

**1. Would you agree to the assertion that the Indian Constitution is a flexible document that gives too much power to the legislature to bring in amendments? Substantiate your views.**

**Introduction**

Indian constitution, in the words of Ivor Jennings is a perfect blend of Rigidity and flexibility. The amendment procedure provided under Article 368 has certain provisions to be amended by simple majority, some by special majority and also requiring state approval.

**Body**

The assertion that the Indian Constitution gives too much power to legislature is not an objective analysis for the following reasons:

- Basic structure doctrine: Legislature is bound to the doctrine as established under Keshavanand Bharathi case. Judicial review act as a check on too much power used by the legislature. For instance,
  - certain provisions of 39<sup>th</sup> constitutional amendment was declared null and void.
  - 99<sup>th</sup> constitutional amendment was declared unconstitutional.
- Special majority: Procedure under article 368 requiring special majority itself act as a check on too flexible power to the legislature to amend the constitution. For instance, it took many decades for the legislature to form panchayat raj system as 3<sup>rd</sup> tier of government.
- State approval: Requirement of approval by half of the states on structural changes keep the parliament power in check. E.g. the amendment to introduce GST took more than a decade to get the approval of states.

**However, a view of flexibility in constitutional amendment is due to**

- The very fact that there are over 100 amendments demonstrate the flexibility in amendment procedure. In comparison, US constitution is amended 27 times in over 2 centuries.
- Majority driven: when the ruling government has majority in parliament and state governments, the amendment procedure becomes too flexible. E.g.
  - 42<sup>nd</sup> constitutional amendment amended almost every major section without much opposition as the central government had majority in parliament as well as in several states.
  - Some of the recent amendments like Economically weaker section reservation passed without deliberations shows that the rigidity is issue specific.
- Several specified constitutional provisions can be amended by the Parliament by an ordinary law of Parliament passed by a simple majority. For instance,

constitutional amendment for reservations, insertion of schedules in the constitution etc.,

- Amendments involving the creation of new states in the Indian Union, administration of Union Territories, creation or abolition of State legislative bodies, etc... require only a simple majority of the members present and voting in the Union Parliament. The state views may not be even considered. E.g. Jammu and Kashmir was made a union territory in spite of opposition from the state political leaders.

### Conclusion

Thus, the constitutional amendment procedure is said to be flexible vis a vis amending ordinary provisions. But the Basic structure doctrine limit the power of legislature to exert too much power to make flexible amendments.

**2. What purpose does the Preamble to the Constitution serve? Can it be called the philosophical key to the Constitution? Is it even a part of the Constitution? Examine.**

### Introduction

Preamble refers to the preface of the constitution. It embodies the basic philosophy and fundamental values on which Indian Constitution is based i.e., moral, political and religious. As it reflects the dreams of the founding fathers of the constitution, SC has held that Preamble is the key to understanding the mind of constitution makers.

### Body

#### Purpose of the preamble:

The Preamble does not grant any power but it gives a direction and purpose to the Constitution. It outlines the objectives of the whole Constitution. The Preamble contains the fundamentals of the constitution. The preamble to an Act sets out the main objectives which the legislation is intended to achieve.

The Preamble to our Constitution serves the following purposes:

- It indicates the source from which the constitution derives its authority.
- It also states the objectives which the constitution seeks to establish and promote.

Preamble emphasizes on the following:

- REPUBLIC, as the head of the state is not a hereditary monarch.
- DEMOCRATIC, because the constitution rests in the people's will.
- SOVEREIGN, because no country has supremacy over it.
- SOCIALIST, aims at eliminating inequality in status and opportunity.
- SECCULAR, being all religion equal.

- JUSTICE, LIBERTY, EQUALITY and FRATERNITY has its content according to Fundamental Rights and DPSP.

### **Philosophical key to constitution?**

As Constituent Assembly member Pandit Thakur Das Bhargava observes 'The Preamble is soul of the constitution. It is a key to the Constitution'. It acts a keystone with

- Guide for the state in its functioning whether it is the socialist nature or secular government functioning.
- It instigates the state to take steps to realize the directive principles of state policy. E.g. the land ceiling policy was justified by the then government as in lines of socialist nature of state as mentioned in the preamble itself.
- It helps the judiciary in deciding the cases based on the philosophical and ideological brainstorming behind the judgements. E.g. Supreme court in the recent Sabarimala and Triple talaq case mentioned secularism as well as equality as mentioned in the preamble is the basic Indian philosophy which needs to be adhered.
- It acts as a guide for Indian citizens in their conduct. For instance, the philosophy of equality, fraternity as mentioned in the preamble requires citizens to stay secular, give up communal issues and so on.

As Justice Sikri observed, "It seems to me that the preamble of our Constitution 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."

### **Part of 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:

- Berubari Union case: the court ruled out that the Preamble to the Constitution is a key to open the mind of the makers of the Constitution, but nevertheless the Preamble is not a part of the Constitution.
- Kesavananda Bharati case: the apex court rejecting the earlier opinion held that-
  - The Preamble to the Constitution of India is a part of the Constitution;
  - That the Preamble is not a source of power or a source of limitations or prohibitions;
  - The Preamble has a significant role to play in the interpretation of statutes and also in the interpretation of provisions of the Constitution.
- Union Government v. LIC of India: The Supreme Court once again held that the Preamble is an integral part of the Constitution.

Thus, preamble is a part of the constitution and even amendable as any other provisions of the constitution subject to basic structure.

## Conclusion

To conclude, it will not be wrong to say that the spirit or the ideology behind the Constitution is sufficiently crystallized in the preamble. The Preamble embodies the spirit of the constitution to build up an independent nation which will ensure the triumph of justice, liberty, equality, and fraternity.

## 3. The 42<sup>nd</sup> amendment to the Constitution can be termed as a watershed in post independence India's constitutional history. Elucidate.

### Introduction

42<sup>nd</sup> Constitutional Amendment Act, sometimes called 'mini-Constitution' or 'Constitution of Indira', is the most comprehensive amendment carried out in the year 1976 during internal emergency (1975-1977). It has brought about widespread changes to the Constitution most of which were curtailed in the 44<sup>th</sup> Constitutional Amendment Act 1978.

### Body

The main purpose behind the enactment of the amendment was to trim the powers of judiciary with regard to the issue of judicial review and writs and strengthen the central government. Some of the changes made under the Amendment are-

#### Preamble

The characterization of India as "Sovereign Democratic Republic" was changed to "Sovereign Socialist Secular Democratic Republic". The words 'unity of Nation' replaced with 'unity and integrity of Nation'.

#### Parliament and State

##### Legislature

Life of Lok Sabha and State Legislative Assembly was extended from 5 to 6 years.

##### Judiciary

Insertion of Article 32A in order to deny Supreme Court the power to consider the Constitutional validity of a State law. Another new Article 131A, gave the Supreme Court an exclusive jurisdiction to determine question relating to the Constitutional validity of a central law.

**Executive** Article 74(1) was added, which stated that President shall act in accordance to the council of ministers.

**Federal**

Insertion of Article 257A, to enable the Centre to deploy armed forces to deal with any grave situation of law and order arising in any State.

**Emergency**

It authorized the President to declare emergency in any part of the country.

**Directive Principle of State Policy**

Four new directive principles were added

- To secure opportunities for healthy development of children (Article 39)
- Enabling free legal aid Article 39A,
- Protection of workers in factories Article 43A,
- Protection of environment and to safeguard Forest and Wildlife Article 48A

**Fundamental Duties**

Part IVA was added to the Constitution enabling Fundamental Duties to the citizens.

**Conclusion**

A Constitution to be living must be growing. Using Article 368, the 42nd Constitutional Amendment Act of 1976 has touched upon almost all the parts of the Constitution, disturbing the balance between Government and Judiciary on one hand and federal balance between Centre and State on the other. This imbalance was restored by 44<sup>th</sup> Constitutional Amendment Act of 1978.

**4. In what ways does the Indian Constitution provide the framework for an egalitarian state? Explain.****Introduction:**

Egalitarian state is the one in which it Expresses or supports the belief that all people are equal and should have the same Rights and opportunities. Equal opportunities imply absence of privilege and Exploitation. Indian constitution emphasizes the principles of egalitarian state in very preamble itself.

**Body:**

**In following ways the Indian Constitution provides the framework for an egalitarian state.**

**Secularism:** Features of secularism as envisaged in the Preamble is to mean that the state will have no religion of its own and all persons will be equally entitled to the freedom of conscience and the right freely to profess, practice and propagate the religion of their choice.

**Democratic:** Indicates that the Constitution has established a form of Government which gets its authority from the will of the people. The rulers are elected by the people and are responsible to them.

**Republic:** As opposed to a monarchy, in which the head of state is appointed on the hereditary basis for a lifetime or until he abdicates from the throne, a democratic republic is an entity in which the head of state is elected, directly or indirectly, for a fixed tenure. The President of India is elected by an electoral college for a term of five years. The post of the President of India is not hereditary. Every citizen of India is eligible to become the President of the country.

**Justice:** the term justice has three distinct forms- social, economic and political secured through various provisions of fundamental rights and directive principles.

- **Social justice:** it denotes the equal treatment of all citizens without any social distinction based on caste, color, race, religion, sex and so on.
- **Economic justice:** denotes the non-discrimination between people on the basis of economic factors. It involves the elimination of glaring inequalities in wealth, income and property. A combination of social justice and economic justice denotes as a 'distributive justice'.
- **Political justice:** All citizens should have equal political rights, equal access to all political offices and equal voice in the government.

**Equality:** the term equality means absence of special privileges to any section of the society, and the provision of adequate opportunities for all individuals without any discrimination.

**Liberty:** it means the absence of restraints on the activities of individuals, and at the same time, providing opportunities for the development of individual personalities.

### **Conclusion:**

India is a multi-diverse nation with lot of complex problems and issues. You cannot just pinpoint at one problem. If India wants tolerance and egalitarianism like the western counterparts, various cultural, structural and political problems had to be either eradicated or reformed.

**5. The 'basic structure' doctrine is a shining example of judicial innovation. Do you agree? Substantiate. In what ways has the basic structure doctrine shaped India's polity? Examine.**

### **Introduction**

The 'basic structure doctrine' attempts to identify the philosophy upon which a constitution is based. Basic structure doctrine, evolved by the Indian Supreme Court, through its numerous landmark judgments over the years, brings in that required

factor of constitutionalism, which is critical to the upkeep of the spirit of the constitution document, to preserve, protect and maintain the thicker concept<sup>3</sup> of rule of law, without which the constitution is but a dead letter law.

### Body

#### **'Basic structure' doctrine is a shining example of judicial innovation**

- Application of the doctrine did not stop with the constitutional amendments but has been applied to different forms of state action in the same way as it applies to Constitutional amendments. It has become a dependable mechanism to preserve the spirit of democracy, pursuit of social progress and the preservation of integrity of the country.
- The basic structure doctrine is well-known and it has been judicially determined that the power of Parliament to amend the Constitution does not indeed extend to "damage or destroy" its basic structure. Therefore certain aspects of the Constitution are immutable and so bound up with the fabric of the Constitution itself, that as long as the Constitution exists, they too must necessarily exist.
- While the Court has not delimited an exhaustive list of unamendable "basic feature", it has variously held – inter alia – democracy, republicanism, secularism and judicial review to be part of the basic structure.
- The basic structure is not to be found in any one provision, or combination of provisions, but is found in abstract principles that explain and justify the architecture of the Constitution as a whole (for example, a combination of Articles 14, 15, 19, 25, 26, 29 and 30) would, together, constitute the principle of secularism that cannot be reduced to either one or many of them in conjunction.

#### **Basic structure doctrine, evolved by the Indian Supreme Court, through its numerous landmark judgments over the years shaped the Indian Constitution.**

- In *Indira Nehru Gandhi vs. Raj Narain*, *Minerva Mills vs. Union of India* and *Waman Rao vs. Union of India*, Constitution Benches of the Supreme Court used the basic structure doctrine to strike down the 39th Amendment and parts of the 42nd Amendment respectively, and paved the way for restoration of Indian democracy.
- *Minerva Mills Vs. Union of India*, 1980 The concept of basic structure was further developed by adding 'judicial review' and the 'balance between Fundamental Rights and Directive Principles' to the basic features
- *Kihoto hollohan Vs. Zachillhu*, 1992 'Free and fair elections' was added to the basic features
- *Indira Sawhney Vs. Union of India*, 1992 'Rule of law, was added to the basic features.

- S.R Bommai vs Union of India, 1994 Federal structure, unity and integrity of India, secularism, socialism, social justice and judicial review were reiterated as basic features.

However, in Kuldip Nayar v. Union of India, case Supreme Court unanimously held that, the doctrine of 'Basic Feature' in the context of our Constitution, thus, does not apply to ordinary legislation. In Madras Bar Association v. Union of India, the constitutional validity of the National Tax Tribunal Act, 2005, Challenged, Same view was expressed by honourable court.

### **Conclusion**

A Constitution is a living system. But just as in a living, organic system, such as the human body, various organs develop and decay, yet the basic structure or pattern remains the same with each of the organs having its proper functions, so also in a constitutional system the basic institutional pattern remains even though the different component parts may undergo significant alternations.

