PREFACE

Interest in various scholarly topics waxes and wanes over time, but interest in the amending process has clearly increased in the past two decades. As more and more states are claiming independence, the need for an enduring Constitution with a robust amendatory provision is becoming not only indispensable but almost inevitable. The present work draws inspiration from an emerging field called Constitutional Design Sciences which treats the Constitution not as an inert parchment of written rules but as a Living Constitution capable of adaptability and amendability. The amendment provisions are no longer seen in isolation. Rather they are being associated with subjects like Constitutional Mortality, Constitutional Endurance and Constitutional Dynamics. Principles of Constitutional Design by Donald S. Lutz, The Endurance of National Constitutions by Zachary Elkins, Tom Ginsburg and James Melton, The Strategic Constitution by Robert Cooter and The Paradox of Amendments by Peter Suber are some seminal works which have injected a new life into the static field of Constitutional Law.

It is in this backdrop that the present work has germinated. Amendments in the Indian Constitution have so far been viewed quantitatively by many people but the present work embarks on a qualitative assessment of some major game changing amendments which hopefully shall be a meaningful addition in this field. It deserves attention that the Constitution has gone through small and major amendments at an average rate of one amendment in a year, but still it has retained its basic structure. The Constitution of India adopted on 26 November 1949 and brought into force on 26 January 1950 is the longest surviving Constitution in Asia next only to the Constitution of Japan. It has the distinction of being the lengthiest, bulkiest and the most comprehensive document ever framed by any nation. Originally confined to 22 parts, 395 articles and 9 Schedules it has now leapfrogged to 22 parts, 447 articles and 12 schedules and has been amended for a whopping 100 times. Perhaps no other country has devoted so much time and energy in enacting such a meaningful document as ours. For this very reason it is ascribed to as a ‘Living Document’ or as ‘Dynamic Instrument’ because it has not only withstood the vagaries of the fluctuating majorities but also successfully acclimatized to the changing condition.

Of all the facets of the Indian Constitution, the one that deserves special mention though it is the much over-looked part, is the provision of Amendment encapsulated in Part
XX /Article 368 couched in both rigid and flexible expressions. The Indian Constitution follows the path of the ‘Golden Mean’ in bringing about changes and transformations. By being rigid it keeps the whims and caprices of the power-wielders at bay and by lending itself elasticity it furnishes the necessary elbow room to meet the exigencies of time. In a way, the machinery of amendment helps to maintain the ‘homeostasis’ or what Granville Austin, the famous freelance historian calls the ‘seamless web’. One is not only intrigued but also mesmerized that how in a short span of 60 years, the Indian Constitution has hammered out 100 amendments and has still managed to conserve our plural culture and ethos successfully.

This thesis is an attempt to trace not only the trajectory of the major breakthrough amendments but also makes a searching and critical analysis of their impact on the Indian Constitution, on the Indian polity at large and on the social canvas.

For convenience the thesis has been structured into seven Chapters, each being organically linked to the other. To support the text an ensemble of tables, graphs, graphs and pie diagrams have been utilized to enhance the meaning of the content. Chapter one unfolds the foundational meaning of Constitution and by using the living tree doctrine metaphor unravels the dynamic nature of the Constitutions. Due emphasis has been laid on the amendatory provisions found in the Indian Constitution as it forms the fulcrum on which this work is based upon. This chapter also unveils the research methodology pursued in our work and purveys a review of relevant literature in the field. Chapter two reconnoiters the inventory of amendments and undertakes an in-depth analysis of the amendments which have wrought the Indian Constitution over the years. Chapter three probes into the multiple demands which necessitate amendments to the Constitution. It discusses the plethora of demands like the socio-political and economic demands, multicultural and territorial demands in keeping with the diverse nature of the country, federal demands, egalitarian demands and above all transparency demands which mould the Constitution. Chapter four delves into ambit of Parliament as an amending body. So far the Parliament has been known for its legislative competence and law making powers but there is one more aspect to it. It is also the donee of amending powers. By virtue of the constituent power conferred by Article 368, the Parliament walks into the shoes of a body which is capable of bringing about a spate of amendments. The amplitude of this power is far-reaching as the parliament can amend in any way i.e. by addition, variation or repeal of any provision of the Constitution. Chapter five anatomizes the sweet-sour relationship between the Parliament and Judiciary. Instances of recurrent clashes between the Legislature and the Judiciary have not only impacted the status
of the two organs but it has also played a vital role in changing the course of the Indian polity. It thus deals with the contentious issues between the two organs spans. Chapter six is the most comprehensive chapter in the entire treatise as it appraises in detail not only the structural framework of the Amendment Acts but also discusses their political and social reverberations that transpired from these amendments. The four amendments which have been placed under the scanner are 42nd Amendment Act and 44th Amendment Act, 73rd Amendment Act and the most recent 86th Amendment Act. These amendments have been by far the most momentous amendments. It would not been an exaggeration if one calls them the foundation stones on which the Indian polity is built. The concluding Chapter seven serves as an epilogue to the preceding discourse where a rational and fair course is taken. It recapitulates the key findings of our study with respect to the four amendments. Finally, it is established in the conclusion that amendment to the Constitution is desiderated for its organic growth and also for developing a constitutional culture.

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