
PREAMBLE AND ITS RELEVANCE IN THE INDIAN CONSTITUTION

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ABSTRACT

This paper aims to examine essence of the Preamble of the Indian Constitution and the insight it provides into the spirit of the Constitution along with the aid in the interpretation of statutes that cannot be ignored. The Preamble and its aspirations set out the objectives that are to be fulfilled in the future by the citizens in order to maintain equilibrium in the society.

Keywords: Basic Structure, Constituent Assembly, Preamble.

Introduction

Preamble of a document is the introductory part or paragraph in a statute, deed or document, setting forth the intentions of the makers of the aforementioned document.¹ It acts as a preface stating the goals and objectives of the drafters of the constitution. Broadly, a preamble may include valuations relating to the functional, historical relevance, or general principles explicitly directing the rule's interpretation, and norms of behaviour offering a settlement mechanism.² The Preamble of the Constitution provides a quintessential insight into the letter and spirit of the Indian Constitution. It sheds light on the philosophy and intentions of the Drafting Committee of the Indian Constitution. It holds paramount importance as a part of the law of the land. The Preamble of the Indian Constitution plays the important role of segregating the grey area into black and white during the time of ambiguity with respect to interpretation of laws. It is a sum total of what the country is in spirit and what it should be when moving forward. It is the non-esoteric characteristic of the Preamble that makes it widely acceptable amongst the citizens. The phrase, 'by the people, of the people and for the people' gains its origin from here.³ Preamble imbibes these values into the Constitution and empowers people as the source of authority.

Background

The document in itself is brief but the rationale behind every locution is made intentionally which in turn makes its nature dense and sacrosanct. The goals of the Indian Preamble have kept up with time, removing the aspect of rigidity from it. While adopting the Preamble, it only had three words, Sovereign, Democratic and Republic. Later on, it was amended in 1976. Now, it describes India as a Sovereign, Socialist, Secular, Democratic and Republic. It is of utmost importance to note that even though there have been multiple amendments in the Constitution itself, the Preamble has only ever been amended once.⁴ As of 2021, there have been 105 amendments to the Indian Constitution depicting that there was a need for it to be amended several times to remove the ambiguity in an attempt to keep it up to date with the evolving times. On the other hand, Preamble has been concise and to the point which is why it has only been amended once. With respect to what the Constitution and its drafters had in mind for the

¹ A. Z. M. Arman Habib, Primacy and Efficacy of Preamble Propositions in India and Bangladesh: A Comparative Understanding of Interpretative Constitutionalism, 58 INT'L J.L. & MGMT. 660 (2016).

² Cs. Varga, The Preamble: A Question of Jurisprudence, 13 ACTA JURIDICA 101 (1971).

³ Anil Kumar Mohapatra, Basic Objectives and Values of the Indian Constitution, Volume 6, 30, 33-34 (2011).

⁴ Volume 8, Liav Orgad, The preamble in constitutional interpretation 714, Oxford Academic 2010.

country was to imbibe in the citizens, is set in stone of the Preamble. For instance, the phrase “in the name of god” was vehemently opposed in the Constitutional Assembly debates because of what the drafters wanted the country to be in the future. Due to that, such a phrase is still not included in the Preamble solely because the country seeks to be a secular one, which will be curtailed if any such phrase is included.⁵ The inclusion of this phrase and any such other phrase is avoided because of the goals assigned in the Preamble as in this specific case would lead to compulsion of accepting a particular faith, directly or indirectly. What has been achieved up until now and what is yet to be achieved in terms of constitutional goals has had a major influence and reliance on the text of the Preamble. Subhash C. Kashyap, an eminent constitutional scholar and expert, deliberated the importance of not only the present but the future in terms of the goals of the founding fathers of the Indian Constitution. Aspects that go against the goals and objectives to be achieved in the future are held inconsistent with the freedoms and liberties enshrined under the Constitution. The amalgamation of these ideas and principles as stated by Halim, are the founding stones of the Constitution. For these reasons, the Preamble is widely considered as “a legitimate aid in the interpretation of the provisions of the constitution (role of Preamble in the interpretation of Constitution).⁶ Also, it helps in the interpretation of other statutes formulated under the pretext of the Constitution. *In Re: The Berubari Union And ... v Unknown*,⁷ even though it was held that Preamble is not a part of the constitution, an important verdict was given with respect to its role. It was said in the obiter the Preamble itself is the key to the lock, here being the minds of the makers of the Constitution.⁸ It is noteworthy that the ideals of the makers of the Constitution are given such a high pedestal which only paves the way for the future generations to use the Preamble as an interpretative tool of the Indian Constitution.

Keywords and their significance

A few keywords assigned with specific meaning and intent behind them are of paramount importance in terms of discussion around the Preamble. The Constitution derives its basis from the wording of the Preamble itself. The word Sovereignty was discussed thoroughly by the Constituent Assembly. Dr. B.R. Ambedkar presented his staunch opinions on the floor of the

⁵ Byjus, <https://byjus.com/free-ias-prep/constituent-assembly-debate-on-preamble/> (Last visited April 14, 2022).

⁶ A. Z. M. Arman Habib, Primacy and Efficacy of Preamble Propositions in India and Bangladesh: A Comparative Understanding of Interpretative Constitutionalism, 58 INT'L J.L. & MGMT. 660 (2016).

⁷ *In Re: The Berubari Union And ... v Unknown*, AIR 1960 SC 845.

⁸ Volume 8, Liav Orgad, *The preamble in constitutional interpretation* 714, Oxford Academic 2010.

Assembly in 1949 stating that the Preamble symbolises what every member of the House wishes for the constitution to be and that it derives its legitimacy, power, and sovereignty from the people. Secondly, the term Socialist was added in 1976 through the 42nd constitutional amendment. The drafters believed that the country shouldn't work on either of the extremes and there should be mutual co-existence of public and private sectors. It sets out for the future that the country should not be interpreted as either of the extremes, but meant to be a mixture of both. A wider meaning was given to the word in *D.S. Nakara v Union of India*⁹ where it was held that the state should seek to eradicate vast income inequalities while striving to improve the standard of living of every citizen. Parallely, Secular was another term added through the 42nd constitutional amendment of 1976. Even though the word 'Secular' was also added in 1976 it was held by the Supreme Court in *S.R. Bommai v Union of India*¹⁰ that in nature and spirit, the country has been secular since the inception of the republic. Secularism is conveyed by the drafters as a goal to be achieved so that the two sects, religion and government, are not intertwined. No one should be forced, directly and indirectly, to follow any religion that is against their wish. Henceforth, in the interpretation of the Constitution, the word 'Secular' holds a lot of importance in India because of the vast diversity of religions that it inhibits. Fourthly, the word Democratic has been a part of the Preamble since the very beginning. Democracy in its essence reiterates the power of the people in running the country by electing their own representatives of the government. It is one of the most important principles to be followed by the country, irrespective of the state of politics at the time. In the landmark judgment of *Kesavananda Bharti v State of Kerala*,¹¹ the supremacy of democracy was established, even when the Judiciary and the Legislature were at opposite poles with respect to their opinions.. The impending question of whether or not the Parliament had unlimited powers of amending the Constitution was answered through the aforementioned case. Keeping the ideals of the Preamble in mind, the interpretation of the Constitution was done to keep democracy intact and it was held that Parliament could alter or amend the constitution but the basic structure set out by the drafters could not be amended or abrogated. It had implications that proved that the Preamble was now a part of the Indian Constitution. Lastly, the word Republic holds its importance in the fact that the elected head of the state, which is the President in India, is to be elected by the people of state. It means that people have the real authority and it is people who hold supremacy in the country. The term is of Latin origin and when divided

⁹ *D.S. Nakara v Union of India*, AIR (1983) SC 130.

¹⁰ *S.R. Bommai v Union of India*, (1994) 3 SCC 1.

¹¹ *Kesavananda Bharti v State of Kerala*, (1973) 4 SCC 225.

into two parts *res* and *publica*, the former meaning affairs and the latter meaning public. The idea that people have sovereignty, which is also the essential idea of democracy, is at the heart of modern republics.¹² The term Republic compliments Democracy at the core of it, by establishing power of the people as the law of the land.

Point of view of Eminent Jurists

One of the most important angles to be looked at while discussing the role of the Preamble in interpreting the Constitution are the views of a former Chief Justice of India, Justice Dipak Misra, and former Judge of the Supreme Court, Justice Janardhan Raghunath Mudholkar. Justice Misra talked about the Preamble in depth and mentioned how it is a pillar on which the Constitution rests. It is through the Preamble that ambiguity of a law in question during an infringement of one such right is eliminated. He points out one crucial characteristic of the Preamble while saying that “as I read the Preamble from time to time, it is not static. It encapsulates and incorporates the generational spirit that always remains in the indestructible present.”¹³ His views are backed by making use of the first three words of the Preamble that state, “We the people.”¹⁴ He mentions how this phrase promotes a atemporal and eternal concept for the future which will represent the past, the present and the future as well. A landmark case that is mentioned in his rationale is the *Indira Sawhney* case¹⁵ that dealt with the issue of reservation and Article 16 of the Constitution. Even in such an important verdict, the judges relied on the Preamble to come to a conclusion and used the principles of justice, equality, liberty and fraternity. It is noteworthy that it is in this judgment that the Preamble was for the first time regarded as the “basic feature of the Constitution.” Finally, The sentiment and thought of the minds of the Constitution framers are expressed throughout the Preamble of the Indian Constitution.¹⁶ Another eminent personality that shed light on the significance of the Preamble was Justice Mudholkar. In *Sajjan Singh v State of Rajasthan*,¹⁷ a while before the basic structure doctrine came into effect and before it was held that Preamble is an integral part of that basic structure, Justice Mudholkar, mentioned about it in his rationale behind the verdict.

¹²Hindustan Times, <https://www.hindustantimes.com/columns/shashi-tharoor-s-word-of-the-week-republic/story-1qXNSrMJYjn6soIGpqQFGK.html> (last visited April 20, 2022).

¹³ India Today, <https://www.indiatoday.in/impact-feature/story/former-chief-justice-of-india-takes-a-refresher-course-on-the-preamble-of-the-constitution-1679734-2020-05-19> (last visited April 22, 2022).

¹⁴ INDIA CONST. art. 36-51.

¹⁵ *Indra sawhney vs Union of India*, AIR 1993 SC 477.

¹⁶India Today, <https://www.indiatoday.in/impact-feature/story/former-chief-justice-of-india-takes-a-refresher-course-on-the-preamble-of-the-constitution-1679734-2020-05-19> (last visited April 22, 2022).

¹⁷ *Sajjan Singh v State of Rajasthan*, (1965) AIR 845.

He opined that even though the Preamble is not a part of our Constitution, when compared to the Constitution itself, it can be seen how it is the pinnacle of those characteristics.¹⁸ To put it in his words, the Constitution is an “amplification or concretisation of the concepts set out in the preamble.”¹⁹ It bears the imprint of careful thought and is marked by precision. This portrays the psyche of the Constitution's framers of treating Preamble in a particularly important document.²⁰ At this juncture, Preamble is no more a point of contention, it is an established element of the Constitution that helps in interpreting the Constitutional ambiguity.

Interpretative value and International Perspective

The Preamble provides the citizens with justice, liberty, equality and fraternity.²¹ The preamble makes sure that the government in power cannot scuttle away from providing the aforementioned promises to the citizens of the country. In the sphere of interpreting the Constitution, the Preamble plays a role like a preamble of a statute, the meaning and intent behind the statute can be derived from the Preamble itself. Article 36 through 51 of the Indian Constitution talk about the Directive Principles of State Policy.²² These are principles that provide insights into the Constitution's overall aims and objectives. The broad contours of DPSP and the Preamble align with each other with respect to the end goal that they seek to achieve. Both the components of the Constitution strive tirelessly to equip the country with basic amenities in the present and set goals for basic necessities to be provided in the future without fail. The Preambular idea of Justice is defined under Articles 39A, 41, 42 and 43. While 39A talks about free legal aid and equal justice,²³ Articles 41, 42 and 43 talk about right to work and education along with provisions for humane working environment for the employees with a minimum wage for sustenance.²⁴ However, hiccups that the country has faced have been majorly in providing the citizens with Justice, Social and Economic. Social Justice in layman's terms means the total absence of privileges based on caste, sex, gender or race, but that is a very utopian concept for a nation like ours. Affirmative Action taken by the government has been a huge point of contention for the entire country and has been a tool in uplifting and empowering the country socially and economically. Even such stringent actions haven't been

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ INDIA CONST.

²² INDIA CONST. art. 36-51.

²³ INDIA CONST. art. 39A.

²⁴ INDIA CONST. art. 41, 42, 43.

able to eradicate the problem, in fact the problem has surged to an extent where constant back and forth and violence has been taking place with respect to what should be the way ahead. Preamble comes in handy here as it lays down the guidelines as to what should be achieved and statutes are based off of the beliefs and the spirit of the Constitution. To put it in perspective, Preamble can be perceived as a lighthouse that illuminates the sea, through it, we can look at the statutes and the Constitution even in times when issues seem entangled. In *Union of India v LIC of India*,²⁵ it was reiterated like it was done several times before and the Supreme Court held that even though the Preamble is not enforceable in Court, it still is and shall remain an integral part of the Institution. The power of Judicial Review that rests with the Judiciary was provided through *IR Coelho v State of Tamil Nadu*²⁶ and *L. Chandra Kumar v Union of India*.²⁷ Judicial Review is a vital requisite in the realm of Justice. It establishes the supremacy of the Indian Constitution. It also acts as an instrument of interpreting laws drafted, passed and amended by the Legislature keeping in mind the purpose and ambitions as stated in the Preamble that convey the intent and goals of the drafters. Apart from domestic or national importance, the Preamble of India regarding the power of interpretation is also aided by International Conventions and Treaties. In *Vishakha and Others v State of Rajasthan*,²⁸ the popular Vishakha Guidelines were laid down by the Supreme Court. The apex court arrived at the guidelines on the prevention of sexual harassment in the workplace. With the help of the Convention on the Elimination of All Forms of Discrimination Against Women CEDAW, they concluded that the content of the guidelines and it was gender justice stemming from the Preamble's use of the words justice and equality paved the path for the formation of the guidelines. It is worth noting that the applicability of the Preamble is universal in a sense that s applicable, directly or indirectly, in all the spheres of adjudication and legislation. In the sphere of legislation, the laws should adhere to or depict faithfulness to the Preamble and the objectives that it lays down.²⁹

Conclusion

Therefore, the Preamble acts as a user manual for the product, here being the Indian Constitution. It puts forth the goals that are to be achieved by us as a nation and in the absence

²⁵ *Union v LIC of India*, (1999) 235 ITR 514.

²⁶ *IR Coelho v State of Tamil Nadu*, (1999) 7 SCC 580.

²⁷ *L Chandra Kumar v Union of India*, (1997) 3 SCC 261.

²⁸ *Vishakha and Others v State of Rajasthan*, AIR 1997 SC 3011.

²⁹ R.K. Joshi, *Constitution of India: A commentary on its preamble*, 1, 20, (2007), <http://www.viniyogparivar.org/Essays/Constitution%20of%20India.pdf>.

of the Preamble the interpretation of the Constitution can become vague and ambiguous. Therefore, the preamble can be perceived as a key to understanding and exploring the essence of the Constitution.³⁰ Without it, a proper appreciation of the objectives and values that find place in our constitution seems a remote possibility.³¹ May it be Article 368 or a statute regarding affirmative action of a state, the judiciary has fallen back to the basics and brought in the Preamble to remove that uncertainty while adjudicating justice. The Constitution's soul is built on the trinity of Fundamental Rights, Directive Principles of State Policy, and the Preamble.³² At no cost can the interpretative value be questioned. The future of the basic foundations of the country have already been put in place and to uphold them is in the hands of the people and their elected representatives. Therefore, the Constitution's appendix, the Preamble, enhances the material's effectiveness and having the Preamble to the Indian Constitution is a sine qua non.³³

³⁰ A. Z. M. Arman Habib, Primacy and Efficacy of Preamble Propositions in India and Bangladesh: A Comparative Understanding of Interpretative Constitutionalism, 58 INT'L J.L. & MGMT. 660 (2016).

³¹ *Id.*

³² R.C. Lahoti, *Preamble: The Spirit and Backbone of the Constitution of India*, 2004.

³³ Cs. Varga, The Preamble: A Question of Jurisprudence, 13 ACTA JURIDICA 101 (1971).