

# Constitutional Amendments: Wounds on the soul of the original Indian constitution

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**ABSTRACT** - The Constitution of India is famous for being the longest among the written constitutions worldwide with a reasonably long Preamble, 395 articles augmented by more additions than deletions through amendments and 12 Schedules, some of them very long. In the family of Constitutions, the Constitution of India is said to belong to the Euro –American tradition. As regards its length, early commentators on the Constitution had predicted that its length would lead to legalism and rigidity. Fortunately, this did not happen and as expected by the Constitution makers it has proved to be quite flexible and received some favourable comments from some foreign scholars.

The Constitution has gone through small and major amendments at an average rate of more than a year, but it has managed to retain its basic structure which needs to be extolled. The amendments were passed in order to (i) clarify the meaning of existing provisions; (ii) over-ride decisions of the Court concerning the right to property; (iii) dilute democratic checks and balances during the 1975 emergency, and to restore them after the Emergency lapsed (iv) enhance democracy for example, ‘by devolving power on village and district governments (the third tier of federalism), and preventing unprincipled and opportunistic defections from political parties by legislators. In this way, the present study intends to analyse the study of Part XX /Article 368 and constitutional amendments.

**Keywords:** constitution, amendments, India, wounds, Article 368.

## I. INTRODUCTION

The Constitution of India is the largest constitution in the world. The Constitution of India is the supreme rule of law. The document defines frameworks for delineating the political constitution, structure, procedures, powers and responsibilities of administrative authorities, as well as the basic rights, guidelines and responsibilities of citizens. Chairman of the Preparatory Committee B.R. Ambedkar is generally regarded as the chief architect. The Constitution declares India to be a sovereign, socialist, secular, democratic republic which guarantees justice, equality and freedom to its citizens and strives to promote brotherhood.

The original 1950 constitution is preserved in the helium-filled Parliament Buildings in New Delhi. During the Emergency, the words "secular" and "socialist" were added to the preamble in 1976. It was passed by the Constituent Assembly of India on 26 November 19

9 and came into force on 26 January 1950. Article 368 of the Constitution of India states that the Government can amend the constitution. There are two types of change procedures - (i) rigid and (ii) flexible. In a rigid system, it is very difficult for people to change the constitution. The

constitutions of the United States, Canada and Australia follow. In contrast, the flexibility is where the constitution can be changed.

Rajeev Bhargava points out that Indian Constitution was designed to break the shackles of traditional social hierarchies and to usher in a new era of freedom, equality and justice. He views Indian Constitution as a breakthrough in constitutional theory as the Indian Constitution derives its rationale for existence not only by disempowering people in power but also by empowering those who have been traditionally deprived of power.

The Indian Constitution is each rigid and flexible, i.e., arduous to amend however nearly flexible. In compliance with Article 368 of the Indian Constitution, a provision should be created in any of the houses, that must be gone an oversized majority or by a straightforward majority later. If a vote approves the resolution, it'll be submitted to the president for his assent. In seventy years of Indian Independence, the constitution has been amended 104 times. beginning with 395 Articles and eight Schedules, it currently stands at quite 450 Articles and 12 Schedules – arising from 104 amendments.

### Amendment of Indian Constitution – Article 368

Under Article 368 of the Indian Constitution, the Parliament is empowered to amend it and its procedures. Changes to the Indian Constitution aren't easy to provide and need compliance with alternative provisions. Article 368 grants Parliament some powers permitting it to amend it whereas keeping its elementary form simply the same. Article 368 of the Constitution of India cites 2 kinds of amendments to the Constitution of India. The shape of amendment is by a straightforward legislative majority (Lok Sabha & Rajya Sabha), the second kind of change is by a special parliamentary majority, and therefore the third type is with the approval of a special majority and by the whole state.

### Reason for change Procedure by Article 368

The time isn't static, it's continued to change. The Constitution must be revised. People's social, cultural, and political state of affairs is beginning to shift. If the constitutional changes weren't made, we might not be able to encounter the long run difficulties and it'd become a hurdle in the path of development. There's evidence of why our initiation fathers created the constitution as strong because it is today. It's to make sure the plans are dynamic with the country's growth. Therefore, in step with Article 368, Parliament's powers to amend the constitution are unlimited in respect of components of the constitution that it needs to amend.

### The basic structure of the Indian Constitution

In the Kesavanand Bharati case of 1973, the Supreme Court dominated that the Parliament couldn't amend sure provisions that represent the fundamental constitutional framework. Constitutional ideologies which are essential to constitutional survival. Some examples are Free and honest Election, the nation's Federal nature, Judicial Review, and Power Separation. It notes that some basic legislative frameworks and foundation values constitute the muse of the Constitution. These can't be touched by anyone.

### STATEMENT OF PROBLEM

Although having provisions to amend the constitution was progressive to the fathers of our nation, it's necessary that such provisions don't seem to be misused. Misuse may lead to undue legislative or government authority that may rip apart the material of our society. Indians might not perpetually understand all the procedural details of this protracted and imperfect document; however, they know the core — that it's not the whims of political greed that governs them, but the constitutional words. And on Republic Day, this can be price celebrating.

Article 368 is obscure on whether or not or not the parliament has the proper to vary the fundamental structure, but this still doesn't mean this text 368 imposes the restriction on the modification of the fundamental structure and half III of the Constitution. The primary Amendment, crafted by the Constitution's framers, set the tone for the future. It absolutely was clear that, if there have been smart intentions, it was acceptable to use Constitutional amendments to get rid of government constraints. The conditions that diode to one zero five institutional changes and many interpretational amendments can create one miserable. Nevertheless, the Constitution lasted seven decades despite varied attacks by Parliament and therefore the judiciary (Zink et.al, 2016).

### OBJECTIVE AND RESEARCH METHODOLOGY OF THE STUDY

The objective of the present study is to analyse the study of Part XX /Article 368 which has so far been relegated to the background. 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.

### wound caused on constitution through Article 368

The constitution of Indian is one amongst the foremost fascinating documents on this planet. No alternative country features a constitution as comprehensive as ours and is that the largest constitution within the world. However, despite being thus comprehensive, the rationale why this document is so fascinating is because of the undeniable fact that it's very flexible. The fathers of our constitution created it so, they needed that the constitution wouldn't solely aid the country to grow but it would additionally grow aboard it. Thus, the govt. will amend the constitution looking on numerous issues brought up. These powers are given by Article 368.

42nd modification "is conscious of the aspirations of the people, and reflects the realities of the current time and therefore the future." With these words in her speech, Indira Nehru Gandhi introduced the foremost criticized amendment to the Indian Constitution.

If the common of the entire amendments within the Indian Constitution is taken out, then it's virtually 2 amendments per year. Consistent with law experts, the Amendments to the Indian Constitution have reinforced it over time. However, this was the primary instance once the amendment had wholly return up with personal ambitions at the amount of Emergency obligatory by Indira Nehru Gandhi. She modified the Constitution to such an extent

that the "Constitution of India" was started being known as as "Constitution of Indira".

What were the changes forty second modification brought, what were the consequences of those changes and the way the Constitution was brought back to its original form? These queries create the foremost essential a part of this study.

### Background of the 42nd Amendment

On March 19, 1975, Indira Gandhi had to go to the Court for her witness in an election plea. it absolutely was the first instance wherever a primary Minister had to go to the Court throughout its tenure. Shortly once that, June 12, 1975, became a historic day in Indian history wherever the Allahabad court off the election of Indira Gandhi. before long after that, on June 25, Emergency was declared within the country. It initiated the part when the govt. started dynamic the soul of the Indian republic through the Constitutional Amendments.[1]

### Important Prior Amendments

38th Amendment to the Constitution was passed on July 22, 1975, first time after the Emergency, where the Judiciary was stripped of the right to make judicial review of the Emergency. Soon after two months of this amendment, the 39th Amendment to the Constitution was introduced with the intent to keep the Prime Minister's post for Indira Gandhi. Since the Allahabad High Court had cancelled the election of Indira Gandhi, 39th amendment stripped off the right of High Courts to investigate the election of a person appointed to the post of Prime Minister of the country.

The series of changes did not end here. Indira Gandhi claimed that the state of emergency was the need of the hour and continuously made many constitutional changes during this period. After several provisions were changed by the 41st and 42nd Amendments, the 42nd Amendment was introduced which made the Indian Constitution a joke. This change caused people to start calling the constitution "Indira Constitution" instead of "Indian Constitution" or "Mini-Constitution". This reform law of even changed the provisions of the preamble of the constitution.

### The 42nd Amendment

The Constitutional (Forty-second) Amendment Act, 1976, was primarily a handicap of Congress Party, majorly based on the proposals made by Swaran Committee. The Amendment amended the Preamble of the Constitution, 40 Articles [article 31, article 31C, 39, 55, 74, 77, 81, 82, 83, 100, 102, 103, 105, 118, 145, 150, 166, 170, 172, 189, 191, 192, 194, 208, 217, 225, 226, 227, 228, 311, 312, 330, 352, 353, 356, 357, 358, 359, 366, article 368 and

article 371F], Seventh Schedule and added 14 New Articles [articles 31D, 32A, 39A, 43A, 48A, 131A, 139A, 144A, 226A, 228A and 257A and parts 4A and 14A] to the Constitution. As it was undertaken at the time of Emergency, when most of the opposition leaders were detained in preventive detention, so it became more or less a party affair of Indian National Congress instead of National Interest. The Act introduced several changes, most of which sought to tilt the power in the favour of executive away from the Judiciary.

### Some Important Changes

#### In Preamble

Two changes were made to the preamble. First, the characterization of India as "Sovereign Democratic Republic" was changed to "Secular Sovereign Socialist Democratic Republic" and second, the words "Unity of the Nation" were changed to "Unity and Integrity of the Nation".

#### State Legislature and Legislature

In addition to the 42nd Amendment, required for the re-election of districts constituencies to Lok Sabha and State Legislative Assemblies

, after each census conducted after ten years at the time of the 1971 census until the first census conducted after the year 2000. The number of seats for SC tribes and ST in Lok Sabha also froze. A person holding "paid office" shall be disqualified from membership of Parliament or any state legislature, and the court's power to declare paid office shall be terminated.

The restriction of the President under Article 103 to follow the opinion of the Electoral Commission has also been lifted.

#### Justice

Prior to Amendment 42, the Indian judiciary was unified, but the amendment limited the High Court's power to rule only on the validity of state laws and that of the Supreme Court on core legislation. A new provision has been added as Article 131A, giving the Supreme Court exclusive jurisdiction to decide Question relating to the Central Legislature. Section 226A and Section 228A restricted the higher courts. Articles 144A and 228A also added that at least seven judges would sit to decide a question of the constitutional validity of the central law and that laws could only be declared unconstitutional by a two-thirds majority.

#### Emergency Provisions

Article 352 was amended to allow the President for explanation empower an emergency not only across the country but everywhere. To this end, some necessary amendments to Article 353,

Article 358 and Article 359 have been made. Previously, the Article 356 emergency declaration had to be approved by Parliament every six years, but now that period has been extended to one year.

### Fundamentals Rights and Directive Principles

Article 31-C was amended in an attempt to give the DPSP primacy over fundamental rights. Although no direct changes have been made to the fundamental rights articles.

Certain changes have been made to mitigate the effect. Article 31-D was added to allow Parliament to legislate to prevent and prohibit anti-national activities. In addition, it was forbidden to void laws made under Article 31-D for violating Articles 14, 19 or 31.

The amendment added a few more Guiding Principles added, namely, Article 39-A, Article 43-A, Article 48-A. Article 39 (f) has also been reworded.

Article 31C was amended to provide that any law implementing the Guiding Principles would be considered null and void because it is inconsistent with any of the rights under Article 14, Article 19 or Article 31. It was one of the most controversial provisions of the amendment – prioritizing the guiding principles of state policy over fundamental rights (David, et.al, 2014)

### Amendment

When another infamous 42nd Amendment provision involved "amending the Constitution." A few years ago, the Supreme Court delivered the landmark ruling in the Keshavananda Bharati case [1].

Where he set out a scale for amending the Constitution, but Amendment 42 also squeezed those scales. After this change, constitutional changes made by the legislature could be challenged in court without cause. In addition, the membership of MPs and MLAs could not be challenged in court. In case of dispute. The right to decide on his membership rested solely with the President, and the term of office of Parliament was extended from five to six years.

### Some positive prospects

Not all provisions of Amendment 42 were negative. The addition of words such as "socialist", "secular" and "integrity" and the inclusion of basic duties are some examples of the positive provisions added by the 42nd Amendment itself. 42nd Amendment, these provisions are an integral part of the Constitution of India.

### Consequences of the 42nd Amendment

Indira Gandhi had to vote in the elections suffer their worst defeat after the state of emergency. And for the first time in Indian history, a non-congress government was formed in India.

Headed by Morarji Desai, the Janta Party government began reforming the constitution. The government felt it was necessary to make some other amendments to amend the constitution. damaged by the amendments.

The powers of the Supreme Court and Supreme Courts were restored to them by the 43rd Amendment. With the strengthening of the judiciary and the removal of the 42nd Amendment, the 44th Amendment also did the job of strengthening the Constitution even more than ever.

This change made many changes to avoid the situation like the 42nd change in the future. The term "armed rebellion" was included in the provisions related to the state of emergency instead of "internal unrest". At the same time, this change also strengthened fundamental rights.

### Indira Nehru Gandhi vs. Shri Raj Narain & Anr, 1975

When this case came before the Supreme Court, Indira Gandhi was at the height of power and her party was enjoying a majority in Parliament. However, Indira Gandhi was later found guilty of electoral offences. He called for an emergency and approved certain reform legislation, including Article 329-A, which prohibited judicial review. The question was whether judicial review was part of the basic structure of the Indian Constitution.

The court ruled that the emergency was enacted in bad faith and that Section 329A, enacted under the Amendment Act, was unconstitutional.

### Facts

In the 1971 Indian general election, Raj Narain was pleased with Indira Gandhi in a constituency in Uttar Pradesh. The results of the elections were that Indira Gandhi was re-elected and that the Indian National Congress won a large majority in Parliament.

Raj Narain filed an appeal with the Allahabad High Court to reverse the election. He accused Ms Gandhi of using unfair means such as bribery and abusing the government machinery to win the election.

The Allahabad High Court ruled that Ms. Gandhi was guilty of election misconduct. The election in this constituency was declared invalid. It was also noted that he was unable to stand for election in that constituency for six years.

Gandhi attempted to appeal to the Supreme Court, but the trial was postponed to a later date as the court was on

vacation. This prompted Indira Gandhi to call out the emergency call. The Supreme Court tried to overturn that decision and postpone deliberations against it until a later date, but Parliament added Section 329-A to the 39th Constitutional (Amendment) Act 1975, placing such matters outside the jurisdiction of the court.

Therefore, the 39th Constitutional (Amendment) Law of 1975 was challenged in court.

### Amendment 39

#### Clause 4 of Article 329 A

This referred to the election of the Prime Minister to Parliament.

It has been stipulated that the election of the Prime Minister or Speaker of the People's House will not be challenged by any authority other than those specified in the law passed by Parliament. It was also stated that the validity of such laws will not be challenged by the courts.

Based on Kesavananda Bharati's verdict, the defendants argued that the amendment in question violated fundamental features of the constitution. Parliament, under Article 368, could only establish the general principles that governed the state organs. The question of whether the elections were valid or not are a matter for the judiciary under Articles 329 and 136.

Therefore such a change is a violation of the democratic structure of India. The amendment violates the principle of equality because it fails to rationalize the need to distinguish between those in high positions and others.

It violates democracy because it does that the Representation of the People Act 1951 does not apply to the election of the Prime Minister and the Speaker.

Overturning the ruling of the Allahabad Supreme Court is a policy of denial of justice that is a basic feature of the constitution. The change is a slap in the face not only for judicial review but also for the separation of powers.

### Issue

#### Is the 39th Constitutional (Amendment) Act, 1975 constitutional valid?

The court upheld the Kesavananda Bharati case's ruling and declared Clause 4 of Article 329 to be invalid.

According to the majority bench, the clause tore at the foundation of democracy. The Constitution's Basic Structure includes a provision for free and fair elections. It would be a serious violation of the rights of the Indian people to take that away. The bench also determined that it breached the rule of law (the limitation of arbitrary

power by legislation) and the principles of natural justice, or Audi Alteram Partem, which are fundamental elements of the constitution (Pion-Berlin et.al, 2010)

In accordance with Justice Chandrachud, Additionally, Justice Chandrachud J. stated that because the Act granted the parliament certain powers, it violated the principle of separation of powers.

He also believed it violated Article 14 as it gave an unequal advantage to some who, despite not being under the control of free and fair elections, could hold such a powerful position.

### Modification of Legal Challenges

Minerva Mills Ltd. & Ors v Union Of India & Ors , 1980[1]

In this case, the court examined the implications that the government do could amend articles of the Constitution that gave them the power to amend. They also examined the relationship between the Guiding Principles and fundamental rights. The Court ruled that Clause 5 of 368 (extending its powers to amend), Clause 4 of 368 (eliminating judicial review) and Section 4 of the 1976

Amendment Act (eliminating judicialreview) were unconstitutional.

### Facts

In order to save facilities that are being managed against the public interest, The government passed in 1974 the Sick Textile Companies (Nationalization) Act. This law allowed the government to take over the management of these factories.

Minerva Mills, a limited liability company involved in the textile industry, has been accused by the government of being a "sick industry". A commission was set up to investigate the matter. The report claimed the company was "sick". As a result, the company was placed under government administration under Section 18A of the Industries (Development and Regulation) Act 1951.

The factory challenged the constitutionality of such legislation, which it made possible to Constitution Act (Forty and Second Amendment) of 1976.

For this reason, the constitutionality of the amendment law has been questioned.

### Issues

The constitutionality of the Constitution (Forty-second Amendment), 1976.

#### Clause 5 of Section 368

The Reform contained articles 368 Paragraph 5, which said Parliament had no constraint on what part of the Constitution it wanted to change.

The court ruled that the newly introduced Amendment was unconstitutional. It expanded the limited power of government to absolute power.

Such expansion went against the social, political and economic justice of the people. Therefore, Parliament cannot expand its powers and ruin the basic structure of the constitution.

#### Clause 4 of Article 368

The change additionally enclosed clause four of 368 that explicit that no amendment created underneath Article 368 may well be reviewed by the court. The court also dominated this to be unconstitutional. there's a crucial balance between the 3 wings of the government- specifically the legislative, the manager and also the judiciary. If this clause is to be valid then the judiciary wouldn't be in a position to mark down any amendment passed under this provision, although it goes against the fundamental Structure of the Constitution. it'd the general assembly that may decide the validity of the law. That power belongs to the judiciary.

Thus, this clause offers an influence to the general assembly that clearly belongs to the judiciary. By destroying this separation of power and depriving the human of a supply of redressal, they're going against the material of democracy.

The section tries to isolate Article fourteen (equality before law) and Article 19 (freedom of speech) from Article 31(C). when amendment, Article 31(C) explicit that any law giving impact to bound Directive Principles shall not be aforesaid to be invalid if it violates Article fourteen and 19. No court are ready to question such laws. The court dominated this change to be unconstitutional. These 2 rights that are desecrated by these laws don't seem to be solely an important part of the Universal Declaration of Human Rights however additionally essential to the fundamental Structure of the Constitution. it absolutely was also said that by the quantitative relation of the Kesavanda Bharati case, they can't be castrated by these amendments.

#### Relationship between Part III and IV of the Constitution

The court additionally explains the connection between half III and half IV of the constitution, i.e., the basic rights and also the directive principles. They explicit that each created the muse of the constitution and if one was to lean preference over the other, it'd shake the foundation of the constitution and create it weak.

#### Dissent

Bhagwati J. dissented with relevancy the change to Article 31(C). He was of the opinion that one shouldn't rule a law to be unconstitutional at first look and will 1st analyze its pith and substance before ruling against it.

The constitutionality of sections four and fifty five of the forty second change was challenged in Roman deity Mills v. Union of India. once Charan Singh was caretaker Prime Minister. Article 31C of the Constitution was amended by Section 4 of the 42nd change to accord control of the Directive Principles of State. The policy articulated partially IV of the Constitution over the basic Rights of people articulated partially III. Section 55 prevented any constitutional amendment from being "called in question in any Court on any ground". It additionally declared that there would be no limitation no matter on the facility of Parliament to amend the Constitution. when the 1980 Indian general election, the Supreme Court declared sections four and fifty five of the forty second change as unconstitutional. It any supported and evolved the fundamental structure belief of the Constitution.

## II. CONCLUSION

The size of a country, its sizeable population, it's phenomenal diversity and the enormity of problems associated with its political and social history, poverty, illiteracy, lack of adequate experience and expertise in constitutional governance, the disturbed regions and several other factors have contributed to doubts whether India could have and work with a modern Constitution. Miraculously India not only produced one of the most progressive constitutions after its liberation from British rule, but the Constitution has also and worked reasonably well since its inception despite several ups and down. One of the reasons for its survival has been its adaptability to the changing times and situations.

Regardless of the goals and objectives of this constitutional modification. Told by the then ruling class, the most aim of this constitutional amendment was the main focus of the ability within the hands of the Prime Minister and also the Executive.

During the election of the sixth Lok Sabha, underneath the political platform of election manifesto. that was printed by the Janata Party. Cancelling the forty second constitutional amendment was the primary issue written. however once getting power a viable approach was adopted. supported virtue concerning this, rather than canceling all the provisions of the forty second amendment. The forty third and forty fourth constitutional amendments were introduced to take

away the harmful provisions introduced through 42nd Amendment.

Here, one needs to note that even if the Judiciary is unable to bridle the powers of the Parliament, there are ample internal or procedural checks on the Parliament which arise out of the very nature of the amending power itself. In the Indian Constitution so long the procedure is laid down in Article 368, the Parliament can never claim absolute Parliamentary sovereignty. The procedure itself imposes a restriction on the power of Parliament. It is thus the duty of the Judiciary to see that the procedure is fully complied with when Parliament acts under Article 368. Any irregularity with regard to the procedure prescribed in Article 368 is not only an irregularity of the proceedings but a non-compliance of the provisions of the Constitution and must be regarded as fatal to the exercise of the amending power. The procedure laid down in Article 368 is therefore a sufficient check on the amending power of the Parliament.

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