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Preamble to the Constitution of India: “The Key to Open the Mind of Makers”

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Abstract: The objective resolution moved by Pandit Jawaharlal Nehru, inter-alia led the foundation of constitution of India and preamble is a prototype of the Objective Resolution. The Constitution of India is derived out of the noble ideals enshrined in the Preamble. Preamble accommodates the ideals, objectives and basic principles of the Constitution.

The Preamble to the Constitution of India is manifested with the intent for of the aims and aspirations of the people of India, glimpse of which can be observed into the various provisions of the Constitution.

Question regarding preamble to be part of constitution of India was raised in; In Re: The Berubari Union and v Unknown, 14 March 1960, Honorable Supreme court stated that preamble is not the part of Constitution of India, and same was overruled in (Kesavananda Bharati v State Of Kerala And Anr, 24 April, 1973, where it was stated by the honorable court that Preamble is part of constitution of India and can be amended but without altering the basic structure.

The following effort is an analytical research which analyses and describes the Importance of Preamble and its Effectiveness as “Key to Open the Mind of Makers”

Index Terms - Objective resolution, Constitution, Preamble, Amendment, Supreme Court

I.INTRODUCTION: Preamble is a chaperone which can be designated as the catalogue of the Constitution which proffers that state and its organs shall ramify proportionately with the objectives manifested in preamble. According to Black’s Law Dictionary a preamble is “A clause at the beginning of a constitution or statue explanatory of the reasons for its enactment and the objects sought to be accomplished” (Henry Campbell Black, 1968).

To constitute India into a “sovereign democratic republic” and to secure its citizens “justice liberty, equality and fraternity”, the framers of the Constitution directed their objectives to have a welfare state and an egalitarian society manifested with the intent for of the aims and aspirations of the people of India.

The Preamble to the Constitution of India is manifested with the intent for of the aims and aspirations of the people of India, a glimpse of which can be observed into the various provisions of the Constitution. After the hard work of constituent assembly, the framer’s effort conduces in nascence of constitution in India.

It is lucrative to project on the archival of the preamble, we could endorse that it was introduced in the very beginning of the constitution and was debated and approved on 17/10/1949. It was one of the final acts of members of Constituent Assembly. For the delay in taking up the preamble President of the Assembly, Dr. Rajendra Prasad justified that it was to ensure that it was in conformity with the rest of the Constitution (Constituent Assembly, 1949). Thus it is evident that framers had the vision that preamble should be in compliance with the provisions of the Constitution, While acknowledging the accomplishment of the framers in making of Indian Constitution, Pandit Thakur Das Bhargava expressed his opinion that "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 proper yardstick with which one can measure the worth of the Constitution. All the 395 articles of the Constitution have to be measured with the yardstick of the Preamble and such provisions as stand the test of the Preamble are good and others should be taken as worthless" (Constituent Assembly, 1949)

The constitution of India is emanated from the Preamble, and Preamble is debated predominantly. Chief Justice Subba Rao in (I.C. Golak Nath & Ors v. State of Punjab, 27 February, 1967) had held that “The preamble to an Act sets out the main objectives which the legislation is intended to achieve”. Thereafter, much has been written and said about the preamble, until 1973, it was vacillating i.e. whether Preamble is a part of constitution or not?

The Supreme Court of India, in (Kesavananda Bharati v State Of Kerala And Anr, 24 April, 1973) perceived “preamble is a part of the Constitution” by overruling its antecedent in; In Re: The Berubari Union and v Unknown, 14 March 1960 that preamble to the Constitution is “a key to open the mind of the framers of the Constitution but it is not a part of the Constitution”.

II. PRE-INDEPENDENCE; THE OBJECTIVE RESOLUTION: The preamble of Indian constitution has been archived from the Objective Resolution¹ of Nehru. On Friday, the 13th December, 1946, Mr. Chairman (Honorable Dr. Rajendra Prasad) asked Pundit Jawaharlal Nehru to move the resolution, and while moving the resolution for adoption, Nehru said that the Constituent Assembly was not what many of us wished it to be. It came into existence in conjunction with British government under particular conditions. Its substratum was the Cabinet Mission plan of 16 May 1946 (State Paper) and it had to function within certain limits.

He further asserted "You must not Ignore the 'Source from which this -Assembly derived its strength. Governments do not come into being by State Papers; they are in fact, the expression of the will of the people. We have met here today-because of the strength of the people behind us and we shall go as far, as the people not of any party or group but the people as a whole shall wish us to go. We should, therefore, always keep in mind "the passions that lie in the hearts of the masses of Indian people and try to fulfill them.

It was further stated by Mr. Nehru that "The Resolution I am placing before you is in the nature of a pledge. It has been drafted after mature deliberation and efforts have been made to avoid controversy".

He further quoted "The Resolution deals with fundamentals which are commonly held and have been accepted by the people", "The resolution states that it is our firm and solemn resolve to have a sovereign Indian republic. We have not mentioned the word 'republic' till this time; but you will well understand that a free India can be nothing but a republic"(Constituent Assembly, 1946).

The resolution was seconded by Mr. Purushottam Das Tandon he endorsed the resolution by saying that the Resolution had equality as its underlying theme (Constituent Assembly, 1946). Thereafter an amendment was moved by Mr. Jayakar on 16th December 1946 to postpone its consideration to a later date to enable the representatives of the, Muslim League and Indian states to participate in the deliberations of the assembly on the resolution, since meeting being preliminary, the Assembly could not adopt it. This, he said, was the legal difficulty in terms of the Cabinet Mission Statement of 16 May 1946 (Constituent Assembly, 1946).

The resolution was debated for eight days by many members. Various amendments proposed were by members with almost complete unanimity on the embodiment of some fundamentals in it as the substructure of framing a "Constitution for India". Finally after voting as it was declared by Mr. President (The Honorable Dr. Rajendra Prasad) that the Resolution was adopted on 22nd day of January, 1947 (Constituent Assembly, 1947).

III. POST-INDEPENDENCE; APPROVAL OF PREAMBLE: On 29th August 1947, the Constituent Assembly through a resolution appointed a Drafting Committee to "scrutinize the draft of the text of the Constitution of India prepared by the Constitutional Adviser, giving effect to the decisions already taken in the Assembly and including all matters which are ancillary thereto or which have to be provided in such a Constitution, and to submit to the Assembly for consideration the text of the draft constitution as revised by the committee."²⁰ The Drafting Committee had seven members: Alladi Krishnaswami Ayyar, N. Gopalaswami; Dr. B.R. Ambedkar, K.M Munshi, Mohammad Saadulla, B.L. Mitter and D.P. Khaitan (Constituent Assembly, 1947). At its first meeting on 30th August 1947, the Drafting Committee elected Dr, B.R Ambedkar as its Chairman.

a. **LETTER OF DR. BR. AMBEDKAR:** On, 21st February, 1948, Dr. B.R Ambedkar wrote a letter to The Honorable President of the Constituent Assembly of India, where he stated that, on behalf of the Drafting Committee appointed by the resolution of the Constituent Assembly of August 29, 1947, I submit herewith the Draft of the new Constitution of India as settled by the Committee. Regarding preamble he wrote, "The Objectives Resolution adopted by the Constituent Assembly in January, 1947, declares that India is to be a Sovereign Independent Republic.

¹ THE OBJECTIVE RESOLUTION: This Constituent Assembly declares its firm and solemn resolve to proclaim India as an independent Sovereign Republic and to draw up for her future governance a Constitution:

(2)WHEREIN the territories that now comprise British India, the territories that now form the Indian States, and such other parts of India as are outside British India and the States as well as such other territories as are willing to be constituted into the Independent Sovereign India shall be a Union of them all; and

(3)WHEREIN the said territories, whether with their present boundaries or with such others as may be determined by the Constituent Assembly and thereafter according to the law of the Constitution shall possess and retain the status of autonomous units, together with residuary powers, and exercise all powers and functions of government and administration, save an except such powers and functions as are vested in or assigned to the Union, or as are inherent or implied in the Union or resulting there from; and

(4)WHEREIN all power and authority of the Sovereign Independent India, its constituent parts and organs of government, are derived from the people; and

(5)WHEREIN shall be guaranteed and secured to all the people of India justice, social, economic, and political; equality of status, of opportunity, and before the law; freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality; and

(6)WHEREIN adequate safeguards shall be provided for minorities, backward and tribal areas, and depressed and other backward classes; and

(7)WHEREBY shall be maintained the integrity of the territory of the Republic and its sovereign rights on land, sea and air according to justice and the law of civilized nations; and

(8) this ancient land attain its rightful and honored place in the world and make its full and willing contribution to the promotion of world peace and the welfare of mankind.

The Drafting Committee has adopted the phrase sovereign democratic republic because Independence is usually implied in word “Sovereign”, so that there is hardly anything could be gained by adding the word “Independent”². The committee has also added a clause about “Fraternity” in the Preamble, although it does not occur in the Objective resolution Adopted on 22nd January, 1947.

The, committee concluded that the need for fraternal concord and good-will in India was never greater than now and that the particular aim of the new Constitution should be emphasized by special mention in the Preamble. In other respects the committee has tried to embody in the Preamble the spirit and as far as possible, the language of Objective Resolution.

b. **FIRST PRESENTATION OF PREAMBLE:** Draft Constitution of India, first time presented the preamble which was as follows-

WE, THE PEOPLE OF INDIA, having solemnly resolved, to constitute India into a SOVEREIGN DEMOCRATIC REPUBLIC* and to secure all its citizens: JUSTICE, social economic and political; Liberty of thought, expression, belief faith and worship; Equality of status and opportunity; and to promote among them all FRATERNITY assuring the dignity of the individual and the unity of Nation;

In our Constituent assembly this of (day15 of May, 1948 A.D.), do HEAR BY ADOPT ENACT AND GIVE OURSELVES THIS CONSTITUTION³.

c. **CONTEST ON PREAMBLE:** On 5th November 1948 over motion re. Draft Constitution it was asked by Maulana Hasrat Mohani to move the amendment to the preamble, but Mr. President (Dr. Rajendra Prasad) renounce it by saying “no amendment to the Preamble or any part of the constitution can be taken up this stage. We shall take up all amendments in due course (Constituent Assembly, 1948).

On same date Mr. B. Das also raised his objection regarding changes made in preamble by drafting committee, he pointed that the Objective resolution that we adopted in January 22nd 1947 stated that the constitution is “Independent Sovereign Republic.” On 21st February 1948 Dr. Bhimrao Ambedkar changed it into “Sovereign Democratic Republic. Later on Mr. Lokanath Mishra also dissented from draft constitution. He stated “I must say draft does not represent the objective resolution which this sovereign body passed last year.” He also added that if the words in the preamble ‘Equality, justice and peace, could have meaning only if we have a strong Centre (Constituent Assembly, 1948).

Discussion over draft constitution was continued next day on 6th November 1948 Mr. T. Prakashan said that “I was hoping, Sir, having seen the Preamble that everything would follow in regular course and bring out a Constitution that will give food and cloth to the millions of our people and also give education and protection to all the people of land. But Sir, to the utter disappointment of myself and some of us who think with me, this Draft constitution has drifted from point to point until at last it has become very difficult for us to understand where we are, where the country is, where the people are, what is it that they are going to derive out of this constitution when it is put on the statute book.” (Constituent Assembly, 1948).

Mr. B.A. Mandloi endorsed the Draft constitution and stated that, “The Constituent Assembly in its very first session passed a Resolution with respect to the objective of our Constitution. That Resolution was moved by our respected leader Pandit Jawaharlal Nehru, and was unanimously passed. We have to see that our Constitution is based on that fundamental Resolution—on that Objectives Resolution—in which the claims for justice, liberty, equality and fraternity had been granted. I submit that the Draft Constitution is a true reflection of the Objectives Resolution and therefore we can say that it has fulfilled our object. There is another touch-stone with which to see whether the Draft Constitution answers the purpose of our country and our nation. That touch stone is whether it would maintain our freedom, our independence and our democratic, secular Government, I am of opinion that looking from that point of view also, this Draft Constitution serves our purpose” (Constituent Assembly, 1948).

Pandit Thakur Das Bhargava also supported the preamble presented by drafting committee. He stated that “I think, Sir that the soul of this Constitution is contained in the Preamble and I am glad to express my sense of gratitude to Dr. Ambedkar for having added the word 'fraternity' to the Preamble. Now, Sir, I want to apply the touch-stone of this Preamble to the entire Constitution. If Justice, Liberty, Equality and Fraternity are to be found in this Constitution, if we can get this ideal through this Constitution, I maintain that the Constitution is good. In so far as these four things which are contained in the Preamble are wanting, then I am bound to say that the Constitution is wanting, and from this angle I want to judge the Constitution.” (Constituent Assembly, 1948).

Mr. Mahavir Tyagi debated over the agenda of sovereignty and raised his voice that, it is neither defined in the Preamble in so many words. I want that it should be clearly defined. I am a layman. I would like to know from the expert draftsmen whether the Preamble forms part of the body of the Constitution. Since the Preamble is not an Article of the Constitution, may I know if it comes in the body of the Constitution proper? Can Preamble always override the law? I don't think it does. What I want is that sovereignty should be defined in one of the Articles of the Constitution. The Preamble mentions only casually that we constitute India into a sovereign union. From this my friends of the Drafting Committee draw the conclusion that the sovereignty resides in the "people". That does not satisfy me. We cannot depend on the implication drawn. I insist that sovereignty should be defined in the body of the Constitution itself (Constituent Assembly, 1948).

² Letter to, the Honorable President from Dr. B.R Ambedkar New Delhi, 21st February, 1948

*This follows the decision taken by the Constituent Assembly. The question of the relationship between this Democratic Republic and the British Commonwealth of Nations remains to be decided subsequently.

³ Draft Constitution of India: printed in India by the manager govt. of India press New Delhi 1948.

Mr. Tyagi was opposed by, M. Ananthasayanam Ayyangar who Pointed out that "In the preamble it is stated that "We, the people of India, having solemnly resolved to constitute, etc." We are the persons who have met to give a Constitution for ourselves. Unless we are sovereign, we cannot give a Constitution for ourselves. Hitherto it was the Parliament in the United Kingdom that framed Constitutions. The fact that we have been elected by the various legislatures and come here for framing a Constitution shows that sovereignty is inherent in the people (Constituent Assembly, 1948).

d. **PREAMBLE AS A PART OF THE CONSTITUTION OF INDIA:** According to protocol Preamble was eminently discussed on 17th October 1949. Mr. President announced after consideration of all amendments that we have had from the drafting committee, "We shall now take up the Preamble", in context to preamble Mr. President said that "I find there are quite a good number of amendments to the Preamble in Vol. I of the Printed List Many of them bring in certain matters really not germane to the Preamble but by way of introduction of the Preamble, but I find that Maulana Hasrat Mohani's amendment is one of substance and seeks to bring in altogether new ideas. Therefore, I would ask him if he wishes to move his amendment first". Finally, the most enthusiastic person Maulana Hasrat Mohani who was impatient from beginning irrevocably got the opportunity to move his amendment, three amendments are moved by him separately and after deliberation over his amendments by assembly, Mr. President gradually put his amendments for vote and Maulana Hasrat Mohani was out of luck as his amendments were negated (Constituent Assembly, 1949).

Considerable numbers of amendments were obtained of which notice is given by other members. Regarding this Mr. President said "Now we have got a large number of amendments of which notice is given by other Members. Some of these amendments relate to two things. In some of them the name of God is brought in some form or other in this preamble.

In some others, the name of Mahatma Gandhi is brought in some form or other. Then there are some in which some amendments are suggested to the wording. But those are rather minor things, and the main amendments are really those in which the name of God is brought in, or the name of Mahatma Gandhi is brought in or both together.

Now, I would like to know from Members if they insist upon these amendments being moved, because I cannot prevent them from moving them; but I would suggest that neither God nor Mahatma Gandhi admits of a discussion in this House." Mr. H.V Kamath, Professor Shibban Lal Saksena and Pandit Govind Malaviya moved the amendments regarding name of God and Mahatma Gandhi while amendment presented by Mr. Brajeshwar Prasad and Mr. mati Purnima Banerji presented amendments regarding wordings. All amendments are discussed by assembly and are put for either voting or for division and none of the moved amendments regarding Preamble were adopted.

After considering all the amendments moved regarding Preamble, on 17th October 1949, Mr. President finally said that "There is no other amendment. The Preamble, as it is now open to discussion, if any Member wishes to say anything." In response Honorable Members said "The question may now be put" thereafter Mr. President said "if nobody is willing to speak, I shall put the Preamble to the vote.

The question is, "That the Preamble stands part of the Constitution." The motion was adopted, and Preamble was added to the Constitution (Constituent Assembly, 1949).

Thus after several hurdles and several discussion made by constituent assembly members finally resolution of 1946 was transformed into preamble of Constitution of India.

IV. JUDICIAL APPROCH REGARDING PREAMBLE: Indeed all the efforts which was put by members of Constituent Assembly in making preamble of the constitution was disappointingly challenged when in, (In Re: The Berubari Union and v Unknown, 14 March 1960) which was a referential case referred by President to Apex Court under article 143(1) of the Constitution of India on promulgation of the Indo-Pak agreement over Berubari union and exchange of enclaves, among the eight bench judges Justice Gajendragadkar unanimously, passed the judgment and in his verdict he stated that "There is no doubt that the declaration made by the people of India in exercise of their sovereign will in the preamble to the Constitution is, in the words of Story, "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.

This decision that "the preamble is not a part of the Constitution" was vis a vis conflicting to the motion adopted by Constituent Assembly "That the Preamble stands part of the Constitution."

V. END OF CONFLICT AND BASIC STRUCTURE DOCTRINE: This conflict that the preamble is a part of the Constitution or not, ended after the Landmark judgment given by 13 judges bench in (Kesavananda Bharati v State Of Kerala And Anr, 24 April, 1973), Regarding preamble it was stated by S.M. Sikri that, the Constitution indicates three modes of amendments and assuming that the "provisions of Article 368 confer power on Parliament to amend the Constitution, it will still have to be considered whether as long as the preamble is not amended, that power can be exercised with respect to any of the basic features of the Constitution. But, I think, that if upon a comparison of the preamble with the broad features of the Constitution it would appear that the preamble is an epitome of those features or, to put it differently if these features are an amplification or concretization of the concepts set out in the preamble.

With respect of whether the preamble is not a part of the Constitution, he quoted that in Re: The Berubari Union And v Unknown; it was said that preamble is not a part of constitution of India, in justification it was stated that preamble was

expressly voted to be a part of the Constitution. Further, with respect, no authority has been referred before us to establish the proposition that "what is true about the powers is equally true about the prohibitions and limitations"

In reference regarding Preamble used by apex Court in previous cases, S.M. Sikri, C.J. discussed the case of (*Behram Khurshed Pasikaka v The State of Bombay*, 1955) where after referring to Part III, Mahajan, C.J., observed "We think that the rights described as fundamental rights are a necessary consequence of the declaration in the preamble and these fundamental rights have not been put in the Constitution merely for individual benefits, though ultimately they come into operation in considering individual rights". Similarly in, in (*In re The Kerala Education Bill*, 1959), Das C.J. stated that "Nothing provokes and stimulates thought and expression in people more than education. It is education that clarifies our belief and faith and helps to strengthen our spirit of worship. To implement and fortify these supreme purposes set forth in the preamble, Part III of our Constitution has provided for us certain fundamental rights".

After discussing various cases regarding validity of preamble as part of Constitution it was finally concluded by S.M. Sikri, C.J that it seems to me that the Preamble of our Constitution is of extreme importance and the Constitution should be read and interpreted in the light of the grand and noble vision expressed in the Preamble. It is also stated that the preamble can be amended exercised under article 368 but amendments made shall not destroy the basic structure.

VI. AMENDMENT OF PREAMBLE: On 18th December 1976 the preamble was amended by the majority government of Smt. Indira Gandhi on recommendation of Sardar Sawarn Singh committee. Recommendation on amending the preamble was adopted by the government, and through The Constitutional (Forty Second Amendment) Act 1976, the words "socialist" and "secular" were added between the words "Sovereign" and "democratic" and the words "unity of the Nation" were changed to "unity and integrity of the Nation".

VII. CONCLUSION: The journey of objective resolution presented by Pandit Jawaharlal Nehru was not easy as in every step it was challenged, but in spite of challenges the objective resolution led the foundation of constitution of India and preamble is a prototype of the Objective Resolution. The Preamble to the Constitution of India is a foreword to the largest written Constitution of the world belonging to the largest democracy in the world. It contains the ideals and the aspirations seek out to be achieved by the united spirit of the people (The ultimate Sovereign).

In the words of the Honorable Supreme Court in (*In Re: The Berubari Union and v Unknown*, 14 March 1960) it has been regarded that Preamble is "The Key to Open the Mind of the Makers". Further in (*I. C. Golaknath & Ors vs State Of Punjab & Anrs.*, 27 February, 1967), the Apex Court went to the extent of saying Preamble in the nutshell contains the ideals and objectives of the Constitution.

It is noteworthy that no written statute is complete without a Preamble of its own and yet the Preamble to the Constitution of India was the last part to be added to it this has raised the question that; the Preamble is truly an Key to Open the Mind of the Makers? If the answer to this question is in affirmative, it means through the Preamble the noble vision and intention of our Constitution makers can be found out. This point however, gets allowed by the fact that after experiencing the amendment in 1976 by the Constitutional (Forty Second Amendment) Act 1976, the "intention of the makers" no longer prevails.

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