2. SURVEY OF AMENDMENTS SINCE THE INCEPTION OF THE CONSTITUTION

The wave of democratization around the world in recent decades brought about a surging need for a means to assess, to compare and to explain democratic progress cross country, cross region and over time. A number of composite indices were developed to measure democracy and amendments forms one such powerful democratic index.

The inviolability of the Constitution may be a plea for status-quoism in monarchy but will be most absurd in a democracy. It is for this reason that every Constitution has an intrinsic provision for amendment. The Indian Constitution is no exception. The Constitution of India has been amended on hundred occasions now averaging at the rate of 1.5 amendments per year. It is also visible that the two politically volatile decades 1971-1980 and 1981-1990 witnessed the highest number of amendments. It is also seen that barring the first decade after the commencement of the Constitution, every decade has witnessed a steady stream of amendments. This means that irrespective of the nature of politics and the party in power, amendments were required to be made from time to time. This tally looks rather large when compared to the United States of America whose Constitution has been amended barely twenty-seven times. To support this, one can observe the following table which shows the trend of amendments decade wise in the Indian Constitution.

Table 2.1: Timeline of Amendments in the Indian Constitution

<table>
<thead>
<tr>
<th>Timeline</th>
<th>Number of amendments</th>
</tr>
</thead>
<tbody>
<tr>
<td>1951-1960</td>
<td>9</td>
</tr>
<tr>
<td>1961-1970</td>
<td>14</td>
</tr>
<tr>
<td>1971-1980</td>
<td>22</td>
</tr>
<tr>
<td>1981-1990</td>
<td>22</td>
</tr>
<tr>
<td>1991-2000</td>
<td>16</td>
</tr>
<tr>
<td>2001-2006</td>
<td>11</td>
</tr>
</tbody>
</table>

*Source: H.K., Saharay, Constitution of India, Eastern Law House, 2012*

In order to have a better insight, it would be feasible here to delve into a comparative study of frequency of amendments or amendment rates in some selected countries. The graph below clearly shows that Germany, Sweden, Austria and Portugal have the highest
amendment rate where Portugal projects an amendment rate of 6.67 followed by Austria which is almost 6.3. This shows the extreme flexible nature of their Constitutions. On the other hand the Constitutions of Japan, Denmark, Australia and United States have an annual amendment rate which is almost negligible thereby making the constitution rigid. Indian Constitution shares its amendment rate with countries like Luxembourg(1.8), Belgium(1.32) and Norway (1.12) which are representative of Constitutions with a moderate amendment rate.

Fig. 2.1: Yearly amendment rates across selected countries

![Yearly amendment rates across selected countries](image)

Source: Lutz (1994, 1995)

Thus, it can be established now that all over the world, Constitutions are neither immutable and nor are they renegotiation proof. They need to be and often are altered over time to respond to changes in the political, social or economic environment in which they are operating. According to Lutz¹, Constitutions can reach a considerable age without being replaced if they are neither amended too frequently nor too. In his view, moderate rate of amendment depends on an amendment procedure that reaches an optimum equilibrium between flexibility and rigidity. If this procedure is too rigid, the constitution cannot adapt

efficiently to changing political environments. If it is too flexible, the distinction between ordinary and constitutional legislation disappears, making amendments a frequent strategy. In either case the replacement rate should increase. Even though this argument has some logical appeal but it is also true that extra constitutional factors such as the relative stability of the political, social and economic environment are equally responsible. By this standard, if the environment is stable, a stringent amendment procedure and a low amendment rate might be adequate and the Constitution is saved. However, if the environment is unstable, a burdensome amendment process may prevent necessary adaptations and over time create incentives for the replacement of the Constitution.

The key point is that the longer a constitution survives without being replaced, the more stable it is. Keeping this in mind it can be deduced that the lifespan of a Constitution is the length of time that passes between its enactment and its formal replacement by another Constitution. Based on this reasoning the stability of a Constitution can be explained in terms of time which is called amendment rate, or in terms of its constitutional design or in terms of the socio-political landscape in which it is operating. In this section, for the purpose of this survey only those crucial amendments have been taken into consideration from the inventory which have transformed the Indian polity. The analysis shall be confined only to those amendments of socio-political-cum-economic bearing that have molded the national ethos and wrought a new political culture. In the forthcoming pages an exhaustive analysis of those amendments has been provided for the perusal of the readers.

Before advancing, it needs to be noted that amendments made so far may be broadly classified into three groups. The first group of amendments includes amendments of technical or administrative nature which were only clarifications, explanations and minor modifications of the original provisions. Likewise the next category of amendments comprise of those amendments which are a product of different interpretations of the Constitution given by the Judiciary and the Government. Thirdly, there is another group of amendments that have been made as a result of the consensus among the political parties. These amendments in a way reflect the prevailing political philosophy and aspirations of the society.
2.1. An Inventory of Constitutional Amendments

2.1.1. The Constitution (First Amendment Act), 1951

Table 2.2: The Constitution (First Amendment Act), 1951

<table>
<thead>
<tr>
<th>Presented by:</th>
<th>Prime Minister Shri Jawaharlal Nehru</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tabled in Lok Sabha on</td>
<td>12-5-1951</td>
</tr>
<tr>
<td>Act effective from:</td>
<td>18-6-1951</td>
</tr>
</tbody>
</table>

Source: Present study

The momentous First amendment amended 9 articles and added two additional articles as well a new Schedule. By way of amendment it added cl.(4) to Article 15, substituted cl(2) of Article 19, inserted Articles 31A and 31B after Article 31, substituted Article 85 and added Ninth schedule.²

It established the precedent of amending the Constitution to overcome judicial judgements that were impeding fulfillment of the government’s perceived responsibilities to the seamless web and to particular policies and programmes.³ This was introduced in the Provisional Parliament by the founding fathers of the constitution after one and a half years from the coming into force of the Constitution. It was eventually passed on June 18, 1951.

This amendment majorly dealt with three Fundamental Rights, viz. The Right to Equality, Right to Freedom and Right to property whereby the main objects of the Act was to amend article 19 and to introduce provisions that would secure and shelter the constitutional validity of zamindari abolition laws in general and certain State acts in particular.

The legislative history of the amendment dates back to the first fifteen months of the working of the Constitution where certain intricacies had been brought to light by judicial decisions and pronouncements especially with regard to fundamental rights. Hence the amendment to Article 19 came as a natural sequel to the SC's decision in Romesh Thapar v. State of Madras(1) wherein it was held that "freedom of speech and expression " under Article 19(1) (a) was so comprehensive so as not to render a person culpable even if he advocated murder and other crimes of violence.(2) Further the citizen's right, under article 19(1)(g) to practice any profession or to carry on any occupation, trade or business was

³ Granville Austin, Working a Democratic Constitution, Oxford University Press, New Delhi, 1999, p.97
subjected to "reasonable restrictions" which the laws of the State might impose in the "interests of the general public" and although these words were comprehensive enough to cover any scheme of nationalization which the state might undertake. These restrictions relate to public order, friendly relations with foreign states or incitement to any offence in relation to the freedom of speech and to prescribing of professional or technical qualification necessary on any occupation, trade or business or carrying on by the State or by a corporation owned or controlled by the State, of any trade, business industry or service, whether to the exclusion complete or partial of citizens or otherwise.

Article 31 had also given rise to unprecedented difficulties for the implementation of agrarian reforms passed by the State Legislatures and had been held up due to dilatory litigation. The Act also augments the expanse of article 15(3) so as to ensure that the State may make for the educational, economic or social advancement of any backward class of citizens may not be challenged on the ground of being discriminatory. The act also affects certain amendments in respect of the articles dealing with the convening and proroguing of the sessions of the Parliament as also a few minor amendments in respect of articles 341, 342, 372 and 376.

2.1.2. The Constitution (Second Amendment Act), 1952

Table 2.3: The Constitution (Second Amendment Act), 1952

<table>
<thead>
<tr>
<th>Presented by:</th>
<th>Minister of Law and Minority affairs Shri C.C.Biswas</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tabled in Lok Sabha on:</td>
<td>18-6-1952</td>
</tr>
<tr>
<td>Act effective from:</td>
<td>1-5-1953</td>
</tr>
</tbody>
</table>

Source: Present study

The commencement of the second amendment became necessary for the delimitation of the Parliamentary constituencies on account of 1951 census. This act was initiated by Shri C.C. Biswas, Minister of Law and Minority Affairs on May 19, 1952. By virtue of this amendment, the representation scale for election to the Lok Sabha was readjusted. The pristine article 81(1) (a) prescribed an absolute limit of 500 elected members in the Lok Sabha and article 81 (1) (b) provided that the State would be divided, clustered and organized into territorial constituencies. In addition to this the number of members to be allotted to each constituency would be so determined so as to ensure that there was not less than one member for every 750,000 of the population and not more than one member for every 500,000 of the population. As a follow-up, seats were allotted in the House of the people to Part A & Part B
on the basis of one member for every 7.2 lakhs of the estimated population which amounted to a total of 470 members to these States.  

The 1951 census figures were higher in all the cases and in view of the overall limit of 500 members prescribed in article 81(1) (a), it was not possible to increase appreciably the total number of seats allotted to these States. Thus to accommodate the members, the representation ratio changed from one member for every 7.2 Lakhs to one member for every 7.5 lakhs of population which was the maximum permissible limit. However it was obvious that the population of some constituencies would exceed that figure. It was thence deemed essential that article 81(b) should be amended to relax the perimeters prescribed therein so as to avoid a Constitutional irregularity.

Besides delimitation the second amendment also inaugurated the policy of Affirmative Discrimination called Reservation in order to bring the socially and economically backward segments of the society in the mainstream. For this the seats in the Lok Sabha and the State Assemblies for Schedule Castes and Schedule tribes were reserved. The constitutional provision for reservation has been lodged in Part XVI of the constitution which stipulates the reservation of seats in Parliament and Assemblies for the Schedule Castes and Scheduled Tribes and Anglo Indians.

Originally the reservation was to be operational only for ten years. The 8th amendment extended to another 10 years5 and the 23rd amendment by yet another ten years.6 The 62nd amendment extends it up to 50 years. The 45th amendment had extended it to 10 years.

It was the 42nd amendment that froze this reservation to the level of 1971 census. In the notes appended to the bill, the rationale of this amendment as the Articles 81 and 170 was thus given, “In the context of the intensification of the family planning programs of the Government, it is considered that not only the allocation of seats in the House of people or the States and the total number of seats in the Legislative assemblies of the States but also the extent of Parliamentary and Assembly constituencies and the reservation of seats for the states as determined on the basis of 1971 census, should be frozen till the year 2001.” If the Government’s family planning program fails the people should at least, not be denied their due representation in the legislatures. The Janta Government did not consider it necessary to touch these provisions and consequently the 44th amendment has not abrogated these provisions.

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4 R.C. Bhardwaj, ed., Constitution Amendment in India (Sixth ed.), Northern Book Centre, New Delhi 1995pp, 17–18; 146–147; 258
5 42nd Amendment Act, 1976, Section 47
6 Ibid Sections 18 and 31
The State of Nagaland which came into existence in (1963) and Meghalaya (1971) are predominantly tribal. It would be anomalous if reservation of seats is made for them in these states. The 23rd amendment in respect of Nagaland 7 and 31st amendment 8 in respect of Meghalaya, Arunanchal Pradesh and Mizoram lay down that in these States no reservation to be made for the SC and ST.

The 51st amendment amends article 330 relating to reservation of seats for Schedule Tribes and Schedule Castes in Lok Sabha and Article 332 relating to reservation of seats for SC and ST in State assemblies. In Article 330 for sub-clause (b) the following sub clause has been substituted: “The Schedules Tribes except the Scheduled Tribes in the autonomous districts of Assam.”

In article 332(1) for the words “except the Schedule Tribes in the tribal areas of Assam, Nagaland and Meghalaya, the words “except the Schedule tribes in the autonomous districts of Assam “ shall be substituted. It has also been stated that this amendment shall not affect any representation in the Legislative Assembly of the State of Meghalaya until the dissolution of the Legislative assembly of the State of Nagaland or the State if Meghalaya existing at the commencement of this amendment. The 57the amendment further amends article 332 by adding a new clause (3a).

2.1.3. The Constitution (Fourth Amendment Act), 1955

<table>
<thead>
<tr>
<th>Table 2.4: The Constitution (Fourth Amendment Act), 1955</th>
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<tbody>
<tr>
<td>Presented by Prime Minister Shri Jawaharlal Nehru,</td>
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<tr>
<td>Tabled in Lok Sabha on: 20-12-1954</td>
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<tr>
<td>Act effective from: 27-4-1955</td>
</tr>
</tbody>
</table>

Source: Present Study

This amendment did not break the existing constitutional pattern in any manner. Rather the Act in the main amends articles 31, 31A and 305 and as a corollary to the amendment of article 31A enhances the Ninth Schedule 9 by the inclusion of some more acts. This amendment was devised to nullify the decision in Bela Banerjee’s case (AIR 1954 SC 170) by making the adequacy of compensation paid by the state for acquiring private property non-justiciable.

7 R.C. Bhardwaj, op.cit., p.40-41  
8 Ibid., p.53  
9 H.K.Saharay, op.cit., p.1301
Introduced by Shri Jawaharlal Nehru on 17-12-1954 this amendment came in the wake of some decisions which the Supreme Court had given whereby the meanings to clauses (1) and (2) of Article 31 were widely enhanced. While moving the Bill for reference to the Select committee, Nehru declared that when the country was aiming at changes in its social structure, one could not think in terms of giving what was called full compensation. Explaining the object of the Fourth Amendment, he observed that no arbitrary confiscatory or expropriatory action was contemplated. Acquisition of property should be according to law and quantum of compensation should be decided by legislature and not by courts. In 1954 there were two important decisions of the Supreme Court on the provisions of Article 31 (2). In one case, it was held that the compensation denoted the notion of just equivalent and mean market value of the property acquired plus a solatium.

In another decision, even where dispossession or denial of property was caused by a purely regulatory provision of law and was not accompanied by any acquisition or taking possession of that or any other property right by the state, the law in order to be valid, had to provide for compensation under the “eminent domain” provision of clause (2) of the article. With this amendment, it became obligatory to demarcate and to restate more precisely the State's power of compulsory acquisition and requisitioning of private property and to make a distinction from cases where the operation of regulatory or prohibitory laws of the state resulted in “deprivation of property “.

To get a better insight into the nature of the amendment it becomes necessary to comprehend the meaning of the State’s power of eminent domain which Article 31 recognizes as Eminent Domain:

The power of eminent domain is believed to be an essential attribute of sovereignty. The power in legal sense means the power of the State to take the private property of individuals for public purposes. Since the power is an inseparable incidence of sovereignty, there is no need to confer this authority by the Constitution.

Quite often it is also considered to be the offspring of political necessity. The power is inalienable for it is founded upon the common necessity and interest of appropriating the

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11 India Lok Sabha Debates, 14 March 1955, col. 1951
13 The power of the sovereign to take the subjects property without his consent.
15 The term originated in the writings of Hugo Grotius in 1925 who wrote of this power in his book “ De Jure Belli Et Pacis”. In 1925
16 United States v. Jones (1883)27 L Ed 1015, 1017
property of the individual members of the community to the greater interest of the whole community.¹⁷ Thus property can be acquired under this power for government offices, libraries, slum clearance projects, public schools, colleges and universities, public highways, public parks, railways and telephone lines, dams, drainage, sewers and many other projects of public interest and welfare.

Consequently, the Constitution (Fourth Amendment) Act 1954 was enacted in the background of these cases. It amended Article 31(2) so as to except the adequacy of compensation from judicial review. Concomitantly it added a new clause to Article 31 to the effect that where a law does not provide for the transfer of ownership or right to possession of any property to the State, it shall not attract the ‘eminent domain’ provision for payment of compensation.

Article 31A of the Constitution was amended further to extend its domain to cover categories of essential welfare legislation like abolition of zamindari; proper planning of urban and rural areas and for affecting a full control over the mineral and oil resources of the country, etc. In other words this amendment was in the nature of a regulatory economic measure. It made the legislature the soul judge of the quantum of compensation. Secondly it could enable the state to take over management of sick industrial units for a regulatory purpose. Despite the differences in the wording of the two clauses, they were regarded as dealing with the same subject. It was basically to smoothen the way for the advent of a socialistic economy.

Also the 4th amendment amended Article 305. The substituted article 305 reads as follows:

“Saving of existing laws and laws providing for state monopolies: Nothing in articles 301 and 303 shall affect the provisions of any existing law except in so far as the President may by order otherwise direct and nothing in article 301 shall affect the operation of any law made before the commencement of the Constitution (Fourth amendment Act), 1955 insofar as it relates to, any such matters as is referred to in sub clause (ii) of clause 6 of article 19.” Thus the Constitution amended clauses (2) and (6) of article 19 to nullify the aforesaid decisions.

¹⁷ Samuel P. Weaver, Constitutional Law, Constitutional Law and its Administration, Callaghan & Company, Chicago, 1946, p.541
2.1.4. The Constitution (Seventeenth Amendment Act), 1964

Table 2.5: The Constitution (Seventeenth Amendment Act), 1964

<table>
<thead>
<tr>
<th>Presented by:</th>
<th>Minister of Home Affairs Shri Govind Ballabh Pant</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tabled in Lok Sabha on:</td>
<td>18-4-1956</td>
</tr>
<tr>
<td>Act effective from:</td>
<td>1-11-1956</td>
</tr>
</tbody>
</table>

Source: Present study

The spark for this 1964 amendment emerged in response to a Supreme Court decision. The Supreme Court declared Madras Land Reforms Act as ultra vires which fixed ceiling on landholdings. Therefore the government had to introduce the bill for the seventeenth amendment. It was the last to be enacted in the array of those amendments which were aimed at the abolition of zamindars and other intermediaries. The later amendments that followed appended state land laws to the Ninth schedule. The Seventeenth amendment was framed to overcome the definitional anomalies that arose because of the term ‘estate’. With this amendment the term ‘estate ‘was broadened to include tenure systems like inam, jagir and land held under Ryotwari settlement. This Act thus modifies the definition of "estate" in Article 31A and also luridly revealed how the Central government and the State Governments were abusing the Ninth schedule.

According to Article 31A of the Constitution, a law in respect of acquisition by the state of any estate would not be deemed to be void on the ground that it was inconsistent with Article 14, 19 or 31. The expression “estate " had been delineated differently in different States. As a result of the transfer of land from one State to another under the scheme of reorganization of States, the expression came to have different connotations even in parts of the same state. This act further embedded 44 new entries in the Ninth Schedule in the context of agrarian reforms. The validity of the seventeenth amendment act was challenged in Sajjan Singh and Golak Nath. In the former case, the validity was sought to be impugned on a procedural aspect: the plea being that an amendment for the inclusion of a state statute in the Ninth schedule affected the jurisdiction of the High Court and as such it fell within the entrenched provisions of article 368 and could not be enacted without ratification by the states. The plea did not materialize 18 .

In Golak Nath the amendment was challenged on the substantive ground that Fundamental Rights were immune from the amendatory power in article 368. It might be

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noted here that although the Golak Nath judgment was seen as a trespass in the sphere of its parliamentary sovereignty, this remained free from the strain of power politics.

In the Golak Nath case\textsuperscript{19}, the Supreme court reversed by a narrow majority, its own earlier decisions upholding the power of Parliament to amend all parts of the Constitution including part III relating to Fundamental Rights. The result of the verdict was that Parliament was considered to have no power to take away or curtail any of the Fundamental rights even if it became necessary to do so for giving effect to the directive principles of State policy and for the attainment of the objectives set out in the Preamble to the Constitution.

Article 31 of the Constitution especially provided that no law providing for the compulsory acquisition or requisitioning of property which either fixed the amount of compensation or specified the principles on which and the manner in which the compensation was to be determined and given could be called in question in any court on the ground that the compensation provided by that law was not adequate.

In the Bank Nationalization case\textsuperscript{20}, the Supreme Court had held that the Constitution guaranteed right to compensation, that is, the equivalent in money of the property compulsorily acquired. Thus in effect, the adequacy of compensation and the relevancy of the principles had virtually become justifiable inasmuch as the court could go into the question whether the amount paid to the owner of the property was what might be regarded reasonably as compensation for loss of property. In the same case, the court also held that a law which sought to acquire or requisition of property for a public purpose should also satisfy the requirements of article 19(1) (f).

With the insertion of a new article 31C after article 31B, the Act amends the Constitution to surmount the difficulties placed in the way of giving effect to the Directive Principles of State Policy by the following interpretation:

"31C. saving of laws giving effect to certain directive Principles…
Notwithstanding anything contained in article 13, no law giving effect to the policy of the State toward securing the principles specified in clause (b) or clause (c) of article 39 shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by article 14, article 19 or article 31; and no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy.

\textsuperscript{19} 1967 (2) SCR 762
\textsuperscript{20} 1970 (3) SCR 830
Provided that where such law is made by the Legislature of a State, the Provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent.”

2.1.5. The Constitution (Twenty-fifth Amendment) Act, 1971

**Table 2.6:** The Constitution (Twenty-fifth Amendment) Act, 1971

<table>
<thead>
<tr>
<th>Presented by:</th>
<th>Minister of Law and Justice Shri H.R.Gokhale</th>
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</thead>
<tbody>
<tr>
<td>Tabled in Lok Sabha on:</td>
<td>28-7-1971</td>
</tr>
<tr>
<td>Act effective from:</td>
<td>20-4-1972</td>
</tr>
</tbody>
</table>

**Source:** Present Study

Introduced by H.R.Gokhale, Minister of Law and Justice this amendment further amended Article 31 in the wake of the Bank Nationalisation case. The Statement of Aims and Objects attached to the Twenty-fifth Amendment Bill suggested the reasons why the government brought forward this measure:

“In Bank Nationalisation case, the Supreme Court has held that the Constitution guarantees right to compensation i.e. the equivalent in money of property compulsorily acquired. Thus in effect the adequacy of compensation and the relevance of the principles laid down by the legislature for determining the compensation, has virtually become justiciable in as much as the Court can go into the question whether the amount paid to the owner of the property / is what may be regarded reasonable as compensation for loss of property. In the same case, the Court has held that a law which seeks to acquire or requisite property for a public purpose should also satisfy the requirements of Article 19(1)(f). The Bill seeks to surmount the difficulties placed in the way of giving effect to the Directive Principles of State Policy by the aforesaid interpretation.”

Law Minister H.R.Gokhale explained that the insertion of Article 31(c) in the Constitution would give primacy to the Directive Principles of State Policy and limit property rights in a manner that vested interests did not take shelter under the Fundamental Rights and block any progressive legislation. Explaining the purpose of the Amendment, he maintained that, in an amended Constitution, the judiciary would not be called upon to sit in judgement over political issues, but confine itself to the task of legal interpretation of the Constitution.

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21 The Hindu, July 29 1971
S.S. Ray, Union Education Minister observed that the Bill was constitutionally correct, economically essential, politically proper and morally just.\textsuperscript{22}

The Twenty-fifth Amendment act further substituted the word ‘amount’ in place of ‘compensation’ in the light of the judicial interpretation of the word ‘compensation’ meaning ‘adequate compensation’.\textsuperscript{23} Besides Article 31C was also inserted by this amendment.\textsuperscript{24} The act commenced on April 20 1972.

2.1.6. The Constitution (Twenty-Sixth Amendment) Act, 1971

\textbf{Table 2.7:} The Constitution (Twenty-Sixth Amendment) Act, 1971

<table>
<thead>
<tr>
<th>Presented by:</th>
<th>Prime Minister Shrimati Indira Gandhi</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tabled in Lok Sabha on:</td>
<td>9-8-1971</td>
</tr>
<tr>
<td>Act effective from:</td>
<td>28-12-1971</td>
</tr>
</tbody>
</table>

\textbf{Source:} Present study

The concept of rulership, with privy purses and special prerogatives which were unrelated to the social purpose were held irreconcilable with the spirit of an egalitarian social order. Indisputably the existence of Privy purses would have spread its malignant effect and would have sanctified galling disparities between the various strata of Indian society. Thus with the passage of time, there developed a widespread sentiment in the country that the princely privileges had become anachronistic\textsuperscript{25} and that the privy purses should be abolished. This amendment was thus an assertion for a social order based on equality and justice. Government of the day therefore decided to terminate the privy purses and the exclusive privileges of the Princes of the erstwhile Indian states. On May 6, 1970 a bill called the Twenty-Fourth Amendment Bill was introduced in the Lok Sabha by Home Minister Y.B. Chavan for abolishing the privy purses and other privileges that the ex-rulers enjoyed, in conformity with the socialistic policy included in the ten-point programme that the AICC had adopted at New Delhi in June 1967. The AICC resolution referred to the privy purses and privileges as:

“ Incongruence with the concept and practice of democracy . The A.I.C.C.is of the view that the government should examine it and take steps to remove them .”\textsuperscript{26}

\textsuperscript{22} Lok Sabha Debates, November 30, 1971, col. 226
\textsuperscript{24} H.K. Saharay, op.cit., p.1304
\textsuperscript{25} Privy purses and Privileges detailed in Asian Recorder, 30 July-5 August 1967, pp.7838-39
\textsuperscript{26} The Statesman, New Delhi, June 25, 1967
This was buttressed by Prime Minister Indira Gandhi who stressed that “The continuance of hereditary titles and privy purses without any relatable functions and responsibilities was incompatible with spirit of the times and the demand of changed circumstances.”\(^{27}\) She described the Bill as a historic step in democratization of Indian social and political life. The Bill according to the Prime Minister represented the momentum for social change in the country.\(^{28}\)

Apart from amending the relevant provisions of the Constitution, a new article 363A was inserted so as to terminate expressly the recognition already granted to such rulers and to abolish privy purses and extinguish all rights, liabilities and obligations in respect of privy purses. This Amendment was passed as a result of Supreme Court decision in Madhav Rao’s case\(^ {29}\) and came into being on December 28, 1971.

### 2.1.7. The Constitution (Twenty Seventh Amendment Act), 1971

**Table 2.8:** The Constitution (Twenty Seventh Amendment Act), 1971

<table>
<thead>
<tr>
<th>Presented by:</th>
<th>Minister of State for Home Affairs Shri K.C.Pant</th>
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</thead>
<tbody>
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<td>Tabled in Lok Sabha on:</td>
<td>21-12-1971</td>
</tr>
<tr>
<td>Act effective from:</td>
<td>30-12-1971</td>
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</tbody>
</table>

**Source:** Present Study

Enacted by the Parliament in the twenty-second year of the Republic of India, it gives effect to the schema of reorganization of the North-Eastern areas whereby it was proposed that the Union territory of Mizoram contemplated under the scheme should have a legislature and a Council of Ministers. It was proposed to achieve this object by including the Union territory of Mizoram in article 239A of the Constitution where it shared the space with Goa, Daman and Diu and Pondicherry.\(^ {30}\)

The Study Team appointed by the Administrative Reforms Commission on the Administration of Union Territories and NEFA had recommended that the Administrator of a Union Territory with Legislature might have the power to promulgate ordinances when the

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\(^{28}\) Lok Sabha Debates, September 1, 1970, col. 263

\(^{29}\) Madhav Rao Scindia v. Union of India, AIR 1971 SC 530

\(^{30}\) R.C. Bhardwaj, op. cit., p.45
legislature was not in session. To meet this provision a new article 239B was inserted which conferred on the administrator the power to promulgate ordinances.  

2.1.8. The Constitution (Twenty-Ninth Amendment) Act, 1972

Table 2.9: The Constitution (Twenty-Ninth Amendment) Act, 1972

<table>
<thead>
<tr>
<th>Presented by:</th>
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<tbody>
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</tr>
<tr>
<td>Act effective from:</td>
<td>9-6-1972</td>
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</tbody>
</table>

Source: Present Study

The Kerala Land reforms Act, 1963 is the leading land reform law in the State of Kerala and was included in the Ninth Schedule to the Constitution. In the course of its implementation, the State Government had encountered grave difficulties. This complexities were finally prevailed over by the extensive Kerala Land Reforms (Amendment) Act, 1969 (Act 35 of 1969) and by the Kerala Land Reforms (amendment) Act, 1971 (Act 25 of 1971). Certain crucial provisions of the principal act as amended were challenged in the High court of Kerala and in the Supreme Court, creating a climate of uncertainty and ambiguity in the effective implementation of land reforms.

The Supreme Court in its judgments delivered on 26th and 28th April, 1971 generally upheld the scheme of land reforms as envisaged in the principal act and at the same time agreed with the High Court invalidating certain crucial provisions. Apprehensions escalated that this would have far-reaching adverse effects on the implementation of the programmes of land reforms in the State and thousands of tenants would be critically affected by some of those provisions which had either been struck down or rendered ineffective. Moreover there were many misgivings that the Supreme Court judgments might open the floodgates of litigation much to the detriment of thousands of Kudikidappukars in the State who would not be able to defend themselves in the long-drawn-out legal proceedings. It was therefore proposed to include the Kerala land reforms (Amendment Act), 1969 and the Kerala Land Reforms (Amendment Act) 1971 in the Ninth schedule to the Constitution so that they might have the protection under article 31B and any fogginess that might arise in regard to the validity of those Acts was removed.

32 H.K. Saharay, op. cit., p.1304
2.1.9. The Constitution (Thirty-Ninth amendment) Act, 1975

Table 2.10: The Constitution (Thirty-Ninth amendment) Act, 1975

<table>
<thead>
<tr>
<th>Presented by:</th>
<th>Minister of Law and Justice and Company Affairs, Shri H.R.Gokhale</th>
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</thead>
<tbody>
<tr>
<td>Act effective from:</td>
<td>10-8-1975</td>
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</table>

Source: Present Study

This amendment defies all classification. This was enacted in the context of Indira Gandhi case when the adjudication of her appeal against the decision of the Allahabad High Court was pending with the Supreme Court. Just on the eve of the hearing of the appeal on August 11, 1975 the amendment bill was gazetted on August 7, 1975 and passed by the Lok Sabha the same day. It was passed by the Rajya Sabha the very next day and ratified by the State Legislatures on August 9, 1975. This act inserted article 329A in Part XV of the Constitution. Prior to this amendment, all election petitions arising out of parliamentary elections were to be decided by such authority as may be appointed under the Representation of People Act 1951. Article 329A sought to create a separate forum for arbitration of election petitions relating to persons holding the office of the President, the Vice President, the Prime minister and the Speaker of Lok Sabha.33

Clause (1) of this article provided that the election of persons who hold office of the Prime minister or speaker of Lok Sabha shall not be called into question except before an authority and under a law providing for these matters, as may be provided under article 329A.

According to clause (2) neither the legality of such a law nor the verdict of any authority or body constituted there under shall be subjected to inquiry in any court of law. Clause (3) provided that the pending election petitions in respect of such personages shall "abate" or subside if they are elected, in the interim, to the position of Prime Minister or Speaker: in such cases the election may be questioned under such law and before such authority as may be especially created under article 329A.

Clause (4) is the kingpin of article 329A. It does four things. First, it says that no law made by Parliament (prior to the enactment of this article) as regards election petition shall apply in relation to the election of the Prime Minister or the Speaker. Secondly, such election shall not be deemed to be void or ever to have become void on the grounds of pre-existing election laws. Third, such elections would be valid in all respects even despite any order.

made by any court. Fourth any judicial finding invalidating such election shall itself be deemed always to have been void and of no effect.\textsuperscript{34}

Clause (5) of the article 329a relates to any appeal or counter-appeal pending before the Supreme Court at the commencement of this amendment and directs that it shall be disposed of in conformity with clause(4). Clause (6) provides that the provisions of Article 329 A shall have effect notwithstanding anything contained in the Constitution. Thus the abuse of amending power is writ large on this amendment act.

This amendment also embedded 38 new entries in the Ninth Schedule mostly unconnected with agrarian reforms. Recourse was had in the past to the ninth schedule whenever it was found that progressive legislation conceived in the interests of the public was jeopardized by litigation. Between 1971 and 1973 legislation was enacted for nationalizing coking coal and coal mines for conserving these resources in the interests of steel industry. These were challenged on the ground that they were illegal. A similar fate struck the sick textile undertakings which were later nationalised in 1974. To prevent smuggling of goods and diversion of foreign exchange which affected national economy, Parliament enacted legislations which were challenged in the Supreme Court and the High Courts. These enactments were not only constitutionally sheltered under article 31B but were proposed to be included in the Ninth schedule. Certain state Legislations relating to land reform and ceiling on agricultural land holdings have already been included in the Ninth Schedule.

2.1.10. The Constitution (Forty -Second Amendment) Act, 1976

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<td>1-9-1976</td>
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<tr>
<td>Act effective from</td>
<td>18-12-1976</td>
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</tbody>
</table>

Source: Present Study

Of all the amendments that have been inked so far, this amendment turned out to be the most exhaustive and comprehensive and very meticulously crafted. This amendment was couched essentially for the purpose of giving effect to the recommendations of Swaran Singh Committee. It undertook the mammoth task of spelling out expressly the high ideals of

\textsuperscript{34} Upendra Baxi, Alice Jacob, Tarlok Singh (ed.,)Reconstructing the Republic, Indian Association of Social Science Institutions, Har-Anand Publications, 1999,p.182
socialism, secularism and the integrity of the nation, to make the Directive principles paramount and to give them precedence over those fundamental rights so that the likelihood of any kind of Constitutional atrophy could be evaded.

The question of removing the impediments which have arisen in achieving the objective of socio-economic revolution like poverty, epidemics and inequality opportunity has been engaging attention of Government and the people at large for some time now. There is no doubt that the democratic institutions provided in the Constitution are basically sound but this also holds true that with time they too have been subjected to considerable stresses and strains. This is a voluminous enactment which affected the institutional structure of the Constitution in a drastic way and ushered in many sweeping changes in the Constitutional landscape. These changes are listed below:

1. The 42nd amendment has substituted the following words in the Preamble” Sovereign Democratic Republic” with the words “ Sovereign Democratic Secular Socialist Republic”. Socialism without qualifications is socialism and socialism with qualifications is less than socialism. It is recorded in the annals of human history that when socialism was qualified with term “national”, it ceased to be socialism rather it became fascism. “Socialism” when qualified with democratic became the worst and tyrannical form of Capitalism. But in India it became more secular in perspective. On 15 August when India became free, it was a natural emotional temptation to call ourselves “sovereign republic” In fact in republic are inherent the ideas of Democracy, secularism and sovereignty”. The Sixth Parliament too could not resist these words and thus it amounted to the induction of these grandiose words in the Preamble. Instead of deleting these word s, the Constitution (45th amendment Bill), 1978 purported to define the terms “secular “and “socialist”. It lays down they “ the expression republic as qualified by the expression “secular” means a republic in which there is equal respect for all religions and the “ the expression republic as qualified by the expression ‘socialist’ means a republic in which there is freedom from all forms of exploitation, social, political and economic “. However the Rajya Sabha rejected this amendment.

35 Clauses 16 and 29(b) of the 42nd Amendment Act, 1976
36 Sections 17 and 30 of the 42nd amendment act, 1976
37 Sections 13 and 24 of the 44th Amendment act, 1976
2. The Directive Principles in Part IV were given primacy over fundamental Rights in Part III. Granville Austin says that the core of the commitment to social revolution lies in Part III and Part IV and these together are the heart of the Constitution. The amendment was a complete reversal of the constitutional scheme as regards the inter-relation and equation between these two fundamental constitutional mandates. Later in Minerva Mills, this amendment was declared invalid. The 42nd amendment introduced three new directives. The first relates to “equal justice and free legal aid”, the second to “participation of workers in management and industries” and the third to “protection and improvement of environment and safeguarding of forests and wildlife”. This amendment also inserted a new clause to Article 39 which provides that childhood and youth are to be protected against exploitation and against moral and material abandonment and children are given adequate opportunities to enable them to grow in a healthy atmosphere and with freedom and dignity. These were some of the sanctimonious hopes expressed by the Fifth Parliament so that the country could become a “Socialist Republic”.

3. A new provision (Article 31D) in respect of anti-national activities was inserted. Soli Sorabjee said that its real aim was to suppress dissent and political opposition under the guise of anti-national activity. He regarded this article as the official liquidator of democracy.

4. Detailed changes were made in the structural pattern of judicial power of the Supreme Court and the High Courts.
   a) Firstly, it introduced the concept of dichotomy in relation to the judicial review of Central Laws and State Laws. This resulted in substantial curtailment of the power of judicial review of these apex courts.
   b) Provision was made that the constitutional validity of a statute shall be determined by a minimum specified number of judges with a specified majority.
   c) Thirdly Parliament was empowered to institute Administrative Tribunals for adjudication of disputes and complaints over a wide area of subjects to the

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38 The Constitution (Forty- Second Amendment) Act, 1976
39 Article 39 A
40 Article 43 A
41 Article 48 A
42 Soli Sorabjee, "Resurrection of Faith "(1977) v. People's Times at 7-9
exclusion of all appellate jurisdictions except the jurisdiction of the Supreme Court under Article 136 of the Constitution.

5. The Prime Ministerial regime was further fortified and efforts were made to perpetuate the existing regime to that end:---
   a) The advice of the Council of Ministers was made binding on the President.43
   b) The production of rules made for the transaction of the business of Government was exempted from the scrutiny of the courts.44
   c) The tenure of the Lok Sabha including that of the existing Lok Sabha was increased to six years45.
   d) The quorum restrictions as to the proceedings of the Parliament were removed. The decision about it was put in the hands of the Parliament.46
   e) The Emergency provisions were rehashed to give them more teeth47.

6. The Indian Constitution was already considerably centralized. The amendment centralized it further and that in areas of key importance. Under a new provision48 the center could deploy armed forces in a State for dealing with any grave situation of law and order.

7. Some vital subjects and legislative powers of the States were transferred to the Concurrent List.49

8. In order to assert the supremacy of the Parliament in the field of constitutional reform, Article 368 was amended to that effect to overrule Kesavanand.

9. To top it all, the President was vested with unbound powers for a period of two years to make such provisions which included any modification of any provision of the Constitution as may be needed or found expedient for removing any difficulty in giving effect to the new amendment.

   In a way, the entire mass of the Constitution was at the mercy of the Executive. This was an enabling provision of the Weimar era variety. This analysis shows that the Forty -Second Amendment act involved the most gruesome use of constituent amending power which was nothing but a calculated attempt to concentrate power in the guise of social revolution.

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43 Supra note 15; section 13
44 Ibid section 14
45 Ibid section 17
46 Ibid sections 18 and 22
47 Ibid sections 48, 49, 50, 51, 52 and 53
48 Article 257A
49 Ibid section 57
Palkhiwala described as a shocking piece which had no parallel in civilized jurisprudence: an ultimate in contempt of Rule of Law.

2.1.11. **The Constitution (Forty-Third Amendment Act), 1977**

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<tr>
<th>Table 2.12: The Constitution (Forty-Third Amendment Act), 1977</th>
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<td>Tabled in Lok Sabha on</td>
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<td>Act effective from</td>
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**Source:** Present Study

The Constitution (Forty Second amendment act), 1976 inserted various articles in the constitution to curtail, both directly and indirectly the jurisdiction of the Supreme Court and the High Court to review the constitutionality of laws. This Act thereby provided for the reinstatement of the jurisdiction of the Supreme Court and High Courts, curtailed by the enactment of the Constitution (Forty-second Amendment) Act, 1976 and accordingly Articles 32A, 131A, 144A, 226A and 228A included in the Constitution by the said amendment, were omitted by this Act.\(^50\) The Act also provided for the omission of Article 31 which conferred special powers on Parliament to enact certain laws in respect of anti-national activities.

2.1.12. **The Constitution (Forty-Fourth Amendment Act), 1979**

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<tr>
<th>Table 2.13: The Constitution (Forty-Fourth Amendment) Act, 1979</th>
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<td>Tabled in Lok Sabha on:</td>
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<td>Act effective from:</td>
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**Source:** Present Study

The outstanding achievement of Janta government was that it brought about the 44\(^{th}\) amendment to the Constitution in order to give economic justice to the people. The Janata Government had won the mandate by promising that it would secure social and economic

\(^{50}\) H.K. Saharay, op.cit., p.1306
justice to the people. Therefore it implemented its promise by inserting Cl. (2) in Article 38 of 44th Constitution amendment act 1978. This clause read as follows:

“(2) the State shall in particular strive to minimize the inequalities in income and endeavor to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

Another aim of this amendment was to restore the status quo ante which existed prior to the Forty-Second Amendment. General election held in 1977 led to the displacement of the Emergency regime. This heralded a new era of retrospection of those amendments which had disturbed the Constitutional equilibrium in an extreme way. Being a comprehensive corrective to the Emergency era amendments, it made changes in article 31C (which was the subject of much litigation in the Congress regime as the Zamindars did not want the elimination of Zamindari), article 368 and the State List and Concurrent List and simultaneously as a restorative act it reinstated the status quo ante. In this process, many offensive entries in the Ninth Schedule were deleted.

There were other aspects of this amendment which have a merit of their own and deserve mention:

1. The right to property, which had been the bete noire of painful constitutional wrangles was removed from Part II and converted into a normal legal right. The Constitution (44th Amendment) Act of 1978 repealed the right to property under Article 19(1) (f) and Article 31 altogether. Article 31(1) was made a separate Article 300A reading: “No person shall be deprived of his property save by authority of law.” Thus Article 31(1) ceased to be a fundamental right but became a constitutional right under Article 300A. The rest of Article 31 was totally repealed except the proviso dealing with minority education institutions has been transferred to Article 30(1A).

2. The Provisions of Article 22 were tailored to provide for greater and tangible safeguards in the operation of preventive detention laws.

3. A provision has been made whereby the President may require the Council of Ministers to reconsider the advice tendered by them but he is bound to act on the advice tendered by them after reconsideration. Just like the British Monarch, the President of India can now exercise the prerogative to advise, warn and encourage.

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4. Many extensive changes have been made in the Emergency provisions (articles 352, 356, 358, 359 and 360) to provide for substantive and procedural safeguards against their misuse. Also, the enforcement of Right to Freedom under articles 20 and 21 cannot be suspended by the President under article 359 during the period of an emergency. This is recognition of the dissenting judgment of Justice Khanna in the Habeas corpus case of the Emergency era.

5. A new provision (article 361 A) has been made to provide for protection of publication of proceedings of Parliament and State Legislatures.

6. Recent experience has shown that the fundamental rights, including those of life and liberty, granted to citizens by the Constitution are capable of being taken away by transient majority. It is therefore imperative to phase in adequate safeguards against the recurrence of such a contingency in the future and to ensure to the people themselves an effective voice in determining the form of Government. This was one of the primary objects of the bill.

2.1.12.1. Recent Developments

India is a signatory to various conventions on human rights. Article 51(c) of the Constitution requires the State (including the Judiciary) to foster respect for international law and treaty obligations in the dealings of people with one another. Therefore, it may be argued that right to property being a part of human rights as embodied in Article 21, any legislation for depriving such right would require the State to provide for full compensation in the event of deprivation of property for example by land acquisition. In P.T. Munichikkanna Reddy v. Revamma, the Supreme Court of India has held that the right to property is not just a statutory right but is also a human right. Developing further in Hemaji Waghaji Jat v. Bhikabhai Khengerbhai Harijan and looking at the position in other countries, the Supreme Court held the law of adverse possession as irrational. In Chairman, Indore Vikas Pradhikaran v. Pure Industrial Coke and Chemicals, the Supreme Court has held that the right to property is now held to be not only a constitutional right but also a human right. There the Supreme Court followed the law laid down in P.T. Munichikkanna Reddy and reiterated that property rights are also incorporated within the definition of human rights.

52 J.C.Johari, op. cit., p.9
54 Civil Appeal No. 1196 of 2007 (decided on 23/09/2008).
2.1.13. **The Constitution (Forty-Fifth Amendment) Act, 1980**

<table>
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<tr>
<th>Presented by</th>
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<td>23-1-1980</td>
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<tr>
<td>Act effective from:</td>
<td>25-1-1980</td>
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*Source: Present study*

This was passed to extend safeguards in respect of reservation of seats in Parliament and State Assemblies for Scheduled Castes, Scheduled Tribes as well as for Anglo-Indians for a further period of ten years.

2.1.14. **Constitution (Fifty-first Amendment) Act, 1984**

<table>
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<tr>
<th>Presented by</th>
<th>Minister of Home Affairs, Shri P.V.Narsimha Rao</th>
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<tbody>
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<td>Tabled in Lok Sabha on:</td>
<td>23-8-1984</td>
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<tr>
<td>Act effective from:</td>
<td>16-6-1986</td>
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*Source: Present study*

Article 330 has been amended by this Act for providing reservation of seats for Scheduled Tribes in Meghalaya, Nagaland, Arunachal Pradesh and Mizoram in Parliament and Article 332 has been amended to provide similar reservation in the Legislative Assemblies of Nagaland and Meghalaya to meet the aspirations of local tribal population.56

2.1.15. **The Constitution (Fifty Second amendment Act), 1985**

<table>
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<tr>
<th>Presented by</th>
<th>Shri A.K. Sen, Minister of Law and Justice</th>
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*Source: Present study*

56 R.C. Bhardwaj, op.cit., p.101
This act in effect puts a blanket ban on defections.\textsuperscript{57} By this amendment Articles 101, 102.190 and 191 were suitably amended so as to insert the Tenth schedule to the Constitution dealing with the provisions as to disqualification on ground of defection.\textsuperscript{58} The law applies not merely to those MPs and MLA’s who are returned to the house on the ticket of a political party but also those who are returned as independent candidates as well as to the nominated members. The scope of the provision is wide enough to include not only those cases where an MP or MLA who is returned on the ticket of one political party and switches to another later but also where he votes or abstains from voting contrary to the directions of the party whip without obtaining the prior permission of his political party. However, it is possible that the political party whose whip he had defied may condone his action, but then such condonation has to be made within fifteen days of his defiance of the whip.

In the case of nominated members, the MP or MLA will be deemed to be the member of the political party whose member he was at the time of his nomination. In a case where he does not belong to any political party at the time of nomination, he is free to join any political party before the expiry of a period of six months from the date he takes his seat in the House. If after six months from the date of his taking seat in House, if a non-political party at the time of his nomination and later on he joins another political party, he incurs the disqualification of a defector.

In the case of existing MP or MLA at the time of the commencement of the amendment, they will be deemed to belong to the political party whose members they were at the time of the commencement of amendment.

\textbf{2.1.16. The Constitution (Sixty-second Amendment) Act, 1989}

\textbf{Table 2.17:} The Constitution (Sixty-second Amendment) Act, 1989

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\textbf{Source:} Present Study

Article 334 of the Constitution lays down that the provisions of the Constitution relating to the reservation of seats for the Scheduled Castes and the Scheduled Tribes and the representation of the Anglo-Indian community by nomination in the Lok Sabha and in the Legislative Assemblies of the States shall cease to have effect on the expiry of a period of 40 years from the commencement of the Constitution. Although the Scheduled Castes and the

\textsuperscript{57} J.C. Johari, op. cit., p.9
\textsuperscript{58} H.K. Saharay, op. cit., p.1307
Scheduled Tribes have made considerable progress in the last 40 years, the reasons which weighed with the Constituent Assembly in making provisions with regard to the aforesaid reservation of seats and nomination of members, have not ceased to exist. The Act amends Article 334 of the Constitution to continue the reservation for the Scheduled Castes and the Scheduled Tribes and the representation of the Anglo-Indians by nomination for a further period of 10 years.

2.1.17. **The Constitution (Sixty-fifth Amendment) Act, 1990**

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<td>Presented by: Minister of Labour and Welfare Mr. Ram Vilas Paswan</td>
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**Source:** Present Study

Article 338 of the Constitution provides for a Special Officer for the Scheduled Castes and Scheduled Tribes to investigate all matters relating to the safeguards provided for the Scheduled Castes and Scheduled Tribes under the Constitution and to report to the President on their working. The Article has been amended for the constitution of a National Commission for Scheduled Castes and Scheduled Tribes consisting of a Chairperson, Vice Chairperson and five other Members who shall be appointed by the President by warrant under his hand and seal. The amended Article elaborates the duties of the said Commission and covers measures that should be taken by the Union or any state for the effective implementation of the reports presented by the Commission. It also provides that the Commission shall, while investigating any matter or inquiring into any complaint have all the powers of a Civil Court trying a suit and the reports of the said Commission shall be laid before Parliament and the Legislature of the states.

2.1.18. **The Constitution (Seventy Third Amendment Act), 1992**

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<th>Table 2.19: The Constitution (Seventy Third Amendment Act), 1992</th>
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<td>Act effective from: 20-4-1993</td>
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**Source:** Present Study

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59 H.K. Saharay, op. cit., p.1308
Probably the most revolutionary constitutional amendment of the latter half of the century relates to the establishment and reinforcement of the Panchayati Raj System. This was the cherished dream of Mahatma Gandhi which was given the constitutional status in Article 40 of the constitution. The amendment in essence constitutionalized Panchayats as the third stratum of government at and below the district level and inaugurated multi-tier federalism in India.\textsuperscript{60} The country has hitherto lived with a two-tiered governmental system, the Union and the States. The terrain below the states was left unprovided for, except for the Directive Principles for setting up self-governing institutions. Soon this state of dormancy was broken by this amendment that required the States to constitute Panchayats not only at the grassroots but also create institutions of self-government at the intermediate and at the district levels. The most visible impact of this amendment was felt in the enhanced participation of women in policy making. The 73\textsuperscript{rd} Constitutional amendment bills passed in 1992 by the Parliament marks a major event in the lives of Indian women as amendments ensure one-third of total seats i.e. 33.3\% for women in all elected offices of local bodies. About 0.8 million women have emerged as leaders /decision makers. Of these about 76, 200 are Chairwomen at the village, block and district levels.\textsuperscript{61}

In a number of studies, it was revealed that the majority of women members of Panchayati Raj Institutions had put up fairly better development roles between 1987 and 1992. They secured development benefits to the people of their villages mainly in the field of agriculture, public works and civic amenities welfare and education. Fatima Bi, Sarpanch of Kalva village in Kurnool district of Andhra Pradesh was selected for the United Nations Development Programmes’s International Race against Poverty Award for her outstanding role in poverty alleviation programs in the State. She was awarded on October 17, 1998 at New York by the UN Secretary General.

The 73\textsuperscript{rd} amendment introduced a new part, Part IX to the Constitution relating to the Panchayati Raj system. The 73\textsuperscript{rd} amendment act stipulates to do the following:

1. It is made obligatory for all the states to establish a three tier system of local self-government institutions at the village, intermediate and district level, though states having a population of less than 20 lakhs are exempted from the obligation of establishing Panchayat at the intermediate level.

\textsuperscript{60}Mahendra Prasad Singh, Subhendu Ranjan Raj, The Indian Political System, Pearson Education, India, 2012, p.79-80

2. All the seats in all the tiers shall be filled by direct election on the basis of adult franchise. However members of the Lok Sabha, Vidhan Sabha and Chairpersons of the Panchayat at intermediate level may be nominated through such members shall not have any voting rights.

a) It lays down that reservation of seats for the Schedule Castes, the Schedule Tribes and Women in the Panchayat at all levels. 30% are to be reserved for women whereupon the reserved seats whereupon reserved seats for women will be allotted by rotation to different constituencies in a Panchayat.

3. Reservation of seats for the schedule caste and schedule tribes will be made so as to bear, as nearly as possible. The same proportion to the total number of seats to be filled by direct election in that Panchayat as the Population of the SC and St in that Panchayat area bears to the total population of that area. Out of the seats thus reserved for the SC and ST, as nearly as may be, thirty percent of the total number of seats shall be reserved for the SC and St Women as the case may be.

4. Where the number of reserved seats for the SC and ST is not more than two, then one seat out of these will be reserved for women belonging to the SC and ST, as the case may be. With the exception of reservation of women, other reservations will continue only in terms of Article 334.

It goes without saying that with this amendment decentralisation soon began to be seen as an alternative system of governance, where a ‘people –centred’ approach to resolving local problems is followed to ensure social and economic justice. According to Rajni Kothari “In effect, decentralisation should be seen as an important correlate of development policies to equip local groups and bodies to become qualified members of the global village.”

2.1.19. The Constitution (Seventy- Fourth) Amendment Act, 1992

Table 2.20: The Constitution (Seventy- Fourth) Amendment Act, 1992

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Source: Present Study

In many states local bodies have become weak and ineffective on account of a variety of reasons, including the failure to hold regular elections, prolonged supersession and inadequate devolutions of powers and functions. As a result, Urban Local Bodies are not able to perform effectively as vibrant democratic units of self-government. Having regarded to
these inadequacies, a new part IX-A relating to the Municipalities and Twelfth Schedule have been incorporated in the Constitution.62

In order to provide the common framework for urban local bodies and help to strengthen the functioning of the local bodies as effective democratic units of self-government, Parliament amended the constitution (74th Amendment Act 1992) and provided constitutional status to “municipalities” which are of 3 types:

A. Nagar Panchayat-for transitional area (an area which is being transformed from rural to urban area),
B. Municipal Council for a smaller urban area,
C. Municipal Corporation for a larger urban area.

Through this amendment Part IX A has been added to the constitution along with a schedule (12th schedule). This means that now constitution of India sets out clear guidelines on the following63:

- Composition of municipalities
- Composition and constitution of Ward Committees, District planning committees and Metropolitan Planning committee.
- Reservation of seats for SCs/ST and Women,
- Power, authority, duration, dissolution and elections of the municipalities,
- Constitution of State Finance Commission

Besides, Schedule 12 lists down 18 subjects on which it can formulate its policies and execute it.

However, as mentioned earlier Local government is the “State Subject” therefore based on these constitutional guidelines states were required to make a law for the functioning of the respective states. All the states (except the 4 North East states where the act does not apply- Arunachal Pradesh, Meghalaya, Mizoram and Nagaland) have constituted Municipalities in their states and they conduct regular elections.

What has actually changed after 74th Constitution Amendment Act 1992?

The question arises that municipalities have been in existent in several cities of India before 1992 as well so what exactly have changed after this Act? The difference between the previous and present bodies is as follows:

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62 H.K. Saharay, op. cit., p.1309
63 Kanhaiyalal Sharma, op. cit., p.414
1. The Municipalities in Pre-1992 era did not have the Constitutional status and the state governments were free to extend or control the functional sphere through executive decisions which they cannot do now.

2. The state government could control the municipalities by controlling the funds. However, now the State government is mandated to transfer the funds in accordance with the recommendations of the State Finance Commission.

3. The subject of jurisdiction is clearly defined now with Municipalities having exclusive control over 18 listed subjects.

4. Representation of SC/STs and women is laid down in the Act itself making Municipalities more representative.

2.1.20. The Constitution (Seventy-sixth Amendment) Act, 1994

Table 2.21: The Constitution (Seventy-sixth Amendment) Act, 1994

<table>
<thead>
<tr>
<th>Presented by:</th>
<th>Minister of Welfare Mr. Sita Ram Kesari</th>
</tr>
</thead>
<tbody>
<tr>
<td>Act effective from:</td>
<td>31-8-1994</td>
</tr>
</tbody>
</table>

Source: Present Study

The policy of reservation of seats in educational institutions and reservation of appointments or posts in public services for Backward Classes, Scheduled Castes and Scheduled Tribes has had a long history in Tamil Nadu dating back to the year 1921. The extent of reservation has been increased by the State Government from time to time, consistent with the needs of the majority of the people and it has now reached the level of 69 per cent (18 per cent Scheduled Castes, one per cent Scheduled Tribes and 50 per cent Other Backward Classes).

The Supreme Court in Indira Sawhney and others vs. Union of India and others (AIR, 1993 SC 477) on 16 November 1992 ruled that the total reservations under Article 16(4) should not exceed 50 per cent.

The Tamil Nadu Government enacted a legislation, namely, Tamil Nadu Backward Classes, Scheduled Castes and Scheduled Tribes (Reservation of Seats in Educational Institution and of appointments or posts in the Services under the State) Bill, 1993 and forwarded it to the Government of India for consideration of the President of India in terms of Article 31-C of the Constitution. The Government of India supported the provision of the State legislation by giving the President’s assent to the Tamil Nadu Bill. As a corollary to this decision, it was necessary that the Tamil Nadu Act 45 of 1994 was brought within the
purview of the Ninth Schedule to the Constitution so that it could get protection under Article 31B of the Constitution with regard to the judicial review.

2.1.21. **The Constitution (Seventy-seventh Amendment) Act, 1995**

<table>
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<th>Minister of Welfare Mr. Sita Ram Kesari</th>
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<td>Tabled in Lok Sabha on:</td>
<td>31-5-1995</td>
</tr>
<tr>
<td>Act effective from</td>
<td>17-6-1995</td>
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</table>

*Source:* Present Study

The Schedule Castes and the Scheduled tribes have been enjoying the facility of reservation in promotion since 1955. The Supreme Court in its judgment dated 16 November 1992 in the case of Indra Sawhney and Others vs. Union of India and others, however, observed that reservation of appointments or posts under Article 16(4) of the Constitution is confined to initial appointment and cannot extend to reservation in the matter of promotion. This ruling of the Supreme Court will adversely affect the interests of the Scheduled Castes and the Scheduled Tribes. Since the representation of the Scheduled Castes and the Scheduled Tribes in services in the States have not reached the required level, it is necessary to continue the existing dispensation of providing reservation in promotion in the case of the Scheduled Castes and the Scheduled Tribes. In view of the commitment of the Government to protect the interests of the Scheduled Castes and the Scheduled Tribes, the Government have decided to continue the existing policy of reservation in promotion for the Scheduled Castes and the Scheduled Tribes. To carry out this, it was necessary to amend Article 16 of the Constitution by inserting a new clause (4A) in the said Article to provide for reservation in promotion for the Scheduled Castes and the Scheduled Tribes.

2.1.22. **The Constitution (Seventy-ninth Amendment) Act, 1999**

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<th>26-10-1999</th>
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<tbody>
<tr>
<td>Act effective from:</td>
<td>25-1-2000</td>
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</table>

*Source:* Present Study

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Article 334 of the Constitution was amended with a view to extend the period of reservation of seats for Scheduled Castes, Scheduled Tribes and to the Anglo-Indian community by nomination in Parliament and in the State Legislatures for a further period of ten years \(^{65}\) i.e. the words "fifty years" have been substituted with "sixty years".

2.1.23. **The Constitution (Eighty-Sixth Amendment Act), 2002**

**Table 2.24:** The Constitution (Eighty-Sixth Amendment Act), 2002

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<tr>
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<th>26-11-2002</th>
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<tbody>
<tr>
<td>Act effective from:</td>
<td>12-12-2002</td>
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</tbody>
</table>

**Source:** Present Study

A number of recent efforts have been initiated in India to make elementary education a fundamental right for every child. Prior to the 86\(^{th}\) amendment Act, 2002 three articles in the Constitution were very crucial for the children. These were articles 24, 39 and 45 dealing with prohibition of children from being employed in factories, mines or in other hazardous employment; development and protection of the tender age of children and free and compulsory education.

**Article 24:** "No child below the age of 14 years shall be employed to work in any factory or mine or engaged in hazardous employment.

**Article 39:** The state shall direct its policy toward securing that the tender age of children is not abused and that citizens are not forced by economic necessity to enter avocation unsuited to their age or strength and that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

**Article 45:** "The state shall endeavour to provide within a period of ten years from the commencement of the Constitution for free and compulsory education for all children until they complete the age of 14 years.

Apart from these, the 1993 judgement of the Supreme Court in the case of J.P. Unni Krishnan and others vs. State of Andhra Pradesh and others (1993) OSCC was also

considered to have the status of a Fundamental Right. The Apex Court had declared:” The passage of 44 years – more than four times the period stipulated in article 45 has converted the obligation created by the Article into an enforceable right. At least now the state must honour the command of Article 45 and make it a right.”

With the passing of the 93rd Constitution amendment Bill by the Lok Sabha, on 27th November 2001 and then by the Council of States (Rajya Sabha), on 14th of May 2002, a major stride was witnessed in the evolution of the 93rd Constitution Amendment Bill into the 86th Constitution amendment Act. This amendment is after taking into consideration the 165th Report of the Law Commission of India and also the recommendations made by the Standing Committee of Parliament. With this Act, for the first time since the framing of the Constitution a Fundamental right was added to the Constitution of India. Befittingly, for India with the largest number of illiterates in the world, this addition to the Fundamental Rights list relates to education. The Indian Constitution now guarantees eight years of elementary education to each and every child in the country.

Subsequent to the amendment, the following article is inserted after Article 21 of the Constitution, namely:

1. “21A. The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.”
2. Similarly the content of the article 45 of the Constitution is substituted to encompass
3. “45. The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years.”
4. In Article 51 A of the Constitution, after clause (j), the following clause has been added:
5. “(k) Who is a parent or guardian to provide opportunities for education to his child or as the case maybe, ward between the age of six and fourteen years.”

The underlying concern of this Amendment is that what is required today is not just legislation but a progressive piece that will enforce the rights of every child to quality education.

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66 H.K.Saharay, op. cit., p. 1310
67 M.V.Pylee, op.cit.,p.303
2.1.24. The Constitution (Ninetht Amendment Act), 2005

Table 2.25: The Constitution (Ninety-third Amendment Act), 2005

| Tabled in Lok Sabha on : | 19-12-2005 |
| Act effective from:      | 20-1-2006  |

Source: Present Study

This amendment seeks to promote and provides greater access to higher education including professional education to a large number of students belonging to the socially and educationally backward classes of citizens i.e. the OBC’s or of the Scheduled Castes and Scheduled Tribes\(^{68}\). To achieve this purpose, this amendment was enacted to amplify Article 15 where a new clause (5) \(^{69}\) shall enable the Parliament as well as the State Legislatures to make appropriate laws so that the students belonging to the aforesaid categories can gain admission in private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of Article 30.

2.2. CONCLUSION

It is evident in the preceding pages that the Indian democracy has been abreast with the times and has metamorphosed progressively and affirmatively. Endogenously the amendments have inserted, substituted, omitted and amended Articles and Schedules. The wide spectrum of amendments beginning from Land reform legislation, Fundamental rights to reformations regarding reservation (popularly called the Policy of affirmative discrimination) to the Panchayati Raj system and the most recent one dedicated to the cause of education (RTE) have a compound impact on erecting a Constructive and Sustainable democratic nation. In addition to this, the discourse on amendments has also confirmed that the quantitative rise in the number of amendments has had an optimistic impact and mitigated the risk of constitutional hazards which involve replacement or overhauling of the current Constitution.

\(^{68}\) Gopa Sabharwal, op. cit., p.352
\(^{69}\) H.K.Saharay. op.cit., p.1311