

CHAPTER - 3

THE PREAMBLE

Framework

- Theory of Government.
- Whether a part of Constitution or not.
- Purpose of Preamble.
- Prominent Ideas in Preamble.

Whether Preamble is a part of Constitution or not.

Theoretically Preamble is treated as an Ornamental part rather than Essential part of Constitution of India.

According to Sartori, "Constitution is a Power Map".

This theory of constitution tells that the basic purpose of constitution is to tell about the location and flow of power in the Political systems. It is simply customary to have Preamble in a constitution.

This trend commenced with the first Written constitution i.e. USA.

Debate in Indian Context:

There has been a debate in Indian context whether Preamble is a part of Constitution or not?

"Views of Supreme Court"

Supreme Court took traditional approach in the Beru-Bari Case, 1960.

1. Held that Preamble not a part of Constitution of India.
2. Preamble is important. It is like a key to the minds of Constitution makers. Thus Preamble helps in interpretation of ambiguous provisions of Indian Constitution.

II. Case

Supreme Court of India changed its opinion in K. Bharti Case, 1973.

Views of Petitioners

Preamble is not a part of constitution. Hence, can't be amended.

Views of Supreme Court of India:

Preamble is a part of the constitution & hence it can be amended.

However, Supreme Court of India laid down the condition that amendment should not destroy the Basic Structure of constitution.

Preamble can be treated as a part of Constitution in India context for following reasons.

1. Only a part of Constitution can be amended.
2. Preamble was amended in 1976 by 42nd Amendment Act.
3. This shows that Preamble is a part of constitution.
4. When motion for adoption of Preamble was taken up in CA, the language of motion was: "The preamble stands as the part of Constitution."

Thus in Indian context Preamble is treated as a Part of Constitution of India.

1. However it is to be noted that Preamble is not a justiciable part. It cannot be enforced in court of law automatically.
2. Preamble is not a source of Power of legislature or any other organ of Govt.

"Views on Preamble"

- (1) "Preamble is like a horoscope" K.M. Munshi
 - Horoscope in context of an individual.
 - Horoscope is a document that tells about time of birth of a person, and nature, characteristic of person. It predicts the future of person.
 - Preamble as horoscope of Constitution of India.
 - Preamble serves the same purpose like that of horoscope. Preamble tells about.
 - Time of adoption of Constitution of India.
 - Indian Constitution on 26th November, 1949.

Like horoscope the ideals of Preamble tell about nature of Polity. From this provision India emerges as a Secular, democratic Republic.

Values of Liberal & Socialism guide Indian Political Systems. Horoscope tells about future of a person. In case of constitution, Preamble tells the direction towards which the future Political Systems of India should move.

Indian Political systems should move in such a way so that the ideals found in preamble come into existence.

Hence, we can call Preamble as a horoscope of the Constitution.

(2) "Preamble is like a light-house". Supreme Court of India

The function of a lighthouse is to throw light on darkness. Similarly Preamble in Indian context is treated by Judicial as a Lighthouse.

According to opinion of Supreme Court of India, expressed in *Beru Bari case, 1960*, Preamble is a key to open minds of members of CA.

Hence, whenever there is a lack of clarity with respect to provision of constitution, Preamble can be used to throw light on these provision.

Hence Preamble aids in the interpretation of constitution & so treated as a Lighthouse.

(3) "Preamble is a keynote of Constitution"

Ernest Barker

"Social - Political Theory" - book The key note means the most important part also the brief summary.

Barker praises Indian Preamble at the onset of his famous book —

"The Principles of social-Political Theory". According to him the Indian Preamble summarize his entire Political Philosophy in few words. Preamble is the most important aspect of Indian Constitution to understand essence of Indian Political systems. It outlines the ideals nature & Indian Polity.

Hence if anybody wants to know the philosophical essence of Indian Polity systems, he should find it in Preamble.

The ideals expressed in Preamble Helps Indian Judiciary in the aid & interpretation of Constitution of India.

Significance of Preamble

1. Preamble tells about nature of Indian State.
2. tells about objectives of Indian State.

3. tells that ultimate source of authority in Indian context derived from people of India.

4. it gives date of Adoption & Enactment of Constitution of India.

5. Nature of India Secularism

Prominent Ideals of Preamble

1. Concept of Popular Sovereignty

Constitution uses the phrase "We the people of India", this phrase establish that the Indian constitution is written by the representative of Indias. Indian Constitution is not framed by any external authority. Hence the Constitutions of India is having different basis of legitimacy than earlier constitutions like Government of India act, 1935.

2. Sovereign

- India is a sovereign nation.
- Sovereign is the most important attribute of a nation state.
- This is the basis demarcation between Independent nations & colonies.
- The ideal of Sovereign as expressed in Indian Constitution shows that Indian possess autonomy in the sphere of decision making. In external spheres NAM was the policy to assert autonomy in decision making.

Sovereign is always a diluted concept. In contemporary times with emergence of phenomenon like globalization, liberalisation Sovereignty does not exist ideally.

Still Government of India is trying to achieve what is best possible for its people in contemporary contexts. Be it the platform of WTO, or UN.

3. Socialist

Socialist has always been the goal of Indian Policy Systems. Indian national leaders like, Gandhi, Nehru, Ambedkar always felt that political democracy without socio-economic democracy is meaningless, for Indian leaders the ideal of liberty was also very important. Hence, we have adopted the path of democratic socialism, we are trying to achieve socialist Ideals through democratic mechanisms. Nehru gave concept of mixed economic in Indian context. Some people believe that goal of socialism has been compromised since India adopted new Economy-Policy based on Liberalism. But critics are not correct when

Government still maintains its faith in ideals of socialism e.g. NREGA, food security act shows the recognition of necessity of having Inclusive Growth. So our Goals remains same but strategies to achieve the goal have been consistently modified.

(4) Secularism (Article 25-28)

- Meaning
- Features of secular State
- Problems
- Secularism features of Constitution of India.
- Analysis of Indian secularism.
- Conclusion.

Meaning

Term secularism emerges from "Secularis" (Latin word) meaning temporal, non-spiritual, worldly.

Secularization shows a progressive retreat of religion from Public sphere.

Secularism emerged in the west as a result of the reformation movement.

Protestant Religion has established that religion is a personal affair. It comes within private sphere. State has no role in this context because Authority of State is limited to Public Sphere.

Features of a Secular State

Secular State is different from Theocratic State.

In theocracy, official alliance between religion & political exist, state is ultimately governed by priests.

In contemporary times S. Arabia, Iran are Theocratic State.

There can be other ways in which states link themselves with religion e.g. in U.K. Protestant church is the national church.

States like Pakistan declared themselves as Islamic states. In comparison to above states, we can say that in India, State does not have any official religion state's not governed by religious heads. State's does not follow preferential policy towards a particular state religion. However, the status of Indian state as a Secular State comes under attack from both within

Various opinions put forth by critics.

- (1) In India the complete separation of Politics & Religion does not exist.

- (2) Use of Religion symbols are allowed in elections.

- (3) India does not have uniform Civil Code.

- (4) India suffers from, communal violence on regular basis.

- (5) Many Human right activities feel that the minorities are not adequately representative

- (6) The Indian idea of secularism does not match to the dictionary meaning of secularism.

Scholars like Ashish Nandy has coined a term called "Indianism" for Secularism in India. Constitution gives special rights to Minorities (Article 29). Some call Indian secularism as PSEUDO - Secularism.

Despite above challenges to Indian secularism we can establish that India is a Secular State. India fulfils the minimum criterion of Secular State.

Indian Secularism adopts the Western ideal of Secularism but also incorporate its own version of it. Secular is defined as an ideal of an Indian State. Indian Supreme Court in S.R. Bommai case establish that secularism is a Basic structure of Constitution of India.

For Nehru, Secularism is a basic necessity for India. He consider the policy of secularism essential for fulfilment of project of nation building in India.

Following Scholars have defined

Indian model of Secularism against various criticisms:

- (1) Dr. S. Radhakrishnan

In Indian context, the western model of Secularism is in appropriate. We cannot reject the relevance of Religion from life of Indians.

India is a secular state because

- (a) Equal status is give to all religion.
- (b) State does not have any official religion.
- (c) No religion is given special status.
- (d) No person suffers from any disability due to religion.

- (2) K.M. Pannikar

There are 3 reasons to calling India Secular

- (a) The basis of political institutions are socio-economic interests & not religion.

(b) The distributive policies are not based on criticism of Religion.

(c) No discrimination among citizens on ground of faith.

(5) Democratic Republic

India adopted both models of Representative & Direct democracy & we are continuously expanding the concept of Democracy. We have given representation for SC / STs in representative structures. Attempt is being made to provide representation to Women, in national & state legislatures (Women's Bill).

Rules of Interpreting Constitution of India

Doctrines of Liberal interpretation

Each & every word must get its complete meaning & relevance. Interpretation is always simple & general.

(1) Doctrine of Prospective Overruling

- Golak Nath Case, 1967
- Correction can change its interpretation
- New interpretation should be used in future cases only
- Not retrospective effect.

(2) Doctrine of Harmonious Construction

A.K. Gopalan vs. State of Madras (1950)

Champakam vs. State of Madras Dorairajan (1959)

If 2 provisions of Constitution of India, come under contradiction Court will try to give effect to both provisions. So that none of the provisions becomes invalid.

(3) Doctrine of Basic Structure

Keshavanand Bharti Case (24th April, 1973)

Court does not permit Parliament to rewrite the constitution but only allows to amend it.

(4) Doctrine of Colourable Legislation.

Kameshwar Singh vs State of Bihar (1952)

What you can't do directly, you also can't do indirectly.

(5) Doctrine of Pith & Substance

Court will look into essence of law & not label.

(6) Doctrine of Severability

A.K. Gopal case

Entire law not be invalid but only part that is contradictory to provision of Constitution of India.

(7) Doctrine of Eclipse

Bhikhaji Narayan, case, 1955.

It is meant for pre constitutional laws.

Preconstitutional laws do not die but come under shadow of Constitution. They can become fully operational when we remove the shadow.