

A DEEP ANALYSIS ON THE CONTROVERSIAL PREAMBLE OF THE CONSTITUTION OF INDIA

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Abstract:

In Indian Premier League match in Tamil Nadu the theme song is “*NAMMA Thala Dhoni*” *ku oru visil podu* and “*NAMMA Thala Dhoni*” *ku oru kuthu dance podu* and it shows the youngsters celebrating Dhoni as their leader. Though there are several numbers of diverse cultures in India, still we find “**Unity in Diversity**” among Indian. The Constitution of India was finalized by the Constituent Assembly and came into force on 26th January 1950. The Preamble to the Indian Constitution is the starting point of the text of Constitution. The preamble to the Constitution in 1950 had provided that, India will be “**Sovereign Democratic Republic**”. In the 42nd amendments in 1976 two words “Secular and Socialist” were added between the words "Sovereign" and "democratic" and the words "unity of the Nation" were changed to "unity and integrity of the Nation". The words '**secular**' and '**socialist**' were removed from the preamble of India's Constitution in an advertisement issued on India's 66th Republic Day in 2015. In this paper an analysis has been made over this controversy on the Preamble of India's Constitution.

Key Words: Preamble, Constitution of India, Constituent Assembly, 42nd amendments, Secular, Socialist.

I. Introduction to Constituent Assembly:

The Constituent Assembly of India is a body consisting of popularly elected representatives composed for the purpose of writing or drafting a document called Constitution of India. The drafting It was in the pursuit of this very assurance that Gandhiji gave to the people the much-valued concept of ‘**SarvaDharmSambhav**’ - the principle that all religions are equal. The Muslim

League had boycotted the Constitution Assembly when it started its session on December 9, 1946, and it continued to boycott it even thereafter. The first meeting of the Constituent Assembly was held on 9th December 1946 in the constitution hall and Dr. Rajendra Prasad was elected as president and H.C. Mukherjee was elected as vice-president a Christian from Bengal and former vice-chancellor of Calcutta University. India became an independent nation, and the Constituent Assembly started functioning as India's Parliament on August 15th 1947. The drafting committee prepared the 1st draft in the **Constituent Assembly** ⁽¹⁾ constitution of India in February 1948.

The Preamble to Indian constitution is based on “**Objective Resolution**” of Jawaharlal Nehru and it was introduced by him in the Constitution Assembly, laying down the underlying principles of the constitution. It finally became the Preamble of the constitution. The **Constitution of India** was finalized by the Constituent Assembly and accepted by all on **November 26, 1949** and came into force on January 26, 1950. January 26th was selected, because it was this day in 1929 when Declaration of Indian Independence (Purna Swaraj) was proclaimed by the Indian National Congress. The Government of India declared **26 November as “Constitution Day** ^(2,3)” on 19th November 2015 by a gazette notification. The Prime Minister of India Narendra Modi made the declaration on 11 October 2015 while laying the foundation stone of the B.R. Ambedkar memorial in Mumbai.

II. Preamble of the Constitution of India :

Preamble means introduction or preface or foreword or prelude or opening words. Preamble is an integral part of the constitution. Preamble is the introductory part of the Constitution which is rightly defined as "Soul of the Constitution" & "Identity card of the constitution".

III. Constitution of India is a Quasi-Federal:

A Constitution of a Country may be Unitary or Federal. Central Government is having all the power in Unitary Constitution e.g. British Constitution. In Federal Constitution the powers are distributed between central and states e.g. American Constitution. The Constitution of India is a written constitution and it is neither purely federal nor purely unitary but it is a combination of both. According to Prof. Wheare the Constitution of India is a unitary state with subsidiary federal

features, rather than a federal state with subsidiary unitary features. Therefore, the Constitution of India is almost quasi-federal.



Photo: Jawaharlal Nehru and other members taking pledge during the midnight session of the Constituent Assembly of India held on 14 and 15 August 1947. (Courtesy: Wikipedia)

IV. Constitution Drafting Committee :

The constituent assembly contained many committees for various purposes, but the most important of these was the drafting committee. Drafting Committee was appointed on August 29, 1947 to draft a permanent constitution, with Dr B R Ambedkar as chairman.

The seven members of the committee were:

1. Dr. B R Ambedkar (Chairman)
2. N Gopaldaswamy Ayyangar
3. Dr. K M Munshi
4. T TKrishnamachari

5. Syed Mohammad Sadullah
6. N Madhav Rau
7. Alladi Krishnaswamy Ayyar

B.R. Ambedkar, the Chairman of the Drafting Committee of the Constitution of India, is widely considered to be its chief architect. During February 1948 the first draft of the constitution was published. The time was given to the people for discussion about the draft was eight months. After discussions, suggestions and proposed amendments were considered and a second draft was prepared by the assembly. The Constitution of India is a long document it has many Articles, it is known as the longest Constitution of the world. At the time of its commencement, it contained 395 Articles divided into 22 Parts, and 8 Schedules. Additions of articles have been made by numerous amendment and some provisions have been repeated.



Dr. B. Ambedkar, chairman of the Drafting Committee, presenting the final draft of the Indian Constitution to Dr. Rajendra Prasad on 25 November 1949. (Courtesy: Wikipedia)

V. Preamble 1950^(4,5,6):

The Constitution of India is a secular Constitution and it establishes a Secular state. The preamble of the Constitution outlines the main objectives of the Constitution. It serves as a key to the Constitution. The original text of preamble of the draft Constitution of India is given below:

PREAMBLE

“We, The People of India,

Have solemnly resolved to constitute India into a

SOVEREIGN 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 of the Nation;

IN OUR CONSTITUENT ASSEMBLY

This twenty-sixth day of November, 1949, do

HERE BY ADOPT, ENACT AND GIVE TO

OURSELVES THIS CONSTITUTION.”

Thus, the preamble to the Constitution had provided that, India will be “**Sovereign Democratic Republic**”. It is important to note that the words “Socialist” and “Secular” were not mentioned in the preamble. The first line of the preamble starts with the words: We, the people: It refers to the fact that the constitution is not forced or imposed upon us. In fact, it is voted to the constituent assembly. It summarizes that we, the people of India, have solemnly resolved to constitute India which means that the people of India are authors of the preamble.

The Preamble to the Indian Constitution is the starting point of the whole text of Constitution. It is an integral part of the same. The Preamble proclaims that India shall be a democratic republic and its objectives shall be to ensure **Justice, equality, fraternity and liberty** ^(4,5,6) for the masses.

VI. Berubari Union Case, 1960^(8,9):

Berubari case, 1960 was the power of the parliament to transfer the territory of Berubari to Pakistan and it was the Presidential Reference under Article 143(1) of the Constitution of India on the implementation of the Indo-Pak agreement relating to Berubari Union and exchange of enclaves. A bench consisting of **Eight Judges** sitting on the bench and Justice Gajendragadkar delivered the unanimous opinion that the preamble is not a part of the Constitution. A similar judgment was given by **11 Judges Bench Golaknath case, 1967**. The Supreme Court of India originally stated in the BeruBari case of presidential reference that **the Preamble is not an integral part of the Indian Constitution**, and therefore it is not enforceable in a court of law.

VII. Kesavananda Bharati Case, 1973^(10-14,18) :

Kesavananda Bharati vs The State of Kerala, The case is called in the annals of Indian judicial history, got its name from **His Holiness KeshvanandaBharati a Pontiff** ⁽¹⁶⁾ of the mutt. On **24 April 1973** case was decided, which has been playing a great role between Judiciary and Parliament from then till today. The KesavanandaBharati case was the culmination of a serious conflict between the judiciary and the government. In **Golaknath Case, 1967**, in which the petitioner challenged the **7th Constitutional Amendment Act, 1964** under Article 32 for violation of his fundamental rights. In Golaknath case, the Apex Court ruled, “**Parliament cannot take away**

or abridge and amend any of the fundamental rights, even cannot touch, because these are sacrosanct in nature”.

The Parliament passed the **24th** and **25th** Amendment Act in **1971** and overruled the verdict of Golaknath Case, and Expressed that, “we, the Parliament can Amend Anything in the Constitution, and Judiciary has no power to review”. The Supreme Court got an opportunity to review the 24th, 25th and 29th Amendment Acts in 1973, when the famous case of *Kesavananda Bharati v. The State of Kerala*, came before the Apex Court, where petitioner challenged these Amendments. First Time in the Indian Judiciary, 13 judges gathered to hear this case, on 24 April 1973, a very divided Judgement was passed by a majority of seven judges, including Chief Justice S.M. Sikri. The judgement was decided by a thin margin of 7–6. It totally took 68 working days commencing on October 31, 1972 and concluding on March 23, 1973. Chief Justice **SM Sikri** held that Parliament can amend every Article in the Constitution, but this power of amendment is not absolute because as it does not enable Parliament to overrule or take away fundamental rights or to completely change the basic fundamental features of the Constitution so as to destroy its identity. These fundamental features of the Constitution are what he called “Basic Structure”. The Supreme Court has held that Preamble is an integral part of the Constitution. The Supreme Court in Kesavanada Bharati Case (1973), gave an elaborate verdict that Preamble is Part of Constitution and is subject to the amending power of the parliament as any other provisions of the Constitution, provided the basic structure of the constitution cannot be destroyed. In the light of Kesavanada Bharti as well as other judgments, the following points about the constitution must be noted. Preamble is an integral Part of Constitution and Preamble Indicates “Basic structure of the Constitution (in SR Bommai Case also.). The Preamble can be amended by Parliament using its amendment powers as per Article 368.

Though later judgment got subverted in KeshvanandBharti Case 1973 where Supreme Court declared that *the Preamble is an integral part of the Indian Constitution, and therefore it is not enforceable in a court of law. Preamble as the "Basic feature of the constitution" & can be amended as well but the basic features should be intact. Though it is not legally enforceable but a grand vision of Preamble helps us achieve a Sovereign, Socialist, Secular & Equal society.*

VIII. 42nd Amendment Passed by the Parliament:

During the Emergency on December 1976 in India, the Indira Gandhi government pushed through several changes in the 42nd Amendment of the constitution. A committee under the chairmanship of Sardar Swaran Singh recommended that this amendment is enacted after being constituted to study the question of amending the constitution in the light of past experience. In this 42nd amendment, the words "socialist" and "secular" were added between the words "Sovereign" and "democratic" and the words "unity of the Nation" were changed to "unity and integrity of the Nation". From 1977 onwards the 3 words **Secular, Socialist and Integrity** were added to the constitution.

From 26th January 1977 onwards The Preamble of the Constitution changed the description of India from "Sovereign Democratic Republic" to a "Sovereign, Socialist, Secular **Democratic** Republic", and also changed the words "unity of the nation" to "unity and integrity of the nation".

The Amend Preamble read from 26th January 1977 as Thus-

PREAMBLE

"We, the People of India,

Have solemnly resolved to constitute India into a

Sovereign, Socialist, Secular Democratic Republic

And so on....

Thus, the Preamble to the Constitution indicates the "**Secular**" Constitution of the Indian Constitution. It also shows how Secular is being given a great importance in the Constitution. Unity and integrity of the Nation: Embraces both psychological and territorial dimensions of National integration. The Union means indestructible nature. This sentence aims at overcoming hindrances to national integration like communalism, regionalism, casteism, linguism, and secessionism.

One of the great things Prime Minister Indira Gandhi did in her repressive rule during the Emergency was to include the words, Secularism and Socialism, in the Preamble to the Constitution. Morarji Desai, who succeeded her, had all the changes she made in the Constitution deleted but retained the amendment to the Preamble.

66th Republic Day Advertisement with 1950 Version Preamble ⁽¹⁹⁻³⁰⁾:

The words '**secular**' and '**socialist**' were removed from the preamble of India's Constitution in an advertisement issued on India's 66th Republic Day in 2015⁽¹⁹⁻²¹⁾. The advertisement, published in newspapers across the country on January 26, quotes the preamble as: "We, the people of India, having solemnly resolved to constitute India into a **SOVEREIGN DEMOCRATIC REPUBLIC....**"

The ministry of information and broadcasting issued an advertisement on Republic Day that showed the original preamble of 1950. A storm of protest broke out. The two words were missing: secular and socialist. The confusion has been confounded by the Union Law and Justice Minister Ravi Shankar Prasad, who stated that the omission of words, Secularism, and Socialism, had given an opportunity to debate the matter all over again. The Minister of State for Information and Broadcasting Rajyavardhan Singh Rathore then defended the move stating that they advertised the picture of the first Preamble used during the adoption of the Constitution.

One of the Congress leader M.Tewari attacked the Centre on this issue, claiming the government advertisement "deleted" the two words, which was only a prelude to their "substitution" with "communal" and "corporate".

The controversy ended with an assurance and promise of Vice President of India **M. Venkaiah Naidu** ⁽²⁹⁾ said the government has nothing to do with these statements concerning the Preamble of the Constitution. "There is no proposal from the government. There is no question of any change in the Preamble to what has been brought about in 1976."

IX. Discussion on Challenges:

A challenge on the inclusion of the word 'socialism' in the Indian Constitution. On 8 January 2008, a petition, filed by Sanjiv Agarwal of the NGO. In its first hearing of the case, Chief Justice of

India K.G. Balakrishnan, who headed the three-judge bench, observed, "Why do you take socialism in a narrow sense defined by Communist? Socialism means welfare measures for the citizens in a broader sense. It is a facet of democracy. It hasn't got any definite meaning. It gets different meanings in different times. Justice Kapadia also stated that no political party had, so far, challenged the 42nd amendment and everyone had subscribed to it. The petition was withdrawn on 12 July 2010 after the Supreme Court declared the issue to be "highly academic"

A Division Bench of Allahabad High Court (25) recently dismissed a challenge to the addition of the words 'socialist' and 'secular' to the Preamble of Constitution of the Country and re-emphasized on the secular nature our country. In fact, some constitutional experts now claim that these words can *never* be removed since they form part of the "basic structure" of the constitution that has been upheld by the Supreme Court. Arvind P Datar ⁽²⁸⁾ is quoted in The Economic Times as saying that "not even a government which wins 543 out of 543 Lok Sabha seats can change this."

Effect of New Economic Policy on Socialistic Ideology:

The Preamble expresses a resolve to create inter alia a "Sovereign" and "Socialist" republic. It has been held by the Supreme Court of India time and again that these concepts embodying the philosophy of the Constitution are part of basic structure of the Constitution. The Supreme Court has clearly recognized the Socialist ideology to which India is wedded to. In a socialist economy the means of production should be socially owned and controlled for the benefit of the society as a whole. The State should see that the common man should enjoy the fruits of the development. To check private monopoly and concentration of economic power, public sector undertakings were set up as a countervailing force against private sector. This is known as replacement of Socialistic pattern of "mixed economy" as opposed to "market economy" based on capitalistic system.

X. Secular in Unity and Diversity:

"Unity in Diversity" is the unity among people of different variety of people and it is the motto of Indian life and culture. Though the people of India from different states of India are different in

their manners and ways of living, they are aware of the importance of National Integration. There is one religion that can bind all the Indian on a single thread from Kashmir to Kanyakumari, is cricket. The game has been playing as a huge part in the country's diplomatic policies. Current Indian cricket team has players from Punjab, Delhi, Gujarat, Maharashtra, Uttar Pradesh, Tamilnadu, Karnataka, Jharkhand (M.S.Dhoni) and West Bengal. Our Indian cricket is an example of unity in diversity.

In Indian Premier League Match ⁽³¹⁻³³⁾, the C.S.K. (Chennai Super Kings) emerges **IPL – 2018 Champion**. The famous theme song in Tamilnadu while celebrating the T20 match of IPL title triumph is (*Chennai Super Kings*) *C.S.K ku oru visil podu "NAMMA Thala Dhoni" ku oru kuthu dance podu. Enga Thala Dhoni ku periya whistle adinga...* It means "Cheer for our **Captain Dhoni** by blowing big whistle". It is a line in CSK theme song. All the school, as well as college students, are treating our Indian cricketers as their brothers / their role model. All the students' enjoyment and feelings revealed during the International Cricket Match and we can find our Unity. Besides Hinduism, other religions like Christianity, Islam, Sikhism, Buddhism, and Jainism have a large following in India. Modern India is a country of very diverse cultures with many languages, religions and traditions.



Unity in Diversity. (Courtesy: www.superthirty.com)

Today in India, there are a large number of ancient culture prevailing or still practicing. Though there are several numbers of diverse cultures in India, still we find “**Unity in Diversity** ⁽³³⁾” among Indian. Thus, **Secularism** has been pivotal to the post-independent India, binding all communities together as equal citizens which indirectly say that India needs Uniform Civil Code for all. In the Bommai case in 1994, the Supreme Court added that Secularism is also a part of basic structure as the basis of the Indian Constitution is that all citizens are equal and that the religion of a citizen is irrelevant in the matter of his enjoyment of Fundamental Rights.

XI. Conclusion:

The Government and their policies may change, but the Preamble of the Constitution should not be changed or unaltered. One India – different preambles of the Constitution will give an endless question mark which leads Controversy on Preamble of the Constitution. In India, The Supreme Court has performed a great role to make the social justice successful and it should put a full-stop for this controversy Preamble.

XII. References:

- 1 https://en.wikipedia.org/wiki/Constituent_Assembly_of_India
2. The Hindu, Celebrating Constitution Day, 26th Nov. , 2015.
3. Livemint, What is Constitutional Day?, 26th Nov. 2016.
4. www.download.nos.org/srsec317newE/317EL5.pdf (Preamble and the Salient Features of the Constitution of the India).
5. Preface, The Constitution of India,(PDF), Government of India, Retrive 2015 .
6. Dr RD Vijay Sekar, Constitutional Law, Vijay Law Series, Vijay Publication, 2008
7. Mirchandani (1 January 1977). Subverting the Constitution. Abhinav Publications. pp. 37–41; 183. Retrieved 8 December 2013
8. Trishna Roy, Case Study on The Berubari Union And. Others vs Unknown on 14 March, 1960.(Case Analysis).

9. The Berubari Union and .Vs Unknown on 14 March, 1960, AIR 1960 SC 845, 1960 3 SCR 250.
10. I.C. GolakNath v. State of Punjab, AIR 1967 SC 1643.
11. *Granville, Austin. Working A Democratic Constitution - The Indian Express, Page ,371*
12. [.http://www.livelaw.in/seven-interesting-things-keshvananda-bharati-case/](http://www.livelaw.in/seven-interesting-things-keshvananda-bharati-case/)
13. KesavanandaBharati v. State of Kerala, AIR 1973 SC 1461.
14. **N Karapaha D Nagarathinam & D Nagarathinam P Duraipandian**, A Comparative Study Of King Janamejaya, Kannagi And Former Prime Minister Indira Gandhi In Court Of Law, Journal of Legal Studies and Research, Vol.4 Issue 4 PP. 452 - 467.
15. “*When in doubt ,amend*”, *Indian Express. 21st Aug. 2009*. Retrieved 2013-11-23.
16. . Arvind P Datar, The Case that saved Indian Democracy, The Hindu, April 24th , 2013.
17. [.www.rediff.com](http://www.rediff.com) › News , Laws violating Constitution's framework open to review:
18. Minerva Mills Ltd. &Ors vs Union Of India &Ors on 31 July, 1980
19. . IndiaResists.Com, Secular and Socialist Dropped From the Preamble of Indian Constitution In Republic Day Advertisement, 27th January 2015.
20. The Hindu, Sena wants ‘secular’, ‘socialist’ deleted from preamble to Constitution, Mumbai, 28th January 2015.
21. The Hindu, 3rd Feb. 2015. ‘I never called for a debate on secularism and socialism’ ,[Ravi Shankar Prasad](#) , February 03, 2015.
22. The Hindu, 2nd Feb. 2015. A needless controversy ,February 02, 2015 .
23. The Hindu, Debates show why Preamble’s original text left out the two words. New Delhi, Janu. 29th, 2015.
24. [.www. archive.indianexpress.com/news/supreme-court-says-no-to...socialist.../259361/](http://www.archive.indianexpress.com/news/supreme-court-says-no-to...socialist.../259361/), Supreme Court says no to deleting ‘socialist’ from Constitution, New Delhi, January 8, 2008.
25. <http://www.livelaw.in/allahabad-hc-upholds-addition-of-words-socialist-and-secular-to-preamble-to-the-constitution-of-india/>

26. The Hindu, Let nation debate Preamble: Ravi Shankar, New Delhi, 29th January, 2015.
27. NDTV, Secular, Socialist' Added to Constitution During Dark Period of Emergency, Says Minister Ravi Shankar Prasad, 29th January 2015.
28. R Jeganathan, “Secular, Socialist” are Relics of Congress Undemocratic Past ; They have little meaning Today, Jan. 28th, 2015. Firstpost.
29. The Hindu, New Delhi, National Preamble row: Govt. not to remove words ‘secular’, ‘socialist’ , New Delhi, February 24, 2015 15:12 IST (Venkaiah Naidu V.P).
30. www.livelaw.in/rethinking-the-preamble/
31. <https://www.smule.com/song/ipl-csk-whistle-podu-chennai...lyrics/.../arrangement>
32. IPL 2018 Winners Chennai Super Kings continue their celebrations back home in Chennai , Mirror Online , Mumbai Mirror, Updated: May 29, 2018,
33. www.yourarticlelibrary.com/india-2/short-speech...unity...diversity-in-india.../4000
34. The New Indian Express, Legal Experts Say Debating Preamble of Constitution Pointless, Needless, January 30, 2015.