

CONSTITUTION OF INDIA- A UNIQUE WORK

Arsha Sharma

Abstract

The Constitution of India, came into effect from 26 January 1950, after being adopted on 26 November 1949 and its total number of articles were originally 395 which are grouped into.. It is the result of careful thought applied over time by an eclectic Constituent Assembly that chose, modified and melded constitutional practices from other nations to make it work in independent India. The paper begins with its salient features, such as the length of the Indian constitution & parliamentary form of governance, federal nature and an elaborate part containing fundamental rights, directive principles & mechanism of judicial review. Chapter III studies the amendment process spelt out under Article 368 dealt with the three modes of Amendment: the simple majority mode, Special Majority Mode, and Special Majority Mode with State Ratification. Analysis-Includes the basic structure doctrine (Returned in *Kesavananda Bharati v. State of Kerala*) which acts as a limitation on power of Parliament to amend. We back this claim up with selective illustrative examples; we draw on landmark judgments as well as show provisions in some constitutions tailing towards one way or the other to clarify the perceptible tension of constitutional flexibility and rigidity. The conclusion emphasizes the ongoing importance of amending constitutions to deal with new social and economic challenges, as well as technological change; but to do so without eroding bases established long before.

Introduction

The Constitution of India is the longest and the most detailed constitution in the world. The Constituent Assembly which was incorporated with the task of making a uniform Constitution for the whole India did a tremendous job. Each and every article which we find in the Constitution of India is the result of long deliberations and discussions of the members of the Constituent Assembly. The Constituent Assembly included members from all spheres of the society. The composition of the Constituent Assembly was diverse

so that the voice of each and every section of the society was represented while making the Constitution. The Constituent Assembly borrowed various provisions from the Constitutions of different countries across the world. However, these provisions were not simply copied into our Constitution. Rather, these provisions were adapted in such a manner so that it could meet with the requirements of our land. The Constitution of India was adopted on 26 November 1949 and it came into effect on 26 January 1950. Dr. B.R Ambedkar is often referred as the 'Father of our Constitution.'

Indian Constitution and Its Salient Features:

The Indian Constitution is a voluminous work of the Constituent Assembly. Some of the salient features of the Constitution of India are as follows:-

1. **Longhiest Constitution-** The Constitution of India is the lengthiest constitution in the world. Each and every article has been explained in an exhaustive manner. At present, the Constitution of India consists of 395 Articles divided into 25 parts and 10 Schedules.
2. **Parliamentary form of Government-** India has a Parliamentary form of Government. The President is the nominal head of the State and the real executive power lies in the hands of the Council of Ministers headed by the Prime Minister.
3. **Fundamental Rights-** Part III of the Constitution of India consists of Fundamental Rights of the citizens and the citizens have a right to move to court in case there fundamental rights are violated.
4. **Directive Principles of State Policy-** The Directive Principles of State Policy are enshrined in Part IV of the Constitution of India. They are certain aims and objectives that the government must aim to achieve. However, they are non-justiciable in nature.
5. **Universal Adult Suffrage-** The Constitution of India gives every citizen who as attained the age of majority, that is 18 years of age the right to vote in elections in order to choose their representatives.

6. Independence of Judiciary- The judiciary is independent in India. India has a single integrated system of judiciary with the Supreme Court at its apex followed by High Courts and then District and Subordinate Courts at the lower level. The judiciary keeps a check on the legislature and the executive. The judiciary is considered to be a protector of the Constitution of India.
7. Single Citizenship- Unlike countries like Canada where citizens are given dual citizenship, India grants single citizenship to all its citizens.
8. Quasi-Federal Structure- India follows a quasi-federal system. The powers have been distributed between the Centre and the States. Also, the Constitution of India contains the provision of emergency powers, which have been borrowed from the Constitution of Germany.
9. Fundamental Duties- Rights and duties go hand in hand. In fact, for every right there is a corresponding duty. Fundamental Duties were incorporated into the Constitution of India through the 42nd Amendment Act of 1976.
10. Judicial Review- The Supreme Court has been vested with the most extensive power of judicial review. The Supreme Court has the power to check the constitutional validity of the legislative and executive enactments. If they are found to be violative of the basic features of the Constitution of India, the Supreme Court can declare those acts ultra vires, that is, unconstitutional and they are declared null and void.

Amendment of The Constitution: Is It Necessary?

Law is dynamic in nature. It changes according to the needs of the society. The makers of the Constitution were well of the fact. The provisions of the Constitution that we may consider relevant in today's time may become irrelevant after a few years. The makers of the Constitution wanted to draft the Constitution in such a way that it could adapt itself according to the needs of the citizens of the future. They were well aware of the fact that if the Constitution could be changed easily, it could become a mere tool in the hands of the ruling party and they could change the Constitution according to their whims. If the

constitution was made too flexible, it could lose its effectiveness and would fall like a house of cards. The members of the Constituent Assembly knew that if they drafted a Constitution that was too rigid to adapt itself according to the needs of the citizens in the future, then the citizens would have no means other than adopting extra constitutional measures like revolution to bring changes. These measures can disrupt the working of the country and can bring the country to a halt. Thus, after long discussions and debates, the makers of the Constitution of India tried to make the Constitution of India a unique blend of flexibility and rigidity. Thus, one of the unique features of the Constitution of India is that it is the perfect blend of flexibility and rigidity. Thus, the Constitution of India establishes three ways according to which various articles of the Constitution can be amended. The Constitution clearly mentions the procedure according to which the provisions of various articles of the Constitution can be amended.

Ways in which Amendments Can Be Made:

There are three ways in which amendments can be made in the Constitution of India. The three ways are as follows:-

- Through Simple Majority- There are certain Articles in the Constitution of India that can be amended by a simple majority like required while amending ordinary law. Articles 5, 169 and 239-A can be amended through simple majority.
- Through Special Majority- There are certain Articles that can be amended through special majority. The procedure to amend articles through special majority is enshrined in Article 368 of the Constitution of India. Special majority means majority of total members of each House of the Parliament including majority of not less than two-third members of the House present and voting.
- Through Special Majority and Ratification by States- There are certain that require not only special majority but also ratification by not less than $\frac{1}{2}$ of the State Legislatures. The articles amended through this process are fundamental in nature and states are also given a chance to participate in their amendment. The articles that can be amended through this procedure are as follows- President's

Election (Article 54, 55), Article 368, Article 279A, Article 73, Article 245-255, Article 214-231.

Procedure for Amendment:

In order to amend the Constitution or any Article of the Constitution, a Bill is introduced in either House of Parliament. The Bill is supposed to be passed by each House by a majority of the total members of the House and also by a majority of at least 2/3rd members of the House present and voting. After a Bill is passed by both the Houses of the Parliament, it is sent to the President for his assent. If the President gives his assent to the Bill, the amendment shall be made. The President has veto power through which he can withhold the amendment. In case, Article 368 needs to be amended, then it shall require ratification by not less than ½ of the State Legislatures.

Limitation on The Power of Amendment- Basic Structure:

The power to amend the Constitution is not absolute. There are certain restrictions on the power of the legislature to amend the Constitution. The judiciary acts as a watchdog and keeps a check on the legislature. The judiciary restrains the legislature from exercising the power to amend the Constitution arbitrarily. The theory of basic structure of the Constitution is a limitation on the power of the legislature to amend the Constitution. In *Kesavananda Bharati vs. State of Kerala*, the 24th Amendment Act of 1971 was challenged. A special bench of 13 judges was constituted to hear the case. It was held by the Court that under Article 368 the basic structure of the Constitution of India cannot be amended. The court quashed the ruling in the *Golaknath's* case which did not allow the Parliament to amend Fundamental Rights enshrined in the Constitution. It was held in the *Kesavananda Bharati* case that the Parliament can amend the Fundamental Rights but it cannot amend the basic structure of the Constitution. The Parliament does not have the power to destroy the basic structure of the Constitution

Basic Structure- Meaning:

There has been no exact definition of the term 'basic structure' in the Constitution, nor did the Supreme Court define what the term 'basic structure' stands for. By the term

‘basic structure’ the Supreme Court meant that the basic framework of the Constitution cannot be changed. The basic elements and the essential features of the Constitution cannot be amended. In *M.Nagraj vs. Union of India*, the Supreme Court explained that by basic structure, the systematic principles upon which the foundation of the Constitution lies is referred to. The supremacy of the Constitution, secular character of our Constitution, republican and democratic government, the quasi-federal structure of the Constitution and the separate powers of the legislature, executive and judiciary are some of the basic elements of our Constitution.

Conclusion

The Articles enshrined in the Constitution of India can be amended. Amendments are necessary so as to ensure that the Constitution adapts itself to the changing needs of the citizens. The Constitution of India is a perfect blend of flexibility and rigidity. The basic structure and basic framework of the Constitution cannot be amended. The power of judicial review helps to keep a check on the legislature’s power of amendment. The judiciary protects the basic structure of the Constitution of India as the basic structure of the Constitution cannot be amended. One reason the Constitution of India was able to not just survive but thrive through more than seven decades is a deliberate mix of rigidity and flexibility built into its articles. This amendment process is important as it strikes a balance between making the Constitution an inflexible relic and a malleable tool vulnerable to transient political interests. This equilibrium preserves the supremacy of the Constitution but also permits adjustment to social changes. The landmark judgment in *Kesavananda Bharati* had laid down the basic structure doctrine to be applied as a constitutional escape clause to save the lifeblood of the Constitution. In the absence of such a doctrine, democratic governance, fundamental rights and institutional independence are at risk by majoritarian overreach.

Over the years some of these amendments have covered important issues on goods and services tax (GST), reservation policies, electoral reforms. Yet at the same time, each amendment also relaunches debates over when and how much legislative renovations can accomplish. The process underlines the continuing necessity of the judiciary to act as a sentinel ensuring that modifications are consistent with democratic principles. In the

future, higher levels of public participation in constitutional dialogue can help to increase the legitimacy, transparency, and trustworthiness of amendments. At this juncture, with India facing issues of global digital privacy, environmental governance and inclusive development, amendability would be crucial to how well it can course-correct without abandoning its paramount ideals. The real power of the constitution is such that it can adapt to the circumstances and change; but at same time, it also rooted in ancient virtues of justice, liberty, equality and fraternity.

References

1. D.D. Basu, *Introduction to the Constitution of India*, 26th edn., LexisNexis, Gurgaon, 2023, pp. 1–45.
2. M.P. Jain, *Indian Constitutional Law*, 8th edn., LexisNexis, Gurgaon, 2018, pp. 120–160.
3. H.M. Seervai, *Constitutional Law of India*, 4th edn., Universal Law Publishing, New Delhi, 2013, Vol. 1, pp. 292–320.
4. Granville Austin, *The Indian Constitution: Cornerstone of a Nation*, Oxford University Press, New Delhi, 1999, pp. 60–115.
5. *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461: (1973) 4 SCC 225, at 282–285.
6. *I.R. Coelho v. State of Tamil Nadu*, (2007) 2 SCC 1, at 12–15.
7. *M. Nagaraj v. Union of India*, (2006) 8 SCC 212, at 217–220.
8. *Indira Nehru Gandhi v. Raj Narain*, 1975 Supp SCC 1: AIR 1975 SC 2299, at 2302–2305.
9. P.M. Bakshi, *The Constitution of India*, 18th edn., Universal Law Publishing, New Delhi, 2023, pp. 560–575.
10. R. Sudarshan, “The Doctrine of Basic Structure: An Indian Invention and its Implications for Constitutional Amendment”, (2010) 52(2) *Journal of the Indian Law Institute* 150–172.