

## **Preamble to Indian Constitution: An Overview**

Burhan Majid<sup>1</sup>

I. Since the birth of Constitution in India until now, much has been written and said about the preamble to it. This includes the decisions of honourable courts and writings of jurists. For example, there has been a controversy on the point whether the preamble is a part of the Constitution or not until 1973 in which year the Supreme Court of India observed, in *Kesavananda Bharti V. state of kerala* (1973) 4 SCC 225, that “the preamble is a part of the Constitution.” Thus overruling its earlier stand that “the preamble is not a part of the Constitution” as held out in *Re: Berubari Union (1)* (1960) 3 SCR 250.

In fact, a number of issues pertaining to the preamble of Indian Constitution have been discussed and debated by the Constitutional experts in India and elsewhere. But the point which will remain the centre of gravity in this paper is - whether the preamble is a source of Constitution. And, yes, I have a reason to believe - that it is, notwithstanding the fact it has been put in the Constitution at the last stage of its framing. The nature and phraseology of the preamble clearly suggest that the provisions (body) of the Constitution have to be on the lines of the broader framework, sketched out in the preamble. Yet, however, I also argue that there are contradictions between what has been enunciated in the preamble and the purview which follows it, though many may not concur with my opinion.

The preamble constitutes the crux about what follows in the purview of the Constitution.

In other words, we can say that the preamble symbolizes what the country (India) stands for. It outlines the major edifices the Indian Constitution is built upon. The preamble contains a condensed and accurate account of the objectives and broad features of the Constitution which are worked out in detail in the succeeding Articles.

II. Almost every modern Constitution opens with a preamble, so does the Constitution of India. But before moving further, it is of the essence to answer the basic question as to ‘what is a preamble?’ Preamble constitutes an introductory part of a statute, deed, or the like, stating the reasons and intent of what follows. In other words,

---

<sup>1</sup> LL.M 2nd year student at faculty of Law, University of Kashmir-190006

it is a brief introductory statement that sets out the guiding purpose and principles of the document. As we deal with the Constitution of a country here, let me put it this way - the preamble represents the basic structure and spirit of the Constitution. Not only this, the preamble serves as a channelising tool for the interpretation of Constitution as a whole.

Infact there is a background that how Indian constitution rather its preamble came into being. The process of evolution of Constitution actually began along the sidelines of the freedom struggle against the British Empire. As the history reveals, the British colonists challenged the Indian leaders to produce a Constitution which carries behind it a fair measure of general agreement among different sections. So it is in this context, the Constitution of India came into being. And, accordingly a preamble. So the preamble to Indian Constitution symbolized what the people of India had dreamt for long. It is the preamble which sets out what India wanted to achieve. I mean - what kind of polity, the ideals et cetera which it seeks to ensure. And it is in the context of preamble the purview of the Constitution is based upon. In a way, the purview of the Constitution reflects what has been outlined in the preamble to it. Thus it is clear from here that the preamble is a source of Constitution. Yet, there are limitations to this assertion.

Pertinent to mention here, a Constitution of a country is the supreme law of the land to which all other laws must confirm to be valid and binding. Kelsen calls it grundnorm. Secondly a Constitution is not just an ordinary law. Therefore a constitution cannot be construed in the same way and upon the same principles as the ordinary statutes are. "Ordinary laws meet certain contingencies or certain situations while as a Constitution is framed for ages to come and is designed to approach immortality as near as human institutions can approach," observed Chief Justice Marshall of the U.S Supreme Court.

Having said this, it is important to have a preamble at the opening of a Constitution, just because to outline the scope of this grand document. What follows from this assertion is that no reading of any Constitution can be complete without reading it from the beginning to the end. The end may expand or alter but the point of commencement can never change. It is the preamble wherefrom the Constitution commences. Hence the significance of the preamble. Had there been no preamble in the Indian Constitution it would have been difficult to know what India stands for. The preamble introduces the document rather the country.

III. Coming back to the question of "whether preamble is a part of Constitution or not," I emphasize that there is no room for any controversy for a motion was adopted

in the Constituent Assembly that “the preamble do stand part of the Constitution” (C.A.D, Vol.10, p. 429). And it is actually this motion the Court relied upon in Kesavananda’s case.

However, the Supreme Court laid down an important principle in Re: Berubari Union case that “the preamble is a key to open the minds of its makers which may show the general purposes for which they made the several provisions in the Constitution.” These two italicized lines observed by the Honorable Court clearly show that the preamble is a source of the Constitution. Shelat and Grover, JJ. in Kesavananda’s case, also held that “the constant strain which runs throughout each and every article of the Constitution is reflected in the preamble.”

Let us suppose take, at the first instance, the polity assured to the people of India by the Constitution in its preamble where it is described as SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC. When we peruse the purview of the Constitution we indeed find provisions which explain these main edifices. What the preamble does, it only outlines these concepts. For instance, the Directive Principles of State Policy contained in part IV of the Constitution are designed for the achievement of socialistic goal envisaged in the preamble. However the word ‘socialist’ itself is nowhere defined in the Constitution, so as to avoid, I think, the rigidity of its scope. The preamble makes it clear that India is a Democratic Republic which signifies that the government here is of the people, by the people and for the people. And we indeed find the relative provisions in the purview of the Constitution.

But this is not all about the concept of Democracy. The other fundamental is that “Democracy is also a way of life and it must maintain human dignity, equality and rule of law”. The preamble states in clear terms that the Constitution shall seek to secure to the people “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”. It is with this object that Indian Constitution carries an exclusive part, i.e., Part III on fundamental rights. For example, Article 19 provides that all citizens have the right to freedom of speech and expression; to assemble peaceably and without arms; to form associations and unions; to move freely throughout the territory of India; to reside and settle in any part of the territory of India and to practise any profession or to carry on any occupation, trade or business. Also, Article 25 of Part III which confers on every person the freedom of conscience and the right freely to profess, practise and propagate religion. The freedom guaranteed in Article 25 necessarily requires liberty of thought, expression, belief, faith and worship. Other rights to freedom are contained in Articles 20, 21 and 22 which respectively deal with protection against double jeopardy and self incrimination,

protection of life and personal liberty and protection against detention. The safeguards available to a detenu under Article 22 epitomizes the democratic structure which the forefathers of India had in mind. But what we experience on the ground is that these concepts, enunciated in the preamble, are being misused and abused time and again. Sometimes under the pretext of the blanket term “national interest” and at other times, under the disguise of other erroneous reasons.

Likewise, Equality of Status and of Opportunity is secured by Articles 14, 15, 16 and 17. These days, it is not possible to conceive of a democratic republican form of government without equality of citizens. As Chandrachud. J, in Raj Narain’s case, has rightly observed that “equality is the faith and creed of our democratic republic”. The preamble lastly contains the promise to promote “Fraternity assuring the dignity of the individual and the unity and integrity of the Nation”. By “fraternity” is understood a spirit of brotherhood the promotion of which is absolutely essential in a country which is composed of people of many races and religions. This spirit of brotherhood assuring the dignity of the individual and the unity and integrity of the Nation is sought to be achieved by abolition of untouchability (article 17), abolition of titles (Article 18), prohibition of traffic in human being (Article 23) and many more.

One can hence say that the preamble contains a condensed and accurate account of the objectives and broad features of the Constitution which are worked out in detail in the succeeding Articles. However, as Lord Normand of House of Lords observes, “there may be no exact correspondence between the preamble and the enactment, and the enactment may go beyond, or it may fall short of, the indications that may be gathered from the preamble. Yet there is a strong reason for the assertion that preamble is a source of Constitution. In other words we can say that what is in the preamble is the crux of the entire document and the purview which follows it is just an explanation”.

Again regarding the significance of preamble, the Supreme Court, in Kesavananda Bharati vs. State of Kerela, also observed that the preamble may be used to interpret ambiguous areas of the Constitution where differing interpretations present themselves. However, the preamble is useful as an interpretive tool only if there is an ambiguity in the Article itself and should not be treated as a rights bestowing part of the Constitution.

IV. Though we can say the preamble is a source of the Constitution, there are a number of instances and areas where the disregard of preamble is quite apparent. Thus contaminating the cause for which the founding fathers of India rose against the British regime. What is more annoying is that the contamination of the cause is being perpetrated under the pretence of so called development, liberalization of economy,

reforms etc.. The present scenario of huge scams and frauds by the ministers, bureaucrats and the politicians epitomizes the extent of respect these men give to the preamble. India is sinking in corruption amid the existence of 70% of population with an income as scarce as twenty rupees a day. There is a reason why I mention this. The reason simply is that it is the people who constitute the central theme of a Democracy. If this remains the position then the very first expression of the preamble to the Constitution "We the people of India" deserves justice that it should be omitted and a new one is put there which fits this ugly situation India is passing through. Mathew. J, in Kesavanada's case, has rightly observed that "the statement in the Preamble that Constitution proceeded from the people is not a fact and it can only be taken as a rhetorical flourish."

Besides this, many more contradictions and loopholes become evident when the purview of the Constitution is weighed with its preamble. The example par excellence here is Article 44 of the Constitution which provides that the state shall endeavour to secure for the citizens a uniform civil code throughout the territory of India. The provision is clearly violative of the rights of minorities, as they say it is an attempt of assimilation against their identity. The provision is also in contradiction with the secular setup of Indian democracy, enunciated in the preamble.

Furthermore, the Constitutional experts like H M Seervai say that it is patently false to say that the people of India on 26 Nov. 1949 resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC. What they did, he says, was to constitute India into a SOVEREIGN DEMOCRATIC REPUBLIC. Even then if we peep at the situation that how socialism works in India, it looks that the addition of the word "Socialist" in the preamble was intended to denote a socialist form of dictatorial government. It is this Indian form of socialism which is substantially responsible for the emergence of Naxalism in India.

There are also provisions in the Constitution, say for example, those relating to division of states on linguistic basis which mitigate the concept of fraternity laid down in the preamble. There are yet innumerable instances when the preamble of the Indian Constitution has been disregarded, ranging from the micro level of governance to its macro level.