

THE CONSTITUTION (FORTY-FOURTH AMENDMENT) ACT, 1978

India

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Statement of Objects and Reasons appended to the Constitution (Forty-fifth Amendment) Bill, 1978 (Bill No. 88 of 1978) which was enacted as THE CONSTITUTION (Forty-fourth Amendment) Act, 1978
STATEMENT OF OBJECTS AND REASONS Recent experience has shown that the fundamental rights, including those of life and liberty, granted to citizens by the Constitution are capable of being taken away by a transient majority. It is, therefore, necessary to provide adequate safeguards against the recurrence of such a contingency in the future and to ensure to the people themselves an effective voice in determining the form of government under which they are to live. This is one of the primary objects of this Bill.

2. It is, therefore, proposed to provide that certain changes in the Constitution which would have the effect of impairing its secular or democratic character, abridging or taking away fundamental rights prejudicing or impeding free and fair elections on the basis of adult suffrage and compromising the independence of judiciary, can be made only if they are approved by the people of India by a majority of votes at a referendum in which at least fifty-one per cent. of the electorate participate. Article 368 is being amended to ensure this.

3. In view of the special position sought to be given to fundamental rights, the right to property, which has been the occasion for more than one amendment of the Constitution, would cease to be a fundamental right and become only a legal right. Necessary amendments for this purpose are being made to article 19 and article 31 is being deleted. It would, however, be ensured that the removal of property from the list of fundamental rights would not affect the right of minorities to establish and administer

educational institutions of their choice.

4. Similarly, the right of persons holding land for personal cultivation and within the ceiling limit to receive compensation at the market value would not be affected.

5. Property, while ceasing to be a fundamental right, would, however, be given express recognition as a legal right, provision being made that no person shall be deprived of his property save in accordance with law.

6. A Proclamation of Emergency under article 352 has virtually the effect of amending the Constitution by converting it for the duration into that of a Unitary State and enabling the rights of the citizen to move the courts for the enforcement of fundamental rights---including the right to life and liberty---to be suspended. Adequate safeguards are, therefore, necessary to ensure that this power is properly exercised and is not abused. It is, therefore, proposed that a Proclamation of Emergency can be issued only when the security of India or any part of its territory is threatened by war or external aggression or by armed rebellion. Internal disturbance not amounting to armed rebellion would not be a ground for the issue of a Proclamation.

7. Further, in order to ensure that a Proclamation is issued only after due consideration, it is sought to be provided that an Emergency can be proclaimed only on the basis of written advice tendered to the President by the Cabinet. In addition, as a Proclamation of Emergency virtually has the effect of amending the Constitution, it is being provided that the Proclamation would have to be approved by the two Houses of Parliament by the same majority which is necessary to amend the Constitution and such approval would have to be given within a period of one month. Any such Proclamation would be in force only for a period of six months and can be continued only by further resolutions passed by the same majority. The Proclamation would also cease to be in operation if a resolution disapproving the continuance of the Proclamation is passed by Lok Sabha. Ten per cent. or more of the Members of Lok Sabha can requisition a special meeting for considering a resolution for disapproving the Proclamation.

8. As a further check against the misuse of the Emergency provisions and to put the right to life and liberty on a secure footing, it would be provided that the power to suspend the right to move the court for the enforcement of a fundamental right cannot be exercised in respect of the fundamental right to life and liberty. The right to liberty is further strengthened by the provision that a law for preventive detention cannot authorise, in any case, detention for a longer period than two months, unless an Advisory Board has reported that there is sufficient cause for such detention. An additional safeguard would be provided by the requirement that the Chairman of an Advisory Board shall be a serving Judge of the appropriate High Court and that the Board shall be constituted in accordance with the recommendations of the Chief Justice of that High Court.

9. A special provision is being made guaranteeing the right of the media to report freely and without censorship the proceedings in Parliament and the State Legislatures. The provision with regard to the breakdown of the constitutional machinery in the States is being amended so as to provide that a Proclamation issued under article 356 would be in force only for a period of six months in the first instance and that it cannot exceed one year ordinarily. However, if a Proclamation of Emergency is in operation and the Election Commission certifies that the extension of the President's rule beyond a period of one year is necessary on account of difficulties in holding elections to the Legislative Assembly of the State concerned, the period of operation of the Proclamation can be extended beyond one year. This is subject to the existing limit of three years. These changes would ensure that democratic rule is restored to a State after the minimum period which will be necessary for holding elections.

10. With a view to avoiding delays, it is proposed to amend articles 132, 133 and 134 and insert a new article 134A to provide that a High Court should consider the question of granting a certificate for appeal to Supreme Court immediately after the delivery of the judgment, decree, final order or sentence concerned on the basis of an oral application by a party or, if the High Court deems fit so to do, on its own motion. Cases of special leave to appeal by Supreme Court will be left to be regulated exclusively by article 136.

11. The other amendments proposed in the Bill are mainly for removing or correcting the distortions which came into the Constitution by reason of amendments enacted during the period of the Internal Emergency.

12. The Bill seeks to achieve the above objects. The notes on clauses explain in detail the various provisions of the Bill.

-----ARRANGEMENT OF SECTIONS-----SECTIONS

- 1. Short title and commencement.**
- 2. Amendment of article 19.**
- 3. Amendment of article 22.**
- 4. Amendment of article 30.**
- 5. Omission of sub-heading after article 30.**
- 6. Omission of article 31.**
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- 28. Amendment of article 217.**
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- 31. Amendment of article 227.**
- 32. Amendment of article 239B.**
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34. Insertion of new Chapter IV in Part XII.

35. Amendment of article 329.

36. Omission of article 329A.

37. Amendment of article 352.

38. Amendment of article 356.

39. Amendment of article 358.

40. Amendment of article 359.

41. Amendment of article 360.

42. Insertion of new article 361A.

43. Amendment of article 371F.

44. Amendment of the Ninth Schedule.

45. Amendment of THE CONSTITUTION (Forty-second Amendment) Act, 1976.

An Act further to amend the Constitution of India. BE it enacted by Parliament in the Twenty-ninth Year of the Republic of India as follows:-

1. Short title and commencement.- (1) This Act may be called the Constitution (Forty-fourth Amendment) Act, 1978.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act.

2. Amendment of article 19.- In article 19 of the Constitution,-

(a) in clause (1),-(i) in sub-clause (e), the word "and" shall be inserted at the end; (ii) sub-clause (f) shall be omitted; (b) in clause (5), for the words, brackets and letters "sub-clauses (d), (e) and (f)", the words, brackets and letters "sub-clauses (d) and (e)" shall be substituted.

3. Amendment of article 22.- In article 22 of the Constitution,-

(a)for clause (4), the following clause shall be substituted, namely:- `(4) No law providing for preventive detention shall authorise the detention of a person for a longer period than two months unless an Advisory Board constituted in accordance with the recommendations of the Chief Justice of the appropriate High Court has reported before the expiration of the said period of two months that there is in its opinion sufficient cause for such detention:Provided that an Advisory Board shall consist of a Chairman and not less than two other members, and the Chairman shall be a serving Judge of the appropriate High Court and the other members shall be serving or retired Judges of any High Court:Provided further that nothing in this clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (a) of clause (7).Explanation.-In this clause, "appropriate High Court" means,-(i)in the case of the detention of a person in pursuance of an order of detention made by the Government of India or an officer or authority subordinate to that Government, the High Court for the Union territory of Delhi;(ii)in the case of the detention of a person in pursuance of an order of detention made by the Government of any State (other than a Union territory), the High Court for that State; and(iii)in the case of the detention of a person in pursuance of an order of detention made by the administrator of a Union territory or an officer or authority subordinate to such administrator, such High Court as may be specified by or under any law made by Parliament in this behalf.';(b)in clause (7),-(i)sub-clause (a) shall be omitted;(ii)sub-clause (b) shall be re-lettered as sub-clause (a); and(iii)sub-clause (c) shall be re-lettered as sub-clause (b) and in the sub-clause as so re-lettered, for the words, brackets, letter and figure "sub-clause (a) of clause (4)", the word,brackets and figure "clause (4)" shall be substituted.

4. Amendment of article 30.-In article 30 of the Constitution, after clause (1), the following clause shall be inserted, namely:-

"(1A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause."

5. Omission of sub-heading after article 30.- The sub-heading "Right to Property" occurring after article 30 of the Constitution shall be omitted.

6. Omission of article 31.- Article 31 of the Constitution shall be omitted.

7. Amendment of article 31A.-In article 31A of the Constitution, in clause (1), for the words and figures "article 14, article 19 or article 31", the words and figures "article 14 or article 19" shall be substituted.

8. Amendment of article 31C.-In article 31C of the Constitution, for the words and figures "article 14, article 19 or article 31", the words and figures "article 14 or article 19" shall be substituted.

9. Amendment of article 38.-Article 38 of the Constitution shall be renumbered as clause (1) thereof and after the clause as so renumbered, the following clause shall be inserted, namely:-

"(2) The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations."

10. Substitution of new article for article 71.-For article 71 of the Constitution, the following article shall be substituted, namely:-

"71. Matters relating to, or connected with, the election of a President or Vice-President.-(1) All doubts and disputes arising out of or in connection with the election of a President or Vice-President shall be inquired into and decided by the Supreme Court whose decision shall be final.(2)If the election of a person as President or Vice-President is declared void by the Supreme Court, acts done by him in the exercise and performance of the powers and duties of the office of President or Vice-President, as the case may be, on or before the date of the decision of the Supreme Court shall not be invalidated by reason of that declaration.(3)Subject to the provisions of this Constitution, Parliament may by law regulate any matter relating to or connected with the election of a President or Vice-President.(4)The election of a person as President or Vice-President shall not be called in question on the ground of the existence of any vacancy for whatever reason among the members of the electoral college electing him."

11. Amendment of article 74.-In article 74 of the Constitution, in clause (1), the following proviso shall be inserted at the end, namely:-

"Provided that the President may require the Council of Ministers to reconsider such advice, either generally or otherwise, and the President shall act in accordance with the advice tendered after such reconsideration."

12. Amendment of article 77.-In article 77 of the Constitution, clause (4) shall be omitted.

13. Amendment of article 83.-(1) In article 83 of the Constitution, in clause (2), for the words "six years" in both the places where they occur, the words "five years" shall be substituted.

(2)The amendments made by sub-section (1) to clause (2) of article 83 shall apply also to the House of the People in existence on the date of coming into force of this section without prejudice to the power of Parliament with respect to the extension of the duration of that House under the proviso to that clause.

14. Substitution of new article for article 103.- For article 103 of the Constitution, the following article shall be substituted, namely:-

"103. Decision on questions as to disqualifications of members.-(1) If any question arises as to whether a member of either House of Parliament has become subject to any of the disqualifications mentioned in clause (1) of article 102, the question shall be referred for the decision of the President and his decision shall be final.(2)Before giving any decision on any such question, the President shall obtain the opinion of the Election Commission and shall act according to such opinion."

15. Amendment of article 105.-In article 105 of the Constitution, in clause (3), for the words "shall be those of the House of Commons of the Parliament of the United Kingdom, and of its members and committees, at the commencement of this Constitution", the words, figures and brackets "shall be those of that House and of its members and committees immediately before the coming into force of section 15 of the Constitution (Forty-fourth Amendment) Act, 1978" shall be substituted.

16. Amendment of article 123.-In article 123 of the Constitution, clause (4) shall be omitted.

17. Amendment of article 132.-In article 132 of the Constitution,-

(a)in clause (1), for the words "if the High Court certifies", the words, figures and letter "if the High Court certifies under article 134A" shall be substituted;(b)clause (2) shall be omitted;(c)in clause (3), the words "or such leave is granted," and the words "and, with the leave of the Supreme Court, on any other ground" shall be omitted.

18. Amendment of article 133.-In article 133 of the Constitution, in clause (1), for the words "if the High Court certifies-", the words, figures and letter "if the High Court certifies under article 134A-" shall be substituted.

19. Amendment of article 134.-In article 134 of the Constitution, in sub-clause (c) of clause (1), for the word "certifies", the words, figures and letter "certifies under article 134A" shall be substituted.

20. Insertion of new article 134A.- After article 134 of the Constitution, the following article shall be inserted, namely:-

"134A. Certificate for appeal to the Supreme Court.- Every High Court, passing or making a judgment, decree, final order, or sentence, referred to in clause (1) of article 132 or clause (1) of article 133, or clause (1) of article 134, -(a) may, if it deems fit so to do, on its own motion; and (b) shall, if an oral application is made, by or on behalf of the party aggrieved, immediately after the passing or making of such judgment, decree, final order or sentence, determine, as soon as may be after such passing or making, the question whether a certificate of the nature referred to in clause (1) of article 132, or clause (1) of article 133 or, as the case may be sub-clause (c) of clause (1) of article 134, may be given in respect of that case."

21. Amendment of article 139A.-In article 139A of the Constitution, for clause (1), the following clause shall be substituted, namely:-

"(1) Where cases involving the same or substantially the same questions of law are pending before the Supreme Court and one or more High Courts or before two or more High Courts and the Supreme Court is satisfied on its own motion or on an application made by the Attorney-General of India or by a party to any such case that such questions are substantial questions of general importance, the Supreme Court may withdraw the case or cases pending before the High Court or the High Courts and dispose of all the cases itself: Provided that the Supreme Court may after determining the said questions of law return any case so withdrawn together with a copy of its judgment on such questions to the High Court from which the case has been withdrawn, and the High Court shall on receipt thereof, proceed to dispose of the case in conformity with such judgment."

22. Amendment of article 150.-In article 150 of the Constitution, for the words "after consultation with", the words "on the advice of" shall be substituted.

23. Amendment of article 166.-In article 166 of the Constitution, clause (4) shall be omitted.

24. Amendment of article 172.- (1) In article 172 of the Constitution, in clause (1), for the words "six years" in both the places where they occur, the words "five years" shall be substituted.

(2) The amendments made by sub-section (1) to clause (1) of article 172- (a) shall not apply to any existing State Legislative Assembly the period of existence whereof as computed from the date appointed for its first meeting to the date of coming into force of this section (both dates inclusive) is more than four years and eight months but every such Assembly shall, unless sooner dissolved, stand dissolved on the expiry of- (i) a period of four months from the date of coming into force of this section; or (ii) a period of six years from the date appointed for its first meeting, whichever period

expires earlier;(b)shall apply to every other existing State Legislative Assembly without prejudice to the power of Parliament with respect to the extension of duration of such Assembly under the proviso to the said clause (1).Explanation I.-In its application to the Legislative Assembly of the State of Sikkim referred to in clause (b) of article 371F of the Constitution, this sub-section shall have effect as if-(i)the date appointed for the first meeting of that Assembly were the 26th day of April, 1975; and(ii)the references in clause (a) of this sub-section to "four years and eight months" and "six years" were references to "three years and eight months" and "five years" respectively.Explanation II.-In this sub-section, "existing State Legislative Assembly" means the Legislative Assembly of a State in existence on the date of coming into force of this section.

25. Substitution of new article for article 192.-For article 192 of the Constitution, the following article shall be substituted, namely:-

"192. Decision on questions as to disqualifications of members.-(1) If any question arises as to whether a member of a House of the Legislature of a State has become subject to any of the disqualifications mentioned in clause (1) of article 191, the question shall be referred for the decision of the Governor and his decision shall be final.(2)Before giving any decision on any such question, the Governor shall obtain the opinion of the Election Commission and shall act according to such opinion."

26. Amendment of article 194.-In article 194 of the Constitution, in clause (3), for the words "shall be those of the House of Commons of the Parliament of the United Kingdom, and of its members and committees, at the commencement of this Constitution", the words, figures and brackets "shall be those of that House and of its members and committees immediately before the coming into force of section 26 of the Constitution (Forty-fourth Amendment) Act, 1978" shall be substituted.

27. Amendment of article 213.-In article 213 of the Constitution, clause (4) shall be omitted.

28. Amendment of article 217.-In article 217 of the Constitution, in clause (2),-

(a)in sub-clause (b), the word "or" occurring at the end shall be omitted;(b)sub-clause (c) shall be omitted;(c)in the Explanation, clause (a) shall be re-lettered as clause (aa) and before clause (aa) as so re-lettered, the following shall be inserted, namely:-(a) in computing the period during which a person has held judicial office in the territory of India, there shall be included any period, after he has held any judicial office, during which the person has been an advocate of a High Court or has held the office of a member of a tribunal or any post, under the Union or a State, requiring special knowledge of law;"

29. Amendment of article 225.-In article 225 of the Constitution, the following proviso shall be inserted at the end, namely:-

"Provided that any restriction to which the exercise of original jurisdiction by any of the High Courts with respect to any matter concerning the revenue or concerning any act ordered or done in the collection thereof was subject immediately before the commencement of this Constitution shall no longer apply to the exercise of such jurisdiction."

30. Amendment of article 226.-In article 226 of the Constitution,-

(a)in clause (1), for the portion beginning with the words "writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them" and ending with the words "such illegality has resulted in substantial failure of justice.", the following shall be substituted, namely:-"writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.";(b)for clauses (3), (4), (5) and (6), the following clause shall be substituted, namely:-"(3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any way proceedings relating to, a petition under clause (1), without-(a)furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and(b)giving such party an opportunity of being heard, makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next day, stand vacated.";(c)clause (7) shall be renumbered as clause (4).

31. Amendment of article 227.- In article 227 of the Constitution,-

(a)for clause (1), the following clause shall be substituted, namely:-"(1) Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction.";(b)clause (5) shall be omitted.

32. Amendment of article 239B.-In article 239B of the Constitution, clause (4) shall be omitted.

33. Omission of article 257A.-Article 257A of the Constitution shall be omitted.

34. Insertion of new Chapter IV in Part XII.-In Part XII of the Constitution, after Chapter III, the following Chapter shall be inserted, namely:-

"CHAPTER IV.-RIGHT TO PROPERTY

300A. Persons not to be deprived of property save by authority of law.-No person shall be deprived of his property save by authority of law."

35. Amendment of article 329.-In article 329 of the Constitution, in the opening portion, the words, figures and letter "but subject to the provisions of article 329A" shall be omitted.

36. Omission of article 329A.-Article 329A of the Constitution shall be omitted.

37. Amendment of article 352.- In article 352 of the Constitution,-

(a)in clause (1),-(i)for the words "internal disturbance", the words "armed rebellion" shall be substituted;(ii)the following Explanation shall be inserted at the end, namely:-"Explanation.-A Proclamation of Emergency declaring that the security of India or any part of the territory thereof is threatened by war or by external aggression or by armed rebellion may be made before the actual occurrence of war or of any such aggression or rebellion, if the President is satisfied that there is imminent danger thereof.";(b)for clauses (2), (2A) and (3), the following clauses shall be substituted, namely:-"(2) A Proclamation issued under clause (1) may be varied or revoked by a subsequent Proclamation.(3)The President shall not issue a Proclamation under clause (1) or a Proclamation varying such Proclamation unless the decision of the Union Cabinet (that is to say, the Council consisting of the Prime Minister and other Ministers of Cabinet rank appointed under article 75) that such a Proclamation may be issued has been communicated to him in writing.(4)Every Proclamation issued under this article shall be laid before each House of Parliament and shall, except where it is a Proclamation revoking a previous Proclamation, cease to operate at the expiration of one month unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament:Provided that if any such Proclamation (not being a Proclamation revoking a previous Proclamation) is issued at a time when the House of the People has been dissolved, or the dissolution of the House of the People takes place during the period of one month referred to in this clause, and if a resolution approving the Proclamation has been passed by the Council of States, but no resolution with respect to such Proclamation has been passed by the House of the People before the expiration of that period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution, unless before the expiration of the said period of thirty days a resolution approving the Proclamation has been also passed by the House of the People.(5)A Proclamation so approved shall, unless revoked, cease to operate on the expiration of a period of six months from the date of the passing of the second of the resolutions approving the Proclamation under clause

(4): Provided that if and so often as a resolution approving the continuance in force of such a Proclamation is passed by both Houses of Parliament the Proclamation shall, unless revoked, continue in force for a further period of six months from the date on which it would otherwise have ceased to operate under this clause: Provided further that if the dissolution of the House of the People takes place during any such period of six months and a resolution approving the continuance in force of such Proclamation has been passed by the Council of States but no resolution with respect to the continuance in force of such Proclamation has been passed by the House of the People during the said period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of the said period of thirty days, a resolution approving the continuance in force of the Proclamation has been also passed by the House of the People. (6) For the purposes of clauses (4) and (5), a resolution may be passed by either House of Parliament only by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting. (7) Notwithstanding anything contained in the foregoing clauses, the President shall revoke a Proclamation issued under clause (1) or a Proclamation varying such Proclamation if the House of the People passes a resolution disapproving, or, as the case may be, disapproving the continuance in force of, such Proclamation. (8) Where a notice in writing signed by not less than one-tenth of the total number of members of the House of the People has been given, of their intention to move a resolution for disapproving, or, as the case may be, for disapproving the continuance in force of, a Proclamation issued under clause (1) or a Proclamation varying such Proclamation, - (a) to the Speaker, if the House is in session; or (b) to the President, if the House is not in session, a special sitting of the House shall be held within fourteen days from the date on which such notice is received by the Speaker, or, as the case may be, by the President, for the purpose of considering such resolution. "; (c) clause (4) shall be renumbered as clause (9) and in the clause as so renumbered, for the words "internal disturbance" in both the places where they occur, the words "armed rebellion" shall be substituted; (d) clause (5) shall be omitted.

38. Amendment of article 356.-In article 356 of the Constitution,-

(a) in clause (4), - (i) for the words, brackets and figure "one year from the date of the passing of the second of the resolutions approving the Proclamation under clause (3)", the words "six months from the date of issue of the Proclamation" shall be substituted; (ii) in the first proviso, for the words "one year", the words "six months" shall be substituted; (iii) in the second proviso, for the words "one year", the words "six months" shall be substituted; (b) for clause (5), the following clause shall be substituted, namely: - "(5) Notwithstanding anything contained in clause (4), a resolution with respect to the continuance in force of a Proclamation approved under clause (3) for any period beyond the expiration of one year from the date of issue of such Proclamation shall not be passed by either House of Parliament unless - (a) a Proclamation of Emergency is in operation, in the whole of India or, as the case may be, in the whole or any part of the State, at the time of the passing of such resolution, and (b) the Election Commission certifies that the continuance in force of the Proclamation approved under clause (3) during the period specified in such resolution is necessary on account of difficulties in holding general elections to the Legislative Assembly of the State concerned."

39. Amendment of article 358.-Article 358 of the Constitution shall be renumbered as clause (1) of that article, and-

(a)in clause (1) as so renumbered,-(i)in the opening portion, for the words "while a Proclamation of Emergency is in operation", the words "While a Proclamation of Emergency declaring that the security of India or any part of the territory thereof is treated by war or by external aggression is in operation" shall be substituted;(ii)in the proviso, for the words "where a Proclamation of Emergency", the words "where such Proclamation of Emergency" shall be substituted;(b)after clause (1) as so renumbered, the following clause shall be inserted, namely:-"(2) Nothing in clause (1) shall apply-(a)to any law which does not contain a recital to the effect that such law is in relation to the Proclamation of Emergency in operation when it is made; or(b)to any executive action taken otherwise than under a law containing such a recital."

40. Amendment of article 359.-In article 359 of the Constitution,-

(a)in clauses (1) and (1A), for the words and figures "the rights conferred by Part III", the words, figures and brackets "the rights conferred by Part III (except articles 20 and 21)" shall be substituted;(b)after clause (1A), the following clause shall be inserted, namely:-"(1B) Nothing in clause (1A) shall apply-(a)to any law which does not contain a recital to the effect that such law is in relation to the Proclamation of Emergency in operation when it is made; or(b)to any executive action taken otherwise than under a law containing such a recital."

41. Amendment of article 360.-In article 360 of the Constitution,-

(a)for clause (2), the following clause shall be substituted, namely:-"(2) A Proclamation issued under clause (1)-(a)may be revoked or varied by a subsequent Proclamation;(b)shall be laid before each House of Parliament;(c)shall cease to operate at the expiration of two months, unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament:Provided that if any such Proclamation is issued at a time when the House of the People has been dissolved or the dissolution of the House of the People takes place during the period of two months referred to in sub-clause (c), and if a resolution approving the Proclamation has been passed by the Council of States, but no resolution with respect to such Proclamation has been passed by the House of the People before the expiration of that period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of the said period of thirty days a resolution approving the Proclamation has been also passed by the House of the People.";(b)clause (5) shall be omitted.

42. Insertion of new article 361A.-After article 361 of the Constitution, the following article shall be inserted, namely:-

`361A. Protection of publication of proceedings of Parliament and State Legislatures.-(1) No person shall be liable to any proceedings, civil or criminal, in any court in respect of the publication in a newspaper of a substantially true report of any proceedings of either House of Parliament or the

Legislative Assembly, or, as the case may be, either House of the Legislature, of a State, unless the publication is proved to have been made with malice: Provided that nothing in this clause shall apply to the publication of any report of the proceedings of a secret sitting of either House of Parliament or the Legislative Assembly, or, as the case may be, either House of the Legislature, of a State. (2) Clause (1) shall apply in relation to reports or matters broadcast by means of wireless telegraphy as part of any programme or service provided by means of a broadcasting station as it applies in relation to reports or matters published in a newspaper. Explanation.-In this article, "newspaper" includes a news agency report containing material for publication in a newspaper.'

43. Amendment of article 371F.-In article 371F of the Constitution, in clause (c), for the words "six years", the words "five years" shall be substituted, and for the words "five years" in both the places where they occur, the words "four years" shall be substituted.

44. Amendment of the Ninth Schedule.- In the Ninth Schedule to the Constitution, entries 87, 92 and 130 shall be omitted.

45. Amendment of the Constitution (Forty-second Amendment) Act, 1976.- In the Constitution (Forty-second Amendment) Act, 1976, sections 18, 19, 21, 22, 31, 32, 34, 35, 58 and 59 shall be omitted.

[The Constitution (Forty-Fourth Amendment) Act, 1978, repealed Article 19 (1) (f) and also took out Article 31(1) has been taken out of Part III and made a separate Article 300A in Chapter IV of Part XII. This amendment may have taken away the scope of speedy remedy under Article 32 for the violation of Right to Property because it is no more a Fundamental Right. Making it a legal right under the Constitution serves two purposes: Firstly, it gives emphasis to the value of socialism included in the preamble and secondly, in doing so, it conformed to the doctrine of basic structure of the Constitution. Also Refer]