CHAPTER XLII

THE CONSTITUTIONAL AMENDMENTS

SYNOPSIS

During its career of nearly fifty years, the Indian Constitution has undergone a number of amendments. It may be helpful to have a brief resume of the salient features of these amendments and to understand the factors and forces which led to their enactment.

FIRST AMENDMENT: 1951

The Constitution (First Amendment) Act, 1951, was enacted within a year of the commencement of the Constitution. The First Amendment made several modifications in a few Fundamental Rights.

It added the following three more heads to Art. 19(2): 'public order', "friendly relations with foreign states', and 'incitement to an offence'. Thus, the legislature became entitled to restrict the freedom of speech and expression in respect of these three heads also in addition to the heads originally mentioned in Art. 19(2)[1].

The phrase 'friendly relations with foreign states' was needed to curb propaganda against Pakistan which was then going on in a rather virulent form.

Addition of the expressions 'public order' and 'incitement to an offence' were deemed necessary as the courts had held that 'security of state' was a restricted concept as compared with 'public order' and 'public safety' so that freedom of speech could not be curtailed merely for maintaining 'public order' and 'public safety' unless the 'security of state' was also threatened. On this basis, several laws were declared *ultra vires* as they restricted the freedom of speech for maintaining 'public order' and not 'security of state'.[2]

The Patna High Court in the *Shailabala* case[3] had ruled that only incitement to commit political assassinations, or murders, or crimes of violence intending to overthrow the state could affect 'security of state', but not incitement to commit any crime, and so the former and not the latter, could be restrained under the rubric 'security of state'. Although, simultaneously, the Madras High Court had decided in *Srinivasa v. State of Madras*[4] that even incitement of a single case of murder, or cognisable offence involving violence, might have a tendency to overthrow the state and thus affect its security, the *Shailabala* verdict had already gone home to the Central Government. Hence, Art. 19(2) was amplified to enable the legislature to make laws to restrict freedom of speech in the interests of 'public order' or put a restraint upon 'incitement to violence'.

In 1952, the Supreme Court overruled the *Shailabala*[5] case and, thus, much of the misunderstanding which the case had generated was cleared, and much of the justification for amending Art. 19(2) was removed, but the Supreme Court's decision came too late as the Amendment had already been effectuated.

In one respect, Art. 19(2) was improved by the First Amendment. Originally, Art. 19(2) did not contain the word 'reasonable' before the word 'restrictions', and so the courts could not assess the reasonableness of the restrictions imposed on the right guaranteed by Art. 19(1)(*a*). Art. 19(2) thus differed from Arts. 19(3) to 19(6) in which the expression 'reasonable restrictions' had been used. The word 'reasonable' was now introduced in Art. 19(2) thus making restrictions on the freedom of speech and expression justiciable.[6] This was a major gain.

The Amending Act added a clarificatory clause to Art. 19(6) to make it clear that the freedom of trade and commerce guaranteed by Art. 19(1)(*g*) was not to invalidate any scheme of nationalisation undertaken by the state. The need for this amendment was felt because of certain remarks made by the Judges of the Allahabad High Court in *Motilal v. State of Uttar Pradesh* which arose out of nationalisation of motor transport.[7]

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1. *Supra*, Ch. XXIV, Secs. C and D.
2. *Romesh Thappar v. State of Madras*, AIR 1950 SC 124 : 1950 SCR 594; *Brij Bhusan v. Delhi*, AIR 1950 SC 129 : 1950 SCR 605; *supra*, Ch. XXIV, Sec. D.
3. AIR 1951 Pat 12.
4. AIR 1951 Mad 70.
5. *Supra*, footnote 3.
6. *Supra*, Ch. XXIV. Also, XII Parl, Deb., II, 9010.
7. AIR 1951 All 257; *supra*, Ch. XXIV, Secs. I and J.

The First Amending Act curtailed the Fundamental Right to property guaranteed by Art. 31 with a view to achieve quick implementation of important measures of agrarian reform passed by the State Legislatures by immunizing the same against attack in the courts. This amendment added two new Articles, 31A and 31B, and the Ninth Schedule, so as to make laws acquiring zemindaris unchallengeable in the courts.[8]

The Patna High Court had declared the Bihar legislation unconstitutional under Art. 14,[9] while the High Courts of Allahabad and Nagpur had held similar laws valid. Before, however, the Supreme Court could give its verdict on the validity or otherwise of this type of legislation, the Central Government under Nehru became restive at the delay being caused by litigation in furthering the programme of agricultural land reform, and thought of short circuiting the judicial process. Nehru was an ardent supporter of agrarian reform which he regarded as a process of social reform and social engineering. The Centre wanted to remove any possibility of such laws being declared invalid by the courts and hence the amendment.

The Ninth Schedule was an interesting innovation in the area of constitutional amendment. A new technique of by-passing judicial review was initiated. Any Act incorporated in the Schedule became fully protected against any challenge in a court of law under any Fundamental Right. Even an act declared invalid by a court becomes valid retrospectively after being incorporated in the Schedule.

To begin with, only Acts abolishing zamindari were included in the Schedule. Thus, only thirteen State Acts named therein were put beyond any challenge in courts for contravention of Fundamental Rights. But Schedule IX has swelled and swelled in course of time as all kinds of statutes have been included therein to protect them from judicial review so much so that to-day the Schedule contains as many as 284 entries.[10]

Art. 15(4) was added to the Constitution under circumstances already explained earlier.[11]

Arts. 85 and 87 were amended so as to do away with the summoning of Parliament twice a year and the requirement of the President addressing the two Houses at the commencement of each session. Now, the provision is that not more than six months are to elapse between the last day of one session and the first day of the following session. The Houses are now prorogued only once a year and the President addresses the Houses of Parliament only at the commencement of the first session each year.[12]

Corresponding amendments were also made in Arts. 174[13] and 176[14] for the State Legislatures.

A few other minor amendments were made by the First Amendment in Arts. 341, 342, 372, which it is not necessary to detail here.[15]

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8. *Supra*, Ch. XXXII, Sec. C.
9. *Kameshwar v. State of Bihar*, AIR 1951 Pat 91; *supra*, Chs. XXI, XXXI and XXXII.
10. *Supra*, Ch. XXXII, Sec. C.
11. *Supra*, Ch. XXII, Sec. C.
12. *Supra*, Ch. II, Sec. G(b).
13. *Supra*, Ch. VI, Sec. C.
14. *Supra*, Ch. VI, Sec. C(b).

As has already been stated earlier, the constitutional validity of the First Amendment was challenged in the Supreme Court. The Court upheld the validity of the amendment in the famous *Shankari Prasad* case.[16]

SECOND AMENDMENT : 1952

The Constitution (Second Amendment) Act was passed in 1952.

Originally, Art. 81(1)(*b*) required that Lok Sabha would have not less than one member for every 7,50,000, and not more than one member for every 5,00,000, of the population. The strength of the Lok Sabha was fixed at 500 and at the rate of one member for every 7.5 lakhs of people, the formula became unworkable the moment the population reached 37.5 crores. The Amending Act, therefore, dropped the minimum requirement of one member for every 7.5 lakhs of people in Art. 81(1)(*b*). Only the maximum requirement was retained.[17]

Corresponding changes were effectuated in Art. 170(2) relating to the State Legislatures.[18]

This Amendment would not have been necessary had the constitution-makers taken into consideration the population trends in the country.

THIRD AMENDMENT : 1954

The Constitution (Third Amendment) Act enacted in 1954 amended the original entry 33 of List III, expanded its scope and gave it its present shape.

The Amendment somewhat changed the federal balance of power in favour of the Centre.

The factors leading to the Amendment and its impact on federalism in India have already been discussed earlier.[19]

FOURTH AMENDMENT : 1955

The Constitution (Fourth Amendment) Act, 1955, again amended Art. 31 in several respects.

In the first place, Art. 31(2) was modified.[20] Secondly, a new Article 31(2)(*A*) was added, the genesis and effect of which have been explained earlier.[21] The purpose of these amendments was to restate more precisely the State's power of compulsory acquisition and requisitioning of private property and to distinguish it from deprivation of property by the operation of regulatory or prohibitory laws. The amendments made it clear that it is only for the former, and not for the latter, that compensation becomes payable.

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15. For Arts. 341 and 342 see, *supra*, Ch. XXXV, Secs. B and C.
Art. 372 being of a temporary nature has exhausted itself: *supra*, Ch. XXXVII, Sec. F.
16. *Supra*, Ch. XLI, Sec. D(a).
17. *Supra*, Ch. II, Sec. C.
18. *Supra*, Ch. VI, Sec. B(ii).
19. *Supra*, Ch. X, Sec. F.
20. *Supra*, Ch. XXXI, Sec. C.
21. *Ibid.*

Another purpose of amending Art. 31(2) was to make the amount of compensation non-justiciable. For this purpose a new clause (2A) was added to Art. 31. This was done to get over the effect of the Supreme Court's decision in *State of West Bengal v. Bella Banerjee*. This point has also been explained earlier.[22]

To justify the necessity of the Fourth Amendment, so far as Art. 31(2) was concerned, an argument advanced by the Central Government was that the judiciary had held that compensation was payable for 'any deprivation of property' even by a purely regulatory law. The actual position, however, was somewhat different from the one this statement sought to make out. What the Supreme Courts had held was that compensation was payable in case of '*substantial* dispossession' or 'serious impairment' of the property right.[23] However, the Centre was not satisfied even with this and wanted to restrict payment of compensation only to a situation when there was acquisition involving transfer of ownership, or requisitioning involving transfer of the right to possession, to the State. The right to private property, therefore, became very much circumscribed by the Fourth Amendment and much came to depend on the goodwill of the Legislature.

Art. 31(2), as it stood prior to the Fourth Amendment, did not in so many words provide that no acquisition of property could be made save for a public purpose. By a verbal amendment of Art. 31(2), the Fourth Amendment now brought out more specifically than before that no private property was to be compulsorily acquired or requisitioned except for a 'public purpose'.

Before the Fourth Amendment, the point was implicit and the Supreme Court had already held in *State of Bihar v. Kameshwar Singh* that according to universal juristic notions, 'public purpose' was a prerequisite of 'eminent domain'.[24] The change therefore did not add much to the already existing legal position, but made explicit what was implicit earlier.

The Constitution (First Amendment) Act had added Art. 31A to protect the zamindari abolition laws from being challenged under Arts. 14, 19 and 31. Art. 31A was now expanded in scope with a view to extend the same immunity to other types of social welfare and regulatory legislation affecting private property.[25]

While sponsoring the Fourth Amendment, the Central Government claimed that the Amendment clarified and brought the Constitution in line with what its makers had intended. Prime Minister Nehru stated in the Lok Sabha (April 11, 1955) that according to the Constitution, as put forward before the Constituent Assembly, and as it emerged from there, it was made quite clear that the quantum of, or the principles governing, compensation were to be decided by the legislature. "It was obvious that those who framed the Constitution failed to give expression to their wishes accurately and precisely and thereby the Supreme Court and some other courts have interpreted it in a different way." The Amendment, it was claimed, was to word the Constitution precisely in accordance with what the framers of the Constitution at that time had envisaged, meant and openly said.

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22. *Supra*, Ch. XXXI, Sec. C.

23. *State of West Bengal v. Subodh Gopal*, AIR 1954 SC 92 : 1954 SCR 587; *Dwarkadas Shrinivas v. Sholapur Spinning Co.*, AIR 1954 SC 119 : 1954 SCR 674; *Saghir Ahmad v. State of Uttar Pradesh*, AIR 1954 SC 728 : (1955) 1 SCR 707; *supra*, Ch. XXXI, Sec. C.

24. *Supra*, Ch. XXXI, Sec. C(iv).

25. *Supra*, Ch. XXXII, Sec. B.

It is correct that Nehru and others in the Constituent Assembly had thought that the original Art. 31(2) made the legislature the final arbiter of the quantum of compensation which could not be challenged in a court except when there was a fraud on the Constitution or a fraudulent exercise of the power so given. To the extent the Fourth Amendment made compensation non-justiciable, it could be said to accord with the intentions of some of the constitution-makers. But the Amendment did not stop at that. It had a much broader coverage. Arts. 31A and 31B were much more extensive in scope than what the framers had ever thought of. The Amendment was made to serve certain purposes which the constitution-makers had not dreamt of. Social welfare legislation and regulatory legislation had only recently been thought of. The Amendment in effect reconstituted original Art. 31 in a every fundamental manner.[26]

The Fourth Amendment also added a few more Acts to the Ninth Schedule thus immunizing these Acts from attacks under Fundamental Rights. These Acts covered a wide canvass as they related to such matters as land acquisition for rehabilitation of refugees, insurance, railway companies, taking over of management of industrial undertakings under the provisions of the Industries (Development and Regulation) Act: land development and planning.

The Fourth Amendment also redrafted Art. 305, the necessity for which has already been explained earlier.[27] The main purpose of this exercise was to protect laws creating State monopolies or nationalising any undertaking from the operation of Art. 301. This Amendment was undertaken to neutralize the impact of *Saghir Ahmad v. State of Uttar Pradesh*[28] in which it was ruled that a law providing for a state monopoly would have to be justified as being in the public interest under Art. 301 or as amounting to a "reasonable restriction under Art. 304(*b*). It was thought to be necessary that Art. 305 should be amended to make this clear.[29]

FIFTH AMENDMENT : 1955

The Constitution (Fifth Amendment) Act enacted in 1955 amended Art. 3.

This Article envisaged that before Parliament passed an Act to re-organise the States, the Bill for the purpose should be referred by the President to the State Legislatures concerned for expression of their views thereon. A defect in the original Art. 3 was that it did not lay down a time-limit within which the States concerned were to express their views. The absence of any such limit could cause delay or even hold up Parliamentary Legislation for the purpose.[30]

The Government of India was anxious to expedite re-organisation of the States on a linguistic basis and it apprehended that an aggrieved State might forestall the passage of the necessary legislation by Parliament merely by non-expression of its views for any length of time. The Amending Act therefore made it possible for the President to set a time-limit within which a State must express

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26. See, H.C.L. Merrillat, Compensation for the Taking of Property : A Historical Footnote to *Bela Banerjee's* case, 1 *JILI* 375.
27. *Supra* Ch. XV, Secs. H and I.
28. *Supra*, Ch. XXIV, Sec. I(b).
29. *Supra* Ch. XV, Sec. I.
30. *Supra*, Ch. V, Sec. B.

its views. On the expiry of the prescribed time-limit, Parliament could proceed with the matter without waiting for the views of the State concerned.

SIXTH AMENDMENT : 1956

The Constitution (Sixth Amendment) Act, 1956, sought to remove some of the difficulties arising in the area of sales taxation by the States. The Amendment was passed to do away with multiple taxation of sale or purchase of goods in interstate trade and commerce by the States on the basis of territorial *nexus*.[31]

The Amendment emanated out of the recommendations of the Taxation Enquiry Commission which can be summarised as follows: while sales tax must continue to be a State source, the power and responsibility of the States must come to an end, and that of the Centre should begin, when the sales tax of one State impinges administratively on the dealers and fiscally on the consumers of another State. Therefore, interstate sales tax should be the concern of the Centre, but the revenue should devolve on the States.

Further, some restrictions should be placed on the State power to tax intrastate sale of raw materials produced therein, otherwise, the cost of the manufactured articles, whether manufactured in the State producing the raw materials, or in another State, would increase. Since manufactured goods are consumed mostly outside the State producing the raw materials, an increase in their cost due to State taxation is of direct concern to the consumers in other States, and, therefore, it is necessary that such intrastate sales be brought under the Central control. The matter had assumed importance after the Supreme Court's decisions in *State of Bombay v. United Motors* and *Bengal Immunity Co. v. State of Bihar*.[32]

The Amending Act made taxation of interstate sales a Central matter by introducing entry 92A in List I,[33] and making entry 54 in List II,[34] regarding sales taxation by the States, subject to entry 92A of List I. This change placed taxes on inter-State sales and purchases under the exclusive domain of the Centre's Legislative and executive power. The revenue thereby was to be distributed among the States.

There was some difficulty in finding out—(i) what was a sale 'outside' a State, or (ii) 'in the course of import and export', or (iii) 'in the course of inter-State trade and commerce' so as to debar a State from taxing any such sale.[35] Therefore, Art. 286 was modified so as to enable Parliament to define these concepts.

The Amending Act also added Art. 286(3) which was designed to enable Parliament to restrict States' power to tax important raw materials.[36]

Art. 269 was also amended by adding clause (g) thereto so as to assign the revenue arising from Central taxation of inter-State sales to the States.[37]

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31. For 'Territorial Nexus', see, *supra*, Ch. X, Sec. A.
For 'Sales Taxation', see, *supra*, Ch. XI, Sec. J(i).
32. *Supra*, Ch. XI, Sec. J(i).
33. *Ibid.*
34. *Supra*, Ch. XI, Sec. C; Sec. J(i)(b).
35. *Supra*, Ch. XI, Sec. J(i)(a).
36. *Supra*, Ch. XI, Sec. J(i)(d).
37. *Supra*, Ch. XI, Sec. K(i).

The cumulative result of the Sixth Amendment of the Constitution was to add to the power of the Centre and to place the States' power to levy sales tax under Central Government's control and regulation in several ways. This was done in the interests of discouraging the creation of trade barriers by the States in the way of, and avoiding multiple taxation of, interstate trade which might affect the emergence of the country into one single economic unit.

Further, the Constitution permits sufficient flexibility by leaving "to Parliament, instead of doing so itself or leaving it to the Courts as hitherto, the defining of such concepts as 'outside sale', 'sale in the course of inter-State trade and commerce.' 'sale in the course of import and export', and 'declaration of goods special importance in inter-State trade".[38] The Centre has passed the Central Sales Tax Act, 1956.

SEVENTH AMENDMENT : 1956

The Constitution (Seventh Amendment) Act, 1956, was necessitated primarily because of the re-organisation of the States on a linguistic basis as a result of the report of the States' Re-organization Commission. The opportunity was however utilised to effect modifications in several provisions of the Constitution.[39]

The scheme of States' re-organisation involved not only changes in the boundaries of several of the existing States, but also the abolition of the pre-existing classification of the States into those of Part A, Part B and Part C. By this Amendment, the States of Part A and Part B were placed on an equal footing while the States of Part C were now designated as Union Territories.[40] These various changes were effectuated by modifying Art. 1, substitution of Schedule I by a new Schedule,[41] and modifying Arts. 239, 240 and to 241 to provide for the administration of the newly formed Union Territories.[42]

Consequential amendments were effected in Art. 80 which were of a formal nature, but Schedule IV,[43] dealing with allocation of seats in the Rajya Sabha, was completely revised.

Arts. 81 and 82[44] dealing with the division of the States into constituencies for the purpose of election of members of the Lok Sabha (which had been modified by the Second Amendment)[45] were also completely revised because provision had to be made for Union Territories and also because the provision in the pre-existing Art. 81 for grouping of States for formation of constituencies for Lok Sabha became redundant as each of the newly formed States was large enough to be divided by itself into a number of constituencies. The stipulation of not more than one member in Lok Sabha for every 5 lakh of population was also dropped.[46]

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38. *Supra*, Ch. XI, Sec. J.
See ILI, *INTER-STATE TRADE BARRIERS AND SALES TAX LAWS IN INDIA* (1962).
39. *Supra*, Ch. V, Sec. B.
40. *Supra*, Ch. IX, Sec. A.
41. *Supra*, Ch. V, Sec. A.
42. *Supra*, Ch. IX, Sec. B.
43. *Supra*, Ch. II, Sec. B.
44. *Supra*, Ch. II, Sec. C.
45. *Supra.*
46. See Amendment II, *supra.*

Art. 131 defining the original jurisdiction of the Supreme Court[47] was revised because the States of Part B had now disappeared.

Art. 153[48] was modified so as to make it possible to appoint one person as the Governor of two or more States and, consequently, Art. 158 was amended so as to provide for the apportionment of salary of the common Governor among the States concerned.

Art. 168 was modified for providing Legislative Councils in a few more States,[49] and Art. 171 was revised so as to increase the strength of the Upper Houses in the States.[50] Art. 170[51] dealing with the composition of State Legislative Assemblies was revised so as to be brought in line with Art. 81 as revised as stated above.

In the case of High Courts, the following amendments were made:

(1) From Art. 216, the proviso requiring the President to fix the maximum strength of the Judges of each High Court was dropped because it was of little practical significance as the number once fixed could be changed by the President whenever he liked.[52]

(2) Art. 224 was modified so as to make provision for appointment of additional and acting Judges in the High Courts and, consequently, Art. 217 was also amended to clarify that the tenure of these Judges would be temporary and not up to 62 years as in case of permanent Judges.[53]

(3) Art. 220 was revised so as to permit a retired High Court Judge to practice in the Supreme Court and in any High Court other than the one in which he was a permanent Judge; this provision was made to attract talent to the High Courts.[54]

(4) Art. 222 was amended so as to make provision for transfer of a Judge from one High Court to another.[55]

(5) Arts. 230 and 231 were completely revised with a view to establishing common High Courts for two or more States and to extend to a Union Territory the jurisdiction of a High Court or exclude it therefrom, and, as a consequence, Art. 232 was omitted.[56]

(6) Salaries of the Judges of all High Courts were equated by amending the Second Schedule and the distinction previously maintained between High Courts of States of Part A and Part B in this respect was now abolished.

Art. 239 was re-drafted so as to provide for the administration of Union Territories.[57]

Art. 258A was added to enable a State to entrust its functions to the Centre.[58]

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47. *Supra*, Ch. IV, Sec. C(iii)(b)(c)(d).
48. *Supra*, Ch. VII, Sec. A(i)(b).
49. *Supra*, Ch. VI, Sec. B(i).
50. *Supra*, Ch. VI, Sec. B(i).
51. *Supra*, Ch. VI, Sec. B(ii).
52. *Supra*, Ch. VIII, Sec. B(a).
53. *Ibid.*
54. *Ibid.*
55. *Supra*, Ch. VIII, Sec. B(m).
56. *Ibid.*
57. *Supra*, Ch. IX, Sec. A.
58. *Supra*, Ch. XII, Sec. B(e).

Art. 298 was revised and amplified to clarify that the executive power of the Centre and the States extended to the carrying on of any business or industry, holding property and entering into contracts.[59]

Arts. 350A and 350B were inserted to implement one of the recommendations of the States' Re-organisation Commission to afford safeguards to the linguistic minorities.[60]

Art. 371 was revised so as to provide for regional committees for Andhra and Punjab.[61]

The pre-existing three entries, 33 of List I, 36 of List II, and 42 of List III, relating essentially to the single subject of acquisition and requisitioning of property by the government, gave rise to unnecessary technical difficulties in legislation. To avoid difficulties and simplify the constitutional provision, entries in List I and List II were omitted and entry 42 in List III was revised.[62]

Some slight modifications were also effected in Art. 49, entry 67, List I, entry 12, List II, entry 40, List III (taken in one group)[63] and in entry 24, List II.[64]

A few other minor amendments made to other Articles are not mentioned here.[65]

EIGHTH AMENDMENT : 1959

The Constitution (Eighth Amendment) Act, 1959, amended Art. 334, so as to extend the duration of the reservation of seats in Lok Sabha and State Legislative Assemblies for the Scheduled Castes, Scheduled Tribes and Anglo-Indians, originally fixed for ten years, to twenty years, from the commencement of the Constitution.[66]

NINTH AMENDMENT : 1960

The Constitution (Ninth Amendment) Act modified the description of boundaries, contained in the First Schedule to the Constitution, of the States of Assam, Punjab, West Bengal and the Union Territory of Tripura.

The Amendment had to be undertaken in the wake of the *Berubari* case.[67] The amendment of the First Schedule was effected to cede some Indian territory to Pakistan as envisaged in the Indo-Pakistan Agreement.

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59. *Supra*, Ch. XII, Sec. C.
60. *Supra*, Chs. XVI, Sec. C(c) and XXXV, Sec. F(a).
61. *Supra*, Ch. IX, Sec. B(e).
62. *Supra*, Ch. X, Sec. F.
63. In entries 67 in List I, 12 in List II, 40 in List III and Art. 49, for the words "declared by Parliament by law", the words "declared by or under law made by Parliament" were substituted: *supra*, Ch. X.
64. *Supra*, Ch. X, Sec. E.
65. Art. 290A was added to charge some money on the Consolidated Funds of Kerala and Madras for payment to a Travancore religious fund, *supra*.
A transitional provision, Art. 372A, was added conferring power on the President to adapt laws in conformity with the newly amended Constitution.
66. *Supra*, Chs. II, , Sec. C; VI, Sec. B(ii) and XXXV, Secs. B, C and D.
67. *Supra*, Ch. V, Sec. C.

TENTH AMENDMENT : 1961

The Constitution (Tenth Amendment) Act, 1961, made Dadra and Nagar Haveli (formerly under the Portuguese possession), a constituent unit of the Indian Union and gave it the status of a Union Territory.[68] Necessary changes were made in Art. 240(1) and the First Schedule.

ELEVENTH AMENDMENT : 1961

The Constitution (Eleventh Amendment) Act, 1961, was enacted to prevent election of the President or the Vice-President from being challenged on the ground of any vacancy existing at the time of election in the appropriate electoral college. The circumstances leading to the amendment have already been discussed.[69]

TWELFTH AMENDMENT : 1962

By this Amendment, the territory of Goa, Daman and Diu, formerly a Portuguese
colony, was integrated into India as a Union Territory.[70]

THIRTEENTH AMENDMENT : 1962

The Constitution (Thirteenth Amendment) Act, 1962, was enacted to effectuate an agreement between the Government of India and the leaders of the Naga Peoples' Convention to constitute a separate State of Nagaland within the Indian Union.

A new provision, Art. 371A, was added to the Constitution so as to make certain special provisions for the governance of the State of Nagaland.[71]

FOURTEENTH AMENDMENT : 1962

The Constitution (Fourteenth Amendment) Act, 1962, integrated the French establishments of Pondicherry, Karikal, Mahe and Yanam formally as a Union Territory of Pondicherry.[72]

Opportunity was taken to effect some changes with respect to the administration of the Union Territories. It was thought advisable to create Legislatures and Council of Ministers in some of the Union Territories, and, for this purpose, necessary legislative power had to be conferred on the Union Parliament. Accordingly, a new provision, Art. 239A, was added to the Constitution.[73]

The regulation-making power of the President under Art. 240 was extended to Pondicherry as well, but a proviso was also added to Art. 240 to make it clear

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68. *Supra*, Chs. V and IX, Sec. A.
69. *Supra*, Ch. III, Sec. A(i) and (ii).
70. *Supra*, Chs. V and IX.
71. For details see, *supra*, Ch. IX, Sec. B(b).
72. *Supra*, Chs. V and IX.
73. *Supra*, Ch. IX, Sec. A.

that the President's regulation-making power would come to an end when a Legislature was established in a Union Territory.[74]

FIFTEENTH AMENDMENT : 1963

The Constitution (Fifteenth Amendment) Act, 1963, was an omnibus constitutional amendment as it effected modifications in several constitutional provisions.

Art. 217(1) was amended to raise the retirement age of the High Court Judges from 60 to 62 years.[75] It partially gave effect to the recommendation of the Law Commission that the retirement age of the High Court Judges be raised to 65 years.

Two factors weighed with the Law Commission in making this recommendation; first, there was a marked rise in the life expectancy in India; secondly, many High Court Judges, after their retirement, were engaged in active work (like practice *etc*.) even at the age of 65. The Central Government did not go as far as the Law Commission had suggested, and stopped at 62 years for the High Court Judges with a view to keep avenues open for younger people. However, Art. 224A was added so as to enable a retired High Court Judge to sit and act as the Judge of the same court.[76]

Art. 128 was modified so as to make it possible for the retired High Court Judges to sit and act as *ad hoc* Judges of the Supreme Court. Previously, only retired Judges of the Supreme Court and the Federal Court could sit as such, but there were not many of such Judges, and, therefore, provision was made for retired High Court Judges as well to act as *ad hoc* Judges of the Supreme Court.[77]

Arts. 124 and 217 were amended so as to make a specific provision empowering the President to determine the correct age of the Judges of the Supreme Court and the High Courts, whenever a question is raised in that regard. This was necessitated by the protracted litigation pursued by Justice Mitter of the Calcutta High Court. There was a discrepancy in the age of Justice Mitter as accepted at the time of his appointment to the High Court and his age as recorded in his matriculation certificate. He was retired in accordance with the age shown in the certificate and this was challenged by Justice Mitter in the courts. It was to avoid such litigation in future that Arts. 124 and 217 were amended. Thus, two new provisions were added for the purpose : Art. 124(2A) to Art. 124 and Art. 217(3).[78]

It was considered desirable in public interest that Judges should be transferred from one High Court to another. Such transfer imposed additional financial burden on the Judge who would be so transferred. In order to provide an incentive to the Judges to accept transfers, Art. 222 was modified so as to pay to such a Judge some compensatory allowance in addition to his salary.[79]

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74. *Ibid.*
75. *Supra*, Ch. VIII, Sec. B(q).
76. *Supra*, Ch. VIII, Sec. B(j).
77. *Ibid.*
78. *Supra*, Chs. IV, Sec. B(l) and VIII, Sec. B(q).
79. *Supra*, Ch. VIII, Sec. B(o).

A significant modification made by the XV Amendment was in respect of Art. 226. Before the Amendment, only the Punjab High Court could issue writs under Art. 226 to the Central Government offices located at New Delhi.[80] This involved considerable hardship to litigantsfrom distant places. Therefore, a new provision, Art. 226(2), was added to Art. 226 to remove this limitation. The scope of the newly added clause has already been explained.[81]

The Calcutta High Court declared in *Paramath Nath v. Chief Justice*[82] that the expression 'organisation' occurring in entry 78 of List I did not include 'vacations'. Accordingly, the entry was amended to clarify that the expression 'organisation' would include 'vacations' as well.[83]

The words 'continental shelf' were added to Art. 297. This was to assert rights of India under International Law over the sea-bed and sub-soil of the continental shelf adjoining its territory and beyond the territorial waters.[84]

The Fifteenth Amendment also made some adjustments in Arts. 316 and 311 concerning public services. Art. 316 originally made no express provision for the appointment of an acting chairman for a public service commission in case of vacancy in the post of the chairman on account of leave or otherwise. The Amending Act removed this lacuna.[85]

The Amending Act substituted a new provision in the place of Art. 311(2) with a view to somewhat circumscribe the second opportunity of hearing given to civil servants in matters of dismissal, removal or reduction in rank. The implications of the new clause have already been stated earlier.[86]

SIXTEENTH AMENDMENT : 1963

The Constitution (Sixteenth Amendment) Act, 1963, was brought forward with a view to give effect to the recommendations made by the Committee on National Integration and Regionalism in November, 1962.

The Committee had recommended that—

(1) Art. 19 be so amended that adequate powers become available for the preservation and maintenance of the integrity and sovereignty of the Union;

(2) every candidate for membership of Parliament or State Legislatures, and every aspirant to, and incumbent of, a public office should pledge himself to uphold the Constitution and to preserve the integrity and sovereignty of the Union; and

(3) forms of oath in the Third Schedule to the Constitution should be suitably amended for the purpose.

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80. Originally, a High Court could not issue a writ against a person or authority residing or located outside its territorial jurisdiction : *Election Commission v. Saka Venkata Rao*, AIR 1953 SC 210; *Khajoor Singh v. Union of India*, AIR 1961 SC 532 : (1961) 2 SCR 828.
81. *Supra*, Ch. VIII, Sec. D(b).
82. AIR 1961 Cal 545.
83. *Supra*, Ch. VIII, Sec. H.
84. *Supra*, Ch. XXXVII, Sec. D.
85. *Supra*, Ch. XXXVI, Sec. K.
86. *Supra*, Ch. XXXVI, Sec. G(a).

These recommendations were effectuated by the Sixteenth Amendment by amending Arts. 19(2), (3) and (4) for enabling the state to make a law imposing reasonable restrictions on the exercise of rights conferred by Arts. 19(1)(*a*), (*b*) and (*c*) in the interests of the sovereignty and integrity of India.[87]

Arts. 84 and 173 and the forms of oath contained in the Third Schedule were modified.[88] Every candidate for membership of Parliament, or a State Legislature, Union and State Ministers, members of Parliament and State Legislatures, Judges of the Supreme Court and, the High Courts and the Comptroller and Auditor-General of India have to take an oath to uphold the sovereignty and integrity of India.

The amendment thus conferred adequate powers on the government to impose restrictions against those individuals or organisations who want to make secession from India or disintegration of India as political issues for the purpose of fighting elections.

SEVENTEENTH AMENDMENT : 1964

The Constitution (Seventeenth Amendment) Act, 1964, again circumscribed property rights guaranteed in Art. 31. This was the third amendment in the series, the earlier ones being the First and the Fourth.

The Kerala Agrarian Relations Act, 1961, was struck down by the Supreme Court in its application to *ryotwari* lands, as well as by the Kerala High Court in relation to lands other than 'estates' in the Malabar area on the ground that it transgressed Arts. 14, 19 and 31, because the protection of Art. 31A was not available to the lands in question as those were not 'estates'. Under Art. 31A, as it stood at the time, protection of Art. 31A was available only in respect of such tenures as were 'estates' on the 26th January, 1950, when the Constitution came into force.

The expression 'estate' bore different meanings in different States, and sometimes in different parts of the same State. Moreover, many of the land reform enactments related to lands which were not included in an estate. It thus became necessary to expand the scope of the word 'estate' so as to protect all this legislation. Accordingly, the Seventeenth Amendment was undertaken. It changed the definition of the word 'estate' by bringing within its scope *ryotwari* lands as well as other lands in respect of which provisions are normally made in land reform enactments. Therefore, Art. 31A(2)(*a*) was redrafted so as to give it its existing form.[89]

As a counterpoise to expanding the concept of 'estate', the same amendment also prohibited the State from acquiring any self-cultivated land within the ceiling fixed by law until compensation not less than the market-value was provided.[90]

The Ninth Schedule was further expanded by including therein forty-four State enactments with a view to immunize them from any attack in a court of law

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87. *Supra*, Ch. XXIV, Secs. D, E and F.
88. *Supra*, Chs. II and VI.
89. *Supra*, Ch. XXXII, Sec. B.
90. *Ibid.*

on the ground of breach of any Fundamental Right.[91] Schedule IX thus came to have 64 Acts inscribed therein which could not be challenged under any Fundamental Right. These Acts covered a very wide field, *e.g.*, ceiling on agricultural holdings, abolition of certain types of tenures, acquisition of land belonging to religious and charitable endowments, fixation of rent, protection of tenants from eviction, etc.

As has already been stated earlier, the constitutional validity of the XVII Amendment was challenged and upheld in *Sajjan Singh v. State of Rajasthan*[92]

EIGHTEENTH AMENDMENT : 1966

The Constitution (Eighteenth Amendment) Act, 1966, added two explanations to Art. 3 clarifying that the term 'State' in that Article would include a Union Territory as well.[93] This facilitated re-organisation of States and Union Territories by Parliament as and when necessary.

The Amendment also clarified that the power under Art. 3(*a*) includes power to form a new State or Union Territory by uniting part of a State or Union Territory to another State or Union Territory.

The Amendment was undertaken to facilitate re-organization of the State of Punjab and the Union Territory of Himachal Pradesh.

NINETEENTH AMENDMENT : 1966

Hitherto, election disputes were settled by election tribunals. The Constitution (Nineteenth Amendment) Act, 1966, modified Art. 324 so as to terminate the jurisdiction of election tribunals to decide election disputes. The Amendment withdrew from the Election Commission the power of setting up election tribunals.[94]

Thus, election tribunals were abolished. Later on, the Representation of the People Act, 1951, provided that election petitions were to be heard by the High Courts.[95]

TWENTIETH AMENDMENT : 1966

The Constitution (Twentieth Amendment) Act, 1966, was enacted to overcome the difficulties created in the functioning of the subordinate judiciary in the State of Uttar Pradesh as a result of the Supreme Court pronouncement in *Chandra Mohan v. State of Uttar Pradesh*.[96]

The case laid down certain norms for the appointment of district judges. This meant that all appointments of district judges made otherwise than according to these norms were illegal.

The Amendment added a new provision, Art. 233A, to the Constitution legalising these appointments. The Amendment also validated the judgments, de

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91. *Ibid.*
92. *Supra*, Ch. XLI, Sec. D(b).
93. *Supra*, Ch. V, Sec. B.
94. *Supra*, Ch. XIX, Sec. F.
95. *Ibid.*
96. AIR 1966 SC 1987 : (1967) 1 SCR 77; *supra*, Ch. VIII, Sec. G(b)(c)(d).

crees, orders and sentences passed or made heretofore by all such district judges whose appointments had been declared to be invalid by the Supreme Court.[1]

TWENTY-FIRST AMENDMENT : 1967

The Constitution (Twenty-first Amendment) Act, 1967, amended the Eighth Schedule to the Constitution by including 'Sindhi' therein.[2]

TWENTY-SECOND AMENDMENT : 1969

The Constitution (Twenty-second Amendment) Act, 1969, conferred legislative power on Parliament for the purpose of creating an autonomous Hill State within the State of Assam. For this purpose, a new provision, Art. 244A, was introduced in the Constitution.

Art. 371B, a new provision, was also added to provide for the constitution of a committee of Assam Legislative Assembly consisting of the members of the Assembly elected from Part A tribal areas and such other members as the President may notify for the purpose.

Accordingly, Parliament passed the Assam Re-organisation (Meghalaya) Act, 1969, to set up the State of Meghalaya within the State of Assam. This was a new experiment to meet regional aspirations within a State.[3]

TWENTY-THIRD AMENDMENT : 1969

The main purpose of the Constitution (Twenty-third Amendment) Act, 1969, was to extend the safeguards granted by the Constitution to the Scheduled Castes and Scheduled Tribes by ten more years. Therefore, the operation of Art. 334 (which had already been amended once earlier by the Eighth Amendment in 1959) was extended by a further period of ten years.[4]

Art. 333 was also amended so as to provide that the Governor of a State could appoint one member of the Anglo-Indian community to the State Assembly. Formerly, there was no such restriction, and the Governor could appoint as many members of the community as he considered appropriate to give it proper representation in the State Legislature.[5]

The State of Nagaland came into being in 1963. More than ninety percent of its population is tribal. It would, therefore, seem anomalous to reserve seats for tribals in the State of Nagaland. Accordingly, Arts. 330 and 332 were amended to discontinue any reservation for the Scheduled Tribes of Nagaland both in the Lok Sabha as well as in the State Legislature.[6]

TWENTY-FOURTH AMENDMENT : 1971

In *Golak Nath*[7], the Supreme Court had ruled that a constitutional amendment under Art. 368 which "takes away or abridges" a Fundamental Right would be void.

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1. *Supra*, Ch. VIII, Sec. G(b)(c)(d).
2. *Supra*, Ch. XVI, Sec. E.
3. *Supra*, Chs. V and IX, Sec. B(c).
4. *Supra*, Chs. II, VI and XXXV, Secs. B and C.
5. *Supra*, Chs. II, VI and XXXV, Sec. D.
6. *Supra*, Chs. II, V, IX, Sec. B(b) and XXXV, Sec. C.
7. *Supra*, Ch. XLI, Sec. D(c).

As a counter to this pronouncement, Parliament enacted the Constitution (Twenty-Forth Amendment) Act, 1971, to claim power to amend any part of the Constitution including the Fundamental Rights. The Amendment added clause (4) to Art. 13 saying that this article would not apply to an amendment of the Constitution made under Art. 368. Article 368 was also amended as discussed earlier.[8]

TWENTY-FIFTH AMENDMENT : 1971

The Constitution (Twenty-Fifth Amendment) Act, 1971, made many changes in Art. 31 following the *Bank Nationalisation* case.[9]

The word 'compensation' was replaced by 'amount'. No law was to be called in question on the ground that the amount fixed for property acquired was not adequate.

A new clause 31C was added declaring that a law giving effect to the state policy towards securing the Directive Principles contained in Arts. 39(*b*) or (*c*) would be held void because of its inconsistency with Arts. 14, 19 and 31. Further, a declaration in the law that it was enacted to give effect to the policy towards securing these Directive Principles would render the law immune from being challenged in any court on the ground that it did not give effect to such policy.[10]

The Amendment was widely criticized at several fora as an attack on the Fundamental Rights guaranteed by the Constitution. The Amendment gave rise to the famous *Kesavananda* case which has already been discussed earlier.[11]

TWENTY-SIXTH AMENDMENT : 1971

To get over the Supreme Court ruling in *Madhav Rao Scindia v. Union of India*,[12] the Constitution (Twenty-sixth Amendment) Act was enacted in 1971.

By this Amendment, the anomaly of having 'rulers' in a democratic set-up was done away with. The Amendment terminated the privileges and privy purses of the ex-rulers of the former Indian States.

Art. 291 providing for the payment of privy purses, and Art. 362 guaranteeing personal rights, privileges and dignities of the princes were omitted.[13] A new provision, Art. 363A, abolishing the institution of rulership and privy purses payable to them, was added to the Constitution. On the commencement of the Amendment, the recognition granted to the rulers of the Indian States was to cease.

Art. 366(22) was now recast. The term 'ruler' was to mean the 'ruler' recognised as such by the President before the enactment of the Amendment in question.

Also see, *infra.*

8. *Supra*, Ch. XX, Sec. C and Ch. XLI, Sec. D(c).
9. *Supra*, Chs XXXI, Sec. C(iii).
10. *Supra*, Chs. XXXII, Sec. D, Ch. XXXIV.
11. *Supra*, Ch. XLI. , Sec. D(e)
12. *Supra*, Ch. XXXVII, Sec. E.
13. *Ibid.*

The constitutional validity of this Amendment was challenged but the Supreme Court upheld the same in *Raghunath Rao v. Union of India*[14]. The Court ruled that Amendment XXVI did not infringe any basic structure or essential feature of the Constitution.

TWENTY-SEVENTH AMENDMENT : 1971

The Constitution (Twenty-seventh Amendment) Act, 1971, was enacted to implement the decision to establish the Union Territory of Mizoram.[15] It empowered Parliament to create a legislature and a council of ministers for the new Territory. This was achieved by adding Mizoram to Art. 239A.

A new Article 239B, was also added so as to confer power on the Administrators of Goa, Daman and Diu, Pondicherry and Mizoram to promulgate ordinances.[16]

TWENTY-EIGHTH AMENDMENT : 1972

Art. 314 guaranteed to the members of the ICS (Indian Civil Service which was in existence before the Independence) the same conditions of service as they were entitled to before the commencement of the Constitution. Art. 314 thus kept intact the privileges of the members of this service.

The Constitution (Twenty-eighth Amendment) Act, 1972, was enacted adding Art. 312A so as to enable Parliament to vary the conditions of service of the members of the Indian Civil Service who continued to serve the Government of India or a State after the commencement of the Constitution. Parliament was also empowered to vary the pension rights of the members of this service who had retired earlier. Art. 314 which gave security to the I.C.S. personnel in some respect was repealed.[17]

TWENTY-NINTH AMENDMENT : 1972

By the Constitution (Twenty-ninth Amendment) Act, 1972, two Kerala Acts dealing with land reforms were included in the IX Schedule to the Constitution.[18] These Acts thus received the protection of Art. 31B.

THIRTIETH AMENDMENT : 1972

Before 1972, under Art. 133, an appeal lay to the Supreme Court in any case involving the subject-matter of Rs. 20,000/- or more. Thus, appeals could be filed in the Supreme Court if the valuation test was satisfied whether it had any merit or not.

By the Constitution (Thirtieth Amendment) Act, 1972, Art. 133 was recast so as to redefine the civil appellate jurisdiction of the Supreme Court. Valuation test

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14. AIR 1993 SC 1267, at 1287; *supra*, Ch. XLI, Sec. E(c).
15. *Supra*, Chs. V and IX, Sec. E.
16. *Supra*, Ch. IX, Sec. A.
17. For Art. 314, see, M.P. JAIN, *INDIAN CONST. LAW* (II ed., 1970), 692.
18. *Supra*, Ch. XXXII, Sec. B.

was now dropped; an appeal now lies to the Supreme Court, if the High Court certifies that the case involves a substantial question of law which needs to be decided by the Supreme Court. This matter has been discussed earlier.[19]

The result of this Amendment is that while any case involving an important question of law can reach the Supreme Court by way of appeal, a case howsoever large the amount involved therein but involving no substantial point of law, would fail to reach the Supreme Court.

THIRTY-FIRST AMENDMENT : 1973

By the Constitution (Thirty-first Amendment) Act, 1973, the strength of the Lok Sabha was increased from 525 to 545 members.[20] This was done to accommodate the increase in population as revealed by the 1971 census. Accordingly, Art. 81(1)(*a*) was suitably amended.

The allocation of Lok Sabha seats among the States and the Union Territories after this Amendment was as follows: Andhra Pradesh, 42; Assam, 14; Bihar, 54; Gujarat, 26; Haryana, 10; Himachal Pradesh, 4; Jammu & Kashmir, 6; Karnataka, 28; Kerala, 20; Madhya Pradesh, 40; Maharashtra, 48; Manipur, 2; Meghalaya, 2; Nagaland, 1; Orissa, 21; Punjab, 13; Rajasthan, 25; Sikkim, 1; Tamil Nadu, 39; Tripura, 2; Uttar Pradesh, 85; West Bengal, 42; Andaman & Nicobar, 1; Arunachal Pradesh, 2; Chandigarh, 1; Dadra & Nagar Haveli, 1; Delhi, 7; Goa, Daman and Diu, 2; Lakshadweep, 1; Mizoram, 1; Pondicherry, 1; Total, 542.

Of these, 78 members belonged to the Scheduled Castes and 38 to the Scheduled Tribes.

THIRTY-SECOND AMENDMENT : 1973

The Constitution (Thirty-second Amendment) Act, 1973, was enacted to make a few special provisions for the State of Andhra Pradesh to satisfy the aspirations of the people of the Telengana region. These provisions have been noted earlier.[21]

THIRTY-THIRD AMENDMENT : 1974

The Constitution (Thirty-third Amendment) Act, 1974, amended Arts. 101 and 190.[22]

Before the Amendment, the resignation of a member of a State Legislature/Parlia-ment became effective the moment it was tendered. The Speaker/Chairman had no option as the element of acceptance of the resignation was absent and the member's seat became automatically vacant even when his

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19. *Supra*, Ch. IV, Sec. C(iv)(c).
20. *Supra*, Ch. II, Sec. C.
21. *Supra*, Ch. IX, Sec. B(e).
22. *Supra*, Chs. II, Sec. E(b) and VI, Sec. B(v)(b).

resignation may not be voluntary and may have even been induced by force or threats.[23]

This position was now changed. A resignation becomes effective only after it has been accepted by the presiding officer of the House concerned. He may refuse to accept the resignation if he is satisfied after making such inquiry as he thinks fit that the resignation is not voluntary or genuine. This precautionary provision appeared to be necessary to avoid the members of Parliament or of State Legislatures being forced to resign.

THIRTY-FOURTH AMENDMENT : 1974

By the Constitution (Thirty-fourth Amendment) Act, 1974, twenty State Acts concerning land ceiling and land tenure reforms were added to the Ninth Schedule to the Constitution, so as to put them under the protection of Art. 31B.[24] These laws have thus been given immunity from challenge in the courts on the ground of violation of Fundamental Rights.

THIRTY-FIFTH AND THIRTY-SIXTH AMENDMENTS : 1974-75

The Constitution (Thirty-fifth Amendment) Act, 1974, introduced an innovation in the Indian Constitution by conferring on Sikkim the status of an associate in the Indian Union. This was done in pursuance of the wishes of the people of Sikkim with a view to strengthen Indo-Sikkim co-operation and inter relationship.

For this purpose, a new schedule (X Schedule) was added to the Constitution setting out the terms and conditions for association of Sikkim with India. The XXXV Amendment also provided for the representation of Sikkim in the Lok Sabha and the Rajya Sabha.

This however proved to be a short-lived experiment. The people of Sikkim desired to be an integral part of India. Accordingly, the Constitution (Thirty-sixth Amendment) Act was enacted in 1975 to confer fullfledged statehood on Sikkim.[25]

A new Article (Art. 371F) has been added to the Constitution making special provisions for Sikkim in regard to such matters as the State Legislative Assembly, High Court, responsibility of the Governor for peace and social and economic advancement of different sections of the population of Sikkim *etc.*

Cl. (f) of Art. 371F runs as follows :

> "Parliament may, for the purpose of protecting the rights and interests of the different sections of the population of Sikkim make provision for the number of seats in the Legislative Assembly of the State of Sikkim which may be filled by candidates belonging to such sections."

The constitutional validity was attacked on the ground that it went against the basic feature of the Constitution as it violated the principle of 'one person one

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23. See, *M. Kunjukrishnan Nadar v. Speaker, Kerala Leg. Ass.*, AIR 1964 Ker. 194; *Surat Singh Yadava v. Sudama Pd.*, AIR 1965 All. 536.
24. *Supra*, Ch. XXXII, Sec. C.
25. *Supra*, Chs. V and IX, Sec. D.

vote'. By majority, the Supreme Court rejected the contention in *R.C. Poudyal v. Union of India*[26] holding that the provision in question did not depart so much as to negate fundamental principles of democracy.

The Court also ruled that Art. 2 which permits accession of new States to the Indian Union does not confer power on Parliament to override the constitutional scheme.[27]

THIRTY-SEVENTH AMENDMENT : 1975

The Constitution (Thirty-seventh Amendment) Act, 1975, upgraded the status of Arunachal Pradesh as a Union Territory.

Arts. 239A and 240 were amended so as to authorise Parliament to create for Arunachal Pradesh a legislature and a council of ministers. After the legislature was established, the President ceased to have power to make regulations for the Union Territory.[28]

THIRTY-EIGHTH AMENDMENT : 1975

The Constitution (Thirty-eighth Amendment) Act, 1975, was enacted during the emergency (1975-1977) to make certain modifications in the emergency provisions.

Amendments were made in Art. 352 with a view to make the proclamation of emergency of 1975 beyond any question although it was issued when the proclamation of emergency on the ground of external aggression had already been in operation since 1971.[29]

The presidential 'satisfaction' to issue a proclamation was declared to be 'final and conclusive'.[30]

The amendment of Art. 352 became necessary because contentions were made in some writ petitions filed in the High Courts to the effect that while one proclamation of emergency under Art. 352 was in operation, another proclamation of emergency could not be made. Art. 352 was thus amended so as to make it clear that the President could issue different proclamations of emergency on different grounds whether or not there was already a proclamation in existence and in operation.

A clarificatory clause was added to Art. 356(1) so as to make presidential 'satisfaction' to issue a proclamation thereunder as 'final and conclusive' which 'shall not be questioned in any court on any ground.'[31]

A new clause was added to Art. 359 to bring its phraseology in line with that of Art. 358. This aspect of the matter has already been explained.[32]

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26. AIR 1993 SC 1804; *supra*, Ch. V, Sec. B; Ch. IX, Sec. D.
27. Also see, *Mangal Singh v. Union of India*, AIR 1967 SC 944 : (1967) 2 SCR 109; *supra*, Ch. V, Sec. B.
28. *Supra*, Chs. V, Sec. A; IX, Sec. A.
29. See, *supra*, Chs. XIII, Sec. B(a) and XXXIII, Sec. F.
30. *Supra*, Ch. XIII, Sec. B(a).
31. *Supra*, Ch. XIII, Sec. E.
32. *Supra*, Ch. XIII, Sec. D(c).

The Presidential 'satisfaction' under Art. 360 was also made 'final and conclusive'.[33]

This Amendment also declared that the 'satisfaction' of the President and a State Governor to issue ordinances [Arts. 123 and 213] would be 'final and conclusive' and 'shall not be questioned in any court on any ground.'[34] These provisions were made as a matter of abundant caution because the courts in several pronouncements had already taken the position that "the necessity of immediate action and of promulgating an ordinance is a matter purely for the subjective satisfaction of the Governor. He is the sole judge as to the existence of the circumstances necessitating the making of an ordinance. His satisfaction is not a justiciable matter. It cannot be questioned on the ground of error of judgment or otherwise in court."[35]

The 'satisfaction' of the Administrator of a Union Territory to issue an ordinance under Art. 239B was also made 'final and conclusive.'[36]

It hardly needs to be pointed out that the 'satisfaction' of the head of the state is only formal; the effective power in this respect lies with the council of ministers.[37]

In *Pran Nath v. Union of India*,[38] the Delhi High Court held the 38th Amendment valid although it excluded judicial review of the 'satisfaction' of the President to declare emergency under Art. 352(1). The court argued that judicial review was not a basic feature of the Constitution and that, in specified fields, lack of judicial review might not affect any basic feature of the Constitution. The Constitution itself from the very beginning recognised certain areas where there might not be judicial review, *e.g.*, election.

As against this reasoning of the High Court, it needs to be mentioned that reading the Constitution as a whole, one will get the impression that judicial review is regarded as an integral part of the total constitutional scheme as a number of Articles in the Constitution provide for judicial review.

KHANNA, J., emphasized upon the importance of judicial review in *Kesavananda*.[39] In *Indira Nehru Gandhi*, the Supreme Court emphasized upon the role of the judiciary as a dispute resolving machinery. [40] The concepts of constitutionalism and Rule of Law cannot be preserved without a robust judicial system.[41]

The fundamental features mentioned by the various Judges in *Kesavananda* involved judicial review. However, in course of time, it has become established

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33. *Ibid.*
34. Art. 123, *supra*, Ch. III, Sec. D(ii)(d); Art. 213, *supra,* Ch. VII, Sec. D(ii)(c).
35. *S.K.G. Sugar v. State of Bihar,* AIR 1974 SC 1533 : (1974) 4 SCC 827; *supra,* Chs. III, Sec. D(ii)(d) and VII, Sec. D(ii)(c).
36. *Supra*, Ch. IX, Sec. A.
37. *Supra*, Chs. III, Sec. B and VII, Sec. B.
38. AIR 1977 Del 167.
39. *Supra*, Ch. XLI, Sec. D(e).
For Judicial Review, see, Ch. XL, Secs. A and C.
40. *Supra*, XLI, Sec. D(f).
41. *Supra*, Ch. I, Secs. B and C.

that judicial review is a basic feature of the Constitution which cannot be eroded by an amendment of the Constitution made under Art. 368.[42]

THIRTY-NINTH AMENDMENT : 1975

The voiding of the election to Lok Sabha of Prime Minister Indira Gandhi by the Allahabad High Court in 1975 on the petition of Raj Narain led to the enactment of the Constitution (Thirty-ninth Amendment) Act, 1975.[43] The Amendment introduced changes in the method of deciding election disputes relating to the four high officials of the Country, *viz.*, President, Vice-President, Prime Minister and the Speaker of Lok Sabha.

As regards the President and Vice-President, the basic change introduced was that jurisdiction was taken away from the Supreme Court to decide any doubts and disputes arising in connection with their election.[44] Under the new Art. 71(2), Parliament by law was to establish some 'authority' or 'body' for deciding such disputes, and its decision was not to be challengeable in any court.[45]

Elections of the Prime Minister and the Speaker to the Parliament were also taken out of the election-dispute settling mechanism envisaged in Art. 329.[46] Art. 329A dealt with election to either House of Parliament of a person who held the office of the Prime Minister at the time of such election, or was appointed as Prime Minister after such election, and to the House of People of a person who held the office of the Speaker at the time of such election, or who was chosen as the Speaker after such election.

The election of any such person was not to be called in question, except before such 'authority' or 'body', and in such manner, as was to be provided for by or under any law made by Parliament. Such an authority would not be the one as was referred to in Art. 329(*b*). The law of Parliament could provide for all other matters relating to doubts and disputes in relation to such election including the grounds on which such election could be questioned.

This law of Parliament was to be subject to clause (1) of Art. 102 except sub-clause (*e*).[47] This meant that parliamentary law could not remove the following disqualifications for election to Parliament as contemplated by sub-clauses (*a*) to (*d*) of Art. 102(1) : holding an office of profit; being of unsound mind; being an undischarged insolvent; not being a citizen of India; voluntarily acquiring the citizenship of a foreign State, or being under any acknoweldgement of allegiance or adherence to a foreign State.

The Parliamentary law would not however be controlled by Art. 102(1)(*e*) which lays down that a person shall be disqualified for being chosen as, and for being a member of, any House of Parliament if he is so disqualified by or under any law made by Parliament. Thus, Parliament could remove the disqualification envisaged in Art. 102(1)(*e*).

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42. *Supra*, XLI, Sec. F(a).
43. *Supra*, Chs. XIX, Sec. F; XLI, Sec. D(f).
44. *Supra*, Chs. III, Sec. A(i)(b) and IV, Sec. C(iii)(a).
45. Ch. IV, *supra.*
46. *Supra*, Ch. XIX, Sec. F.
47. *Supra*, Ch. II, Sec. D.

Under Art. 329A(2), the validity of a parliamentary law envisaged in Art. 329A(1), and the decision of any authority or body under such law could not be called in question in any court.

The effect of clauses (1) and (2) of the new Art. 329A thus was that the election of the Prime Minister and the Speaker to a House of Parliament or Lok Sabha respectively would be governed by one law, while election of the other members of Parliament would be governed by another law.

The Thirty-ninth Amendment did not stop here. It went further and sought to nullify the High Court decision voiding the election of Prime Minister Indira Gandhi and declare it to be valid. The main provision made for this purpose was clause 4 in Art. 329A which consisted of four parts:

1. No law made by Parliament before the commencement of the Constitution (Thirty-Ninth Amendment) Act, 1975, insofar as it related to the election petitions was to apply, or be deemed ever to have applied, to the election of the Prime Minister or the Speaker to Parliament.

2. Such election was not to be deemed to be void, or ever to have become void, on any ground on which such election could be declared to be void, or has been declared to be void under any such law.

3. Notwithstanding any court order declaring such election to be void, it was to continue to be valid in all respects;

4. Any such order and any finding on which such order was based was to be deemed always to have been void and of no effect.

This part of Art. 329A validating an election already held void by the High Court was declared to be unconstitutional by the Supreme Court in *Indira Nehru Gandhi v. Raj Narain*.[48] The Court criticised the 39th Amendment as negation of rule of law, anti-democratic, lawless and one which denied equality before law.

No one can imagine a greater misuse of the power to amend the Constitution than what is represented by the XXXIX Amendment when just to validate the election of one person, the Constitution was drastically amended. The Supreme Court rendered a yeoman service to the Constitution by vetoing such a distorted law.

The case provides sterling testimony to the worth of the doctrine that the fundamental features of the Constitution could not be amended. There always lurks the danger that the ruling party with the help of its majority in the two Houses of Parliament may introduce distortions in the Constitution to suit its own political agenda. It may be remembered that to keep-herself in power, Prime Minister Indira Gandhi even imposed the emergency on the country in 1975.[49]

On merits, however, the Supreme Court accepted the appeal of the Prime Minister against the High Court's judgment and held her election to Lok Sabha to be valid.

The Thirty-ninth Amendment also extended immunity to a number of statutes from judicial purview on the ground of infringement of Fundamental Rights by including them in the Ninth Schedule.[50]

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48. Art. 1975 SC 2299 : 1975 Supp SCC 2; *supra*, Ch. XLI, Sec. D(f).
49. See, *supra*, Ch. XIII, Sec. B, Ch. XXXIII, Sec. F; XLI, Sec. D(f).
50. *Supra*, Ch. XXXII, Sec. C.

FORTIETH AMENDMENT : 1976

The Constitution (Fortieth Amendment) Act, 1976, extended immunity to 64 Central and State statutes by including them in the IX Schedule. These statutes pertained to land reform, urban ceiling, and prevention of publication of objectionable matter.[51]

This Amendment also substituted a new Art. 297 for the old one with a view to enlarge the scope of India's sovereign rights over sea wealth and include therein the concept of exclusive economic zone. All resources in the exclusive economic zone have been vested in the Union. This aspect of the matter has already been explained earlier.[52]

FORTY-FIRST AMENDMENT : 1976

The Constitution (Forty-first Amendment) Act, 1976, raised the age of retirement of the chairman and members of State Public Service Commissions from 60 to 62.[53] This brought the age of retirement of these persons in line with that of the High Court Judges.[54]

FORTY-SECOND AMENDMENT : 1976

The Constitution (Forty-second Amendment) Act, 1976, is the most controversial and debatable piece of constitutional amendment ever undertaken in India since 1950.[55] The Amendment Act was primarily the handiwork of the Congress Party and comprised mostly the proposals made by a Committee of the party headed by *Swaran Singh*. It was an *omibus* measure introducing modifications in a number of constitutional provisions. This Amendment amended the Preamble to the Constitution, 40 Articles and the Seventh Schedule, and added 14 new Articles to the Constitution.

A fundamental objection against this Amendment Act is that it was undertaken during the emergency period when most of the members of the opposition were detained in preventive detention and when a free, frank and fair discussion of the arguments for and against the proposed modifications was not possible. The two Houses of Parliament consisted of an overwhelming majority of the members of the ruling Congress Party and so it became more or less a party affair rather than a product of national consensus.

The Amendment Act introduced a number of changes in the Constitution, some of which happened to be of great significance in so far as they sought to tilt the balance of power in favour of the executive and away from the judiciary and the legislature and, thus, the control-mechanism over the executive was sought to be weakened. The dominant thrust of the Amendment Act in question was to reduce the role of the courts, particularly, that of the High Courts, in the coun-

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51. *Supra*, Ch. XXXII, Sec. C.
52. *Supra*, Ch. XXXVII, Sec. D.
53. *Supra*, Ch. XXXVI.
54. *Supra*, Ch. VIII, Sec. B(q).
55. This Act received the assent of the President on December 18, 1976. Some of the provisions became operative on Jan. 3, 1977, while others were enforced from Feb. 1, 1977.

try's judicial and constitutional process. It also sought to strengthen Parliament in various ways which in effect added to the power of the Central Government. Besides, the powers of the Central Government were enhanced in several other directions.

In the area of federalism, the centralising tendency was further strengthened in several directions at the cost of the States. Above all, the importance of Fundamental Rights was greatly devalued. Thus, the whole complexion of the Constitution was sought to be changed so as to reduce the element of constitutionalism therein. No wonder, then, that with the lifting of the emergency in 1977, there was a strident public demand that the 42nd Amendment be scrapped. The new Janata Government was committed to the removal of the objectionable features of this Amendment, and it did redeem its pledge to a large extent by enacting the 44th Amendment to undo most of the objectionable provisions of the 42nd Amendment.[56]

The main reasons stated by the Law Minister on behalf of the then Central Government in justification of the various modifications being effectuated in the Constitution by the 42nd Amendment Act were: the supremacy of the Parliament should be asserted, especially in respect of its constituent power under Art. 368 which should be uncontrolled and subject to no judicial review; hurdles and obstacles in the way of enactment of socio-economic legislation should be removed so that the pace of improvement of the condition of the masses may be accelerated and this could be achieved by declaring that the Directive Principles override the Fundamental Rights; the sense of confrontation between the judiciary and Parliament should be removed and to achieve this, powers of the courts need to be curtailed somewhat and jurisdiction of the courts redefined with greater precision.

The several amendments made in the Constitution by the 42nd Amendment Act [hereinafter designated as CA 42] are noted below in the order in which the various topics have been discussed in the body of the book.

PREAMBLE

Constitutional Amendment 42 has made two changes in the Preamble.

First, the characterisation of India as "sovereign democratic republic" has been changed to "sovereign socialist secular democratic republic". Thus, the concepts of 'socialism' and 'secularism' which were implicit in the Constitution were now made explicit and India's commitment to these ideals was further underlined and strengthened.[57]

Secondly, the words "unity of the nation" in the clause in the Preamble explaining 'Fraternity' were changed to "unity and integrity of the nation". This change was made to lay emphasis on indivisibility of the country along with the unity of the nation.[58]

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56. *Infra, eq. seq.,* Sec. E(c).
57. *Supra*, Ch. I, Sec. E(c) and Ch. XXXIV, Sec. A, for Preamble.
For secularism see, *supra*, Ch. I, Sec. E(f) and Ch. XXIX, Sec. A, for socialism.
58. *Supra*, Ch. I and XXXIV, Sec. A.

PARLIAMENT AND STATE LEGISLATURES

The Constitution provided for readjustment in constituencies for election to *Lok Sabha*,[59] and State Legislative Assemblies,[60] after every census held at an interval of ten years. This process was frozen by CA 42 at the point of 1971 census till the holding of the first census after the year 2000. The idea is to give a fillip to the family planning programme in the country. A State can neither claim an increase in, nor will it lose any, seat in the *Lok Sabha* with the increase or decrease in its population. This is expected to provide a better motivation to the States to intensify family planning programmes.

The fixation of the number of seats for the Scheduled Castes and the Scheduled Tribes in Lok Sabha and State Legislative Assemblies was also frozen by CA 42 at the level of the 1971 census until the first census to be held after the year 2000.[61]

Hitherto, the quorum in a House of Parliament, or a State Legislature, was fixed by the Constitution at 1/10 of the total members of the House, but this could be changed by law.[62] CA 42 changed this position. It left the quorum to be fixed by the rules of each House.[63]

Thus, quorum ceased to be a substantive matter and became merely a procedural matter. A House has power to suspend its rules of procedure and so it can suspend the rule relating to quorum as well any time it likes, and transact any business without a quorum. Because of the principle of internal autonomy of the House, the validity of anything purported to have been done by the House without the requisite quorum would not be challengeable in a court.[64] This becomes all the more evident from the repeal of Arts. 100(4)[65] and 189(4).[66] Under these repealed clauses, the presiding officer of a House was obligated, in the absence of the quorum, to suspend the meeting of the House till there was a quorum.

The life of the *Lok Sabha* and State Legislative Assemblies was extended from five to six years.[67]

A person holding an 'office of profit' is disqualified from membership of Parliament or a State Legislature. Until CA 42, it was for the courts to declare what was an office of profit. The courts had evolved certain indices to decide whether an office was an 'office of profit'. A law could however be made to declare what offices would not disqualify, otherwise the disqualification arose automatically as soon as a member came to hold an office of profit.[68]

CA 42 changed this position. Henceforth, Parliament was to lay down through law what offices would be regarded as 'offices of profit' so as to disqualify their holders from membership of a House of Parliament or a State Legislature. There

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59. *Supra*, Ch. II, Sec. C.
60. *Supra*, Ch. VI, Sec. B(ii).
61. For Arts. 330, 332 and 334, see, *supra*, Ch. XXXV, Secs. B and C; also see, Chs. II, Sec. C and VI, Sec. B(ii).
62. *Supra*, Chs. II, Sec. G(d) and VI, Sec. C(d).
63. *Supra*, Chs. II, Sec. L(c) and VI, Sec. H(c), for rule-making.
64. *Supra*, Chs. II, Sec. L(d) and VI, Sec. H(d).
65. *Supra*, Ch. II, Sec. G(d).
66. *Supra*, Ch. VI, Sec. C(d).
67. *Supra*, Chs. II, Sec. I(c) and V, Sec. E.
68. *Ibid*.

would not be any automatic disqualification on this account and the courts were to lose power to declare whether an office was an office of profit or not. This change brought the position in India in line with that in Britain on this matter.[69] Clause (1)(a) of Article 102 provides that a person shall be disqualified for being chosen as, and for being, a member of either House of Parliament if he holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder. What is an office of profit has been considered by a 3 Judge Bench of the Supreme Court.[70] Referring to earlier decisions, the Court reiterated the implications of the expression in these words :-

> "It is well settled that where the office carries with it certain emoluments or the order of appointment states that the person appointed is entitled to certain emoluments, then it will be an office of profit, even if the holder of the office chooses not to receive/draw such emoluments. What is relevant is whether pecuniary gain is 'receivable' in regard to the office and not whether pecuniary gain is, in fact, received or received negligibly"

It is worth nothing that prior to CA 42, a State Legislature also had power to declare what offices would not disqualify their holders from its membership.[71] But now the power was vested in Parliament to prescribe what offices would disqualify. So, the power in this area moved away from the State Legislatures and the courts to Parliament.

Until the enactment of CA 42, under Art. 103, the question whether a member of Parliament had become subject to a disqualification or not was to be decided by the President but he was bound in this matter to follow the opinion of the Election Commission.[72] CA 42 changed this position insofar as the President was not to be bound by the opinion of the Election Commission. He was to consult the Commission but, thereafter, he was to be free to take his own decision. This meant that ultimately he was to act on ministerial advice in this area. The final word in respect of disqualification of members of Parliament thus passed from an autonomous impartial body like the Election Commission to a political body like the Council of Ministers which was not desirable.

Before CA 42, a member became automatically disqualified when he was held guilty of committing a corrupt practice at an election to the House.[73] Henceforth, this question was also to be decided by the President in the same way as a question of disqualification arising on other grounds and as mentioned above.

A similar change was effected in Art. 192 applicable to the State Legislatures.[74] The question of disqualification of a member of a State Legislature was to be decided by the President in consultation with the Election Commission as in case of Parliament. Till now, this function was vested in the Governor who was bound in this matter by the advice of the Election Commission. The power in this regard was thus transferred from the State Government to the Central Government. The reason was that formerly the effective decision lay with the Election Commission and the function of the Governor was rather mechanical. But now

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69. *Ibid*.
70. *Jaya Bachchan v. Union of India,* (2006) 5 SCC 266 : AIR 2006 SC 2119.
71. *Ibid*.
72. *Supra*, Ch. II, Sec. D(d).
73. *Supra*, Ch. II, Sec. D(d).
74. *Supra*, Ch. VI, Sec. B(iii)(b).

the effective decision was taken away from the Election Commission and vested in the Central Government, though nominally in the President. This was undesirable as a legal question became a political question. On the whole, the effect of the above changes was to increase the power of the Central Executive *vis-a-vis* Parliament and State Legislatures.

PRIVILEGES OF PARLIAMENT AND STATE LEGISLATURES

Prior to CA 42, under Art. 105(3), privileges of Parliament, and, under Art. 194(3), the privileges of the State Legislatures, were to be the same as those enjoyed by the House of Commons on January 26, 1950,[75] the day the Constitution came into force. These constitutional provisions were amended by CA 42 so as to drop any reference to the House of Commons.

After CA 42, the privileges of a House or its members were to be those as existing at the commencement of CA 42 and as were to be 'evolved' by the House from time to time. This meant that the existing privileges were to continue. Until a House evolved its own privileges, reference to the privileges of the House of Commons was to continue to be made as 'existing' privileges. This means that though there was a verbal change in the relevant constitutional provisions, no change in effect was made.

There was one restriction placed on the State Legislatures in this respect, *viz.* A State Legislative Assembly was to evolve its privileges, "so far as may be", in accordance with those of the *Lok Sabha*; and the Legislative council was to evolve its privileges, "so far as may be", in accordance with those of the *Rajya Sabha.*

However, the word 'evolved' used in Arts. 105(3) and 194(3) was very vague and ambiguous. What would be the evidence of a privilege having been 'evolved' by a House? Over how long a period of time was a privilege to be claimed or exercised by a House before it could be regarded as having been evolved? Was a claim by a House or its Committee of Privileges to be sufficient to concede a privilege to it? Under the amended constitutional provisions, it was possible that each House could evolve its own distinct privileges and, thus, the various Houses of Parliament and of State Legislatures could come to have their own separate privileges. This would have made the situation as regards the law of legislative privileges very confusing. This was a far cry from codification of legislative privileges, the demand for which had been insistently made in the past.[76]

EXECUTIVE

CA 42 clarified that no change would be made in respect of the weightage of votes of members of the State Legislatures for presidential election after the census of 1971 until the first census was held after the year 2000.[77]

CA 42 barred the courts from requiring production of rules of business framed by the Central and State Governments under Arts. 77 and 166 respectively.[78] This was designed to adversely affect judicial review of administrative action to some extent. At times, the courts looked into these rules to ascertain whether the im-

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75. *Supra*, Chs. II, Sec. L(ii) and VI, Sec. H.
76. *Supra*, Chs. II, Sec. L(v) and VI, Sec. H(f).
77. *Supra*, Ch. III, Sec. A(i)(a).
78. *Supra*, Chs. III, Secs. B and E and VII, Sec. B.

pugned order was made by an officer having necessary authority under the Business Rules.

In some cases, courts had quashed administrative action when it was found to have been taken by an officer who did not have the requisite authority to do so.[79] CA 42 sought to bar any judicial probe into the question whether the officer making a decision had or had not the requisite authority to do so.

CA 42 amended Art. 74 to state explicitly that the President shall act in accordance with the advice of the Council of Ministers in the discharge of his functions.[80] In a way, this merely restated the position which already had been in existence,[81] and which the courts had already recognised in several cases. Therefore, by and large, the legal position had crystallised before CA 42 that the President was bound by the advice of the Council of Ministers.

It may be noted that no such provision was made by CA 42 as regards the State Governors. Thus, the position of Governors became sharply differentiated from that of the President. A Governor has certain discretionary functions to discharge in respect of which he is not bound by ministerial advice.[82]

JUDICIARY

Before the enactment of CA 42, India's judiciary was unified and the High Courts and the Supreme Court could adjudicate upon the constitutional validity of Central or State legislation without any differentiation.[83] This position was sought to be changed by CA 42 so that the question of constitutional validity of the Central law would fall exclusively within the purview of the Supreme Court, and that of the State law within the purview of the High Courts, though appeals from the High Courts to the Supreme Court were to continue to lie as usual. Thus, a new provision, Art. 32A, was added, after Art. 32, so as to deny to the Supreme Court power to consider the constitutional validity of a State law under Art. 32 unless the constitutional validity of a Central law was also in issue.[84] It meant that the question of constitutional validity of a State law *vis-a-vis* Fundamental Rights was to be raised before the High Court under Art. 226.[85]

Another new provision, Art. 131A, was added saying that henceforth only the Supreme Court, and no other court, would have exclusive jurisdiction to determine questions relating to the constitutional validity of a Central law. A High Court was obligated to refer to the Supreme Court all cases pending before it or the subordinate courts involving questions of constitutional validity of a Central law, or of a Central law and a State law. Besides, on the application of the Attorney-General, the Supreme Court could itself require a High Court to refer to it any case pending before it or a subordinate court involving questions of constitutional validity of a Central law, or of both Central and State laws.[86]

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79. *Fonseca (P) Ltd. v. L.C. Gupta,* AIR 1973 SC 563 : (1973) 1 SCC 480. Also, JAIN, *A TREATISE ON ADM. LAW*, II.
80. *Supra*, Ch. III, Sec. B(a).
81. For a discussion on the constitutional position of the President, see *supra,* Ch. III, Sec. B(a).
82. *Supra*, Ch. VII, Sec. C.
83. *Supra*, Chs. IV and VIII.
84. *Supra*, Ch. XXXIII, Sec. A.
85. *Supra*, Ch. VIII, Sec. D.
86. *Supra*, Ch. IV, for Art. 131, Sec. C(iii)(b).

Art. 226A, a new provision, declared that a High Court would not consider the constitutional validity of a Central law in any proceedings under Art. 226.[87]

Art. 131A extended the original jurisdiction of the Supreme Court because any matter involving constitutionality of a Central law was to be brought straight before the Supreme Court.[88]

Art. 228A declared that a High Court was not to have jurisdiction to declare any Central law to be constitutionally invalid. A High Court (subject to Art. 131A) could determine questions as to the constitutional validity of State laws. The change was justified on the ground that doubts about the constitutional validity of Central laws would now be disposed of expeditiously, and that if before a number of High Courts gave differing judgments as regards the validity of a Central law, its implementation became difficult and such a situation would now be avoided.

The fact however remained that demarcation of functions between the Supreme Court and the High Courts diluted, to some extent, the concept of a unified judiciary and introduced in India some elements of the U.S. model of dual judiciary.[89] However, it may be noted that all questions under the Central legislation, other than the question of its constitutionality, were to continue to be decided by the High Courts as before.

For the purposes of these Articles, 'Central law' meant any law other than a 'State law', but did not include any amendment of the Constitution under Art. 368. A 'State law' meant an Act of the State Legislature, Governor's ordinance, delegated legislation, any order having the force of law and any other law (including any usage or custom having the force of law) with respect to a matter in the State List.

New Articles, 144A and 228A, made further innovations in the area of judicial review of the constitutionality of legislation. Art. 144A required that the minimum number of Judges of the Supreme Court who would sit to decide a question of constitutional validity of a Central or State law was to be seven, and that a law was not to be declared to be constitutionally invalid by the Court unless a majority of not less than two-thirds of the Judges sitting to decide the matter held it to be so. Till now, a Bench of five Judges could decide such a question by a simple majority.[90]

In case of a High Court, under Art. 228A, the minimum number of Judges for deciding the constitutionality of a State law was to be five and the same two-thirds majority rule was to prevail there also.

These provisions were designed to make declaration of legislation constitutionally invalid very difficult for, in the Supreme Court, 5 out of 7 Judges, and in a High Court, 4 out of 5 Judges on the Bench must hold the law to be invalid. Hitherto, a law could be held invalid by a simple majority of Judges sitting on the Bench. Some of the most famous cases in the area of Indian Constitutional Law have been decided in the past by a closely divided court,[91] while there also

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87. *Supra*, Ch. VIII, Sec. D.
88. For original jurisdiction of the Supreme Court see, *supra*, Ch. IV, Sec. C(ii).
89. *Supra*, Chs. I, Sec. E(k) and IV, Sec. A.
90. *Supra*, Ch. IV, Sec. I(h).
91. For example, *Golak Nath and Kesavananda Bharati, supra*, Ch. XLI, Sec. D(c).

have been cases in which laws have been held invalid by a big majority.[1] The former type of decisions were no longer to be effective. This would have affected, to some extent, the character not only of Fundamental Rights but also of Indian Federalism as State laws challenged on the ground of trespassing into Central field could be held invalid with great difficulty. The rules regarding 2/3rd majority led to the absurd result that the effective decision making power was transferred to minority judges. In a Bench of 13 judges, 5 minority judges would have prevailed against the majority of eight judges holding the Act to be unconstitutional.

The rules made for a High Court having less than five Judges were very harsh. Here, all the Judges were to sit to consider the question of constitutional validity of a State law, and all the Judges were to hold it invalid. Thus, only a unanimous decision could hold the law to be constitutionally invalid in case of a High Court with less than five Judges.

However, other questions, apart from those of constitutionality of legislation, were not affected by Arts. 144A and 228A and were to continue to be decided as usual. One can see an anomaly in Arts. 144A and 228A insofar as while five Judges of a High Court could consider a question of constitutionality of a State law, in the Supreme Court, a bench of seven Judges had to sit for the same purpose.

HIGH COURTS

A few significant changes were introduced in the composition of the High Courts.

In future, it was to be possible to appoint a 'distinguished jurist' as a High Court Judge. Till CA 42, while there was such a provision in respect of the Supreme Court, there was no such provision for the High Courts.[2]

Further, it would now be possible to appoint as High Court Judges those advocates who had been members of tribunals, or had held government posts requiring special knowledge of law, for ten years. A defect in this provision was that this would have opened the way for appointment of government servants to high judicial posts in the country.

Another significant change made in the jurisdiction of the High Courts was the repeal of the *proviso* to Art. 225. The result of this was to re-impose on the original jurisdiction of the High Courts restriction regarding matters concerning revenue or acts done in collection thereof. This was to bring back the pre-1950 restriction on the original jurisdiction of the High Courts of Calcutta, Madras and Bombay which had been in abeyance for the last 25 years.[3] This indeed was a retrograde step taking things back to the pre-Constitution age.

A new provision, Art. 139A, provided that—

(*i*) if, on an application made by the Attorney-General, the Supreme Court was satisfied that cases involving substantially the same questions of law were pending before it and one or more High Courts, or

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1. For example, *The Bank Nationalisation* case, *supra*, Ch. XXXI, Sec. C(iii); *Romesh Thappar, supra*; *Brij Bhushan*; *Benett Coleman v. Union of India, supra*, Ch. XXIV, Sec. C(e).
2. *Supra*, Ch. IV, Sec. B(h).
3. *Supra*, Ch. VIII; JAIN, *INDIAN LEGAL HISTORY*, Ch. XIX.

before two or more High Courts, and if such questions were 'substantial questions of general importance,' then the Supreme Court could transfer those cases to itself;

(*ii*) the Supreme Court could transfer any case from one High Court to another if it deemed expedient to do so for the ends of justice. Art. 139A thus effected some diminution in the powers of the High Courts.

POWER TO ISSUE WRITS

A major change was brought about in the powers of the High Courts to issue writs under Art. 226.[4]

Prior to CA 42, a High Court could issue writs, under Art. 226, for 'enforcement of Fundamental Rights' or 'any other purpose'. While the power of the High Court to enforce Fundamental Rights remained untouched, several restrictions were imposed on its power to issue writs 'for any other purpose'.

The words "for any other purpose" now disappeared from new Art. 226, and the High Court's power to issue writs was spelled out in some detail. Henceforth, a High Court could issue a writ—

(i) for the redress of any *injury of a substantial nature* by reason of the contravention of any other provision of the Constitution, or an enactment or ordinance or any order, rule, regulation, bye-law or other instrument made thereunder; or

(ii) for the redress of *any injury* by reason of any *illegality* in any proceedings by or before any authority under any provision referred to in the above clause where such illegality has resulted in *substantial failure of justice*.

The new Art. 226 introduced two new concepts: "injury of a substantial nature" and "substantial failure of justice". The contours of these concepts were not clear. However, the question whether there was "injury of a substantial nature" or "substantial failure of justice" had to be decided in relation to the aggrieved person; "it must be looked at from the perspective and interests of the aggrieved person."

An injury might appear to some to be of insignificant nature, but the court had to examine whether the injury complained of by a person was substantial to him or not. Even a mere threat to take an action against a person could cause substantial injury to him, depending upon the circumstances of each case.[5] For example, the petitioner was superseded by another employee appointed in breach of statutory rules. The petitioner was held entitled to file a writ petition as he had suffered substantial injury.[6]

The concepts "injury of a substantial nature" or "substantial failure of justice" increased the discretionary element of the courts in the matter of giving a remedy. A court could refuse togive a remedy even if the administrative action was unlawful if it felt that no substantial injury or injustice had resulted.

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4. *Supra*, Ch. VIII, Sec. D.
5. *Ahmedabad Cotton Mfg. Co. v. Union of India*, AIR 1977 Guj 113; *Govt. of India v. National Tobacco Co.*, AIR 1977 AP 250.
6. *Harinath v. State of Bihar*, AIR 1977 Pat 305.

This created uncertainty. It made rule of law a matter of judicial discretion. A cleavage could appear in judicial opinion as to how the judicial discretion ought to be exercised in various factual situations. Another fundamental objection to the new formula was that it changed the principle of legality upon which the Indian Administrative law derived from the English common law was based.

Ordinarily, under (*i*) above, a writ could be issued against a breach of law (constitutional or statutory) or of any order, rule, regulation, bye-law or other instrument made under any provision of the Constitution or statute if there was substantial injury. The words 'other instrument' included schemes, warrants, licences *etc*. made under a constitutional or statutory provision.

The term "illegality in any proceedings" used in (*ii*) above included breach of a mandatory procedural norm. It also included denial of natural justice. There was no reason to interpret the word 'illegality' in this clause in a narrow sense.

Art. 226(3) barred a writ-petition if "any other remedy for such redress was provided for by or under any other law." This bar applied to a writ petition not for enforcement of a Fundamental Right but only in respect of one falling within the above two clauses.

The bar arose only if the 'remedy' was 'real', and not illusory, and was truly and really capable of giving to the aggrieved person similar redress as was contemplated by the above clauses. In the words of the Gujarat High Court commenting on this provision: "... 'any other remedy' has to be for the redress of the injury for which this writ jurisdiction is conferred and, therefore, it must be equally adequate or efficacious so that qualitatively or quantitatively the same relief would be given for redress of the injury to the petitioner."

The High Court also asserted that this alternative remedy could never be the general remedy of a civil suit under the C.P.C., and that where the order was a nullity (*e.g.* when it was *ultra vires*), the question of exhausting alternative remedy could hardly arise as the petitioner could straightaway seek remedy of judicial review.[7]

The Industrial Disputes Act provided a clear remedy for adjudication of labour disputes and, therefore, a writ petition would not lie for this purpose.[8] The Indian Registration Act provided a remedy against refusal of the sub-registrar to register a document. A writ petition was therefore not maintainable for the purpose.[9]

A High Court's power to issue an *interim* order (for enforcement of Fundamental Rights or otherwise) was very much restricted. Such an order (whether by way of injunction or stay or in any other manner) could not be made unless the copies of the petition along with supporting documents were furnished to the opposing party and an opportunity of being heard was given to it.

The High Court could however waive these requirements and issue an interim order as an 'exceptional measure' if it was satisfied, for reasons to be recorded in writing, that it was necessary to do so for preventing any loss being caused to the petitioner which could not be adequately compensated in money.

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7. *National Tobacco*, *supra*.
8. *Ibid*.
9. *Ramautar v. State of Bihar*, AIR 1977 Pat 295.

Such an order was to cease to have effect after 14 days unless the necessary formalities were fulfilled in the meantime and the High Court continued the order in operation.

No interim order could be issued if it was to have the effect of delaying any inquiry into a matter of public importance, or any inquiry into an offence punishable with imprisonment, or any action for the execution of any work or project of public utility, or the acquisition of any property for such execution, by government or any corporation owned or controlled by the government.

The avowed object of the changes effected in Art. 226 was to weaken judicial supervision of administrative action. The scope of new Art. 226 was uncertain as much would have depended on how the expressions 'injury of substantial nature' or 'substantial failure of justice' were interpreted by the courts. Then, if 'any remedy' was available, writ was not to be issued.

Hitherto, the Courts did follow the principle, a kind of self-imposed restriction, that if an 'alternative adequate remedy' was available, a writ would not be issued. But this was a flexible rule.[10]

The question under the new provision would be whether 'any remedy' meant 'an adequate remedy' or just any remedy. The answer to this question would have vitally affected the scope of writ jurisdiction of the High Courts. If the courts were to take the view that the existence of a remedy, howsoever inadequate or inefficacious it could be, would be a bar to the issue of writ, then effective relief in many situations of administrative maladministration could not be possible. However, the words 'any other remedy' were qualified by the words, 'for *such* redress'. This could be interpreted to mean that the remedy available must be effective to give *such* redress as he could get through the writ. This could mean an 'adequate' remedy and not 'any' remedy. The High Courts could have interpreted the new provision in the light of the pre-CA 42 case law on this point.

TRIBUNALS

Another retrograde innovation made by CA 42 was to withdraw 'tribunals' from Art. 227. This meant that the High Courts would no longer have superintendence over tribunals until the law provided for the same.[11]

However, CA 42 also opened the possibility for the proliferation of the tribunal system in the country. Under Art. 323A, Parliament was empowered to establish service tribunals. This matter has already been discussed earlier.[12]

Art. 323B empowered the appropriate legislature to provide, by law, for adjudication or trial by tribunals of any disputes and offences with respect to several matters mentioned therein. Art. 323B has already been discussed earlier.[13]

A notable feature of Art. 323B is that tribunals established under it can authorise to try certain categories of criminal offences and thus impose penal sanctions as distinguished from merely administrative sanctions. This is an innovation which raises several critical issues of which two may be mentioned here:

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10. *Supra*, Ch. VIII, Sec. D(g).
11. *Supra*, Ch. VIII, Sec. C(iv).
12. *Supra*, Ch. VIII, Sec. I.
13. *Supra*, Ch. VIII, Sec. I.

(*i*) in a criminal trial appraising of evidence against the accused and finding facts are very important for which legal training is necessary but the tribunals may not necessarily be manned by lawyers. This thus puts into back gear the trend of separating the executive from the judiciary.[14]

(*ii*) The tribunals do not follow the normal rules of evidence as contained in the Evidence Act. In criminal courts, an accused is presumed to be innocent till he is proved guilty beyond any reasonable doubt. It is not so in case of a tribunal which can convict a person on evidence which may not be of sufficient probative value for a court to convict.

> As the Supreme Court has observed: "A finding of fact recorded by the tribunal cannot be challenged on the ground that the relevant and material evidence adduced before the tribunal is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal."[15]

The legislature concerned can, if it so likes, free the tribunals established under Arts. 323A and 323B from judicial control except that exercised by the Supreme Court under Art. 136. Much of the success of the tribunal system will depend upon the legislation which may be passed, the type of people who are appointed to sit in these tribunals and the procedure prescribed for them. Although these tribunals can be freed from the control of the High Courts, it is suggested that the legislatures should not do so in every case, especially in case of tribunals imposing penal sanctions, for it will not be possible for many persons to go to the Supreme Court in appeal against tribunal decisions, and that may amount to a denial of justice to them.

The justification for introducing the tribunal system in India was stated as follows in the Statement of Objects and Reasons appended to the Bill:

> "To reduce the mounting arrears in High Courts and to secure the speedy disposal of service matters, revenue matters and certain other matters of special importance in the context of the socio economic development and progress, it is considered expedient to provide for administrative and other tribunals for dealing with such matters while preserving the jurisdiction of the Supreme Court in regard to such matters under article 136 of the Constitution".

It may be pointed out that in *L. Chandrakumar Kumar v. Union of India*,[16] Cl. 2(d) of Art. 323A and Cl. 2(d) of Art. 323B have been declared unconstitutional. These clauses authorised the exclusion of all judicial review of tribunal decisions except that under Art. 136.[17] The Supreme Court has ruled that the power of the High Court under Art. 226/227[18] and of the Supreme Court under Art. 32[19] being

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14. *Supra*, Ch. VIII, Sec. I.
15. *State of Andhra Pradesh v. C.V. Rao*, AIR 1975 SC 2151, 2155 : (1975) 2 SCC 557.
Aslo see, *supra*, Ch. VIII, Sec. D(i) and XXXIII, Sec. A on this point.
16. AIR 1997 SC 1125 : (1997) 3 SCC 261.
17. *Supra*, Ch. IV, Sec. D.
18. *Supra*, Ch. VIII, Secs. C(iv), D.
19. *Supra*, Ch. XXXIII, Sec. A.

"essential features" of the Constitution even an amendment of the Constitution could not abrogate the same.[20]

FEDERALISM

CA 42 introduced several notable changes in the area of Centre-State relationship, the inevitable thrust of which was to strengthen the Centre *vis-a-vis* the States in several respects, and, thus, to make Indian Federalism more centralised.[21]

Art. 257A, a new provision, enabled the Centre to deploy any armed force of the Union, or any other force under its control, for dealing with any grave situation of law and order in any State. Any such force had to act subject to the control and directions of the Centre and not of the concerned State Government.

This provision could be justified in the light of the difficulties described in the body of the book,[22] as well as under Art. 355,[23] which obligates the Centre to protect the States against internal disturbance.

Under Art. 257A, the Centre could act without the concurrence of the concerned State Government. However, the Law Minister gave an assurance in Parliament that the power under Art. 257A would be used only in 'exceptional' situations and in consultation with the concerned State Government.[24]

To give full effect to Art. 257A, a few changes were made in the relevant entries. The following new entry was added to the Union List:

> "2A. Deployment of any armed force of the Union or any other force subject to the control of the Union or any contingent or unit thereof in any State in aid of the civil power; powers, jurisdiction, privileges and liabilities of the members of such forces while on such deployment."[25]

Consequently, entry I in the State List,[26] was redrafted as follows:

> 1. "Public order but including the use of naval, military or air force or armed forces of the Union or of any other force subject to the control of the Union or of any contingent or unit thereof."

And, entry 2 in List II was redrafted as follows:[27]

> "2. Police (including railway and village police) subject to the provisions of entry 2A of List I."

The administration of justice below the High Courts has now been shifted from the exclusive State control to the concurrent area. Therefore, from entry 3, List II, the following words have been eliminated: "Administration of justice; constitution and organisation of all courts, except the Supreme Court and the High Court."

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20. *Supra*, Ch. XLI, Sec. F.
21. *Supra*, Chs. X-XVII.
22. *Supra*, Ch. XII.
23. *Supra*, Ch. XIII, Sec. C.
24. *Rajya Sabha Debates*, Nov. 10, 1976.
For this provision, see, *supra*, Ch. XIII, Sec. C; Ch. X, Sec. G(iii)(f).
25. *Supra*, Ch. X, Sec. D(a).
26. *Supra*, Ch. X, Sec. E(a).
27. *Supra*, Ch. X, Sec. E(a).

To achieve this objective, provision was made for the creation of an all-India judicial service.[28]

The following entries were eliminated from the State List[29]:

(12) Education;

(19) Forests;

(20) Protection of wild animals and birds; and

(29) Weights and measures.

These matters were placed in the Concurrent List.[30] The new entries in List III are:

(11A) Administration of justice : constitution and organisation of all courts, except the Supreme Court and the High Courts;

(17A) Forests;

(17B) Protection of wild animals and birds;

(20A) Population control and family planning;

(33A) Weights and measures except establishment of standards;

(25) Education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List I; vocational and technical training of labour.

The result of shifting the several entries from the State to the Concurrent List is to enable Parliament also to legislate in these areas along with the State Legislatures. The question of transferring 'education' to the Concurrent List had been before the country for quite some time.[31] Wild life, forests and family planning have been placed in the Concurrent List because increasing importance is going to be attached to these programmes in future. For this purpose, Art. 48A adds a new Directive Principle.[32]

EMERGENCY

Prior to CA 42, the President could declare emergency under Art. 352 throughout the country and not only in a part of the country. This lacuna was filled by suitably amending Art. 352.[33]

Another change made in Art. 352 was to authorise the President to vary proclamation of emergency. Hitherto, the President could revoke, but could not vary, a proclamation issued under Art. 352. The proclamation varying an earlier proclamation had to undergo the same process in Parliament (of being laid and approved) as a fresh proclamation under Art. 352.

Consequent upon the change in Art. 352, providing for proclamation of emergency in a part of the country, necessary changes were made in Arts. 353, 358

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28. *Supra*, Ch. XII, Sec. G; Ch. VIII; Sec. G(g).
Also, under Government Services, Ch. XXXVI.
29. *Supra*, Ch. X, Sec. E.
30. *Supra*, Ch. X, Secs. F(c), (e), (f).
31. *Supra*, Ch. X, Sec. G(iii)(d).
32. *Supra*, , Ch. XXXIV, under Directive Principles.
33. *Supra*, Ch. XIII, Sec. B.

and 359.[34] The purpose of these amendments was to clarify that when emergency operated in a part of India, necessary action (by way of legislation or executive action) could be taken in other parts of India as well in so far as the security of India was threatened by activities in or in relation to the area under emergency.

Slight changes were made in Arts. 356 and 357.[35] Before CA 42, the proclamation of emergency under Art. 356 in respect of a State needed parliamentary approval to operate at the end of every six months. This period was now extended to one year. Henceforth, presidential proclamation under Art. 356 was to come before Parliament for approval after a year and not six months.

Another change in Art. 357 ensured that the laws made for a State when it was under Art. 356 emergency was not to come to an end automatically after the emergency was over, but would continue in operation until the State Legislature made changes therein or repealed them.

FUNDAMENTAL RIGHTS

One significant change made by CA 42 was in Art. 31C. An attempt was made to give primacy to all Directive Principles over the Fundamental Rights. This aspect has already been discussed earlier.[36] The Supreme Court declared this amendment unconstitutional [37] and restricted the primacy of Directive Principles as was laid down in Amendment XXV[38] and upheld in *Kesavananda*.[39]

While no verbal changes were made by CA 42 in the text of the various Articles dealing with Fundamental Rights, certain changes were made with a view to dilute the over-all efficacy of these rights.

A new provision, Art. 31D, was added to enable Parliament to make a law to prevent or prohibit 'anti-national activities' or the formation of 'anti-national associations.' The expression 'anti-national activity' was defined broadly. An 'anti-national association' was also defined broadly. No such law was to be void on the ground that it was inconsistent with, or took away or abridged any of the rights conferred by Arts. 14, 19 or 31. The law under Art. 31D was to be made by Parliament. No such law could be made by a State Legislature.

Art. 31D threw a great responsibility on Parliament to see that a law to suppress anti-national activities had proper safeguards so that while such activities were duly suppressed, legitimate activities of individuals or groups were not unduly obstructed.

The expression 'anti-national activity' was to mean any action:

(*i*) which was intended to bring about, on any ground whatsoever, the cession or secession of a part of the Indian territory, or which incited any individual or association to bring about cession or secession;

(*ii*) which questioned or threatened or was intended to threaten or disrupt the sovereignty and integrity of India or the security of the state or the unity of the nation;

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34. *Supra*, Ch. XIII, Sec. B(b).
35. *Supra*, Ch. XIII, Sec. D.
36. *Supra*, Ch. XXXII, Sec. D.
37. *Supra*, Chs. XXXII, Sec. D(ii)(iii); XXXIV, Sec. C and XLI, Sec. E(a).
38. *Supra*, Chs. XXXII, XXXIV, Sec. E(a) and XLI; *supra*, this Chapter.
39. *Supra*, Ch. XLI, Sec. D(e).

(*iii*) which was intended to overthrow by force the government as by law established;

(*iv*) which was intended to create internal disturbance or disruption of public services;

(*v*) which was intended to threaten or disrupt harmony between different religious, racial, language or religious groups or castes or communities.

An 'anti-national association' meant an association:

(*i*) which had for its object any anti-national activity;

(*ii*) which encouraged or aided persons to undertake or engaged in any anti-national activity;

(*iii*) the members of which undertook or engaged in any anti-national activity.

The expression 'anti-national activity' was very broadly defined as was clear from such phrases as 'internal disturbance, 'disrupt harmony' between various groups, 'disruption of public services' *etc*. It was not only an activity which in fact resulted in any of the prohibited results but even an activity which was 'intended' to achieve such a result which was illegal.

In Art. 31D, the word used was 'law' and not 'reasonable law'. Thus, the courts could not adjudge the reasonableness of a law passed to prevent or prohibit anti-national activities or associations. Parliament could thus impose any restrictions it liked on the Fundamental Rights guaranteed by Arts. 14, 19 or 31 through a law made under Art. 31D. If Parliament were to confer an absolute discretion on the Executive to declare unlawful any association which, in its opinion, was engaged in an unlawful activity, the courts could not declare the law to be unreasonable or invalid.

The only role left for the courts under Art. 31D was to adjudicate whether or not a law enacted by Parliament fell within the scope of Art. 31D, for a law falling outside Art. 31D could not claim protection from Arts. 14, 19 or 31. But, in view of the extensive phraseology used in Art. 31D, it was doubtful whether any law could he held to fall outside the scope of Art. 31D.

It may be noted that the Unlawful Activities (Prevention) Act, 1967, seeks to bar an activity which is intended to bring about the secession of a part of the Indian territory or which disclaims or disputes the sovereignty and territorial integrity of India. The Criminal Law (Amendment) Act, 1972, makes illegal any activity inciting disharmony against any religious, racial, language or regional group or caste or community. Under these laws, an association could be declared unlawful if it has for its object the activities declared illegal.

Art. 31D added three more ingredients for declaring activities and associations unlawful which were not to be found in these Acts, *viz*.: (i) overthrowing the government by force; (ii) creating internal disturbance; (iii) disrupting public services. However, the significant point to note is that the two Acts enacted prior to Art. 31D are subject to the Fundamental Rights in Arts. 14, 19 and 31. Thus, under Art. 19(1)(c), the procedure to declare an association unlawful has to be

reasonable.[40] Consequently, under these Acts, the government order declaring an association unlawful is subject to review by a tribunal consisting of a High Court Judge and, under Art. 136, there could be an appeal to the Supreme Court from the tribunal.[41] But, now, under Art. 31D, the power of Parliament was to be free from any such restraints and safeguards.

During the course of parliamentary discussion at the time of enactment of Art. 31D, several members expressed apprehensions at the breadth of the provision, the possibility of misuse of power under it by the bureaucracy, and the possibility of Art. 31D being used to curb legitimate trade union activity, or the democratic activity of the common man, or formation of associations by the minorities. It was suggested that internal disturbance might be caused by a variety of causes but under Art. 31D any kind of internal disturbances might be termed as 'anti-national'. Who was to decide whether an internal disturbance was anti-national or not? It was therefore emphasized that there should be provisions for review by a tribunal or High Court of the question whether an association was engaged in anti-national activity or not. The Law Minister however assured the members that it was not the intention of the Government to prohibit legitimate trade union activity, or formation of associations by the minorities. He stated that Art. 31D only gave power to Parliament to make a law and the question of safeguards should be raised as and when Parliament proceeded to legislate under it. Art. 31D thus placed a great power in the hands of Parliament to affect the rights of the people.

DIRECTIVE PRINCIPLES

CA 42 added a few more Directive Principles, *viz.*, Art. 39A,[42] Art. 43A,[43] Art. 48A.[44]

Art. 39(*f*) was redrafted so as to widen the state obligation towards children.[45] Thus, the range of state obligations towards society had become more extensive through the new Directive Principles.

But a major change that was made by CA 42 was to give primacy to all Directive Principles over the Fundamental Rights contained in Arts. 14, 19 or 31.[46] To achieve this objective, Art. 31C was amended so as to say that no law giving effect to any of the Directive Principles was to be deemed to be void on the ground of its inconsistency with any of the rights conferred by Arts. 14, 19 or 31.[47]

By this amendment, the wheel had turned a full circle. The Directive Principles started as being subservient to the Fundamental Rights.[48] Now, some of the significant Fundamental Rights were made subservient to the Directive Principles.

This change was justified on the ground that the rights of the community must precede over the rights of the individual. But, as already stated, the Supreme

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40. *State of Madras v. Row*, *supra*, Ch. XXIV, Sec. F.
41. For Art. 136, see, *supra*, Ch. IV, Sec. E.
42. *Supra*, Ch. XXXIV, Sec. D(j).
43. *Supra*, Ch. XXXIV, Sec. D(o).
44. *Supra*, Ch. XXXIV, Sec. D(w).
45. *Supra*, Ch. XXXIV, Sec. D(h).
46. *Supra*, Chs. XXI, XXIV, XXXI, XXXII, XXXIV and XLI.
47. *Ibid*.
48. *Supra*, Ch. XXXIV, Sec. C.

Court refused to accept such a drastic change in the mutual relationship between the Directive Principles and the Fundamental Rights.[49]

However, Art. 37 was left untouched. This meant that the Directive Principles were not enforceable in any court.[50] Therefore, there is no legal way in which the state can be compelled to implement the Directive Principles and the sanction underlying these principles still remains mainly political. But, as has been discussed earlier,[51] in course of time, the Supreme Court by reading the Directive Principles along with the Fundamental Rights, has made the Directive Principles enforceable to a large extent.

FUNDAMENTAL DUTIES

CA 42 laid down fundamental duties of the Indian citizens.[52] A new article, Art. 51A, was added to the Constitution for this purpose.

GOVERNMENT SERVICES

Till 1976, under Art. 311(2), a government servant could not be dismissed, removed or reduced in rank without being given a reasonable opportunity of being heard at two stages :

first, at the time of inquiry into the charges against him;

secondly, when after the inquiry, it was proposed to impose any of the aforesaid punishments on him.[53]

CA 42 amended Art. 311(2) so as to eliminate the second stage. Thus, a government servant was denied the opportunity to make a representation at the second stage of inquiry against the punishment proposed to be imposed on him in a disciplinary proceeding.

Art. 312 was amended to enable Parliament to create an all-India judicial service.[54] This service was not to include any post inferior to that of a district judge.[55] The parliamentary law creating such a service could make necessary amendments in Arts. 233 to 237,[56] and such a law would not be regarded as an amendment of the Constitution for purposes of Art. 368. This is a consequence of transferring 'administration of justice' from the exclusive State control to the concurrent area.[57]

AMENDMENT OF THE CONSTITUTION

CA 42 made some modifications in Art. 368. Two new clauses, Arts. 368(4) and (5), were added to the Constitution.

Cl. (4) sought to provide that no amendment to the Constitution "shall be called in question in any Court on any ground". Cl. 5 declared "for removal of

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49. *Minerva Mills Ltd. v. Union of India*, AIR 1980 SC 1789 : (1980) 3 SCC 625; *supra*, Ch. XLI, Sec. E(a).
50. *Supra*, Ch. XXXIV, Sec. B.
51. *Supra*, Chs. XXVI, Sec. J and XXXIV, Sec. C.
52. *Supra*, Ch. XXXIV, Sec. E.
53. *Supra*, Ch. XXXV, Sec. G.
54. *Supra*, Chs. XII, Sec. G and XXXVI, Sec. B.
55. The term has been defined in Art. 236, *supra*, Ch. VIII, Sec. G.
56. *Supra*, Ch. VIII, Sec. G.
57. *Supra*, Ch. X, Sec. F.

doubts", that "there shall be no limitation on the constituent power of Parliament" to amend the Constitution.

These newly added clauses have made no difference to the stance of the Supreme Court that the basic features of the Constitution are inviolable by any constitutional amendment. This position has been reiterated by the Supreme Court in a number of cases after 1975. This matter has been discussed earlier.[58]

FORTY-THIRD AMENDMENT : 1977

The sixth general election to the Lok Sabha took place in March, 1977, after the emergency imposed in 1975 was revoked. As the Indian people were very angry at what had happened during the period of emergency, the Congress Party which had held power for the last nearly 30 years was defeated at the polls and the Janata Party won a decisive majority and formed the government.

The Janata Party had made an election pledge that it would repeal the 42nd Amendment and restore the *status quo ante*. The Constitution (Forty-Third Amendment) Act enacted in December, 1977, partially redeemed this pledge.

Although the Janata Government had the requisite majority in Lok Sabha to enact a constitutional amendment, it lacked the same in Rajya Sabha where the Congress Party still had the majority and, therefore, the Janata Government could not hope to have a constitutional amendment effectuated without the concurrence of the Congress Party. Therefore, only such amendments as were agreed upon between the Janata and the Congress Parties could be enacted.

The 42nd Amendment had inserted a number of provisions in the Constitution to curtail both directly and indirectly the jurisdiction of the Supreme Court and the High Courts to review the constitutionality of legislation. Some of these provisions were now repealed. These provisions were: Arts. 32A, 131A, 144A, 226A, 228A and 31D.[59]

Art. 32A barred the Supreme Court from considering the constitutional validity of any State law in proceedings for enforcement of Fundamental Rights. Art. 131A gave to the Supreme Court exclusive jurisdiction to decide the constitutional validity of a Central law. Art. 144A required a bench of seven Judges in the Supreme Court to consider the Constitutional validity of a law, and also required a special majority of two-thirds for the invalidation of such law. Art. 226A barred the High Courts from considering the constitutional validity of a Central law in their writ jurisdiction. Art. 228A barred the High Courts from declaring a Central law to be constitutionally invalid and also required a bench of at least five Judges and a special majority of two-thirds to hold a state law invalid.

The reasons given for repealing these provisions were as follows.[60] Arts. 32A, 131A and 228A caused hardship to persons living in distant parts of India. Art. 32A would lead to multiplicity of proceedings for the cases relating to the validity of a State law must now be heard first by a High Court and then come before the Supreme Court by way of appeal. The rule requiring a special bench to consider the constitutional validity of a law resulted in valuable judicial time being

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58. *Supra*, Ch. XLI, Sec. F.
59. *Supra*, 1957 *et seq*.
60. See the Statement of Objects and Reasons appended to the Bill.

lost for such a bench must be constituted however unsubstantial the challenge to a law might be.

The Supreme Court itself in *Misrilal Jain v. State of Orissa*[61] had taken occasion to comment adversely on Art. 144A and expressed the hope that Art. 144A would be amended by Parliament so as to leave to the Court itself the duty to decide how large a bench should sit to consider any particular case.

Art. 31D empowered Parliament to enact certain laws in respect of anti-national activities and associations. These powers were of a sweeping nature and were capable of abuse, and so Art. 31D was repealed.[62]

FORTY-FOURTH AMENDMENT : 1978

The 42nd Amendment undertaken during the emergency (1975-77) had been the most controversial amendment in the whole Indian Constitutional History. It had a number of obnoxious features, and had introduced a number of distortions in the Constitution; it was regarded as an attempt to institutionalize emergency in the country for ever.

One of its most debatable features was to curtail the power of the High Courts and the Supreme Court to review legislation and give redress to the individual against administrative excesses. Another feature was dilution of Fundamental Rights. Also, the Central powers *vis-a-vis* those of the States were increased and Art. 368 was sought to be amended to make Parliament's amending power beyond judicial review. There was so much public sentiment against the 42nd Amendment that one of the election issues in the sixth general election was the repeal of the 42nd Amendment. The Janata Party won the election and it redeemed its pledge by enacting the 43rd and the 44th Amendments to the Constitution to undo most of the provisions of the 42nd Amendment.

The Constitution (Forty-Fourth Amendment) Act, passed in 1978, removed most of the aberrations and distortions introduced into the Constitution by the Forty-Second Amendment of the Constitution.[63] Not only this, the 44th Amendment also sought to amend a few other provisions of the Constitution so as to achieve the following major objectives:[64]

(i) to ensure that Fundamental Rights were not restricted or taken away by a transient majority in Parliament, it was necessary to provide adequate safeguards against 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 were to live;

(ii) to take the controversial property right out of the category of Fundamental Rights and make it an ordinary legal right;

(iii) to ensure that the power to proclaim an emergency under Art. 352, which virtually has the effect of amending the Constitution by converting it to a unitary state and suspending the right of the citizen to

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61. AIR 1977 SC 686.
62. For comments on Art. 31D see, *supra*, 2400-2402.
63. *Supra*, 2386-2404.
64. The Statement of Objects and Reasons annexed to the Bill.

enforce Fundamental Rights,[65] was used properly and after due consideration and deliberation and was not misused for personal or partisan ends;

(iv) to ensure that the fundamental and basic features of the Constitution were not lightly interfered with by Parliament in exercise of its power of constitutional amendment under Art. 368.

The salient features of CA 44 are as follows.

PARLIAMENT AND STATE LEGISLATURES

(*i*) CA 42 had extended the life of Lok Sabha and State Legislative Assemblies from five to six years. CA 44 reduced the term again to five years and, thus, restored the *status quo ante*.[66]

(*ii*) *Status quo* was also restored in respect of the quorum in the Houses of Parliament as well as the State Legislatures. CA 42 had reduced the question of quorum from a substantive to a merely procedural matter.[67] Changes made in this area by CA 42 were cancelled and the original Articles 100(3) and (4) and 189(3) and (4) were restored by CA 44.[68]

(*iii*) CA 42 had amended Art. 103 as regards the procedure to decide the question of disqualification of a member of Parliament.[69] CA 44 amended Art. 103 again so as to restore the position to what it was before the passage of CA 42. Henceforth, the question of disqualification of a member of a House of Parliament is to be decided by the President in accordance with the opinion of the Election Commission.[70]

A similar change was introduced in the case of the members of the State Legislatures. Henceforth, the question of disqualification of a member of a State Legislature is to be decided by the Governor in accordance with the opinion of the Election Commission.[71]

(*iv*) CA 44 added a new Article 361A to the Constitution so as to ensure that no one was held liable to any civil or criminal proceedings in a court in respect of the publication in a newspaper of a substantially true report of any proceedings of either House of Parliament or a State Legislature unless the publication was proved to have been made with malice. This immunity would not apply to publication of any report of the secret proceedings of a House. The same immunity would also apply to broadcasts or wireless.[72]

To begin with, this immunity was given under a law of Parliament in respect of publication of parliamentary proceedings.[73] During the 1975 emergency, this

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65. In the discussion which follows, the following abbreviations have been used : CA 42 for the Forty-Second Amendment Act; CB 45 for the Forty-Fifth Amendment Bill and CA 44 for the Constitution (Forty-Fourth Amendment) Act, 1978.
66. *Supra*, also see, Chs. II, Sec. I(c) and VI, Sec. (d) *supra*.
67. *Supra*, 2388.
68. *Supra*, Chs. II, Sec. I(c) and VII, *supra*.
69. *Supra*, Ch. II, Sec. G(d), Ch. VI, Sec. C(d).
70. *Supra*, Ch. II, Sec. D(d).
71. *Supra*, Ch. VI, Sec. B(iii)(b).
72. *Supra*, Ch. II, Sec. L(i)(b).
73. The Parliamentary Proceedings (Protection of Publication) Act, 1956.

law was repealed, but was re-enacted after the emergency.[74] Art. 361A put the immunity on a firmer foundation. It also extended the same immunity to publication of proceedings of a State Legislature.

(*v*) Art. 102(1)(*a*) regarding "office of profit" as it stood originally prior to CA 42 has been restored.[75] The change made therein by CA 42 taking away from the courts the power to declare what was an "office of profit" was cancelled by CA 44.[76] The courts get back the power to decide whether an office is an "office of profit." A similar change was made as regards the State Legislatures.[77]

(*vi*) Arts. 105 and 194 dealing with the privileges of Parliament and of the State Legislatures[78] had been amended by CA 42 so as to drop partially the reference to the House of Commons.[79] CA 44, in the first place, cancelled the amendments made by CA 42 and then amended Articles 105(3) and 194(3) so as to drop completely any reference to the House of Commons in future. The privileges enjoyed by a House of Parliament or State Legislature, or any of its committees of members, would henceforth be the same as existing immediately before the coming into force of CA 44.[80]

EXECUTIVE

(*i*) CA 39 had deprived the Supreme Court of its jurisdiction to decide disputes concerning election of the President and the Vice-President.[81] CA 44 cancelled this amendment and restored to the Supreme Court its original jurisdiction in this respect.[82] CA 44 thus restored the *status quo* obtaining before CA 39.

(*ii*) CA 42 had amended Art. 74 so as to make ministerial advice binding on the President.[83] The President was left with no option except to act in accordance with the ministerial advice. This provision was not changed by CA 44, but to somewhat relax the rigours of this provision, a new *proviso* was added to Art. 74(1) saying that the President could require the Council of Ministers to reconsider its advice given to him, either generally or otherwise, and the President should act in accordance with the advice tendered after such reconsideration. This means that while the President remains bound by ministerial advice, he now gets a limited right to refer the matter back to the Council of Ministers for reconsideration. The provision supplements Art. 78(*c*).[84]

(*iii*) CA 42 barred the courts requiring production of Business Rules made by the Central or a State Government.[85] For this purpose, clause (4) was added to Arts. 77 and 166 of the Constitution. CA 44 repealed the new clause (4) and thus enabled the courts to require the government to produce its Rules of Business, if

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74. The Parliamentary Proceedings (Protection of Publication) Act, 1977.
75. *Supra*, Ch. II, Sec. D(a).
76. *Ibid*.
77. *Supra*, Ch. VI, Sec. B(iii)(a).
78. *Supra*, Chs. II, Sec. L and VI, Sec. H.
79. *Supra*, 2389-2390.
80. *Supra*, Chs. II, Sec. L and IV, Sec. H.
81. *Supra*, 2384.
82. *Supra*, Ch. III, Sec. A(i)(b).
83. *Supra*, 2390.
84. *Supra*, Ch. III, Sec. B.
85. *Supra*, 2390.

necessary, to decide a controversy before them as they could do prior to the enactment of CA 42.[86]

(*iv*) CA 38 had added clause (4) to Articles 132 and 213 so as to make the satisfaction of the President or the Governor to issue ordinances "final and conclusive"[87] CA 44 now repealed the clause. Thus, the position as existing prior to CA38 in this respect was restored.[88] In this way, the discretion/satisfaction of the President/Governor to issue an ordinance was made open to judicial review.

(*v*) Art. 239B(4) added by CA 38 declaring satisfaction of the Administrator of a Union Territory to issue Ordinances "final and conclusive" was also withdrawn by CA 44.[89]

HIGH COURTS AND THE SUPREME COURT

(*i*) CA 42 had added Art. 139A so as to enable the Supreme Court, in certain circumstances, to withdraw cases from the High Courts and decide them itself.[90] CA44 continued this provision subject to some modifications. Previously, the Court could do so only on the application of the Attorney-General. Now, CA 44 enabled the Court to do so additionally either *suo motu* or on the application of a party to any such case.

The Supreme Court would decide the question of law involved in the case withdrawn and thereafter would send the case back to the High Court concerned for disposal.[91]

(ii) CA 44 inserted a new Article 134A and made consequential verbal changes in Arts. 132, 133 and 134(1)(c).

The underlying purpose of these amendments was to cut down any element of delay in the Supreme Court hearing appeals from the High Courts.[92] Art. 134A laid down the procedure for the grant of certificate of fitness by the High Courts for appeal to the Supreme Court. Art. 134A makes it obligatory on the High Court to consider the question of granting certificate immediately on the delivery of the judgement.

(iii) Formerly there was Art. 132(2) authorising the Supreme Court to grant special leave to appeal if the High Court refused to grant the necessary certificate. CA 44 repealed Art. 132(2) as, in such a case, the Supreme Court could consider grant of special leave to appeal under Art. 136.[93]

(*iv*) CA 42 had made provision for appointment of distinguished jurists as Judges of the High Courts.[94] This provision was repealed by CA 44.

(*v*) CA 42 had amended Art. 225 so as to re-impose on the original jurisdiction of the High Courts restrictions regarding matters concerning revenue or acts done

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86. *Supra*, Chs. III, Sec. E and VII, Sec. B.
87. *Supra*, 2383.
88. *Supra*, Chs. III, Sec. D(ii)(d) and VII, Sec. D(ii)(c).
89. *Supra*, Ch. IX, Sec. A.
90. *Supra*, 2394.
91. *Supra*, Ch. VIII.
92. *Supra*, Ch. IV, Sec. I(a).
93. *Supra*, Ch. IV, Sec. E.
94. *Supra*, Ch. VIII, Sec. B(e).

in collection thereof.[1] CA 44 again amended Art. 225 so as to remove this bar on the High Courts' original jurisdiction. Thus, the position as it obtained prior to CA 42 has been restored in this respect.[2]

(*vi*) CA 42 had brought about a major change in the jurisdiction of the High Courts to issue writs under Art. 226.[3] The avowed purpose of this change was to curtail the writ jurisdiction of these courts and to curtail judicial review of administrative action. This constituted a serious encroachment of individual's right to seek redress against the administration in case he was adversely affected by its action.

CA 44 amended Art. 226 again so as to restore the position as it obtained prior to CA 42.[4]

(*vii*) The provisions as to the issue of interim orders introduced by CA 42 in Art. 226 were also repealed. Instead, a simple new provision, Art. 226(3), was introduced. It seeks to provide that where an interim order is passed against a party without giving him an opportunity of being heard, that party may apply to the Court for the vacation of such an order and that such an application should be disposed of by the High Court within two weeks. If not so disposed of, the *interim* order will lapse automatically after two weeks.[5]

(*viii*) CA 42 had amended Art. 227 so as to divest the High Courts of their power of superintendence over the tribunals. [6] Art. 227 was amended again by CA 44 so as to restore it to the form in which it stood prior to CA 42. [7] The High Courts thus got back their power of superintendence over the tribunals existing within their territorial jurisdiction.

FEDERALISM

Art. 257A was omitted.[8]

EMERGENCY

Art. 352 was amended by CA 44 so as to introduce a number of safeguards therein against abuse of power regarding proclamation of emergency.[9] The idea underlying these amendments was to make practically impossible the repetition of the 1975 situation when an emergency was declared without adequate cause on the ground of "internal disturbance".[10] These amendments made in Art. 352 have been mentioned earlier.[11]

(*i*) Clause 5 of Art. 352, which had been inserted by CA 38,[12] and which made the 'satisfaction' of the President as to the existence of a grave emergency neces-

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1. *Supra*, 2393.
2. *Supra*, Ch. VIII, Sec. C(ii).
3. *Supra*, 2394-2396.
4. *Supra*, Ch. VIII, Sec. D.
5. *Supra*, Ch. VIII, Sec. D(r).
6. *Supra*, 2396.
7. *Supra*, Ch. VIII, Sec. C(iv).
8. *Supra*, Ch. X.
9. *Supra*, Ch. XIII, Sec. B.
10. The Shah Commission held that there was no evidence of circumstances which could warrant the declaration of an emergency in 1975. There was no unusual event or even a tendency in that direction to justify the imposition of emergency. There was no threat to the well-being of the nation from sources external or internal.
11. *Supra*, Ch. XIII, Sec. B.
12. *Supra*, 2383.

sitating the issue of a proclamation of emergency 'final', was withdrawn by CA 44.

(*ii*) As a further check against misuse of the emergency provisions, and to put the right to life and liberty on a secure footing, Art. 359[13] was now amended so as to provide that the presidential power to suspend the right to move the court for the enforcement of a Fundamental Right cannot be exercised in respect of the Fundamental Rights guaranteed by Arts. 20 and 21.[14] Thus, it will no longer be possible to suspend the right to life and personal liberty guaranteed by Art. 21, and the right to protection in respect of conviction for offences guaranteed by Art. 20.

This amendment will obviate in future the situation which arose in the *Shukla* case.[15]

Making Art. 20 inviolate during an emergency means that the government could not harass people during an emergency by making acts punishable retroactively.[16]

It has also been provided further that the suspension of the enforcement of any Fundamental Right under Art. 359 shall not apply in relation 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 to any executive action taken otherwise than under a law containing such a recital. Thus, law other than those passed for the specific purpose of the emergency will no longer be protected by the presidential order issued under Art. 359.[17]

(*iii*) The scope of Art. 358 was also restricted.[18]

First, under Art. 358, Art. 19 can be suspended in future only in case of a proclamation of emergency issued on the ground of war or external aggression, and not in the case of a proclamation of emergency issued on the ground of armed rebellion.

Secondly, a new clause has been added to Art. 358 laying down that Art. 358 will not apply to any law which does not contain a recital saying that it is a law in relation to the proclamation of emergency in operation when it is made, or to any executive action taken otherwise than under a law containing such a recital. This makes it clear that only a law enacted in relation to the emergency, but no other law, would be immune from being challenged under Art. 358 during an emergency.

(*iv*) Changes were made in Art. 356 so as to make its scope somewhat restrictive.[19] Henceforth, the proclamation would remain in force for six months (instead of one year)[20] from the date of its approval by the Houses of Parliament. This change restored the position as it obtained prior to CA 42.

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13. *Supra*, Ch. XIII, Sec. B(b).
14. *Supra*, Chs. XXV and XXVI.
15. *Supra*, Ch. XXXIII, Sec. F.
16. *Supra*, Ch. XXV, Sec. A.
17. *Supra*, Ch. XIII, Sec. B(b).
18. *Ibid.*
19. *Supra*, Ch. XIII, Sec. E.
20. The period of one year was substituted for six months by CA42, *supra*, 2399.

Art. 356(5) added by CA 38 making satisfaction of the President under Art. 356(1) 'final and conclusive' was now withdrawn.[21] Instead, a new clause was added imposing certain conditions on the Parliament seeking to pass a resolution approving continuance of the emergency beyond one year.[22]

(*v*) Art. 360 concerning financial emergency was also amended so as to include some more safeguards therein. For this purpose, Art. 360(2) was replaced by a new clause. The new Art. 360(2) has been mentioned earlier.[23]

Further, Art. 360(5), which was inserted by CA 38, and which made presidential 'satisfaction' as to the matter mentioned in Art. 360(1) 'final and conclusive', was dropped.[24]

PREVENTIVE DETENTION

Art. 22 containing provisions regarding preventive detention[25] was amended so as to introduce a few more safeguards therein as follows:

(*i*) The maximum period for which a person may be detained without obtaining the opinion of the advisory board has been reduced from 3 to 2 months. In all cases of preventive detention beyond two months, advisory board is to be consulted. There will be no preventive detention beyond two months unless the advisory board reports that there is in its opinion sufficient cause for such detention.

(*ii*) In future, an advisory board is to consist of a chairman and not less than two other members, the chairman being a serving Judge of the appropriate High Court and the other two members being the serving or retired High Court Judges.

The board is to be constituted in accordance with the recommendations of the Chief Justice of the appropriate High Court. These changes in the composition of the advisory board are designed to make it independent of the executive so that it may be able to look at a case of preventive detention objectively.

(*iii*) No person is to be kept in preventive detention beyond the maximum period prescribed by any law made by Parliament.

These changes have not yet been notified and so have not been effectuated so far. The old Art. 22 still operates. Reference may be made in this connection to *A.K. Roy v. India*, mentioned earlier.[26]

FUNDAMENTAL RIGHTS

CA 44 removed the right to property from the category of Fundamental Rights and made it a right which can be regulated by ordinary law.[27] With a view to achieve this objective, the following changes were introduced in the Constitution.

(*i*) Art. 19(1)(f) was deleted.[28]

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21. *Supra*, 2383.
22. *Supra*, Ch. XIII, Secs. D and E.
23. *Supra*, Ch. XIII, Sec. F.
24. *Infra.*
25. *Supra*, Ch. XXVII, Sec. B.
26. *Supra*, Chs. XXVII, Sec. B and XLI, Sec. E(e).
27. *Supra*, Chs. XXXI and XXXII.
28. *Supra*, Ch. XXXI, Sec. B.

(*ii*) Art. 31 was omitted.[29]

(*iii*) Art. 31(1) became Art. 300A saying that no person shall be deprived of his property save by authority of law.[30]

(*iv*) The safeguard contained in Art. 31(2) relating to acquisition of property of an educational institution established and administered by a minority is now sought to be incorporated in Art. 30. Thus, a new clause (1A) has been added after Art. 30(1).[31]

Art. 31D was repealed by CA 44.[32]

DIRECTIVE PRINCIPLES

A new Directive Principle was inserted by adding a new clause to Art. 38 to the effect that the state shall strive to minimise inequalities in income and endeavour to eliminate inequalities in status, facilities and opportunities not only amongst individuals but groups of people residing in different areas or engaged in different vocations.[33]

ELECTIONS

Art. 329A inserted by CA 39 making special provisions regarding elections to Parliament of the Prime Minister and the Speaker was now omitted.[34]

CONCLUDING REMARKS

CA 44 thus negatived most of the distortions introduced into the Constitution by CA 42. However, CA 44 did not go so far as CB 45[35] ("the Bill which on enactment became CA 44) proposed to go.

CB 45 contained a few more significant provisions but which were absent from CA 44. The reason was this: the Janata Government had a large majority in the Lok Sabha but it was in a minority in the Rajya Sabha. While the Lok Sabha passed CB 45 as a whole, a few clauses had to be omitted therefrom in the Rajya Sabha which were voted down by the Congress Party. The following provisions in CB 45 were finally dropped before CA 44 could be passed by the two Houses.

(*i*) CA 42 had introduced into the Preamble to the Constitution the terms 'secular' and 'socialist' without however defining or explaining the significance of these terms. [36]

CB45 sought to define these two terms. "Secular republic" was defined to mean a "republic in which there is equal respect for all religions". "Socialist republic" was to mean "a republic in which there is freedom from all forms of exploitation, social, political and economic". This definition clause did not appear in CA 44.

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29. *Supra*, Ch. XXXI, Sec. C.
30. For comments on Art. 300A, see, *supra*, Ch. XXXII, Sec. E.
31. *Supra*, Ch. XXX, Sec. C(k).
32. For Art. 31D see, *supra*.
33. *Supra*, Ch. XXXIV, Sec. D(b).
34. *Supra*, 2384-2386.
35. The Constitution (Forty-fifth) Amendment Bill.
36. On preamble to the Constitutions, *supra*, Chs. I, Sec. E(c) and XXXIV, Sec. A.

(*ii*) CA 42 had added two new Articles 323A and 323B for purposes of establishing some new tribunals in India.[37] CB45 proposed to eliminate the new Articles, but this proposal did not succeed in the Rajya Sabha with the result that Arts. 323A and 323B continue to stay in the Constitution.[38]

(*iii*) CA 42 had introduced a number of changes in the area of federalism in the Constitution, the inevitable result of which was to tilt the balance somewhat in favour of the Centre. For example, Education and Forests were transferred from the State List to the Concurrent List.[39] CB45 sought to restore the *status quo ante* by retransferring these two entries back to the State List, but the proposal failed in the Rajya Sabha.[40]

(*iv*) CB 45 sought to amend Art. 31C so as to restrict its scope to what it was before CA 42.[41] It was thus proposed that in future only a law effectuating the policy of the state towards securing Art. 39(*b*) and (*c*) would be subservient to Arts. 14 and 19. However, the Rajya Sabha did not accept this proposal. Art. 31C stays in the Constitution as amended by CA 42. Ultimately, the Supreme Court restricted the scope of Art. 31C to what it was prior to the enactment of CA 42.[42]

(*v*) CB 45 sought to eliminate the last portion of Art. 31C, *viz*. "no law containing a declaration that it is for giving effect to such policy shall be called into question in any court on the ground that it does not give effect to such policy."[43] The clause had been declared unconstitutional by the Supreme Court in *Kesavananda Bharati*.[44] This proposal did not get through in the *Rajya Sabha*. But the clause cannot be effective in view of the Supreme Court's ruling in *Kesavananda.*

(*vi*) Finally, the proposal made in CB 45 to introduce referendum as a part of the constitutent process failed in the *Rajya Sabha*. This has already been explained earlier.[45]

The proposal was that changes in the Constitution impairing its democratic or secular 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 51% of the electorate participate. The proposal fell because of the opposition of the Congress Party.

FORTY-FIFTH AMENDMENT : 1980

The Constitution (Forty-Fifth) Amendment Act, 1980, was enacted with the purpose of continuing reservation of seats for Scheduled Castes and Scheduled Tribes in the Lok Sabha and the State Assemblies for another ten years. Accord-

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37. *Supra*, 2396.
38. *Supra*, Ch. VIII, Sec. I.
39. *Supra*, 2398-2399.
40. *Supra*, Ch. X, Sec. E.
41. *Supra*, Ch. XXXII, Sec. D.
42. See, *supra*, Ch. XLI., Sec. E(a), *Minerva Mills.*
43. *Supra*, Ch. XXXII, Sec. D(ii) and (iii).
44. *Supra*, Ch. XLI, Sec. D(e).
45. *Supra*, Ch. XLI, Sec. E(f).

ingly, in Art. 334, for the words "thirty years", the words "forty years" were substituted.

The same concession was extended to the Anglo-Indians who could have representation by nomination in these chambers.

Thus, reservation for these classes in Parliament and State Legislatures was extended upto the year 1990.[46]

FORTY-SIXTH AMENDMENT : 1982

Before the enactment of this Amendment, tax on the mere consignment of goods in the course of interstate trade and commerce fell outside entry 54, List II. The matter thus fell outside the legislative competence of the States, but fell within the area of legislative competence of the Centre because of Art. 248 and the residuary Entry 97, List I.[47]

The Constitution (Forty-sixth Amendment) Act was passed in 1982. This Amendment was designed to improve the financial position of the States. The purpose of the Amendment was to enable Parliament to levy and collect tax on the consignment of goods taking place in the course of inter-State trade or commerce. The proceeds of the tax so levied were to be assigned to the States. The new tax was complimentary to the tax on inter-State sales.

Accordingly, to achieve the purpose, a new Entry 92B was added to List I in the Seventh Schedule; Art. 269 and the Union List were amended and Art. 366 was amended by adding a clause (29A) after clause (29) to expand and clarify the meaning of the phrase "tax on the sale or purchase of goods".[48]

As a result of these amendments, the field of taxation on the consignments in course of inter-state trade and commerce falls within the legislative competence of Parliament.

The Amendment also empowers the States to levy a tax on the supply of food and drink.[49]

Many controversies had arisen in connection with the levy of sales tax by the States. For example, hire-purchase transactions could not be subject to sales tax as there was no transfer of property in goods. The idea underlying the Forty-Sixth Amendment was to put an end to all these controversies by defining the expression "tax on sale or purchase of goods" in a comprehensive manner.

The Amendment was undertaken on the basis of the recommendations made by the Law Commission in its 61st report. The whole matter has been explained earlier.[50] The Commission had pointed out that the provisions of the existing Central Sales Tax Act were insufficient to tax the consignment transfers from one branch to another as it was not a sale.

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46. *Supra*, Chs. II, Sec. C; VI, Sec. B(ii) and XXXV, Secs. B, C, D.
47. *Supra*, Ch. XI, Sec. C.
48. *Ibid*, Sec. K(i).
49. *K. Damodarasamy Naidu & Sons v. State of Tamil Nadu*, (2000) 1 SCC 521 : AIR 1999 SC 3909.
50. *Supra*, Ch. XI, Sec. J.

FORTY-SEVENTH AMENDMENT : 1984

The Constitution (Forty-seventh Amendment) Act was passed in 1984. This Amendment adds 14 State Acts dealing with land to the IX Schedule.[51]

FORTY-EIGHTH AMENDMENT : 1984

The Constitution (Forty-eighth Amendment) Act was passed in 1984. It dealt with the situation prevailing in Punjab at the time.

The purpose of the Amendment was to extend the President's rule under Art. 356 in Punjab to two years. The proclamation under Art. 356 was issued by the President on the 6th October, 1983. Under Art. 356(5), President's rule could last in a State for a maximum period of one year.[52] But the conditions in Punjab were not conducive to holding of fresh elections and, accordingly, extension of the President's rule became imperative. Art. 356(5) was accordingly amended to make this possible.

FORTY-NINTH AMENDMENT : 1984

The Constitution (Forty-ninth Amendment) Act was passed in 1984. The purpose of this Amendment is to take out the Tribal areas of Tripura from Schedule V and put them in Schedule VI.[53]

FIFTIETH AMENDMENT : 1984

The Constitution (Fiftieth Amendment) Act, was passed in 1984. This Amendment
substitutes an expanded Art. 33 for the old Article.

The old Art. 33 applied only to the members of the armed forces or the forces charged with the maintenance of public order. The new Article 33 applies to two more categories of services.

By the new Art. 33, Parliament is authorised to curtail the Fundamental Rights of the members of the armed forces, forces charged with the maintenance of public order, intelligence organisations, or telecommunication systems set up for any force or intelligence bureau, with a view to ensure the proper discharge of duties by, and maintenance of discipline among, these persons in the interest of country's security.[54]

FIFTY-FIRST AMENDMENT : 1984

The Constitution (Fifty-first Amendment) Act, 1984, effectuates some changes in Arts. 330 and 332 with a view to provide for reservation of seats in the Lok Sabha for Scheduled Tribes in Meghalaya, Arunachal Pradesh, Nagaland and Mizoram, as well as in the Legislative Assemblies of Nagaland and Meghalaya.[55]

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51. *Supra*, Ch. XXXII, Sec. C.
52. *Supra*, Ch. XIII, Sec. D.
53. *Supra*, Ch. IX, Sec. C.
54. *Supra*, Ch. XXXIII, Sec. E.
55. *Supra*, Ch. IX.
Also see, *supra*, Ch. XXXV, for Arts. 330 and 332.

The Amendment was undertaken to satisfy the aspirations of the local tribal population. Even though these States are predominantly tribal areas, the purpose of the Fifty-first Amendment is to ensure that the members of the Scheduled Tribes in these areas do not fail to secure a minimal representation because of their inability to compete with the advanced sections of the society.

FIFTY-SECOND AMENDMENT : 1985

The Constitution (Fifty-second Amendment) Act, passed in 1985, popularly known as the 'Anti-Defection' Law, is designed to prevent the scourge of defection of members of Parliament and State Legislatures from one political party to another, and destabilizing governments in the process.[56]

It was stated in the Statement of Objects and Reasons: "The evil of political defections has been a matter of national concern. If it is not combated, it is likely to undermine the very foundations of our democracy and the principles which sustain it."

In Art. 102, which lays down disqualifications for membership of Parliament,[57] the following new clause has been added:

"A person shall be disqualified for being a member of either House of Parliament if he is so disqualified under the Tenth Schedule."

A similar clause has been added to Art. 191 which lays down disqualifications for membership of the Houses of State Legislature.[58]

A new Schedule (X Schedule) has been added to the Constitution containing the following provisions:

(*i*) A member of a House belonging to any political party becomes disqualified for being a member of the House—

(a) if he voluntarily gives up his membership of such political party; or

(b) if he votes or abstains from voting in such House contrary to any direction issued by the political party to which he belongs without obtaining prior permission of such party, and such act has not been condoned by the concerned political party within 15 days from the date of such voting.

(*ii*) An elected member of a House belongs to the political party by which he was set up as a candidate for election. An independent member of a House (elected without being set up as a candidate by any political party) shall become disqualified to remain a member of the House if he joins any political party.

(*iii*) The disqualification on the ground of defection does not apply when there is a split in the concerned political party and he belongs to a faction arising out of such split and such group consists of not less than 1/3 members of the party.

(*iv*) Similarly, no disqualification arises when his party merges with another political party.

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56. *Supra*, Ch. II, Sec. F; Ch. VI, Sec. B(iv).
57. *Ibid;* Ch. II, Sec. D.
58. *Supra*, Ch. VI, Sec. B(iii).

(*v*) Any question regarding disqualification arising out of defection is to be decided by the Chairman or the Speaker of the House as the case may be, and his decision shall be final.

(*vi*) The courts do not have any jurisdiction in such a matter.

The underlying idea is that if a member of Parliament or a State Legislature seeks to quit the party on whose ticket he was elected then he will have to resign his seat and recontest. This will put an effective curb on the propensity of members to change parties with a view to get some immediate political gain. This phenomenon was causing unstability in the body politic.[59]

Till recently, the Constitution had not expressly referred to the existence of political parties. By the 52nd Amendment, for the first time, there is a clear recognition of the political parties by the Constitution. The Schedule now acknowledges the existence of political parties.

FIFTY-THIRD AMENDMENT: 1986

The Constitution (Fifty-third Amendment) Act enacted in 1986, inserts a new provision in the Constitution, Art. 371-G, making special provisions regarding the State of Mizoram.[60]

The Amendment provides that notwithstanding anything contained in the Constitution, no Act of Parliament in respect of the following matters—

(a) religious or social practices of the Mizos;

(b) Mizo customary law and procedure;

(c) administration of civil and criminal justice involving decisions according to Mizo customary law; and

(d) ownership and transfer of land

shall apply to the State of Mizoram unless the State Legislative Assembly so decides by passing a resolution.

This restriction would not apply to any Central law which may be in force in the State at the commencement of the 53rd Amendment. Further, the Amendment fixes the strength of the State Legislative Assembly at a minimum of forty members.

The special provisions made by the Amendment emerged as a result of an agreement between the Central Government and the leaders of Mizoram.

FIFTY-FOURTH AMENDMENT: 1986

The purpose underlying the Constitution (Fifty-fourth Amendment) Act, 1986, is to increase the salaries of the Supreme Court and High Court Judges. The salaries of these Judges had remained static since 1950 despite high inflation. This Amendment practically doubles the salaries of the Judges.

The Amendment makes changes in Arts. 125 and 221 as well as in the Second Schedule.

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59. For an essay on defection see: *Mian Bashir Ahmad v. J & K*, AIR 1982 J & K 26.
60. *Supra*, Ch. IX, Sec. E.

Formerly the salaries for these Judges were mentioned in the Second Schedule which could be amended only by following the procedure prescribed for a constitutional amendment. Things have changed now. While the increased salaries are still mentioned in the Second Schedule, provision has been made now for amending this Schedule by Parliament by passing an ordinary law. Thus, Art. 125(2) has now been amended so as to provide that Parliament may determine the salaries of the Supreme Court Judges by law and until it so determines, the salaries of these Judges shall be those as specified in Schedule II.

Art. 221(1) concerning the salaries of the Judges of the High Court has also been amended on similar lines.[61]

The increase in the salaries of the Judges was long over due and the Constitutional Amendment now meets the long felt need.

FIFTY-FIFTH AMENDMENT : 1986

The Constitution (Fifty-fifth Amendment) Act, 1986, has been enacted to confer statehood on Arunachal Pradesh.[62]

Because of the sensitive location of the State, the State Governor has been given special responsibility with respect to law and order in the State. The Amendment adds a new provision, Art. 371-H, to the Constitution. It provides that in the discharge of the special responsibility, the Governor, after consulting the Council of Ministers, ultimately exercises his own individual judgment. If any question arises with respect to a matter whether it is or it is not one falling within the Governor's special responsibility, the decision of the Governor is final. The validity of anything done by him cannot be called in question on the ground that he ought or ought not to have acted in the exercise of his individual judgment.

It is further provided that if the President either on receipt of a report from the Governor or otherwise is satisfied that it is no longer necessary for the Governor to have any such special responsibility with respect to law and order in the State, he may by order direct that the Governor shall cease to have any such responsibility with effect from such date as may be specified by him in the order.

The strength of the State Legislative Assembly has been fixed at a minimum of thirty members.

FIFTY-SIXTH AMENDMENT : 1987

The Constitution (Fifty-sixth Amendment) Act, 1987, inserts a new constitutional provision, Art. 371-I, which contains a special provision regarding the State of Goa. The strength of the Goa State Legislative Assembly has been fixed at a minimum of 30 members.[63]

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61. *Supra*, Chs. IV, Sec. B(i) and VIII, Sec. B(l).
62. *Supra*, Ch. IX, Sec. F.
63. *Supra*, Ch. IX.

FIFTY-SEVENTH AMENDMENT : 1987

The Constitution (Fifty-seventh Amendment) Act, 1987, seeks to reserve seats for the Scheduled Tribes in the Legislative Assemblies of the States of Arunachal Pradesh, Meghalaya, Mizoram and Nagaland. This Amendment adds Clause 3A to Art. 332.[64]

The Amendment now provides that in the Legislative Assemblies of these four States, seats shall be reserved for the Scheduled Tribes on the following basis:

(a) if all the seats in the State Legislative Assembly in existence on the date of the coming into force of this Amendment are held by members of the Scheduled Tribes, all the seats except one;

(b) in any other case, such number of seats as bears to the total number of seats, a proportion not less than the number of members belonging to the Scheduled Tribes in the existing Assembly.

It is further clarified that these amendments to Art. 332 shall not affect any representation in any of these Legislative Assemblies until dissolution.

Amendment Fifty-Seventh was enacted to implement the Fifty-first Amendment passed earlier. Amendment Fifty-first could not be fully implemented unless paralled action was taken to determine the seats which were to be reserved for the Scheduled Tribes in these States.

FIFTY-EIGHTH AMENDMENT : 1987

The Constitution (Fifty-eighth Amendment) Act, 1987, has inserted the words "Authoritative Text in Hindi" in the heading of Part XXII. The Amendment adds a new Article 394A, saying that the President shall cause to be published under his authority—

(a) the translation of the Constitution of India in the Hindi language signed by the members of the Constituent Assembly, with such modifications as may be necessary to bring it in conformity with the language, style and terminology adopted in the authoritative texts of Central Acts in the Hindi language, and incorporating therein all the amendments of the Constitution made before such publication; and

(b) the translation in the Hindi language of every constitutional amendment made in the English language.

Cl. (2) of Art. 394A provides that the translation of the Constitution and its amendments as published under cl. (1) shall be construed to have the same meaning as the original thereof and if any difficulty arises in so construing any part of such translation, the President shall cause the same to be revised suitably.

Under cl. (3), the translation of the Constitution and of every amendment thereof published under this Article "shall be deemed to be, for all purposes, the authoritative text thereof in the Hindi language".[65]

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64. *Supra*, Ch. IX.
Also see, *supra*, Ch. XXXV, Sec. C.

65. *Supra*, Ch. XVI.

The reason for passing this Amendment is as follows: The Constituent Assembly adopted the English text of the Constitution. A Hindi version of the Constitution, signed by the members of the Constituent Assembly was published in 1950 under the authority of the President of the Constituent Assembly. It had become necessary to update this Hindi version of the Constitution by incorporating therein all the subsequent amendments, and to have an authoritative text of the Constitution in Hindi.

This Amendment gives constitutional recognition to the authoritative text of the Constitution in Hindi.

FIFTY-NINTH AMENDMENT : 1988

The principal *raison d'etre* for enacting the Constitution (Fifty-ninth Amendment) Act, 1988, was to control the terrorist escalation in Punjab. The Amendment made a number of changes in the emergency provisions in the Constitution by introducing Art. 359A in the Constitution. The application of this Article was limited to Punjab.

Art. 359A empowered the President, if satisfied that a grave emergency exists whereby the integrity of India is threatened by *internal disturbance* in the whole or any part of Punjab, to declare emergency in Punjab.

It may be noted that under the existing Art. 352, an emergency can be declared in India only when there is war, or external aggression or armed rebellion in any part of the country. Thus, Art. 359A brought back the old Art. 352 (as it existed before the 44th Amendment) which authorised declaration of emergency on the ground of internal disturbance; but the old provision was resurrected only in relation to Punjab and not for the rest of India.

Art. 359 was also amended by Art. 359A. The President was authorised, on a proclamation of emergency having been made, by order to declare that the right to move any court for the enforcement of all or any of the Fundamental Rights (except Art. 20),[66] as might be mentioned in the order, would remain suspended. The access to court was thus barred even when the right to life and personal liberty guaranteed by Art. 21 was suspended.

Art. 358 was also amended by Art. 359A. It was now provided that Art. 19 would remain suspended when emergency was declared in Punjab on the ground of internal disturbance.

By a new proviso to Art. 356, the operation of Art. 356(5) was excluded in relation to the proclamation issued on 11th May, 1978, for Presidential take-over of the Punjab Government. Thus, the proclamation could remain in force for three years, as provided for in the first proviso to Art. 356(4), without being controlled by Art. 356(5).[67]

Undoubtedly, Art. 359A brought back the draconian law of emergency in Punjab as it prevailed in India before the 44th Amendment which led to the now infamous case of *A.D.M., Jabalpore v. Shivkant Shukla*.[68]

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66. *Supra*, Chs. XIII and XXXIII, Sec. F.
67. *Supra*, Ch. XIII, Sec. D; see, 63rd Amendment, Sec. F *infra.*
68. *Supra*, Ch. XXXIII, Sec. F.

SIXTIETH AMENDMENT : 1988

The Constitution (Sixtieth Amendment) Act, 1988, amends Art. 276(2) of the Constitution.[69]

The States are now permitted to levy tax on profession, trades or callings and employments up to Rs. 2,500/- instead of Rs. 250/- as hitherto. This is to enable the States to collect more revenue under this head. Also, the maximum ceiling of Rs. 250/- had made the profession tax regressive in effect as even people with high salaries had to pay only Rs. 250/- per annum. The higher ceiling now fixed will enable the States to levy the tax on a progressive basis.

SIXTY-FIRST AMENDMENT : 1988

The Constitution (Sixty-first Amendment) Act, 1988, amends Art. 326 to lower the age for voting in elections to Parliament and State Legislatures from 21 to 18 years.[70]

The Amendment thus makes democracy in India much more pervasive. The present-day youth are literate, enlightened and politically conscious, and the lowering of the voting age enables them to participate in the political process in the country.

SIXTY-SECOND AMENDMENT : 1989

The Constitution (Sixty-second Amendment) Act, 1989, amends Art. 334 and extends reservation of seats for Scheduled Castes and Scheduled Tribes, and representation of the Anglo-Indian community in Lok Sabha and State Legislative Assemblies by ten more years, *i.e.*, up to January 25, 2000.[71]

SIXTY-THIRD AMENDMENT : 1989

The Constitution (Sixty-third Amendment) Act, 1989, repeals the changes made in Art. 356 by the 59th Constitutional Amendment in relation to Punjab. Thus, the proviso to Art. 356(5) has now been repealed as well as Art. 359A is omitted from the Constitution.

Punjab was thus brought at par with the other States as the Central Government felt that there was no longer any need for any special powers in regard to the proclamation of emergency in Punjab as was envisaged in the 59th Amendment.

SIXTY-FOURTH AMENDMENT : 1990

The Constitution (Sixty-fourth Amendment) Act, 1990, amended Clauses (4) and (5) of Art. 356 so as to enable the Central Government to extend the proclamation of emergency issued for Punjab on May 11, 1987, for some time more.[72]

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69. *Supra*, Ch. XI, Sec. D.
70. For Art. 326, see, *supra*, Ch. XIX, Sec. B.
71. For Art. 334, see, *supra*, Chs. II, VI and XXXV.
Also see, Forty-fifth Amendment, 1980, *supra.*
72. For Art. 356, see, *supra*, Ch. XIII, Sec. D.

Ordinarily, the proclamation would have come to an end in three years, *i.e*, May 10, 1990. But the Central Government took the view that the conditions in Punjab were not conducive to holding elections to the State Legislative Assembly. Consequently, in Art. 356(4), after the second proviso, another proviso was added making it possible to keep the said proclamation in force in Punjab for three years and six months instead of three years as provided for in the second proviso for all other States. In Art. 356(5), a proviso was added to exclude the operation of cl. 5 in relation to the proclamation mentioned above in relation to Punjab.

By the Sixty-seventh Amendment enacted in 1990, the period of three and half years was increased to four years for the validity of the same proclamation. The reason was that the situation in Punjab was still not conducive to revoking the proclamation and holding free and peaceful elections in the State.

SIXTY-FIFTH AMENDMENT : 1990

This Amendment enlarges the scope of Art. 338 which deals with constitutional safeguards for Scheduled Castes and Scheduled Tribes.[73]

Prior to this Amendment, Art. 338 provided for the appointment of a Special Officer for the Scheduled Castes and Scheduled Tribes to investigate all matters in relation to safeguards provided for these sections of the population. It was felt that instead of the Special Officer, a more effective arrangement for the purpose would be to have a high level multi-member Commission to guarantee constitutional safeguards for these people. Accordingly, Art. 338 has been amended to provide for the appointment of a Commission consisting of a chairperson, vice-chairperson and five other members. Subject to any law made by Parliament, the conditions of service and tenure of office of these persons will be determined by rules made by the President of India.

The Commission shall investigate all matters relating to the safeguards provided for the Scheduled Castes and Scheduled Tribes, and also inquire into specific complaints with respect to deprivation of any rights and safeguards to these people, *etc*.

The Commission is to make recommendations as to the measures to be taken by the various Governments for the effective implementation of these safeguards and other measures for the protection, welfare and socio economic development of the Scheduled Castes and Scheduled Tribes.

The Commission is to make an annual report to the President. It can also make a report as and when it thinks necessary. These reports are to be placed before each House of Parliament along with a memorandum by the Government as to the action taken or proposed to be taken on the recommendations made by the Commission.

Any report of the Commission pertaining to a State Government is to be forwarded to the State Governor and is to be placed before the State Legislature with a Government memorandum explaining the action taken or proposed to be taken on these recommendations.

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73. *Supra*, Ch. XXXV, Sec. G(a).

The Commission has been given power of a civil court to summon witnesses *etc*., while investigating any matter as mentioned above.

SIXTY-SIXTH AMENDMENT : 1990

The Constitution (Sixty-sixth Amendment) Act, 1990, was enacted to put a number of statutes passed by the State Legislatures, mostly in relation to land reforms, in the IX Schedule.[74]

The total number of statutes now included in this Schedule stands at 257. All these statutes stand immunized from being challenged on the ground of infringement of any Fundamental Right.

SIXTY-SEVENTH AMENDMENT : 1990

See above under the 64th Amendment. The Constitution (Sixty-seventh Amendment) Act was enacted in 1990 in relation to Punjab as stated above.

SIXTY-EIGHTH AMENDMENT : 1991

The Constitution (Sixty-eighth Amendment) Act, 1991, was enacted to keep in force the proclamation issued under Art. 356 in relation to Punjab on May 11, 1987, and which was due to end on May, 1991, under Amendment 67th, for sometime more beyond four years as had been provided by the 67th Amendment as stated above. The terrorist violence was still continuing in Punjab, and free, fair and peaceful elections to the Punjab Legislature were not yet possible.

Accordingly, Art. 356(4) was again amended to keep the said proclamation in force for five years from the date of its issue, *i.e.*, until May 10, 1992.

SIXTY-NINTH AMENDMENT : 1991

The Constitution (Sixty-ninth Amendment) Act, 1991, has added two Articles to the Constitution, *viz*., 239AA and 239AB after Art. 239A. The purpose of the Amendment is to give a special status to the National Capital of Delhi—a Union Territory.[75]

According to Art. 239AA, the Union Territory of Delhi is henceforth to be called as the National Capital Territory (NCT). The Administrator of the Territory is to be designated as the Lt. Governor. There shall be a Legislative Assembly for the NCT, the members of which are to be elected directly by the people from territorial constituencies.

Barring a few entries, the Legislature shall have power to make laws with respect to all matters enumerated in the State and the Concurrent Lists.[76] But this is not to derogate from the powers of Parliament to make a law with respect to any matter for a Union Territory. In case of repugnancy between a Central law and a law made by the Legislative Assembly, the former shall prevail.

There shall also be a Council of Ministers but in case of difference of opinion between the Lt. Governor and the Ministers, the matter is to be referred to the Presi-

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74. See, *supra*, Ch. XXXII, Sec. C, for the Ninth Schedule.
75. See, *Supra*, Ch. IX, Sec. A(f).
76. *Supra*, Ch. X, Secs. D and E.

dent. The Chief Minister and other Ministers are to be appointed by the President and are to hold office during the pleasure of the President. The Council of Ministers is to be collectively responsible to the Assembly.

According to Art. 239AB, in case of breakdown of the constitutional machinery in the NCT, the President may suspend the operation of any or all provisions of Art. 239AA.

SEVENTIETH AMENDMENT : 1992

The Constitution (Seventieth Amendment) Act, 1992, provides for the inclusion of the members of the Legislatures of National Capital Territory and the Union Territory of Pondicherry in the electoral college for the election of the President.[77]

Hitherto, Art. 54 provided for an electoral college for election of the President consisting only of the elected members of Parliament as well as of the State Legislative Assemblies and not of the Union Territories. To this effect, Art. 54 has been suitably amended.

Also, according to newly added Art. 239AA,[78] Parliament has to make provisions for giving effect to the provisions of Art. 239AA regarding the establishment of a democratic system in the National Capital Territory. It is now clarified that any law made by Parliament for the purpose would not be treated as an amendment of the Constitution for the purpose of Art. 368.[79]

SEVENTY-FIRST AMENDMENT : 1992

The Constitution (Seventy-first Amendment) Act, 1992, adds Konkani, Manipuri and Nepali to the list of languages in the VIII Schedule.[80]

SEVENTY-SECOND AMENDMENT : 1992

The Constitution (Seventy-second Amendment) Act, 1992, has been enacted to provide for reservation of seats for Scheduled Tribes in the Legislative Assembly of Tripura.[81]

The constitutional validity of the Constitutional Amendment has been upheld by the Supreme Court in *Subrata Acharjee v. Union of India.*[82]

SEVENTY-THIRD AMENDMENT : 1993

The Constitution (Seventy-third Amendment) Act, 1992, came into effect after having been passed by both Houses of Parliament and ratified by the State Legislatures as required by Art. 368.[83]

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77. *Supra*, Ch. III, Sec. A(i)(a).
78. See 69th Amendment, *supra.*
79. For Art. 368, see, *supra*, Ch. XLI, Sec. C.
80. *Supra*, Ch. XVI, Sec. E.
81. *Supra*, Ch. IX, Sec. G.
82. (2002) 2 SCC 725.
See, *supra*, Ch. IX, Sec. G, for details.
83. *Supra*, Ch. XLI, Sec. C.

The main feature of the Amendment is to introduce *panchayat* system at the grass roots level. Hitherto, the *panchayat* system had been based purely on State Legislation and its functioning had been very sporadic. The Amendment seeks to strengthen the *panchayat* system by giving it a constitutional base.

A new Part, Part IX, has been added to the Constitution consisting of Arts. 243 to 243-O. A new Schedule, *viz*. Eleventh Schedule, has also been added. *Panchayats* are proposed to be established at the village, intermediate and district levels and will be directly elected by electorate from territorial constituencies in the respective *panchayat* area. The detailed provisions are to be made by the States subject to the constitutional provisions contained in Part IX.

The underlying idea is to make *panchayats* as vibrant units of local administration in the rural area. The Amendment is regarded as historic as it is designed to establish strong, effective and democratic local administration which may lead to rapid implementation of rural development programmes.[84]

The Amendment has been passed in pursuance of the Directive Principle contained in Art. 40, which lays down that the State shall take steps to organise village *panchayats* and endow them with such powers as may enable them to function as units of self-government.[85]

Following its earlier decision[86] it has been held that Part IX of the Constitution or Article 243 makes no change in the essential feature of the Panchayat Organization. It was pointed out that what was sought to be done by the Seventy-third Amendment which inserted Part IX was to confer constitutional status on District Panchayat, Taluka Panchayat and Village Panchayats as instruments of local self government.[87]

In *Kishan Singh*[88] a Constitution Bench of the Supreme Court considered object and purpose of insertion of Part IXA in the Constitution. It noted that the object of introducing part IXA was the improper working of the local bodies in many states, timely election not being held and nominated bodies were continued for long period, elected bodies had been superseded or suspended without adequate justification. The insertions was made with a view to restore rightful place of the local bodies in political governance. The considerations made it necessary to provide a constitutional status to such bodies and to ensure regular and fair Conduct of elections.[89]

SEVENTY-FOURTH AMENDMENT : 1992

The Constitution (Seventy-fourth Amendment) Act, 1992, seeks to strengthen the system of municipal bodies in the urban areas. The idea is to place the local self-government in urban areas on a sound and effective footing. Both this and the Seventy-third Amendments represent measures for decentralization of power and greater participation of people in self-rule.

A *nagar panchayat* is to be established in a place in transition from rural to urban area. A municipal council is to be established for a smaller urban area and a municipal corporation for a larger urban area.

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84. *Supra*, Ch. IX, Sec. H.
85. *Supra*, Ch. XXXIV, Sec. C(k).
86. *Kishansingh Tomar v. Municipal Corporation of City of Ahmedabad,* (2006) 8 SCC 352 : AIR 2007 SC 269.
87. *Gujarat Pradesh Panchayat Parishadn v. State of Gujarat,* (2007) 7 SCC 718 : (2007) 9 JT 503.
88. (2006) 8 SCC 352 : AIR 2007 SC 269.
89. *Gujarat Pradesh Panchayat Parishad v. State of Gujarat,* (2007) 7 SCC 718 : (2007) 9 JT 503.

These bodies are to be directly elected. The Amendment adds a new Part IXA to the Constitution after Part IX. Part IXA contains Arts. 243P to 243ZG. A new Schedule XII is also added to the Constitution. This Schedule lists the functions which a State Legislature may by law assign to the municipalities.

Provision is also made for the appointment of a finance commission by a State to review the financial position of the municipalities and to recommend division of financial resources between the States and the municipalities within the State.

Hitherto, the institution of municipal bodies has not been functioning very effectively in the States. The 74th Constitutional Amendment seeks to make these institutions as effective instruments of administration.[90] Art. 243 (q) cannot be applied where the area of one description (such as Municipal Council) is converted into an area of another description (such as Municipal Corporation).[91]

Both the 73rd and 74th Amendments seek to decentralise decision-making power from top to bottom and thus strengthen democracy at the grass roots level. The Supreme Court had the occasion to consider the 74th amendment in a case from Haryana. The Haryana Municipal Act, 1973 faithfully adopted the constitutional mandate enshrined in Part IX-A, for carrying out the purpose of the Constitution (Seventy-fourth Amendment) Act, 1992. The Rules there-under were made for carrying out the purposes of the enactment and the purpose of the Act was to ensure that at least minimum number of persons belonging to the specified categories got elected. Accordingly, Part IX-A came to be inserted by the Constitution (Seventy-fourth Amendment) Act, 1992 w.e.f. 1-6-1993. It specifically provides for devolution by the State Legislature of powers and responsibilities upon municipalities with respect to preparation of plans for economic development and social justice, and for the implementation of development schemes as may be required to enable them to function as institutions of self-government. It was felt that economic development and implementation of schemes securing social justice may not be possible without providing for adequate representation to the weaker sections of the society. Its paramount objective was to empower the vulnerable sections of the society who were hitherto precluded from participating in the local self-government institutions for various historical reasons due to which the constitutional objective of securing social justice remained unfulfilled.[92]

SEVENTY-FIFTH AMENDMENT : 1994

The Constitution (Seventy-fifth Amendment) Act, 1994, sought to amend Art. 323B. The Amendment introduces sub-clauses (*h*), (*i*) and (*j*) in cl. (2) of Art. 323B. Thus, the Legislature has been authorised to set up tribunals for deciding disputes relating to—

(*h*) rent, its regulation and control and tenancy issues including the right, title and interest of landlords and tenants;

(*i*) offences against laws with respect to any of the matters specified in sub-clauses (*a*) to (*h*) and fees in respect of any of those matters.

(*j*) any matter incidental to any of the matters specified in sub-clauses (*a*) to (*i*).

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90. See, Ch. IX, Sec. I, *supra.*
91. *State of Maharashtra v. Jalgaon Municipal Council,* (2003) 9 SCC 731 : AIR 2003 SC 1659.
92. *Bihari Lal Rada v. Anil Jain (Tinu),* (2009) 4 SCC 1 : (2009) 2 JT 455.

An avowed objective underlying the Amendment is to expedite decision of cases relating to rent control legislation.[93]

SEVENTY-SIXTH AMENDMENT : 1994

The Constitution (Seventy-sixth Amendment) Act, 1994, added the Tamil Nadu Backward Classes, Scheduled Castes, and Scheduled Tribes (Reservation of Seats in Educational Institutions and or appointments or posts in Services under the State) Act, 1993, enacted by the Tamil Nadu Legislature, to the IX Schedule so as to give protection to the State Act under Art. 31B.[94]

This followed the decision of the Supreme Court in *Indra Sawhney* case fixing total reservations under Art. 16(4) to not more than 50%. The State forwarded the Act to the Centre under Art. 31C.[95]

SEVENTY-SEVENTH AMENDMENT : 1995

In *Indra Sawhney v. Union of India*,[96] the Supreme Court interpreting Art. 16 ruled that the word 'employment' would not include 'promotion' and reservation in promotion upheld in *Rangachari*[97] and followed in other subsequent cases was not valid. Reservation in promotion was declared unconstitutional and those cases were thus overruled. The Court, however, made the suggestion to enact a suitable law. Accordingly, the Constitution (77th Amendment) Act, 1995, has been enacted.

The Amendment introduces Art. 16(4A). This Article expressly empowers the state to make any provision for reservation in matters of promotion in any class or classes of posts in the service under the state in favour of S/Cs and S/Ts which, in the opinion of the state, are not adequately represented in the services under the state.[98]

SEVENTY-EIGHTH AMENDMENT : 1995

The Constitution (Seventy-eight Amendment) Act, 1995, adds a few State Acts to the IX Schedule.[99] To day the Schedule contains 284 statutes.

SEVENTY-NINTH AMENDMENT : 1999

The Constitution (Seventy-ninth Amendment) Act, 1999, has come into force on the 25th January, 2000.

By virtue of this Amendment, reservation of seats and special representation for S/Ts and S/Cs in the House of People and State Legislative Assemblies have been extended for another 10 years. Thus, the words "fifty years" used in Art. 334 have been changed to 'sixty years' from the commencement of the Constitution.

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93. For detailed discussion on Art. 323B, see, *supra*, Ch. VIII, Sec. I.
94. *Supra*, Ch. XXXII, Sec. C.
95. For discussion on these various constitutional provisions and *Indra Sawhney*, see, *supra*, Chs. XXIII, Sec. G, XXXII, Sec. D and XXXV.
96. *Supra*, Chs. XXIII, Secs. G and H and XXXV.
97. *Supra*, Ch. XXIII, Sec. D(c).
98. *Supra*, Ch. XXIII, Sec. H.
Also see, Ch. XXXV, *supra.*
99. For discussion on the IX Schedule, see, *supra*, Chs. XXXII, Sec. C and XLI, Sec. E(b).
Also see, the Amendments adding State statues to the IX Schedule.

Similarly the representation of the Anglo-Indian community in the Lok Sabha and in the Legislative Assemblies of the States by nomination has been extended for another ten years.[1]

These reservations would not now end on January 25, 2001, but would now last upto January 25, 2011.[2]

EIGHTIETH AMENDMENT : 2000

The Constitution (Eightieth Amendment) Act, 2000, seeks to restructure the financial relationship between the Centre and the States following the recommendations of the Finance Commission.[3]

In the first place, Art. 269 has been amended. Clauses (1) and (2) thereof have been substituted by new clauses, the purport of these clauses being to—

(1) empower the Centre to levy taxes on the sale or purchase of goods in inter-State trade or commerce and on the consignment of goods in inter-State trade or commerce;

(2) to assign the revenue arising from these taxes to the States after 1st April, 1996.

The principles for distribution of the revenue among the States are to be formulated by Parliament.

In the second place, Art. 270 has been replaced by a new Article with effect from 1st April, 1996. The new Article seeks to achieve the following:

(1) A percentage of all Central taxes and duties shall be distributed among the States.

(2) The following levies are exempted from the divisible pool—

(*a*) Duties and taxes referred to in Arts. 268 and 269;

(*b*) surcharge on taxes and duties referred to in Art. 271; and

(*c*) any cess levied for specific purposes under any law made by Parliament.

(3) The percentage, manner and form of distribution are to be prescribed by the President after considering the recommendations of the Finance Commission.[4]

(4) Art. 272 has been omitted.[5]

EIGHTY-FIRST AMENDMENT : 2000

The Constitution (Eighty-first Amendment) Act, 2000, adds the following clause as cl. (4B) after cl. (4A) in Art. 16:

> "(4B) Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under cl. (4) or clause

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1. See, *supra*, Chs. II, VI and XXXV, Sec. D.
2. *Ibid.*
3. For discussion on Centre-State Financial Relationship, see, *supra*, Ch. XI, Sec. K(i)(c).
4. For Finance Commission, see, *supra*, Chs. XI, Sec. L and XIV, Sec. G.
5. The genesis and effect of this Amendment have been discussed earlier, see, *supra*, Ch. XI, Sec. K(c).

(4A) as a separate class of vacancies to be filled up in any succeeding year or years and each class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent reservation on total number of vacancies of that year."[6]

EIGHTY-SECOND AMENDMENT : 2000

The Constitution (Eighty-second Amendment) Act, 2000, adds a proviso to Art. 335.

According to the newly added proviso, it becomes possible for the government to make any provision in favour of S/Cs and S/Ts for relaxation in qualifying marks in any examination or lowering the standards of evaluation, for reservation in matters of promotion to any class or classes of services or posts in connection with the affairs of the Union or of a State.[7]

EIGHTY-THIRD AMENDMENT : 2000

The Constitution (Eighty-third Amendment) Act, 2000, adds the following clause after Art. 243M(3):

> "(3A) Nothing in article 243D, relating to reservation of seats for the Scheduled Castes, shall apply to the State of Arunachal Pradesh."[8]

EIGHTY-FOURTH AMENDMENT : 2001

The Constitution originally envisaged allocation of seats in Lok Sabha for the States on population basis as ascertained at the census after every ten years. [Arts. 81 and 82]. The Forty-second Amendment in 1976 made a change in this scheme, *viz.* No fresh adjustment of seats in Lok Sabha as fixed on the basis of the Census figures of 1971 was to be made till after the year 2001. This meant that the number of seats for each State of Lok Sabha fixed on the basis of the Census of 1971 was frozen till 2001. By the Eighty-fourth Amendment of the Constitution 2001, this freeze is to last till 2026. No change in the number of seats for each State in Lok Sabha is to be made till after the first Census held after 2026.

The underlying reason for this provision made by the 83rd Amendment is this: some States have implemented the family planning programme more vigorously than others. Accordingly, the population in these States has stabilised while in the other States the population has increased. If now seats in Lok Sabha were to be reallocated among the States on population basis, the States implementing the family planning programme would lose some seats. This may cause set back to the family control programme. Hence it has been decided to extend the freeze on Lok Sabha seats till the year 2026 as a motivational measure to enable the State Governments to pursue the programme of population stabilisation.[9]

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6. For discussion on Art. 16(4B), see, *supra*, Ch. XXIII, Sec. H(c).
7. For discussion on the implications of this Amendment, see, *supra*, Chs. XXIII, Sec. H(b) and XXXV, Sec. C(c).
8. For discussion on these various Articles, see, *supra*, Ch. IX, Sec. F.
9. See, Ch. II, Sec. C, *supra.*

But, the readjustment of territorial constituencies within a State for purposes of election to Lok Sabha is a different matter. This has to be undertaken by the Delimitation Commission on the basis of population figures of the Census of 1991. [see, Art. 81 Proviso; Art. 82 Proviso]

The Eighty-fourth Amendment also effects some changes in Art. 170 dealing with the composition of the State Legislative Assemblies. Art. 81 has been amended so as to provide that each State is to be divided into territorial constituencies for election to the State Legislature on the basis of the population figures of the 1991 Census. This arrangement would continue until the Census is held after the year 2026.[10]

Arts. 330 and 332 has been amended so as to provide that the number of seats reserved for the Scheduled Castes and the Scheduled Tribes in Lok Sabha and in each State Legislative Assembly has to be fixed on the basis of the 1991 Census figures and that no change is to be effectuated therein till the Census is taken after the year 2026.[11]

EIGHTY-FIFTH AMENDMENT : 2001

The Constitution (Eighty-fifth Amendment) Act, 2001, modifies Cl. 4A of Art. 16. It now reads as follows:

> "Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion *with consequential seniority* of any class or classes of posts in the services of the State in favour of the Scheduled Castes and the Scheduled Tribes which in the opinion of the State are not adequately represented in the services under the State."[12]

Clause 4A in Art. 16 was introduced in the Constitution by the 77th Amendment. Now the words italicized have been introduced by the 85th Amendment. In effect, the purport of both the Amendments is to undo the effect of the rulings of the Supreme Court in *Indra Sawhney* and later cases on the question of reservations in promotions and the seniority of the promotees on the basis of reservation.[13]

EIGHTY-SIXTH AMENDMENT : 2002

The Constitution (Eighty-sixth Amendment Act 2002) inserted three amendments to provide for the education and welfare of children.

First, Article 21A casts obligation upon the State to provide free and compulsory education to all children of the age of 6 to 14 years in such manner as the State may, by law, determine. This amendment was inspired by the Directive Principles contained in Article 45 of the Constitution which provided that the "State shall endeavour to provide childhood care and education for all children until they complete the age of 6 years". To achieve this objective in

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10. Ch. VI, Sec. B(ii), *supra.*
11. Ch. XXXV, Secs. B and C, *supra.*
12. *Supra*, Ch. XXIII, Sec. H(a).
13. For discussion on this aspect, see, Ch. XXIII, Sec. G, *supra.*

the Directive Principles the statement of objects and reasons of this amendment acknowledge that in spite of strenuous efforts made to fulfill this objective, the ultimate goal of providing universal and quality education remain unfulfilled. The amendment bill was introduced in Parliament in 1997. It was scrutinized by the Parliamentary Standing Committee on Human Resources Development and this subject was also dealt with by the Law Commission of India (165th Report).

Secondly, the 86th amendment also substituted a new article for Article 45 which provides that the State shall endeavour to provide early childhood care and education for all children until they complete the age of 6 years.

Thirdly, the amendment also added a further clause in Article 51A which enjoins a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of 6 and 14 years.

The 86th amendment received the assent of the President on 12th December, 2002 and was published in the gazette of India dated 13th December, 2002.

THE CONSTITUTION (EIGHTY-SEVENTH AMENDMENT) ACT, 2003

An Act to amend the Constitution of India

Be it enacted by Parliament in the Fifty-fourth Year of the Republic of India as follows:—

S. 1. Short title.—This Act may be called the Constitution (Eighty-seventh Amendment) Act, 2003.

S. 2. Amendment of Article 81.—In article 81 of the Constitution, in clause (3), in the proviso, in clause (ii), for the figures "1991", the figures "2001" shall be substituted.

S. 3. Amendment of Article 82.—In article 82 of the Constitution, in the third proviso, in clause (ii), for the figures "1991", the figures "2001" shall be substituted.

S. 4. Amendment of Article 170.—In article 170 of the Constitution,—

(i) in clause (2), in the Explanation, in the proviso, for the figures "1991", the figures "2001" shall be substituted;

(ii) in clause (3), in the third proviso, in clause (ii), for the figures "1991", the figures "2001" shall be substituted.

S. 5. Amendment of Article 330.—In article 330 of the Constitution, in the Explanation, in the proviso, for the figures "1991", the figures "2001" shall be substituted.

THE CONSTITUTION (EIGHTY-EIGHTH AMENDMENT) ACT, 2003

[*15th January, 2004*]

An Act further to amend the Constitution of India.

BE it enacted by Parliament in the Fifty-fourth Year of the Republic of India as follows:—

S. 1. Short Title and Commencement.—(1) This Act may be called the Constitution (Eighty-eighth Amendment) Act, 2003.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

S. 2. Insertion of new Article 268A.—After article 268 of the Constitution, the following article shall be inserted, namely:—

"268A. Service tax levied by Union and collected and appropriated by the Union and the States.—(1) Taxes on services shall be levied by the Government of India and such tax shall be collected and appropriated by the Government of India and the States in the manner provided in clause (2).

(2) The proceeds in any financial year of any such tax levied in accordance with the provisions of clause (1) shall be—

(a) collected by the Government of India and the States;

(b) appropriated by the Government of India and the States,

in accordance with such principles of collection and appropriation as may be formulated by Parliament by law".

S. 3. Amendment of Article 270.—In article 270 of the Constitution, in clause (1), for the words and figures "articles 268 and 269", the words, figures and letter "articles 268, 268A and 269" shall be substituted.

S. 4. Amendment of Seventh Schedule.—In the Seventh Schedule to the Constitution, in List I—Union List, after entry 92B, the following entry shall be inserted, namely:—

"92C. Taxes on services.".

NOTES

The Constitution (88th Amendment of 2003) was made after extensive study and consultation between the Central Government and the States. The purpose was to give effect to the unanimous decision of the States to replace their existing sales tax system with the system of Value Added Tax (VAT) from 1st April, 2003. The States, with a view to widening their tax base, suggested that they should be enabled to collect the appropriate tax on services. Tax on services was not a specific legislative field in the 7th Schedule—although the Parliament took recourse to the residual field in Entry 97 and periodical tax on certain services. Parliament was of the view that the 88th amendment would pave the way for eventual inclusion of services within the purview of State level VAT. To give effect to this felt necessity the 88th amendment inserted Article 268A as above and also the 7th Schedule by providing that after 92B, the following entry shall be inserted viz.—"92C: Taxes on services". It will be noticed that Article 268A empowered the Government of India to levy such tax but to collect and appropriate by the Government of India and the States in the manner provided.

THE CONSTITUTION (EIGHTY-NINTH AMENDMENT) ACT, 2003

[*28th September, 2003*]

An Act further to amend the Constitution of India.

BE it enacted by Parliament in the Fifty-fourth Year of the Republic of India as follows:—

S. 1. Short title and commencement.—(1) This Act may be called the Constitution (Eighty-ninth Amendment) Act, 2003.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

S. 2. Amendment of article 338.—In article 338 of the Constitution,—

(a) for the marginal heading, the following marginal heading shall be substituted, namely:—

"National Commission for Scheduled Castes.";

(b) for clauses (1) and (2), the following clauses shall be substituted, namely :—

"(1) There shall be a Commission for the Scheduled Castes to be known as the National Commission for the Scheduled Castes.

(2) Subject to the provisions of any law made in this behalf by Parliament, the Commission shall consist of a Chairperson, Vice-Chairperson and three other Members and the conditions of service and tenure of office of the Chairperson, Vice-Chairperson and other Members so appointed shall be such as the President may by rule determine.";

(c) in clauses (5), (9) and (10), the words "and Scheduled Tribes" wherever they occur, shall be omitted.

S. 3. Insertion of new Article 338A.—After article 338 of the Constitution, the following article shall be inserted, namely:—

"338A. National Commission for Scheduled Tribes.—(1) There shall be a Commission for the Scheduled Tribes to be known as the National Commission for the Scheduled Tribes.

(2) Subject to the provisions of any law made in this behalf by Parliament, the Commission shall consist of a Chairperson, Vice-Chairperson and three other Members and the conditions of service and tenure of office of the Chairperson, Vice-Chairperson and other Members so appointed shall be such as the President may by rule determine.

(3) The Chairperson, Vice-Chairperson and other Members of the Commission shall be appointed by the President by warrant under his hand and seal.

(4) The Commission shall have the power to regulate its own procedure.

(5) It shall be the duty of the Commission—

(a) to investigate and monitor all matters relating to the safeguards provided for the Scheduled Tribes under this Constitution or under any other law for the time being in force or under any order of the Government and to evaluate the working of such safeguards;

(b) to inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Tribes;

(c) to participate and advise on the planning process of socio-economic development of the Scheduled Tribes and to evaluate the progress of their development under the Union and any State;

(d) to present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards;

(e) to make in such reports recommendations as to the measures that should be taken by the Union or any State for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the Scheduled Tribes; and

(f) to discharge such other functions in relation to the protection, welfare and development and advancement of the Scheduled Tribes as the President may, subject to the provisions of any law made by Parliament, by rule specify.

(6) The President shall cause all such reports to be laid before each House of Parliament along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the Union and the reasons for the non-acceptance, if any, of any of such recommendations.

(7) Where any such report, or any part thereof, relates to any matter with which any State Government is concerned, a copy of such report shall be forwarded to the Governor of the State who shall cause it to be laid before the Legislature of the State along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the State and the reasons for the non-acceptance, if any, of any of such recommendations.

(8) The Commission shall, while investigating any matter referred to in sub-clause (a) or inquiring into any complaint referred to in sub-clause (b) of clause (5), have all the powers of a civil court trying a suit and in particular in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;

(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copy thereof from any court or office;

(e) issuing commissions for the examination of witnesses and documents;

(f) any other matter which the President may, by rule, determine.

(9) The Union and every State Government shall consult the Commission on all major policy matters affecting Scheduled Tribes.".

NOTES

The 89th amendment of 2003 deals with the establishment and constitution of a commission for the Scheduled Castes to be known as "The National Commission for Scheduled Castes as well as a National Commission for Scheduled Tribes". Article 338A enumerates the duties of the Commission and among the most important being its duty to investigate and monitor all matters relating to the safeguarding of the Constitutional provisions or the Statutory provisions relating to such safeguarding and to evaluate the working of such safeguards and to inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Tribes.

CONSTITUTION (NINETIETH AMENDMENT) ACT, 2003

[*28th September, 2003*]

An Act further to amend the Constitution of India.

BE it enacted by Parliament in the Fifty-fourth Year of the Republic of India as follows:—

S. 1. Short title.—This Act may be called the Constitution (Ninetieth Amend-ment) Act, 2003.

S. 2. Amendment of article 332.—In Article 332 of the Constitution, in clause (6), the following proviso shall be inserted, namely:—

"*Provided* that for elections to the Legislative Assembly of the State of Assam, the representation of the Scheduled Tribes and non-Scheduled Tribes in the constituencies included in the Bodoland Territorial Areas District, so notified, and existing prior to the constitution of the Bodoland Territorial Areas District, shall be maintained.".

CONSTITUTION (NINETY-FIRST AMENDMENT) ACT, 2003

[*1st January, 2004*]

An Act further to amend the Constitution of India.

BE it enacted by Parliament in the Fifty-fourth Year of the Republic of India as follows:—

S. 1. Short title.—This Act may be called the Constitution (Ninety-first Amendment) Act, 2003.

S. 2. Amendment of Article 75.—In article 75 of the Constitution, after clause (1), the following clauses shall be inserted, namely:—

"(1A) The total number of Ministers, including the Prime Minister, in the Council of Ministers shall not exceed fifteen per cent. of the total number of members of the House of the People.

(1B) A member of either House of Parliament belonging to any political party who is disqualified for being a member of that House under paragraph 2 of the Tenth Schedule shall also be disqualified to be appointed as a Minister under clause (1) for duration of the period commencing from the date of his disqualification till the date on which the term of his office as such member would expire or where he contests any election to either House of Parliament before the expiry of such period, till the date on which he is declared elected, whichever is earlier.".

S. 3. Amendment of Article 164.—In article 164 of the Constitution, after clause (1), the following clauses shall be inserted, namely:—

"(1A) The total number of Ministers, including the Chief Minister, in the Council of Ministers in a State shall not exceed fifteen per cent. of the total number of members of the Legislative Assembly of that State:

Provided that the number of Ministers, including the Chief Minister, in a State shall not be less than twelve:

Provided further that where the total number of Ministers, including the Chief Minister, in the Council of Ministers in any State at the commencement of the Constitution (Ninety-first Amendment) Act, 2003 exceeds the said fifteen per cent. or the number specified in the first proviso, as the case may be, then, the total number of Ministers in that State shall be brought in conformity with the provisions of this clause within six months from such date as the President may by public notification appoint.

(1B) A member of the Legislative Assembly of a State or either House of the Legislature of a State having Legislative Council belonging to any political party who is disqualified for being a member of that House under paragraph 2 of the Tenth Schedule shall also be disqualified to be appointed as a Minister under clause (1) for duration of the period commencing from the date of his disqualification till the date on which the term of his office as such member would expire or where he contests any election to the Legislative Assembly of a State or either House of the Legislature of a State having Legislative Council, as the case may be, before the expiry of such period, till the date on which he is declared elected, whichever is earlier.".

S. 4. Insertion of new Article 361B.—After article 361A of the Constitution, the following article shall be inserted, namely:—

'361B. Disqualification for appointment on remunerative political post. A member of a House belonging to any political party who is disqualified for being a member of the House under paragraph 2 of the Tenth Schedule shall also be disqualified to hold

any remunerative political post for duration of the period commencing from the date of his disqualification till the date on which the term of his office as such member would expire or till the date on which he contests an election to a House and is declared elected, whichever is earlier.

Explanation.—For the purposes of this article,—

(a) the expression "House" has the meaning assigned to it in clause (a) of paragraph 1 of the Tenth Schedule;

(b) the expression "remunerative political post" means any office—

(i) under the Government of India or the Government of a State where the salary or remuneration for such office is paid out of the public revenue of the Government of India or the Government of the State, as the case may be; or

(ii) under a body, whether incorporated or not, which is wholly or partially owned by the Government of India or the Government of a State and the salary or remuneration for such office is paid by such body,

except where such salary or remuneration paid is compensatory in nature.'.

S. 5. Amendment of the Tenth Schedule.—In the Tenth Schedule to the Constitution,—

(a) in paragraph 1, in clause (b), the words and figure "paragraph 3 or, as the case may be," shall be omitted;

(b) in paragraph 2, in sub-paragraph (1), for the words and figures "paragraphs 3, 4 and 5", the words and figures "paragraphs 4 and 5" shall be substituted;

(c) paragraph 3 shall be omitted.

NOTES

The 10th Schedule of the Constitution (commonly known as Anti-Defection Law) came in for intensive criticism to the effect that although the Schedule contained provisions for individual defections as illegal, it did not do so in the case of bulk defections. It was also noticed that there were abnormally larger Councils of Ministers being constituted by various governments at the Centre as well as the States. The amendment addressed the problem in relation to the 10th Schedule by inserting Article 361B dealing with the problem of the 10th Schedule and also amending articles 75 and 164 by restricting the sizes of the Councils of Ministers both at the Central and State levels respectively.

CONSTITUTION (NINETY-SECOND AMENDMENT) ACT, 2003

[*7th January, 2004*]

An Act further to amend the Constitution of India.

BE it enacted by Parliament in the Fifty-fourth Year of the Republic of India as follows:—

S. 1. Short title.—This Act may be called the Constitution (Ninety-second Amendment) Act, 2003

S. 2. Amendment of Eighth Schedule.—In the Eighth Schedule to the Constitution,—

(a) existing entry 3 shall be re-numbered as entry 5, and before entry 5 as so re-numbered, the following entries shall be inserted, namely:—

"3. Bodo.

4. Dogri.";

(b) existing entries 4 to 7 shall respectively be re-numbered as entries 6 to 9;

(c) existing entry 8 shall be re-numbered as entry 11 and before entry 11 as so renumbered, the following entry shall be inserted, namely:—

"10. Maithili.";

(d) existing entries 9 to 14 shall respectively be re-numbered as entries 12 to 17;

(e) existing entry 15 shall be re-numbered as entry 19 and before entry 19 as so re-numbered, the following entry shall be inserted, namely:—

"18. Santhali.";

(f) existing entries 16 to 18 shall respectively be re-numbered as entries 20 to 22.

CONSTITUTION (NINETY-THIRD AMENDMENT) ACT, 2005

[*20, Januanry 2006*]

An Act further to amend the Constitution of India.

BE it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:—

S. 1. Short title and commencement.—(1) This Act may be called the Constitution (Ninety-third Amendment) Act, 2005.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

S. 2. Amendment of article 15.—In article 15 of the Constitution, after clause (4), the following clause shall be inserted, namely:—

"(5) Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30.".

CONSTITUTION (NINETY-FOURTH AMENDMENT) ACT, 2006

[*12th June, 2006*]

An Act further to amend the Constitution of India.

BE it enacted by Parliament in the Fifty-seventh Year of the Republic of India as follows:—

S. 1. Short title.—This Act may be called the Constitution (Ninety-fourth Amendment) Act, 2006.

S. 2. Amendment of article 164.—In article 164 of the Constitution, in clause (1), in the proviso, for the word "Bihar", the words "Chhattisgarh, Jharkhand" shall be substituted.

NOTES

The 90th (2003), 92nd (2003), 93rd (2005) and 94th (2006) amendments speak for themselves and no separate commentary is called for.