

7. Preamble and Constitutional Interpretation

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Pg. No: 83-97

i. Abstract

With the increasing no. of problems and cases, the law needs to adopt solutions that are not contradictory and will maintain its importance within civilians. In the same way, we need to understand the principles of the preamble and its link with the auspicious framework of law i.e., Constitution. Since Independence, our country has faced many political and social difficulties such as defection, power-centric politics, inconsistency with provisions of the statute. Our constitution is the largest in the world, also comes up with flaws in it. To set and find a remedy on such flaws, our judiciary is trying to interpret and solve such issues. In this research, we will find how 85 words on a single page describes the largest constitution of the world. We will also discuss why the judiciary is a legit body to interpret as itself is appointed by political means. Also, their debates and controversies of distribution of authority to interpret. Why the judiciary is known for the watchdog of democracy and protector of constitution. Also, we will explore some predictions of future contributions of legal protocols and statutes in India.

The research covers multiple topics on the Constitution of India. Although, I agree with the present situation where the judiciary keeps an eye on every moment when there is a question of law, especially of the preamble and its basic structures.

1. If there was no preamble, then it would become difficult for the promulgation of basic principles.
2. If unlimited powers with restrictions to amend are given to legislation then we can see more complications in existing laws and its functions.
3. If the Supreme Court does not restrict violation of basic structures, then the spirit of preamble loses and loses the importance of constitution among people.
4. The purposive or structural approach is the best way of interpretation.

Keywords: Preamble, Constitutional Interpretation, doctrines, political roles, judiciary, and amendments.

Table of Contents

S. No.	Title	Pg. No.
i.	Abstract	84
1.	Introduction	86
2.	Preamble: Formation and Basic Principles	87
3.	Role of Preamble in Constitution	90
4.	Interpretation of Articles in Court of Law	92
5.	Doctrine of Interpretation	94
6.	Conclusion	96

1. Introduction

“ 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 ...”

In this part of Preamble, it didn't even mention which form of government that India has sought to adopt. Also the same with the provisions of India. Its judiciary, interpreted through the origin and history of the land, pronounced that India has a parliamentary form of democracy. Similarly, we need to think that a single-page document is the meaning or soul of the world's largest constitution which governs the 1.3 billion population. The fact we need to understand that preamble and constitution was drafted by the constituent assembly which was elected representatives of people at that time (1940-50). As the time changes, we need to get updated so as our laws too. In the same manner, amendments are made by legislators keeping in mind that 'the change is needed in order to maintain law and order in the society.' We also need to understand most of the laws are adopted not created by our state. The scenarios, circumstances, climate, and problems were different in different countries. Pre-making or in the process of making our constitution, the planners/drafters studied the constitutions of the other 60 countries. As a researcher, we need to analyze existing data and make inferences and predictions. I don't mean to disrespect or criticize our constitution, but the thing is our constitution is lengthiest and mostly we adopted certain provisions from different countries. This is why the inconsistency and variety in our constitution and present laws are seen, it would have been better if the constitution was short and sweet and no provisions could be contradictory to each other.

The question arises who has the authority to interpret the true meaning of articles of the Constitution when its language understanding issue, ambiguous or has two contradicting meanings. So, its Supreme Court of India which has the final arbiter on the interpretation of the constitution, everybody was bound by the said declaration of law.⁸⁸ A codified constitution

⁸⁸ Kannadasan v. State of T.N., (1996) 5 SCC 670.

is a nation's founding document, which not only constitutes the nation, but also establishes the rules for its governance.⁸⁹ Also, the subject matter of this research is on the preamble and why and how the judiciary is a legit body to interpret the constitution. Preamble of India was adopted on 26 November 1949 and later enforced on 26 January 1950. It represents the whole structure of the fundamental values, also aims & objectives of founding fathers of the nation. It serves mainly two purposes - i. It indicates the source from which the constitution derives its authority. ii. It states the objects, which the constitution seeks to establish and promote. We will explore the preamble and its significance, scope, and role in basic structures. The framers of the Constitution of India set out three broad purposes: India is a Republic because the head of the state is not a hereditary monarch. Democratic because the decisions which the representatives of legislature makes are elected by the people through the principle of universal adult franchise. The US which is 227 years old and has only 27 amendments and India which is only 70 years only and has 104 amendments. Now, we get to know either there are flaws in drafting or politicians take unfair advantages to amend according to their choices or both. And, we will learn the contradiction or overruling of SC judgments, the inconsistency of opinions of SC judges of provisions in statutes & articles in the constitution.

2. Preamble: Formation and Basic Principles

1. Sovereign

Sovereign means Supreme. This word is taken from Article 5 of the Ireland Constitution. The country decided to be a member of the commonwealth nation under the leadership of Pandit Nehru. Also, we need to know the membership of UN and commonwealth nations won't affect sovereignty and India can backout from membership at their will without any sanctions. India is an independent country and does not dominate or get dominated by other countries. It means

⁸⁹ Keith E Whittington, *Constitutional Interpretation: Textual Meaning, Original Intent, and Judicial Review* 6 (University Press of Kansas 1999).

the state has the final authority to discuss and decide the internal and external affairs of the country. For example, India is free from the UK's queen orders.

2. Socialist

It was enacted through the 42nd amendment. This means that the means of production and goods are under control by the government wholly or partially. The word used in the preamble here is inspired by the philosophies of Jawaharlal Nehru and Mahatma Gandhi. It aims to remove the poverty, ignorance, and inequality of opportunities. It also includes socio-economic equality. Govt. will endeavor to make distribution of the wealth more equal and provide a decent standard of living to all its citizens. That is why, right to private property in Article 19 is removed through a constitutional amendment. In *Air India Statutory Corporation v. United Labour Union*⁹⁰, the Supreme Court elaborated on the concept of “socialism” and stated that the word socialism was expressly brought in the constitution to establish an egalitarian social order through rule of law as its basic structure. In *Samatha v. State of Andhra Pradesh*⁹¹ the Supreme Court observed that the word Socialist used in the Preamble must be read from the goals, Article 14, 15, 16, 17, 21, 23, 38, 39, 46 and all other mutual articles sought to establish, i.e. to reduce inequalities in status, income and to provide equality of opportunities.

3. Secular

Enacted by 42nd Amendment. It suggests that the State has no official religion. But this term is seen as rigid in foreign countries. These countries used to define it as anti-religion. But, In Indian Context, this word is adopted for positive secularism. It doesn't deprive any individual's right to profess and follow a certain religion. We have the freedom to profess, propagate and

⁹⁰ Air India Statutory Corporation v. United Labour Union, AIR 1997 SC 645

⁹¹ Samatha v. State of Andhra Pradesh, AIR 1997 SC 3297

practice religious practices, customs or rituals. Although the government must not promote, propagate, or discriminate against any religion.

In *Aruna Roy v. Union of India*⁹², the Supreme Court has said that secularism has a positive meaning that is developing, understanding, and respect towards different religions. In *Valsamma Paul v. Cochin University*, the court said secularism is a bridge between religion in a multi-religious society to cross over the hindrance of diversity. In the case of *St. Xavier's College v. State of Gujarat*⁹³, the court held that “secularism is neither anti-God nor pro-God, it is like a devout, agnostic and atheist.”

4. Democracy

Demo means ‘people’ and cracy means ‘rule.’ In India, the parliamentary form of democracy is adopted and the decisions will be through the will of the people not through monarch. Here, not only political democracy is concerned but also social and economic democracy. From the first line and last line of the preamble, we can interpret the sense of unity and democratic nature. In *Union of India v. Association for Democratic Reforms case*⁹⁴, SC observed: “Democracy cannot be alive without free and fair elections.” It implies all three pillars are separate and mutually dependent on each other. Gandhiji’s favorite concept of RAM RAJYA is highlighted in such forms of democracy where every citizen has the right to question the working of government and this helps in maintaining efficient democracy.

5. Republic

The word republic is derived from ‘res publica’. It is exactly opposite to the hereditary system. Here, the Prime Minister is the real head and the President is the nominal head. Both of them

⁹² Aruna Roy v. Union of India, (2002) 7 SCC 368

⁹³ St. Xavier’s College v. State of Gujarat, 1974 AIR 1389

⁹⁴ Union of India v. Association for Democratic Reforms, 2002 (3) SCR 294

are elected indirectly by the people of India through universal adult franchise. Every citizen is treated equally in eyes of law irrespective of his/her social and economical background.

3. Role of Preamble in Constitution

In *Re Berubari Union and exchange of enclaves case*⁹⁵, stated that preamble is not a part of our constitution citing that Willoughby has observed about the preamble of American Constitution “it has never been regarded as a source of any substantive power conferred on the Government of the US or any of its department. Such powers embrace only those expressly granted in the body of the Constitution.” I agree to a point that we have adopted certain lines from foreign nations but disappoint with the bench assuming that the US constitution doesn’t include preamble in it so similarly, we won’t. The reasoning given in the majority by the bench is what unacceptable. It laid down the power of the amending clause that it can amend the whole constitution if it wishes but cannot amend the preamble as it is not part of the Constitution prima facie. Later the judgment was overruled by a larger bench (13) of SC in the case of *Kesavananda Bharati v. State of Kerala*⁹⁶, stating that the procedure established for the making of the constitution was the same of the preamble i.e., through the constituent assembly. “*Preamble walks before the Constitution.*”⁹⁷ It was also held that preamble is a part of the constitution and cannot be amended in a way that will harm the basic structure of the constitution made by drafters. It cited the quote from the judgment of *Tribhuvan Prakash Nayar v. Union of India*⁹⁸, which held that 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. It ultimately indicated the importance of preamble merely in interpreting the constitution in tough scenarios. Legislators cannot transgress with the basic features and it is ultra vires. Later the legislators amended the amending clause with the change in title from ‘procedure’ to ‘power’, it included a bar of jurisdiction on every court to look after legislative

⁹⁵ Re Berubari Union and exchange of enclaves, AIR 1960 SC 845

⁹⁶ Kesavananda Bharati v. Union of India 1973 4 SCC 225

⁹⁷ Supra note 10, Khanna J. opinion, the provisions which indicate basic structures are unalterable, rest is alterable.

⁹⁸ Tribhuvan Prakash Nayar v. Union of India, 1970 AIR 540

bills and absolute power to amend the constitution. In *Minerva Mills v. Union Of India*⁹⁹, it was held that such amendment harmed the basic structure of judicial review, thus this enhancement of power by legislative was struck down and declared void.

In *Golak Nath v. State of Punjab*¹⁰⁰ Chief Justice Subba Rao had held that the preamble to an Act sets out the main objectives which the legislation is intended to achieve through its implementation. Hence, Preamble has a cornerstone to every part of the statute or set of rules made within the territory of India as mentioned in Article 1. In the SCJ of *Ashoka Kumar Thakur v. Union of India*¹⁰¹, when a constitutional provision is interpreted, the cardinal rule is to look to the Preamble to the Constitution as the guiding star and the directive principles of State policy as the “book of interpretation”. The Preamble embodies the hopes and aspirations of the people and directive principles set out the proximate grounds in the governance of this country. In *Kashi Prasad v. State of U.P*¹⁰² The court held that even though the preamble cannot be used to defeat the provisions of the legislation itself, it can be used as a vital source in making the interpretation of the legislation. If any law attracts to violation of preamble, then it is challenged in the court of law and ultimately declared to be void. Then what about the Citizenship Amendment Act, which is a full-fledged violation of Article 14. If this act covers 6 religions from 6 places, what about the Bahamas, Jews, atheists, etc peoples. I don't personally see this in anti-muslim or pro-bhakt decision, but as a constitutionalism perspective. This is a violation in the preamble i.e., Secularism. Why is the Indian Judiciary still waiting while the amendment is violating one of the basic structures? A major question mark which the judiciary needs to give the decision and should be away from dust and din of politics.

⁹⁹ *Minerva Mills v. Union Of India*, 1980 AIR 1789

¹⁰⁰ *Golak Nath v. State of Punjab*, 1967 AIR 1643

¹⁰¹ *Ashoka Kumar Thakur v. Union of India*, (2008) 6 SCC 1

¹⁰² *Kashi Prasad v. State of U.P*, AIR 1950 All 732

4. Interpretation of Articles in Court of Law

In *Harsharan Verma v. Union of India*¹⁰³, courts cannot undertake matters of constitutional interpretation unless there is a live issue before them. In the SCC of *P. Kannadasan v. State of T.N.*¹⁰⁴, it was held that “the Supreme Court is the final arbiter on the interpretation of the Constitution.” In the case of *B.R. Kapur v. State of T.N.*¹⁰⁵, It is the duty of the Supreme Court to interpret the Constitution. It must perform that duty regardless of the fact that the answer to the question would have a political effect. The best example is *A.K.Gopalan v. State of Madras*¹⁰⁶, where the question was in Article 21 of the Indian Constitution: “Procedure established by law” and “due process of law” by the American Constitution are the same? SC held that both are different and went for textualism in interpreting the article 21.

However, *Kesavananda Bharati Case*¹⁰⁷ overruled the above judgment and held that both are the same. Due process of law was established through common law. And, India follows common law. SC explicitly said that “**Same Soul and a different body.**” Later in the famous case of *Maneka Gandhi v. Union of India*¹⁰⁸, it was held that Article 21 includes an exception clause of “procedure established by law.” SC said that that law has to be fair, just and reasonable, not fanciful, oppressive or arbitrary. Indian SC believes that the constitution is dynamic instead of static document.

¹⁰³*Harsharan Verma v. Union of India*, 1987 Supp SCC 310

¹⁰⁴ *P. Kannadasan v. State of T.N.*, (1996) 5 SCC 670

¹⁰⁵ *B.R. Kapur v. State of T.N.*, (2001) 7 SCC

¹⁰⁶ *A.K.Gopalan v. State of Madras*, AIR 1950 SC 27

¹⁰⁷ *Supra* note 10

¹⁰⁸ *Maneka Gandhi v. Union of India*, 1978 AIR 597

Interpretation of Article 19

In *Bijay Cotton Mills v. State Of Ajmer*¹⁰⁹, is the landmark case of the interpretation of the Spirit of the Constitution. The Mills challenged the certain provisions of the Minimum Wages Act 1948 which according to them were violating Art.19(1)(g) of the Constitution of India. The Supreme Court considered the importance of Art 43 of the Constitution of India and declared that the State has the ultimate power to uplift the living standard of the people. The Mills which cannot provide the minimum wages have neither moral nor legal right to exist. The Right to Trade is under the Spirit of the Constitution which recognizes the socialist principles as our way of life.

In *State of Punjab v. Devans Modern Breweries Ltd.*¹¹⁰, it was observed that the right to carry a business or trade subject to the imposition of reasonable restrictions made by law. If a certain state law allows the prohibition of liquor, then the trader is bound not to engage in selling liquor.

In the 7 judge bench SCC of *Abhiram Singh v. C.D. Commachen*¹¹¹, it was discussed whether the S.123 (3) violates Article 19(1)(a) and Article 245(1) - Prohibits of making laws which violate the Constitution. The SC in a clever manner interpreted that right to be elected as MP is not a fundamental right. In S.123, it doesn't stop a candidate from speaking or campaigning but imposes conditions to elect as MP. If anyone wants to be elected an MP, he/she must follow the rules of the RP Act.

In *All India Bank Association Employees Limited v. NIT*¹¹², SC said that the right to strike or right to a lockout doesn't cover in Article 19(1)(c).

In the famous case of *Bijoe Emmanuel v. State of Kerala*¹¹³, Facts were - 3 school children stood for the national anthem but didn't sing. Their headmaster asked the reason and punished

¹⁰⁹*Bijay Cotton Mills v. State Of Ajmer*, 1955 AIR 33

¹¹⁰ *State of Punjab v. Devans Modern Breweries Ltd.*, (2004) 11 SCC 26

¹¹¹ *Abhiram Singh v. C.D. Commachen*, (2017) 2 SCC 629

¹¹² *All India Bank Association Employees Limited v. NIT*, 1962 SCR (3) 269

¹¹³ *Bijoe Emmanuel vs State Of Kerala*, 1986 SCR (3) 518

them. They knocked on the door of the high court, but HC rejected their petition citing the disrespect of the National Anthem. Then the children under special leave go for SC, SC held that 3 children didn't disrespect the national anthem as they were not singing because their religion says only to sing the religious and cultural songs. They didn't disrespect and didn't violate the National Honor act, 1971. SCJ added a principle under Article 19 that Freedom of Speech & Expression includes the right to remain silent also.

Court interpreted that the right under Art.19 is not absolute and is subject to 8 rounds prescribed in Art. 19 (2).

Interpretation of Art.136 - *Ashok Nagar Welfare Association v. R.K. Sharma*¹¹⁴, SC held that article 136 doesn't mean the right of appeal to any party, but it confers only to discretionary powers of SC. The criminal cases will not be interfered with by the Supreme Court.

Interpretation of Art.131 - In *T.N. Cauvery Sangam V. Union of India*¹¹⁵ It was observed that whenever there will be a dispute between states for water boundaries, the court will not interfere as mentioned in Art.131 of the constitution since parliament has enacted the Inter-Water dispute act, 1956.

5. Doctrine of Interpretation

Philip Bobbitt describes six ways to interpret a constitution when it seems ambiguous: historical, textual, prudential, doctrinal, structural, and ethical.¹¹⁶ These above methods of interpretation are used by foreign courts. Also we will explore the methods used in India Perspectives:

¹¹⁴ *Ashok Nagar Welfare Association v. R.K. Sharama*, (2002) 1 SCC 749

¹¹⁵ *T.N. Cauvery Sangam V. Union of India*, AIR 1990 SC 1316

¹¹⁶ See Philip Bobbitt, *Constitutional Interpretation* (Blackwell 1991).

1. Textualism

It focuses on the meaning of the words. Justice Scalia of the US Supreme Court is championed in this theory of interpretation. According to her, this theory looks for objectified intent from the language used by lawmakers. The textualism technique is also known as the principle of fidelity. It finds out the meaning of words present in the constitution. It doesn't consider the history but only the direct meaning of words.

In the *Shankari Prasad Case*¹¹⁷, SC opted for the method of textualism to find the intent of legislators when discussing limitations to Article 13 & Article 368. Similarly, in the *Sajjan Singh Case*¹¹⁸, Hidayatullah J stated that Article 368 did not say that every provision of the Constitution could be amended with a two-thirds majority.

In the case of *State of Gujarat v. Shantilal Mangaldas*¹¹⁹, held that the compensation cannot be challenged because the owner has been deprived was not provided for. But within the year, SC held that compensation must be a just equivalent.¹²⁰ Many contrasting cases in the Indian judiciary are a problem.

2. Structural or Purposive

This method of interpretation is not interested in engaging the exact meaning of the confused words or unambiguous provisions. It engages in investigating the mindset of the legislators and makes inferences through the parliament debates while enacting or adopting the law. Aharon Barak, a former President of the Supreme Court of Israel, is the main founder of the doctrine of purposive interpretation. He observed that purposive interpretation demonstrates its sensitivity to the uniqueness of a Constitution in the balance it strikes between *subjective*

¹¹⁷ Sri Sankari Prasad Singh Deo vs Union Of India, 1951 AIR 458

¹¹⁸ Sajjan Singh vs State Of Rajasthan, 1965 AIR 845

¹¹⁹ State of Gujarat v. Shantilal Mangaldas, 1969 AIR 634

¹²⁰ Rustom Cavasjee Cooper v. Union of India, (1970) 1 SCC 248

purpose i.e., the intent of the authors of the Constitution, and *objective purpose* i.e., the intent of the system.¹²¹ Here Subjective purpose relates to the intention of lawmakers and objective purpose relates to constitutional text which works or a better democracy. The best example for this approach is the ***Kesavananda Bharati Case***¹²², where article 368 was interpreted in a way where parliament can amend the whole constitution using 2/3rd MPs in favor of the bill but without abrogating or altering the spirit and basic structures of the Constitution. This case shows the line between subjective i.e., Intend of constituent assembly and objective i.e., Intend of the system.

We need to understand that the Constitution is a living document and attached and very sensitive to social changes. From my point of view, the purposive approach is the best way to interpret because it not only works to secure the public interest and welfare but also saves from the evil use of parliamentarians to fool everyone into the gameplay of the meaning of the words and capture their political motives.

6. Conclusion

Imagine if there was no preamble and amendment clause in our constitution. Today's picture would be very different, the judiciary would face hurdles in between to trace the footprints of law. There would be no complete power to legislate in the true sense, they cannot make amendments in the statutes. Complexity could increase in such cases. No basic structures to protect the interests of common people as most of them are embedded in the preamble. Remember anti-defection laws, they couldn't exist in such a scenario. Wealthy people will rule the government, justice will be sold in the market. Strikes, lockouts, riots, internal and external imbalances could make our country in the worst situation. Thanks to our freedom fathers and constitution protectors who could work hard to make our constitution sustainable. In Indian History, the 42nd amendment is good and bad. Our constitution implicitly supports secularism and also directly recommends UCC in directive principles. But, we need to remember, our first phase of partition was on a religious basis. Keeping this aside, why is the interpretation of the

¹²¹ Aharon Barak, *Purposive Interpretation in Law*, 371 Princeton University Press, 2005

¹²² *Supra* note 10

article in some cases contradictory? Is this a failure of the judiciary? The only victimized body of this failure is the common people. The 123 years old epidemic act couldn't help to face the current COVID situation. Then why we adopted the contract law, epidemic law, etc which was during the British Raj. If amendments were necessary with the increasing time, then why India didn't adopt its concrete laws. In the UK & US, there were mainly 2 to 3 political parties i.e., why there are fewer chances of a hung parliament or fractured mandate. In India, the case is different, there are many regional political parties, which eventually need more clarity of law to govern in hung assemblies. The same article 75 was adopted, which made the president power-centric at times of hung assembly, later SR Bommai case, interpreted the form of democracy and initiated for floor test technique. If the provisions of the constitution had not been taken from other countries,

I believe that today we won't face complications and inconsistency in interpretations and decisions.

Preamble is the heart of the Constitution. A body without a heart is dead, because the circulation of blood will stop. It has become the tool for interpretation which is an accurate and efficient way of interpreting any article, law, statutes. Comparing the textual and purposive understanding of interpretation, a purposive approach will kill/sanitize the smudges. It's important to clear our mind that instead of looking for a word in a dictionary, the court should look at the objectives of that unambiguous word and protect the innocent. Throughout the research, we explored the role of the judiciary in interpreting the world's lengthiest constitution and the importance of preamble.

In such uncertain times, if the politicians keep their selfish motives aside and stop playing politics, then our nation will win this battle against corona. The Post-corona period will be tough and I think the laws need to be more sustainable and clarity in them is a must.