

Constitutional amendments in India - Present Constitutional scenario - strategies for change

Constitutional Amendments in India – Present Constitutional Scenario

The Constitution of India, adopted on 26th January 1950, is regarded as one of the lengthiest and most comprehensive written constitutions in the world. It embodies the aspirations of a newly independent nation and reflects a delicate balance between rigidity and flexibility. Recognizing that societal, political, and economic needs evolve over time, the framers included provisions for amendment under **Article 368**, ensuring that the Constitution could adapt to changing circumstances without losing its core identity. Constitutional amendments in India, therefore, represent an evolving dialogue between the legislature, judiciary, and society at large. In the present constitutional scenario, amendments continue to play a central role in shaping the governance framework, addressing new challenges, and safeguarding the democratic ethos of the nation.

The Nature of Constitutional Amendments

Amendments in India reflect a balance between **flexibility and rigidity**. While the Constitution is not as rigid as that of the United States, it is not as flexible as the British Constitution. Article 368 specifies the procedure of amendment, allowing Parliament to alter provisions by different methods—some through a simple majority, others by a special majority, and certain crucial provisions requiring ratification by half of the states.

The framers were aware that constitutional permanence without adaptability could make governance ineffective. At the same time, unchecked amendments could lead to authoritarianism. Hence, the procedure ensures that while Parliament has wide powers, there remain inherent limitations, reinforced by the judiciary.

Historical Trajectory of Constitutional Amendments

Since 1950, the Indian Constitution has undergone **over 105 amendments**. The early years focused on socio-economic reforms, particularly land redistribution and agrarian justice. For instance, the **First Amendment (1951)** curtailed the right to property to facilitate land reforms and placed restrictions on freedom of speech in the interests of public order and security.

The later decades witnessed amendments relating to the centralization of power, emergency provisions, judicial independence, and socio-economic welfare. The **42nd Amendment (1976)**, enacted during the Emergency, is often termed the “mini-constitution” because of its sweeping changes, many of which attempted to curb judicial review and enhance

parliamentary supremacy. Subsequently, the **44th Amendment (1978)** reversed several provisions of the 42nd Amendment, reaffirming democratic safeguards.

In the 1990s and 2000s, amendments reflected globalization, decentralization, and affirmative action. The **73rd and 74th Amendments** introduced Panchayati Raj and urban local bodies, ensuring grassroots democracy. Recent amendments have focused on structural reforms like the **Goods and Services Tax (101st Amendment, 2016)** and reservation-related changes such as the **103rd Amendment (2019)** introducing 10% quota for economically weaker sections.

Judicial Review of Amendments: The Basic Structure Doctrine

A key development shaping the present scenario is the judiciary's role in limiting Parliament's amending power. In the landmark **Kesavananda Bharati v. State of Kerala (1973)**, the Supreme Court held that while Parliament can amend any part of the Constitution, it cannot alter its **basic structure**. This doctrine ensures that essential features such as democracy, secularism, federalism, and the rule of law remain inviolable.

The judiciary has since invoked the basic structure doctrine in cases such as **Indira Gandhi v. Raj Narain (1975)** and **Minerva Mills v. Union of India (1980)**, striking down amendments that sought to undermine judicial review or concentrate absolute power in Parliament. Thus, while Parliament continues to be the primary agent of constitutional change, the judiciary acts as the ultimate guardian of constitutional identity.

Contemporary Constitutional Amendments and Their Significance

In the present era, constitutional amendments reflect India's evolving priorities, including governance reforms, economic development, social justice, and digital modernization. Some of the significant recent amendments include:

1. **101st Amendment (2016)** – Introduction of the Goods and Services Tax (GST), creating a unified national market and transforming India's indirect tax system. This reflects the constitutional shift toward economic integration.
2. **102nd Amendment (2018)** – Provided constitutional status to the **National Commission for Backward Classes (NCBC)**, ensuring stronger mechanisms for protecting the rights of backward classes.
3. **103rd Amendment (2019)** – Introduced **10% reservation for economically weaker sections (EWS)** in education and public employment, marking a major shift by extending affirmative action beyond caste-based criteria.
4. **104th Amendment (2020)** – Abolished reserved seats for Anglo-Indians in Parliament and State Legislatures, but extended the reservation for Scheduled Castes and

Scheduled Tribes for another ten years, showing the continued commitment to social representation.

5. **105th Amendment (2021)** – Restored the power of states to identify and maintain their own lists of Other Backward Classes (OBCs), balancing federalism with social justice.

These amendments indicate that constitutional change in the present scenario is not only about correcting anomalies but also about reinterpreting equality, representation, and economic reforms in light of contemporary challenges.

Present Constitutional Scenario: Issues and Challenges

The current constitutional landscape is shaped by competing concerns of **parliamentary supremacy, judicial activism, federalism, and social justice**. Several challenges characterize the scenario:

1. **Tension between Parliament and Judiciary** – While Parliament asserts its sovereign right to amend, the judiciary safeguards constitutional permanence through the basic structure doctrine. The debate continues over whether the judiciary sometimes oversteps by scrutinizing not just the process but the substance of amendments.
2. **Federal Dynamics** – Amendments like the GST have centralized fiscal powers, while others like the 105th Amendment reaffirm state powers. The balance between central authority and state autonomy is a recurring theme.
3. **Affirmative Action** – Expanding reservations, such as with the EWS quota, raises questions about balancing meritocracy and social justice. Amendments have broadened the scope of affirmative action, but they also trigger debates on economic versus caste-based criteria.
4. **Democratic Safeguards** – There remain concerns about constitutional amendments being used to entrench political power, as was evident during the Emergency. Vigilance is required to prevent misuse.
5. **Adaptation to Globalization and Technology** – Emerging issues like digital privacy, data protection, climate change, and global economic integration raise questions about whether constitutional amendments will be needed to address new rights and duties.

Judicial Trends in the Present Scenario

Judicial review continues to act as a safeguard against excessive parliamentary power. The Supreme Court has upheld the **103rd Amendment** (EWS quota) in *Janhit Abhiyan v. Union of India* (2022) but emphasized that the principle of equality remains part of the basic structure.

Similarly, in disputes over the **102nd and 105th Amendments**, the Court clarified the balance between central and state powers over OBC identification.

The judiciary, therefore, has not only protected the Constitution's integrity but also guided the evolution of amendments in line with changing societal needs. This judicial oversight ensures that amendments align with constitutional morality and the vision of the founding fathers.

Global Comparisons

Compared to other democracies, India's constitutional amendment process is uniquely dynamic. While the U.S. Constitution has only 27 amendments since 1789, India has crossed 100 within 75 years. This reflects India's social and economic diversity, as well as the political need to adjust the constitutional framework frequently. At the same time, judicial doctrines like the basic structure ensure stability comparable to entrenched constitutions.

The present constitutional scenario highlights the need for **responsible constitutionalism**. Going forward, the following steps are essential:

1. **Balancing Flexibility and Stability** – Amendments should address pressing needs but avoid frequent tinkering that undermines stability. A balance must be maintained.
2. **Public Participation** – Greater citizen involvement in constitutional debates is needed. Amendments should not be seen as elite-driven exercises but as reflective of democratic consensus.
3. **Judicial Prudence** – While the judiciary must safeguard the Constitution, it should also respect parliamentary supremacy and not substitute legislative will with judicial preference.
4. **Strengthening Federalism** – Future amendments must prioritize cooperative federalism, particularly in fiscal and administrative matters, to strengthen India's unity in diversity.
5. **Addressing Emerging Rights** – Amendments may be required to address 21st-century issues like digital rights, environmental protection, and sustainable development, ensuring that constitutionalism remains relevant.

Constitutional amendments in India represent a living dialogue between past traditions and future aspirations. In the present scenario, they are not merely technical changes but instruments of social transformation, federal balance, and democratic preservation. While Parliament retains wide powers to amend, the judiciary ensures that the Constitution's soul—the basic structure—remains untouched.

The trajectory of amendments, from agrarian reforms in the 1950s to GST and EWS reservations in the 21st century, demonstrates the Constitution's adaptability to changing

socio-economic realities. However, efficiency, inclusiveness, and prudence must guide future amendments. India's constitutional journey remains dynamic, and its amendments continue to shape the democratic destiny of over a billion citizens.

Strategies for Change as per Judicial Experts

The Indian Constitution, though flexible, is not static. Its framers envisaged a living document capable of evolving with the needs of a dynamic society. This evolution has primarily been enabled through **constitutional amendments**, judicial interpretation, and institutional reforms. Judicial experts, both from the bench and the academic world, have consistently emphasized that strategies for change must balance **constitutional permanence** with **socio-political adaptability**. In the present constitutional and legal scenario, their insights offer valuable guidance on how India can navigate its complex challenges.

Judicial Role in Shaping Constitutional Change

Since independence, India's judiciary has emerged not only as an interpreter but also as a **guardian of the Constitution**. Through doctrines such as the **basic structure**, **judicial review**, and **constitutional morality**, the courts have ensured that while Parliament has wide powers to amend, it cannot distort the Constitution's identity. Judicial experts highlight that this role must remain central to any strategy for change in India. The judiciary's interventions in landmark cases such as *Kesavananda Bharati v. State of Kerala* (1973), *Minerva Mills v. Union of India* (1980), and *Janhit Abhiyan v. Union of India* (2022) demonstrate its pivotal role in shaping constitutional amendments.

Strategies for Change Identified by Judicial Experts

Judicial scholars and former judges have articulated several strategies to ensure that constitutional change in India remains effective, legitimate, and in harmony with democratic values. These strategies can be grouped into broad themes:

1. Strengthening the Doctrine of Basic Structure

One of the most important contributions of the judiciary has been the **basic structure doctrine**, which limits Parliament's power to amend the Constitution. Judicial experts argue that this doctrine should be further clarified to prevent misuse of amendments that undermine core values.

- **Justice H.R. Khanna**, who famously dissented in *ADM Jabalpur v. Shivkant Shukla* (1976), stressed that rights like liberty and rule of law are inviolable, even during emergencies. His vision supports strategies that fortify basic rights.

- **Justice P.N. Bhagwati**, an architect of judicial activism, emphasized that strategies for change must ensure that amendments strengthen, not weaken, the Constitution's core.

Thus, judicial experts argue that future strategies must reaffirm the inviolability of democracy, secularism, federalism, and judicial independence.

2. Promoting Constitutional Morality

Judicial experts frequently invoke **constitutional morality**, a principle highlighted in *Navtej Singh Johar v. Union of India* (2018) and *Government of NCT of Delhi v. Union of India* (2018). This concept requires that public officials, legislators, and citizens adhere not just to the letter of the Constitution but also to its spirit.

- Experts like **Justice D.Y. Chandrachud** have stressed that constitutional morality prevents majoritarian impulses from subverting rights.
- Strategies based on this principle would involve using amendments to protect marginalized groups, uphold pluralism, and balance state power with individual freedoms.

3. Decentralization and Strengthening Federalism

Judicial experts note that excessive centralization weakens India's federal structure. Amendments such as the **101st (GST)** have been critiqued for concentrating fiscal powers. Experts recommend that strategies for constitutional change prioritize **cooperative federalism**.

- **Justice R.S. Sarkaria**, through the Sarkaria Commission, emphasized the need for balance between Centre and states.
- Judicial scholars suggest that amendments should restore greater fiscal autonomy to states, strengthen local self-government under the 73rd and 74th Amendments, and prevent overreach by the Union in matters reserved for states.

4. Expanding Fundamental Rights

Judicial strategies often emphasize the dynamic nature of **Fundamental Rights**, which must evolve with time. The Supreme Court itself has expanded rights through interpretation—such as recognizing the **right to privacy** in *Justice K.S. Puttaswamy v. Union of India* (2017).

- Experts suggest that future amendments could explicitly recognize **digital rights, environmental rights, and rights related to artificial intelligence and data protection**.

- Former Chief Justice J.S. Verma emphasized that strategies for change must prioritize human dignity, equality, and justice over economic or political expediencies.

5. Ensuring Inclusive Social Justice

Judicial experts argue that constitutional amendments must go beyond caste-based reservations to ensure inclusive and equitable justice.

- For instance, the **103rd Amendment (EWS reservations)** has been both defended and critiqued. The judiciary upheld it but warned against diluting equality principles.
- Experts like **Justice Indu Malhotra** have stressed the need for balancing merit with social justice.
- Strategies for change must ensure that affirmative action addresses not only caste and economic backwardness but also gender, disability, and minority concerns.

6. Guarding Against Political Misuse of Amendments

Judicial experts warn against amendments being used to entrench political power. The **42nd Amendment (1976)**, which curtailed judicial review and concentrated parliamentary supremacy, stands as a cautionary tale.

- **Justice Y.V. Chandrachud**, in *Minerva Mills*, emphasized that amending powers cannot destroy democratic balance.
- Strategies must include safeguards such as greater transparency in the amendment process, wider public consultation, and judicial scrutiny of politically motivated amendments.

7. Enhancing Public Participation in Constitutional Change

Another strategy stressed by judicial experts is increasing **democratic participation** in constitutional amendments. Presently, amendments are often passed with limited debate and public awareness.

- Scholars argue that mechanisms such as **referendums, state consultations, and civil society involvement** can enhance legitimacy.
- Judicial voices highlight that participatory constitutionalism ensures that amendments are not seen as elite-driven but as reflective of societal consensus.

8. Integrating International Human Rights Norms

Judicial experts often stress aligning Indian constitutional amendments with **global human rights standards**. The Supreme Court has already incorporated international norms into its judgments, such as in *Vishaka v. State of Rajasthan* (1997).

- Experts suggest that future strategies must ensure that amendments align with India's commitments under international treaties, particularly regarding climate change, refugee rights, and digital governance.

Present Constitutional Scenario: Judicial Perspectives

In recent years, judicial experts have reflected both optimism and concern regarding constitutional change. While amendments like GST and EWS quotas reflect adaptability, there is unease about the **frequency of amendments** and their use for political ends. The judiciary's role in striking a balance—upholding flexibility while guarding the Constitution's essence—remains crucial.

Judicial voices, from **Justice Khanna's defence of liberty** to **Justice Chandrachud's advocacy for constitutional morality**, consistently emphasize that strategies for change must not be hasty or partisan. Instead, they should embody **deliberation, inclusiveness, and fidelity to constitutional ethos**.

Judicial experts provide a roadmap for efficient constitutional change in India:

1. **Institutionalize safeguards** to prevent politically motivated amendments.
2. **Expand fundamental rights** to cover new-age challenges like digital privacy and environmental security.
3. **Strengthen federalism** by ensuring equitable power-sharing between Centre and states.
4. **Promote participatory democracy** by involving citizens in amendment processes.
5. **Reaffirm the basic structure** as an unshakable foundation.
6. **Use constitutional morality** as a guiding principle to ensure justice, equality, and dignity for all.

Judicial experts in India emphasize that strategies for constitutional change must balance adaptability with permanence, flexibility with stability, and innovation with tradition. They caution against political misuse and stress the judiciary's role in safeguarding democracy. Their vision underscores that constitutional amendments must always reflect **justice, equality, liberty, and fraternity**, the guiding ideals of the Preamble.

In the present constitutional scenario, strategies for change as envisioned by judicial experts are not mere legal technicalities but a moral imperative to ensure that India's constitutional journey continues to empower its citizens while preserving democratic values. By following these strategies, India can ensure that its Constitution remains a **living document**, responsive to contemporary needs yet faithful to its founding spirit.