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**TOPIC-PREAMBLE OF THE INDIAN CONSTITUTION  
AND PROCEDURE OF AMENDMENT.**

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# CHAPTER—I

## INTRODUCTORY OVERVIEW

The Preamble to the Constitution of India is "Declaration of Independence" statement & a brief introductory that sets out the guiding principles & purpose of the document. It is the soul of the Indian Constitution, written by the Father of Indian Constitution Dr. B. R. Ambedkar.

Proper function of a Preamble is to explain certain facts which are necessary to be explained before the enactments contained in the Act can be understood. Preamble is not an integral part of the Indian constitution was once decided upon by the Supreme Court of India in the *Berubari* case; therefore it is not enforceable in a court of law. However, the Supreme Court of India has, in the *Kesavananda* case, recognised that the preamble may be used to interpret ambiguous areas of the constitution where differing interpretations present themselves. Supreme Court held that the Preamble is an integral part of the Constitution.

The preamble-page, along with other pages of the original Constitution of India, was designed and decorated solely by renowned painter Deodhar Rammanohar Sinha. As such, the page bears Deodhar Rammanohar Sinha's short signature Ram in Devanagari lower-right corner.<sup>1</sup>

The preamble described the state as a "sovereign democratic republic". In 1976 the Forty-second Amendment explicitly enacted secular egalitarianism feature.

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<sup>1</sup> <http://www.lexisnexis.in/d-d-basu-introduction-to-the-constitution-of-india-21st-edn.htm>

The Constitution of India is the supreme law of India. It lays down the framework defining fundamental political principles, establishes the structure, procedures, powers, and duties of government institutions, and sets out fundamental rights, directive principles, and the duties of citizens. It is the longest written constitution of any sovereign country in the world, The Constitution, in its current form (September 2013), containing 444 articles in 22 parts, 12 schedules and 118 amendments. Besides the Hindi version, there is an official English translation. Dr. Bhimrao Ramji Ambedkar is widely known as the father of the Indian Constitution.

The Constitution follows parliamentary system of government and the executive is directly accountable to legislature. Article 74 provides that there shall be a Prime Minister of India as the head of government. It also states that there shall be a President of India and a Vice-President of India under Articles 52 and 63. Unlike the Prime Minister, the President largely performs ceremonial roles.

The Constitution is federal in nature. Each State and each Union territory of India have their own government. Analogues to President and Prime Minister, is the Governor in case of States, Lieutenant Governor for Union territories and the Chief Minister. The 73rd and 74th Amendment Act also introduced the system of Panchayati raj in villages and municipalities. Also, Article 370 of the Constitution gives special status to the state of Jammu and Kashmir.<sup>2</sup>

The Constitution was adopted by the Constituent Assembly on 26 November 1949, and came into effect on 26 January 1950. The date 26 January was chosen to commemorate

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<sup>2</sup> <http://www.lexisnexis.in/d-d-basu-introduction-to-the-constitution-of-india-21st-edn.htm>

the Purna Swaraj declaration of independence of 1930. With its adoption, the Union of India officially became the modern and contemporary Republic of India and it replaced the Government of India Act 1935 as the country's fundamental governing document. To ensure constitutional autochthony, the framers of constitution inserted Article 395 in the constitution and by this Article the Indian Independence Act, 1947 was repealed. The Constitution declares India to be a sovereign, socialist, secular, democratic republic, assuring its citizens of justice, equality, and liberty, and endeavors to promote fraternity among them. The words "socialist" and "secular" were added to the definition in 1976 by constitutional amendment (mini constitution). India celebrates the adoption of the constitution on 26 January each year as Republic Day.

An aspect of the Constitution of India most neglected, and to which the least importance is attached, is the Preamble. In no work, commentary or treatise on the Constitution, could one find the space worth mentioning for its consideration. If we were to hold anybody responsible for showing this scant courtesy for what is to be regarded as the key which opens the door to the understanding of the Constitution, it is the judiciary. Vested with the power of interpretation of the Constitution, and to regard its interpretation as the final say in that matter, at one time it held that the rightful place of the Directive Principles of State Policy was somewhere in the Schedules beyond the Articles of the Constitution, simply because the Constitution stated that the Directives were unenforceable in the courts of law, and till recently that the Preamble was not a part of the Constitution as it preceded Article 1 of the Constitution and ended up with the expression "this Constitution", which meant that what followed the Preamble was the Constitution. Their justification for such an interpretation was that they could not go

beyond the written word and rules in respect of ordinary statutory interpretations, which put a bar on any consideration being paid to the spirit of the Constitution. Be it then, the question is whether or not another interpretation was possible on the basis of the spirit of the Constitution. It was possible and easy enough if the verbatim proceedings of the making of the Constitution in the Constituent Assembly and its various committees had been kept. Or, alternatively, the Notes and personal papers of the prime architects of the Constitution were easily accessible.<sup>3</sup>

Thus, when the Kesavananda Bharathi's Case came before the Supreme Court, opportunity was availed of to recognize the Preamble as a part of the Constitution. Incidentally, however, for the first time in the history of the judiciary, copious references were made in this case to the debates of the Constituent Assembly. All this, it should be reiterated, the judiciary did for the limited purpose of holding its position, namely, that although fundamental rights could be abridged by an amendment of the Constitution, nevertheless it should not be done as they constituted a basic feature of the Constitution. In other words, the judiciary would never have regarded the Preamble as a part of the Constitution if the circumstances leading to the establishing of the supremacy of the Directives over the Fundamental Rights had not come about at all. Or, to put it differently, the Preamble, on its merits alone, could not directly claim a rightful place as part of the Constitution, but as the Directive Principles of State Policy had come to be recognized as a vital part of the Constitution, enjoying primacy over the fundamental rights, the Preamble had to be accepted as a part of the Constitution. In short, it may not be inappropriate to say that the recognition of the Directive Principles of State Policy as

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<sup>3</sup> Markandan K.C.-The Preamble Page-1-2

superior to, or more basic than, fundamental rights under our Constitution, paved the way for the entry of the Preamble into the Constitution as its integral part.

The origins of the Preamble to written constitutions, the purpose and the manner of its stamen in various constitutions make a fascinating study. There are as many variations in preambles as there are variations in constitutions. And naturally so, as they have to reflect the objectives of the constitution they intend to do. The Preamble to the Indian Constitution has its own distinguishing features. The manner of its evaluation, the extent of care and concern that was shown in its formulation, both in its content and phraseology, is unprecedented. The study of the Preamble reveals how keen the founding fathers were in providing for our country a constitution that would, at once, be stable and flexible. It also enables us to know what exactly the constitution stands for and what it does not.

The purpose of this Preamble is to clarify who has made the Constitution, what is its source, what is the ultimate sanction behind it: what is the nature of polity which is sought to be established by the Constitution and what are its goals and objective?

The Preamble to the Constitution is not a mere flourish of words, but was an ideal set up for practices and observance as a matter of law through Constitutional mechanism.

The mode of realization of this ideal, namely, the establishment of an egalitarian society, permeated by social, economic and political justice, is carried out in detail by the various provisions of the Constitution<sup>4</sup>.

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<sup>4</sup> Markandan K.C.-The Preamble Page-3

It was declared that “it (Preamble) contains in a nutshell, its ideals and its aspirations. The Preamble is not a platitude but the mode of its realization is worked out in detail in the Constitution.

### **Significance:**

The Preamble of the Constitution of India is a unique piece of document. It embodies the most important values and objectives of our constitution. It is the soul and spirit of the constitution. It briefly but succinctly states what our political leaders and Constitutional Fathers wanted India to be. The Preamble is the mirror of India's Constitution. It is the yardstick with which one can judge the constitution.<sup>5</sup>

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<sup>5</sup> [n.wikipedia.org/wiki/Constitution\\_of\\_India](https://en.wikipedia.org/wiki/Constitution_of_India)

## CHAPTER II—

# The Evolution of the Preamble to the Indian Constitution

Thinking in respect of the Preamble to our Constitution began with the statement made by the Cabinet Mission and the Viceroy, on May 16, 1946. They recommended that the Constitution of India should take the following basic form:

There should be a Union of India, embracing both British India and the States which should deal with the following subjects, Foreign Affairs, Defence and Communications, and should have the powers necessary to raise the finances required for the above subjects.<sup>6</sup>

The Union should have an Executive and Legislature constituted from British India and States representatives. Any question raising a major communal issue in the Legislature should require for its decision by a majority of the representatives present and voting, of such of the two major communities as well as a majority of all members, present and voting.

All subjects other than the Union subjects and all residuary power should vest in the Provinces.<sup>7</sup>

The States should retain all subjects and powers other than those ceded to the Union.

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<sup>6</sup> [http://en.wikipedia.org/wiki/Preamble\\_to\\_the\\_Constitution\\_of\\_India](http://en.wikipedia.org/wiki/Preamble_to_the_Constitution_of_India)

<sup>7</sup> . Markandan K.C.-The Preamble Page-27-32

Provinces should be free to form Groups and Executives and Legislatures, and each group could determine the provincial subjects to be taken in common.

The Constitution of the Union and of the Groups should contain, a provision whereby any Province could, by a majority vote of its Legislative Assembly, call for a reconsideration of the terms of the Constitution after an initial period of ten-yearly intervals afterwards.

The Statement indicated that it had become necessary for the Cabinet Mission and the Viceroy to specifically lay down the basic form of the future Constitution, in the manner they had done, as otherwise it would not have been possible for them to get the Muslim League and the Congress to join in the setting up of the Constitution-making machinery.

The Statement observed:

“It has been necessary, however, for us to make this recommendation as to the broad basis of the future Constitution because it became clear to us in the course of our negotiations that not until that had been done was there any hope of getting the two major communities to join in the setting up of the Constitution-making machinery.”<sup>8</sup>

The Congress Working Committee, at its meeting held on 25th June 1946 passed a resolution accepting the Mission’s Plan relating to the type of Constitution and the objectives. It decided that the Congress should join the proposed Constituent Assembly with a view to framing the Constitution of a “free, united and democratic India”. The objective of the Constitution was spelled out as “immediate independence and the opening out of avenues leading to the rapid advance of the masses economically and socially, so that their material standards may be raised and poverty, malnutrition, famine

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<sup>8</sup> [http://en.wikipedia.org/wiki/Preamble\\_to\\_the\\_Constitution\\_of\\_India](http://en.wikipedia.org/wiki/Preamble_to_the_Constitution_of_India)

and lack of the necessities in life may be ended, and all the people of country may have freedom and the opportunity to grow and develop according to their genius”.

“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 wherein

the territories that now comprise British India, the territories now form the Indian States and such other territories and parts of India as are outside British India and the States and are willing to be constituted into the Independent Sovereign India shall be a Union of them all; and the said territories, either 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 functions and powers of government and administration, save and except those that are assigned to and vested in the Union, and save and except such powers and functions as are inherent in the Union by virtue of the sovereignty of the union;

and wherein

all power and authority of the Sovereign Independent India, its constituent parts, and organs of government are derived from the people;<sup>9</sup>

and wherein

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<sup>9</sup> <http://www.hrdiap.gov.in/87fc/images11/4.pdf>

shall be guaranteed to all the people of India by law and accrued to them by declared social objectives and purposes, economic organizations and administrative machinery

Justice, social, economic and political,

Equality of status, of opportunity and before the law,

Freedom of thought, belief, vocation, association and action subject to law and public morality;

and wherein

adequate safeguards shall be provided for minorities, backward areas and classes;

and 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

this ancient land attains its rightful and honoured place in the world and makes its full and willing contribution to the promotion of world peace and the welfare of mankind.

On 20 November, 1946, the Congress Working Committee adopted a resolution on the objective of the Constitution, which was a brief reiteration of the essential objectives of the Constitution earlier adopted.<sup>10</sup>

The Objectives of the Constitution as drafted by the Experts Committee and approved by the Congress Working Committee with some modifications, was moved in the

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<sup>10</sup> <http://www.hrdiap.gov.in/87fc/images11/4.pdf>

Constituent Assembly, by Pandit Jawaharlal Nehru, on 13 December, 1946, as Resolution Re. Aims and Objectives. It read as follows:

“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:

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

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 functions and powers of government and administration, save and 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

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

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, belief, vocation, association and action subject to law and public morality;<sup>11</sup>

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<sup>11</sup> <http://www.hrdiap.gov.in/87fc/images11/4.pdf>

Wherein adequate safeguards shall be provided for minorities, backward areas and tribal areas and depressed and backward classes; and

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

this ancient land attains its rightful and honoured place in the world and makes its full and willing contribution to the promotion of world peace and the welfare of mankind.”

Acharya J. B. Kriplani stated at the outset that the Preamble should have been considered first even as it was given in the beginning of the Constitution, the reason being that it would have been before them in every detailed provision cautioning them that they were not deviating from the basic principles which they had laid down in the Preamble. He held that the principles contained in the Preamble were not only legal and political principles, but were also moral and spiritual principles, and as such, they were to be lived whether it was public life or private life. He pleaded the acceptance of the amendment as it really described the true position. To remind the Government and representatives of the people that they were really servants of the people, he felt that it was necessary to lay down clearly and distinctly that sovereignty resided and flowed from the people..

The Preamble to the Constitution as adopted on 26th November, 1949, remained as such till September, 1976, when the 42nd Amendment to the Constitution was introduced in

the Lok Sabha seeking, inter alia, to amend the Preamble for purposes of including in it the words “Socialist”, “Secular” and “Integrity”.<sup>12</sup>

On 25th October, 1976, the Lok Sabha took up for consideration the Bill, and after discussing it for seven days, passed it on 2nd November, 1976. Two days later, on 4th November, 1976, the Rajya Sabha took up the 42nd Amendment as passed by the Lok Sabha, and after discussing it for six days, passed it on 11th November, 1976. By and large, members from both the Houses welcomed the addition of the three words in the Preamble.

Speaking on the motion for consideration of the Bill in the Lok Sabha, on 25th October 1976, the Minister of Law, Justice and Company Affairs justified the inclusion of the words “Socialism” and “Secularism” by citing the Congress Resolution passed in 1931 at Karachi and Nehru’s remarks in the Constituent Assembly. He said that in 1931, the Karachi Congress had passed a resolution indicating that although their immediate objective was to attain political freedom, their further objective was to bring about a socio-economic revolution in the country after the achievement of that freedom. Pandit Nehru’s remarks in this regard that he quoted were:

“The first task of the Assembly is to free India through a new Constitution, to feed the starving people, to clothe the naked masses and to give every Indian the fullest opportunity to develop himself according to his capacity”.

He contended that a Constitution was not only a legal document but also a social and political document and as such, it must reflect not only the aspirations and wishes of the

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<sup>12</sup> <http://uttarapath.wordpress.com/tag/preamble-of-indian-constitution/>

people, but also serve as an effective instrument for carrying out a socio-economic revolution. Characterizing the Preamble as a fundamental part of the Constitution, he argued that the Objective of Socialism and Secularism, which they had tried to implement in the future, would have to be more accurately and correctly reflected in it. He observed:

“The Preamble is the key to the whole Constitution when we interpret the Constitution, its letter, its provision. It is the most fundamental part of the constitutional structure which gives direction to the whole Constitution, a direction to all we do by law or otherwise.”

“.... The objectives which we had always in view, namely socialism and secularism, which we had tried to implement, will be more and more implemented and will be more accurately and correctly reflected in a basic part of our Constitution, namely, the Preamble. Let anyone say that socialism or secularism is incapable of definition. Well, if that argument were to be accepted even democracy in that sense, is incapable of definition because is it not understood in different ways in different countries? But we understand what kind of democracy we stand for. In the same way we understand what socialism stands for, what secularism stands for”.<sup>13</sup>

The objection to the incorporation of the word Socialism in the Preamble has been three-fold. Firstly, it is said that the Preamble is not a part of the Constitution and so it is incapable of amendment. In the Kesavananda Bharti’s case, however, the Supreme Court on which the critics heavily rely, had laid down that Preamble is a part of the Constitution. But apart from that even assuming that Preamble is not a part of the

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<sup>13</sup> <http://www.competitionmaster.com/category.aspx?ID=805ce845-5701-402c-b519-93816a1ff163>

Constitution, what follows? I have not come across any law which bars the Parliament from making any amendment to the Preamble. The only effect of the Preamble not being accepted as a part of the Constitution will be that this Parliament will be able to amend it by a simple majority and a two-thirds majority will not be required”.

The Judiciary, however, referred to and dilated upon the Preamble whenever a case relating to Fundamental Rights came up before it, the only exception being the Sankari Prasad’s case. In Sajjan Singh Vs. State of Rajasthan<sup>14</sup>, Hidayatullah J. referred to the nature and importance of the Preamble in the following words:

“Another provision, namely, the Preamble to the Constitution is equally vital to our body politic. In The Berubari Union and Exchange of Enclaves, it is held that although the Preamble is the key to the mind of the Constitution-makers, it does not form part of the Constitution. Perhaps, in one sense, it does not but, in another sense, it does. Our Preamble is more akin in nature to the American Declaration of Independence (July 4, 1776) than to the Preamble to the Constitution of the United States. It does not make any grant of power but it gives a direction and purpose to the Constitution which is reflected in Parts III and IV”.<sup>15</sup>

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<sup>14</sup> AIR 1965 SC 845

<sup>15</sup> <http://www.facts-about-india.com/borrowed-features-of-constitution.php>

## CHAPTER III—

### MEANING

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**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 of 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 twenty-sixth day of November, 1949, DO HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.<sup>16</sup>**

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<sup>16</sup> JAIN.M.P-Indian Constitutional law, Page 367

The original 26 November 1949 constitution stated "SOVEREIGN DEMOCRATIC REPUBLIC" and "unity of the Nation", the words "SOCIALIST SECULAR" and "Unity and Integrity" were added via the 42nd amendment during the Emergency in 1976

Reading through the Preamble, one can see the purpose that it serves, namely, the declaration of (1) the source of the constitution, (2) a statement of its objectives and (3) the date of its adoption.

The opening words of the preamble ('we the people of India') emphasise the ultimate authority of the people from whose will the constitution emerges. Since the Constituent Assembly enacted and adopted the constitution in the name of the people of India, the question has been asked whether the Assembly was really representative of the people of India. This question was raised both within and outside the Assembly. The circumstances under which the Constituent Assembly came into being shows that it was impracticable to constitute such a body in 1946 with adult suffrage as its basis. No part of the country had the experience of adult suffrage.

To prepare an electoral roll on the basis of adult suffrage for the country and to hold elections on that basis would have certainly taken a number of years. It was rightly thought unwise to postpone the task of constitution making until such an election was held. This was the main justification for accepting the Cabinet Mission Plan for constituting the Assembly through indirect election. Everyone will definitely agree with what Dr. Ambedkar said in the floor of the Constituent Assembly in 1949, "I say that the Preamble embodies what is the desire of every members of the House, that the

constitution should have its root, its authority, its sovereignty from the people that it has".<sup>17</sup>

It signifies the democratic principle that power ultimately rests in the hands of the people. It also emphasizes that the constitution is made by and for the Indian people and is not given to them by any outside power (such as the British Parliament). The wording is close to the preamble to the constitution, which had been adopted in 1937; it reads "We, the people of India ... Do hereby adopt, enact, and give to ourselves this Constitution". The phrase "we the people" emphasizes upon the concept of popular sovereignty as laid down by J. J. Rousseau. All the power emanates from the people and the political system will be accountable and responsible to the people.

### **Sovereign**

The word sovereign means supreme or independence. India is internally and externally sovereign - externally free from the control of any foreign power and internally, it has a free government which is directly elected by the people and makes laws that govern the people. She allies in peace and war. The Popular sovereignty is also one of the basic structures of constitution of India. Hence, Citizens of India also enjoy sovereign power to elect their representatives in elections held for parliament, state legislature and local bodies as well. People have supreme right to make decisions on internal as well as external matters. No external power can dictate the government of India. All the people are free in a limit to do their work in their own opinion.

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<sup>17</sup> [http://en.wikipedia.org/wiki/Preamble\\_to\\_the\\_Constitution\\_of\\_India](http://en.wikipedia.org/wiki/Preamble_to_the_Constitution_of_India)

## **Socialist**

The word socialist was added to the Preamble by the Forty-second Amendment during the Emergency in 1976. It implies social and economic equality.

Social equality in this context means the absence of discrimination on the grounds only of caste, colour, creed, sex, religion, or language. Under social equality, everyone has equal status and opportunities.

Economic equality in this context means that the government will endeavor to make the distribution of wealth more equal and provide a decent standard of living for all. This is in effect emphasized a commitment towards the formation of a welfare state. India has adopted a socialistic and mixed economy and the government has framed many laws to achieve the aim.

## **Secular**

The word secular was added to the Preamble by the Forty-second Amendment during the Emergency in 1976. Citizens have complete freedom to follow any religion, and there is no official religion. The Government treats all religious beliefs and practices with equal respect and honor.<sup>18</sup>

## **Democratic**

The first part of the preamble “We, the people of India” and, its last part “give to ourselves this Constitution” clearly indicate the democratic spirit involved even in the

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<sup>18</sup> [http://en.wikipedia.org/wiki/Preamble\\_to\\_the\\_Constitution\\_of\\_India](http://en.wikipedia.org/wiki/Preamble_to_the_Constitution_of_India)

Constitution. India is a democracy. The people of India elect their governments at all levels (Union, State and local) by a system of universal adult franchise; popularly known as "one man one vote". Every citizen of India, who is 18 years of age and above and not otherwise debarred by law, is entitled to vote. Every citizen enjoys this right without any discrimination on the basis of caste, creed, colour, sex, religion or education.

## **Republic**

As opposed to a monarchy, in which the head of state is appointed on hereditary basis for a lifetime or until he abdicates from the throne, a democratic republic is an entity in which the head of state is elected, directly or indirectly, for a fixed tenure. The President of India is elected by an electoral college for a term of five years. The post of the President Of India is not hereditary. Every single citizen of India is eligible to become the President of the country. The leaders of the state and local bodies are also elected by the people in similar manner.<sup>19</sup>

It is from this legal standpoint that the Supreme Court observed, in the Berubari case.

“The declaration made by the people of India in exercise of their sovereign will in the Preamble to the Constitution is “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 and it has never been regarded as the source, of any substantive power conferred on the Government of Indian Union or on any of its departments. Such powers embrace only those expressly granted in the body of the Constitution and such as may be implied from those so granted. What is true about

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<sup>19</sup> [http://en.wikipedia.org/wiki/Preamble\\_to\\_the\\_Constitution\\_of\\_India](http://en.wikipedia.org/wiki/Preamble_to_the_Constitution_of_India)

the powers is equally true about the prohibitions and limitations. Besides, the assumption that the first part of the Preamble postulates a very serious limitation on one of the very important attributes of sovereignty itself is not correct. One of the attributes of sovereignty is the power to cede parts of national territory if necessary. At the highest it may perhaps be arguable that 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 in the objectives enshrined in the Preamble.

In the early case of *Gopalan*<sup>20</sup>, it was observed that in interpreting the Fundamental Rights enumerated in Part III of the Constitution, the high purpose and spirit of the Preamble, namely, that it assured to the citizen 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.

Majority judgement in *Keshavananda Bharati*'s case has strongly relied on the Preamble in reaching the conclusion that power of amendment conferred by Article 368 of the Constitution was limited and did not enable Parliament to alter basic structure or framework of the Constitution. The concept of "economic equality" at equal pay for equal work was held ingrained in the Constitution as one of the basic aspects for which much importance was given to the amendment of Preamble by 42nd Amendment of the Constitution. The addition of word "Socialist" in the Preamble enabled the Courts to learn more and more in favour of nationalization and state ownership.<sup>21</sup>

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<sup>21</sup> [http://en.wikipedia.org/wiki/Preamble\\_to\\_the\\_Constitution\\_of\\_India](http://en.wikipedia.org/wiki/Preamble_to_the_Constitution_of_India)

Whether it is the Constitution that is expanded or the Constitutional validity of a statute that is considered a cardinal rule is to look to the Preamble to the Constitution as the binding light and the Directive Principles of State Policy as the Book of Interpretation. It was held in that case that the inclusion of word “socialist” is a beacon to guide and inspire all that is enshrined in the articles of the Constitution – is clearly to set up a vibrant throbbing socialist welfare society” in place of a “feudal exploited society.”

## CHAPTER IV

### **Anatomy of the Preamble to the Indian Constitution**

At the Outset, it must be recognized that in the eighty-five words contained in the Preamble (eighty one initially), the founding fathers had conveyed in the most eloquent manner what the framers of any other Constitution in the world had sought or failed to convey. The care and concern that is reflected in its thought and content, and in its formulation and phraseology, is unprecedented, so much so that it has set a new trend in the formulation of constitutional Preambles. Although there is very little that is new or novel in what is said in the Preamble that is not to be found in one or more constitutional Preambles of the world yet the manner in which the whole thing is conceived and woven together is, indeed, unique. The attempt, on the part of the founding fathers, was to epitomize and reflect in the Preamble the entire thought and content of the Constitution.<sup>22</sup>

Through the Preamble the framers wanted to convey the broad framework of ideas and concepts within which the entire Constitution in all its details had been provided for. Besides, it was to serve several other purposes. By providing the goals and objectives, it was meant to give guidance to political development in the context of the aspirations of the people; by the manner of its formulation it sought to give direction to the legislature, to set limit to executive and administrative action, and finally, to provide guidance to judicial interpretations. Above all, the Preamble was meant to serve the purpose of understanding the Constitution in its right perspective. Without it, the Constitution was

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<sup>22</sup> Markandan K.C-The Preamble,Pages 98-103

not only likely to be misunderstood but even distorted. It was with this objective that the framers of the Constitution put the Preamble with its content and formulation, textually a part of the Constitution. There cannot be any other justification other than the above to put the Preamble, which mirrors the entire Constitution, as part of it. Failure or inability to appreciate this objective of the framers of the Constitution has kicked up the controversy about the nature and significance of the Preamble, particularly, with the judiciary. A more important thing to be noted is that what is not reflected in the Preamble, or specifically sought to put into it but rejected, is not in the Constitution or at least seeks to offer irrespective of contentions to the contrary. To hold, therefore, the view, and maintain on the basis of provisions in the Constitution but are not reflected in the Preamble or rejected by it, that such a thing is contained in the Constitution is not only erroneous but even mischievous.

How far the Preamble truly reflects the entire Constitution and enables its proper understanding can be known only when the Preamble is subjected to a close scrutiny. To this purpose the following pages will be devoted to.<sup>23</sup>

To begin with, for purposes of our analysis, the Preamble can be divided into three parts, namely, Declaratory, Obligatory-Objective and Descriptive. The Declaratory Part of the Constitution is:

“We, the people of India, in our Constituent Assembly this twenty-sixth day of November, 1949, do Hereby Adopt, Enact and Give to Ourselves This Constitution”.

The Obligatory-Objective Part is :

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<sup>23</sup> Markandan K.C-The Preamble,Pages 98-103

“Having solemnly resolved to constitute India into a Sovereign Socialist Secular Democratic Republic” :

and the Descriptive Part is spelt out as:

“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”.

Taking the Democratic Part first, the words “We, the People of India.... Do Hereby Adopt Enact and Give to Ourselves This Constitution”, is taken from the Irish Constitution with the substitution of the word “India” for “Eire”. But then this does not mean that these words were merely transplanted into the Indian Preamble without serving the precise purpose for which it was needed. The Constituent Assembly of India was, no doubt, engaged in the task of enacting a Constitution, but then it was doing so on behalf of the people of India, as a whole. After all, a Constitution cannot be enacted by the people as population, except through their representatives. Nor is it possible, practicable or even necessary, in the Indian context to get a Constitution so enacted and ratified by the people. All that was necessary was to ensure that the representatives of the people engaged in the task of enactment of the Constitution represented, as far as possible, the different sections of the Indian Society. Viewed from this angle, the Constituent Assembly of India was, indeed, truly representative of the people of India. And under these circumstances the people are left with no choice other than of adopting the Constitution which is as good and true as enacted by them. The word “adopt” precedes

the word “enact” to convey that the people of India had adopted a Constitution that was enacted by the Constituent Assembly. As it was a self-prescription it was appropriate to insert the words “give to ourselves” after enactment. The words “in our” before Constituent Assembly was meant to signify that the Constituent Assembly consisted of the representatives chosen by and from amongst the people of India. The twenty-sixth day of November, 1949, was the date when the Constituent Assembly finally enacted the Constitution and the people of India adopted the same.<sup>24</sup>

The Declaratory Part of the Preamble is a normal feature of any Constitution which has a Preamble. Its purpose is to state the source of the Constitution; by whom and for whom it was enacted; and in certain cases, as to when it was enacted. Declaration of the source of authority for framing the Constitution at the outset of the Constitution itself in the Preamble, which is the most appropriate place for the purpose, is to lend authenticity and sanctity to the constitutional document, and to infuse confidence in the minds of those for whom it is meant and that what is stated or assured in the Constitution would be complied with and fulfilled. As the Constitution is invariably enacted by the representatives of the people as a whole, there are, indeed, two sources of authority for the Constitution, namely, the proximate source of authority which actually enacts the Constitution, and the ultimate source of authority, which adopts the Constitution. To the proximate source of authority, power is delegated by the ultimate source of authority, enacting the Constitution on its behalf, and after performing that function disappears from the scene. The ultimate source of authority, on the contrary, remains, and as the Constitution is enacted not only for the existing generation of people but also for the succeeding

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<sup>24</sup> Markandan K.C-The Preamble,Pages 98-103

generations as well, the ultimate source of authority commands greater authenticity, sanctity and confidence. Therefore, the ultimate source of authority, namely, the people of the country, occupies a place of pride in the Preamble, and is mentioned at the very outset, and to distinguish it from the delegated enacting authority, the declaratory part of the Preamble is split into two parts and the latter authority is put towards the end of the Preamble.

The source of authority and power for the adoption and enactment of the Constitution, as already indicated, is vested in the entire people of India. However, when the Constituent Assembly was discussing the Constitution, doubts were expressed by some members of the Constituent Assembly whether the term “People of India” used in the Preamble to signify sovereign power really meant the entire people of India. As it was not clear they wanted it to be precisely stated, preferably in the Articles of the Constitution rather than in the Preamble because it was doubtful if the Preamble formed a part of the Constitution.

The expression “the people of India” in the Preamble means the entire population of India. The Constituent Assembly is speaking population of India. The Constituent Assembly is speaking in the name of the people of India. The amendment is misconceived. Further, it will not be correct to refer to the representatives “elected by adult franchise”, as the members of the Constituent Assembly have not been elected by adult franchise. The amendment cannot, therefore, be accepted.<sup>25</sup>

It needs to be mentioned here that the framers of most of the Constitutions of the world have held that the Preamble did not form part of the Constitution, and therefore, they

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<sup>25</sup> Markandan K.C-The Preamble, Pages 98-103

have stated in the body of their respective Constitution that the source of authority and power or sovereignty was vested in the people and they did so even if they had made such a statement in their Preambles.<sup>26</sup>

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<sup>26</sup> Markandan K.C-The Preamble,Pages 98-103

## CHAPTER V

### BASIC FEATURES OF THE CONSTITUTION

It is necessary to identify the basic features of the Constitution which are non-amendable under Art. 368. The question has been considered by the Court from time to time and several such features have been identified, but the matter still remains an open one, no exhaustive list of such features has yet emerged and the Court has to decide from case to case whether a constitutional feature can be characterized as basic or not.

In the seminal of Kesavananda case<sup>27</sup>, Sikri, C. J., mentioned the following as the “basic foundation and structure” of the Constitution:

- Supremacy of the Constitution.
- Separation of Powers between the legislature, the executive and the judiciary.
- Republican and democratic form of Government;
- Secular character of the Constitution.
- Federal Character of the Constitution.

Sikri, C. J., maintained that the above features are easily discernible not only from the Preamble but the whole scheme of the Constitution.

Other Judges mentioned in addition to the above three more basic features: The dignity of the individual secured by the various Fundamental Rights and the mandate to build a welfare state contained in the directive principles;<sup>28</sup>

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<sup>27</sup> AIR 1973 SC 1461

<sup>28</sup> Jain. M.P-Indian Constitutional Law, Pages- 1926-1934

- The unity and integrity of the nation.
- Parliamentary system.

The above features have been mentioned as only illustrative and the list is not by any means exhaustive. Whether a feature of the Constitution is “basic” or not is to be determined from time to time by the court as and when the question arises.

Since Kesavananda, the matter has been considered by the Supreme Court in several cases and the Court has had occasion to declare several features of the Constitution as fundamental features or basic structures of the Constitution.

It is generally agreed that all Fundamental Rights do not constitute basic features. For example, in Kesavananda itself it has been held that the right to property does not pertain to the basic structure of the Constitution. Now that Art. 31 has been repealed, and Art. 300A included in the Constitution, right to property has ceased to be a Fundamental Right, as well as basic feature of the Constitution. It is merely a constitutional right.

In Kihato Hollohon,<sup>29</sup> the Supreme Court has declared: “Democracy is a basic feature of the Constitution” and Election conducted at regular prescribed intervals is essential to the democratic system envisaged in the Constitution. So is the need to protect and sustain the purity of the electoral process. That may take within it the quality, efficiency and adequacy of the machinery for resolution of electoral disputes.

Again, in the same case, Verma J., in his minority opinion has declared: Democracy is a part of the basic structure of our Constitution; and the rule of law, and free and fair

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<sup>29</sup> AIR 1993 SC 412

elections is provision for resolution of election disputes as also adjudication of disputes relating to subsequent disqualifications by an independent authority.<sup>30</sup>

In *S. R. Bommai Case*<sup>31</sup>, Sawant and Kuldeep Singh, JJ., have observed: “Democracy and Federalism are essential features of our Constitution and are part of its basic structure.”

This view is supported by Ramaswami. J., who has observed: “Federalism envisaged in the Constitution of India is a basic feature.”

In the same case, the Supreme Court has ruled that secularism is a basic or an essential feature of the Constitution. The concept of secularism is embedded in the Constitution. The concept means that the State is to accord equal treatment to all religions and religious sects and denominations.

In *Indira Gandhi Vs Rajnarain*,<sup>32</sup> the Supreme Court has unequivocally ruled that the Preamble to the Indian Constitution guarantees equality of status and of opportunity and that the Rule of law is the basic structure of the Constitution.

The concept of equality which is the basic rule of law, and that which is regarded as the most fundamental postulate of republicanism are both embedded in Art. 14. The doctrine of equality enshrined in Art. 14 of the Constitution which is the basis of the Rule of law, is the basic feature of the Constitution. Art. 16(1) is a facet of Art.14. This point has been re-emphasized by the Court in *Indra Sawhney*<sup>33</sup>: “The Preamble to the Constitution of India emphasizes the principle of equality as basic to our Constitution.”

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<sup>30</sup> Jain. M.P-Indian Constitutional Law, Pages- 1926-1934

<sup>31</sup> AIR 1994 SC 1918 at 1976

<sup>32</sup> AIR 1975 SC 2299

<sup>33</sup> AIR 1993 SC 447

“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 stands un-amended, that power can be exercised with respect to any of the basic features of the Constitution.

To illustrate my point, as long as the words “sovereign democratic republic” are there, could the Constitution be amended so as to depart from the democratic form of Government or its republican character? If that cannot be done, then as long as the words “Justice, social, economic and political” etc, are there could any of the rights enumerated in Articles 14 to 19, 21, 25, 31 and 32 be taken away? If they cannot, it will be for consideration whether they be modified.

In *I. C. Golak Nath Vs State of Punjab*<sup>34</sup>, Subba Rao C. J., held that the Preamble was not a “platitude”. He observed:

“The object sought to be achieved by the Constitution is declared in sonorous terms in the Preamble.... It contains in a nutshell its ideals and aspirations. The Preamble is not a platitude but the mode of its realization is worked out in detail in the Constitution”.

Justice Wancho, in the same case, pointed out that the Preamble could not prohibit or control in any way or impose any implied prohibitions or limitation on the power to amend the Constitution.

In *Kesavananda Bharathi’s Vs State of Kerala*,<sup>35</sup> the Supreme Court considered in all its details the Preamble. For the first time, perhaps, in the history of the judiciary, copious

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<sup>34</sup> 1967 2SCR 762

<sup>35</sup> AIR 1973 SC 1461

references from the Constituent Assembly proceedings were made to substantiate their contention that the Preamble was a part of the Constitution; that its interpretation ought to be different from the interpretation to the Preamble of ordinary statutes; and that the Preamble contained the basic features of the Constitution. As a matter of fact, the judiciary reversed its attitude towards the Preamble, reliance now being placed more on the spirit of the Constitution rather than on the written words. It appeared as if it were that the judges of the Supreme Court were vying with one another to establish importance, and that the Constitution should be read and interpreted in the light of the spirit of the Constitution.

To begin with, Sikri C. J., first of all traced the history of the shaping of the Preamble to show that it was in conformity with the Constitution as it was finally accepted. He drew attention to the fact that not only was the Constitution framed in the light of the Preamble but that the Preamble was ultimately settled in the light of the Constitution. In the most effective and unambiguous terms he stated that the use of the Preamble to the Constitution was totally different from that of the Preamble to an ordinary statute. He observed:

“Regarding the use which can be made of the Preamble in interpreting an ordinary statute, there is no doubt that it cannot be used to modify the language if the language of the enactment is plain and clear. If the language is not plain and clear, then the Preamble may have effect either to extend or restrict the language used in the body of an enactment. “If the language 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”. (Tribhuban Parkash Nayyar Vs. The Union of India<sup>36</sup>)

Referring to the Berubari case<sup>37</sup>, where the Court had held that the Preamble was not a part of the Constitution, that it had never been regarded as a source of any substantive power, and that what was true about the powers was equally true about the prohibitions and limitations and to the observations of Wanchoo J., and Bachawat J., in Golak Nath’s case to the same effect.

Sikri C. J., pronounced his verdict in the Indian Preamble as under:

“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”.

According to Shelat and Grover JJ., the Preamble to our Constitution served three important purposes, namely;

- It indicated the source from which the Constitution came, viz; the people of India;
- It contained the enacting clause which brought into force the Constitution; and
- It declared the great rights and freedoms which the people of India intended to secure to all citizens and the basic type of government and polity which was to be established.

Therefore, they added, if any provision in the Constitution had to be interpreted, and if the expression used therein were ambiguous, the Preamble would, certainly, furnish

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<sup>36</sup> AIR 1984 SC 802

<sup>37</sup> AIR 1960 SC 845(856)

valuable guidance in the matter, particularly, when the question was of the correct ambit, scope and width of a power intended to be conferred by article 368.

The two judges held that the Preamble could not be changed or abrogated as it constituted a land-mark in India's constitutional history, and was formulated by the people of India, in order to mould their future destiny. They observed:

“The stand taken up on behalf of the respondents that even the Preamble can be varied, altered or repealed is an extra-ordinary one. It may be true about ordinary statutes but it cannot possibly be sustained in the light of the historical background, the Objective resolution which formed the basis of the Preamble and the fundamental position which the Preamble occupies in our Constitution. It constitutes a land-mark in India's future history and sets out as a matter of historical fact what the people of India resolved to do for moulding their future destiny. It is unthinkable that the Constitution-makers ever conceived of a stage when it would be claimed that even the Preamble would be abrogated or wiped out:.

Having established the thesis that the Preamble could not be altered or abrogated, the two Judges went on to state that the power to amend the Constitution, vested under Article 368, could not be made use of to completely efface the identity or the basic elements on which the constitutional structure had been erected. In other words, Shelat and Grover JJ., were of the view that in as much as the Preamble contained the basic features of the Constitution, more especially the declaration of rights and freedoms of the citizens of India, it was not possible to abridge or abrogate the content of the Preamble by resorting to article 368. Quoting the observations of story in respect of the Preamble to the U. S.

Constitution in his Vol. 1, to the effect that the Preamble was not adopted as a mere formulatory but as a solemn promulgation of a fundamental fact, vital to the character and operations of the Government, and that its true office was to expound the nature, extent and application of the powers actually conferred by the Constitution and not substantially to create them, the Judges asked if the words “Sovereign Democratic Republic”, contained in the Preamble, unambiguous as they were, and whose true import and connotation was so well-known, could be so interpreted as to confer on the amending body the power to take away any of those three fundamental and basic characteristics of the Indian polity.<sup>38</sup>

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<sup>38</sup> [http://en.wikipedia.org/wiki/Basic\\_structure\\_doctrine](http://en.wikipedia.org/wiki/Basic_structure_doctrine)

## CHAPTER VI

### PROCEDURE OF AMENDMENT

**Amendment of the Constitution of India** is the process of making changes to the nation's fundamental law or supreme law. The procedure of amendment in the constitution is laid down in Part XX (Article 368) of the Constitution of India. This procedure ensures the sanctity of the Constitution of India and keeps a check on arbitrary power of the Parliament of India.<sup>39</sup>

However, there is another limitation imposed on the amending power of the constitution of India.

There has been a conflict between the Supreme Court and Parliament, where Parliament wants to exercise discretionary use of power to amend the constitution while the Supreme Court wants to restrict that power. This has led to the laying down of various doctrines or rules in regards to checking the validity/legality of an amendment, the most famous among them is the Basic structure doctrine as laid down by the Supreme Court in the case of *Kesavananda Bharati v. State of Kerala*.<sup>40</sup>

The process of re writing any part of the constitution is called amendment. Amendments to the Constitution are made by the Parliament, the procedure for which is laid out in Article 368. An amendment bill must be passed by both the Houses of the Parliament by

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<sup>39</sup> <http://hanumant.com/AmendmentBasicStructure.html>

<sup>40</sup> AIR 1973 SC 1461

a two-thirds majority and voting. In addition to this, certain amendments which pertain to the federal nature of the Constitution must be ratified by a majority of state legislatures.

As of July 2013 there have been 118 amendment bills presented in the Parliament, out of which 98 have been passed to become Amendment Acts. Most of these amendments address issues dealt with by statute in other democracies. However, the Constitution is so specific in spelling out government powers that many of these issues must be addressed by constitutional amendment. As a result, the document is amended roughly twice a year.

**Necessity of amending provisions in the constitution**—Provision for amendment of the constitution is made with a view to overcome the difficulties which may encounter in future in the working of the constitution. no generation has monopoly of wisdom nor has it a right to place fetters on future generations to mould the machinery of government according to their requirements. if no provisions were made for the amendment of the constitution, the people would have recourse to extra constitutional method like revolution to change the constitution.<sup>41</sup>

It has been of the amending process itself in federation which has led political scientist to classify federal constitution as rigid. A federal constitution is generally rigid in character as the procedure of amendment is unduly complicated. the procedure of amendment in American constitution is very difficult. the framers of the Indian constitution were keen to avoid excessive rigidity. they were anxious to have a document which could from with

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<sup>41</sup> Dr. Pandye J.N-The constitutional law, Pages 767-770

a growing nation., adopt itself to the changing need and circumstances of a growing people.<sup>42</sup>

But the framers of the Indian constitution were also aware of the fact that if the constitution was so flexible would be a playing of the whims and caorices of the ruling party. they were therefore anxious to avoid flexibility of the extreme type. hence, they adopted a middle course, it Is neither too rigid to admit necessary amendments nor flexible for undesirable changes.

the machinery of amendment should be like a safety valve, so devised as neither to operate the machine with too great facility nor to require, in order to set in motion, an accumulation of force sufficient to explode it. the constitution makers have therefore kept the balance between the danger of having non-amendable constitution and constitution which is too easily amendable.

For the purpose of amendment the various articles of the constitution are divided into three categories.

- 1) **Amendment by simple majority**- Articles that can be amended by parliament by simple majority as that required for passing of any ordinary law. the amendment contemplated in article 5, 169, and 239-A, can be made by simple majority. these articles are specially exclude from the purview of the procedure prescribed in article 368.
- 2) **Amendment by special majority**- Articles of the constitution which can be amended by special majority as laid down in article 368. all constitutional amendments, other

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<sup>42</sup> Wheare K.C.: Federal Government P.(1963 edn)

than those referred to above, come within this category and must be effected by a majority of the total membership of each house of parliament as well as by a majority of not less than 2/3 of the members of that house present and voting.

3) **By special majority and ratification of states-** Article which require, in addition to the special majority mentioned above, ratification by not less than ½ of the state legislature. the states are given an important voice in the amendments of these matters. these are fundamental matters where states have an important power under the constitution and any unilateral amendment by parliament may vitally affects the fundamental basis of the system built up by the constitution. this class of articles consists of amendments which seek to make any change in the provisions mentioned in article 368. the following provisions require such ratification by the states—

- Election of the President—Articles 54-55.
- Extent of the Executive Powers of the union and states—Articles 73 and 162.
- Articles dealing with judiciary, supreme court, high court in the states and union territories—articles 124-147, 214- 231, 241.
- Distribution of legislative powers between the centre and state—Articles 245-255
- Any of the lists of the VIIth Schedule.
- Representation of states in parliament IVth schedule.
- Article 368 itself.

## **PROCEDURE**

A proposed amendment begins in Parliament where it is introduced as a bill. A bill to amend the constitution may be introduced in either house of parliament. it must be passed

by each house by a majority of the total membership to that house and by a majority of not less than 2/3 of the member of that house present and voting. when a bill is passed by both houses it shall be presented to the President for his assent who shall give his assent to bill and thereupon the constitution shall stand amended. But a bill which seeks to amend the provisions mentioned in the article 368 requires in addition to the special majority mentioned above the ratification by the ½ of the state.<sup>43</sup>

Despite the super majority requirement in the Constitution, it is one of the most frequently amended governing documents in the world; amendments have averaged about two a year. This is partly because the Constitution is so specific in spelling out government powers that amendments are often required to deal with matters that could be addressed by ordinary statutes in other democracies. As a result, it is the longest constitution of any sovereign nation in the world. It currently consists of over 117,000 words (450 articles plus 115 amendments).

Another reason is that the Parliament of India is elected by means of single seat districts, under the plurality voting system, used in the United Kingdom and the United States. This means that, it is possible for a party to win two thirds of the seats in Parliament without securing two thirds of the vote. For example, in the first two Lok Sabha elections held under the Constitution, the Indian National Congress party won less than one half of the national vote but roughly two thirds of seats in the chamber.

Article 368 however, does not constitute the complete code. the process of amending the constitution is the legislative process governed by the rules of that process.

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<sup>43</sup> The Constitution (24<sup>th</sup> amendment act 1971)

Thus, it is clear that most of the provisions of constitution can be amended by an ordinary legislative process. only a few provisions which deal with the federal principle require a special majority plus ratification by the state. the procedure to amend these provisions is in conformity with the federal principle. the procedure to amend the constitution is however, not so difficult as in America and Australia. the difficult procedure of referendum followed in Australia and switzerland or constitutional conventions followed in America, have not been adopted in Indian constitution. most of the provisions of the Indian constitution can eb amended by the special majority. though different from the ordinary legislative process, the special majority rules does not result in very rigid methodof amendment as is clear from the fact that the constitution has been amended as many as 98 times within the period of 60 years. even the procedure to amend the constitution with the consent of the states, though more rigid than the special majority rule, is not so difficult as that of american or australian procedure to amend that constitution.

Thus, it may be said that the Indian constitution makers have sought to find a via media, between the two extreme flexibility and extreme rigidity, as this it is hoped, will duty meet the needs of a growing society. <sup>44</sup>

### **Forty-second Amendment**

On 18 December 1976, during the Emergency in India, the Indira Gandhi government pushed through several changes in the Forty-second Amendment of the constitution of India. A committee under the chairmanship of Sardar Swarn Singh recommended that

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<sup>44</sup> Dr. Pandye J.N-The constitutional law, Pages 767-770

this amendment be enacted after being constituted to study the question of amending the constitution in the light of past experience. Through this amendment the words "socialist" and "secular" were added between the words "sovereign" and "democratic" and the phrase "unity of the Nation" was changed to "unity and integrity of the Nation".

### **Limitations**

The Supreme Court has ruled in Kesavananda Bharati v. State of Kerala case that not every constitutional amendment is permissible, the amendment must respect the "basic structure" of the constitution, which is immutable.

However, in the Kesavanand Bharti v/s State of Kerala <sup>45</sup>Case, Supreme Court reversed the earlier verdicts and said that Preamble is part of the Constitution and is subject to the amending power of the parliament as any other provisions of the Constitution, provided the basic structure of the constitution is not destroyed. Kesavanada Bharati Case has created a history. 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 held: Preamble to the Constitution of India is a part of Constitution Preamble is not a source of power nor a source of limitations Preamble has a significant role to play in the interpretation of statues, also in the interpretation of provisions of the Constitution. The Supreme Court held that the Constitution should be read and interpreted in the light of grand and novel vision expressed in the preamble. In fact the Preamble was relied on in imposing the implied limitations on amendment under the Article 368. Further, in SR Bommai Case the Supreme Court reiterated that Preamble Indicates basic structure of the

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<sup>45</sup> 1973.

Constitution. Note: KM Munshi quoted Preamble as "Political Hosrocope" Thakurdas Bhargav quoted Preamble as "Soul of the Constitution"

The proper function of a Preamble of any statute is to explain certain facts which are necessary to be explained before the enactments contained in the Act can be understood.

In short, it contains a recital of the facts or state of the law for which it is proposed to legislate by the statute, the object and policy of the legislation and the evils or inconveniences, it seeks to remedy. But though it is recital of some inconveniences, it does not exclude others, for which remedy is given by the enacting parts of the statute.

Hence, 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 cases where the enacting part of a statute is not co-extensive with the object enunciated in the Preamble.

In such cases, if the language of the section be clear, it is the section which will prevail, for the general terms of the Preamble may not indicate or cover all the mischiefs which in the enacting portions of the Act itself are found to be provided for.

But where the enacting part of the statute is ambiguous, the Preamble can be referred to, to explain and elucidate it. In such a case, the Preamble may afford a useful light as to what a statute intends to reach.

“If any doubt arises from the terms employed by the Legislature, it has always been held a safe means of collecting the intention, to call in aid the ground and cause of making the statute, and to have recourse to the Preamble..... which is a key to open the mind of the makers of the Act, and the mischiefs which they intended to redress”.

Thus, where very general language is used in a statute which, it is clear, must be intended to have a limited application, the Preamble may be referred to find out in what particular instances the enactment is intended to be applicable.

But the Preamble is not the source of any substantive power.

The Preamble in itself is not an enacting provision and is not of the same weight as an aid to construction of a section of an Act as are other relevant enacting words to be found elsewhere in the Act: the utility of Preamble diminishes on a conclusion as to clarity of enacting provision.<sup>46</sup> Preamble is only an abbreviation for purpose of reference is not useful aid to construction. The Preamble of an Act, no doubt, can also be read along with other provisions to decide whether they are clear or “ambiguous”.

## **JUDICIAL REVIEW AND JUDICIAL ACTIVISM**

One significant feature of the use of the preamble by the courts in India is to treat the preamble as the goal of the constitutional aspiration of the people and to develop the constitutional law beyond its substantive provisions in order to achieve what is assured in the preamble.

I have mentioned some instances where the Supreme Court has expanded the law by resorting to the progressive and purposive doctrines of the interpretation, as applied to the constitution as well as statutes.<sup>47</sup>

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<sup>46</sup> Principles of Statutory Interpretation by Justice G. P. Singh Ninth Edition 200 pages 144 – 145).

<sup>47</sup> Jain.M.P 5<sup>th</sup> edn 2003 vol 2 P. 1928

in the present context I am mentioning the basic features of the constitutions of india and its applications so as to annul even constitutional amendment acts duly enacted in accordance with the procedure prescribed by article 368.

the constitution provided a separate part viz., Part XX which contains only one article i.e, Article 368-an exclusive provision dealing with Amendment of the constitution. the constitution makers never imagined that if any provision of the constitution was amended by parliament in conformity with the requirement of the article 368, the validity of that amendment act might still be subject to the power of judicial review (which is the power of the courts to examine the virus of an ordinary statute where thye country adopts a written constitution as its fundament law)

To remove any uncertainty in the original constitution on the forgoing point, the constitution was amended in 1976, to provide that the power conferred by article 368 upon parliament was constituent power which means that the power of amendment conferred by article 368 was absolutely unlimited, so that no court would be competent to question the validity of a constitution amendment act which had been duly passed in accordance with the procedure prosecuted by the forgoing clauses of the article 368. the supreme court however struck down cl (5) of article 368 as violative of the basic structure of the constitution, which the court invented in kesavananda bharti v. state of kerala. this doctrine in brief meant that there are certain basic features of the constitutions which were immune from the power of amendment conferred by article 368, which according to the court was subject to implied limitation which were inherent in the very word amend.

One of the basic features according to the court was the power of judicial review which had been violated by the 42<sup>nd</sup> constitution amendment act which had inserted cl (5) in the article 368. As a result of this 13 judges pronouncement of supreme court the validity of a constitution amending act is now liable to be challenged not only on the ground of procedural ultra virus but also of substantive ultra virus, on the ground of violating any of the basic features as enumerated by the court.

Having fortified its own power of judicial review as a basic features the supreme court has been expanding this power, by adding to the Indian constitutional law novel doctrines outside the text of the constitution as it was enacted in 1949. the power of the court to make law in the name of interpretation is known as judicial activism.

Of the products of judicial activism may be mentioned,

- (a) The doctrine of unenumerated fundamental rights.
- (b) Public Interest Litigation
- (c) Prospective overruling
- (d) Progressive interpretation

Recently Hon'ble supreme court held that fundamental rights themselves have no fixed content, most of them are empty vessels with which each generation must pour its content in the light of experience. the attempt of the court to expand the reach and ambit of the fundamental rights by process of judicial interpretation. the constitution is required to be young, energetic, and alive. it was held that freedom of speech and expression is given the meaning to include the right to know the antecedent of candidate contesting the election and such right to know could not be set at naught by legislature. it was further

held that fundamental rights are dynamic concepts having no fixed contents and court expands them in the changing context so as to make them vibrant and lively. expansive meaning given to these rights by the courts are equally enforceable and cannot be ignored by legislature on the ground of being derivative rights.

Recently hon'ble supreme court held that in keeping with the spirit of universal declaration of 1948, the preamble of the constitution embodies a solemn resolve of its people to secure inter alia to its citizens liberty of thought and expression. it was held that right or freedom of speech and expression guaranteed by article 19(1) has been advisedly set out only in the broad terms leaving their scope of expansion and adaption, though interpretation to the changing needs and involving notion of a free society. it was interpreted that the freedom of speech and expression includes right to information. right to information facet of the right to speech and expression and hence the same is also a fundamental right.<sup>48</sup>

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<sup>48</sup> <http://justicekatju.blogspot.in/2013/10/separation-of-powers-judicial-review.html>

# CONCLUSION

The framers of the Indian Constitution gave the Preamble the Platonic orientation of relevance and reflection of the contents of the Constitution to be the real purpose of the Preamble. We have seen the care and concern shown by the founding fathers in the evolution of this concept and more so the removal of the misconceptions beclouding it. The Indian judiciary, however, familiar with constitutional preambles of the world and firmly believing that our Preamble is in no way dissimilar from them, have been holding till recently that our Preamble is not a part of the Constitution. Even now the judiciary is not fully reconciled to recognizing our Preamble as a part of the Constitution.

That the proper function of the Preamble is to reflect the contents of the Constitution is particularly relevant in the Indian context. We have a single Constitution for the vast country, instead of more than one, as in the case of the U.S.A. Not have we provided for in the Constitution for autonomous states and the right to secede to constituent units as in the U.S.S.R. Consequently, provisions were introduced to safeguard the unity and integrity, as well as the diverse character of the country. The interests of the individual as well of the society are sought to be reconciled. A number of provisions are not stated in absolute terms; that they are so heavily qualified that it is difficult to know as to what exactly they signify. Besides, there is an Amending Clause which can amend each and every provision of the Constitution including itself. It is, therefore, necessary to synthesize and convey precisely what exactly are the contents of the Constitution at any point of time. In the absence of such a reflection the Constitution is bound to be

misunderstood, if not distorted. The Preamble to our Constitution inasmuch as it serves this purpose is apt and befitting.

But then the Preamble to our Constitution serves the purpose of reflecting the contents of the Constitution should be known, as otherwise, not only the painstaking efforts of the founding fathers in evolving this concept would have been in vain, but even the Constitution runs the risk of being distorted. It is a pity that no effort has been made till to-date to study or understand this vital aspect of our Constitution. If only such an attempt had been made in the past many of the misconceptions with regard to our Constitution would not have cropped up.

The Indian model of the Preamble, as already pointed out, has broken new grounds in the conception of constitutional Preambles. This model emphasis the need to consider the Preamble as a part of the Constitution. Its main purpose is to reflect the entire Constitution so that it is understood in its proper perspective.

## **BIBLIOGRAPHY AND REFERENCES**

- 1) Basu, Durga Das (1984). Introduction to the Constitution of India (10th ed.). South Asia Books.
  - 2) Pylee, M.V. (2004). Constitutional Government in India. S. Chand & Co. ISBN 81-219-2203-8
  - 3) Basu, Durga Das (1965). Commentary on the constitution of India : (being a comparative treatise on the universal principles of justice and constitutional government with special reference to the organic instrument of India)
  - 4) Baruah, Aparajita (2007). Preamble of the Constitution of India : An Insight & Comparison. Eastern Book Co.
  - 5) Pandye J.N.-The constitutional law of India,48<sup>th</sup> edtn Published- central law agency.
  - 6) Jain M.P.-Indian constitutional law,5<sup>th</sup> edtn 2003, vol 2 publication wadhwa agency.
  - 7) Markandan K.C- The Preamble-key to the mind of the makers of the Indian constitution.1<sup>st</sup> publication, 1984.
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- 1) <http://justicekatju.blogspot.in/2013/10/separation-of-powers-judicial-review.html>
  - 2) <http://hanumant.com/AmendmentBasicStructure.html>
  - 3) [http://en.wikipedia.org/wiki/Basic\\_structure\\_doctrine](http://en.wikipedia.org/wiki/Basic_structure_doctrine) visited on19th oct. 2013
  - 4) <http://www.facts-about-india.com/borrowed-features-of-constitution.php>
  - 5) <http://www.competitionmaster.com/category.aspx?ID=805ce845-5701-402c-b519-93816a1ff163>
  - 6) <http://uttarapath.wordpress.com/tag/preamble-of-indian-constitution/>
  - 7) <http://www.hrdiap.gov.in/87fc/images11/4.pdf>

8) [http://en.wikipedia.org/wiki/Preamble\\_to\\_the\\_Constitution\\_of\\_India](http://en.wikipedia.org/wiki/Preamble_to_the_Constitution_of_India) visited on 01 nov.  
2013

9) <http://www.lexisnexis.in/d-d-basu-introduction-to-the-constitution-of-india-21st-edn.htm> v

