

## Quadrant II - Notes

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**Module Name: Preamble**

**Module No: 03**

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Welcome students. I am assistant professor Aamod Shirali from V.M. Salgaocar College of Law, Miramar, Goa. In this module we will be discussing about the Preamble to the Indian constitution. In this module we will be discussing more particularly the meaning and the purpose of preamble, the structure of preamble and the crafting of the preamble. At the end of this module, the students will be able to comprehend the meaning and contents of the preamble to the Constitution of India, able to know when the preamble came into force, understand the significance of the preamble to the Constitution of India. So generally speaking, what is the meaning of preamble with respect to any ordinary statute? It is basically the preliminary text or an introductory section which lays down the purpose for which the statute is enacted. You can also say that it is like the spirit of the legislation which is contained in the preamble.

Now the question is whether the preamble of any other statute is similar to the Constitution of India. The answer is no. The preamble to the Constitution of India is significant. It helps in interpretation and understanding the goals and objectives. The preamble to the Constitution and shall recite the preamble. To the Constitution of India. 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 unity and integrity of the nation, in our constituent Assembly this 26th day of November, 1949, do hereby adopt, enact, and give to ourselves this Constitution.

So from this we understand that the preamble of to the Constitution of India contains ideals and aspirations of the people of India it contains. The goals and objectives and no reading of the Constitution of India can commence except when the preamble is read. So therefore it is the preamble wherefrom the Constitution actually commences. The preamble to the Constitution of India is the spirit and the backbone of the Indian Constitution.

What is the purpose of the preamble to the Constitution? First is that it indicates the source of the Constitution. That is, the people of India. Secondly, enacting clause that we we do hereby adopt, enact, and give to ourselves this Constitution. It contains rights and freedoms, justice, liberty, equality, fraternity. Thirdly, it indicates the type of government or polity the Democratic Republic,

The parts of the preamble. We have declaratory, revolutionary promissory part. The declaratory part is indicated by the declaration at the end where the people of India do hereby adopt, enact and give to themselves the Constitution. The revolutionary part is the introductory paragraph where the people of India. Have solemnly resolved to constitute India into sovereign socialist, secular, Democratic Republic and Promisary part is where the assure. Justice, Liberty, equality and fraternity. So when did the preamble of to the Constitution of India come into force? The preamble came into force on 26th of January 1950. So how do we know this, Article 394 to the Constitution of India lists out 16 articles which came into force at once and all the remaining

provisions came into force on 26th of January 1950. This means that the preamble also forms part of those provisions which came into force on 26th of January 1950.

The preamble underwent changes and amendments. There were two changes made in 1976 by the 42nd Amendment Act, the word 'Socialist Secular' were added and the term Unity of India was changed to 'Unity and Integrity of India.' This led to some objection in the Parliament. With the use of the word socialism, because socialism was susceptible to different meanings and it was proposed that socialism could be added in the directive principles by an amendment to that instead of adding it in the preamble.

Sovereign. What is the meaning of sovereignty? The term sovereign in the preamble signifies sovereignty and sovereignty is absolute and supreme power, acknowledging no superior. Sovereignty can be of two types, external and internal. External sovereignty means that India is not subject to any foreign power or external authority. Internal sovereignty means that the state has complete control and jurisdiction over persons, property, things within its territory, and it can make laws on any of the subjects. So the doctrine of sovereignty is based on the Maxim Parens Patriae, which means parent of the country. The state is like the parent of the country, with powers and obligations to safeguard the rights of the people.

The concept of socialist or socialism means complete State ownership, but in India there's a unique policy of mixed policy of. Public and private enterprise where both coexist. D.S. Nakara versus Union of India. The court, the honourable Supreme Court. Combined socialist. And that. Article 14 to strike down a legislation. In order to achieve the socialist goal. The court said the

concept of socialism. And the main aim of it is to. Eliminate inequalities of income and status, Provide decent standard of living for the working people and protect the weaker sections of the society. Similarly, the Supreme Court *Excel Wear versus Union of India*, The honourable Supreme Court stated that and interpreted the term socialist. with Article 39, clause (d). Which provides for equal pay for equal work and upheld the constitutional validity of a law which provided for nationalist nationalization of private property. Secular.

The term Secular implies that that there is equal treatment to all religions. And there is no state religion. No official religion of the state. There was an objection to add the term secular. But the vested interests felt that. It was necessary to be added because. The majority community would oppress the minority community and therefore the 42nd Amendment Act 1976 added the term 'Secular' in the preamble. Article 15,16, 29 and 30. Article 15 outlaws discrimination on various grounds. Article 16 provides for equal opportunities, Articles 29 and 30 deal with minority rights and these provisions were existing even before the preamble could have been amended, and therefore the Supreme Court. Observed that even if the word was not added in the preamble, it was implicit in various other provisions of the Constitution. Particularly Articles 25 to 30. In *S.R. Bommai versus Union of India*, The honourable Supreme Court said secularism is a part of the basic structure of the Constitution and secularism embodies various other concepts. One is 'Samanata' that is equality. Second is protection against discrimination on grounds of religion, race, caste, sex, place of birth, residence descent. The freedoms which are provided in various in Article 19 and 21, the freedom of religion provided an Article 25 to 28 and the concept of uniform Civil Code in Article 44.

The preamble also provides for the Democratic and Republic form of polity which parliamentary democracy symbolizes representation of people A very responsible government and accountability of the Council of Ministers to the legislature. The term 'Republic' indicates that India is not a hereditary monarchy. The head of the state is the president having a fixed term.

Now coming to the. Goals of justice. What does the term justice mean in this context? Justice means harmonious reconciliation of individual conduct. With that of the general welfare of the society. so an individual act or conduct is said to be just only when it is for the greater or well-being of the society. So essence of justice is to promote the well-being of the society or ensure the welfare of the society in Valsamma Paul versus Cochin University the honourable Supreme Court. Quoted Dr Babasaheb Ambedkar's speech, in which he said political democracy can be cannot be achieved without social democracy. Social democracy is a way of life in which liberty. Equality and fraternity are principles of life. And the concept of. Social and economic justice have been embodied in articles 14,15,16,21,38 and 39. No social, economic and political justice. No, social and economic justice means removal of social inequalities and economic inequalities, ensuring restoration of property to the people who are deprived and redistribution of wealth. Number of provisions in article indicate social and economic justice. Articles 38,39,41,43,46,47,15 and 16. The constitution. M.C Mehta was his Union of India. The honourable Supreme Court provided that children who were employed in hazardous industry. Should not be allowed to continue in employment in lieu of them, their parents could be provided employment in the industry. What is political justice? Political justice means equal, fair and free opportunities to the people in the political process which means. That everyone has equal political rights. Without any discrimination.

Liberty, no liberty should not be an absolute license. Liberty means free from restraint. But however, this freedom or liberty that is provided by the Constitution is not absolute. Article 19 1(a), for example, is freedom of speech and expression. However, it has restrictions in Article 19, Clause 2 on the grounds of public order, morality, decency. In terms of security of the state and so on. So liberty of thought, expression, belief, faith and worship is what the article states liberty of thought is always on a higher footing than belief and expression. Without liberty of thought, there cannot be belief, nor can there be expression. The faith and worship freedom of conscience, and freedom of religion has been contained in Article 25 to 28. Equality now the equality of status and of opportunity is what the preamble states. This is reflected in Article 15, 16 and 17, Article 15 outlaws discrimination on grounds of religion, race, sex, place of birth, Art 16 provides equal opportunities in matters of public employment and Art. 17 abolishes untouchability. The general article on equality is Article 14. Which ultimately aims at equality of status and equal justice. The Constitution's preamble. Also prescribed fraternity, which means that it was necessary that the spirit of brotherhood. Can preserve the unity and integrity of India and India has one common citizenship and every citizen shall be a citizen first irrespective of other basis.

We coming to the last part. The question is whether preamble to the Constitution of India is a part of the Constitution. This came in for interpretation for the first time in. In the case of *In re Berubari Union and exchange of enclaves*, in which the Supreme Court said that preamble is not a part of the Constitution of India. But however, it's a key to open the mind of the makers of the Constitution and it is not a source of power. In *Kesavananda Bharati versus state of Kerala*, the 13 judge bench of the Supreme Court held that preamble is a part of the Constitution of India. However, it is not a source of

power, nor is it a source of limitation. And the Supreme Court said it's an important aid for interpretation of the Constitution only when the provisions of the Constitution are ambiguous or susceptible to different meanings. But if the language and the text is clear and unambiguous in nature, the preamble cannot be an aid of interpretation. Lastly, can the preamble to the Constitution be amended? The answer is yes. The preamble can be amended, but however the basic structure, which is enshrined in the preamble, the basic structure of the Constitution of India, I mean. Cannot be amended.

These are the references.

Thank you.