

Q1. How has constitution changed since its inception?

a) The constitution making and institution building process did not stop on 26th November 1949, but process continued even after its formal implementation on 26th January 1950. Within a period of 57 years, the constitution has been amended more than 1000 times.

For promotion of Socio-economic changes, Indian constitution has witnessed many constitutional amendments. Indian constitution has changed since its inception in following ways:

a) **For Social and Educational Development:** First amendment was in year 1951, in article 15, which empowered states to provide some special system for the development of some class of citizens who are socially backward. (nothing can stop it from doing so).

b) **In Order too Limit the Right to Property:** Right to property in article 31 of fundamental rights, came in way of economic developmental schemes of the state. This right was limited in following ways:

- (i) The first amendment (1951), limited the powers of the judiciary in regard to the right of property.
 - (ii) The fourth constitution (Amendment) Act of 1955 by amending Articles 31 and 31A empowered the Government to confiscate property in order to promote welfare of the people and for which it can duly compensate.
 - (iii) Through the seventeenth constitution (Amendment) Act of 1964, by amending Article 31 – A, the word ‘Property’ was given a wider connotation and under Ryotwari system the government was empowered with the right to confiscate land.
 - (iv) Under twenty-fourth constitution (Amendment) Act, 1971, once again Article 31 was amended so as to replace the word ‘compensation’ with the word ‘amount’.
 - (v) Articles 31 and 19 (1)(f) related with right to property were always a hindrance in the way of Socio-economic change and because of which they had to be amended often and even thereafter because the problem was not getting resolved. By forty-fourth constitution (Amendment) Act of 1979, Articles 31 and 19 (1)(f) in regard to property right was removed from the constitution.
 - (vi) By placing the right to property in Article 300A by the forty-fourth constitutional (Amendment) Act of 1979, it has now been made a general legal right.
- c) **Ninth Schedule:** The first constitution (Amendment) Act of 1951 itself had provided for the addition of a new Ninth Schedule in the constitution the Government wanted to place such legislations in this Schedule, which it wanted to keep out of the judicial review jurisdiction of the judiciary. At that time many states had enacted many laws on land reform and many others wanted to enact such laws. The Government feared that because these laws affected the property right, and therefore, the court may not declare these laws as unconstitutional. Therefore, whenever the government wished that a legislative piece should be kept outside the jurisdiction of the judiciary, the Government placed that legislative piece in the Ninth schedule.

- (i) Under the first constitution (Amendment) Act (1951) the states laws made by the states of Bombay, Bihar, Madhya Pradesh, Madras, Hyderabad etc. in regard to land form, agricultural reform, change in Ryotwari, abolition of Zamindari, jagirdari etc were placed in Ninth Schedule.
 - (ii) The fourth amendment (1955) placed seven laws in Ninth Schedule, which included the law to provide land to the displaced people of Bihar, laws pertaining to industries and land pertaining to land development and planning of West Bengal.
 - (iii) Through Seventeenth Constitutional Amendment Act, laws regarding land and agriculture, made by states were included in the Ninth Schedule.
 - (iv) Through 34th Amendment Act (1974), many such laws were introduced in Ninth schedule. These State laws required exclusion from jurisdiction of judiciary.
 - (v) The 29th Amendment Act, (1972) added the Land Reforms Act of Kerala in 9th schedule.
 - (vi) Through the 39th Amendment Act (1975), many other acts were placed in 9th Schedule.
 - (vii) Through 40th Amendment Act (1976), laws pertaining to land reforms, ceiling of urban land, end of bonded labour, confiscation of smuggled goods etc were placed in 9th schedule.
- d) **Importance of Directive Principles of State Policy:** 25th Amendment Act (1971) was to give importance to Directive Principles of State Policy. Under this act, any law made by state government to fulfill the Directive Principles of State Policy, cannot be declared unconstitutional on the grounds that it is violative of the right to property.
- e) **Abolition of Privileges of Princes:** By the 26th constitutional Amendment Act (1971), the privilege of native Princes were abolished.
- f) **Abolition of Privileges of some Officials:** Through the 28th constitutional amendment Act, (1972), the privileges enjoyed by some central officials from the time of British period, were abolished.
- g) **Increase in the Civil Jurisdiction of the Supreme Court:** Through the 30th constitutional amendment act (1972), Supreme Court gained the power to hear case of any amount.
- h) **Forty-Second Amendments:** Through 42nd Amendment Act (1976), the words 'Secular' and 'Socialism' were added in Preamble of Indian Constitution.

42nd Amendment Act introduced article 39 – A, it provided that all shall get equal opportunity of justice, no person shall be deprived of civil justice and there should be free legal aid.

Under this Amendment, children are given opportunities and facilities to develop in a healthy manner, in conditions of freedom and dignity, and protected them against exploitation

This amendment secured the participation of workers in the management of undertakings or organizations engaged in any industry.

It directs states to preserve and protect the forest and wild life.

i) **Provision for Protection of Individual Liberty:** Through 44th Amendment Act, (1978), protection has been provided to individual, arrested under 'Preventive Detention'.

j) **Check over Defection:** Through 52nd amendment Act (1985), Tenth Schedule was introduced to check political defection.

k) **Provision for Decrease in Electorates Age:** Through 61st Amendment Act (1989), voter's age was changed from 21 to 18 years.

l) **In Regard to Reservation:** Through 62nd Amendment Act reservation of scheduled Castes and Tribes was extended to year 2000, and 79th Amendment Act extended this provision upto 2010.

m) **Constitutional Status for Scheduled Castes & Tribes:** 65th Amendment Act (1990) provided a constitutional state to schedule castes and tribes. A provision provided for a commission of scheduled castes and tribes.

n) **Constitutional Safeguards for Local-Self Governments:** 73rd Amendment Act (1992) Provides for three tier system for Panchayat Raj, and 33 percent seat reservation to women at every tier.

74th Amendment Act gave constitutional status to Municipal Corporation.

Indian constitution has never put obstacles in way of Socio-economic development. Through Amendments and judicial decisions the constitution is slowly developing and moving towards welfare state.

Q2. What further changes are being debated?

The question of constitutional Amendment became controversial when it involved a conflict between fundamental Rights and desire of the state to curtail some of the rights with a view to fulfill socio-economic objectives under Directive Principles of state policy whenever, the legislature has taken the view that it can contravene in fundamental rights, in its obligation to implement the Directive Principles courts take the position that Directive principles are not justifiable, and, state has no right to encroach upon fundamental rights.

➤ In Golak Nath Case, Supreme Court withheld that fundamental rights cannot be amended.

➤ In Keshavamanda Bharati Vs. State of Kerala, Supreme Court withheld that amending power of parliament of India is limited. Justice Sikri tried to tabulate the basic structure of constitution;

a) Supremacy of the constitution.

b) Republican and democratic form of Government.

c) Separation of powers.

d) Federal character of the constitution. Justice Hegde and Justice Mukherjee included – sovereignty and unity of Indian, Democratic character of our polity Individual freedom to elements of Indian constitution.

Justice Khanna said that parliament could not change democratic government of India and secular character of state cannot be changed.

In Indira Nehru Gandhi Vs. Raj Narain, Justice Chandrachud declared following elements as basic elements of Indian constitution:

i) India as a sovereign, democratic and republic.

ii) Equality of status & opportunity.

iii) Secularism and freedom of conscience.

iv) Rule of law.

➤ In S.R. Bommai case, supreme Court declared following things as basic elements of Indian constitution:

a) Democratic form of Government.

b) Federal Structure.

c) Unity and integrity of the nation.

d) Secularism.

e) Socialism.

f) Social justice.

g) Judicial Review.

There is considerable difference of opinion on whether power to amend constitution has been used frequently/misused by parliament.

Q3. How has working of Democracy Affected the Constitution?

The constitution of India is a unique blend of rigidity and flexibility, and so far there have been so many amendments since its inception. The two decades 1971 – 1990 saw a rapid change in our constitution. Within short span of three years from 1974 – 1976, there had been ten amendments. The same series of amendments were from 2001 – 2003.

Factors Responsible for amendments:

The factors responsible for amendments in our constitution are:

❖ Amendments were made to tackle administrative problems of the country. These amendments were related to clarification of the provisions of constitution. Actually these changes were need of time, e.g., change in retirement of High Court Judges.

CONSTITUTION AS A LIVING DOCUMENT

❖ Some amendments were related to clash between Executive and Judiciary like relationship between fundamental rights and directive principles of state policy, right to property etc.

❖ Some amendments were made because of consensus among political parties. Like 73rd and 74th constitutional amendment related to Panchayati Raj System and Municipalities.

❖ Some amendments were carried out without support of opposition with the power of emergency by ruling party, like 42nd Amendment act.