

The Preamble of the Constitution: An Analytical Study

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ABSTRACT

The preamble is called the introductory speech of a constitution. It contains the objective of the State by which it is to be made. Every law starts with the preamble, which is the key to a statute. It contains the national foundational principles, hopes and aspirations of the people of a country. It affirms the people's sovereignty and acknowledges the country's independence. This article focuses on the aims, aspirations, rights, duties, obligations, just, free and equal society, ensuring fundamental human rights, rules of law, to ensure international peace and cooperation for the people of Bangladesh. At the same time, the rights, duties, and responsibilities of the State of the People's Republic and the existing ruling government are also considered although amendment and political debate, the preamble remains a cornerstone of the country's constitutional identity.

INTRODUCTION

The preamble of the Constitution of Bangladesh is a brief introductory assertion that sets out the guiding motive and principles of the document. The preamble is not legally binding in any court of law for it is not an essential part of the Constitution. The significance of the preamble to the Bangladesh Constitution is that it defines the functions of the government or the objectives that the framers had in mind for the functions of government. In the Preamble of Bangladesh Constitution, the function of the government is described, and the function should be done by the citizens in order to make a "more perfect democratic and socialist country" it is also described. Preamble of the constitution of Bangladesh encompasses the nation's foundational principles and aspiration, reflecting its social, political and cultural ethos. This is based on high ideals that inspired the liberation struggle by nationalism, socialism, democracy and secularism. It is also ensured that a society free from exploitation, ensuring the rule of law, fundamental human rights, freedom, equality and justice for all citizen.

Problem of the Study

Generally, a preamble is an introductory paragraph or part in a statute or other document setting forth the grounds and intentions of it. Not only a Constitution but also most of the statutes contain a preamble. The preamble to an Act holds, in a nutshell, its ideals and aspirations. In other words, it sets out the main objectives that legislation is intended to achieve. It is a key to the intention of the maker of the Act. Likewise, the preamble to a Constitution is its philosophy because it contains those ideals and principles on the basis of which the whole structure of the Constitution is erected. However, in the case of ordinary statutes, much importance is not always attached to the preamble, and extreme importance is always attached to a preamble in a constitutional statute. The preamble to a Constitution serves the following three main purposes: It indicates the main purpose of the Constitution, as well as the legal and moral basis structure of the Constitution. It expresses the ideas and aspirations of the Objectives of the Constitution. The declared objection is to secure justice, liberty, equality and fraternity to all the citizens. Thus, the preamble expresses the political, moral and religious values which the Constitution is intended to promote. It works as the guiding star for the interpretation of the Constitution. In original constitution, secularism was to be a fundamental principles. But 1977, secularism was removed and in 1988, Islam was declared the state religion. In 2010, the Supreme Court reinstated secularism and there is ongoing debate about the balance between secular and religious values. This preamble focus Bengali nationalism where the ethnic group is not recognized. Preamble is also facilitated authoritarian tendencies. It concentrates the power in the executive branches and limited the scope for civil

liberties which is opposite to democratic ideals. Protesters of 2024 have demanded to establish 1972 constitution.

Necessity of the Study

The US Constitution adopted¹ For the first time, it contained a Preamble, and consequently, most of the new countries with written Constitution constitutions are adopting a preamble to their constitutions. The Constitution of Bangladesh with an elaborate Preamble was written and finally accepted on the 4th of November 1972 for conducting the State. It took effect from the 16th of December 1972. At a later stage, at different times, many amendments to the Constitution were made. According to this amended Constitution, the state administration is going on. The preamble covers the nation's commitments to four fundamental state principle like nationalism, socialism, democracy and secularism. These ideals are central to the liberation movement and continue to shape Bangladesh's identity. It covers a socialist society free from exploitation which inspired the social justice and economic equity for all citizen enjoining human rights and freedom. The preamble focuses a dedication to secularism culturally that ensured the state remains neutral in religious matter and promote harmony among its diverse population. The preamble establishes the framework for a democratic state politically and it is rooted in the rule of law and committed to upholding the will of the people. As such preamble is to be called as a testament for the dedication of core values, guiding its social, political and cultural development. By implementing this principles, nation's dynamic political and cultural development is possible. Recently, student-led revolution in august 2024 that led to the ousting of prime minister have prompted the interim government to revise the country's historical narrative.

Meaning of Preamble

It is an introductory part or paragraph in a statute or other document setting forth its grounds and intention. It is in a nutshell, its ideals and aspirations; in other words, it sets out the main objectives that legislation is intended to achieve. It contains those ideals and principles on the basis of which the whole structure of the Constitution is erected.

Anwer Hossain Chowdhury v. Bangladesh² the Supreme Court examine the constitutionality of constitutional amendment by which permanent bench of the High Court Division was established outside the capital. The Court held that it is the violation of the basic structure of the constitution by undermining the unitary character of the judiciary. This decision reinforced the principle that certain fundamental aspects of the constitution like preamble cannot be altered by amendment.

Bangladesh Italian Marble Works Ltd v. Government of Bangladesh³, Supreme Court invalidated the fifth amendment case which legalize the martial law proclamation during military regimes. This amendment contravened the core principles outline in the preamble like rule of law, democracy and secularism.

Sixteen Amendment cases⁴, it involves the restoration of parliament's power to remove Supreme Court judge. The Court declared such amendment unconstitutional as judicial independence is a core stone of the constitution's basic structure. The preamble is function as a constitutional interpretation and ensuring that amendment and legislative action remain consistent with the nation's foundational principles.

Purpose of Preamble

There are basically three purposes for introducing the preamble of the Constitution, and these are:

It indicates the sources of the Constitution, the legal and moral basis of the Constitution

It expresses in a nutshell, the ideas and aspirations of the objectives of the Constitution.

It works as the guiding star for the interpretation of the Constitution.

¹ in 1787

² Eight amendment case of 1989

³ Fifth amendment case of 2010

⁴ 2017

Preamble as Operative Part of the Constitution

There are different ideas about whether the preamble is an operative part of the Constitution. The following concepts are helping to reduce this confusion, and these are:

Not integral part

It is not an essential part of the Constitution.

Dropped from the Constitution

If it were dropped from the Constitution, the operative part of the Constitution would, in no way, be hampered.

No need to begin with the preamble

Not every statute or Constitution needs to start with a preamble.

Not the sources of power

The preamble of a constitution is neither regarded as the sources of any substantive governmental power nor does it import any limitations on exercising powers not expressly or impliedly prohibited by the constitution⁵.

In Jacobson v. Massachusetts

It was the opinion of the S.C. of the USA that the preamble is not an operative part of the Constitution. It has never been considered the source of any substantive power vested in the government of the USA or any of its departments. Similarly, the S.C. of India has laid down in some cases that the preamble is not an operative part of the Constitution, and hence, it can never be a source of power.

Recent view on preamble

The earlier view was that the preamble was not an operative part of the Constitution. However, some recent judgments have been quite different.

In the Kesavananda Bharati Case

The Indian SC held that the preamble is a part of the Constitution. Though in an ordinary statute, not much importance is associated with the preamble, all importance has to be attached to the preamble of the Constitution.

Sikri C.J. Said

“It seems to me that the preamble of our constitution is extremely important.”

Anwar Hossain Case

It is not merely the outline of the governmental structure. It is the embodiment of the hope and aspiration of the people cherished all the year.

Keshavanada Bharati case, preamble contains the sources, enacting laws, rights and freedom to secure to all citizens, types of government.

Significance of the Preamble

The preamble is a part of the Constitution, but it is not necessarily part of the enacting or operative part of the Constitution, and the Court cannot enforce it directly. The preamble therefore bears no legal significance. But it has other important significance which is sometimes more than the legal importance.

⁵ [In *Berubari case* 1960]

Legal Sources or Bases of the Constitution

Legal sources or bases of the Constitution: It is the preamble that identifies the legal sources or bases of the Constitution. The legal base of the Constitution means where the validity and power of the Constitution are derived.

In Goloknath v. State of Punjab

It was held that the preamble to an act establishes the main objectives that the legislation is intended to achieve. It contains in a nutshell, its ideals and aspirations.

Moral Basis of the Constitution

Moral basis of the Constitution: It indicates the moral basis or the philosophy of the Constitution. The logic which works behind obeying a constitution as the supreme law is its moral philosophy.

Guiding Stars for the Whole Nation

Guiding stars for the whole nation: The preamble works as a guiding star for the whole nation. Because it is pledge in the preamble that all governmental works would be administered in conformity with the preamble and taking it as a pole star.

In Anower Hossain Chowdhury v. Bangladesh

It was held that a preamble is a key to opening the mind of the maker, showing the general purposes for which they made several provisions of the Constitution.

Interpretative significance

The preamble has a great interpretative significance. Where any operative part of the Constitution is ambiguous, the preamble can be restored to clarify that part or wording.

In Pakala Narayan v. Emperor

It was held that if the enacting part of the Constitution is ambiguous or open to doubt, the preamble may be referred to resolve the ambiguity or doubt as it is a good means of finding out the meaning.

The Preamble or Philosophy of the Bangladesh Constitution

In short, it identifies the legal basis of the Constitution: We, the members of the constituent assembly, hereby adopt, enact, and give ourselves this Constitution.

It identifies the moral basis of the Constitution: It is our duty to protect and uphold the Constitution as the expression of the people's will in Bangladesh. It identifies the goal of the State.

The Preamble of the original Constitution⁶ was amended by the Martial Law Administrator and later validated by the 5th Amendment. From this amended preamble, we can derive the following features:

It identifies the legal basis of the Constitution.

We, the people of Bangladesh, having announced our independence on the 26th of March 1971 and through a historic struggle for national liberation, settled the independent, sovereign People's Republic of Bangladesh.

The words state that people are the source of all supreme power. People are the real creators of this Constitution. The members of the Constituent Assembly were all representatives of the people. Therefore, the preamble indicates that the legal foundation of our Constitution is the people - the ultimate source of all power.

⁶ 1972

It identifies the moral basis of the Constitution.

As the Constitution of Bangladesh has been adopted and accepted by the people of Bangladesh and is the reflection of the aspirations of the people of Bangladesh, it is also the duty of these very people to obey it. The Constitution is the supreme law of the land and serves as the foundation for law and order in our country. If it is violated, the entire system of government could collapse. Therefore, it is the moral obligation of the citizens to uphold and obey the Constitution. This moral basis of the Constitution has a clear recognition in the preamble-

Pledging that the high ideals of nationalism, secularity, democracy and socialism, which inspired our heroic people to commit themselves to, and our stalwart martyrs to sacrifice their lives in the fight for national liberation, shall be the main principles of the Constitution.

To elucidate the legal and moral basis of our Constitution, it is pertinent to mention here two illustrations. It is said in the preamble of the Indian Constitution-"We, the people of India.... In our Constituent Assembly, we hereby adopt, enact, and give ourselves the Constitution." The preamble of the Indian Constitution, therefore, indicates the people of India both as the legal and moral basis of the Constitution. But in fact, the legal basis of the Indian Constitution is the Indian Independence Act⁷ and not the people of India. Because India achieved its independence by the operation of that Act. Again, there was no universal suffrage in the election of the constituent assembly. The people of India, therefore, had neither direct nor indirect involvement in the making of the Constitution.

Likewise, the US Constitution was adopted in the Philadelphia Conference⁸ which was represented by the owners of the government debentures, landlords, money-lenders, shipping businessmen and owners of the slave trade. No labour representative nor any representative of the cultivators was invited to that conference. But the conference adopted the Constitution, declaring, "We, the people of United States, do ordain and establish this constitution for the USA."

To compare the Bangladesh constitution with the above-mentioned two constitutions, it may be said that there is no doubt as to the source of the Bangladesh constitution. It is certainly the people of Bangladesh. The people of Bangladesh achieved their independence through a nine-month bloody struggle, and the Constitution was made and adopted by the representatives who were directly elected by the people. It is, of course, sometimes argued that the members of the constituent Assembly were MNAs and MPAs of the erstwhile Pakistan; they were not elected to act as representatives in the constituent Assembly of Bangladesh and no election was held after independence.

It identifies the goal of the State.

In addition, we commit to a democratically driven process towards a socialist society free from exploitation as being advantageous to society, one that is to be a primary aim of the State. This society will adhere to the rule of law and honour fundamental human rights and freedoms, equality and justice - political, economic, and social - for all citizens.

Affirming that it is our sacred responsibility to safeguard and protect this Constitution and to maintain its "Further pledging that it shall be a principle aim of the State to realise through the democratic method, a socialist society free from occlusion, a society in which the rule of law, fundamental human rights and equality, freedoms, justice, economic, political and social, will be secured for all citizens;

It is our consecrated duty to safeguard, protect, and defend the Constitution of Bangladesh. We must ensure that the Constitution is, above all, representative of the will of the Bangladeshi people. This allows each of us to live as we will, be productive and, in doing so, work with the rest of the world for a more peaceful and harmonious future consistent with the goals of humanity. When enacted in 1972, the Constitution of Bangladesh was hailed by international jurists and legal historians as one of the most progressive and

⁷ 1974

⁸ 1774

democratic constitutions in modern history and one that inspired progressive political aspirations among third-world countries and populations struggling for self-determination. However, amendments during socialist one-party and military rule in Bangladesh radically altered the secular and liberal democratic nature of the Constitution. In August⁹, the Bangladesh High Court passed a landmark judgment that declared constitutional amendments during military rule as illegal and unconstitutional and hence nullified. After several legal protests, the Bangladesh Supreme Court, in January,¹⁰ ultimately announced that the historic verdict of the High Court would be upheld. The judgment of Bangladesh's highest courts paved the way for the return of the original nature of the Constitution, which defines Bangladesh as a secular democracy.

Objectives Enshrined in the Preamble been Maintained in Bangladesh:

Rule of Law

The provisions of the main Constitution of 1972 were more or less assistant enough to ensure the rule of law in Bangladesh, But only after nine months of its adoption, preventive detention, emergency, etc. Black provisions were inserted in the Constitution through the Second Amendment, arresting all the possible ways to ensure the rule of law. Then, in 1975, by the 4th Amendment, a multi-party democratic system was buried, and a one-party dictatorial presidential system was introduced, undermining, better to say, uprooting the spirit of constitutional supremacy, judicial independence, rule of law and democracy.

In the 12th Amendment¹¹ of the Constitution was passed, the governmental system from presidential to parliamentary, and the first 12 years of the second parliamentary democracy were completed. But the rule of law still remains a far cry. All problematic provisions of the Constitution, such as emergency laws, preventive detention, the ordinance-making power of the President, the involvement of the executive in the judiciary, Article 70, and the dependence of the CAG on the executive, present significant concerns. as they stand now, are insurmountable stumbling blocks against the ensuring rule of law.

Fundamental Rights

The Constitution provides for 18 fundamental rights. However, poverty and the absence of legal aid prevent most poor citizens from fully practising these rights. Preventive detention and emergency provisions are also obstacles to the full realisation of fundamental rights.

To see how far the objectives enshrined in the preamble have been maintained and ensured, we have to examine the conditions of the following concepts, which are components of an exploitation-free society- the ultimate goal of the State.

Political, Economic and Social Equality

A large number of Social and Economic rights have received Constitutional recognition. However, without reasonable economic equity among people, no social or political equality can be ensured. 32 years have passed since Bangladesh achieved independence, but economic inequality rather than equality is reining the majority of the people's lives. No government has taken stern measures to control the high growth rate of the population, and the rate of literacy is going down compared with the growth rate. However, there will be no political balance unless and until the people are politically conscious and educated.

Recent View of Preamble

Thus, the earlier view was that the preamble was not any operative part of the Constitution. However, some recent judgments have given quite different views. In Kesavananda Bharti's case, the Indian Supreme Court argued that the preamble is a part of the Constitution. "The preamble of a constitution holds great importance, unlike in an ordinary statute. Chief Justice Sikri remarked that the preamble of our Constitution is extremely

⁹ 2005

¹⁰ 2010

¹¹ 1991

important and that the Constitution should be interpreted in the light of the superlative and noble vision expressed in the preamble.". According to the judgment of this case, the view taken in the Berubari case was, therefore, wrong. According to the judgment of this case, the view taken in the Berubari case was, therefore, wrong.

Amendment of Preamble

The question was raised for the first time before the Indian Supreme Court in Kesavananda Bharati's case. It was argued that it was amended like any other provisions of the Constitution. The Court held that since the preamble. It was argued that since the preamble was a part of the Constitution. It could be a part of the Constitution that can be amended subject to the condition that the 'fundamental features' in the preamble cannot be amended. The Court said,

The Constitution is founded on the fundamental elements outlined in the preamble. Should any of these elements be removed, the structure would not survive, and it would cease to be the same Constitution, failing to maintain its identity. The preamble states that the people of India resolved to constitute their country as a Sovereign Democratic Republic. The power to amend the Constitution cannot be interpreted to give Parliament the authority to remove any of these fundamental and basic characteristics of the policy.

It is pertinent to mention here that the Supreme Court of Bangladesh also held in the 8th Amendment case that the preamble is a part of the Constitution, and it is a basic structure of our Constitution. It is also noteworthy that though the Supreme Court held that the Parliament could not amend any basic structure of the Constitution like the preamble, this very preamble was altered by the martial law director and was later validated by the Parliament.

Power to Amend any Provision of the Constitution

Notwithstanding anything contained in this Constitution, any provision may be amended by way of alteration, addition, substitution, or repeal by Act of Parliament.: Provided that-

No bill for such amendment 91 shall be approved to proceed unless the long title explicitly states that it will amend 91a provision of the Constitution";

No bill can be presented to the President for compliance unless it is passed by at least two-thirds of the total number of members of Parliament;

When a bill passed, as mentioned above, is presented to the President for his approval, he must give his assent to the bill within seven days of receiving it. If he fails to do so, the bill will be considered approved at the end of that seven-day period.

Nothing in Article 26 shall embed to any amendment made under this article.

Part of the Preamble Existing in the Constitution

The Constitution includes the sources, enacting clause, fundamental human rights, freedom, equality and justice, political, economic and social security, government system and the birth of the State.

Birth of Bangladesh: We, the people of Bangladesh, declared our independence on the 26th of March, 1971, and after a historic struggle for national liberation, we established the independent, sovereign People's Republic of Bangladesh.

Fundamental Principles of the Constitution:

Pledging that high ideals of socialism, nationalism, democracy and secularism, which inspired our heroic people to devote themselves to and our bold martyrs to sacrifice their life in the national liberation struggle, shall be the fundamental principles of the Constitution.

Fundamentalism of the State:

The State is committed to achieving a socialist community free from exploitation through the democratic process. This society will ensure the rule of law, fundamental human rights, equality, freedom, justice, and political, economic, and social security for all citizens.

Constitutional Duty of the People:

We affirm that it is our sacred duty to protect, defend and safeguard this Constitution and to maintain its mastery as the embodiment of the will of the people of Bangladesh. This will allow us to prosper in freedom and make our full contribution toward international peace and cooperation, in line with the progressive aspirations of mankind.

Enacting Clause:

In our constituent assembly, on the eighteenth day of Kartik, 1379 B.S., corresponding to the fourth day of November 1972 A.D., we hereby adopt, enact, and give ourselves this Constitution.

Suggestion

The preamble is a part of the Constitution but it is not necessarily the part of the enacting or operative part of the Constitution, and the Court cannot enforce it directly. The preamble, therefore, bears no legal significance. But it has other important significance which is sometimes more than legal importance.

First, it is the preamble, which identifies the legal source or base of the Constitution. The legal base of the Constitution means wherefrom the validity and power of the Constitution are derived,

Second, it indicates the moral basis or the philosophy of the whole nation. The logic that works behind obeying a Constitution as the supreme law is its moral philosophy.

Third, the preamble serves to orient the entire country. Because it is stated in the pledge that all government al works will be carried out according to the preamble and making it a guide.

Fourth, the preamble has immense interpretative significance. Where there is ambiguity in any operative part of the Constitution, one can resort to the preamble for clarification of that part or wording.

CONCLUSION

The preamble of the Bangladesh constitution encapsulates the core values and principles on which the Constitution is founded. It also outlines the goals and objectives that the framers of the Constitution urged the nation to work towards achieving. While it is not directly enforceable in a court of law, the preamble sets out the aims that the Constitution aims to establish and uphold. Additionally, it helps in interpreting the Constitution where the language is unclear or open to different interpretations.

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