



CONSTITUTIONAL AMENDMENTS: AN INSTRUMENT FOR SOCIAL TRANSFORMATION

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▪ **Abstract**

A century of amendments that have been incorporated into the Constitution in a span of 65 years' exhibit the polity's inclination to upgrade the quality of the supreme law for better situation. Although there were aberrations of authoritarian amendments in the past, the way in which they were rectified by subsequent amendments or by judicial review to reinforce the enduring values with more extensive safeguards reflects the maturity and competence of a throbbing democracy. That the thrust towards social transformation is clear in major constitutional amendments can be inferred by looking to their context and content.

▪ **Introduction**

Accommodating for future changes through the mechanism of constitutional amendment is one of the prominent requisites of an ideal constitution. A century of amendments that have been incorporated into the Constitution in a span of 65 years' exhibit the polity's inclination to upgrade the quality of the supreme law for better situation. Although there were aberrations of authoritarian amendments in the past, the way in which they were rectified by subsequent amendments or by judicial review to reinforce the enduring values with more extensive safeguards reflects the maturity and competence of a throbbing democracy. That the thrust towards social transformation is clear in major constitutional amendments can be inferred by looking to their context and content. A brief theme-wise survey is attempted for this purpose.

▪ **Property Amendments**

The issue of subjecting the property right to the goal of economic justice had occupied considerable space in early constitutional development. While the original property right clauses had such orientation, narrow and legalistic interpretations¹ of them by judiciary had repeatedly obstructed the process of realising this goal. Equality clause had been used in *Kameshwar Singh v. State of*

¹. Sathe S.P. [1989], **Constitutional Amendments 1950-1988**, N.M. Tripathi, Bombay, at p. 16.



*Bihar*² to quash the **Bihar Land Reforms Act**, 1950 which had provided for differential rates of compensation to land owners whose property had been acquired in the course of land reforms. **Nehru's** fury that the magnificent Constitution was kidnapped and purloined by the lawyers³ symbolised dissatisfaction of the people and their representatives. Finding that the protection accorded to land reform legislations was inadequate, Articles 31–A and 31–B were added by the **Constitution (1st Amendment) Act**, 1951. Special technique of the 9th Schedule protection was employed for the purpose to protect the agrarian and economic reform legislation from constitutional litigation. From a modest list of 13 legislation originally incorporated, its size has grown stupendously to 284 because of subsequent additions through constitutional amendments. Some of the entries are controversial, as they do not fall within the culture, spirit and pattern of economic reforms. Because of the interpretation of the words “*taken possession of*” and “*acquisition*” in *State of West Bengal v. Subodh Gopal Bose*⁴ and *Dwarkanath Shrinivas v. Sholapur Spg. and Wvg. Co. Ltd.*,⁵ to include the situations of economic regulation of substantial type even for limited period, there was a need to provide through insertion of Clause (2–A) to Article 31 by the **Constitution (4th Amendment) Act**, 1955 to the effect that when ownership was not transferred it did not amount to deprivation of property. In order to counter the judicial approach in *State of West Bengal v. Bella Banerjee*⁶ insisting on just and equivalent compensation in case of acquisition of property it also made the question of adequacy of compensation in Clause (2) non–justiceable. The protection given to laws reforming estate under Article 31–A was found to be inadequate because of pedantic view taken about that term in *Karimil Kunhikoman v. State of Kerala*.⁷ By amending the definition of the term “*estate*” to include ryotwari holding also, the **Constitution (7th Amendment) Act**, 1964 covered up the deficiency.

In view of the judgment in *Rustom Cavasjee Cooper v. Union of India*⁸ which opened up the issue of justiciability of compensation by scrutinising whether there was compensation or fraudulent expropriation the necessity of substituting the word compensation by a neutral word “*amount*” was

². AIR 1951 Pat 91.

³. Parliamentary Debates, Vol. XII (Part 2), 16th May, 1951.

⁴. AIR 1954 SC 92.

⁵. AIR 1954 SC 119.

⁶. AIR 1954 SC 170.

⁷. AIR 1962 SC 723: (1962) Supp1 SCR 829.

⁸ (1970) 1 SCC 248: AIR 1970 SC 564.



felt by the makers of the **Constitution (25th Amendment) Act**, 1971. In *Kesavananda Bharati v. State of Kerala*,⁹ the Supreme Court insisted that the “amount” should not be arbitrary. Article 31–C was also added by this amendment to the effect that legislation implementing the objectives of Articles 39(b) and (c) would enjoy immunity against challenges based on Articles 14, 19 and 31. Repeal of the provisions relating to Privy Purses through the **Constitution (26th Amendment) Act**, 1971 is another radical measure to establish an egalitarian society rejecting the vestiges of hierarchy. The **Constitution (44th Amendment) Act**, 1978 repealed Articles 19(1)(f) and Article 31, manifestly to strengthen the commitment to socialistic pattern of society. The sober status given to property right in Article 300-A could not drive off the arguments relating to reasonableness in the application of property expropriation legislation.¹⁰ Although the decline of property right in the scale of values has its own impact on constitutional litigation on property right, in the light of liberalisation, the policy of legislative assurance has come into vogue for fair return to property acquired. Retention of clauses regulative of property right under Articles 31–A and 31–C has served the cause of economic justice. The whole story of property right amendments and its ultimate “*deletion*” from Part III of the **Indian Constitution** depicts the saga of representative bodies to bring reforms in property relations, the conflicts with conservative approach of judiciary and gradual triumph of popular measure to control property owners’ interests for the larger benefits of the society. Property became the first site for removing the obstacles of conservatism in the path of mammoth reforms. The creative and facilitative contribution of constitutional amendments in shifting the focus from property to welfare and liberty is one of the clearest examples of instrumental role of law.

▪ Reservation Policy and Amendments

Provisions on reservation policy constituted another site of frequent amendments¹¹ either to overcome restrictive interpretations or to expand the area of its operation both in time and space. Political reservation to the SC/STs has been extended decennially from time to time while the original intention was to confine its prevalence only for first 10 years’. In response to *State of Madras*

⁹ (1973) 4 SCC 225; AIR 1973 SC 1461.

¹⁰ *State of Maharashtra v. Basantibai Mohanlal Khetan* (1986) 2 SCC 516; AIR 1986 SC 1466; also see, Bhat P. Ishwara (2004), **Fundamental Rights**, Eastern Law House, Kolkata, at pp. 531–33.

¹¹ As many as 16 amendments have been on the matter of reservation.



*v. Champakam Dorairajan*¹² decision ruling out state's power to provide for reservation in educational institutions Clause (4) was added to Article 15 by the **Constitution** (1st Amendment) Act, 1955. Three amendments were brought to scale down the effect of *Indra Sawhney* judgment on the questions of levels and quantum of reservation in the matter of public employment.¹³ In order to extend reservation policy to the level of promotion for SC/STs Clause (4-A) was added by the **Constitution** (77th Amendment) Act, 1995. When consequential seniority was not given because of the formal equality rule in *Ajit Singh I v. State of Punjab*¹⁴ the Parliament again amended this clause in 2001 by safeguarding the seniority of the reservation promotees. For ensuring that relaxation of promotion rules will not be hit by the requirement of safeguarding administrative efficiency under Article 335 through the application of *Preeti Srivastava (Dr.) v. State of Madhya Pradesh*¹⁵ ruling, a proviso was added to that effect by the **Constitution** (82nd Amendment) Act, 2000. Unusual method of using 9th Schedule technique was employed by the **Constitution** (76th Amendment) Act, 1994 to safeguard the Tamil Nadu legislation on reservation exceeding the 50 percent rule. The **Constitution** (81st Amendment) Act, 2000 facilitated to fill up backlog vacancies by going beyond the 50 percent rule as an extraordinary measure by adding Clause (4-B). The fact that as many as five amendments were brought in a span of six years' in the matter of reservation in public employment speaks about the readiness of Parliament and enthusiasm of the political parties to respond to the cause of assisting the SC/STs going beyond the balanced approach taken in *Indra Sawhney* which aimed to satisfy the interests of the society as a whole along with implementing the reservation policy. The Supreme Court has upheld the constitutionality of the amendments to Article 16(4) in *M. Nagaraj v. Union of India*¹⁶ but subjected the state measures to a scrutiny about the existence of compelling state interest.

Another landmark development is inclusion of Clause (5) to Article 15 by the **Constitution** (93rd Amendment) Act, 2005, which enables the state to make special provision through law for the advancement of SEBC, SC/STs in the context of admission to educational

¹² AIR 1951 SC 226.

¹³ It has ruled in *Indra Sawhney v. Union of India* (1992) Supp 3 SCC 217; (1992) SCC (L&S) Supp 1: AIR 1993 SC 477 that reservation shall not be extended to the level of promotion and that reservation shall not exceed 50 percent of vacancies.

¹⁴ (1996) 2 SCC 715; AIR 1996 SC 1189, also see, *Ajit Singh II v. State of Punjab* (1999) 7 SCC 209; AIR 1999 SC 3471.

¹⁵ (1999) 7 SCC 120; AIR 1999 SC 2894.

¹⁶ (2006) 8 SCC 212.



institutions including private educational institutions whether aided or unaided by the State, other than the minority educational institutions under Article 30(1). Although there was public agitation against this amendment, unanimity of political parties on the policy had enabled its smooth sail. There have been criticisms on this measure on account of undermining the interests of merit, imposition of unjustified burden upon the private institutions, which also have right of administration including admission, and exclusion of the minority institutions from the social responsibility of participating in reservation programme. Its constitutional validity was examined by the Supreme Court in *Ashok Kumar Thakur v. Union of India*¹⁷ on these counts. The Court upheld the constitutionality of the amendment insofar as it is applicable to public educational institutions.

The overall development exhibits that political decision-making has more traversed the path of vote bank appeasement rather than using the instrument of reservation only as a means to an end and a policy to be balanced with other egalitarian norms for building a harmonious society equipped with competitive ability to face the challenges of globalisation. Anyway, use of amendatory power to go ahead with pro-active policy regarding reservation exhibits its role as a catalyst in social transformation.

▪ Expanding the Welfare Canvas

Inclusion of the term “*socialist*” in the Preamble and Clause (2) to Article 38 by constitutional amendments has reinforced the commitment to socialistic pattern of society. Incorporation of Article 48-A gave a great fillip to the invigorating jurisprudence of environmental protection. Addition of Article 39-A has expanded the opportunities to have access to equal justice and free legal aid. By prescribing fundamental duties of citizens to traverse the path of good citizenship and balanced modernisation, the Article 51-A, added by 42nd amendment, has aimed to develop the welfare canvas through people’s participation. About these attempts of retraditionalisation, **Werner Menski** comments:

¹⁷. (2008) 6 SCC 1.



“One could read almost all of these statements on Hindu dharma, which shows that recent developments in Indian constitutional law have begun to combine, more explicitly than ever before, new elements of the modern Constitution and ancient holistic concepts.”¹⁸

The place of newly incorporated right to free and compulsory primary education under Article 21–A is also crucial for societal preparation for better order.¹⁹ The value addition made by amendments has significant social content.

▪ Strengthening of Democracy

The amendments aimed at strengthening of the safeguards against abuse of power to impose or implement emergency, combating against political defection, and introduction of grass root democracy with compulsory and periodic election through *Panchayatiraj* and *Nagarpalika amendments* have widened the base and efficacy of democratic institution in India.²⁰ In turn, the competence of participatory democracy for pro–people social transformation is revalorised. Their socio–political inputs consist in establishing mechanisms for better people–government relations, creation of additional forum or method of accountability, and expanding of people’s participation in decision making or policy implementation.

▪ Socio–Political Preparation for Amendments

The change management involved in some of the constitutional amendments reflects efforts to take people into confidence by inquiry and discussion initiated and coordinated by special committees and commissions constituted for the purpose. Swaran Singh Committee preceding the **Constitution (42nd Amendment) Act**, 1976, the **Sarkaria Commission on Centre–State Relations**, 1985 and the **National Commission to Review the Working of the Constitution** (NCRWC), 2000 headed by Justice **M.N. Venkatachaliah** have contributed to public discussion on need and desirability of amendments. But majority of amendments are not preceded by systematic popular discussion, but are outcome of limited discussion within Parliament although with media publicity. While the Swaran Singh Committee

¹⁸ Menski Werner (2000), **Comparative Law in a Global Context: The Legal Systems of Asia and Africa**, Platinum, London, at p. 205.

¹⁹ Inserted by the **Constitution (86th Amendment) Act**, 2002.

²⁰ The **Constitution (44th Amendment) Act**, 1978; the **Constitution (52nd Amendment) Act**, 1985; the **Constitution (73rd Amendment) Act**, 1992; the **Constitution (74th Amendment) Act**, 1992.



recommendations could not be discussed in free atmosphere due to internal emergency situation, the outcome of the latter two in terms of constitutional changes has not been enormous.

The NCRWC recommendation for incorporation of right to primary education as Fundamental Right has materialised. Its suggestion for scheme of rural employment guarantee is also given practical shape and legal status in the form of a law.²¹ The Commission expressed disappointment about inadequate implementation of the constitutional goals. Three observations made by NCRWC can be remembered here regarding building up a developed and inclusive society with commitment to human rights and welfare:

- 1) The first and the foremost need are to place the citizens of this country at centre stage and demonstrate this prioritisation in all manifestation of governance.
- 2) The sociology of pluralism is not inimical to strong democracy, but, on the contrary, is in itself a strong sustaining factor of democracy. It is essential to promote participatory institutions, and
- 3) In the changing context of globalised economy, the Fundamental Law should address itself in action to relocate the sources of the social obligations of the State.

As a part of implementation strategy for the Directive Principles it suggested annual scrutiny of the governmental efforts through interactive seminars participated by civil society. It should be noted that the need to fill the gap between people and the Constitution shall be properly addressed as a part of social transformation discourse and exercise.²²

General elections have also supplied opportunities for people's choice about constitutional amendments. Election manifestos of political parties often refer to future constitutional amendments. Although it is not well established that political promises really influence people's voting behaviour, parties in power claim people's specific mandate to bring the promised constitutional change after the election. Abolition of Privy Purse and of right to property and restoration of democratic features of the Constitution after the internal emergency has been the products of ballot. Public debate involved in the electoral process makes people participants in the change process.

²¹. The **National Rural Employment Guarantee Act**, 2005, later renamed as the **Mahatma Gandhi National Rural Employment Guarantee Act**.

²². Bhat P. Ishwara (2007), *Towards bridging the Gap between People and the Constitution*, 1 Legal Opus 14.