

CHAPTER – V

Preamble to the Constitution – A Declaration of the State of India to Secure Justice and Security to the People

Every constitution begins with a Preamble. The Preamble embodies the objectives or aims or basic purposes of the constitution. It is a preface or the introduction to the constitution. The interpretation of the Constitution is based on spirit of the Preamble. The Constitution of India begins with a Preamble which has a special significance. We cannot regard it or underestimate it as a collection of useless rhetoric. It contains the ideal, aspirations and declaration of the nation to ensure justice and to build up the country as a true welfare state. The Preamble declares the aims and objectives of the Constitution and indicates the source of its authority. It does not form part of the operative position of the Constitution. It is a key to unlock the minds of the makers of the Constitution. Prof. M.V. Pylee writes, "Here was an opportunity for them to give expression to the dreams of a new order they had been dreaming of year."²³

5.1 Meaning of the Constitution

A Constitution is a set of rules governing an organization. It contains the supreme laws and rights of a people of a country. Longman Dictionary of Contemporary English defines constitution as "the system of laws and principles, usually written down according to which a country or an organization is governed. A Constitution aims at building up a governmental structure in certain basic principles. "It is a political and economic document. It represents a specific political economy." It necessarily reflects the basic interests and values of the classes in society that have been responsible for its formulation. The Constitution of India is drafted in legalistic forms making it a "lawyer's paradise". It provides for the basic law and very detailed and minute administrative progressions.

²³ M.V .Pylee

The Preamble is an integral part of the Constitution of India. Our discussion of the 'Directive Principles of State Policy' and the 'Fundamental Rights' as enunciated in the Constitution of India will remain incomplete, fragmental and incomprehensive if we do not shed light on and explain the Preamble, because the Preamble is inseparably related to both the 'Directive Principles of State Policy' and the 'Fundamental Rights' as far as the ideas of rights, social justice, social security and dignity of man as man are concerned. Before discussing, explaining and analyzing the value of Directive Principles in term of social justice, we need to discuss the implications of the Preamble.

“The Preamble is an ornamental part of the Constitution and is couched in lofty and stirring language. These words like justice, liberty, equality and fraternity evoke in our mind, the memories of the great struggles the nations had to go through in order to secure them. These words tell us why we in India fought the protracted freedom struggle in which thousands of our people died. With noble ideas like justice, liberty, equality and fraternity enshrined in the Preamble, we can build India of our dreams. The Preamble is an embodiment of the principles in the objective resolution adopted by the Constituent Assembly in 1947.” (A.T. Philips and K.H. Shivaji Rao).

The Preamble is a very significant part of the Constitution of India. It is used to explain and elucidate any type of ambiguity of the statute. The Supreme Court of India endorses the importance of Preamble. Justice Patanjali Sastri observes, “The court could only search for the objective intent of the legislature primarily in the words used in the enactment, aided by such historical material as reports of statutory committees, Preamble etc.” He gives only secondary importance to the Preamble in the interpretation of the provisions of the Constitution. But Justice Mahajan attached great importance to it when he observed : “The interpretation that I am inclined to place on clause (5) Article 22 is justified by the solemn words of the declaration contained in the Preamble to the Constitution. It is the declaration that makes our Constitution sublime”. A.K. Gopalan vs. State of Madras, 1950 SCS P-236. “The court was, however, against the importation of the idea of the spirit of the Constitution in the interpretation of its provisions on the strength of the declaration of its objectives embodied in

the Preamble, such as the establishment of justice, liberty, equality, fraternity, etc. It is quite clear that the Preamble contains the aims and objects which the Constitution seeks to establish and promote.

5.2 The Preamble Designed to Make India a Welfare State

The 42nd Amendment to the Constitution of India, 1976 has added the words 'Socialist', 'Secular' and 'Integrity of Nation' to the Preamble in our Constitution. The Republic has now become 'Socialist' and 'Secular'. The decision to include the word 'SOCIALIST' is significant. India has been steadily marching towards some form of socialism since 1953 when the Congress party accepted it as its ideal a socialist commonwealth. The aim is to establish socialism in India. Socialism will be achieved by the parliamentary Acts.

The Government of India has adopted a number of measures to give a socialistic shape to India. It has already nationalized the banks and the means of production; the right to private property has been removed from the list of Fundamental Rights through a constitutional amendment. It has introduced the policy of giving various concessions to the economically backward people to reduce inequality and thus through many other measures. India has been going ahead towards socialism. Land distribution policy and **barga operation** (In West Bengal) were socialistic in nature²⁴ . The land distribution policy of Government of West Bengal is designed to distribute and hand over lands to the landless tillers. Socialism to which India is committed to a positive and bold step of the Indian leadership to secure equality to all to root out discrimination from the society and to protect the disadvantaged classes against deprivation.

Secularism is the aim of the country. Democracy without socialism and secularism is meaningless. Secularism is a glaring necessity in India's socio-political context. India is declared as a democratic state and democracy does not

²⁴ Operation Barga was a land reform movement throughout rural west Bengal for recording the names of the share croppers while avoiding the time consuming method through the settlement machinery . It bestowed on Bargadars , the legal protection against eviction by the landlords, and entitled them to the due share of the produce. Operation Barga was launched in 1978 and concluded by the mid 1980s. It is in line with the Directive Principles of State Policy (Article 34)

allow cultural and religious discrimination. Religious discrimination is antithetical to the concept of a welfare state. People of the minority community enjoy as much freedom and equality as those of the majority community. Besides, the Government of India has adopted some measures to promote the social and economic life of the minority community in India. India's secularism ensures that religious minorities do not suffer a sense of inferiority as do the minority communities in Pakistan and Bangladesh. The Indian democratic system protects all religions equally and does not itself uphold any state religion. The idea of secularism implies full freedom and equal respect for all religions. This is a definite way for India to ensure social justice to the minorities.

To build up an ideal democracy, the Preamble emphasizes justice, liberty, equality and fraternity as political ideals. The Preamble envisages not only a democratic form of Government but also a democratic society which is infused with the ideals and spirit of "Justice, Liberty, Equality and Fraternity". Dr. M.V. Pylee writes in his book **Constitutional Government in India**, "The Preamble proceeds further to define the objectives of the Indian Republic. These objectives are four in number – Justice, Liberty, Equality and Fraternity" Democracy is not merely a form of government but also a socio-economic system based on these concepts. "This part seems to be the climax of all democratic constitutions." (Pylee)

Since India had been long subjected to all kinds of injustice – political, economic and social – under the British Government, it was but natural that the framers of our Constitution hope for justice for all and strive for the removal of all inequalities and discrimination from the society. Justice can exist only in an egalitarian society because justice will be a reality when everybody has equal access to equality to be real, must be given equally. Justice means, "A harmonious reconciliation of individual conduct with the general welfare of society. The essence of justice is the attainment of the common good. It embraces, as the Preamble proclaims the entire social, economic and political spheres of human activity."

The ideal of justice implies a system where individuals can realise their full potentialities. In the view of our founding fathers it is not enough that there is a political or legal justice. Political and legal justice is a myth unless accompanied by social and economic justice. Social justice implies that all social discriminations like caste or untouchability must be ended. Economic justice implies that economic exploitation should be ended. India is striving her best to secure social and economic justice to all and adopts policies and programmes to build up a society of equals and frames rules and laws to provide equality of status and opportunity. These ideals have been embodied in Articles 14-18 (Rights to Equality), 19-22 (Right to Life and Liberty) and specially in Article 38 (to promote the welfare of the people).

The Preamble may not have any legal value because it cannot normally qualify the provision of the Constitution. Yet in cases of doubt, the Supreme Court of India has referred to the Preamble to elucidate vague provisions of the Constitution. The real value of the Preamble lies in its psychological appeal because it contains words surcharged with emotions – justice, liberty, equality and fraternity. The philosophy of the Constitution is embodied in the Preamble. As Justice Hidayatulla said, The Preamble is more than a declaration. It is the soul of our Constitution and lays down the pattern of our political society. It contains a solemn resolve which nothing but a resolution can alter. Grenville Austin says that the Indian Constitution is a social document. It aims at establishing a better society on the basis of justice, liberty, equality and fraternity and the Preamble commits the Constitution to a social revolution. The whole of the Indian Constitution is an elaboration and an elucidation of the Preamble.

The ideals and values proclaimed in the Preamble, according to Chief Justice P.B. Gajendragadkar, constitutes India's commitment to the ideal of welfare state and to the establishment of socio-economic justice. Social justice as declared in the Preamble prohibits discrimination on artificial grounds; it also prohibits forces creating artificial social barriers. Economic or distributive justice is a corollary to social justice. It means freedom from hunger and destitution, non-exploitation of the working class, and reshaping economy in a way that its benefits are equitably or justly available to the common mass. This socio-economic justice has been

translated into several Articles in Part III and Part IV of the Constitution. The goal of social justice and security is embodied in the concept of a welfare state and the establishment of 'socialist states'.

The Preamble constitutes a perfect document of a democratic welfare state. India is working hard to ensure the triumph of justice, liberty, equality and fraternity, Chief Justice Subba Rao in *Golaknath vs State of Punjab, 1967*, observed: "The Preamble contains in a nutshell , its ideals and aspiration." It lays down the principal objectives which the Government of India should strive to achieve. It is expressive of the political, moral and religious values which the Constitution is intended to promote. Pandit Thakur Das Bhargava, a member of the Constituent Assembly commented: "The Preamble is the most precious part of the Constitution. It is the soul of the Constitution. It is a key to the Constitution. It is a jewel set in the Constitution."

5.3 Legal implication of the Preamble

The Preamble is a priceless addition to the Constitution of India and hence is recognised as a part of the Constitution but not as a part of its operative provisions as it is stated in the *Keshavananda Bharati Case, 1973*. The Preamble is not an enactment ; it is not enforceable in the court of law. It lets the constitution framers know the evils or inconveniences which they intended to remedy.

The Preamble enables the court to dispel the ambiguity of language or expression found in a constitutional provision and to explain and elucidate its appropriate meaning and significance. This view was nicely expressed by the

Supreme Court in the Berubari Case (1968)²⁵, Bhim Singh vs. Union of India, 1981²⁶; Gopalan vs State of Madras, 1950. "The functioning of the Preamble is illuminative and not restrictive or expansive." In Keshavananda Case, though the Supreme Court declared the Preamble as a part of the Constitution, it could not suggest that the government could derive any additional power from the Preamble. Hence, the court cannot be expected to examine the constitutional validity of a legislative enactment or administrative measure by keeping their attention confined to the Preamble. The Preamble may better be looked upon as a 'guiding star' in the interpretation of law.

Dr. Durga Das Basu has made a very significant comment on the legal implication of the Preamble. He observes that "The proper functioning of a Preamble is to explain certain facts which are necessary to be explained before the provisions contained in the Act can be understood."²⁷ But the Preamble itself as the then Chief Justice of the Supreme Court P.B. Gajendragadkar aptly observes, "is neither a source of power nor a source of the privation of power."

The recent observation of the Supreme Court on the implication of the Preamble in matter of rational interpretation of Fundamental Rights is quite significant. The court is inclined to give expression to the view that since the Preamble sets forth the aims and objectives of the political system of India, "it may be invoked to determine the scope of Fundamental Rights." (Minerva Mills vs. Union of India, 1980) and the 'Directive Principles of State Policy' (State of Kerala vs. Thomas

²⁵ The Berubari Union and Unknown on 14 March , 1960 . Judgment.

Gajendragadkar J. This will be so divided as to give half the area to Pakistan the other half adjacent to India lies retained by India. The division of Berubari Union no 12 will be horizontal, starting from North East corner of Debigunj thana. The division should be made in such a manner that the Cooch Behar enclave of Pachaghar thana of east Pakistan and Berubari Union no. 12 of Jalpaiguri thana of West Bengal will remain connected as present with Indian lower down between Boda thana of east Pakistan and Berubari union No. 12 will be exchanged along with general exchange of enclaves and will go to Pakistan"

²⁶ Bhim Singh Vs. Union of India & Another; Judge, Manomohan Sarin ; decided on Jul. 26 - 2000

²⁷ D.D. Basu's Introduction to the Indian Constitution

1996, Waman Rao And others vs. Union of India 1980²⁸) ; what led the Supreme Court to express this view about the Preamble is the interrelationship between the 'Preamble' and 'Fundamental Rights'. It attaches this importance to the Preamble because the ideals of socialism, secularism and democracy are elaborated by the provisions of the Constitution. In the case of Linogappa vs State of Maharastra, 1985 and Indira Swaney vs. Union of India, 1992, the Supreme Court proceeded further in this respect. In its view, the words 'social justice' in the Preamble makes it obligatory for the State to enact positive measures in order to protect the tribals and the weaker section of the community.

5.4 Legal and Constitutional Importance of the Preamble

No one can deny the legal and constitutional importance of the Preamble. The Preamble contains the ideals and aspirations of the constitution-framers. It is a key to the Constitution which aims at giving a real socialistic and democratic shape to Indian society in which equality and justice will always prevail . The nature and character of the Constitution of India and the political system of the country are easily understood by reading the Preamble. The Preamble cannot be enforced by the court of law, but it helps and enables the court to explain and interpret constitutional provision. In Keshavananda Bharati Case, Justice Shikri annotated that the Preamble is "of extreme importance and Constitution should be read and interpreted in the light of grand and noble vision expressed in the Preamble." The Court also observed that "the edifice of our Constitution is based upon the basic elements mentioned in the Preamble."

The Supreme Court's observation on the value and importance of the Preamble in Atma Prakash's Case, 1986, as quoted below, illuminates and makes it clear

²⁸ A ceiling on agriculture holdings was imposed in Maharashtra by the Maharashtra Agricultural lands (ceiling on Holdings) act, 1961 which was brought into operation on January 26, 1962. The ceilings fixed by that Act (the Principal Act) , was lowered and certain other amendments were made to that Act by Acts 21 of 1975 . The validity of the Acts was challenged in the Bombay High Court in a large group of over 2660 petitions. A divison Bench of the High Court sitting at Nagpur repelled that challenge by a judgement

that the Preamble to the Constitution of India is not a collection of useless rhetoric:

“Whether it is the Constitution that is expounded or the constitutional validity of a statute that is considered a cardinal rule is to look to the Preamble to the Constitution as the guiding light and to the Directive Principles of State Policy as the Book of Interpretation. The Preamble embodies and expresses the hopes and aspirations of the people. What people of independent India expect from the State of India or the Government of India has been unequivocally expressed in the Preamble to the Constitution. The Directive Principles set approximate goals. When it is the task of examining statutes against the Constitution, it is through these glasses that the Court must look, 'distinct vision' or 'near-vision'.

Summary

The Preamble to the Constitution of India is not a conventional addition but an addition with utmost value and importance of the polity which India as a social welfare state strives to establish . The spirit of the Constitution has been virtually epitomized by and embodied in the Preamble. Though the Preamble is not justifiable or enforceable, it defines the boundary of functions of the Constitution. India cannot overstep or override the Preamble in the formulation of laws and adoption and introduction of policies. It can be said that to override the Preamble is definitely to override the Constitution. The spirit of the Constitution is announced in the simple few words of the Constitution . That India is committed to social welfare and social justice is declared in it.