

Amendability of Preamble of Constitution: A Critical Analysis

By Mr. Jeetender Gupta¹, Prof. (Dr.) S K Bose²

¹Scholar, PhD (Law), Manav Rachna University

²Professor, School of Law, Manav Rachna University

Abstract

This article delves into the much-debated issue of the amendability of the Preamble to the Constitution of India, more specifically, to the insertion of terms “Socialist” and “Secular” to the Preamble by way of the 42nd Constitutional Amendment in 1976, during the controversial “Emergency” period under the then Prime Minister, Mrs. Indira Gandhi. The issue has recently been reignited in June 2025 when the then Vice President of India, Sh. Jagdeep Dhankar questioned the amendability of the Preamble and also the 42d Amendment. During the last five decades, the Hon’ble Supreme Court of India, through various landmark judgements, has deliberated and examined the issue in the light of the doctrine of Basic Feature of the Constitution and the amending power of the Parliament under Article 368 of the Constitution of India. This article traces the scope and amendability of the Preamble as interpreted by the Supreme Court of India. It also explores the concepts of “Secularism” and “Socialism” on the touchstone of judicial pronouncements. This discussion aims to inform legal professionals, academic scholars, lawmakers, etc., about the scope and limits of the amendability of the Preamble to the Constitution of India

Keywords: Preamble, Secular, Secularism, Socialist, Constitution, Article 368, 42nd Amendment, Emergency, Indira Gandhi, Jagdeep Dhankar.

AMENDABILITY OF PREAMBLE OF CONSTITUTION: A CRITICAL ANALYSIS

By Mr. Jeetender Gupta¹ & Prof. (Dr.) S K Bose²

A. Introduction:

June 25, 2025, marked the completion of 50 years since the issuance of the Proclamation of Emergency, on June 25, 1975, by Shri Fakhruddin Ali Ahmed, President of India, while invoking his power under Article 352 of the Constitution of India. Between 25 June 1975 and 21 March 1977, India as a Nation remained under a state of Emergency - this period under then Prime Minister, Smt. Indira Gandhi is generally regarded as one of the darkest chapters for Indian Democracy. Recently, on 28th June 2025, the then Vice President of India, Shri Jagdeep Dhankhar, raised the issue of the amendability of the Preamble of the Indian Constitution³ in the context of Emergency Period. Shri Dhankar condemned the *42nd Constitutional Amendment Act of 1976*, where by, the words “Socialist”, “Secular” and “Integrity” were

¹ Mr. Jeetender Gupta is an Advocate-On-Record, Supreme Court of India, and PhD Scholar at Manav Rachna University

² Prof. (Dr.) S.K. Bose is a Professor at School of Law, Manav Rachna University.

³ <https://vicepresidentofindia.nic.in/pressrelease/words-added-preamble-during-emergency-have-been-added-nasoor-sacrilege-spirit-sanatana>

added to the Preamble, by way of following remarks:

“Preamble of any constitution is its soul. The Preamble of the Indian Constitution is unique. Except Bharat, [no other] Constitution’s Preamble has undergone change and why? Preamble is not changeable. Preamble is not alterable. Preamble is the basis on which the constitution has grown. Preamble is the seed of the Constitution. It is Soul of the constitution but this Preamble for Bharat was changed by 42nd Constitutional Amendment act of 1976, adding words Socialist, Secular and integrity”.

In the last 50 years, the Supreme Court has repeatedly settled the issue of amendability of the Preamble, more specifically, to the insertion of terms “Socialist” and “Secular” to the Preamble by way of the 42nd Constitutional Amendment, with the most recent pronouncement being in the year 2024. However, the debate and the controversy around the amendment to the Preamble have never rested.

B. Preamble to the Indian Constitution:

As per the online Merriam-Webster Dictionary, the word “Preamble” is defined as *“an introductory statement, especially: the introductory part of a constitution or statute that usually states the reasons for and intent of the law”*.⁴

Our Preamble has been inspired by the Preamble to the Constitution of the United States of America (USA), which also begins with the words “We the People”. The Constitution of the USA was written in 1787, ratified in 1788, and has remained in force since 1789.

The Preamble to the Indian Constitution was drafted in the light and direction of the Objective Resolutions adopted on January 22, 1947, and formally adopted on November 26, 1949, by the Constituent Assembly. The original text was as follows:

“WE, THE PEOPLE OF INDIA, having 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.”

The Preamble has been amended only once, and that too during the controversial “Emergency Period” in 1976 by way of the “42nd Constitutional Amendment Act of 1976”. The words “Sovereign Democratic Republic” were substituted by the words “Sovereign Socialist Secular Democratic Republic” and the phrase “unity of the Nation” was replaced with the phrase “unity and integrity of the Nation”. The 42nd Amendment is also known as referred to as the “Mini Constitution” for the number of provisions amended/introduced through it and is regarded as the most controversial constitutional amendment in our history. The text of the amended Preamble that remains in force till date is as follows:

“WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN DEMOCRATIC SECULAR 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

⁴ <https://www.merriam-webster.com/dictionary/preamble>

FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation; IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION."

C. Legal Status and Amendability of the Preamble: Judicial Interpretation

The Berubari Union Case (1960):

The exercise to interpret the legal status of the Preamble to the Constitution of India was first carried out by the Supreme Court of India in the case of **"Re: The Berubari Union And Exchange Of ... vs Unknown"**⁵, being the Presidential Reference under Article 143(1) of the Constitution on the implementation of the Indo-Pak agreement relating to the Berubari union and exchange of enclaves. A bench consisting of eight judges, analysed the Preamble in terms of its attribute of "Sovereignty" and concluded that the Preamble cannot be considered as part of the Constitution with the specific observations as reproduced below:

"There is no doubt that the declaration made by the people of India in exercise of their sovereign will in the preamble to the Constitution is, in the words of Story, "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, and, as Willoughby has observed about the preamble to the American Constitution, "it has never been regarded as the source of any substantive power conferred on the Government of the United States, or on any of its departments. Such powers embrace only those expressly granted in the body of the Constitution and such as may be implied from those so granted".

Sajjan Singh Case (1964):

In the case of **"Sajjan Singh vs State of Rajasthan"**⁶, a five-judge bench of the Supreme Court of India, was considering the validity of the Constitution (Seventeenth Amendment) Act, 1964. The Court compared our Preamble to the "American Declaration of Independence" while observing that:

"Our preamble is more akin in nature to the American Declaration of Independence (July 4, 1776) than to the preamble to the Constitution of the United States. It does not make any grant of power but it gives a direction and purpose to the Constitution which is reflected in Parts III and IV".

The Court also considered various modes of amendments and analysed the effect of the unamended Preamble upon the power of the Parliament to amend the Constitution, under Article 368 of the Constitution, by way of the following remarks:

"The Constitution indicates three modes of amendments and assuming that the provisions of Art. 368 confer power on Parliament to amend the Constitution, it will still have to be considered whether as long as the preamble stands unamended, that power can be exercised with respect to any of the basic features of the Constitution"

Golak Nath Case (1967):

In the case of **"I.C. Golak Nath and Ors. vs State of Punjab"**⁷ the 11-judge bench of the Supreme Court while referring to the **Berubari Union Case**, opined that the Preamble does not place any restrictions on the authority to amend the Constitution.

"that the preamble cannot prohibit or control in any way or impose any implied prohibitions or limitations on the power to amend the Constitution contained in Article 368".

⁵ AIR 1960 SC 845

⁶ [1965] 1 S.C.R 933

⁷ [1967] 2 S.C.R. 762

The Kesavananda Bharati Case (1976):

In the case of *“Kesavananda Bharati, vs State of Kerala”*⁸ the historic 13-judge bench of the Supreme Court of India, headed by then Chief Justice S.M. Sikri, was constituted to determine the full extent of Parliament's constitutional amendment powers conferred by Article 368 of the Constitution, apart from Article 13(2), on the Parliament of India. It resulted in the landmark decision that laid the foundation of the “basic structure doctrine of the Indian Constitution” as the “touchstone” to test the constitutionality of amendments to the Constitution of India, as well as that of any new legislation. The final judgement of this significant case, which runs to 502 pages, bears multiple references to the Preamble. The Court held the Preamble to be a part of the Constitution, which was amendable as other parts of the Constitution under the provisions of Article 368, as long as it pertains to areas beyond the basic structure:

“As Preamble is a part of the Constitution, its provisions other than those relating to basic structure or framework, it may well be argued, are as much subject to the amendatory process contained in Article 368 as other parts of the Constitution. Further, if Preamble itself is amendable, its provisions other than those relating to basic structure cannot impose any implied limitations on the power of amendment. The argument that Preamble creates implied limitations on the power of amendment cannot be accepted unless it is shown that the Parliament in compliance with the provisions of Article 368 is debarred from amending the Preamble in so far as it relates to matters other than basic structure and removing the supposed limitations which are said to be created by the Preamble.”

Several judges considered “Secularism” to be one of the characteristics of the basic feature of our Constitution, which was inherent and unamendable. Justice Shelat and Justice Grover described India as a secular state with no state religion:

“India is a secular State in which there is no State religion. Special provisions have been made in the Constitution guaranteeing the freedom of conscience and free profession, practice and propagation of religion and the freedom to manage religious affairs as also the protection of interests of minorities.”

Justice Khanna regarded the “secular” character of the state as a safeguard against discrimination on the ground of religion, which cannot be subverted by an amendment of the Constitution by way of Article 368 of the Constitution:

“The secular character of the state according to which the state shall not discriminate against any citizen on the ground of religion only cannot likewise be done away with. Provision regarding the amendment of the Constitution does not furnish a pretence for subverting the structure of the Constitution nor can Article 368 be so construed as to embody the death wish of the Constitution or provide sanction for what may perhaps be called its lawful harakiri. Such subversion or destruction cannot be described to be amendment of the Constitution as contemplated by Article 368.”

S R Bommai Case (1994):

In the case of *“S.R. Bommai vs Union of India”*⁹, a nine-Judge bench of the Supreme Court of India laid down the restrictions upon the Central Government against the arbitrary dismissal of state governments by it under Article 356 of the Constitution. The Apex Court also examined Secularism in the light of the 42nd Amendment.

“Notwithstanding the fact that the words 'Socialist' and 'Secular' were added in the Preamble of the Constitution in 1976 by the 42nd Amendment, the concept of Secularism was very much embedded in our constitutional philosophy. The term 'Secular' has advisedly not been defined presumably because it is a

⁸ AIR 1973 SC 1461

⁹ 1994 AIR 1918

very elastic term not capable of a precise definition and perhaps best left undefined. By this amendment what was implicit was made explicit. The Preamble itself spoke of liberty of thought, expression, belief, faith and worship. While granting this liberty the Preamble promised equality of status and opportunity. It also spoke of promoting fraternity, thereby assuring the dignity of the individual and the unity and integrity of the nation. While granting to its citizens liberty of belief, faith and worship, the Constitution abhorred discrimination on grounds of religion, etc.”

Justice B. P. Jeevan Reddy reiterated “Secularism” to be a “constitutional goal and a basic feature of the Constitution”:

While the citizens of this country are free to profess, practice and propagate- such religion, faith or belief as they choose, so far as the State is concerned, i.e., from the point of view of the State, the religion, faith or belief of a person is immaterial. To it, all are equal and all are entitled to be treated equally. How is this equal treatment possible, if the State were to prefer or promote a particular religion, race or caste, which necessarily means a less favourable treatment of all other religions, races and castes. How are the constitutional promises of social justice liberty of belief, faith or worship and equality of status and of opportunity to be attained unless the State eschews the religion, faith or belief of a person from its consideration altogether while dealing with him, his rights, his duties and his entitlements? Secularism is thus more than a passive attitude of religious tolerance. It is a positive concept of equal treatment of all religions. This attitude is described by some as one of neutrality towards religion or as one of benevolent neutrality. This may be a concept evolved by Western liberal thought or it may be, as some say, an abiding faith with the Indian people at all points of time. That is not material. What is material is that it is a constitutional goal and a basic feature of the Constitution as affirmed in Kesavananda Bharati v. State of Kerala and Indira N. Gandhi v. Raj Narain. Any step inconsistent with this constitutional policy is in plain words, unconstitutional.

R C Poudyal Case (1993):

In the case of **“R C Poudyal v. Union of India”**¹⁰ the Supreme Court of India held “Secularism” to have always remained as one of the basic features of the Constitution, irrespective of its subsequent insertion in the Preamble by the 42nd Amendment.

“Although the expression ‘Secular did not find a place in the Constitution prior to its insertion in the Preamble by Constitution (Forty-Second Amendment) Act, 1976, but the commitment of the leaders of our freedom struggle during the course of freedom movement which find expression in the various provisions of the Constitution leaves no room for doubt that secularism is one of the basic features of the Constitution.”

Ismail Faruqui Case (1994):

In the case of **“Dr. M. Ismail Faruqui v Union of India”**¹¹ the Hon’ble Supreme Court analysed the constitutionality of the “Acquisition of Certain Area at Ayodhya Act, 1993” which gave the Central Government the authority to acquire the land where the Babri Masjid once stood. The object of secularism and its place in the Constitution was emphasised in terms of the Preamble of the Constitution and also Article 15:

“The Preamble to the Constitution of India proclaims that India is a Secular Democratic Republic. Article 15 in Part III of the Constitution, which provides for fundamental rights, debars the State from discriminating against any citizen on the ground of religion. Secularism is given pride of place in the

¹⁰ AIR 1993 SC 1804

¹¹ (1994) 6 SCC 360

Constitution. The object is to preserve and protect all religions, to place all religious communities on a par.”

Dr. Balram Singh Case (2024):

In the case of “*Dr Balram Singh Versus Union of India*”¹² the Supreme Court adjudicated the challenge against the insertion of the words “socialist” and “secular” in the Preamble to the Constitution of India through the 42nd Amendment Act of 1976. One of the grounds for challenge was the retrospectivity of the insertion in 1976. The Hon’ble Supreme Court held that the power to amend the Constitution lies with Parliament, which also includes the power to amend the Preamble, and this amending power extends to the Preamble. Further, the Court held that the date of adoption does not limit or restrict the power under Article 368:

“Article 368 of the Constitution permits amendment of the Constitution. The power to amend unquestionably rests with the Parliament. This amending power extends to the Preamble. Amendments to the Constitution can be challenged on various grounds, including violation of the basic structure of the Constitution. The fact that the Constitution was adopted, enacted, and given to themselves by the people of India on the 26th day of November, 1949, does not make any difference. The date of adoption will not curtail or restrict the power under Article 368 of the Constitution. The retrospectivity argument, if accepted, would equally apply to amendments made to any part of the Constitution, though the power of the Parliament to do so under Article 368, is incontrovertible and is not challenged.”

The Hon’ble Court elaborately reiterated “Secularism” to be a basic feature of the Constitution while referring to the law laid down in the landmark decisions in the case of Kesavananda Bharati Case, S R Bommai Case, R C Poudyal Case, and also the M Ismail Case. The Court made the following observations in conclusion:

“The State maintains no religion of its own, all persons are equally entitled to freedom of conscience along with the right to freely profess, practice, and propagate their chosen religion, and all citizens, regardless of their religious beliefs, enjoy equal freedoms and rights. However, the ‘secular’ nature of the State does not prevent the elimination of attitudes and practices derived from or connected with religion, when they, in the larger public interest impede development and the right to equality. In essence, the concept of secularism represents one of the facets of the right to equality, intricately woven into the basic fabric that depicts the constitutional scheme's pattern.”

Likewise, the Hon’ble Supreme Court also defined what “Socialism” means in the Indian setting, ruling that it represents the vision of economic and social development, as expressed in the words that follow:

“Similarly, the word 'socialism', in the Indian context should not be interpreted as restricting the economic policies of an elected government of the people's choice at a given time. Neither the Constitution nor the Preamble mandates a specific economic policy or structure, whether left or right. Rather, 'socialist' denotes the State's commitment to be a welfare State and its commitment to ensuring equality of opportunity. India has consistently embraced a mixed economy model, where the private sector has flourished, expanded, and grown over the years, contributing significantly to the upliftment of marginalized and underprivileged sections in different ways. In the Indian framework, socialism embodies the principle of economic and social justice, wherein the State ensures that no citizen is disadvantaged due to economic or social circumstances. The word 'socialism' reflects the goal of economic and social upliftment and does not restrict private entrepreneurship and the right to business and trade, a fundamental right under Article 19(1)(g).”

¹² 2024 INSC 893

The Supreme Court rejected the challenge to the Constitution (Forty-second Amendment) Act, 1976, on the ground that its enactment was during the Emergency by referring to the relevant chronology of events during the relevant period, as follows:

“The argument that the Constitution (Forty-second Amendment) Act, 1976, should be struck down due to its enactment during the Emergency and the extended period of the Lok Sabha was previously deliberated in Parliament, during the consideration of the Constitution Forty-Fifth Amendment Bill, 1978. During these deliberations, the inclusion of the words 'secular' and 'socialist' came under scrutiny. Subsequently, this Bill was renumbered and called the Constitution Forty-Fourth Amendment Act 1978. The word 'secular' was explained as denoting a republic that upholds equal respect for all religions, while 'socialist' was characterized as representing a republic dedicated to eliminating all forms of exploitation—whether social, political, or economic. However, the said amendment as proposed to Article 366 was not accepted by the Council of States.”

Conclusion:

In 1976, the Preamble of the Indian Constitution was amended for the first and only time by the “42nd Constitutional Amendment Act of 1976”, thereby inserting the words “Socialist”, “Secular”, and “Integrity”. The major controversy surrounds the insertion of the words “Socialist” and “Secular”. The apex court has repeatedly settled the law and held the Preamble to be an integral part of the Indian Constitution, which is amendable under Article 368 of the Constitution, subject to the restriction that such an amendment should not violate the basic features of the Constitution.

References:

1. Article titled “The words added in Preamble during emergency have been added as Nasoor; a sacrilege to the spirit of Sanatana – VP” <https://vicepresidentofindia.nic.in/pressrelease/words-added-preamble-during-emergency-have-been-added-nasoor-sacrilege-spirit-sanatana>
2. Definition of the word “Preamble” as per the online Merriam-Webster Dictionary. <https://www.merriam-webster.com/dictionary/preamble>
3. Article titled “The Emergency in India” <https://www.pib.gov.in/FactsheetDetails.aspx?Id=149224#:~:text=Between%2025%20June%201975%20and,Article%20352%20of%20the%20Constitution.&text=The%20Emergency%20was%20declared%20in,legitimacy%20of%20the%20ruling%20leadership>
4. Article titled “The U.S. Constitution: Preamble” <https://www.uscourts.gov/about-federal-courts/educational-resources/about-educational-outreach/activity-resources/us-constitution-preamble>
5. *Re: The Berubari Union And Exchange Of ... vs Unknown*, AIR 1960 SC 845
6. *Sajjan Singh vs State of Rajasthan*, [1965] 1 S.C.R 933
7. *I.C. Golak Nath and Ors. vs State of Punjab*, [1967] 2 S.C.R. 762
8. *Kesavananda Bharati, vs State of Kerala*, AIR 1973 SC 1461
9. *S.R. Bommai vs Union of India*, 1994 AIR 1918
10. *R C Poudyal v. Union of India*, AIR 1993 SC 1804
11. *Dr. M. Ismail Faruqui v Union of India*, (1994) 6 SCC 360
12. *Dr Balram Singh Versus Union of India*, 2024 INSC 893