

# Constitutional Amendments-Harnessing Constitutional Goals

Sharmila H S

*Faculty (Law) K.L.E.Society's Law College, Bengaluru, Karnataka, India*

hs.sharmila@gmail.com

**Abstract**— Our constitution being the world's largest constitution has been amended more than 100 times within the span of 70 years. The constitutional makers visualised that the diversified country like India needs suitable laws or amendments in existing laws, for socio economic development. Accordingly, Constitutional amendment process under Art. 368 made flexible to consider and enhance the constitutional values for progressive India. This article reflects the constitutional amendment in three phases, namely at phase I, amendments which were for development of weaker section of society and for benefits -interests of the people. At phase II, Amendments that submerged the constitutional values by making it more individual centric, safeguarding the personal political interest. Phase III, Amendments captive under the political regime underpinning the vested political interest ensuring the vote bank. The article finds answer to the questions like, do we see any deviance to object of amendment? Whether political regime is captivating the constitutional amendment? This paper analyses the various decisions passed by the Hon'ble Supreme Court of India underpinning the constitutional amendments.

**Keywords**—constitutional amendment, harnessing constitutional values, submersion of constitutional values, basic structure, judicial review

## I. INTRODUCTION

This When our country got independence there were many challenges that independent India faced. Out of those concerns the major ones were, reorganisation of states, good governance, policy making, public welfare etc, which were to be addressed on a priority basis. First of all, India needed a parent document which can define the powers and functions in order to establish a government. A document containing rules and regulations to structure the government itself called the constitution for ourselves. In the process it was drafted in such a way which is neither too flexible nor too rigid so as to accommodate the growing India's needs. This paper has identified three phases perhaps stages wherein amendments were made to address the difficulties faced during working constitution and kind of situations to protect the interests of vulnerable and weaker sections of the society, individual centric amendments and lastly to safeguard the political interest of the various parties.

## II. PHASE I OF CONSTITUTIONAL AMENDMENT

The first step to promote the weaker section of the society underpinning the equality and social justice was to provide (Art 15(4))<sup>1</sup> reservation to educational economic or social backward class of citizens. The state is given power under the article to make special laws in favour of them. This cannot be considered as discriminatory. In addition to that many of the provisions were modified among which Art.31(A) and Art.31(B) were inserted<sup>2</sup> in order to facilitate the agrarian reforms as well as social control of the means of production. Wherein the agrarian reforms legislation that were ceiled under 9<sup>th</sup> Schedule of the constitution to exclude judicial review. These provisions<sup>3</sup> along with the constitutional amendment were questioned before the Supreme court. The Hon'ble Supreme Court upheld<sup>4</sup> the validity of Art. 31(A) and 31(B) and power of the Parliament to amend the constitution. Thereafter many states enacted land reforms acts and included in 9<sup>th</sup> schedule<sup>5</sup> in order to evade judicial review as the legislations aimed at benefit of the public and controlled<sup>6</sup> the land ceiling limit. The right to property<sup>6</sup> and parliament power to amend the constitution without abrogating fundamental rights was upheld by the Supreme Court in Golak Nath case<sup>7</sup>.

The Supreme Court invoked<sup>8</sup> doctrine of prospective overruling and curtailed the Parliament power to make laws not to an extent of abrogating fundamental rights guaranteed under Part III of the Indian Constitution.

### III PHASE II OF CONSTITUTIONAL AMENDMENT

This situation created a tussle between the judiciary and Parliament as judiciary was curtailing the powers of Parliament with regard to amendment of constitution. That is when the then government brought an amendment<sup>9</sup> by inserting a clause to Art.13 stating “nothing in this Article shall apply to any amendment of this Constitution made under Art.368” also few modifications to Art.368 thereby enhanced the power of the Parliament also ensured supremacy of Parliament in making constitutional amendments. At this juncture The Kerala Land Reforms Act,1963 was included in the 9<sup>th</sup> Schedule as a result of which there was practical difficulties<sup>10</sup> which the Kerala government faced. In order to overcome the difficulties, the Act was modified. This was questioned by the His Holiness Keshavananda Bhrathi who was religious pontiff of Edneer Mutt of Kasaragodu, Kerala district as the Hindu holy Mutt property management was interfered by the Kerala government as per the provisions of The Kerala Land Reforms Act. During the pendency of the Keshavananda Bharathi<sup>11</sup> case 29<sup>th</sup> Constitutional amendment was brought into force by including the amended Kerala Land Reforms Act<sup>12</sup> into 9<sup>th</sup> Schedule to evade judicial review. The full bench<sup>13</sup> of the Supreme Court held Parliament has a power to amend the constitution however it is subject to basic structure of the constitution. The basic structure doctrine included supremacy of the constitution, rule of law, judicial review, federalism, secularism sovereignty, democracy, republic structure social justice, objectives enshrined in Preamble of the Constitution and many more. This doctrine and outcome of Golak Nath and Keshavananda Bharthi case affected the government’s power<sup>14</sup>, which resulted in significant and sensational amendments in Indian constitution viz 42<sup>nd</sup> and 44<sup>th</sup> amendments. The 42<sup>nd</sup> amendment expressed the ideas of socialism, secularism and integrity of the nation, to make the directive principles more comprehensive and give them precedence over those fundamental rights which have been allowed to be relied upon to frustrate socio-economic reforms for implementing the directive principles<sup>15</sup>. Though with these aspirations were reflected in a form of fundamental duties,<sup>16</sup> it was also proposed to narrow down the scope of fundamental rights as duties to be read with rights and also to take away the jurisdiction of High Courts with regard to determination of constitutional validity of Central laws and confer multiplicity of proceedings with regard to validity of central laws and confer exclusive jurisdiction in this behalf on the Supreme Court so as to avoid multiplicity of proceedings.<sup>17</sup> Parliament and legislature power was strengthen and judiciary’s power was curtailed especially provisions relating to constitutional amendment.<sup>18</sup>

### IV PHASE III OF CONSTITUTIONAL AMENDMENT

In order to restore the spirit of the constitutional values the Janata government brought in within a span of 2 years 44<sup>th</sup> amendment to keep up its political party’s election manifestation was introduced which reinstated the damages caused due to the individual political centric amendments. Few aspects were removal of right to property from fundamental right to legal right only. This also restored and stabilised the judicial review of the court regarding the election issues<sup>19</sup>. Then on the from individual centric to political party centric amendments were brought in underpinning their respective party’s election manifestations promises and fulfilment of the pledge made to the public. At this point the reservation policy became a prominent issue and the political parties brought in few changes in the reservation system. In Indra Sawhney & others v. Union

of India<sup>20</sup> implementation of separate reservation for other backward class(OBC) other than SC/STs<sup>21</sup> were made. Likewise, the reservation policy extended to freezing of backlogs in government and public sector employment also extending it to promotion level also.<sup>22</sup> The recent amendment 103<sup>rd</sup> amendment to constitution extended 10% reservation in favour of economic backward people under Art.15 and Art 16 both in the education field and employment has attracted the public.

#### V CONCLUSION

The procedure for amendment were drafted under Indian constitution with a primary object of not being too flexible or too rigid to achieve dynamic national progress. Art. 368 of the Indian Constitution provides three forms of amendments. One is with simple majority<sup>23</sup> in Parliament and others by 2/3<sup>rd</sup> majority<sup>24</sup> and the last form of amendment requires ratification by the one half of the states<sup>25</sup>. Ensuring the balance between rigidity and flexibility in amending provisions, the constitution also has also imposed limitations both substantive and procedural the former are those which restrict the field of the exercise of the amending powers and the later on the other hand are those which impose restrictions with regard to the mode of exercise of amending power<sup>26</sup>. The constitutional values were submerged by way of imposing national emergency in the country, curtailing the judicial review power the higher judiciary<sup>27</sup> by imposing certain restrictions. No constitution can be made perfect. Indian constitution is also not an exception<sup>28</sup>. But what is more important is that any constitution should be more workable harnessing constitutional values such as transformation of police state to welfare state equal opportunities to men and women, equal opportunities to one and all etc. These ideals were realised successfully in amendments explained in Phase I. By the end of Phase II, the political parties tried to subvert the constitutional values and it is continuing till today.

The constitutional amendment as sacrosanct process, it is an endeavour made to ensure socio-economic revolutions possible and fulfil the constitutional aspirations by keeping the constitutional values alive. We witnessed two aspects viz., constitutional amendment and constitutional values. Anyone who reads this paper may feel that it is an obvious point relating to constitutional amendment and harnessing values. But what I am trying to explain through this paper is whether the constitutional provisions amended so far aim at harnessing the constitutional goals, are there a balance between the constitutional idealism and realism? Having drafted and dedicated the constitution for ourselves Granville Austin<sup>29</sup> mentions the quote of Dr. B R Ambedkar “by independence we have lost the excuse of blaming the British for anything going wrong. If hereafter things go wrong, we will have nobody to blame except ourselves”. The responsibility of preserving, enlarging and protecting constitutional values in achieving goals became need of hour as legislature is trying to enhance it deluging the powers of other institutions namely executive and judiciary which should be prevented.

#### REFERENCES

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- <sup>1</sup> After the judgement in *Champakam Dorairajan v. State of Madras*, AIR 1951, SC 226 by the supreme court Art.15(4) was inserted by virtue of First amendment.  
<sup>2</sup> Which caused major changes through various state legislatures to Indian land reform/ revenue system  
<sup>3</sup> Art.31(A) and 31(B), 9<sup>th</sup> Schedule  
<sup>4</sup> In the case of *Shankari Prasad v. Union of India*, AIR 1951 SC 455- wide power of Parliament to amend Constitution  
<sup>5</sup> land reforms legislations were inserted therein, 17<sup>th</sup> amendment  
<sup>6</sup> Under Art.31  
<sup>7</sup> *Golak Nath v. State of Punjab* AIR 1967 SC1643  
<sup>8</sup> Reversed the earlier judgements supra 7  
<sup>9</sup> The constitution (24<sup>th</sup> amendment) Act,1971  
<sup>10</sup> Statement of objects and reasons of 29<sup>th</sup> Amendment  
<sup>11</sup> AIR 1973 SC 1461  
<sup>12</sup> Both 1969 and amended Act of 1971  
<sup>13</sup> 13 judges also called constitutional bench

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- <sup>14</sup> The then government wanted to have a single party dominance almost was arbitrarily ruling the country
- <sup>15</sup> Statement of reasons & objectives of 42<sup>nd</sup> Amendment
- <sup>16</sup> Art.51A
- <sup>17</sup> Statement of Objects and Reasons of 42<sup>nd</sup> Amendment
- <sup>18</sup> Art.368- insertion of clauses (4) and (5)
- <sup>19</sup> 39<sup>th</sup> amendment
- <sup>20</sup> AIR 1993 SC 477
- <sup>21</sup> Schedule caste and schedule tribe
- <sup>22</sup> M Nagaraj v. Union of India 2006(6) SCC 212
- <sup>23</sup> For Determination of qualification of citizenship, creation of a new state etc
- <sup>24</sup> Matters relating to distribution of legislative and executive powers between Union and States etc
- <sup>25</sup> Art.368(2)(e) of Constitution of India
- <sup>26</sup> *Basu DD Shorter Constitution of India*, 14<sup>th</sup> edition, Volume II LexisNexis, Butterworths & Wadhwa, Nagpur
- <sup>27</sup> power of high court in ascertainment of constitutionality of central laws
- <sup>28</sup> Pylee M V Constitutional Amendments in India, 15<sup>th</sup> Edition, at page 36
- <sup>29</sup> Granville Austin's *The Indian Constitution Cornerstone of a Nation*, 22<sup>nd</sup> Impression, Oxford University Press, Chapter 13, conclusion, at pg.384