CHAPTER SIX

PREAMBLE AND THE SECULAR CHARACTER OF THE CONSTITUTION

The Constitution of India is a Secular Constitution and it establishes a Secular State. The Concept of Secularism is explicit in the Preamble to The Constitution of India.

Preamble - Original and Amended:

The Preamble to the Constitution outlines the main objectives of the Constitution. It serves as a key to the Constitution.

The Preamble to the Draft Constitution of India reads thus, "WE THE PEOPLE OF INDIA, having solemnly resolved to constitute India into 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 opportunity and to promote among them all, FRATERNITY assuring the dignity of the individual and unity of the nation. IN OUR CONSTITUENT ASSEMBLY This --- of --- day, May 1948 A.D. do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS
CONSTITUTION

In the Revised Draft Constitution which was submitted to the Constituent Assembly on November 3, 1949, there was no change in the text of the Preamble except the date of enactment of the Constitution.

The text of the Original Preamble is as follows:—

"WE, THE PEOPLE OF INDIA having solemnly resolved to constitute India into a SOVEREIGN DEMOCRATIC REPUBLIC and secure to all its citizens, JUSTICE, Social, Economic and Political, LIBERTY of thought, expression, belief, faith and worship, EQUALITY of status and opportunity and to them all, FRATERNITY assuring the dignity of the individual and 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."

Thus, Preamble to the Constitution had provided that, India will be "Sovereign Democratic Republic".

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It is important to note here that the word 'Secular' was not mentioned in the Preamble. The Preamble ensured justice-Social, Economic and Political for all citizens. It also promised the liberty of thought, expression, belief, faith and worship and equality of status and opportunity. The Preamble also spoke of fraternity ensuring the dignity of individual and unity of nation. But, to note that, 'Secularism' was neither promised nor aimed at in the Preamble. The Constitution 42nd Amendment Act which was passed by the Parliament in November, 1976 for the first time speaks of India as "Sovereign Socialist Secular Democratic Republic".

The amended Preamble reads thus -

"WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens - JUSTICE, thought Social, economic and Political, LIBERTY of/STATUS and expression, belief, faith and worship, EQUALITY of status and opportunity and to promote among them all, 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 US TO OURSELVES THIS CONSTITUTION.

Thus, the Preamble to the Constitution now indicates the Secular character of the Indian Constitution. It also shows how Secularism is being given a great importance in the Constitution. It must, however, be pointed out that the change that has been made to the Preamble is by no means Constitutionally significant. Because from the legal point of view, the Preamble, though included in the Constitution, is not supposed to be its integral part and it is non-justiciable. But it must be remembered that the Preamble is a grand declaration of the ideas and objectives which the Indian people have set before themselves.

Similarly, the Constitution is not only a legal document, it is more than that. It embodies the aspirations of all people and those are summarised in the Preamble. It is in this sense the Preamble was described by Purnima Banerjee, as 'the very life breath of the Constitution'.

Preamble And 42nd Constitution Amendment :-

It will be proper to consider the 42nd Constitutional Amendment while explaining the Preamble, because the Preamble has been amended as a result of this Constitutional Amendment. The original Preamble to the Constitution of India had provided that, India will be a "Sovereign Democratic Republic." But the 42nd Constitution Amendment (1976) makes it "Sovereign Socialist Secular Democratic Republic". For this Constitutional Amendment, the bill which was popularly known as 44th Amendment Bill was introduced by the Union Law Minister, Shri H.R. Gokhale, on 1st September, 1976. Lok Sabha passed the Bill on November 2, 1976 and Rajya Sabha passed the same on November 11, 1976. The bill was passed with near unanimity and with very little opposition in the Parliament as well as in the State Legislatures. The bill was assented by the President, on December 19, 1976.

Here, it may be remembered that, by this time, emergency had been imposed. The emergency was declared on June 25, 1975. As a result of this, the opposition leaders were in jail. There was also press censorship.
In the climate of oppression and fear, free and open debate was not possible.

The 42nd Constitutional Amendment was the most comprehensive Amendment made in the Constitution so far, and has been described as a 'Mini Constitution'. It consisted of 59 clauses. It was also the most controversial amendment and it had far reaching effects on the Constitution.

The 42nd Constitutional Amendment Act was mostly based on the proposals made by a Committee headed by Swaran Singh. One of the important recommendations was that "The Preamble to the Constitution should be amended and it should be provided that, India should be Sovereign Democratic Secular Socialist Republic. In the Preamble words unity, integrity should also be added".

The statement of objects and reasons in the Bill explains that the Constitution is proposed to be amended to spell out expressly the high ideals of Socialism and Secularism and the integrity of the nation, to make the Directive Principles more comprehensive and given them precedence over the Fundamental Rights.--- It is also
proposed to specify the Fundamental Duties of citizens and make special provisions for dealing with the anti-national activities, whether by individuals or associations.\(^3\)

In spite of these high ideals explained in the statement of objects and reasons, the opposition leaders and the critics have criticised and condemned the bill. It was said that the real object was to create a strong executive by curtailing the powers of judiciary and establishing the supremacy of the Parliament, regarding the Constitutional Amendments, and taking away the Fundamental Rights of the people.

The introduction of the 42nd Constitutional Amendment Bill was opposed by Shri H.M. Patel, who represented the Congress (O)., Jana Sangh, Socialist Party and Bhartiya Lok Dal, Shri Samar Mukerji (C.P.I.M.), Shri Tribid Chaudhari (R.S.P.), Shri P.G. Mavalankar (Ind.). Their contentions were that, Parliament had no authority to amend the basic structure of the Constitution and

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that there had been no national debate on the proposed amendment in the Constitution.

Prominent political leaders, Jurists, Parliamentarians and academicians who participated in the All India Seminar \(^4\) held in October, 1976, in New-Delhi, have also criticised the Bill on the grounds of procedure and substance.

The 42nd Constitutional Amendment Act affected the various provisions of the Constitution either by insertion of new articles or omission of some articles of the Constitution. Here, we are mainly concerned with the change in the Preamble.

It has already been stated that 42nd Constitutional Amendment Act of 1976 has added words 'Socialist', 'Secular', and 'Integrity' to the Preamble to the Constitution. With this amendment, Indian Republic has become

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'Socialist' and 'Secular'. But at the same time, it has raised some questions like—Was the original Constitution of India not Secular before the enactment of the 42nd Constitutional Amendment in 1976? Was India not Secular before 1976, in which it has been designated as 'Secular'? Why the term 'Secular' is inserted in the Preamble when the Constituent Assembly had deliberately rejected the term 'Secular' either in the Preamble or in the other provisions of the Constitution? Is it not now inconsistent with the principle of religious freedom? Why the provision is made in the Preamble? Why the other provisions particularly relating to the freedom of religion have not been amended? Is Secular State a new goal of the Indian Constitution?

The answers to these questions are not only varied but also contradictory. Even before 1976, many thinkers and writers subscribed that the Constitution of India is Secular in character and it provides for a Secular State in India.

Smith D.E., has remarked that 'the Constitution of India is a basic law which without using the term clearly
erects the structure of a Secular State.\(^5\)

On the contrary, Luthera has concluded that 'India is not and cannot be a Secular State'.\(^6\) Luthera's contention is that the Constitution of India does not provide for the separation of the State and the Church. A Ayyub Abu Syeed, has explained that 'the Indian State is Secular in the sense that its Constitution guarantees full religious liberty to all individuals and groups and forbids discrimination against any citizen on grounds only of religion'.\(^7\) Sinha also admits the claim that, India is a Secular State. But he remarks that 'Secularism secured by the Constitution is not an adequate safeguard


against a possible disastrous future'. Similarly, Dr. Sexena has observed that "as far as the institutional pattern is concerned, our country (India), is entirely Secular'.

According to Justice Gajendragadkar, 'the Indian Constitution unequivocally provides for a Secular State'.

Thus, Secular character of the Indian State was a controversial issue since the beginning, and even now the position is not changed. At present also, although the State of India is declared as a 'Secular State' in the Preamble to the Constitution, there are divergent views


This is evident from the debates in the Parliament during the discussion on 42nd Constitutional Amendment and in the writings on the subjects like 'Secular State' and 'Indian Constitution'.

42nd Constitutional Amendment in the Parliament :-

At the time of discussion on 42nd Constitutional Amendment, many members of the Parliament have expressed their views on various clauses of the Amendment Bill. Here, we are mainly concerned with the discussion on the amendment in the Preamble which makes India a 'Secular State'.

The amendment in the Preamble was also a controversial issue. However, it must be noted that the insertion of the term 'Secular' in the Preamble was not criticised or opposed. The objection to this, was only on technical grounds. It was argued that the Preamble could not be amended since it was dated and not technically a part of the Constitution.

Shri P.G. Mavalankar, raised the point that 'can we change the Preamble which was passed on 26th November, 1949
and that was specifically mentioned in the Preamble;---the Preamble is the part of the Constitution, not strictly, though undoubtedly is the key of the Constitution, as the Hon. Law Minister rightly said. Therefore, if you put the words to-day "Socialist" and "Secular" in the Preamble, I am afraid a time will come when some people might say remove the word 'democracy'. Already, the substance has gone, the word may also go next time.\textsuperscript{11}

While defending the changes in the Preamble, Shrimati Indira Gandhi, said that 'The founding fathers of our Constitution and of our country had intended Indian Society to be Secular and socialist. They have guided our laws all these years. All we are doing now is to incorporate them in the Constitution itself for they rightly deserve to be mentioned there. The specific mention of this fact in the Preamble will provide the frame of reference to the people, to the Government, to the judiciary and to the world.'\textsuperscript{12}

\textsuperscript{12} Ibid., PP. 145-46.
Mr. C.M. Stephen, also asserted that 'After 25 years of experience and experimentation, we have reached the take off stage and the Constitution will have to reflect the pulsation of the nation. It has to set a course for the nation to follow. It has to renew its oath as to what it is meant for. It is with that purpose that the Preamble is being amended'—Jana Sangh is going about with a sectarian point of view and a divisive philosophy. Therefore, it is necessary that, the Preamble reminds the nation that the nation has committed to Secularism and there can be no going away from Secularism.13

The Members of the Rajya Sabha also supported the amendment in the Preamble.

Shri B. Rachaih stated that 'To my mind, the inclusion of the words 'Secular' and 'Socialist' in the Preamble of the Constitution reflects the urges and aspirations of the people towards the direction in which the country wants to proceed'14.


Shri N.H. Kumbhare, was of opinion that 'Our Concept of Secularism is now enshrined in the Preamble. It envisages that every citizen should have freedom in respect of religion, that a citizen may belong to any religion or caste or creed, but has nothing to do with the business of the State'.

Shri Prakashvir Shastri also supported the inclusion of the term 'Secular' in the Preamble, but he objected its Hindi translation that is 'Dharma Nirpexata'. In his opinion, it is not proper translation. He said it may be 'Asampradaik' or 'Sampradayya Nirpexa'.

42nd Constitutional Amendment Outside the Parliament:

The amendment in the Preamble has also been discussed and criticised outside the Parliament by the various political scientists, Judges and the Authors on the 'Constitution of India'. There are opinions for and against the amendment in the Preamble.

According to Prof. Kogekar, 'the provisions made in relation to religious freedom for all citizens and the absence of a State religion in the Constitution, as also the policies pursued by the Government so far and the decisions given by the courts on this questions clearly establish the 'Secular character of the State.' The inclusion of this word in the Preamble is therefore, only a recognition of fact'.

Mr Swaroop has observed that 'addition of the words- 'Socialism, Secularism and Integrity' in the Preamble of Indian Constitution are three Jewels, which make the nation's most important manifesto a real document of socio-economic revolution'.

It has been remarked that 'the Concept of Secularism, socialism and integrity of the nation are implicit in the

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Constitution. These have been clearly spelt out in the amendments to the Preamble.\textsuperscript{19}

Some writers on the other hand, are not satisfied with the Amendment in the Preamble of to the Constitution. It has been pointed out that 'The change seems to suggest that the Indira Government was trying to place greater emphasis on the socialist and Secular character of the Constitution rather than on the democratic structure which in any case was vanishing during the emergency. It must be pointed out that the change that has been made to the Preamble is by no means Constitutionally significant.'\textsuperscript{20}

Dr. Basu, remarks that 'Instead of clarifying the meaning of those provisions, the use of non-technical word 'Secular' originating in common parlance and there from finding its way into courts, has been unfortunate and confusing. Little improvement will be effected by inserting this word in the Preamble.'\textsuperscript{21}

It is also pointed out that 'the insertion of the two words 'Socialist' and 'Secular' appears to be superfluous.' Similarly, there is no justification for the introduction of the word 'Secular' in the Preamble when it allows 'Liberty of thought, expression, belief, faith and worship to all citizens. Such verbal insertion would hardly ensure any socialist or Secular character to our State. And if there is any doubt regarding the socialist and Secular character things must be repaired not in the Preamble but elsewhere.'

Justice Jahagirdar also remarks that 'mentioning in the Preamble that India is a Secular State will not make it a Secular any more than mentioning that it is a paradise will not make it paradise. Moreover, a Preamble is the least important and the least effective part of any enactment. It is clear, therefore, that the amendment of the Preamble has not made any difference.'


Baird R.D., also remarks that, 'the insertion of the term 'Secular' in the Preamble of the Constitution by the Constitution Amendment Bill of 1976 did not modify the Constitution as far as its Secular intention was concerned' 24.

It is evident from the preceding discussion that, there are some opinions which do not accord with the amendment in the Preamble to the Constitution. However, in this context, it can be said that, after the independence, India opted for a Secular State, without designating it so, either in the Preamble or in other provisions of the Constitution. Therefore, the affirmation of Secular State was not strong enough to give its effects in reality. There was a need to spell out it clearly. This is done by the 42nd Constitutional Amendment Act of 1976; which amended the Preamble and declared that, India will be a 'Socialist' and 'Secular State'. It may be maintained that before 1976, the Concept of Secularism and Secular State was accepted conventionally, now it is accepted Constitutionally.

The inclusion of the term 'Secular' in the Preamble to the Constitution is definitely important as it has made a significant addition to the Constitutional goals which were already declared in the Preamble to the Constitution. Now, the people can ask the Government to achieve that objective of Secularism.

The declaration of India being a Secular State may also be the best weapon to fight against communalism. It will also be useful for maintaining national unity. Similarly, Secularism is the only alternative for the religious minorities in India. This is because of the fact that, it is only the Secular State which obtains from giving preferential treatment to any religion. Thus, with this Constitutional Amendment, India became a Secular State and it is in keeping with the other progressive States in the world.

It must, however, be pointed out that only the insertion of the term 'Secular' is not adequate. It must be defined to be clear and to avoid the confusion in the formation and implementation of the policies of the Government. The 42nd Constitutional Amendment inserts the
word 'Secular' in the Preamble, but does not define it. This may be called the deficiency in this Constitutional Amendment. It may, here, be noted that this deficiency was perhaps because of two reasons. The first, as the critics have pointed out, the main object of this Constitutional Amendment was to establish executive autocracy by reducing the powers of judiciary and it was being done in the name of the Supremacy of the Parliament. The second reasons, would be that, it is no easy task to define the term 'Secular'. As a matter of fact, everybody defines the term 'Secular' and 'Secularism' according to his religion, communal background, education and convenience.

**Preamble and 45th Constitutional Amendment Bill** :-

Though devoid of the definition of the term 'Secular' the amendment in the Preamble to the Constitution was by no means negligible. The significance of 42nd Amendment to the Constitution was that the Sixth Lok Sabha (March, 1977 to July, 1979) with the majority of Janata Party too could not avoid temptation of retaining the words 'socialist' and 'Secular' in the Preamble. Instead of deleting
these words, the Janata Party Government intended to define them. Clause 44 of the 45th Constitutional Amendment Bill was to amend the Article 366 of the Constitution to include therein the provision for explaining the significance of the expressions 'Secular' and 'Socialist' as used in the Preamble. It laid down 'the expression, 'Republic' as qualified by the expression 'Secular' means a Republic in which, there is equal respect for all religions and the expression 'Republic' as qualified by the expression 'Socialist' means a Republic in which there is freedom from all forms of exploitations social, political and economic'.

This 45th Amendment Bill was introduced on 15th May, 1978 by the Minister of Law, Justice and Company Affairs, Shri Shanti Bhushan. It was discussed in the Lok Sabha on 7th August to 11th August, 1978 and 21st August to 23rd August, 1978.

While the discussion in the Lok Sabha, some of the Members suggested the amendments to the clause 44th of the Bill, intending to define the terms 'Secular' and 'Socialist'. Here, we are mainly concerned with the amendments to the definition of the term 'Secular'.
Shri Mritunjya Prasad suggested that the sentence "and neither any religious bai is permitted in the affairs of the State is allowed to interfere in the sphere of religion" - be added to the definition given. 25.

Shri Shambunath Chaturvedi suggested that for clause 44th substitute "In the Preamble to this Constitution the words 'Socialist' and 'Secular' be omitted" 26.

Shri P.K. Kodiyan suggested the substitute like _all citizens irrespective of their religious belief or not shall have equal rights and opportunities._ 27.

Shri B.G. Kamble suggested that the explanation which is given, the clause should be substituted by the words 'whose affairs are non-religious and means a republic which does not discriminate on the grounds of religion' 28.

Prof. P.G. Mavalankar, objected the given definition

26. Ibid., P. 107.
27. Ibid., PP. 107-108.
28. Ibid., P. 108.
of term 'Secular' and suggested that after 'religion' insert "and in which no particular religion as such shall be discriminated against"\textsuperscript{29}.

Shri Shanti Bhushan answered to these suggestions. He said, 'I hope Hon. Members are aware that the word 'Secular' is defined in some dictionaries to mean "irreligious". We wanted to avoid the impression that the Philosophy of this country is that the country must be irreligious\textsuperscript{30}.

It may, here be pointed out that, all the above mentioned amendments to clause 44th of the 45 Amendment Bill were either withdrawn or rejected by the Lok Sabha and the Amendment Bill was passed by the Lok Sabha on 23rd August, 1978.

The 45th Amendment Bill was discussed in the Rajya Sabha on 28th August to 31st August, 1978. In Rajya Sabha, also the amendments were suggested to clause 44th of the 45th Amendment Bill.

\textsuperscript{29} Debates Before Lok Sabha, 6th Series, Vol.18, No.25, P.109.

\textsuperscript{30} Ibid., P.125.
Prof. Sourendra Bhattacharjee moved the amendment that 'for the words 'in which there is equal respect for all religions and' the words 'in which the State administration as such is not identified with any particular religious denomination and there is equal respect for all religions' be substituted'.

Shri Bhupesh Gupta moved the amendment that for the words 'there is equal respect for all religions and' the words 'all citizens irrespective of their religious belief or not shall have equal rights and opportunities and' be submitted.

Shri Syed Shahabuddin suggested that the amendment that for the words "there is equal respect for all religious" the words "there is equal respect for right to belief in and practice of any religion and freedom to pursue one's faith", be submitted.


32. Ibid., PP.262-63.

33. Ibid., P.263.
Shri Murasoli Maran moved the amendment that after the word 'and' the words "a republic which shall make no law respecting an establishment of religion or prohibiting the free exercise there of, where neither any religious test shall be required as a qualification for any office nor any discrimination shall be made on the grounds of religion and" be inserted.\(^{34}\)

All these amendments were put to vote and the motions were negatived. The 45th Amendment Bill originally contained 49 clauses. Rajya Sabha rejected five clauses of these. The rejected clauses included clauses Numbers 8, 35, 44, 45 and 47. The Rajya Sabha suggested one new clause namely 7 A to amend Article 31 c. Rajya Sabha passed the Amendment Bill on 31st August, 1978, and it was reconsidered in the Lok Sabha on 6th and 7th December, 1978.

While reconsidering the 45th Amendment Bill in the Lok Sabha, Dr. Pratap Chandra Chunder stated that the Rajya Sabha felt that this clause should be deleted because

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in its own judgement such definition was not necessary.\textsuperscript{35}

Shri Venkataraman pointed out that 'there is difference of opinion on the question as to what exactly is the definition of 'Socialism' or 'Secularism'. In fact, there is no definition. Sometimes, the definitions restrict the scope of the words. Definitions are not always to the advantage of the citizens. Very often they hamper the judicial interpretations based on the various aspects and environments of the case'.\textsuperscript{36} Dr. V. A. Seyid argued that 'that (definition) would do more harm than good'.\textsuperscript{37}

Shri Nathusinh, on the other hand criticised the attitude of the Rajya Sabha, particularly the Congress Members and said that the inclusion of the word 'Secular' and 'Socialist' by 42nd Amendment was to show only. They did not intended the real change. Therefore, they are opposing the definitions. --- The Rajya Sabha did not make good by rejecting the definitions of these words'.\textsuperscript{38}

\textsuperscript{35} Debates Before Lok Sabha, 6th Series, Vol. 20, No. 13, P. 254.
\textsuperscript{36} Ibid., P. 260.
\textsuperscript{37} Ibid., P. 268.
\textsuperscript{38} Ibid., PP. 296-98.
However, on 7th December, 1978, the Lok Sabha adopted the 45th Amendment Bill as it was amended by the Rajya Sabha and it was assented by the President on 30th April, 1979.

Thus, it is clear that the Janata Party Government wanted to limit the connotation of 'Socialist' and 'Secular' by defining them in the clause 44th of the 45th Constitutional Amendment Bill. But it was rejected by the Rajya Sabha, in which, Janata Party was in a minority. Therefore, the present or future Government can give its own definition to both these terms which have been added to the Preamble to the Constitution and decide the prospect of Indian Secularism.