



Bihar

Judicial Services Exam

Bihar Public Service Commission (BPSC)

Volume - 4

The Constitution of India, Hindu & Muslim Law



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CHAPTER

Constitution of India

Important Amendments for Preliminary Exams

1. 1st Amendment (1951)

- ✓ Added **9th Schedule** (immunity to land reform laws).
- ✓ Curtailed **Right to Property (Art. 19(1)(f))**.
- ✓ Introduced **reasonable restrictions** on Art. 19.
- ✓ Inserted Art. 31A & 31B.

2. 7th Amendment (1956)

- ✓ Reorganized States on **linguistic basis** (States Reorganisation Act).
- ✓ Abolished distinction between Part A, B, C, D states.
- ✓ This Amendment created the concept of a **“common Governor”**, i.e., one individual can act as the constitutional head of two or more states simultaneously.
- ✓ This Amendment empowered the Parliament to establish a **common High Court** for two or more states.

3. 21st Amendment, 1967

- ✓ Added **Sindhi**.
- ✓ Total: **15 languages**

4. 24th Amendment (1971)

- ✓ Made clear: **Parliament has power to amend any part of Constitution**, including Fundamental Rights.
- ✓ Article 368 made explicit.
- ✓ Response to *Golaknath v. State of Punjab* (1967).

5. 25th Amendment (1971)

- ✓ Inserted **Art. 31C**: Directive Principles (Art. 39(b), (c)) override Fundamental Rights (Art. 14, 19).

6. 26th Amendment (1971)

- ✓ Abolished **privy purses & privileges** of erstwhile rulers.

7. 31st Amendment (1973)

- ✓ Increased strength of **Lok Sabha** from 525 to 545.

Kesavananda & Emergency Era

7. 42nd Amendment (1976) (*Mini-Constitution*)

- ✓ Added words **“Socialist, Secular, Integrity”** in Preamble.
- ✓ Made **DPSPs** superior to Fundamental Rights (subject to judicial review later).
- ✓ Curtailed judicial review.
- ✓ Gave Parliament primacy in amending Constitution.
- ✓ Extended tenure of Lok Sabha & State Assemblies from 5 to 6 years.

8. 44th Amendment (1978)

- ✓ Reversed Emergency excesses.
- ✓ Restored tenure of Lok Sabha & Assemblies back to **5 years**.
- ✓ Restored power of **judicial review**.
- ✓ Made **Right to Property** (Art. 300A) a **legal right**, no longer a fundamental right.
- ✓ Provided that **Fundamental Rights under Art. 20 & 21** cannot be suspended even during Emergency.

9. 52nd Amendment (1985)

- ✓ Inserted **10th Schedule (Anti-Defection Law)**.

10. 61st Amendment (1989)

- ✓ Reduced **voting age** from **21 to 18 years**.

11. 69th Amendment (1991)

- ✓ Made Delhi **National Capital Territory (NCT)** with Legislative Assembly (Art. 239AA).

12. 71st Amendment, 1992

- ✓ Added **Konkani, Manipuri, Nepali**.
- ✓ Total: **18 languages**.

13. 73rd Amendment (1992)

- ✓ Constitutional status to **Panchayati Raj Institutions**.
- ✓ Added **11th Schedule**.

14. 74th Amendment (1992)

- ✓ Constitutional status to **Urban Local Bodies (Municipalities)**.
- ✓ Added **12th Schedule**.

15. 86th Amendment (2002)

- ✓ Made **Right to Education (Art. 21A)** a Fundamental Right (6–14 years).
- ✓ Changed DPSP: Art. 45 → Early childhood care (0–6 years).

16. 91st Amendment (2003)

- ✓ Limited size of **Council of Ministers** (15% of Legislative strength).
- ✓ Strengthened Anti-Defection Law.

17. 92nd Amendment, 2003 (came into effect in 2004)

- ✓ Added **Bodo, Dogri, Maithili, Santhali**.
- ✓ Total: **22 languages** (current)

18. 97th Amendment (2011)

- ✓ Gave **constitutional status to cooperatives** (Art. 19(1)(c), Part IXB).
- ✓ Later partly struck down by SC in *Union of India v. Rajendra Shah* (2021) for want of state ratification.

19. 101st Amendment (2016)

- ✓ Introduced **Goods and Services Tax (GST)**.
- ✓ Created GST Council (Art. 279A).

20. 102nd Amendment (2018)

- ✓ Granted constitutional status to **National Commission for Backward Classes (NCBC)**.

21. 103rd Amendment (2019)

- ✓ Introduced **10% reservation for Economically Weaker Sections (EWS)**.
- ✓ Added **Art. 15(6), 16(6)**.

22. 104th Amendment (2020)

- ✓ Extended reservation of **SC/ST in Lok Sabha & State Assemblies** till 2030.
- ✓ Abolished reserved seats for **Anglo-Indians** in Lok Sabha & Assemblies.

23. 105th Amendment (2021)

- ✓ Restored power of **States to identify OBCs** for their own list.

24. 106th Amendment (2023)

- ✓ It reserves one-third of seats for women in Lok Sabha, State Legislative Assemblies, and Legislative Assembly of Delhi.



List of Cases on Constitutional Doctrines

- 1. Doctrine of Quasi-Federalism** – Indian Constitution is federal with strong unitary bias – *State of West Bengal v. Union of India (1963) SC*.
- 2. Doctrine of Separation of Powers** – No rigid separation, but functional separation between legislature, executive & judiciary – *Indira Nehru Gandhi v. Raj Narain (1975) SC*.
- 3. Doctrine of Rule of Law** – No one is above law; equality before law – *ADM Jabalpur v. Shivkant Shukla (1976) SC* (criticized, later corrected in *Maneka Gandhi (1978)* & *K.S. Puttaswamy (2017)*) SC.
- 4. Doctrine of Judicial Review** – Judiciary has power to strike down unconstitutional laws – *Marbury v. Madison (1803, US) SC of US*; in India – *Kesavananda Bharati v. Union of India (1973) SC*.
- 5. Doctrine of Reasonable Classification** – Equality permits reasonable classification, not class legislation – *State of West Bengal v. Anwar Ali Sarkar (1952) SC*.
- 6. Doctrine of Arbitrariness** – Any law/action arbitrary violates Art. 14 – *E.P. Royappa v. State of Tamil Nadu (1974) SC*; strengthened in *Maneka Gandhi V. Union of India (1978) SC*.
- 7. Doctrine of Manifest Arbitrariness** – A law can be struck down if arbitrary – *Shayara Bano v. Union of India (2017) SC* (Triple Talaq case).
- 8. Doctrine of Pleasure Qualified by Safeguards** – Though Art. 310 gives “pleasure doctrine”, Art. 311 gives safeguards – *Shamsher Singh v. State of Punjab (1974) SC*.
- 9. Doctrine of “Collective Responsibility”** – Cabinet collectively responsible to Lok Sabha – *Shamsher Singh v. State of Punjab (1974) SC*, *Ram Jawaya Kapur v. State of Punjab (1955) SC*.
- 11. Doctrine of Unreasonable Restriction** – Restrictions on FR must be reasonable – *Chintaman Rao v. State of M.P. (1951) SC*.
- 12. Doctrine of Public Interest** – Courts allow restrictions if in larger public interest – *Bennett Coleman v. Union of India (1972) SC*.
- 13. Doctrine of Balancing Fundamental Rights** – When two FRs conflict, balance must be struck – *Bijoe Emmanuel v. State of Kerala (1986) SC*.
- 14. Doctrine of Living Constitution** – Constitution interpreted as evolving with time – *Navtej Singh Johar v. Union of India (2018) SC*.
- 15. Doctrine of Constitutional Morality** – Constitutional values must guide interpretation – *Government of NCT of Delhi v. Union of India (2018)*, *Navtej Johar (2018) SC*.
- 16. Doctrine of Transformative Constitutionalism** – Constitution seen as a tool of social transformation – *Navtej Johar (2018)*, *Joseph Shine (2018) SC*.
- 17. Doctrine of Subsidiarity** – Matters should be handled at lowest effective level – applied in local governance context (*Bommai V. State of Karnataka case 1994 indirectly*).
- 19. Doctrine of “Fruit of the Poisonous Tree”** – Illegally obtained evidence inadmissible – adopted in India cautiously (*Pooran Mal v. Director of Inspection (1974)*) SC.
- 20. Doctrine of Double Jeopardy** – No person tried/punished twice for same offence – *Maqbool Hussain v. State of Bombay (1953) SC*.

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- 24. Doctrine of Escheat** – If a person dies intestate without heirs, property goes to the State – *Art. 296 of Constitution.*
- 25. Doctrine of Bona Vacantia** – Ownerless property goes to State – *Art. 296.*
- 26. Doctrine of Public Trust** – State is trustee of natural resources for public – *M.C. Mehta v. Kamal Nath (1997) SC.*
- 27. Basic Structure Doctrine** – Parliament can amend Constitution but cannot alter its basic features (democracy, federalism, judicial review).
Case: *Kesavananda Bharati v. State of Kerala (1973).*
- 28. Pith and Substance Doctrine** – Legislative competence judged by true subject of law, not incidental encroachment.
Case: *State of Bombay v. F.N. Balsara (1951).*
- 29. Colourable Legislation** – What cannot be done directly, cannot be done indirectly by legislature.
Case: *K.C. Gajapati Narayan Deo v. State of Orissa (1953) SC.*
- 30. Severability Doctrine** – Invalid part of a statute can be severed; rest continues if workable.
Case: *R.M.D. Chamarbaugwala v. Union of India (1957) SC.*
- 31. Eclipse Doctrine** – Pre-constitutional laws inconsistent with FRs are dormant, not void; revive if inconsistency removed.
Case: *Bhikaji Narain Dhakras v. State of M.P. (1955) SC.*
- 32. Waiver Doctrine** – Fundamental Rights cannot be waived as they serve public policy.
Case: *Bheshar Nath v. CIT (1959 SC).*
- 33. Harmonious Construction** – Conflicting provisions should be interpreted to give effect to both.
Case: *M.S.M. Sharma v. Sri Krishna Sinha (1959) SC.*
- 34. Prospective Overruling** – New judicial ruling applies only prospectively, not retrospectively.
Case: *I.C. Golaknath v. State of Punjab (1967) SC.*
- 35. Separation of Powers** – Legislature, executive, judiciary have separate domains; part of basic structure.
Case: *Indira Gandhi v. Raj Narain (1975) SC.*
- 36. Laches Doctrine** – Delay in filing petition can defeat claim (“equity aids the vigilant”).
Case: *State of M.P. v. Bhailal Bhai (1964 SC).*
- 37. Stare Decisis** – Courts must follow precedents; ensures certainty under Art. 141.
Case: *Bengal Immunity Co. v. State of Bihar (1955) SC.*
- 38. Rule of Law** – No one is above law; equality before law is guaranteed.
Case: *ADM Jabalpur v. Shivkant Shukla (1976)* (later corrected in *Maneka Gandhi*).
- 39. Proportionality Doctrine** – Restrictions on rights must be necessary, suitable, least restrictive.
Case: *K.S. Puttaswamy v. Union of India (2017) SC.*
- 40. Territorial Nexus Doctrine** – State law may operate extraterritorially if sufficient nexus exists.
Case: *State of Bombay v. R.M.D.C. (1957) SC.*
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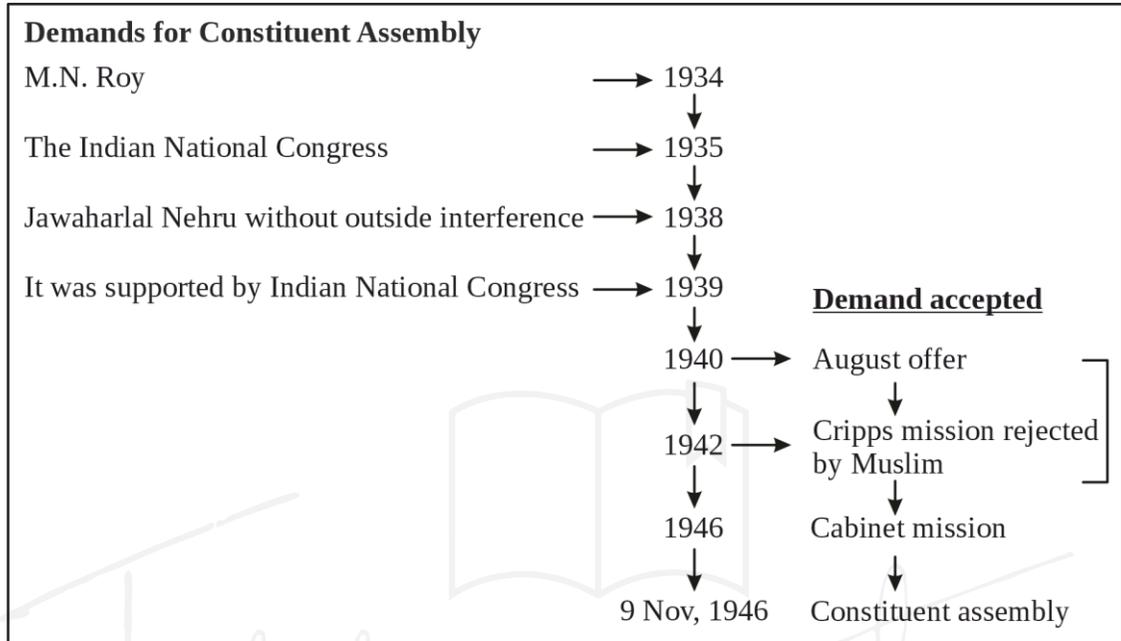
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- 41. Repugnancy Doctrine** – In Concurrent List, Union law prevails over inconsistent State law.
Case: *M. Karunanidhi v. Union of India (1979) SC.*
- 42. Occupied Field Doctrine** – When Union law occupies field, State cannot legislate further.
Case: *Tika Ramji v. State of U.P. (1956) SC.*
- 43. Pleasure Doctrine** – Govt. servants hold office during President's/Governor's pleasure, subject to Art. 311.
Case: *Shamsher Singh v. State of Punjab (1974) SC.*
- 44. Doctrine of Legitimate Expectation** – Citizens can expect consistency in state policy; breach reviewable.
Case: *Navjyoti Coop. Group Housing Society v. Union of India (1992) SC.*



Making of the Indian Constitution

1. Background

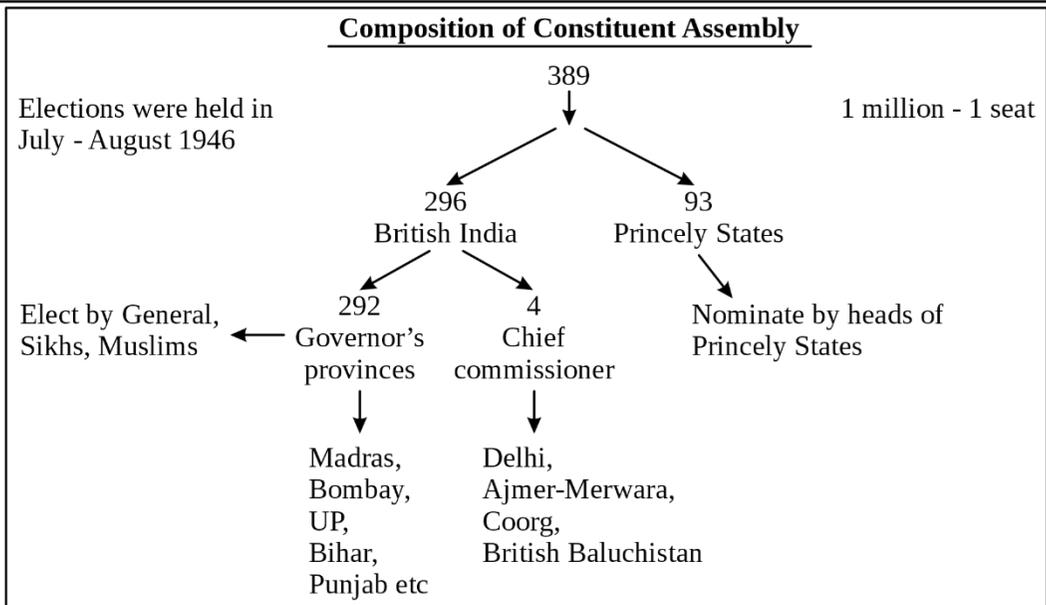
- ✓ **British Rule:** Exposed India to modern constitutional institutions (Govt. of India Acts, 1909–1935).
- ✓ **Demand for Constitution:** Indian National Congress (INC) demanded self-governance & Constituent Assembly since 1934 (M.N. Roy's idea).



- ✓ **August Offer (8 August 1940):** The British promised that after World War II, Indians would get a chance to frame their own Constitution. But Congress rejected it (they wanted full independence), but the Muslim League accepted it.
- ✓ **Cripps Mission (1942):** Proposed Indian dominion with right to frame its own constitution but it was rejected.
- ✓ **Cabinet Mission Plan (1946):** The British Government sent a Cabinet Mission (Pethick-Lawrence, Cripps, A.V. Alexander) to India in 1946 to discuss independence and transfer of power.
- ✓ It rejected the demand for a separate Pakistan but proposed a **Union of India** with provinces and princely states.
- ✓ The Union would control only **foreign affairs, defence, and communications**; provinces retained autonomy.
- ✓ Provinces were grouped into three sections (A: Hindu-majority, B & C: Muslim-majority).
- ✓ It proposed a **Constituent Assembly** to frame the Constitution and an **Interim Government** until full transfer of power.

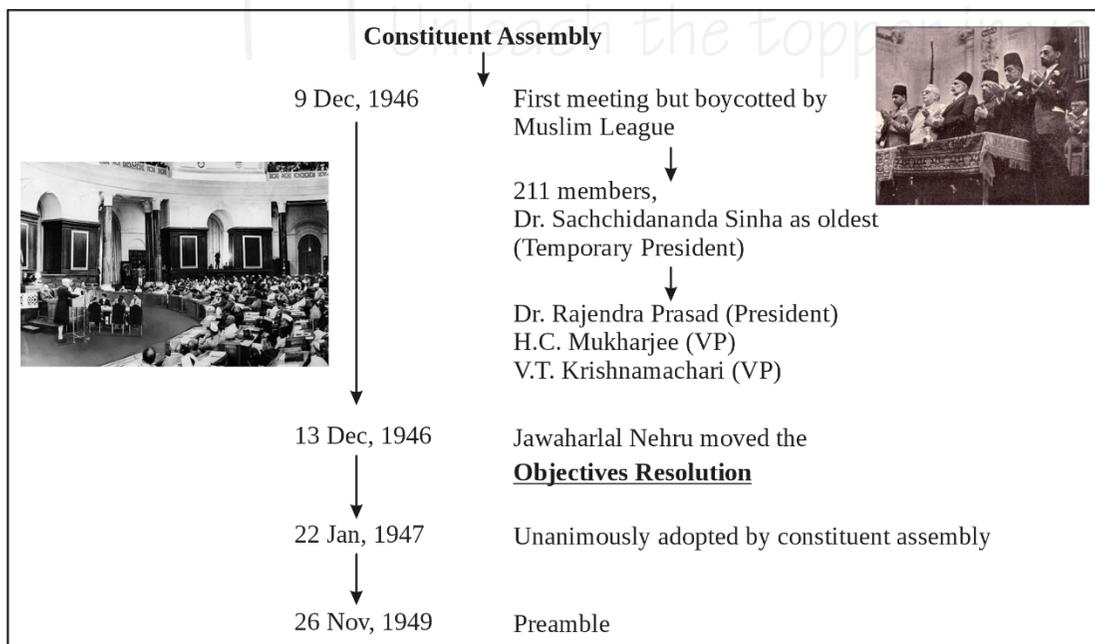
2. Formation of Constituent Assembly

- ✓ **Total Members:** 389 (292 from provinces, 93 from princely states, 4 from Chief Commissioner's provinces).
- ✓ **Method:** Indirect election by Provincial Assemblies on basis of population (1 seat per 10 lakh).
- ✓ **After partition (1947):** 299 members remained (229 provinces, 70 princely states).



3. Imp Dates

- ✓ **9 December 1946:** First meeting of Constituent Assembly.
- ✓ **11 December 1946:** Dr. Rajendra Prasad elected as permanent President.
- ✓ **13 December 1946:** Nehru moved the **Objectives Resolution** (later became the Preamble).
- ✓ **22 January 1947:** Objectives Resolution adopted.
- ✓ **14 August 1947:** Assembly met as sovereign body after Indian Independence Act, 1947.
- ✓ **26 November 1949:** Constitution adopted.
- ✓ **24 January 1950:** Final signing of the Constitution.
- ✓ **26 January 1950:** Constitution came into force (chosen to honour 1930 Purna Swaraj Resolution).



4. Important Committees of Constituent Assembly

(Chaired mostly by B.R. Ambedkar, Alladi Krishnaswami Ayyar, Gopalaswami Ayyangar, etc.)

- ✓ **Union Powers Committee** – Jawaharlal Nehru.
- ✓ **Union Constitution Committee** – Jawaharlal Nehru.
- ✓ **Provincial Constitution Committee** – Sardar Patel.
- ✓ **Drafting Committee** – Dr. B.R. Ambedkar.
- ✓ **Fundamental Rights & Minorities** – Sardar Patel.
- ✓ **Advisory Committee on Fundamental Rights** – Sardar Patel.
- ✓ **Steering Committee** – Dr. Rajendra Prasad.

5. Drafting Committee (Most Important for exam)

- ✓ **Formed:** 29 August 1947.
- ✓ **Chairman:** Dr. B.R. Ambedkar (Father of Indian Constitution).
- ✓ **Other Members:** K.M. Munshi, Alladi Krishnaswami Ayyar, Mohammad Saadullah, N. Gopalaswami Ayyangar, B.L. Mitter (later replaced by N. Madhava Rao), D.P. Khaitan (later replaced by T.T. Krishnamachari).

6. Adoption Process

- ✓ Draft debated in Constituent Assembly for **2 years, 11 months, 18 days**.
- ✓ **114 days** were devoted to clause-by-clause discussion.
- ✓ Received **over 7,600 amendments**; ~2,400 were discussed.
- ✓ Final document: **395 Articles, 22 Parts, 8 Schedules (originally)**.

7. Sources of the Constitution

- ✓ **Government of India Act, 1935** → Federal structure, administrative details, judiciary.
- ✓ **British Constitution** → Parliamentary system, Rule of Law, Prerogative writs, single citizenship.
- ✓ **US Constitution** → Fundamental Rights, Judicial Review, Preamble, impeachment of the President, independence of judiciary.
- ✓ **Irish Constitution** → DPSPs, nomination to Rajya Sabha, method of election of President.
- ✓ **Canadian Constitution** → Federation with strong Centre, vesting residuary powers in the centre, advisory jurisdiction of the Supreme court, appointment of the State Governors by the Centre.
- ✓ **Australian Constitution** → Concurrent list, trade & commerce provisions, joint sitting of the two Houses of Parliament.
- ✓ **Weimar (German) Constitution** → Emergency powers.
- ✓ **Soviet Constitution (USSR)** → Fundamental Duties, Socialism.
- ✓ **South African Constitution** → Procedure of amendment, election of Rajya Sabha members.
- ✓ **Japanese Constitution** – Procedure established by law (Article 21).

8. Cost of the Constitution

- ✓ **Total Cost:** ₹64 lakhs (approx.).
- ✓ Printing alone cost ₹1 lakh.

9. Significance

- ✓ World's **largest democracy's foundation document**.
- ✓ Represents a compromise between **rigidity and flexibility**.
- ✓ Introduced **universal adult suffrage** at inception.
- ✓ Embodied ideals of **justice, liberty, equality, fraternity**.
- ✓ Provided mechanisms for **social revolution** (DPSPs, Fundamental Rights, affirmative action).



Preamble

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;

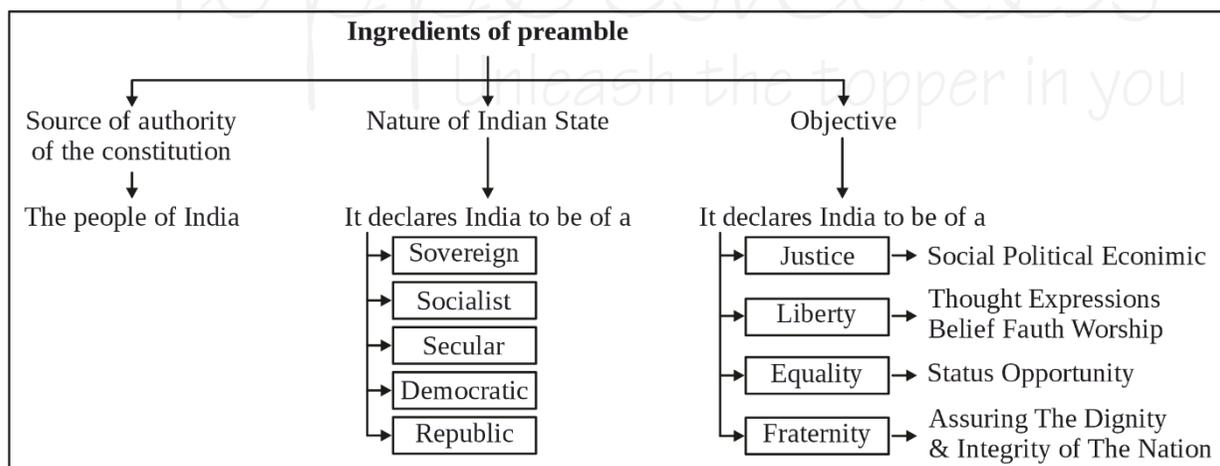
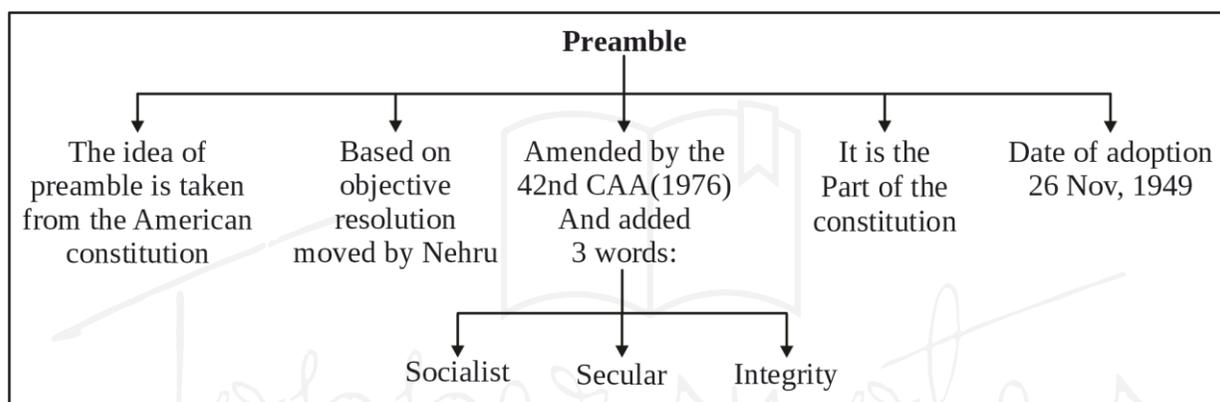
LIBERTY, of thought, expression, belief, faith and worship;

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."



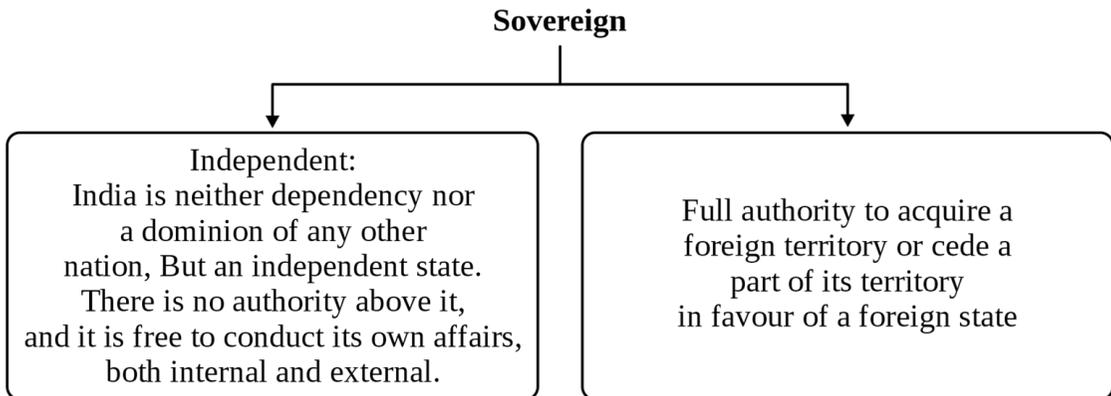
Key Components of the Preamble

1. “We, the People of India”

- ✓ Reflects the idea of **popular sovereignty** — the Constitution derives its authority from the **people**, not from any external source or monarch.
- ✓ Indicates that **ultimate power** lies with the **citizens of India**.

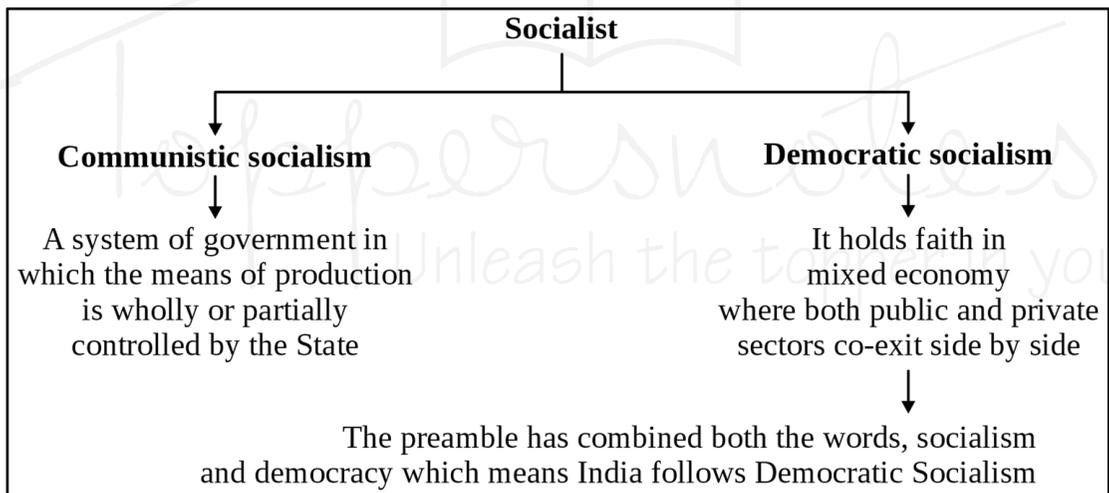
2. “Sovereign”

- ✓ India is **independent** and not subject to control by any external power.
- ✓ It can freely formulate its **internal and external policies**.



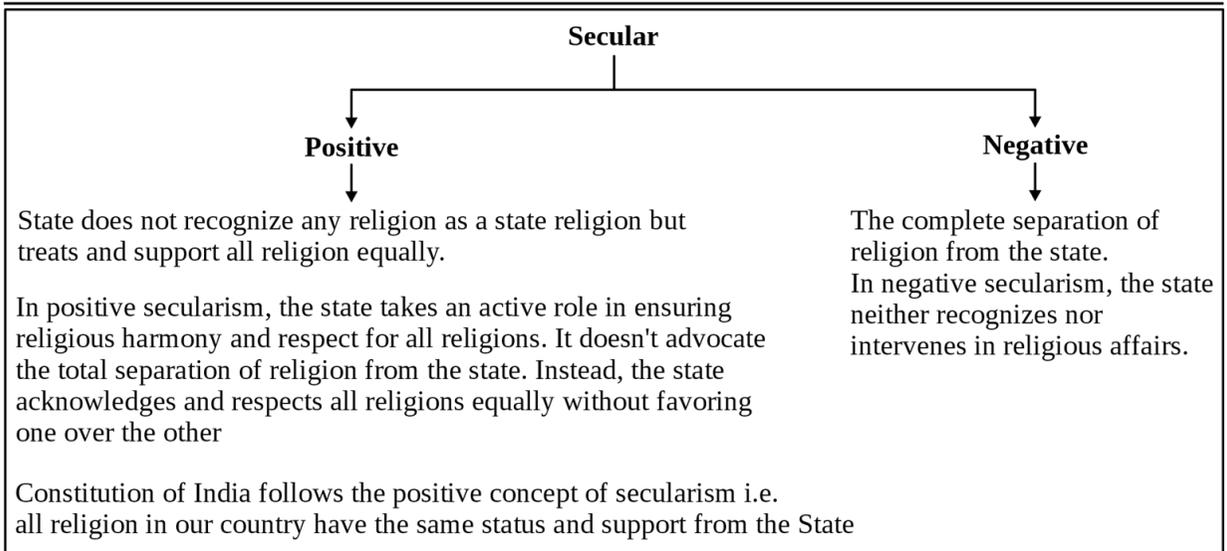
3. “Socialist” (Added by 42nd Amendment, 1976)

- ✓ Reflects **economic justice** and reduction of inequality.
- ✓ It does **not imply communism** but the **mixed economy** model where both public and private sectors co-exist.
- ✓ The state strives for **equal distribution of wealth and welfare of all**.



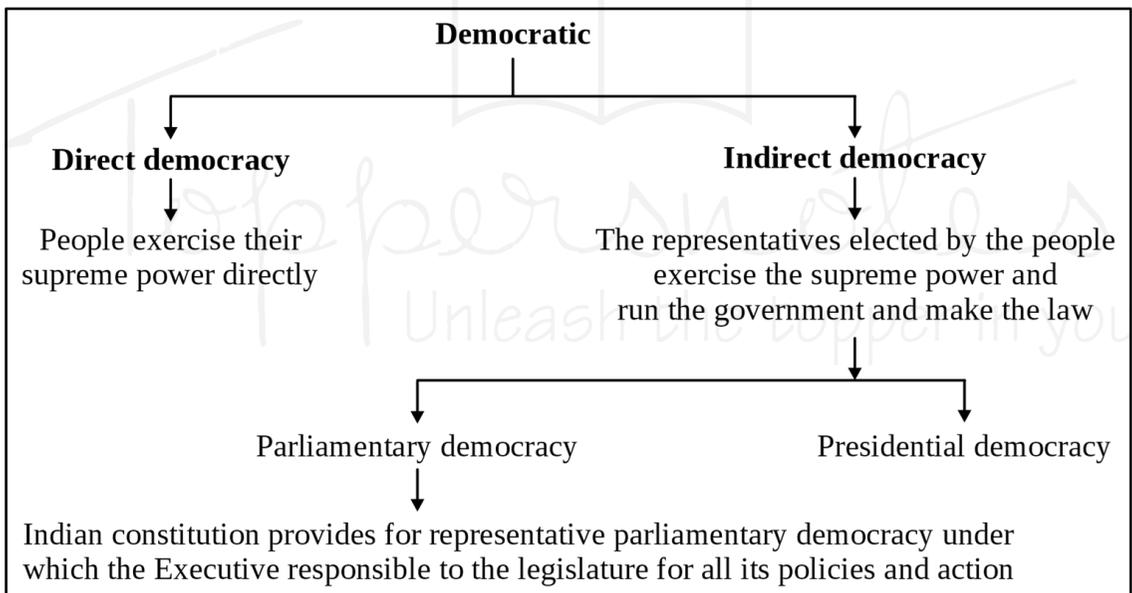
4. “Secular” (Added by 42nd Amendment, 1976)

- ✓ India has **no official religion**.
- ✓ The state treats **all religions equally** and maintains a **principled distance** from religious affairs.
- ✓ Citizens have the **freedom of religion** under Article 25 to 28.



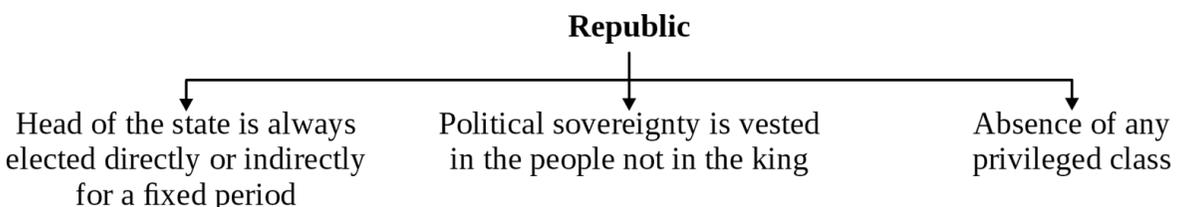
5. “Democratic”

- ✓ Refers to a **system of government by the people**, through their elected representatives.
- ✓ Emphasizes **universal adult suffrage, periodic elections, rule of law, accountability, and civil liberties**.



6. “Republic”

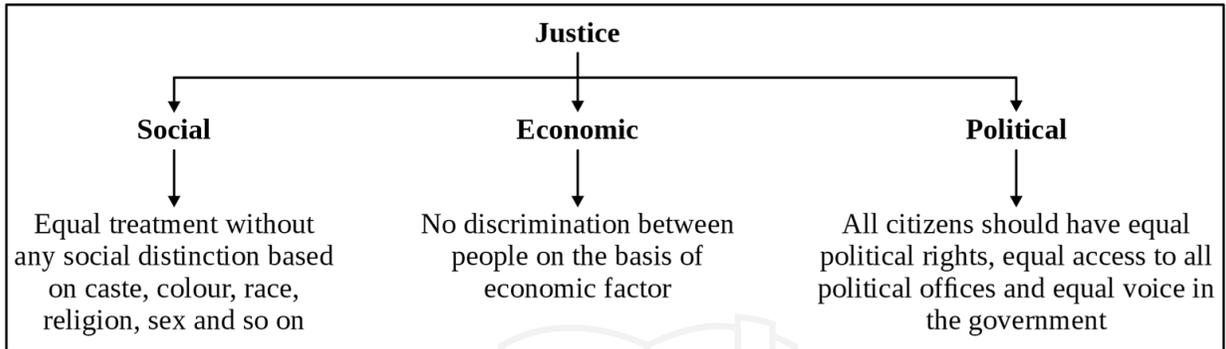
- ✓ The **head of the State (President)** is **elected**, not hereditary.
- ✓ Ensures that **public offices are open to all citizens**, not restricted by birth.



Objectives of the Constitution

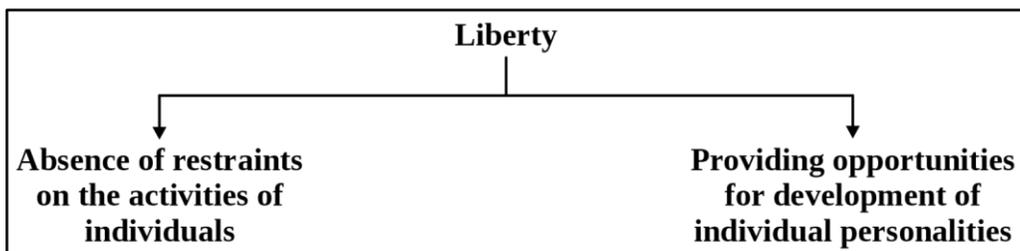
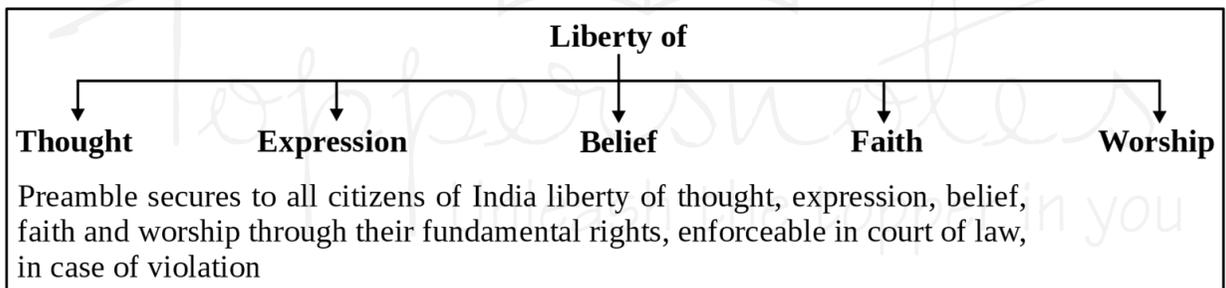
a) Justice – Social, Economic, and Political

- ✓ **Social Justice:** Removes social inequalities, prohibits discrimination (Article 15), and promotes welfare (Directive Principles).
- ✓ **Economic Justice:** Fair distribution of wealth, opportunity, and resources.
- ✓ **Political Justice:** Equal rights to participate in the political process (universal franchise, right to contest).



b) Liberty – of Thought, Expression, Belief, Faith, and Worship

- ✓ Protected under **Articles 19 and 25-28**.
- ✓ Citizens are free to think, express, and follow any religion or belief without fear.



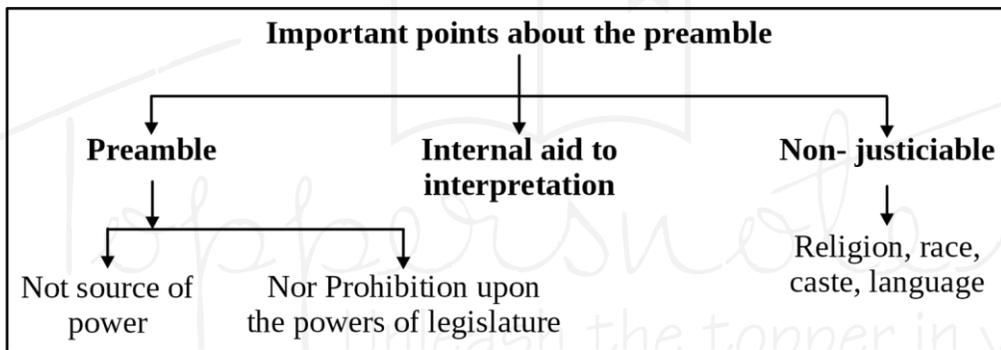
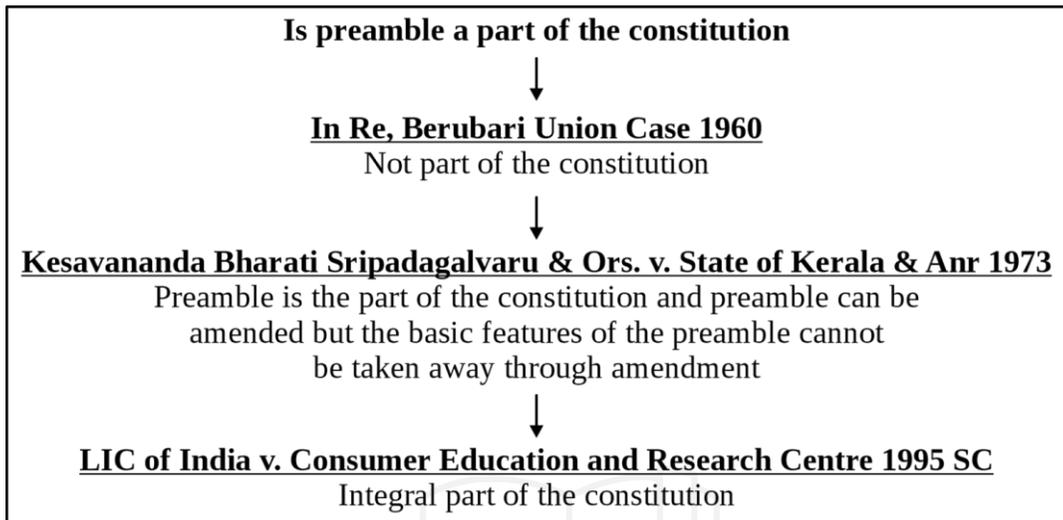
The ideals of liberty, equality and fraternity in our preamble have been taken from French revolution (1789-1799)

c) Equality – of Status and Opportunity

- ✓ Ensures **equal treatment before law** (Article 14), **prohibits discrimination** (Article 15), and guarantees **equal opportunity** (Article 16).

d) Fraternity – Assuring Dignity of the Individual and Unity and Integrity of the Nation

- ✓ Promotes **brotherhood** among citizens.
- ✓ Upholds the **dignity of each person**.
- ✓ Aims to maintain **national integration** in a diverse country.



The Union and its Territory

Article 1 – Name and Territory of the Union

1. India = Bharat: The country shall be called India, that is Bharat.
2. Union of States: India is a Union of States, not a federation formed by agreement, and States have no right to secede.
3. Territory of India includes:
 - (a) Territories of the States.
 - (b) Union Territories as specified in the First Schedule.
 - (c) Any other territories that may be acquired by India in the future.

Two things are clear from this Article-

- First, the name of the country i.e Bharat and India.
- Secondly, the nature of India, it means India will be a ‘union of states’.

There was no unanimity in the Constituent Assembly with regard to the name of the country. Some members suggested the traditional name (Bharat), while other advocated the modern name (India). Hence, the Constituent Assembly had to adopt a mix of both (India, that is Bharat) The country is described as ‘Union’ although its constitution is federal in structure. According to the B.R. Ambedkar, the phrase ‘Union of states’ has been preferred to ‘Federation of state’ for two reasons:

One, the Indian Federation is not the result of an agreement among the states like the American Federation;
Second, the states have no right to secede (to decide not to continue to be part) from the federation.

Article 2 – Admission or Establishment of New States

Parliament's Power:

Parliament can

- **admit** new states into the Union
- **establish** new states

with any terms and conditions it deems fit.

Article 2 relates to the admission or establishment of new states that are not part of the union of India.

Article 3 – Formation or Alteration of States

Parliament may make laws to:

- (a) **Form** a new state.
- (b) **Increase** the area of any state.
- (c) **Decrease** the area of any state.
- (d) **Alter boundaries** of any state.
- (e) **Change the name** of any state.

In other words, it deals with internal re-adjustment of the territories of the states

[Article 4]

Article 3 lays down the two conditions in this regard

- Firstly, bill can be introduced in the Parliament only with the prior recommendation of the president
- Secondly, before recommending the bill, the President has to refer the bill to the state legislature concerned for expressing its views within a specified period.
- Parliament or President is not bound by the views of the state legislature.

It is thus, clear that the constitution authorises the Parliament through Article 3 to form a new state or alter the area, boundaries or names without their consent.

Hence, the territorial integrity or continued existence of any state is not guaranteed by the constitution.

It means the parliament can redraw the political map of India according to its will.

Therefore, India is rightly described as '**an indestructible union of destructible states**' where the Union Government can destroy the states whereas the state government cannot destroy the Union.

Explanation I:

- For clauses (a) to (e), the word 'State' includes Union Territories.
- But in the Proviso, 'State' does not include Union Territories.

Explanation II:

- The power under clause (a) includes making a new State or Union Territory by merging parts of existing States or UTs.

Article 4 – Laws under Articles 2 & 3

1. Any law made under Article 2 or Article 3 must:
 - ✓ Include amendments to the First Schedule (which lists states and union territories).
 - ✓ Include amendments to the Fourth Schedule (which deals with Rajya Sabha seat allocation).
 - ✓ May also include supplemental, incidental, and consequential provisions, such as:
 - Representation in Parliament or State Legislature(s) of affected states.
2. Such laws are not considered constitutional amendments under Article 368, meaning they do not require a special majority.