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POLITICS OF CONSTITUTIONAL AMENDMENT UNDER ARTICLE 368

Ashish Kumar Singh

2nd Semester, B.A., Ll. B.(H), Amity Law School , Amity University, Noida, May, 2020

Abstract

The framers of the Indian constitution were keen to avoid excessive rigidity from the constitution, that this constitution should evolve with time and the rigidity of the federal government for amending any provision that is the basic feature of the federal nation should not stop the functioning of a growing nation that it led to a barrier for our growing nation that is why they made this sacred Constitution a Dynamic in nature. And for this reason, they added a separate part in the constitution for amending the constitution itself in Article 368 and Part XX. The true nature for this amending provision is for the purpose that the needed portion can be amended easily and the provisions that need more interest of the nation will be amended by rigid process i.e. by the Special Majority plus ratification by half of the state. But the framers were not aware that time that the political expert will find a way from it also. They were not aware of the present political environment. This research paper tells about the necessity of Article 368, the politics did by political parties in even fundamental rights, tried to establish autocracy in the country, and even also threaten judiciary indirectly by amending articles or by encroaching in their system by appointing judges. The research paper talks about the four phases of judicial development that is Shankari Prasad Case (1951) to Golaknath Case (1967), Golaknath Case (1967) to Kehvananda Bharti Case (1973). Keshavananda Bharti Case to Election Case (1975), and Election Case to Minerva Mills Case (1980). This paper tries to highlight the politics done by the government in power from the time of Independence to the Present. And have suggested some of the ways by which amendment can be saved.

Keywords: *Amendment, Constitutionality, Provisions, Political Parties.*

1. INTRODUCTION:

The Constitution of India is the supreme law of the land, which is fundamental inside the governance of India. The Constitution of India become enacted on 26th November, 1949 and was adopted on 26th January, 1950. The Draftsmen of the Indian Constitution took the idea from Constitutions all around the globe and included their attributes into the Indian Constitution. For example, Part III on Fundamental Rights is partially derived from the American Constitution and Part IV on Directive Principles of State Policy from the Irish Constitution, and the Procedure of amendment in Part XX is taken from South Africa .

A Constitution needs to be a Dynamic Document. It needs to be capable of adapting itself to the converting needs of society. Sometimes underneath the impact of recent effective social and monetary forces, the pattern of government will require primary changes. Keeping this element in mind the Draftsmen of the Indian Constitution included Article 368 within the Constitution which dealt with the system of the amendment.

In simple meaning amendment means the change or add in any clause, article, section, provision of the law. In India for constitutional amendment Article 368 was inserted which lay down the procedure of amendment which is basically inserted to differentiate between what laws can be amended easily by a simple majority and what can be amended by the difficult process of special majority and ratification by half of the state. But in 1971 by the virtue of the 24th amendment, the government tried to make it declaratory by adding the word power in it. In India, the meaning of amendment was described in different ways in different cases by the Supreme Court time and again. And the political expert used the amendment process for their political interest.

2. RESEARCH QUESTION (STATEMENT OF PROBLEM):

- Whether the Constitution of India is free from ambiguities?
- Whether Political Parties are affecting the constitution by amendment?
- Whether the political interest of parties obstructs the dynamic nature of the constitution and the nation?
- Whether by making the constitution flexible in the federal government for amending process helps the political parties to fulfill their ambition

3. SCOPE OF STUDY: Talking about the scope of this research it talks about the Political Interest from the very first amendment till now. The emergency era and objective of Independent India of adding an amending provision in the constitution it covered most of the aspect. In between research work fundamental rights cases were also discussed starting from the Shankari Prasad Case to the Minnerva Milla case.

4. RESEARCH OBJECTIVE: The main objective of my research paper is to eradicate the Political interest from the amending process

5. RESEARCH HYPOTHESIS: By making the article 368 flexible in character helps the political parties to fulfill their own interest rather than to concentrate or to work the development of the nation and also if it is rigid in some portion still if the majority is of the party it becomes easy for them to amend any provision of being dominant over other.

6. RESEARCH METHODOLOGY: This research paper is based on the doctrinal method in which data is collected from the secondary resources. In the secondary resource some books, e-books, websites etc. have been referred. After collecting data from these

resources the materials were filtered and included in the research paper in such a way that the objective of my research would attained.

7. WHAT IS AMENDMENT:

Under the Constitution, India proclaims itself as a 'Sovereign, Socialist, Secular, Democratic, Republic' nation. The Constitution of India was passed by the constituent assembly on 26 November 1949, and it came into effect on 26th January 1950.

No Written Constitution is exhaustive so without amending provisions; in certain regards, it stops the constitution to be dynamic. The term 'amendment' comes from the Latin word 'amendere.' The term 'amend' for the most part intends to make right, to make rectification, or to correct. In like manner speech 'amendment' passes on the feeling of a slight change.

The object of the amending clause in a Constitution is to guarantee that the Constitution is protected. A State can't be static. A Constitution ought to be dynamic and versatile in nature to stay aware of the changing needs of society. An adjustment in the public eye will require an adjustment in the Constitution.

- **As per Oxford Dictionary Amendment mean: [1][**A small change or improvement that is made to a document or proposed new law; the process of changing a document or proposed new law.]
- **As per Merriam-Webster Dictionary Amendment mean: [2][**the process of altering or amending a law or document (such as a constitution) by parliamentary or constitutional procedure.]
- **As per Collins Dictionary Amendment mean:** [3][An amendment is a section that is added to a law or rule in order to change it.]
- **Legally speaking:** Amendment means any adjustment, betterment, change, correction, elaboration, emendation, enhancement, improvement, modification, perfection, refinement, remedy, revision.

The amending proviso in the written Constitution expects great significance since it allows to the progressive age to develop it according to their requirements. The amending proviso is a chance to express state-related worries without changing basic and fundamental structure.

[1] Meaning of Amendment, Oxford Dictionary, (Apr 23rd, 2020, 14:10 PM), https://www.oxfordlearnersdictionaries.com/definition/english/amendment

[2]Meaning of Amendment, Merriam Webster Dictionary, (Apr 23rd, 2020, 14:15 PM), https://www.merriam-webster.com/dictionary/amendment

[3] Meaning of Amendment, Collins Dictionary, (Apr 23rd, 2020, 14:15 PM), https://www.collinsdictionary.com/dictionary/english/amendment

The constitution was framed about 70 years ago, the composers at that point, couldn't in any way, shape or form the present Indian political and financial condition. A change is made with the end goal of beating the troubles which may emerge in future in the working of the Constitution.

- Talking about the Indian context the framers of the Indian Constitution were keen to avoid excessive rigidity so that this document can grow with the growing nation that means it should be dynamic in nature that it doesn't stop society from development and also not so much excessive flexibility so that it couldn't be the playing of the whims and caprices of the ruling party.

Still the very first amendment i.e. in year 1951 was challenged in **Shankari Prasad v. Union of India (1951**) that it violates article 13(2) and the court held that the law in article 13(2) includes only ordinary laws not amendment in article 368, that means from the very starting article 368 stated it as imperfect with the constitution and filled with ambiguities.

- Since 1951, questions have been raised about the genuine degree and nature of amending process given under Art.368 of the Constitution. A survey of the Indian constitutional amendments till this date uncovers that there are not many arrangements that stay untouched. By and by, beginning with the preamble of the Constitution and closure with Art.394-A greater part of the provisions have been touched by taking the recourse of amendment for in excess of multiple times.
- **The word Amendment defined in Sajjan Singh v. State of Rajasthan: [4]**["amend" is to, correct a fault or reform; but in the context, reliance on the dictionary meaning of the word is singularly inappropriate. Because what Art. 368 authorises to be done is the amendment of the provisions of the Constitution. It is well-known that the amendment of a law may in a proper case include the deletion of any one or more of the provisions of the law and substitution in their place of new provisions. Similarly, an amendment of the Constitution which is the subject matter of the power conferred by Article-368, may include modification or change of the provisions or even an amendment which makes the said provisions inapplicable in certain cases. The power to amend in the context is a very wide power and it cannot be controlled by the literal dictionary meaning of the word "amend".]

[4] Sajjan Singh v. State Of Rajasthan, AIR 1965 S.C. 845 (India)

- **The above meaning of amendment was limited in extent by the Golak Nath v. State of Punjab(1967), Subba Rao CJ** speaking for the majority held that [5][the power to amend the constitution was not a sovereign power, superior to the legislative power, it was also subject to limitations and judicial review.]
- **Be that as it may, in Keshvananda Bharti Case (1973):** [6][The court determined that the word "amend" within the provision of Article 368 stands for a restrictive connotation and couldn't ascribe to a fundamental change. To understand it simply; the parliament in order to pass a constitutionally valid amendment, the precise change is challenge to the utility of Basic Structure take a look at and has to pass it. Since the majority dominated that Parliament can amend any & every provision of Constitution problem to Basic Structure test, it additionally had the effect of allowing Parliament to amend even FR's as lengthy as they may be in consonance with the Basic Structure theory. The court advised few primary systems that they could find along with Free & Fair Elections, Supremacy of Constitution, Independent judiciary, Secularism, Federal Character of Nation, Separation of Power, Republic & Democratic shape of Government etc. However, the list they prepared isn't exhaustive and future courts on interpretation can add features they discover as Basic Structures.]

8. Necessity of Amending Provision of the Constitution: [7][Provision for amendment of the constitution is made with the end goal of beating the challenges which may experience later on in the working of the Constitution. No generation has a monopoly of wisdom nor has it a right to place fetters on future generations to mold the machinery of government according to their requirement. On the off chance that no provision was made for the amendment of the Constitution, the individuals would have a plan of action to extra-sacred strategies like a revolution to change the constitution.]

It has been in reality the concept of the amending process in the federation which has pushed political specialists to categorise federal charter as rigid. A federal Constitution is usually inflexible in individual as the procedure of the change is unduly complicated. The procedure of amendment in the American Constitution is extremely rigid. So is the situation with

[5] Golaknath v. State of Punjab, AIR 1971 SC 1643 (India)
[6] Keshvananda Bharti v. State of Kerala, AIR 1973 SC 1461
[7] Keshvananda Bharti v. State of Kerala, AIR 1973 SC 1461

Australia, Canada, and Switzerland. It is a common criticism of the federal Constitution behind the times.

Basically if we talk about necessity there comes three major reasons for the amending provision in the constitution

A. That Constitution should be Dynamic in nature: The framers of the Indian constitution were keen to avoid excessive rigidity from the constitution, that this constitution should evolve with time and the rigidity of the federal government for amending any provision that is the basic feature of the federal nation should not stop the functioning of a growing nation that it led to a barrier for our growing nation that is why they made this scared Constitution a Dynamic in nature.

[8][The nature of amending the "amending process" envisaged by the framers of our constitution can best be understood by referring the following observation of the late Prime Minister Pt. Nehru, "while we want this constitution be as solid and permanent as we can make it, there is no permanence in the constitution. There should be certain flexibility. If you make anything rigid and permanent you stop the nation's growth, of a living vital, organic people……. In any event, we could not make this constitution so rigid that it cannot be adopted to changing conditions. When the world is in a period of transition what we may do today may not be wholly applicable tomorrow]

B. That the Constitution should not be so flexible and so rigid in nature: We have already discussed why a constitution should not be so much rigid, that it stops the growing nation and constitution to be dynamic. But when we talk about why it should not be so much flexible that if we are talking about constitution to be dynamic but not flexible, then what does that mean will it not barricade the growing nation ??, the reason is that it will then becomes a playing ball of the ruling party. Where one party should not be interested in fulfilling their own aspiration than the aspiration of the growing nation. That is why they adopted a middle road of development that it should not be so rigid and nor be so flexible. The equipment of amendment must be like a protection valve, so devised as neither to operate the device with too extraordinary facility nor to require, to be able to set in motion, an accumulation of force enough to blow up it.

[8] Dr. J. N. Pandey, Constitutional Law Of India, 775, (Central Law Agency, 30-D/1 Moti Lal Nehru Road, Allahabad, 2016 Edition)

While this is a terrifying idea, it isn't far away from reality. The legislature in numerous amendments, for example, the 39th Amendment and in the second clause of the 25th Amendment has attempted to set up a state where the legilative is incomparable and tried to create an autocracy in the country.

C. Flexible Federation: On above two reasons one can say that the Indian Federation will not suffer from the faults of rigidity of legalism.

Its distinguishing feature is that it is a flexible federation where [9][Prof. Wheare called our constitution to be Quasi federal and stated that, "The Constitution establishes a system of Government which is almost quasi-federal…….. a unitary state with subsidiary features rather than a federal State with subsidiary unitary feature. Jennings has characterized it as 'a federation with a strong centralizing tendency'.]

For the reason that our constitution should be a flexible federation that for amending ordinary law it does not require ratification by the state and when there is interest of state in that amending provision it requires ratification by the state also.

For that they have added three categories of amending a constitution:

I. Amendment by Simple Majority: Those articles which can be amended by the Parliament by simple majority which amends ordinary law an those which are contemplated in Article-5, Article 169 and Article 239-A, and these article are excluded from the purview of Aricle-368 i.e. procedure to amend the constitution.

II. Amendment by Special Majority: Those articles which can be only amended by special majority as laid down in Article 368. All constitutional amendment other than those cited above, come inside this category and must be effected by majority of the total membership of every House of Parliament as well as by a majority of not less than 2/3 of the members of that House present and voting.

III. Amendment by Special Majority plus Ratification by States: Those Articles which requires ratification by not less than ½ of the State legislature with the special majority as mentioned in above. The states are given an important voice in the amendment of constitution where the personal interest of the state and even any unilateral amendment by Parliament which may vitally tries to destroy the fundamental basis of the constitution

[9] Dr. J. N. Pandey, Constitutional Law Of India, 19, (Central Law Agency, 30-D/1 Moti Lal Nehru Road, Allahabad, 2016 Edition)

This class of Articles consists of amendment which seek to make any change in the provisions mentioned in Article 368. The following Provisions require such ratification by the states:

a) Election of the President- Articles 54 and 55.

b) Extent of the Executive Power of the union and the states- Articles 73 and 162

c) Articles managing with Judiciary, Supreme Court, High Court in the States and Union territories- Articles 124 to 147, 214 to 231, 241.

d) Distribution of legislative powers between the Centre and the States- Articles 245 to 255

e) Any of the lists of the VIIth Schedule.

f) Representation of States in Parliament in IVth Schedule.

g) Article 368 itself.

9. Article 368 and the 24th Amendment:

As to that much importance of amendment provision in the constitution which was already discussed earlier, it has been put in a separate part of the constitution i.e. Part XX of the Constitution of India.

[10][368. Power of Parliament to amend the Constitution and Procedure therefor.-

(1) Notwithstanding anything in this Constitution, Parliament may in exercise of its constituent power amend by way of addition, variation or repeal any provision of this Constitution in accordance with the procedure laid down in this article

(2) An amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of that House present and voting, it shall be presented to the President who shall give his assent to the Bill and thereupon the Constitution shall stand amended in accordance with the terms of the Bill: Provided that if such amendment seeks to make any change in

a. Article 54, Article 55, Article 73, Article 162 or Article 241, or

b. Chapter IV of Part V, Chapter V of Part VI, or Chapter I of Part XI, or

c. any of the Lists in the Seventh Schedule, or

d. the representation of States in Parliament, or

[10] INDIA CONST. art. 368

e. the provisions of this article, the amendment shall also require to be ratified by the Legislature of not less than one half of the States by resolution to that effect passed by those Legislatures before the Bill making provision for such amendment is presented to the President for assent

(3) Nothing in Article 13 shall apply to any amendment made under this article

(4) No amendment of this Constitution (including the provisions of Part III) made or purporting to have been made under this article whether before or after the commencement of Section 55 of the Constitution (Forty second Amendment) Act, 1976 shall be called in question in any court on any ground

(5) For the removal of doubts, it is hereby declared that there shall be no limitation whatever on the constituent power of Parliament to amend by way of addition, variation or repeal the provisions of this Constitution under this article PART XXI TEMPORARY, TRANSITIONAL AND SPECIAL PROVISIONS**]**

Not only by the virtue of this provision parliament amended other provisions of the constitution but also amended Article 368 itself and it had been amended twice by the parliament first in the 7th amendment act, 1956 and second in the 24th amendment act, 1971.

At first, after the 7th amendment act, only the "Procedure for amendment of the Constitution" and under it only clause 2 (which was article 368 itself) was mentioned, but soon after the Judgment of Golaknath v. State of Punjab (1971) which held that, [11][Parliament had no power from the date of this decision to amend Part III of the Constitution so as to take away or abridge the fundamental rights], parliament in the government of Indira Gandhi because of their political interest of creating autocracy in the country amended article 368 by the virtue of 24th amendment act. The amendment has made the following amendment:

i. It has added a new clause (4) to Article 13 which provides that [12][Nothing in this article shall apply to any amendment of this constitution made under article 368]

ii. It substituted the old heading of article 368 "Procedure for amendment of the Constitution". To the new heading is "Power of parliament to amend the Constitution and Procedure thereof"

[11] Golaknath v. State of Punjab, AIR 1971 SC 1643 (India)
[12] INDIA CONST. art.13, cl. 4.

iii. It inserted new sub-section (1) in Article 368 which provides that [13][notwithstanding anything in the constitution, Parliament may, in exercise of its constituent power amend by a way of addition, variation, or repeal any provision of this Constitution in accordance with the procedure laid down in this article].

iv. It substituted the words, "it shall be presented to the president who shall give his assent to the Bill and thereupon" in 2nd clause which was primarily Article 368 for the words "it shall be presented to the President for his assent and upon such assent being given to the Bill." Thus from the 24th amendment, she started acting like a despot and makes it obligatory for the President to give his assent to the Bill amending the constitution.

v. It has added a new clause (3) to article 368 which provides that [14]["nothing in article 13 shall apply to any amendment made under this article."]

Thus the 24th amendment not only restored the amending power which was restricted by the Golaknath case, but also extended its scope by adding the words [15]["to amend by way of the addition of variation or repeal any provision of this Constitution in accordance with the procedure laid down in this Article"]

The irony is that Indira Gandhi Government was in power at that time and it becomes easy for her to amend this provision, as this provision need to be ratified by the special majority plus ratification by more than half of the state. She actually becomes a ringmaster of politics at that time that she amended article 368 itself which gives the important procedure to amend the constitution without any reconsideration and rejection by the parliament and legislature.

Non-Obstante Clause: The constitutionality of the 24th Amendment Act 1971, was then challenged in Keshvananda Bharti Case which is discussed later in this paper, the important thing is that Non-Obstante Clause (notwithstanding anything) i.e. Clause 1 of Article 368 does creates an impression that the amendment provision is superior to all kinds of constitutional provisions and the court in that case held that the power to amend the constitution was implicit in this constitution even before 24th amendment and thus 24th amendment merely made it explicit or declaratory. However the basic features of the Constitution cannot be taken away by amendment.

[13] INDIA CONST. art. 368, cl. 1.
[14] INDIA CONST. art. 368, cl. 3.
[15] INDIA CONST. art. 368, cl. 1.

10. AMENDMENT OF FUNDMENTAL RIGHT AND THE POLITICS:

If we talk about ambiguities in Article 368, it is totally filled with it, starting from the very first amendment till today it is been challenged several times and we know that as our Honorable Supreme Court says that our law develops and will always develop i.e. it is dynamic from its core, so it is obvious that it could be challenged from time to time if it abridges anyone right or it does something unlawful or it is against societal interest. But when it is challenged on the basis or it is found that it is filled with political interest it is the duty of the court or anyone to file a case against the political party, and as the only protector of Constitution Supreme court has a duty to safeguard the constitution. With so much consciousness and awareness Supreme Court protected the Sacred Constitution by giving judgments in favor or disfavor of parliament as per the societal condition of development from time to time.

(1) From the very first case **Sankari Prasad v. Union of India (1951**): As the validity of first amendment was challenged which inserted Article 31-A and 31-B that it violates Article 13(2). **These articles were introduced to nullify the judgment of Supreme Court that the Bihar Land Reforms Act, 1950 was violative of Article 14.**

The then court held [16][that article 13(2) only includes ordinary law made in exercise of legislative powers and not a constitutional amendment which is made in the exercise of constituent power. And as a result, the power to amend the constitution (in article 368) also includes the power to amend the Fundamental Rights.]

But, that time it was the necessity of the nation to add these kinds of articles in the constitution because at that time the main focus was development by giving land to poor from rich landowning classes to achieve poverty reduction, increase employment, etc. So what the Supreme Court held or interpreted at that time we can say it was right for the nation.

(2) The Second case was **Sajjan Singh v. State Of Rajasthan (1965**): In that case [17][the 17th amendment act was challenged. The words "amendment of this constitution" in article 368 plainly and unambiguously meant amendment of all the provisions of the Constitution; it would, therefore, be unreasonable to hold that the word "law" in article 13(2) took in Constitution Amendment Acts passed under article 368.]

[16] Shankari Prasad v. Union Of India, AIR 1951 S.C. 455 (India)
[17] Sajjan Singh v. State Of Rajasthan, AIR 1965 S.C. 845 (India)

Gajendragadkar, C.J. speaking for the majority held that [18][the Act to be valid and held that if the constitution maker intended to exclude the fundamental rights from the scope of the amending power, they would have made clear provision in that behalf.] The **Sankari Prasad Case** decision was upheld.

However, **Hidayatullah, J.** and **Mudolkar J.** expressed their doubts.

(3) Now there comes a turn of politics when again 17th Amendment was challenged on the view of the doubts of **Hidayatullah, J.** and **Mudolkar J.** in **Golaknath v. State of Punjab (1967)**

Subba Rao, C.J. speaking for the majority held that, [19][the power to amend the constitution was not a sovereign power, superior to the legislative power, it was also subject to limitations and judicial review. And fundamental rights obtain a transcendental place in the Constitution and hence have been kept beyond the reach of the Parliament.]

This, decision was not digestible by the parliament and the Indira Gandhi government have a fear that this may not led to supremacy of Judiciary over Parliament, that they come with new amendment i.e. 24th amendment, there they amended article 368 which was already discussed earlier, but the main objective is that the self-esteem of leaders in power was shattered in a way that they amended article 368 itself which gives the procedure for amendment, they amended it in a way that it should not to be questioned if any amendment violates anyone right.

And as the researcher discussed earlier it was irony that it was so easy for her to amend Article 368 which requires to be ratified by special majority plus ratification by half of the state, well one will definitely say it was a political influence of her that the article of that much importance amended easily.

(4) After that much interference of politics or one can say the urge of creating autocracy in the country by the Indira Gandhi Government there comes a case of Basic Structure Doctrine i.e. **Keshvananda Bharti v. State of Kerala (1973)** where Sikri C.J., speaking for the majority held that, [20][the power to amend the constitution was implicit in the constitution (in Article 368) even before the 24th amendment. It contained earlier also the power as well as the procedure of amendment. The 24th amendment merely made it explicit or declaratory. However, the basic features of the constitution cannot be taken away by amendment. The

[18] Sajjan Singh v. State Of Rajasthan, AIR 1965 S.C. 845 (India)
[19] Golaknath v. State of Punjab, AIR 1971 SC 1643 (India)
[20] Keshvananda Bharti v. State of Kerala, AIR 1973 SC 1461

word 'Amendment' postulates that the old constitution must survive through in its basic elements.

As to fundamental rights, it was held that they can't be abrogated or repealed but can be abridged only to the extent that they remain a basic feature of the constitution.] As a result, the **Golaknath Case** was overruled.

The Supreme Court with this judgment tried to create an understanding between Judiciary, Parliament, Executive and Fundamental Rights of Citizen. They haven't disfavored the 24th amendment but they given a judgment in such a manner that the citizens' rights shouldn't be abrogated but can be abridged in such a manner that it may lead to societal change and needs of the citizen.

But the then Government didn't stop, they haven't touched fundamental rights but they encroached in the system of the judiciary of appointing CJI, the practice was to appoint the seniormost judge of the Supreme Court as CJI, yet the 22 years old practice was broken inside a couple of hours of the judgment of this case. At the point when Mr A.N. Ray was appointed as the Chief Justice of India superceding three senior judges, Justice Shelat, Hegde and Grover. As Mr. A.N. Ray has given judgment in favor of the government.

Indira Gandhi Government tried to show that they are the only supreme one in the country and she is the only leader. She tried to threaten the judiciary and create a sought of fear from their government by rejecting the theory of Separation of Power and Check and Balances on each other.

(5) Indira Gandhi v. Raj Narain (1975): Her government was not only encroaching in amending the constitution or creating supremacy over other constitutional functionaries but also bribed to win the election. Indira Gandhi was found guilty of Election Malpractice in Rae Bareilly Constituency in Lok Sabha, 1971 election.

[21][On 12 June1975, The High Court of Allahabad speaking under Justice Jagmohanlal Sinha found Indira Gandhi guilty of misusing government machinery u/s-123(7) of Representative of Peoples Act, 1951. Therefore, the court held that Indira Gandhi cannot continue as the Prime Minister of the nation, further, she cannot contest elections for another six years.

[21]Hemant Varshney, Indira Nehru Gandhi Vs. Raj Narain – Case Summary, Law Times Journal (Apr 30, 2020, 14:00 PM), http://lawtimesjournal.in/indira-nehru-gandhi-v-raj-narain/

Aggrieved by this decision Indira Gandhi went to appeal this ruling of Allahabad High court in Supreme Court. However, SC being in vacation at that point of time granted a conditional stay on execution on 24 June 1975.]

- Because of this judgment giving conditional stay given by Justice Iyer on 25th June, 1975 a large protest was formed asking the resignation of Indira Gandhi led by J.P. Narayan. As a result of protest MISA on 26th June, 1975 arrested many of the opposition leaders like J.P.Narayan, Raj Narain, Advani, and many more.
- Of this so much disturbance and disobedience, the then President Fakhruddin Ali Ahmed declared emergency on the advice of Indira Gandhi.
- The supreme court while granting a conditional stay on 24th June, 1975 ordered parties to appear before the court on 11th August, 1975 but the Indira Gandhi Government knows the fact that after all judgment will come against them passed the 39th Amendment between emergency which inserted article 329A in the constitution which bars the jurisdiction of courts to entertain the cases related to the election of President, Prime Minister, Vice-President and the Speaker of Lok Sabha.

The constitutionality of the 39th Constitutional Amendment Act was then challenged the Supreme Court on 7th Nov, 1975 decided in the light of Basic Structure Doctrine that the 39th amendment act was unconstitutional and upheld the Allahabad court decision.

The decision by the Supreme Court was a brave move as they made realize the parliament that they are not only the functionary in the democracy. And the Supreme Court is the guard of the constitution will save the constitution from politics. The free and fair election, separation of power, democracy is also a part of the Basic Structure Doctrine and should always be followed.

But still, Indira Gandhi Government didn't stop they come up with a new constitutional amendment that is 40th, 41st and 42nd amendment (42nd amendment is discussed later) in between emergency by which she tried to bar the courts one more time to decide the case related to the amendment. Unless she faced defeat after the emergency in Lok Sabha Election in 1977. Then after Janta Party which came in power removed the uncertainty from the constitution by 43rd and 44th amendment and later on the remaining ambiguities which tried to bar judiciary from the amendment cases were removed by Minnerva Mills Case (1980).

(6) Minerva Mills Case (1980): Therein the constitutional validity of Section 4 and 55 of the 42nd Amendment Act, 1976 was in issue

Section 4: Added new Article 31C to the effect that:

a) [22][No law by Parliament giving effect to the provisions of Part IV is to declared void even if it abridges or take away the fundamental rights under Article 14, 19 and 31

b) Judiciary excluded from deciding such cases]

Section 55: Added clause 4 and 5 to Article 368

a) [23][Clause 4: No Amendment (including Part III) to be called in question in any court]

b) [24][Clause 5: Removal of doubts- There shall be no limitation whatsoever on the constituent power of Parliament to amend by way of addition, variation or repeal the provisions of the constitution under Article 368]

The petitioners were owner of Minerva Mills Limited which was nationalized and taken over by the Central Government. Apart from other contentions, the main contention was the validity of the above section of the 42nd Amendment.

The judgment become divided into 4:1, Y.V. Chandrachud (then CJI) writing on behalf of himself and (A.C. Gupta, N.L. Untwalia, P.S. Kailsam JJ.). The majority struck down Section 55 & 4 of the 42nd Amendment because it turned into in violation of basic structure thereby upholding the Basic Structure doctrine laid down by Kesavananda Bharti. And declared Section 4 and 55 as Unconstitutional and Invalid. And Called it as a dead letter.

11. The 42nd Amendment and The Politics:

When the country was facing difficulties from the emergency, India Gandhi and her government was fulfilling her ambitions through Constitutional Amendments and denying the fact that there is some other constitutional functionaries as well. *The same case was for 42nd amendment, and she changed the constitution to that much extent that it was started being called as "Constitution of Indira" rather than "Constitution of India"*

[25][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,

[22] INDIA CONST. art. 31C
[23] INDIA CONST. art. 368, cl. 4.
[24] INDIA CONST. art. 368, cl. 5.
[25] Gyan Prakash Kesharwani, 42nd Amendment, Was it India's or Indira's Constitution?, Centre for Constitutional Research and Development (May 03, 2020, 18:30 PM), https://ccrd.vidhiaagaz.com/42nd-amendment-of-indian-constitution/

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.]

The important changes which destroyed the soul of the constitution were as follows

The attempt was made to give upperhand to DPSP over Fundamental Rights

I. Article 31-D was added to enable the parliament to make laws against the opposition as we can see the case of emergency when opposition leaders were detained. The law was to prevent and prohibit Anti-national activities
II. Also article 31-C and 31-D were made to be forbidden to be held void with respect to as it violates Article 14, 19 or 31 if any laws were made under them.
III. Article 368 Clause 4 and 5 which were inserted to bar the jurisdiction of judiciary in case of amendment.
IV. Emergency provisions was amended to authorize the president to declare emergency not only throughout the country but also in any part.
V. The number of seats of schedule caste and schedule tribe were also frozen in Lok Sabha.

Regardless of the goals and objectives of this constitutional amendment. Told through the then ruling class, the main goal of this constitutional modification was the main objective of the power in the hands of the Prime Minister and the Executive

After that when Janta Party came in power after the worst defeat of Indira Gandhi they removed ambiguities from the constitution by 43rd and 44th amendment and the remaining ambiguities which bars judiciary from judicial review or filing a case in the court related to fundamental rights was removed by Minnerva Mills Case as already discussed.

12. Not only Articles but Politicising Schedule also:

When one go through constitution they will found that schedule were made to develop the country but in it there is so much ambiguities which help political parties to fulfill their ambitions and those are Schedule IX and X

I. **IX Schedule:** Schedule IX was added by the very first amendment in 1951, but then it was the need of the country to introduce such a schedule in the constitution.

[26][During a speech in Parliament, Jawaharlal Nehru had said, "If there is agrarian trouble and insecurity of land tenure nobody knows what is to happen. Therefore, these long arguments and these repeated appeals in courts are dangerous to the State, from the security point of view, from the food production point of view, and from the individual point of view, whether it is that of the zamindar or the tenant or any intermediary."]

As the need was of food, employment, agrarian society, development it was necessary that every zamindar should not file such a case related to the land reforms and government can work in the development field.

In other phrases laws beneath Ninth Schedule are beyond the purview of judicial review even though they violate fundamental rights enshrined beneath Part III of the Constitution. At present 284 such laws were shielded from judicial review.

But now many of the political parties fulfill their goals through IX schedule, the only thing they have to do is put the laws in the IX schedule and after if it violates anyone right it can't be questioned in any court.

Some days back LJP leader Chirag Swami said that reservation should be put under the Ninth Schedule of the Constitution. His comments came days after the Supreme Court ruled that reservation in the matter of promotions in public posts was not a fundamental right, and that a state cannot be compelled to offer quota if it chooses not to.

Where the General class was fighting with the pressure of reservation, the political parties are trying to influence other classes by saying that it should also be shielded from judicial review. Is it not a right of a person when he is more eligible than others in any examination or job interview was stopped by the reservation and he can file a case in court to get some relief if it was against them?

Alike many of the laws are under IXth schedule which takes away the fundamental rights of citizen or is against the nation but still they are shielded under IX schedule.

II. X Schedule:

This schedule was came into effect by the 52nd amendment in 1985 when the sense of fear was originated in Congress Party when 142 MP's and 1900 MLA's changed their party after

[26] Explained Desk, The Ninth Schedule of the Constitution contains a list of central and state laws which cannot be challenged in courts. Currently, 284 such laws are shielded from judicial review, Indian Express, Feb 14, 2020 https://indianexpress.com/article/explained/ninth-schedule-of-the-constitution-explained-6265890/

1967 election. This amendment helped the political party not to lose their power. But there are many loopholes or one can say it was formed in such a manner that their political interest will not get affected.

First, is the power to the speaker, to decide the case related to disqualification of a member on the grounds of defection. The main thing is that the speaker is most of the time is elected from the majority party. And if someone change the party not for his interest but when the party goes against its manifesto. Speaker can be biased for his party.

Second, bars the jurisdiction of the court in matter of defection. The judiciary is the only protector of constitution and rights of the people and by stopping them to decide the case related to defection, it violates member right to get justice, it waste the amount of money of normal people which is spent for the election of a particular seat, the belief of people is shattered because of which they choose their representative.

Third, the anti-defection law puts the members of the party into a bracket of obedience in accordance with the rules and policies of the party , restricting the legislator's freedom to oppose the wrong acts of the party, bad policies, leaders and bills. A political party acts as a dictator for its members who are not allowed to dissent. In this way it violates the principle of representative democracy wherein the members are forced to obey the high command.

Fourth, some exception from disqualification of members in the cases relating to mergers, there seems to be some loophole in the law. The provision tends to safeguard the members of a political party where the original political party merges with another party subject to the condition that atleast two-third of the members of the legislature party concerned have agreed to such merger. The flaw seems to be that the exception is based on the number of members rather than the reason behind the defection. Same can be found in Maharashtra Lok Sabha Election, 2019 where people have faith in BJP voted for Shiv Sena and then Shiv Sena because of their political interest of becoming C.M. changed their coalition from BJP to Congress and NCP. It just broke the trust of the resident of Maharashtra and the members cannot change the party because of the fear of anti defection law. It then becomes the playing whims of political ideology that they can turn a political leader as their own interest.

13. Present Scenario: Talking about present there is a sense of fear related to amendments, as the BJP government is in power in both the Centre and the State, it always feels like they can fulfill their own aspiration of creating a one religion dominating over other. In 2019 itself they come up with Amendment related to Special Status to Jammu &

Kashmir, and the most controversial amendment of 2019 i.e. Citizen Amendment Act and yes it was in their manifesto and citizens of India choose them and they believe them but it created a sense of fear in the citizens that a protest against any one of them may not lead to armed rebellion and war between different religious communities. As the objective of the research paper is to exclude the political interest of the parties it should be with the consonance of the present scenario.

Talking about CAA, 2019 their main objective was to give citizenship to six different religions Hindus, Sikhs, Buddhists, Jains, Parsis, and Christian coming from Pakistan, Afghanistan and, Bangladesh.

But what was the need to amend this act, is there any difference between CAA 1955 and CAA 2019. Do these six communities don't get citizenship before this act. Or it is just for removing Muslims from giving citizenship.

On these questions, Home Minister Amit Shah replied that it doesn't take anyone's citizenship but it only gives citizenship to these six communities which are in minority in Pakistan, Afghanistan, and Bangladesh and being an Islamic State these three countries will not discriminate with the Muslim communities and we will give citizenship further to these six religion communities.

But, whatever their explanation was, whether it was needed or not, it created a sense of fear between other communities. And the main role played in creating fear amongst others is created by the Media and Opposition that anytime, anywhere a protest can change into fights between different religious communities. And the media has gained a mass profit from it.

One more question which comes to the mind of many is that, is it a political stunt of getting a majority vote by giving act for them. Or creating fear from others by which the majority community can give votes to them.

The reason is yet to be discovered but at least amendment should not be done for the interest of the political party. And BJP being in majority should not use amendment process like the Indira Gandhi Government does for their interest in between and before emergency.

14. Conclusion: Since as already discussed it is a necessity for amending provision in the constitution to cope up with the needs of societal change otherwise makers of the constitution will not intend to add this Provision. But it should not be mixed with the Politics or Own ambition of Political Parties rather it should go with the ambition of citizen. The citizens of Indian have seen so many dark sides from the past to present, from the rule of

British Government to the era of emergency by Indira Gandhi government of creating autocracy in the country, and it has always been a barricading for the Indian Nation. For the growing nation, it is important to let aside the politics from the amendment process, as the amendment led to the result of development or otherwise it obstructs from developing. The nation needs to be dynamic and for that, we obviously need amendment, as we can see that the very first amendment was necessary for the agrarian society otherwise situation of our country will now be worst. But some of the amendment resulted in such a way that it stopped our nation to be more developed, to be more centered on the goal of achieving the ambition for self-development and the development of the nation.

- It is better for the interest of nation that a trained committee should be there in respect of amending the constitution or any law, otherwise the results are in front of us that the political leader fulfill their own ambition rather than the ambition of the citizen
- And it will be more well aimed if the citizens are more educated that they know what is the manifesto of the government for which they are voting.
- And if parties are more concerned for the development of nation by amending provisions.
- And if there is strict anti corruption units, it will be difficult for the political parties to do amendment in their favor.