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CAN PREAMBLE AMENDMENTS KEEP THE ORIGINAL DATE? SC PONDS OVER CONSTITUTIONALITY OF ‘SOCIALIST’, ‘SECULAR’ WORDS

Preamble Amendments and the Indian Constitution: A Legal Examination

In a pivotal development that epitomizes India’s continuous constitutional discourse, the Supreme Court of India is set to examine the constitutional validity of incorporating “Socialist” and “Secular” into the Preamble of the Indian Constitution. This examination transcends mere textual analysis, venturing into the philosophical, ideological, and legal bedrock on which modern India is constructed. This blog aims to demystify the complexities surrounding this issue by exploring its historical context, legal foundations, and the potential repercussions for Indian governance.

Historical Context

The Preamble of the Indian Constitution, a beacon of the nation’s aspirations and values, initially did not contain the words “Socialist” and “Secular.” These were introduced via the 42nd Amendment in 1976, during a time marked by political turmoil and the imposition of the Emergency by then-Prime Minister Indira Gandhi. This amendment sought to explicitly integrate the principles of socialism and secularism within the constitutional schema, underlining a commitment to a mixed economy and a state that maintains a neutral stance on religion while ensuring religious freedom.

Legal Controversy

The Supreme Court's review of these amendments transcends legal scrutiny, posing profound questions about the scope of constitutional amendment powers and the Constitution's core essence. Central to this debate is Article 368 of the Indian Constitution, which empowers Parliament to amend the Constitution, albeit within the confines of the "Basic Structure Doctrine" established in the Kesavananda Bharati case (1973). This doctrine asserts that Parliament cannot alter the Constitution's fundamental framework or basic structure.

Legal Perspectives

The Case for the Amendments

Advocates for the amendments argue that they merely formalize values already inherent in the Indian constitutional and political narrative. They contend that India's commitment to social welfare, resource distribution equity, and religious neutrality predates these amendments, being foundational to the Constitution's vision. Thus, these amendments did not revolutionize the Constitution's basic structure but rather elucidated implicit principles that have historically underpinned the Indian state.

The Case Against the Amendments

Opponents argue that introducing "Socialist" and "Secular" to the Preamble imposes specific ideological commitments that may limit political and economic diversity. They assert that "Socialist" prescribes an economic doctrine possibly misaligned with India's evolving economic landscape. Additionally, the varied interpretations of "Secular" could lead to inconsistent legal and policy applications.

Implications of the Supreme Court's Deliberation

The Supreme Court's deliberation on this matter is significant for several reasons. First, it underscores the dynamic nature of constitutional law in India and the ongoing negotiation between tradition and modernity, between foundational principles and evolving societal values. Second, it highlights the judiciary's role in interpreting the Constitution not as a static document but as a living, breathing entity that must reflect the changing contours of Indian society.

Moreover, the Court's decision could have profound implications for India's political discourse. Affirming the constitutionality of the amendments could reinforce the ideals of socialism and secularism as foundational to the Indian state. Conversely, questioning their constitutionality could open the door to a broader re-examination of the Preamble and, by extension, the values and principles that define the Indian polity.

Recently, a bench of Justices Dipankar Datta and Justice Sanjiv Khanna was hearing a petition seeking to delete the words "socialist" and "secular" from the preamble.

The Supreme Court asked if the Preamble of the Constitution could have been amended without changing the date of its adoption on November 26, 1949.

The Preamble was amended only once in December 1976 to introduce the words "socialist" and "secular". The phrase 'unity of the nation' was replaced by 'unity and integrity of the nation.

These changes were made in the Preamble by the 42nd Constitutional Amendment Act during Emergency.

The bench of justices Sanjiv Khanna and Dipankar Datta clarified that the court did not mean to say that Preamble cannot be amended at all, but the question arose if it could have been tweaked when the date of adoption of the Constitution was a part of the Preamble too. "Just consider this...Can the Preamble be changed while keeping the other date intact? This is perhaps the only Preamble we have seen that comes with a date. On so and so date (November 26, 1949) we give

ourselves this Constitution...this is also a part of the Preamble,” the bench asked. “The amendment was per se illegal for violating the concept of freedom of speech and expression enumerated in Article 19(1)(a) of the Constitution and the right to freedom of religion guaranteed under Article 25 of the Constitution,” it said.

“It’s not that Preamble cannot be amended. The question is about the other date,” the bench clarified, as it asked the parties to come prepared with a discussion on this point on the next date of hearing. The court has fixed the next hearing in April.

The Supreme Court’s deliberation on this matter signifies the evolving nature of constitutional law in India, highlighting the judiciary’s role in interpreting the Constitution as a dynamic entity reflective of India’s changing societal values. Furthermore, the Court’s decision may profoundly impact India’s political dialogue, either reinforcing the foundational status of socialism and secularism or prompting a broader reevaluation of the Preamble and the values it espouses.

Case Examples

The Supreme Court’s approach to interpreting the Preamble and its amendments can be contextualized through past judgments. For instance, in the *Kesavananda Bharati v. State of Kerala* case, the Court established the Basic Structure Doctrine, underscoring the Constitution’s core principles as immutable, even by constitutional amendments. This case highlighted the judiciary’s pivotal role in safeguarding the Constitution’s essence against potential legislative overreach.

Another pertinent case is the *S.R. Bommai v. Union of India* (1994), where the Court asserted the secular nature of the Indian Constitution, emphasizing secularism as a basic feature that upholds the principle of equality irrespective of religion. This judgment reflects the judiciary’s stance on secularism as an integral part of the constitutional framework, providing a legal lens through which the inclusion of “Secular” in the Preamble can be viewed.

Conclusion

As the Supreme Court of India deliberates on the constitutionality of “Socialist” and “Secular” in the Preamble, it navigates the intersections of legal interpretation, historical context, and philosophical inquiry. This examination extends beyond the legality of specific terms, probing into the core of India’s constitutional identity. The outcome will significantly contribute to India’s constitutional jurisprudence, mirroring the nation’s ongoing quest to articulate its identity in inclusive and aspirational terms.

Citation:

Kesavananda Bharati v. State of Kerala, AIR 1973 SC 1461, and

S.R. Bommai v. Union of India, (1994) 3 SCC 1,