



CONSTITUTIONALISM AND PREAMBLE

The Constitution of a country provides the basis for the governance of the country. The Constitution contains the law and principles according to which a State is governed. A Government which is controlled or limited by a Constitution, is called a Constitutional Government. 'Constitutionalism' means belief in a constitutional Government or belief in constitutional principles.

The Constitution of India begins with a Preamble. The Preamble contains the ideals objectives and basic principles of the Constitution. The Preamble to the Constitution has played a predominant role in shaping the destiny of the country. The Preamble is of great utility as a guide to the interpretation of the constitutional provisions of the Constitution.



OBJECTIVES

After studying this lesson, you will be able to :

- understand the meaning of the term 'Constitutionalism';
- recognise the significance of the Constitution as the fundamental law of the land;
- describe the 'Preamble' to the Constitution, its ingredients and its relevance;
- identify the basic principles of 'Preamble' and their reflection in the constitutional provisions;
- know if the 'Preamble' forms part of the Constitution or not;
- understand and analyse the role of 'Preamble'; and
- identify the interpretational value of the Preamble.

18.1 CONSTITUTIONALISM

The document containing laws and rules which determine and describe the form of the government, the relationship between the citizens and the government, is called a 'Constitution'.

As such, a Constitution is concerned with two main aspects i.e. the relation between different organs and different levels of government and between the government and the citizens. The Constitution of a country provides the basis for governance of the country. A Constitution contains basic or fundamental laws of the land and established rule of law.

In short, Constitution contains law and principles according to which a State is governed.

A government which is controlled or ruled or limited by a Constitution, is called a constitutional government.

'Constitutionalism' means belief in a constitutional government or belief in constitutional principles. Constitutionalism establishes a constitutional government which is controlled or ruled by a Written Constitution. The development of Judicial system can be traced to the growth of 'Constitutionalism'.

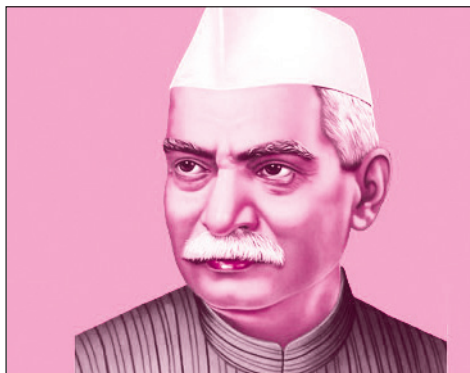


Figure 18.1 Dr. Rajendra Prasad
President of Constituent
Assembly



Figure 18.2 Dr. B.R. Ambedkar
Chairman of Drafting Committee
of Constitution

**INTEXT QUESTIONS 18.1**

1. Describe briefly the meaning of 'Constitution'.
2. What do you mean by the term 'Constitutionalism'?



Notes

**Notes****18.2 PREAMBLE OF THE CONSTITUTION**

The Constitution of India begins with a 'Preamble'. The 'Preamble' contains the ideals, objectives and the basic principles of the Constitution.

The Preamble reads :

Preamble

We, the people of India, having solemnly resolved to constitute India into 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 Preamble, in brief, explains the objectives of the Constitution in two ways; one, about the structure of governance and the other, about the ideals to be achieved by India. It is because of this, that the Preamble is considered to be the key of the Constitution.

The 'objectives' specified in the 'Preamble' contains the basic structure of the Constitution which cannot be amended in exercise of the power under Article-368 of the Constitution.

The following judgements of the Supreme Court relates to the theory of basic structure of the Constitution.

(1) Keshavananda Bharti V. State of Kerala, AIR 1973 SC 1461.

(2) Indira Gandhi V. Raj Narayan, AIR 1975 SC 2299

(3) Minerva Mills Ltd. V Union of India, AIR 1980 SC 1789

(4) Ref. Berubari union (1), (1960) 3 SCR-250.

The 'Preamble' has been amended by the Constitutions, 42nd Amendment Act of 1976. It is important to note that in 'Keshvanand Bharti', case the Supreme Court held that the Preamble is the basic structure of the Constitution whereas

the same Court held in the famous ‘Berubari case’ that the Preamble is not the basic structure of the Constitution.

Ingredients of the Preamble

The preamble reveals four ingredients of components:

1. Source of authority of the Constitution: The Preamble States that the Constitution derives its authority from the people of India.
2. Nature of the State: It declares India to be of a Sovereign, Socialist, Secular democratic and Republic Polity.
3. Objectives of the Constitution: It specifies Justice, liberty, Equality and Praternity as the objectives.
4. Date of adoption of the Constitution: It stipulates November 26, 1949 as the date of adoption.



INTEXT QUESTIONS 18.2

Fill in the blanks:

1. The Preamble contains the of the Constitution.
2. The Preamble explains the of the Constitution.
3. Name any one ingredient or component of ‘Preamble’.

18.3 PREAMBLE: IS IT A PART OF THE CONSTITUTION?

It is interesting to note that the Preamble, though the Constitution opens with it, was not the first to come into existence. It was the last piece of drafting adopted by the Constituent Assembly at the end of the first reading of the Constitution and then mentioned in the beginning of the Constitution. The motion to adopt the Preamble was moved on 17th October, 1949. The President of the Drafting Committee moved the motion — “That the Preamble stands part of the Constitution.” The motion was adopted on November 2, 1949. The Preamble was added to the Constitution.

The vexed question whether the Preamble is a part of the Constitution or not was dealt with in two leading cases on the subject:

1. Berubari Case

2. Kesavananda Bharati Case

On the answer to the primary question — whether the Preamble is a part of the Constitution, would depend on the resolution of the next question, which follows as a corollary – whether the Preamble can be amended, if at all.



Notes

**Notes****18.3.1 Preamble is not a part of the Constitution**

Berubari Case was the main Reference “under Article 143(1) of the Constitution of India on the implementation of the Indo-Pakistan Agreement relating to Berubari Union and Exchange of Enclaves” which came up for consideration by a Bench consisting of eight Judges headed by the *Chief Justice B.P. Sinha*. Justice *Gajendragadkar* delivered the unanimous opinion of the Court. The Court ruled that the Preamble to the Constitution, containing the declaration made by the people of India in exercise of their sovereign will, no doubt is “a key to open the mind of the makers” which may show the general purpose for which they made the several provisions in the Constitution but nevertheless the Preamble is not a part of the Constitution.

The holding in ‘*Berubari case*’ has been summed up later by Justice Shelat and Justice Grover. in *Kesavanand case* (vide para 534) as under:

1. A Preamble to the Constitution serves as a key to open the minds of the makers, and show the general purpose for which they made several provisions in the Constitution;
2. The Preamble is not a part of our Constitution;
3. It is not a source of the several powers conferred on government under the provisions of the Constitution;
4. Such powers embrace those expressly granted in the body of the Constitution ‘and such as may be implied from those granted’;
5. What is true about the powers is equally true about the prohibitions and limitations;
6. The preamble did not indicate the assumption that the first part of Preamble postulates a very serious limitation on one of the very important attributes of sovereignty viz. ceding territory as a result of the exercise of the sovereign power of the State of treaty-making and on the result of ceding a part of the territory.

Berubari case was relied on in *Golak Nath case* Justice Wanchoo, said:

“On a parity of reasoning we are of the opinion that the Preamble cannot prohibit or control in any way or impose any implied prohibitions or limitations on the bar to amend the Constitution contained in Article 368”.

Justice Bachawat, observed:

“Moreover the Preamble cannot control the unambiguous language of the Articles of the Constitution.”

18.3.2 Preamble as a part of the Constitution

It is a matter of regret, yet a matter of record, that constitutional history was overlooked by the eminent Judges constituting the Bench answering the Presidential Reference in '*Berubari case*'. The motion adopted by the Constituent Assembly stated in so many words that the Preamble stands as a part of the Constitution. The error came to be corrected in '*Kesavananda case*' where the majority specifically ruled that the Preamble was as much a part of the Constitution as any other provision therein. *Kesavananda Bharti case* has thus created history.

It would be interesting to note what some out of the thirteen Judges constituting the Bench which decided '*Kesavananda Bharati*' case had to say about the Preamble. For the first time, a Bench of thirteen Judges assembled and sat in its original jurisdiction hearing the writ petition. Thirteen Judges placed on record 11 separate opinions. It is not an easy task to find out the ratio of the holding of the Court in *Kesavananda Bharati case*. To the extent necessary for the purpose of the Preamble, it can be safely concluded that the majority in *Kesavananda Bharati case* leans in favour of holding, (i) that the Preamble to the Constitution of India is a part of the Constitution; (ii) that the Preamble is not a source of power nor a source of limitations or prohibitions; and (iii) the Preamble has a significant role to play in the interpretation of statutes also in the interpretation of provisions of the Constitution. When it is necessary to determine the width or reach of any provision or when there is any ambiguity or obscurity in the provision which needs to be clarified or when the language admits of meanings more than one the Preamble may be relied on. However, the Preamble cannot be utilised as an aid to interpretation when the language is plain and unambiguous.

An interesting argument advanced in *Kesavananda case* has been noted by Justice Y.V. Chandrachud, that the Preamble may be a *part* of the Constitution but is not a *provision* of the Constitution and therefore, you cannot amend the Constitution so as to destroy the Preamble. Discarding the submissions Chandrachud, J. held that it was impossible to accept the contention that the Preamble is not a provision of the Constitution; it is a part of the Constitution and is not outside the reach of the amending power under Article 368. The record of the Constituent Assembly leaves no scope for this contention. It is transparent from the proceedings that the Preamble was put to vote and was actually voted upon to form a part of the Constitution. The Preamble records, like a sunbeam, certain glowing thoughts and concepts of history and the argument is that in its very nature it is unamendable because no present or future, however mighty, can assume the power to amend the true facts of past history. Though the true facts of past history cannot be changed yet the Preamble in other parts can be amended.



Notes

**Notes**

Keesavananda Bharati case is a milestone and also a turning point in the constitutional history of India. The divergence in judicial opinion on issues of grave constitutional significance which arose for decision in the case is amazing and interesting to any student of constitutional law. Each of the learned Judges recording his opinion has chosen the choicest words and has been at his best while translating into words the dreams of our Founding Fathers and of “We, the people of India.”

Justice D.G. Palekar, held that the Preamble is a part of the Constitution and, therefore, is amendable under Article 368. He termed the submission that the Fundamental Rights are an elaboration of the Preamble, as “an overstatement and a half-truth”.

In the opinion of Justice H.R. Khanna, the Preamble is a part of the Constitution. He developed a concept of natural rights linked with cherished values like liberty, equality and democracy as enthroned in the Preamble. He agreed that such rights are inalienable and cannot be affected by an amendment of the Constitution for these are cherished values and representative of those ideals for which men have striven through the ages.

Justice Khanna, also rejected the submission that the Preamble is not a part of the Constitution but “walks before the Constitution”. In his opinion, the Preamble was as much a part of the Constitution as its other provisions and hence amenable to constitutional amendment excepting those provisions which relate to the basic structure or framework of the Constitution, and therefore to the extent to which the Preamble itself is amendable, its provisions other than those relating to basic structure cannot be read as imposing any implied limitations on the power of amendment.

Justice S.N. Dwivedi, expressing his concurrence with the conclusion arrived at by Justice A.N. Ray, held that the Preamble was a part of the Constitution. It is noteworthy that Justice Dwivedi held the Preamble to be a part of the Constitution and then also referred to it as a provision of the Constitution.

In conclusion, Justice Beg, held that there was no limitation on the powers of constitutional amendment found in Article 368.

**INTEXT QUESTIONS 18.3****Fill in the Blanks:**

1. In case the Supreme Court held the Preamble to the Constitution is the basic structure of the Constitution.

2. In case the Supreme Court held that the Preamble to the Constitution is not the basic structure of the Constitution.
3. “The Preamble to the Constitution is a part of the Constitution”. Do you agree with this statement? If yes, cite the relevant case in support of your answer.



18.4 ROLE OF THE PREAMBLE

Notes

The Preamble of the Constitution can be discussed as under :

1. Role of the Preamble; and
2. Interpretational value of the Preamble

The interpretational value of the Preamble can further be studied in three dimensions:

- (a) **Preamble as Interpreter of the Constitution;**
- (b) **Preamble as a source of interpretation of other Statutes framed under the Constitution; and**
- (c) **International Documents/Treaties/Conventions/Declarations as aid to Interpretation of the Preamble.**

The Preamble to the Constitution has played a predominant role in shaping, the destiny of the country. Wherever the limbs of democracy have moved on the path laid down by the Preamble the movement has been in the right direction. Any deviation from the path has resulted in aberrations.

“The arch of the Constitution of the India pregnant from its Preamble, Chapter III (Fundamental Rights) and Chapter IV (Directive Principles) is to establish an egalitarian social order guaranteeing fundamental freedoms and to secure justice — social, economic and political — to every citizen through rule of law. Existing social inequalities need to be removed and equality in fact is accorded to all people irrespective of caste, creed, sex, religion or region subject to protective discrimination only through rule of law.”

The propositions laid down in *Berubari Union and Exchange of Enclaves, Re case were:*

1. A Preamble to the Constitution serves as key to open the minds of the makers, and shows the general purpose for which they made the several provisions in the Constitution.
2. The Preamble is not a part of our Constitution.
3. It is not a source of the several powers conferred on the Government under the provisions of the Constitutions.

**Notes**

4. Such powers embrace those expressly granted in the body of the Constitution “and such as may be implied from those granted”.
5. What is true about the powers is equally true about the prohibition and limitations.
6. The Preamble did not indicate the assumption that the first part of the Preamble postulates a very serious limitation on one of the very important attributes of sovereignty viz. ceding territory as a result of the exercise of the sovereign power of the State of treaty-making and on the result of ceding a part of the territory.

However, according to Justice Shelat and Justice Grover, in *Kesavananda Bharti case* the history of the drafting and the ultimate adoption of the Preamble shows—

1. That it did not “walk before the Constitution” as is said about the Preamble to the United States Constitution;
2. That it was adopted as a part of the Constitution;
3. That the principles embodied in it were taken mainly from the Objectives Resolution;
4. The Drafting Committee felt, it should incorporate in it “the essential features of the new State”; and
5. That it embodied the fundamental concept of Sovereignty being in the people.

Interesting question arise: Can the Preamble itself be amended? Does the Preamble control Article 368 — the power to amend the Constitution?

The significance of the Preamble is that it contains the fundamentals of our Constitution. Could the power to amend under Article 368 be made to suffer a complete loss of identity or can the basic element on which the constitutional structure has been erected be eroded or taken away? The people of India resolved to constitute their country into a Sovereign Democratic Republic. No one can suggest that these words and expression are ambiguous in any manner. Their true import and connotation is too well known that no question of any ambiguity is involved. The question which immediately arises is whether the words “amendment” or “amended” as employed in Article 368 can be so interpreted as to confer a power on the amending body to take away any of these three fundamental and basic characteristics of our policy. Can it be said or even suggest that the amending body can make institutions created by our Constitution undemocratic as opposed to Democracy; or abolish the office of the State who would not fit into the conception a “Republic”? The width of the power claimed on behalf of the respondents has such a large dimension that

even the above part of the Preamble can be wiped out from which it would follow that India can cease to be a Sovereign Democratic Republic and can have a polity denuded of sovereignty, democracy and republican character.

The Learned Judges termed the submission made before them that even the Preamble can be varied, altered or repeated, as an “extraordinary one” and held that the Preamble constitutes a landmark in India’s history and sets out as a matter of historical fact what the people of India resolved to do for molding their future destiny. It is unthinkable that the Constitution-marks ever conceived of a stage when it would be claimed that even the Preamble could be abrogated or wiped out.

Justice A.N. Ray, in his opinion posed a question which can befittingly be read as referring to the Preamble. The question is — “He that planted the ear, shall he not hear? Or, He that made the eye, shall he not see?” He agreed that the Preamble is an integral part of the constitution noting the motion passed by the Constituent Assembly—

“The Preamble stands part of the Constitution, and held that the Preamble can be repealed. As to the significance and utility of the Preamble he held that the Preamble is property resorted to where doubts or ambiguities arise upon the words of the enacting part. If the enacting words are clear and unambiguous, there is little room for interpretation, except the cases leading to an obvious expressed in the Preamble. This is the view of Story. The Preamble can never be resorted to enlarge the powers confided to the general government. The Preamble can expound the nature, extent and application of the powers actually conferred by the Constitution and not substantively create them.”

The Preamble to a Constitution refers to the frame of the Constitution at the time of the Preamble, and therefore, it can possibly have no relevance to the constituent power in the future when that Constitution itself can be changed. The position would be the same so far the Preamble is concerned — whether the constituent power is exercised by the amending body provided for by the people themselves in the Constitution or by referendum if so provided for in the Constitution.

There is nothing in the Preamble to suggest that the power to amend the fundamental right to property is cut down. The Preamble makes no reference to the right to property. On the contrary, it is clearly implied that if the operative parts of the Constitution failed to put us on the road to the objectives, the Constitution was liable to be appropriately amended. Right to property that would have conflicted with the objectives of securing to all its citizens, justice, social, economic and political, and equality of opportunity, to achieve which

**Notes**



Notes

Directive Principles were laid down. The Preamble can neither increase nor decrease the power granted in plain and clear words in the enacting parts.

Jurists and judicial opinion hold unanimously (except for variation in choosing the words of expression) that the Preamble to the Constitution of India is not just a formal piece of draft. It is in itself a historic document and yet a part of the Constitution. It is a source of interpretation and the basis of rule of law. It has guided the destiny of this nation at least through the judiciary, a pillar of constitutional democracy, the sturdy and powerfulmost. It will continue to play its role, as thought of by the framers of the Constitution, in the times to come.

Durga Dass Basu, the eminent constitutional jurist states that the majority of the nine Judges in *Bommai case* have laid down a new application of the Preamble under the Constitution as follows:

- I. The Preamble indicates the basic structure of the Constitution.
- II. A Proclamation under Article 356(1) is open to judicial review on the ground of violating the basic structure of the Constitution.
- III. It follows that a Proclamation under Article 356(1) which violates any of the basic features as summarised in the Preamble of the Constitution is summarised in the Preamble of the Constitution is liable to be struck down as unconstitutional.

A discussion on the role of the Preamble cannot be complete without making a reference to *Indra Sawbney V. Union of India* popularly known as *Mandal Commission case* decided by a larger Bench of nine Judges. A rainbow of judicial thoughts reflecting the significance value and message of the Preamble can just be seen. Justice S. Ratnavel Pandian, opined—

“Equality of status and of opportunity ... the rubric chiseled in the luminous Preamble of our vibrating and pulsating Constitution radiates one of the avowed objectives in our sovereign, socialist and secular democratic republic.”

Several constitutional provisions dealing with equal distribution of justice in the social, political and economic spheres, spoken of in the ‘Preamble’ need prismatic interpretation to perceive not through an artless window glass but reflected with the enhanced intensity and beauty of the notable aspirations contained in Fundamental Rights illuminating the constitution has to be upheld for securing social justice, economic justice and political justice must be so in it’s the adoption to the changing social needs. No one can be permitted to invoke the Constitution either as a sword for an offence or as shield for anticipatory

defence. No interpretation of the Constitution is acceptable which causes irrevertible injustice and irredeemable inequalities to any section of the people or can protect those unethically claiming unquestionable dynastic monopoly over the constitutional benefits. Fostering an advanced social policy in term of the constitutional mandates cannot be performed by sitting in ivory towers, keeping an Olympian silence, unnoticed and uncaring of the storms and stresses that affect the society.

Human sentiments overtook the judicial opinion recorded by Justice Dr T.K. Thommen. He said that with the city slum-dwellers, the inhabitants of the pavements afflicted and disfigured in many cases by diseases like leprosy, caught in the vicious grip of grinding penury, and making a meagre living by begging besides the towering mansions of affluence visible to the eyes, the real India transcends all barriers of religion, caste, race etc. in their degradation, suffering and humiliation. These living monuments of backwardness, a shameful reminder of our national indifference are a cruel betrayal of what the Preamble to the Constitution proclaims.

Justice Kuldip Singh, hit at the caste system which in spite of having been put in the grave by the framers of the Constitution continues to try raising its ugly heads in various forms posing a serious threat to the secularism and consequently to the integrity of the country. He warns those who did not learn from the events of history that they are doomed to suffer again. For the people of India, it is of the utmost importance to adhere in letter and spirit to the Constitution which has moulded this country into a sovereign, socialist, secular, democratic republic and has promised in its Preamble to secure to all its citizens justice, social, economic and political, equality of status and of opportunity.

Justice P.B. Sawant recorded his conviction that so long as equality of opportunity is not ensured to all, the goal enumerated in the Preamble to the Constitution, of fraternity assuring the dignity of an individual and the unity and integrity of the nation shall remain unattainable.

Inequality ill-favours fraternity, and unity remains a dream without fraternity. So long as economic justice is not guaranteed to all, social and political justice pledged by the Preamble to be secured to all citizens will remain a myth. Securing employment — whether private or public — is a means of direct and hence a means of social leveling. Such employment ought to be secured to them who were denied the same in the past so as to do social and economic justice to the deprived as ordained by the Preamble.

In the opinion of Justice R.M. Sahai, the Preamble to the Constitution is a turning point in history. Our Constitution was “a break with the past” and was framed with “a need for fresh look”. The Preamble of the Constitution, echoing the sentiments of a nation, harassed for centuries by foreign domination. He observed:

**Notes**

MODULE - 5

The Constitution of
India-I



Notes

“to secure, to all its citizens justice, social, economic and political; liberty of thought, expression, belief, faith and worship; equality of status and opportunity; and to promote among them all fraternity assuring the dignity of the individual was not a mere flourish of words but was an ideal set-up for practice and observance as a matter of law through a constitutional mechanism. Communal reservations were outlawed both from governance and administration”.

Justice P.B. Sawant qualified the Preamble with the expression—

“the basic feature of the Constitution, which promises equal opportunity and status and dignity to every citizen. Looked at from this angle, compensatory or remedial measures for the lesser fortunate are not, Ipso facto, violative of equal opportunity as our society was founded not on abstract theory that all men are equal but on the realism of societal differences created by human methodology, the poor and rich”

Justice B.P. Jeevan Reddy, spoke for M.H. Kania, C.J. and M.N. Venkatachaliah, A.M. Ahmadi, JJ. and himself. According to him, the four-fold objective of securing to its citizens justice, liberty, equality and fraternity displays statesmanship has of the highest order — the likes of which our country has not seen since — belonging to the field of law, politics and public life coming together to fashion the instrument of change — the Constitution of India. The framers of the Constitution did not rest content with evolving the framework of the State; they also pointed out the goal as spelled out in the Preamble and the methodology for reaching that goal elaborated in Parts III and IV. Justice Jeevan Reddy, traced the origin of certain expressions employed in the Preamble. “Liberty, equality and fraternity” was the battle-cry of the French Revolution. It is also the motto of our Constitution, with the concept of “justice — social, economic and political” — the sum total of modern political thought — superadded to it. Equality has been and is the single greatest craving of all human beings at all points of the time. It has inspired many a great thinker and philosopher. All religious and political schools of thought, if one looks to it ignoring the later crudities and distortions. Liberty of thought, expression, belief, faith and worship has equally been an abiding faith with all human beings, and at all times in this country in particular. Fraternity assuring the Indian context. Right to equality, a dynamic, multifacet and evolving concept, aims at equality of status and of opportunity. “Justice — social, economic and political” is the sum total of the aspirations incorporated in Part IV.

During discussions on amendments in the Preamble, on October 17, 1949 Acharya J.B. Kripalani made a passionate speech full of sentiments. He stated inter alia that the President of the Assembly has, like a good host reserved the choicest wine for the last. The Preamble which should have come in the

beginning of the Constitution was being taken up at last though to be placed in the beginning of the Constitution. At the solemn hour he reminded the House that:

“What we have stated in this Preamble are not legal and political principles only. They are also great moral and spiritual principles. In fact these were not first legal and constitutional principles, instead they were really spiritual and moral principles.”

He said further, that:

“Democracy is equality of man and implies fraternity and non-violence above all. Violence is anathema to Democracy”.

He further added:

“If we want to use democracy as only a legal, constitutional and formal advice, we shall fail. The whole country should understand the moral, the spiritual and the mystic implications of the word ‘democracy’.”

It seems as if Acharya Kripalani was speaking only yesterday. The Preamble to the Constitution is not just a piece of legal drafting or a matter of mere formality. It is a code of conduct. It is a lesson in morality and ethics — to be learnt by heart and to be practised. It contains philosophy, full of spiritualism and mysticism. It has a rhythm and message of ringing bells. Do we have ears to listen, eyes to read and hearts to understand?



INTEXT QUESTIONS 18.4

1. Discuss briefly, the role of the Preamble in the working of the Constitution.
2. “The Preamble to the Constitution plays a predominant role in shaping the Destiny of the Country” Is this statement True or False?

18.5 INTERPRETATIONAL VALUE OF THE PREAMBLE

The interpretational value of the Preamble can be studied in three dimensions:

- (a) Preamble as the Interpreter of the Constitution itself;
- (b) Preamble as a source of Interpretation of other statutes framed under the Constitution; and
- (c) International Documents/Conventions/ Declarations as Aid to Interpretation of the Preamble



Notes

**Notes****(a) Preamble as Interpreter of the Constitution**

With the pronouncement of the Supreme Court in *Kesavananda Bharti, Chandra Bhavan and Dharwad District PWD Literate Daily Wage Employees Association*, it is trite that the Preamble may be invoked to determine the ambit, sweep and scope of Fundamental Rights and Directive Principles of State Policy.

The Preamble of the Constitution furnishes the key to open the mind of the makers of the Constitution more so because the Constitution Assembly took great pains in its formation so that it may reflect the essential features and basic objectives of the Constitution. The Preamble is a part of the Constitution but the Preamble can neither be regarded as the source of any substantive power nor as a source of any prohibition or limitation. The Preamble of a Constitution can be used to understand the object of any amendment. The majority Judges in '*Kesavananda and Minera Mills*' strongly relied on the Preamble in reaching the conclusion that power of amendment conferred by Article 368 was limited and did not enable Parliament to alter the basic structure or frameworks of the Constitution.

In '*AIIMS Students' Union V. AIIMS*' while striking down a reservation within reservation, not supported by the Constitution or constitutional principles, the Court pressed into service the Preamble to the Constitution. The Court observed that the Preamble to the Constitution of India secures as one of its objects "fraternity" assuring the dignity of the individual and the unity and integrity of the nation to "we the people of India". Reservation unless protected by the Constitution itself, as given to us by the founding fathers and as adopted by the people of India, is subversion of fraternity, unity and integrity and dignity of the individual.

It is the Preamble which spells out the Constitution being the source of all powers derived from the people of India in whom vests the ultimate power and strength. Chief Justice R.S. Pathak, speaking for the Constitution Bench, held in '*Kehar Singh v. Union of India*' that the Constitution of India is a document, in keeping with modern constitutional practice, and fundamental to the governance of the country. The people of India have provided a constitutional policy consisting of certain primary organs, institutions and functionaries to exercise the powers provided in the Constitution. All powers belong to the people, and it is entrusted by the intention of working out, maintaining and operating a constitutional order. This is spelled out from the significant recitals contained in the preambular statement of the Constitution.

Chief Justice S.M. Sikri, during the course of his judgment in '*Kesavananda Bharati case*', by way of interlude to interpretation of the Constitution, observed that the Constitution had our history in the background and had to be interpreted in the light of our aspirations and hopes and other relevant circumstance. No

other Constitution combines under its wings such diverse peoples, numbering now more than 550 million, with different languages and religions and in different stages of economic development, into one nation, and no other nation is faced with such vast socio-economic problems. The Constitution cannot be interpreted like an ordinary Statue but as a Constitution which apart from setting up a machinery for the Government has a noble and grand vision. The vision was put in words in the Preamble and carried out in part by conferring fundamental rights on the people. The vision was directed to be further carried out by the application of Directive Principles (paras 14-15). Dissenting with *Re Berubari Union* and the opinion of Justice Wanchoo, and Justice Bachawat, in *Golak Nath case* that the Preamble is not a part of the Constitution, C.J. Sikri opined in *Kesavananda's Bharati case* that the Preamble was expressly voted to be a part of the Constitution. The holding that the Preamble is not a source of power cannot be extended as regards prohibitions and limitations. There was ample authority available to show that limitations have been derived in certain cases from the Preamble. The Preamble to the Constitution does not prescribe any vague doctrine. He concluded that the expression "amendment of this Constitution" in Article 368 means in addition or change in any of the provisions of the Constitution within the broad *contours* of the Preamble and the Constitution to carry out the objects in the Preamble and the Directive Principles. Applied to Fundamental Rights it would mean that while Fundamental Rights cannot be abrogated, reasonable abridgement of Fundamental Rights can be effected in the public interest. The concept of amendment within the contours of the Preamble and the Constitution cannot be said to be a vague and unsatisfactory idea which parliamentarians and the public would not be able to understand.

Justice J.M. Shelat and Justice A.N. Grover, jointly recorded their opinion in *Kesvananda Bharati case*. According to them, the Preamble to the Constitution of India embodies the great purposes, objectives and the policy underlying its provisions apart from the basic character of the State which was to come into existence i.e. a Sovereign Democratic Republic. Parts III and IV which embody the Fundamental Rights and Directive Principles of State Policy are the conscience of the Constitution. In addition to the historical background and the scheme of the Constitution, the use of the Preamble has always been made and is permissible if the word "amendment" has more than one meaning. The Constitution-makers gave to the Preamble the pride of place. It contains all the ideals and aspirations for which the country had struggled during the British regime and a Constitution was sought to be enacted in accordance with the genius of the Indian people. It certainly represented an amalgam of schemes and ideas adopted from the Constitution of other countries. But the constant strain which runs throughout each and every article of the Constitution is reflected in the Preamble which could and can be made sacrosanct. It is not without



Notes

**Notes**

significance that the Preamble was passed only after draft articles of the Constitution had been adopted with such modifications as were approved by the Constituent Assembly. The Preamble was, therefore, meant to embody in a very few and well-defined words the key to the understanding of the Constitution.

The learned Judges noticed the explanation offered by the President of the Constitution Assembly for putting the Preamble last. It was done to see that the Preamble was in conformity with the Constitution as accepted. Various amendments suggested in the draft text of the Constitution were rejected. One of the amendments suggested was to insert into it the words, “In the name of God.” That was rejected on the ground that it was inconsistent with the freedom of faith which was not only promised in the Preamble itself but was also guaranteed as a fundamental right. An amendment which would have made it clear beyond all doubt that sovereignty vested in the people was not accepted on the short ground that the Preamble as drafted could convey no other meaning than that the Constitution emanated from the people and sovereignty to make this Constitution vested in them.

Justice Khanna, set out two utilities of the Preamble from the point of view of interpretation of the Constitution or Statutes: (1) reference can be made to the Preamble for the purpose of construing when the words of a Statute or the Constitution are ambiguous and are admitted; (2) the Preamble can also be used to shed light on and clarify obscurity in the language of a statutory or constitutional provision. When, however, the language of a Section or Article is plain and suffers from no ambiguity or obscurity, no gloss can be put on the words of the section or Article by invoking the Preamble.

Justice Jaganmohan Reddy, speaking of the source and force behind the Constitution observed that the fact that the Preamble professed in unambiguous term that it is the people of India who have adopted, enacted and “given to themselves this Constitution”, that the Constitution is being acted upon unquestioned for the last over twenty-three years and every power and authority is purported to be exercised under the Constitution; and that the vast majority of the people have, acting under the Constitution, elected their representatives to Parliament and the State Legislatures in general elections, makes the proposition indisputable that the source and the binding force of the Constitution is the sovereign will of the people of India. In his opinion the Preamble to the Constitution finally settled by the Founding Fathers after the Constitution was framed so as to conform to the ideals and aspirations of the people embodied in that instrument. The Preamble declares in a ringing tone the purpose and objectives which the Constitution was intended to subserve.

In the opinion of Justice Jaganmohan Reddy, the utility of the Preamble in interpreting the Constitution though a subject of depth yet it is clear from the opinion of jurists that (a) the Preamble is a key to open the mind of the makers as to the mischiefs, which are to be remedied; (b) that it is properly resorted to, where doubts or ambiguities arise upon the words of the enacting part; (c) even where the words are clear and unambiguous, it can be used to prevent an obvious absurdity. (d) there is every reason to believe that the intentions of the framers as stated in the preamble, found expression in fundamental law or the constitution. (e) the Preamble can never be resorted to, to enlarge the powers expressly given, nor to substantively create any power or to imply a power which is otherwise withdrawn from the Constitution; its true function is to expound the nature, extent and application of the powers actually conferred by the Constitution.

The American concept is that the Preamble may not be resorted to as a source of federal authority but the value and use of the Preamble is to ascertain the essential concepts underlying the Constitution.

English cases show that the Preamble can be resorted to as a means to discover the legislative intent of which one may be cited. The gist of the English view is that: (a) the Preamble cannot enable going further than what the enacting words indicate; (b) the Preamble cannot be pressed into service for finding out the meaning of the enacting words when the meaning of the Preamble itself is in doubt. Having referred to other authorities Justice Jaganmohan Reddy concluded by holding that statute where the words are ambiguous or even where the words are unambiguous to aid a construction which will not lead to an absurdity. Where the Preamble conveys a clear and definite meaning, it would prevail over the enacting words which are relatively obscure or indefinite or if the words are capable of more than one construction, the construction which fits the Preamble may be preferred.

Discussing the utility of the Preamble as a guide to the interpretation of the constitutional provisions, Justice Chandrachud, discarded the argument that the Preamble could be read as placing implied limitations or immunities from amendment.

He concluded that every part and every provision of the Constitution was within the purview of wide and unfettered power of amendment of the Constitution conferred by Article 368. No inherent limitations on the amending power could be spelled out so as to develop a theory of keeping the essential features or the fundamental principles of the Constitution beyond the power of amendment.

**Notes**



Notes

(b) Preamble as a source of interpretation of other Statutes framed under the Constitution.

Whether it is the Constitution that is expounded or the constitutional validity of a Statute that is considered, a cardinal rule is to look to the Preamble Constitution as the guiding light and to the Directive Principles of State Policy and as the book of interpretation of the constitution. The Preamble embodies and expresses the hopes and aspirations of the people. The Directive Principles set out proximate goals. When we go about the task of examining statutes against the Constitution, it is through these glasses that we must look, distant vision or near vision. The Constitution being *sui generis*, where constitutional issues are under consideration, narrow interpretative rules which may have relevance when legislative enactments are interpreted may be displaced. Originally the Preamble to the Constitution proclaimed the resolution of the people of India to constitute India into “a Sovereign Democratic Republic” and set forth “Justice, Liberty, Equality and Fraternity”, the very rights mentioned in the French Declaration of the Rights of Man as our hopes and aspirations. That was in 1950 when we had just emerged from the colonial-feudal rule. Time passed. The people’s hopes and aspirations grew. In 1977, the Forty-Second Amendment proclaimed India as a Socialist Republic. The word “Socialist” was introduced into the Preamble to the Constitution. The implication of the introduction of the word “Socialist”, which has now become the centre of the hopes and aspiration of the people — a beacon to guide and inspire all that is enshrined in the Articles of the Constitution — is clearly to set up a “vibrant throbbing socialist welfare society” in the place of “feudal exploited society”. Whatever Article of the Constitution it is that we seek to interpret, whatever Statute it is whose constitutional validity is sought to be questioned, we must strive to give such an interpretation as will promote the march and progress towards a socialistic democratic State. For example, when we consider the question whether a Statute offends Article 14 of the Constitution we must also consider whether a classification that the legislature may have made is consistent with the socialist goals set out in the Preamble and the Directive Principles enumerated in Part IV of the Constitution. A classification which is not in tune with the Constitution is *per se* unreasonable and cannot be permitted.

The Preamble to the Constitution has relevance and significance in the interpretation of other laws. That the Preamble acts as beacon light guiding the interpretation of other law is a rule recognised in *‘Kesavananda Bharti’ case*.

According to Kelsen: “Preamble serves to give a Constitution a greater dignity and efficacy.” Initially the Preamble was utilised by courts in interpreting social legislations. And later, the net widened.

The validity of the Kerala Fisherman Welfare Fund Act, 1985 was upheld in *‘Kolutbara Exports Ltd. v. State of Kerala’* on the grounds that the aim of law

was to provide social security and welfare to the Kerala fisherman and that this was justified as it was in accordance with the objectives contained in the Preamble.

The Supreme Court has also used the concept of equality as found in the Preamble in the interpretation of tax laws. In *'Sri Srinivasa Theatre v. Govt. of T.N.'* the Court said that Parliament has been given more freedom in the case of taxing statutes in order to decide who should pay more taxes, to remove the inequalities that prevail in this country, as per the goal of equality as envisaged in the Preamble.

In a more recent decision, *P.Ramachandra Rao v. State of Karnataka*, the Court has reiterated the right to speedy trial as a fundamental right under Article 21, and has used the concept of justice as found in the Preamble to the Constitution to strengthen this right.

In the field of labour and company law, the Court, in the case of *'National Textile Workers' Union v. P.R. Ramakrishnan'*, used the right of justice as assured in the Preamble to the Constitution to give workers of a company a right to be heard in a winding-up petition.

In *'Randhir Singh v. Union of India'* the Supreme Court construed Articles 14 and 16 in the light of the Preamble and Article 39(d) of the Constitution.

In *'D.S. Nakara v. Union of India'* the Court observed the Preamble to the Constitution is the floodlight which illuminates the path to be pursued by the State to set up a Sovereign, Socialist, Secular and Democratic Republic, and decided the case in favour of the pensioners who had been denied the enhanced pensionary benefits under an order issued by the Central Government.

In *'Sanjit Roy v. State of Rajasthan'*, the Court held that when a person is forced to work on wages less than what is prescribed as minimum is "forced labour" under Article 23 and basically contrary to the principle laid down in the Preamble.

In *'Sanjeev Coke Mfg. Co. v. Bharat Coking Coal Ltd.'*, the Court relied on the Preamble and Article 39(b) for upholding the validity of the Coking Coal Mines (Nationalisation) Act, 1972 and observed that the Act was designed to achieve the egalitarian principle of social and economic justice for all. Justice Chinnappa Reddy, observed—

"Scale of justice are just not designed to weigh competing social and economic factors. In such matters legislative wisdom must prevail and judicial review must abstain."



Notes

**Notes****(c) International Documents/Treaties Conventions/Declarations as aid to Interpretation of the Preamble.**

The Judges in India have referred to international legal documents and treaties in order to do justice in the absence of any law or authority available on the point. In *Madhu Kishwar v. State of Bihar* the Court made use of the Vienna Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) ratified by UNO on 18-12-1979 to uphold the right of succession for tribal woman over which there was some amount of legal controversy. The concept of justice and equality spoken of in the Preamble was given a new dimension by the Supreme Court observing that Article 2(3) of CEDAW enjoins the Supreme Court to breathe life into the dry bones of the Constitution, International Conventions and the Declaration Human Rights act, to prevent gender-based discrimination and to effectuate right to life including empowerment of economic, social and cultural rights. Women are half of the lowest of the low. It is mandatory to render them socio-economic justice so as to ensure their dignity of person, so that they be brought into the mainstream of the national life. In *Vishaka v. State of Rajasthan* the Supreme Court laid down guidelines on sexual harassment of woman in the work place on the basis of CEDAW in search of gender justice flowing from “justice” and “equality” as employed in the Preamble. In *Kirloskar Brothers Ltd. v. ESI Corpn.*, the Court used the Universal Declaration of Human Rights, 1948 and the International Covenant on Civil and Political Rights to reaffirm the duty of the State as regards its welfare role.

**INTEXT QUESTIONS 18.5**

1. Analyse briefly the role of Preamble as interpreter of the provisions of Constitution itself.
2. “The Preamble acts as an aid to the interpretation of other Statutes.” Is this statement true or false?
3. “The International Documents/Treaties/Conventions/Declarations act as aid to the interpretation of the Preamble.” Is this statement true or false?

**WHAT YOU HAVE LEARNT**

The document containing laws and rules which determine and describe the form of the government and the relationship between the citizens and the government is called a Constitution. In short, Constitution contains law and principles according to which a State is governed.

A Government which is controlled or ruled or limited by a Constitution, is called a constitutional government.

‘Constitutionalism’ means belief in a constitutional government or belief in constitutional principles. Constitutionalism establishes a constitutional government which is controlled or ruled by a written constitution.

The Preamble of the Constitution explains the objectives of the Constitution in two ways; one about the structure of governance and the other, about the ideals to be achieved by India. It is because of this that the Preamble is considered to be the key to the Constitution. In fact, the ‘objectives’ specified in the Preamble contains the basic structure of the Constitution.

The Preamble acts as interpreter of Constitution and other Statutes formed under the Constitution. The Preamble to the Constitution has played a predominant role in shaping the destiny of the country during the last six decades.

**Notes****TERMINAL QUESTIONS**

1. What is meant by the ‘Constitution’?
2. Examine in brief the characteristics of a Constitutional Government.
3. Describe briefly the term ‘Constitutionalism’.
4. Examine the role of Preamble in interpreting the Constitution.
5. Discuss briefly Preamble as an aid in interpreting the other Statutes framed under the Constitution.
6. “The Preamble is an integral Part of the Constitution.” Examine this statement in the light of relevant cases.
7. Explain briefly the constitutional values mentioned in the Preamble which gives us dignity of existence as a Nation in the International Community.

**ANSWER TO INTEXT QUESTIONS****18.1**

1. Constitution contains the Laws and the Principles according to which a State is governed. The Constitution of a country provides the basis for governance of country.
2. ‘Constitutionalism’ means belief in a Constitutional Government or beliefs in Constitutional Principles. ‘Constitutionalism’ establishes a constitutional government which is controlled or ruled by a written Constitution.
3. Source of Authority of the Constitution.

MODULE - 5

The Constitution of
India-I



Notes

18.2

1. Basic Structure
2. Objectives

18.3

1. Keshavananda Bharti Case
2. Berubari Case
3. Keshavananda Bharti Case.

18.4

1. Refer to 18.4
2. True

18.5

1. Refer to 18.5 (a)
2. True
3. True.