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Preamble to the Constitution: The Heart, the Soul and the Goal of the Indian Constitution

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ABSTRACT

The Constitution as understood by a layman and a lawman tends to be very different in both letters and spirit. Constitution is only for the lawman is also a very infructuous proposition as it was made by “WE THE PEOPLE” for “WE THE PEOPLE”, upholding India as a Democratic, Secular Nation with the virtues of embracing Liberty and Equality. The Constitution is not only a big fat book with complex provisions, but rather it is the soul of the nation, it is guiding force for the government and bible for a Citizens Rights, laying its virtues and principles in the Preamble itself.

Preamble to anything are the opening lines describing the particular statute in hand, but the Preamble to the Constitution is from its very inception an unique creation. Generally, Preamble sets the goal, which the Statute seeks to achieve, but while drafting the Constitution, Preamble was inserted at the last, which makes it much more than just a set of words making an empty promise, but rather it is a realistic proposition that was realised after the Constitution was drafted.

With many interpretations, amendments etc we now tend to mug up the case laws and the provisions without much attention to the pulse of the law, but with this topic, we got an opportunity to re-live it. All the important words in our Preamble starting from “WE THE PEOPLE” to “FRATERNITY” has all been debated and discussed by the Courts at various points in time, signifying that they are not just empty promises, but rather are the essence of the Document which govern and embraces us.

Keywords: *Preamble, Fundamental Rights, Constitutionalism, Sovereignty, Secularism, Justice, Equality, Liberty, Fraternity, Power, Rights, Duties, Obligations.*

I. INTRODUCTION

Adjudging the importance of the Topic, I feel amidst the countrywide constitutional developments, the constitution is becoming just another bulky document that under a pressure is restricting its study to the mere letters of it. But what sets apart our constitution is that the

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underlying constitutional principles have been kept alive through critical interpretations by the judges throughout the years, having the Preamble as the ultimate guardian, Custodian and touch stone for the determination of such constitutional values.

In terms of interpretation of Statutes, “Preamble” *is looked into for reason or spirit of every statute for evils to be sought and doubts to be remedied and in the best and the most satisfactory manner know the object or intention of the Legislature in making or passing of the statute itself.*³ Being incorporated after the final completion of the draft, the Preamble set foot not in elucidating idealistic words but rather set some realistic goals. Thus knowing its history is not merely a formality but an indispensable part without which we would inevitably fail in appreciating the true nature and function of it. Based upon Jawaharlal Nehru’s “Objective Resolution” adopted by the Constituent Assembly on January 22, 1947, trying to embody the ideals set in the resolution, the Drafting Committee of the Assembly, drafted the Preamble to constitute India to be a “Sovereignty Democratic Republic which secures to each of its citizens Justice, Liberty, Equality and Fraternity”.

In the following part, a critical analysis of each of the important words and principles of Preamble and their impact and incorporation in the exhaustive interpretation of the Constitution would be the main function and purpose of this paper.

II. “WE THE PEOPLE”

These opening words, “We The People of India”, is declaration to the entire world that the constitution has been drafted by its own people, the natives of India and sovereignty lies within them. The Importance of these words find in the words of Nani Palkhiwala, saying, “*It is a Charter of Power granted by liberty and not Carter of Liberty granted by power*”.⁴ Thus, inspite of colonial influence, the indigenous people of India, became sovereign to decide, as to how we want to rule ourselves. Another important indication of this phrase is the subtle acknowledgement of the principle unity in Diversity. Although divided in caste, class, race, religion, the Constitution urged us to profess fraternity amongst all and the secret concept of tolerance as found in National Anthem’s Case⁵, whereby the Supreme Court of India protected the rights of two minority students from a sect of Jeehovas and withheld that their expulsion on the ground of not singing the National Anthem, as being prohibited by their religious texts. But it is sad that even after the directives from the highest court, these student failed to secure admission in any school in their state. Thus, in the words of *jurist, Fali S. Nariman, those*

³ Justice G.P. Singh, Principles of Statutory Interpretation 174 (Justice A.K.Patnaik, 14th ed. 2020).

⁴ Kesavananda Bharti v. State of Kerala, (1973) 4 S.C.C 225 (India).

⁵ Bijoe Emanuel v. State of Kerala, A.I.R. 1987 S.C. 748 (India).

Students won their Constitutional Case, but lost their constitutional right which the court affirmed.

III. A SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC

Incorporated from Article 5 of the Irish Constitution, the principle of *Sovereignty* reflected both in the Indian Constitution and among its people since January 26, 1950. Since then having equal status as with the other international communities, India witnesses both external and internal sovereignty. Incorporated with the 42nd Amendment Act⁶, *Socialism*, was an inclusion of political-economic system aiming at a welfare state and providing equal opportunity for each citizen. As determined in *Samatha v. State of Andhra Pradesh*⁷, Socialism as enumerated in the Preamble serves the basis for interpreting the constitutional articles of Equality, and other fundamental rights enumerated under Art. 14, 15, 16, 17, 21, 23, 38, 39, 46. *Secularism*, on the other hand as understood in common parlance means that to the state every religion is equal, but the concept of secularism has been very aptly defined by Fali S. Nariman in his book, *The State of the Nation*, as, “*Non-Recognition by the State of any religion*”⁸.

But, the problem cropped up in interpreting the principle and its application against the Personal Laws that conflict with other secular statutes of the nation. Well, the answer could be given some pride as the Supreme Court has always stood up with the oppressed class in this regard. First instance being the case of *Shah Bano Began*⁹ whereby, the Supreme Court in all its vigour restricted the narrow application of maintenance as per Muslim Laws and permitted divorced Muslim women to claim maintenance even under Section 125 of Code of Criminal Procedure.

Although the Supreme Court in earlier decisions took conservative view in matters of religion but in later cases like the Triple Talaq case¹⁰, Supreme Court clearly and firmly held that the practice of Triple Talaq to be a blatant violation of the constitution. Again, as held in *Union of India v. Association of Democratic Reforms*¹¹, that a *Successful democracy needs more aware citizenry*. Democracy is a way of life and a Republican form of government embodies ultimate powers in the hands of the people through the Universal Adult Suffrage. Only in a democratic and republican state the full potentiality of sovereignty vested amongst the citizens can be realized. Thus, reaffirming the principles the Constituent Assembly adopted the Constitution

⁶ INDIA CONST. amend. XLII, § 3.

⁷ *Samatha v. State of Andhra Pradesh*, A.I.R. 1997 S.C. 2397 (India).

⁸ FALI S. NARIMAN, *THE STATE OF THE NATION* (2014).

⁹ *Mohd. Ahmend Khan v. Shah Bano Began*, A.I.R. 1985 S.C. 945 (India).

¹⁰ *Shayara Bano v. Union of India*, (2017) 9 S.C.C. 1 (India).

¹¹ *Union of India v. Association of Democratic Reform*, (2002) 5 S.C.C. 294 (India).

in the name of and for, “We, The People of India”.

IV. JUSTICE, LIBERTY, EQUALITY AND FRATERNITY

The concept of equality as enshrined, does not mean in the words of Senior Advocate Sh. Harish Salve, *the same law for the lion and the lamb*¹² but rather it means treating the equals equally. The series cases of Anwar Ali Sarkar¹³, F.N. Balsara¹⁴, EP Royappa¹⁵ laid the test for discrimination in Art. 14 of being non-arbitrary and the discrimination having reasonable nexus with the object of the act. The concept of equality is so sacred to our constitution that it is placed beyond the amending power of the parliament.¹⁶ Equality not only confined to discriminative justice but permits affirmative actions in order to create a level playing field in furtherance of Art. 15 and 16¹⁷.

Liberty as I perceive is the epicentre of all the fundamental rights exercised both by citizens and the Foreign nationals¹⁸ in the Indian territory. Although once narrowly construed, Supreme Court prominently overruled A.K. Gopalan¹⁹ and since Maneka Gandhi²⁰, Arnesh Kumar²¹, D.K. Basu²², Nilabati Behra²³, has looked for the opportunity to interpret Art. 21 to its widest amplitude possible considering Personal liberty and recognition of freedom as the backbone of fundamental rights.

V. PAST TO FUTURE: THE CONSTITUTIONAL PRINCIPLES IN THE PREAMBLE CONTINUES TO RULE

Aptly said by Dr. Ambedkar, *However good a Constitution may be, if those who are implementing it are not good, it will prove to be bad. However bad a Constitution may be, if those implementing it are good, it will prove to be good*". So, the herculean task rests upon the people to make sure that the principle professed are actually practiced. Recently, the principles are being used like in the case of the Veteran journalist, Arnab Goswami whereby the Supreme Court in unhesitant manner condemned the abuse of criminal law and instantly granted him

¹² Karan Thapar, *Harish Salve On Why The Supreme Court is Unlikely To Void Article 370*, THE WIRE (Oct.22, 2019), <https://thewire.in/law/harish-salve-supreme-court-article-370-kashmir>.

¹³ State of West Bengal v. Anwar Ali Sarkar, AIR 1952 SC 75 (India).

¹⁴ State of Bombay v. F.N. Balsara, A.I.R. 1951 S.C. 318 (India).

¹⁵ E.P. Royappa v. State of Tamil Nadu, A.I.R. 1974 S.C. 555 (India).

¹⁶ Kesavananda Bharti v. State of Kerala, (1973) 4 S.C.C. 225 (India).

¹⁷ Indra Sawhney v. Union of India, A.I.R. 1993 S.C. 477 (India); M.R. Balaji v. State of Mysore, A.I.R. 1963 S.C. 649 (India).

¹⁸ The Chairman v. Chandrima Das, (2000) 4 S.C.C. 465 (India).

¹⁹ A.K. Gopalan v. State of Madras, A.I.R. 1950 S.C. 27 (India).

²⁰ Maneka Gandhi v. Union of India, A.I.R. 1978 S.C. 597 (India).

²¹ Arnesh Kumar v. State of Bihar, (2014) 8 S.C.C. 273 (India).

²² D.K. Basu v. State of West Bengal, (1997) 1 S.C.C. 416 (India).

²³ Nilabati Behra v. State of Orissa, (1993) 2 S.C.C. 746 (India).

bail. We also observed the Supreme Courts vigilance upon the Executive Authorities of the State whereby it always stood as a watch dog to prevent the abuse of power. Recently the Bombay High Court while striking down the BMC notice to demolish the famous celebrity Kangana Ranaut's House turned the action of the BMC as, "*Nothing but malice in Law*". These are some great cases whereby Supreme Court continued upholding the principles of Constitutionalism and liberty. Also, on Government's recently formed Aadhar Scheme, court answering reference interpreted Right to privacy as an integral part of Art.21.

Subsequently, in Navtej Singh Johar²⁴ striking down a 150 year old law that prohibited sexual intercourse amongst consenting adults; taking a stern objection as to objectifying striking down Sec. 497 of Indian Penal Code²⁵. These are the recent scenarios upholding the principles of liberty, equality and Justice.

VI. CONCLUSION: ROAD AHEAD

What is unfortunate to observe that a new regime has started whereby the people are exercising unnecessarily, their misconceived freedom of speech and expression to unnecessarily tamper with the administration of justice which has forced the court to invoke its contempt jurisdiction as observed in the cases of Prashant Bhushan and the comedian Kunal Kamra. Although in the black and white letters of law the court is well empowered to hold somebody in contempt but as Ret. SC Judge O.P. Chinappa Reddy recalls in his book the *Court and the Constitution of India*²⁶ that the Judges of the SC are very reluctant to invoke the contempt jurisdiction unless very much needed. This is not something that could be settled by the letters of law, but a mutual understanding between the judiciary and the common citizens of India must exist, which in the current scenario is becoming close to extinction.

²⁴ Navtej Singh Johar v. Union of India, (2016) 7 S.C.C. 485 (India).

²⁵ Joseph Shine v. Union of India, A.I.R. 2018 S.C. 1676 (India).

²⁶ O.P. CHINNAPPA REDDY, THE COURT AND THE CONSTITUTION (Oxford India Paperbacks, 1st ed. 2010).