



## **FACULTY OF JURIDICAL SCIENCES**

**Course : BBALLB , 3<sup>rd</sup> Semester**

**Subject : CONSTITUTIONAL LAW I**

**Subject code : BBL304**

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## Constitutional law - I

**OBJECTIVE:** The objective of this paper is to provide understanding of basic concepts of Indian Constitution and various organs created by the constitution including their functions.

### UNIT – I

- Salient features of the Indian Constitution.
- Preamble
- Definition of State (Art. 12)
- Doctrines of Ultra-vires, severability, eclipse, waiver (Art, 13)

### UNIT-II

- Right to equality (Art. 14)
- Prohibition of discrimination, Rights to equality of opportunity (Art. 15-16)
- Right to freedom under Article 19: Freedom of association; Freedom of movement;
- Freedom of residence; Freedom of assembly; Freedom of association; Freedom of
- movement; Freedom of residence; Freedom of occupation, trade and business;
- Right to take out processions; Right of the State to impose reasonable restrictions

### UNIT – III

- Protection in respect of Conviction under Article 20,
- Ex-post-facto law; Double jeopardy; Self-incrimination;
- Right of Life and Personal Liberty (Art. 21),
- Protection in respect of arrest and detention
- Right to freedom of religion (Articles 25-28)

### UNIT – IV

- Cultural and Education Rights (Articles 29-30)
- Enforcement of Fundamental Right, Writ Jurisdiction of the Supreme Court and
- High Court (Article 32, 226)
- Right to property before and after the Constitution 42nd Amendment Act, 1976
- Abolition of Untouchability, Titles (Articles 17-18)
- Right against exploitation (Articles 23, 24)

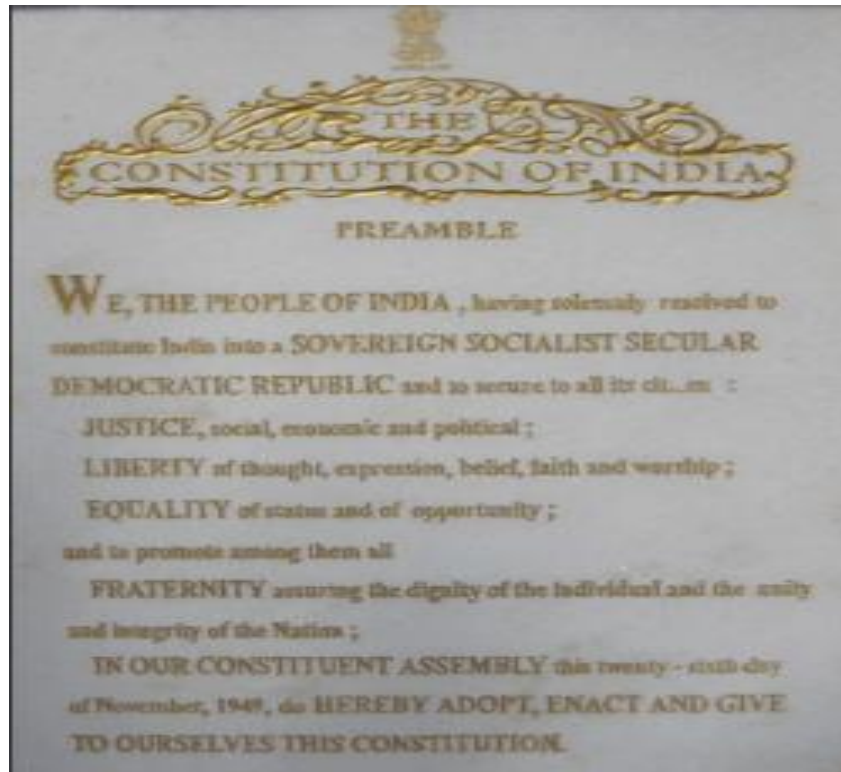
### Suggested Readings:

1. Austin Granville: Constitution of India: Cornerstone of a Nation; and Working A Democratic constitution
2. NarenderKumar : Constitutional Law of India.
3. Basu D. D : Shorter Constitution of India
4. Jain, M.P.: Constitutional Law of India,
5. Seervai, H.M. : Constitutional Law of India, Vols. I-III
6. Shukla, V.N. : Constitutional of India (ed. M.P.Singh)
7. B.R. Sharma : Constitutional Law and judicial Activism
8. M.C. Jain Kagzi : The constitution of India
9. B. Shiva Rao: The Framing of India's Constitution



# LECTURE 3

## PREAMBLE



The 'Preamble' of the Constitution of India is a brief introductory statement that sets out the guiding purpose and principles of the document, and it indicates the source from which the document derives its authority, meaning, the people. It was adopted on 26 November 1949 by the Constituent Assembly and came into effect on 26th January, 1950.

### **Preamble of India – Objective Resolution**

In 1946, Objective Resolution was moved by Jawaharlal Nehru, describing constitutional structure. on 1947 (22nd January) it was adopted. It shaped the Constitution of India and its modified version is reflected in the Preamble of the Indian Constitution. The basic tenets that the objective resolution highlighted were:

- Constituent Assembly's resolve to see India as independent, sovereign and republic
- To draw a Constitution for India
- To make all territories of the pre-independent India into a united states of post-independent India
- To realize residual powers, autonomy on such states as the Constitution of India reflects
- To realize union with the power which will be different than those given to such states
- The people of India to play the source of power and authority of the sovereignty, and the independence
- To provide justice, social, economic and political equality of status of opportunity and, freedom of thought,

expression, belief, faith, worship, vocation, association and action, subject to law and public morality before the law

- To provide adequate safeguards to the minorities, tribal and backward areas and other depressed and backward classes
- To maintain the integrity of the Indian republic's territory and its territorial rights on land, sea, air according to the justice and law of the civilized nation
- To promote the peace and welfare among the worldly nations.

## **2] Status of the Preamble**

**2.1 Traditional View** The traditional view is that it is not a necessary part of the Constitution, but an ornamental part. This means that if we drop it from the statute, it will not impact the provisions of the law or enactment.

**2.2 Modern View** The modern view is that the Preamble is a part of the Constitution and it is subject to amendment by the Parliament.

### **2.3 Status of the Preamble in India**

#### **2.3.1 *Berubari Union case, 1960***

• The Supreme Court said that the Preamble shows the general purposes behind the several provisions in the Constitution, and is thus a key to the minds of the makers of the Constitution. Further, where the terms used in any article are ambiguous or capable of more than one meaning, some assistance at interpretation may be taken from the objectives enshrined in the Preamble.

Despite this recognition of the significance of the Preamble, the Supreme Court held that the Preamble is not a part of the Constitution. It is also not the source to prohibit the power, which is given explicitly in the Constitution. Further, the Preamble is not enforceable in a Court of Law.

#### **2.3.2 *Kesavananda Bharati case, 1973***

In the Kesavananda Bharati case (1973), the Supreme Court rejected the earlier opinion (in the Berubari Case) and held that the 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. Explanation provided by the Supreme Court:

• The Preamble may not be an essential part of ordinary statute, but it is an essential part of Constitutional Law.

• Supreme Court admitted that a few facts regarding the Preamble were not noticed in the **Berubari Case**. These facts established Preamble as a part of the Constitution.

- It has been adopted by the Constituent Assembly in the same manner as other parts.
- The motion by which the Preamble was adopted said: "The question is that Preamble stands part of the Constitution".
- The Preamble was enacted after rest of the Constitution was already enacted. The Preamble was inserted in the end to ensure that there is no inconsistency between the

- not be invoked to explain or interpret explicit provisions. In this case, the SC held that the term 'law' used in Article 21 (life & liberty) denotes a 'law made by the State' and not 'natural law'. • It however acknowledged that the Preamble may be used if there is an ambiguity in the provisions of the Constitution. According to the SC, Preamble is the key to unlock the minds of the Constituent Assembly.

#### 4.2 Kesavananda Bharati Case

- 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.
- SC clarified that Preamble can be used in the interpretation of the relationship between Fundamental Rights and Directive Principles.
- SC utilized the above approach in examining the validity of 25th Amendment Act, 1971, which added Article 31C

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### **Choose the correct option**

- 1. Which of the following word has not been written in the preamble of the Indian Constitution?**
  - (A) Sovereign
  - (B) Socialist
  - (C) Democratic
  - (D) Indians
- 2. Which of the following statements is not true?**
  - (A) The date of implementation of the Indian Constitution is November 26, 1949
  - (B) The "Secular" word was added by the 42nd Constitution Amendment
  - (C) The 42nd Constitutional Amendment was done in 1976
  - (D) Social, Economic and political justice has been taken from the Russian Revolution in the Indian Constitution
- 3. Which statement is not correct in the case of "Sovereign India"?**
  - (A) India is not dependent on any country
  - (B) India is not a colony of any other country
  - (C) India can give any part of its country to any other country
  - (D) India is obliged to obey the UN in its internal affairs

**4. K.M. Munshi was related to.....**

- (A) Constitution draft committee
- (B) Preamble Committee
- (C) Public Accounts Committee
- (D) None of the following

**5. Which year is related to Berubari Case?**

- (A) 1972
- (B) 1976
- (C) 1970
- (D) 1960