

Role of Preamble Interpretation with Indian Constitutio...

Author : Chanduilnu

Published: December 11, 2013, 1:42 am

No reading of any Constitution can be complete without reading Preamble from the beginning to the end. While the end may expand, or alter, the point of commencement can never change. It is the Preamble wherefrom the Constitution commences. Hence, the significance of the Preamble. The Preamble when analyzed can be divided into three parts by reference to its qualitative characteristics. The first part is declaratory, where by the people of India in their Constituent Assembly adopted, enacted and gave to themselves this Constitution. That is the Constitution of India¹. The second part is revolutionary, whereby the people of India solemnly resolved to constitute India into a Sovereign Democratic, Republic “We, the people of India, having solemnly resolved in our constituent assembly this 26th Nov.1949” is a matter of history or the past and proposals to place on record an event which has already happened. Each and Every word of the Preamble has been cautiously chosen. Even the arrangement of the words- the order, in which they have been placed-is not without significance and suggestion. The Preamble to the Constitution has played a predominant role in shaping the destiny of the country. The Preamble of the Constitution like the preamble of any statute furnish the key to open the mind of the makers of the Constitution more so because the Constituent Assembly took great pains in formulating it so that it may reflect the essential features and basic objectives of the Constitution. The opinion of K.K Mathew J. said that the preamble stands part of the constitution and there seems to be no valid reason why the Preamble, being a part of the constitution, cannot be amended. The framers of the Constitution of India set out three broad purposes preamble: First, they sought to constitute India into a „Sovereign Socialist Secular Democratic Republic‟. India is Republic because the head of the state is not hereditary monarch. It is Democratic because the Constitution ensures the creation and existence of the government at the will of the people through the participation in the formation of the government at regular intervals on the principle of universal adult franchise. It is Sovereign because it can make or unmake any decision with respect to itself without interference – by any other country. Her membership of the

1 Justice R C Lahoti, Preamble The spirit and backbone of Indian constitution 2nd edn. Eastern Book company, India,Lucknow,2004

Commonwealth of the Nations is not inconsistent with her independent and sovereign status². The words “Socialist” and Secular were added in the preamble by the forty-second Amendment. As Preamble is the basic structure of Indian Constitution so the question is that whether it can be amended or not. In the Landmark Judgment of Keshvananda Bharti v. State of Kerla In this case the Supreme Court propounded the principal of basic structure of the constitution and restricted the power of parliament to amend the constitution under the provision of Article 368.

Scope of Preamble:-

Unlike the Constitution of Australia, Canada or the U.S.A., the Constitution of India has an elaborate Preamble. The purpose of the Preamble is to clarify who has made the Constitution, what is its source, what is ultimate sanction behind it; what is the nature of the polity which is sought to be established by the Constitution and what are its goals and objective?

The Preamble does not grant any power but it gives direction and purpose to the Constitution. It outlines the objective of the whole Constitution. The Preamble contains the fundamental of constitution. It serves several important purposes, as for example;

1. It contains the enacting clause which brings the Constitution into force.
2. It declares the basic type of government and polity which is sought to be established in the country.
3. It declares the great rights and freedom which the people of India intended to secure to its entire citizen.
4. It throws light on the source of the Constitution, viz., the People of India.

As regard the nature of the Indian Polity, the Preamble to the Constitution declares India to be a "Sovereign Socialist Secular Democratic Republic". The term "Sovereign" denotes that India is subject to no external authority and that the state has power to legislate on any subject in conformity with constitutional limitations. The term "Democratic" signifies that India has a responsible and parliament form of government which is accountable to an elected legislature. The Supreme Court has declared "democracy" as the basic feature of the Constitution. The term "Republic" denotes that the head of the state is not a hereditary monarch, but an elected functionary.

As to the grand objectives and socio-economic goals to achieve which the Indian Polity has been established, these are stated in the Preamble. These are: to secure all its citizens social, economic and political justice; liberty of thought; equality of status and opportunity, and to promote among them fraternity so as to secure the dignity of the Individual and the unity and integrity of the Nation.

3. Prof. M P Jain, Indian Constitutional Law, Lexis Nexis Butterworth's Wadhwa, fifth edition 2009. The Preamble of Indian Constitution is the main and very important part of our constitution. Preamble describes about all the aspect related to the human being which is very require to survive in the society with dignity and prestige. Preamble is introduced in our Constitution in the year of 1976 by the 42nd Constitution Amendment Act. Preamble describes about the Justice, Liberty, Equity and Fraternity vested in the People of India. Justice covers all the aspect related to the social justice, political justice and economic justice. Liberty means freedom of speech, expression, worship and belief etc. Equity means that equality is provide in the opportunity and the status for all the persons. No person is discriminated on the basis of race, sex, caste, religion and place of birth. Fraternity means developing the feeling of brotherhood in the entire person and they live with the feeling of brotherhood and unity.

The Preamble is the basic structure of the Constitution of India. The Preamble says that people are the ultimate authority and the Constitution emerges from them.

In fact the Preamble contains with the declaration that "to secure to all citizens justice, social, economic and political, liberty of thought, expression, belief, faith and worship-equality of status and of opportunity.

One of the earliest matters which engaged the attention of Constitution makers related to the wording of the Preamble of the Constitution. In his Memorandum dated May 30, 1947, B.N. Rau suggested that the Preamble should read:

We, the people of India, seeking to promote the common good, do hereby, through our chosen representatives, enact, adopt and give to ourselves this Constitution.

The Drafting Committee considered the Preamble at a number of its meeting during the month of February 1948. It thereafter prepared a draft of the Preamble as under:

We, the people of India, having 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 all Fraternity assuring the dignity of the individual and the unity of the Nation; In the Constituent Assembly this …day of May 1948 A.D., do hereby adopt, enact and give to ourselves this Constitution.

It was the above draft which was ultimately accepted without any alternation except that the words and figures “this 26th day of November 1949” were introduced in the last paragraph to indicate the date on which the Constitution was finally adopted by the Assembly.

Another significant event which may also be noted was the completion of the process of merger and integration of the States. The States also agreed that their constitution should be framed by the Constituent Assembly itself as an integral part of the Indian Constitution and their position as constituent units should not be different from that of the rest of the country. Sardar Patel accordingly told the Assemble on October 12, 1949 that unlike the scheme of the Government of India Act of 1935, the new Constitution was “not an alliance between democracies and dynasties, but a real union of the Indian people, built on the basic concept of the sovereignty of the people”.

The Preamble emphasizes the unity of Nation and it proceeds further to define the objectives of the Indian Republic. The Preamble has been amended once in 1976. The Preamble contains a specified objective that is the basic structure. The Preamble may invoked to determine the ambit of the fundamental rights, and Directive Principles of States Policy. It is the soul of the soul of the Constitution and as such is the precious part of the Constitution. Preamble says that the Constitution was adopted on 26th November, 1949 which is observed as the Law Day though it came into force from 26th January, 1950.

The basic objective specified in the Preamble contains the basic structure of our Constitution, which cannot be amended in the exercise of the power under article 368 of the Constitution. For the theory of the “basic structure”. See the following judgment of the Supreme Court:

Concept relating to “ separation of powers between the legislature, the executive and judiciary ” as well as the fundamental concept of an independent judiciary are now elevated to the level of basic structure of the Constitution and are the very heart of the Constitutional scheme; State of Bihar v. Bal Mukund sah⁷.

Pluralism is the keystone of Indian culture and religious tolerance is the bedrock of Indian secularism; Valsamma Paul v. Cochin University⁸.

In reality the right to social and economic justice envisaged in the Preamble and elongated in the Fundamental Rights and Directive Principles of the Constitution, in particular articles 14, 15, 16, 21, 38, 39 and 46 are to make the equality of the life of the poor, disadvantaged and disabled citizens of the society, meaningful; Valsamma Paul v. Cochin University⁹.

2.2 Interpretation of Preamble:

The interpretational value of the Preamble can be studied in the following dimensions-

1. Preamble assisting the interpretation of provisions of the Constitution itself;

-
2. Preamble as a source of interpretation of statutes framed under the Constitution ;and
 3. The words in the Preamble as judicially interpreted and reflected in judicial analysis.
 4. Fundamental rights; and

5. Directive Principles of the State Policy.

The Preamble is of utmost importance in the process of interpretation of the Constitution. The Preamble is considered to be a legitimate aid in the interpretation of the provisions of the Constitution. For the purpose of interpretation, the Preamble of the Constitution stands on the same footing as the Preamble of an Act. “The Preamble of the statute,” said Coke, “is a good means to find out the meaning of the statute, and as it were a key to open the understanding thereof.

The Preamble may therefore be pressed into service to interpret the provisions as to:

1. Fundamental rights – Keshavananda Bharti v. State of Kerala¹⁰ .
2. Directive Principles-Chandra Bhavan v. State of Mysore¹¹.

The Preamble, the Fundamental Rights and the Directive Principle have been characterized as the „trinity‟ of the Constitution.

Interpretation of the Preamble of the Constitution of India:-

The process of interpreting the Preamble of the Constitution is an inseparable part of the art and the science of the interpretation of the Constitution. D.D. Basu has stated that where the language of the enacting section is clear and unambiguous, the terms of the Preamble cannot qualify or cut down that enactment.

There may be case where the enacting part of a statute does not co-exist with the object, enunciated in the Preamble. In such cases, if the language of the section is clear, it is the section which will prevail, for the general terms of the Preamble may not indicate or cover all the mischief‟s which in the enacting portions of the Act itself are found to be provided for.

It has been held that if any doubt arises from the terms used by the legislature, it would be always safe to explain the ground and cause of making the statute. As the Preamble is a part of the statute, it is a key to open the mind of the makerers¹².

On the other hand, in constructing the Fundamental Rights enumerated in Part-3 of the Constitution, the high purpose and spirit of the Preamble , namely , that it assured to the citizens, the dignity of the individual and other cherished human values as a means to the full evolution and expression of his personality, should be borne in mind.

The preamble can never be resorted to, to enlarge the powers expressly give, not to substantively create any power or to imply a power which is otherwise withdrawn from the Constitution , and its true function is to „expound the nature, extent and application of the powers‟,, actually conferred by the Constitution.

Khanna, J., set out tow utilities of the Preamble from the point of views of interpretation of the Constitution or, statutes:-

1. Reference can be made to the Preamble for the purpose of construing when the words of a statute or the Constitution are ambiguous and are admitted; and
2. The Preamble can also be used to shed light on and clarify obscurity in the language of a statutory or, constitutional provision. When, however, the language of a section or article is plain and suffers from no ambiguity or obscurity, no gloss can be put on the words of the section or article by invoking the Preamble.

12 Aparajita Baruah , Preamble of the Constitution of India , An insight and comparison with other constitution,Deep&Deep Publication pvt. Ltd., 2007.

In the opinion of Jaganmohan Reddy, J., the utility of the Preamble in interpreting the Constitution in-depth, is clear from the opinion of jurists on the following aspects¹³:-

1. The Preamble is a key to open the mind of the makers as to the mischief¹³s, which are to be remedied;
2. That it is properly resorted to, where doubts or ambiguities are arise upon the words of the enacting part;
3. Even where the words are clear and unambiguous, it can be used to prevent an "obvious absurdity¹³" or to a direct overthrow of the intention expressed in the Preamble, and it would be much more so, if they were ambiguous;
4. There is no reason why, in fundamental law or Constitution of the government, an equal attention should not be given to the intention of the framers, as stated in the Preamble.
5. The Preamble can never be resorted to, to enlarge the powers expressly given, nor to substantively create any power or to imply a power which is otherwise withdrawn from the Constitution; and
6. Its true function is to "expound the nature, extent and application of the powers¹³", actually conferred by the Constitution.

This is all the importance of the Preamble in our Constitution.

13 Aparajita Baruah, Preamble of the Constitution of India, Deep&Deep Publication Pvt. Ltd., Edition 2007.

2.4 Case Study:-

1. Keshavananda Bharati v. State of Kerala¹⁴. In this Supreme Court of India has emphasized in that the Preamble to the Constitution emphasizes the principle of equality as basic to the Constitution of India. This is the basic features of the Constitution which no legislature in India can transgress. Even an Amendment of the Constitution offending a basic structure of the Constitution is ultra virus.

In this the majority propounded the novel doctrine of "basic features¹³" as an implied limitation upon the amending power conferred by Article 368, not from the Preamble- but from an interpretation of the word "amendment¹³" in Article 368 itself.

1. In formulating the basic features, the court referred to the objective specified in the Preamble, as other provisions, but it was nowhere stated that the Preamble as such constituted any substantive source of power or limitation apart from its enacting provisions.

2. Kesavananda Bharati judgment created a history in Judicial review of the policy of the government. For the first time, a bench of 13 Judges assembled and sat in its original jurisdiction hearing the writ petition. 13 Judges placed on record 11 separate opinions. It is not an easy task to find out the ratio of the holding of the court in the same case. It was held in this case:

- A. Preamble to the Constitution of India is a part of Constitution
- B. Preamble is not a source of power nor a source of limitation
- C. Preamble has a significant role to play in the interpretation of statutes, also in the interpretation of provisions of the Constitution.

D. The basic elements in the preamble cannot be amended under Article 368.

One of the various questions raised in this case was the extent of the power of the Parliament to amend under Article 368. A 13 Judge Constitutional bench was formulated under Chief Justice Sikri in order to evaluate the intricacies of Golaknath's case. The Supreme Court overruled its decision in Golaknath's case and held that, Article 368 contained power as well as procedure for amendment. The majority held that there are inherent limitations on the amending power of the Parliament and Article 368 does not confer power so as to destroy the "Basic Structure" of the Constitution.

It may be however be mentioned here that in India, the concept of equality is regarded not as a static, but a dynamic concept. It permits every process of equalization and protective discrimination. Progressive measures to eliminate group disabilities and promote collective equality are not regarded as antagonistic to the concept of equality on the ground that every individual ate existing inequalities. Those who are unequal, in fact, cannot be treated by identical standards. That may amount to equality in law but it would certainly not be real equality. It is necessary to take into account de facto inequalities which exist in society and to remove which affirmative action needs to be taken. This may involve giving preference to the socially and educationally disadvantaged persons, or inflicting handicaps on those more advantageously placed. Such affirmative action though apparently discriminatory is calculated to produce equality on a broader basis by eliminating de facto inequalities.

2. Minerva Mills V. Union Of India 15.

It was relied on Kesavananda Bharati, Supreme Court struck down clauses (4) and (5) of Article 368 inserted by the 42nd amendment. Justification for the deletion of the said clauses was based on the destruction of "Basic Structure". The Court was satisfied that 368 (4) and (5) clearly destroyed the "Basic Structure" as it gave the Parliament absolute power to amend Constitution. Limitation on the amending power of the Parliament is a part of the "Basic Structure" explained in Kesavananda's case.

In this case the Supreme Court express the meaning of "Socialism" as to crystallize a socialistic state securing to its people socio-economic justice by interplay of the Fundamental Rights and the Directive Principle. The Preamble to the Constitution read with the Directive Principle in Arts.38,42,43,46 and 48A promotes the concept of social justice. The aim of social justice is to attain a substantial degree of social, economic and political equality. Social justice is a device to mitigate the suffering of the poor, weak, Tribal's and the deprived sections of the society and to elevate them so that they can live with dignity.

3. Re: The Berubari Union and Exchange of Enclaves Reference Under Article 143(1) of The Constitution of India.16

In re Berubari Union case, the Supreme Court held that the Preamble is not a part of the Constitution. It is only "a key to open the mind of the makers" which may show the general purposes for which they made the several provisions in the Constitution; but nevertheless the preamble is not a part of the Constitution, therefore "it has never been regarded as the source of any substantive power. Such powers embrace only those expressly granted in the body of the Constitution and such as may be implied from those so granted if necessary.

What is true about the powers is equally true about the prohibitions and limitations. Besides, it is not easy to accept the assumption that the first part of the preamble postulates a very serious limitation on one of the very important attributes of sovereignty itself. It can be restored to where there is any ambiguity in the statue. Thus, if the terms used in any of the articles in the Constitution are ambiguous or are capable of two meanings, in interpreting them some assistance may be sought from the objectives enshrined in the preamble and construction which fits the Preamble may be preferred.

4. I. C. Golaknath v. State Of Punjab.

Berubari case was relied in Golaknath case and it was held that the preamble sets out the main objectives which the legislation is intended to achieve.

5. S.R. Bommai v. Union of India.¹⁷

In Ziyauddin Burhamuddin Bukhari v. Brijmohan Ramdass Mehra and Brothers¹⁸ Justice M.H. Beg observed that the secular state arising above all differences of religion, attempts to secure the good of all its citizens irrespective of their religion beliefs and practices.

In India, secularism is declared to be one of the basic features of the Constitution¹⁹ which is beyond the amending power of the Parliament.

Conclusion:-

In this research project the researcher found that the preamble is the very important part of the Indian Constitution. In this project researcher found his hypothesis correct, Preamble is key to open the mind the makers. In this research project after the analysis of several case law it's conclude that the preamble is the part of the constitution. In the case of Kesavananda Bharati, it is clear mention that Preamble is part of the Constitution and the basic features of the Preamble cannot be amended. In the Preamble it's discuss about the basic human needs like all kinds of justice, welfare and opportunity and the fraternity. So, the Preamble is very important in our Constitution. It is the integral part of our Constitution. Preamble is very helpful in assisting the interpretation of provision of the Constitution. It is a source of interpretation of statues framed under the Constitution. Preamble is use in interpreting an ordinary statute; there is no doubt that it cannot be used to modify the languages-if the languages of the enactment are plain and clear. It has been held that if the languages of the enactment is capable of more than one meaning then that one is to be preferred which comes nearest to the purpose and scope of the Preamble.

After the analysis of interpretation value of the Preamble in our Constitution. Researcher found that the Preamble is the very important part of Indian Constitution, to understand the meaning of the any statute of its not clear.

~~~~~  
1. Keshavananda Bharati V. State of Kerala<sup>4</sup>.

2. Indira Nehru Gandhi v. Raj Narain<sup>5</sup>.

3. Minerva Mills Ltd. V. Union of India<sup>6</sup>.

4 AIR 1973 SC 1461:(1973) SCC225

5 AIR 1975 SC229.

6 AIR 1980 SC 1789.

7 AIR 2000 SC 1296.

8 AIR 1996 SC1011.

9 AIR 1996 SC 1011.

10 AIR 1973 SC1461.

11 AIR 1970.

14 AIR 1973 SC 1461.

15 AIR 1980 SC 1789.

16 AIR 1960 SC 845.

17 AIR 1994 SCC 1.

18 1975 Suppl. SCR 1918

19 Kesavananda Bharati v. State of Kerala AIR 1973 Sc 1461(para 302)

The author can be reached at: [chanduilnu@legalserviceindia.com](mailto:chanduilnu@legalserviceindia.com)