

THE PREAMBLE OF THE CONSTITUTION

The Preamble to an Act sets out the main objectives which the legislation is intended to achieve.¹ It is a sort of introduction to the statute and many a times very helpful to understand the policy and legislative intent. It expresses "what we had thought or dreamt for so long".² The Constitution-makers gave to the Preamble "the place of pride". It embodies in a solemn form all the ideals and aspirations for which the country had struggled during the British regime.³ In *re Berubari* case,⁴ the Supreme Court has said that the Preamble to the Constitution is a key to open the mind of the makers, and shows the general purpose for which they made the several provisions in the Constitution.

The Preamble declares:

"We, the People of India having solemnly resolved to constitute India into a Sovereign Socialist Secular Democratic Republic 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.

In our Constituent Assembly this twenty-sixth day of November, 1949 do Hereby, Adopt, Enact and Give to Ourselves this Constitution."

Preamble how far useful in interpreting the Constitution.—The Preamble is the key to open the mind of the makers. But it does not mean that the preamble can override the express provisions of the Act. In *Berubari*'s case the Supreme Court held that the Preamble was not a part of the Constitution and therefore it could never be regarded as a source of any substantive powers. Such powers are expressly granted in the body of Constitution. What is true about the powers is equally true about the prohibitions. It has limited application and can be resorted to where there is any ambiguity in the statute. If the terms used in the Constitution are ambiguous or capable of two meanings in interpreting them some assistance may be taken from the objectives enshrined in the Constitution and the construction which fits the preamble may be preferred.

But in *Kesavananda Bharti's* case,⁶ the Supreme Court rejected the above view and held that the preamble is the part of the Constitution. Though in any ordinary statute not

1. Subba Rao C.J. in *I.C. Golak Nath v. State of Punjab*. AIR 1967 SC 1643.

2. Sir Alladi Krishnaswami—Constituent Assembly Debates Vol 10. 417

3. Shelat and Grover, JJ., in *Kesavananda Bharti v. State of Kerala*. AIR 1973 SC 1461.

4. AIR 1960 SC 845

5. Inserted by the Constitution (42nd Amendment) Act, 1976.

6. *Kesavananda Bharti v. State of Kerala*. AIR 1973 SC 1461.

much importance is attached to the preamble, all importance has to be attached to the preamble in a Constitutional Statute. Sikri, C.J., observed, "no authority has been referred before us to establish the propositions that what is true about the powers is equally true about the prohibitions and limitations. Even from the Preamble limitations have been derived in some cases. *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.*"⁷ In fact, the Preamble was relied on in imposing implied limitations on the amending power of Parliament under Article 368 of the Constitution. In that case, it was held that the "basic elements" in the Preamble cannot be amended under Article 368.

The purpose it serves.—The Preamble serves the following purposes:

- (a) It indicates the source form which the Constitution comes, viz., the people of India.
- (b) It contains the enacting clause which brings into force the Constitution.
- (c) It declares the great rights and freedoms which the people of India intended to secure to all citizens and the basic type of government and polity which was to be established.⁸

It is ordained by the people of India through their representatives assembled in a sovereign Constituent Assembly. The preamble declares in unambiguous terms that it is the people of India who have adopted, enacted and given to themselves the Constitution. *It declares, therefore, that the source of authority under the Constitution is the People of India and there is no subordination to any external authority.*

The Preamble of the Constitution declares India to be a "Sovereign Socialist Secular, Democratic Republic."⁹ Sovereign power, is that which is absolute and uncontrolled. In the words of Cooley, "A State is sovereign where there resides within itself a supreme and absolute power acknowledging no superior." The word 'sovereign' emphasises that India is no more dependent upon any outside authority. However, India is still a member of the Commonwealth of Nations. But as it has been said, its membership of the Commonwealth of Nations is not inconsistent with her independent sovereign status.

In a democratic State, it may have an elected or a hereditary head.—It is 'republic' because the head of the State is not a hereditary monarch. In a 'republic' the political sovereignty vests in the people and the head of the State is only a person elected by the people for a fixed term. In our Constitution there is a President who is the head of the Executive and who is elected, as opposed to hereditary monarch, and holds office for a fixed term of five years. The term 'democratic' indicates that the of the people. The rulers are elected by the people and are responsible to them. The democratic set up can be of two types; (i) Direct, and (ii) Indirect. In a direct democracy the legal and political sovereignty vests in the people, as is the case in Switzerland. In the indirect system of Democracy, it is the representatives of the people who exercise the power of legal as well as political sovereignty. The electorate choose their representatives who carry on the Government. It is for this reason that this type of democracy is called representative democracy. In the Indian Constitution we have adopted indirect or representative system of democracy. All the adults above the age of 18 years have a right to vote.

7. *Kesavananda Bharti v. State of Kerala*, AIR 1973 SC 1461.

8. *Ibid*

9. Inserted by the Constitution (42nd Amendment) Act, 1976 for "Sovereign Democratic Republic".

The terms 'democracy' in its broadest sense embraces, in addition to political democracy, also social and economic democracy. The term 'democratic' is used in this very sense in the Preamble.

Objectives enshrined in the Preamble.—The following are the objectives which the Preamble secures to every citizen:—

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 ¹⁰[unity and integrity of the Nation].

Democracy would indeed be hollow if it fails to generate this spirit of brotherhood among all sections of the people—feeling that they are all children of the same soil and the same motherland. It becomes all the more essential in a country like India composed of many races, religions, languages and of culture.¹¹ Article 1 of the Declaration of Human Rights adopted by the U.N.O. embodies this noble and human principle that "all the human beings are born free and in equal dignity and rights, they are endowed with reason and conscience and should act towards one another in a spirit of brotherhood." It is this concept of brotherhood of man which is contained in the Preamble of the Constitution and is given practical shape by abolishing title (Article 18) and untouchability (Article 17) and many other social evils which swayed the social arena of Indian Society.¹² "Liberty, Equality and Fraternity" which the Constitution seeks to secure for the people of India are to serve the primary objective of ensuring social, economic and political justice. Justice is the harmonious blending of selfish nature of man and the good of the society. The attainment of the collective good as distinguished from individual good is the main aim of rendering justice. Combining the ideals of political, social, economic democracy with that of equality and fraternity in the Preamble, Gandhiji described as "The India of My Dream", namely—"an India, in which the poorest shall feel that it is their country in whose making they have an effective voice; an India in which all communities shall live in perfect harmony."¹³

Can Preamble be amended under Article 368.—This question was raised for the first time before the Supreme Court in the historic case of *Kesavanand Bharati v. State of Kerala*.¹⁴ In that case the Attorney General argued that by virtue of the amending power in Article 368 even the Preamble can be amended. It was said that since the Preamble was a part of the Constitution it could be amended like any other provisions of the Constitution. The petitioners, however, contended that the amending power in Article 368 is limited. Preamble creates an implied limitation on the power of amendment. The Preamble contains the basic elements or the fundamental features of our Constitution. Consequently, amending power cannot be used so as to destroy or damage these basic features mentioned in the Preamble. It was urged that Preamble cannot be amended as it is not a part of the Constitution. The Supreme Court, however, held that the Preamble is a part of the Constitution and, therefore, on this point the *Berubari opinion* was wrong.

On the question whether the preamble can be amended the majority held that since the Preamble is the part of the Constitution it can be amended but subject to this

10. Inserted by the Constitution (42nd Amendment) Act, 1976.

11. Basu—Introduction to the Constitution of India, p. 23 (3rd ed. 1954).

12. *Buckingham & Carantic Co. Ltd. v. Venkatiah*, AIR 1964 SC 1272.

13. M.K. Gandhi—India of My Dreams, pp.9-10.

14. AIR 1973 SC 1461.

condition that the "basic features" in the Preamble cannot be amended. The Court said, "the edifice of our Constitution is based upon the basic elements mentioned in the Preamble. If any of these elements are removed the structure will not survive and it will not be the same Constitution or it cannot maintain its identity. The Preamble declares that the people of India resolved to constitute their country into a Sovereign Democratic Republic. No one can suggest that these words and expressions are ambiguous in any manner. An amending power cannot be interpreted so as to confer power on the Parliament to take away any of these fundamental and basic characteristics of policy." It is submitted that this view of the court is correct. The amending power cannot change the Constitution in such a way that it ceases to be a 'Sovereign Democratic Republic'. It can only be done by wrecking Constitution.

42nd Amendment and the Preamble.—The amendment has inserted three new words in the Preamble i.e., Secularism, Socialism and Integrity. These concepts were already implicit in the Constitution. The amendment merely spells out clearly these concepts in the Preamble.

Socialism is implicit in the Preamble and the directive principle of the Constitution. The term "economic justice" in the Preamble denotes nothing but India's resolve to bring socio-economic revolution. The Directive Principles, particularly Article 39 (b) and (c) of the Constitution are Charters of social and economic liberties of the people. The word 'socialism' has, however, no definite meaning. It has been invariably used in both the types of constitutions—democratic and communistic. Generally, the term implies a system of government in which the means of production is wholly or partially controlled by the State. India's socialism is, however, a democratic socialism and not a 'communistic socialism'. For this purpose, the Preamble has combined both the words, Socialism and Democracy in the Preamble. This combination of the words; socialism and democracy have been criticised by many writers. It has been said that democracy and socialism cannot co-exist. This criticism is, however, not justified in view of the gradual change of thinking of the modern socialists. Their thinking is in line with the idea of a welfare State which would prevent only the excess of exploitation and free competition without destroying individual initiative and without detriment to the political freedoms. It is thus, marriage of democracy and socialism which has been embedded in the Indian Constitution.¹⁵

In *Excel Wear v. Union of India*,¹⁶ the Supreme Court considered the effect of the word 'socialist' in the Preamble. The court held that the addition of the word "Socialist" might enable the courts to lean more in favour of nationalisation and State ownership of an industry. But so long as private ownership of industries is recognised and governs an overwhelming large proportion of our economic structure, the principles 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. Nakara v. Union of India*,¹⁷ the Supreme Court has held 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. This amongst others on economic side envisaged economic equality and equitable distribution of income. This is a blend of Marxism and Gandhism leaning heavily towards Gandhian Socialism. This is the type of socialism which we wish to establish in our country.

15. V.S. Deshpande—Right and Duties under the Indian Constitution (15 JILI 1973 p. 94).

16. AIR 1979 SC 25.

17. AIR 1983 SC 130.

The word 'integrity' is intended to put an end to separatist tendencies and make people feel that every part of India is their home. This concept was already implicit in the nature of the federation envisaged by the Indian Constitution. The framers have used the words "India shall be a Union of States" in Article 1 of the Constitution with a view to make it clear that the States have no right to secede from the federation. In addition to this, Article 19 empowers the State to impose reasonable restriction on the freedom of speech and expression of citizens in the interests of integrity and sovereignty of India. This freedom cannot be allowed to endanger the integrity or sovereignty of India or to allow citizens to preach secession of any part of India from the Union. In view of the above provisions of the Constitution, this amendment was not necessary.

'Secularism' means a State which does not recognise any religion as a State religion. It treats all religions equally. The concept of secularism was already implicit in the Constitution, "liberty of.....belief, faith and worship". Articles 25 to 28 of the Constitution guarantee to every person the freedom of conscience and the right to profess, practise and propagate religion. In *St. Xavier College v. State of Gujarat*,¹⁸ the Supreme Court has said, "although the words 'secular State' are not expressly mentioned in the Constitution but there can be no doubt that Constitution-makers wanted to establish such a State" and accordingly Articles 25 to 28 have been included in the Constitution.

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