POLITICAL SCOPE OF INDIAN CONSTITUTION

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ABSTRACT

The term 'Preamble' means the introduction to a statute. The Constitution of India begins with a Preamble which specifies the nature of the Indian State and the objectives it is committed to secure. The preamble is emanated from the people of India and sovereignty lies with them.The Preamble contains the fundamentals of the constitution. It sets out the main objectives which the legislation is intended to achieve.

The Research paper aims at projecting the aims and aspirations of the makers of the Constitution by analyzing the basic idea of the preamble of the constitution. The Research focuses on how the idea of a welfare state and an egalitarian society are projected in the preamble. It tries to makes a comparative approach by taking into account the preamble of some other nations.

The first part of the research paper deals that how the 'objective resolution' is followed, restricting the preamble to define the essential features of the new state and its basic socio-political objectives. It is also analyzed how the Preamble does not grant any power but it gives a direction and purpose to the Constitution. The other part of the research paper takes into account the five cardinal features of the India as a state as per the preamble. The various ingredients of the preamble and their relevance to the constitution are also analyzed.

The main objective of the research paper is to explicate how the Preamble acts as the political horoscope of the constitution by listing the basic features, philosophy and the nature of Indian state. It analyses the Preamble as a part of the Indian Constitution and how it emphasizes the unity of nation. The research paper is concluded by answeringthe questions regarding the amendment of the preamble. The research paper takes into account the landmark cases.

KEYWORDS: Preamble, Scope, Amendment, Significance, Ingredients, Objective Resolution.

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INTRODUCTION

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.The preamble to the Constitution envisages the establishment of a socialist republic. The basic framework of socialism is to provide a decent standard of life to the working people and especially provide security from cradle to grave.

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[3]. 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.

The preamble to the Constitution of India is a well drafted document which states the philosophy of the constitution. It declares India to be a Sovereign, Socialist, Secular, Democratic, Republic and a Welfare state committed to secure justice, liberty and equality for the people for promoting fraternity, dignity the individual, and unity and integrity of the nation.

The founding father of the Constitution, therefore, while making the Constitution on behalf of the people, declared through "WE THE PEOPLE OF INDIA" in the Preamble, which is part of the Constitution, to secure to every citizen justice, social, economic and political, equality of status and of opportunity with stated liberties to promote among them fraternity and dignity of the individual in a united and integrated Bharat.[4] The idea was that the Preamble should be in conformity with the provisions of the Constitution and express in a few words the philosophy of the Constitution. It is also implied that the Preamble emanated from the people of India and sovereignty lies with them.

INGREDIENTS *OF THE PREAMBLE*

The preamble refers to the five cardinal features of India as a state. It declares India to be a Sovereign, Socialist, Secular, Democratic, Republic.

[3] 1, P.K. &Kararia, Coommentary on the Constitution of India (10th ed, 2009).
[4] 4, Ankit Chaharia, A critical analysis of the preamble of the Indian Constitution (2018).

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SOVEREIGN

According to preamble, the constitution of India has been pursuance of the solemn resolution of the people of India to constitute India into a 'Sovereign Democratic Republic', and to secure well defined objects set forth in the preamble. Sovereignty denotes supreme and ultimate power. External sovereignty or sovereignty in international law means that India can acquire foreign territory and also cede any part of the Indian territory, subject to limitations(if any) imposed by the constitution. On the other hand, internal sovereignty refers to the relationship between the states and the individuals within its territory.[5] Internal sovereignty relates to internal a]nd domestic affairs, and is divided into four organs, namely, the executive, the legislature, the judiciary and the administrative.

SOCIALIST

The constitutional commitment to the goal of socio-economic justice, as envisaged by the original preamble by the constitution of India has been fortified by the constitution (42nd Amendment) Act, 1976.

In Excel Wear v. Union of India[6], the Supreme Court observed that "the addition of the word socialist might enable the courts to lean more in favour of nationalization and state ownership of the industry. But, so long as private ownership of industries is recognized and governs an overwhelming large proportion of our economic structure, the principle of socialism and social justice cannot be pushed to such an extent so as to ignore completely or to a very large extent, the interest of another section of the public, namely, the private owners of the undertaking."

In D.S Nakarav. Union of India[7], the court observed that, "the basic framework of socialism is to provide a decent standard of life to the working people and especially provide security from cradle to grave." The principle aim of socialist State, the Supreme Court held, was to eliminate inequality in income and status and standard of life.

[5] Narendra Kumar, Constitutional Law of India (2008).
[6] Excel Wear v. Union of India, 1 AIR 25, (1979).
[7] D.S Nakarav. Union of India, 2 SCR 165, (1983).

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SECULAR

The term secular inserted by the Constitution (42nd Amendment) Act, 1976[8], explains that the state does not recognize any religion as a state religion and that it treats all religions equally, and with equal respect, without, in any manner, interfering with their individual rights of religion, faith or worship. It does not mean that it is an irreligious or atheistic state. Nor, it means that India is an anti-religious state. It neither promotes nor practices any particular religion, nor it interferes with any religious practice. The constitution ensures equal freedom to all religions.

The Supreme Court in St. Xavier's College v. State of Gujarat[9], explained "secularism is neither anti-God nor pro-God, it treats alike the devout, the agnostic and the atheist. It eliminates God from the matters of the state and ensures that no one shall be discriminated against on the grounds of religion". That, every person is free to mould or regulate his relations with his God in any manner. He is free to go to God or to heaven in his own ways. And, that worshipping God is left to be dictated by his own conscience.

DEMOCRATIC

The term Democracy is derived from Greek words 'demos' which means 'people' and 'kratos' which means 'authority'. It thus means government by the people. Democracy may properly be defined as that form of government in the administration of which the mass of adult popolutaion has some direct or indirect share.

In India, constitution provides for a Parliamentary Representative Democracy. The apex court in Union of India v. Association for Democratic Reforms, observed: "A successful democracy posits an 'aware' citizenry". "Democracy cannot survive", the court said, without free and fair elections, without free and fairly informed voters." [10]This states that free and fair elections are the most important features of democracy. Thus democracy implies that all three powers of the government i.e. the executive, the legislature and the judiciary should be

[8]42nd Constitutional Amendment Act, 1976
[9]St. Xavier's College v. State of Gujarat, 1 AIR 1389, (1974).
[1010] S.R. Myneni, Political Science for Law students (2nd ed., 2006).

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separate, yet mutually independent. Democracy is also a way of life and it must maintain human dignity, equality and rule of law.

REPUBLIC

The Indian government as a 'republican form of government', in which, the ultimate power resides in the body of the people exercised via universal adult suffrage. The president of India who is the executive head of the state is elected by the people (though indirectly) who holds office for a term of five years.[11] All citizens are equal in the eyes of law, there is no privileged class and all public offices are open for all the citizens without any distinction on basis of race, caste, sex or creed.

In a republic, the state sovereignty is vested in, and held by the people, and the political power is exercised popularly as an expression of the people's sovereign command, grace or pleasure. The Constitution is adopted and given to themselves by the People. The Constitution of India has been adopted enacted and given "To ourselves by "We, the People".

OTHER ELEMENTS

JUSTICE: The harmonious reconcilement 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.[12] To achieve this ideal of social justice, the Constitution lays down the Directives Principles of State Policy in Part IV of the Constitution.

LIBERTY (of thought, expression, belief, faith, and worship): 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

[11] J.N. Pandey, The Constitution of India (47th ed., 2010).
[12]Preamble to the Constitution of India, Lawctopus(September 6, 2014), https://www.lawctopus.com/academike/preamble-constitution-india/.

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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[13] which talk about the Right to Freedom of Religion and Article 19 (1) (a)[14] which talks about the liberty in the field of expression.

EQUALITY (of status and of opportunity): 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.

FRATERNITY: Fraternity means a feeling of brotherhood, brotherliness, a feeling that all people are children of the same soil, the same motherland. 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.

SCOPE AND FUNCTION OF THE PREAMBLE

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

[13] The Constitution of India, 1949.
[14] Article 19(1)(a), The Constitution of India, 1949.
[15] 4, Ankit Chaharia, A critical analysis of the preamble of the Indian Constitution (2018).

fundamentals of the constitution. The preamble to an Act sets out the main objectives which the legislation is intended to achieve.

The proper function of preamble is to explain and recite certain facts which are necessary to be explained and recited, before the enactment contained in an act of Parliament could be understood. A preamble may be used for other reasons, such as, to limit the scope of certain expressions or to explain facts or introduce definitions. It usually states, or professes to state, the general object and meaning of the legislature in passing the measure. Hence it may be legitimately consulted for the purpose of solving an ambiguity or fixing the connotation of words which may possibly have more meaning, or determining of the Act, whenever the enacting part in any of these respect is prone to doubt.

In A.KGopalan ***v.*** State of Madras[16], it was contended that the preamble to our constitution which seeks to give India a 'democratic' constitution should be the guiding start in its interpretation and hence any law made under Article 21 should be held as void if it offends the principles of natural justice, for otherwise the so-called "fundamental" rights to life and personal liberty would have no protection. The majority on the bench of the Supreme Court rejected this contention holding that 'law' in article 21 refers to positive or state made law and not natural justice, and that this meaning of the language of article 21 could not be modified with reference to the preamble.

In Berubari Union case[17], the Supreme Court held that the preamble had never been regarded as the source of any substantive power conferred on the government or on any of its departments. The court further explained that *"*what is true about the powers is equally true about the prohibitions and limitations*"*. It, therefore, observed that the preamble had limited application. The court laid down that the preamble would not be resorted to if the language of the enactment contained in the constitution was clear. However, "if the terms used in any of the articles in the constitution are ambiguous or capable of two meanings, in interpreting them some assistance may be sought in the objectives enshrined in the Preamble."

SIGNIFICANCE OF THE PREAMBLE

The Preamble embodies the basic philosophy and fundamental values- political ,moral and religious- on which the constitution is based. It contains the grand and noble vision of the

[16]A.KGopalan ***v.*** State of Madras, AIR 27, (1950).
[17]In Re: the Berubari Union, 3 SCR 250, (1960).

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constituent assembly, and reflects the dreams and aspirations of the founding fathers of the constitution. In the words of Alladi Krishnaswami Iyer, a member of the constituent assembly who played a significant role in making the constitution, "the preamble of our constitution expresses what we had thought or dreamt so long." According to K.M. Munshi, a member of the Drafting Committee of the Constituent Assembly, the preamble is the 'horoscope of our sovereign democratic republic'. [18]

Pandit Thakur Das Bhargava, another member of the Constituent Assembly, summed up the importance of preamble in the following word: '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 yard stick with which one can measure the worth of the constitution'.

CONTROVERSY REGARDING PREAMBLE

One of the controversies about the Preamble is as to whether it is a part of the Constitution or not. In the Berubari Union case(1960)[19], the Supreme Court said that the Preamble shows the general purposes behind the several provisions in the Constitution, and is thus a key to 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. Despite this recognition of the significance of the Preamble, the Supreme Court specifically opined that Preamble is not a part of the Constitution.

In the Kesavananda Bharti case[20], the Supreme Court rejected the earlier opinion and held that Preamble is a part of the Constitution. It observed that the Preamble 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. In the LIC of India case (1995) also, the Supreme Court again held that Preamble is an integral part the Constitution.

Like any other part of the Constitution, the Preamble was also enacted by the Constituent assembly but after the rest of the Constitution was already enacted. The reason for inserting the Preamble at the end was to ensure that it was in conformity with the constitution as adopted by the constituent assembly. While forwarding the preamble for votes, the President

[18]Shodhganga, shodhganga.inflibnet.ac.in/bitstream/10603/45856/10/10_chapter%201.pdf
[19]In Re Berubari Union, 3 SCR 250, (1960).
[20]Kesavananda Bharti v. State of Kerela, 4 SCC 225, (1973).

of the constituent assembly said, 'the question is that preamble stands part of constitution'. The motion was then adopted. Hence, the current opinion held by the supreme court that preamble is a part of the constitution, is in consonance with the opinion of the founding fathers of the constitution.

However, two things should be noted, first, the preamble is neither a source of power to the legislature nor a prohibition upon the powers of legislature. Secondly, it is non-justiable, that is, its provisions are not enforceable in the courts of law.

AMENDABILITY OF THE PREMBLE

The question as to whether the preamble can be amended under article 368 of the constitution arose for the first time in the historic case of Kesavananda Bharti[21]. It was urged that the preamble cannot be amended as it is not a part of the constitution. The petitioner contended that the amending power in article 368 cannot be used to destroy or damage the basic elements in the preamble.

The Supreme Court, however, held that the preamble is a part of the constitution. The court stated that the opinion tendered by it in the Berubari Union[22] in this regard was wrong, and held that preamble can be amended, subject to the condition that no amendment is done to the basic features. In other words, the court held that the basic elements or fundamental features of the constitution as contained in the preamble cannot be altered by an amendment under article 368.

The Preamble has been amended only once so far in 1976 by the 42nd constitutional amendment act, which has added three new words, Socialist, Secular and Integrity to the preamble. This amendment was held to be valid.

COMPARATIVE ANALYSIS

The Preamble categorically accepts the principle of popular Sovereignty. It begins by the words: ‘We the people of India’. These testify to the fact that the people are the ultimate source of all authority. The Government derives its power from the people. The constitution has its roots and derives its sovereignty from the people. In this respect, the Preamble of the

[21]Kesavananda Bharti v. State of Kerela, 4 SCC 225, (1973).
[22]In Re Berubari Union, 3 SCR 250, (1960).

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Constitution of India is similar to the Preamble of the US Constitution and the Preamble of the Charter of the United Nations. [23]

Preambles most often contain the following values: sovereignty, independence, territorial integrity, democracy, rule of law, social justice, justice, freedom, equality, equal and human rights. The following are less frequently cited: peaceful international relations, prosperity, welfare, pluralism, humanism, protection of minorities, equality before law, self-determination. Finally, the following are only rarely cited: family, protection of nature, brotherhood, multi-party system, separation of powers, an independent judiciary, decentralization, truth. It is also interesting that four countries with severe territorial issues have introduced their own expectations for these matters into the preambles of their constitutions: eg. the Constitution of China – unification with Taiwan; the Constitution of Pakistan – unification with other territories into a federation.

CONCLUSION

Thus, it can be concluded that the preamble to the Constitution of India is a well drafted document which states the philosophy of the constitution. It declares India to be a Sovereign, Socialist, Secular, Democratic, Republic and a Welfare state committed to secure justice, liberty and equality for the people for promoting fraternity, dignity the individual, and unity and integrity of the nation.

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[23] 5, Dr. C.R. Somashek Harappa, The Uniqueness of the Indian Constitution (2016).

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