

B.A.LL.B. V Semester
Constitutional Law of India-I
BL-5003
Preamble of the Indian Constitution
(Nature and Salient Feature)

Every constitution begins with a Preamble. The Preamble embodies the objectives or aims or basic purposes of the constitution. It is a preface or the introduction to the constitution. The interpretation of the Constitution is based on spirit of the Preamble. The Constitution of India begins with a Preamble which has a special significance. We cannot regard it or underestimate it as a collection of useless rhetoric. ¹

Preamble

"WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a {SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC}² and to secure to all its citizens:

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity; and to promote among them all

FRATERNITY assuring the dignity of the individual and the {unity and integrity of the Nation} ³;

¹ Prof. Pylee M.V., Indian Constitution, S Chand Publication, 2ndEd. 2016, p 45

² Subs. by the Constitution (Forty-second Amendment) Act, 1976, s.2(a) for "SOVEREIGN DEMOCRATIC REPUBLIC" (w.e.f. 03-01-1977)

³ Subs. by the Constitution (Forty-second Amendment) Act, 1976, s.2(b), *ibid*, for "unity of the nation" (w.e.f. 03-01-1977)

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION."

The Preamble to the Constitution of India embodies and reflects the fundamental values, philosophy and objectives on which the Constitution is based. Pandit Thakur Das Bhargava, member of the Constituent Assembly, summed up the importance of the Preamble in the following words: "*The Preamble is the most precious part of the Constitution. It is the soul of the Constitution. It is the key to the Constitution... It is a jewel set in the Constitution... It is a proper yardstick with which one can measure the worth of the Constitution.*"⁴

The importance of Preamble of the Constitution of India was described by A.T. Philips and K.H. ShivajiRao during constituent assembly debates, quote:

"The Preamble is an ornamental part of the Constitution and is couched in lofty and stirring language. These words like justice, liberty, equality and fraternity evoke in our mind, the memories of the great struggles the nations had to go through in order to secure them. These words tell us why we in India fought the protracted freedom struggle in which thousands of our people died. With noble ideas like justice, liberty, equality and fraternity enshrined in the Preamble , we can build India of our dreams. The Preamble is an embodiment of the principles in the objective resolution adopted by the Constituent Assembly in 1947."⁵

As Justice Hidayatulla said, The Preamble is more than a declaration. It is the soul of our Constitution and lays down the pattern of our political society. It contains a solemn resolve which nothing but a resolution can alter.⁶ Grenville Austin says that the Indian Constitution is a social document. It aims at establishing a better society on the basis of justice, liberty, equality and fraternity and the Preamble commits the Constitution to a social revolution. The whole of the Indian Constitution is an elaboration and an elucidation of the Preamble.⁷

Sovereignty

⁴Basu, D.D., Commentary on the Constitution of India, Vol 1, Lexis Nexis, 9th Ed., P. 132.

⁵ Pal Samaraditya, India'S Constitution –Origins And Evolution (Constituent Assembly Debates, LokSabha Debates On Constitutional Amendments And Supreme Court Judgments); Vol. 1, Lexis Nexis 2014, P. 213.

⁶Swarup, Jagadish Constitution of India, Vol. 1, Modern Law Publications, 2nd Ed., 2006, P.58

⁷ Swarup, Jagadish Constitution of India, Vol. 1, Modern Law Publications, 2nd Ed., 2006, P.59

The opening words of the Preamble to the Constitution, 'We the People of India', announce to the world that the ultimate sovereignty rests with the people of India as a whole. Accordingly, it is implied that the constitutional authorities and organs of the Government derive their power only from the people of India.⁸

Socialism

There are several articles in the Constitution giving credence to the ideals of a Welfare State which stands to end all forms of exploitation in all spheres of existence. As per the vision of the Constitution, the State is duty bound to strive for promotion of a social order, in which justice, social, economic and political informs all the institutions of the national life. The ownership and control of material resources of the community are to be distributed as best to sub-serve the common good and the operation of the economic system should not result in the concentration of wealth and means of production to the common detriment. The Constitution has facilitated land reforms, promoted well-being of the working class and advocated social control of all important natural resources and means of production for the well-being of all sections of society. 'A basic minimum to all' has been the crux of our public policies.⁹

Secularism

India is home to almost all the major religions of the world. The ideal of secularism in the Indian context implies that the State does not itself uphold any religion and protects all religions equally. Our State is not guided by any religion or any religious considerations. In tune with the liberty of 'belief, faith and worship' as promised in the Preamble, the Constitution provides for prohibition of discrimination on the ground of religion; entitles all persons right to freedom of religion including freedom of conscience and free profession, practice and propagation of religion, freedom to manage religious affairs, freedom to pay taxes for promotion of any particular religion and freedom of - 8 - attendance at religious instruction or religious worship in certain educational institutions; cultural and educational rights including protection of interests of minorities and their right to establish and administer educational institutions.¹⁰

⁸Jain M.P. Indian Constitutional Law, Lexis Nexis, 8th Ed. 2015, p 52.

⁹Shiva Rao. B, The framing of Indian Constitution A Study, Universal Law Publishing Co, 2nd Edition p,122

¹⁰ Jain M.P. Indian Constitutional Law, Lexis Nexis, 8th Ed. 2015, p 54.

Justice:

The preamble declares in clear and unambiguous term to secure to its citizens justice, social, economic and political. So the Preamble specifies justice of three kinds, which is inspired by the peculiar socio-political history of pre-independent India. Preamble does not talk of Justice in general and abstract sense, because its sole aim was to attain certain ends, because it was a Society/State subjugated politically with no political rights conferred upon the people, exploited economically with the enjoyment of economic privilege by a handful and selected few and divided socially along caste, race, religion etc, line with a large section of the population suffering disabilities of many sorts. So the foremost concern of the framer of the Constitution was to set the goal in the Preamble to ensure social, economic and political justice. By this it did not confer any right on any body but sought to create a social order wherein social, economic and political justice would be prevailing where the enjoyment of fundamental right in more secured without any invasion and infraction.¹¹

The Constitution seeks to attain this by making a broad range of express provisions as directive principles in Arts 38 and 39 which though not justiciable but are fundamental in the governance of the country by obligating the state to strive in that direction.

Liberty

The second objective declared by the Preamble is liberty. It is again not liberty in general and abstract sense, but it is liberty of thought, expression, belief, faith and worship. This spells out the path towards the moral psychological freedom of man as the Preamble envisages civil and religious liberty of man for the fuller moral growth of man. So far we have discussed liberty as set out in the Preamble in the chapter dealing with Arts. 19 and 25.

Equality:

Equality as a goal set out in that Preamble is equality of status and opportunity. Indian society was horizontally divided, It was a society of unequals. The founding fathers thereafter thought to

¹¹Basu D.D. Shorter Constitution of India, Lexis Nexis, 13th Edition, 2017, p 122.

ameliorate the conditions of the downtrodden, the underprivileged segments of the society and recognize the naturally ordained equality of human beings.

The founding fathers scribed twin formulae: development to do away the inequalities of status and to provide equal opportunities for so as to attain a social order based on equality of citizenship and an equalitarian State. In order to attain such goal the Constitution has recognized the fundamental right to equality of man, which have been discussed in the chapter dealing with equality clauses.

Fraternity

Liberty, equality and fraternity have to be secured and protected with social justice, economic empowerment and political equality under the rule of law.¹²

The word Fraternity is not a mere rhetoric, but is an instrument for assuring (a) the dignity of the individual and (b) unity and integrity of the nation. This concept of Fraternity obviously enjoins "all this could be possible only if the people of India as a whole were bound together by spirit of brotherhood"¹³

Whether Preamble is Part of the Constitution of India?

The deliberation on the historical aspect of the Preamble reveals that establishment of sovereign democratic, republic was the sole object of the founding father so as to realize the goal of just social and economic order based on justice, equality and freedom. The preamble reflects the entire Constitution and its spirit in a miniature form. It is perfect in tune with the Constitution mirroring its contents, ideal and aspiration. The intent and purposes contained in the Preamble, in the light of its history, are of immense significance, but it received a raw deal at the hand of judiciary in *Re. Berubari Union and Exchange of Enclaves*¹⁴ In this case the court observed:

“There is no doubt that the declaration made by the people of India in exercise of their sovereign will in the Preamble to the constitution is, in the words of Story, a key to open the mind of the

¹² S. S. Bola v. B. D. Sardana, 1997(18) SCC 522

¹³ IndraSawhney v. Union of India, AIR 1993 SC 477 Para - 3

¹⁴ AIR 1960 SC 845

makers' which may show the general purpose for which they made the several provisions in the Constitution; but nevertheless the Preamble is not a part of the Constitution, and as Willoughby has observed about the Preamble to the American Constitution, It has never been regarded as the source of any substantive power conferred on the Government of the United States of any of its departments. Such powers embrace only those expressly granted in the body of the Constitution and such as may be implied from those so granted.”

Supreme Court in *Re Kerala Education bill, 1957*¹⁵ observed: "To implement and Fortify these supreme purpose set forth in the preamble, part - III of our constitution has provided for us certain fundamental rights".

Relaying upon the above discussed authorities and decisions and holding the Berubari decision wrong, Sikri C.J. in *KesavanandaBharati's* case observed

"It (Preamble) was expressly voted to be a part of the Constitution".

Further he held: "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".¹⁶

To mark the importance of the preamble Shelat and Grover J.J. in *KesavanandaBharati's* case observed.

"The constitutional makers gave to the Preamble the pride of places. It embodied in a solemn form all the ideals and aspirations for which the country had struggled during the British regime and a Constitution was sought to be enacted in accordance with the genius of the Indian people. It certainly represented an amalgam of schemes and ideas adopted from the Constitutions of other countries. But the constant strain, which runs through out each and every article of the Constitution is reflected in the Preamble which could and can be made sacrosanct. It is not without significance that the Preamble was passed only after draft articles of the Constitution had been adopted with such modifications as were approved by the Constitution Assembly. The Preamble was, therefore, meant to embody in a very few and well defined words the key to the understanding of the constitution."¹⁷

¹⁵AIR 1958 SC 956

¹⁶AIR 1973 SC 1461, p. 1506

¹⁷AIR 1973 SC 1577

Prior to Kesavananda case the Supreme Court had already started realizing the significance of the Preamble although with a belief that Preamble was not a part of the Constitution.

In *Sajjan Singh Vrs. State of Rajasthan*¹⁸, Hidayatullah J. Observed:

"The Preamble of the Constitution is equally vital to our body politic. It does not make any grant of power but it gives a direction and purpose to the Constitution which is reflected in part - III and IV."¹⁹

Compiled by

AshishKaushik

Assistant Professor

Institute of Legal Studies

Ch. Charan Singh University, Meerut

E Mail: ashishkaushiknlsiu@gmail.com

Note: The content is exclusively meant for academic purposes for enhancing teaching, learning and research. Any other use for economic purpose is strictly prohibited. The users of the content shall not distribute, disseminate or share it with anyone else and its use is restricted to advancement of individual knowledge.

¹⁸AIR 1965 SC 845

¹⁹AIR 1965 SC 861