

## **CONSTITUTIONAL AMENDMENTS IN INDIA: A STUDY ON FACTORS NECESSITATE THE AMENDMENTS**

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### **ABSTRACT**

A Constitution is not static but dynamic and it changes with time. It should be democratic in spirit and a living organism adaptable to the conditions and needs of the time. It is maintained that the “The growth of the nation and the consequent development of the government system would snap as under a constitution which could not adapt itself to the measure of the new conditions of an advancing society. If it could not stretch itself to the measure of the time, it must be thrown off and left behind, as a by-gone device.” A congruent view is articulated on the Constitution by William Bennett Munro who says: “It is not static but dynamic, a Darwinian, not a Newtonian affair.”

This explication of Munro applies not only to the American Constitution but to all the Constitutions of the world as well, with equal force and to the same extent. Accordingly, the necessity for amendment of the Constitution as per the needs and the aspirations of the succeeding generations arises from time to time as constitutions are not immutable. They need to be and often are altered over time to respond to changes in the political, economic or social environment in which they operate. To be more precise, it is the exigencies of the circumstances that bring about amendments in the Constitution. In view of the above, an attempt has been made to identify the various forces or factors which are responsible for bringing about change in the Constitution. The study concluded that the people have the ultimate power to make, unmake or amend the Constitution, either directly or through their representatives, either formally or informally, either in a legal manner or through a revolution.

**Keywords:** constitution, amendments, factors, change, India

### **INTRODUCTION**

The idea that constitutions are created and changed as a reflection of socio-political transformations makes sense if we consider the historical events that have actually triggered constitution making processes. It has been pointed out by Elster that constitutional change tends to occur in the wake of a crisis or exceptional circumstance of some sort, such as social and economic crises, revolutions, regime collapse, fear of regime collapse, reconstruction after war, or liberation from colonial rule. All these are important events with the

potential to upset a pre-existing constitutional equilibrium.

A rich intellectual tradition in political science postulates that formal institutions emerge and change as a by-product of social and political change. In this perspective, political actors would support a constitution in equilibrium so long the underlying configurations of interests and powers that sustains the equilibrium remains stable. Should the interests or resources of powerful actors change, so would the existing constitutional structure **(Zink and Dawes, 2016)**.

A vivid example from the Indian context which draws our attention is the 42nd amendment act, 1976 to the Constitution of India, enacted at the behest of Mrs. Indira Gandhi, the then Prime Minister of India. This particular amendment of the Constitution of India bore the personal imprint of Mrs. Indira Gandhi and of her social, political and economic ideology, throughout the whole amendment. This amendment was an episode of absolute tyranny where power ran rampant. In the words of Donald G. Morgan, "Power is somewhat analogous to forms of physical energy. Like falling water fire or atomic energy, it has great potential utility for mankind but also danger. Indeed, it carries a special danger, its corrupting effect on those who wield it."

The import of this amendment suggests strappingly that dominant groups of people who are at the helm of affairs in a state and who are in a position to decisively influence an amendment of the Constitution are one of the primary factors responsible for the amendment of the Constitution and this can be attributed as the first demand that necessitates amendment. This premise is based on the presumption that such group is in a position to decisively influence and amend the Constitution **(Pion-Berlin, David 2010)**.

## **OBJECTIVE OF THE STUDY**

To highlight the indispensability of the Amendment provisions in the Indian Constitution and primary factors facilitating amendments in constitution.

## **RESEARCH METHODOLOGY**

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.

## **NECESSITY OF AMENDING CONSTITUTION**

It is a ubiquitous fact that a constitution framed in a particular age by a particular generation is representative of that age and of the generation. The ideologies, philosophies, beliefs, convictions and aspirations of that generation play a major role in defining and framing the Constitution **(David and David, 2016)**. At this juncture it becomes pertinent to dwell on the question ---is it really a whole generation or the whole society which participates or which influences the framing of the Constitution. The Indian society which is an amalgamation of divergent groups with different linguistic, religious, regional, economical, historical, social and political beliefs and interests necessitates changes which can be brought about only by dominant groups of the society. In view of this reason, the Constitution as finally framed and adopted will generally be a compromise of these conflicting wishes and beliefs of different sections of the society as prevalent at the time

of the Constitution being framed and adopted.

Thus, what is true of the framing of the Constitution would also be more or less true of its amendments also. Thus, if a constitution bears the stamp of a group of dominant people, be it the framers or others who have to approve it or ratify it or have the opportunity of influencing its making, in the similar way an amendment of a Constitution would also be reflective of a similar set of dominant or influential persons who mastermind the amendment. In pursuance of this rationale in the Indian context, it can be said that it was not only the socio-political demands that motivated amendments but many amendments were driven by people of eminence or rather customized to suit their ideologies and in some cases their personalities. Various amendments to the Constitution can also be classified into two broad historical facts. The first epoch spans the Nehru period and covers the first seventeen amendments from 1964 to 1966. They came to be called as the Nehru Amendments. After that there is a lull for two years. A new series of twenty-five amendments began in 1966, perhaps coincidentally with the advent of Mrs. Gandhi as Prime Minister, which culminated in the Forty-second amendment.

### **The Nehru Amendments**

The earlier Nehru Amendments were concerned with trying to ensure that no capitalists and landowners could use the courts to prevent the furtherance of socialism. This included the famous First, Fourth and Seventeen Amendments. The First and Sixteenth Amendments also limited freedom of speech in order to preserve public order and the security and integrity of India in 1951 and 1963 respectively. The 1951 amendment was justified on the grounds that the Supreme Court had by various decisions permitted several newspapers to fan the flames of communal violence at a time when, following the partition, India could ill afford such propaganda. The 1963 amendments were made necessary by the Chinese invasion, in order to give the government powers to control the media as part of its war tactics.

Most of the Nehru amendments were created because of the reconstruction of the States in 1956, the solution of the problems created by the foreign enclaves in Pondicherry, Goa, Daman and Diu, and the solution of the Berubari dispute with Pakistan. There were also minor amendments on the size of constituencies, the election of Vice –Presidents and Presidents, the retiring age of judges and the position of civil servants, certain sales tax matters and re-considering some of the transitional provisions of the Constitution with respect to Anglo Indians, Scheduled Castes and Scheduled Tribes.

All in all, the controversial Nehru Amendments are the socialistic property amendments. The remaining fourteen amendments enacted by the Nehru regime are not regarded as making inroads into the collective ethos of the Constitution. Pandit Nehru was very impatient with the courts for preventing socialism. It is possible that Pandit Nehru was right in assessing that the Constituent Assembly of which he was a member may have wanted these amendments.

### **Mrs. Gandhi Amendments**

To some extent amendments in Mrs. Gandhi era follow the pattern of the Nehru amendments. Some of these

amendments may be termed socialistic amendments. Unfortunately, by the time Mrs. Gandhi came to power, the Supreme Court had questioned Parliament's contention that the power of Parliament was unlimited. Mrs. Gandhi upheld the sovereignty of Parliament much as Nehru might have done had he been in a similar position. Some of Indira Gandhi's amendments dealt with the creation of new states, the absorption of Sikkim, and new developments relating to the law of the sea. There were also technical amendments relating to the retiring age of the State Public Service Commission employees, the privileges of members of the Indian Civil Service and such alike.

But Mrs. Gandhi era also witnessed an unusual rate of amendment which indiscriminately placed large numbers of statutes in the Ninth Schedule so that these statutes could intrude into the fundamental rights of the people and not to be challenged. Even more drastic were the political amendments which ousted the Court's jurisdiction from hearing Mrs. Gandhi's election case. Ironically, Mrs. Gandhi had herself been associated with the Nineteenth Amendment which had transferred jurisdiction in these election petitions from election tribunals to the High Courts.

Finally, those amendments came which removed the Court's control from inquiring into important matters like the declaration of Emergency. The amendment appears even more unnecessary and politically motivated if we note the fact that Courts had in the past been very reluctant to interfere in these matters anyway.

There is no doubt that to some extent Mrs. Gandhi's amendments followed the Nehru pattern. In certain places as for example, in the matter of the privy purses of the Indian rulers---Mrs. Gandhi had been more decisive. But towards the middle of 1975 the power of amendment took a different kind of political turn. Mrs. Gandhi promulgated a new style of constitutional change. The appointment of the Swaran Singh Commission led to the creation of a new approach to constitutional change. This new approach consisted of the new view that the Indian Constitution was due for a complete overhaul and the power of amendment could effectuate this overhaul. These amendments have later been subjected to lots of criticism. They are regarded as a transparent attempt to consolidate the power of the Congress in general and Mrs. Gandhi in particular.

## **FACTORS NECESSITATE THE AMENDMENTS.**

### **Economic Factors**

One of the major objectives of the modern state is the economic development of its citizens. A modern welfare state has to adopt an economic policy best suited to its peculiar conditions so as to ensure an overall economic development. In a state which is predominantly rural such as India, in accordance with the philosophy of the welfare state, it is necessary to uplift the economic status of the rural populace. In a typical rural economy, two primary sources of income of the masses are agriculture and cottage industries. Therefore, in a country like India, where land is concentrated in the hands of a few landlords, the Government found it necessary to carry out agrarian reforms to ensure equitable distribution of land after independence. Various state legislations, relating to land reforms were enacted for the purpose in India. Moreover, this has been the hottest area in the Constitution of India as far as the amendment of the Constitution is concerned. A few examples from the Indian

Constitution would clarify the purpose of amendments.

By the First Amendment Act, 1951, a clarifying clause in Art. 19(6) was added to make it clear that the freedom of trade and business guaranteed under Art. 19(1) (g) was not to invalidate any scheme of nationalization undertaken by the state.

The Ninth Schedule was inserted by the Constitution First Amendment Act, 1951 in the Constitution along with two new articles 31A and 31B so as to make laws acquiring zamindaris unchallengeable in the Courts. As many as 13 State Acts named in the Ninth Schedule were put beyond any challenge in the Courts for contravention of Fundamental rights. These amendments were felt necessary to carry out land reforms in accordance with the economic philosophy of the state to distribute land among the land tillers after taking away such land from the landlords.

By the Constitution (Fourth) Amendment Act, 1955, Art.31 relating to the right to property was amended in several respects. The purpose of these amendments related to power of the state of compulsory acquisition and requisitioning of private property. By the Constitution (Seventeenth) Amendment Act, 1964, article 31A was amended with respect to meaning of the expression “estate” and the Ninth amendment was further amended by including certain State laws.

The Constitution (Twenty-sixth) Amendment Act, 1971 terminated the recognition granted to the Rulers of former Indian states and to abolish privy purses and extinguish all rights, liabilities and obligations in respect of privy purses as it was considered to be incompatible with an egalitarian order.

The Constitution (Thirty-ninth) Amendment Act, 1975 further amended the Ninth schedule to the Constitution for the purpose of protecting legislations relating to nationalization of coking coal and coal mines for conserving these resources in the interest of steel industry, nationalization of sick textile undertakings, prevention of smuggling of goods and diversion of foreign exchange which affected national economy and other important enactments from being challenged in the Courts on the grounds of unconstitutionality.

The Constitution Fortieth Amendment Act, 1976 further amended the Ninth schedule to the Constitution for the purpose of protecting legislations concerning Acts related to land reforms, certain State enactments relating to private forests intended to end the monopoly of vested interests and forest contractors, certain central Laws like the smugglers and Foreign exchange Manipulation (forfeiture of Property Act), 1976, the Urban Land (Ceiling and Regulation Act ), 1976, the Essential Commodities Act, 1955 and certain provisions of the Motor Vehicles Act 1939 . It was felt that these legislations were allowed to be challenged in the Courts and thereby delaying the process of implementation of these laws., the very purpose of enacting these laws would be frustrated and the national economy would be severely affected. By the 42nd amendment act, 1976 the Preamble was amended to declare that India is a Socialist and Secular constitution in addition to the existing words namely Sovereign, Democratic and Republic.

Right to Property was guaranteed as a Fundamental right under the Article 31C of the Constitution. Similarly sub clause (f) of clause (1) of Article 19 guaranteed the fundamental right to acquire and hold property. Both

these provisions were omitted from the Constitution by the 44th Amendment act, 1978 to counteract a series of the judgments of the Supreme Court which supposedly which came in the way of various laws relating to agrarian reforms.

Thus, on many occasions, changes in the economic philosophy of a state necessitate amendments to the Constitution. It has been made amply clear that the economic policy of the state may also be a guiding force for the purposes of influencing changes in the Constitutions.

### **Federal Factors**

Another important cause that motivates amendment is the federal legislative or relationship between the federal unit and the state units. Between June 1951 and January 2004, a total of 92 amendments to the Constitution were made. Of these 37(40.22 percent) are related to federalism. The federal amendments covered wide range of aspects of varying significance of Union-state relations.

The next largest category of federal amendments numbering eight (21.62%) related to the proclamation of President's Rule, the addition of the state of Delhi to the presidential Electoral College and the Punjab amendments to keep the state under the Union's control during the insurgency of the 1980s.

It is known fact that a Federal Constitution attempts to create a fine balance of powers between the federal and state units. The actual distribution of powers between the federal unit and the state units in a particular Constitution may depend on various factors. Moreover, with the passage of time, certain difficulties can be experienced in the actual working of such distribution of powers and a need may be felt to make changes to such distribution to suit the requirements. By the Constitution Third Amendment Act, 1954 additional power was given to the subject of trade and commerce in, and the production, supply and distribution of certain essential foodstuff, cattle fodder, raw cotton and raw jute.

By the Constitution Sixth Amendment Act, 1956 the Parliament was allowed to make measures for the inter-state trade and commerce, including the legislative power to charge taxes on the sale or purchase of goods in the course of inter-state trade and or commerce.

By the Constitution Seventh Amendment Act, 1956 provisions relating to the acquisition and requisition of property in the Seventh schedule of the Constitution were amended. Entry 33 of the Union List and Entry 36 of the State list were omitted and for entry 42 of the Concurrent list, the following entry was substituted, namely "42. Acquisition and requisitioning of property"

By the Constitution Forty Second Amendment Act 1976 in the Seventh schedule to the Constitution, in the Union List, a new entry 2A was inserted to give power to the Government of India to deploy any of its armed forces in any state in aid of the civil power. Entry 1 in the state list was also consequentially amended. Following subjects were transferred from the State list to the Concurrent List by the Constitution Forty – Second Amendment Act, 1976: Forest, Administration of justice (in certain areas), Protection of wild birds and animals, Education including technical education, medical education and universities and Weights and

measures except establishment of standards

By the Constitution Eightieth Amendment act 2000, Articles 269, 270 and 272 of the Constitution were amended to bring several Central taxes and duties like Corporation tax and Custom duties at par with the Income tax as far as their constitutionally mandated sharing with the states is concerned. By the Constitution Eighty-eighth Amendment Act, 2003 a new Article 268A was inserted in the Constitution relating to levying of Service tax and its collection and distribution by the Union and State Governments. These amendments clearly show that the requirement for a change in the federal legislative or financial relationship between the Union and the states may necessitate amendments to the Constitution.

Due to the developments in science and technology, communication and means of transportation, people in different states have come closer and their mutual interactions in different field have gone up. The relationship among people of different people of different states in a federal constitution can best be regulated by the federal or the Central government, giving rise to need for centralization. It needs to be noted that the centralizing tendency in India's federal structure was adopted at a time when it was necessary to weld India's disparate elements together into a nation. This was a task for which the government of India was uniquely positioned and required a supporting constitutional architecture.

K.C. Wheare opines that war or fears of war, economic crisis, the welfare nature of the state are the other reasons for the increase in tendency towards centralization. This is what he observes with respect to wars:

“In war federal governments come near to being unitary governments, not by any alteration in the words of the Constitution but by bringing into the ambit of the defence power of many matters of great importance which in peace time would clearly lie within the authority of the states.”

It is apt to conclude that the tendency towards centralization in the federal centralization in the federal constitutions has also emerged as a major cause for piloting changes in a Constitution.

### **Judicial Factors**

Modern democracy demands that if any legislative Act is challenged in the court of law, the validity of the Act has to be tested objectively. Thus, a federal country in order to establish an ideal democratic rule and to create confidence in the mind of the people about democratic federalism must allow judicial review to thrive so as to eliminate unjust and unconstitutional laws and to relieve the people from legislative tyranny. Thus, under most of the Constitutions today, the power of judicial review is given to the Judiciary to decide about the Constitutionality of a law enacted by the Legislature. India too has adopted judicial review of legislative acts which acts as a great weapon through which arbitrary, unjust, harassing and unconstitutional laws are checked. Judicial Review is the cornerstone of constitutionalism, which implies limited government.

Charles L. Black remarks, “Judicial review serves an affirmative function, vital to the government of limited powers, the functions of keeping up a satisfactorily high public feeling that the Government has obeyed the law of its own Constitution and stands ready to obey it as it may be declared by a tribunal of independence.”

In addition to the benefits mentioned above, it also removes the misgivings from the minds of the people against the Government and creates a healthy atmosphere for legislative action.

The same sentiment has been voiced by Justice M. Hidayatullah who said, “They (courts) certify the constitutionality and correctness of their acts and thus save them from the doubts of the people. If you look through the law reports, you will see that the Judges, by their decisions, have protected the Executive and the Legislature from unfair criticism and blame. In this way the Judiciary makes the machinery of Government run true to the Constitution.”<sup>1</sup>

All this may lead to the competent body amending the relevant constitutional provisions to overcome the difficulties posed by such decisions of the judiciary in the way of such laws or the constitutional provisions, as the case may be, held constitutionally invalid either wholly or partially. A few examples of how the decisions of the judiciary lead to formal amendments to a Constitution may be given as under:

Article 368 of the Constitution has been amended twice due to various judgments of the Supreme Court. This article was first amended by the 24th Amendment Act 1971 to counteract the majority decision of the Supreme Court in the case of *Golak Nath v. State*<sup>2</sup> to the effect that Fundamental Rights cannot be abridged. This amendment amended the Constitution to provide expressly for the Parliament’s power to amend any part of the constitution. However, in spite of such express power given to the Parliament for carrying out amendment of any part of the Constitution, in the case of *Kesavanand Bharati v. State of Kerala*<sup>3</sup>, a majority decision of 7:6 in a full bench of 13 judges invalidated the second part of Article 31C, inserted by the 25th Amendment Act, 1971, on the ground that it sought to take away the principle of judicial review which was one of the basic features of the Constitution.

Likewise in the *Indira Gandhi v. Raj Narain*<sup>4</sup> case the Supreme Court by a majority decision annulled clause (4) of Article 329A of the Constitution, as inserted by the 39th Amendment act, 1975 on the ground that it altered certain basic features of the Constitution e.g., free and fair elections and rule of law, without affording an alternative forum. These cases led to the further amendment of Article 368 by way of the 42nd Amendment Act, 1976 which inserted two new clauses, namely (4) and (5) in this Article by which it was made clear that on no ground shall any court be competent to invalidate any Constitution Amendment Act.

By the Constitution (Twentieth Amendment Act), 1966 a new article 233A was inserted in the Constitution to validate judgements, decrees, orders and sentences passed or made by all such district judges in those States and also validate the appointment, posting, promotion and transfer of such district judges barring those few who were not eligible for appointment under Article 233 in view of two judgements of the Supreme Court rendering appointment of district judges in Uttar Pradesh and a few other states invalid and illegal on the ground that such appointments were not made in accordance with the provisions of article 233 of the

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<sup>1</sup> M. Hidayatullah, Democracy in India and the Judicial Process, The Macmillan Company, New York, 1960, p.86

<sup>2</sup> AIR 1967 SC 1643

<sup>3</sup> AIR1973 SC 1461

<sup>4</sup> AIR 1975 SC 2299

Constitution. The Supreme Court had also held that the power of posting a district judge from one station to another and that the power of transfer of a district judge is vested in the High Court under Article 235.

Thus, the judicial review by the judiciary may also amount to changes in a Constitution. While this may lead to formal changes in a Constitution by way of formal amendments, there may be circumstances when the exercise of the power of judicial review by the judiciary itself may amount to a situation where in the Constitution stands amended due to the judicial interpretation, without there being any formal amendment to the Constitutions. This is so because in many of the modern Constitutions, the power to interpret what a constitutional provision in the Constitutions means depends upon the interpretation of the same by the judiciary.

### **Multicultural Factors**

India is composed of bewildering variety of cultures and traditions. This diversity takes the form of social and political interests that manifest themselves as campaigns, political aspirations and constitutional demands. Thus, it is the demand and need of a multitextured society like India that care of the interests of various groups should be taken. Since India's Constitution enjoys a considerable flexibility, many of these inspirational demands are accommodated through politics as well as the use of the executive, legislative and amendment power flowing from the Constitution. The amendments which secure the specific socio-cultural interests are:

The Constitution (Twenty-first Amendment) Act, 1967, the Eighth Schedule of the constitution of India was amended to include Sindhi as one of the languages in the Eighth Schedule. Similarly, the Constitution (Thirty-second Amendment) Act, 1973 provides the necessary constitutional authority for giving effect to the provisions of possible opportunities for people in different areas of the State of Andhra Pradesh in the matters of admission to educational institutions and public employment. This was done mainly to remove the dissatisfaction in the Telangana area and other backward areas in the state of Andhra Pradesh in the matter of employment and also in the matter's educational facilities for the residents of that area Likewise the Constitution (Ninety-second Amendment) Act, 2003 the Eighth Schedule to the Constitution was again amended to include, Bodo, Dogri, Maithili and Santhali as the language included in the said Schedule. Thus, the foregoing passages amply clarify that with a view to satisfy the needs or pacify a particular group, changes in the Constitution become inevitable.

### **Territorial Factors**

The Indian Constitution gives the Parliament the power to alter the boundaries of the various states. No one of course ever imagined that the territorial framework of the country would be altered completely. Nor was it anticipated that new states would be created out of the fabric of old states with the rapidity with which they have been created in the past few years. In the words of William S. Livingston, "Federalism is a function not of constitutional devices but of the diversities in society ... The pattern of diversities in societies is constantly changing. What was merely an instrumentality of federalism yesterday becoming part of the pattern of diversities itself today."

Consequently, the amending power has been used on several occasions to rework the constitutional design and especially the federal setup. By a simple use of the legislative power, the geographic boundaries of existing states have been altered to create several smaller states out of the old ones. This process has been under way since 1956 and is likely to continue into the future. The entire federation has undergone a sea change. Several states have split into new and smaller states. Thus, even the territories of a state are not permanent or inviolate. In some states, intermediate forms of tribal and other governance mechanism have been set up. In 1992, Constitution was amended to superimpose a three –tire structure of constitutionally entrenched local government to restructure federal governance. It can be thus inferred that the rewriting of Indian federalism has not always been imposed from above; it also reflects the aspirations of regional claims arising out of the huge diversity of faiths, cultures, loyalties and ambitions that distinguishes Indian subcontinent.

This can be testified by citing some examples. For example, 7th, 13th, 18th, 22nd, 27th and 37th Amendment Acts of 1956, 1962, 1966, 1969, 1971 and 1975 respectively were concerned with the reorganization of the States and Union Territories and the provisions in the Constitution relating thereto. India's political map was redrawn again by the 84th amendment Act, when both Houses of Parliament passed the Madhya Pradesh Reorganisation Bill, 2000, the Uttar Pradesh Reorganisation Bill, 2000, and the Bihar Reorganisation Bill, 2000 for the creation of Chhattisgarh, Uttaranchal and Jharkhand respectively. The bills got presidential assent in August, and the states came into being in November 2000 on socio political basis.

In the case of Chhattisgarh, the demand was based both on the grounds of tribal affiliations and lack of economic development. The people of this region felt strongly that the region's natural resources were being exploited by the state government but its development needs were not being met to a commensurate level, and that only separate statehood would help the region grow economically.

Similarly, the hill regions of Uttar Pradesh had their own claims. Their ecological distinctness, cultural specificity and their economic problems could be tackled only within the framework of autonomy that statehood brought. The demand for Uttarakhand started way back in 1930 and finally materialized in 2000

### **Linguistic and Ethnic Factors**

Another set of federal amendments which constitute almost 35.14% amendments in the Constitution are concerned with the reorganization of states. Credit goes to the Indian Constituent Assembly which left the process of amending the Constitution for the purpose of the reorganization of states without any strong entrenchment.

It all began with the creation of Andhra Pradesh in 1953 which was created on linguistic basis. It was created by separating the Telugu speaking areas from the State of Madras. This followed a prolonged agitation and the death of Potti Sriramulu after a 56-day hunger strike. As there were several more demands for states on a linguistic basis, a commission was set up under Justice F. Fazl Ali with H.N. Kunzru and K.M. Panikkar as members to study the demand. As a result, the four-fold distribution of States was replaced by 14 States (Andhra Pradesh, Assam, Bihar, Bombay, Jammu and Kashmir, Kerala, Madhya Pradesh, Madras, Mysore,

Orissa, Punjab, Rajasthan, Uttar Pradesh and West Bengal) and six Union Territories (Andaman and Nicobar Islands, Delhi, Himachal Pradesh, Laccadive, Minicoy and Amandivi, Manipur and Tripura) in 1956 vide the Seventh Constitution Amendment. This amendment resulted in the abolition of A, B, and C class States and the creation of the present categories of full-fledged States and Union Territories.

This was followed by the sub-division of Bombay into Gujarat and Maharashtra in 1960 and the division of Punjab and Haryana in 1966. as a result of the J.C. Shah Commission report, the Punjabi speaking areas were constituted into the State of Punjab, while the predominantly Hindi-speaking areas were constituted as the new State of Haryana, and the hill areas were merged with the contiguous Union Territory of Himachal Pradesh; Chandigarh became a Union Territory serving as the common capital of the two States. It is held that the presence of linguistic compatibility, and cultural homogeneity goes a long way in solving specific problems of regional discrimination and unequal access to state power.

The Thirteenth Amendment was necessitated by the creation of Nagaland. Tribal affiliations were recognized as a basis of statehood when Nagaland was created. Of course, partly the state was created to calm down the Naga insurgency which was the first armed challenge to the unity of the Indian state. Several other states were also formed in the north eastern region on the basis of tribal/ethnic affiliations under the North-Eastern Areas Reorganisation Act, 1971. The Twenty –second dealt with the creation of the State of Meghalaya. The Twenty-Seventh Amendment added Mizoram and Arunachal Pradesh as Union Territories, the Thirty-second Amendment dealt with certain matters relating to Andhra Pradesh, The Thirty-Seventh Amendment dealt with creation of parliamentary governments in Arunachal Pradesh.

Another class of territorial amendments came about because of international events. The liberation of Goa and its surrounding territories from the Portuguese led to the Tenth and Eleventh Amendments. The negotiations with the French over Pondicherry led to the Fourteenth Amendment which also provided for legislatures in various Union Territories including Goa. The negotiations with Pakistan over Berubari led to the Ninth Amendment. The absorption of Sikkim first as an “associate” state and then as a full- fledged state of the Union of India led to the Thirty-fifth and Thirty –Sixth Amendment respectively. One part of the Fortieth Amendment was enacted to keep pace with the technological and political changes in the attitude of the international community towards the territorial sea and the continental shelf and minerals near the coast. The Fortieth Amendments ensured that India’s claim to these areas was clearly stated in the Constitution to avoid future controversy.

Many a times the transfer of areas to a country or surrender of some existing areas to other nations may also lead to amendment of the Constitution. For example, the 9th, 10th, 12th, 14th, 35th and 36th Amendment Acts were passed in the years 1960, 1961, 1961, 1974 and 1975 respectively to amend the Constitution of India for such purposes. While the 9th Amendment Act, 1960 related to transfer of certain territories to Pakistan in pursuance of the agreements entered into between the Governments of India and Pakistan, the other aforementioned Acts related to the accession of Dadra and Nagar Haveli, Goa, Pondicherry, Sikkim and their admissions to India.

Recently the President of India has given his assent to the Constitution (One Hundredth Amendment) Act,

2015 which has been passed by the Parliament to facilitate the boundary-dispute settlement between India and Bangladesh. The Act shall give effect to the acquiring of territories by India and transfer of certain territories to Bangladesh in pursuance of the India-Bangladesh agreement signed on 16 May 1974 and its protocol entered into between the Governments of India and Bangladesh. Under this agreement, which was ratified on 6 June 2015, India will get 51 Bangladeshi enclaves (covering 7, 110 acres (2, 880 ha)) in the Indian mainland, while Bangladesh will get 111 Indian enclaves (covering 17, 160 acres (6, 940 ha)) in the Bangladeshi mainland.

### **Decentralisation Factors**

The world is inching towards democratic governance and it becomes essential that decentralisation is pursued. The democratic governance argument is based on the assumption that decentralisation ensures greater participation of all the stakeholders which eventually deliver prompt, flexible, effective and efficient actions under greater accountability and awareness about the local needs.

Furthermore, it is also argued that a constitution designed to diffuse power is likely to last longer than a constitution that concentrates power. Keeping these progressive trends in mind, the constitution was amended in 1992 -93 so as to create an apparatus of three –tiered local governments by virtue of 73rd and 74th Amendment. As a result of these amendments, the Constitution has now enacted a multi-tiered federalism for India. The states were given one year to enact enabling legislation so that all existing legislation was brought in line with the new constitutional mandate---failing which, constitutional provisions would prevail. A unique feature of these amendments was to secure representation of the backward classes of untouchables, tribal people and in particular to ensure that one-third of all seats went to women who, in turn would head these local bodies by rotation. This experiment has worked well and added to the empowerment of women and the disadvantaged to enrich democracy.

Beside this the 73rd and 74th Amendments has added a new facet to the polity through cooperative federalism. The growth of cooperative federalism is a social necessity in the present condition of political conditions. As Sobei Mogi had remarked, “The Federal idea in the modern sense is not of co-partnership of the state and local limits, but also involves a cooperative unity of members of each component body directly related to the federal government.”

### **Goal-Specific Factors**

The need for amendments is also felt when certain goals and philosophies needs to be realized. On this basis the Amendments can be classified into two kinds:

- A. Resultant and minor amendments;
- B. Controversial amendments affecting fundamental Rights, socialism and the position of the judiciary.

The first type of amendments is not un-controversial amendments. Some of them are the result of changes which were very controversial. The second type of amendments is controversial because they affect basic

changes of principle in the constitutional set-up. Some of these amendments were introduced in order to achieve certain socialistic objectives, while others were introduced in order to achieve certain purely political aims. A large number of these amendments were enacted because of the decisions from the various High Courts and the Supreme Court of India. Some of these amendments were allegedly motivated by the desire to make the Constitution a true vehicle for the achievements of socialistic ends. Some of these amendments were pushed through for reasons for what Solzhenitsyn has called the “good of the cause.”

Besides, there are many amendments of a minor nature as well. Some of these amendments were controversial but these were not amendments in the true sense of the word. For instance, the size of a Parliamentary constituency or the size of the membership of Parliament itself is an important matter. The status of Sindhi as an official language is also seen as an important issue. The second amendment dealt with the size of a Parliamentary constituency. The size of the Lok Sabha was increased from 525 to 545 members by the Thirty-First Amendment. The Eighth and Twenty-Third amendment merely extended the reservations of special seats for the Anglo –Indians, Scheduled Castes and Scheduled Tribes till 1970 and 1980 respectively. The Twenty-First Amendment 1967 enacted an order to accord Sindhi the status of an Official language. The Eleventh Amendment in 1961 made some minor changes in the elections of Presidents and Vice-Presidents. The Fifteenth Amendment 1963 made some changes with respect of tenure of civil servants and also raised the retiring ages of High Court judges from 60 to 62. The Nineteenth Amendment transferred jurisdiction of election matters from election tribunals to High Courts. The Thirteenth Amendment enlarged the appellate civil jurisdiction of the Supreme Court. The Thirty- Second Amendment in 1970 made it imperative that the Speaker should accept voluntary resignation of any member of the legislature.

### **Transparency Factors**

The all-pervasive impact of amendments has been felt by the Judiciary as well. Of the three pillars of Indian democracy, it is the Judiciary which is considered to be the most sanctimonious institution. But over the years the institution of Judiciary, which is a citadel of integrity and moral impeccability, has been in news for some wrong reasons which blemished its glory and marred its reputation.

All over the world demands for democratic accountability are being raised. It is at this opportune juncture that the Constitution (Ninety- Ninth Amendment) Act was enforced. This amendment brings the collegium system, which was created in 1993 by the Supreme court, to a grinding halt after 22 years. It is claimed that the collegium system was abused by both the appointers and the appointees alike. Till now the appointment and transfer to the Supreme Courts and High Courts was done by a collegium consisting of the Chief Justice of India and the four most senior judges of the Supreme Court. The system was criticized for being excessively “insular and unaccountable”<sup>5</sup> as being biased, lacking transparency, marred in controversy, having kith and kin syndrome and at times resulting in quid pro quo. Besides the grounds for making appointments are known only to those who are a part of the collegiums, making the process a highly secretive and arbitrary one. Justice Rumi Pal of the Supreme Court had aptly said “process of appointment of judges to the superior courts was possibly the best kept secret of the country.”

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<sup>5</sup> Bills passed by Parliament on judicial appointments have serious flaws, India Today(web edition), August 22, 2014

Moreover, this amendment addresses the gaping inadequacies of the collegiums system and aims to create a democratic, transparent and inclusive system of appointment. With this amendment equal participation of Judiciary and Executive shall be ensured in the appointment of Judges in higher judiciary. This will thereby increase the confidence of the public in the institution of judiciary.

Until now, the judicial appointment process in India has been a zero-sum game, in which either the executive has primacy over the judiciary or vice-versa. This began when the legendary “Three Judges Cases” on judicial appointment systems took place. In the “First Judges case,”<sup>6</sup> in 1981 the Supreme Court had ruled that the CJI’s recommendations of judges could be set aside if the president had “cogent reasons” thus tipping the scales in favour of the executive.

The second of the three cases concluded in 1993<sup>7</sup>, when a nine-judge SC bench that included Justice JS Verma overturned the 1981 judgement. The bench ruled that the Chief Justice of India must have a “primal” role in the appointments of judges and that the executive could not have an equal say, or else it could lead to “indiscipline” in the judiciary. The Supreme Court said that consultation with the CJI would mean a binding consultation on the government. The court held that the word consultation had to be interpreted in the constitutional context which aims at maintaining the independence of the judiciary. This verdict led to dissent and confusion within the judiciary, but it also gave birth to the collegium system, which was further reinforced by the third of the “Three Judges Cases” in 1998. This judgement came through another nine-judge bench, which emphasized the judiciary’s upper hand over the executive in judicial appointments.

The National Judicial Accountability Commission Act was passed by the Lok Sabha on 13th August, 2014 and the Rajya Sabha on 14th August, 2014. Since the Act involved constitutional Amendment, hence ratification was needed by the States. Pursuant to the ratification by the majority of the States, the president gave the assent to the Act on 31st December, 2014 and the Act has been notified to come into force from 13th April, 2015. The Constitution Ninety Ninth Amendment Act provides for the composition and the functions of the NJAC. The preamble of the Act reads as “An Act to regulate the procedure to be followed by the National Judicial Appointments Commission for recommending persons for appointment as the Chief Justice of India and other Judges of the Supreme Court and Chief Justices and other Judges of High Courts and for their transfers and for matters connected therewith or incidental thereto” It amended Article 124A of the Constitution to accommodate the Commission. Earlier Article 124 of the Constitution stipulated that the judicial appointments to the Supreme Court must be made by the President in consultation with the CJI and other senior judges of the SC and the high courts. Similarly, Article 217 said that High Court judges are to be appointed by the President, the CJI and the governor of the concerned state.

Without a doubt it is as a transformative step in re-defining judicial transparency and independence as it relinquishes the “closed door” opaque system of appointments which fails to ensure impartiality and fairness of the system altogether.

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<sup>6</sup> S P Gupta v. Union of India 1981 Supp(1) SCC87

<sup>7</sup> Supreme Court Advocates-on Record Association v. Union of India, (1993)4 SCC441

## **CONCLUSION**

The amendment process was incorporated in the Constitution by the Draftsmen of the Constitution to help India adapt itself to the changing circumstances. Society is never stagnant. It is ever- changing. Therefore, the amending procedure was made partly flexible so as to make it easy for the Legislature. But the Parliament assumed itself to be the supreme law when the Constitution is the supreme law of the land. But after the landmark decisions of *Keshavnand Bharati* and *Minerva Mills* the Court by its power of judicial review has curtailed the amending power of the Parliament. The amendments made by the Parliament can no longer affect the basic structure of the Constitution. But, looking at the ease with amendments can take place depending on the whims and fancies of the ruling government and the Politics.

In this study, an attempt has been made to identify the various factors (agrarian reforms, affirmative action through reservations law/Amendments etc) which are responsible for bringing about change in the Constitution. Consequently, it may be pertinent to point out one of the primary forces responsible for changes in the Constitution are the attitude or opinion of the society or the people about their Constitution. The people who hold the Constitution in high regard like United States and Switzerland, the Constitution will not be changed frequently. On the other hand, if the people have scant regard for the Constitution, or if they disregard it, or if they are not satisfied with it, there are more chances of frequent or greater changes in the Constitution. In fact, ultimately it is the people who make the Constitution.

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