

Preamble and Pronouncements: The Indian Constitution.

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Abstract :

The preamble of a constitution serves as a guiding principle of governance as it describes the basic purpose/ objective of the government. It also helps in resolving any/ all conflictual legislation which do not conform to the normative values as enshrined in the preamble. This paper is an argumentative analysis of the issue in the specific contextual terrain of the judicial decisions in the Indian political system.

Key words

Constitution, Preamble, amendment, basic structure, justice, liberty, equality, fraternity, socialist, secular, integrity.

The Preamble of the Indian constitution, like any other constitution of the world, is normative outline of the cherished values which are proposed to be realised through the political system by adhering to the prescribed procedural paths in letter and spirit. A cursory glance at the thematic values of the preamble - with amended addition of socialist and unity and integrity- would suggest that the constitution was supposed to act as a guiding force for "social revolution" within the ideational intellectual traditions of liberalism and welfarism/ democratic socialism.

Textual texture of the term 'we the people' is in the complete consonance of the theoretical tradition of democracy which enjoins the sovereign/ supreme power of deciding the destiny of the state in the people of independent India who are unfettered by the dictates/ authoritative obligations of any external power/ superior.

Another critical component worth mentioning is the repudiation of hereditary nature of the head of the state and explicit exposition of "Republic" as the core value of institutional mechanism of governance.

Thus, the 'general will' of the people was to be operationalised on the democratic axiom of 'government of the people and for the people'.

Having ensured sovereignty of the people and the Republican form of governance the preamble clearly outlined the agenda of our political system in no uncertain terms :

"Justice " in the realm of social, economic and political arena of the civil society on the one hand and" liberty, equality and fraternity" on the other. Furthermore, the above-mentioned values were getting more teeth by including/ adding " socialism and secularism" as the cornerstone of the aspirational objective.

Though not a formal/ legal part of the constitution it has acquired due attention of the judiciary whereby many issues of larger interest were settled by innovative interpretations of the respective higher courts as the judgements invoked the preamble of the constitution. It would be relevant to explore and explain the relevant judicial Pronouncements which touched upon the preambular provisions in their support.

We the people:

There are two judicial Pronouncements which explicitly asserted that the sovereign power to the people is clearly reflected in the preamble which does not mince the words in the preamble. (Motilal vs Uttar Pradesh Government, AIR 1951, All 257, Paras 185,188, affirmed in State of W. B. vs Anwar Ali, AIR,1952,SC 75.). In yet another decision the court held that the people being sovereign/ ultimate source of power get their general will exercised through their elected representatives at both the levels of federal government; union and the state. (Ram Nandan vs State,AIR 1959,ALL 101).

Socialist:

The term socialist which found its way into the preamble through 42nd amendment has to be read contextually in conjunction with the term 'democracy' which is the central guiding principle of governance. Moreover, it can be explained as reinvigorating value which was inserted to strengthen the goal of socio-economic justice by implementing those provisions of 'fundamental rights and directive principles' which aims at establishing an equity oriented egalitarian society through a bloodless/ non- violent social revolution. Whatever may have been the intention of the then ruling political dispensation, this insertion certainly gave another opportunity to the judicial system to sharpen its so-called interventionist role which has been a bone of contention between the political elites and the judiciary. Immediately after the addition the term socialist found its place in the judicial Pronouncements of the Supreme Court. In Excel Wear vs Union of India (AIR 1978,SC,25) it was clearly mentioned by the court that this development would certainly enable it in adjudication of cases involving policies of nationalisation in consonance with

constitutional commitments and the relevant laid down procedure. Furthermore, in D.S. Nakara vs Union of India case(AIR,1983,SC,130) the court said that the basis aim and ambition of socialism is to remove economic hardships of the underprivileged sections of the society in such a way that a decent standard of life can be enjoyed by one and all.

Secularism:

The founding fathers did not think it necessary to use the term secularism anywhere in the constitution primarily because it was implied in the provisions of Articles 25-28 which dealt particularly with the issues of 'liberty in the matters of belief, faith and worship'. A careful reading of these provisions would imply that the state neither has any official religion nor does it support any religion from the public funds. In other words, the individuals would be free to believe, practice and propagate any religion of their choice without any fear and undue pressure on the one hand and the state would not extend any favours to any individual or group of individuals by pursuing any discriminatory policy on the basis of religion. However, the judicial Pronouncements made it more explicit and emphatic. In S.R. Bommai vs. Union of India 'Secularism' was declared as one of the basic/ fundamental structures of the constitution.(1994,SCC,1). Further, in the Aruna Roy vs. Union of India case, the court broadened its ambit by saying that secularism denotes positive connotations of developing, understanding and imbibing respect for different religious traditions. (AIR,2003,SC, 3176). In yet another legal issue the court explicitly expressed what does secularism mean? . It implies that the state shall treat everyone alike and no one shall be discriminated against on the grounds of religion.(St. Xavier's College Ahmedabad vs State of Gujarat, AIR 1974 SC 1389, Para 75).

Democratic Republic:

Though the term democracy is not mentioned in the preamble, the emphatic exposition of "we the people ... give to ourselves" make it crystal clear that the governance shall be carried out on the democratic principles. It was further reaffirmed by asserting that the Indian political system shall have an elected head of the state based on the principle of Republic.It is in tune with the theoretical postulates of democracy which are meticulously provided in the constitutional provisions dealing with universal adult franchise, electoral process, responsible/ accountable governance and fundamental rights.

Justice:

It is the most important cherished value of the preamble which intended to bring about a revolutionary change in the arena of social, economic and political system. Keeping this in mind the architects of our constitutional journey provided adequate provisions in the constitution under relevant chapters. Innumerable judicial Pronouncements have been made to protect and promote the principles of justice.

Liberty, Equality and Fraternity:

The due emphasis on the ideals of liberty of thought and expression has received prominent place in the preamble. These ideals are to be realised through relevant provisions of the fundamental rights and directive principles of the constitution. The judicial decisions have pro- actively interpreted this preambular provision in its judgements. For example in *Government of Andhra Pradesh and others vs P. Laxmi Devi* (2008,(4)SCC,720,JT,2008(2) 639) and *Deepak Bajaj vs State of Maharashtra and others* (JT 2008(11)SC609) the judgements invoked the concept of liberty as a judicial tool for protecting unfettered enjoyment of liberty by any institution of the government. In yet another decision the court said that liberty, equality and fraternity are so intricately interwoven that these can not be treated in isolation.(*S.S. Bola vs B.D. Sardana*, 1997,8, SCC 522).

Unity and Integrity:

The purpose of adding these ideational concepts in the preamble may have been guided by keeping the vibrant plurality of the country intact. In other words the multi- ethnic, multi- religious, multi- cultural and multi- lingual regions and people of the country needed to be galvanized in the ideal construct of ' unity in diversity' which shall act as a mantra of peace, progress and prosperity.

Relevance

Notwithstanding the critical question whether preamble can be enforced through judicial remedies or not the judiciary did intervene on many occasions and established its legitimate significance beyond textual interpretation as nothing more than a preface outlining the normative values/ goals which are to be realised. The judicial scrutiny of its legitimate/ legal place in the constitution has been subject to diametrically opposite views which almost settled down due to judicial interpretation particularly in the two landmark judgements - *Beruberi Case* and *Kesavananda Case* -which needs to be explained in a nutshell . Basically two questions were dealt with in the above mentioned two path breaking judicial Pronouncements. In the *Beruberi Case* which came up before the Supreme Court through Presidential reference the court took a categorical decision that despite being" a key to open the mind of the makers" ' it can not not be a part of the constitution. However, in *Kesavananda Case* involving the same issue by a larger bench the court almost settled the matter with a contrary opinion. The tone and tenor of the majority decision is clearly reflected in the words of justice Y. V. Chandrachud who wrote in his argument that it sounds absurd to accept that the preamble which was put to vote like other provisions in the constituent assembly as part of the constitution should not be treated the same. Hence, it is not only an inalienable part of the constitution but one of the basic features of the constitution which cannot be destroyed by amendment.(Y. V. Chandrachud, *Keshavananda Bharati*, para, 2086). In the same case justice H.R.

Khanna opined that the preamble is not only part of the Constitution but it walks before the Constitution.(H .R. Khanna, J , Keshavananda Bharati case,ibid,pp 1471-72).

Concluding observations

Having analysed the judicial journey involving the purpose and place of the preamble in the Constitution of India we can succinctly conclude that it has been recognised as an amendable and integral part of the basic structure of the constitution which cannot be allowed to suffer from destruction.

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