



ROLE OF PREAMBLE IN DEVELOPING ‘THE LIMITED THEORY OF AMENDMENT’ IN INDIA

Dr.N.M.Khirale¹

Associate Professor & Head,
Department of Law, Dr. Ambedkar College,
Deeksha Bhoomi,
Nagpur, Maharashtra

Article DOI: <https://doi.org/10.36713/epra3997>

ABSTRACT

The Preamble to the constitution has a noble vision which is reflected in the body of constitution in two parts. Chapter on fundamental rights and directive principles both are constitutional goals. The foundation of welfare state and democratic setup is a basic feature which directs state machinery to respect the way, access to exercise of right to life of millions in India. The Supreme nature of the constitution, Republic and Democratic form of Government. Secular in itself and partially adoption of theory of Separation of powers with Federal character are the basic elements of the constitution which can easily be understood by anybody by simply reading the contents of the preamble.

The Constitution-makers with legitimate voice finalized the competency parliament to make amendments in rights to cater the present needs of nation and also to find remedial measures for the problems of socio-economic progress and development of the country.

KEYWORDS: Preamble, Basic structure, Amending powers, limited power theory.

INTRODUCTION

Objective Resolution Which Was Moved By Pandit Nehru In The Year 1928 Was Under Consideration Of Drafting Committee, Finally Contents Of objective Resolution Was Redrafted And Adopted By The Constituent Assembly on twenty sixth day of November, 1949. The Opening of the Preamble Says That 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. The Above Introductory Part Was Came Into Force from 26 January 1950.

The spirit or the ideology contain in objective resolution was adopted in its totality by the constituent assembly and framer put life in it and finally it becomes introductory part of Constitution. The fundamental rights are given an inspirational position for development of citizen to the fullest extent under our Constitution. Parliament has limited powers, it has to keep in mind the philosophy, history of its inclusion in constitution. In Constitution provisions relating to fundamental rights and Directive Principles formed an unified mutually inclusive scheme, of an independent code. State can enforced the Directive Principles of State Policy without recourse to Article 13 of the constitution. Guarantee of fundamental rights is not absolute, It determines the ambit of the freedom. the Constitution contain provisions for the suspension of exercise of fundamental rights subject to social control and national interest. Parliament can introduce some



changes by way of amendment to the constitution for peace, welfare and good government of the state.

HISTORY OF PREAMBLE

The first meeting of the Constituent Assembly took place on December 9, 1946 when the swearing in of members and election of a temporary president to conduct the business until the installation of a permanent head, took place. On December 13, 1946 Pandit Jawahar Lal Nehru moved the famous "Objectives Resolution" giving an outline, aims and objects of the Constitution. This resolution was actually passed on January 22, 1947 by all members of the Constituent Assembly (standing) and it declared among other matters that all power and authority of the sovereign Independent India, its constituent parts and organs of Government are derived from the people. By November 26, 1949 the deliberations of the Constituent Assembly had concluded and the Constitution had been framed. As recited in the Preamble it was on that date that the people of India in the Constituent Assembly adopted, enacted and gave to themselves "this Constitution" which according to Article 393 was to be called "The Constitution of India". In accordance with Article 394 that Article and the other Articles mentioned therein were to come into force at once but the remaining provisions of the Constitution were to come into force on the 26th day of January 1950.

THE PREAMBLE: PRIDE OF PLACE

It was specifically held by the court in 1965 in *Beruberi* case that preamble is a solemn form all the ideals and aspirations of the Indian people. Philosophy of Lord Buddha certainly represented in preamble and it also contains some ideas adopted by other countries. But the constant strain which runs throughout each and every article of the Constitution is reflected in the Preamble which could and can be made sacrosanct. The preamble was, therefore, meant to embody in a very few and well defined words the key to the understanding of the Constitution. It occupied symbol status and place of pride in Indian constitution.

On July 22, 1947, while moving the report of the Union Constitution Committee, Jawaharlal Nehru suggested that it was not at that stage necessary to consider the Preamble since the Assembly stood by the basic principles laid down in the Objectives Resolution and these could be incorporated in the Preamble later. The suggestion was accepted and further consideration of the Preamble was held over.

Meanwhile important developments had taken place in regard to the Indian States. With the completion of the process of merger and integration of the Indian States the principle had been accepted (i) of

sovereign powers being vested in the people, and (ii) that their Constitutions should be framed by the Constituent Assembly and should form integrated part of the new Constitution. The draft preamble was considered by the Assembly on October 17, 1949.

An amendment was moved in the Constituent Assembly to make it clear beyond all doubt that sovereignty vested in the people. It was not accepted on the short ground that "the Preamble as drafted could convey no other meaning than that the Constitution emanated from the people and sovereignty to make this Constitution vested in them

The history of the drafting and the ultimate adoption of the Preamble shows :

- (1) That it did not "walk before the Constitution" as is said about the preamble to the United States Constitution;
- (2) That it was adopted last as a part of the Constitution;
- (3) That the principles embodied in it are taken from the Objectives Resolution;
- (4) That it embodied the fundamental concept of sovereignty being in the people.

THE PREAMBLE: SOURCE OF LIMITED POWER

How the preamble will assist in interpreting and in discovering the meaning of the word "amendment" employed in Article 368 was under consideration of Indian judiciary.

The preamble does not have the widest possible meaning and there are certain limitations to the exercise of the amending power and, therefore, the expression "amendment" should be construed considering those limitations. All the elements of the Constitutional structure, are to be found in the preamble and the amending body cannot repeal or abrogate those essential elements because if any one of them is taken away the edifice as erected must fall.

The preamble was finalized after a long discussion and it was adopted last so that it may embody the fundamentals underlying the structure of the Constitution. It is true that on a concept such as social and economic justice there may be different schools of thought but the Constitution makers knew what they meant by those concepts and it was with a view to implement them that they enacted Parts III (Fundamental Rights) and Part IV (Directive Principles of State Policy) - both fundamental in character - on the one hand, basic freedoms to the individual and on the other social security, justice and freedom from exploitation by laying down guiding principles



THE PREAMBLE: PEOPLE'S WILL

The various fundamental rights has permanence place in Indian constitution. They are "paramount", "sacrosanct", "these rights are reserved by the people", they are "inalienable and inviolable", and "transcendental". the part III is a foundation for minorities which shows their existence in political platform. It is a guarantee for them to live dignified life like others. Preamble is the people's will and certain Articles or doctrines of the Constitution are utterly incapable of alteration at any time even if demanded by an absolute majority of the voters.

THE PREAMBLE: GUIDANCE FORCE

Indian judiciary has constantly looked to importance of the preamble and its guidance force and given it a transcendental position when considering on the issue of the waiver of a fundamental right referred to the preamble and to the genesis of declaration of fundamental rights while interpreting the Constitution or other laws. The Supreme Court denoted to the preamble extensively and observed that the fundamental rights were provided for "to implement and fortify the supreme purpose set forth in the preamble".

In other countries also following the same system of jurisprudence the preamble has been referred to for finding out the Constitutional principles underlying a Constitution.

The Preamble is a similar in principle to the constitution and any amendment to basic features can be declared beyond the competence of Parliament or any state legislature to enact so long as our Constitution remains in its present form of a Constitutional democracy.

In re. Berubari case The Court laid down the following propositions

A preamble is useful, it is helpful for opening the minds of the makers, and object behind several provisions in the Constitution; the government has limited powers under the Constitution; there are certain prohibitions and limitations on the powers of government;

The people of India gave to themselves this Constitution on the 26th day of November 1949. Even if the preamble was actually adopted by the Constituent Assembly at a later date, no one can question the statement made in the Preamble that the Constitution came into force on the date mentioned therein. The supreme court held that The preamble itself must be deemed by a legal fiction to have come into force with effect from 26th November 1949. Even if this is a plausible conclusion, it does not appear to be sufficient to support the observation in the Berubari case that the preamble was not a part of the Constitution.

The preamble serves several important purposes. Firstly, it indicates the source from which the Constitution comes viz. the people of India. Next, it contains the enacting clause which brings into force the Constitution. In the third place, 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. From all these, if any provision in the Constitution had to be interpreted and if the expressions used therein were ambiguous, the preamble would certainly furnish valuable guidance in the matter, particularly when the question is of the correct ambit, scope and width of a power intended to be conferred by Article 368.

The historical background, the Objectives Resolution formed the basis of the preamble and the preamble occupies fundamental position in our Constitution. It constitutes a land-mark in India's history and sets out as a matter of historical fact what the people of India resolved to do for molding their future destiny. The Constitution makers made everything clear during debate on status of preamble and its guidance force.

While examining the effect of the declarations made and the statements contained in the preamble on interpretation of the word "amendment" employed in Article 368 of the Constitution the Apex Court said that the people of India resolved to do was to constitute their country into a Sovereign, Democratic and Republic. The preamble contains the fundamentals of our the historical background, the Objectives Resolution formed the basis of the preamble and the preamble occupies fundamental position in our Constitution. It constitutes a land-mark in India's history and sets out as a matter of historical fact what the people of India resolved to do for molding their future destiny

CONCLUSION

The effect of the declarations made and the statements contained in the preamble on interpretation of the word "amendment" employed in Article 368 of the Constitution the Apex Court said that the people of India resolved to do was to constitute their country into a Sovereign, Democratic and Republic. the preamble contains the fundamentals of our Constitution, it has to be seen whether the word amendment in Article 368 should be so construed that by virtue of the amending power the Constitution can be made to suffer a complete loss of identity or the basic elements on which the Constitutional structure has been erected, can be eroded or taken away.



REFERENCES

1. *Preamble to the Constitution of India.*
2. *Behram Khurshid Pesikaka's [1955] 1 S.C.R. 613 at p. 653case.*
3. *Bhagwati J., in Bashesar Nath v. Commissioner of Income-tax [1959] Suppl. 1 S.C.R. 528*
4. *In Re Kerala Education Bill 1957 [1959] S.C.R. 995 this (Constituent Assembly Debates Vol. 10, pp. 432-442). (The Framing of India's Constitution by B. Shiva Rao, p. 131)*
5. *Rex v. Hess [1949] Dom. L.R. 199 at p. 208*
6. *I. C. Golaknath & Ors vs State Of Punjab & Anrs 1967 AIR 1643, 1967 SCR (2) 762*
7. *Kesavananda Bharati v. State of Kerala (1973) 4 SCC 225: AIR 1973 SC 1461*