



Constitutional Amendments In India: Vehicle Of A Nation's Progress

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Abstract: Any nation pledges a Constitution and steers itself ahead accordingly. Some Constitutions continue long with exemplary stability. India stands out in this sense as its Constitution has proved greater stability than many. The Amendments that were passed from time to time tried to fulfill the changing aspirations of its people as well as their needs. The Amendments to the Constitution also indicate our State's commitment towards bringing improvements in our social fabric. In this context, the paper examines how Constitutional amendments have been instrumental in driving social changes in India.

Keywords - women's participation, Scheduled Caste, Scheduled Tribe, deprived section, reservation

I. INTRODUCTION

A Constitution indicates a nation's progress and steers the nation forward by showing the path of development that the country has to follow in the years to come. Experts cannot foretell, while framing a constitution, what kind of changes and needs may appear in the coming decades. Clearly for this reason, Constitutions have to be adaptive, and Amendments, therefore, become the sine qua non for any Constitution that has to survive for a long time. Amendments refer to any type of change in the constitution. It involves addition, deletion, or substitution. Whatever may be the nature of change, the objective is to rectify any error that may be there in the document or help it to adapt to changing circumstances.

The procedure of amendment varies across different countries. While in some countries the procedure is very rigid, in others it is relatively simple. The Irish constitution adopted a simple majority procedure in the Parliament following which, it has to be placed before the people in the form of a referendum. In Australia, on the other hand, amendments can be made only by an absolute majority in Parliament, majority in state legislatures as well as majority of the electors. In India, the elaborate procedure of Referendum has been ignored. Our Constitution gave the power of amendment to the Parliament primarily; in some cases the approval of state legislatures is also required. The procedure has allowed us to amend our constitution several times since it was adopted. Article 368 of the Indian Constitution (Part 20) lays down the procedure of amendment. According to this Article, amendment may be introduced in any House of the Parliament. After it is passed by both the Houses, it is sent to the President for his or her approval (Basu, 1976). In some cases, ratification by half of the state legislatures is also sought before it is sent for presidential assent; (Basu, 1976) this is particularly required to amend the federal features of our Constitution. The Constitution provides for three ways of amendment.

Amendments have to be approved by the President, without which no part of the constitution can be amended. Amendments cannot be introduced in state legislative assemblies, amendments to any part of the Constitution can be introduced in Parliament only.

II. AMENDMENT PROCEDURE

Through simple majority: According to this procedure, an Amendment Bill is introduced in any House of Parliament. After being passed by a simple majority there, it is introduced in the second House where a similar procedure is followed. When both the Houses pass the bill, it is sent for presidential approval. The following sections are amended using this simple method. Articles 2, 3 and 4 dealing with formation of new states, alteration of state boundaries, changing name of states; Article 81 dealing with delimitation of constituencies; Article 100(3) relating to Quorum in parliament; Articles 105 and 106 dealing with privileges and immunities of MPs their salaries and allowances; Article 118 dealing with rules of procedures in each House of parliament; Articles 124(1) and 135 relating to appointment of judges, their salaries allowances and jurisdictions of Supreme Court; Article 169 creation and evolution of upper chamber Article 240 which is about creation of Council of Ministers for union territories; Article 341 official languages and Schedules 2, 5 and 6 of the constitution.

Amendment by special majority in Parliament - Maximum part of the constitution can be amended by this procedure. According to this procedure, an Amendment Bill can be introduced in any House of Parliament, passed by majority of total members in the house and as well as by majority of not less than two thirds of the members of that House present and voting, the bill goes to the other House with the same procedure. After it is passed, it is then presented before the President for his approval. While the process seems relatively rigid, it becomes easy when any party holds full majority support in Parliament.

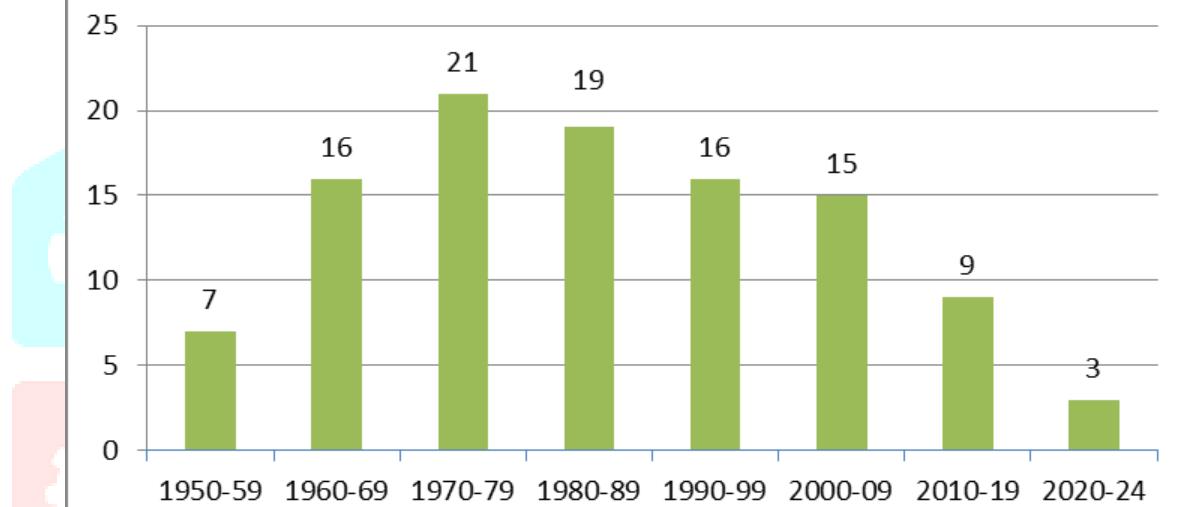
Special majority in Parliament plus ratification by half of the state legislatures - According to this procedure, amending a bill requires a special majority in Parliament plus ratification by half of the state legislatures. This procedure is generally prescribed for sections which relate to the federal features of the constitution. For instance, Article 54 and 55 relating to election of President, Article 73 and 162 regarding executive power of union government and state government respectively, chapter four of Part 5 and chapter five of Part 6 dealing with Supreme court and High court respectively.

Thus, different Articles of the Constitution are subject to different ways of amendment (Constitution of India). There is no one single way that is applicable to the entire Constitution. Some provisions are more flexible than others. It was agreed that if the change is substantial then the amendment procedure should be more rigid, but if it is not substantial and does not affect the Constitution majorly, then it can be done through simple majority in the Parliament. In the Constituent Assembly, a section of members believed that the procedure of amendment should not be made so difficult that it will make the constitution unworkable after a period of time. The framers of the Constitution were aware that, though a long period was spent in framing the Constitution, the changing circumstances can make it unworkable. Shri Brajeshwar Prasad in the Constituent Assembly supported a flexible Constitution and stated that, unless it is made flexible, it will not be able to pass the test of time. HV Kamath, another Constituent Assembly member, made it clear that the Article on amendment is one of the fundamental articles that the constitution should work on. It is important that it remains flexible and responds to any change. While explaining his position on this issue, he drew the analogy of blades of grass that can withstand a storm as it is soft and flexible, while mighty trees break as they are hard and rigid. Dr Ambedkar stated that the Constitution should be left open to future Parliaments for amendment; either by a simple majority or any other way more rigid. (Constituent Assembly Debates, September 17, 1949)

The founding fathers of the Constitution, while discussing in the Constituent Assembly, seemed aware that within some time it will become necessary to amend the Constitution; otherwise it will hamper the working of the document. This will be necessitated by the ever-changing circumstances. Some also felt that allowing amendments will be significant as they will be like the necessary outlets or safety-valves that prevent a ship from getting blown up during a storm and allow any storm to pass through. So Parliament should be able to amend the Constitution. If the outlets are not provided, the whole Constitution may get rejected by a future Parliament. With providing for amendments, dissatisfaction with any provision may be easily cured (P. S. Deshmukh).

Table 1 below shows the number of Constitutional Amendments passed by the Indian Parliament in each decade.

Table 1: Number of Constitutional Amendments in India



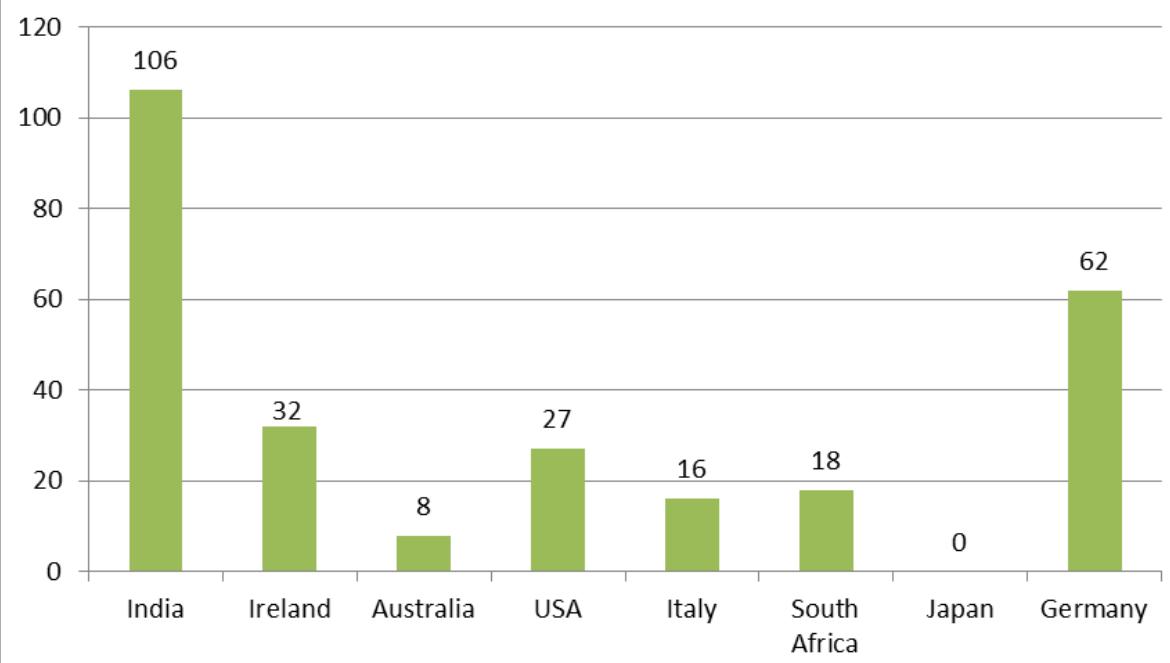
III. WHAT CAN BE AMENDED

Regarding amending the Constitution, as it stands today, the Parliament can amend any part of the Constitution without changing the basic structure of it. Thus the scope of amendment remains very wide. The Supreme Court can revoke any amendment made by the Parliament, if proved unconstitutional. In this sense, both the Parliament and the judiciary have to work as per the Constitution which is the supreme law of the land.

Amendments can also be amended. The judiciary, applying the power of judicial review, can declare any amendment or a part of any amendment invalid if it is found unconstitutional. In such cases, the Parliament makes changes to it. The Parliament can also revisit its amendment and change it. Some sections of the Forty Second Amendment were revised or modified by the Forty Fourth Amendment. Thus, the amendment made earlier was further changed or amended.

Table 2 below compares the number of constitutional amendments enacted for eight countries, ever since their constitutions were ratified.

Table 2: Number of Constitutional Amendments



Data Sources:

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https://www.aph.gov.au/About_Parliament/House_of_Representatives/Powers_practice_and_procedure/Practice7/HTML/Chapter1/Constitution_alteration

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IV. SOCIO-ECONOMIC CHANGES ENVISAGED

Amendments to the Constitution made from time to time have extensive social as well as economic significance. Much of the Directives given in Part 4 of our Constitution were sought to be carried out through the various amendments.

Amendments made from time to time have acted as a catalyst in improving the lives of women. According to Article 38 of Indian Constitution (Directive Principles of State Policy), the states are directed to promote welfare of the people, secure justice and minimise all inequalities of income, status, facilities and even opportunities. Women in Indian societies were traditionally excluded from many opportunities, including political participation. Later, women started occupying positions of power, but they had no say in decision making. Resultantly, women's political participation has always remained at the margins. The seventy third and seventy fourth amendments passed in 1992 went a long way in increasing the number of women

members in local bodies in India, pertaining to both rural and urban areas. Articles 243D(3) and 243T(3) provided for reservation of not less than one-third seats in panchayats and nagarpalikas to women. Article 243D(4) and 243T(4) provided the same kind of rotational reservation of seats for women to the post of chairperson in panchayats and nagarpalikas respectively. The numbers now have increased much beyond the constitutionally mandated thirty three percent. This has, however, not translated into greater participation at the state or national level. In order to establish a gender just society, it is imperative to increase gender balance in political institutions. In September 2023, the One Hundred and Sixth Amendment was passed. It mandated reservation of one third seats in Lok Sabha, state legislative assemblies including legislative assembly of NCT of Delhi. It inserts Article 330A and 332A to the constitution. It further allows rotational reservation of seats or constituencies. The Amendment proposed reservation of seats for women for fifteen years, which may be extended by parliament if it so wishes. It will be made effective after the publication of the Census following the commencement of the Act. Seats will be rotated after each delimitation process. The objective was to change our vision from women's development to women-led development and eliminate gender gap within the society. Amending the Constitution, Article 51A(e) was added in the Fundamental Duties section that says that citizens should renounce practices that are derogatory to women.

The amelioration of the conditions of deprived sections of the society like the Scheduled Castes and Scheduled Tribes, was a commitment of our nation, it was sought to be done by amending the relevant provisions of the Constitution and extending them from time to time. So, The Eighth amendment Act 1960, amended Article 334 extending the reservation for twenty years, instead of ten, that is to say till 1970. The Twenty Third Amendment Act 1970 extended it further to January 1980, the Forty Fifth Amendment Act 1980 extended it to January 1990, the Sixty Second Amendment Act 1989 extended it to January 2000., the Seventy Ninth Amendment Act 1999 extended it to January 2010, the Ninety Fifth Amendment extended it to 2020 and One Hundred And Fourth Amendment Act passed in 2020 extended it to 2030.

Other than reservation of seats for the scheduled castes and scheduled tribes, the parliament also set up a National Commission for Scheduled Castes and Scheduled Tribes through the Sixty Fifth Amendment Act, 1990. The Seventy Seventh Amendment Act 1995 amended Article 16 and extended reservation for the scheduled castes and tribes in promotion in jobs. The Amendment was made after the Supreme Court in the Indira Sawhney vs. Union of India 1992 case observed that reservation should be confined to initial appointments and not in matters of promotion. Since the government thought that their representation was still very low, the amendment was passed keeping in mind the government's social goal of uplifting the backward sections of the society. The Eighty Second Amendment Act 2000 was passed to amend Article 335 to provide relaxation to the scheduled castes and tribes in qualifying marks in any examination to enable more and more scheduled caste and tribe candidates to qualify the examinations. All these amendments definitely have strong social-economic implications. The Sixty Fifth Amendment 1990 provided for a multi-member National Commission for Scheduled Castes and Scheduled Tribes (NCSCST) by amending Article 338 of the Constitution. Later, the Eighty Ninth Amendment Act 2003 bifurcated it into two separate bodies; the National Commission for Scheduled Castes and National Commission for Scheduled Tribes. The two commissions provided the deprived sections a constitutional forum to protect themselves from discrimination and exploitation. These bodies can monitor as well as investigate any complaints that come before them pertaining to any instances of exploitation or deprivation against the deprived sections.

Other Backward Classes (OBCs), a category that got political support post Mandal Commission, also received strong constitutional support through amendments. The Ninety Third Amendment Act passed in 2006, added clauses 15(4) and 16(4) to the Constitution. The purpose was to reserve seats for the OBCs in government jobs and higher educational institutions at the rate of twenty seven percent. One Hundred and Second Amendment passed in 2018 gave constitutional status to the National Commission for Backward Classes. The One Hundred and Fifth Amendment in 2021 gave back the power to governments at the state levels to prepare their own list of socially and educationally backward classes.

For the economically weaker sections (EWS), the One Hundred and Third Amendment was passed in 2019. In doing so, Article 15 and 16 had to be amended again. Article 16(6) was added which says that nothing in this Article will prevent the state from reserving seats for appointments in favour of the Economically Weaker Sections (EWS), other than classes mentioned in clause 4. Mention was also made of a maximum of ten percent of seats to be reserved for this purpose. The same provision of ten percent seats to be reserved in educational institutions was made in Article 15(6).

The First Amendment, too, was an attempt at a major step in favour of the disadvantaged. It was about special treatment to disadvantaged sections and for remedying some man-made inequalities (Kashyap, 2000). Article 15 was amended and 15(4) was added stating that provisions in Article 15 or 29(2) should not prevent the government from making special provisions for the educational, economic and social advancement of the backward classes. The Madras government in 1950 issued an order to fill the seats in medical and engineering colleges according to a formula that will provide special treatment to the disadvantaged sections and protect them against discrimination (Austin, 2000). When this was challenged in Madras High Court (Champakam Dorairajan case), the government order was struck down as unconstitutional under Article 29(2). The Supreme Court later upheld the High court's ruling, as the implementation of the directive principle was violating a Fundamental right. Understanding the consequences, the First Amendment added clause 4 to Article 15.

Education for all was another commitment that we had from the beginning of our constitutional journey. At the outset education was not a fundamental right for the citizens of our country. One could see it only as part of the directive principles in Part 4. The Eighty Sixth Amendment Act was passed in 2002 that made the right to elementary education as part of Article 21A, that is to say, it was made a fundamental right. This became applicable for students from age six to fourteen years. Concomitant to this Amendment, the Parliament made a statutory provision in 2009 and passed the Right of Children to Free and Compulsory Education (RTE). The Act came into effect in 2010. Article 51A (Fundamental Duties) was also amended and made it a duty of citizens to guarantee free and compulsory education to the children between six and fourteen years of age. Originally education was part of Directive Principles of State Policy; Article 39(A) and 45 provided for state funded education and equitable and accessible education. The Eighty Sixth amendment made it part of Fundamental rights.

V. CONCLUDING REMARKS

So far, there have been a total of 106 amendments in the Indian Constitution, the latest being in 2023. The flexibility in the Indian constitution accorded by the amendments truly exemplifies why the document has been able to sustain itself for close to eight decades. The inherent dynamism in the document also allows it to evolve itself and respond to time-variant needs. In this sense, the Indian constitution has played an important role in weaving and strengthening the socio-economic fabric of the country.

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