

## **One India – Two Preambles for the Constitution of India?**

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### **Abstract**

Almost in every Constitution there is a preamble, which provides the objectives, purposes, nature, scope of the Constitution, etc. The preamble of the Indian constitution is nothing but an introduction of the Indian constitution in short and therefore it is treated as a part of the Constitution.

The Constitution of India was finalized by the Constituent Assembly on November 26, 1949 and came into force on January 26, 1950. The Indian Constitution is a very long and elaborate document. It originally contained 395 articles arranged in twenty-two parts and twelve schedules. Since then, additions have been made by numerous amendments and some provisions have been repealed.

**Keywords:** Constitutional Day, Constitution of India, Preamble, B. R. Ambedkar, Dr. Rajendra Prasad, Prime Ministers Jawaharlal Nehru, Indira Gandhi, and Narendra Modi.

### **Introduction**

The Government of India declared **26 November as “Constitution Day<sup>(1,2)</sup>”** on 19 November 2015 by a Gazette notification. The Prime Minister of India Narendra Modi made the declaration on 11 October 2015 while laying the foundation stone of the B. R. Ambedkar Memorial in Mumbai. On 26<sup>th</sup> November 2017 a full page advertisement was published, which had an image of the Constitution's preamble with the words,

**“WE, THE PEOPLE OF INDIA,  
have solemnly resolved to constitute India into a  
SOVEREIGN SOCIALIST  
SECULAR DEMOCRATIC REPUBLIC ...”**

**Chief Minister Siddharamaiah.**

Many of us were wondering why this one full page Preamble advertisement was released on 26<sup>th</sup> November 2017. Is it because he belongs to the Congress Party? For this question let us go to the history, significance and Court of Law about the Preamble of the Constitution.

**Preamble**

Almost in each and every Constitution there is a preamble, which provides the objectives, purposes, nature, scope of the Constitution, etc. The preamble of the Indian Constitution is nothing but an introduction of the Indian Constitution in short and therefore it is treated as a part of the Constitution.

American Constitution was the first to begin with a Preamble. Preamble refers to the introduction or preface to the Constitution. The Preamble to Indian constitution is based on the “*Objective Resolution*” of Jawaharlal Nehru <sup>(1,2)</sup>. The “Objective Resolution” was introduced on December 13, 1947 by Jawaharlal Nehru and it was adopted by the Constituent Assembly on 22 January 1947.

The Constitution of India was finalized by the Constituent Assembly on November 26, 1949 and came into force on January 26, 1950. The Indian Constitution is a very long and elaborate document. It originally contained 395 articles arranged in twenty-two parts and twelve schedules. Since then additions have been made by numerous amendments and some provisions have been repealed.



**Jawaharlal Nehru moving the resolution for and Independent Soveriqn Republic in Constituent Assembly**

**Courtesy: Images- Jawaharlal Nehru in the Constituent Assembly of India.**

## **Constitution of India**

The **Constitution of India** <sup>(1,3-6)</sup> is the supreme law of India. A Constitution of a Country may be Unitary or Federal. Unitary Constitution gives all the powers to Central Government. E.g., British Constitution. In the Federal Constitution, the powers are distributed between central and state governments. E.g. American Constitution. The **Constitution of India** is neither purely Federal nor purely Unitary but it is a combination of both <sup>(5,6)</sup>. The Constitution of India is almost quasi-federal according to Prof. Wheare. The Constitution of India lays down the framework defining fundamental political principles, establishes the structure, procedures, powers and duties of government institutions and sets out fundamental rights, directive principles and the duties of citizens. It is the longest written constitution of any sovereign country in the world. B. R. Ambedkar, the Chairman of the Drafting Committee, is widely considered to be its chief architect.

### ***Preamble***

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**Language in India** [www.languageinindia.com](http://www.languageinindia.com) ISSN 1930-2940 **18:1 January 2018**

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The term *Preamble* means the introduction to a statute. It is the introductory part of the constitution. A preamble may also be used to introduce a particular section or group of sections. According to *Chambers Twentieth Century Dictionary*, a preamble means preface, introduction, especially that of an act of Parliament, giving its reasons and purpose – a prelude. The preamble can be referred to as the preface which highlights the entire Constitution. It was adopted on 26 November 1949 by the Constituent Assembly and came into effect on 26<sup>th</sup> January 1950.

The 26<sup>th</sup> January 1950 Preamble declares India to be a sovereign, democratic republic assuring liberty of thought, expression and belief to all its citizens, and equality and justice to all the citizens. These words constitute the cornerstone of the Constitution. The main body of the Constitution is an evocation of the beliefs and ideals enshrined in the Preamble.

The 1950 text of the Preamble, which we should know, is given below:

#### **PREAMBLE**

**“WE, THE PEOPLE OF INDIA,**

**have solemnly resolved to constitute India into a**

**SOVEREIGN DEMOCRATIC REPUBLIC**

**and to secure to all its citizens:**

**JUSTICE, social, economic and political;**

**LIBERTY of thought, expression, belief, faith and worship;**

**EQUALITY of status and of opportunity;**

**and to promote among them all**

**FRATERNITY assuring the dignity of the**

**individual and the unity of the Nation;**

**IN OUR CONSTITUENT ASSEMBLY**

**this twenty-sixth day of November, 1949, do**

**HEREBY ADOPT, ENACT AND GIVE TO**

**OURSELVES THIS CONSTITUTION.”**

### **Jawaharlal Nehru: Architect of Modern India**

Jawaharlal Nehru began steering the ship of the nation in tempestuous times, when India had been partitioned and the division was accompanied by communal killings, destruction, and trans-border migration on a horrendous scale. He led the process of building new institutions of democratic governance, a new culture of parliamentary democracy, also a new policy platform for the reconstruction of a poor and backward economy wholly incapable of meeting the aspirations of a newly liberated nation. He was also the paramount guide to establishing independent India's relations with the rest of the world on the principles of peace and universal brotherhood, because of which India's prestige in the comity of nations rose enormously. All this earned him the honorific of 'Architect of Modern India' <sup>(21)</sup>. Jawaharlal Nehru was a remarkable man who will not be forgotten not only by the people of India, but also by the world. He has left an indelible mark, which includes his kindness, generosity, vision, and love for children.



Rajendra Prasad, the President of the Constituent Assembly of India, signing a copy of the new Constitution at the Constituent Assembly Hall in New Delhi in November 1949.

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**Language in India** [www.languageinindia.com](http://www.languageinindia.com) ISSN 1930-2940 18:1 January 2018

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**Dr. B. R. Ambedkar Sitting Opposite to him.**

*Courtesy: Images – The Hindu Archives, FrontLine, Volume 28 - Issue 17, 2011*

### **Preamble is Not a Part of the Constitution**

There have been numerous debates in the Supreme Court on whether the Preamble is a part of the Constitution or not. In *Berubari case* <sup>(8,9)</sup> and *Golaknath case* <sup>(10)</sup> the court held that the Preamble is not a part of the Constitution. The *Berubari case* was based on **Dr. Rajendra Prasad's** Presidential Reference “under Article 143(1) of the Constitution of India on the implementation of the Indo-Pakistan Agreement relating to Berubari Union and Exchange of Enclaves which came up for consideration by a Bench consisting of **Eight judges headed by the Chief Justice B.P. Singh**. Justice Gajendragadkar delivered the unanimous opinion of the Court. The court ruled out that the Preamble to the Constitution, containing the declaration made by the people of India in exercise of their sovereign will, no doubt is “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, therefore it is not enforceable in a court of law. Similar judgment was given by **11 Judges Bench in Golaknath case** <sup>(10)</sup>, **1967**. The Supreme Court of India originally stated in the *Berubari case* presidential reference that **the Preamble is not an integral part of the Indian Constitution** <sup>(9,10)</sup>, and therefore it is not enforceable in a court of law.

### **Preamble is a Part of the Constitution**

The *Kesavanandha Bharati case* <sup>(4,13-16)</sup> as called in the annals of Indian judicial history, got its name from **His Holiness Keshvananda Bharati, a Pontiff** of the mutt. On **24 April, 1973** the case was decided, which has been playing a great role between Judiciary and Parliament from then till today. The *Kesavananda Bharati case* was the culmination of a serious conflict between the judiciary and the government, then headed by Mrs. Indira Gandhi. **The story begins with Golaknath Case, 1967** <sup>(5)</sup>, in which the petitioner challenged the **7th Constitutional Amendment Act, 1964** under Article 32 for violation of his fundamental rights. The Apex Court ruled, “Parliament cannot take away or abridge and amend any of the

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**Language in India** [www.languageinindia.com](http://www.languageinindia.com) ISSN 1930-2940 **18:1 January 2018**

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fundamental rights, even cannot touch, because these are sacrosanct in nature”. Parliament passed the **24th** and **25<sup>th</sup>** Amendments Act in **1971** and overruled the verdict of Golaknath Case, and expressed that, “we, the Parliament can Amend Anything in the Constitution, and Judiciary have no power to review ”. Between the conflicts, Supreme Court got an opportunity to review the Amendment Acts in 1973, when the famous case of [Kesavananda Bharati v. State of Kerala](#) came before the Apex Court, where the petitioner challenged these Amendments. **First Time in the Indian Judiciary, 13 judges** gathered to hear this case, on 24 April, 1973. A very divided Judgement was passed by the majority of seven judges, including **Chief Justice S.M. Sikiri**, and was decided by a thin margin of **7–6** <sup>(16-20)</sup>. The Supreme Court Bench held that Preamble is the integral part of the Constitution. In Kesavanada Bharati Case (1973), the Supreme Court gave an elaborate verdict which *inter alia* said that Preamble is Part of Constitution and is subject to the amending power of the Parliament as any other provisions of the Constitution, provided the basic structure of the constitution is not destroyed.

### **Important Points for Consideration**

In the light of Kesavanada Bharti as well as other judgments, the following points about the Constitution must be noted. Preamble is an integral Part of Constitution and Preamble indicates “**Basic Structure of the Constitution** <sup>(4,13)</sup>” (in S.R. Bommai Case also). The Preamble can be amended by Parliament using its amendment powers as per Article 368 <sup>(14)</sup>.

**The words *Secular, Socialist and Integrity* were added to the Constitution by 42<sup>nd</sup> Amendment:**

The preamble has been amended only once so far. On 18 December 1976, during the National Emergency in India, the Indira Gandhi government pushed through several changes in the 42<sup>nd</sup> Amendment of the Constitution. A committee under the chairmanship of Sardar Swaran Singh recommended that this amendment be enacted after being constituted to study the question of amending the constitution in the light of past experience. Through this amendment the words "socialist" and "secular" were added between the words "Sovereign" and "democratic" and the words "unity of the Nation" were changed to "unity and integrity of the Nation". From 1977 onwards the 3 words **Secular, Socialist** and **Integrity** were added to the constitution.

From 26<sup>th</sup> January 1977 onwards the Preamble of the Constitution changed the description of India from “**Sovereign Democratic Republic**” to a “**Sovereign, Socialist Secular, Democratic Republic** <sup>(14)</sup>”, and also changed the words "unity of the nation" to "unity and integrity of the nation".

### **Indira Gandhi Accepted the 44<sup>th</sup> Amendment**

Interestingly, in the final vote on the 44<sup>th</sup> Amendment on December 7, 1978, Desai and Indira Gandhi voted on the same side. She was re-elected to the Lok Sabha a month earlier and was expelled and briefly imprisoned a few days later!



**Indira Gandhi. (1917 – 1984)**

**Courtesy: <http://www.culturalindia.net/leaders/indira-gandhi.html>**



The question whether the Constitution, as it had emerged from 42<sup>nd</sup> and 44<sup>th</sup> Amendments, was in consonance with the basic structure doctrine was still open. The famous Minerva Mills case settled it. This case had reached the Supreme Court when Charan Singh was the Caretaker Prime Minister. The apex court delivered its judgment in May 1980 when Indira Gandhi was back in power. The court endorsed the basic structure doctrine yet again, and threw out some of the surviving features of the 42<sup>nd</sup> Amendment. Indira Gandhi did nothing to oppose the verdict that was widely welcomed by the country <sup>(15)</sup>. This is the reason why she lives in the hearts of Indians forever, particularly in the poor people's heart.

### **Remove Secular and Socialist from Preamble to the Constitution, Says Shiv Sena**

The government on Republic Day in 2015 <sup>(19,20)</sup> published an advertisement where the Preamble was without the words "secular" and "socialist" across the country. The words were removed from the preamble of the Constitution in an advertisement issued by the Narendra Modi government to commemorate 66th Republic Day. Shiv Sena - a key constituent in the ruling National Democratic Alliance (NDA) - sought to retain the "mistake" of omission of two vital words - "secular" and "socialist" - from the preamble to the Indian Constitution. Even as the government defended the act as it came under attack over the Republic Day advertisement, senior Shiv Sena leader Sanjay Raut <sup>(18)</sup> said, "If printing old preamble is by mistake then it should happen regularly. India is never a secular country. It is a Hindu rashtra." Controversy began as opposition slammed the BJP led government of its "Hindutva promotion ideology" and, to make it worse, their ally, Shiv Sena stated that these words should be deleted from the constitution. Indian constitution when constituted in 1947, Ambedkar said that entire constitution is based on secularism and hence there is no need for adding these words in the preamble and he refused to add socialistic as that's not Indian way.

### **Rajnath Singh Sparks '*secular*' debate**

**New Delhi, November 26, 2015:** Union Home Minister Rajnath Singh <sup>(25)</sup> sparked the debate on word 'secular' in the Preamble of the Indian Constitution. Speaking in the Lok Sabha on the Constitution Day, Rajnath Singh <sup>(25)</sup> said that Dr. B. R. Ambedkar didn't find the word 'secular' and 'socialist' in the Preamble of the Constitution. The Home Minister Rajnath

Singh attacked the Congress saying that B. R. Ambedkar had never thought the necessity to incorporate it in the Preamble as these two words were part of the Constitution. It is inbuilt in the Indian system. He also said that the two words were the most misused terms of the Indian Constitution and that there have been instances of tension in the society. However, the change from "**sovereign, democratic republic**" to "**sovereign socialist secular democratic republic**", is one of the most controversial changes made to the Indian Constitution.

The advertisement drew a lot of ire from the opposition. The Minister of State for Information and Broadcasting Rajyavardhan Singh Rathore then defended the move stating that they advertised the picture of the first Preamble used during the adoption of the Constitution. The Union Law Minister Ravi Shankar Prasad <sup>(27,28)</sup> had also called for a **debate** on whether "secularism" and "socialism" should be included in the Preamble.

Parliamentary Affairs Minister M. Venkaiah Naidu <sup>(30,31)</sup>, however, said the government has nothing to do with these statements concerning the Preamble of the Constitution. "There is no proposal from the government. There is no question of any change to what has been brought about in 1976."

### **The Word "Socialist" Should Not Be Taken in a Narrow Sense Defined by Communist – Chief Justice of India**

A challenge on the inclusion of the word 'socialism' in the Indian Constitution - on 8 January 2008, a petition, filed by Sanjiv Agarwal of the NGO, "Good Governance India" Foundation, challenged the validity of Section 2 of the 42nd Amendment by Smt. Indira Gandhi government, which inserted the word "socialist" in the Preamble to the Constitution. Fali S. Nariman argued that the 42nd Amendment was "superfluous". In its first hearing of the case, Chief Justice of India K.G. Balakrishnan <sup>(24)</sup>, who headed the **three-judge bench**, observed, "Why do you take socialism in a narrow sense defined by Communist? Socialism means welfare measures for the citizens in a broader sense. It is a facet of democracy. It hasn't got any definite meaning. It gets different meanings in different times." Justice Kapadia also stated that no political party had, so far, challenged the 42<sup>nd</sup> amendment and everyone had subscribed to it. The

court would consider it only when any political party challenged the EC. The petition was withdrawn on 12 July 2010 after the Supreme Court declared the issue to be **"highly academic"**.

### **Secularism is a Part of Basic Structure**

In the Bommai case in 1994, the Supreme Court added that Secularism is also a part of basic structure as the basis of the Indian Constitution is that all citizens are equal and that the religion of a citizen is irrelevant in the matter of his enjoyment of Fundamental Rights. The Constitution ensures equal freedom for all religion and provides that the religion of the citizen has nothing to do in socio-economic matters.

A Division Bench of Allahabad High Court <sup>(26)</sup> recently dismissed a challenge to the addition of the words 'socialist' and 'secular' to the Preamble of Constitution of the Country and re-emphasized on the secular nature our country. In fact, some constitutional experts now claim that these words can *never* be removed since they form part of the "basic structure" of the Constitution that has been upheld by the Supreme Court. Arvind P Datar <sup>(29)</sup> is quoted in *The Economic Times* as saying that "not even a government which wins 543 out of 543 Lok Sabha seats can change this."

### **One School of Thought**

In Kesavananda Bharati Vs State of Kerala case in 1973, 11 Judges Bench held that Preamble is Part of Constitution and is subject to the amending power of the Parliament as any other provisions of the Constitution, provided the Basic Structure of the Constitution is not destroyed. The Preamble to the Indian Constitution was amended by the 42nd Amendment Act, 1976 whereby the words Socialist, Secular and Integrity were added to the Preamble. The words "Secular" and "Socialist" were added into the preamble of the constitution of India in 1976 during emergency period by the Parliament, headed by Indira Gandhi . In Preamble "Sovereign Democratic Republic" is a Basic Structure word and from the year 1976 onwards the Preamble of the Constitution changed the description of India from "Sovereign Democratic Republic" to a "Sovereign, Socialist Secular Democratic Republic".

Here the important question is whether the word “Socialist” does mean a Democratic word in its real sense? Also, the inclusion of the words in the Preamble, “Socialist” and “Secular” by the 42<sup>nd</sup> amendment in the Parliament during an emergency period was in itself not correct? The inclusion of the two words is the violation of “Basic Structure of the Constitution” which has to be strictly restricted by The Supreme Court of India during the year 1976 itself. The Former Prime minister had dominant personality and authority to change the basic nature of the Constitution when emergency was effective in the nation. The BJP bases its argument on the fact that the amendment was passed without any debate as almost all the opposition MPs had been imprisoned during the introduction of the amendment. Why these words were not originally included in the Constitution when it was drafted? Jawaharlal Nehru was a member of the committee. Why he decided to drop these two words at that point of time?

The Constitutional expert Subhash Kashyap <sup>(23)</sup> said: “The word ‘socialist’ was added to send a message politically that she stood for the poor. The word ‘secular’ was obviously meant for the minorities in the context of the birth control programmes of the emergency period. It was not as if the Constitution was not secular or socialist before the words were added. India has been secular before the 42<sup>nd</sup> Amendment and continues to be secular after it.” “It was merely playing politics,” Mr. Kashyap <sup>(23)</sup> said. He said the present controversy removal of “Secular and Socialist” from the Preamble over the government advertisement was “innocuous.” “The advertisement only shows the Preamble originally signed by the Constituent Assembly members with the calligraphy of the famous artist, Nandalal Bose.” It shows the Preamble as on January 26, 1950 when the country became a republic, he said. **It is true that the words Socialist and Secular were not there in the original Constitution which was implemented in 1950.**

## 2<sup>nd</sup> School of Thought

India is a large country. India is a home for 1.326 billion people. There are **29** states and **7** union territories in India. Our society is multilingual, multi-religious and pluralistic in nature. There are **22** official languages, but the total number of mother tongues spoken in India is **1652**. In India, people of different religions live together. Hence she has a multi religious society. The spoken language of one state is quite different from that of another. They celebrate

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**Language in India** [www.languageinindia.com](http://www.languageinindia.com) ISSN 1930-2940 **18:1 January 2018**

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different festivals and perform varied religious rites. People belonging to diverse cultures belong to different religious faiths. Besides Hinduism, other religious like Christianity, Islam, Sikhism, Buddhism and Jainism have a large following in India. In spite of these diversities, Indians feel a sense of unity and oneness among them. **India finds Unity in Diversity.**

India is a democratic republic with people of various religions and castes divided by faith but united in nationality. There are differences and controversies but that does not influence the loyalty of millions of Indians towards their nation. Unity in diversity has not lost its meaning with broad minded people respecting each other and their religions despite differences in ideologies. Such attempt at deleting the words "socialist" and "secular" is harmful to peace and integrity of the nation. In current environment where several elements have become part of the government, the removal of words 'socialism' and 'secular' is direct attack on the Constitution of India and its secular and socialist credentials. Secularism is part of our Constitution. India is defined by secularism. If we drop the word secular from the Constitution and forget its values, India will become a mirror image of Pakistan and we cannot afford it.

## **Conclusion**

It is the duty of the government to strengthen the common bond of unity that ties the people together in spite of the diversity in their religions and rich cultures. We should uphold the torch of unity irrespective of our different faiths and creeds. This unity in diversity is the beauty of India and it is the Pride of India and the strength of India. Dr. Sangay<sup>(32)</sup> who is the head of the Central Tibetan Administration (CTA), January 13, 2015 addressed the 5th annual national conclave of Indian Student Parliament at Pune in Maharashtra and he said the same word<sup>(32)</sup>. Our Prime Minister Narendra Modi in a pre-election interview, had also spoken these reassuring words: "There is only one holy book for the Indian government, and that is the Constitution<sup>(34)</sup>. I respect everything that the Constitution says." He is therefore duty-bound, and also bound by his own solemn assurance, to swear his allegiance to secularism and socialism. Prime Minister Narendra Modi on the occasion of Constitution Day said that government and Judiciary must work together keeping their differences aside to serve the interest of the people of India<sup>(35)</sup>. The government must take effective steps to remove the growing disparities in stakes and

opportunities for followers of all faiths, and sections within each community, in India's social, economic, political and cultural progress.



**Prime Minister while addressing.**

**Courtesy: (Agence France-Presse photo)**

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**Language in India** [www.languageinindia.com](http://www.languageinindia.com) ISSN 1930-2940 **18:1 January 2018**

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**Language in India** [www.languageinindia.com](http://www.languageinindia.com) ISSN 1930-2940 **18:1 January 2018**

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