

# Working of the Constitution of India

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# Significance and Evolution of Modern Constitutions

- Constitution - **Supreme law of the land**
- **Evolution**- USA ,1787- Switzerland 1848(1999) -Australia,1900- Canada 1867(1982) etc
- **Classification**- Written and Unwritten, Unitary and Federal-Rigid and Flexible
- **A Nation's Constitution** – Legal heir of its past and testator of its future

# Drafting of Indian Constitution

- Drafted by the Drafting Committee of the Constituent Assembly (389 members-292 elected & 93 nominated)
- **Committee**— headed by **Dr.Ambedkar** and consisted of N.Gopalaswami Ayyangar, Alladi Krishnaswami Ayyar, K. M. Munshi, Md.Sadadulla, N.Madhav Rao, T.T.Krishnamachari (in place of D.P.Khaitan)
- **B.N.Rao** -was the Constitutional Advisor to the Drafting Committee

# Salient features of the constitution

- **Longest written constitution**
- **Sovereign, Socialist ,Secular & Democratic Republic**
- **Parliamentary System of Government**
- **Partly Federal and Partly Unitary**
- **Fundamental Rights**
- **Directive Principles of State Policy**
- **Fundamental Duties**
- **An Independent Judiciary**
- **Emergency Provisions**
- **Partly Rigid and Partly Flexible etc**

# Judicial System in India

- **Adversarial System**-follows predominantly the Common law
- **Position before Constitution**- Pre-British era, British era (1600-1758) & British India until the Independence Act (1758-1950)
- **Judiciary under Indian Constitution**- Higher and Subordinate
- Higher Judiciary- Supreme Court and High Courts
- **Subordinate Judiciary**- Civil and Criminal
- **Tribunal System**
- **Special Courts**
- ADR System etc

# The constitution- Expectations and Experiences

- **Sovereign** -impact of LPG
- **Socialist** -NEP and impact
- **Secular** - Fundamentalism and Appeasement
- **Democratic Republic- Dynastic dimensions**
- **Parliamentary System of Government** - fractured verdicts, coalition governments & impact on collective responsibility -lack of accountability (cash for vote and cash for query scams etc)
- **Partly Federal and Partly Unitary- hypocrisy in practice**
- **Fundamental Rights-** ever expanding but gaps between pronouncements and practice
- **Directive Principles of State Policy-** An audit
- **Fundamental Duties-** Yet to be made really fundamental
- **An Independent Judiciary-** extent of judicial power & review, docket explosion, judicial activism and accountability
- **Emergency Provisions-** use and misuse
- **Partly Rigid and Partly Flexible –100 amendments-Necessity?**

# Working of the Constitution - 64 Years of Experience

- Achievements & Failures : A Balance Sheet
- Administration - Corruption, insensitivity and inefficiency of administration, increasing non-accountability, Constitutional protection for the Services under Article 311- exploited by dishonest officials to protect themselves ? (NCRWC)
- Administration of Justice: Judicial system- not able to meet expectations of the society-delays & costs-breaking down of the trial system ? (NCRWC)

# Amendment of Constitution-Need

- Times & Life of Nation-Not Static
- Constitution-Living Organism
- Constitution- Drafted in one era, often inadequate for another
- Change in political, social and economic conditions of a nation
- Right of every generation to mould its future

# Modes of Constitutional Change

## ○ Informal & Formal

○ Informal – through Judicial Interpretation, Conventions and Constitutional usages

○ Formal – Through Amendments

○ Position in USA – only 25 Amendments since 1789-Rigid procedure u/Art. V

○ Position in Australia – 8 since 1901 Sec.128

○ Position in Canada – Under BNA 1867 & Constitution Act of 1982

# Constitutional Amendment in India

- Article 368-Power and Procedure to amend
- Amendment by Simple Legislative Procedure – Admission of New States, Citizenship, Parliamentary privileges etc
- By Special Majority- by not  $< 2/3^{\text{rd}}$  members of House present & voting +majority of its total membership
- By Special Majority +Ratification by not  $< 1/2$  of State Legislatures – Entrenched Provisions manner of P's election, extent of executive power of union & States & jurisdiction of SC & HCs etc

# Scope of Constitutional Amendment Process in India

- I stage 1951-1973
- II Stage After 1973
- Sankari Prasad v.UoI (1951,SC),Sajjan Singh v.Raj(1965,SC),Golaknath v .Punjab (1967,SC) - rel.to Right to Property
- “Fundamental Rights cannot be playthings of a majority ” – Hidayatullah,j &”fundamental features cannot be changed’-Mudholkar,J in Sajjan Singh
- “F.Rts occupy ‘transcendental position in Constitution, no authority including art.368 can amend f.rts, & Law includes Amendments also”- Koka Subba Rao,CJ in Golaknath

# Scope of Constitutional Amendment Process in India

- **24<sup>th</sup> Am. ,1971 to neutralize Golaknath**
- **Effect-** Law u/A 13 = Am. u/A 368
- Marginal note u/A 368 changed from ' Procedure for Amendment' to 'Power of Parliament & procedure for Amendment'," parliament's power to amend any provision of Constitution'
- **Kesavananda Bharati v. State of Kerala(1973,SC)** – Challenge to validity of 24 7 25<sup>th</sup> Am.
- **Ratio:** Amendments under challenge – upheld
- **Evolution of Basic structure Theory:** 'The amending power can't be exercised to destroy or emasculate basic features/fundamental features of the constitution' “2/3<sup>rd</sup> members of Parliament may not represent votes of majority people in this country”
- **7 majority judges identified 11 features** of including – Supremacy of constitution, Republican & Democratic form of Govt, Secular Character, Federal character etc

# Post 1973 Developments

- Indira Nehru Gandhi v. Raj Narain (1975,SC) - 39<sup>th</sup> Am, Cl.(4)-declared unconstitutional as violative of 3 basic features 'free & fair elections', 'separation of powers' & 'rule of law'
- Minerva Mills v .UoI (1980,SC) – 42<sup>nd</sup> Am & Art.31-C- 'power to destroy, not a power to amend' & 'harmony between F.Rts & DPSP' & 'Jud.Review' are basic features
- Kihoto Hollohan v.UoI (1993,SC)- democracy is a Basic Feature
- S.R.Bommai v.UoI(1994,Sc)-federalism, democracy & secularism are Basic Features
- L.Chandra Kumar v.UoI(1997,SC)- Judicial Review
- I.R.Coelho v.State of T.N.(2007,SC)- Judicial Review of enactments added in IX Schedule

# Recent amendments

- 99<sup>th</sup> Amendment, 2015-regarding NJAC –struck down in SCARA v.UoI
- 98<sup>th</sup> -To insert Article 371J in the Constitution 2 January 2013-To empower the Governor of Karnataka to take steps to develop the Hyderabad-Karnataka Region
- 97<sup>th</sup> Amend- Art 19 and added Part IXB-12 January 2012-Added the words "or co-operative societies" after the word "or unions" in Article 19(1)(c) and insertion of article 43B i.e., Promotion of Co-operative Societies and added Part-IXB i.e., The Co-operative Societies. The amendment objective is to encourage economic activities of cooperatives which in turn help progress of rural India. It is expected to not only ensure autonomous and democratic functioning of cooperatives, but also the accountability of the management to the members and other stakeholders.

# Recent amendments

- **99th (2015)** - Insertion of new articles 124A, 124B and 124C. Amendments to Articles 127, 128, 217, 222, 224A, **231- 31 December 2014**- Provided for the formation of a National Judicial Appointments Commission(NJAC) . 21 State assemblies out of 29 States including Goa, Rajasthan, Tripura, Gujarat and Telangana ratified the Central Legislation, enabling the President of India to give assent to the bill – **Struck down by the SC in Oct.2015**
- **100<sup>th</sup> Amendment(2015):** Regarding the Boundary Adjustments with Bangladesh
- **101 Amendment(2017)** - Introduction of GST
- **102<sup>nd</sup> Am.(2018)**- Constitutional status to National Commission for Backward Classes

# NCRWC-Its work

- Set-up by on 22 February 2000 for suggesting possible amendments to the Constitution of India
- **Object:** to examine, in the light of the experience of the past 50 years, as to how best the Constitution can respond to the changing needs of efficient, smooth and effective system of governance and socio-economic development of modern India within the framework of Parliamentary democracy, and to recommend changes, if any, that are required in the provisions of the Constitution without interfering with its basic structure or features.
- Submitted its report on 31 March 2002 (Final Report- available at <http://lawmin.nic.in/ncrwc/finalreport/volume2book3.htm>)

# Issues focused by NCRWC

- Enlargement of Fundamental Rights
- Pace of Socio-Economic Change under the Constitution
- Literacy in the context of the Constitution of India
- Social Security and Employment
- Effectuation of Fundamental Duties of Citizens
- Review of the Working of Political Parties specially in relation to Elections and Reform Options
- Review of Election Law, Processes and Reform Options
- Immunity of Legislators: What do the words 'in respect of anything said or any vote given by him' in article 105(2) signify?
- Efficacy of Public Audit System in India: C&AG
- Probity in Governance
- Liability of State in Tort
- Superior Judiciary
- All India Judicial Service

# Issues focused by NCRWC

- Financial Autonomy of the Indian Judiciary
- Constitutional Mechanism for the settlement of Inter-State Disputes
- Treaty-making power under our Constitution
- The Institution of Governor under the Constitution
- Article 356 of the Constitution
- Review of the Working of the Constitutional Provisions for Decentralization (Panchayats)
- Decentralization and Municipalities
- Empowering and Strengthening local self-government in Cantonments
- Empowerment and Strengthening of Panchayat Raj Institutions/ Autonomous District Councils/Traditional tribal governing institutions in North East India

# Conclusion

- "It is workable, it is flexible and it is strong enough to hold the country together both in peace time and in war time. Indeed, if I may say so, if things go wrong under the new Constitution, the reason will not be that we had a bad Constitution. What we will have to say is that man is vile."..**Dr.Ambedkar**
- "If the people who are elected are capable men of character and integrity, they should be able to make the best of a defective Constitution. If they are lacking in these, the Constitution cannot help the country."..**Dr.Rajendra Prasad**
- "(T)oday when there is so much talk about revising the Constitution or even writing a new Constitution, we have to consider whether it is the Constitution that has failed us or whether it is we who have failed the Constitution."-

**Thank You**

**Conclusion**