

Preamble: A Text Invigorating Transformation

Abstract

Preamble to the Indian Constitution is a political resource that serves as an insight into our what our Constitution stands for. Whether it is used in the courts to uphold and justify unenumerated rights or as a call by the common people for preservation of what is rightfully theirs, Preamble's relevance is substantial. This article makes the argument that Preamble is a transformative instrument. The values that this document has come to represent clearly indicate the progressive path towards which it directs. There might be variance in its usage, however even these variations will be influenced by the core of Preamble, which is embodiment of the soul of our Constitution.

Introduction

The term 'preamble' means 'walking in front', which is precisely its role - it walks in front of what is to come. It sheds light on the subsequent, such as the constitution of a nation.

What preambles seek to illuminate, varies according to the particular ideologies being pursued by those who write it, and those who employ it. The Preamble to the Indian Constitution was read by lawyers in the backdrop of the Citizenship (Amendment) Act (CAA) 2019 protests, to challenge this law for being 'unsecular'.¹ On the other hand, some lawyers also read it to show their support for the Act.² A plea has also been filed in the Supreme Court to remove the word 'secular' from the Preamble.³ Even though the objectives sought in these instances are different; the tool to gain legitimacy remains the same i.e. the Preamble. Hence, notwithstanding which side one is ideologically, the significance of Preamble is beyond doubt.

The Preamble to the Indian Constitution is reckoned as a transformative instrument for forwarding the values cherished and the philosophy endorsed by the Constitution. This article

¹ *Lawyers Read Preamble Outside Bombay High Court Protesting Citizenship Law*, NDTV (Jan. 20, 2020, 10:30 PM), <https://www.ndtv.com/india-news/caa-protest-lawyers-read-preamble-outside-bombay-high-court-in-protest-against-cao-citizenship-act-2167077>

² *Debayan Roy, Now, pro-CAA lawyers of SC sing Vande Mataram, read Preamble on court premises*, THE PRINT (Jan. 8, 2020, 4:09 PM), <https://theprint.in/india/now-pro-cao-lawyers-of-sc-sing-vande-mataram-read-preamble-on-court-premises/346441/>

³ *Plea in SC seeks to remove words 'socialist', 'secular' from Constitution's preamble*, FIRSTPOST (Jul. 29, 2020), <https://www.firstpost.com/india/plea-in-sc-seeks-to-remove-words-socialist-secular-from-constitutions-preamble-8650391.html>.

is an attempt to examine the potential of this instrument for transformative constitutionalism i.e. the idea that we must change.⁴ It will examine whether the Preamble can be a guide to ‘how’ we must change.

Expression of progress

The Preamble to the Indian Constitution embodies the nature of the Indian polity envisaged (sovereign, socialist, secular, democratic republic) and the kind of values to be secured to its citizenry (justice, liberty, equality along with fraternity). Although these values are shrouded with inherent ambiguities, their expression in the Preamble indicate a deliberate shunning of rules that govern a medieval society.

Additionally, an argument that the language of the Preamble represents mere utopian ideals, meant only for salutary invocation at different occasions would be mistaken as “*language is more than a communication tool...it has the power to influence the thoughts of a nation and mould the culture of a society*”.⁵ The words of the Preamble thereby guide the path that we need to follow.

As mentioned earlier, Preamble may be used as a tool by people across the ideological spectrum. However, jurisprudentially speaking, the mentioning of certain terms in the Preamble ensure that the grey area (“penumbra of uncertainty”) has a shadow casted by the core.⁶ This implies that the ambiguities of the terms in Preamble will be determined around the core, that these terms represent (which in essence is the soul of our Constitution). For instance, hierarchical structures that are unjust would definitely not be accommodated by the Preamble and hence the Constitution as they go against ‘equality’ and ‘justice’. The only tinkering that is possible is to determine the contours of ‘equality’, ‘justice’, ‘liberty’ etc.

What these expressions entail can be determined through the historicity of our Preamble, shaped in the Constituent Assembly (CA), and later in the judicial courts, which has bestowed it with an additional moral force for a progressive impact. A.K. Ayyar (member of the CA) referred to the Preamble as a document that contains everything that “*we had thought*

⁴ Upendra Baxi, *Preliminary notes on transformative constitutionalism*, in *Transformative constitutionalism: Comparing the apex courts of Brazil, India and South Africa* 19-47 (O Vilhen et. al. 2013).

⁵ Indira Jaising, *An open letter from Indira Jaising to the Chief Justice of India on International Women’s Day*, THE LEAFLET (Mar. 9, 2019), <https://www.theleaflet.in/indira-jaising-writes-an-open-letter-from-indira-jaising-to-the-chief-justice-of-india-on-international-womens-day/#>

⁶ Chris Rideout, *Penumbra Thinking Revisited: Metaphor in Legal Argumentation*, 7 *Legal Communications and Rhetoric*: JALWD 155 (2010).

or dreamt for so long”, implying all the ethos that brought a nation together against colonial rule.⁷

The Supreme Court has held that the objectives laid out in the Preamble form part of the basic structure of the Constitution.⁸ Justice Hidaytullah considered that our Preamble gives direction and purpose to our Constitution.⁹ This is most notable when the Preamble is used as a judicial tool to interpret ambiguous constitutional text(s).¹⁰ However, our courts have liberally used this tool - whether it is for the recognition of nationalisation of private industries¹¹, or of fixed wages as a violation of equality¹², or of the Preamble’s use in the justification of the relationship between various fundamental rights¹³, or of the increasing significance of the values enshrined in the Preamble read with Part III and Part IV of the Constitution.¹⁴ The judiciary has played a pivotal role in instilling life to the Preamble. It has aided judges to follow an activist approach in framing a human rights jurisprudence, especially when it enjoyed the confidence of the people.¹⁵

Transformative text of the people, by the people, for the people

What also makes Preamble so significant is its accessibility.¹⁶ The addition of the words ‘*socialist secular*’ to it by Indira Gandhi via the 42nd Constitution Amendment, 1976 were meant to send a political message, far and wide - that she stood for the poor.¹⁷ Although she intended these additions as a mere “*frame of reference*”, the controversy in the wake of an advertisement of the Preamble by the Information & Broadcasting Ministry in 2015, omitting

⁷ Kesavananda Bharti v State of Kerala, AIR 1973 SC 1461.

⁸ *Id.*

⁹ Sajjan Singh v State of Rajasthan, 1965 AIR 845.

¹⁰ Kesavananda Bharti, *supra* note 6.

¹¹ Excel Wear etc. v Union of India & Others, 1979 AIR 25.

¹² Chandra Bhavan Boarding and Lodging, Bangalore v State of Mysore, (1969) 3 SCC 84; Randhir Singh v Union of India, (1982) 1 SCC 618.

¹³ Minerva Mills Ltd. v Union of India, (1980) 3 SCC 625.

¹⁴ Smaran Shetty & Tanaya Sanyal, *Fraternity and the Constitution: A Promising Beginning in Nandini Sundar v. State of Chattisgarh*, 4 NUJS L. Rev. 439 (2011).

¹⁵ Prem Shankar Shukla v Delhi Administration, (1980) 3 SCC 526, 537; Maru Ram v Union of India, (1981) 1 SCC 107, 135-36; Jagdish Saran & Ors v Union of India 1980 AIR 820.

¹⁶ Alok Prasanna Kumar, *Protesters are reading the Preamble. It's the soul of the Constitution*, DECCAN HERALD (Feb. 09, 2020, 00:36 PM), <https://www.deccanherald.com/opinion/protesters-are-reading-the-preamble-it-s-the-soul-of-the-constitution-802970.html>

¹⁷ Krishnadas Rajagopal, *Debates show why Preamble's original text left out the two words*, THE HINDU (Jan. 29, 2015, 02:27 IST), <https://www.thehindu.com/news/national/debates-show-why-preambles-original-text-left-out-the-two-words/article6831694.ece>.

these words suggest that Preamble continues to have more than symbolic significance.¹⁸ It has the potential to shape the political discourse of our country.

The real potency of the Preamble, however, was visible during the anti-CAA protests when it occupied the public sphere and became the primary source for vibrant citizen activism.¹⁹ The recital of the Preamble on the streets gives us a staunch reminder that the ultimate power rests with the people of this country. The societal unity or ‘we-ness’ observed during these protests, draws moral approval from the phrase - ‘We, the people of India’ and the ideal of ‘fraternity’ in the Preamble. In addition to this, reading of Preamble has been made mandatory in schools by various states.²⁰ This indicates that Preamble is not the prerogative of the legal fraternity but has appeal and speaks to the common citizens as well.

These instances aim to cultivate constitutional morality as a natural sentiment through invocation of the Preamble, thereby fulfilling Ambedkar’s dream of installing democratic values in the minds and hearts of people. As the purest distillation of the Constitution and the easy accessibility that the Preamble offers²¹, it is a ready reckoner for capturing the constitutional imaginary of the citizens²². Therefore, citizens must constantly rework, redefine and give meaning to this imagination.

A healthy manner to use the Preamble innovatively, would be to centre our identity around it and put it above all other ascribed identities. The ‘language’ of the Preamble must become the manifesto through which we evaluate all spheres of our lives. This is all the more important in the time that we live in - where allegations of cynical ploy on the Constitution are abound, where there are attacks on the credibility of public institutions, especially the apex court, and where the Constitution, with its emancipatory Preamble, has become the only hope for those who passionately seek to protect what is truly ‘Indian’, as envisioned at the founding moment of ‘India’.²³

¹⁸ V. Venkatesan, *Preamble Politics*, FRONTLINE (Mar. 06, 2015), <https://frontline.thehindu.com/the-nation/preamble-politics/article6901634.ece>

¹⁹ Valerian Rodrigues, *Deriving authority from ‘we the people’*, THE HINDU (Jan. 26, 2020, 01:12 IST) <https://www.thehindu.com/opinion/op-ed/deriving-authority-from-we-the-people/article30655212.ece>

²⁰ *After Maharashtra, Madhya Pradesh mandates recital of preamble in schools*, DNA (Jan. 23, 2020, 05:01 PM), <https://www.dnaindia.com/india/report-after-maharashtra-madhya-pradesh-mandates-recital-of-preamble-in-schools-2810530>

²¹ Alok Prassana Kumar, *supra* note 15.

²² Baxi, *supra* note 4.

²³ MADHAV KHOSLA, *INDIA’S FOUNDING MOMENT* (1st ed. 2020).

Conclusion

The past history of using Preamble and the history in the making that is being witnessed by the manner in which it has captured the public sphere, clearly indicate that it will continue to guide us. This guide tells us ‘how’ we must change. The manner of employing the Preamble may vary – from poems to memes to inscribing it on walls of universities or religious sites, but as long as the source of inspiration, and the site of struggle remains the same, the differences can be taken care of, as they have been for the past seventy years in a vast and diverse country like India.