

PREAMBLE

The Preamble in its present form 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 HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION

Purpose of Preamble

The Preamble declares that it is the people of India who had enacted, adopted and given the constitution to themselves. Thus the sovereignty lies with the people. It also declares that ideals and aspiration of the people that need to be achieved. Ideals are different from that of aspiration, while the former have been achieved with the constitution proclaiming India as Sovereign, Socialist, Secular, Democratic Republic the latter include Justice, Liberty, Equality and Fraternity which are yet to be achieved. The ideals are the means to achieve aspiration.

- ✓ The word 'Sovereign' emphasizes that there is no authority outside India on which the country is in any way dependent.
- ✓ The word 'Socialism' means the achievement of socialistic pattern of society through democratic means.
- ✓ The word 'Secular' imply that the state in itself is not religious and follows the ancient Indian principle of "Sarva Dharma Samabhava".
- ✓ The term 'Democratic' means that the rulers elected by the people only have the authority to run the government.
- ✓ The word 'Republic' means that there exists no hereditary ruler in India and all Authorities of the state are directly or indirectly elected by the people.

Preamble as Part of the Constitution

In the Berubari Union case (1960), the Supreme Court opined that Preamble is not a part of the Constitution.

In the Kesavananda Bharati case¹⁷ (1973), the Supreme Court rejected the earlier opinion and held that Preamble is a part of the 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 case¹⁸ (1995) also, the Supreme Court again held that the Preamble is an integral part of the Constitution.

However, two things should be noted:

1. The Preamble is neither a source of power to legislature nor a prohibition upon the powers of legislature.
2. It is non-justiciable, that is, its provisions are not enforceable in courts of law.

TERRITORY OF THE UNION (PART-I)

Art.1 says that “INDIA” that is Bharat, shall be the union of states.

The drafting committee has used the term Union because the Union of India has not formed as a result of an agreement among the units like the American federation. Moreover the states of India have no right to secede from the federation.

Federation is union because it is indestructible. Americans has to wage a civil war to establish that the states have no right to secession and that their federation is indestructible .The drafting committee thought that it was better to make it clear at the outset, rather than leave it to speculation.

The expression 'Union of India' should be distinguished from the expression 'Territory of India'. While the 'Union' includes only the States which enjoy the status of being members of the federal system and share a distribution of powers with the Union, the "Territory of India" includes the entire territory over which the sovereignty of India, for the time being, extends. Thus, beside the States, there are two other classes of territories, which are included in the 'Territory of India',

1. 'Union Territories'
2. Such other territories as may be acquired by India.

Art. 2 say: Admission or establishment of new States.

Parliament may by law admit into the union the union, or establish, new state on such terms and conditions as it thinks fit.

Formation of new States and Alteration of Boundaries, etc,

The Indian federation differs from the traditional federal system insofar as it empowers the Union Parliament to alter the territory or integrity of its units, namely, the States, without their consent or concurrence.

Since federation in India was not the result of any compact between independent States, there was no particular urge to maintain the initial organization of the States as outlined in the Constitution when interests of the nation as a whole demanded a change in this respect.

Art. 3 says: Parliament may by law

- a. Form a new state by separation of territory from any State or by uniting two or more States or parts of States or by uniting any territory to a part of any State
- b. Increase the area of any State
- c. Diminish the area of any State
- d. Alter the boundaries of any State
- e. Alter the name of any State;

Parliament, under Article 3, can increase or diminish the area of any of the state or alter the boundaries or change the name of any state. The constitution empowers the parliament to alter the territory or names etc of the states without their consent or concurrence.

FUNDAMENTAL RIGHTS (PART-III)

Introduction

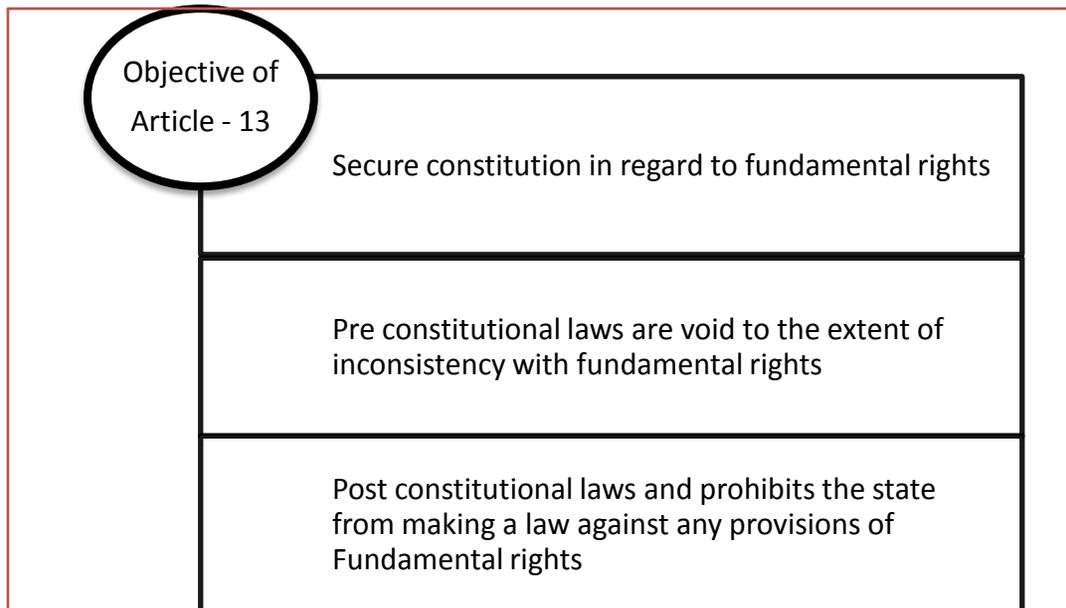
The most striking difference between the Government of India Act 1935 and the constitution is the presence of Fundamental Rights in the latter. This is the Magna Carta of India.

In American Constitution, these rights are provided in the form of 'Bills of Rights'. Part III of the Constitution is called the cornerstone of the Constitution and together with Part IV, constitutes the 'Conscience' of the Constitution.

Significance of Fundamental Rights

Fundamental Rights are meant to protect the rights and liberties of the people from the encroachment by the Government. They are limitations upon the powers of the Government, legislative as well as executive, and are essential for the preservation of public and private rights. The danger of encroachment on citizen's liberties is particularly great in the parliamentary system as those who form the Government enjoy a majority support in the legislature and can get laws made according to their wishes.

Art.12 Definition of State	Art.13 Laws inconsistent with or in derogation of the fundamental rights
"The State" includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.	Meaning, the courts can declare the laws of legislature and orders of executive as unconstitutional and illegal if they violate any of the fundamental rights.



Classification of Fundamental Rights

The Constitution classified the Fundamental Rights under seven groups as follows:

- a. Right to equality

- b. Right to particular freedoms
- c. Right against exploitation
- d. Right to freedom of religion
- e. Cultural and educational rights
- f. Right to constitutional remedies

(The Right to Property has been eliminated by the 44th Amendment Act, so that only six freedoms now remain, in Art. 19(1).)

Right to Equality (Articles 14 to 18):

Article 14

Equality before law Or Equal Protection of Laws

"The state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India".

- Source of it lies in American and Irish constitution
- Concept is more an equivalent to the Concept of, "Rule of Law" propounded by A. V. Dicey British Jurist
- Equality before the law is negative concept means that no man is above the law of the land. Which means every person, whatever be its social status is subject to jurisdiction of the courts.

Exceptions- In India -

- (i) The President or the Governor of a State shall not be answerable to any court for the exercise and performance of the power and duties of his office.
- (ii) No criminal proceeding whatsoever shall be instituted or continued against the President or a Governor in any court during his term of office. They cannot be arrested or imprisoned.
- (iii) However, after giving two months notice, civil proceedings can be instituted against them during their term of office in respect of their personal acts.
- (iv) The ministers do not enjoy such immunities and hence they can be sued in ordinary courts like common citizens for crimes

The above immunities, however, shall not bar

- (i) Impeachment proceedings against the President,
- (ii) The suits or other appropriate proceedings against the Government of India or the Government of a State.
- (iii) Besides the above constitutional exceptions, there remain the exceptions acknowledged by the comity of nations in every civilized country.

For Example: Foreign diplomats, Judges and Ambassadors enjoy immunities, protection and special privileges.

Classification of the Directive Principles

Socialistic Principles

These principles reflect the ideology of socialism. They lay down the framework of a democratic socialist state, aim at providing social and economic justice, and set the path towards welfare state. They direct the state:

1. To promote the welfare of the people by securing a social order permeated by justice—social, economic and political—and to minimize inequalities in income, status, facilities and opportunities (Article 38).
2. To secure (a) the right to adequate means of livelihood for all citizens; (b) the equitable distribution of material resources of the community for the common good; (c) prevention of concentration of wealth and means of production; (d) equal pay for equal work for men and women; (e) preservation of the health and strength of workers and children against forcible abuse; and (f) opportunities for healthy development of children⁵ (Article 39).
3. To promote equal justice and to provide free legal aid to the poor (Article 39 A).
4. To secure the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement (Article 41).
5. To make provision for just and humane conditions for work and maternity relief (Article 42).
6. To secure a living wage, a decent standard of life and social and cultural opportunities for all workers (Article 43).
7. To take steps to secure the participation of workers in the management of industries (Article 43 A).
8. To raise the level of nutrition and the standard of living of people and to improve public health (Article 47).

Gandhian Principles

These principles are based on Gandhian ideology. They represent the programme of reconstruction enunciated by Gandhi during the national movement. In order to fulfill the dreams of Gandhi, some of his ideas were included as Directive Principles. They require the State:

1. To organise village panchayats and endow them with necessary powers and authority to enable them to function as units of self-government (Article 40).
2. To promote cottage industries on an individual or co-operation basis in rural areas (Article 43).
3. To promote the educational and economic interests of SCs, STs, and other weaker sections of the society and to protect them from social injustice and exploitation (Article 46).
4. To prohibit the consumption of intoxicating drinks and drugs which are injurious to health (Article 47)
5. To prohibit the slaughter of cows, calves and other milch and draught cattle and to improve their breeds (Article 48).

Liberal-Intellectual Principles

The principles included in this category represent the ideology of liberalism. They direct the state:

1. To secure for all citizens a uniform civil code throughout the country (Article 44).

2. To provide early childhood care and education for all children until they complete the age of six years (Article 45).
3. To organise agriculture and animal husbandry on modern and scientific lines (Article 48).
4. To protect and improve the environment and to safeguard forests and wild life (Article 48 A).
5. To protect monuments, places and objects of artistic or historic interest which are declared to be of national importance (Article 49).
6. To separate the judiciary from the executive in the public services of the State (Article 50).
7. To promote international peace and security and maintain just and honorable relations between nations; to foster respect for international law and treaty obligations, and to encourage settlement of international disputes by arbitration (Article 51).

PARLIAMENT

The Parliament is the legislative organ of the Union government. It occupies central position in the Indian democratic political system due to adoption of the parliamentary form of government, also known as 'Westminster' model of government.

Articles 79 to 122 in Part V of the Constitution deal with the organisation, composition, duration, officers, procedures, privileges, powers and so on of the Parliament.

Organisation of Parliament

Under the Constitution, the Parliament of India consists of three parts viz, the President, the Council of States and the House of the People. In 1954, the Hindi names 'Rajya Sabha' and 'Lok Sabha' were adopted by the Council of States and the House of People respectively. The Rajya Sabha is the Upper House (Second Chamber or House of Elders) and the Lok Sabha is the Lower House (First Chamber or Popular House). The former represents the states and union territories of the Indian Union, while the latter represents the people of India as a whole.

The parliamentary form of government emphasizes on the interdependence between the legislative and executive organs. Hence, we have the 'President-in-Parliament' like the 'Crown-in-Parliament' in Britain. The presidential form of government, on the other hand, lays stress on the separation of legislative and executive organs. Hence, the American president is not regarded as a constituent part of the Congress.

Composition of the Two Houses

Composition of Rajya Sabha

The maximum strength of the Rajya Sabha is fixed at 250, out of which, 238 are to be the representatives of the states and union territories (elected indirectly) and 12 are nominated by the president.

At present, the Rajya Sabha has 245 Members. Of these, 229 Members represent the states, 4 Members represent the union territories and 12 Members are nominated by the president.

The Fourth Schedule of the Constitution deals with the allocation of seats in the Rajya Sabha to the states and union territories.

1. **Representation Of States** The representatives of states in the Rajya Sabha are elected by the elected Members of state legislative assemblies. The election is held in accordance with the system of proportional representation by means of the single transferable vote. The seats are allotted to the states in the Rajya Sabha on the basis of population. Hence, the number of representatives varies from state to state. For example, Uttar Pradesh has 31 Members while Tripura has 1 Member only. However, in USA, all states are given equal representation in the Senate irrespective of their population. USA has 50 states and the Senate has 100 Members—2 from each state.
2. **Representation of Union Territories** The representatives of each union territory in the Rajya Sabha are indirectly elected by Members of an electoral college specially constituted for the purpose. This election is also held in accordance with the system of proportional representation by means of the single, transferable vote. Out of the seven union territories, only two (Delhi and Pondicherry) have representation in Rajya Sabha. The populations of other five union territories are too small to have any representative in the Rajya Sabha.
3. **Nominated Members** The president nominates 12 Members to the Rajya Sabha from people who have special knowledge or practical experience in art, literature, science and social service. The rationale behind this principle of nomination is to provide eminent persons a place in the Rajya Sabha without going through the process of election. It should be noted Parliament here that the American Senate has no nominated Members.

Composition of Lok Sabha

The maximum strength of the Lok Sabha is fixed at 552. Out of this, 530 Members are to be the representatives of the states, 20 Members are to be the representatives of the union territories and 2 Members are to be nominated by the president from the Anglo-Indian community.

At present, the Lok Sabha has 545 Members. Of these, 530 Members represent the states, 13 Members represent the union territories and 2 Anglo-Indian Members are nominated by the president.

1. **Representation of States** The representatives of states in the Lok Sabha are directly elected by the people from the territorial constituencies in the states. The election is based on the principle of universal adult franchise. Every Indian citizen who is above 18 years of age and who is not disqualified under the provisions of the Constitution or any law is eligible to vote at such election. The voting age was reduced from 21 to 18 years by the 61st Constitutional Amendment Act, 1988.
2. **Representation of Union Territories** The Constitution has empowered the Parliament to prescribe the manner of choosing the representatives of the union territories in the Lok Sabha. Accordingly, the Parliament has enacted the Union Territories (Direct Election to the House of the People) Act, 1965, by which the Members of Lok Sabha from the union territories are also chosen by direct election.
3. **Nominated Members** The president can nominate two Members from the Anglo-Indian community if the community is not adequately represented in the Lok Sabha.

Originally, this provision was to operate till 1960 but has been extended till 2010 by the 79th Amendment Act, 1999.

THE UNION TERRITORIES (PART-VIII)

Article	Content
Art. 239	Administration of Union territories
Art. 239A	Creation of local Legislature or Council of Ministers or both for certain Union territories
Art. 239AA	Special provision with respect to Delhi
Art. 239AB	Provision in case of failure of constitutional machinery
Art. 239B	Power of administrator to promulgate ordinances during recess of Legislature
Art. 240	Power of President to make regulations for certain union territories
Art. 241	High Courts for Union territories

By the 7th constitutional amendment 1956, the classification of states into three parts, Part A , Part B ,and Part C and Territories in Part D was abolished and the whole territory of India was categorized into the states, the Union Territories and Acquired territories ,if any.

The states or the provinces are constitutional units of the union of India enjoying federal relationship with the centre. The status of the union territories, has subtle difference from that of the states in two respects,

They are not part of the federal structure of the constitution and hence do not participate in the division of power.

They are directly administered by the centre through the Lt. Governor or Chief Commissioner (Chandigarh) appointed by the President.

In 1987 there were seven union territories, namely, Delhi, Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli, Daman and Diu, Pondicherry and Chandigarh.

Administrator of Andaman & Nicobar Islands, Delhi and Pondicherry are designated as Lieutenant Governors.

The Governor of Punjab is currently the Administrator of Chandigarh. The Administrator of Dadra &Nagar Haveli is concurrently the Administrator of Daman &Diu. Lakshadweep has a separate Administrator.

Administrator:

Except where otherwise provided by Parliament by law, every Union Territory shall be administered by the President acting, to such extent as he thinks fit, through an Administrator to be appointed by him with such designation as he may specify. Instead of appointing an Administrator from outside, the President may appoint the Governor of a State as the Administrator of an adjoining Union Territory; and where a Governor is so appointed, he shall exercise his functions as such Administrator independently of his Council of Ministers.

Legislative Power:

The President can also make rules and regulation for the peace, progress and good governance of the union territories, except Delhi and Pondicherry, However, when the Legislature of Pondicherry is not in session, the President can make rules and regulations for it also. The President's regulations have the same effect as those of the Acts of Parliament. The Parliament has exclusive power over a Union Territory, including matters in the State List. The President

may make regulations for the Island territories, Dadra & Nagar Haveli, Daman and Diu and Pondicherry.

High Court:

Parliament may by law constitute a High Court for a Union Territory or declare any court in any such Territory to be a High Court until such legislation is made the existing High Courts relating to such territories shall continue to exercise their jurisdiction. Thus the Punjab and Haryana High Court acts as the High Court of Chandigarh; Lakshadweep is under the jurisdiction of the Kerala High Court; the Calcutta High Court has got jurisdiction over the Andaman and Nicobar Islands; the Madras High Court has jurisdiction over Pondicherry, the Bombay High Court over Dadra and Nagar Haveli. The Territory of Daman and Diu comes under Bombay High Court. Delhi has a separate High Court of its own since 1966.

Local Governance

PREFACE

“In this structure composed of innumerable villages, there will be ever widening, never ascending, circles. Life will not be a pyramid with the apex sustained by the bottom. But, it will be an oceanic circle, whose centre will be the individual, always ready to perish for the village, the latter ready to perish for the circle of the villages, till at last the whole becomes one life composed of individuals, never aggressive in their arrogance, but ever humble, sharing the majesty of the oceanic circle of which they are integrated units. Therefore, the outermost circumference will not wield power to crush the inner circle, but will give strength to all within and will derive its own strength from it.”

-Mahatma Gandhi

In this report on Local Governance, the Administrative Reforms Commission has examined in detail the issues relating to rural and urban local governance in India with a special focus on the need for real democratic decentralisation in the country in order to usher in genuine grass roots democracy as envisaged by the founding fathers of our republic and as now specifically mandated by our Constitution. The Report examines these issues in three parts - the first part deals with common issues of local governance that are relevant for both rural and urban areas as well as the rural-urban continuum; the second deals with rural governance issues; and the third with urban governance.

What are the characteristics of good governance? An institutional set-up that ensures good governance usually has the following features:

1. Participation

All men and women should have a voice in decision-making, either directly or through legitimate intermediate institutions that represent their interests. Such broad participation is built on freedom of association and speech, as well as capacities to participate constructively.

2. Rule of Law

Legal frameworks should be fair and enforced impartially, particularly laws on human rights.

3. Transparency

Transparency is built on the free flow of information. Processes, institutions and information are directly accessible to those concerned with them, and enough information is provided to understand and monitor them.

4. Responsiveness

Institutions and processes try to serve all stakeholders.

5. Consensus Orientation

Good governance mediates differing interests to reach a broad consensus on what is in the best interests of the group and where possible, on policies and procedures.

6. Equity

All men and women have opportunities to improve or maintain their well-being.

7. Effectiveness and Efficiency

Processes and institutions produce results that make the best use of resources.

8. Accountability

Decision-makers in government, the private sector and civil society organisations are accountable to the public, as well as to the institutional stakeholders. This accountability differs depending on the organisation and whether the decision is internal or external to an organisation.

9. Strategic Vision

Leaders and the public have a broad and long-term perspective on good governance and human development, along with a sense of what is needed for such development. There is also an understanding of the historical, cultural and social complexities in which that perspective is grounded.

Institutional Arrangements For Conflict Management

1.1 Introduction

1.1.1 There are several institutions, and instrumentalities within the framework of the State whose mandate it is to deal with potential and actual conflict situations. Some of these institutions have a constitutional status while others were constituted through statutes or executive orders. These institutions include those which are normally the first responders to conflict situations and also play a role in their subsequent management.

1.2 Conflict Resolution and the Constitution of India

1.2.1 All national constitutions lay down the governance paradigms perceived by their Framers, as best suited to maintain and promote national cohesion and harmony and are thus instruments of conflict resolution. The process of framing the constitution of India offers an example of successfully harmonising competing interests and nipping in the bud the causes of potential conflicts. One illustration is the consensus arrived at on the contentious issue of "Official language of the union" by retaining English along with Hindi (Article 343), conceding the preeminence of regional languages in their areas of influence (Article 345) while protecting the interests of other languages in such regions (Article 347). The process of working out such compromises is adequately brought out in the constituent Assembly debates on languages (Vol IX pp - 1377-1515). Similarly, on issues like Inter- State trade and commerce, taxing powers of the union and the States, freedom of religion and citizenship etc, debates in the Assembly and backroom deliberations of the Drafting committee provide ample evidence of how conflicts were avoided and the process of 'give and take' resulted in durable solutions to problems that appeared to be insoluble. Some of the salient provisions of the Indian constitution which seek to provide an institutional platform for conflict prevention or resolution are given below:

a. Article 131 recognises the importance of resolving union-State/s and inter- State disputes as being inherently vital to the smooth functioning of a federal polity and confers the exclusive original jurisdiction on the Supreme court to try suits concerning such disputes. It is clearly a mechanism designed to authoritatively and judicially determine situations potentially injurious to the health of the union as a whole.

b. Article 262: Inter-State Rivers or River valleys water disputes and to provide for adjudication of such disputes. In this sense, this provision is an exception to Article 131. Here again, the intention is to provide a special procedure for dealing with a dispute which may require resolution taking a variety of factors into consideration.

c. Article 263 envisages inter-State councils for resolution of disputes and to discuss matters of mutual interest to the union and the States as well as issues requiring coordination between them

d. Article 280 : quasi-judicial Finance Commission to recommend the norms of distribution of certain central levies between the union and the States and to generally assess the financial requirements of central subvention for carrying out the administration of the states efficiently. This Article clearly underscores the need to prevent disputes arising out of 'financial grievances' of States.

e. Article 307 authorises setting up an authority to facilitate inter-State trade and commerce.

Article 350b which provides for a special officer to safeguard the interests of linguistic minorities, and Articles 338 and 338A which provide for commissions to promote and protect the interests of Scheduled castes and Scheduled Tribes respectively. Such provisions seek to narrow the scope for grievances escalating into conflicts.

1.2.2 The actual working of various constitutional institutions like the Election Commission of India and the Finance Commission has demonstrated their important role in providing level playing fields for a healthy, functioning democracy and in promoting federal-fiscal regimes. These constitutional bodies have rendered signal service in maintaining unity within a highly diversified and differentiated polity. It is the endeavour of the commission to suggest measures to suitably strengthen other institutions and practices to improve the process of building consensus on matters which have the potential to produce rifts within society.