and integrity of the nation, we could not succeed in our efforts economic development and could not hope to preserve either democracy or the independence of the country and the honour of the countrymen. Article 51A, therefore, appropriately makes it the duty of every citizen to uphold and protect the sovereignty, unity and integrity of India and promote harmony and brotherhood. At least in matters which involve threat to the unity and integrity of the nation, it is expected of every citizen to forget all differences and rise above all considerations of self-interest. The word 'integrity' has been added to the preamble by the 42<sup>nd</sup> Constitutional Amendment Act, 1976.

### **Preamble as a Part of the Constitution**

Preamble is generally not regarded as a part of the Constitution though considered as a key to the meaning of a statute. In case of **In re Berubari Union**, AIR 1960 SC 845, the Supreme Court declined to treat the Preamble as part of the Constitution. 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.

But the court reversed its judgment in the case of **Keshavanand Bharati v. State of Kerala**, AIR 1973 SC 1641, stating that the Preamble formed part of the Constitution because it was separately passed after the enacting provisions had been passed. The recognition of the Preamble as part of the Constitution has enhanced its value as an aid to interpretation of the Constitution. But the following proposition would be applicable:

- a. Preamble is not a source of power. Power must be founded on a specific provision.
- b. Preamble cannot be regarded as a source of prohibition or limitation upon the powers of a legislature.

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- c. Where the terms of an article are ambiguous or capable of two meanings, in arriving at the true meaning some assistance may be sought in the objectives enshrined in the Preamble.

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." The motion then adopted. Hence 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.

#### **Amendment of the Preamble**

The question that whether the preamble can be amended under Article 368 was raised in the case of **Kesavananda Bharti v. State of Kerala**, SC 1973. The Supreme Court held that preamble is the part of the constitution. Preamble can be amended, subject to the doctrine of basic structure. In other words, the basic elements contained in the preamble cannot be altered by an amendment under Art. 368.

The preamble has been amended only once in the year 1976 by 42<sup>nd</sup> amendment and three words, namely, Socialist, Secular and integrity were inserted.

Thus, an analysis of the various concepts and terms in the Preamble shows that the noble words of our Preamble represent the quintessence, the philosophy, the ideals or the soul of the entire Constitution of India. It contains the grand and noble vision of the Constituent Assembly and reflects the dreams and aspirations of the founding fathers of the Constitution. 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."

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**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.'

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