



Progressive Amendments in the Development of Constitution of India

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Introduction

India has got freedom in 1947. After the enforcement of Constitutional Law of India some issues have raised by the people of India. They want some amendments in the Constitutional Law of India. Their main issues regarding the Land Acts and other laws, which were inconsistent against the provisions of the Constitutional Law of India. Now Constitution is the supreme law of the land. Any Law which is repugnant and his part is against the Constitution it cannot be applicable in India. Every person is equal in the eye of law. Nobody can be deprived from his fundamental rights and legal rights. Even in case of emergency when all the rights of the people can be suspended but right to life cannot be curtail.

A Brief History of the Constitution of India

Before 1947, India was divided into two main entities The British India which consisted of 11 provinces and the Princely states ruled by Indian princes under subsidiary alliance policy. The two entities merged together to form the Indian Union, but many of the legacy systems in British India is followed even now. The historical underpinnings and evolution of the India Constitution can be traced to many regulations and acts passed before Indian Independence¹.

The Constitution of India came into force on 26th January 1950. Since then, the day is celebrated as Republic Day. However, before 1950, 26th January was called Independence Day. Since 26th January 1930, it was the day on which thousands of people, in villages, in Mohall's, in towns, in small and big groups would take the independence pledge, committing themselves to the

¹ www.clearias.com

complete independence of India from British rule. It was only fitting that the new republic should come into being on that day, marking from its very inception the continuity between the struggle for independence and the adoption of the Constitution that made India a Republic².

The process of the evolution of the Constitution began many decades before 26th January 1950 and has continued unabated since. Its origins lie deeply embedded in the struggle for independence from Britain and in the movements for responsible and constitutional government in the princely states.

On 19th February 1946, the British government declared that they were sending a Cabinet Mission to India to resolve the whole issue of freedom and constitution making. The Cabinet Mission, which arrived in India on 24th March 1946, held prolonged discussions with Indian leaders. On 16th May 1946, having failed to secure an agreement, it announced a scheme of its own. It recognized that the best way of setting up constitution-making machinery would 'be by election based on adult franchise; but any attempt to introduce such a step now would lead to a wholly unacceptable delay in the formulation of the new constitution. Therefore, it was decided that the newly-elected legislative assemblies of the provinces were to elect the members of the Constituent Assembly on the basis of one representative for roughly one million of the population. The Sikh and Muslim legislators were to elect their quota based on their population.

It was only after this process had been completed that the representatives of all the provinces and those of the princely states were to meet again to settle the Constitution of the Union. The Congress responded to the Cabinet Mission scheme by pointing out that in its view the Constituent Assembly, once it came into being, would be sovereign. It would have the right to accept or reject the Cabinet Mission's proposals on specifics.

The Constituent Assembly was to have 389 members. Of these, 296 were to be from British India and 93 from the princely Indian states. Initially, however, the Constituent Assembly comprised only of members from British India. Elections of these were held in July-August

²www.indiansaga.com

1946. of the 210 seats in the general category. Congress won 199. It also won 3 out of the 4 Sikh seats from Punjab. The Congress also won 3 of the 78 Muslim seats and the 3 seats from Coorg, Ajmer-Merwara, and Delhi. The total Congress tally was 208. The Muslim League won 73 out of the 78 Muslim seats.

At 11 a.m., on 9th December 1946, the Constituent Assembly of India began its first session. For all practical purposes, the chronicle of independent India began on that historic day. Independence was now a matter of dates. The real responsibility of deciding the constitutional framework within which the government and people of India were to function had been transferred and assumed by the Indian people with the convening of the Constituent Assembly. Only a coup d'état could now reverse this constitutional logic.

207 members attended the first session. The Muslim League, having failed to prevent the convening of the Assembly, now refused to join its deliberations. Consequently, the seventy-six Muslim members of the League stayed away and the four Congress Muslim members attended the particular session of the Assembly. On 11th December, DrRajendra Prasad was elected the permanent Chairman; an office later designated as President of the Assembly.

The third session was held from 28th April to 2nd May 1947 and the League still did not join. On 3rd June, the Mountbatten Plan was announced which made it clear that India was to be partitioned. With India becoming independent on 15th August 1947, the Constituent Assembly became a sovereign body, and also doubled as the legislature for the new state. It was responsible for framing the Constitution as well as making ordinary laws.

The work was organized into five stages: first, committees were asked to present reports on basic issues; second, B.N. Rau, the constitutional adviser, prepared an initial draft on the basis of the reports of the reports of these committees and his own research into the constitutions of other countries; third, the drafting committee, chaired by Dr. Ambedkar presented a detailed draft constitution which was published for public discussion and comments; fourth, the draft constitution was discussed and amendments proposed; fifth, and lastly the constitution was adopted.

In February 1948, Dr. Rajendra Prasad the first President of India constitutes a committee for the drafting of the Constitution of India. The Constitution of India was adopted by the constituent assembly on 26th November 1949. It was finally come into force on dated 26th January 1950. The constitution replaced the Government of India Act, 1935 as the country's fundamental governing document, and the Dominion of India became the Republic of India.

Major Amendments in the Indian Constitution

There are so many amendments done by the Parliament time to time as per the requirement of the society. This was the demand of the time because some Laws were not consistent.

In First Amendment³ Parliament had added special provision for the advancement of any socially and educationally backward classes or for the Scheduled Castes and Scheduled Tribes (SCs and STs). To fully secure the constitutional validity of zamindari abolition laws and to place reasonable restriction on freedom of speech. A new constitutional device, called Schedule 9 introduced to protect against laws that are contrary to the constitutionally guaranteed fundamental rights. These laws encroach upon property rights, freedom of speech and equality before law.

In Eleventh Amendment⁴ the Parliament had amended the election of Vice President by Electoral College consisting of members of both Houses of Parliament, instead of election by a Joint Sitting of Parliament. Indemnify the President and Vice President Election procedure from challenge on grounds of existence of any vacancies in the Electoral College.

In twentieth Amendment⁵ the Parliament had amended Indemnify & validate judgments, decrees, orders and sentences passed by judges and to validate the appointment, posting, promotion and transfer of judges barring a few who were not eligible for appointment under article 233. Amendment needed to overcome the effect of judgment invalidating appointments of certain judges in the state of Uttar Pradesh.

³ First Amendment on dated 10th May 1951

Eleventh Amendment on dated 19th December, 1961

Twentyth Amendment on dated 22nd December, 1966.

⁵ Twenty Fifth Amendment on dated 20th April, 1972

In twenty Fifth Amendments⁶ the Parliament had amended some provisions and restricts property rights and compensation in case the state takes over private property. However, the Supreme Court quashed a part of Article 31C; to the extent it took away the power of judicial review. This was done in the landmark case of KesavanandaBharati v. State of Kerala(1973) 4 SCC 225 which for the first time enunciated the Basic structure doctrine.

In Thirty Ninth Amendment⁷ the Parliament had amended and designed to negate the judgement of Allahabad High Court invalidating Prime Minister Indira Gandhi's election to parliament. Amendment placed restrictions on judicial scrutiny of post of Prime Minister. The amendment was introduced and passed in the Lok Sabha on August 7, 1975 and again introduced and passed in the Rajya Sabha on August 8, 1975. As many as 17 State Assemblies, summoned on Saturday, August 9 ratified this amendment and President Fakhruddin Ali Ahmad gave his assent on Sunday, August 10 and the civil servants issued gazette notification on Sunday, August 10, 1975. As a consequence of this amendment to the Constitution of India, Supreme Court of India's scheduled hearing on August 11, 1975 of Petition challenging Prime Minister Indira Gandhi's election became infructuous.

Later however, Article 329A was struck down by the Supreme Court in case of State of Uttar Pradesh v. Raj Narain 1976 (2) SCR 347, for being in violation of basic structure.

In Forty Two Amendment⁸ the Parliament had amended so many Articles and insert so many Articles and also passed during internal emergency by Indira Gandhi. Provides for curtailment of fundamental rights, imposes fundamental duties and changes to the basic structure of the constitution by making India a "Socialist Secular" Republic. However, the Supreme Court, in Minerva Mills v. Union of India, quashed the amendments to Articles 31C and 368 as it was in contravention with the basic structure of the Constitution.

In Forty Fourth Amendment⁹ the Parliament had amended so many Articles and insert so many Articles and also amend Schedule 9 of the Constitution and passed after revocation of internal emergency in the Country. Provides for human rights safeguards and mechanisms to prevent abuse of executive and legislative authority. Annuls some Amendments enacted in Amendment Bill 42.

Thirty Ninth Amendment on dated 10th August 1975.

⁸ Forty Two Amendment on dated 2nd November ,1976.

⁹ Forty Fourth Amendment on dated 6th September 1978.

In Fifty Two Amendment¹⁰ the Parliament had amended Articles 101, 102, 190, and 191 and insert Schedule 10 in the Constitution and amended Anti Defection Law provide disqualification of members from parliament and assembly in case of defection from one party to other. However, parts of the 10th Schedule to the Constitution of India was struck down by the Supreme Court in the case of KihotoHollohan v. Zachillhu 1992 SCR (1) 686, for being in contravention with Article 368 of the Constitution.

In Fifty Ninth Amendment¹¹ the Parliament had amended Article 356 amended to permit President's rule up to three years in the state of Punjab, Articles 352 and Article 359A amended to permit imposing emergency in state of Punjab or in specific districts of the state of Punjab.

In Eighty Amendment¹² the Parliament had amended Articles 269 and 270 and implement Tenth Finance Commission recommendation to simplify the tax structures by pooling and sharing all taxes between states and The Centre.

In Ninty Seventh Amendment¹³ the Parliament had amended Article 19 and Added the words "or co-operative societies" after the word "or unions" in Article 19(1) (c) and insertion of article 43B i.e., Promotion of Co-operative Societies and added Part-IXB i.e., The Co-operative Societies. The amendment objective is to encourage economic activities of cooperatives which in turn help progress of rural India. It is expected to not only ensure autonomous and democratic functioning of cooperatives, but also the accountability of the management to the members and other stakeholders.

In Ninty Ninth Amendment¹⁴ the Parliament had amended Formation of a National Judicial Appointments Commission. 16 State assemblies out of 29 States including GoaRajasthanTripura, Gujarat and Telangana ratified the Central Legislation, enabling the President of India to give assent to the bill. The amendment was struck down by the Supreme Court on 16 October 2015.

In Hundred Amendment¹⁵ the Parliament had amended First Schedule that Exchange of certain enclave territories with Bangladesh and conferment of citizenship rights to residents of enclaves'

¹⁰ Fifty Second Amendment on dated 15th February 1985

¹¹ Fifty Ninth Amendment on dated 30th March, 1988.

¹² Eighty Amendment on dated 9th June, 2000.

¹³ Ninty Seventh Amendment on dated 12 January, 2012.

¹⁴ Ninty Ninth Amendment on dated 13th April, 2015.

¹⁵ Hundredth Amendment on dated 01 August, 2015.

consequent to signing of “Land Boundary Agreement” (LBA) Treaty between India and Bangladesh.

In Hundredth First Amendment¹⁶ the Parliament had introduced the Goods and Services Tax. Because there were so many complications was facing by the peoples at that time. To remove these complications Parliament had introduced this Act.

Conclusion

Law is a dynamic concept. So this is the requirement of the society that the law should be change as per the requirement of the society. These all Amendments have been made by the Parliament for the need of the society. In future as per the public opinion this is the main duty of the Parliament to amend the Constitution for the welfare of the society.

¹⁶Hundred First Amendment on dated 01 July, 2017.