

## **Constitutional Law and Public Administration in India**

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**Week- 02**

**Lecture-05**

### **Preamble of the Indian Constitution**

The third important word that is mentioned in the preamble of the Constitution, it is the word secular. Now, the word secular was added into the Constitution by the 42nd Amendment Act of 1976. And the Supreme Court has said that the word secular is not alien to the Constitution, rather if one reads articles 25 to 28 of the Constitution, which guarantees the fundamental right to freedom of religion, assumed that this was what the state wanted to be, that the state wanted to have a secular character and not a religious one. Secularism today has become an important touchstone of public policy. The next word that is used in the preamble of the Constitution, the word democratic is also relevant and important as one would say that democracy is the kind of system or quality that a society wishes to adopt. And democracy or democratic form of governance is generally considered as the doctrine of popular sovereignty, that the position of the supreme power is in the hands of the people, for the people and by the people.

If one analyzes the word democracy it is an indirect democracy. So, democracy generally is of two types, one is called direct, the other is called indirect. And in direct democracy the supreme power lies directly with the people. And hence they can decide issues based on referendums, or they can also exercise issues such as recall of their representatives. So, the people will have a direct call on the democratic process of public administration and public policy. And other important public policy legislation must pass through the referendum process. So, it is direct democracy in which the citizens directly decide on the law that is to be enacted for them. And any public servant can be recalled from his public office by the citizens. So, the citizens can be public servants in office and the citizens can remove the public servant from office as well.

So, direct democracies may work in smaller nations and countries like Switzerland and others. But in bigger nations, direct democracy is difficult to operate and manage. In democracies, there must be equal political rights to all and must hold the form of government elected to be accountable. And that can be achieved generally by indirect democracy, which generally can be either parliamentary form of democracy, or the

presidential form of democracy. So, in indirect democracy, the people elect their representatives, as members of parliament, or members of legislative assembly, and these so-called nominated members govern the society. This kind of indirect democracy is also called a representative democracy. And the Indian Constitution brings about what is known as representative democracy. And while in democracy, the parliament is supreme, the parliament is interested with the lawmaking power, with the power of making policies and creating actions. It is the executive that is responsible to protect the principles of democracy through the institution of the parliament. In India democracy embraces not only political democracy, but it also embraces social democracy, or what we may also add as economic democracy. Dr. Ambedkar in a speech that he gave in the Constituent Assembly on November 25, 1949, just the day before the Constitution got enacted said that political democracy cannot last until it lies at the base of its social democracy.

What is social democracy? It is a way of life, which recognizes liberty, equality and fraternity. The principles of liberty, equality and fraternity are not only to be treated as separate items, but they also form a union in the sense that to divest one from the other is to defeat the purpose of democracy. Liberty cannot be diverse from equality, equality cannot be diverse from liberty, nor can liberty and equality be diverse from fraternity. So, stressing upon the democratic values, Dr. Ambedkar clearly said about democracy in a political context of how the government has to be formed, who has to form it and how it has to be formed.

But the real fabric of democracy is in society. And social democracy is critical, because over there these three words, liberty, equality, and fraternity will ensure political democracy. The Supreme Court also has kind of agreed with Dr. Ambedkar, when the Supreme Court said that the Constitution wants to establish an egalitarian social order, in which every citizen, irrespective of social, economic, and political background, enjoys the same kind of democratic values in this republic. Therefore, democracy and democratic institutions have an important role.

The preamble stands the same as an important touchstone of what is going to be expected in the country. Democracy is a combination of two words, they are two Greek words, *demos* and *kratia*, which means people and the rule. So, *demos* means people, *kratia* means rule. So, people's rule is what democracy is. So, it's the combination of two Greek words, which has led to this word called democracy. Referendum, Recalls are direct forms of democracy. The democratic principles, democratic values are the vision of the preamble of the Constitution. And the preamble of the Constitution clearly becomes the document for all of us to realize how the constitutional ideals are going to be followed in the history of the country.

Another word called republic, which is also mentioned in the Constitution and words like liberty, equality and fraternity are critical and important. Republic means that the head of the state is an elected official and not official who attains that position or who inherits that position due to some hereditary, kind of succession. So, in a republic, the monarch kind of a system is taken up, which means you don't have a head of state, who becomes head of state by inheriting the crown or the seat. So, kingship is out of the question. There is no queen, there is no monarchism. We are a republic where the head of the state is an elected person. He represents the ideals of the society. He is having someone who comes from the society. He's not someone who's privileged. And he wants this public office to be accountable to the people at large.

In India, the head of the state is the President of India or the Governor. And they have a tenure of five years. And the republic means that the state has the right to choose its own head. And it is free from any kind of external influence, or any kind of external rule. No one from outside is determining the direction of the country. The people of the country have into their own hands, the direction in which the country has to be taken for the group. These are words with heavy implications and expressions and ideas and philosophy. And hence, looking at all of these five words in the preamble the words socialist secular were added to the Constitution. They were not originally in the Constitution, they were added later.

Though they were added in 1976, today, they are the basic fabric of the Constitution, they have the basic fabric of public administration, and public policy. So these are non-alienable concepts. They are non-alienable doctrines. And at any point of time, anyone can trample, change or deviate or distract from the basic vision that is mentioned in the preamble of the Constitution. These five words are the basic tenets of constitutional public administration in this country. That is the philosophy and the idea behind the aspects of public administration in the Constitution. Now, taking the preamble forward, it is important that one starts understanding the significance of the preamble. Is the preamble significant in any sense over a period of time, after we gave the Constitution, the significance of the preamble has been debated for quite some time. And a lot of people thought that the preamble is not part of the Constitution because the Constitution starts from Article 1 or Part 1.

So, the preamble is not necessarily a part of it. But the Supreme Court has been clear and they have laid down this to rest as early as in 1960, in the case of Berubari Union of 1960. This case was a case that came from the President of India as a reference under Article 143 of the Constitution. In this case was the implementation of the Indo-Pakistan agreement relating to the Berubari Union and the exchange of enclaves in 1960. Now the Supreme Court in 1960 said that the preamble shows the general purpose behind the several provisions of 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. So, the Supreme Court clearly says the preamble is the guiding light and wherever some kind of guiding light is required in interpretation of the Constitution, then the preamble is something that the judges can always rely upon. And in case of the *Keshvananda Bharati*, decided in 1973, which is also called the case on basic structure doctrine, held that the preamble is a part of the Constitution, it is integral to the Constitution. It is not just a guiding light; the preamble is the first opening part of the Constitution and it's extremely important that the Constitution shall always be read and interpreted in the light of the preamble

The preamble is like the sun, the preamble is the grand noble vision of the makers of the Constitution. Hence, at no point of time can the preamble be considered as a separate part, it's an integral part. So, in the case of *LIC of India*, it's a case of 1995 the Supreme Court held, this is the *LIC of India versus Consumer Education and Research Centre 1995*. The Supreme Court held that, keeping everything aside that the preamble is an integral part of the Constitution. Two things should be noted at this point of time. The preamble is neither a source of the power of the legislature, nor is it something that prohibits the powers of the legislature. It is not saying that the preamble is kind of justiciable in any form, in any court of law. The preamble is the way in which public administration will be guided, the directive principles of state privacy wherever they are in some kind of ambiguous in nature or character, the preamble should be the part which should guide any such actions as the case may be. The Supreme Court did say that the preamble is like the dream that the makers said what India should look like.

India should look like something which can be an economic superpower, nuclear superpower, or the third largest economy with 1 trillion kinds of GDP and so on and so forth. Whatever ideas one may have about the Indian state, the ideas emanate from the preamble. So, the few jurists have said that the preamble is like the jewel in the crown. However important the crown is, it will be a jewel that shines and makes the crown look quite attractive and something that is needed to be looked at. So, the preamble has been also said by certain jurists to be the most precious part of the Constitution.

One can measure the effectiveness of the Constitution by reading the preamble. Interestingly, the preamble also states the political wisdom of the makers of the Constitution, what they thought should be the society. So, the philosophy of giving India a society which shall have liberty, justice, equality and fraternity is what the preamble was supposed to be all about. The term liberty means the absence of restraint on the activities of individuals, at the same time providing opportunities for the development of individual personalities. That's liberty and to some extent, many would assume that liberty is some kind of a right. Yes, it can be, but it's liberty in the sense that as human beings, free unto yourself, you have given the state the power to create a kind of a government and this

government shall respect individual liberty as the case may be. So, the word liberty and its importance in the preamble, it means that citizens of this country have liberty of what? Liberty of thought, expression, belief, faith, and worship. And when liberty is violated in the means of fundamental right, such kind of infringement of fundamental right shall be adjudicated, shall be justiciable and it shall be enforceable in a court of law. So, liberty should not be construed as an absolute liberty or a license to do whatever one likes. It's a liberty of responsibility. It's a liberty of duty. It is a liberty of exercising your fundamental rights in a responsible and a free manner as the case may be. To be honest, the idea of liberty and equality and fraternity in the Indian Constitution was taken from the French Revolution, which happened between 1789 and 1799. What was put in the preamble becomes a significant part of understanding what it means.

Second, let's look at the word justice. This is a complicated word, a word that may have quite a few, you know, meanings as it is, it could be claimed. So, we have defined justice in three forms and that is social, economic and political. And these are something that have to be secured to the society, the citizens by the state through the fundamental rights and the direct means of state policy. So, what does social justice mean? Social justice denotes equal treatment. And all citizens, irrespective of their social background or distinctions, as we were called, and now those distinctions could be based on caste, color, race, religion, sex, and so on, shall be treated equally.

In terms of social justice, there is no person who is going to be treated as a privileged class. So, privileges shall be granted if so, to an individual, irrespective of his caste, color or creed, and no person of the society should get any special or preferential treatment. However, that particular section of the society in India in ensuring social justice, like the sections of the society and economic background, why is there a reservation policy in place? It could be those coming from the backward sections of the community, the SCs, the STs and OBCs, and women can be treated differentially, to render social justice in one sense. Justice could also mean economic justice, which clearly means the principle of non-discrimination. While social justice talks about equal treatment, economic justice denotes the principles of non-discrimination among people on economic factors, which means the inequality of wealth has to be reduced by the state.

And the state must try and give economic opportunities to a person in the society as equal as possible. Often than not, economic justice is also called distributive justice, which means the resources and the wealth of the nation shall be distributed equally among the citizens. And that is how the disparity of wealth can be reduced to a larger extent. Distributive justice is an important connotation of economic justice. The third is political justice, as one would say that political rights, be it the right to participate in the elections, right to vote, the right of association, the right of public opinion, the right to take part in lawmaking, and so on and so forth.

Such kind of rights, or be it the right of the voluntary organizations or NGOs shall also be given access equally to all citizens. Interestingly, it is not that the one who has more power has the more voice in a democracy. Everyone should get equal access, equal say in the democratic decision-making processes of governance, and that would achieve political justice. The ideas of justice and fraternity come from the Russian Revolution of 1917. And that also adds a significant part to the basic tenets of the Preamble and the Constitution of India.

The term equality is also interesting and important. While we say equality is a principle under Article 14 of the Constitution, it clearly says about equality, which is civic, which is political and economic. So, Article 14, 15, 16, 17 and 18 explicitly talk about the principal rules of equality. The directive principles also secure the same. But you will notice that equality is again not an absolute rule, exceptions to women and children and the marginalized sections of the community can be made. And a person has the right to be treated equally before and by the law. And equality is some kind of equal respect for human beings, despite his religion, creed, caste or any other cases. So, equality before the democratic process, the economic process and the social process are something that is important and critical. To a larger extent, equality respects not only life, but it also respects livelihood and the equal opportunity to work.

These are critical and important. So, issues of human gender justice are just issues that can be dealt with or under the principles of equality. One would kind of remember an important doctrine called equal pay for equal work, which means that between men and women who are working in the same class for the same kind of activity or efforts or same kind of position that they are working. The equality principle would mean that men and women cannot be discriminated on pay, equal pay for equal work. This is a public policy, constitutional public policy. And that is something that you can apply in public administration as well.

Fraternity is critical and important to maintain the social fabric in Indian society, which is unfortunately so diverse and sometimes divided. So, to maintain the unity of the society, fraternity is an important principle of the constitution and its preamble. The term fraternity means brotherhood. This means promoting the highest form of peace, harmony in society. And trying to transcend all religious linguistic, regional sometimes, sectional diversities and to embrace oneness of the nation as one Indian. So sometimes, when there is a reference to a South Indian and in a recent movie, the actor says that *"I'm an Indian from South. So, I'm not a South Indian."* To a larger extent, trying to bring in oneness of a nation, which is divided from North to East is the principle of fraternity. Fraternity also to a larger extent protects the dignity of an individual. It tries to maintain equilibrium in the society, which is quite sacred for progress of democracy for maintaining democratic values.

It also casts upon people the duty, the duty not to make hate speeches, the duty not to create hatred among individuals and communities. The duty not to derogate any other individual from any other community or region or society. The dignity of women, dignity of all kinds of people who are major or minor, who own privileges or not, are the principles of fraternity that are so important for a country to remain united and for a country to move away from communal violence, regionalism, casteism, regionalism and sectionalism. India, for a long period of time experienced different forms of criminalism and regionalism. The principles of fraternity are followed, enforced and applied as a public policy and administration.

We are all Indians and that is all that matters. Single citizenship concept in fraternity protects the principles of fraternity. The kind of barriers that are created, either politically or otherwise, have to be removed for fraternity to ever last and for fraternity to progress the ideals of democracy. So, some of these aspects that infringe the ideals of fraternity are communalism, regionalism, casteism, linguistics and sectionalism. All of these have no place in the constitution. We must move above all of these to accept the noble principles of the preamble.

So, having kind of understood the purpose of the preamble, its significance, each word that is mentioned in the preamble and what it means, it can be finally concluded that the preamble is an integral part of the constitution. It is not just a guiding light, but it's the light itself. And it is something that will determine the rules of public policy. It clearly establishes the way the preamble would be important for public administration.