

**1. Preamble is the philosophical key to the Indian Constitution. Elucidate.**

**Approach**

A simple and straightforward question where in you need to elucidate upon the aspect of Preamble being the philosophical key to the Indian constitution through multiple example's and details of preamble.

**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**

- The preamble of the Indian constitution, which is based on the objective's resolution drafted by Jawaharlal Nehru, summarises the ideals and thoughts the founding fathers of independent India had dreamed of. It is the central theme around which the constitution revolves.
- 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 embodies the basic philosophy and fundamental values – political, moral and religious –on which the constitution is based. The Preamble is the key to the minds of the maker of the constitution. The edifice of our constitution is based upon basic element mentioned in the preamble –
  1. Sovereign – India is sovereign and free to conduct its own affairs (internal and external).It can acquire foreign territory and cede also as per mentioned in the constitution (Article 1-4).
  2. Socialist –India has democratic socialism i.e. both public and private sector co-exist. This is evident in Directive principles of state policy (DPSP) socialist principle.
  3. Secular – All religion in India have the same status and support from the state. This is evident in Fundamental Rights (FR-Article 25-28) and DPSP.
  4. Democratic – The preamble has mentioned about Political, social and economic democracy. FR ensures political democracy while DPSP ensures socialist and economic democracy.
  5. Republic – The head of state is always elected directly or indirectly. Republic means political sovereignty lies in the hands of people and public offices are being opened to every citizen without any discrimination.
  6. The Idea of Justice, Liberty, Equality and Fraternity of Preamble has been ensured in the various provision of the FR and DPSP.

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 philosophical key 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."

- The Supreme Court has stated that the preamble is a part of the basic structure of constitution. In the Kesavananda Bharati case (1973), it stated that the preamble can be used as a viewpoint to understand the basis of certain articles of the constitution. These features suggest that the preamble is the philosophical key to the constitution.
- So, one can say that Preamble is the introduction or preface to the constitution of India. Whenever there is any doubt regarding any provision in the constitution Preamble will act as guiding light and can be used for grey area (interpretation).

### Conclusion

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.

**2. Even though the term 'secular' was added to the preamble by the 42nd amendment, the Indian Constitution was already secular in its principles and provisions. Do you agree? Comment.**

### Approach

Students are expected to write about the term secular in the preamble. And highlight on how Indian constitution was already a secular in its principles and provision.

### Introduction

Secularism is a doctrine that states religion is kept separate from the social, political, economical and cultural spheres of life. Religion is open to one and all and is given as a personal choice to an individual without any different treatment to the latter. In the words of P B Gajendragadkar, a former Chief Justice of India, secularism is defined as 'The State does not owe loyalty to any particular religion as such: it is not irreligious or anti-religious; it gives equal freedom to all religions.

### Body

Secular term in the preamble:

- The Preamble of Indian Constitution aims to constitute India a Sovereign, Socialist, Democratic Republic. The terms socialist and secular were added to it by the 42nd amendment. The whole constitution is summarised in the preamble. It is the mirror to the spirit of the constitution. Indian society is a multi-religious society, it is having different caste, religion along with several religion diversification.
- It emphasises the fact that constitutionally, India is a secular country which has no State religion. And that the state shall recognise and accept all religions, not favour or patronise any particular religion.

Indian Constitution guaranteed secular principles and provision even before 42<sup>nd</sup> constitutional amendment such as:

Through fundamental rights:

- Article 25 provides 'Freedom of Conscience', that is, all persons are equally entitled to freedom of conscience and the right to freely profess, practise and propagate religion.
- While Article 14 grants equality before the law and equal protection of the laws to all, Article 15 enlarges the concept of secularism to the widest possible extent by prohibiting discrimination on grounds of religion, race, caste, sex or place of birth.
- Article 16 (1) guarantees equality of opportunity to all citizens in matters of public employment and reiterates that there would be no discrimination on the basis of religion, race, caste, sex, descent, place of birth and residence.
- As per Article 26, every religious group or individual has the right to establish and maintain institutions for religious and charitable purposes and to manage its own affairs in matters of religion.

Through DPSP:

- Article 44 of the Directive Principles in the Constitution says the “State shall endeavour to provide for its citizens a uniform civil code (UCC) throughout the territory of India.”

Through preamble:

- Preamble secures all citizens of India Liberty of thought, expression, belief, faith and worship.

Through adult franchise:

- Article 326: Elections to the House of the People and to the Legislative Assemblies of States to be on the basis of adult suffrage. Adult franchise means that the right to vote should be given to all adult citizens without the discrimination of caste, class, colour, religion or sex. It demands that the right to vote should be equally available among all.

The constituent assembly has visualised the peculiar situations of the country and arranged Indian constitution to secure secular principles. It made incumbent upon the state to take positive as well as negative actions to promote fraternity with upholding secular provision and principles.

Threats to Secularism:

- Politicisation of any one religious group leads to the competitive politicisation of other groups, thereby resulting in inter-religious conflict.
- One of the manifestations of communalism is communal riots. In recent past also, communalism has proved to be a great threat to the secular fabric of Indian polity.

### Conclusion

Secularism undoubtedly helps and aspires to enable every citizen to enjoy fully the blessing of life, liberty and happiness, but in the pursuit of this ideal, those who believes in secularism must be inspired by a sense of ethical purpose in dealing with their fellow citizens.

**3. Discuss the doctrine of basic structure and its significance in a constitutional democracy.**

**Approach-**

question is straight forward. Candidate is required to give evolution of basic structure doctrine in the beginning, laid out its significance in context of healthy working of Indian democracy.

**Introduction**

Basic means, base, foundation on which a thing stands. In case the base is removed, the structure will fall. The Doctrine of Basic Structure signifies the basic features of the Constitution, which cannot be changed or amended.

**Body**

- Since the adoption of Indian Constitution, debates have started regarding the power of the Parliament to amend key provisions of the Constitution.
- In the early years of Independence, the Supreme Court conceded absolute power to Parliament in amending the Constitution, as was seen in the verdicts in Shankari Prasad case (1951) and Sajjan Singh case (1965).
- In both the cases the court had ruled that the term “law” in Article 13 must be taken to mean rules or regulations made in exercise of ordinary legislative power and not amendments to the Constitution made in exercise of constituent power under Article 368.
- This means Parliament had the power to amend any part of the constitution including Fundamental rights.
- Article 13(2) reads, "The State shall not make any law which takes away or abridges the right conferred by this Part (Part-III) and any law made in contravention of this clause shall, to the extent of contravention, be void."
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- However, in the Golaknath case (1967), the Supreme Court held that Parliament could not amend Fundamental Rights, and this power would be only with a Constituent Assembly.
- The Court held that an amendment under Article 368 is "law" within the meaning of Article 13 of the Constitution and therefore, if an amendment "takes away or abridges" a Fundamental Right conferred by Part III, it is void.

**Keshavananda Bharati case**

- The case of Kesavananda Bharati v. State of Kerala where the Supreme Court emphasising on the essence of the basic structure held that “every provision of the Constitution can be amended provided in the result the

basic foundation and structure of the Constitution remains the same.” The concept of basic structure as such give’s coherence and durability to a Constitution for it has a certain intrinsic force in it.

- In the Kesavananda Bharati, SC laid down the very first list of features - “discernible not only from the Preamble but from the whole scheme of the Constitution” that would constitute the “basic foundation and structure” of the Constitution:

1. Supremacy of the Constitution;
2. Republican and Democratic form of Government.
3. Secular character of the Constitution
4. Separation of powers between the Legislature, the executive and the judiciary;
5. Federal character of the Constitution
6. The dignity of the individual secured by the various Fundamental Rights and the mandate to build a welfare state contained in the directive principles;
7. The unity and the integrity of the nation;
8. Parliamentary System.
9. parliamentary system
10. rule of law.

Since then, the constituents of the Basic Structure have reviewed, examined and delved into by the Supreme Court in several cases.

#### Significance

- The framers of the Constitution have built a wall around the fundamental rights, which has to remain forever, limiting the ability of the majority to intrude upon them. That wall is a part of basic structure.
- under Article 368 “one cannot legally use the Constitution to destroy itself”, as the doctrine of constitutional identity requires. The theory of basic structure is based on the principle that a change in the thing does not involve its destruction, and destruction of a thing is a matter of substance and not of form.

#### Conclusion

Basic structure of constitution is cornerstone of democratic form of government. We have witnessed altering destruction of constitution by political class in our neighbourhood and all over the world. The robustness of Indian constitution derives its power from seminal principles of basic structure which is necessary for working constitutional democracy.

**4. What according to you have been the two most landmark amendments to the Indian Constitution in the 21st century? Substantiate.**

**Approach**

As the derivative is substantiate so it necessitates an explanation in which you have to give evidence or provide information to prove that something is true

**Introduction**

Under Article 368 of the Indian Constitution, the Parliament is empowered to amend it and its procedures. Amendments to the Indian Constitution are not easy to produce and require compliance with other provisions. Article 368 grants Parliament some powers allowing it to amend it while keeping its fundamental form just the same. In 73 years of Indian Independence, the constitution has been amended 104 times.

**Body**

**THE TWO MOST LANDMARK AMENDMENTS TO THE INDIAN CONSTITUTION IN THE 21ST CENTURY**

**1. THE CONSTITUTION (86TH AMENDMENT ACT-2002):**

- Provides Right to Education until the age of fourteen and early childhood care until the age of six.
- One of the most important amendments, the government directed private schools to take 25% of their class strength from economically weaker or disadvantaged groups of society through a random selection process with the help of the government funding.
- This initiative was taken to try and provide elementary education to all. Moreover, the local and state governments were made to ensure its proper implementation.
- In order to make the right to free and compulsory education a fundamental right, the Act inserts a new Article, namely Article 21A, which confers the right to free and compulsory education on all children aged between 6 and 14 years.
- The Law amends the Constitution in Part-III, Part -IV, and Part-IV(A).

**2. THE CONSTITUTION (101ST AMENDMENT ACT-2016):**

- Goods and Services Tax (GST) commenced on 8 September 2016 with the enactment and subsequent notices of the 101st Constitution Amendment Act, 2016.

- The constitution incorporated ARTICLE 246-A, 269-A, 279-A. The amendment allowed amendments to the constitution's 7th cycle.
- Union List entry 84 earlier contained duties related to cigarettes, alcoholic liquors, marijuana, Indian hemp, medicines and drugs, medicinal and bathroom arrangements. Petroleum oil, high-speed gasoline, engine spirit (petrol), natural gas, and air turbine power, cigarettes, and cigarettes goods should be listed following the amendment.
- Entry 92 has been removed (newspapers and ads published therein), they are now under GST. Entry 92-C (Service Tax) is now deleted from the list of unions.
- Entry 52 (entry tax for in-state sale) has now been removed from the State register.
- Entry 54, Taxes on the export or purchasing of products other than newspapers, according to the provisions of Entry 92-A of the List I have now been supplemented by Taxes on the selling of petroleum oil, high-speed gasoline, motor spirit (petroleum), natural gas, aviation turbine fuel and alcoholic spirit for human consumption, but not including the sale or distribution in the form of inter-State commerce or commerce Reference 55 (Taxes on Advertising) was omitted.
- Entry 62 (Luxury taxes, including taxes on entertainment, entertainment, betting and gambling) has now been replaced by these taxes only to be levied by local authorities.

### **Conclusion**

Article 368 is vague on whether or not the parliament has the right to change the basic structure, but this still does not mean this Article 368 imposes the restriction on the modification of the basic structure and Part III of the Constitution. Although having provisions to amend the constitution was progressive to the fathers of our nation, it is important that such provisions are not misused. Misuse could lead to undue legislative or executive authority that could rip apart the fabric of our society. Indians may not always know all the procedural details of this lengthy and imperfect document, but they know the core — that it's not the whims of political greed that governs them, but the constitutional words. And on Republic Day, this is worth celebrating.



**5. What are the latest amendments made to the provisions related to citizenship. What are your views on these amendments? Discuss.**

**Approach:**

The question demands a thorough explanation of all the amendments made to citizenship act since it was enacted from 1955, also vies need to expressed in a balanced, forward looking and logical manner.

**Introduction:**

Citizenship signifies the relationship between individual and state. Like any other modern state, India has two kinds of people—citizens and aliens. Citizens are full members of the Indian State and owe allegiance to it. They enjoy all civil and political rights. Citizenship is an idea of exclusion as it excludes non-citizens. Citizenship is the status of a person recognized under law as being a legal member of a sovereign state or belonging to a nation. In India, Articles 5 – 11 of the Constitution deals with the concept of citizenship.

**Body:**

- **Citizenship at the commencement of the Constitution-**  
Articles 5 to 11 talk about citizenship for people at the commencement of the Constitution, i.e., on November 26th, 1949. Under this, citizenship is conferred upon those persons who have their domicile in Indian territory and Who was born in Indian territory; Whose either parent was born in Indian territory; Who has ordinarily been a resident of India for not less than 5 years immediately preceding the commencement of the Constitution.  
citizenship is regulated by the Citizenship Act, 1955. The Act specifies that citizenship may be acquired in India through five methods – by birth in India, by descent, through registration, by naturalisation (extended residence in India), and by incorporation of territory into India.
- **Amendments:**  
The Citizenship (Amendment) Bill, 1986-  
As per the law amendment, it is no longer adequate to be born in India to be granted Indian citizenship. At the time of birth either one of the parents has to be an Indian citizen for the person to become a citizen of India.
- The Citizenship Amendment Bill, 1992-  
The Act provides that a person born after January 26, 1950 but before the commencement of the Act shall be a citizen of India if the father is Indian at the time of birth; after the commencement of the Act, the person shall be Indian if either of the parents is Indian. Also replaces references to "male persons" with "persons".
- The Citizenship (Amendment) Act, 2003-

The Act was passed by the Parliament in December 2003, and received presidential assent in January 2004. It is labelled "Act 6 of 2004". The Act amended The Citizenship Act, 1955 by introducing and defining a notion of "illegal migrant", who could be jailed or deported.

- **Citizenship (Amendment) Act, 2016**

In 2015 and 2016, the central government issued two notifications exempting certain groups of illegal migrants from provisions of the Foreigners Act, 1946 and the Passport (Entry into India) Act, 1920. These groups are Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan, who arrived in India on or before December 31, 2014. This implies that these groups of illegal migrants will not be deported or imprisoned for being in India without valid documents. The Citizenship (Amendment) Bill, 2016 was introduced in Lok Sabha on July 19, 2016 to amend the Citizenship Act, 1955. It seeks to make illegal migrants belonging to the same six religions and three countries eligible for citizenship.

- **Views-**

Citizenship act has been constantly amended since 1986 because of the very reasons of the issues in some parts of the country like Assam since 1971 with the formation of Bangladesh as a separate country from erstwhile East Pakistan with the influx of refugees in large numbers in the immediate neighbour states like Assam, West Bengal, Tripura etc but with recent amendment of 2019 there has been protests in large numbers against the provisions like providing citizenship to particular minority groups like Hindus, Sikhs, Buddhists in India coming from the countries like Pakistan, Afghanistan and Bangladesh, this with the formation of National Register of Citizens the fear among minority groups in India particularly among Muslims because they think it is politically directed towards them with serious negative intentions.

- **Concerns-**

It contradicts the Assam Accord of 1985, which states that illegal migrants, irrespective of religion, heading in from Bangladesh after March 25, 1971, would be deported. Critics further argue that the extensive exercise of updating the National Register of Citizens (NRC) will become Null and Void due to this Amendment act. There are an estimated 20 million illegal Bangladeshi migrants in Assam and they have inalienably altered the demography of the state, besides putting a severe strain on the state's resources and economy.

It is argued that it is violative of Article 14 of the Constitution (which guarantees the right to equality and applicable to both the citizens and foreigners) and the principle of secularism enshrined in the preamble of the constitution.

India has several other refugees that include Tamils from Sri Lanka and Hindu Rohingyas from Myanmar. They are not covered under the Act.

- **Governments stand:**

The government claims that these persecuted migrants will be eligible to apply for citizenship only after intense assessment and recommendation of district authorities and state government. The government has also clarified that Pakistan, Afghanistan, and Bangladesh are Islamic republic's where Muslims are in majority hence, they cannot be treated as persecuted minorities. The beneficiaries under the Citizenship Amendment Bill can reside in any state of India the burden of these persecuted migrants will be shared by the entire country and not only Assam. Moreover, these migrants were earlier given protection against legal action in the years 2015 & 2016. Long term visa protection was also granted to them. Thus, the proposed amendment will only extend these benefits further to make these persecuted migrants eligible to apply for citizenship.

**Conclusion:**

While addressing the rights of Chakma refugees, the Supreme Court in NHRC vs. State of Arunachal Pradesh case provided equal protection before the law and rights under Article 21 (Right to life) to all immigrants including those who are considered as illegal. With the passage of this legislation, then by means of naturalization, these persecuted immigrants would be entitled to enjoy the benefits of rights guaranteed under the constitution of India, including equality, free of speech and expression, life, vote, work, food, etc. Hence, the law should not limit itself to minorities from Afghanistan, Pakistan, and Bangladesh, but also include refugees from persecuted minorities of all religions who have made India their home.