

# **MAJOR CONSTITUTIONAL AMENDMENTS AND ITS IMPLEMENTS: AN ANALYSIS**

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## **ABSTRACT**

The constitution of India was said to be set in stone for a long period of time after its making. But, as the social and economic background of India started evolving, the need for an updated constitution was felt. There are many major Amendments to the Constitution, such as 17th Amendment Act, 1964 included 44 more Acts in the Ninth Schedule, 29th Amendment Act, 1972 included two Kerala Acts on land reforms in the Ninth Schedule, 34th Amendment Act, 1974 included twenty more land tenure and land reforms acts of various states in the Ninth Schedule.

**Keywords:**--Constitution, Amendments, Reforms, Schedule, Act, Fundamental, Implements, Changes, etc..

## **INTRODUCTION**

There are many amendments did in constitution after independence. Some are major and some minor. The major amendments are mostly defined as :-

1. First amendments
2. Forth amendments
3. Seventh amendments
4. Thirty-eighth Amendment
5. Forty-second Amendment
6. Forty-fourth Amendment
7. 103th Amendments

### **1. First Amendment**

The first amendment to the constitution of India was enacted on 18-6-1951. This amendment stood as a precedent for all other constitutional amendments made further. The first amendment act made changes to many articles and inserted the ninth schedule.

- It amended the following articles:15, 19, 85, 87, 174, 176, 341, 342, 372, and 376.
- It further inserted articles 31A and 31B along with the ninth schedule.
- The ninth schedule protects the acts that are a part of it from judicial review. This means that the acts cannot be declared as volatile of fundamental rights and they cannot be declared void. This made it convenient and hassle less for the government to implement its policies through parliament law-making procedure because the check on parliamentary actions by the judiciary was not active for the acts under the ninth schedule. Thus, they did not have to worry about the judiciary objecting.

- Article 19(g) gives the freedom to the citizens of India to practice trade and business of their choice. The amendment provided that nationalization of any trade and business by the state is not violative of the constitutional rights as long as it is in accordance with the following conditions that are in the interest of:

1. State security
2. Amicable relations with foreign states
3. Public order
4. Contempt of court
5. Incitement to commit an offence
6. Defamation

This provision was further amended by the sixteenth amendment. The provisions of the sixteenth amendment modified the changes made by the first amendment to give importance to the sovereignty and integrity of India.

### **Reasons for the first amendment**

The first amendment act was enacted to address a number of issues:-

- **Article 19(1) (a) of the Indian constitution provides freedom of speech** and expression the status of a fundamental right. However, it was realized that unregulated display and use of speech and expression could prove to be more harmful than beneficial. If there were no restrictions implemented on the freedom of speech and expression then people would start doing anything and everything without considering the consequences of their actions. This could endanger foreign relations and peace within as well outside the country. It would render sedition, defamation, etc. meaningless. It prevents the state from punishing those who abuse this freedom and power.
- Thus, the first amendment gave way to reasonable restrictions to be imposed only. It secured the constitutional validity of these restrictions as well as the abolition of zamindari laws and other related state acts.
- In order to provide for the educational and economic upliftment of the scheduled tribes, other backward classes and scheduled caste, a provision was made under article 46. It uses the word 'shall' in instructing the states to promote special care for the same.
- Thus, any provision (such as reservation in government jobs and educational institutions) made by the legislature of various states or the centre should not be considered unconstitutional or violative of the fundamental rights of others.

### **Impact of the first amendment**

- As the laws under the ninth schedule were protected from judicial scrutiny they tend to violate the points made under the Kesavananda Bharati case, 1973. No laws made can be an exception to judicial review however in the cases related to the acts within the ninth schedule, it is void. The ninth schedule is not seen as unconstitutional, as a public good was ranked above individual freedom and privileges.
- The amendment to article 31(b) was made in a retrospective manner. This means that it applies even to the laws made before the enactment of the first amendment law. So, even

if a law was declared void earlier, if included under the ninth schedule then it is counted to be a valid law.

- The ninth schedule can be taken advantage of by the government to further their own ideas and preferences. As the laws escape judicial review, the ninth schedule serves as a safe haven to enact laws that can attract judicial scrutiny.
- The government can use the ninth schedule for personal benefits for eg. Former PM Indira Gandhi made amendments to the Representation of Peoples Acts of 1951 and 1974 and placed in the Ninth Schedule along with the Election Laws Amendment Act, 1975 to make her election valid.

## **2.Fourth Amendment**

The fourth amendment is connected with the first constitutional amendment as both of them deal with the subject of property, land acquisition, and zamindari abolition laws. Zamindari abolition laws were fairly accepted by the judiciary as they upheld those laws. The question that arose after the enactment of the first amendment was what was the exact meaning of the word 'estate' mentioned in Article 31.

### **The Fourth Amendment made many changes to:**

- Article 31 and inserted Article 31A.
- Substituted clause (1) of Article 31A and amended Article 31A (2) (b) to add the terms 'raiyats' and 'under raiyats' to the list of those whose 'rights' in an estate were removed from the protection of Articles 14, 19(1) (f) and 31.
- It also amended the ninth schedule to add more acts to it.
- Article 305 was also amended.

### **Reasons behind the fourth amendment and their impact**

- Article 301 provides for the freedom of trade and commerce. The question raised was- Is an act that provides for a state monopoly in violation of article 301. This question was raised in the case of *Saghir Ahmed vs. the State of U.P.* this question was left unanswered then but an amendment to article 305 explains it:

The Supreme Court judgment mostly explains that the law enabling state monopoly will have to be proved to have been implemented in the interest of the public and that it falls under the category of reasonable restrictions under article 301 and 304(b) respectively. With respect to the land reform, the zamindari abolition laws were accepted however, the scope of article 31A was widened to cover acts under the category of 'essential welfare legislation'. For acts to be considered under the said category, the following conditions are to be fulfilled:

1. To define as to how much agricultural land one can own or occupy. This meant that nobody could own more land than the limit if they had the intention and ability to do so. It prevented one person from holding a huge share of agricultural land and allowed fair distribution.
2. To ensure that excess land (more than the limit prescribed) held by anybody is disposed of and that the rights of the landowners and the tenants in the agricultural holdings are updated accordingly.
3. To promote proper planning of urban and rural areas for the beneficial utilization of the vacant and wastelands or clearance of slum areas.

4. In the public interest, to take over a commercial or industrial undertaking or other property, for better management of the same.

Thus, it can be safely interpreted that the fourth amendment was enacted to support the first amendment act to protect it from claims based on unconstitutionality. The introduction of the category of 'essential legislations' invalidated many cases based on the violation of fundamental rights. It saved time for the courts by invalidating wasteful and time-consuming suits.

### **3. Seventh Amendment**

- The reorganization scheme brought changes in the first schedule which mentioned the land area and boundary of all states and union territories.
- The seventh amendment to the constitution of India inserted articles 258A, 290A, 298, 350A, 350B, 371, 372A, and 378A.
- It also amended part 8 and schedules 1, 2, 4, and 7 of the constitution.
- The fourth Schedule which defines the allocation of seats in the Council of States was completely revised. This was because the seat numbers were according to a census carried out in the year 1941. A change in the number of seats in each state was required as there was a significant change in the composition and population of India.
- A new article 258A was inserted in the constitution. This article defined the power of the states to entrust functions to the union which is opposite to the provision of Article 258(1) which entrusts union function to a state government.
- Article 81 was revised to make a change in the allocation of seats in states and their territories. There are instructions of change to be carried out after each census. This change would also include divisions of each state into territorial constituencies after each census.

It also provided the number of members that could be elected from territorial constituencies was 500 from the states and the maximum number of members elected from the UT's was to be 20 in Lok Sabha as Parliament may by law provide. The House of the People should have 500 members (full capacity) who have been elected directly from constituencies of the state. On the other hand, it should have a maximum of 20 members who have been directly elected from Union Territories. Amended article 153 says that the appointment of one person as Governor is allowed for two or more states. The articles 170 and 171 have increased the maximum capacity of the Legislative from 1/4th to 1/3rd of the legislative assembly.

- There was a complete ban on the practice of retired judges in the supreme courts and in the high courts. However, an amendment was made to article 220. This amendment relaxes the complete ban. It does so by allowing retired judges to practice in high courts. The only condition was that the court they serve after retirement should not be the same as the one they have served before their retirement. This article is applicable to only permanent judges and not additional judges or acting judges.
- Article 230 was amended to enable the Parliament to extend the jurisdiction of a High Court to:---
  1. Exclude the jurisdiction of a High Court from any Union territory.
  2. Enable the Parliament to establish a common High Court for two or more States.

While this article gives power to Parliament to extend a high court's jurisdiction, it also has the power to restrict and abolish the jurisdiction given to a court over a union territory. However, it does not empower the parliament to exclude a certain area from the jurisdiction of a certain high court. For example, if 1, 2, and 3 are parts of the same state and fall under the jurisdiction of high court A then, the parliament does not have the power to exclude anyone selectively.

- Article 240 was amended to provide for the peace, progress, and good governance of:
- The Andaman and Nicobar Islands
- The Laccadive, Minicoy, and Amindivi Islands.
- A new Article 350A was inserted to ensure that the mother tongue is taught to every child belonging to linguistic minority groups at the primary level. The president is empowered to issue directions to any state to ensure that the necessary facilities have been provided.
- This article is very beneficial as a child learns to communicate effectively in his mother-tongue. It empowers every child with literacy and ensures that reading and writing in one's own language is possible at the least.

It was decided that the State is not empowered under this article to compel linguistic minority groups to choose their mother tongue as the only medium to communicate in primary schools.

Article 350B provides for appointments by the President of Special Officers. The duty of this officer is to investigate all matters relating to safeguards provided for linguistic minorities under the Constitution and to report to the President upon those matters. According to this article, these reports are to be presented before each House of Parliament and they have to be sent to the governments of the concerned states.

### **Reasons of the seventh amendment and their impact**

- The implementation of article 258A was necessary according to the 13th edition of V.N. Shukla's Constitution of India because there was to be found a lacuna. This lacuna was detected when there was a practical difficulty in relation to the execution of certain developmental projects of a state. This lacuna was filled (resolved) by the insertion of article 258A.
- Major changes made by the seventh amendment are to restructure the composition of legislative assemblies and councils. This was to be done with the same formula as before i.e. for the first five million- one seat per million and one additional seat for every 2 million increase. Thus, the number of seats is revised according to the latest census results but the formula used remains the same.
- The strength is raised to one-third instead of one-fourth because it created issues in states with a comparatively lower population. The 1/4th rule worked for states such as Uttar Pradesh which has a huge population, but not for states with a lower population.
- It was needed to make amendments to implement the scheme of states reorganization and also to make some changes in provisions of the Constitution related to:----

1. High Courts
2. High Courts Judges
3. The executive power of the Union and the States
4. Legislative lists.

#### **4.Thirty-eighth Amendment**

- When both the houses of the parliament are not in session then under article 123, the President is empowered to promulgate ordinances. However, this can be only done when the President is convinced that it is absolutely necessary to do so under the given circumstances. Accordingly, powers have been conferred by the Constitution:----

1. On the Governor under the same article as above and
2. On the administrator under article 239B

The language of articles 123, 213, and 239B is very clear. Satisfaction is an abstract term; therefore, it cannot be measured. It is subjective in nature. The amendment stated that since satisfaction is a subjective term, the satisfaction of the president should be enough to pass an ordinance. An ordinance is passed in emergency situations, when both the houses of the parliament are not in session. In such situations, there is no time to consult and ponder upon the situation. Swift action is to be taken for which the satisfaction of the president should be the only measure needed.

The following points are to be fulfilled to pass an ordinance:

1. The ordinance must be passed when both the houses of parliament are not in session. An ordinance may be issued in the case when only one house is sitting and not the other.
2. The president must be satisfied that the situation makes it necessary for him to pass an ordinance.
3. Every ordinance should be presented to both the houses. The ordinance expires after six months of reassembly of the houses of parliament.
4. An ordinance made by the president shall be subject to the same limitations as a law made by Parliament.

The following was decided after the case called:

1. The satisfaction of the president is not excluded from judicial review; however, the president's satisfaction cannot be viewed purely as a political action or cannot just be doubted due to a political question.
  2. The ordinance cannot be challenged on the grounds of motives or non-application of mind.
  3. The power to issue an ordinance is not an executive power but is the power of the executive to legislate.
  4. An ordinance can be questioned if the President's intentions are under being questioned. It can be challenged when the President did not act bona fide.
- Article 352 states that the President has the power to declare emergency if he satisfactorily believes that the security of India or any part of India is being threatened by war, external aggression or internal disturbance. This emergency could be on the grounds of rebellion, imminent threat, armed rebellion, external aggression, etc. It also allows the president to declare financial emergencies when the financial stability of India is



uncertain. It also empowers the president to assume control of a state when the constitutional institutions (eg. the government falls) in that state fails.

The problem faced was that the president could not declare more than one proclamation at a time. So, if the president has passed one proclamation, he cannot pass another even if the reasons behind both proclamations are different. To resolve this issue, the 38th amendment inserted in this article a provision that allows the president to pass different proclamations based on different grounds even if a previous proclamation is operational. As long as the proclamations are based on different grounds, they tend to serve different purposes.

- The President has the power to make an order to suspend the right to move to courts for the enforcement of rights conferred under Part III of the Constitution of India. However, this can be done when a proclamation of Emergency is in operation. The president is empowered to do the aforesaid, under article 359.
- A similar provision is made under article 358. This provision directly suspends the provisions of article 19 during the time of emergency. This means that no citizen can move the courts for enforcement of rights under article 19 as long as the situation of emergency exists. It also empowers the state to make decisions and laws which they would not have been able to under normal circumstances as they would have been in violation of the rights conferred under Article 19. Therefore, the amendment to article 359 was meant to serve the same purpose as above.

### **5. Forty-second Amendment**

- It inserted articles 31D, 32A, 39A, 43A, 48A, 131A, 139A, 144A, 226A, 228A, and 257A and parts 4A and 14A. It also amended Schedule 7.
- The Preamble of the constitution was amended as follows:
- The words “SOVEREIGN DEMOCRATIC REPUBLIC”, were replaced with the words “SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC” and the words “unity of the Nation” were substituted with “unity and integrity of the Nation”
- Article 31-C states that a law that aids the state in fulfilling their duties laid down in part 4 of the constitution of India should not be held void on the grounds that it violates the fundamental rights conferred by Article 14, 19 or 31.
- This provision was questioned in the case. The question was o of *Minerva Mills Ltd. & Ors vs Union Of India & Ors* 1980 over the importance of fundamental rights.

### **Reasons of the 42nd amendment and their impact**

- The parliament then believed that the constitution should change with changing times. In a quest to bring about a social and economic revolution, the 42nd amendment to the constitution of India was made. This bill was aimed at providing the government with better freedom to fulfil their duties of eradicating poverty and promoting growth.
- The preamble to the constitution of India was amended to include the ideas of sovereign, secular, socialist, and democratic. These are ideal words and the principles that India as a country would achieve in the future.

- To bring about a social and economical revolution by uplifting the poor and better achieving the goals set as directive principles of state policy, amendments were made so that the government can achieve these goals easily.

### **6. Forty-fourth Amendment**

- It inserted articles 134A and 361A of the constitution.
- It removed articles 31, 257A and 329A of the constitution.
- It also amended part 12 and schedule 9 of the constitution.
- The right to property was declared a legal right and it was no longer considered a fundamental right. Article 19(1)(f), which guarantees the citizens the right to acquire, hold and dispose of property and article 31 related to compulsory acquisition of property have been deleted from the constitution. It is important to note here that the declaration of the right to property as a legal right did not abolish the right of minorities to establish and run educational institutions of their choice.
- A new directive principle has been inserted in article 38, which provides that the State shall do everything possible in its power to ensure the welfare of people by protecting:
  1. Social order
  2. Minorities from injustice by reducing individual as well as group inequalities.
  3. justice, social, economical, and political is ensured and informs all institutions of national life.

### **Reasons of the 44th amendment**

- 42nd amendment that ensured parliamentary supremacy could be taken advantage of. The fundamental rights could be taken away easily under the provisions of emergency. This caused grave injustice to the people of India and went against the spirit of the constitution and the fundamental rights in it. Thus, to ensure that these events are not repeated in future, a 44th amendment was made. This amendment had to redefine the kind of governance in India and ensure that essential pillars of a democracy such as fundamental rights and judicial review are given utmost importance.
- The right to property could not be considered a fundamental right any longer. This amendment was to ensure that no person's saved property is taken away in accordance with the law.
- A proclamation of emergency under article 352- which was a decision entirely made by the government had the ability to convert democracy into a unitary state which deprived its citizens even of the basic fundamental rights. This provision had been used for purely personal and political reasons by the government once. It proved to be a potential threat and had the ability to destabilize the democratic structure of the country. To ensure that such abuse of power is never exercised again, the 44th amendment was needed to implement provisions that safeguarded the nation against the same.

### **7. 103th Amendments**

- On 5 August 2019, the government of India revoked the special constitutional status of the erstwhile state of Jammu and Kashmir under Article 370 of the Constitution, and abrogated Article 35A which had allowed it to define who its 'permanent residents' are



and what rights and privileges are attached to such residency. The former state was bifurcated into the Union Territories of Ladakh (without a legislature) and Jammu-Kashmir (with a legislature). Concurrently, the Indian government imposed a near-total telecommunications lockdown in the region, detained political leaders and dissidents, and enforced Section 144 of the Indian Penal Code to prevent violent unrest. The conditions on the ground remained the same for over a year, with many political leaders remaining in detention, District Development Council (DDC) elections taking place as mere tokens of normalcy, and 4G internet services being restored only as late as February 2021. Despite the government's actions, India received minimal adverse reaction from the international community.

- There are three main points of contention surrounding the constitutional amendments. First, should the government have revoked J&K's special status? Second, was the manner of the changes legally and constitutionally justifiable? Third (and of the most significance to the international community), were the preventative steps taken by the Indian government for the sake of national security justifiable in a democratic country from a humanitarian and political perspective? For the government, following its decision, criticism from the international community would have carried serious implications: it would have legitimised Pakistan's narrative that J&K was a disputed region, "under occupation" by India, and that third-party mediation was required; and it would have affected the Modi government domestically, becoming fodder for opposition parties. International censure might have forced the government into course correction to shield itself from long-term political consequences.

### **Conclusion**

On careful reading of the above explanation of the amendments, we see how they have defined the relationship between the nation and its people. The amendments made were not flawless. Some changes made backfired and threatened to destabilize the most important principles of democracy and violated basic fundamental rights. However, the parliament corrected its mistakes by amending and omitting whenever needed to safeguard the values of our constitution and achieve the ideas talked about in our preamble.

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