BLOGS

Notes on 42nd Amendment of the Indian Constitution

Indrasish Majumder · 24 Jan 2025

Edit TABLE OF CONTENTS Introduction What are Constitutional Amendments? Significance of the 42nd Amendment Origin of the 42nd Amendment Changes introduced by the 42nd Amendment Impact of the 42nd Amendment Rectifications of Amendments made during the Emergency

Introduction

A nation's Constitution plays a pivotal role in shaping its progress and determining its overall trajectory. It serves as the foundational basis upon which administrative actions, judicial determinations, and legislative laws are constructed.

Without a Constitution (written or unwritten), a country would be in a state of chaos and confusion, underscoring its indispensable role in the governance and administration of any nation.

In democratic nations such as India, the Constitution enjoys constitutional supremacy, signifying its superior authority over the government and all other administrative institutions. This ensures that the principles enshrined in the Constitution serve as the guiding framework for the nation's governance.

What are Constitutional Amendments?

Constitutional amendments are changes made to a country's constitution to adapt it to evolving societal needs and emerging challenges.

Amendments can be initiated in either house of Parliament (Lok Sabha or Rajya Sabha) by introducing a Bill. The Bill must be passed by a special majority, i.e., a majority of the total membership of that house and a majority of not less than two-thirds of the members present and voting.

Significance of the 42nd Amendment

The 42nd Amendment to the Indian Constitution, enacted in 1976, holds immense importance due to its introduction of various changes that impacted the abovementioned principles. Often referred to as the **'Mini Constitution' or 'Constitution of Indira'** this Amendment generated considerable controversy due to its extensive modifications and introduction of novel provisions.

Origin of the 42nd Amendment

The **origins of the 42nd Amendment can be traced back to the political and legal conflicts that transpired during the 1960s and 1970s**. Notably, the ***Golaknath v. State of Punjab Case*** became a significant point of contention between the executive branch and the judiciary under the leadership of Mrs. Indira Gandhi.

Concurrently, the nation witnessed heightened political tensions. In 1971, general elections took place, during which Mrs. Indira Gandhi emerged victorious as Prime Minister, prevailing over Mr. Raj Narain.

Following her election victory, Mr. Raj Narain initiated legal proceedings against Mrs. Gandhi, alleging electoral malpractice and the improper utilization of government resources during her campaign. In 1975, the Allahabad High Court rendered a verdict of guilt against her, thereby invalidating her election and imposing a six-year prohibition on her eligibility to contest.

The judgment sparked political demonstrations and eventually led to the declaration of a state of emergency in June 1975.

Changes introduced by the 42nd Amendment

During the period of emergency, several contentious constitutional amendments were proposed, resulting in the erosion of civil liberties and the curtailment of judicial authority. The 42nd Amendment occupies a significant place in the constitutional history of India as a notable milestone during this time.

The 42nd Amendment introduced controversial modifications and additions to the Indian Constitution. The Swaran Singh Committee set up under Mrs. Indira Gandhi's direction, made these changes based on its recommendations. The **amendments** impacted various aspects of the

Constitution, including the Preamble, 40 provisions, the Seventh Schedule, and the addition of 14 new Articles.

Impact of the 42nd Amendment

1. Inclusion of the terms “Socialist, Secular” and “Unity and integrity of the nation”

The Preamble of the Constitution encapsulates the fundamental principles and ideals upon which the document is based.

The Preamble underwent two significant modifications due to the implementation of the 42nd Amendment. The term “Sovereign Democratic Republic” was replaced with **“Sovereign Socialist Secular Democratic Republic”.** At the same time, the expression “unity of the nation” was modified to **“unity and integrity of the nation”.**

The implementation of these modifications encountered significant resistance, as detractors contended that the designations “socialist” and “secular” conveyed a divergent interpretation compared to the initial vision of the drafting committee under the leadership of Dr. B.R. Ambedkar. There were apprehensions regarding the compatibility of the new additions with “Marxist socialism” and “Western secularism,” as they were perceived to deviate from India’s distinct interpretations of these ideologies.

2. Impact of the 42nd Amendment on the Judiciary

The Amendment had a substantial impact on the authority of the judiciary. Before the implementation of this Amendment, High Courts possessed the jurisdiction to determine the legality of Acts passed by both the State and Union Legislatures.

Nevertheless, the power of the High Courts was limited by the 42nd Amendment, which imposed restrictions and confined their jurisdiction solely to determining the legality of State legislation.

The introduction of **Article 226A and Article 228A** necessitated the establishment of a seven-judge bench by the Supreme Court. This bench is responsible for determining the constitutionality of any Union law, requiring a two-thirds majority vote to declare a law unconstitutional.

The alterations faced significant criticism due to their perceived infringement on the judiciary's authority and their potential to undermine the principle of separation of powers.

3. Power to suspend Fundamental rights

The 42nd Amendment incorporated provisions that enabled the temporary suspension of fundamental rights in times of emergency. The rest of **Article 358** automatically suspends the rights enshrined in Article 19 upon declaring an external emergency.

Article 359 grants the President the authority to temporarily suspend the entitlement to seek redress for individuals harmed by emergency legislation that contradicts any explicitly stated fundamental right, except for Article 20 and Article 21. During times of emergencies, although fundamental rights were not inherently suspended, their enforceability in courts was temporarily halted.

4. The inclusion of Fundamental Duties

The Amendment incorporated ten fundamental duties within Part IVA of the Constitution. As mentioned earlier, the responsibilities, which encompass adherence to the Constitution, preservation of the nation's sovereignty and integrity, conservation of the environment, and provision of national service, are endowed with a non-judicial and unenforceable impact.

Certain individuals expressed their approval of this inclusion, whereas others raised concerns regarding the practicality of imposing obligations on individuals within a democratic framework.

5. DPSP and the 42nd Amendment

The 42nd Amendment modified the Directive Principles of State Policy (DPSP), notably by broadening the ambit of Article 31C. This provision granted precedence to laws on Directive Principles of State Policy (DPSP) over fundamental rights. Furthermore, the implementation of Article 31D resulted in the legalization of legislation on Anti-National elements, even in cases where such laws contravened the provisions outlined in Article 14 and Article 19.

Nevertheless, the Amendment also implemented beneficial modifications, as exemplified by the inclusion of Article 39-A, which guarantees free legal assistance to individuals of low socioeconomic status. Additionally, it incorporated revisions aimed at safeguarding children's

rights and preserving the environment.

6. Mandate for the President

The Amendment established a legal requirement for the President to act per the Council of Ministers' recommendations.

Rectifications of Amendments made during the Emergency

The 42nd Amendment of the Indian Constitution generated substantial controversy, leading to the defeat of the Congress government in the 1977 general elections by the Janata Party alliance after the emergency period.

Under the leadership of Mr. Morarji Desai, the newly established administration aimed to address certain unconstitutional modifications implemented during the period of emergency. The 42nd Amendment's specific provisions were the focus of the 43rd and 44th Amendments Acts.

The case of **Minerva Mills v. Union of India in 1980** was instrumental in rectifying specific contentious provisions of the 42nd Amendment.

The legal dispute presented a challenge to the process of nationalizing Minerva Mills and ultimately resulted in the invalidation of Section 4 and Section 55 of the 42nd Amendment. These sections granted precedence to the Directive Principles of State Policy (DPSP) over fundamental rights and expanded the authority of Parliament to amend the Constitution without undergoing judicial review.

Conclusion

The 42nd Amendment to the Indian Constitution is widely regarded as a highly contentious event in the nation's constitutional history. While some provisions introduced by this Amendment remain relevant, others have been addressed through subsequent amendments and judicial interventions.

The 42nd Amendment serves as a poignant illustration of the intricate equilibrium between upholding the Constitution and preserving democratic principles during periods of political and social upheaval.