

## FUNDAMENTAL RIGHTS AND SOCIO- ECONOMIC JUSTICE IN INDIAN CONSTITUTION

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### **ABSTRACT**

*The preamble of the Indian constitution contains inter alia, two important concepts namely, popular sovereignty and socio-economic Justice. The former, which implies that ‘the people’ is the ultimate sovereign, is a powerful constitutional tool for directing and shaping the constitutional development, But its usefulness and power depend much on the actual position granted to it in the constitution by the constitution makers. The later represents the aspirations of the people who have established the constitution. Therefore the three topics discussed here are:*

- *The position of the preamble*
- *The concept of popular sovereignty, and*
- *The concept of socio-economic justice & fundamental Rights in Indian Constitution.*

**KEYWORDS:** *Preamble, Socio-Economic Justice, Fundamental Rights, Objective Resolution*

### **INTRODUCTION**

A proposition has been formulated to the effect that although the preamble indicates the general purposes for which the people ordained and established the constitution, it has never been regarded as the source of any substantive power conferred on the government or any of its departments.<sup>1</sup> Intentions of the framers of the constitution are to be gathered it is said primarily from its specific provisions. It is also stated that the rules of interpretation propounded by the judiciary do not permit the preamble to qualify specific provisions.<sup>2</sup> Prof. Willoughby is of the view that the value of the preamble to the constitution for purpose of construction is similar to that given to the preamble of an ordinary statute.<sup>3</sup> Again Willoughby lays emphasis on this idea when he says that the preamble “may not be relied upon for giving to the body of the instrument a meaning after than that which its language plainly imports, but may be resorted to in cases of ambiguity, when the intention of the framers does not clearly and definitely appears.”<sup>4</sup> But he is not clear as to whether this rule could be applied to both the latent and patent ambiguities.

In fact, another eminent writer, Story asserts that “the preamble of a statute is a key to open the mind of the makers as to the mischief’s which are to be remedied, and the objects which are to be accomplished by the provisions of the statute.”<sup>5</sup>

The foregoing proposition applies with greater force to the preamble of the Indian constitution than to preambles of many other constitutions. The fact of the matter is that the preamble to the Indian constitution has obtained a unique position in the document, it may be remembered that it was carved out of the 'objective resolution' adopted by the constituent assembly in January 1947, on the basis of which the entire constitution was subsequently drafted. The great importance attached by the framers of the constitution to the basic document. Objective Resolution indicates the preeminent position given to the preamble of the constitution. The objective resolution was variously described by the framers as "something that breathes life in human minds;"<sup>6</sup> "A pledge which is enshrined in the heart of every man;"<sup>7</sup> "An expression of the surging aspiration of a people."<sup>8</sup> "A sort of a spiritual preamble which will pervade every section, every clause and every schedule (of the constitution)"<sup>9</sup> and "a sort of dynamic, a driving power."<sup>10</sup>

Thus, it is clear that the preamble to the Indian constitution is not merely a free face to the constitution but the very basis of it. In view of these facts, it is difficult to minimize the value of the preamble to the Indian constitution as an aid to construe the provisions of the constitution. As a matter of fact, the judiciary in India although hesitant earlier in taking the help of the preamble,<sup>11</sup> has been now seeking increasingly the aid of the preamble in interpreting specific provisions of the constitution.<sup>12</sup>

The preamble makes it clear that the constitutions is ordained and established by the people and the phrase "we the people of India" indicates the source of power and authority. The popular sovereignty embodied in the preamble, which is considered the basic concept in the Indian constitutional system, is not a mere fiction but a potent and active constitutional precept. "The people are therefore the ultimate and real sovereign, and the government which is the creature of the constitution is its agent.

## CONCEPT OF SOCIO-ECONOMIC JUSTICE

The preamble of the constitution states that the people of India have solemnly resolved "to secure to all its citizens: Justice, social, economic and political, equality of status and of opportunity." The constituent assembly declares its firm and solemn resolve to draw up for her future governance a constitution on-

- Wherein shall be guaranteed and served to all the people of India justice, social economic & political; Equality of states of opportunity, and before the law and
- Wherein adequate safeguards shall be provided for minorities, backward and tribal areas and depressed and offer backward classes."

Thus the concept of socio-economic justice has been incorporated in the preamble, but its actual connotations and intentions of the framers of the constitution incorporating it may be gathered from the opinions expressed by the members of the constituent assembly. On the phrase relating to socio-economic justice in the objectives resolution, two different opinions were expressed by some members in the constituent assembly. According to one opinion, the phrase should have been so framed as to express in clear terms the acceptance of the doctrine of socialism. Putting forward this view, Dr. B. R. Ambedkar stated that if this resolution "has a reality behind it and sincerity I should have expected some provisions whereby it would have been possible for the state to make economic, social and political Justice a reality. I do not understand how it would be possible for any future government which believes in doing justice, socially, economically and politically unless its economy is a socialistic economy."<sup>13</sup>

The above view was not shared by others who opined that the constituent assembly had no sufficient mandate to incorporate in the constitution such, and economic policy of doctrinaire character.<sup>14</sup>

The various views of the members of the constituent assembly and final acceptance of the phrase without any change clearly indicate that the framers unequivocally laid down socio-economic justice as a goal to be achieved by the future governments in India and rejected the idea of incorporating in the constitution particular means to achieve it.

It is, therefore, necessary to know the meaning of the concept of socio-economic justice. Statements made by the certain member in the constituent assembly explaining the concept of socio-economic justice. The phrase in the objectives resolution pertaining to socio-economic justice, in M.R. Masani's view, clearly rejects the present social structure and social status quo.<sup>15</sup> Proceeding further he said that the resolution also "envisages for –reaching social change-social justice in the fullest sense of the term-but it work for those social changes through the mechanism of political democracy and individual liberty."<sup>16</sup> As to the economic justice, N.V. Godgil said that it could only be secured if the means of production in the country ultimately came to be socially owned. Private enterprises might be there, but in a limited manner."<sup>17</sup>

This preamble concept of socio-economic justice has been translated by the framers into specific provisions in part-III and part-IV of the constitution.

The incorporation of fundamental rights is, therefore, intended to secure two purposes, namely in to present the executive from acting arbitrarily, and (ii) to ensure some amount of security and protection to the minorities of various types in India. However, a view has been developed by the supreme court of India and a few writers that the fundamental rights embodied in part-III of the constitution are immutable and transcendental in character. In support of this view, the fundamental rights have been variously described as "paramount"<sup>18</sup>, "sacrosanct"<sup>19</sup>, "rights reserved by the people"<sup>20</sup> "inalienable and inviolable"<sup>21</sup> and "transcendental."<sup>22</sup> The immutability or permanence of the fundamental rights is sought to be established first on the reasoning that these rights are rooted in the doctrine of natural law and therefore, traditionally known as " natural rights", and secondly, on the ground that they have been given a place of permanence by the constitution within its scheme. It is, therefore, necessary to dwell on the basis and the nature of fundamental rights as reflected in the scheme of the constitution to ascertain the concept of fundamental rights.

The nature of fundamental rights, from the point of view of amending ability has been a subject of lively debate, particularly after the famous Supreme Court verdict in *Golak Nath vs. state of Punjab*,<sup>23</sup> in 1967. Wherein fundamental rights were declared sacrosanct and as such, beyond the part of amending power. In previous decisions, the Supreme Court had (Sometimes with the unanimity of all the judges constituting the constitution Bench as in *Shankari Prasad v. Union of India*,<sup>24</sup> and sometimes with the majority of Judges as in *Sajjan Singh vs. the State of Rajasthan*).<sup>25</sup> upheld the parliament's competence to amend the fundamental rights enshrined in part-III of the constitution. But in the *Golak Nath* case, the Supreme Court delivered an epoch-making Judgment when it denied this right of the parliament and thereby unsettled the settled issue. In *Keshvanand Bharti. Vs. The State of Kerala*,<sup>26</sup> The supreme court reversed its earlier judgment given in the *Golak Nath* case and upheld parliament's power to amend the constitution, including the fundamental rights, though even under this judgment the parliament failed to get an unfettered power of constitutional amendments.

The foregoing analysis of amendments in relation to fundamental rights shows that parliament did not exercise its power in a cavalier manner except in the case of insertion of article 31-D by the forty-second amendment. P.B. Gajendra

Gadkar has rightly observed that they were inspired by a genuine desire to help the process of bringing about economic justice in the country to which Indian democracy was committed as a result of the promise held out to the country by the preamble and other provisions of the constitution.<sup>27</sup> It is obvious that socio-economic compulsions were responsible for the frequent change in the various provisions relating to fundamental rights. This constitutional goal of socio-economic justice can be achieved only if the courts adopt a pragmatic and sociological approach. Without making much ado about the rights, in interpreting socio-economic legislation, which contemplate the change in the social structure, effect a transition from serfdom to freedom, or attempt to remake material conditions of the society. The fact that such a goal has been embodied in the preamble itself, testifies its value-signifying predominant position in the constitution.

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