BLOGS

44th Amendment of the Indian Constitution

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What is the 44th Constitutional Amendment?

The 44th Constitutional Amendment Act, enacted in 1978, is one of the most significant amendments to the Indian Constitution. It was introduced in the backdrop of the Emergency (1975-77), during which several constitutional provisions were misused to curtail fundamental rights and undermine democratic institutions.

The amendment aimed to restore and fortify the democratic and constitutional framework by reversing certain changes made by the 42nd Constitutional Amendment Act, 1976.

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Background of the Act

The Emergency declared in 1975 by then Prime Minister Indira Gandhi exposed vulnerabilities in India's constitutional framework. The 42nd Amendment, passed during this period, concentrated power in the executive, curtailed judicial independence, and diluted fundamental rights. These changes raised concerns about authoritarianism and the erosion of democratic institutions.

When the Janata Party came to power in 1977, it promised to restore democratic norms. The 44th Amendment was a direct response to the excesses of the Emergency and the 42nd Amendment, seeking to:

1. Restore the primacy of fundamental rights.
2. Ensure judicial independence.
3. Prevent future misuse of emergency provisions.

Features of the 44th Amendment

1. Reclassification of the Right to Property

The amendment repealed **Articles 19(1)(f)** and **31**, which guaranteed the right to property as a fundamental right. It inserted Article 300A in Part XII, making the right to property a constitutional, but not a fundamental, right.

This change aimed to balance individual property rights with the state's obligation to promote social justice and implement land reforms.

2. Non-Suspension of Articles 20 and 21

The 44th Amendment explicitly prohibited the suspension of **Article 20** (Protection in respect of conviction for offences) and **Article 21** (Protection of life and personal liberty), even during a national emergency under **Article 352**.

This provision was a direct response to the misuse of emergency powers during the 1975 Emergency.

ADM Jabalpur v. Shivkant Shukla: Popularly known as the Habeas Corpus case, the Supreme Court controversially upheld the suspension of fundamental rights during the Emergency. The 44th Amendment nullified this precedent by safeguarding Articles 20 and 21 from suspension.

3. Redefinition of "Internal Disturbance"

The amendment replaced the term "internal disturbance" with "armed rebellion" in **Article 352** to narrow the grounds for declaring a national emergency. This change ensured that emergencies could not be declared for vague or arbitrary reasons.

Article 352 was amended to require the President to act only on the written advice of the Cabinet for declaring a national emergency. This aimed to prevent unilateral decisions by the Prime Minister, as occurred during the 1975 Emergency.

The duration for parliamentary approval of an emergency proclamation was reduced from six months to one month. Additionally, subsequent extensions required approval by a special majority in both Houses of Parliament.

4. Strengthening Judicial Independence

The 42nd Amendment had curtailed judicial review and shifted power to the executive. The 44th Amendment restored judicial independence by re-emphasizing the judiciary's power of review and its role as the guardian of the Constitution.

5. Safeguards Against Preventive Detention

Article 22 was amended to require that a person detained under preventive detention laws be presented before an advisory board chaired by a High Court judge.

The maximum period of preventive detention without such review was reduced from three months to two months.

Landmark Cases Related to 44th Constitutional Amendment

Minerva Mills v. Union of India

The Minerva Mills case arose when the government nationalized Minerva Mills Ltd. under the Sick Textile Undertakings (Nationalisation) Act, 1974. The petitioner challenged the legislation, arguing that it violated their fundamental rights.

During the proceedings, certain provisions of the 42nd Constitutional Amendment were also challenged, particularly those limiting judicial review and expanding the Directive Principles of State Policy over Fundamental Rights.

Issues:

1. Whether the 42nd Amendment violated the “basic structure” of the Constitution by curtailing judicial review.
2. Whether the amendment granting primacy to Directive Principles over Fundamental Rights was valid.

The Supreme Court, by a majority, struck down Sections 4 and 55 of the 42nd Amendment as unconstitutional. These sections:

- Limited the power of the judiciary to review constitutional amendments.
- Gave Directive Principles unqualified precedence over Fundamental Rights.

The Court reaffirmed the doctrine of the basic structure established in ***Kesavananda Bharati v. State of Kerala*** *(1973)*, stating that judicial review and the balance between Fundamental Rights and Directive Principles are integral to the basic structure of the Constitution.

The 44th Amendment complemented this judgment by restoring judicial review and rebalancing Fundamental Rights and Directive Principles, preventing any further dilution of individual rights.

Indira Nehru Gandhi v. Raj Narain

Raj Narain contested Indira Gandhi's 1971 election to the Lok Sabha, alleging electoral malpractice. The Allahabad High Court invalidated her election, prompting her to appeal to the Supreme Court.

Meanwhile, during the Emergency, the Parliament passed the 39th Constitutional Amendment, which retroactively protected the election of the Prime Minister and Speaker from judicial scrutiny.

Issues:

1. Whether the 39th Amendment violated the basic structure of the Constitution.
2. Whether the amendment undermined the principle of equality before the law.

The Supreme Court declared the 39th Amendment unconstitutional as it violated the basic structure of the Constitution by exempting certain individuals (like the Prime Minister) from judicial review, thereby undermining the rule of law and equality. The Court emphasized that no individual, regardless of their position, could be above the law.

The 44th Amendment addressed issues of executive overreach highlighted in this case by introducing safeguards to prevent the misuse of constitutional amendments for personal or political gain.

Waman Rao v. Union of India

This case involved a challenge to the inclusion of certain land reform laws in the Ninth Schedule of the Constitution, which made them immune from judicial review under Article 31B. The petitioners argued that these laws violated their fundamental rights.

Issues:

1. Whether the Ninth Schedule could protect laws that violated Fundamental Rights.
2. Whether the doctrine of basic structure applied to laws in the Ninth Schedule.

The Supreme Court upheld the validity of laws included in the Ninth Schedule before the *Kesavananda Bharati* judgment (April 24, 1973), as they were considered settled. However, the Court ruled that any law added to the Ninth Schedule after this date would be subject to judicial review if it violated the basic structure of the Constitution.

Conclusion

The 44th Amendment served as a corrective mechanism for the excesses of the 42nd Amendment. It reaffirmed the commitment to individual rights, the rule of law, and institutional checks and balances. The amendment's provisions, particularly the protection of Articles 20 and 21 during emergencies, have become a benchmark for safeguarding human rights.