

The Historical Impact of Forty Second Amendment in Indian Constitution

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Abstract

This paper discusses the historical impact of forty second amendment in Indian Constitution. The Constitution (Forty-second Amendment) Act, 1976, was enacted during the Emergency by the Congress government headed by Mrs. Indira Gandhi. It reduced the power of the Supreme Court and High Courts to pronounce upon the constitutional validity of laws. It laid down the Fundamental Duties of Indian citizens to the nation. This amendment brought about the most widespread changes to the Constitution in its history, and is sometimes called a mini Constitution. Almost all parts of the Constitution, including the Preamble and amending clause, were changed by the 42nd Amendment, and new articles and sections were inserted. It curtailed democratic rights in the country. It stated India as "sovereign, socialist secular democratic republic." Most of the political parties and pressure groups opposed this amendment. The conflict between legislature and judiciary is more visible in enacting this act.

Keywords

Indian Constitution, Amendment, Democracy, Judiciary

Introduction

The Forty-second Amendment of the Constitution of India was enacted in 1976 by the Indian National Congress government headed by Mrs. Indira Gandhi. This Amendment is regarded as the most controversial constitutional amendment in Indian history. It attempted to reduce the power of the Supreme Court and High Courts to pronounce upon the constitutional validity of laws. It laid down the Fundamental Duties of Indian

citizens to the nation. This amendment brought about the most widespread changes to the Constitution in its history, and is sometimes called a "mini Constitution"¹.

Amending Procedure

Several parts of the Constitution, including the Preamble and amending clause, were changed by the 42nd Amendment, and new articles and sections were inserted in it. Seven of the thirteen consequential provisions were designed to weaken judicial review, and the amendment's fifty-nine clauses stripped the Supreme Court of many of its powers and moved the political system towards parliamentary sovereignty. It curtailed democratic rights in the country and by providing sweeping powers to the Prime Minister's Office, virtually exempting it from any kind of scrutiny²,

The amendment provided Parliament unrestrained power to amend any parts of the Constitution, disallowing judicial review of those changes. It also deprived citizens of direct access to the Supreme Court; made Directive Principles of State Policy precedence over Fundamental Rights, and provided that any law passed in pursuance of a Directive Principle immune from scrutiny by the Supreme Court; and transferred more power from the state governments to the central government, eroding India's federal structure³.

The 42nd Amendment altered the depiction of India from 'Sovereign Democratic Republic' to a 'Sovereign, Socialist Secular Democratic Republic,' and also modified the words 'unity of the nation' to 'unity and integrity of the nation'⁴.

The bill for the Constitution (Forty-second Amendment) Act, 1976 was introduced in the Lok Sabha on 1 September 1976., by H. R. Gokhale, then Minister of Law, Justice and Company Affairs⁵.(It sought to amend the Preamble and articles 31, 31C, 39, 55, 74, 77, 81, 82, 83, 100, 102, 103, 105, 118, 145, 150, 166, 170, 172, 189, 191, 192, 194, 208, 217, 225, 226, 227, 228, 311, 312, 330, 352, 353, 356, 357, 358, 359, 366, 368 and 371F and the Seventh Schedule).

It also sought to substitute certain articles⁶ (103, 150, 192 and 226; and insert new Parts IVA and XIVA and new articles 31D, 32A, 39A, 43A, 48A, 131A, 139A, 144A, 226A, 228A and 257A in the Constitution)

The bill after the debate by the Lok Sabha from 25 to 30 October and November 1 and 2 adapt in the original form. Clauses 2 to 14, 6 to 16, 18 to 20, 22 to 28, 31 to 33, 35 to 41, 43 to 50 and 56 to 59 were adopted in their original form.

The remaining clauses were all amended by the Lok Sabha before being passed. Clause 1 of the bill was adopted by the Lok Sabha on 1 November and amended to replace the name "Forty-fourth" with "Forty-second", and a similar amendment was made on 28 October to Clause 5 which sought to introduce a new article 31D to the Constitution.

Amendments to all the other clauses that were adopted on 1 November was passed by the Lok Sabha on 2 November 1976. It was then debated by the Rajya Sabha⁷. On 4 to 11, 1976. All amendments made by the Lok Sabha were accepted by the Rajya Sabha on 10 November, and the bill was passed on 11 November 1976. The Bill, after ratification by the States, received assent from the then President Fakhruddin Ali Ahmed on 18 December 1976, and was notified in The Gazette of India on the same date. (Sections 2 to 5, 7 to 17, 20, 28, 29, 30, 33, 36, 43 to 53, 55, 56, 57 and 59 of the 42nd amendment came into force from 3 January 1977. Sections 6, 23, 26, 37 to 42, 54 and 58 went into effect from 1 February 1977 and Section 27 from 1 April 1977.

Impact of the Amendment

- The amendment excluded the courts entirely from election disputes. It was obviously to protect Indhira Gandhi's election to Parliament, as well as future elections contested by her and her successors. The same immunity was also extended to the President, the Vice President and the Speaker.
- An amendment to the 42nd Amendment bill, which had sought to grant lifelong immunity from civil or criminal prosecution to the three officials mentioned as well the Prime Minister, was dropped after it was passed by the Lok Sabha.
- The amendment transferred more powers from the provincial governments to the central government, eroding India's federal structure; and enabling the Centre to rule the country as a unitary, and not a federal system.

- It gave Parliament unrestrained power to amend any parts of the Constitution, disallowing judicial review of those changes and also gave maximum protection to social revolutionary legislation from judicial challenge,
- It made Directive Principles of State Policy precedence over Fundamental Rights, and made any law passed in pursuance of a Directive Principle immune from scrutiny by the Supreme Court.

The 42nd Amendment also restricted the power of the courts to issue stay orders or injunctions⁸. A person holding an office of profit is disqualified from the membership of Parliament or State Legislature under the Constitution. The 42nd Amendment revoked the power of the courts⁹. A new article 228A was inserted in the Constitution which gave High Courts the authority to "determine all questions as to the constitutional validity of any State law"¹⁰. Seven of the thirteen consequential provisions were designed to weaken judicial review.

The amendment's fifty-nine clauses stripped the Supreme Court of many of its powers and moved the political system toward "Parliamentary Sovereignty". Historically saying that the 43rd and 44th Amendments reversed these changes. The 44th Amendment removed most of the restrictions imposed by the 42nd Amendment on the powers of the High Court and the Supreme Court¹¹.

Prior to the 42nd Amendment, the proclamation of Emergency under Article 356 required approval from Parliament to operate at the end of every six months, but this period was now extended to one year.

Article 357 was amended so as to ensure that laws made for a State, while it was under Article 356 emergency, would not cease immediately after the expiry of the emergency, but would instead continue to be in effect until the law was changed by the State Legislature¹². Articles 358 and 359 were amended, to allow suspension of Fundamental Rights, and suspension of enforcement of any of the rights conferred by the Constitution during an Emergency¹³.

The 42nd Amendment added new Directive Principles, viz Article 39A, Article 43A and Article 48A. The amendment to Article 31C gave precedence to all Directive Principles over the Fundamental Rights, irrespective of any inconsistency they may have with any of the rights conferred by Articles 14, 19 or 31¹⁴. The 42nd Amendment gave primacy to the Directive Principles, by stating that "no law implementing any of the Directive Principles could be declared unconstitutional on the grounds that it violated any of the

Fundamental Rights". The 42nd Amendment also added a new section to the Article on "Fundamental Duties" in the Constitution. The new section required citizens "to promote harmony and the spirit of common brotherhood among all the people of India, transcending religious, linguistic and regional or sectional diversities."

Historical Impacts

The 42nd Amendment enlarged central power to intervene in the states, extending the term of President's rule from six months to a year, and also gives the Union Government the right to authorize the use of any central military force "for dealing with any grave situation of law and order in any State.

“The power that was vested in the governor of the state was now granted to the president, in consultation with the election commission to disqualify the members of the state legislatures by the 42nd Amendment.

Article 105 was amended so as to grant each House of Parliament, its members and committees the right to "evolve" their "powers, privileges and immunities", "from time to time".

Article 194 was amended to grant the same rights as Clause 21 to State Legislatures, its members and committees. Two new clauses 4A and 26A were inserted into article 366 of the Constitution, which defined the meaning of the terms "Central Law" and "State Law" by inserting two new clauses 4A and 26A into article 366 of the Constitution.

The 42nd Amendment froze any delimitation of constituencies for elections to Lok Sabha, and State Legislative Assemblies, at the point of 1971 census until the first census after the year 2000, by amending article 170 (relating to composition of Legislative Assemblies¹⁵. The total number of seats in the Lok Sabha and the Assemblies remained the same until the 91st Amendment, passed in 2003, extended the freeze up to 2026¹⁶. The number of seats reserved for the Scheduled Castes and Scheduled Tribes in the Lok Sabha and State Legislative Assemblies was also frozen by the 42nd Amendment, and the quorum in a House of Parliament or a State Legislature was left to be determined by each House¹⁷. The amendment also extended the term of Lok Sabha and Legislative Assemblies members from five to six years¹⁸, by amending article 172 (relating to MLAs) and Clause(2) of Article 83 (for MPs).

Three list apportioning the powers between the central and State Governments were made at the time of India becoming republic. They are CENTRAL LIST, STATE LIST, and CONCURRENT LIST. The state Governments were given powers to legislate or make laws only on the subjects enumerated in the STATE LIST. Prior to the amendment there were Sixty Six Subjects in the STATE LIST. Of them five Subjects were taken away and included in the concurrent list. Since the inclusion of Education in the concurrent List, the Seeds for all evils have been sown. This fact has not yet been made aware of fully. Both the central Govt. and state Government can make laws on the Subjects enumerated on the concurrent List. In the event of clash between the laws made by both the Central Govt. and State Governments on the concurrent List Subjects, the laws of the former would prevail. Thus it has paved the way for the Central Govt. to impose its authority.

Morarji Desai who came to power afterwards, tried to remove the evils of 42nd Amendments, proposing 43 and 44 Amendments. These Amendments could not be made as it lacked requisite two thirds majorities of the State Legislatures. Of course later on the disadvantages were mitigated to same extent, but Education taken away from the STATE LIST continues to be in the CONCURRENT LIST. Taking advantage of this, the Central Govt. gives now and then pinpricks to the State Govts. For instance State Governments have ordered to celebrate Sanskrit week, Conduct common Entrance Examination, to include Sanskrit in their educational curriculum etc as imposed by the Central Govt¹⁹.

The Congress government headed by Mrs. Indira justified the amendment to remove the impediments to the growth of the Constitution. The question of amending the Constitution for removing the difficulties which have arisen in achieving the objective of socio-economic revolution, which would end poverty and ignorance and disease and inequality of opportunity, has been engaging the active attention of Government and the public for some years now. The democratic institutions provided in the Constitution are basically sound and the path for progress does not lie in denigrating any of these institutions. However, there could be no denial that these institutions have been subjected to considerable stresses and strains and that vested interests have been trying to promote their selfish ends to the great detriment of public good.

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