

## **AMENDMENT TO PROVISIONS AND THE EFFECT OF PUBLIC OPINION ON THEM**

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### **Abstract**

*The following research paper is on the relation between public opinion and how public opinion regarding a particular issue brings change to an amendment made by the Parliament regarding any provision, be it constitutional or ordinary law. In order to show the influence of public opinion, 3 such Amendments have been discussed they are, the 42<sup>nd</sup> Amendment, Atrocities Act, 2018 Amendment and the Citizenship Amendment Act, 2019. All these amendments were affected by public opinion in some way or the other. The project first explains the basics of the concepts of Amendments and Public opinion and then creates a relationship between them by discussing the abovementioned amendments also, in order to understand clearly the situations that led to certain events, a clear explanation of social conditions of the time has also been provided. In the end, the paper discusses the importance of public opinion in today's era and in the conclusion discusses about the potential solution in order to prevent peaceful public protests from turning into violent displays causing harm to life and property.*

**Keywords:** Amendment, Public Opinion, 42<sup>nd</sup> Amendment, Emergency, Atrocities Act, CAA



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## **INTRODUCTION**

After years of struggle, India, on 15th August 1947 attained Independence, but to be fair, this truly was not the end of struggles for India. The now-independent nation now had to prepare itself to come out of the shadow of the Empire and face all the tasks for the making of a great nation, all from internal governance to international affairs, head-on and on its own. Also, at the same time, the establishment of a democracy based on the idea of Justice, Liberty, Equality and Fraternity.

And the very first task undertaken by the nation was the creation of a new Constitution. A Constitution which would embody in it all the ideals that the nation would stand for, a supreme law for the entire nation. Or in much simpler words, a Constitution of the people, by the people and for the people of India.

The Constituent Assembly, which was set up in 1946 according to the Cabinet Mission Plan was responsible for the framing of the Constitution for a country with not only the second largest population in the world but also with a huge number of linguistic, religious and regional diversities. And these were only a few of the problems they'd have to face, but the most

important aspect was, that the solutions presented by the Assembly for the problems would not only assist in the present but would establish future aspirations of the people of the nation as a whole. The Constituent Assembly was not so sovereign at first, it was brought by the British Government and thus could've been abolished by it and thus was also facing various limitations, but all this changed after the Indian Independence Act, 1947, which removed all these limitations.

The Constituent Assembly met for the first time on 9<sup>th</sup> December 1946, and after a great series of discussions and deliberations, the task of the creation of a constitution for independent India came to an end. And the fact that our constitution is functional to this day and still has the status of the most important legal document of the nation shows that all the work of the makers of our constitution clearly paid off. But, the history of the entire Constitution's creation isn't the focus of the paper. The aspect to be focused upon is the Amendment Powers granted by the Constitution, which is not only one of the most important provisions of the constitution, but also one that was very highly debated during the formulation of the Constitution.

Along with discussing about Amendments, we will also be discussing about Public Opinion, which is one of the most important things leaders of any Democratic Nation have to be wary of. The motive of the paper is to discuss about the influence of the mass outlook of the people of the nation over a particular topic, in this case, amendment to various provisions, and how does their opinion bring a change in the decision of the political regime of the time.

### **1. RESEARCH QUESTION (STATEMENT OF PROBLEM):**

- How integral is the Amendment Provision to India?
- Can the Amendment Provision be used to make such changes which have more negative repercussions than positive results?
- How do the people react to such an Amendment or Law?
- Can the Public Opinion formed against such Amendments turn out to be violent if not dealt with in time?
- Does Public Opinion play a vital role in India today as well?

### **2. RESEARCH OBJECTIVES:**

The main objective of this paper is to elucidate the importance of public opinion in the Indian Democracy and the role it plays in bringing out the inadequacies of Amendments made to Laws of significance in India.

### **3. RESEARCH HYPOTHESIS:**

Public Opinion always has and always will be an integral part of politics and the action of any Political Party which goes against the general consensus of the people is nothing less than poking a sleeping lion. People of a nation are the only reason through which the governments are able to come to power and enforce their ideals, but if the people are against any action of said government, and decide to raise their voice against it, the government needs to be swift in dealing with such instances in a calm and co-ordinated manner.

#### **4. RESEARCH METHODOLOGY:**

This research paper is based on the doctrinal method in which data is collected from the secondary resources. In the secondary resource some books, e-books, websites etc. have been referred. After collecting data from these resources the materials were filtered and included in the research paper in such a way that the objective of my research would be attained.

#### **5. SCOPE OF STUDY:**

Public Opinion is the cornerstone of any democracy, especially in India where the Preamble to the Constitution establishes the source of all power in the nation with its first 3 words i.e. "We The People". But at times the law of the nation, be it Constitutional or Ordinary Law, might be construed in such a way that creates a sense of discontent among the people thus formulating a Public Opinion not in the favour of any or all of the 3 organs of the government. The paper discusses about such instances by talking about 3 such Amendments, the 42<sup>nd</sup> Constitutional Amendment, the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act of 2018 and the Citizenship Amendment Act of 2019 and it what way did these amendments affect the Public Opinion causing inconvenience for the Government and citizens as well.

#### **6. ABOUT THE AMENDMENT PROVISION IN INDIA:**

As stated in the section above, the Amendment Provision was one that was debated over by the constituent assembly, as it was such a provision which will be integral in the establishment of the Constitution as a dynamic document, i.e one that would change and adapt with the time.

The key issue regarding the creation of the Amendment Provision was: Rigidity and Flexibility of the Constitution. Which will be discussed in the paper.

The purpose behind the creation of the provision of amendment was to counter/overcome the problems that the working Constitution may encounter in the future. No generation has

the wisdom and/or authority or a self-established monopoly to place fetters on future generations to mould the machinery of government according to their requirements. If no provisions were made for the amendment of the Constitution, the people would have recourse to extra constitutional methods like revolution to change the Constitution.<sup>1</sup>

Here comes the discussion over the rigidity, flexibility and the overall dynamic nature of the Indian Constitution. The makers of the constitution were wary of both, excessive rigidity and excessive flexibility of the Constitution.

In the case of the excessive rigidity, the framers of the Constitution were of the opinion that rigidity would prevent the Constitution from becoming a document which would grow with a growing nation, adapt itself to the changing need and circumstances of a growing people. And this can be understood by the following observation by late Prime Minister Pt. Jawaharlal Nehru, **“while we want this constitution be as solid and permanent as we can make it, there is no permanence in the constitution. There should be certain flexibility. If you make anything rigid and permanent you stop the nation's growth, of a living vital, organic people”**

And, in the case of the excessive flexibility of the Constitution, the framers were aware that if the Constitution was made extremely flexible then it would be in danger of becoming a victim of the vision of the ruling party i.e. if the ruling party found a particular provision of the constitution to be a hindrance, they could easily do away with it. The Framers were thus wary to avoid extreme flexibility. Members like H.V. Kamnath favoured ensuring procedural safeguards to avoid the possibility of hasty amendment to the Constitution.

The framers thus worked out a compromise i.e. the formulation of a Constitution which (in simple words) is neither too rigid and at the same time is not too flexible. It is neither too inconvenient to create obvious changes and at the same time it is not so easy to make unnecessary and unethical changes.

It is quite evident that if the balance created by the framers of the constitution were to shift to either side of the plane i.e. rigidity and flexibility a bit more than what it is today, then in either case there would be a danger to political institutions and the people. Thus, the purpose of providing an Amendment provision is to make it possible to create a change in the constitution gradually in relation to the changing social situations i.e. have the law

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<sup>1</sup> Keshavnanda Bharti v. State of Kerela, AIR 1973 SC 1461

change/evolve with the social changes, thus keeping the ever so desired dynamic nature of the constitution.

**And thus there are the following types of amendments:**

- 1. Amendment by Simple Majority:** Those articles which can be amended by the Parliament by simple majority which amends ordinary law and those which are contemplated in Article-5, Article 169 and Article 239-A, and these articles are excluded from the purview of Article-368 i.e. procedure to amend the constitution.
- 2. Amendment by Special Majority:** Those articles which can be only amended by special majority as laid down in Article 368. With the procedure laid down in Article 368. All constitutional amendment other than those referred to above, come within this category and must be effected by majority of the total membership of each House of Parliament as well as by a majority of not less than 2/3 of the members of that House present and voting.
- 3. Amendment by Special Majority plus Ratification by States:** Those Articles which requires ratification by not less than ½ of the State legislature with the special majority as mentioned in above. The states are given an important voice in the amendment of constitution where the personal interest of the state and even any unilateral amendment by Parliament which may vitally tries to destroy the fundamental basis of the constitution. This class of Articles consist of amendment which seek to make any change in the provisions mentioned in Article 368. The following Provisions requires such ratification by the states:
  - i.** Election of the President- Articles 54 and 55.
  - ii.** Extent of the Executive Power of the union and the states- Articles 73 and 162.
  - iii.** Articles dealing with Judiciary, Supreme Court, High Court in the States and Union territories- Articles 124 to 147, 214 to 231, 241.
  - iv.** Distribution of legislative powers between the Centre and the States- Articles 245 to 255
  - v.** Any of the lists of the VIIIth Schedule.
  - vi.** Representation of States in Parliament in IVth Schedule.
  - vii.** Article 368 itself.

The Amendment Provision has had a somewhat history of conflict in India. Mainly over the question of its area of influence. The problem with the interpretation of the provision was, that

did the provision have within its power to amend Fundamental Rights, as they have always been regarded with great importance and form a certain base of the Constitution.

The very first instance of such a question over the power of the Amendment Powers of the Legislature came with the enactment of the **1<sup>st</sup> Amendment Act, 1951** in the **Shankari Prasad v. Union Of India<sup>2</sup>** case. The case obviously questioned the validity of the Amendment. The motive of the amendment (amongst others) was to abolish the greatly prevalent Zamindari System in India, and thus introduced Articles 31-A and 31-B. The Amendment was challenged on the ground that it tries to take away or abridge the rights conferred by Part III of the Constitution (Fundamental Rights).

The argument was that the Parliament as per Article 13(2) of the Constitution did not have the power to abridge the provisions of Fundamental Rights even by a Constitutional Amendment. The Argument was made on the ground that just like in Article 12, the word “State” included the Parliament in it, similarly Article 13 (2) in its utilisation of the word “Law” included Constitutional Amendment as well, and thus deeming the 1<sup>st</sup> amendment void/invalid. The court rejected these claims, and held, that the Parliament’s power to amend the Constitution, including Fundamental Rights is included in Article 368, and in the case of the word “Law” as mentioned above, it included only ordinary laws framed in utilisation of Legislative Powers, and not the Constitutional Amendments which were made in exercise of Constituent Powers. Thus, making the 1<sup>st</sup> Amendment and any other further Constitutional Amendment valid, even if it were to abridge or take away any Fundamental Right.

Then came **the Sajjan Singh v, State of Rajasthan<sup>3</sup>** case, which challenged the validity of the 17<sup>th</sup> Amendment Act, 1964. The Supreme Court approved the judgement from the previously mentioned case, with the then Chief Justice of India, Mr. P.B. Gajendragadkar stating that if the makers of the Constitution had the intention of excluding the Fundamental Rights from the ambit of amending power of the Parliament, they’d have made a clear provision for the same. But, then came the case, **Golak Nath v. State Of Punjab<sup>4</sup>**, which also questioned the validity of the 17<sup>th</sup> Amendment. In this case the Supreme Court overruled the judgements of the previous 2 cases, thus establishing that the Parliament (from the date of the decision) had no power to amend any of the provisions in Part III of the Constitution i.e. they had no power/authority to take away or abridge the Fundamental Rights. The court held that an

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<sup>2</sup>Shankari Prasad v. Union Of India 1951 AIR 458

<sup>3</sup>Sajjan Singh v, State of Rajasthan 1965 AIR 845

<sup>4</sup> Golak Nath v. State Of Punjab 1967 AIR 1643

Amendment is a 'Law' within the ambit of Article 13(2), and thus, if the Parliament was to pass any amendment that was to violate any of the fundamental rights, it would be declared void.

However, the 17<sup>th</sup> Amendment Act, which was challenged in this case, was not held to be void, as, the Chief Justice (for the first time) applied the principle of **Prospective Overruling**.<sup>5</sup> Through this principle, the CJI drew a protective cover over the not only the 17<sup>th</sup> Amendment but also the previously challenged Amendments i.e. all the amendments before (and including) the 17<sup>th</sup> amendment were deemed valid.

The Golak Nath case created a lot of difficulties for the Parliament in regards to their Amendment powers. And thus, came the enactment of the **24<sup>th</sup> Amendment Act, 1971**.

It was clear that the purpose of the Indira Gandhi regime was to abrogate the ruling of the Supreme Court in the Golak Nath case. The **24<sup>th</sup> Amendment** made considerable changes in **Article 13 and Article 368** of the Constitution,

**The Amendment made the following changes<sup>6</sup>:**

- i.** In article 13, it added 4<sup>th</sup> clause, which established that "Nothing in this article shall apply to any amendment of this Constitution made under Article 368"
- ii.** The rest of the changes were made in Article 368, firstly, the heading of the article was changed from "Procedure of Amendment of the Constitution" to "Power of the Parliament to amend the Constitution and Procedure therefor"
- iii.** Next in Article 368, a new sub-section (1) was added which stated "Notwithstanding anything in this Constitution, Parliament may in exercise of it's Constituent Powers amend by way of addition, variation or repeal any provision of this Constitution in accordance with the procedure laid down in this Article."
- iv.** Then, after renumbering a clause as clause (2), it made it obligatory for the Parliament to obtain the assent of the President in order to pass the Bill amending the Constitution.
- v.** And lastly, a third clause to Article 368 was added which provided that "Nothing in Article 13 shall apply to any amendment made under this Article"

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<sup>5</sup> Dr. J.N. PANDEY, CONSTITUTIONAL LAW OF INDIA, Pg. 778 (51<sup>ST</sup> Edition, Central Law Agency, 30-D/1 Moti Lal Nehru Road, Allahabad)

<sup>6</sup> THE CONSTITUTION (TWENTY-FOURTH AMENDMENT) ACT, 1971

The 24<sup>th</sup> Amendment not only reversed the judgment of the Supreme Court from the Golak Nath case but at the same time enhanced the Amendment powers of the Parliament, as is clearly evident with this statement in the newly added 1<sup>st</sup> clause of Article 368.

But soon, a limitation was put on this newly established unlimited amending power.

The validity of the 24<sup>th</sup> Amendment was again challenged in the monumental case **Keshavnanda Bharati v. State of Kerela**.<sup>7</sup> The case at first challenged the validity of the Kerela Land Reforms Act 1963. But after the passing of the 29<sup>th</sup> Amendment Act, the Kerela Land Reforms Act came to be included in the 9<sup>th</sup> Schedule of the Constitution, thus permitting the petitioners to challenge the validity of the 24<sup>th</sup>, 25<sup>th</sup> and the 29<sup>th</sup>, Amendment Act. The Union of India claimed that the Amending power was unlimited, while on the other hand the petitioners argued that surely the Amending power was wide but it definitely was not unlimited. Thus, again bringing forth the question about the extent of the Parliament's amending powers. And for this, for the first time, a special 13 Judge Bench was constituted to hear the case.

In its judgement, the court overruled the Golak Nath case Judgement which denied the Parliament the power to amend Part III of the Constitution.

The court held that even before the 24<sup>th</sup> amendment, the Parliament had the same powers of amendment. The 24<sup>th</sup> amendment was only declaratory in nature, i.e. it made explicit what was implicit in the Constitution.<sup>8</sup>

This case however, put a limitation on the amending powers of the Parliament as it propounded the **Basic Structure Theory**. As per this theory, there were certain aspects of the Constitution which were considered as its basic structure and therefore, any amendment that went against the basic structure of the constitution will be deemed invalid/void. Thus, the judgement granted and also put a check on the power of the parliament.

Sadly, this was not the end of the problems in relation to the Amendment Powers of the Parliament. The worst was yet to come.

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<sup>7</sup> Keshavnanda Bharati v. State of Kerela AIR 1973 SC 1461

<sup>8</sup> Dr. J.N. PANDEY, CONSTITUTIONAL LAW OF INDIA, Pg. 779 (51<sup>ST</sup> Edition, Central Law Agency, 30-D/1 Moti Lal Nehru Road, Allahabad)



The worst being the coming of the era of Emergency and the 42<sup>nd</sup> Amendment. Both these topics will be discussed properly in further sections whilst creating a relation with the influence of public opinion.

But for now, the motive of this section of the paper is completed.

## **7. ABOUT PUBLIC OPINION:**

Public opinion as a concept is rather simple to understand, especially in the context of a democracy. In simple words it refers to the collective opinion of the majority of the people over a particular issue. In a Democracy, public opinion plays a vital role as the leaders derive their authority from the people.

The concept of Public Opinion has been widely discussed by sociologists and philosophers in order to understand it's importance.

**Various factors have been found responsible for influencing the public opinion of the people such as:**

- i. **Mass media:** Various means of media play a vital role in influencing the people's outlook by the way they present information and also what information they present.  
Eg. Fake news shown to people during CAA protests
- ii. **Social Surroundings:** A person's opinion is majorly affected by those around him/her
- iii. **Social Situations:** A person's opinion regarding a particular issue is also largely dependent on the type of social condition he/she lives, for eg, a person from a poor family would be largely be influenced by a leader who promises to bring better conditions for him/her.
- iv. **Role of Leaders:** People's opinion in a democracy is mostly not based upon the political party the person belongs to, but to the leader representing it. If the people find the leader to not be so influential, their opinion would shift from him/her to the other choice.

Together, these factors, among many others formulate public opinion which leads to the people influencing various decisions of the Government.

## **8. AMENDMENT TO PROVISIONS AND PUBLIC OPINION:**

This section of the topic is where a relation between public opinion and their influence on Amendments (either formulation or dissolution) will be established, you can consider this section as the culmination of the basics you have just read about in the topics above.

It is essential to remember that the social, economic and political scenarios of the time play a major role in all the three amendments to be discussed in this section. And, to make it easier for the reader to understand that concept, primarily a discussion has been made for the same.

**42<sup>nd</sup> Amendment:** We ended the section about the discussion of the Amendment Provision and its conflicting history with the statement “The worst was yet to come” i.e. referring to the coming of the 42<sup>nd</sup> Amendment and The Emergency.

To this date, the 42<sup>nd</sup> Amendment is regarded as the most controversial Constitutional Amendment, reason being that the Amendment made changes to almost all the Parts of the Constitution including Article 368.

But, before we go into a proper discussion about 42<sup>nd</sup> Amendment and the Emergency, we must discuss the socio-political situation of the time.

**Rise of Indira Gandhi:** After Lal Bahadur Shastri’s death in 1966, for the second time in 2 years, the Congress faced the issue of political succession.

There was a stiff competition between, Morarji Desai and Indira Gandhi. However, after a secret ballot among the Congress MP’s, Indira Gandhi became the new PM of the nation.

Then came the **1967 General Elections**. Indira Gandhi did not have enough time to adjust in her position as the PM and the person who was to lead the Congress Government to victory yet again. Leaders of other parties took advantage of this and formed alliances. The Congress, was able to form the Government at Central Level, but did not achieve the majority they always had.<sup>9</sup>

Then came the infamous “**Split In The Congress**”. The Congress had a group of leaders who were in control of the party, called the Syndicate. This group of leaders played a vital role in the election of both Lal Bahadur Shastri and Indira Gandhi. However, their motive behind having Indira Gandhi Elected as the PM was that they put her inexperience to their use and be the one’s who actually “pulled the strings”<sup>10</sup>. And Indira Gandhi knew that in order to establish her control as the leader of the party as well as the Nation, she first had

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<sup>9</sup> POLITICS IN INDIA SINCE INDEPENDENCE FOR CLASS 12 (NCERT)

<sup>10</sup> POLITICS IN INDIA SINCE INDEPENDENCE FOR CLASS 12 (NCERT)

to sideline the Syndicate. And she did accomplish this when the **1969 Presidential Elections** were conducted. In 1969, following the death of President Zakir Hussain, the office of the President lay vacant. The Syndicate nominated N. Sanjeeva Reddy as the official Congress Candidate. Indira Gandhi on the other hand, convinced the then Vice President, V.V. Giri to file his nomination as an independent candidate.

Even after the Syndicate's efforts to ensure their candidate's election as the President, they lost, as Indira Gandhi called for a 'Conscience Vote'. This didn't only mean V.V. Giri's victory for becoming the President, it also meant Indira Gandhi's victory over the Syndicate.

This led to the Congress President **expelling Indira Gandhi from the party.**

The internal struggle in the Congress was known to all, but this act of expelling the PM in a way officialised it.

Both Indira Gandhi and The Syndicate created their own Congress parties. Indira Gandhi and her followers formed the **Congress (Requisitionists)** and the Syndicate formed **the Congress (Organisation)**. Most of the members of the Congress joined Indira Gandhi's Congress ( R ) as to them it was evident that in order to climb the ranks quickly, the only aspect required was to have loyalty towards Indira Gandhi and her family.

After the split, Indira Gandhi's government reduced to a minority, yet they continued to function with the support from parties like the Communist Party of India and the DMK. But, in order to end her dependence on other parties, and regain her strength, the Indira Gandhi Government decided to dissolve the Lok Sabha in December 1970.

And thus came the **5<sup>th</sup> General Elections of 1971**. All the major non-Congress, non-Communist parties formed the "Grand Alliance", but they lacked what the Congress ( R ) had, a proper issue and agenda.

Indira Gandhi contested under the slogan "Garibi Hatao" and focussed on issues which troubled the poor masses and minorities, garnering her huge support from disadvantaged sections of the society like landless labourers, Dalits, Adivasis, Women, unemployed youth etc.

And as a result of her gaining mass popularity and support, Indira Gandhi's Congress ( R ) and CPI alliance won the most seats the Congress Government had ever won. During this period, there was no mass public discontent regarding Indira Gandhi, and what helped more in this aspect was that after the 1971 elections, war broke with Pakistan and

the way she handled the matter not only gained her more approval from the public but also appreciation from leaders of the Opposition.

Now, we have reached the point when Indira Gandhi had established her supremacy.

After the 1971 war, the economy suffered a huge strain, and adding to this problem were issues like decline in food grain output due to failed monsoons the resulting in rise in prices, low industrial growth, growing unemployment etc.

These issues continued, thus resulting in protests. But the most prominent were the Gujarat and Bihar student protests. In 1974, there were mass student protests in Gujarat against the rising prices of food commodities and corruption of government officials. Major opposition leaders joined such protests and demanded that fresh elections for the state of Gujarat to be conducted. Morarji Desai declared that he would go on an indefinite fast till fresh elections were declared. And the same happened, fresh elections were declared and in June 1975, Congress lost the election for Gujarat. In the case of Bihar, the student protests were conducted on the same grounds as Gujarat. And the leader of the Bihar protests, J.P. Narayan demanded the dismissal of the Congress Government, to which the government however refused. The movement had begun to affect national politics as well and J.P. Narayan wished to spread it to other parts of the nation as well.

**Issues with the judiciary:** This was also the time when the Congress regime faced many issues with the Indian Judiciary. A major issue of conflict was the limitation on the amendment provision which was put up by the Supreme Court and their Basic Structure Theory established in the monumental Keshavnanda Bharti case.

There were some other instances (before the emergency) which showed the government's retaliation to the Judiciary. Primary examples being, the passing of the 26<sup>th</sup> Amendment which withdrew the provision of Privy Purse, it was passed in order to nullify the order of the Supreme Court regarding the same; and **the making of A.N. Ray as CJI**, this was highly controversial as A.N. Ray superseded 3 Judges senior to him for the post of the CJI, and also, because A.N. Ray was the primary judge in the minority of the Keshavnanda Bharti case who were in favour of the Government, this act of Indira Gandhi was greatly criticised.<sup>11</sup>

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<sup>11</sup> Vicky, 1973: When Indira Gandhi Eroded the Independence of the Judiciary and Morarji Desai Restored it, ONE INDIA (Jan. 13, 2018, 12:09 PM), <https://www.oneindia.com/india/1973-when-indira-gandhi-eroded-the-independence-of-the-judiciary-and-morarji-desai-2619309.html>

**Declaration of The Emergency:** Then came the verdict to the infamous **State of Uttar Pradesh v. Raj Narain**.<sup>12</sup> On 12<sup>th</sup> June 1975, the Allahabad High Court declared Indira Gandhi's 1971 election to the Lok Sabha as invalid. The petition was filed by Raj Narain, who had been defeated by Indira Gandhi, it challenged her election on the grounds of election fraud and use of state machinery for election purposes. **After the verdict, legally she could no longer be an MP and therefore could not remain as the Prime Minister.** Indira Gandhi challenged the High Court's judgement in Supreme Court. On June 24, 1975 the Supreme Court upheld the judgement of the High Court, but at the same time it allowed her to continue to stay as the PM till her plea was decided. Thus, putting a **partial stay on the High Court Judgement.**

Taking advantage of the presented opportunity, J.P. Narayan led the opposition political parties in a massive protest in Delhi on 25<sup>th</sup> June 1975. He called for a nationwide satyagraha for her resignation. This threatened Indira Gandhi's position as a leader.

The political mood of the country had turned against the Congress, more than ever before. The response of the government was to declare a state of emergency. On 25 June 1975, the government declared that there was a threat of internal disturbances and therefore, **it invoked Article 352 of the Constitution.** President Fakhruddin Ali Ahmed on the recommendation of the PM declared the State of Emergency.

This had various instant effects such as the electricity to all major media houses was cut, all the protests, bandhs etc came to a halt as they were now banned and many opposition leaders (including J.P. Narayan) were put in jail.

Various excesses were committed by the government during this period and many Constitutional Amendments were also passed, starting with the **39<sup>th</sup> Amendment**, the purpose of which was to negate the decision of the Allahabad High Court, it placed the election of the President, the Vice-President, the Prime Minister and the Speaker of the Lok Sabha beyond the scrutiny of the Indian Courts.

And then, finally, came the 42<sup>nd</sup> Constitutional Amendment Act, 1976.

**About 42<sup>nd</sup> Amendment:** The 42<sup>nd</sup> Amendment is one of the things that came out of the Emergency era and to this day is synonymous with it. It is considered to be extremely

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<sup>12</sup> State of Uttar Pradesh v. Raj Narain 1975 AIR 865

controversial as it brought changes to almost all the provisions of the Constitution and is thus sometimes referred to as the “**mini-Constitution**”.

The amendment and its **59 clauses**:

- i.** took away many of the powers of the Supreme Court;
- ii.** transferred many of the powers of the State Governments to the Central Government;
- iii.** gave excessive powers to the office of the Prime Minister
- iv.** addition of 4 new Directive Principles of State Policy in the Constitution and establishing that no law implementing any of the DPSP can be declared invalid;
- v.** addition of words to the Preamble;
- vi.** amending Article 357 making it clear that even after the Emergency ended the laws created during this time would not be deemed as invalid when the Emergency ended.

Now, as for the changes to the Amending Powers of the parliament, the 42<sup>nd</sup> amendment gave completely **unlimited powers to the Parliament** and at the same time, made the Supreme Court incapable to decide over the validity of the amendment via the process of Judicial Review.

This change was brought to the Constitution in order to remove the limitation put on the Amendment powers by the **Basic Structure Theory** from the Keshavnanda Bharti case, which established that if any amendment to the Constitution was to go against the Basic Structure of the Constitution, it would be declared as invalid.

The Amendment **added 2 clauses to Article 368**, namely the 4<sup>th</sup> and 5<sup>th</sup> clause. **Clause 4** provided that, **No Constitutional Amendment**, including those made for the provisions of Part III (Fundamental Rights) , irrespective of the fact that whether it was made before or after the commencement of the 42<sup>nd</sup> Amendment can be called in any court on any ground to challenge its validity. And **Clause 5 removed any doubt regarding the scope of the amendment powers** now. It established very clearly that there shall be no limitation as to the powers of the Parliament to amend the Constitution by way of addition, variation or repeal. Thus making it clear that the basic feature of the Constitution can be amended. <sup>13</sup>

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<sup>13</sup> Dr. J.N. PANDEY, CONSTITUTIONAL LAW OF INDIA, 774 (51<sup>ST</sup> Edition, Central Law Agency, 30-D/1 Moti Lal Nehru Road, Allahabad, 2016)

The 42<sup>nd</sup> Amendment acted as a blot to the importance of the power of Constitutional Amendment of the Legislature and brought more controversies than any other Constitutional Amendment.

The discontent of the people was not directly towards the 42<sup>nd</sup> Amendment, but towards the government that enforced it, and it was this discontent which eventually led to its removal.

**The Elections of 1977 (Public Opinion Takes on the Amendment):** The Emergency lasted for 21 months. And finally in January of 1977, Indira Gandhi called for fresh general elections. This led to the release of all the political prisoners.

The sudden release from prison and the declaration of elections gave the opposition very little time to prepare, but the major opposition parties had already been coming together in the pre-Emergency period.

Major opposition parties came together and formed what came to be known as **The Janta Party** and accepted the leadership of Jayaprakash Narayan. This new party even consisted of leaders of the Congress Party who were against their party during the Emergency.

Now, here is where the concept of Public Opinion gets applied, and eventually resulting in the removal of the 42<sup>nd</sup> amendment. The Janta Party turned this election into a referendum over the fact that choosing either the Janta Party or The Congress would be the public's last chance to choose between **Dictatorship and Democracy**<sup>14</sup>, and, in the backdrop of the Emergency, and the excesses done by the Congress (such as press censorship, excessive arrests of opposition leaders, vasectomy campaigns in rural areas, and most of all, the almost complete alteration of the Constitution by the 42<sup>nd</sup> Amendment) this choice presented by the Janta Party, had more impact that one would've imagined.

The final results of the elections took everyone by surprise, the joining together of the non-Congress parties guaranteed that there won't be any division in the non-Congress votes.

The Janta Party's winning and forming the Government clearly represented the **change in the socio-political** landscape of the country. **Morarji Desai became the first Non-Congress PM of the nation.** This clearly showed that, no matter how strong a leader, if in the eyes of the public, the actions of the regime in power are wrong, in a Democracy, the people's vote will always be final.

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<sup>14</sup> POLITICS IN INDIA SINCE INDEPENDENCE FOR CLASS 12 (NCERT)

Now, as the new party formed the government, the changes that the 42<sup>nd</sup> Amendment made to the Constitution, were reverted by **the 43<sup>rd</sup> and 44<sup>th</sup> Amendment Acts in 1976**. The Amendments brought the constitution back to its former glory for example, they returned to the Supreme Court the powers that the 42<sup>nd</sup> Amendment had taken away.

As for the remaining provisions which the 43<sup>rd</sup> and 44<sup>th</sup> Amendments didn't do away with, namely, Clauses 4 and 5 added to Article 368, they were taken care of in the **Minerva Mills Ltd v. Union of India**<sup>15</sup> case. Here, the Supreme Court with a majority of 4 to 1 did away with these clauses on the ground that they invalidated the basic structure of the Constitution. Limited Amending power is a basic feature of the Constitution.<sup>16</sup>

The judgement clearly established the supremacy of the Constitution and not the Government in power and also, again validated the Basic Structure Theory of the Constitution.

As for the role of public opinion in all this, it is clearly evident, as if it wasn't for the mass disapproval of the nation's public, then, the Janta Government wouldn't have been able to come into power and do away with the 42<sup>nd</sup> Amendment, and if the powers of the Supreme Court were not reinstated by the 43<sup>rd</sup> and 44<sup>th</sup> Amendments then the ability of the Supreme Court to decide over the Minerva Mills Case also wouldn't have been possible.

In this case, public opinion shows its influence over the 42<sup>nd</sup> Amendment in the form of basic democratic process of electing leaders which implement change as per social requirements.

### **9. Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2018:**

The abovementioned Act is an amendment created in the SC/ST (Prevention of Atrocities) Act, 1989 or more popularly known as the **Atrocities Act**.

One of the problems that to this day that haunts certain section of the Indian society is discrimination against people belonging to the SC/ST community. The people belonging to these communities were regarded as being at the bottom of the society, so much so that the practise of exploiting them became a norm of the society. Various measures were taken by the government to uplift the condition of the SC/ST community but it was clearly evident from their continued exploitation that the already established provisions didn't create any difference.

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<sup>15</sup> Minerva Mills Ltd v. Union of India 1980 AIR 1789

<sup>16</sup> Dr. J.N. PANDEY, CONSTITUTIONAL LAW OF INDIA, 785 (51<sup>ST</sup> Edition, Central Law Agency, 30-D/1 Moti Lal Nehru Road, Allahabad)



Their social status was constantly exploited, and the worst part of this exploitation was that there didn't seem any scope for the community's social status to improve especially in areas where such exploitation was common.

The post-independence era witnessed various instances of injustice and atrocities being committed against the community and in relation to what is stated above, the already established provisions through acts like **Protection of Civil Rights Act, 1955** and the normal provisions of the Indian Penal Code proved to be rather ineffective. And despite the various measures to improve their social status in society, the community still remained a victim to the deep roots of the caste system.

Therefore, it was decided that an act to deliver justice to the community and for their protection from such atrocities an act will be passed. Even the Supreme Court emphasised upon the importance of such an act.

And hence, the **SC/ST (Prevention of Atrocities) Act came into being on 9<sup>th</sup> September 1989 with the purpose of achieving the proper inclusion of the SC/ST community into the Indian Society.**

The Act defined the term Atrocity as any offence committed against the SC/ST community (by a person who is not a member of the SC/ST community) which is punishable by Section 3 of the Act.

**The act has various provisions for the protection of the community, such as<sup>17</sup>:**

- i. Listing of all the potential atrocities which if committed against the people of the SC/ST community are punishable (ranging from imprisonment for 6 months to death penalty);
- ii. Enhancement of punishment in case the person is a repeat offender;
- iii. Establishment of special courts for speedy trials etc.

But, on **2<sup>nd</sup> April 2018**, after a judgement regarding certain provisions of the Act, **protests by the SC/ST community erupted nationwide.** In the **Dr. Subhash Kashinath Mahajan v. The State of Maharashtra and Anr case<sup>18</sup>**, the Supreme Court opined that the Act enacted for the upliftment and protection of the SC/ST community was being misused by the very people for whom the act was created thus destroying the purpose of the act. <sup>19</sup>

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<sup>17</sup> SC/ST (Prevention of Atrocities) Act, 1989

<sup>18</sup> Dr. Subhash Kashinath Mahajan v. The State of Maharashtra and Anr case, Bombay High Court CRIMINAL APPLICATION NO. 673 OF 2016

<sup>19</sup> Jayna Kothari, A Wrong Turn in the Road to Equality, CENTRE FOR LAW & POLICY RESEARCH (Apr. 6 2018) <https://clpr.org.in/blog/a-wrong-turn-in-the-road-to-equality/>

The matter before the court wasn't about the act's eligibility, but it was regarding a plea of a complaint being rejected to be quashed by the Bombay High Court. The complainant (a member of the SC/ST community) in the case alleged that the appellant had made averse remarks about the complainant in the annual confidential report. And thus the complainant filed a complaint under the provisions of the Act, claiming that the remarks were racial. Later on, another complaint was filed, and to have it quashed, the appellant moved to the Bombay High Court where it was rejected and thus finally going to the Supreme Court.

While examining the case, the **Supreme Court questioned the Section 18 of the Act** which imposed a barrier to anticipatory bail. The court did quash the complaint, but, at the same time brought changes to the certain provisions of the Act in its **20<sup>th</sup> March, 2018** judgement.

The changes brought established that a Public Servant accused of discriminating a person of the SC/ST community can only be arrested after getting a written permission from the public servant's appointing authority and similarly, for the arrest of a non-Public Servant permission from the Senior Superintendent of Police of the District is required beforehand. Along with this, the court established that there was no bar against granting anticipatory bail. The reason behind the Supreme Court bringing this change was that at times the law has been **misused to blackmail innocent public servants and private individuals to get vengeance or serve personal interests.**

And thus, the provisions which were considered as some of the most integral provisions of the Act, were deemed invalid by the Supreme Court on the grounds of 'Abuse of law' and 'Promote Caste Hatred' something which the legislature never intended the Act to be.

In response to the Supreme Court Judgement, the SC/ST community banded together and in a move of solidarity observed a **Bharat Bandh** to protest against the judgement.

Here again, we witness the influence of public opinion of a particular community. The community protested as to the fact that the Act's provisions which were provided as a deterrent has now been removed and brought them back to square one.

The community was infuriated as what they considered a legal weapon for their community had been taken away and now they felt a deep sense of hatred and betrayal towards the "system".

Various cases of atrocities against the community came out after the judgement. Which did nothing but invoke a much greater intention to protest. **The protests ended up claiming lives as well.**

The SC/ST community declared that they would protest on 9<sup>th</sup> August 2018 again, until and unless the Government does not reverse the Supreme Court Judgement.

The situation got so intense that the Government did the same and passed the **SC/ST (Prevention of Atrocities) Amendment Bill, 2018**. The Amendment introduced Section 18A which completely **reversed the 20<sup>th</sup> March 2018 Judgement of the Supreme Court** thus stating that no preliminary inquiry will be required for the registration of an FIR under this act and the investigating officer will not require any prior approval for making an arrest. Also, the provision of Anticipatory Bail was also removed.

This shows that when a certain section of the society feels offended or feels that their rights are being trifled with, there is a very good chance that they would resort to protesting against it. In order to have their voice their concerns the people will take to whatever means necessary.

This instance shows us that public opinion doesn't only lead to the eventual dissolution of an amendment but might also lead to the formulation of one. It always comes down to what the people really desire.

### **10. Citizenship (Amendment) Act, 2019:**

An amendment that started widespread protests throughout the nation, created divisions in the society, caused a large number of casualties and affected the people of the nation at large, this is the Citizenship (Amendment) Act, 2019 (or more commonly known as the CAA).

A discussion about public opinion in relation to amendment to provisions will be incomplete if this Amendment act is not mentioned.

But before we get to the part about the protests and their effect, some context regarding the Citizenship Act.

Part II of the Constitution of India (Articles 5-11) deals with the concept of Citizenship in India. And the legislation related to the matters of Citizenship in India is the **Citizenship Act of 1955**. And the act provided for 5 ways through which a person can acquire Indian Citizenship, they are, **Birth, Descent, Naturalisation, Registration or Incorporation of Territory**.

The act has been amended multiple times by the amendment acts of 1986, 1992, 2003, 2005, 2015 and finally 2019.

Ever since it was decided that the Citizenship (Amendment) Bill or more commonly known as CAB will be introduced in the Parliament, protests started in Northeast India and similarly it started gaining mass disapproval from the people. All this was because of what the Bill proposed. It stated that any person belonging to the **Hindu, Sikh, Buddhist, Jain, Parsi or Christian community from Afghanistan, Bangladesh and Pakistan who entered into India on or before 31<sup>st</sup> December 2014**, without proper documents, shall not be deemed as an illegal migrant. Instead the person will be granted a certificate of naturalisation. Therefore, making the procedure to acquire Indian citizenship easier for these communities (as the period required for naturalisation was reduced from 12 years to 6).

The bill was introduced by the **BJP government** and was passed by the Parliament on 11<sup>th</sup> December 2019.

Now, one might think that, what's so wrong with the implementation of an amendment which provides citizenship to communities that face religious persecution in the mentioned countries that it incited mass protests. Well, firstly, **the act did not include the Muslim community**. Or to be more precise, the act provided citizenship to communities which face mass discrimination in the mentioned countries (which have Islam as their state religion) but it does not include communities like the Ahmadiyya Muslim who are viciously discriminated in Pakistan or the Hazaras of Afghanistan thus, piling the entire Muslim community as one, irrespective of a sect's social position in their respective country.

Secondly, **it does not include other persecuted communities from Non-Muslim countries**, such as the Rohingyas of Myanmar, the Buddhist refugees of Tibet etc.

And thirdly and the probably the biggest issue of contention, is **the relationship of the CAA with the National Registry of Citizens (NRC)**. The NRC is a means through which it can be established that which citizens of the nation are legally citizens and which are migrants.<sup>20</sup> The NRC was for the first time applied in Assam, as it is border state, Assam has a large population of migrants and thus implemented the NRC to find out the illegal migrant population. But why is it a bone of contention for the people when related to CAA. According to the critics of CAA and NRC, when the nationwide NRC is conducted, then people belonging to the communities mentioned in CAA will have a way to preserve their citizenship on the claims that they are migrants who fled political persecution from the countries

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<sup>20</sup> What is NRC, INDIA TODAY (Dec. 18,2019, 11:13 AM) <https://www.indiatoday.in/india/story/what-is-nrc-all-you-need-to-know-about-national-register-of-citizens-1629195-2019-12-18>

mentioned in CAA. In a way acting as a protective cover for them. But in the case of the Muslim community, the same is not possible (as witnessed in the NRC in Assam, if a person's documents seem to be insufficient, then he/she will be deemed as an illegal migrant.)

It was this combination of the CAA and NRC which created fear in the Muslim population of the country.

Now, the grounds of the of discontent have been established, so it will be easier to understand why the protests got so severe. Protests started in Assam, that too when the Act was still a Bill. The people of Assam were only against the provisions of the CAA i.e. the granting of citizenship to migrants from the mentioned countries, Assam had already undergone a statewide NRC to do away with the same problems of migrants and thus protested the coming of CAA. From there, the protests only got bigger.

After the bill was passed by the Parliament, the nationwide protests against the Act started. Major areas of protests were Assam, West Bengal, Delhi, Uttar Pradesh and many other states and union territories. Many universities, mainly, JNU, Jamia Millia Islamia and Aligarh Muslim University witnessed mass protest against CAA, the protests however got so much out of hand at times that police had to intervene on many occasions causing harm and injuries to students. The protests saw many instances of excessive use of force by the police.

The Anti-CAA movement started garnering support from various public personalities such as Political Leaders, Bollywood celebrities and also garnered support internationally.

However, on one side there were peaceful protests like those at Shaheen Bagh, where people from all walks of life gathered in order to protest against the discriminatory act and what was even more surprising that even with the sheer number of people being there, no instance of violence was reported and on the other hand, instances like the Jaffrabad and Maujpur protests where clashes erupted between the pro and anti CAA protesters.

The protests at for example **Shaheen Bagh**, went on for nearly 100 days and didn't show any signs of coming to an end and the same went for protests in other parts of the nation, but all the public protesting came to an end due to the threat posed by the **Covid-19 virus**.<sup>21</sup> Which not only caused a halt to the protests, but to the functioning of the entire nation as well.

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<sup>21</sup> Anam Ajmal, How Delhi Cops End 100-Day Shaheen Bagh Protest, THE TIMES OF INDIA (Mar. 25,2020, 08:35 AM) <https://timesofindia.indiatimes.com/city/delhi/cops-end-100-day-shaheen-bagh-protest/articleshow/74801195.cms>

In the matter of a few weeks, the nation went through a lot in regards to the CAA. Like, mass spread of fake news, instances of hate speech, violent clashes which resulted in many casualties, **the filing of a 144 petitions in Supreme Court against CAA (decision pending)**<sup>22</sup>, attempts at mediation with the protesters by the Supreme Court etc. But through all this, both, the resolve of the Anti-CAA protestors and the BJP government stayed the same.

Maybe if the Covid-19 pandemic hadn't struck, some solution could've been presented.

The CAA protests act as a perfect example to show that how if the people of a nation agree/disagree over anything and they feel that what the Government is doing is wrong, in order to voice their concerns, the people will bind together and protest.

And this brings an end to this section.

### **11.IMPORTANCE OF PUBLIC OPINION IN TODAY'S DAY AND AGE:**

By the time you reach this section you would've witnessed various instances showing how public opinion brings a change, be it through general elections or through protests. And you'd have also witnessed instances as to when such mass opinion gets rather severe. So, if most of the times public opinion has such severe results, is it really that important today, isn't our motive to avoid conflict? Well, yes and no, sure our motive is to avoid conflict and sure at times public protests get out of hand but as time goes by and the needs of the people keep on changing, one may never know when a provision which once considered normal may turn out to be discriminatory to a certain section of the society (for example, section 377 of the IPC to the LGBT community). And that is why it becomes integral to listen to public opinion, today more than ever.

The participation of citizens in their own ways to voice their concerns regarding problems plaguing the nation is one of the best signs of an Independent Democracy.

### **12.CONCLUSION:**

However, the problem regarding the fact that at times protests turn violent still persists examples of which have been provided in the sections above. But it must also be noted that it takes a lot for a protest to turn violent, such as, no communication between the government and the protestors to address their concerns or the use of force by the government in order to suppress the protests (even if they are rather peaceful) or external provocation by different

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<sup>22</sup> Krishnadas Rajagopal, Supreme Court refuses to stay Citizenship Amendment Act without hearing government, THE HINDU (Jan. 22, 2020, 11:40 AM) <https://www.thehindu.com/news/national/caa-petitions-sc-says-no-stay-without-hearing-centre-may-refer-pleas-to-larger-constitution-bench/article30622277.ece>

groups and many more, but if or when a protest turns violent, the government in power has the choice to either suppress the protests with violence themselves or agree upon a proper discussion regarding the claims of the protestors.

As time goes by, it is becoming clearer than ever to the people that violence is no way to protest (excluding some situations) and thus primarily they themselves wait for the response of the government regarding their wants.

One never knows when a protest might turn violent and thus it should be a policy of the government to address the wants of the protestors if their wants show no sign of subsiding in order to avoid conflict. No protest should ever turn so serious that it costs people their lives.