

ISSN: 2582-6433



INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed 6th Edition

VOLUME 2 ISSUE 7

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume 2 Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

IJLRA

EDITORIAL TEAM

EDITORS

Megha Middha



Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshargarh, Sikar

Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshargarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much

as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain

Head & Associate Professor

14th, 2019

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC - NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce. Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March

Mrs.S.Kalpna*Assistant professor of Law*

Mrs.S.Kalpna, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.

**Avinash Kumar**

Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been

awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

PREAMBLE: THE BASIS OF POLITICAL SYSTEM OF INDIA

AUTHORED BY - JUHI MISHRA

Abstract:

Though the political system of the country changes with the change in the decade and era but in the recent times the said system has seen tremendous fluctuations. Though the system is dynamic in nature but the changes should be inclined towards the right path. The right path is declaratory of the fact that things goes well and the society remains pacific and intact in nature. The violence, uprisings, hatred, intolerance, casteism, criminalization of politics, etc. has created a threatening factor to the peaceful co-existence and proper governance of the country. The disturbing elements are few but are influential. Thus, ultimately creates the mental and social disturbance and ultimately the adverse effect to the peace and security of the nation. This is the signal of the fact that the importance of proper and effective governance should be revised and also be told to the people. The fact that the Constitution of India is the grund norm and every Acts and provisions derive their authority from it is not ignorable. This is needed to be well appreciated. The preamble of the Indian Constitution is mirror of the well established principles of the Constitution. The ideals enshrined in it is the thing which is needed to be well maintained so that the basic structure of the constitution as well as that of the political system remains intact and well protected. Thus, an in-depth analysis of the preamble and the mutual relationship of the preamble and the political system is needed to be discussed.

I. INTRODUCTION:

Constitution constitutes the framework and the backbone in the governance of the country. The guiding force of the governance of the state besides the Constitution is also inclusive of multiple forces which together results in the proper and effective working of the country. The ancient earlier civilization was of nature state. In the nature state there was no protection to the life, liberty and property of the human. For the purpose of seeking the protection they grouped together to form the community. These small communities together surrendered their rights towards the head of their community for the purpose of the overall protection. As stated by the learned jurist Thomas Hobbes, the head was having the absolute right and thus he called him the “leviathan”. He was

vested with the duty of protecting the members of his community and thus all the persons vested their absolute faith in him. The things got reformed with the time and the State meanwhile in the stage of development witnessed the kings and the ministerial powers. Regardless, to say almost every civilization went through the stage of witnessing the rule of kings and councils and the ministerial rules. Even after further societal development the rule of the head remained the same. The only difference it saw is that the form and shape of the rule varied with the societies. That is to say, some of it be the oligarchy or the monarchial form of government or be it the westminster form of government. The form changed but one thing remained the constant, i.e., the societal pressure behind the rule. Though in the form of monarchy the societal pressure almost got neglected due to arbitrary powers but talking about the democratic form of government the societal pressure holds an upper hand. In such a case the whole governance revolves around the political system of the State.

In every political system especially in India there are few elements which are formal and informal in nature. The formal element being the constitution and the informal elements being the pressure groups, political parties, existing political scenario, etc.. The political system can be brought into force only with the combined forces of these two elements and the seclusion of one element from the other will adversely affect the whole system. Thus, along with these non-constitutional elements, the political system also gets affected by the by the social, cultural, economic, historical and constitutional elements. The constitution forms the formal structure while the other elements form the informal structure.

Regarding the context of the Indian scenario, the Preamble to the Indian Constitution provides for the underlining of the political system of the India.

Before the commencement of the Indian Constitution there was prevailing dominance of the single party but after the commencement of the Constitution there emerged various political parties and pressure groups from different part of the country. These newly emerged political parties and the pressure groups emerged out of new ideologies and aims and objectives and aspirations. This resulted in the tussle between the political dynamism and the socio-cultural behavior of several elements which laid discernible effect on the political system.

Even, the ruling parties made several attempts to re-frame the constitution via the constitutional amendments intending to re-shape the political system. But all the attempts subjected to the basic structure of the constitution. The basic structure of the Constitution tells about the normal and the basic aims and objectives of the Constitution and that are what are needed to be protected for the sake of proper governance of the country. As propounded by the great jurist, Kelson, the Constitution is the grund-norm, which ultimately works as the guiding force behind every law of

the land. The Indian political system under one prevailing party used to be a stable one but after the rise of various regional parties it became unstable due to conflict of thoughts and interests.

II. Indian Political System: The Determinative Factor:

The Preamble to the Indian Constitution is based on the 'Objective Resolution' passed by Pt. Jawahar Lal Nehru in the Constituent Assembly on December, 13, 1946. This is the Preamble which lays down about the objectives and aims of the Indian Constitution and what were the elements which the fore-fathers of our constitution wanted to achieve. That is why the Preamble is considered for the basis of the Political System of the country. The Constitution makers envisaged the ideals as enumerated in the Preamble for the policy making of the country. The future policies and the planning of the country are dependent on the tenets which are enshrined in the Preamble. As quoted by Pandit Thakur Das Bhargava, "The preamble is the soul of the constitution". This is the reason that all the governmental organs and the institutions owe their origin to the Constitution and derive their powers from the said provisions.¹

II.1: Relevance of Preamble: For the every work which is carried out by the human kind there is some sort of the aim which is intended to be achieved. The constitution framers while framing the constitution aimed to achieve the grund norm which can be beneficial for the whole country and also for the millions of the people living herein. Therefore, for the same purpose they placed the preamble in the beginning of the constitution so that it can reflect the basic ideals enshrined in the constitution. Unlike the other Preamble, i.e., of the statues, it was the Preamble of the Constitution and thus, was given proper relevance by the Constitution makers. It was first to be introduced in the form of objective resolution and passed and last to be adopted. Therefore, it is also regarded as, " 'a key to open the mind of the makers' of the constitution which may show the general purposes for which they made several provisions in the Constitution. "². The words which are encoded in the Preamble are wisely chosen so that the government institutions while framing any policy and laws should upkeep the basic elements enshrined therein. The words like "Sovereign, Socialist, Secular, Democratic, Republic" are the ones which try to show about the nature of the Preamble and the other elements sows about the mind of the framers so that the basic structure remains intact.

¹ V.N.Shukla, Constituion of India A-21 (13TH EDITION 2015)

² Berubari union (1), re, AIR 1960 SC 845

II.2. Preamble as a part of Constitution: Form the time since when the Constitution was adopted it was thought that just like the preamble of the statute is just an introductory part, the same was considered to be with the preamble of the Constitution. In other words, the preamble was not considered as part of the Constitution. The Supreme Court in *Berubari Union (1), re*,³ did not considered the fact that the Preamble was introduced in the Constituent Assembly and then discussed upon and then passed by the Assembly. It was duly adopted after the adopting and enacting the Constitution. This is the evidence of the fact that the framers of our Constitution were taking the preamble as a guiding principle in framing the provisions enshrined in the Constitution. Thus, it was held by the Hon'ble Court that, "preamble is not part of the Constitution."⁴

Later on, when the constitutional history was given much relevance and the facts were brought into the notice of the court then the apex court in the case of, *Kesavananda Bharati vs. Union of India*⁵, held that, "the preamble of the Constitution was part of the Constitution and the observations to the contrary in *Berubari Union* case were not correct."⁶ In the same case it was also held that Preamble is the Basic Structure of the Constitution. Also, in *State of U.P. vs. Dina Nath Shukla*⁷, it was held that Preamble is part of the Constitution it is also part of the basic structure.

III. Nature of Preamble:

The preamble of the Indian Constitution holds good the two aspects, firstly, that the source of the Constitutional power is derived from people of India. The phrase "*We the people of India...adopt, enact and give to ourselves this Constitution*", is clearly evident of the fact that the source of Indian Constitution is derived from sovereignty of people of India. Secondly, the nature of the Preamble is explanatory from the words used in the Preamble itself, like, "*Sovereign, Socialist, Secular, Democratic, Republic.*"

III.1.: India being a socialist state, lays emphasis on the fact that all the resources of the country are equally distributed. It is also emphasized that no accumulation of the resources could take place and hence, every person gets the equal access to the resources irrespective of any discrimination based on any of the factors, be it social, economic, etc.

³ AIR (1960) SC 845

⁴ *ibid*

⁵ (1973) 4 SCC 225

⁶ *ibid*

⁷ AIR 1997 SC 1095

III.2.: Secularism in India is different as compared to other western countries. In other countries the secularism means the total segregation of the relation between state and religion. On the other hand in India the secularism stands for respect to all religion. The state has no religion of its own and it pays equal respect to all the religions. The meaning which can be used for the term secularism is not separation of state and religion but it is “पंथनिरपेक्ष “, i.e., respect to all the religion without having its own religion. Though the word “secular” did not find its place originally in the Constitution, but the legislature for the effective governance of the political system of the India, inserted the same in the Preamble via 42nd Amendment Act, 1976. Further to strengthen the concept of the secularism the Hon’ble, Supreme Court in the case of *S.R.Bommai v. Union of India*⁸, declared “the secularism as the unamendable basic feature of the Indian Constitution.”

III.3: Preamble also declares India to be a republic. India is republic in the sense that the office of the head of the state are subject to election. Unlike many other countries where the office of the head of the state are of hereditary nature, thus they could not be republic, India chose to be republic by creating the elected office system of the head of the state.

III.4: The preamble to the Indian Constitution declares India to be democratic country. It means that all the powers of the government making vests with the People. It grants the check system to the people of the country so that if the government does not work well then the people can overthrow the government and hence the government is responsible to the people of the country for its acts or omissions.

III.5: The preamble to the Constitution expressly provides for the “Justice- Social, Economic, Political”⁹ The political justice ensures the participation of all the persons of the society in the political activities and to ensure the political rights of the persons of the country. The instances of the political rights being, right to contest election, right to exercise the voting rights irrespective of the discrimination. But the fore fathers of the Constitution were not ignorant of the fact that the political justice without the economic and social justice is a vague concept and thus, they enumerated the social and economic justice in the preamble so as to ensure the political justice. All three goes together. The economic justice aims to the prevention of the accumulation of the resources in few hands and to provide basic minimum necessities to all the persons. In the social justice, the aim sought to be achieved is that to prevent the discrimination to any particular section

⁸ (1994) 3 SCC 1

⁹ Constitution of India, <https://www.constitutionofindia.net/articles/preamble> (last visited on June 14, 2023).

of the society and to provide the helping hand to the weaker section of the society so as to bring them at par with the rest of the society. For this purpose there comes Article 15, 16, 17,18, 23,24, etc. to the rescue of the weaker section of the society.

III.6: Equality as envisaged in the Constitution is about both “equality before the law” and the “equal protection of the laws”. The quality as given in the constitution lays down about the fact of non- discrimination among the various sections of the society and of the fact that no one should be subject to discrimination as well as no one should be subject to special privilege. The exceptions which are given of the concept are well founded and are guided by the principles of rule of law.

IV. Characteristics of Indian Political System:

IV.1: Relation of caste and politics: India gained independence due to struggles and hard work and brotherhood of the people of the country. The time before when India got independence, the only thing which lingered in the mind of the people was to achieve the independence anyhow and to make India an independent country. But the moment the Britishers left, the internal conflict began to take place. The biggest conflict was the capture of power. Few political leaders were behind the powerful and influential powers so that they can rule the country. This gives rise to the lucrative policies and the mental framework of the people was that the India is now a democratic Country so they must achieve the mass support. This gave rise to the fact that rise of casteism began to take place. Due to this reason many new political parties were created based on casteism. Behind the refinement of the down-trodden classes, casteism was silently fused into political system.

IV.2: Bureaucratic Dominance: The unstable political system in India has given rise to the strong bureaucratic powers in the country. The bureaucracy is responsible for the implementation and the execution of the plans and policies of the government and hence they create much pressure on the government of the country and hence, are given much importance in the country.

IV.3: Dynamic political System: The Indian political system is so dynamic that the need and demand of the time can be fulfilled by the political parties. Even the multiparty system creates such an environment that if any need and demand is created in any section of the society a new political party fulfilling the aims and the aspirations is formed. Indian society has seen such rise of the political parties many times.

IV.4: Capitalist Influence: After independence the capitalist class has got the chance to enhance their power in the political sphere also. Few of them got the positions in the government and few of them got the chance to create an influence in the government so that they can bag the lucrative tenders and contracts from the government. Also, the capitalist class offer to fund the political parties in their policies and election campaigns. This created the ultimate influence of the capitalist class in the political sphere.

IV.5: Criminalization in the politics: The ill known fact that the political leaders are not seen with the respect except a few is because of the fact that the leaders create a sense of the fear in the mind of the people especially in the mind of the people of their constituency. They do so because of the fact that they elect him from the same constituency from tenure after tenure. Also the fact that power corrupts and the absolute power corrupts absolutely. This made the overall political system criminalized and hence, the various acts and provisions prohibited the persons having the criminal background from contesting the elections.

V. Way Forward: The political system in India is a dynamic feature and thus it changes from time to time. With every decade it changes in some of its form and shape. Preamble to the Indian Constitution is just a determinative factor and the prohibitory guideline which limits and watches keenly on the every acts and actions of the political shape. Outside the scope and ambit of the preamble, nothing can be carried out. The concept of casteism in the politics is the most threatening object to be achieved because it does not support the equality concept but it does support the discrimination concept as the casteism creates discrimination and hatred in amongst most of the community. This creates the rift among various groups of the society which is harmful for the peaceful co-existence. This needs to be regulated by the Election Commission as they can be given power to regulate the registration of the political parties based on the aims and objects sought to be achieved by them. Moreover, the various financial regulatory bodies like SEBI, Enforcement Directorate, etc. can be given power about the keeping of the eye on the funding of the various political parties and their expenditure and thus to prevent the capitalistic influence in the political sphere. Also the bureaucratic dominance has to be controlled and should be limited. Thus, the political environment of the country has to be managed and controlled in such a way so as to bring it to the level of peaceful co-existence and to achieve the dream which the fore- fathers of the Constitution have dreamt of.