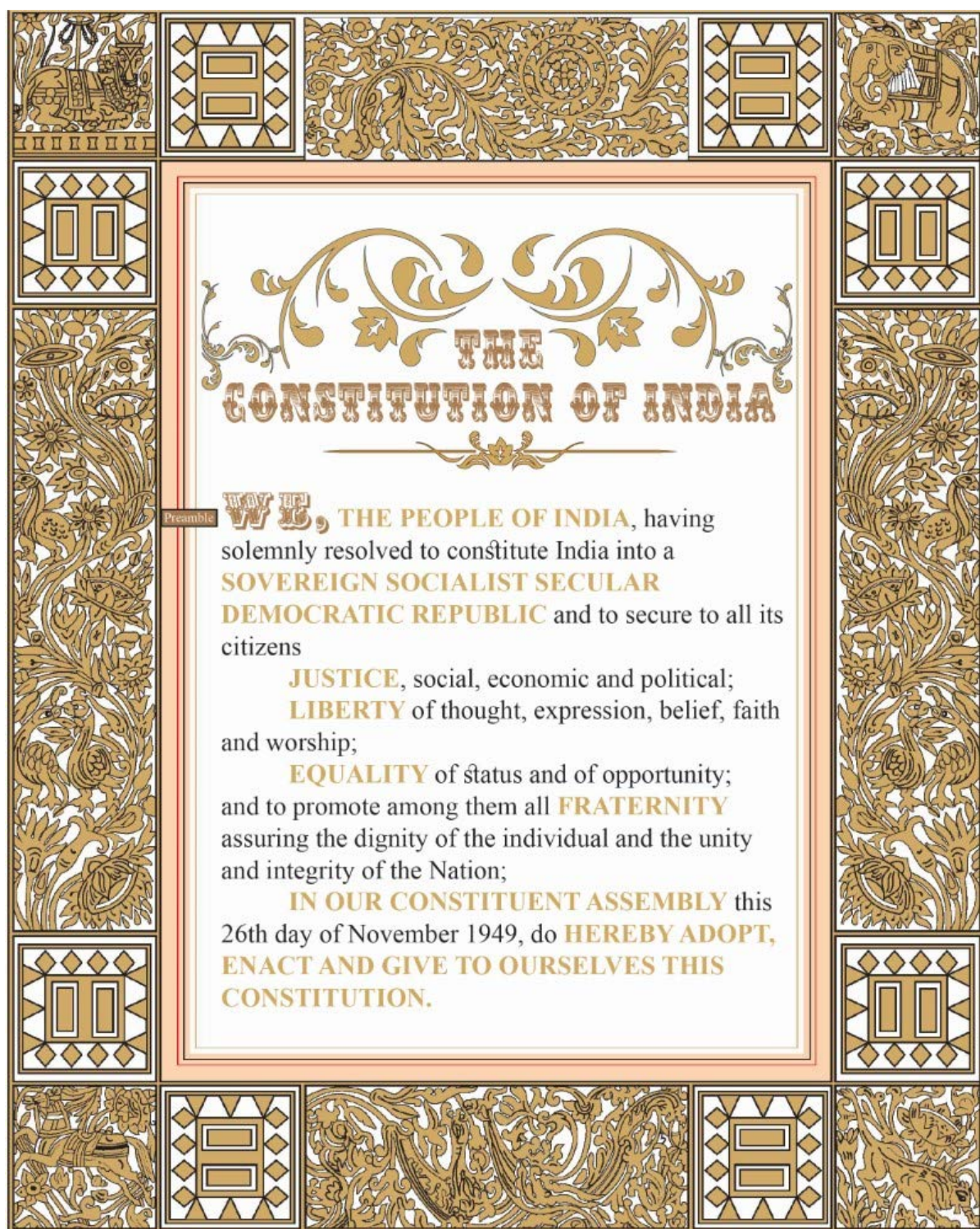


PREAMBLE OF THE CONSTITUTION OF INDIA

MA SEM I PAPER V: CONSTITUTION AND ADMINISTRATION

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MEANING

The term 'Preamble' refers to the preface or opening statement of a written document that declares its essence and purpose. Like many countries, India also followed the practice of having a Preamble to the Constitution, which states its basic philosophy and objectives. It serves as the introduction to the Constitution of India. Sir Ernest Barker, a distinguished English political scientist rightly called it, the 'key-note' to the Constitution.

HISTORY

The Preamble was adopted based on the 'Objectives Resolution', drafted and moved by Pandit Jawaharlal Nehru, and adopted by the Constituent Assembly on January 22, 1947. The ideals embodied in the resolution were incorporated in the Preamble. It has been amended once, by the 42nd Amendment Act (1976), which added the terms – Socialist, Secular and Integrity.

There have been two debates/controversies regarding the preamble. These are as follows:

→ **Whether the Preamble is a part of the Constitution:**

This debate began with the case of *Gopalan v. State of Madras*, 1950. In this case, the Supreme Court ruled that the Preamble is not enforceable in a court of law. Then, in the *Berubari Union* case, 1960, the Supreme Court opined that the Preamble was not a part of the Constitution, even though it revealed the general purposes behind several provisions of the Constitution and wherever certain provisions were ambiguous, the objectives in the preamble could be used to interpret them. Thereafter, in 1973 (*Kesavanand Bharti* case), the Supreme Court rejected its earlier opinion and held that the Preamble is a part of the constitution. Reiterating its opinion in 1995 (*LIC of India* case), the Supreme Court went a step ahead and called the Preamble an integral part of the Constitution.

→ **Whether the Preamble is amendable:**

The question whether the preamble could be amended under Article 368 of the constitution, arose during the historic *Kesavanand Bharti* case, 1973. The Supreme Court held that the Preamble was a part of the constitution and hence could be amended, subject to the condition that no amendment was done to its 'basic features'. Subsequently, the Preamble was been amended, in 1976, by the 42nd Amendment Act of the Constitution.

The present position is, that the Preamble is very much a part of the Constitution. In fact, according to Justice Madholkar, it is "the epitome" of the basic features of the Constitution. Therefore, no amendment can be made to alter its basic elements, because they constitute the edifice on which the basic structure of the constitution survives.

KEY WORDS IN THE PREAMBLE

1. SOVEREIGN

India is an independent state. It can freely conduct its affairs, both internal and external. It has the power to legislate on any subject without interference or control of other state or external power. Being, a sovereign state, India can also acquire a foreign territory or cede a part of its territory to a foreign state.

2. SOCIALIST

Though this term was added by the 42nd Constitutional Amendment Act, 1976, independent India always aspired to establish a socialistic pattern of society and this was reflected in the Directive Principles of State Policy. Indian socialism is Democratic Socialism. Unlike 'communistic socialism or state socialism' which undertake abolition of private property and nationalisation of all means of production, India favours 'mixed economy'. It seeks to end poverty and inequality of opportunity, as well as to protect the interests of weaker sections of the society.

3. SECULAR

The Indian Constitution embodies positive concept of secularism i.e. all religions have the same status and protection by the state. There is no state religion. Pluralism, tolerance and acceptance are hallmarks of Indian secularism. In the original Constitution, even though the term secularism was not present, secularism had been guaranteed through the Fundamental Right to freedom of religion. Adding of this term by the 42nd Constitutional Amendment Act, 1976, fulfilled the purpose of making the concept explicit.

4. DEMOCRATIC

The term Democracy in the Preamble denotes political as well as social democracy. This means that there shall be a democratic government as well as a democratic society. A democracy (rule of/by People) is based on the doctrine of popular sovereignty, wherein people possess the ultimate authority. They exercise their power either directly, as in the case of Switzerland, or indirectly, as in India. Indirect democracy is also known as representative democracy, because people elect their representatives to make laws and carry on government on their behalf.

5. REPUBLIC

A democratic polity may be a Monarchy or a Republic. In a Monarchy (Britain), the head of the state (king or queen known as the crown) is a hereditary position. Whereas in a Republic like India and USA, the head of the state is elected for a fixed period. India being a Republic has an (indirectly) elected head of state called the President. Republic also means that sovereignty lies in the people, not in just one person (Monarch) and that public offices are open to all citizens without discrimination.

6. JUSTICE

The preamble provides for 3 types of Justice. **Social justice** denotes equal treatment of all citizens, absence of privileges to a particular section of society and improvement in the condition of the backward classes. **Economic justice** denotes non-discrimination based on economic conditions and elimination of the wide gap in wealth, income and property. **Political justice** denotes providing equal political rights to all citizens.

7. LIBERTY

The term liberty denotes absence of restraints on activities of individuals, such that each individual can develop and achieve their potential. The liberty thus given is qualified not absolute i.e. it comes with 'reasonable restrictions'. This means that liberty is to be practiced and enjoyed within the framework of the law and the limitations mentioned in the Constitution itself.

8. EQUALITY

The term 'equality' denotes absence of special privileges to any section of society and provision of equal status and opportunities for all individuals, without discrimination. However as noted by the Supreme Court of India, "equal treatment of unequals lead to inequality". Thus, the concept of equality envisaged in the Preamble seeks to remove inequalities and provide a level playing field based on reasonableness.

9. FRATERNITY

Fraternity means a sense of brotherhood. The Preamble seeks to promote fraternity among citizens so as to maintain and strengthen the unity and integrity of the nation and the dignity of each individual. As noted by K M Munshi, a member of the drafting committee, "by including dignity, the constitution seeks to acknowledge that the personality of each person is sacred".

SIGNIFICANCE OF THE PREAMBLE

The Preamble incorporates the following -

- The essence or summary of the Constitution.
- The grand and noble vision of the founding fathers of the Constitution.
- The dreams and aspirations of the Constituent Assembly.
- The fundamental values and philosophy on which the constitution is based.
- The aims and objectives that the Constitution seeks to establish, promote and achieve.
- The basic principle on which the government is to function.
- The declaration regarding the source of authority of the Constitution i.e. 'We the people of India'. Through these words the Preamble unequivocally declares that the sovereignty resides in the people of India.

Moreover, the importance and utility of the Preamble can be ascertained from the opinions given by the Supreme Court which is the supreme guardian and interpreter of the Constitution. It held, that the preamble is a key to the minds of makers of the Constitution. It helps in legal interpretation of the Constitution wherever the language is found ambiguous. The Supreme Court also said that the Preamble may be of substantial help in determining the ambit of the Directive Principles of State Policy and Fundamental Rights.

Thus, it can be said that the preamble has rightly been called "the soul of the Constitution- eternal and unalterable".

- Justice Hidayatollah