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YOJANA MAGAZINE ANALYSIS

(November 2024)

(Part 1/3)

TOPICS TO BE COVERED

PART 1/3

- EVOLUTION OF INDIAN CONSTITUTION: CONSTITUTIONAL AMENDMENTS
- ROLE OF INDIAN CONSTITUTION IN PROMOTING SOCIAL JUSTICE

PART 2/3

- FUTURE OF AI IN INDIA
- CRIMINAL JUSTICE REFORMS: EVALUATING BNS

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- REDEFINING LAW IN A CYBER AGE: INDIA'S LEGISLATIVE SHIFT AGAINST MODERN CRIME

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EVOLUTION OF INDIAN CONSTITUTION: CONSTITUTIONAL AMENDMENTS

Introduction:

- The **Constitution of India** is the supreme law that governs the country's political framework.
- Its evolution reflects the changing socio-political, cultural, and economic realities of the nation.
- **Constitutional amendments** have played a vital role in adapting the Constitution to meet the evolving needs of society while preserving its core values.

EVOLUTION OF THE CONSTITUTION DURING BRITISH RULE

The **Indian Constitution** traces its roots back to the colonial era when a series of **constitutional developments** paved the way for an independent India. The key milestones during British rule were:

- **The Government of India Act, 1858:** This Act established **direct British control over India, ending the rule of the East India Company.**

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- **Indian Councils Acts (1861 & 1892):** These Acts introduced **limited representative governance**, allowing Indians to participate in legislative councils.
- **The Government of India Act, 1909 (Morley-Minto Reforms):** This expanded legislative councils and introduced **separate electorates for Muslims**, marking the start of communal representation.
- **The Government of India Act, 1919 (Montagu-Chelmsford Reforms):** This Act introduced the **dyarchy system**, separating **central and provincial functions**, and allowed for **limited self-governance through legislative councils**.
- **The Government of India Act, 1935:** The most significant precursor to the Indian Constitution, it introduced a **federal structure**, a **bicameral legislature**, and **reserved seats for minorities and marginalized groups**.

These acts formed the foundation for the development of a constitutional framework that would eventually lead to an independent India.

CONSTITUTIONAL AMENDMENTS OF A FEDERAL CONSTITUTION

- India's Constitution is federal in nature but with a **strong unitary bias**.

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- In a federal setup, amendments are essential to maintain the balance of power between the **Union** and the **States**.
- Amendments have played a key role in addressing the needs of **national integration** and **socio-economic justice**, adjusting the allocation of powers between the two.

NEED FOR CONSTITUTIONAL AMENDMENTS

- **Changing Social Norms:** Over time, societal practices evolve, and the Constitution must address issues like **caste discrimination**, **gender equality**, and **minority rights** to remain relevant.
- **Political Realities:** The political dynamics of India change over time, **necessitating constitutional amendments to accommodate new states**, changes in the **electoral system**, or the **structure of governance**.
- **Judicial Interpretations:** As the judiciary interprets the Constitution, it may give rise to new meanings, requiring formal amendments to clarify or expand constitutional provisions.
- **Technological and Global Developments:** Technological advancements, economic shifts, and international developments also pose new challenges, demanding constitutional reforms, especially in **digital governance**, **economic policies**, and **global cooperation**.

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PROCEDURE FOR AMENDING THE CONSTITUTION

Article 368 of the Indian Constitution lays down the process for amendments, which is divided into three categories:

- 1. Amendments by Parliament:** Certain provisions can be amended by a **simple majority** in both Houses of Parliament (e.g., the name of a state).
- 2. Amendments Requiring a Special Majority:** Some provisions, such as the distribution of powers between the Union and States (under Article 368), require a **special majority** in both Houses of Parliament.
- 3. Amendments with State Consent:** Some amendments, like changes to the representation of states in Parliament, require the **approval of not only Parliament but also the consent of at least half of the states.**

POWER OF PARLIAMENT TO AMEND CONSTITUTION

- Article 368 grants Parliament the authority to amend the Constitution, but this power is **not absolute.**

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- While Parliament can amend most provisions, certain **basic features** of the Constitution, such as **federal structure** and **fundamental rights**, cannot be altered **by ordinary amendments**.
- The **Kesavananda Bharati case (1973)** established the **Doctrine of Basic Structure**, limiting Parliament's ability to amend essential aspects of the Constitution, ensuring that core values such as **democracy**, **republicanism**, **separation of powers**, **rule of law**, and **individual freedoms** are preserved.

THE KESAVANANDA BHARATI CASE

- The **Kesavananda Bharati case** is one of the most significant rulings in Indian Constitutional history.
- The Supreme Court ruled that while **Parliament has the power to amend the Constitution**, it cannot alter its **basic structure**.
- This **doctrine was pivotal in protecting the fundamental principles of the Constitution** and **preventing arbitrary amendments** that could undermine its core values.

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LANDMARK CONSTITUTIONAL AMENDMENTS

- **First Amendment (1951):** This amendment imposed **reasonable restrictions** on the **freedom of speech and expression**, **prohibited untouchability**, and **allowed the state to limit property rights for social justice**.
- **Seventh Amendment (1956):** It reorganized states based on **linguistic** and **administrative** considerations, creating states like **Andhra Pradesh** and **Tamil Nadu**, and updated the Union List.
- **Forty-Second Amendment (1976):** Often called the “**Mini-Constitution**”,
 - The 42nd Amendment amended Preamble and changed the description of India from "sovereign, democratic republic" to a "sovereign, socialist, secular, democratic republic", and also changed the words "unity of the nation" to "unity and integrity of the nation".,
 - It curtailed judicial review, expanded the Directive Principles of State Policy, and centralized power in the Union during the Emergency period.
- **Forty-Fourth Amendment (1978):** This amendment **reversed** undemocratic changes made during the Emergency, restored the **right to property as a legal right (under Article 300A)**, and **limited the state's ability to suspend fundamental rights**.

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- **Fifty-Second Amendment (1985):** Known as the **Anti-Defection Law**, it disqualified elected representatives who switched parties or voted against party directives, ensuring **political stability**.
- **Sixty-First Amendment (1988):** This lowered the voting age from **21** to **18**, thus **increasing youth participation** in the democratic process.
- **Seventy-Third and Seventy-Fourth Amendments (1992):** These amendments mandated the creation of **elected local governments** (Panchayats and Municipalities), devolved powers to local bodies, and provided reservations for women and marginalized communities.
- **Ninety-Ninth Amendment (2014):** It introduced the **National Judicial Appointments Commission (NJAC)** to replace the **Collegium system** for judicial appointments. However, the NJAC was struck down by the **Supreme Court** in 2015 for violating judicial independence.
- **Hundred and First Amendment (2016):** This amendment introduced the **Goods and Services Tax (GST)**, simplifying India's tax system and promoting economic integration.

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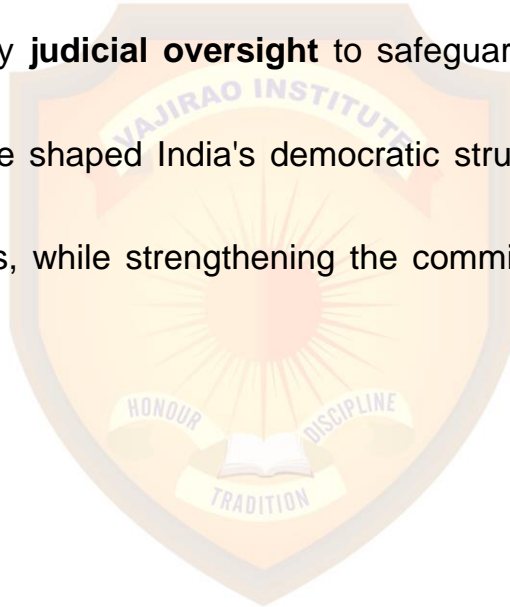
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CONCLUSION

The **Indian Constitution** is a **living document** that evolves in response to the **changing needs** of society. Constitutional amendments ensure that the Constitution remains relevant, effective, and adaptable to contemporary challenges. While the power to amend rests with **Parliament**, it is tempered by **judicial oversight** to safeguard fundamental principles. The **landmark amendments** have shaped India's democratic structure, responding to **political, social, and economic** needs, while strengthening the commitment to justice, equality, and social welfare.



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ROLE OF INDIAN CONSTITUTION IN PROMOTING SOCIAL JUSTICE

Introduction:

- The **Indian Constitution**, adopted on **26th January 1950**, is not just a legal document that defines the structure of government but also a powerful tool for promoting social justice in India.
- Social justice, in the Indian context, aims at ensuring **fairness** and **equitable distribution** of resources, opportunities, and benefits, especially to those who have been **historically marginalized** or **disadvantaged**.
- The Constitution, through its various provisions, sets the framework for creating a just society by addressing issues of **equality**, **discrimination**, and **oppression**.

PREAMBLE: A COMMITMENT TO SOCIAL JUSTICE

The **Preamble** to the Indian Constitution envisions an egalitarian society by setting the goals of **Justice, Liberty, Equality, and Fraternity**.

- **Justice** refers to the **social, economic, and political** justice that the Constitution seeks to secure for all citizens.

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- The Preamble directly commits to **securing social justice**, which means ensuring that **every individual enjoys equal rights and opportunities, especially the marginalized and vulnerable** communities.

Preamble lays the foundation for a legal and social framework aimed at **reducing inequalities** and promoting the dignity of every individual.

FUNDAMENTAL RIGHTS: GUARANTEEING EQUALITY & PROTECTION

The **Fundamental Rights (Articles 12-35)** form the bedrock of the Indian Constitution's commitment to **social justice**. These rights guarantee **individual freedoms, equality before the law, and protection against discrimination**. Some key articles that directly promote social justice include:

- **Article 14:** Guarantees **equality before the law** and **equal protection of the laws**, ensuring that all citizens are treated fairly, regardless of their social or economic background.
- **Article 15:** Prohibits discrimination on the grounds of **religion, race, caste, sex, or place of birth**, thus providing a legal framework to challenge discriminatory practices against **Scheduled Castes (SCs), Scheduled Tribes (STs), and Other Backward Classes (OBCs)**.

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- **Article 16:** Ensures **equality of opportunity** in public employment, prohibiting discrimination based on **caste, religion, or sex**.
- **Article 17:** Abolishes **untouchability**, which had been a pervasive social practice, ensuring that no individual is treated as "**untouchable**" and **denying them their basic human dignity**.

These provisions are fundamental to achieving **social justice**, by ensuring that the law acts to eliminate inequality and discrimination.

DPSP: GUIDING THE STATE'S WELFARE AGENDA

The **Directive Principles of State Policy (DPSPs)**, enshrined in **Part IV of the Constitution (Articles 36-51)**, guide the government in formulating policies and laws that promote **social justice**. Although the DPSPs are not **justiciable** (i.e., **they are not enforceable in courts**), they serve as **moral obligations** for the state to act towards **social welfare**.

Key DPSPs focusing on social justice include:

- **Article 38:** Directs the state to promote the welfare of the people by securing a **social order based on justice**, and reducing inequalities in income and wealth.

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- **Article 39:** Ensures that the state makes provisions for the **adequate livelihood** of all citizens, guarantees **equal pay for equal work** for both men and women, and **protection from economic exploitation**.
- **Article 41:** Guarantees the **right to work, education, and public assistance** in cases of **unemployment, old age**, sickness, or disablement.
- **Article 42:** Directs the state to secure **just and humane conditions of work** and ensure **maternity relief**.
- **Article 46:** Directs the state to promote the **educational and economic interests** of SCs, STs, and other backward sections of society, thereby addressing the **historical disadvantages** they face.

These principles guide the government's efforts to address **economic disparities, social injustices**, and **provide welfare benefits** to the disadvantaged.

RESERVATION & AFFIRMATIVE ACTION

The Constitution recognizes the importance of **affirmative action** to uplift marginalized communities and ensure that they have access to **opportunities** in education, employment, and political participation.

- **Article 15(4): Empowers the state to make special provisions for the advancement of socially and educationally backward classes, including SCs, STs, and OBCs.**

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- **Article 16(4):** Allows the state to provide **reservations in public employment** for backward classes, ensuring that they are adequately represented in government jobs.

These provisions have led to **reservation policies** in education and employment, which aim to level the playing field and ensure that historically disadvantaged communities have access to opportunities they were previously denied.

The **judiciary** has played a significant role in promoting **social justice** in India, through **judicial interpretations** that have expanded the scope of **Fundamental Rights** and **Directive Principles**. Key judicial contributions include:

- **Right to Life and Personal Liberty (Article 21):** The Supreme Court has expanded the interpretation of **Article 21 beyond physical harm** to include **health, education, shelter, and environmental justice**, which are essential to ensuring a **decent quality of life** for marginalized communities.
- **Public Interest Litigation (PIL):** PIL has allowed the judiciary to address **social justice** issues that **affect vulnerable groups, such as prisoners, women, children, and persons with disabilities**. It has been a powerful tool to ensure that the **poor and marginalized** have access to justice.

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- **Landmark Judgments:**

- **Vishaka v. State of Rajasthan (1997):** This case led to the formulation of guidelines for preventing **sexual harassment at the workplace**, which is crucial in promoting **gender justice**.
- **National Legal Services Authority v. Union of India (2014):** This case recognized the rights of **transgender persons**, affirming their right to equality and dignity.

Through **judicial activism**, the Indian judiciary has been proactive in interpreting the Constitution to uphold social justice, especially for those who face systemic discrimination and exclusion.

SOCIAL JUSTICE THROUGH LEGISLATION

Beyond constitutional provisions, various **laws** enacted by Parliament have been crucial in advancing **social justice** in India. Some of the key legislations include:

- **The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989:**

This law aims to prevent atrocities and discrimination against **SCs** and **STs**, ensuring their protection from social and economic exploitation.

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- **The Right to Education Act, 2009:** This Act ensures **free and compulsory education** for **children aged 6-14 years**, with a particular focus on **socially disadvantaged** children.
- **The Protection of Women from Domestic Violence Act, 2005:** Provides legal protection to women facing **domestic violence**, empowering them to seek legal recourse.
- **The Maintenance and Welfare of Parents and Senior Citizens Act, 2007:** This Act ensures that parents and **senior citizens are not neglected by their families** and have the legal right to seek maintenance.

These laws are critical in addressing social inequalities and offering legal remedies for vulnerable and marginalized communities.

CHALLENGES & WAY FORWARD

Despite the robust framework of the Constitution and supporting legislation, several **challenges** persist in achieving true social justice in India:

- **Caste-based Discrimination:** While untouchability has been abolished, **caste-based discrimination** remains entrenched in many parts of India.

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- **Gender Inequality:** Women, especially in rural areas, continue to face **discrimination** in areas such as education, employment, and social mobility.
- **Economic Inequality:** Significant wealth disparities persist, with large sections of the population living below the **poverty line** and facing **economic marginalization**.
- **Access to Justice:** The cost of litigation and **legal barriers** often prevent marginalized groups from accessing **justice** in the courts.



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