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THE PREAMBLE OF THE CONSTITUTION OF THE PEOPLES REPUBLIC OF BANGLADESH : AN ANALYSIS FROM LEGAL PERSPECTIVE

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What is preamble

Preamble is an introductory speech and it contains generally the objectives. Usually every law starts with a preamble. Lord Davey[1] after quoting with approval the words of Chity, L.J., in the same case "it is a settled rule that the preamble can not be made use of to control the enactments themselves where they are expressed in clear and unambiguous terms", observed:[2]

> The preamble is a key to the statute and affords a clue to the scope of the statute where the words construed in themselves without the aid of the preamble are capable of more than one meaning. There is, however, another rule or warning which cannot be too often repeated, that you must not create or imagine an ambiguity in order to bring in the aid of the preamble.

Lord Norman said:[3]

> The preamble is part of the statute, and that no part of a statute can be regarded as independent of the rest,... It is therefore clearly permissible to have recourse to it as an aid to construing the enacting provisions. The preamble is not, however, of the same weight as an aid to construction of a section of the Act as are other relevant enacting words to be found elsewhere in the Act, or even related Acts, there may be no exact correspondence between preamble and enactment, and the enactment may go beyond, or it may fall short of, the indications that may be gathered from the preamble. Again, the preamble cannot be of such, or any, assistance in the construing provisions which embody qualifications or

1. In *Powell V. Kempton Park Racecourse Co. Ltd.* (1899) A.C. 143.
2. Quoted from the Constitution 8th Amendment Case, 1989 BLD (Spl) 1 para 445.
3. Ibid , para 447.

> exceptions from the operation of the general purpose of the Act. It is only when it conveys a clear and definite meaning in comparison with relatively obscure or indefinite enacting words that the preamble may legitimately prevail. The courts are concerned with the practical business of deciding
> ....

Professor K. C. Wheare said that the preamble to the Constitution 'is not only permissible but also desirable. Most Constitutions have a preamble.'[4] Preambles of the written constitutions are intended primarily to reflect the hopes and aspirations of the people.[5] Shahabuddin, J. commented rightly that—

> "But Preamble of a Constitution is something different from that of an ordinary statute. A Constitution is not merely the outline of the governmental structure; it is the embodiment of the hopes and aspirations of the people cherished all the years and includes the nation's high and lofty principles and people's life philosophy."[6]

The preamble of the Constitution of Bangladesh and its importance

In the Constitution 8th Amendment case Badrul Haider Chowdhury, J. described the features of the Preamble to the constitution of Bangladesh in the following words:

> It takes notice of (i) people of Bangladesh have proclaimed independence on 26th March, 1971; (ii) the fundamental principles of the Constitution shall be the high ideals of absolute trust and faith in the Almighty Allah, nationalism, democracy and socialism meaning economic and social justice which inspired our heroic people to dedicate themselves to and our brave martyrs to sacrifice their lives in the war for national independence; (iii) fundamental aim of the State is to realize through democratic process a socialist society in which the rule of law, fundamental human rights and freedom, equality and justice will be

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4. Wheare K. C., *Modern Constitutions*, p. 71.
5. Tope T. K., *Constitutional Law of India*, 1st ed. With supp., Eastern Book Company, Lucknow, 1988, p. 3.
6. *Anwar Hossain Chowdhury V. Bangladesh*, 1989 BLD (Spl) 1, at p. 147 para 354

> secured ; (iv) our sacred duty is to safeguard , protect, and defend this Constitution and to maintain 'its supremacy as the embodiment of the will of the people of Bangladesh'.[7]

He then commented in the next paragraph of the judgment that 'Few constitutions do have such a Preamble'.[8]

Shelat and Grover, JJ.[9] mentioned three specific points regarding the importance of the preamble taking into consideration the case of Indian Constitution, they are:

1. It indicates the source from which the Constitution comes.
2. It contains the enacting clause which brings into force the Constitution.
3. It declares the great rights and freedoms which the people of India intended to secure to all citizens and the basic type of government and polity which was to be established.

This observation made by Indian judges is also true fundamentally in the case of Bangladeshi Constitution:

1. The first paragraph of the preamble of the Constitution of Bangladesh says that "We, ***the people*** of Bangladesh, having proclaimed our independence on the 26th day of march, 1971 and through a historic war for national independence, established the independent, sovereign People's Republic of Bangladesh;" Thus it indicates the source, viz. the people of Bangladesh from which the Constitution comes.
2. The last paragraph of the preamble of the Constitution of Bangladesh says that "In our Constituent Assembly, this eighteenth day of Kartick, 1379 B.S. corresponding to the fourth day of November, 1972 A.D., do hereby ***adopt, enact and give to ourselves this Constitution.***" Thus this paragraph of the preamble appears to be the enacting clause of the Constitution of Bangladesh which brings into force the Constitution.

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7. Ibid., p. 59 para 49.
8. Ibid. para 50.
9. In Kesavananda case, AIR 1973 SC 1461 para 537.

3. The first paragraph gives the idea of establishment of a state which will be people's republic where the seed of democracy is ripen and it is as well as found in the third paragraph which speaks of a democratic process. Moreover, second and third paragraphs together declare the great rights and freedoms which the people of Bangladesh intended to secure to all citizens.

In fact, the preamble of the Constitution of Bangladesh speaks more by its fourth paragraph that speaks of at least two things:

1. It imposes the duty upon the people of Bangladesh to safeguard, protect and defend this Constitution and to maintain its supremacy as the embodiment of the will of the people of Bangladesh, and consequently
2. It will make the people able to make their full contribution towards international peace and co-operation in keeping with the progressive aspirations of mankind.

Thus it emphatically declares the commitment and duty of the people of Bangladesh towards the Constitution and as well as to the mankind at large. This particular emphasis on international peace by the preamble undoubtedly gives a noble status to the Constitution.

Moreover the first paragraph precisely describes also the history of creation of this state which mentions that Bangladesh has been created through a historic war. Thus it embodies the glorious pride of this nation which achieved its independence by its blood.

In this connection the observation made by Justice Mustafa Kamal in the famous case of Dr. Mohiuddin Farooque V. Bangladesh[10] is worth mentioning here which focuses on the unique nature of the preamble of the Constitution of Bangladesh which is as follows:

> "As for (ii) the Preamble and Article 7, the Preamble of our Constitution stands on a different footing from that of other Constitutions by the very fact of the essence of its birth

10. 49 DLR (AD) 1, para 42.

> which is different from others. It is in our Constitution a real and positive declaration of pledges, adopted, enacted and given to themselves by the people not by way of presentation from skilful draftsmen, but as reflecting the echoes of their historic war of independence."

Justice Latifur Rahman[11] observed that "The Preamble of our Constitution really contemplates a society where there will be unflinching respect for the Rule of Law and the welfare of the citizens." The preamble of the Constitution of Bangladesh contains fundamental principles of the Constitution and the basic objectives of the state. M.H.Rahman, J., has focused this particular aspect of the preamble[12] in the following words:

> After referring to the Proclamation of Independence on 26th of March, 1971, the war of national independence and the principles of nationalism, democracy and socialism for which our brave martyrs sacrificed their lives the makers of the Constitution in the name of "We, the people" declared the fundamental principles of the Constitution and the fundamental aims of the State.

People as the enacting authority of the constitution mentioned in the preamble

The Preamble to the Constitution of Bangladesh adopted on 4 November 1972 says it expressly that the 'people' have in fact adopted and enacted this Constitution as it mentions that 'We, the people of Bangladesh, ... do hereby adopt, enact and give to ourselves this Constitution.' Though Professor Wheare posed a question about using such terminology that "Is it not unreal in any case to speak of 'the people' enacting a Constitution 'in' or 'through' a constituent assembly? It is seldom indeed that the people are asked even to approve a Constitution ostensibly enacted in their name."[13] The Constitution of the Republic of Cuba probably does not have to face this objection raised by K. C. Wheare as this Constitution was passed by the referendum and the Preamble to

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11. Ibid, para 79.
12. The Constitution 8th Amendment Case, 1989 BLD (Spl) 1 para 456.
13. Wheare, *Modern Constitutions*, 1960 pp. 89-90.

this Constitution says that 'We, Cuban citizens, ... WE DECLARE ... AND ADOPT by means of our free vote in a referendum, the following CONSTITUTION'.[14]

However, many Constitutions of the world in fact expressly mentioned the people as the 'constitution maker' and the 'source of authority'. I have studied the text of the Preamble of 70 written Constitutions of different States and let me cite the Preamble of certain constitutions among those which give such recognition.

The Preamble to the Constitution of India adopted on 26 November, 1949 says 'WE, THE PEOPLE OF INDIA,... do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION'.

The Preamble to the Constitution of Ireland adopted on 1 July 1937 says that 'We, the people of Ireland, ... Do hereby adopt, enact, and give to ourselves this Constitution'. Thus, it appears that both the Constitutions of Bangladesh and India borrowed these phrases from the Preamble of Ireland as they used these words exactly in the Preamble obviously using the terms 'People of Bangladesh' and 'People of India', respectively. The reason for such conclusion is obvious that is the constitution of Ireland is the oldest one among these three as the respective dates of adoption of the Constitutions show it clearly.[15]

The Constitution of USA says in the Preamble that 'We the People of the United States, ... do ordain and establish this Constitution for the United States of America.'

Preamble to the Pakistani Constitution says '...we, the people of Pakistan, ... Do hereby, through our representatives in the National Assembly, adopt, enact and give to ourselves, this Constitution.' Thus, this Preamble avoids the ambiguity mentioning the direct immediate source of the Constitution that is the 'people' *through the representatives in the 'National Assembly'*, the House which passed the Constitution.

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14. See the Preamble to the Constitution of the Republic of Cuba 1992.

15. Following are the dates of adoption of these three Constitutions: *Ireland: 1 July 1937; India: 26 November 1949; Bangladesh: 4 November 1972.*

The Constitution of the Republic of Belarus says that 'We, the People of the Republic of Belarus, ... hereby adopt and enact this Constitution as the Fundamental Law of the Republic of Belarus.'

The Preamble to the Constitution of the Republic of Liberia says that 'We the People of the Republic of Liberia: ... Do hereby solemnly make, establish, proclaim, and publish this Constitution for the governance of the Republic of Liberia.'

The Preamble of the Constitution of Kiribati says 'We the people of Kiribati, ... do now grant ourselves this Constitution establishing a sovereign democratic State.'

The Preamble to the Constitution of Cambodia says-'We, the people of Cambodia ... We inscribe the following as the Constitution of the Kingdom of Cambodia.'

Ethiopian Constitution uses the terms 'nations' and 'nationalities' besides the popular terminology 'peoples' to identify the adopter of the Constitution of Ethiopia as the Preamble to this Constitution says that 'We, the nations, nationalities and Peoples of Ethiopia:... do hereby adopt this Constitution through our representatives in the Constitutional Assembly.'

The Constitution of Georgia says in its Preamble that '... we the people of Georgia, ... do ordain and establish this Constitution.'

The Constitution of the Independent State of Papua New Guinea says in its Preamble that 'WE, THE PEOPLE OF PAPUA NEW GUINEA— ... HEREBY ESTABLISH, ADOPT and GIVE TO OURSELVES this Constitution ... .'

The Preamble of the Albanian Constitution says 'We, the people of Albania, ... We establish this Constitution.'

The Preamble to the Constitution of the Principality of Andorra presents their people as the approving authority of the Constitution as it says that 'The Andorran People, ... Approve the present Constitution, in the exercise of their sovereignty'.

The Constitution of The Republic of Armenia plainly speaks in its Preamble that the 'Armenian People, ... Hereby adopts the Constitution of the Republic of Armenia'.

The Constitution of the Arab Republic of Egypt says in its Preamble 'We, the people of Egypt, ... accept, and grant, to ourselves this Constitution, affirming our determination to defend and protect it, and asserting our respect for it in letter and spirit'.

The Constitution of Japan also recognises their people as the Constitution giving authority in its Preamble as it says that 'We, the Japanese people, acting through our elected representatives in the National Diet, ... do proclaim that sovereign power resides with the people and do firmly establish this Constitution'.

The Constitution of the Republic of Cameroon says explicitly that '...the State shall guarantee all citizens of either sex the rights and freedoms set forth in the Preamble of the Constitution'.

The Preamble to the Constitution of Haiti simply starts with the words 'The Haitian people proclaim this constitution... .'

The Preamble to the Constitution of Lithunia uses the term 'nation' instead of the term 'people' that says ' The Lithuanian Nation ... approves and declares this Constitution'.

The Constitution of Russia uses the term 'multinational people' as the approving authority of their Constitution as the Preamble says 'We, the multinational people of the Russian Federation, ... hereby approve the Constitution of the Russian Federation'.

Preamble and interpretation of the Constitution

Shelat and Grover, JJ. made the following observation in Kesavanada case[16] regarding the role of preamble of the Constitution in its interpretation which has been quoted by M.H. Rahaman,J. in the Constitution 8th Amendment case[17] in Bangladesh:

> From all these, if any provision in the Constitution had to be interpreted and if the expressions used therein were ambiguous, the Preamble would certainly furnish valuable guidance in the matter, particularly when the question is of the correct ambit, scope and width of a power intended to be conferred by Art. 368.

16. AIR 1973 SC 1461
17. 1989 BLD (Spl) 1 para 454.

Lord Halsbury rightly observed:[18]

> Two propositions are quite clear; one that a Preamble may afford useful light as to what the statute intends to reach and another if an enactment is itself clear and unambiguous, no preamble can qualify or cut down the enactment.

It was held in *In re Berubari Union & Exchange of Enclaves*[19] that the preamble by itself is not a source of power and it can be used to discover the meaning of any ambiguous provision of the Constitution or may assist to determine a single meaning in case of more than one interpretation of any constitutional provision. Thus the preamble was held to be "a key to open the mind of the makers".[20] Indian Chief Justice Sikri rightly observed in Kesavananda Bharati case that "It seems to me that the Preamble of our Constitution is of extreme importance and the Constitution should be read and interpreted in the light of the grand and noble vision expressed in the Preamble."[21] The Preamble of the Indian Constitution has also been termed as 'the key to the understanding of the Constitution'.[22]

But if any constitutional provision has a clear meaning then the court will not accept any wider meaning to the plain words of that Article using the preamble as a tool of interpretation.[23] In the case of Anwar Hossain Chowdhury V. Bangladesh, 41 DLR (AD) 165, the Appellate Division has taken note of aspirations of the people of Bangladesh and has given interpretation and meaning to the preamble in conformity with other constitutional provisions of the Constitution.[24]

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18. In *Powell V. Kempton Park Race Course Co.*, (1899) AC 143 (153).
19. AIR1960 SC 845: (1960) 3 SCR 250
20. (1960) 3 SCR at pp. 281-2.
21. *Kesavananda Bharati V. State of Kerala* (1973) 4SCC 255 : AIR 1973 SC 1461.
22. Ibid., *per* Shelat and Grover , JJ.
23. *Gopalan V. State of Madras* AIR 1950 SC 27 : 1950 SCR 88.
24. Rahman Latifur, *The Constitution of The People's Republic of Bangladesh with Comments & case-Laws* 1st ed. 2004 at p. 27.

Is preamble a part of the constitution

Surprisingly, in India it was held in *In re Berubari Union & Exchange of Enclaves* that 'the preamble is not a part of the Constitution'. H. M. Seervai commented about it that 'it is obvious that the history of the preamble had not been brought to the attention of the court; otherwise it would not have said that the preamble was not a part of our Constitution'.[25] However, subsequently, in Kesavananda's case[26] Supreme Court changed its position and the preamble was held as a part of the Constitution and several judges also observed that the Berubari Opinion was wrong on this point. Seervai mentioned in his book of 4th edition that 'It was stated in the first edition of this book that the statement that the preamble was not a part of the Constitution was not in accordance with modern authorities and was not correct.'[27]

In the context of the Constitution of Bangladesh, Preamble is considered as a part of this Constitution and no contrary opinion is found against it. This is proved both by the constitutional provision and the history of the passing of this Constitution in the Constituent Assembly in 1972. If we look to the history of the passing of our Constitution in the Constituent Assembly it will appear before us that the Speaker of the Assembly on the 4th November just before passing of the Constitution asked the House after passing necessary changes in the draft preamble to vote on the issue that the amended 'preamble' is to be made a part of the Constitution Bill and the House accepted it.[28] Moreover, the last proposal in the Constituent Assembly after passing the Constitution Bill was in fact a clarification of the Constitution Bill, that

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25. Seervai H. M., *Constitutional Law of India*, 4th ed. Universal Book Traders, Delhi, 2002, vol.1 p. 278.
26. Kesavananda Bharati V. State of Kerala (1973) 4SCC 255 : AIR 1973 SC 1461.
27. Op. cit., p. 25.
28. See Bangladesh Gono Parishader Bitarka, Sarkari Biboroni, vol.2, 1972, at p.690.

contained different parts of the Constitution, which was to include the preamble of the Bill, short title, contents, schedule, all articles, clauses, sections subjects as parts of the Constitution Bill and the proposal was passed unanimously. This also clearly shows that the preamble of the Constitution of Bangladesh is undoubtedly a part of this Constitution and this is not a mere introductory note.

Again Article 142 lays down the provisions regarding 'power to amend any provision of the Constitution' and Article 142 (1A) specifically prescribes the special procedure to be followed to amend the preamble and thus it has been explicitly recognized by the Constitution itself that the Preamble to it is obviously a part of this Constitution. Thus Badrul Haider Chowdhury, J rightly observed in the 8th Amendment case that:

> We are relieved of the anxiety as to whether the Preamble is a part of the constitution or not as it has been the case in some other country. Article 142(1A) stipulates that a Bill for amendment of the Preamble and provisions of Articles 8, 48, 56, 80, 92-A and Article 142 when passed in the Parliament and presented to the President for assent "the President shall within the period of seven days after the Bill is presented to him, cause to be referred to a referendum the question whether the Bill should or should not be assented to". Hence the Preamble can only be amended by referendum and therefore is a part of the Constitution.[29]

Justice Rahman said that the preamble is not only a part of the Constitution of Bangladesh rather it is the 'Pole Star' of the Constitution. To quote him :[30]

> This preamble is not only a part of the Constitution; it now stands as an entrenched provision that can not be amended by the Parliament alone. It has not been spun out of gossamer matters nor it is a little star twinkling in the sky above. If any provision can be called the pole star of the Constitution then it is the preamble.

Justice Rahman further has in fact enforced the preamble by interpreting the Constitution 8th Amendment in the light of the preamble as he observed :

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29. *Anwar Hossain Chowdhury V. Bangladesh*, 1989 BLD (Spl) 1, p. 59 para 48.
30. Ibid. p.174 para 456.

> The impugned amendment is to be examined in the light of the Preamble. I have indicated earlier that one of the fundamental aims of our society is to secure the rule of law for all citizens and in furtherance of that aim Part VI and other provisions were incorporated in the Constitution. Now by the impugned amendment that structure of the rule of law has been badly impaired, and as a result the high Court Division has fallen into sixes and sevens—six at the seats of the permanent Benches and the seven at the permanent seat of the Supreme Court.[31]

He even argued boldly that the Constitution 8th Amendment even could be judged by the Preamble without resorting to the doctrine of basic structure. To quote him:

> In this case we are concerned with only one basic feature, the rule of law, marked out as one of the fundamental aims of our society in the Preamble. The validity of the impugned amendment may be examined, with or without resorting to the doctrine of basic feature, on the touchstone of the Preamble itself.[32]

The recent interim Constitution of Iraq, interestingly, adds a more clear constitutional provision in its Article 1(C) saying that the 'Preamble to this Law is an integral part of this Law'.[33] Perhaps, this is the only constitution which gives such express recognition through a direct constitutional provision.

Nature of the preamble and its amendability

Joseph Story termed the Preamble to the Constitution of the United States as vital to the character and operations of the Government, but he says that its true office is to expound the nature and extent and application of the powers actually conferred by the Constitution and not substantially to create them."[34] In 1973

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31. Ibid.
32. Ibid. p.171 para 443.
33. See the interim Constitution of Iraq adopted on 8 March 2004, *Official Title: Law of Administration for the State of Iraq for the Transitional Period.*
34. Commentaries on the Constitution of the United States, 1833 edition, vol 1; For reference see Kesavananda case, AIR 1973 SC 1461 at para 539.

in the context of the Constitution of India Shelat and Grover, JJ. made the following important observation:[35]

> "The Constitution makers gave to the preamble the pride of place. It embodied in a solemn form all the ideals and aspirations for which the country had struggled. ... Its is not without significance that the Preamble was passed only after draft articles of the constitution had been adopted with such modifications as were approved by the Constituent Assembly. The Preamble was, therefore, meant to embody in a very few and well defined words the key to the understanding of the Constitution."

In 1975, Mathew J. in Smt. Indira Gandhi V. Rajnarain[36] though recognized the Preamble of the Indian Constitution as a part of the Constitution but he said emphatically that it is not possible to spin out the idea of basic structure from the preamble. To quote him:

> The preamble, though a part of the Constitution is neither a source of power nor a limitation upon that of the ideological aspirations of the people. ... It is impossible to spin out any concrete concept of basic structure out of the gossamer concepts set out in preamble. The specific provisions of the Constitution are the stuff from which the basic structure has to be woven.[37]

In the above same case Chandrachud J. also supported above view and says that the preamble can not be regarded as a source of any prohibitions or limitations.[38] He says:

> I find it impossible to subscribe to the view that the Preamble to the Constitution holds the key to its basic structure ... the preamble can not affect or throw light on the meaning of the enacting words of the Constitution. Therefore, though our preamble was voted upon and is a part of the Constitution, it is really 'a preliminary statement of the reasons' which made the passing of the Constitution necessary and desirable. ...

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35. In *Kesavananda Bharati V. State of Kerala*, AIR 1973 SC 1461.
36. AIR 1975 SC 2299 Para 347 at p. 2386.
37. Ibid.
38. AIR 1975 SC Para 666 at p. 2466.

> The Preamble of our Constitution cannot therefore be regarded as a source of any prohibitions or limitations.[39]

In 1980, Bhagawati J. in Minerva Mills case[40] supported the above view expressed by Mathew J. But interestingly, in the same case Chandrachud J. shifted his earlier position made in Indira Gandhi's case. He says in Minerva Mills Limited[41] that 'The Preamble assures to the People of India a polity where basic structure is described therein as a Sovereign Democratic Republic'. It is also claimed that the objectives set out in the preamble of the Constitution of India are themselves ambiguous and they cannot throw any light on the provisions of the Constitution because they stand in need of interpretation themselves.[42]

In the context of Bangladesh, it was decided in the 8th Amendment case[43] that at least the concept of 'Rule of law' contained in the Preamble constitutes the basic structure of the Constitution of Bangladesh. Badrul Haider Chowdhury, J. has made it very clear in the following words:

> That Constitution promises 'economic and social justice' in a society in which 'the rule of law, fundamental human right and freedom, equality and justice' is assured and declares that as the fundamental aim of the State. Call it by any a name- 'basic feature' or whatever, but this is the basic fabric of the Constitution which can not be dismantled by an authority created by the Constitution itself- namely, the Parliament.[44]

Now the issue arises, can the Preamble be amended? The Constitution of Bangladesh contains clearly the elaborate

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39. Ibid.
40. AIR 1980 SC 1789 at p. 1811.
41. Ibid. para 21.
42. Seervai H. M., *Constitutional Law of India*, 4th ed. Universal Book Traders, Delhi, 2002, vol.2 p. 282.
43. *Anwar Hossain Chowdhury V. Bangladesh*, 1989 BLD (Spl) 1.
44. Ibid., p. 96 para 195.

provisions regarding the amendment procedure of the Preamble and 'its amendability is rigidly protected which can only be done by the people at referendum'.[45] The Preamble of the Constitution of Bangladesh was amended in 1977 and the Preamble of the Indian Constitution was amended also by the 42nd Amendment in 1976. However, in Bangladesh, the Constitution 8th Amendment case gives a landmark judgment establishing the concept of basic structure of the Constitution, which is unamendable even by the Parliament. Oneness of the High Court Division was decided by the majority as a basic structure, but there was no unanimous opinion regarding other basic structures. M. H. Rahman J. observed that the 8th Amendment badly impaired the structure of the 'rule of law' as contained in the preamble.[46] Whereas Badrul Haider Chowdhury, J. expressly mentioned it as one of the basic structures of the Constitution of Bangladesh while he gave a long list of 21 basic features. To quote him:

> "The following are the unique features of our Constitution:
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> ... (2) The Preamble: It postulates that it is our sacred duty to safeguard, protect, and defend this Constitution and to maintain its supremacy as the embodiment of the will of the people of Bangladesh.
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> ... (20) The declaration and pledges in the preamble have been enacted substantively in Article 7 and 8. While Preamble and Article 8 have been made unamendable, necessarily Article 7 remains as unalterable."[47]

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45. *Per* Badrul Haider Chowdhury, J. in *Anwar Hossain Chowdhury V. Bangladesh*, 1989 BLD (Spl) 1, p. 59 para 50.
46. *Anwar Hossain Chowdhury V. Bangladesh*, 1989 BLD (Spl) 1, p. 174 para 456.
47. Ibid., pp.109-111para 254.

Thus we can reach to the conclusion considering Article 142 and the 8th Amendment case together that the part of the Preamble, which constitutes the basic structure that, can not be amended and the rest is amendable under Article 142. In India, the majority opinion in Kesavananda case[48] seems to express the same view that only a part of the Preamble that constitutes the basic structure is unamendable where it was held 'that the objectives specified in the Preamble contain the basic structure of *our* Constitution, which cannot be amended in exercise of the power under Art. 368 of the Constitution'.[49]

48. AIR 1973 SC 1461.

49. Ibid., Basu D D, *Shorter Constitution of India*, 10th ed., Prentice Hall of India Private Limited, New Delhi, p. 1.