
CONSTITUTIONAL AMENDMENTS: INVESTIGATING THE PROCESS AND IMPORTANT AMENDMENTS

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ABSTRACT

India is a country which is constantly transforming, adapting and always evolving where the land is culturally rich and very diverse. Moreover, the makers of the constitution aimed to fulfil the dreams and aspirations of citizens of India who had endured many hardships during the colonial era and for the future generations to be content with the current constitution and therefore, they designed it to be flexible and can be easily amended by adhering to the process mentioned in Article 368.

Constitutional amendments hold immense significance as they play a pivotal role in shaping and balancing society which is so variable and its governance according to the expectations of the people of the country. Therefore, it is crucial to understand its intricacies and delve into the process of tracing important amendments that have been enacted since the commencement of constitution to comprehend its transformative impact on nation's progress. The research has been conducted by collecting information from secondary sources of data that includes online journals and published sources.

These amendments have significantly contributed to the progress and development of India as they introduced provisions keeping in mind advancement of every community, individual and classes. As the society will progress, the constitution will also be amended to keep the expectation of the people and their growth in the positive direction.

INTRODUCTION

A Nation's constitution serves as the foundation of its existence, establishing the principles and values that guide its governance and ensure the rights and responsibilities of its people. The purpose of constitution is to ensure the well-being and contentment of the community. The framers of the constitution ensured the adaptability of constitution to be flexible and enabled it to be amended by the law makers to prevail its relevancy over time in the interest and welfare of the general public.

Amendment is the process of altering or amending a law document like constitution or a contract by parliamentary or constitutional procedure.¹ **The Keshavananda Bharti vs. State of Kerela**² offered a comprehensive definition of the term 'amendment'. In the context of constitution, the term would signify the introduction of a provision on a new and independent subject matter which is self-contained and completely unrelated to other provisions.³

The purpose of amendment is to ensure that the constitution remains a living document that can adjust to changing circumstances, while steadfastly upholding its fundamental principles and values. There have been 106 amendments in the constitution of India from the time it had been enacted.

CONSTITUTION OF INDIA

The constitution of India is the supreme law of land. It was adopted on 26th November, 1949 and came in force on 26 January, 1950.⁴ The constitution of India declares the country as Socialist, sovereign, secular, democratic and republic .

Socialism is a political and economic system based on public rather than private ownership of a country's means of production.⁵ In India the socialism is based on the ideologies of Mahatma Gandhi. He described Indian society with no one rich or poor, no class conflicts, where there is equal distribution of resources and self-sufficient economy without exploitation.⁶

¹ *Amendment*, Merriam- Webster (11th ed. 2019)

² AIR 1973 SC 1461

³ Amendability of Indian Constitution with Reference to Fundamental Rights (legalserviceindia.com) (last visited March 23,2024)

⁴ Constitution of India - Wikipedia (last visited March 23, 2024)

⁵ What Is Socialism? Definition and Examples (thoughtco.com) (last visited March 24,2024)

⁶ Gandhian socialism - Wikipedia (last visited March 24,2024)

The preamble declares India as a **Sovereign** state which implies that India has complete autonomy in making its decision without any external interference. India is not subjected to any laws of other nations or states. ⁷

Secularism is a belief system that separates religion from state and its civic affairs. India advocates secularism by granting equal freedom to all religions. ⁸

India is the world's largest **Democratic** country. The government in India is formed by the people, for the people and at the will of people.

A **Republican** country is where the political power rests with the public through their representatives. India has an elected head of state, called the President, who is chosen by the people or their representatives.

FRAMING OF CONSTITUTION

The constitution of India was framed by the Constituent assembly, formed under the cabinet Mission plan. The assembly consisted of 389 members that represented the provinces and states. The constituent assembly further formed 13 committees. On basis of the reports of these committees and under the chairmanship of B.R. Ambedkar, a draft of constitution was formed.

The drafting constitution was published in 1948 and after a thorough discussion and modification, it was adopted on November 26 1949 and was signed by the president of assembly.

The constitution of India was derived from various other sources like rule of law, parliamentary system of government was borrowed from the Constitution of U.K. or the concept of Directive Principles of State Policy was taken from republic of Ireland.

PROCESS OF AMENDING THE CONSTITUTION

The provision of amending the constitution is given under Article 368 in part XX of the Indian constitution.

⁷ Sovereignty - Indian Polity Notes (prepp.in) (last visited March 24, 2024)

⁸ Secularism : implication and relevance in India - iPleaders (last visited March 24, 2024)

1. **Introduction of the bill :** A bill for amending the constitution can only be introduced in either house of the parliament and not in state legislatures. The bill can be introduced either by a minister or by a private person, it does not require prior assent of president.
2. **Passage in each house :** the bill must be passed in each house of parliament by a special majority. This means it must receive the support of more than 50% of total members of the house and two- third majority of the members present and voting.
3. **Separate passage in each house :** Both houses of parliament must pass the bill independently. In the case of conflict between the two houses, there is no arrangement for holding a sitting of the two houses for consideration and entry of the bill working closely together.
4. **Ratified by simple majority :** If the bill seeks to amend the federal provisions of the constitution, it should be sanctioned by legislatures of half of the state by a simple majority.⁹
5. **President's assent :** once the bill has been properly approved by both houses of the parliament and if required, ratified by the state legislatures, it is sent to the president for ratification. The president must give his assent to the bill as he can neither reject the bill nor send it back for reconsideration
6. **Becomes a bill :** The bill becomes an act upon the President's assent, at which point the Act's modification to the constitution takes place.

TYPES OF AMENDMENT

Article 368 of Indian Constitution provides for types of amendment :-

1) Simple majority

- Simple majority involves 50% members present and voting.
- It is also known as the functional or working majority. It is the most frequently used

⁹ Amendment of the Constitution: Meaning, Types, Procedure & Limitations (nextias.com) (last visited April 2, 2024)

- bform of majority in parliament.
- These changes include things like permitting states to connect, changing name or borders of existing states, choosing the salaries of public officers and making rules around how parliament works.

2) Special Majority

- Special majority involves more than 50% of the total membership of the house and a majority of two- thirds of the member of that house present and voting. ¹⁰
- The special majority is used for amending Fundamental rights and Directive principles of state policy.

3) Special Majority of the parliament and consent of half states

- A special majority of the parliament and the approval of half of the state legislatures by a simple majority are required for any amendment to the constitution's provision pertaining to India's federal structure.
- This majority can be used for amending the provisions that relate to manner and process of election for president, powers of union and state representation of states in parliament.

THE FIRST CONSTITUTIONAL AMENDMENT ACT

The first constitution amendment was enacted in 1951 by the provisional parliament. The landmark case of **State of Madras vs. Champakam Dorairajan** ¹¹ led to the first amendment of Constitution of India.

This amendment brought about various modification to the constitution, including alteration to fundamental rights and imposing restriction on freedom of speech and expression. It also advocated the abolition of zamindari system that was prevalent at that time.

¹⁰ *Ibid.*

¹¹ AIR 1951 SC 226

The **Article 15** was introduced a fourth clause that allowed the government to establish special provision for socially and educationally backward classes, along with Scheduled Caste and Scheduled Tribes¹².

Clause 2 of **Article 19** was modified to impose reasonable restriction on the freedom of speech and expression. ¹³ The right to freedom can be practised unless it jeopardises national security, friendly relations with foreign states, public order, contempt of court of incitement to an offence.

The **ninth schedule** was integrated which exempted all laws from being subject to judicial review.

The amendment replaced **Article 85** to encompass the clause regarding the session of parliament, prorogation and dissolution. **Article 174** was also substituted regarding the sessions of state legislature, prorogation and dissolution. ¹⁴

The amendments were also made to **Article 341** and **Article 342** to confer upon the president the power to identify caste, races and tribes in relation to any state.¹⁵

The inclusion of clause (2) in **Article 372** empowered the president to make adjustments to the existing laws for a specific duration following the commencement of constitution.

Furthermore, amendments to **Article 376** were made to allow judges from the High Courts of any province to be eligible for appointments as chief justices of High Court.

THE SEVENTH CONSTITUTIONAL AMENDMENT ACT

The year 1895 witnessed the commencement of a movement advocating for the establishment of an autonomous state based on the language spoken by its inhabitants. Originating from a specific region, this movement swiftly gained momentum, prompting other linguistic majorities across the country to aspire for their own separate state. In order to cater their needs, the parliament passed the **State Reorganization Act, 1956**. However, to achieve the desired modification a constitution amendment was necessary which led to the Seventh Amendment

¹² First amendment of Indian Constitution - iPleaders (last visited March 25, 2024)

¹³ *Ibid.*

¹⁴ *Ibid*

¹⁵ First Amendment To The Indian Constitution (lawyersclubindia.com) (last visited April 4, 2024)

act, 1956. In addition to the primary goal of reorganising the states, several other provisions were set to be amended.¹⁶

The state reorganization act aimed at establishing 14 states and 5 centrally administered territories¹⁷. The act replaces the former governor provinces and princely states with 'states and the provinces that were governed by chief commissioners or lieutenant governors were replaced with 'Union Territories'.

The seventh amendment also modified the First schedule to lay new boundaries for different states and the fourth schedule by which seats in the council of states are allocated to existing states.

The Amendment Act revised the **Article 153** of the Indian constitution. This article initially stated that there shall be a governor for each state. However, this posed a challenge due to the lack of efficiency as the appointment of governors for each state led to disagreements and misunderstandings, hindering the functioning of similar states. Hence, the amendment made the appointment of governor for more than two states at a time.

The **Article 168(1)(a)** provided the establishment of bicameral legislature in specific states. An amendment was made to include a bicameral legislature for the newly formed Madhya Pradesh and to insert the term 'Mysore' after the term 'Madras'.

The 7th Amendment Act also modified **Article 171** of the constitution which stated the maximum strength of states legislative council. Previously, the limit on seats in legislative council was set at one- fourth of the total strength of the legislative assembly. This set- up favoured larger states like Uttar Pradesh and Bihar while smaller states were not adequately represented. Therefore, to create a balance, upper – limit was amended to one-third of total strength of legislative assembly.

Further, the **Article 216** was omitted as it was seen impractical to allow the president to appoint as many judges as he may to a high court when necessary¹⁸.

¹⁶ All About 7th Constitutional Amendment Of India (unacademy.com) (last visited April 4, 2024)

¹⁷ 7th Amendment of Indian Constitution - iPleaders (last visited April 4, 2024)

¹⁸ 7th Amendment of Indian Constitution - iPleaders (last visited April 4, 2024)

The amendment also incorporated new articles in the Indian Constitution. **Article 258(a)** was included to grant authority to the governor of a state to delegate Union responsibilities to the central government or its officials. **Article 350A** focused on ensuring adequate resources at primary education level for teaching in their mother tongue. **Article 350B** stipulated the appointment of a special officer for linguistic minorities by the president.

THE FOURTY – SECOND CONSTITUTIONAL AMENDMENT ACT

The 42nd amendment act is considered as the most contentious constitutional amendment in the history as it sought to modify the basic structure of Indian Constitution. It was implemented during the time of emergency that was enacted on 25th June, 1975 by the Indian National Congress that was under the guidance of Indira Gandhi.¹⁹

The aforementioned amendment is also called as the ‘Mini constitution’ due to the extensive changes it made to Indian Constitution.²⁰ It imposed limitations on judicial review powers and modified the preamble, the seventh schedule, and 53 articles within the constitution. Moreover, it added several new provisions.

There were two amendments that this act introduced to the **Preamble** of the constitution. Initially, the statement declaring India as ‘sovereign, democratic, republic’ was altered to state ‘sovereign, socialist, democratic, republic.’ Secondly, the term ‘unity of nation’ was exchanged with the phrase ‘unity and integrity of the nation.’

The subjects of state lists were transferred to concurrent list mentioned in the 7th **schedule** of the Indian Constitution. These subjects included education, forests, weights and measures, protection of wild animals and birds and administration of justice.

The authority of judiciary also underwent changes. This amendment curtailed the judicial review power of High Court which is the authority of judiciary to review executive and legislative action. The inclusion of **Article 226A** and **Article 228A** in the constitution restricted the power of High Court to solely adjudicate the constitutionality of state legislature and not of executive. Similarly, **Article 131A** limited Supreme Court’s power to exclusively review central legislation.

¹⁹ A critical analysis of the 42nd Amendment Act, 1976 - iPleaders (last visited April 6, 2024)

²⁰ The 42nd Amendment: India's Mini Constitution (legalserviceindia.com) (last visited April 6, 2024)

Additionally, the act also added three new Directive principles of state policy to the existing list and one was amended. **Article 39** was introduced to ensure opportunities for the healthy development of children, **Article 39A** aided in promoting fairness in the legal system and providing free legal aid to the poor, **Article 43A** took steps to secure worker participation in the industrial management and the **Article 48A** implemented steps to safeguard the forests, wildlife and environment for future generations.

Upon the recommendation of Swaran Singh Committee, 10 fundamental duties were added to the Constitution in Part IV.

One of the significant changes implemented by the amendment act was the elongation of tenure of Lok Sabha, which serves as the lower house of parliament, from five to six years. This alteration was intended to grant the ruling party an extended duration of political stability, thereby influencing the governance.

THE FOURTY FOURTH CONSTITUTIONAL AMENDMENT ACT

The Janata Party enacted the forty- fourth amendment act of Constitution of India to address the modifications and alterations made to the Indian Constitution by the 42nd Amendment Act²¹. These changes were implemented against the will of citizen of India by the National Congress²² and the 44th Amendment Act was introduced to undo these changes and restore harmony between state and its people.

The 44th Amendment Act stated that any alteration to the fundamental framework of the constitution can only be implemented with the approval of citizen of India through a referendum with minimum participation of 51% of the electorate.

The mentioned Amendment Act also reversed the provisions made by the 42nd Amendment Act that permitted the government to amend the constitution on their will by **Article 368** .

Article 31 was omitted from the constitution of India which addressed the force acquisition of property. The right to property was no longer considered a fundamental right but rather a legal

²¹ Forty-fourth Amendment of the Constitution of India - Bharatpedia(last visited April 7, 2024)

²² All you should know about 44th amendment of the Indian Constitution - iPleaders (last visited April 10, 2024)

right.²³

The amendment act brought a complete substitution of **Article 71**, encompassing matters related to the election of a president or vice-president, and any matters linked to it.

Article 74(1) was modified to contain the provision of allowing president to ask the council of ministers to review any advice given to him although the president must ultimately adhere to the advice given after such reconsideration. Previously, the president had to comply with the Council of Minister's advice.

Further, the duration of the houses of parliament and state legislatures was changed back to the tenure of 5 years by amending **Article 83** and **Article 172**²⁴. The 42nd Constitutional Amendment Act had extended the term of Lok Sabha and Rajya Sabha from five years to six years. The act furthermore omitted clause 4 of **Article 123**.²⁵

THE 101ST CONSTITUTIONAL AMENDMENT ACT

The 101st Constitutional Amendment Act established the Goods and Service Tax. **Article 366(12A)** provides a comprehensive definition of the term goods and services tax. It encompasses any tax imposed on the provision of goods, services or both, with the exception of the taxes levied on the sale of alcoholic beverages intended for human consumption.

The constitution was amended to include Articles 246A, 269A, and 279A. **Article 246A** stated that in India, both the Union and the States now have 'concurrent powers' to enact laws governing goods and services. **Article 269A** stated that in the case of inter-state trade, the tax will be imposed and collected by the Government of India and allocated between the Union and the States based on the GST Council's decision and **Article 279A** requires the President to form a GST council within sixty days of the act's enactment.²⁶

THE 102ND CONSTITUTIONAL AMENDMENT ACT

The 102nd constitutional Amendment was enacted in 2018 to grant constitutional status to the

²³ 44th Amendment of Indian Constitution - Indian Polity Notes (byjus.com) (last visited April 10, 2024)

²⁴ *Ibid*

²⁵ *Ibid*

²⁶ 100, 101, and 102 Amendment of the Indian Constitution - iPleaders (last visited April 10, 2024)

National Commission for Backward Classes²⁷.

Through this amendment **Article 338B** which deals with organization, responsibilities and authority of National commission for Backward Classes was inserted. According to this Article the commission shall consist of chairperson, vice- chairperson and three other members.

Moreover, **Article 342A** which grants the President power to identify socially and economically marginalised classes within a state or union territory was also incorporated in the Indian Constitution.

CONCLUSION

In conclusion, the constitutional amendments are of significant nature to align the constitution with changing needs and progress of people. Through an examination of the imperative revisions sanctioned since the constitution's beginning, it gets to be apparent that these changes have played a noteworthy part in driving India's advance and advancement. By presenting arrangements pointed at progressing the interface of each community, person, and course, these corrections have contributed to cultivating an environment conducive to development.

As India proceeds to walk forward on its way of development and advancement, the structure remains an energetic instrument, prepared to be corrected in arrangement with the changing flow of society. It is through a profound understanding of these complexities and a commitment to maintaining the standards cherished inside the structure that the country can explore the challenges of the display and clear the way for a brighter future for all its citizens.

²⁷ 102nd Amendment Act, National Commission for Backward Classes [UPSC Polity Notes] (byjus.com) (last visited April 10, 2024)