



INTERNATIONAL JOURNAL OF ADVANCE RESEARCH, IDEAS AND INNOVATIONS IN TECHNOLOGY

ISSN: 2454-132X

Impact factor: 4.295

(Volume 4, Issue 5)

Available online at: www.ijariit.com

A critical analysis of the preamble of the Indian constitution

Ankit Chaharia

ankitchaharia99@gmail.com

Christ University, Bengaluru, Karnataka

ABSTRACT

The term 'Preamble' means an introduction to a Statute. The preamble is the introductory part of the Constitution. The Preamble cannot override the express provisions of the Act. It declares that the source of authority under the Constitution is the People of India and there is no subordination to any external authority. The preamble to the Indian Constitution is an integral part of the Constitution and can be amended but the basic structure cannot be amended. Secularism, Socialist and Integrity were added by the 42nd Amendment. Thus, the drafters of the Constitution also drafted the Preamble as a mirror and an introduction of the same. It would not be wrong to say that the spirit of the Constitution is present in the Preamble.

Keywords— Preamble, Indian constitution, 42nd Amendment

1. INTRODUCTION

"In re Berubari case, the Supreme Court has said that the Preamble to the Constitution is a key to open the mind of the makers, and shows the objective for which the drafters made several provisions in the Constitution. [1]

The term 'Preamble' means an introduction to a Statute. The preamble is an introductory part of the Constitution. [2] The Preamble sets out the ideals and goals which the makers of the constitution intended to achieve through the constitution. The preamble is also regarded as a key to open the mind of the makers of the Constitution which may show the general purposes for which they made several provisions in the Constitution. [3]

2. PREAMBLE HOW FAR USEFUL IN INTERPRETING THE CONSTITUTION

The Preamble cannot override the express provisions of any Act. The Supreme Court held in Berubari case that the Preamble was not a part of the Constitution and could not be regarded as a source of any substantive power. The Constitution grants such powers expressly. Whatever is true about the powers is also true about the prohibitions of the Constitutions. The application of the Constitution is limited and can be resorted to in case of any ambiguity in a statute. The Preamble may be preferred if the terms used in the Constitution are capable of different interpretations.

The Supreme Court rejected the above view in the Kesavananda Bharati's case and held that the Preamble is the part of the Constitution. The power of Parliament under Article 368 of the Constitution to amend the Constitution is limited by the Preamble. The "basic elements" in the Preamble cannot be amended under Article 368. [4]

In Randhir Singh v. Union of India the Supreme Court relying on the Preamble and Articles 14 and 16 held that Article 39 (a) envisages a constitutional right of equal pay for equal work for both men and women. [5]

3. THE PURPOSE IT SERVES

The Preamble serves the following purposes:

- The source from which the Constitution comes is indicated viz., the people of India.
- The enacting clause which brings the Constitution into force is contained.
- The rights and freedoms which the people of India intended to secure to all citizens are declared and the basic type of government and polity which was to be established. [4]

Therefore, it declares that the source of authority under the Constitution is the People of India and there is no subordination to any external authority.

Whether Preamble is a part of the constitution: The Constituent Assembly proceedings make it clear that the Preamble to our constitution was enacted and adopted by the same procedure as the rest of the Constitution. The Preamble was put in motion by a

vote in the Constituent Assembly. Referring to the history of the drafting and the ultimate adoption of the Preamble, the Supreme Court in *Kesavananda Bharati v. State of Kerala* case laid down that the Preamble was an integral part of the Constitution. [6]

4. AMENDMENT IN THE PREAMBLE

Can Preamble be amended under Article 368?

In the historic case of *Kesavananda Bharati v. the State of Kerala*. [6], Supreme Court said that since the Preamble was a part of the Constitution it could be amended like any other provisions of the Constitution. It was contended that the amending power in Article 368 is limited. The power of amendment is limited by the Preamble. The basic elements or the fundamental features of our Constitution are contained in the Preamble. Article 368 cannot be used to destroy or damage these basic features mentioned in the Preamble. It was believed that Preamble cannot be amended as it is not a part of the Constitution. The Benbari opinion was wrong as the Supreme Court held that the Preamble is a part of the Constitution.

The Preamble is the part of the Constitution it can be amended but subject to the condition that the "basic features" in the Preamble cannot be amended. It will not be the same Constitution if any of these elements are removed. India has been constituted them into the Sovereign Democratic Republic by the people as declared by the Preamble. Amending power cannot be interpreted to confer power on the Parliament to take away any of these fundamental and basic characteristics.

42nd Amendment and the Preamble

Secularism, Socialism, and Integrity have been inserted by an amendment in the Preamble. These concepts already existed in the Constitution. The Preamble contains these concepts after the amendment.

5. PRINCIPLES ENshrined IN THE PREAMBLE

5.1 Sovereign

Cooley has defined Sovereign as, "A State is sovereign when there resides within itself a supreme absolute power, acknowledging no superior."

India is still a member of the Commonwealth of Nations but its membership of the Commonwealth of Nations is not inconsistent with its independent sovereign status [7] and it has no Constitutional significance as it is merely a voluntary association of India and it is open to India to cut off this association at will.

The word Sovereign was inserted into the Preamble to highlight that India is not dependent on any outside authority and that both externally and internally India is a sovereign. India recognizes no foreign power as its master.

5.2 Socialist

The 42nd Amendment Act, 1976 added the word Socialist into the Preamble. The term Socialist literally means state ownership and control of means of ownership and control of means of production, distribution, and exchange. The Constitution, however, has a different meaning for the term.

In *D.S. Nakara v. Union of India*, the Court observed that "the basic framework of socialism is to provide a decent standard of life to the working people and especially provide from cradle to grave. This envisaged economic equality and equitable distribution of income." [8] The Supreme Court held that the principal aim of a socialist state was to remove inequality in income and status and standard of life.

Democratic socialism thus aims to end poverty, ignorance, disease, and inequality of opportunity.

5.3 Secular

The term Secularism means that the State treats all religions equally with equal individual rights for faith, religion or worship and does not recognize any religion as a State.

Articles 25 to 30 of the Constitution by way of Right to Freedom of Religion contains the concept of Secularism. The Supreme Court in *St. Xavier's College v. the State of Gujarat*, explained that India "is neither anti-God nor pro-God; it treats alike the devout, the antagonistic and the atheist. It eliminates God from the matters of the State and ensures that no one shall be discriminated against on the ground of religion." [9]

Secularism is beyond the amending power of the Parliament which makes it the basic feature of the Constitution. It means honoring all religions. The Constitution of India recognizes no religion and treats all religions equally and encourages one to practice the religion of his choice.

5.4 Democratic

The term democracy has been derived from the Greek root 'demos' which means 'the people': 'Kratos' stands for 'rule' or 'government'. Thus literally, democracy signifies 'the rule of the people.' The definition given by Abraham Lincoln reads "Democracy is the government of the people, by the people, and for the people."

The Supreme Court in *Mohan Lal v. Dist. Magistrate Rai Bareilly*, observed: "Democracy is a concept, a political philosophy, an ideal practiced by many nations culturally advanced and politically mature by resorting to governance by representatives of the people elected directly or, indirectly." [10] It was also concluded that direct democracy is one where the people directly exercise their power of the government and carry on the government and change the government by their direct vote, however, in an indirect democracy, the people elect their representatives who carry on the administration of the government directly.

The Supreme Court in the case of *Union of India v. Association for Democratic Reforms*, observed: "a successful democracy posits an aware citizenry". "Democracy cannot survive without free and fair elections, without free and fairly informed voters". [11] The power bestowed upon the citizens of India to elect the government is clearly emphasized.

5.5 Republic

The term Republic is used in distinction to 'Monarchy'. [12] The head of the State is not a hereditary monarch, thus India is a Republic. The head of the state in India is elected by the citizens of India. The Constitution of India sets up in India a 'republican form of Government', in which, the ultimate power resides in the body of the people. The President of India is the Executive Head of the State, is elected by the people and holds office for a term of five years.

6. OBJECTIVES ENSHRINED IN THE PREAMBLE

The Preamble to the Constitution of India secured to all its citizens:

- Justice-Social, economic and political
- Liberty- Of thought, expression, belief, faith and worship
- Equality - Of status and of opportunity
- Fraternity- Assuring the dignity of the individual and the unity and integrity of

These ideals of the Constitution are detailed in the headings to follow.

6.1 Justice (social, economic and political)

The harmonious reconciliation of individual conduct with the general welfare of the society is referred to as justice. An act or conduct of a person is said to be just if it promotes the general well-being of the community. Therefore, the attainment of the common good as distinguished from the good of individuals is the essence of justice.

The Constitution of India professes to secure to the citizens:

- Social Justice
- Economic Justice
- Political Justice

Social Justice means the abolition of all sorts of inequalities which may result in the inequalities of wealth, opportunity, status, race, religion, caste, title and the like. To achieve this ideal of social justice, the Constitution lays down the Directives Principles of State Policy in Part IV of the Constitution. In the case of *Air India Statutory Corporation v. United Labor Union*, [13] the Supreme Court observed that the aim of social justice was to attain a substantial degree of social, economic and political equality which was the legitimate expectation and constitutional goal. It was held that social justice was a dynamic device to mitigate the sufferings of the poor, weak, Dalits, tribals and deprived sections of the society and to elevate them to the level of equality, to live a life with dignity of the person. The Court ruled that the Preamble and Article 38 of the Constitution envisioned social justice as the arch to ensure life to be meaningful and livable with human dignity.

6.2 Liberty (of thought, expression, belief, faith, and worship)

Liberty has been derived from the Latin word 'liber' which means free. The idea of Liberty came to the forefront with the French Revolution in 1789 and the leaders defined liberty as "the power to do like anything that does not injure another is liberty." [14]

The term liberty' is used both in a negative as well as positive sense. As a negative concept liberty means the absence of all undue or arbitrary % interference with individual's action on the part of the State. In a positive sense, liberty comprises of liberties or rights which are considered essential for an individual to attain his potentialities and for the perfection of the national life. The Constitution of India professes to secure the liberty of thought, expression, belief, faith, and worship, which are regarded as essential to the development of the individual in the Nation.

The same principle is reflected in Articles 25-28 of the Constitution which talk about the Right to Freedom of Religion and Article 19 (1) (a) which talks about the liberty in the field of expression.

6.3 Equality (of status and of opportunity)

Equality is the basis of democracy like equality. The formulation of the doctrine is the product of the eighteenth century. In the American Declaration of Independence (1776), it is described that "we hold these truths to be self-evident that all men are created equal". The Declaration of Rights of Man (1789) issued by the National Assembly in France during the French Revolution states that "Men are born, and always continue, free and equal in respect of their rights. Equal opportunities to all are necessary for the fullest development of personality of the people.

Equality of status and of opportunity is secured to the people of India by abolishing all distinctions or discriminations by the State, between citizen and citizen, on the ground of religion, race, caste, sex or place of birth and by throwing open 'public places' to all the citizens. [15] This has been provided for in the Articles 14 and 15 of the Constitution of India and the same talk about equality before law and prohibition of discrimination.

The Constitution also abolishes untouchability and titles by the Articles 17 and 18 respectively. This helps in securing equality of opportunity in the matters relating to employment or appointment to any office under the State under Article 16 of the Constitution of India.

6.4 Fraternity

Fraternity means a feeling of brotherhood, brotherliness, a feeling that all people are children of the same soil, the same motherland. The term was also inspired by the French Revolution and was added to the Preamble by the Drafting Committee of the Constituent Assembly because, "The Committee felt that the need for fraternal concord and goodwill in India was never greater than now and that this particular aim of the new constitution should be emphasized by special mention in the Preamble". [16]

There is no express provision in the Constitution which reflects 'fraternity' as an object. However, there are provisions in the Constitution, such as common citizenship, the right of the citizen of India to move freely, to reside and settle in any part of the territory of India, etc., which generate their spirit of brotherhood.

The dignity of the individual is to be maintained for the promotion of, fraternity. Therefore, the Preamble assures the dignity of each and every individual. This dignity is assured by securing to each individual equal fundamental right and at the same time laying down a number of Directives for the State which directs the State policies towards the betterment of citizens.

The Unity and Integrity of the Nation sound the concern of the founding fathers of the Constitution regarding the maintenance of the Independence of the nation as well as the success of the democracy in India. Therefore, while securing rights and freedoms for the individuals, they incorporated in the Constitution elaborate provisions conferring on the State overriding powers in the form of emergency provisions as to help contain any forces threatening and endangering the unity and integrity of the country. India has been declared as a Union of States and is intended to put an end to the separatist tendencies.

7. DATE OF ADOPTION

Last part of the preamble is the date of adoption which shows that our constitution is adopted on the 26th day of November 1949.

8. CONCLUSION

To conclude I would like to highlight that the Preamble highlights the very principles which the Constitution works on and the objectives which the same has to achieve. The drafters of the Constitution also drafted the Preamble as a mirror and an introduction of the same. It would not be wrong to say that the spirit of the Constitution is sufficiently summated in the Preamble.

9. REFERENCES

- [1] AIR 1960 SC 845
- [2] Collins, New Gem Dictionary, 1965, page-401.
- [3] Berubari Union and Exchange of Enclaves, Re, AIR 1960 SC 845,856: (1960) 3 SCR 250.
- [4] Kesavananda Bharati v. State of Kerala, AIR 1973 SC 1461.
- [5] 1982 AIR 879
- [6] *Ibid*
- [7] Pandey, J. N.; The Constitution of India, 47th Edition, Central Law Agency, Allahabad, 2010, page-31
- [8] 1983 AIR 130
- [9] 1974 AIR 1389
- [10] 1992 SCC (4) 80
- [11] 2002 AIR 2112
- [12] Kumar Narender; Constitutional Law of India, Allahabad Law Agency, 2008, page-32
- [13] AIR 1997 SC 645
- [14] Myneni, S.R.; Political Science for Law Students, 2nd Edition, Allahabad Law Agency, 2006, page-168
- [15] Kumar Narender; Constitutional Law of India, Allahabad Law Agency, 2008, page-34
- [16] Rao, Shiva; The Farming of Indian Constitution, N.M. Tripathi Pvt. Ltd., Bombay, 1967, vol-3, page-510, cited in Kumar Narender; Constitutional Law of India, Allahabad Law Agency, 2008, page-34a
- [17] V.S. Deshpande-Right and Duties under the Indian Constitution, (15 JILI 1973)
- [18] Majumdar, P.K. and Kararia, R.P.; Commentary on the Constitution of India, 10th Edition Volume 1, Orient Publishing Company, Allahabad, 2009, page-196