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"Preamble as an Aid to Interpretation"

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Abstract

From Plato[1] to Cicero, from England's Common Law to Roman's Jus Civile, Preamble have played a stellar role in law and policy making. To say Preamble of Indian Constitution is a stuff of legend would be an understatement. Justice Deepak Gupta at his retirement address said "Whenever a case is difficult, I go through the Preamble and more often than not I find the solution there."[2] Preamble is not only just a parchment but an "identity card of the constitution"[3] "A Preamble to the Constitution serves as a key to open the minds of the makers, and shows the general purposes for which they made the several provisions in the Constitution."[4] Preamble's purpose is not only to clarify who made the constitution but also to determine what is the source and the ultimate sanction behind it; what is the nature of the polity which is sought to be established by the Constitution and what are its goals and objectives?[5]

Contrary to popular belief, Preamble is prefixed not only to the Constitution but also to statutes. The Preamble of a Statute is also a part of the Act and is a admissible aid to construction. Albeit not an enacting part. Preamble expresses the scope, object and the purpose of the act. It informs the grounds of why the Statute was enacted in the first place and the evils it sought to remedy or the doubts it may intend to settle.[6]

Preamble is sometime referred to with different though equivalent names[7], but nonetheless, has a specific content. It not only presents the history of the nation and the ideals it is built on but also the values of the nation. Our constitution has a noble vision and that vision was beautifully put in words in the Preamble and carried out in part by conferring fundamental rights on the people. The vision was directed to be further carried out by the application of directive principles.[8]

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[1] Plato wrote in *Laws* that *"the dictatorial prescription…. Is the law pure and simple; and that part comes before it which is essentially persuasive…. Has an additional function analogous to that of a Preamble of a Speech. It seems obvious to me that the Legislator gave the entire persuasive address was to make the person to whom he promulgated his law accept his orders -the law-in more cooperative frame of mind and correspondingly greater readiness to learn. That is why, as I see it the element ought properly to be termed not the 'text' of the law, but the preamble."*

[2] https://thewire.in/law/full-text-justice-deepak-gupta-farewell-speech

[3] Nani Palkhivala

[4] *In Re Berubari Union*, AIR 1960 SC 485

[5] M.P. Jain, *Indian Constitutional Law*, 8th Edition. Page 12

[6] Justice G.P. Singh, *Principles of Statutory Interpretation*, 14th Edition, Page 174

[7] In Albania and Bahrain, Preamble is referred to as "Foreword" or in Japan (Nippon) it is referred as "Preface"

[8] *Kesavananda Bharti v. State of Kerala*, AIR 1973 SC 1461, (1973) 4 SCC 225, (1974) 1 SCC (JI.) 3

In this paper, the Author tries to showcase how Preamble of a Statute has been used as an interpretive tool by the Courts. For the sake of lucid understanding, we will see how the Preamble to the Constitution is interpreted by the Courts and how a Preamble to a Statute is interpreted. With regards to the Preamble to the Constitution, the Author traces the history of the Preamble from the Objective Resolution introduced by Jawaharlal Nehru in 1946 to the Constituent Assembly Debates on the Preamble. The Author will answer the question whether Preamble is Part of the Indian Constitution and what will be the effect of that question on the interpretation. As far as the Preamble to the Statute is concerned, the Author caresses through the landmark pronouncements not only by the Indian Courts but also by the House of Lords, to decipher what role does the Preamble play in the Interpretation of Statutes.

Preamble to the Constitution

Objective Resolution, 1946

On 13th December 1946, the first Prime Minister of India, Jawaharlal Nehru introduced the Objective Resolution laying down the underlying principles of the Constitution at the Constitution Hall, New Delhi. Nehru elaborated on the importance of this resolution by stating *"The Resolution that I am placing before you defines our aims, describes an outline of the plan and points the way which we are going to tread."*[9] Nehru outlined his and the assembly's ardent desire to *"to see the people of India united together so that we may frame a constitution which will be acceptable to the masses of the Indian people"*[10]. Nehru pointed out that this resolution doesn't actually goes into details of governance or polity but *"only seeks to show how we shall lead India to gain the objectives laid down in it."*[11] The importance of this resolution is higher than the mere words it comprises, but *"the main thing is the spirit behind it"*, he said[12]. He advised against the mechanical and textual reading of the document (Scalia J. turns in his grave) and warned *"if you examine its words like lawyers, you will produce only a lifeless thing."*[13]

He introduced the following:

(1) 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;

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

(3) 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

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[9] https://www.constitutionofindia.net/constitution_assembly_debates/volume/1/1946-12-13
[10] *Id.*
[11] *Id.*
[12] He also mentioned *"That the House should consider this Resolution not in a spirit of narrow legal wording, but rather to look at the spirit of the Resolution."*
[13] Supra at 7

all powers and functions 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 therefrom; and

(4) WHEREIN all power and authority of the Sovereign Independent India, its constituent parts and organs of government, *are derived from the people*; and

(5) 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, expression, belief, faith worship, vocation, association and action, subject to law and public morality*; and

(6) WHEREIN adequate safeguards shall be provided for minorities, backward and tribal areas, and depressed and other backward classes; and

(7) 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 civilised nations, and

(8) this ancient land attains its rightful and honoured place in the world and make its full and willing *contribution to the promotion of world peace and the welfare of mankind*."

Nehru, at last, said *"Our past is witness to what we are doing here and though the future is still unborn, the future too somehow looks at us, I think, and so, I would beg of this House to consider this Resolution in this mighty prospect of our past, of the turmoil of the present and of the great and unborn future that is going to take place soon."*

This Objective Resolution went on to become our Preamble to the Constitution.

Constituent Assembly Debates

The debate in the Constituent Assembly on Preamble began on 17th October 1947[14] after considerable postponements[15], and it was not a smooth ride. The first amendment to the Preamble was moved by Maulana Hasrat Mohani who proposed changing the word 'democratic' with 'federal' or else with 'independent'. However, both the alternatives were negatived by the assembly and then Dr. Prasad adjourned the assembly for lunch. Maulana Mohani moved another amendment to the Preamble asking to substitute the words 'Sovereign

[14] The debate on Preamble can be accessed through this link: http://164.100.47.194/loksabha/writereaddata/cadebatefiles/C17101949.html

[15] The object of putting the Preamble last, Dr. Rajendra Prasad explained, was to see that it was in conformity with the Constitution as accepted.

Democratic Republic' for 'Union of Indian Socialistic Republics'. Sounds familiar. Well, that's because it was modelled on U.S.S.R itself.[16] However, yet again, Maulana failed to gather support in the assembly.

Another amendment was moved by H.V. Kamath[17] asking the House to incorporate the phrase *"In the name of God"* before *"We the People"*. Shri Rohini Chaudhari took a dig at Mr. Kamath and proposed that instead of God we should use 'Goddess'. However, majority of the House were serious and were not convinced with this amendment. Pandit H.N. Kunzru said,

"I recognise the sincerity of Mr. Kamath and of those who agree with him, but I do not see why in a matter that vitally concerns every man individually, the collective view should be forced on anybody. Such a course of action is inconsistent with the Preamble which promises liberty to thought, expression, belief, faith and worship to everyone. How can we deal with this question in a narrow spirit? We invoke the name of God, but I make bold to say that while we do so, we are showing a narrow, sectarian spirit, which is contrary to the spirit of the Constitution and which we should try to forget at this time when we have reached the end of a very important stage of our labours."

With 68 Noes to 41 Ayes, the amendment was negatived.

In a rather bizarre turn of events, Prof Shibban Lal Saxena moved an amendment to the Preamble invoking Mahatma Gandhi[18] but was quickly shot down. Rightly so, as *"this was not a Gandhian Constitution"*[19]. The amendment was withdrawn.

There was a rather strong debate in the assembly on the adoption of the word 'sovereign' in the Preamble. Mr. Brajeshwar Prasad led the assault and elaborated that *"I feel that this word 'sovereign' is entirely misplaced. A State consists of individuals. Are individuals sovereign in any sense of the term? If individuals are not sovereign, how can a State which consists of*

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[16] Maulana Mohani clarified in the assembly that *"I am only suggesting that the Constitution and the Preamble we are adopting here in this Second reading must be on the same lines, of the same pattern as the U.S.S.R. plan and I do not think there is anything inconsistent in that."*

[17] H.V. Kamath would not be the only one to move an amendment to incorporate 'God' in the Preamble. A similar amendment was moved by Pandit Govind Malaviya who wanted to incorporate 'Parmeshwar' in the Preamble

[18] *'In the name of God the Almighty, under whose inspiration and guidance, the Father of our Nation, Mahatma Gandhi, led the Nation from slavery into Freedom, by unique adherence to the eternal principles of Satya and Ahimsa, and who sustained the millions of our countrymen and the martyrs of the Nation in their heroic and unremitting struggle to regain the Complete Independence of our Motherland,*

[19] Shri Brajeshwar Prasad

individuals be sovereign. It is a very well-known fact that man has no free will of his own, that he is circumscribed by factors of heredity and environment. Both qualitatively and quantitatively he holds a very insignificant place in the universe. If man is so insignificant, if man is a non-entity in the world how can a State which consists of individuals be a sovereign State? Therefore, Sir, I am opposed to this idea of sovereignty."[20] However, nothing was done and the word Sovereign remained untouched.

Later that day itself, Dr. Rajendra Prasad brought the session to the close as there were no other objections and the Preamble was added to the Indian Constitution.

The preamble serves several important purposes. Firstly, it indicates the source from which the Constitution comes viz. the people of India. Next, it contains the enacting clause which brings into force the Constitution. In the third place, it declares 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.[21]

The Preamble to the Indian Constitution lays down the goals of politico-socio-economic democracy for the citizen of India. It emphasizes that India should be a *Sovereign Socialist*[22] *Secular*[23] *Democratic Republic*. It further goes on to state that the People of India have given to themselves 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 Fraternity assuring the dignity of the individual. The three concepts- Liberty, Equality and Fraternity – constitute a Trinity; one cannot be divorced from another.[24]

Is Preamble a Part of Constitution?

To understand and unravel whether Preamble form a Part of Indian Constitution, two judgments hold the key to the door. *In Re: The Berubari Union v. Unknown*[25] and *Kesavananda Bharti v. State of Kerala*[26].

[20] Supra at 12
[21] Supra at 3
[22] 42nd Amendment, 1976
[23] *Id.*
[24] Supra at 3, page 1466
[25] Supra at 3
[26] Supra at 6

In *Berubari* (supra), there was a dispute[27] between the Indian Government and the Pakistan Government. The two governments signed a joint note recording their agreements vis-à-vis the dispute. The Prime Ministers of the respective nations "*with a view to removing causes of tension and resolving border disputes and problems relating to Indo-Pakistan Border Areas and establishing peaceful conditions along those areas,"* entered into an agreement which was called as the Indo-Pakistan Agreement. One of the points of contention was the Berubari Union. This area had to be divided between the two nations. The division has to be fashioned in such a way that the Cooch Behar Enclaves between Pachagar Thana and Berubari union will go to India and the Cooch Behar Enclaves lower down between Boda Thana and Berubari union would go to Pakistan. The GoI was confused regarding a point of law namely, *"whether the implementation of the Agreement relating to Berubari Union requires any legislative action either by way of a suitable law of Parliament relatable to Article 3 of the Constitution or by way of a suitable amendment of the Constitution in accordance with the provisions of Article 368 of the Constitution or both."* Hence, the President u/a 143(1) asked for the opinion of the Apex Court as per their Advisory Jurisdiction.

Now as per the Article 1 of the Constitution, India was divided into Part A, B & C states given under the First Schedule. West Bengal came under Part A and its territory comprised of the territory of the erstwhile province of West Bengal right before the commencement of the Constitution. Berubari Union continued to be in the possession of the Indian Dominion and was governed as a part of West Bengal. Pakistan objected to this all of a sudden in 1952. The dispute continued till 1958 and under these circumstances the aforementioned agreement was reached.

On behalf of the Union of India, Attorney General Setalvad argued that no legislative action is required for the implementation of the agreement. However, the opposition urged that Parliament has no power to cede any part of the territory of India in favour of a foreign state either by legislation or via amendment. This extreme position finds its credence in the fact that "*The makers of the Constitution were painfully conscious of the tragic partition of the country into two parts, and so when they framed the Constitution, they were determined to keep the entire territory of India as inviolable and sacred. The very first sentence in the preamble which declares that* ***'We, the people of India, having solemnly resolved to constitute India into a sovereign democratic Republic'****, irrevocably postulates that India geographically and*

[27] Actually, there were 10 items of dispute

territorially must always continue to be democratic and republican." However, the court paid no heed to this argument. The Court in Para 31 of the judgement notes that;

"*There is no doubt that the declaration made by the people of India in exercise of their sovereign will in the preamble to the Constitution is, in the words, "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."***

The Court also cited Westel Willoughby saying *"it {Preamble} has never been regarded as the source of any substantive power conferred on the Government of the United States, 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".*[28] The court outlined the extent to which Preamble can be used as a tool for interpretation. It opined ***"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."***[29] Therefore, the Court rejected the argument that the preamble imports any *"limitation on the exercise of what is generally regarded as a necessary and essential attribute of sovereignty."*

However, this point of view of the Apex Court regarding the Preamble and the role it plays in guiding the Judges interpreting the Constitution took a tectonic shift in another landmark case, *Kesavananda Bharti* (supra). The facts of this celebrated judgment are widely known and thus the Author won't reiterate them here.

Sikri C.J. writing his opinion invoked Mudholkar J. and opined that,

"upon a comparison of the preamble with the broad features of the Constitution it would appear that the preamble is an epitome of those features or, to put it differently if these features are an amplification or concretisation of the concepts set out in the preamble it may have to be considered whether the preamble is not a part of the Constitution. While considering this question it would be of relevance to bear in mind that the preamble is not of the common run such as is to be found in an Act of a legislature. It has the stamp of deep

[28] Cited with authority in *Jacobson v. Massachusetts,* 197 U.S. 11 (1905)
[29] Para 32 of *Berubari Union* (supra)

deliberation and is marked by precision. Would this not suggest that the framers of the Constitution attached special significance to it?"

Sikri C.J. also noted that *"Not only was the Constitution framed in the light of the Preamble but the Preamble was ultimately settled in the light of the Constitution."*[30] The learned judge noted the views expressed by the Court in *Golaknath*[31] and said ***"With respect, the Court was wrong in holding, as has been shown above, that the Preamble is not a part of the Constitution."***[32] He further noted ***"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."***[33]

In reply to the contention raised by H.M. Seervai who was appearing at the behest of State of Kerala that *"the amending power of Parliament under Article 368 has no limitations and cannot be limited by some vague doctrine of repugnancy to natural and inalienable rights and the Preamble",* Sikri C.J. opined,

"I am driven to the conclusion that the expression "amendment of this Constitution" in Article 368 means any addition or change in any of the provisions of the Constitution ***within the broad contours of the Preamble and the Constitution to carry out the objectives in the Preamble and the Directive Principles.*** *Applied to fundamental rights, it would mean that, while fundamental rights cannot be abrogated reasonable abridgements of fundamental rights can be effected in the public interest."*[34]

Shelat and Grover JJ., tracing the judgments of the Apex court put across the point that the Preamble of the Indian Constitution is of utmost importance. Their Lordships relied on *Behram Khurshid*[35], *Basheshar Nath*[36] and *In Re Kerala Education Bill*[37] to drive home the point that *"Our court has consistently looked to the preamble for guidance and given it a transcendental position while interpreting the Constitution or other laws."*

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[30] Para 92 of *Kesavananda Bharti* (Supra)
[31] *Golaknath v. State of Punjab*, (1967) 2 S.C.R. 762
[32] *Kesavananda Bharti* (Supra) at para 105.
[33] *Id.* At para 124
[34] *Id*. At para 311
[35] (1955) 1 S.C.R. 613
[36] (1959) Suppl. 1 S.C.R. 528
[37] (1959) S.C.R. 995

With this, the Court held that the interpretation given by this Court in *Berubari Union* (Supra) was wrong in law and Preamble **is actually a Part of the Constitution and thus can be amended however, the *'basic structure'* cannot be touched or hampered.** The Court also laid down the principles of interpretation regarding the Preamble. It stated that ***"Constitution, including the Preamble must be read as whole and in case of doubt be interpreted consistent with its basic structure to promote the great objectives stated in the Preamble."***[38] But the Preamble can never be regarded as the *"Source of any substantive Power"*[39] nor as a *"source of any prohibition or limitation."*

The law laid down in the *Kesavananda Bharti* Case was relied upon by the Courts in many cases down the line. The landmark pronouncement after the *Bharti* judgment (supra) came in the year 1980. The case was *Minerva Mills v. UOI.*[40] This case dealt with nationalisation of a Textile Company (petitioner) situated in the State of Karnataka, under the Sick Textile Undertakings (Nationalisation) Act, 1974. The Petition was filed to challenge the vires of certain provisions of the aforementioned Act and also the order passed under the Act. In this case, the Court noted that **"*The edifice of Indian Constitution is built upon the concepts crystallized in the Preamble.*"**

Also, for instance, in *Ashoka Kumar Thakur v. Union of India*[41], the Apex Court held that *"when a constitutional provision is interpreted, the cardinal rule is to look to the Preamble to the Constitution as the guiding star."*[42]

Preamble to the Statutes

The Preamble of a Statute like a Long Title[43], is absolutely a part of the Act is an admissible aid to construction. Though not an enacting part of the Statute, Preamble is expected to express the scope, object and the purpose of the act, more comprehensively than Long Title.[44] *"It is to the preamble more specially we are to look for the reason or the spirit of every statue, rehearsing this as it ordinarily does, the evils sought to be remedied, or the doubts purported*

[38] Supra at 7
[39] Supra at 3
[40] 1981 SCR (1) 206
[41] (2008) 6 SCC 1
[42] *Id.* At Para 212
[43] Long Title as distinguished from Short Title, taken with the Preamble or even in its absence is a good guide regarding the object, scope or purpose of the Act.
[44] Justice G.P. Singh, *Principles of Statutory Interpretation*, page 174

to be removed by the statue, and so evidencing, in best and most satisfactory manner , the object or intention of legislature in making or passing the statue itself."[45]

A landmark case in the mid 19th Century will be of utmost help to understand the relevance and importance of Preamble as an aid to Statutory interpretation. This case dates back to 1844[46]. The case was pertaining to the marriage of a Peer (of a Peerage[47]) in England and the admissibility of certain evidence to prove the relevant fact. The father of the claimant, who was now deceased, wanted to claim peerage and for that end, the Claimant wanted to enter into evidence a Prayer book of his mother which declared in her handwriting, that she was in fact married to his father. The claimant also sort to enter into evidence a will of his deceased father made many years before his death, which also proves his marriage in the most solemn form. But it was rejected. In the backdrop of these facts their Lordships decided upon the *"rule for the construction of Acts of Parliament"*

Tindal J. opinion in this case incisively sums up the principle of interpretation. He says,

"If any doubts arise from the termed 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 statue and have recourse to preamble"

A landmark judgement pertaining to the importance of Preamble in interpretation of Statutes is the ***A.G. v. HRH Prince Ernest Augustus.***[48] The Respondent in the case is the head of the Royal House of Hannover which held the thrones of the U.K. until 1901 and he is also the brother-in-law of the current Sovereign Prince of Monaco, Albert II. This judgement came from an appeal of the judgement given by the Court of Appeal declaring that the respondent was a British Subject before the coming into force of British Nationality Act, 1948.

The Court held that,

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[45] *Brett v. Brett*, (1826) 162 ER 456, page 458
[46] *The Sussex Peerage Case*, (1844) 11 Cl & F 85
[47] A Peerage in the U.K. is a legal system comprising both hereditary and lifetime titles, composed of various noble ranks and forming a part of the British Honours System.
[48] (1957) AC 436 (HL)

*"That preamble may be looked at on the principle that if the enacting words are general, as opposed to specific, or if they are ambiguous, or if there is a real doubt as to the meaning to be given to them, the preamble may have the effect of giving a limited meaning to the general words or resolving the ambiguity. There may be ambiguity in the language used or, without such an ambiguity, there may be a serious doubt as to the meaning, arising from the surrounding circumstances, so that though the words may appear clear and unambiguous, in the light of the surrounding circumstances it is certain that Parliament cannot have intended their apparent meaning. In construing a statute, one is entitled to consider the mischief aimed at, but the fundamental rule is to seek to give effect to the intent of the legislature…. **If, after one has done so, it appears that the meaning of a particular section is clear beyond a doubt, one must give effect to it. But where any doubt arises, either from the preamble or the surrounding circumstances, the preamble becomes the key to the statute."***

The Court went on to say that *"**Where there is a doubt as to the intention of Parliament, the preamble to the Act is the key.** If there are various meanings to be attached to the enacting words, some wider than the preamble and some not, one takes the intention that accords with the preamble. In construing an Act, one reads the whole of it and the preamble is part of the Act."*

The Court relying on *Maxwell on the Interpretation of the Statutes* added a caveat that if *"there is no ambiguity in the enacting words, their meaning cannot be altered by the preamble, either by expanding or restricting them."* The court held that when there is a preamble, it is generally in its recitals that the mischief to be remedied and the scope of the Act are described. It is therefore ***"clearly permissible to have recourse to it as an aid to construing the enacting provisions. The preamble is not, however, of the same weight as an aid to construction of a section of the Act as are other relevant enacting words to be found elsewhere in the Act or even in related Acts."***

Lord Simons elaborated on "compelling reason" rule to ascertain when the aid of preamble can be taken to interpret the statute. He said, *"it {the rule} is better stated by saying that the context of the Preamble is not to influence the meaning otherwise ascribable to the enacting part* ***unless there is a compelling reason for it."*** Lord Normand also supported his brother justice by saying *"It is only when it conveys a clear and definite meaning in comparison with relatively obscure or indefinite enacting words that the Preamble may legitimately prevail."*

Lord Somervell elucidated that,

"Preambles differ in their scope and consequently in the weight, if any, which they may have on one side or the other of a dispute. There can be no rule. If in an Act the preamble is a general and brief statement of the main purpose, it may well be of little, if any, value. The Act may, as has been said, go beyond or, in some respects, fall short of the purpose so briefly stated. Most Acts contain exceptions to their main purpose, on the meaning of which such a preamble would presumably throw no light. On the other hand, some general and most local Acts have their limits set out in some detail. I will not hazard an example, but there may well be cases in which a section, read with the preamble, may have a meaning different from that which it would have if there were no preamble. ***The court will always bear in mind that a preamble is not an enacting provision, but I think it must have such weight as it can support in all contests as to construction."***

According to our modern intelligentsia, foreign judgments should play no role in our domestic jurisprudence and our Courts should steer clear of them. Be that as it may, this judgment pronounced by House of Lords in *Ernst Augustus case* (supra) was relied upon by the Constitution bench of the Apex Court in *Elphinstone Spinning& Weaving Co. Ltd. case.*[49] The appeal by the Union of India in this case arose out of a judgment given by Bombay H.C. The Union Government had taken over the management of the 3 cotton mills including the Petitioner's, under the provision of Textile Undertakings (Taking over of Management) Ordinance, 1983 (hereafter referred as the Ordinance). Bombay H.C. opined that the Govt. violated the fundamental right u/a 14 and 19(1)(g) of the Petitioners.

The Court cited with authority the *Ernst Augustus* Case and opined,

"The preamble of an Act, no doubt can also be read along with other provisions of the Act to find out the meaning of the words in enacting provisions to decide whether they are clear or ambiguous but the preamble in itself not being an enacting provision is not of the same weight as an aid to construction of a section of the act as are other relevant enacting words to be found elsewhere in the Act. ***The utility of the preamble diminishes on a conclusion as to clarity of enacting provisions. It is therefore said that the preamble is not to influence the meaning otherwise ascribable to the enacting parts unless there is a compelling reason***

[49] AIR 2001 SC 724

for it. *If in an Act the preamble is general or brief statement of the main purpose, it may well be of little value."*

After expounding the principle of interpretation regarding the importance of Preamble as an aid to construction, the Court held, the Textile Undertakings Taking Over of the Management Act, 1983, being an Act providing for taking over in the public interest of the Management of Textile Undertakings of the Companies, the *"use of the expression mis-management of the affairs in the preamble will not control the purpose of the Act in the public interest"* and it also held that,

"it was not open for the Court to come to a conclusion by taking recourse to the use of the word mis-management in the preamble to hold that the Parliament intended only to take those Mills whose financial condition was deplorable on account of mismanagement and not in case of those mills where the financial condition may be deplorable but not on account of mis-management."

In *Burakar Coal Co. Ltd. v. UOI*[50] Supreme Court elucidated upon the same principle. The Court speaking through Mudholkar J. opined,

"While. holding that it is permissible to look at the preamble for understanding the import of the various clauses contained in the Bill this Court has not said that full effect should not be given to the express provisions of the Bill even though they appear to go beyond the terms of the preamble. ***It is one of the cardinal principles of construction that where the language of an Act is clear, the preamble must be disregarded. Though, where the object or meaning of an enactment is not clear, the preamble may be resorted to explain it. Again, where very general language is used in an enactment which, it is clear must be intended to have a limited application, the preamble may be used to indicate to what particular instances the enactment is intended to apply. We cannot, therefore, start with the preamble for construing the provisions of an Act, though we would be justified in resorting to it, nay, we will be required to do so, if we find that the language used by Parliament is ambiguous or is too general though in point of fact Parliament intended that it should have a limited application."***

The Court mentioned in the head note that *"Where the object or meaning of an enactment is not clear, the preamble may be resorted to explain it"* and went on to held that that the

[50] AIR 1961 SC 954

expression "unworked land" occurring in the preamble of the Coal Bearing Areas (Acquisition & Development Act) 1957, means land which was not being worked at the time of the notification issued under the Act and includes dormant mines.

In another case, Supreme Court held that *"The Preamble may no doubt be used to solve any ambiguity or to fix the meaning of words which may have more than one meaning, but it can however, not be used to eliminate as redundant or unintended, the operative provisions of the statute."*[51]

Sardar Inder Singh[52] is a constitution bench judgment dealing with the Rajasthan (Protection of Tenants) Ordinance, 1949, promulgated on June 21, 1949, by the *Rajpramukh* of Rajasthan. The ordinance was to remain in force by two years unless the period was extended by the *Rajpramukh.*[53] Furthermore, during the period of continuance of the Ordinance, no tenants can be ejected.[54] Also, the government was given the power to exempt any person or class of person from the application of the Ordinance.[55]

In this case, the *Rajpramukh,* at first issued a notification that this Ordinance shall remain in force for a period of two years and then via another notification it was extended for another year. Then again whimsically, it was extended all together for a period of 5 years substituting the directive of Section 3 vide an amendment. The petitioners contended *inter alia* that the notification issued after substituting the words of section 3 were both ultra vires the power of the *Rajpramukh* and to extend the period to 5 years were unconstitutional delegation of legislative power. They also contended that the power of the govt. to exempt any person or class of persons from the operation of Ordinance by virtue of Section 15, was uncanalised and arbitrary and thus doesn't pass muster under Article 14.

The apex Court speaking through T.V. Aiyyar J. stated that the Preamble of the Ordinance clearly provided the state of facts necessitating the enactment of the law and held that this delegation was intra vires the power of the *Rajpramukh.* And with respect to the second contention, the Court in the head note held that the Section 15 of the Ordinance cannot be held

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[51] *State of Rajasthan v. Leela Jain*, AIR 1965 SC 1296
[52] *Sardar Inder Singh v. State of Rajasthan*, AIR 1957 SC 510
[53] Section 3 of the Rajasthan (Protection of Tenants) Ordinance 1949.
[54] Section 4 of the Rajasthan (Protection of Tenants) Ordinance 1949.
[55] Section 15 of the Rajasthan (Protection of Tenants) Ordinance 1949.

to be bad under Article 14 because *"the preamble to the Ordinance sets out with sufficient clearness the policy of the legislature and as that governs s. I5, the decision of the Government cannot be said to be unguided."* The Court went on to hold *"It is true that that section does not itself indicate the grounds on which exemption could be granted, but the preamble to the Ordinance sets out with sufficient clearness the policy of the Legislature; and as that governs s.15 of the Ordinance, the decision of the Government thereunder cannot be said to be unguided."*

Thus, discretionary power couched in wide terms and challenged as unfettered and unguided was upheld by the recourse to the Preamble and by holding that the discretion so conferred was restricted in that, it could only be used in reference to the object and policy of the Act as disclosed in the Preamble.[56]

Another important instance wherein the Court relied on Preamble as interpretive tool was in the landmark case of *Gullipilli Sowria Raj v. Bandaru Pavani.*[57] This case revolved around the interpretation of the word 'may' in Section 5[58] of Hindu Marriage Act, 1955 (hereinafter referred as HMA). This case concerned itself with the issue that whether a marriage entered into by a Hindu with a Christian is valid under the provisions of HMA, 1955. The appellant, who is a Roman Catholic Christian allegedly married the respondent, who is a Hindu, in a temple only by exchange of `*Thali*' and in the absence of any representative from either side. Subsequently, the marriage was registered.

Soon thereafter, the wife filed a petition in the Family Court for a decree of nullity of marriage on the grounds of Misrepresentation of the social status of the Husband and his religion, which was actually Christian. The petition was dismissed by the Family Court, and therefore an appeal was preferred by the Respondent to the H.C. which pronounced the judgment in the favour of the respondent wife and held the marriage to be *void ab initio*. After a few months, the Respondent married a Hindu again. Hence this appeal was preferred by the Husband-Appellant under Article 136[59].

[56] Supra at 52
[57] (2009) 1 SCC 714, AIR 2009 SC 1058
[58] A marriage 'may' be solemnized between any two Hindus, if the following conditions are fulfilled, namely:
[59] Special Leave Petition.

The appellant argued in this case that HMA does not preclude a Hindu from marrying a person of some other faith. U.U. Lalit (as his lordship then was) proposed, relying on the word 'may' in Section 5, that the word indicate that the conditions were not mandatory and that as a result, the said conditions would not be binding on the marriage performed between the appellant and the respondent. The appellant further argued that Section 5 is actually 'optional'. The Respondent, *au contraire*, placed reliance on the Preamble to the Statute and argued that the Preamble to the HMA 1955, in unambiguous terms makes it clear that the Act was promulgated to amend and codify law relating to marriage amongst Hindus. He urged that the language of the Preamble leaves no room for doubt that the Act and its provisions would apply to Hindus only.

The Division Bench of the Apex Court however failed to agree with the contentions of the Appellant. Altamas Kabir J. laid emphasis on the Preamble to the Statute which stated, ***"An Act to amend and codify the law relating to marriage among Hindus".*** He reiterated that the Act was enacted to codify the law relating to the marriage amongst Hindus. He noted,

> *"Section 5 of the Act thereafter also makes it clear that a marriage may be solemnized between any two Hindus if the conditions contained in the said Section were fulfilled. The usage of the expression `may' in the opening line of the Section, in our view, does not make the provision of Section 5 optional. On the other hand, it in positive terms, indicates that a marriage can be solemnized between two Hindus if the conditions indicated were fulfilled. In other words, in the event the conditions remain unfulfilled, a marriage between two Hindus could not be solemnized. The expression `may' used in the opening words of Section 5 is not directory, as has been sought to be argued, but mandatory and non-fulfilment thereof would not permit a marriage under the Act between two Hindus."*[60]

The Apex Court reaffirmed the decision of the H.C. and said the decision of the Court doesn't warrant any interference. So incisively put, the use of the word 'may' was strictly construed by the Court to be mandatory in the sense that both parties to the Marriage have to be Hindus. More importantly, this result was reached by the Court by using Preamble as an aid to interpretation.

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[60] Supra at 57; para 21

For the last judgement, we will have to travel back in time to pre-independent India. Here there is no Supreme Court but, in its stead, there is the Federal Court of India, est. in 1937 under the Government of India Act, 1935. In the Court of Maurice Gwyer C.J. came a case which dealt with the insertion of a Preamble vide an amendment in the Bihar & Orissa Excise Act, 1915.[61] The Court held in this case that even if a Preamble is inserted vide an amendment in the original act retrospectively, it is of no use to interpret the intention of the Original Act. Gwyer C.J. held,

"But we doubt very much whether a Preamble retrospectively inserted in 1940, in act passed 25 years before can be looked at by the Court for the purpose of discovering the true intention of the Legislature was at the earlier date."

Conclusion

Preamble is an important part of a Statute. It expresses the wisdom of the citizenry and also relays the ideals the nation as a whole wish to achieve. It is something more than just a mere White Paper of the Government but is instead a key to open the mind of the legislators. It lays down the principles and philosophy of governance of the State.

Amartya Sen rightly noted that Indians are by default argumentative in his book *Argumentative Indian* which beautifully elaborates on the rich intellectual and pluralistic debate culture that we have. The same was on full display in the Constituent Assembly on 17th of October, 1947. The Preamble adopted on the basis of the Objective Resolution moved by Jawaharlal Nehru culminated in the formation of Preamble. The assemblymen wanted to invoke Mahatma Gandhi in the Preamble, some wanted to invoke God in the Preamble, and some even debated that is the Preamble really in the name of 'We the People'? But eventually all these questions were answered and we got our Preamble.

A question arose that whether Preamble is really a part of our Constitution? This question had very wide ramifications as including Preamble as a part of Constitution would mean the same can be amended by the Government. The question was answered in the negative in *Berubari* but the same was overruled insofar it deals with the aforementioned question in *Kesavananda*. These pronouncements of the Apex Court also helped us a great deal in understanding the principle of statutory interpretation regarding the Preamble to the Constitution.

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[61] *Bhola Prasad v. Emperor*, AIR 1942 FC 17

Preamble to the statutes also invariably assist in interpreting the texts of the statutes with the purpose to remedy the mischiefs, if any. For clarification of any doubt regarding the text used by the Legislature, an important tool is the Preamble. It informs about the true intention of the Legislature. However, if the words of the legislature are unambiguous and clear, Preamble's use must be restricted and curtailed.

In the present times in India, Preamble has also become a symbol of protest against the Establishment. The same can be seen in plenty during the mass agitation against the Citizenship Amendment Act, 2019 colloquially known as CAA. The Farmer's Protest also saw people marching and peacefully protesting with the Copy of preamble in their hand.

The Preamble not only specifies what kind of Nation we, the citizens of this great nation, aspire but also bestows upon us the quintessential rights of a citizen and cloaks us with the guarantee of dignity. The Preamble which has been built on the edifice of the countless and valorous sacrifices of our *'Fore Parents'* illuminates the path towards a prosperous future. It is up to us now, to inculcate within ourselves the feeling of constitutional morality and embody the philosophy so beautifully crafted and embedded in the Preamble to our Constitution.

Research/Scholar Index

- Plato wrote in *Laws* that *"the dictatorial prescription…. Is the law pure and simple; and that part comes before it which is essentially persuasive…. Has an additional function analogous to that of a Preamble of a Speech. It seems obvious to me that the Legislator gave the entire persuasive address was to make the person to whom he promulgated his law accept his orders -the law-in more cooperative frame of mind and correspondingly greater readiness to learn. That is why, as I see it the element ought properly to be termed not the 'text' of the law, but the preamble."*
- https://thewire.in/law/full-text-justice-deepak-gupta-farewell-speech
- Nani Palkhivala
- *In Re Berubari Union*, AIR 1960 SC 485
- M.P. Jain, *Indian Constitutional Law*, 8th Edition. Page 12
- Justice G.P. Singh, *Principles of Statutory Interpretation*, 14th Edition, Page 174
- In Albania and Bahrain, Preamble is referred to as "Foreword" or in Japan (Nippon) it is referred as "Preface"
- *Kesavananda Bharti v. State of Kerala*, AIR 1973 SC 1461, (1973) 4 SCC 225, (1974) 1 SCC (JI.) 3
- https://www.constitutionofindia.net/constitution_assembly_debates/volume/1/1946-12-13
- *Id.*
- *Id.*
- He also mentioned *"That the House should consider this Resolution not in a spirit of narrow legal wording, but rather to look at the spirit of the Resolution."*
- Supra at 7
- The debate on Preamble can be accessed through this link: http://164.100.47.194/loksabha/writereaddata/cadebatefiles/C17101949.html
- The object of putting the Preamble last, Dr. Rajendra Prasad explained, was to see that it was in conformity with the Constitution as accepted.
- Maulana Mohani clarified in the assembly that *"I am only suggesting that the Constitution and the Preamble we are adopting here in this Second reading must be on the same lines, of the same pattern as the U.S.S.R. plan and I do not think there is anything inconsistent in that."*
- H.V. Kamath would not be the only one to move an amendment to incorporate 'God' in the Preamble. A similar amendment was moved by Pandit Govind Malaviya who wanted to incorporate 'Parmeshwar' in the Preamble
- *'In the name of God the Almighty, under whose inspiration and guidance, the Father of our Nation, Mahatma Gandhi, led the Nation from slavery into Freedom, by unique adherence to the eternal principles of Satya and Ahimsa, and who sustained the millions of our countrymen and the martyrs of the Nation in their heroic and unremitting struggle to regain the Complete Independence of our Motherland,*
- Shri Brajeshwar Prasad
- Supra at 12
- Supra at 3
- 42nd Amendment, 1976
- *Id.*
- Supra at 3, page 1466
- Supra at 3
- Supra at 6
- Actually, there were 10 items of dispute
- Cited with authority in *Jacobson v. Massachusetts,* 197 U.S. 11 (1905)
- Para 32 of *Berubari Union* (supra)
- Para 92 of *Kesavananda Bharti* (Supra)
- *Golaknath v. State of Punjab*, (1967) 2 S.C.R. 762
- *Kesavananda Bharti* (Supra) at para 105.

- *Id.* At para 124
- *Id*. At para 311
- (1955) 1 S.C.R. 613
- (1959) Suppl. 1 S.C.R. 528
- (1959) S.C.R. 995
- Supra at 7
- Supra at 3
- 1981 SCR (1) 206
- (2008) 6 SCC 1
- *Id.* At Para 212
- Long Title as distinguished from Short Title, taken with the Preamble or even in its absence is a good guide regarding the object, scope or purpose of the Act.
- Justice G.P. Singh, *Principles of Statutory Interpretation*, page 174
- *Brett v. Brett*, (1826) 162 ER 456, page 458
- *The Sussex Peerage Case*, (1844) 11 Cl & F 85
- A Peerage in the U.K. is a legal system comprising both hereditary and lifetime titles, composed of various noble ranks and forming a part of the British Honours System.
- (1957) AC 436 (HL)
- AIR 2001 SC 724
- AIR 1961 SC 954
- *State of Rajasthan v. Leela Jain*, AIR 1965 SC 1296
- *Sardar Inder Singh v. State of Rajasthan*, AIR 1957 SC 510
- Section 3 of the Rajasthan (Protection of Tenants) Ordinance 1949.
- Section 4 of the Rajasthan (Protection of Tenants) Ordinance 1949.
- Section 15 of the Rajasthan (Protection of Tenants) Ordinance 1949.
- Supra at 52
- (2009) 1 SCC 714, AIR 2009 SC 1058
- A marriage 'may' be solemnized between any two Hindus, if the following conditions are fulfilled, namely:
- Special Leave Petition.
- Supra at 57; para 21
- *Bhola Prasad v. Emperor*, AIR 1942 FC 17