

CONSTITUTIONAL VALUE OF THE PREAMBLE

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ABSTRACT

The Preamble is the key of the constitution. In the article we will discuss about the importance of the preamble in our Indian constitution, history behind its formation and its significant role in framing of the Indian constitution. What was the reason behind the formation of the Preamble to the Indian Constitution? Why there was a doubt in mind of the law makers to whether consider the preamble as a part of the Indian constitution or not? Can we amend the Preamble? With the help of the historical landmark cases, we will discuss the various possibilities and challenges faced by the honorable Supreme Court while interpreting the ideologies behind framing of the Preamble with respect to the Indian constitution.

INTRODUCTION

The Preamble is an introductory statement in a document that explains the document's philosophy and objectives. In the constitution, it signifies the intentions behind its framers, the history behind its formation, and the key values and doctrine of the nation. The ideals behind the Preamble to Indian constitution were constituted by Jawaharlal Nehru's Objective Resolution.ⁱ On December 13, 1946, Jawaharlal Nehru introduces an objective resolution and further it was accepted by the constituent assembly on January 22, 1947. It was observed by the drafting committee under the chairmanship of Dr B.R. Ambedkar observed that the preamble must be limited in defining the important features of the new states and its socio-political objectives and other important matters should be refined further in the constitution. The committee further changed its motto from 'Sovereign Independent Republic' to 'Sovereign Democratic Republic' as mentioned in the 'Objective Resolution'.ⁱⁱ It was adopted on November 26, 1949, and then came into an effect from January 26, 1950, also known as the Republic day. What's the purpose of the preamble? According to the Preamble it is the people of India who have enacted, adopted and given the constitution to themselves, therefore the preamble indicates that the constitution derives its power from the people and the derivation of all authority under the constitution emerges from its people. It also means that sovereignty ultimately resides with the people. The preamble affirms India to be Sovereign Socialist Secular and Democratic Republic. The word Sovereign means that India has supreme authority and power and no other external authority can undermine the authority of the Indian government. India is an independent authority and the legislature has the power to make the laws under certain limitations imposed by the constitution. Socialist was added by the 42nd amendment act, 1976, it means achieving socialist ends through democratic means. India has adopted the concept of 'Democratic Socialism'.ⁱⁱⁱ It basically believes in the mixed economy concept where private and public sector co-exists and works together side by side. The word Secular also added by the 42nd amendment act, 1976, which means all religions in India get equal respect, protection and support from the state. Part III of the Indian constitution from Article 25 to 28 consists Freedom of Religion as the fundamental right. The word Democratic indicates that the constitution has established a form of government that gets its authority from the will of the people expressed in the election. India is a democratic country which means the supreme power lies with the people. The word Republic means that the head of the state is

elected directly or indirectly by the people. President is the head and is elected indirectly by the people. In the republic political sovereignty is vested in the people and not in a monarch.^{iv}

IS PREAMBLE A PART OF THE INDIAN CONSTITUTION

This question was raised in front of the honorable Supreme court in the landmark case of Re: The Berubari Union, March, 1960. The facts of the case were, according to the Indian Independence act, 1947, the boundaries between India and Pakistan were to be gauge by the award of a of a boundary commission which was to be chosen by the Governor-General. Accordingly, the Governor-General appointed a commission whose chairman were Sir Cyril Redcliff. The award presented by the Redcliff committee was rejected by India and Pakistan. This caused boundary disputes between the two nations. In order to resolve these disputes Indian Prime Minister Jawaharlal Nehru and Pakistan's Prime Minister Mr. Feroze Khan Noon signed an agreement in 1958.

The agreement contains the division of the Berubari Union No.12 and the exchange of enclaves between the two nations. The exchange was drawn on the concept of 'enclaves for enclaves'.^v The consideration for territorial gain or loss was not included. As enacted by the agreement, Berubari Union No 12 was to be divided horizontally, in such a manner that half of the area would be given to Pakistan and remaining half to India. This decision received heavy criticisms after which union government decided to refer the case to the Supreme Court.

LEGAL ISSUES RAISED

Whether the enforcement of an agreement with respect to the Berubari union and the exchange of enclaves includes some legislative intervention either through the law of the parliament mention in the article 3 of the constitution or through the necessary amendments mentioned in the Article 368, or both?

The president felt that both the problems mentioned are of such nature and importance that the opinion of the Supreme Court shall be required. He therefore introduced the following

questions to the Supreme Court by exercising the power provided in the Article 143 of the constitution.

1. Does the implementation of the agreement regarding the Berubari case require legislative actions?
2. If, then will the law legislated by the parliament under Article 3 of the Indian constitution be enough for the execution of the agreement with respect to the Berubari case or there should be an amendment to the constitution under Article 368? If required should it be considered as an alternative or addition.

ARGUMENTS

The Union Government argued that the agreement is just the recognition of the boundary which was previously decided and is not a substitution of the new boundary. The settlement decided is not an alienation of the territory of India. It was then argued that if any portion of the land is to be rendered to Pakistan, according to the award of boundary commission, it does not equate to the cession of territory and it is just the way of setting the boundary conflict.

The Union government contended that legislative actions are not required for the execution of the agreement which included the Berubari Union along with the exchange of enclaves. On the other hand, the opposite party argued that the parliament do not have any power to cede any portion of India in favor of a foreign state.^{vi}

JUDGEMENT

The Supreme Court held that the preamble cannot be considered as a part of the Indian constitution and therefore it could never be regarded as a source of any substantive body. Such powers are granted in the constitution. Whatever true about these powers are equally true about the prohibitions. It has restricted application and can be restored if there is any ambiguity in the statute. If the terms used in the constitution contain two meanings while interpreting them then some help can be taken from the objectives enshrined in the constitution which fits the preamble may be favored.

CAN WE AMEND THE PREAMBLE?

However in another landmark case of *Kesavananda Bharati v State of Kerala, 1973*. This case has created a history. For the first time, a bench of 13 judges assembled and sat in its original jurisdiction hearing the writ petition. The same question was raised in front of the honorable Supreme court that whether preamble is a part of constitution or not? In this case Y.V. Chandrachud, J. argued that the Preamble may be the part of the constitution but it is not a provision of the constitution and therefore we cannot amend the constitution in order to destroy the Preamble.^{vii} *Kesavananda Bharati* case was a climacteric point in the history of the constitution. All the judges in the case have their own view such as, chief justice Sikri held that there were certain inherent restrictions on the power of the parliament to amend formed on higher principles reinforcing the constitution such as the supremacy of the constitution, separation of powers, republic and democratic form of government along with the secularism and federalism features of the constitution.^{viii}

The facts of the case were; Swami HH Sri Kesavananda Bharati, Senior head of Edneer Mutt challenged that the government of Kerala ventures under the two state land reforms act in order to force the limitations on the administrations of its property.

Though under Article 21, the state can conjure its power, Nanabhoy Palkhivala, an Indian legal scholar advised Swami to file a petition under Article 26 of the Indian constitution. Major revisions were made in respect to the Article 24, 25, 26, 29 of the Indian constitution. These were sanctioned by Indira Gandhi's legislature through the parliament to revise the judgment previously passed in the case of *Golak Nath*. In the case of *Golak Nath* the judgment was given by the bench of 11 judges, therefore 13 judges bench was to be sit down in this case for the corrections that was under the test in *Kesavananda Bharati* case.

Justice Shelat and Justice Grover, in their common judgment, were concentrated on individual's dignity along with the unity and integrity of the nation in order to create a basic element of the constitution. Justice Hegde and Justice Mukherjea held that the parliament's power to amend is wide but it does not include the power to destroy the basic elements of the constitution, in the Preamble. The two fundamental purposes of the Preamble are to set up sovereign democratic republic and to provide rights to the citizens of India. Justice Jaganmohan Reddy held that the key structural elements of the constitution; socialist secular sovereign

democratic republic nature of the constitution, justice, liberty, economic, social, faith and worship, equality of status and opportunity cannot be amended. Contrarily, Justice Khanna held that the basic structure only contains the outline of the constitution and not any particular provisions of the constitution. Therefore he rejected the idea that the Preamble cannot be amended.^{ix}

The majority of the judges in the landmark case of *Kesavananda Bharati v State of Kerala* held that the Preamble is a part of the Indian constitution and therefore it can be amended, but its basic structure cannot be amended by the parliament.

Chief Justice Sikri, observed it seems to me that “the Preamble of our constitution is of extreme importance and the constitution should be read and interpreted in the lights of the grand and noble vision expressed in the Preamble”. It was also observed that the basic elements cannot be amended under Article 368.^x

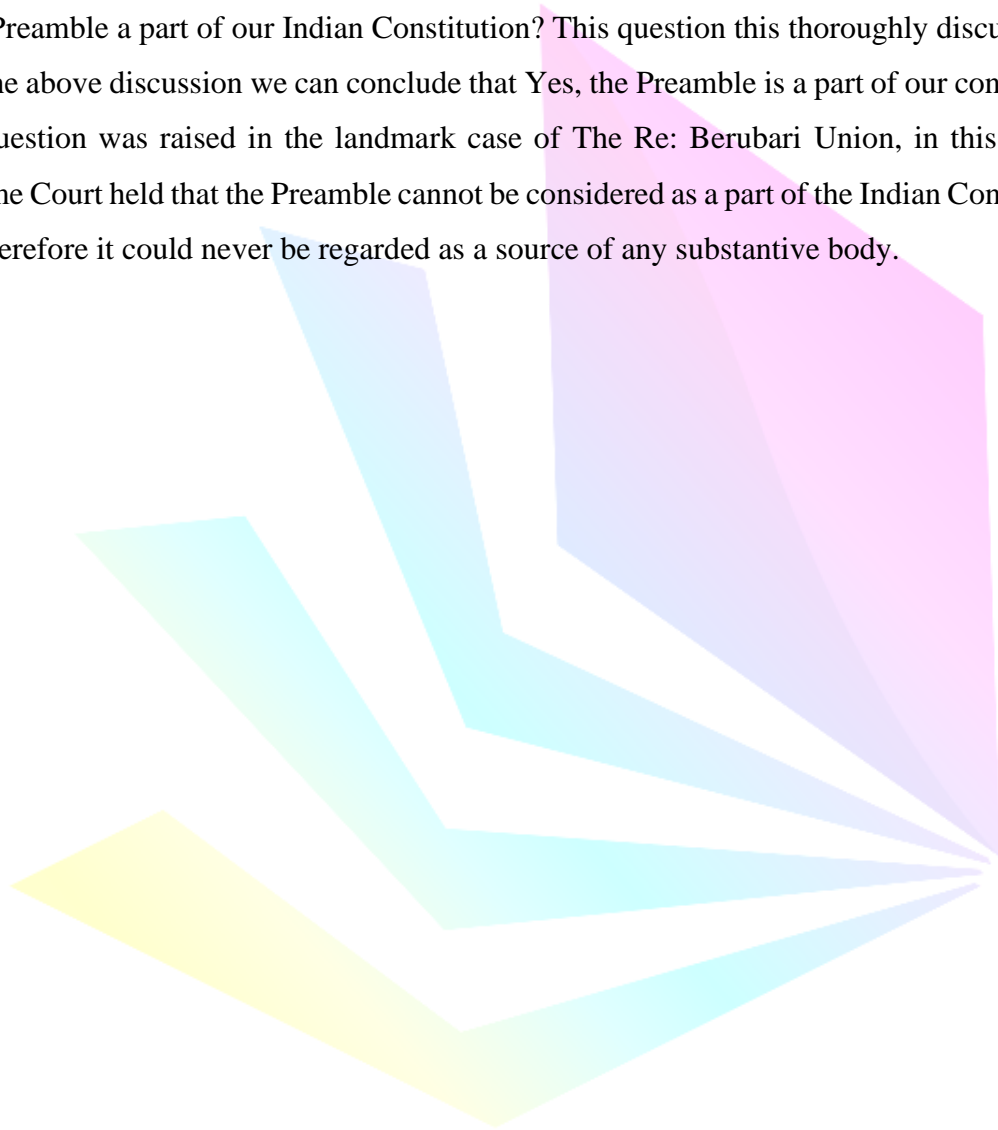
In another case of *SR Bommai v Union of India*, The Supreme Court stated that the power of the president to dismiss a state government is not absolute. The verdict said that the president should exercise his power only when his decree is approved by both the houses of the parliament. Until then, the president can only suspend the Legislative assembly and he has no power to dissolve the Legislative Assembly by exercising his powers under Article 356(1). “The dissolution of Legislative Assembly is not a matter of course. It should be restored to only where it is found necessary for achieving the purpose of the proclamation.”^{xi} The court said. In *SR Bommai v Union of India* the Supreme Court observed that “Secularism is the basic feature of the constitution.”

With respect to all these cases, it could be observed that Preamble is a part of the Constitution and that be amended under Article 368. The Preamble to the Indian constitution was therefore amended by the 42nd amendment act, 1976. It added the words socialist secular and integrity to the Preamble in order to make sure the economic justice and to remove the inequality in income and improve the standard of life. The word secular provides equal respect to all the religions and integrity focused on one of the main of the constitution which was to ensure fraternity and unity of the state.

CONCLUSION

"Indians today are governed by two different ideologies. Their political ideal set in the preamble of the Constitution affirms a life of liberty, equality, and fraternity. Their social ideal embodied in their religion denies them." -BR Ambedkar.^{xii}

Is the Preamble a part of our Indian Constitution? This question is thoroughly discussed and from the above discussion we can conclude that Yes, the Preamble is a part of our constitution. This question was raised in the landmark case of *The Re: Berubari Union*, in this case the Supreme Court held that the Preamble cannot be considered as a part of the Indian Constitution. And therefore it could never be regarded as a source of any substantive body.



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ENDNOTES

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