

Preamble – Its History and Amendability

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Manifest pedagogy:

In the 2021 Winter session of the Indian Parliament, a private member's Bill to amend the Preamble to the Constitution to replace the word "socialist" with "equitable", among other changes, was introduced by BJP MP K.J. Alphons led to protests by Opposition MPs. In this context let us understand the issues surrounding amendability of the Preamble of Indian Constitution.

In news: Protests over BJP MP's Bill to amend Preamble

Placing it in syllabus: Law and Policy

Static dimensions:

- Preamble
- Preamble and its Key terms
- Objectives resolution and its link to Preamble

Current dimensions:

- SC views on the Position of the Preamble (Berubari and Keshavanand Bharati case)
- 42nd amendment to the Preamble

Content:

Preamble:

- In general, Preamble refers to an introductory statement, which in turn describes, or states the reason for, the remaining portion of the document or writing.
- The Preamble of the Indian Constitution is an

introductory statement, stating the aims and objectives of the constitution.

- Accordingly, the preamble to the Indian constitution spells out the basic philosophy contained in the body of the Indian Constitution.
- Preamble as such is widely accepted as the quintessence or soul and spirit of the constitution, because it embodies the fundamentals and the basic of the constitution as well as the vision and commitment of a newly liberated nation

The Preamble is considered to be the key of the Constitution because it explains the objectives of the Constitution in two ways:

- about the structure of the governance
- about the ideals to be achieved in independent India.

Four important aspects about Indian Constitution that can be known from the text of the preamble are:

- **Source of authority of the constitution:** Derives its authority from the people of India
- **Nature of Indian State:** Declares India to be a Sovereign, Socialistic, Secular, Democratic and Republic
- **Objectives of the constitution:** To achieve Justice, Liberty, Equality and Fraternity
- **Date of its adoption:** 26 November 1949

Current Text of the Preamble of Indian Constitution:

“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 26th day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION”

Opinions and comments by eminent personalities about the preamble of the Indian constitution:

- ‘Identity card of the constitution’- NA Palkhivala
- ‘The preamble to our constitution expresses what we had thought or dreamt so long’- Sir Alladi Krishnaswamy Iyer
- ‘The horoscope of our constitution’- Dr KM Munshi
- ‘It is the soul of the constitution. It is a key to the constitution. It is a jewel set in the constitution. It is a proper yardstick with which one can measure the worth of the constitution’- Pandit Thakur Das Bhargava
- ‘Key-note of the constitution’- Sir Ernest Baker
- ‘Preamble is the soul of our constitution, which lays down the pattern of our political society. It contains a solemn resolve, which nothing but a revolution can alter’- Former Chief Justice of India, M Hidayatullah

Preamble and its Key Terms:

Sovereign:

- Implies that India is neither a dependence nor a dominion of any other nation but an independent state.
- There is no authority above it, and it is free to conduct its own affairs (both internal and external).
- Being a sovereign state, India can either acquire a foreign territory or cede a part of its territory in favour of a foreign state.
- In other words, a sovereign state is not subject to the

control of any other state or external power, and that state has the power to legislate on any subject.

Socialist:

- It was added to the Preamble by the 42nd Amendment in 1976.
- Even before the term was added by the amendment, the Constitution had a socialist content in the form of certain Directive Principles of State Policy.
- Socialism in India is democratic socialism.
- India has a mixed economy with the coexistence of both private and public sectors.
- As the Supreme Court says, 'Democratic socialism aims to end poverty, ignorance, disease and inequality of opportunity.
- Indian socialism is a blend of Marxism and Gandhism, leaning heavily towards Gandhian socialism'.

Secular:

- It was also added into the Preamble by the 42nd Amendment in 1976.
- Secular means that relations between government and religious groups are determined according to the Constitution and the law.
- Secularism separates the power of state and religion.
- In Indian secularism, all religions receive the same support from the state.
- In other words – the Indian Constitution embodies the positive concept of secularism i.e., all religions in our country (irrespective of their strength) have the same status and support from the state.

Democratic:

- The term democratic means that the Constitution of India provides for a form of government that derives its authority from the will of the people expressed in an

election.

- The term 'democratic' is used in the Preamble in the broader sense embracing not only political democracy but also social and economic democracy.

Republic:

- The term republic means that the head of state is elected by the people. (It's not hereditary)
- In India, the President of India is the elected head of state, who is indirectly elected by the citizens of India for a 5 year term.

Justice:

The Constitution provides for social, economic, and political justice to ensure equality among its citizens.

- **Social justice:** Social justice means the absence of privileges to certain sections in society. It means that no discrimination shall be made against any citizen on the basis of caste, creed, color, religion, sex or place of birth.
- **Economic justice:** Economic justice means that there is no discrimination between people on the basis of income, wealth and economic status.
- **Political justice:** Political justice means giving equal, free, and fair opportunities to people for participation in the political process.

Liberty:

- The ideal of liberty means that rules do not limit or control the activities of individuals.
- The Preamble gives five different types of liberty. They are liberty of thought, expression, belief, faith, and worship.

Fraternity:

- The word means a feeling of brotherhood and an emotional attachment to the country and all people.
- Fraternity helps to promote dignity of an individual and unity in the nation.
- The constitution promotes this feeling of fraternity by the system of single citizenship.
- Also, the Fundamental Duties (Articles 51-A) say that it shall be the duty of every citizen of India to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic, regional or sectional diversities.

Objectives resolution and its link to Preamble

- The Preamble traces its origins to even before the task of drafting the Constitution began.
- The foundations of the Preamble were laid down in the 'Objectives Resolution' moved by Jawaharlal Nehru before the Constituent Assembly in December 1946.
- Basically, these resolutions were the aspirations of people who were making the Constitution.
- These resolutions were adopted on 22nd January, 1947 by the assembly.

The summary of these resolutions is as follows-

- India is an independent, sovereign, republic.
- India shall be a Union of erstwhile British Indian territories, Indian States, and other parts outside British India and Indian States as are willing to be a part of the Union.
- Territories forming the Union shall be autonomous units and exercise all powers and functions of the Government and administration, except those assigned to or vested in the Union
- All powers and authority of sovereign and independent India and its constitution shall flow from the people
- All people of India shall be guaranteed and secured

social, economic and political justice; equality of status and opportunities and equality before law; and fundamental freedoms – of speech, expression, belief, faith, worship, vocation, association and action – subject to law and public morality.

- The minorities, backward and tribal areas, depressed and other backward classes shall be provided adequate safeguards.
- The territorial integrity of the Republic and its sovereign rights on land, sea and air shall be maintained according to justice and law of civilized nation.
- The land would make full and willing contribution to the promotion of world peace and welfare of mankind.
- The Indian Preamble is based upon these resolutions, which can easily be seen in the preamble.
- There were many discussions about what should be included in the Preamble and what should not be.
- But same as everything, the baseline to decide was these resolutions, which were introduced in the very first session.
- The ideals embodied in the objectives Resolution are reflected in the preamble to the constitution

SC views on the Position of the Preamble

The Supreme Court has deliberated on several controversial questions on the Preamble.

Q1: Is Preamble part of Indian Constitution?

In the **Berubari Union case (1960)**,

- The Supreme Court specifically opined that Preamble is not a part of the Constitution.
- The Supreme Court said that the Preamble shows the general purposes behind the several provisions in the Constitution

- Thus, it is a key to the minds of the makers of the Constitution.
- When the terms used in any article are ambiguous or carry more than one meaning, some assistance at interpretation may be taken from the objectives enshrined in the Preamble.

In the Kesavananda Bharati case (1973),

- 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
- The Constitution should be read and interpreted in the light of the grand and noble vision expressed in the Preamble, it said.
- This opinion was further clarified by the SC in LIC of India case (1995)

Important note:

Though preamble is part of the constitution

- It is neither a source of power to legislature nor a prohibition upon the powers of legislature
- It is non-justiciable, i.e. , its provisions are not enforceable in any courts of law

Q2: Can Parliament amend the Preamble?

- The question about amending the Preamble under Article 368 by the Parliament arose in the Kesavananda Bharati case (1973)
- It was argued that the Preamble cannot be amended because it was not part of the constitution as held in the Berubari Union case.
- The Supreme Court, however, corrected its earlier stance and held that the Preamble is a part of the Constitution.

- It held that the Preamble can be amended, but as long as no amendment is done to the 'Basic Structure'
- In other words, the Court held that the basic elements or the fundamental features of the Constitution as contained in the Preamble cannot be altered by an amendment under Article 368

42nd amendment to the Preamble:

- The Preamble has been amended only once so far.
- In 1976, the 42nd Constitutional Amendment Act added three new words– Socialist, Secular and Integrity – to the Preamble.
- This amendment of the Preamble was held to be valid by the Supreme Court.

Mould your thought:

1. How does the Preamble act as an identity card of the Indian Constitution? Can it be amended?

Approach to the answer-

- Define Preamble
- Mention the 4 key aspects known about Constitution from Preamble
- Discuss the provisions that correspond to the ideals mentioned in the Preamble
- Discuss the verdicts of Berubari Union case and Kesavananda Bharati case
- Mention 42nd amendment
- Conclusion