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Constitutional Amendments and their Impacts on the Democratic Development

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ABSTRACT

There have been more than 100 constitutional amendments till date. Few of these have had a significant impact on shaping our nation as it exists today. This article will address the most important constitutional amendments and it's social and political impact.

Our constitution went through a number of amendments due to the inherent simplicity in the procedure for passing such amendments. 1st, 4th, 17th, 24th, 25th and 29th amendments pertaining to fundamental rights and therefore, the judiciary imposed a limitation on the amending power of the constitution of India, which developed during conflicts between the Supreme Court and Parliament, where Parliament wanted to exercise discretionary power to amend the constitution while the Supreme Court wanted to restrict that power. This led to the laying down of Basic Structure doctrine in 1973. The doctrine curtailed the legislatures' power to amend the fundamental principles of our constitution like Secularism, Independence of Judiciary, Federalism, Rule of Law etc. An amendment to the constitution under Article 368 can be challenged on the ground of violation of the basic structure of the constitution unlike an ordinary legislation. In the Golaknath v. State of Punjab too it was held that the Parliament's power to amend is limited as Article 368 only contains the procedure for amendment whereas the power is derived from Article 245 read with List 1 of the Constitution. But it was elaborated in the Kesavananda Bharti case. Later, in the Woman Rao v. Union of India Case constitutional amendments were brought within the ambit of judicial review.

This article will deal with the most important amendments in detail.

Keywords: Basic Structure, Amendments, Constitutional, Judicial Review, Repeal

INTRODUCTION

In human societies there has been a constant tussle between stability and change. Whenever stability has resulted in stagnation, there have been upheavals and revolutions. With the desire of stability, human societies opted for written constitutions. Most constitutions, owing to the tussle, also provided for a mechanism for change. Thus, Article 368 of the Constitution provides for the power of Parliament to amend, by way of addition, variation or repeal, the Constitution and procedure thereof. There have been 100 Constitutional amendments till 1st August 2015 and 22 more bills still pending. Some of these have had a significant and long lasting impact on our nation. This paper brings out the most important amendments, their social and political scenarios while been enacted and their impact on our nation.

We will learn as to what is the concept of constitutional amendment and why did India undertake to include it within our legal system. This procedure is meant to ensure the sanctity of the Constitution of India and to keep a check on the arbitrary power of our Parliament. The Indian Constitution has borrowed its features from many sources. One of such concepts was that of Constitutional amendments, borrowed from state of South Africa. B.R

Ambedkar, the head of the drafting committee, said "One can therefore safely say that the Indian Federation will not suffer from the faults of rigidity or legalism."

Let's now look at the most important amendments: -

FIRST AMENDMENT ACT, 1951: -

The first amendment, moved by the then Prime Minister with the support of BR Ambedkar, was a result of the difficulty in the working of the Constitution during the first fifteen months brought to light by the judicial decisions. The amendment made modifications in few of the Fundamental Rights. The main object of the Act was to amend Articles 19, 15 and 31 though it amended 14 Clauses of our Constitution. The then existing Article 31 brought in unanticipated difficulties in the implementation of the agrarian measures passed by the State legislatures. Thus, Nehru brought in the first amendment. The first visible obstacle was the issue of reservation as highlighted in the case of State of Madras Vs Champakam Dorairajan3, the Supreme Court invalidated an order of the Madras High Court whereby admissions to the medical college were distributed community-wise. It was considered to be in violation of Article 29 (2). Henceforth, the first amendment added clause 4 in Article 15. It provided that nothing in this Article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes. The effect of first amendment was that the provision of reservation was not made mandatory instead it was left to the discretion of the state. One may find that if the state decides to take away all the reservations, it had the power to do it.

The Constitution was criticized by some for the special safeguards that it provides for minorities and certain classes who are socially and educationally backward. In his reply one sees Ambedkar as the political leader and realist. He said "speaking for myself, I have no doubt that the Constituent Assembly has done wisely in providing such safeguards for minorities as it has done. In this country both the minorities and the majorities have followed a wrong path. It is wrong for the majority to deny the existence of minorities it is equally wrong for the minorities to perpetuate themselves. A solution must be found which will serve a double purpose. It must recognize the existence of the minorities to start with".

It must also be such that it will enable majorities and minorities to merge someday into one. The solution proposed by the Constituent Assembly is to be welcomed because it is solution which serves this two-fold purpose. To die hards who have developed a kind of fanaticism against minority protection I would like to say two things. One is that minorities are an explosive force which, if it erupts, can blow up the whole fabric of the state. The history of Europe bears ample and appalling testimony to this fact. The other is that the minorities in India have agreed to place their existence in the hands of the majority. In the history of negotiations of preventing the partition of Ireland, Redmond said to Carson, "Ask for any safeguard you like for the protestant minority but let us have a United Ireland". Carson's reply was "Damn your safeguards, we don't want to be ruled by you". No minority in India has taken this stand. They have loyally accepted the rule of the majority which is basically a communal majority not even political majority. It is for the majority to realize its duty not to discriminate against minorities. Whether the minorities will continue or will vanish must depend upon this habit of the majority. The moment the majority loses the habit of discriminating against the minority, the minorities can have no ground to exist. They will vanish."4

The judiciary then felt the need for restricting the right to freedom of speech & expression under Article 19. In

3 AIR 1951 SC 226

Romesh Thappar v. State of Madras5, the Supreme Court held that unless a law restricting freedom of speech and expression was directed against undermining the security of the state it could not be held invalid. The same was reiterated in Brij Bhushan V State of Delhi case. The first amendment therefore added the word reasonable restrictions under clause (2) besides enlarging the scope of judicial review by including "public order", "incitement to an offence" and "friendly relations with foreign states" as additional grounds on which freedom of speech and expression could be restricted. The right to speech even against public order is given in USA as against India.

The phrase "friendly relations with foreign states" was needed to curb propaganda against Pakistan which was then going on.

The Patna High Court in the Shaila Bala V Chief Secretary case explained the reason for adding the restrictions in the Right to Freedom of Speech & Expression. The term "security of state" could only cover cases pertaining to commit political assassinations, or murders, or crimes of violence intending to overthrow the state whereas incitement to commit any crime was excluded. Hence, Article 19(2) was amplified to enable the legislature to make laws to restrict freedom of speech and expression in the case the interest of public order or put a restraint upon incitement to violence.

Moving the first Amendment Bill, Prime Minister Nehru said: "It is all very well to talk about the equality of law for the millionaire and the beggar but the millionaire has not much incentive to steal a loaf of bread, while the starving beggar has. This business of the equality of law may very well mean, as it has come to mean often enough, the making of existing inequalities rigid by law. This is a dangerous tiling and it is still more dangerous in a changing society. It is completely opposed to the whole structure and method of this Constitution and what is laid down in the Directive Principles.

Coming to the third part of the Amendment, right to property, Late Nani Palkhiwala, eminent jurist and outstanding senior advocate of the Supreme Court, highlighted that the right to property has been recognized in all democracies. It also appears in Magna Carta, 1215 & French Declaration of the Rights of Man, 1789. Article 5 of the United States Bill, 1791 lays down that no person shall be deprived of his property except according to the due process of law, nor shall the private property be taken for public use without paying just compensation. Palkhiwala underlined that the debates in the Constituent Assembly clearly show that the framers of Constitution attached sufficient importance to right to property by incorporating in the chapter of fundamental rights.

Seervai and Palkhiwala attach great importance to this right for the meaningful enjoyment of others. Nehru on the other hand was of a different opinion, not in consonance of the USA, pro Russian and anti-USA, democratic thought. He believed that outright expropriation of land could not be considered wrong as there was no moral right attached to property. He was not a believer of the individual's right to hold property.

The original Article provided for compensation in case of compulsory acquisition by the state for public purposes. The first amendment through (A) recognized state laws in violation of the said provision & through (B) validated all these state laws & Regulations by adding a schedule, schedule IX. Even an Act declared invalid by a court becomes valid retrospectively after being incorporated in the Schedule. The ninth schedule was beyond the judicial review6.

Article 31 provided that no land could be taken away without paying just compensation, whereas the new inserted Article said that the land could be taken away even in contravention to the fundamental rights even if just compensation was not paid. In case of state legislation, only those bills which have received the assent of the

5 1950 AIR 124.

president shall be considered. Article 31B on the other hand validated certain Acts and Regulations in the IX schedule enacted by the state legislators so as to immunize them from challenge. The schedule had 13 state legislations initially.

The Constitutional validity was challenged in the Supreme Court. The court upheld the validity of the amendment in the famous Shankari Prasad v. Union of India case.

The amendment also provided for a change in Article 376. The Article said that whoever held the post of a judge of a High Court in any province before the commencement of this Constitution shall continue to hold such posts even after the constitution has been enacted in the corresponding states. The amendment held that even if the post was held by a non-Indian, he could still be eligible for the post of chief justice of the High court or as chief justice or a judge of any other high court. Thus, the constitutional amendment first passed within one year of the Constitution was set in motion and used incessantly thereafter.

FOURTH AMENDMENT ACT, 1955: -

The bill for the amendment was introduced on 20th December 1954, passed by the Lok Sabha on 12th April having received the President's assent on 27th April, 1955.

Some decisions of Supreme Court had given a wide meaning to clauses 1 and 2 of Article 31. Despite the difference in the wording of the two clauses they were regarded as dealing with the same subject. According to these decisions, even where deprivation of property was caused by a purely regulatory provision of law and was not accompanied by taking possession of that or any other property right by the state, the law still had to provide for compensation. The fourth amendment distinguished between compulsory acquisition and regulatory acquisition pursuant to state laws. The need for the distinction was to provide for compensation in former cases alone and for the court to not to interfere in the latter cases. Likewise, it was debated by few that there should be a classification even with respect to fundamental right to property. Only the ones who cannot protect their rights or the discriminated class should be given this right. Otherwise, the weak will continue to be discriminated by the rich class, the class who does not just enjoy their fundamental rights but also enjoys the right of taking away the fundamental rights of the weaker class. With the passing of the amendments on property the rich class had acquired the right to take away the property of the weaker class under the garb of compulsory acquisition for public purpose. The compulsory acquisition was not exercised on the properties of the rich class. It led to the affirmation of the entrenched privileges of the privileged class making the poor even poorer. It was thus argued by some that the rich class enjoys the means to protect their rights anyways, they do not need the fundamental rights. In order to bring in the weaker class at par with the rich the former shall be given such a right. Thus, the right of fundamental right to property was also argued to be a distinguished right, not available to one and all.

Coming back on the fourth amendment, it had a two-fold objective, one, to restrict the liability to pay compensation only in cases of compulsory acquisition of property & two, to make the legislature and not the judiciary final arbiter of the quantum of compensation. This was done by adding the following words to (2), "no such law shall be called in question in any court on the ground that the compensation provided by the law is not adequate"7. (2A) was also added to that Article which provided that where a law does not provide for the transfer of ownership or possession of property to the state or a corporation-owned or controlled by the state, it shall not be deemed to provide for compulsory acquisition, notwithstanding the fact that it deprives a person of his property. In such cases the landlord

7 Jain, Mahabir Prashad., Samaraditya Pal, and Ruma Pal. "Elections." 2010. M.P. Jain Indian Constitutional Law: With Constitutional Documents. 6th ed. Gurgaon, India: LexisNexis Butterworths Wadhwa Nagpur, 2010. 876-77. Print

did not have to be compensated for. This was keeping in view with the Nehru's concept of socialism. Thus, the purpose of the legislation was to avoid paying compensation wherever possible. Besides these 7 more legislations were added to the ninth schedule.

CONSTITUTION SEVENTEENTH AMENDMENT ACT, 1964: -

The seventeenth Amendment Act, 1964 led to a further amendment in the property rights. The problem that came in front was the definition of estate different in each state and with the reorganization of states scheme the word had different connotations in each state. The seventeenth amendment modified the definition of "estate" and added a few more state legislations in schedule IX. The Article 31 A was amended to provide that where any law makes provision for acquisition by the state of any estate and where any land is held by a person for his personal cultivation and is within the ceiling limit applicable to him, shall not be taken by the state without paying just compensation and that a law in respect of acquisition by the state would not be invalidated if it violated Article 14, 19 & 31 and added 44 more legislations in the ninth schedule. The amendment further diluted the right to property.

CONSTITUTIONAL TWENTY-FIFTH AMENDMENT ACT, 1971: -

This amendment was a step further in the right to property and substituted "compensation" with the word "amount". The Act was passed to amend the constitution to surmount the difficulties placed in the way of giving effect to the directive principles by the interpretation. Article 31C was added and directive principles were given priority over fundamental rights for the sake of property rights.

Article 31C was inserted to give effect to certain directive principles of state policy. It provided that no law that gives effect to (b) & (c) of article 39 shall be void on the ground that it is inconsistent with or that takes away fundamental rights. None of the policy made to give effect to directive principles shall be called in court. This amendment holds significance as the word compensation was substituted for amount.

FORTY SECOND AMENDMENT ACT, 1976: -

Although Mrs Indira Gandhi nationalized the banks, abolished the privy purses, and tried to establish her leftist radical image, her victory at the general elections in 1971 was backed by disillusionment. This was because her promises had created expectations she could not fulfill. The old members had gone into oblivion but the new ones were inexperienced. Thus, the nehruvian born ideology became a matter of expediency for her. The public discontent was taken advantage of by Jayaprakash narayan, Allahabad high court through a single judge bench passed the order questioning Indira Gandhi's election to Parliament invalid. Opposition parties demanded her resignationto which she reacted by declaring emergency. This led to the passing of the 42nd Amendment Act in 1976. The seeds were laid down by the Swaran Singh report.

The Act led to the following variations:-

It added the word socialist and secular in the preamble, with the word unity replaced by "unity & integrity".

It established administrative tribunals under part XIV.

It took away the right of representation from the civil servants in order to make the enquiry speedier.

It reduced the power of the high court over the tribunals and also the power pertaining to the writ jurisdiction by deleting the words "for any otherpurpose".

Article 31C was amended to give immunity on laws seeking to give effect to the policy of the state from being declared void on the ground of being in violation of fundamental rights. The original enactment

under Twenty Fifth Amendment Act, 1971 gave effect to only (b) & (c) of Article 39, whereas now it included all directive principles.

39 (f) was substituted to give 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 48A on environment and 43A on involvement of workers in management of industries were added.

Fundamental duties were added under a new part IVA.

Article 74 was amended for the President to take decisions on the aid and advice of the council of ministers headed by the Prime Minister.

The amendment attracted controversy not for adding a few Articles or Directive Principles, but for making drastic changes in the system of judicial review and amending the Article 368 by adding a new clause, clause 4.

Until the Golaknath case8 the power to amend the constitution was considered an unlimited power, it was for the first time in this case that the court held that the power to amend was limited. By way of a change in 368, the power was made unlimited. Article 368 (4) states that no amendment of this Constitution (including the provisions of Part III) made or purporting to have been made under this article [whether before or after the commencement of section 55 of the Constitution (Forty Second Amendment) Act, 1976] shall be called in question in any court on any ground. 368 (5) stated that for the removal of doubts, it is hereby declared that there shall be no limitation whatever on the constituent power of Parliament to amend by way of addition, variation or repeal the provisions of this Constitution under this article]. The Cumulative impact was that the power of parliament to amend was made unlimited. Sky was the limit to amend the constitution. The amendment as a whole was therefore struck down in Minerva Mills case and eventually in Woman Rao case Justice Chandrachud said the power to amend is limited and is a basic structure.

Article 32 considered the very heart of our Constitution was also amended by inserting Article 32A. The said article took away the Supreme Court's power to entertain petitions on constitutional validity of state laws unless central laws were in question. The said amendment alienated public opinion which resulted in change of government after the election. It strengthened the power of central executive & the courts comparatively weaker. It was an attempt to take away all the democratic features from our constitution. Later in the case of Minerva mills9 the court held the power of judicial review cannot be taken away. There cannot be unlimited power of constitution, balance between fundamental rights and directive principles is itself a basic structure of our constitution. The amendment as a whole was struck down in the same case.

FORTY FOURTH AMENDMENT ACT, 1978: -

The forty fourth amendment was passed to neutralize the effect of 42nd amendment. Congress during a span of thirty years rule had successively tried to erode the fundamental right to property but it could not pick up the courage to abolish it. The tussle between the congress government to denude the property of all its substance and on the other hand the courts insistence to give it substance led to the affirmation of the entrenched privileges of the privileged class making the poor even poorer.

The Janata Government abolished the right as being the constitutional right pursuant to this amendment by deleting Article 19(1)(f) and 31 which led to consequential amendments in 31A(1) & 19(5). The 44th amendment added 1A

8 1967 AIR 1643

9 AIR 191980 SC 1789

in Article 30 providing for just compensation in case of acquisition of the property of an educational institution by the government. A new article 300A was added which provides that no person shall be deprived of his property except by the authority of law with article 31 A & B to protect land reform legislation still holding good. The search for legal effect of replacing the right to property from the section of fundamental rights to legal rights is difficult. For one, it may just have excluded the Supreme Court from exercising original jurisdiction by way of writs in the redressal of property disputes. This is hardly any change as can still reach the apex court in its original jurisdiction by way of special leave petition.

The Act made variations by way of additions in the following other Articles:-

Article 22, no law providing for preventive detention shall authorize the detention of a person for more than two months unless an authority in consultation with the chief justice of a high court allowed it.

Article 71, it provided for the matters regarding the election of a President or Vice-President to be decided by the Supreme Court. The Supreme Court while deciding such matters was not to invalidate the work done by them even though there election was declaredvoid.

Article 74 was amended in order for the president to require the council of ministers to reconsider such advice, making the president bound by such reconsideration.

Article 358 substituted the words “while the proclamation of emergency is in operation” to “while a proclamation of emergency declaring that the security of India is threatened by war or external aggression”.

Article 361 was inserted for the protection of publication of proceedings of parliament and state legislature. It provided that no person shall be liable whether with civil or criminal liability in any court in respect of the publication in a newspaper of a substantially true report unless the publication is proved to have been made with malice.

The amendment gained public gaze not for the changes made in Article 361, 74 etc but for the deleting the right to property from the Section of fundamental rights. On this I would conclude in the words of M.P. Jain “nevertheless, there is no denying the fact that the Amendments regarding property rights can be justified to some extent, except Schedule IX, on the ground that the views of the judiciary regarding payment of compensation for agricultural property acquired could not just be fully implemented in the Indian context. But the addition of Schedule IX immunizing as many as 284 states Acts from judicial scrutiny does not seem to be warranted. To begin with, it was envisaged that Schedule IX would be used to give immunity only to land laws, but in course of time, all kinds of state laws have been added to the Schedule and granted immunity from judicial review”10. Thus, the fact that comes out of this is that the constitution cannot provide for selected judicial review.

FIFTY SECOND AMENDMENT ACT, 1985: -

After the assassination of Indira Gandhi people were in the sympathetic mode towards the then prime minister. Congress at one time enjoying the status of a majority party lost out its constituencies. This was because alliances of small parties called SVDs had gained power. These parties later witnessed floor-crossing. The party workers were joining other parties for petty amounts. Thus, the need for anti-defection law was felt. The image of Rajiv Gandhi was that of someone who came in power to deliver. It was added as the Tenth Schedule in our Constitution.

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10 M.P. Jain Indian Constitutional Law: With Constitutional Documents. 6th ed. Gurgaon, India: LexisNexis Butterworths Wadhwa Nagpur, 2010. 876-77. Print

It was designed to prevent the evil or mischief of political defections motivated by the lure of office or material benefits or other similar considerations. It is intended to strengthen the fabric of Indian parliamentary democracy apparently by curbing unprincipled and unethical political defections. Rajiv Gandhi described it as the 'first step towards cleaning-up public life'. The then Central law minister stated that the passing of the 52nd Amendment Bill by a unanimous vote by both the Houses of Parliament was 'a proof, if any, of the maturity and stability of Indian democracy'.

The Act was likely to undermine the very foundations of democracy and the principle which sustains it. The Act came up with the whip system. Whip was taken from the English legal system in which one person affiliated to one party had to work accordingly. It provided that an elected member of parliament who has been elected as a candidate set up by a political party and a nominated member of parliament, who is a member of a political party at the time he takes his seat or who becomes a member of a political party within six months after he takes his seat would be disqualified on the ground of defection if he voluntarily relinquishes his membership of such political party and so will an independent member of parliament if he joins any party after his election.

Any question regarding disqualification from membership of parliament arising out of defection was within the ambit of the presiding officer of the house. Originally, the Act provided that the decision of the presiding officer is final and cannot be questioned in any court. Para 7 of the Tenth Schedule restricts the power of judicial review on cases of disqualifications. 39th amendment & 42nd amendments were all those amendments which were passed so as to take away the power of judicial review. However, in Kihoto Hollohan case (1993), the Supreme Court declared this provision as unconstitutional on the ground that it seeks to take away the jurisdiction of the Supreme Court and the high courts. It held that the presiding officer, while deciding a question under the Tenth Schedule, functions as a tribunal. Hence, his decision like that of any other tribunal is subject to judicial review on the grounds of mala fides, perversity.

Though the anti-defection law hailed as a bold step towards cleansing our political life and started a new epoch in the political life of the country, it has revealed lacunae in its operation and failed to prevent defections. With months and years passing by, the Act was questioned for a number of reasons. One, it does not distinguish between a dissent and a defection. Even a member who does not agree to a bill can be disqualified on the ground of defection with absolutely no obligation to replace the disqualified candidate for passing the bill. Second, the bigger and richer parties can still buy the votes of the smaller parties in order to create majorities while the opposite can never be a possibility. Third, the law recognizes splits in and mergers in the parties. Splits are when one-third of the total membership of party defects. Mergers are when more than two-thirds of the members decide to join another party; in mergers, the remaining party members do not get disqualified from the membership of the parliament. Its distinction between individual defection and group defection is irrational. In other words, 'it banned only retail defections and legalized wholesale defections'. Fourth, the person disqualified is not replaced; the house continues to remain in force without the disqualified member. Fifth, it does not provide for the expulsion of a legislator from his party for his activities outside the legislature. Democracy is not always taking the decision based on the decision of the majority. Lastly, it vests decision-making authority in the presiding officer that is the chairman or the speaker of the house. This is criticized on two grounds; firstly, he may not exercise this authority in an impartial and objective manner due to political exigencies. Secondly, he lacks the legal knowledge and experience to adjudicate upon the cases. In fact, two Speakers of the Lok Sabha, Rabi Ray, 1991 and Shivraj Patil, 1993, have themselves expressed doubts on their suitability to adjudicate upon the cases related to defections. Henceforth, it is a weak law.

73rd & 74th CONSTITUTIONAL AMENDMENTS, 1992: -

73rd Amendment Act, 1992 for Rural Panchayati Raj & 74th Amendment Act, 1992 for Urban Municipal Corporation were passed so as to give effect to Article 40 of our Constitution. It provided for the state to organize village panchayats and endow them with powers needed to function as units of self government. It was believed that due to the experience of the working of the Constitution in the past forty years the adding of certain provisions seemed imperative for the continuity and certainty. Balwant Rai, K. Santhanam, Ashok Mehta Committee, GVK Rao Committee & L.M. Sighvi committee recommended for the decentralization of power. Therefore, the proposal was made for adding a new part in the Constitution aiming towards panchayat system. A panchayat means an institution of self governance constituted under Article 243B for rural areas. The panchayat was to fill up with people elected through direct election. The state law allows the panchayat to levy taxes for proper functioning; the Constitution allows the governor to form a finance review board to review the financial position of these panchayats.

The word panchayat did not once appear in the draft constitution. Granville Austin in its treaties "Indian Constitution: Corner Stone of a Nation" noted that the drafting committee did not even once discuss the alternative principles of Gandhinian view of panchayati raj. One of the strongest critics was Dr Rajendra Prasad and he opinioned that the village has been and will even continue to be our unit in this country. Subsequently other members like MA Ayangar and NG Ranga also suggested some amendments to the draft constitution and both harped on the introduction of pachayati raj. Their arguments as quoted by Granville Austin were on the following lines:-

"The state shall establish self-governing panchayati for every village or a group of villages with adequate powers and funds to give training to rural people in democracy and to pave the way for effective decentralization of political and economic power."

The constitution they believed ought to have been drafted on the ancient Hindu model of a state and that, instead of incorporating western theories; it should have been raised and built upon village panchayats and district panchayats. A few even advocated the abolition of the central and provincial governments. Mr Ayangar said there is no point of a democracy if once in a blue moon individuals are brought together for a common purpose merely to elect and disperse. It was under these circumstances that an amendment was moved on 20th Nov, 1948 and accepted by BR Ambedkar with the drafters grudgingly having incorporated Article 40 under directive principles. Pursuant to the amendment the Tamil Nadu Panchayati Act, 1994 was enacted, the first local self governing elections, after which came the Andhra Pradesh and the Rajasthan Acts too came into place.

These institutions of panchayati raj though constitutionally established need to be empowered with respect to both functionality and finances to enable them to fulfill the role envisaged in the Constitution. The state finance commission, which buttresses the functioning of these finance commission also needs to be strengthened so as to make it more predictable and the process of implementing their recommendations more transparent. A number of recommendations have been made by the 11th, 12th and 13th finance commissions though important have not been implemented so far.

Last but not the least; the panchayat was to fill up with people elected through direct election. The people who get elected are not always fit to govern. Therefore, on the suggestion side, the age of voting should either be based on the qualifications of the voter instead of a uniform age for all or the age of voting should be brought back to 21. This is to avoid mob psychology on the voter. The purpose of voting is defeated if the vote is by a half baked mind. If a person does not come out to vote for parliamentary elections how can decentralize work? Thus, the 61st amendment was not the right view just like the move to decentralize in itself. In order to make the system of voting

efficient a commission on qualification of the voter should be constituted. Thenceforth, more needs to be done for effective and efficient decentralization.

EIGHTY FIFTH AMENDMENT ACT, 2001

The National democratic alliance introduced the reservation based on seniority in 2001. The whole concept of reservations came in Southern Railway v. Rangachari, where the court permitted reservations in 16(4), pursuant to which the legislature added reservations not only in employment but in promotions as well through the seventy seventh Amendment Act, 1995 by adding 16(4A) in our Constitution. It provided that no Article shall prevent the state from making any provision for reservation in matters of promotions. It brought in reservation at the level of promotions in public employment. The amendment was a result of the judicial decision in Indra Sawhney, which struck down reservation in promotions contending it should be confined to appointments or posts and should not extend to promotions.

The Statement of Objects and Reasons of the Constitution (Seventh-Seventh Amendment) Act, 1995 were: "The Scheduled Castes and the Scheduled Tribes have been enjoying the facility of reservation in promotion since 1955. The ruling of the Supreme Court in Indira Sawhney adversely affected the interests of the Scheduled Castes and the Scheduled Tribes. It was contended since their representation in services in the States had not reached the required level, it was therefore 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 decided to continue the existing policy of reservation in promotion. To carry out this it was necessary to amend Article 16 of the Constitution by inserting a new clause (4A).

In R.K. Sabarwal v State of Punjab in 1995, the court provided for a roaster system. It was a system wherein once the seats for the reserved category were filled; the percentage of seats could not exceed on the premise of vacant seats. The Supreme Court in this case aimed at ensuring a balance between the general category and thereserved category.

Like most other amendments eighty fifth amendment too was tussle between the judiciary and the legislature. The judicial decisions spoke against consequential seniority while the legislature intended to bring in the reservation based promotion with the passing of amendment in 2001. In this system, if a person of a general category 5 years senior to a person of a reserved category had to be promoted against one vacancy, then the reserved category candidate would be promoted as against the former. If later, general category candidate gets promoted to the same position after three years, he loses eight years as against the reserved category. General candidate will not regain his seniority of 5 years over reservedcandidate.

Now A and B are in Grade 2 – B has been there for 3 years and A has recently been promoted. A is now junior to B. The fact that he was 5 years senior to B before the promotion of B is deemed immaterial. For further promotion to Grade 3, A will be considered 3 years junior to B. In other words, A has lost 8 years inter se B.

NINTY- NINTHTH AMENDMENT ACT, 2014: -

India has been witnessing the debate on the constitution of a National Judicial Appointment Commission for appointment of judges at the higher judiciary ever since the beginning of 21st century. The collegium system having failed on the part of the transparency was argued to give way to the said commission.

The said Act amended Article 124(2) & added Article 124A, 124B & 124C. The words after consultation with the judges of the Supreme Court and high court were replaced by with recommendation from national judicial appointment Commission. Article 124A stated the constitution of people within the commission. It consisted of chief justice of India, two senior most judges, union minister in charge of law and justice ministry, two eminent persons to be nominated with either being the prime minister or leader of opposition out of which one was to be a scheduled caste, tribe or woman etc. Njac was to recommend persons for appointment and transfer of chief justice of India, judges of Supreme Court, chief justices at high court or other judges of high court.

The appointments at the higher level were believed to be manipulated by the judges making it arbitrary and unfair. With judiciary at the apex holding the other two organs together, it was argued by some that the judiciary should have some executive control in the appointment of judges while the others opinioned that the executive control will influence the judges, amidst this was the NJAC Act, 2014 passed. The Act was argued for being contrary to what the drafters intended. The Act was contended to be in violation of the draft Constitution as the eminent persons from the executive background had the veto to strike down the recommendations of the other four members. Thus, making a shift from the decision of the three judges case by taking away the primacy from the judiciary and placing the power back to the governing class in violation of our basic structure principle of Independence of judiciary. Henceforth, it was struck down.

CONCLUSION

The procedure for Constitutional Amendments requires a special majority which is not an impossible task making the supreme most law of our nation easily amendable. So many amendments have been made in a span of 65 years. This easily amendable procedure was misused by the parliament innumerable times in order to nullify the inconvenient judicial pronouncements. A major contributing factor has been that if a political party has enjoyed an overwhelming majority in both the chambers of parliament at the centre and the state legislatures, they have not found it difficult to muster the requisite majority in the two houses of parliament s well as in the state legislatures whenever their ratification was required. An instance to illustrate this is the time of our first president of India. During the leadership of Late Rajendra Prasad there was a stable Government, one that always enjoyed the confidence of Parliament. In fact, the characteristic feature of this period was the massive majority of the Congress party in the Parliament and the comparative insignificance of the opposition. The Congress Party on its own strength could pass any legislative measure including constitutional amendments. The position was so strong that it appeared as if India had a one- party Government which was likely to assume the character of one-party dictatorship. As a result of such a flexible system of amendments our Constitution sustained a number of amendments, some having minor significance and some having a drastic effect. The former include 2nd, 5th & 9th Amendments whereas the latter include the 42nd & 44th amendments. The cumulative effect of these amendments has been mainly to restrict the scope and ambit of some of the Fundamental Rights, particularly the right to property like the 1st, 4th, 17th, 25th & also to provide for safeguards to the minorities and scheduled castes and scheduled tribes.