

One of the most significant revisions to the Indian Constitution is the 42nd Amendment Act of 1976. The Indian National Congress, led by Indira Gandhi, passed it at the time. This act is also known as the “MiniConstitution” because of the enormous number of revisions it has made to the Indian Constitution. Our Indian Constitution is one-of-a-kind in terms of both content and spirit.

The Indian Constitution determines the rule of law and is regarded as the supreme law of the land. The constituent assembly that drafted our Constitution also left room for future revisions.

Several modifications have resulted in significant changes to the Indian Constitution as it stands now. The 42nd Amendment Act is also called as Constitutional Amendment Act, 1976, and is widely regarded as one of the most contentious actions in the history of Indian constitutional revisions.

Why was it introduced?

According to Indira Gandhi, 42nd Amendment was introduced to handle the “Internal disturbance” within the country.

Indira Gandhi had to appear in court on March 19, 1975, as a witness in an electoral case.

It was the first time a Prime Minister had to appear before the Court during its term.

It was also the first time since Independence when seven and a half lakh people, led by Jai Prakash Narayan, were chanting slogans such as “disband the government which you are holding otherwise the public will do it for you”. The Prime Minister was the target of massive protests, and the entire country was against her.

Indira Gandhi constantly revised various constitutional articles during that period, describing emergency time as “the need of the hour.” After the 40th and 41st Amendments changed various parts of the Constitution, the 42nd Amendment was ratified.

Shortly after, the Allahabad High Court annulled Indira Gandhi’s election, making June 12, 1975, a watershed moment in Indian history.

Soon later, on June 25, the country was proclaimed in an emergency. It marked the beginning of a period in which the administration began to alter the soul of the Indian republic through constitutional amendments.

Political Scenario at that time

It all started when Raj Narain filed charges alleging election fraud and the use of state machinery in elections. Indira Gandhi had beaten him in the 1971 parliamentary election. The Prime Minister was cross-examined in the Court for the first time. Indira Gandhi was found guilty by the Allahabad High Court, which declared her election null and void and removed her from her Lok Sabha seat.

Indira Gandhi appealed the ruling of the Allahabad High Court to the Supreme Court. On June 24, 1975, Justice V. R. Krishna Iyer supported the High Court decision and ordered Gandhi's privileges as an MP to be revoked, as well as her right to vote. Indira Gandhi justified her actions as being in the national interest for three reasons.

- India's security and democracy
- Rapid economic development and upliftment of the poor
- Foreign involvement could destabilize and damage the country.

Upon the Prime Minister's advice, President Fakhruddin Ali Ahmed declared a state of emergency under Article 352(1) of the Constitution, which lasted for 21 months, starting on June 25, 1975, and ending on March 21, 1977. During that time, most of Indira Gandhi's political opponents were imprisoned, and the press was restricted. Jai Prakash Narayan, Atal Bihari Vajpayee, Lal Krishna Advani, and several other well-known figures were sentenced to prison.

It's worth noting that the 42nd Amendment was enacted during the 19-month emergency period when the government was under fire from all sides. Indira Gandhi's declaration of emergency was greatly reviled. All powers were consolidated in the hands of the Union government as soon as the President of India declared a national emergency. During this time, the government seized enormous power and limited citizens' fundamental rights. Under compulsion, the press was kept quiet. For the pieces to be published, all newspapers are required to receive prior consent.

The Union Government further banned the Rashtriya SwayamSevak Sangh (RSS) and the Jamait-e-Islami. Furthermore, the Constitution was altered in an autocratic fashion, particularly in the 42nd amendment, due to the government's large majority in parliament. A modification was adopted in the aftermath of the Allahabad High Court decision, saying that elections for Prime Minister, President, and Vice-President could not be disputed in court. Apart from that, Sanjay Gandhi, who had no formal role at the time, was able to take control of the government.

The government finally agreed to conduct an election in March 1977 January 1977. The opposition came together to establish the Janata Party, led by JP Narayan, and the Congress was defeated in the Lok Sabha elections for the first time since independence. Only 154 seats were won by the Congress in the Lok Sabha, whereas 295 seats were won by the Janata Party (330, along with its allies). Indira Gandhi and her son Sanjay Gandhi were defeated in Rae Bareli and Amethi, respectively. Janata Dal established the government and Morarji Desai was elected as the Prime Minister. The government further introduced the 43rd and 44th amendments to restore the constitution to its pre-42nd amendment state.

Details of the amendment

The Constitutional Amendment Act of 1976, India's 42nd Constitutional Amendment, is well known for its contentious modifications and additions. The revisions were implemented following the recommendations of Mrs. Indira Gandhi's Swaran Singh Committee, which was formed for the same objective. This amendment consists of changes made to the Preamble, 40 provisions, Seventh Schedule, and 14 new Articles that were added into the Constitution. The following are some of the important alterations made through this amendment.

Preamble

The constitution is said to be reflected in the preamble. In the constitution's preamble, two changes were made. To begin with, the phrase "Sovereign Democratic Republic" has been substituted by the phrase "Sovereign Socialist Secular Democratic Republic." Second, the phrase "national unity" was substituted with the phrase "national unity and integrity." H.M Seervai slammed the act of adding these phrases, claiming

that they were confusing and should not have been included in the Preamble without explanation. Others objected to the modification, claiming that it violated the principles and method established in the case of **Kesavananda Bharati v. The State of Kerala**.

Judicial Power

The Indian judiciary was unified before the 42nd Amendment, but the amendment limited the power of the High Court to only adjudicate on the validity of State law and the Supreme Court to only adjudicate on the legality of Central law. Article 131A was added as a new provision, giving the Supreme Court sole authority over questions relating to the central law. The high courts were constrained by Articles 226A and 228A. Articles 144A and 228A were also inserted to ensure that a seven-judge court would convene to decide a question of Central Law's constitutional legitimacy and that the legislation could only be declared unconstitutional with a two-thirds majority.

Suspension of the Fundamental Rights

Since the Constitution's inception, the people have had unbroken access to their fundamental rights. However, the 42nd amendment to the Constitution added essential measures to suspend Fundamental Rights in times of emergency. When an external emergency is declared, Article 358 has the effect of suspending rights granted under Article 19 of the Constitution without any special declaration. According to this clause, Article 19 is suspended throughout the country for the duration of the emergency, and the "emergency laws" are given legal immunity. In addition, Article 359 of the Indian Constitution was altered to allow the President to suspend the right to redress for anyone who is harmed by "emergency laws" that are incompatible with any designated basic right, except Articles 20 and 21. According to this clause, a Presidential order can be issued during an internal or foreign emergency for a specific period or for the duration of the emergency. It's worth noting that the FRs are not automatically suspended; rather, their "enforceability" in court is suspended under Article 359 of the Constitution.

Fundamental Duties

Since its foundation, the Constitution has had separate sections for fundamental rights and Directive Principles. However, the government and the Swaran Singh Committee considered that to have a cordial relationship, citizens must also have certain responsibilities toward the state. As a result, the 42nd Amendment of 1976 incorporated 10 essential duties into the Constitution in the form of Part IVA. However, because enforcing duties on citizens would contradict the democratic country's entire framework; these were given a non-judicial and unenforceable impact. Some of the most essential fundamental responsibilities include adhering to the Constitution and its ideals, safeguarding the country's sovereignty, unity, and integrity, protecting the environment, doing national duty, and so on. This aspect of the amendment was not seen as a contentious adjustment because it appears to defend national interests on the surface.

Directive Principles of State Policy (DPSP)

Both good and negative criticisms were included in the revisions to the Directive Principles. First and foremost, the revision of Article 31C had become the most contentious DPSP provision. This article was added to the Constitution in 1971 with the 25th Amendment, but its scope was enlarged with the current amendment.

Previously, this provision had the effect of making a statute lawful under Articles 39(b) and 39(c) of the Constitution, even though it violated people's fundamental rights. Despite widespread opposition, the 42nd amendment was passed, expanding the reach of Article 31C to the point where any law enacted under any DPSP is regarded lawful, even if it violates any basic right. In addition, Article 31D was created with the intent of legalizing any laws relating to anti-national components, even if such laws violate Articles 14 and 19. These two changes to DPSP's functionality had elicited a lot of unfavorable feedback from the public.

The other changes that were made in "DPSP" were the establishment of Article 39-A and a revision to Article 39(f) of the Constitution that was applauded by the community. According to Article 39-A, free legal aid must be provided to the impoverished and weaker elements of society to avoid injustice based only on economic or social disadvantage. Article 39(f) of the Constitution was changed to protect against exploitation and moral and material abandonment of children and

youth. Apart from these revisions, several inductions were made in Part IV (DPSP) of the Constitution, such as Article 43A and Article 48F, which deal with workers' rights and environmental protection, respectively.

Delimitation of the Lok Sabha Seats

This amendment set the Lok Sabha seat delimitation for the following 26 years, or until 2001. Delimitation entails reallocating the reservation and restructuring the boundaries of all Lok Sabha constituencies (The ST, SC, and women reservation). According to Article 82 of the Indian constitution, the Lok Sabha was delimited once every ten years before 1976.

Following that modification, the next delimitation commission, led by Justice Kuldeep Singh, was created on July 12, 2002. Based on the 2001 census, this delimitation was made. On the 10th of January 2008, the commission's proposal was implemented.

Amendment in Article 74

This amendment made no substantive changes; rather, it added a statutory provision to a long-standing practice in the country. When it comes to the country's power structure, the President is the formal Constitutional Head of State, while the Prime Minister is recognized as the actual leader. Prior to the change to Article 74, the President used to act on the advice of the cabinet, even though no provision of the Constitution or any law prevents him from doing so. In such cases, the amendment was made just to give statutory effect to the practice and did not result in any significant change.

Judicial Provisions

The authority of judicial review was limited by this amendment, the jury was given greater prominence in the functioning of the courts, and the Supreme Court's right to assess the legitimacy of the state's laws under Article 32A was removed.

Establishment of Administrative Tribunals

For the first time, an administrative tribunal was constituted by this legislation. The goal was to reduce the number of pending cases in the high court as well as the burden on the high court and Supreme Court. Administrative tribunals deal with issues that are of particular concern, such as socioeconomic and tax issues. In some circumstances, tribunals are more effective than high courts because they deliver quick decisions and swift justice.

Important Judicial Decisions

Kesavananda Bharti vs. State of Kerela, 1973

Kesavnanda Bharti Sripadagalavaru vs. State of Kerala, 1973, was a well-known case ruled by a 13-judge panel. In this case, the Supreme Court addressed the question of whether the Parliament has the right to change any provision of the Constitution, and if so, what was the extent of that power.

After the unusual Golaknath vs. State of Punjab judgment, the frantic Parliament approved a series of Amendments to reclaim its lost power and autonomy by tacitly overruling whatever was ruled in Golaknath's case. In the 1971 elections, Indira Gandhi's government won a majority in the lower house and passed the 24th Amendment, the 25th Amendment, and the 29th Amendment.

Judgment

The bench, by a 7:6 majority, overruled the proposition of law asserted in Golak Nath vs. the State of Punjab, 1967, holding that constitutional amendment is not 'law' within the meaning of Article 13 and that no part of the Constitution, including Part III, which contains fundamental rights, is beyond amending power.

Even constitutional amendments could not change the fundamental framework of the Constitution. It was argued that the basic framework will be determined on a case-by-case basis. As a result, it was decided that the judiciary has the power to overturn a Parliamentary change that contradicts the Constitution's core structure.

The idea of basic structure states that while Parliament has the power to alter the entire Constitution, they must not meddle in any way with

the aspects that are so important to the Constitution that it would be meaningless without them. It is critical to understand Hegde & Mukherjeajj, who, in their opinion, have very wonderfully described this philosophy, to grasp the substance of it. According to them, the Indian Constitution is more of a social document founded on a social philosophy than a political constitution.

Indira Gandhi vs. Raj Narrain, 1975

It was a watershed moment in Indian history, leading to the declaration of Emergency in 1975 and 1977. The case called into question the judiciary's powers and demonstrated how Parliament expected the judiciary to succumb to them. During this lawsuit, Parliament attempted to assert its primacy, but the judiciary intervened. This case called into question many fundamental aspects of the Constitution, including its basic structure, court jurisdiction, separation of the three branches of government (legislative, executive, and judiciary), legislative functions, right to free and fair elections, rule of law, and judicial review, and political justice.

In the 1971 Lok Sabha General Elections, Raj Narain ran for the Rae Bareilly Constituency against Indira Gandhi. Indira Gandhi won the election, and Congress won the House with a landslide victory. Raj Narain, however, filed a petition in the Allahabad High Court after the election results, saying that Indira Gandhi had committed election malpractices. Following that, on June 12, 1975, the High Court of Allahabad, presided over by Justice Jagmohanlal Sinha, found Indira Gandhi guilty of misusing state machinery under Section 123(7) of the Representative of Peoples Act, 1951. As a result, the court declared that Indira Gandhi could no

longer serve as Prime Minister of India and could not run for re-election for another six years. Indira Gandhi was outraged by this ruling and proceeded to the Supreme Court to dispute the Allahabad High Court's verdict. SC was on leave at the time, and on June 24, 1975, she was granted a conditional stay of execution. The Supreme Court later ordered the parties to appear before it on August 11, 1975, while granting a conditional stay, but on August 10, 1975, the President of India signed the 39th Constitutional (Amendment) Act, 1971, which included Article 329-A, effectively barring the Supreme Court from hearing the case. This alteration rendered the election of the President,

Prime Minister, Vice-President, and Speaker of the Lok Sabha illegitimate in the eyes of the courts.

judgment

The Supreme Court of India used the fundamental structure theory to strike down Clause (4) of Article 329-A, which was adopted by the 39th Amendment in 1975 since it is beyond the Parliament's amending power and damages the Indian Constitution's basic structure. Indira Gandhi, after being found guilty of employing corrupt techniques for election by the Allahabad High Court, made various constitutional revisions that eventually abolished all of the grounds on which she was convicted, and she was exonerated by a five-judge Supreme Court bench.

The court handed down its decision on November 7, 1975. This was the first time the Supreme Court used the Kesavananda Bharti decision to uphold the petitioner's claim and declare Article 329A's challenged Clause 4 invalid. The amendment was determined to be in breach of the Separation of Powers concept because it skillfully shifted a pure judicial authority into the hands of the legislature, according to Justice Yeshwant Vishnu Chandrachud. Furthermore, the modification was certain to be in breach of Article 14, as it gave individual members an undue advantage over others.

Minerva Mills vs. Union of India

Minerva Mills, located in the state of Karnataka, was a textile mill that mass-produced silk garments and sold them to the general population. The central government, on the other hand, was skeptical that the company satisfied the criteria for being classified as a sick industry.

The Central Government established a Committee under Section 15 of the Industries (Development and Regulation) Act, 1951 in 1970 to compile a comprehensive report on Minerva Mills' operations. Following that, the Central Government, based on the Committee's recommendation, empowered a National Textile Corporation Limited (an organization created under the 1951 Act) to take over the operation of Minerva Mills u/s 18A of the 1951 Act on October 19, 1971.

The petitioner, however, was unable to challenge an aspect of the 39th Constitutional (Amendment) Act, 1975, because the Parliament had previously inserted the Nationalization Act, 1974 into the Ninth Schedule, meaning that any challenge to the said act would fall outside the scope of judicial review, which was barred by the 42nd Amendment. The fundamental question, in this case, was to determine whether the 42nd Constitutional (Amendment) Act, 1976 was constitutional.

Judgment

The Supreme Court's ruling, in this case, was a majestic and proud reaffirmation of the supremacy of our Constitution's core structure. The decision came at a time when the world's greatest democracy had just freed from the chains of the infamous Emergency, and the judiciary was in its darkest hour thanks to the ADM Jabalpur ruling.

The constitutional validity of the 42nd amendment, which, among other things, provided for the exclusion of judicial review of constitutional amendments and expressly conferred unlimited amendment power to the Parliament, was challenged in this case because it was deemed to violate the Constitution's basic structure. In this decision, the Court, by a 4:1 majority, knocked down Article 368 clauses (4) and (5), ruling that they contradicted the Constitution's basic structure.

The Hon'ble court held that because the Parliament's power is restricted in terms of the alterations it can make, the Constitution is supreme and not the Parliament in this case. Moreover, the newly proposed Clauses 4 and 5 were inserted to prevent courts from hearing any challenge to the constitutional modifications legitimacy.

Its impact on Indian Politics

The 42nd amendment was by far the most significant alteration to the constitution since independence, earning it the nickname "mini-constitution" by analysts. The Indian Constitution Act of 1976 was heavily condemned by Indira Gandhi's opponents. According to them, the modification in the constitution is an attack on India's federal system because the act provides for the transfer of considerable power from state governments to the central government, which will lead to power centralization and is incompatible with the country's federal

structure. In the post-emergency elections, Indira Gandhi suffered her worst defeat. For the first time in Indian history, a government led by a party other than Congress was constituted. The Janta Party Government began amending the Constitution which was damaged by the amendments.

The Supreme Court and the High Courts were given back their powers by the 43rd Amendment. The 44th Amendment has strengthened the Constitution even more than ever before by strengthening the judiciary and repealing the 42nd Amendment. In Emergency-related clauses, the word “Armed Rebellion” was substituted for “Internal Unrest.” In addition, the fundamental rights were enhanced as a result of this modification. This amendment made numerous improvements to avoid future situations similar to the 42nd Amendment.

Conclusion

It is undeniable that the 42nd Amendment was one of the most contentious of all the Amendments. People have often viewed it adversely because of its unfavorable clauses and characteristics, which were later overruled by the Constitution’s 43rd and 44th Amendments. It has also been claimed that the Amendment was brought about because of Indira Gandhi’s ambitions and desire for power. However, despite the criticism, the 42nd Amendment has numerous beneficial features for example- free legal aid, child and environmental protection, fundamental duties, and other policies which are thought to be beneficial to individuals and communities alike.