

PREAMBLE

“Constitution as “a living tree” capable of continuous growth with concomitantly changing scenarios”.

MEANING:

The Preamble to the Constitution is an introductory, succinct statement of the principles at work in the full document. A preamble explains the document's purpose and underlying philosophy.

THE PREAMBLE OF OUR CONSTITUTION:

The Preamble of our constitution is the introductory statement sets out the guiding purpose and principles of the Constitution. The Preamble also indicates the source from which the Constitution comes. This source is **"we the people of India"**.

For the first time, the Government of India Act 1919 (Montague Chelmsford Reforms) had a **separate preamble**. Government of India Act 1935 had no preamble. The idea of the Preamble was borrowed from the Constitution of **USA**. Preamble in the Indian Constitution is based on the **“Objective Resolution”** drafted and moved by Mr. Nehru and adopted by the Constituent Assembly on December 13, 1946 and adopted by it on 22 January, 1947.

The Preamble sets out the aims and aspirations of the people and these have been embodied in various provisions of the constitution. The people will continue to be governed under the constitution so long it is acceptable to them and its provisions promote their aims and aspirations. The Constitution though not ratified by the people, its enactment is brought out as a culmination of urges of people reflecting the changes in the socio-economic order.

“Preamble” has been connoted in various ways by many scholars. Some important among them are as follows:

- KM Munshi quoted Preamble as "Political Horoscope"
- Thakurdas Bhargav quoted Preamble as "Soul of the Constitution"

- NA Palkhiwala calls it the identity card of the constitution.

The Preamble 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 HERE BY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.”

The constitution (42nd Amendment) Act 1976 introduced three words- **Socialist, Secular and Integrity** into the Preamble. A Committee under the chairmanship of **Sardar Swaran Singh** recommended that this amendment be enacted.

IS PREAMBLE A PART OF THE CONSTITUTION? (Question of amenability of the preamble)

A. In the *Berubari's* case 1960, the Supreme Court held that "Preamble is NOT a part of the constitution and thus not a source of any substantive powers and does not import any limitations. A bench consisting of eight judges headed by B.P.Sinha, C.J. Justice Gajendragadkar delivered the unanimous opinion of the court.

B. However, in the *Kesavanand Bharti v/s State of Kerala* (1973) Case, Supreme Court reversed the earlier verdicts and said that Preamble is part of the Constitution and is subject to the amending power of the parliament as any other provisions of the Constitution, provided the basic structure of the constitution is not destroyed.

Kesavanada Bharati Case has created a history. For the first time, a bench of 13 Judges assembled and sat in its original jurisdiction hearing the writ petition. 13 Judges placed on record 11 separate opinions. It held:

- Preamble to the Constitution of India is a part of Constitution
- Preamble is not a source of power nor a source of limitations
- Preamble has a significant role to play in the interpretation of statutes, also in the interpretation of provisions of the Constitution.

C. In LIC of India Case (1995), the Supreme Court again held that Preamble is an integral part of the Constitution.

SOME BASIC FACTS OF PREAMBLE OF OUR CONSTITUTION:

- "HERE BY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION" this phrase underlines the supremacy of the Indian People.
- Preamble enshrines the ideas and philosophy of the constitution and NOT the narrow objectives of the governments.
- The preamble of the constitution has been amended only once so far through the 42nd Constitution Amendment Act 1976. The words Secular, Socialist and Integrity were added to the constitution.
- Pakistan remained a British Dominion till 1956, but India declared itself Republic in 1949 and the Preamble enshrines the philosophy that the government is **by the people and for the people**.
- It is non-justiciable, i.e. its provisions are not enforceable in courts of law.

THE PHILOSOPHY AND IDEALS OF THE PREAMBLE:

SOVEREIGNTY:

The Preamble begins with the words "We the people of India....." and ends with the words ".....adopt, enact and give to ourselves this Constitution". It indicates that ultimate

sovereignty lies with the people of India who collectively constitute the supreme source of authority in the country. The Constitution is regarded as the supreme law of the state, but the supreme power of the state is vested upon the people of India. This is called **popular sovereignty**. The external sovereignty of India means that it is not subject to the control of any other State or external power; and secondly, that it can acquire foreign territory and also cede any part of the Indian territory, subject to limitations (if any) imposed by the constitution¹⁰. From the internal standpoint it means that it has the power to legislate on any subject only to the federal division of legislative powers and other limitations imposed by the Constitution, e.g., the fundamental rights¹¹.

One of the corollaries emanating from the doctrine of sovereignty is that of **parens patriae**. It means that it has the power and obligation of the sovereign to protect the rights and privileges of its citizens. The doctrine can be invoked both in international as well as domestic courts, in order to vindicate the rights of the aggrieved citizens who are unable to enforce their rights¹². In India, though the doctrine of *parens patriae* is not embodied in any express provision of the constitution, it has been derived from the Preamble, read with the Directive Principles in Articles 38, 39 and 39A¹³. The only limits to the exercise of this power by the legislature are the fundamental rights and other constitutional limitations

SOCIALIST:

The word 'Socialist' has been added in the Preamble by the 42nd Amendment in 1976. It means the Constitution of India has a great objective to secure social and economic equality and fair distribution of wealth among all sections of people in the country. By inserting the term 'socialist', it has not only brought a feeling of equal status among the people but also strengthened the philosophical foundation of the Indian Constitution. Some socialistic principles are also distinctly reflected in the Articles 39, 41, 42 and 43 which are incorporated in the Directive Principles of State Policy.

By inserting this word, it set a positive direction to the Government in formulating its policies.

It is close to two decades since India veered away from "socialism" to loosen the state's grip over the economy and to create a bigger play for market forces, but political parties must continue to declare allegiance to "socialism" enshrined in the Preamble of the Constitution to get recognition from Election Commission.

The Supreme Court on Monday refused to entertain a PIL against the anomaly. Significantly, the top court cited an interesting reason to turn down the petition argued by senior advocate Fali S Nariman. It said no political party, including those responsible for getting the state to vacate the "commanding heights" of the economy, had objected to being required to swear by socialism.

Section 29-A of Representation of People Act mandates that no political party would be registered by Election Commission unless it bore "true faith and allegiance to the Constitution of India as by law established and to the principles of socialism, secularism and democracy..."

The Centre, in its affidavit before the SC, had defended the provision in RP Act mandating political parties to stick to the concept of socialism and said it was "one of the fundamental principles underlying the Constitution".

Appearing for the PIL petitioner, NGO 'Good Governance India Foundation', Nariman said market forces were the determining factor since early the 1990s which marked the beginning of liberalisation era in India and it was a dichotomy to force political parties to owe allegiance to "socialism".

A Bench comprising Chief Justice S.H.Kapadia and Justices K.S. Radhakrishnan and Swatanter Kumar asked why no party had ever protested against it.

While Nariman said the declarations owing allegiance to Constitution were given in a routine manner though most did not practise it, many feel that the "habit" suggests that turning away from socialism is still not regarded fashionable or correct even after the ideology lost its appeal.

Nariman also cited the objection of Dr B R Ambedkar, main architect of the Constitution, to insertion of the word "socialist" in the Preamble and how it was left out from the Constitution after a lengthy debate during the Constituent Assembly proceedings.

But solicitor general Gopal Subramaniam said all parties knew their duties and none had ever objected or moved the Election Commission challenging the requirement to give declaration owing allegiance to the word "socialist".

Taking the cue, the Bench disposed of the petition saying though the PIL raised an important question of law, it was purely academic in nature at present. "The court will decide such a question as and when a political party which is refused recognition by EC raises it," the Bench said.

SECULAR:

The word secular appeared at only one article that is Article 25 (2-a) before it was inserted into the Constitution's Preamble. The word 'Secular' has been included in the Preamble by the 42nd Amendment in 1976. The characteristic of Indian secularism is that India does not recognize any religion as the official or state religion and treats all religions equally. Moreover, different communities in India have the right to practice their own faiths. Thus, secularism is one of the ideals of the Indian Constitution.

State will protect every religion equally but the state will not have any foundation on religion.

SECULARISM AND RELIGION-

There's a more fundamental flaw in the "secularism-has-failed" theory, and it is the argument that secularism is alien to a society such as India where religion is a part of everyday life. Or that it is an assault on religion and equates religious faith with communalism. An old argument in Delhi was that, Muslims did not want to vote for the Left because they said that in the garb of secularism it wanted to bring in communist-style atheism. Yet, the mullahs had no compunction doing deals with the Congress in the name of secularism. It's this kind of wheeling and dealing whereby the Congress rewarded certain community members with leadership roles and other perks in return for votes that corrupted secularism. It's just as well that this nexus has been exposed. Secularism will be the better for it.

The fact is that the Indian brand of secularism never discouraged religiosity or the celebration of religion. Not even in communist-ruled States like West Bengal and Kerala where secularism happily coexisted with religious beliefs and indeed their celebration. If anything, the Indian state has been guilty of “doing” too much religion and promoting a culture of competitive religiosity. India must be the only secular country in the world to have so many religious holidays. Its political leaders (from the President down), celebrities and the media all openly celebrate religious festivals and there are more places of worship in the country than worshippers.

Minority disillusionment

In which other country will you find main thoroughfares closed for hours because one religious group or the other is taking out a procession? Religion is so much in one’s face in India that it is impossible to escape it. Does it remotely seem like a country where people feel “ashamed” or “embarrassed” about their religion?

Another fallacious argument is that, somehow, secularism legitimised minority communalism or, in Prof Visvanathan’s words, “treated minority violations as superior to majoritarian prejudices.”

All over the world, the behavior of the dominant group is invariably under greater scrutiny than that of smaller groups. Thus, in the West while white racism is always in the news, non-white racism doesn’t get the same attention. In Britain for example, Dalits have been complaining for years about discrimination at the hands of high-caste Hindus but it is only recently that the government has woken up to it. The issue was ignored all these years because it related to an ethnic minority group. None of this of course justifies any soft-peddling of minority communalism.

Admittedly, there is a lot that has gone wrong with secularism in India, and nothing illustrates it better than the fact that even minorities, especially Muslims, are deeply disillusioned and see themselves as its victims. The ignominy they heaped on the Congress and its secular allies reflects the depth of their anger. But is this a valid basis for saying that secularism doesn’t suit

India, and dismissing it as an elitist conspiracy against religion? To do that will be to succumb to right-wing triumphalists to whom secularism has always been an anathema.

DEMOCRATIC:

The Preamble describes India as a democratic state. The prime philosophy and ideal of the Indian Constitution is to make India a democratic state. India is regarded as the largest democratic state in the World. According to **Abraham Lincoln**, *“Democracy is by the people, for the people and of the people.”* The Constitution of India has established a parliamentary democracy in India marked by universal adult franchise, periodic election to choose the government, majority rule, rule of law, decentralization of power, rule of law, independence of the judiciary, etc.

Ancient city of Vaishali, a city in North Bihar, was the first democratic of the world. However, India has borrowed its present form of democracy from the western world.

IS INDIA REALLY A DEMOCRACY?

During a recent lecture delivered in Chennai, T. S. Krishnamoorthy, the former chief election commissioner of India, declared: “India is undeniably one of the strongest democratic countries in the world but there are forces of threat, too.” Krishnamoorthy further noted that an upheaval like the 'Arab Spring' revolutions could never occur in India – but he cautioned that for democracy to strengthen and thrive, greater public participation must be encouraged. “It is high time that locals participate and build a transparent and healthy democracy,” he told the audience. Another speaker at the same venue, M. R. Ramalingam, vice-president of the Chennai Friends Forum, warned: “Freedom is something we have already got from the British. But the right focus is to feed people, to make them useful for society that will give us good democracy.”

So, is India, a huge nation wracked by immense poverty [30 percent poverty rate as of 2010], still-high illiteracy rates [about 25 percent as of 2011], massive social inequality and a deep culture of political corruption, really a functioning democracy?

Jamie Chandler, a political scientist at Hunter College in New York, said that India has a strong multi-party electoral system which allows new parties to emerge to address issues otherwise left off the table by the dominant parties. "Elections keep India's democracy alive, but it's a tenuous situation," Chandler stated. "Its democracy requires much improvement -- particularly in strengthening government institutions, curtailing repression, and lowering income inequality. If these trends continue, instability could put democracy in jeopardy."

In a book entitled "Beyond A Billion Ballots," author Vinay Sahasrabudde boldly states that democracy is fragile and decaying in the country. "Democracy in India is more impressive in form than substance," he said. "People no longer believe that politicians pursue politics for some great cause." Part of the problem lies with deeply-entrenched and unmovable leadership in the top rungs of party hierarchies. Indeed, of the more than four-dozen officially recognized political parties currently operating in India, only three – the right-wing nationalist BJP and two far-left parties, Communist Party of India (CPI) and Communist Party of India-Marxist (CPI-M) – are not controlled by dynastic rulers or dominated by one charismatic leader.

Thus, as M.R. Narayan Swamy, executive editor of the Indo-Asian News Service (IANS), wrote: "Ideology has been pushed to the periphery; personal ambition is the sole motivating factor for most party workers in most parties." Consequently, Indian politicians – whose image has sunk to all-time lows after a seemingly endless stream of corruption scandals – appear to have sacrificed ideology for personal gain. Aside from parties with extremist or well-defined ideologies (that is, the far-right and far-left), the other organizations are virtually indistinguishable from each other in terms of policy.

Sahasrabudde suggests that India adopt a 'proportional representation' (PR) system, in place of the existing 'first-past-the-post', i.e., 'winner-take-all' program. "PR is likely to help improve the quality of democratic governance," he said. "PR is more capable of challenging moneyed and patronage politics. PR will provide greater political stability and more certainty [to] the schedule of elections." Sahasrabudde further warned that reforms to the political system may not come before frustrated Indians succumb to massive social unrest. "Sooner than later, India

needs to unlock its democracy - now chained to the archaic, outdated aspects of the system," he added.

However, Dr. Michael Kugelman, Senior Program Associate for South and Southeast Asia AT Woodrow Wilson International Center for Scholars in Washington, believes India is indeed a functioning democracy. "Certainly India is afflicted by all kinds of problems, including widespread political corruption, yet despite all this it remains a country that is run by elected civilian officials," he said in an interview. "And despite widespread inequality and sectarianism, it is a nation where pluralism and the rights of minorities are respected--at least relative to many other countries (including democracies) in India's neighborhood. Democracy is both imperfect and ugly, and this unseemly side is always on full display in India."

Sumantra Bose, a professor at the London School of Economics (LSE), asserts that democracy in India has actually been empowered by the emergence of regional parties and decentralization. "For all the flaws and vices of many of contemporary India's regional political figures, the regionalization of India's politics is a democratic outcome that has emerged through the dynamic evolution of India's democracy over six decades," Bose told the Press Trust of India (PTI). Bose's new book "Transforming India: Challenges to the World's Largest Democracy," points out that the country's political structures have now matched its vast cultural diversity.

Once dominated by the Nehru-Gandhi-dynasty-controlled Congress Party, India has, in the past two or three decades, witnessed the spread of smaller regional political parties that can address local issues directly and more effectively. Bose cites as an example, the YSR-Congress, a party that splintered from Congress in the state of Andhra Pradesh and is named after former Congress Chief Minister Y.S.R. Reddy. "The party is led by the deceased leader's son, who faces serious criminal charges of accumulating vast [amounts] of money and assets through blatant corruption during his strongman father's term in office," Bose wrote. Nonetheless, YSR-Congress has gained enormous electoral support in Andhra Pradesh at Congress' expense, thereby granting it a powerful mandate. "The emergence of [an] increasing number of [a] wide variety of parties representing various kinds of segmental identities and interests has resulted

[in] a huge spectrum of ethnic and sub-ethnic, caste and sub-castes, linguistic and sub-linguistic permutations and combinations on India's political landscape," Bose said.

Bose proposes that regional parties should exploit their local, concentrated power by taking on larger responsibilities. "It is crucial in the early twenty-first century for regionalist leaders governing the states to break out of and transcend the boundaries of caste, religion and political partisanship," he said.

Indeed, a blogger named Atanu Dey indicated that in India, all interests are regional interests, in stark contrast to the U.S., which has long been dominated two enduring national parties, the Democrats and Republicans. Also, U.S. voters directly elect their representatives, from local councilors all the way up to President. "[But], the [Indian] people vote for MPs and not for governors or chief ministers or for prime ministers," Dey wrote. "People vote for either the parties... or for some local MP." As a result, the Prime Minister of India (that is, the leader of 1.2-billion people) is not directly chosen by the public.

Dey further noted that, despite the fact that Indians vote in large numbers, their actual engagement with politics largely remains absent. "Indians vote and then forget about it," Dey commented. "But Americans get more into the process — both the width and depth of the process. The U.S. voters participate more actively in all levels of the institutional structure of governance."

Kugelman noted that as Indian democracy follows the Western European parliamentary style of government more than the American presidential variety. "[This] parliamentary democracy... model. tends to promote a more volatile type of politics than presidential democracy, given that governments must often be formed by coalition and tend to be fragile — leading many of them to fall," he said.

Another key difference between U.S. and Indian democracies relates to political dynasties. While it is true that certain American families have had high profiles in national politics — e.g., Kennedys, Bushes, etc. — they have not ruled the nation for decades on end, like the Nehru-Gandhi dynasty of India. Dey likened the Congress Party elites as "imperial." "Imperial rule

often involves a family succession,” Dey wrote. “[Jawaharlal Nehru's] daughter [Indira] was next in the imperial rule line. Then came her son [Rajiv]. Then the son’s wife [Congress leader Sonia], who is the 'first Italian to rule India.' Next will be the son [Rahul] of the Italian who rules India.” Thus, Dey opines that India is still under “imperial rule.” “The government still holds all the major cards, and therefore [there exists] the intense struggle to get into the government,” Dey added.

Crucially, in the U.S., the executive and legislative branches of government are distinct and operate independently of each other. In India, such a separation does not really exist. A lack of transparency in India also breeds excessive corruption.

Perhaps one of most vexing obstacles to establishing a true and fully functioning democracy in India relates to innumerable ethnic, racial, linguistic and caste issues across the sub-continent. In 1950, India's constitution guaranteed universal voting rights – in a country that had lived under severe, strict and codified class, caste and ethnic divisions for centuries. B.K. Ambedkar, the leader of India's Dalits, the long-oppressed 'Untouchables,' noted this dramatic contradiction. "In politics we will have equality and in social and economic life we will have inequality," he said during a constitution assembly in 1949. “How long shall we continue to live this life of contradictions? How long shall we continue to deny equality in our social and economic life? If we continue to deny it for long, we do so only by putting our political democracy in peril.”

Now, in 2014, corruption is the greatest challenge Indian democracy faces. “The fact that it [corruption] has penetrated India's entire political fabric has troubling implications for any democracy,” Kugelman said. “This is not to say democracies aren't corrupt; rare is the democracy that doesn't suffer from it. Yet India's scandals seem to be so much bigger – involving more money and abuses of power – than seems the norm. Such corruption helps explain why politicians are so unpopular in India, and in the long term – if not addressed – this systemic corruption could imperil the social contract between people and state that is meant to embody democracy.”

REPUBLIC:

The Preamble declares India to be a republic. What it means is that the Head of the State in India, that is the President of India, is an elected head. He is not a hereditary ruler. The President of India who is the Chief Executive and nominal head of our country is indirectly elected by the people.

OBJECTIVES OF THE PREAMBLE:

JUSTICE:

Justice implies that the Government will try to promote the welfare of all the sections of the people. The Preamble embraces three types of Justice- **social, economic and political**. To ensure Social Justice the Constitution has made special arrangements for the weaker sections of the society, abolished untouchability, provided free education up to a certain standard, etc. With a view to providing political justice, the Constitution has introduced the principle of universal adult franchise and has given an equal right to all adult citizens to be elected or appointed to public services. Economic justice implies that the Constitution seeks to ensure economic security for the common people and to do away with unequal distribution of income and wealth. A combination of social and political justice is known as “distributive justice”.

(Ideal of social, economic and political justice have been taken from Russian Revolution)

LIBERTY:

The other important philosophy and ideal of the Indian Constitution is to ensure liberty to its citizens for the all round development of their personality. Accordingly, the Preamble provides for liberty of thought, expression, belief, faith and worship. The Constitution of India provides a number of Fundamental Rights to the citizens and also protects these rights

EQUALITY:

Equality is the basis of a democratic state. Equality is necessary for the development of a society. Hence, the term ‘equality’ has been inserted in the Preamble to our Constitution. Equality has been guaranteed by the ‘Rule of Law’. To establish equality, our Constitution has provided for the Right to Equality as a Fundamental Right. The Indian Constitution ensures

equality before the eyes of law to all persons, citizens and non- citizens. The Constitution also prohibits discrimination on grounds of religion, race, caste, sex, and place of birth or any of them. Equality implies to equality of opportunities.

- This objective is made more explicit by Article 15 which forbids the state to discriminate on any basis such as caste, creed, sex or place of birth
- Article 15(2) throws all public places to all citizens
- Article 17 abolishes the untouchability

FRATERNITY:

Articles 1 and 2 are the foundation blocks of the Universal Declaration of Human rights, with their principles of dignity, liberty, equality and brotherhood.

The term fraternity has been incorporated in the Preamble as a means of assuring the dignity of the individual and the unity and integrity of the nation. The term 'dignity of the individual' means the personality of the individual should be recognized, because, the recognition of the personality and the dignity of the individual is an essential condition to promote fraternity among the people. To promote fraternity and a feeling of brotherhood among the people, certain attempts have been made for the removal of social distinctions and inequalities based on caste, class, creed, language, religion, region, etc. Without unity among its citizens, a state could not be successful. The framers of the Indian Constitution were fully aware of the diversities prevailing in the country. Accordingly, the word integrity was added in the Preamble by the 42nd Amendment to emphasize the fundamental unity of the country against the divisive forces of regionalism, communalism and the like.

(The ideals of liberty, equality and fraternity in our preamble is taken from French Revolution)

INDIA AS A WELFARE STATE:

India is committed to the ideal of a welfare state and must establish socio- economic justice. The Preamble lays the foundation of a welfare state in India. Acharya Kripalani says, *"The Preamble contains the mystic principle of a welfare state."* India is committed to democracy and

respects individual liberty, providing to all her citizens, the equality of status and opportunity. The Directive Principles of State Policy involving social, economic, political and cultural goals are like instructions to the state. They, aim at establishing a welfare state in India.

Prepare IAS