
CASE COMMENT: BALRAM SINGH V UNION OF INDIA (2024) INSC 893 (SUPREME COURT OF INDIA, WRIT PETITION (CIVIL) NO. 645 OF 2020, DECIDED ON 25 NOVEMBER 2024)

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1. Introduction

The Supreme Court of India's decision in *Balram Singh v Union of India*¹ is a reminder of the accepted position that the Parliament can make changes to the Constitution, including the amendments to the Preamble. The central issue of the debate was with the term "secular" and "socialist" which were added to the Preamble with the Constitution (Forty-Second Amendment) Act of 1976². These changes were made during the Emergency period of Indira Gandhi's rule and were viewed as ideologically motivated additions devoid of any semblance of democratic legitimacy by the petitioners. Many considered the Preamble as the spirit of the Constitution, and argued that it was harmed by a regime operating under extraordinary constitutional conditions.

Over forty years after the 42nd Amendment came into existence, the petitioners contested in Court that its provisions were crafted in such a way that they misinterpreted the intentions of the Constitution's framers. They claimed that the said terms were purposely left out by the Constituent Assembly and argued that their addition was a result of power abuse by dictatorial rule. In addition, they argued that the term "socialist" constrained economic freedom, and "secular" could be misapplied as a justification for the curtailment of religious freedom. Thus, the petitions challenged both the procedural validity and the substantive impact of the amendment. Their aim was a reaffirmation of constitutional integrity by reverting the Preamble back to the text as it was in 1949.

The Supreme Court dismissed the writ petitions at the admission stage and did so within a very

¹ *Balram Singh v Union of India* (2024) INSC 893.

² Constitution of India, Preamble (as amended by the Constitution (Forty-Second Amendment) Act 1976)

succinct but clear judgment. The Chief Justice Sanjiv Khanna and Justice Sanjay Kumar bench argued that the reasoning put forward did not merit further consideration or detailed examination. It is clear from the Court's explanation that the power of Parliament in amending the Constitution under Article 368 includes the Preamble too, and the addition of “secular” and “socialist” did not breach the basic structure doctrine³. It is also important to appreciate the effort the Court made to stress viewing the Constitution as a document which is alive, as it can respond to the changes in society and politics. The Court rests heavily on decades of constitutional evolution and judicial precedent stressing the stabilizing force of a continuity in India’s legal system. This comment aims to analyze the reasoning provided by the Court, the historical context of the amendment, and the larger constitutional issues posed by the case.

2. Case Summary

2.1 Factual Background

In 2020, Balram Singh filed a writ petition along with other petitioners contesting the validity of the Forty-Second Amendment to the Constitution postulating objections with the inclusion of the terms “socialist” and “secular” in the Preamble. The amendment in question had been passed in 1976 during the Emergency declared under Article 352 which, many Scholars and Critics believe, was a period of significant constitutional overreach along with the suppression of civil liberties.

The petitioners based their challenge on four principal arguments:

1. The retrospective application of the amendment purports to distort the historical truth of the Constitution that was adopted on the 26 November 1949, which did not include these terms.
2. These terms had been debated and rejected by the Constituent Assembly, which demonstrates a clear original intent to omit them.
3. The inclusion of the term “socialist” was argued as hindering economic freedom by embedding an economic ideology into the constitutional text.
4. The amendment was seen as lacking democratic legitimacy as it was approved by a

³ Constitution of India, Art 368.

Parliament elected under Emergency conditions with a lapsed tenure, and thus did not represent the will of the people.

2.2 Procedural Posture and Judgment

The writ petitions were brought before a bench constituted by Chief Justice Sanjiv Khanna and Justice Sanjay Kumar. The Court made a decision to not issue notice of the petitions, which they characterized as “weak” and without substance. The bench was satisfied that no constitutional intervention was warranted.

As part of the Court’s decision, three key remarks were made:

1. Parliament possesses plenary power under Article 368 to amend any part of the Constitution, even the Preamble.
2. The words “secular” and “socialist” do not breach the basic structure doctrine and indeed, align with the fundamental ideals of the Constitution.
3. The shocking delay of 44 years in mounting the challenge markedly undermined the legal respect and urgency of the petition.

The Court relied upon settled constitutional doctrine, including *Kesavananda Bharati v State of Kerala*⁴, which recognized the Preamble as part of the Constitution and subject to amendment under Article 368 as long as the basic structure is preserved. The Court also cited *S R Bommai v Union of India*⁵ and *M Ismail Faruqui v Union of India*⁶ to strengthen the argument for secularism as central to India’s constitutional identity.

3. Discursive Argument

3.1 The Nature of the Preamble and Its Amendability

One of the fundamental pillars of the petitioners' claims was concerning the unwavering nature of the Preamble. They argued it constituted the soul of the Constitution and, due to its adoption prior to the main portions of the text, it was immune to amendments. This, however, is a

⁴ *Kesavananda Bharati v State of Kerala* (1973) 4 SCC 225.

⁵ *S R Bommai v Union of India* (1994) 3 SCC 1.

⁶ *M Ismail Faruqui v Union of India* (1994) 6 SCC 360.

complete misunderstanding of constitutional law and existing legal precedents.

The Supreme Court's ruling in *Kesavananda Bharati* proves this case in asserting that the Preamble does remain a part of the Constitution and therefore, under Article 368 (alongside the basic structure doctrine), it can be amended. The Preamble is not a constitutional relic, but rather, it is a vision that embodies constitutional values.

There is also the fact that the framers of the Constitution recognized the need for modification: Adaptations could be made as political ideologies or socio-economic contexts changed. The drafters of the Constitution never intended the Preamble to be a 'cast in stone' proposition. Its aspirational tenets could adapt to changing political circumstances. The addition of "secular" and "socialist" may be subject to political debate, but legally, it firmly sits within Parliament's jurisdiction.

3.2 Secularism: A Basic Feature

While the term secular was not included in the original preamble of the constitution, secularism was deeply ingrained in it. The fundamental rights enshrined in Articles 14, 15, 25-28, protect religious freedoms and disallow discriminatory practices on religious lines.⁷ Therefore, the incorporation of the term secular merely affirmed the constitutional ethos which was already there.

Indian secularism does not align with the Western model of an absolute separation of Church and State. The Indian model supports "principled distance" where the State can interface with religious bodies for social reforms, so long as it remains neutral among the faiths. This more nuanced position was validated in *S R Bommai*, where a nine judge bench held that secularism forms part of the basic structure of the Constitution.

Further support came from *Ismail Faruqui* where the Court held that secularism does not give the State carte blanche to ignore religions in public life, as all religions must be treated with equal respect. So, in essence, the 42nd Amendment did not create a new principle but simply recognized formal an foundational value.

⁷ Constitution of India, Arts 14, 15, 25–28.

3.3 Socialism and Economic Freedom

The inclusion of “socialist” in the Preamble evoked suspicion from the petitioners who argued that it bound the State to only pursue certain economic policies. They argued that the inclusion of socialism as a constitutional value stifled the potential of embracing a capitalist or free market policies.⁸

The Court made it clear that Indian socialism is not a dogma or a rigid framework. As explained in *Excel Wear v Union of India*⁹, the Indian Constitution envisions socialism with the objectives of economic justice and achieving an egalitarian society. It does not eliminate the appropriation of property, private entrepreneurship, and ownership.

The judgment in *Property Owners Association v State of Maharashtra*¹⁰ further emphasized that a mixed economy is in alignment with the constitutional order. In this context, “socialism” operates as an operative notion, signifying the State’s obligation to uplift the disadvantaged and provide equitable resource distribution.

3.4 Delay and Acquiescence

The Court’s emphasis on delay as a factor in the reasoning was most striking. The petitions were filed in 2020, which is 44 years after the amendment was enacted. The principle of legal certainty upholds that constitutional amendments, once enacted and implemented over decades, should not be subjected to review without substantial reason.

In public law, delay and acquiescence often result in loss of claims, more so in instances where there is acceptance of the provision by successive governments, courts and the populace. The court was correct in observing that the delay undermined the claims of the petitioners and also weakened their argument for urgent relief. This is helpful in promoting constitutional order as well as curbing absurd litigation that is devoid of merit or initiated by political actors.

3.5 Emergency and Legislative Validity

The framers of the petition claimed that the 42nd Amendment is devoid of any democratic

⁸ Constitution of India, Art 19(1)(g)

⁹ *Excel Wear v Union of India* (1978) 4 SCC 224.

¹⁰ *Property Owners Association v State of Maharashtra* (2024) INSC 835.

legitimacy as it was passed during the Emergency period. It is apparent that the Emergency period did witness some degree of the withdrawal of democratic norms. Nevertheless, one cannot invalidate legislation on the mere basis of the conditions under which it was enacted.

In *ADM Jabalpur v Shivkant Shukla*¹¹, the court controversially approved the suspension of fundamental rights during the period of emergency. Although that judgment has been criticized from all forms of democratic societies, it does bring light to the willingness of courts to refuse to invalidate legislation on the sole basis of its political backdrop. Most importantly, the mid-term 44th Amendment, enacted after the emergency, preserved “secular” and “socialist,” confirming democratic approval.¹²

The Constitution allows the Parliament to make laws at any point in time provided there are basic rules that need to be followed. Even with unfriendly biases, as long as those rules are not breached, the political environment by itself cannot repeal an amendment.

3.6 The Living Constitution and the Power of Amendment

The Indian Constitution is frequently recognized due to its flexibility and being adaptive to various changes and factors. Article 368 allows the Parliament to amend the Constitution, which gives it the ability to address changing social, economic, and political circumstances. The Supreme Court has supported this outlook and has referred to the Constitution as a living organism. In *R C Poudyal v Union of India*¹³, the Court recognized democratic pluralism and evolving constitutional values as key components of constitutional governance.

This method is supported by comparative jurisprudence. In *Re Manitoba Language Rights*, the Canadian Supreme Court determined that a constitution’s interpretation must be alive in order to be actively relevant¹⁴. Also in the United States America, while *Plessy v Ferguson*¹⁵ was reversed by *Brown v Board of Education*, it showed the impact of inflexible constitutional interpretation.

The ruling in *Balram Singh* reinforces the scope of Constitutional dynamism on a global scale. It emphasizes that contemporary values are paramount, and the Constitution should not be

¹¹ *ADM Jabalpur v Shivkant Shukla* (1976) 2 SCC 521.

¹² Constitution (Forty-Fourth Amendment) Act 1978

¹³ *R C Poudyal v Union of India* (1994) Supp (1) SCC 324

¹⁴ *Re Manitoba Language Rights* [1985] 1 SCR 721 (Canada).

¹⁵ *Plessy v Ferguson* 163 US 537 (1896).

confined to its originalism shackles.

The Supreme Court reiterated in *Minerva Mills* that amendments must not destroy the basic structure, reinforcing the principle of constitutional balance.¹⁶

4. Comparative Jurisprudence and Global Context

Balram Singh's judgment cannot be ignored while discussing global constitutionalism. Every democratic state struggles with the conflict between originalism – an attempt to interpret the text that is set in stone – and the need for progressive, expanding interpretations along changing times. India, with her mixture of a written text and constitutional morality, tilts towards embracing progress in contemporary aspirations.

A good example would be *Re Manitoba Language Rights (Canada)*¹⁷: The Supreme Court of Canada applied a practical and purposive interpretation of preserving constitutional order to language rights. *National Coalition for Gay and Lesbian Equality v Minister of Justice (South Africa)* stands firmly in favor of the Constitution as a forward-looking document for social renewal. The South African Constitutional Court, in the case, stressed the Constitution's transformative nature and dismissed rigid approaches to interpretation. These decisions reflect the Indian judiciary's inclination to consider the Constitution as a document that evolves with society.

In addition, the Indian interpretation of secularism as dealing with all religions equally and remaining neutral towards them, unlike a division, compares to Turkey and Indonesia, where the government takes a positive role in religious matters to foster pluralism. While balancing the uniqueness of Indian secularism in *Balram Singh*, the Court reaffirmed a constitutional character shaped by pluralism and equality and not identity built on the outcry or exclusion of faith.

In the sphere of economics, a number of constitutional democracies have consciously allowed the aspirational inclusion of economic ideology in their constitutional texts without treating them as binding obligations. Take the example of the Weimar Constitution of Germany which made explicit commitments to socialism and welfare. The courts, however, approached these

¹⁶ *Minerva Mills Ltd v Union of India* (1980) 3 SCC 625

¹⁷ *Re Manitoba Language Rights* [1985] 1 SCR 721 (Canada).

within the framework of democratic freedoms and property rights. In a similar manner, the Indian Supreme Court has, in what could be called pragmatic wisdom, ensured that the word “socialist” in the Preamble does not eliminate market reforms or private enterprise. Instead, it seeks to make public policy responsive to inequality.

By doing so, the Balram Singh judgment reflects the Indian constitutional scheme and aligns with the best practices globally pertaining to constitutional interpretation and amendment. It acknowledges the need for societal transformation and the anchoring of such changes within a rigid framework of legal democracy.

5. Broader Implications for Constitutional Governance

The importance attributed to Balram Singh surpasses the consequences of two words in the Preamble. It directly concerns the functions of constitutional courts within the context of democratic governance. The Supreme Court’s unwillingness to respond to a delayed challenge on an established constitutional amendment reinforces the legal closure principle and the presumption of constitutional validity. It warns against politically motivated judicial overreach fueled by nostalgia for yesteryear.

In addition, the ruling in question seems to respond to the dynamics of the interplay between constitutional identity and political philosophy. The Court emphasized the need for continuity in constitutional identity by interpreting the Preamble as representing enduring values of the nation, not as ephemeral political slogans. The ruling ensures that, irrespective of the changeable nature of governments, the core principles of justice, liberty, equality, and fraternity will persist through all regimes.

With regard to the constitutional amendment procedures, Balram Singh asserts that amendments are not beyond challenge, but must be assessed within the context of democratic consent, procedural propriety, and adherence to the basic structure doctrine. Thus, the Court preserved the spirit of *Kesavananda Bharati* by applying it thoughtfully to contemporary issues.

Ultimately, the decision reflects a much-needed judicial restraint and discipline, which are critical for preserving the reputational capital of the judiciary. Singh Balram's judgment exemplifies the court's commitment to institutional stability and constitutional fidelity, especially during the time of politically heightened polarization and ideological conflicts. This

balance sets an example of how adherent to law, courts can handle politically sensitive constitutional matters.

6. Critical Reflections and Concluding Remarks

Constitutional interpretation in India is shifting, as showcased in the Balram Singh judgment. Though procedurally minimalist, this judgment is rich in its doctrinal consequences. The Court's robust denial of hearing the long-anticipated appeal ensures that the judicial system will not be used in the service of political revisionism. This is crucial for India today, as the debates on constitutional identity, majoritarianism, and core values have become extremely divided.

One could argue that the Court left something to be desired by not tackling head-on the moral and democratic dimensions of the Emergency-era amendments. Yet, that would risk inviting troubling precedents where constitutional amendments made decades ago could be politically reinterpreted and challenged based on prevailing ideologies. The decision reflects a judicial choice to embrace restraint in the face of politically volatile issues, which in this case strengthens and enhances the structure of constitutional law.

By reasserting secularism and socialism as compatible with the basic structure, the Court has stopped attempts to reinterpret or dilute these values. The judgment upholds an India that is inclusive, pluralistic, and committed to social welfare while secularism is being intensely debated and examined in public and scholarly circles.

From a doctrinal view, Balram Singh integrates multiple components of Indian constitutional law: the amendment power under Article 368, the boundaries of the basic structure doctrine, the Preamble's implications, and the political morality of the governing document. It shows how the Court can address problems not with bold declarations, but clear, subtle steps.

In my view, Balram Singh v Union of India strongly affirms constitutional principles. The case goes beyond defending the legality of a textual amendment, capturing the essence of the Indian Constitution which seeks to adapt while remaining anchored in justice, equality, liberty, and fraternity. This judgment illustrates how future constitutional adjudication could be conducted: grounded, restrained, principled, and generous.