

Indian Polity – Part 3, 4, 5

3] Preamble

Notes

- **The preamble** has been **amended only once** so far. On **18 December 1976**, during the Emergency in India, **the Indira Gandhi government** pushed through **several changes in the Forty-second Amendment of the constitution**.
- The words **Socialist, Secular, and Integrity** were **not in the original constitution** and have been inserted by **42nd amendment act 1976**. Thus, the express declaration that India is a **secular state** came only with **the 42nd amendment**. Currently, the word “**secular**” appears in constitution for **two times – in Preamble and then in Article 25**.
- **The Preamble** is like an **introduction of the Indian Constitution**, it is not a part of the contents but it explains the purposes and objectives with which the document has been written. It provides the guide lines of the Constitution and explains the objectives of the Constitution in two ways:
 - ✓ about the structure of the governance
 - ✓ about the ideals to be achieved in independent India. Therefore, the Preamble is considered key of the Constitution.

The objectives laid down in the Preamble are:

- Description of Indian State as Sovereign, Socialist, Secular, Democratic Republic. (Socialist, Secular were added by 42nd Amendment, 1976).

Provision to all the citizens of India of –

A) Justice social, economic and political ;

- B) Liberty of thought, expression, belief, faith and worship ;
- C) Equality of status and opportunity ;
- D) Fraternity assuring dignity of the individual and unity and integrity of the nation.
- The struggle for freedom was not only against the British rule but their struggle was also for restoring the dignity of men and women, removal of poverty and end to all types of exploitation. Such strong motivations and cherished ideals had prompted the framers to lay emphasis on the provisions of Justice, Liberty and Equality to all the citizens of India.

Sovereignty

- **Sovereignty** is one of the essential elements of any independent State. It means absolute independence, i.e., **a government which is not controlled by any other power : internal or external.**
- A country cannot have its own constitution without being sovereign.
- India is a sovereign country free from external control and can frame its policies. India is free to formulate its own foreign policy.
- The word socialist was not there in the Preamble of the Constitution originally. In **1976, the 42nd Amendment to the Constitution included 'Socialist' and 'Secular', in the Preamble.**

Socialist

- The word '**Socialism**' had been used in the context of economic planning. It also means commitment to attain ideals like **removal of inequalities, provision of minimum basic necessities to all, equal pay for equal work. This plays a major role in the economy.**

- These ideals have been incorporated and **implemented in the Constitution by the means of the Directive Principles of the State Policy.**

Secularism

- **Secularism in India is unique to the country**, it is said that **‘India is neither religious, nor irreligious nor anti-religious.’** Now what does this mean? It means that **in India there will be no ‘State’ religion – the ‘State’ will not support any particular religion out of public fund.** This has two implications :
 - ✓ Every individual is free to believe in, and practice, any religion he/she belongs to,
 - ✓ State will not discriminate against any individual or group on the basis of religion.

Democratic Republic

- **The Democratic principles of the country flow from reading of the last line of the Preamble. Democracy is generally known as government of the people, by the people and for the people.**
- Effectively this means that the Government is elected by the people, it is responsible and accountable to the people.
- The **democratic principles** are highlighted with the provisions of **universal adult franchise, elections, fundamental rights, and responsible government.**
- **The Preamble also declares India as a Republic** which means that the head of the **State is the President who is indirectly elected and he is not a hereditary ruler as in case of the British Monarch.**

Justice

- **Justice promises** to give people what they are entitled to in terms of **basic rights to food, clothing, housing, participation in the decision-making and living with dignity as human beings.**
- The **Preamble covers** all these dimensions of **justice – social, economic and political.**
- Besides, the granting of political justice in the form of universal adult franchise or the representative form of democracy. Socio-economic justice is to be achieved through directed policies and their effective implementation.

Liberty

- The **Preamble mentions about liberty of thought and expression.** These freedoms have been guaranteed in **the Constitution through the fundamental Rights.**
- Certain directives to the State have been mentioned in the Directive Principles in this regard.

Equality

- **Equality** is considered to be the **essence of modern democratic ideology.**
- The **Constitution makers placed** the ideals of **equality in a place of pride in the Preamble.**
- All kinds of **inequality based on the concept of rulers and the ruled or on the basis of caste and gender,** were to be **eliminated.**
- All citizens of India should be treated equally and extended equal protection of law without any discrimination based on caste, creed, birth, religion, sex etc

- Similarly equality of opportunities implies that regardless of the socio-economic situations into which one is born, he/she will have the same chance as everybody else to develop his/her talents and choose means of livelihood.

Fraternity

- With the background of **India's multi-lingual, multi-cultural and multi-religious society and keeping the partition of the country** in view, the framers of the Constitution were much **concerned about the unity and integrity of our newly independent country.**
- There was a need for harmonious coexistence of various religions, linguistic, cultural and economic groups. Inclusion of phrases like '**dignity of individuals**', '**fraternity among people**' and '**unity and integrity of the nation**' in the Preamble highlight such a need.
- All these ideals were considered important for achieving an egalitarian society in our country.
- **One vision embodied by the Indian National Congress (Congress party), which was established in 1885,** centered on the creation of a modern secular democratic state along Western lines.
- **Secularism forced French revolution in the year of 1789.** Secularism is the source of unity in diversity.
- The **Parliamentary form of government** is also known as the **Cabinet system or Cabinet Form of Government** because the cabinet is the link between the two departments.
- It is also called a responsible government because executive department is responsible and answerable to the legislative.
- There are **two types of democracy is direct and Indirect**

- Direct democracy was happened in the Ancient Greek and Roman Countries.
- **India is following Parliamentary Democracy.**
- India, England, France, America are the countries following Indirect democracy.
- Equality, Right, Independent are the basics of Democracy.
- Direct democracy happens in the least population countries.
- Parliament cannot override the constitution. It was adopted by the **Constituent Assembly on 26 November 1949, and came into effect on 26 January 1950.**
- The word secularism is included in the **42nd amendment of the Indian Constitution Preamble on 18.12.1976.**
- Indian Government didn't announced any of the religion as a Government religion.
- **Every Citizen had freedom to worship and follow their religion** and they can **enjoy the Social, Political rights with equality.**
- Our constitution Preamble explains that Justice, Freedom, Equality, Fraternity are the aim of our people.
- **Preamble is a part of Constitution**, as the result of **S.R.Bommai case 1994.**
- Elected representatives are the responsible for Legislative assemblies, doing their duties by the way of legislative assemblies.
- India is following Federalism by having States.
- By conducting Elections people are selecting their representatives in the Representative democracy or Indirect.
- **In 1791 France constitution recognized France Government as Secularism Government.**
- Secularism was famous when the Khilafath movement started.

- **Maharaja Ranjith Singh** is the first to implement the idea of Secularism.
- In the **BERUBARI CASE of 1960 HONOURABLE SUPREME COURT** had held that the preamble isn't the part of **INDIAN CONSTITUTION**.
- In that case 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 of the article of **INDIAN CONSTITUTION** are equivocal or ambiguous. These terms are capable of in more than one meaning. Some aids at interpretation may be taken from the objectives treasured in the **PREAMBLE, the SUPREME COURT** specifically gives an instruction that **PREAMBLE isn't a part of the CONSTITUTION**.
- On the other side in the **KESAVANANAD BHARTI CASE of 1973 HONOURABLE SUPREME COURT** rejected the earlier opinion or the earlier instruction which was taken under **BERUBARI UNION CASE** and held that **PREAMBLE is an important part of INDIAN 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 Vs CONSUMER EDUCATION & RESEARCH CENTRE of 1995** also the **SUPREME COURT** again held that the **preamble is an integral part of the CONSTITUTION**.
- In the light of Kesavanad Bharti Case as well as other judgments, there are some key points about the constitution which must be remembered as far as the importance of the knowledge of **PREAMBLE** for every country people

& for examination's point of view is concerned. These key things are as follows:-

- ✓ **Preamble is an integral Part of the Constitution.**
- ✓ **Preamble Indicates basic structure of the Constitution (SR Bommai Case).**
- ✓ **Preamble can be amended by Parliament using its amendment powers as per article 368.** We note here that preamble 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.
- ✓ Preamble enshrines the ideas and philosophy of the constitution, and NOT the narrow objectives of the governments.
- ✓ It also does NOT provide any legal framework of constitutional law.
- ✓ Preamble is neither a source of power nor a source of limitations.
- ✓ It neither provides any power nor imposes any duty.
- ✓ Its importance is in role to be played in interpretation of statutes, also in the interpretation of provisions of the Constitution.
- ✓ Constitution should be read and interpreted in the light of grand and novel vision expressed in the preamble.
- ✓ Preamble is neither enforceable nor justifiable in a court of law. This implies that courts cannot pass orders against the government in India to implement the ideas in the Preamble.

4] Union And Its Territories

Part-1 of the Constitution deals with the union and its territories from Article-1 to 4

Article 1 (1) describes that; “India that is Bharat shall be the Union of States”.

- This was deliberately done by the drafting committee to make it clear that the Union is not the result from an agreement with the states rather it is the union which created the states. The states have no right to secede under the constitution.
- Though the union is indestructible but the states are destructible in the sense that Parliament can change their name, boundary or create new states.
- The **Constitutional provision in 1949**, established a **three-tier state system** under which the constituent units of the **Union had no uniform status**. They were recognized under four separate categories: Part A, B, C and D of the first schedule.
- **Part-A** states **comprised governor’s provinces of British India**.
- **Part-B** states **consisted to nine princely states with legislatures**.
- **Part-C** states **comprised chief commissioner’s provinces of British India and some princely states**.
- **Part-D** states **consisted of the Andaman & Nicobar Island**.
- The Union of India consists of all the states excluding the Union Territories and the Territories of India consists of states as well as union territories.
- **Dhar Commission (1948)**: During this period (1948-49) the southern states were particular on re-organisation of states on linguistic basis.

SK Dhar committee was constituted in 1948 that recommended that the rationale for re-organisation of the states should be on the basis of administrative conveniences rather linguistic factors.

- **JVP Commission (1949):** The Dhar committee recommendation was not accepted by all and to reconsider the recommendation JVP committee was constituted with the Prime Minister Jawaharlal Nehru as a member and Vallabhbhai Patel and Pattabhi Sitaramayya as other two members.
- However, JVP Committee also did not favour the linguistic ground. The only exclusion was creation of Andhra Pradesh which had a fair share of geographical area that was dominated by Telugu speaking people from Madras Constituency.
- It suggested that the security, unity, and economic prosperity of the nation as the criteria of reorganisation.

Formation of new states and alteration of boundaries: The Procedure (Art – 2, 3 and 4):

- **Article 2:** says that the Parliament may by law admit into the Union or establish new states on such terms and conditions as it thinks fit.
- **Article 3:** empowers Parliament to form new states and can alter the area, boundaries or names of the existing states by a law passed by a simple majority. The bill to the same effect requires prior president's recommendations.
- The President before introducing the Bill shall refer it to the State Legislature concerned for its opinion within a specified time limit which can be extended.

- The Bill may be introduced even if the opinion has not come. The Parliament is not bound to accept or act upon the views of the State Legislature.
- If the original Bill is intended to be amended it is not necessary to refer the amendments to the State legislature again.
- **Article 4:** deals with the supplemental, incidental and consequential provisions as may be deemed necessary. By this Parliament may reduce the total number of members of Legislative Assembly even below the limit prescribed in Art 170 (60 members) as done in Goa and Uttarakhand. But now Uttarakhand has increased its seats.
- Article 4 also says that the changes made under Art 2 and 3 shall not be deemed to be an amendment of this Constitution for the purpose of Article 368.

The State Reorganisation Commission (SRC) 1953:

- The recommendation of JVP Committee further accelerated the demand for new states on linguistic basis particularly in Telugu speaking area under the leadership of Potti Sriramalu. The agitation took a violent turn with the death of Potti Sriramalu. The Congress ceded the reorganisation of Telugu speaking area in the State of Andhra Pradesh in 1953.
- To make an exhaustive study of the problem, the Government of India set-up the State Reorganisation Commission in 1953 headed by Fazal Ali (with members K M Pannikar and H N Kunzru) which submitted its report in 1955 and suggested linguistic reorganisation of the states.

- This resulted into 7th Amendment to the constitution and passing up of **The State Reorganisation Act in 1956** to give effect to the recommendations of the commission.

The recommendations of SRC:

- It suggested the reorganisation of **29 states of various categories into 16 states and 3 union territories abolishing the categories Part-A, B, C and D.**
- The general control vested in **Government of India by Article 371 (Special provision with respect to the States of Maharashtra and Gujarat)) should be abolished.**
- **The Present Structure of the Union:** At present India consists of **29 States and 7 Union Territories with Delhi as National Capital Region (NCR).**

5] Citizenship

- **India** is following the citizenship of **single citizenship**. If an Indian citizenship acquired any of the other countries citizenship, he/she will lose the Indian citizenship. the parliament has the power to regulate the citizenship act.
- From **England's constitution** the concept of **single citizenship** was borrowed.

Constitution Part II has the following articles:

- **Article 5.** Citizenship at the commencement of the Constitution.
- **Article 6.** Rights of citizenship of certain persons who have migrated to India from Pakistan.
- **Article 7.** Rights of citizenship of certain migrants to Pakistan.

- **Article 8.** Rights of citizenship of certain persons of Indian origin residing outside India.
- **Article 9.** Persons voluntarily acquiring citizenship of a foreign State not to be citizens.
- **Article 10.** Continuance of the rights of citizenship.
- **Article 11.** Parliament to regulate the right of citizenship by law.

Acquisition of Indian Citizenship

Indian Citizen Ministry of Home Affairs states that Indian citizenship can be acquired by birth, descent, registration and naturalization. The conditions and procedure for acquisition of Indian citizenship as per the provision of the Citizenship Act, 1955 are given below:

1. By Birth (Section 3)

- A person born in India on or after 26th January 1950 but before 1st July, 1987 is citizen of India by birth irrespective of the nationality of his parents.
- A person born in India on or after 1st July, 1987 but before 3rd December, 2004 is considered citizen of India by birth if either of his parents is a citizen of India at the time of his birth.
- A person born in India on or after 3rd December, 2004 is considered citizen of India by birth if both the parents are citizens of India or one of the parents is a citizen of India and the other is not an illegal migrant at the time of his birth.
- An 'illegal migrant' as defined in section 2(1)(b) of the Act is a foreigner who entered India.
- Without a valid passport or other prescribed travel documents.

- With a valid passport or other prescribed travel documents but remains in India beyond the permitted period of time.

2. By Descent (Section 4):

- A person born outside India on or after 26th January 1950 but before 10th December 1992 is a citizen of India by descent, if his father was a citizen of India by birth at the time of his birth. In case the father was a citizen of India by descent only, that person shall not be a citizen of India, unless his birth is registered at an Indian Consulate within one year from the date of birth or with the permission of the Central Government, after the expiry of the said period.
- A person born outside India on or after 10th December 1992 but before 3rd December, 2004, is considered as a citizen of India if either of his parents was a citizen of India by birth at the time of his birth. In case either of the parents was a citizen of India by descent, that person shall not be a citizen of India, unless his birth is registered at an Indian Consulate within one year from the date of birth or with the permission of the Central Government, after the expiry of the said period.
- A person born outside India on or after 3rd December, 2004 shall not be a citizen of India, unless the parents declare that the minor does not hold passport of another country and his birth is registered at an Indian consulate within one year of the date of birth or with the permission of the Central Government, after the expiry of the said period.

3. By Registration (Section 5(1))

- Indian Citizenship by registration can be acquired (not illegal migrant) by: –

- Persons of Indian origin who are ordinarily resident in India for SEVEN YEARS before making application under section 5(1)(a) (throughout the period of twelve months immediately before making application and for SIX YEARS in the aggregate in the EIGHT YEARS preceding the twelve months).
- Persons of Indian origin who are ordinarily resident in any country or place outside undivided India under section 5(1)(b).
- Persons who are married to a citizen of India and who are ordinarily resident in India for SEVEN YEARS (as mentioned at (a) above) before making application under section 5(1)(c).
- Minor children whose both parents are Indian citizens under section 5(1)(d)
- Persons of full age whose both parents are registered as citizens of India under section 5(1)(a) or section 6(1) can acquire Indian citizenship under section 5(1)(e).
- Persons of full age who or either of the parents were earlier citizen of Independent India and residing in India for ONE YEAR immediately before making application under section 5(1)(f).
- Persons of full age and capacity who has been registered as an OVERSEAS CITIZEN OF INDIA (OCI) for five years and residing in India for ONE YEAR before making application under section 5(1)(g).

4. By Registration (Section 5(4))

Any minor child can be registered as a citizen of India under Section 5(4), if the Central Government is satisfied that there are 'special circumstances' justifying such registration. Each case would be considered on merits.

5. By Naturalization (Section 6)

Citizenship of India by naturalization can be acquired by a foreigner (not illegal migrant) who is ordinarily resident in India for TWELVE YEARS (throughout the period of twelve months immediately preceding the date of application and for ELEVEN YEARS in the aggregate in the FOURTEEN YEARS preceding the twelve months) and other qualifications as specified in Third Schedule to the Act.

Loss of Indian Citizenship:

The **Citizenship Act, 1955** prescribes whether acquired under the act or prior to it under the Constitution viz. **renunciation, termination and deprivation.**

1. Renunciation:

It is a **voluntary act by which a person, after acquiring the citizenship of another country, gives up his Indian Citizenship.** This provision is subject to certain conditions.

2. Termination:

It takes place **by operation of law when an Indian citizen voluntarily.** He **automatically ceases to be an Indian citizen.**

3. Deprivation:

- It is a **compulsory termination of Indian citizenship by the Central government, if**
 - ✓ The citizen has obtained the **citizenship by fraud.**
 - ✓ The citizen has shown **disloyalty to the Constitution of India.**
 - ✓ The citizen has **unlawfully traded or communicated with the enemy during a war.**

- ✓ The citizen has, **within five years after registration or neutralization, been imprisoned in any country for two years.**
- ✓ The citizen has been **ordinarily resident out of India for seven years continuously.**

