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White Paper

# Preamble: Whether a Part of the Indian Constitution?

## SALIENT FEATURES OF THE 1950 CONSTITUTION OF INDIA

## The Text of the Preamble

The Constitution of India opens with a Preamble. The Preamble to the Constitution of India as amended in the year 1976 reads as follows:

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 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 DOES HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

## Analysing the Features

As amended in 1976, the Preamble, unambiguously, exemplifies the broad contours of the Indian political life and serves a number of useful purposes, for, the expressions used in it connote certain fundamental aspects of the polity from which there is no escape for the various stakeholders in the political life of the nation. Being directional, the Preamble to the Constitution of India has the following features which are illustrative of the politico-ideological goals that it is meant to serve: First, though the use of the phrase, 'We, the people of India', may appear customary, its implications are far reaching for a nascent and fragile nation like India, marching on the uncharted path of democratic governance with competing hopes and aspirations from diverse quarters of the society. Thus, by establishing the sovereignty of the people, the Preamble reduces all other units of governance in the country to a secondary position, robbing from them any possibility of usurping the powers of other units as well as organs of government. At the same time, it also implies that the powers which are given to the government in India are sourced not from the states or any section of society or the former rulers of the Indian states but from the people at large, as a result of which no section of the people can challenge its authority and contend that it is not bound by the authority of the state because it has not accorded its consent to it. More importantly, since the states of the Union were not the party in the creation of the Union, which was created by the people of India, they cannot claim a right of secession from the Union. Therefore, the Preamble not only affords a stable democratic polity for the nation but also solidifies the unity and integrity of the nation.

Second, the Preamble puts in black and white the nature of polity in the country which must conform to the hard earned ideals of sovereign, socialist, secular, democratic republic. Needless to say, the nature of the Indian polity would not have been different from what it is today, had the words 'socialist' and 'secular' not been added to the original Preamble. While sovereignty affords a respectful place of pride to India in the comity of nations, the ideal of democratic republic manifests the basic outline of the nature of polity, guaranteeing the people the fundamental right of choosing their representatives to foster democratic governance in the country.

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Interestingly, despite the urge to make India a socialist country, the subtle and somewhat irreversible departure of the policies of the government from socialism, beginning in early 1990s with the adoption of Structural Adjustment Programmes (SAPs) under the dictates of the international financial institutions, has become most profound today, whereas the ideal of secularism has been so deeply ingrained in the ethos and mind-set of the one and all that it is now professed both formally as well as informally that the demise of secularism in the country may prove to be the demise of India as a nation as well. Thus, it appears to be a story in contrast for the two equally plausible notions of socialism and secularism, inserted into the Preamble with equal vigour, whereby while socialism, appearing an alien transplant in the Indian constitutional framework, fell in disfavour with the rulers of the day, without any rescue efforts by the other organs of the government, the notion of secularism, a long enduring value of Indian socio-cultural life, not only found commanding heights through the judicial pronouncements but also delving deep into the psyche of the people as well as the government alike.

Third, the Preamble presents a wish list outlining the aspirations of the people which they expect the government of India to secure for them. Spelt out in terms of justice, equality and fraternity, these ideals act as the benchmark to guide the policies and programmes of the government in future to cast India into the mould of a welfare state. Leaving no room for ambiguity on the dimensions of justice, the Preamble demarcates that justice needs to be in terms of social, economic and political, to be construed in the broadest sense of the term so that the nature of state in India does not become lop-sided.

The framers were quick enough to supplement the ideal of justice with that of the ideal of equality of status and opportunity to provide for the holistic framework of an egalitarian society in India. In the meanwhile, the Preamble does emphasize the promotion of fraternity amongst the citizens by assuring the dignity of the individual in society. Aware of the propensity of certain sections of society to advocate the subordination of individual dignity to the cause of farcical societal interests, the framers did not mince words to clarify that societal good could be ascertained only by ensuring the individual good in the society. Thus, the framers wished to create a social democracy in India, which, as Ambedkar elaborates, 'means a way of life which recognizes liberty, equality and fraternity which are not to be treated as separate items in a trinity. They form a union of trinity in the sense that to divorce one from the other is to defeat the very purpose of democracy. Liberty cannot be divorced from equality; equality cannot be divorced from liberty. Nor can liberty and equality be divorced from fraternity'.

Fourth, the Preamble makes it amply clear that the unity and integrity of the country is a precondition for the other cherished ideals to become reality in the scheme of things in an independent India. Discounting any scope for tempering with the unity and integrity of the nation, the essence of the letter and spirit of the Preamble conclusively bars all the stakeholders in the nation, be it the individuals, group of people, the state or any other entity, from casting aspersions on the unity and integrity of the country, in case of which the people of India and/or the government of India are enjoined to safeguard the unity and integrity of the nation.

Finally, the utility of the Preamble is discerned in its serving as a beacon light to the higher courts in the country that are called upon to discharge the grand duty of interpreting the Constitution. At the times of interpreting a controversial law or constitutional provisions, where the meaning of the law in point is not clear or ambiguity or uncertainty prevails in the minds of the constitutional lawyers or the judges, the only reference point left to the court is the language of the Preamble through which they persevere to mark out real intention of the framers of the Constitution. It is argued that the Preamble is the repository of the spirit of the Constitution and hence, the only reference point for those engaged in interpreting the constitutional provisions should be the ideals embodied in it.

## Preamble: Whether a Part of the Constitution?

Whether Preamble should be treated as part of the constitution or not has been a matter of great debate and discussion not only in India but also in USA. It was opined by the Supreme Court of USA that a Preamble is not an operative part of the Constitution. It indicates only the general purpose for which the people ordained and established the Constitution. It has never been regarded as the source of any substantive power conferred on the government of the USA or any of its department. The Supreme Court of India has laid down in some cases that the Preamble is not an operative part of the Constitution and hence it can never be a source of power. It has limited application and can be resorted to where there is any ambiguity or where the object or meaning of any enactment is not clear. Where the enabling part, i.e., the operative part of the Constitution is explicit and unambiguous, the Preamble cannot be resorted to, to control, qualify or restrict. In other words, where the language or provisions of the operative part are clear, full effect should be given to the operative part, even though those provisions appear to contradict the terms of the Preamble. It has thus aptly been argued that: 'Two propositions are quite clear: one that a preamble may afford useful light as to what the state intends to reach; and another, that if an enactment is itself clear and unambiguous, no preamble can qualify or cut down the enactment'.

But in India, proper function of the Preamble is to explain and recite certain facts which are necessary before the enactment contained in an act of the Parliament could be understood. The Preamble is often used to limit the scope of certain expressions used in the Constitution and to throw light on certain facts. Whenever a doubt arises, the Preamble helps in fixing the ambiguity or connotation of the words which can possibly have more than one meaning. In 1950, in the case of *AK Gopalan v. the State of Madras*, it was contended that the Preamble to the Constitution, which seeks to give India a democratic constitution, should be the guiding force in its interpretation and hence any law made under Article 21 of the Constitution should be held void if it offends the principle of natural justice for otherwise the so called 'fundamental rights' to life and personal liberty would have no protection. The majority bench of the Supreme Court rejected this contention holding that 'law' in Article 21 refers to positive or state-made law and not natural justice, and that the meaning of the language of Article 21 could not be modified with reference to the language of Article 21.

In the 1960 *Berubari Union Case*, the Supreme Court declared that the Preamble is not an integral part of the Indian constitution. Therefore it is not enforceable in a court of law and, further, Preamble had never been regarded as the source of any substantive power conferred on the government or on any of its departments. The court explained that 'what is true about the powers is equally true about the prohibitions and limitations'. It was therefore, observed that the Preamble had limited application. The court laid down that the Preamble would not be resorted to if the language of the enactment contained in the constitution was clear. However, 'if the terms used in any of the articles in the constitution are ambiguous or capable of two meanings, in interpreting them some assistance may be sought in the objectives enshrined in the Preamble'. Being unanimous in their decisions, the constitutional bench delivered a judgement which Justice PB Gajendragadkar articulated by saying that the Preamble of the constitution, is a key to our understanding of the Constitution despite not being its part. In other words, the values that the Preamble represents need to be taken into account while interpreting the Constitution.

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In the Bommai case of 1994, the majority of nine Judges laid down that the Preamble of the Constitution is the part of the basic structure of the Constitution. A Proclamation under Article 356(1) is open to judicial review on the ground of violating the basic structure of the Constitution. It laid in the judgement that the proclamation under Article 356(1), which violates any of the basic features as summarized in the Preamble of the Constitution is liable to be struck down as unconstitutional. A further extension of this innovation is that a political party, which appeals to religion in its election manifesto, acts in violation of the basic structure, and the President may impose President's Rule on a report of the Governor that a party has issued such a manifesto. Three of the nine judges have opined that the word 'secularism' in the Preamble of the Constitution is the part of the basic structure of the Constitution.

The Kesavananda Bharati case (1973) was a milestone and was a watershed India's constitutional history. For the first time, a bench of 13 judges assembled and sat in its original jurisdiction hearing the writ petition and they all placed on record 11 separate arguments to defend their points of view. It is not the source of power or the source of limitations for the prohibitors. The Preamble has an important role to play in the interpretation of the provisions of the constitution. Justice Palekar held that the Preamble is the part of the Constitution and therefore is amendable under Article 368 of the Constitution. It is the introductory part of the Constitution and is based on the Objective Resolution of Nehru. It tells about the nature of the state and objects that India has to achieve. There were many judicial interpretation on the issue if the Preamble is the part of the constitution or not? But finally the judiciary in the Kesavananda Bharti case held that the Preamble was a part of the Indian Constitution. Chief Justice Sikri said, '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 the noble visions expressed in the preamble'.

In the Minerva Mills case (1980) the Supreme Court applying Kesavananda principle invalidated the Clauses (4) and (5) of Article 368 inserted by the Forty-Second Amendment Act since they were in violation of the basic structure of the Constitution. Therefore, as it stands today, the Parliament can amend every part of the Constitution, but cannot change the basic structure of the Constitution of which Preamble is an integral part.

In the 1992 Indra Sawhney case, India's apex court drew our attention to the critical importance of the Preamble to the Constitution. Hailing the contribution that the founding fathers had made in constitutionalizing India, the Supreme Court held that the republic was

"founded with the four-fold objective of securing to its citizens justice, liberty, equality and fraternity. Statesman of the highest order . . . belonging to the fields of law, politics, and public life, came together to fashion the instrument of change, the Constitution of India. They did not rest content with evolving the framework of the State, they also pointed out the goal-end and the methodology for reaching the goal. In the Preamble, they elaborated the methodology to be followed for reaching the goal." (Indra Sawhney v. the Union of India, 1992. <https://indiankanoon.org/doc/1363234/> (accessed 29 November 2016).

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Characterizing the Preamble as 'a turning point in history', it was also emphasized by the court that it was also 'a key to the minds of the framers of the constitution'. The argument is very explicit: since the Preamble upholds the fundamental values that the founding fathers nurtured, it provides guidance to the future law makers with reference to what is considered to be constitutionally most appropriate at a particular historical juncture. This has been established by the court more than once. The most significant judicial pronouncement happens to be the Kesavananda judgement of 1973 in which the Preamble was identified as integral to the Constitution of India. Pursuing this understanding of the Preamble, M Hidayatullah further mentioned:

The Preamble resembles the Declaration of Independence of the United States of America, but is more than a declaration. It is the soul of our Constitution which lays down the pattern of our political society which it states is sovereign, democratic republic. It contains a solemn resolve which nothing but a revolution can alter.

Emphasizing that the Preamble lays-out the politico-ideological directions that the State needs to follow while discharging its social responsibility the apex court privileged the prescriptive characteristics of the Constitution of India over those insisting on its procedure-specific nature. This is a remarkable judicial feat since it both upheld the importance of some of the cardinal values of governance in a democratic setting and firmly established the idea that they can never be bypassed under any circumstances. The Preamble is thus not merely a text with tremendous constitutional importance, it also streamlines processes for democratic governance by stressing those pertinent politico-ideological values which are critically important in this regard.

### Reviewing the Argument

For instance, two expressions—'socialistic' and 'secular'—were not there in the Preamble to India's Constitution in its original form; these were added after a constitutional amendment in 1976, presumably to highlight the significance of these ideas in governance; it is also indicative of the nature of the regime. If new ideas can be incorporated, old ideas can, by implication, be discarded. Is it therefore valid to hold the view that Preamble is sacrosanct? There is no easy answer to this question. What is clear however is that so long as these ideas are integral to the Preamble, they are inviolable, as multiple court judgements have shown. By insisting that the Preamble is part of the Constitution, the apex court has time and again emphasized that the ideas enshrined there can never be bypassed or undermined while assessing the constitutional validity of executive and legislative decisions. Beginning with the 1950 AK Gopalan case, the Supreme Court of India has always upheld the importance of the Preamble in assessing whether a particular piece of legislation or an executive feat is justiciable. This is a valid and also persuasive constitutional position so long as there is guarantee for 'procedure, established by law' as per Article 21 of the 1950 Constitution of India which also confirms that in its absence, the situation may not seem to be propitious and favourably tilted for the Preamble. It further means that being the soul of the constitution, a Preamble continues to remain unfringeable since it is politically endorsed and ideologically defended in a particular socio-economic milieu, the absence of which makes its future uncertain and unpredictable.

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