Vegueta. Anuario de la Facultad de Geografía e Historia
22 (10), 2022
eISSN: 2341-1112
DOI: 10.5281/zenodo.7503675

HISTORICAL REVIEW OF CONSTITUTIONAL AMENDMENTS SINCE ITS INCEPTION: A DESCRIPTIVE STUDY

Dr (Lt Col) Anil Balhera

Asst Professor, Dept of Laws, BPS Women University, K.K, Sonepat, Haryana, India.

ABSTRACT

The wave of democratization around the world in recent decades brought about a surging need for a means to assess, to compare and to explain democratic progress cross country, cross region and over time. A number of composite indices were developed to measure democracy and amendments forms one such powerful democratic index. The inviolability of the Constitution may be a plea for status-quo ism in monarchy but will be most absurd in a democracy. It is for this reason that every Constitution has an intrinsic provision for amendment. The Indian Constitution is no exception. The Constitution of India has been amended on hundred occasions i.e. 105 amendments till now averaging at the rate of 1.5 amendments per year. It is also visible that the two politically volatile decades 1971-1980 and 1981-1990 witnessed the highest number of amendments. It is also seen that barring the first decade after the commencement of the Constitution, every decade has witnessed a steady stream of amendments. This means that irrespective of the nature of politics and the party in power, amendments were required to be made from time to time. This tally looks rather large when compared to the United States of America whose Constitution has been amended barely twenty-seven times since 1789. Thus, the present study intends to assess the historical review of constitutional amendments since its inception.

Keywords: constitution, amendments, History, India

INTRODUCTION

The constitutional history of India is traced from the time of the entry of East India Company in the early 17th century apart from some exceptions. The British government took over the governance of India from the "East India Company in the year 1858". The making of the constitution was not an easy task as they had to unite over three hundred million people. The difficulty was that provisions which were to be made had to be in consonance with the Minorities, Dalit's, Backward classes and other indigenous people.

The Britishers decided to examine the possibility of allowing independence to India in the year 1946. Hence, a British Cabinet mission was consigned to India to hold discussions with the representatives of the British India in contemplation of agreeing on the framework for writing a constitution for India. The Britishers had

**Autora de correspondencia / Corresponding author.*

restored and adopted decentralisation of powers between the state and the region. The "Government of India Act, 1919" brought the legislative councils into existence in all the provinces. After this Act, our constitution adopted the quasi-federal; and bicameral structure.

British Constitution

Our constitution borrowed the rule of law, Bicameralism, Single citizenship, Cabinet system and the Parliamentary System. The systems of writs which are Articles 226 and 32 have also been taken from British Constitution. The Supreme Court and the High Courts in our country have the power to issue writs to make the Right to Constitutional Remedies available to the citizens of India. Some more features like the Law-making techniques, Institution of the Speaker and his part and the parliamentary arrangement of Government and leader of the state are great import from Britain.

The parliamentary form of government is basically where a country is governed by a cabinet of ministers which is governed by the Prime Minister. This form of government ensures that one or more opposition parties are there to keep a check on the ruling party and its functioning. "Rule of law" states that a state cannot be governed by the people or the representatives of people but only by the law of that country. The rule of law is codified under Article 14 of the Indian Constitution. The idea of single citizenship basically implies that a person who is born or migrated to India may enjoy political or civil rights of India but not of any other country. Hence, India does not allow dual citizenship.

US Constitution

An important part of our constitution which is Part III, fundamental rights have been taken from the US Constitution. These rights are the "basic human rights" which are given to the citizens of India (Articles 12 to 32). These rights assure them that they have an equal stance in the society. Apart from the fundamental rights, the Position of the Vice President, the System of Judicial Review and Removal of judges of Supreme Court and High Courts and the Impeachment of the President is also taken from US Constitution. Article 124 mentions the removal of judges of the Supreme Court and the High Court.

Judicial Review is an important part of our constitution. It gives the judiciary an upper stake in interpreting the Constitution. Thus, the Judiciary can annul any order passed by the legislature or the executive if the order is in conflict with the Constitution of the country.

Irish Constitution

Part IV, Directive Principles of State Policy (DPSP), the method of election of President, candidature to Rajya Sabha and the mandate standards of state strategy have been adopted from the constitution of Ireland.

Canadian Constitution

An interesting point here is that the same British parliament which passed the Government of India Act, 1935 also made the constitutional laws for Canada. The provisions regarding the Federation, the appointment of

governors by the centre, advisory jurisdiction of the Supreme Court under Article 143, necessary obligations under article 51-A and the residuary powers with the centre under Article 248 have been sourced from Canada.

Australian Constitution

Indian Constitution has not taken much from Australia but "freedom of trade and commerce", the Concurrent list and joint sitting of the two houses of Parliament has been sourced.

Weimar Constitution

It is the constitution of Germany and the suspension of fundamental rights during emergency has been borrowed from Germany.

Soviet Constitution

India has borrowed the principles like fundamental duties and the ideals of social, economic and political justice found in preamble. It is known for its socialism and since India is a welfare state it borrowed from Soviet constitution.

French Constitution

The ideals of liberty, equality and fraternity which in preamble is taken from France. Apart from these Republic characters from the Constitution, balance and brotherhood and beliefs of freedom is also taken from the constitution of France.

Timeline of Amendments in the Indian Constitution

In order to have a better insight, it would be feasible here to delve into a comparative study of frequency of amendments or amendment rates in some selected countries. The country like Germany, Sweden, Austria and Portugal has the highest amendment rate where Portugal projects an amendment rate of 6.67 followed by Austria which is almost 6.3. This shows the extreme flexible nature of their Constitutions. On the other hand, the Constitutions of Japan, Denmark, Australia and United States have an annual amendment rate which is almost negligible thereby making the constitution rigid. Indian Constitution shares its amendment rate with countries like Luxembourg (1.8), Belgium (1.32) and Norway (1.12) which are representative of Constitutions with a moderate amendment rate.

This Table depicts amendment rate of various countries as follows:

Sr No.	Country	Year of Adoption of Constitution	Total number of Amendments	Amendment Rate	Remarks
1.	USA	1789	27	Almost 0%	Amendment

	Japan Denmark Australia	1947 1953 1901	Nil NA 08		Rate negligible
2.	Luxemberg Belgium Norway India	1868 1831 1814 1949	27 29 NA 105	1.8 1.32 1.12 1.43	Moderate Amendment Rate
3.	Portugal Austria	1976 1920	NA NA	6.67 6.3	Higher Amendment Rate

Thus, it can be established now that all over the world, Constitutions are neither immutable and nor are they renegotiation proof. They need to be and often are altered over time to respond to changes in the political, social or economic environment in which they are operating.

OBJECTIVE AND RESEARCH METHODOLOGY OF THE STUDY

The objective of the present study is to assess the historical overview of constitutional Amendments. The present research work is doctrinal in nature. A systematic and descriptive methodology has been adopted for the present study. This paper is based on secondary sources including online publications, books and article**,** Journals, Magazines, Digests and different periodicals having reference to the present examination.

AN OVERVIEW OF CONSTITUTIONAL AMENDMENTS

The Constitution (First Amendment Act), 1951

The momentous First amendment amended 9 articles and added two additional articles as well a new Schedule. By way of amendment, it added cl. (4) to Article 15, substituted cl (2) of Article 19, inserted Articles 31A and 31B after Article 31, substituted Article 85 and added Ninth schedule[1].

[1] H.K. Saharay, The Constitution of India---An Analytical Approach, Eastern Law House, New Delhi, 2012, p. 1301

It established the precedent of amending the Constitution to overcome judicial judgements that were impeding fulfilment of the government's perceived responsibilities to the seamless web and to particular policies (Reservation to socially and educationally backward classes, land reforms and ceiling , reasonable restrictions in Art 19) and programmes.[2]

This was introduced in the Provisional Parliament by the founding fathers of the constitution after one and a half years from the coming into force of the Constitution. It was eventually passed on June 18, 1951. This amendment majorly dealt with three Fundamental Rights, viz. The Right to Equality, Right to Freedom and Right to property whereby the main objects of the Act was to amend article 19 and to introduce provisions that would secure and shelter the constitutional validity of zamindari abolition laws in general and certain State acts in particular.

The legislative history of the amendment dates back to the first fifteen months of the working of the Constitution where certain intricacies had been brought to light by judicial decisions and pronouncements especially with regard to fundamental rights. Hence the amendment to Article 19 came as a natural sequel to the SC's decision in ***Romesh Thapar v. State of Madras***[3] wherein it was held that "freedom of speech and expression " under Article 19(1) (a) was so comprehensive so as not to render a person culpable even if he advocated murder and other crimes of violence. Insertion of clause 4 in Art 15 by first constitutional amendment was to neutralise the decision of **State of Madras v. Champakam Dorairajan** AIR 1951 SC226.

The Constitution (Second Amendment Act), 1952

The commencement of the second amendment became necessary for the delimitation of the Parliamentary constituencies on account of 1951 census. This act was initiated by Shri C.C. Biswas, Minister of Law and Minority Affairs on May 19, 1952. By virtue of this amendment, the representation scale for election to the Lok Sabha was readjusted. The pristine article 81(1) (a) prescribed an absolute limit of 500 elected members in the Lok Sabha and article 81 (1) (b) provided that the State would be divided, clustered and organized into territorial constituencies. In addition to this the number of members to be allotted to each constituency would be so determined so as to ensure that there was not less than one member for every 750, 000 of the population and not more than one member for every 500, 000 of the population. As a follow-up, seats were allotted in the House of the people to Part A & Part B on the basis of one member for every 7.2 lakhs of the estimated population which amounted to a total of 470 members to these States.[4]

Besides delimitation the second amendment also inaugurated the policy of Affirmative Discrimination called Reservation in order to bring the socially and economically backward segments of the society in the mainstream. For this the seats in the Lok Sabha and the State Assemblies for Schedule Castes and Schedule tribes were reserved.

The State of Nagaland which came into existence in (1963) and Meghalaya (1971) are predominantly tribal.

[2] Granville Austin, Working a Democratic Constitution, Oxford University Press, New Delhi, 1999, p.97
[3] AIR 1950 SC 124
[4] AIR 1950 SC 124

It would be anomalous if reservation of seats is made for them in these states. The 23rd amendment in respect of Nagaland and 31st amendment in respect of Meghalaya (80.5% as per 1971-census), Arunanchal Pradesh (79.0% as per 1971-census) and Mizoram (94.3% as per 1971-census) lay down that in these States no reservation to be made for the SC and ST.

The 51st amendment amends article 330 relating to reservation of seats for Schedule Tribes and Schedule Castes in Lok Sabha and Article 332 relating to reservation of seats for SC and ST in State assemblies. In Article 330 for sub-clause (b) the following sub clause has been substituted: "The Schedules Tribes except the Scheduled Tribes in the autonomous districts of Assam."

In article 332(1) for the words except the Schedule Tribes in the tribal areas of Assam, Nagaland and Meghalaya, the words "except the Schedule tribes in the autonomous districts of Assam" shall be substituted. It has also been stated that this amendment shall not affect any representation in the Legislative Assembly of the State of Meghalaya until the dissolution of the Legislative assembly of the State of Nagaland or the State if Meghalaya existing at the commencement of this amendment. The 57the amendment further amends article 332 by adding a new clause (3a).

The Constitution (Fourth Amendment Act), 1955

This amendment did not break the existing constitutional pattern in any manner. Rather the Act in the main amends articles 31, 31A and 305 and as a corollary to the amendment of article 31A enhances the Ninth Schedule by the inclusion of some more Acts. This amendment was devised to nullify the decision in Bela Banerjee's case (AIR 1954 SC 170) by making the adequacy of compensation paid by the state for acquiring private property non-justiciable in name of social justice.

Introduced by Shri Jawaharlal Nehru on 17-12-1954 this amendment came in the wake of some decisions which the Supreme Court had given whereby the meanings to clauses (1) and (2) of Article 31 were widely enhanced.[5] While moving the Bill for reference to the Select committee, Nehru declared that when the country was aiming at changes in its social structure, one could not think in terms of giving what was called full compensation. Explaining the object of the Fourth Amendment, he observed that no arbitrary confiscatory or expropriatory action was contemplated. Acquisition of property should be according to law and quantum of compensation should be decided by legislature and not by courts.[6] In 1954 there were two important decisions of the Supreme Court on the provisions of Article 31 (2).

Consequently, the Constitution (Fourth Amendment) Act 1954 was enacted in the background of these cases. It amended Article 31(2) so as to except the adequacy of compensation from judicial review. Concomitantly it added a new clause to Article 31 to the effect that where a law does not provide for the transfer of ownership or right to possession of any property to the State, it shall not attract the 'eminent domain ' provision for payment of compensation.

[5] State of West Bengal v. Bela Banerjee, AIR 1954 SC 110; Dwarkadas Shriniwas v. Sholapur Spinning Co. Ltd., AIR 1954 SC 119; State of West Bengal v. Subodh Gopal Bose, AIR 1954 SC 92 SCR 587

[6] India Lok Sabha Debates, 14 March 1955, col. 1951

Article 31A of the Constitution was amended further to extend its domain to cover categories of essential welfare legislation like abolition of zamindari; proper planning of urban and rural areas and for affecting a full control over the mineral and oil resources of the country, etc. In other words this amendment was in the nature of a regulatory economic measure. It made the legislature the soul judge of the quantum of compensation. Secondly it could enable the state to take over management of sick industrial units for a regulatory purpose. Despite the differences in the wording of the two clauses, they were regarded as dealing with the same subject. It was basically to smoothen the way for the advent of a socialistic economy.

The Constitution (Seventeenth Amendment Act), 1964

The spark for this amendment emerged in response to a Supreme Court decision. The Supreme Court declared Madras Land Reforms Act as ultra vires which fixed ceiling on landholdings. Therefore the government had to introduce the bill for the seventeenth amendment. It was the last to be enacted in the array of those amendments which were aimed at the abolition of zamindars and other intermediaries. The later amendments that followed appended state land laws to the Ninth schedule. The Seventeenth amendment was framed to overcome the definitional anomalies that arose because of the term 'estate'. With this amendment the term 'estate 'was broadened to include tenure systems like inam, jagir and land held under Ryotwari settlement. This Act thus modifies the definition of "estate" in Article 31A and also luridly revealed how the Central government and the State Governments were abusing the Ninth schedule.

This Act further embedded 44 new entries in the Ninth Schedule in the context of agrarian reforms. The validity of the seventeenth amendment act was challenged in Sajjan Singh and Golak Nath. In the former case, the validity was sought to be impugned on a procedural aspect: the plea being that an amendment for the inclusion of a state statute in the Ninth schedule affected the jurisdiction of the High Court and as such it fell within the entrenched provisions of Article 368 and could not be enacted without ratification by the states. The plea did not materialize[7].

In Golak Nath the amendment was challenged on the substantive ground that Fundamental Rights were immune from the amendatory power in article 368. It might be noted here that although the Golak Nath judgment was seen as a trespass in the sphere of its parliamentary sovereignty, this remained free from the strain of power politics. In the Golak Nath case[8], the Supreme court reversed by a narrow majority, its own earlier decisions upholding the power of Parliament to amend all parts of the Constitution including part III relating to Fundamental Rights. The result of the verdict was that Parliament was considered to have no power to take away or curtail any of the Fundamental rights even if it became necessary to do so for giving effect to the directive principles of State policy and for the attainment of the objectives set out in the Preamble to the Constitution.

The Constitution (Twenty-fifth Amendment) Act, 1971

Introduced by H.R.Gokhale, Minister of Law and Justice this amendment further amended Article 31 in the

[7] Sajjan Singh v. State of Rajasthan, A.I.R. 1965 S.C. 859.
[8] 1967 (2) SCR 762

wake of the Bank Nationalisation case. The Statement of Aims and Objects attached to the Twenty-fifth Amendment Bill suggested the reasons why the government brought forward this measure:

> "In Bank Nationalisation case, the Supreme Court has held that the Constitution guarantees right to compensation i.e. the equivalent in money of property compulsorily acquired. Thus in effect the adequacy of compensation and the relevance of the principles laid down by the legislature for determining the compensation has virtually become justiciable in as much as the Court can go into the question whether the amount paid to the owner of the property / is what may be regarded reasonable as compensation for loss of property. In the same case, the Court has held that a law which seeks to acquire or requisite property for a public purpose should also satisfy the requirements of Article 19(1)(f). The Bill seeks to surmount the difficulties placed in the way of giving effect to the Directive Principles of State Policy by the aforesaid interpretation."

Law Minister H.R.Gokhale explained that the insertion of Article 31(c) in the Constitution would give primacy to the Directive Principles of State Policy and limit property rights in a manner that vested interests did not take shelter under the Fundamental Rights and block any progressive legislation. Explaining the purpose of the Amendment, he maintained that, in an amended Constitution, the judiciary would not be called upon to sit in judgement over political issues, but confine itself to the task of legal interpretation of the Constitution. S.S. Ray, Union Education Minister observed that the Bill was constitutionally correct, economically essential, politically proper and morally just.[9]

The Constitution (Twenty -Sixth Amendment) Act, 1971

The concept of ruler ship, with privy purses and special prerogatives which were unrelated to the social purpose were held irreconcilable with the spirit of an egalitarian social order. Thus, with the passage of time, there developed a widespread sentiment in the country that the princely privileges had become anachronistic and that the privy purses should be abolished. Government of the day therefore decided to terminate the privy purses and the exclusive privileges of the Princes of the erstwhile Indian states. On May 6, 1970 a bill called the Twenty-Fourth Amendment Bill was introduced in the Lok Sabha by Home Minister Y.B. Chavan for abolishing the privy purses and other privileges that the ex-rulers enjoyed, in conformity with the socialistic policy included in the ten-point programme that the AICC had adopted at New Delhi in June 1967. The AICC resolution referred to the privy purses and privileges as:

> "Incongruence with the concept and practice of democracy. The A.I.C.C.is of the view that the government should examine it and take steps to remove them."

This was buttressed by Prime Minister Indira Gandhi described the Bill as a historic step in democratization of Indian social and political life. The Bill according to the Prime Minister represented the momentum for social change in the country.

Apart from amending the relevant provisions of the Constitution, a new article 363A was inserted so as to

[9] Lok Sabha Debates, November30, 1971, col. 226

terminate expressly the recognition already granted to such rulers and to abolish privy purses and extinguish all rights, liabilities and obligations in respect of privy purses. This Amendment was passed as a result of Supreme Court decision in Madhav Rao's case[10] and came into being on December 28, 1971.

The Constitution (Twenty Seventh Amendment Act), 1971

Enacted by the Parliament in the twenty- second year of the Republic of India, it gives effect to the schema of reorganization of the North - Eastern areas whereby it was proposed that the Union territory of Mizoram contemplated under the scheme should have a legislature and a Council of Ministers. It was proposed to achieve this object by including the Union territory of Mizoram in article 239A of the Constitution where it shared the space with Goa, Daman and Diu and Pondicherry. To meet this provision a new article 239B was inserted which conferred on the administrator the power to promulgate ordinances.

The Constitution (Twenty -Ninth Amendment) Act, 1972

The Kerala Land reforms Act, 1963 is the leading land reform law in the State of Kerala and was included in the Ninth Schedule to the Constitution. In the course of its implementation, the State Government had encountered grave difficulties.

The Supreme Court in its judgments upheld the scheme of land reforms as envisaged in the principal act and at the same time agreed with the High Court invalidating certain crucial provisions. It was therefore proposed to include the Kerala land reforms (Amendment Act), 1969 and the Kerala Land Reforms (Amendment Act) 1971 in the Ninth schedule to the Constitution so that they might have the protection under article 31B and any fogginess that might arise in regard to the validity of those Acts was removed.

The Constitution (Thirty -Ninth amendment) Act, 1975

This amendment defies all classification. This was enacted in the context of Indira Gandhi case when the adjudication of her appeal against the decision of the Allahabad High Court was pending with the Supreme Court. This act inserted article 329A in Part XV of the Constitution. Article 329A sought to create a separate forum for arbitration of election petitions relating to persons holding the office of the President, the Vice President, the Prime minister and the Speaker of Lok Sabha.

Clause (1) of this article provided that the election of persons who hold office of the Prime minister or speaker of Lok Sabha shall not be called into question except before an authority and under a law providing for these matters, as may be provided under article 329A. According to clause (2) neither the legality of such a law nor the verdict of any authority or body constituted there under shall be subjected to inquiry in any court of law. Clause(3) provided that the pending election petitions in respect of such personages shall "abate" or subside if they are elected, in the interim, to the position of Prime Minister or Speaker :in such cases the election may be questioned under such law and before such authority as may be especially created under article 329A.

[10] Madhav Rao Scindia v. Union of India, AIR 1971 SC 530

This amendment also embedded 38 new entries in the Ninth Schedule mostly unconnected with agrarian reforms. Recourse was had in the past to the ninth schedule whenever it was found that progressive legislation conceived in the interests of the public was jeopardized by litigation. Between 1971 and 1973 legislation was enacted for nationalizing coking coal and coal mines for conserving these resources in the interests of steel industry. These were challenged on the ground that they were illegal. A similar fate struck the sick textile undertakings which were later nationalised in 1974. To prevent smuggling of goods and diversion of foreign exchange which affected national economy, Parliament enacted legislations which were challenged in the Supreme Court and the High Courts. These enactments were not only constitutionally sheltered under article 31B but were proposed to be included in the Ninth schedule. Certain state Legislations relating to land reform and ceiling on agricultural land holdings have already been included in the Ninth Schedule.

The Constitution (Forty -Second Amendment) Act, 1976

Of all the amendments that have been inked so far, this amendment turned out to be the most exhaustive and comprehensive and very meticulously crafted. This amendment was couched essentially for the purpose of giving effect to the recommendations of Swaran Singh Committee. It undertook the mammoth task of spelling out expressly the high ideals of socialism, secularism and the integrity of the nation, to make the Directive principles paramount and to give them precedence over those fundamental rights so that the likelihood of any kind of Constitutional atrophy could be evaded.

This is a voluminous enactment which affected the institutional structure of the Constitution in a drastic way and ushered in many sweeping changes in the Constitutional landscape. These changes are listed below:

1. The 42nd amendment has substituted the following words in the Preamble" Sovereign Democratic Republic" with the words "Sovereign Democratic Secular Socialist Republic"[11]

2. The Directive Principles in Part IV were given primacy over fundamental Rights in Part III.Granville Austin says that the core of the commitment to social revolution lies in Part III and Part IV and these together are the heart of the Constitution . The amendment was a complete reversal of the constitutional scheme as regards the inter-relation and equation between these two fundamental constitutional mandates. Later in Minerva Mills, this amendment was declared invalid. The 42nd amendment introduced three new directives. The first relates to "equal justice and free legal aid", the second to "participation of workers in management and industries" and the third to "protection and improvement of environment and safeguarding of forests and wild life" This amendment also inserted a new clause to Article 39 which provides that childhood and youth are to be protected against exploitation and against moral and material abandonment and children are given adequate opportunities to enable them to grow in a healthy atmosphere and with freedom and dignity. These were some of the sanctimonious hopes expressed by the Fifth Parliament so that the country could become a "Socialist Republic".

3. A new provision (Article 31D) in respect of anti -national activities was inserted. Soli Sorabjee said

[11] Clauses 16 and 29(b) of the 42nd Amendment Act, 1976

that its real aim was to suppress dissent and political opposition under the guise of anti-national activity He regarded this article as the official liquidator of democracy.

4. Detailed changes were made in the structural pattern of judicial power of the Supreme Court and the High Courts.

5. The Prime Ministerial regime was further fortified and efforts were made to perpetuate the existing regime to that end:

a) The advice of the Council of Ministers was made binding on the President.

b) The production of rules made for the transaction of the business of Government was exempted from the scrutiny of the courts.

c) The tenure of the Lok Sabha including that of the existing Lok Sabha was increased to six years.

d) The quorum restrictions as to the proceedings of the Parliament were removed. The decision about it was put in the hands of the Parliament.

e) The Emergency provisions were rehashed to give them more teeth.

6. The Indian Constitution was already considerably centralized. The amendment centralized it further and that in areas of key importance. Under a new provision the center could deploy armed forces in a State for dealing with any grave situation of law and order.

7. Some vital subjects and legislative powers of the States were transferred to the Concurrent List.

8. In order to assert the supremacy of the Parliament in the field of constitutional reform, Article 368 was amended to that effect to overrule Kesavanand.

9. To top it all, the President was vested with unbound powers for a period of two years to make such provisions which included any modification of any provision of the Constitution as may be needed or found expedient for removing any difficulty in giving effect to the new amendment.

This analysis shows that the Forty -Second Amendment act involved the most gruesome use of constituent amending power which was nothing but a calculated attempt to concentrate power in the guise of social revolution.

The Constitution (Forty-Third Amendment Act), 1977

The Constitution (Forty Second amendment act), 1976 inserted various articles in the constitution to curtail, both directly and indirectly the jurisdiction of the Supreme Court and the High Court to review the constitutionality of laws. This Act thereby provided for the reinstatement of the jurisdiction of the Supreme Court and High Courts, curtailed by the enactment of the Constitution (Forty-second Amendment) Act, 1976

and accordingly Articles 32A, 131A, 144A, 226A and 228A included in the Constitution by the said amendment, were omitted by this Act. The Act also provided for the omission of Article 31 which conferred special powers on Parliament to enact certain laws in respect of anti-national activities.

The Constitution (Forty-Fourth Amendment Act), 1979

The outstanding achievement of Janta government was that it brought about the 44th amendment to the Constitution in order to give economic justice to the people . Therefore, it implemented its promise by inserting Cl. (2) in Article 38 of 44th Constitution amendment act 1978. Another aim of this amendment was to restore the status quo ante which existed prior to the Forty -Second Amendment. General election held in 1977 led to the displacement of the Emergency regime. Being a comprehensive corrective to the Emergency era amendments, it made changes in article 31C (which was the subject of much litigation in the Congress regime as the Zamindars did not want the elimination of Zamindari), article 368 and the State List and Concurrent List and simultaneously as a restorative act it reinstated the status quo ante. In this process, many offensive entries in the Ninth Schedule were deleted. There were other aspects of this amendment which have a merit of their own and deserve mention:

1. The right to property, which had been the bete noire of painful constitutional wrangles was removed from Part II and converted into a normal legal right. The Constitution (44th Amendment) Act of 1978 repealed the right to property under Article 19(1) (f) and Article 31 altogether. Article 31(1) was made a separate Article 300A reading:

   "No person shall be deprived of his property save by authority of law." Thus Article 31(1) ceased to be a fundamental right but became a constitutional right under Article 300A. The rest of Article 31 was totally repealed except the proviso dealing with minority education institutions has been transferred to Article 30(1A).

2. The Provisions of Article 22 were tailored to provide for greater and tangible safeguards in the operation of preventive detention laws.

3. A provision has been made whereby the President may require the Council of Ministers to reconsider the advice tendered by them but he is bound to act on the advice tendered by them after reconsideration. Just like the British Monarch, the President of India can now exercise the prerogative to advise, warn and encourage.

4. Many extensive changes have been made in the Emergency provisions (articles 352, 356, 358, 359 and 360)[12] to provide for substantive and procedural safeguards against their misuse. Also, the enforcement of Right to Freedom under articles 20 and 21 cannot be suspended by the President under article 359 during the period of an emergency.

5. A new provision (article 361 A) has been made to provide for protection of publication of proceedings

[12] AIR 2007 SC 1753

of Parliament and State Legislatures.

The Constitution (Forty-Fifth Amendment) Act, 1980

This was passed to extend safeguards in respect of reservation of seats in Parliament and State Assemblies for Scheduled Castes, Scheduled Tribes as well as for Anglo-Indians for a further period of ten years.

Constitution (Fifty-first Amendment) Act, 1984

Article 330 has been amended by this Act for providing reservation of seats for Scheduled Tribes in Meghalaya, Nagaland, Arunachal Pradesh and Mizoram in Parliament and Article 332 has been amended to provide similar reservation in the Legislative Assemblies of Nagaland and Meghalaya to meet the aspirations of local tribal population.

The Constitution (Fifty Second amendment Act), 1985

This act in effect puts a blanket ban on defections. By this amendment Articles 101, 102.190 and 191 were suitably amended so as to insert the Tenth schedule to the Constitution dealing with the provisions as to disqualification on ground of defection. The law applies not merely to those MPs and MLA's who are returned to the house on the ticket of a political party but also those who are returned as independent candidates as well as to the nominated members.. However, it is possible that the political party whose whip he had defied may condone his action, but then such condonation has to be made within fifteen days of his defiance of the whip. In the case of existing MP or MLA at the time of the commencement of the amendment, they will be deemed to belong to the political party whose members they were at the time of the commencement of amendment.

The Constitution (Sixty-second Amendment) Act, 1989

Article 334 of the Constitution lays down that the provisions of the Constitution relating to the reservation of seats for the Scheduled Castes and the Scheduled Tribes and the representation of the Anglo-Indian community by nomination in the Lok Sabha and in the Legislative Assemblies of the States shall cease to have effect on the expiry of a period of 40 years from the commencement of the Constitution. The Act amends Article 334 of the Constitution to continue the reservation for the Scheduled Castes and the Scheduled Tribes and the representation of the Anglo-Indians by nomination for a further period of 10 years.

The Constitution (Sixty-fifth Amendment) Act, 1990

Article 338 of the Constitution provides for a Special Officer for the Scheduled Castes and Scheduled Tribes to investigate all matters relating to the safeguards provided for the Scheduled Castes and Scheduled Tribes under the Constitution and to report to the President on their working.

The Constitution (Seventy Third Amendment Act), 1992

Probably the most revolutionary constitutional amendment of the latter half of the century relates to the

establishment and reinforcement of the Panchayati Raj System. This was the cherished dream of Mahatma Gandhi which was given the constitutional status in Article 40 of the constitution. The amendment in essence constitutionalized Panchayats as the third stratum of government at and below the district level and inaugurated muti-tier federalism in India. The most visible impact of this amendment was felt in the enhanced participation of women in policy making. The 73rd Constitutional amendment bills passed in 1992 by the Parliament marks a major event in the lives of Indian women as amendments ensure one –third of total seats i.e. 33.3% for women in all elected offices of local bodies.

The 73rd amendment introduced a new part, Part IX to the Constitution relating to the Panchayati Raj system. The 73rd amendment act stipulates to do the following:

1. It is made obligatory for all the states to establish a three tier system of local self-government institutions at the village, intermediate and district level, though states having a population of less than 20 lakhs are exempted from the obligation of establishing Panchayat at the intermediate level.

2. All the seats in all the tiers shall be filled by direct election on the basis of adult franchise. However members of the Lok Sabha, Vidhan Sabha and Chairpersons of the Panchayat at intermediate level may be nominated through such members shall not have any voting rights.

a) It lays down that reservation of seats for the Schedule Castes, the Schedule Tribes and Women in the Panchayat at all levels. 30% are to be reserved for women whereupon the reserved seats whereupon reserved seats for women will be allotted by rotation to different constituencies in a Panchayat.

3. Reservation of seats for the schedule caste and schedule tribes will be made so as to bear, as nearly as possible. Where the number of reserved seats for the SC and ST is not more than two, then one seat out of these will be reserved for women belonging to the SC and ST, as the case may be. With the exception of reservation of women, other reservations will continue only in terms of Article 334.

It goes without saying that with this amendment decentralisation soon began to be seen as an alternative system of governance, where a 'people centred' approach to resolving local problems is followed to ensure social and economic justice. According to Rajni Kothari "In effect, decentralisation should be seen as an important correlate of development policies to equip local groups and bodies to become qualified members of the global village."

The Constitution (Seventy- Fourth) Amendment Act, 1992

In order to provide the common framework for urban local bodies and help to strengthen the functioning of the local bodies as effective democratic units of self-government, Parliament amended the constitution (74th Amendment Act 1992) and provided constitutional status to "municipalities" which are of 3 types: Nagar Panchayat-for transitional area (an area which is being transformed from rural to urban area), Municipal Council for a smaller urban area, and Municipal Corporation for a larger urban area.

Through this amendment Part IX A has been added to the constitution along with a schedule (12th schedule).

This means that now constitution of India sets out clear guidelines on the following:

- Composition of municipalities
- Composition and constitution of Ward Committees, District planning committees and Metropolitan Planning committee.
- Reservation of seats for SCs/ST and Women,
- Power, authority, duration, dissolution and elections of the municipalities,
- Constitution of State Finance Commission

Besides, Schedule 12 lists down 18 subjects on which it can formulate its policies and execute it. However, as mentioned earlier Local government is the "State Subject" therefore based on these constitutional guidelines states were required to make a law for the functioning of the respective states. All the states (except the 4 North East states where the act does not apply- Arunachal Pradesh, Meghalaya, Mizoram and Nagaland) have constituted Municipalities in their states and they conduct regular elections.

The Constitution (Seventy-sixth Amendment) Act, 1994

The policy of reservation of seats in educational institutions and reservation of appointments or posts in public services for Backward Classes, Scheduled Castes and Scheduled Tribes has had a long history in Tamil Nadu dating back to the year 1921. The extent of reservation has been increased by the State Government from time to time, consistent with the needs of the majority of the people and it has now reached the level of 69 per cent (18 per cent Scheduled Castes, one per cent Scheduled Tribes and 50 per cent Other Backward Classes).

The Supreme Court in ***Indira Sawhney and others vs. Union of India and others*** (AIR, 1993 SC 477) on 16 November 1992 ruled that the total reservations under Article 16(4) should not exceed 50 per cent.

The Constitution (Seventy-seventh Amendment) Act, 1995

The Supreme Court in its judgment dated 16 November 1992 in the case of Indra Sawhney and Others vs. Union of India and others, however, observed that reservation of appointments or posts under Article 16(4) of the Constitution is confined to initial appointment and cannot extend to reservation in the matter of promotion. In view of the commitment of the Government to protect the interests of the Scheduled Castes and the Scheduled Tribes, the Government have decided to continue the existing policy of reservation in promotion for the Scheduled Castes and the Scheduled Tribes. To carry out this, it was necessary to amend Article 16 of the Constitution by inserting a new clause (4A) in the said Article to provide for reservation in promotion for the Scheduled Castes and the Scheduled Tribes.

The Constitution (Seventy-ninth Amendment) Act, 1999

Article 334 of the Constitution was amended with a view to extend the period of reservation of seats for

Scheduled Castes, Scheduled Tribes and to the Anglo-Indian community by nomination in Parliament and in the State Legislatures for a further period of ten years 65i.e. the words "fifty years" have been substituted with "sixty years".

The Constitution (Eighty-Sixth Amendment Act), 2002

A number of recent efforts have been initiated in India to make elementary education a fundamental right for every child. Prior to the 86th amendment Act, 2002 three articles in the Constitution were very crucial for the children. These were articles 24, 39 and 45 dealing with prohibition of children from being employed in factories, mines or in other hazardous employment; development and protection of the tender age of children and free and compulsory education.

With the passing of the 93rd Constitution amendment Bill by the Lok Sabha, on 27th November 2001 and then by the Council of States (Rajya Sabha), on 14th of May 2002, a major stride was witnessed in the evolution of the 93rd Constitution Amendment Bill into the 86th Constitution amendment Act. Subsequent to the amendment, the following article is inserted after Article 21 of the Constitution, namely:

1. "Art 21A. The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine."

2. Similarly the content of the Article 45 of the Constitution is substituted to encompass Art "45. The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years."

4. In Article 51 A of the Constitution, after clause (j), the following clause has been added:

5. "(k) Who is a parent or guardian to provide opportunities for education to his child or as the case maybe, ward between the age of six and fourteen years."

The underlying concern of this Amendment is that what is required today is not just legislation but a progressive piece that will enforce the rights of every child to quality education.

The Constitution (Ninety-third Amendment Act), 2005

This amendment seeks to promote and provides greater access to higher education including professional education to a large number of students belonging to the socially and educationally backward classes of citizens i.e. the OBC's or of the Scheduled Castes and Scheduled Tribes[13]. To achieve this purpose, this amendment was enacted to amplify Article 15 where a new clause (5) was inserted in Art 15 , it shall enable the Parliament as well as the State Legislatures to make appropriate laws so that the students belonging to the aforesaid categories can gain admission in private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of Article 30. The same was even upheld by

[13] Gopa Sabharwal, op. cit., p.352

the Supreme Court in **Ashok Kumar Thakur v. Union of India,2008.**

The Constitution (88th Amendment Act), 2003

Service tax collected and appropriated by the Union and States, levied by the Union. The Act amends Articles 268, 270 and VIIth schedule.

The Constitution (92nd Amendment Act), 2003

The amendment encourages the inclusion of Bodo, Dogri, Maithili, and Santhali into the constitution's VIIIth Schedule. The number of languages in the VIIIth Schedule ascends to 22 with the inclusion of these four languages.

The Constitution (95th Amendment Act), 2010

The amendment aims to expand the quota of seats in the Lok Sabha and States for SCs and STs, legislatures from 60 to 70 years.

The Constitution (96th Amendment Act), 2011

Replaced Odia for Oriya in Indian Constitution 8th Schedule.

The Constitution (97th Amendment Act), 2012

Added the words "or cooperative societies" in Article 19(l)(c) after the word "or unions" and the insertion of Article 43B i.e., Promotion of cooperative societies and added Part-IXB i.e., Co-operative societies. The amendment aims to promote cooperative economic activities which in effect support rural India develop. It is required not only to ensure the independent and democratic operation of cooperatives but also to make the management accountable to members and other stakeholders.

The Constitution (99th Amendment Act), 2014

It called for the setting up of the National Judicial Commission.

The Constitution (100th Amendment Act), 2015

Exchange of other enclave lands with Bangladesh. Conferring citizenship rights to enclave residents arising from the signing of the Treaty of Land Boundary Agreement (LBA) between India and Bangladesh.

The Constitution (101st Amendment Act), 2016

Goods and Services Tax (GST) commenced on 8 September 2016 with the enactment and subsequent notices of the 101st Constitution Amendment Act, 2016.

The constitution incorporated Articles 246A, 269A, and 279A. The amendment allowed amendments to the

constitution's 7th cycle. Union List entry 84 earlier contained duties related to cigarettes, alcoholic liquors, marijuana, Indian hemp, medicines and drugs, medicinal and bathroom arrangements. Petroleum oil, high-speed gasoline, engine spirit (petrol), natural gas, and air turbine power, cigarettes, and cigarettes goods should be listed following the amendment.

Entry 92 has been removed (newspapers and ads published therein), they are now under GST. Entry 92-C (Service Tax) is now deleted from the list of unions. Entry 52 (entry tax for in-state sale) has now been removed from the State register.

The Constitution (102nd Amendment Act), 2018

The bill seeks to give the National Commission on Backward Classes a constitutional status. It seeks to insert into the constitution a new Article 338B which provides for NCBC, its mandate, composition, functions, and various officers. Inserted a new Article 342-A that empowers the President to notify that state/union territory 's list of socially and educationally backward classes.
103rd Constitutional Amendment Act, 2018

The Constitutional (103rd Amendment) Act got the assent of President of India on 13th January, 2018. The bill was passed in Lok Sabha by 323 members voting in favor and 3 members against the bill. It was subsequently passed by Rajya Sabha with 165 members in the favor and only 7 members against the bill.

- It provides reservation of jobs in central government jobs as well as government educational institutions. It is also applicable on admissions to private higher educational institutions.
- It applies to citizens belonging to the economically weaker sections from the upper castes.
- This reservation is "in addition to the existing reservations and subject to a maximum of ten per cent of the total seats in each category".

Article 15 (6) is added to provide reservations to economically weaker sections for admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of Article 30. The amendment aims to provide reservation to those who do not fall in 15 (5) and 15(4) (effectively, SCs, STs and OBCs). Article 16 (6) is added to provide reservations to people from economically weaker sections in government posts.

Constitutionality of Constitutional (103rd Amendment) Act, 2018

In *Janhit Abhiyan V. Union of India* , the Supreme Court by 3:2 majority upheld 103rd Constitutional amendment on 07th Nov 2022.

(1) Special provisions Art 15 (6) & Art 16 (6) based on objective economic criteria is per se not violative of the basic structure & the Equality code. In-fact 103rd Constitutional Amendment world further the Preambular vision of economic justice.
(2) Reservation in Private Institutions is not violative of basic structure.

(3) Exceeding 50% ceiling by 103rd Constitutional Amendment does not violate basic structure.
(4) Expanding Doctrine of Equality.
(5) Economic criteria as sole basis for affirmative action does not violate basic structure. New dimension & deviation from earlier styand.

104th Constitutional Amendment Act

This Act ceased the reservation of seats for Anglo-Indians in the Lok Sabha and State Legislative assemblies and extended reservations for SCs and STs for up to ten years. Ravi Shankar Prasad, Minister of Law and Justice, introduced this amendment bill in the Lok Sabha on December 9, 2019. The bill attempted to amend the Constitution's Article 334.[14]

On January 21, 2020, the President of India Ram Nath Kovind gave his assent to the law, which was then published in the Gazette of India the next day. The amendment came into effect on January 25, 2020.

105th Constitutional Amendment Act

It amended Art 342 A to state the power of the President to specify the socially and educationally backward classes in the central list of the Central Govt.

(1) It restores the power of state Govt to recognise OBCs that are socially and educationally backward.
(2) The centre has nothing to do with the State list of backward classes or the State Govt' power to declare a community backward.
(3) This Act is to create a central list that would be applied only to the central Govt & its Institutions.
(4) This Act furthers social empowerment.
(5) The Constitutional Amendment 102nd gave constitutional status to the National Commission for the Backward Class (NCBC), It was interpreted by the Supreme court that 102nd amendment had taken away the State'right to identity the SEBCs. Hence 105th Amendment cleared the position of State power in this regard.

Conclusion

It is evident in the study that the Indian democracy has been abreast with the times and has metamorphosed progressively and affirmatively. Endogenously the amendments have inserted, substituted, omitted and amended Articles and Schedules. The wide spectrum of amendments beginning from Land reform legislation, Fundamental rights to reformations regarding reservation (popularly called the Policy of affirmative discrimination) to the Panchayati Raj system and the most recent one dedicated to the cause of education (RTE) have a compound impact on erecting a Constructive and Sustainable democratic nation. In addition to this, the discourse on amendments has also confirmed that the quantitative rise in the number of amendments has had an optimistic impact and mitigated the risk of constitutional hazards which involve replacement or overhauling of the current Constitution. The amendment procedure in-fact gives & extends the life of living & dynamic

[14] https://indianexpress.com/article/explained/anglo-indian-quota-history-mps-6164232/

constitution as per need of present & future generation.

REFERENCES

Case Laws

1 Indian Constitution: Property Rights and Social Reform, The Comparative Constitutional Law, Merillat, YCL Ohio St. LJ 1960

2 AIR 1951 SC 458 11

3 1965 AIR 845

4 1967 AIR 1643

5 Anwar Hossain Chawdhary v. Bangladesh,41 DLR 1989 App Div 165

6 DarweshAnbey v. Federation of Pakistan ,PLD 1980 Lah 206;Suleiman v. President ,Special Military Cant., NLR 1980 Cir. Quetta 873

7 Indira Nehru Gandhi v. Rajnarayan, 1975 AIR 865

8 T.R. Andhyarujina, The untold story of 'Kesavanand Bharati ' and the Basic Structure Doctrine survived and attempt

9 A.I.R. 1980 SC 1789

10 Minerva Mills Ltd. and Ors. vs Union Of India and Ors., (1980)3SCC 625

11 (2007) 2SCC

12 H.K. Dua, 9th Schedule rout plugged, The Tribune, January 15, 2007, p.10

13 Manmohan Singh, Line between activism and over-reach thin: PM to Bench, The Indian Express, April 9, 2007, p.1.

14 AIR 1967 SC 1643

15 AIR1973 SC 1461

16 AIR 1975 SC 2299

17 Bills passed by Parliament on judicial appointments have serious flaws, India Today(web edition), August 22, 2014

18 S P Gupta v. Union of India 1981 Supp(1) SCC87

19 Supreme Court Advocates-on Record Association v. Union of India, (1993)4 SCC441

books & journal

1. 37th Commonwealth Parliamentary Conference Commemorative Volume
2. Alder, John, Constitutional and Administrative Law, Palgrave Macmillan, 2007
3. Bakshi, P.M., The Constitution of India, Universal Law Publishing Co., New Delhi, 2010
4. Barker, David and Padfield, Colin, Law, Routledge, 2002
5. Baruah, Aparijita, Preamble of the Constitution of India-An Insight and Comparison with other Constitutions, Deep and Deep Publications, New Delhi, 2007
6. Bashford, A. and Levine P. (eds.), The Oxford Handbook of the History of Eugenics, Oxford University Press, Oxford, 2010
7. Basu, D.D., Commentary on the Constitution of India, 8th ed., Vol. 9, S.C.Sarkar & sons, Calcutta, 2011
8. Birju, M.R. (Ed.), Decentralisation: An Indian Experience, National Publishing House, Jaipur, 2007
9. Chopra, Pran, The Supreme Court versus the Constitution : A Challenge to Federalism, New Delhi, 2006
10. De, D.J., The Constitution of India, Asia Law House, 2008
11. Dharampal, Panchayat Raj And India's Polity, Volume IV, Other India Press, Goa, 2000
12. Ghosh, Peu, Indian Government and Politics. PHI Learning Pvt. Ltd., 2012
13. Gupta, D.C., Indian Government and Politics, Vikas Publishing House, 2009
14. Jain, M.P. and Jain, S.N., Principles Of Administrative Law, 6th edn, Vol. I, 2007
15. Kapoor, Coomi, The Emergency- A Personal History, Penguin Viking, 2015
16. Radhakrishanan, Indian Philosophy I, Oxford University Press, 2009
17. Saxena, Priti, Preventive Detention and Human Rights, Deep and Deep Publications,New Delhi, 2007.
18. Zink, J.R., Dawes, C.T. (2016). The Dead Hand of the Past? Toward an Understanding of "Constitutional Veneration". Polit Behav Volume 38, 535–560 https://doi.org/10.1007/s11109-015-9325-5
19. Pion-Berlin, David; Trinkunas, Harold (2010) Civilian Praetorianism and Military Shirking During Constitutional Crises in Latin America, Comparative Politics, Volume 42, Number 4, , pp. 395-411 **DOI:** https://doi.org/10.5129/001041510X12911363509990
20. David Comerford, David Eiser (2014). Constitutional change and inequality in Scotland, *Oxford Review of Economic Policy*, Volume 30, Issue 2, Pages 346–373, https://doi.org/10.1093/oxrep/gru014
21. Ashutosh Kumar (2010), Exploring the Demand for New States, , Economic & Political Weekly, Vol. XLV no 33 p.16-18
22. RM. Hidayatullah, Democracy in India and the Judicial Process, The Macmillan Company, New York, 1960, p.86

WEBSITES

- www.legalserviceindia.com
- www.mondaq.com
- www.ipleaders.com