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Revisiting the 42nd Amendment: The Battle Over 'Socialist' and 'Secular' in the Preamble of Indian Constitution.

Background

To start with, the preamble is the precursor of the highest law of the land. It communicates the goals of the framers of the law and it's rightly called as a 'key to open the mind of makers.'¹ The words 'socialist' and 'Secular' were added in the preamble via clause 2 of 42nd amendment act during the darkest period in the Indian history, yes you have guessed it right, it was during the period of emergency declared by the then prime minister Mrs. Indira Gandhi who at that time was roiled by the judicial pronouncement in Keshavanandha Bharti case. Among all the Constitutional amendments made up to that point, this one was undoubtedly the most significant. It involved adding a slew of new Articles to the Constitution, changing numerous existing ones, and eliminating a number of provisions. When combined, they created a Constitution that was fundamentally different from the one that was adopted on November 26, 1949. The very reason for the inclusion of term 'socialist' in our preamble was to create a statute responsive to Mrs. Gandhi's so called poverty alleviation measures which created nothing but hustle and bustle in the form of slogans such as *garibi hatao desh bachao*. The question was actually discussed while drafting the constitution. With a brief justification, its major architect, B R Ambedkar, opposed the preamble's use of the word "socialist." "People themselves must decide what should be the state's policy and how society should be organised on the social and economic fronts, taking into account the needs of the moment and the circumstances." Such sage remarks need to be the final ones on the matter. It is crucial to bear in mind that the socialism practiced in India different from that of the USSR and China. It concentrated on selective nationalisation wherever it was required rather than nationalising every industry. It was a distinct kind of socialism designed with India in mind. The catastrophic of all is the addition of term 'secular' into our preamble. **Secular** is opposed to religion as it can include anti-religious state within its domain which contradicts Art. 25 & 26 of our Constitution. We follow a positive form of secularism which is entirely different from its western counterparts. Despite the possibility that many of a religion's traditions go against democratic ideals, positive secularism acknowledges the existence of all religions and their customs and treats them all with respect without meddling in their internal affairs. As rightly said by our beloved father of the nation, ours is *Sarva Dharma Sambhava* meaning equal respect to all religions. The inclusion of plain term 'secular' in our preamble might suggest to the readers the negative secularism which advocates treating all religions equally, with disdain and contempt. Negative secularism maintains that religion should only be a private subject that does not violate anyone's rights, hence it will not permit religious considerations to affect public affairs and policy.

CONSTITUTIONAL AND LEGAL FRAMEWORK

The 42nd Amendment to the Constitution, passed in 1976 when the Emergency was in place, replaced the words "sovereign democratic republic" with "sovereign socialist secular democratic republic". It also changed "unity of the nation" to "unity and integrity of the nation".

¹ Beruberi case

Under Article 368(2), Parliament can amend the Constitution by passing a Bill in "each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting". After that, the Bill "shall be presented to the President who shall give his assent... and thereupon the Constitution shall stand amended".

The 42nd Amendment had several other provisions, by which the Indira government sought to further centralise power. Some of these were reversed by the Janta government that came to power after the Emergency.

The question of whether the preamble is a part of the Constitution or simply an introduction has been deliberated upon by the highest court, because the meaning and weight of the objectives mentioned in it, such as "equality of status and opportunity", remained unclear from the perspective of law.

Through the *Berubari* case, the Court stated that 'Preamble is the key to open the mind of the makers' but it can not be considered as part of the Constitution. Therefore it is not enforceable in a court of law. However, the position of the court was reversed in the *Kesavananda Bharati vs State of Kerala* Case², 1973 which is known for the evolution of the basic structure doctrine. A 13 judges bench was assembled to hear the writ petition, and it held that "the preamble will now be considered as a part of the constitution.

By this judgement, the court also held that the Preamble forms the basic structure of the constitution. Furthermore the court held that the Preamble is not the supreme power or source of any restriction or prohibition but it plays an important role in the interpretation of statutes and provisions of the Constitution.

Additionally, the violation of any principle mentioned in the preamble cannot be a reason to go to court, meaning the preamble is "non-justiciable" — however, judgments of courts can cite it as an additional factor in their reasoning, given that it constitutes the spirit of the Constitution.

It is still a matter of debate to decide whether the preamble is beyond the amending power of the Parliament under Article 368 of the Indian Constitution. In the *Kesvananda Bharati* case, The court however held,

"521. The stand taken up on behalf of the respondents that even the preamble can be varied, altered or repealed, is an extraordinary one. It may be true about ordinary statutes but it cannot possibly be sustained in the light of the historical background, the Objectives Resolution which formed the basis of the preamble and the fundamental position which the preamble occupies in our Constitution. It constitutes a landmark in India's history and sets out as a matter of historical fact what the people of India resolved to do for moulding their future destiny. It is unthinkable that the Constitution-makers ever conceived of a stage when it would be claimed that even the preamble could be abrogated or wiped out."

A **Supreme Court** bench recently while hearing a petition by Dr. Subramanian Swamy seeking to delete the words 'socialist' and 'secular' from the Preamble, asked if the **Preamble** of the **Constitution** could have been amended without changing the date of its adoption on November 26, 1949. The amendments made to the preamble contradicts itself as during the date of adoption, i.e., November 26, 1949 the words 'secular' and 'socialist' were not included. The preamble, with such amendments, rather than signifying the words 'in our

² *Kesavananda Bharati Sripadagalvaru & Ors v. State of Kerala & Anr.* 1973 4 SCC 225

constituent assembly', signifies, 'Whereas Parliament in the year of the republic desires to add'

CRITIQUE OF THE INCLUSION

The preamble, as opined by the Supreme Court in various judgements is the key to the minds of founding fathers. The inclusion of the words 'socialist' and 'secular' defeats constitutional supremacy above Parliamentary supremacy.

Prof. KT Shah proposed the inclusion of the words 'secular' and 'socialist' during the making of the constitution but it was rejected twice. Dr. Ambedkar, while opposed the inclusion of the word because it is a political thought governing the country, and no political thought should be forced upon the people of the Republic of India. The term 'Socialist' is an administrative policy decision, and inclusion of which is not associated with historical struggles against British.

Amending the Preamble dilutes the original intent of the Constitution's framers. It is contended that inserting new words alters the fundamental character envisioned by the founding fathers.

As long as the inclusion of the words 'socialist' and 'secular' is concerned, the constituent assembly deliberately choose to keep these words out of the preamble.

Thrice, the attempt was made in the constituent assembly to incorporate these words in the preamble.

On November 15, 1948, Professor KT Shah proposed adding the words "secular, federal and socialist nation", but the Constituent Assembly (CA) rejected it after a lengthy discussion.

On November 25, 1948, a second amendment was introduced and discussed incorporating the word "secular" in the draft Constitution. That, too, was rejected.

On December 3, 1948, a third attempt was made to include "secular" in Article 18 of the Constitution, which was also dismissed by the Constituent Assembly.

The preamble, being the key to the mind of the founding fathers, and a key to guide the nation towards the vision that our founding fathers imagined, inclusion of the words which were outrightly rejected by the constituent assembly is a fraud on the constitution and the ideals of our nation.

Adding "Socialist and Secular" may contradict other constitutional principles. They argue that imposing specific ideologies through the Preamble may infringe upon the Constitution's commitment to pluralism and neutrality. For instance, a joint petition by Balram Singh, Karunesh Shukla, and Pravesh Kumar's in 2020 argues against the 1976 amendment as conflicting with constitutional tenets. They argued that it violates freedom of speech, expression (Article 19(1)(a)), and freedom of religion (Article 25)³.

³ Author, "Supreme Court Hears Petition on Deleting 'Secular', 'Socialist' from the Preamble of Indian Constitution" (*Star of Mysore*, February 10, 2024) <<https://starofmysore.com/supreme-court-hears-petition-on-deleting-secular-socialist-from-the-preamble-of-indian-constitution/>>

Also, a current petition filed by Dr. Subramanian Swamy is pending before the Supreme Court. It argues that Section 2 of 42nd Amendment through which the impugned words were added to the preamble, is against Article 13 (Laws inconsistent with/ in derogation with FRs

of the constitution), Article 25(Freedom of conscience& Profession, practice and propagation of religion), Article 26(Freedom to manage religious affairs), Article 141 (Law declared by SC to be binding on all courts, and Article 142(Enforcement of decrees and orders of SC & orders as to discovery etc) of the Indian Constitution.⁴

The word 'secular' talks about an anti-religious state, which in itself contradicts Article 25 and 26 of the Indian Constitution. The tenets of positive form of secularism, as practiced in India is in itself implicit in the Constitution. Making the word explicit just create unnecessary hoax and disturbs the ideas and vision of the nation.

Misuse of power to amend the constitution is concerning, as it potentially undermines the Constitution's stability and integrity. Many principles affirming secularism and socialism were contained in the Constitution originally, such as in the Directive Principles of State Policy, fundamental rights that allow the freedom to profess and propagate one's religion, etc. Dr. B R Ambedkar's rationale for omitting these terms was based on this belief that the principles of secularism and socialism were inherently ingrained in the constitution's framework. There is no need to tamper with the preamble and bind the people of India to a specific political thought as principles of socialism and secularism are implicit in the constitution.

⁴ Law L, "Live Law" (*Live Law*, September 2, 2022) <<https://www.livelaw.in/top-stories/subramanian-swamys-plea-to-delete-socialism-secularism-from-preamble-to-constitution-supreme-court-to-hear-on-sep-23-2021>>