

NATURE OF JUSTICE ENVISAGED UNDER PREAMBLE TO CONSTITUTION OF INDIA

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Abstract

Among the competing principles of justice, picking one is an horrendous assignment. To address such problem it is imperative to understand the society that one belongs. Preamble to Constitution of India articulates the society that people of India have promised to themselves and it stands in conformity with the Rawlsian theory of Justice. Under Indian constitutional law, an egalitarian society, not utilitarian or libertarian society, where the individual and protection of its interests is envisaged.

Keywords: *Constitutional Law, Preamble, Justice, Egalitarian society*



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Introduction

There are different theories of Justice and before dwelling with the nature of justice as envisaged under Indian Constitutional structure, it would be wise to think about the reason for choosing a particular principle out of the other competing principles of justice. In order to examine the said complex problem, let me use the illustration as made by Amartya Sen in his book, 'The Idea of Justice'(Sen, 2009)¹. There is a flute on the ground and there are three

¹ Amartya Sen, The Idea of Justice, Penguin, London (2009), p. 12-15

claimants. All the three have their independent and unchallenged reason for demand of that flute. The first one claims that the flute should be given to him as he knows how to play it. The second one argues that the flute is product of his diligent labour and his labour should be honoured by returning that product to him. The third one pleads that the flute should be awarded to him as he is the poorest among the three and he could not afford to have a flute of his own. In absence of any two arguments out of the three, remaining one justification for demand of the flute looks very rational. But, when all the three justifications for claim are competing with each other, picking up anyone may seem arbitrary. Indeed, against these competing reasons of justice, there is a difficult decision that one has to make. Things to be noticed here is that, all the three justifications represent three political ideologies. The first one represents utilitarian ideology which is based on the importance of fulfilment and happiness. The second one represents libertarian ideology which recognises the case for being entitled to enjoy the products of one's own labour. And the third one represents the egalitarian ideology which emphasises on economic equity.

Which of the three should get the flute? There is no tailor-made answer to it. It is a problem which speaks about how social arrangements should be made to realise the social need. There may not indeed exist any identifiable perfectly just social arrangement on which impartial agreement would emerge. Resolution to the said problem lies with nature of society that we are living or as envisage under the fundamental character of that society. India's fundamental notion of justice is articulated in the Preamble of Indian constitution and key to the resolution of the said problem lies there.

PREAMBLE OF CONSTITUTION OF INDIA

Significance of Preamble lies in this fact that no reading of any Constitution can be completed without reading it from the beginning to the end and text of Constitution commences from Preamble. More importantly, Preamble, not only an integral part of Constitution but also it is the nidus for the study of Constitution and Constitutional Law. In India, Hon'ble SC overruled the earlier observation in the *Berubari Case*¹ and clarified in the *Keshavananda Bharati Case*¹ that Preamble of Indian Constitution is an integral part of the Constitution. The Preamble pervades through and inspires all the provisions of the Constitution. In fact, Preamble is the beginning as well as the end to the study of Constitutional Law of India. It is definitely not a 'walk before the Constitution', rather it is the beginning of the journey to know the fundamental law of a nation and aspiration of the

people. Since it contains the objectives of the nation, it is the end, we the people envisaged for our lives.

The Objective Resolution which laid down the blue print of proposed new India was adopted unanimously on 22/01/1947 (Rao, 2004, pp. 3-4). There is a great deal of resemblance Preamble of Indian Constitution with Objective Resolution. A comparison of the same is given below :

Objective Resolution	Preamble
.... to proclaim India as an Independent Sovereign Republic resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC
.... all power and authority of the Sovereign Independent India, its constituent parts and organs of government, are derived from the people	We, the People of India do hereby adopt, enact and give to ourselves this constitution.
... shall be guaranteed and secured to all the people of India justice, social, economic and political; equality of status, of opportunity, and before the law; freedom of thought, expression, belief, faith worship, vocation, association and action, subject to law and public morality 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
.... shall be maintained the integrity of the territory of the Republic.....	FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation;

Preamble was debated and approved on 17/10/1949. It was one of the final acts of members of Constituent Assembly. The reason for taking it up so late, President of the Assembly, Dr Rajendra Prasad said, was to ensure that it was in conformity with the rest of the Constitution². The Constitution of India commences with a buoyant and a stirring Preamble. While, summarising on the entire efforts on making of Indian Constitution and pointing out high and low of the Constitution, Pandit Thakur Das Bhargava opined that "The Preamble is the most precious part of the Constitution. It is the soul of the Constitution. It is a key to the Constitution. It is a proper yardstick with which one can measure the worth of the Constitution. All the 395 articles of the Constitution have to be measured with the yardstick of the Preamble and such provisions as stand the test of the Preamble are good and others

² CAD, Vol X

should be taken as worthless"³ . He further emphasised that all the provisions of the Constitution was examined on the touchstone of the Preamble.

Preamble fulfils the high purpose of setting out the objectives for the achievement of which the Constitution is adopted, enacted and given to the people. It indicates the general purposes for which framers of the Constitution made the several provisions of the Constitution⁴. The preamble in express language states that the People of India, in exercise of their sovereign will, have solemnly resolved to constitute India into a Sovereign Socialist Secular Democratic Republic with a view to secure to all its citizens, justice, social, economic and political, liberty of thought, expression, belief, faith and worship, equality of status an opportunity and to promote among them all fraternity, assuring dignity of the individual and the unity and integrity of the nation. The Preamble of Indian Constitution, besides reciting the objectives of the nation, sets out two fundamental canons of our public life and policy. First, the juristic assumption that the sovereignty of India vests in the People of India. Second is that it is in exercise of that sovereignty, the People of India delegate the public powers to the various organs as set up under the Constitution, but retain to themselves certain fundamental rights. The targets set out in the preamble are sought to be achieved through the Fundamental Rights and Directive Principles enshrined in Parts III and IV of the Constitution. Justice Chandrachud, writing for the majority, in the *Minerva Mills* case⁵, clarified that Directive Principles as enumerated in Part IV are the mandatory ends of the Government and those ends can only be achieved only through the permissible means set out in the Part III of the Constitution. Enumeration of nature of justice and assurance of the same to the citizen in the Preamble is definitely not sufficient. It is so as Preamble is not a source of any substantive power or limitation(Basu, 2006: Reprint)⁶. In order to crystallise the premises of justice, guidelines in the form of Directive Principles were framed. In the said context, it can be asserted that in case, the people and the agencies of the government have to choose among the multiple competing principles for practice of justice or administration of justice, they have to be governed under the premises as laid down in the Preamble, Fundamental Rights Chapter and Directive Principles of State Policy Chapter.

³ CAD, Vol XI

⁴Re *Berubari Case*, (1960) 3 SCR 250

⁵ *Minerva Mills Vrs. Union of India*, AIR 1980 SC 1789;

⁶ D D Basu, *Shorter Constitution of India*, Wadhawa Nagpur (2006), p.2

PREAMBULARY JUSTICE AS ENVISAGED AND RAWLSIAN THEORY OF JUSTICE

Rawls' theory of justice is based on demand for fairness. The notion of fairness comes prior to the Rawls theory of justice. The Constituent Assembly, on behalf of the people of India, chose the principles of justice for a social order which is something very akin to Rawl's principles of justice. The Preamble of Indian Constitution, which reflects the general spirit of the Constitution, fully corresponds to the Rawlsian schemes(Sharma, 1989)⁷.

Rawls, in his scheme, asserts that 'justice is the first virtue of the social institutions(Rawls, 1971)⁸. In fact, he emphatically impressed, "Being first virtues of human activities, truth and justice are uncompromising". The rights secured by justice are not subject to political bargaining or to the calculus of social interests. Justice does not allow that the sacrifices imposed on a few are outweighed by the larger sum of advantages enjoyed by many. According to Rawls, injustice is tolerable only when it is necessary to avoid an even greater injustice. Constitution of India confirms the same and primacy of justice is articulated in the Preamble.

In the Preamble, it is solemnly declared that the first and foremost things that the State is going to secure for its citizen is 'Justice'. Through Preamble, 'the people of India' solemnly resolved that they are going to established a 'Sovereign Socialist Secular Democratic Republic'. And, further, the State is going to secure all its citizen- 'Justice, Liberty, Equality and Fraternity'. These are the commitment of the State that it will assure 'Justice, Liberty, Equality and Fraternity' to its subjects. The framers of the Constitution had consciously selected words of highest human values and chosen a purposeful order for it. Justice Palekar, in Keshavananda Baharati Case⁹, had dwelled into the choice of words used in the Preamble and observed, "The pre-eminent place in the Preamble is given to JUSTICE-social, economic and political, and it is obvious that without JUSTICE the other concepts, such as LIBERTY, EQUALITY and FRATERNITY would be illusory. In a democratic country whose institutions are informed by JUSTICE-social, economic and political, the other three concepts of LIBERTY, EQUALITY and FRATERNITY will be automatically fostered. Social and

⁷T R Sharma, Rawlsian Justice: Distinction Between Choice And Observance, The Indian Journal of Political Science, Vol. 50, No. 1 (Jan. - March 1989), p. 33 (28-48)

⁸ John Rawls, A Theory of Justice, Harvard University Press, 1971, p. 3

⁹ Keshavananda Baharti vrs State of Kerala, AIR 1973 SC

political Justice takes care of Liberty; and Justice, social and economic, takes care of Equality of status and of opportunity." Justice R C Lahoti(Lahoti, 2004), in his book 'Preamble : The Spirit and Backbone of the Constitution of India' has beautifully articulated the interrelationship between these four words: "Unless there is justice, liberty is meaningless, nor would liberty survive without justice. Justice and liberty would secure equality. Also justice ad liberty in their interplay would express themselves into 'equality'. 'Fraternity' would be merely a nightmare or only wishful thinking but for justice, liberty and equality. The four words placed in that order is a philosophical travel how the Constitution shall work. Of all the four concepts the most significant is justice"(Lahoti, 2004)¹⁰.

Without going into the nuances of how Rawls drew the postulates of justice, let's brood on the postulates of justice as advocated by him vis-a-vis justice as envisaged under Indian constitution, particularly in the Preamble.

According to Rawls, a just society is a society which is governed by the two principles of justice, primarily applicable to the basic structure of a society. Those two principles¹¹ are:

1. Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all.
2. Social and economic inequalities are to be arranged so that they are both:
 - (a) to the greatest benefit of the least advantaged, consistent with the just savings principle, and
 - (b) attached to offices and positions open to all under conditions of fair equality of opportunity.

Preamble lends full credence to Rawls first principle ensuring equal right to the most extensive total system of basic liberties for all. According to Rawls, the basic liberties, as mentioned in the first principles of justice, are political liberty together with freedom of speech and assembly, liberty of conscience and freedom of thought, freedom of the person to hold property and freedom from arbitrary arrest and seizure. These liberties are all required to be equal by the first principle, since citizens of a just society are to have the same basic rights. Things to be noted here that in Rawls theory liberty gets the precedence over equality. That is also true in the case of Preamble and Indian Constitution. The list embodying the

¹⁰ R C Lahoti, 'Preamble : The Spirit and Backbone of the Constitution of India, Eastern Book Co. Lucknow, 2004 P. 9

¹¹ John Rawls, A Theory of Justice, belknap press of Harvard University Press, Revised edition 1999, p. 266

various liberties in Part III of Indian Constitution is so extensive that it includes almost all liberties which Rawls considers important¹². It is quite evident in the Preamble itself that the right to liberty has been given far greater weightage than the right to equality. While it mentions five different liberties (of thought, expression, belief, faith and worship), it talks of only two equalities - (of status and opportunity). The list of Fundamental Rights further strengthens the contention. Here, the list of liberties is far longer than that of the equalities. In terms of sheer spread of Articles of this section one can notice that nine Articles are devoted to the liberties of citizens (Articles 19, 20, 21, 22, 26, 27, 28, 30 and 32) as against three and a half in favour of equality (Articles 14, 16, 18 and half of 15). Similarly, in terms of their scope the liberties guaranteed in the constitution are far extensive than the equalities. For example, there are 12 liberties(7 in Article 19, 2 in Article 21, one each in Articles 25, 26, 27, 28 and 31) as against only three equalities. Above all, Article 32 which makes all the rights justiciable authorises some of the courts to issue writs. It is evident from the nature and scope of these writs that they are weighed more in favour of protecting liberties than equalities. The general stand of the constitution in favour of liberties as against equalities is also evident from the fact that Part IV (DPSP) which addresses itself more to secure and advance equality in the society.

Uniqueness and strength of India lies in its diversity and social structure. In past, few predicted this was going to be undoing of India. Indeed it was a challenge for the framers of Indian constitution and they opted to maintain the unique cultural and structural heterogeneity by recognising the extensive liberty of all. They make such provisions that only during emergency such liberty can be suspended . This conclusively prove that Indian constitution has given precedence over equality as advocated under Rawls theory of justice.

Indian Constitution upholds Rawls' second principle of justice. It conveys the concern for equitable opportunity in the matter of distribution of goods and offices . Preamble of Indian Constitution has recognised the three facets of justice - social, economic and political and it has been placed in order of significance. The world experience of the later half of nineteenth century and the early years of the twentieth century had proved that mere guarantee of certain rights would be inadequate to secure the well-recognised liberties of the people. To overcome the sense of the said inadequacy, elaborate constitutional arrangement were made to the concepts of justice, liberty and equality. The fact that justice, social and

¹² Article 19, 21, 25, 26, 27, 28, 29 and 30 of the Constitution covers almost all basic liberties.

economic, precede political justice is not unintentional and shows the realisation that political justice, which means adult suffrage, by itself would not bring about the other two objectives, liberty and equality (Shelat, 1967). Without social justice the Constitution would not be able to secure economic justice to the people. It is only such citizenry which has been able to secure social justice and economic justice for all its citizens which would deserve, claim and assert political justice. Only a voter who is socially and economically strengthened can hope to earn political justice (Lahoti, 2004).¹³ In the DPSP supreme importance has been given to Justice - social, economic and political as highlighted in the Article 38. Under Article 38, the State is given a mandate to strive to promote the welfare of the people by securing and protecting a social order in which justice-social, economic and political shall inform all the institutions of the National life. It means, India has to establish an egalitarian social order under the rule of law (Kashyap, 2008, p. 853)¹⁴. Article 38 constitutes an important operative part of the promises made in the Preamble to the Constitution to achieve the ideal of a democratic State and to bring about the social and economic revolution of which the founding fathers dreamt. Article 38 enjoins the State to take the responsibility of the welfare of the people and to bring an social order where 'justice - social, economic and political' prevails. The Preamble and Article 38 envision social justice as its arch to ensure life to be meaningful and liveable with human dignity. The constitution commands Justice, Liberty, Equality and Fraternity as supreme values to usher in the egalitarian, social, economic and political democracy¹⁵. Indeed, article 38 is the keystone of the Directive Principles (Kashyap, 2008, p. 854)¹⁶ for establishment of an egalitarian society. One of the primary objectives of Indian Constitution is establishment of a socialist democracy¹⁷ in which justice-economic, social and political is secure and all men are equal and have equal opportunity. Inequality whether of status, facility or opportunity is to end, privilege is to cease and exploitation is to go. The under-privileged, the deprived and the exploited are to be protected and nourished so as to take their place in an egalitarian society. State action is to be towards those ends. Justice K. Ramaswamy, in the case of Samatha vrs State of Andhra Pradesh¹⁸, while deliberating on the

¹³ R C Lahoti, 'Preamble : The Spirit and Backbone of the Constitution of India, Eastern Book Co. Lucknow, 2004 P. 10

¹⁴ Dr Subhash C Kashyap, Constitutional Law of India, VOL - I, Universal Law Publication, 2009, p.853

¹⁵ Consumer Education and Research Centre vrs Union of India, AIR 1995 SC 922

¹⁶ Dr Subhash C Kashyap, Constitutional Law of India, VOL - I, Universal Law Publication, 2009, p.854

¹⁷ Akhil Bharatiya Soshit Karamchari Sangh vrs Union of India, AIR 1981 SC 298

¹⁸ 1997 Supp(2) SCR 305

meaning of 'socialist democratic republic' observed that "Establishment of the egalitarian social order through rule of law is the basic structure of the Constitution. The Fundamental Rights and the Directive Principles are the means, as two wheels of the chariot, to achieve the above object of democratic socialism. The word "socialist" used in the Preamble must be read from the goals Articles 14, 15, 16, 17, 21, 23, 38, 39, 46 and all other cognate Articles seek to establish, i.e., to reduce inequalities in income and status and to provide equality of opportunity and facilities. Social justice enjoins the Court to uphold government's endeavour to remove economic inequalities, to provide decent standard of living to the poor and to protect the interest of the weaker sections of the society so as to assimilate all the sections of the society in the secular integrated socialist Bharat with dignity of person and equality of status to all". Although, the Preamble of the Constitution does not say much about the first part of Rawls' difference principle where he lays down that social and economic inequalities are to be arranged so that they are to the greatest advantage of the least advantaged, this aspect has been amply taken care of in the Chapter III which deals with Fundamental Rights. There are specific provisions under Indian Constitution which allows preferential distribution of goods and services in favour of least advantaged¹⁹. Here, there are special provisions for protecting and advancing the interests of the least advantaged section of Indian society - women, children, scheduled castes, scheduled tribes and backward classes in the matter of distribution of various goods and services. For example, Article 15 (3) and (4) authorises the Indian state to make special provision for advancement of women and children. Similarly, Article 16 which guarantees equality of opportunity to all citizens has a subsection which enjoins on the Indian state the responsibility to make special provisions for the reservation of appointments or posts in favour of the least advantaged strata. In short, Rawls' difference principle is also confirmed by the Indian constitutional law. Further, Article 28 prohibits exploitation of the least advantaged and Article 24 imposes restrictions on employment of children in any hazardous work. Article 46 provides that the state shall promote the economic interests of the least advantaged, Articles 330 and 332 provide for reservation of seats for the least advantaged section of population in the Central Parliament and State Legislatures.

SUMMATION

Now referring back to the illustration narrated above about the flute and the three claimants, for resolving the dispute it is imperative to observe what is the nature of society in

¹⁹ Article 15 (3)(4)(5), 16(4)(5),17,23,24,29,30

which they are living. From Indian constitutional law prospective, the framers of new India wanted to establish a egalitarian society where the individual and protection of its interests are key. This is very much evident from the collective reading of Preamble, Fundamental Rights and Directive Principles of State Policy. And accordingly flute should be given to such person.

Ever since the day Preamble was adopted by the Constituent Assembly it has enabled the Constitution to stand erect - neither bending nor breaking and continues to be the beacon for governance. One of the significant development of constitutional law in India is the use of Preamble by the Indian judiciary to treat it as the goal of the constitutional aspirations of the people and to develop the constitutional law beyond it's substantive provisions in order to achieve what is assured in the Preamble. It articulates the State commitment for its citizens to ensure 'Justice' 'liberty', 'equality' and 'fraternity'. These have to be secured and protected with social justice and economic empowerment and political justice under 'Rule of Law'.

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