

REVIEW OF FIRST AND ONE HUNDRED-THIRD CONSTITUTIONAL (AMENDMENT) ACT WITH REFERENCE TO RESERVATION POLICY

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INTRODUCTION

The Constitution of India is the supreme law of India. It frames fundamental political principles, procedures, practices, rights, powers, and duties of the government. It imparts constitutional supremacy and not parliamentary supremacy, as it is not created by the Parliament but, by a constituent assembly, and adopted by its people with a declaration in its preamble.

Law must change as per the changing demands of the society. Law must be dynamic and mould itself as per the situation. With this object the Indian constitution contains a provision under article 368 as to amend the constitution. With the help of this provision so many amendments have been made to the constitution of India.

First amendment has been made in the first year after acceptance of the constitution i.e. 1950. This first amendment has made several changes towards the set-up of the constitution. In this paper, author wish to highlight the aspect of 'reservation policy' inserted under article 15 towards the social and educational backward. Similarly, 10rd amendment act has amended articles 15 and 16 towards the 'economical weaker section' in general category. These two amendments have made far-reaching changes in order to secure social justice. These amendments have been made to justify the notion of 'welfare state' through 'affirmative or positive discrimination'.

First amendment has been made in order to nullify the effect of verdict of Supreme Court delivered in State of Madras v. Champakam Dorairajan (AIR 1951 SC 226).



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CONCEPTUAL CLARIFICATION

The First Amendment Act, 1951, added the fourth clause to Article 15 that empowered the government to make any law for the upliftment of socially and educationally backward classes of citizens or for the Scheduled Castes and Scheduled Tribes.

Both these amendments have been evolved to erase the effect of judicial decisions. However, in several other cases honorable supreme court and various high courts have accepted the *intetialegis* and scheme formulated under these amendments.

The Constitution (First Amendment) Act, 1951 is the official name of the amendment. Jawaharlal Nehru, who was India's prime minister at the time, made the motion on May 10 of that year, and Parliament passed it on June 18 of the same year.

The First Amendment was passed in 1951 by the Provisional Parliament, which was elected on a limited franchise.

This Amendment established a precedent for rewriting the Constitution to override judicial decisions that prevented the government from carrying out its alleged obligations to specific policies and programs.

The 1951 Constitution (First Amendment) Act amended the Fundamental Rights clauses of the Indian Constitution in several ways. It gave ways to limit freedom of speech and expression, supported measures to abolish zamindari, and made it clear that the right to equality does not preclude passing laws that give particular consideration to society's most vulnerable groups.

The Statement of Reasons (SOR) relating to the First Amendment said: Challenges to agrarian laws or laws relating to land reform were pending in courts and were holding up large schemes of land legislation through dilatory and waste-ful litigation.

The One Hundred and Third Amendment of the Indian Constitution, officially known as the Constitution (One Hundred and Third Amendment) Act, 2019. It got its assent on 12th January, 2019 and commenced from 14th January, 2019. This amendment introduced 10 per cent reservation for Economically Weaker Sections (EWS) of India.

Amendment of Constitution of India is making changes to what is written in the constitution. The method or process is given in Part XX (Article 368) of Indian constitution. This provision given in the constitution helps to maintain sanctity of the constitution and helps to keep the powers of Parliament in check.

As of now the Constitution of India has already been amended 105 times. The first amendment of the Constitution took place on 18th June, 1951. In these numerous sections of the Constitution were amended including Article 15, 19, 85, 87, etc. Here we would be dealing with the 103rd amendment of the Indian Constitution.

FIRST AMENDMENT ACT

The Constitution (First Amendment Act), 1951 remains one of the most deeply contested changes to the Indian Constitution. The First Amendment was debated over 16 days and brought about barely 16 months after the Indian Constitution was adopted. The amendment was unique in that it was made by the Provisional Parliament, members of who had just finished drafting the Constitution as part of the Constitutional Assembly.

As part of the transition to Indian independence, the Constituent Assembly had also functioned as the Dominion Parliament. Once the Constitution was adopted in 1950, the Constituent

Assembly was dissolved, and the Dominion Parliament, with the same members, was renamed the Provisional Parliament.

The First Amendment to the Indian Constitution was made by the Interim Government dominated by Congress Party members and led by the Interim Prime Minister Jawaharlal Nehru. Since these amendments took place less than a year before the first Parliamentary elections, there were no formal Opposition parties involved in the debate.

Constitutional validity of First amendment was challenged before supreme court in Sri Sankari Prasad Singh Deo Vs. Union of India and State Of Bihar (1951 AIR 458).

103rd AMENDMENT ACT

The **103rd Constitutional (Amendment Act)** brought in a 10% reservation for Economically Weaker Sections (EWS) of society other than Backward Classes, Scheduled Castes, and Scheduled Tribes for admission to central government and private educational institutions and recruitment in central government jobs. The 103 Constitutional Amendment Act also covers private unaided educational institutions, except minority educational institutions. Here, the economic backwardness is to be decided based on family income.

The income criteria introduced for availing benefits of reservation showed that not merely the underprivileged but even the reasonably affluent middle-class categories would benefit. If poverty was the criteria for introducing a new category of Economically Weaker Sections, why were the Scheduled Castes and Scheduled Tribes and Other Backward Classes excluded from the purview of reservation.

Women, minorities, SC/STs, and other backward classes are not adequately represented in the judiciary. There is not enough representation for such categories in High Courts and the Supreme Court though competent hands are available. Even after 72 years of the working of the Constitution, the higher judiciary was dominated by persons drawn from upper castes and not from other communities, minorities or women.

NEED AND SIGNIFICANCE OF BOTH AMENDMENTS – in BRIEF

To protect individual rights, the First Amendment is also the most important to the maintenance of a democratic government. It states that Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

They realized that religious discord can be explosive and cause tremendous disruption in politics. It would be doubly so if one religious sect were favored over all others.

So, they ensured that federal government cannot interfere in the citizen's practice of their religion. The freedoms of speech, press, assembly and the right to petition the government and seek

redress of grievances proclaim that citizens have the right to call the government to account.

Freedom of speech and press allows citizens to communicate their ideas verbally and in writing while freedom of assembly lets them publicly express a common interest. The right to petition allows citizens to point out to the government where it did not follow the law, to seek changes, as well as damages for such missteps.

Of course, there are limits to these freedoms. One may not force the tenets of his or her religion on those who do not observe those beliefs. Harmful speech, such as yelling fire in a crowded room, is not protected, nor is a written lie that causes harm. As well, gatherings must be peaceful. Destruction of the property of others is not protected by the First Amendment.

EFFECT & CHANGES BY BOTH AMENDMENTS

FIRST AMENDMENT ACT

The Constitution (First Amendment) Act, 1951 contains 14 sections that amended or inserted certain provisions in the Indian Constitution. The following are the effects and changes that were introduced.

A. RIGHT TO NON-DISCRIMINATION

Under Article 15, a fourth clause has been added, which provides that the government can make special provisions in favour of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes. Article 15 and Article 29(2) of the Constitution will not restrict the state from introducing benefits for these sections of society.

B. RESTRICTIONS ON FREEDOM OF SPEECH

Under Article 19, clause (2) was modified. The right to freedom of speech and expression ensured under Article 19(1)(a) can be exercised unless it is against the interests of the security of the state, friendly relations with foreign states, public order, decency, or morality, or in relation to contempt of court, defamation, or incitement to an offence.

Secondly, a substitution was made in Article 19(6), which empowered the government to carry on trade or business with or without the exclusion of other entities.

C. SAVING OF CERTAIN LAWS

Articles 31A and 31B were added to the Constitution via Sections 4 and 5, respectively. These provisions were aimed at removing social and economic disparities in the agricultural sector.

103RD CONSTITUTIONAL AMENDMENT

The 103rd Constitutional Amendment was introduced in 2019 to cover up for the economic backwardness suffered by persons other than those belonging to SCs and the STs.

A. IT BROUGHT ABOUT A RESERVATION OF 10% FOR THE ECONOMICALLY WEAKER SECTION (EWS) IN SOCIETY.

(i) Article 15(6) provides reservation for people belonging to economically weaker sections for

admission in educational institutions. However, they should not fall within the scope of Articles 15(4) and 15(5).

- (ii) Article 16(6) mentions reservation of persons belonging to the EWS category in Government jobs and positions.
- (iii) Any person, irrespective of their caste having an income level of less than 8 lakhs per annum or agricultural land of less than 5 acres can avail the benefit of this scheme. Additionally, if they own a residential plot that has an area of less than 200 sq. yards can also avail its benefit.
- (iv) This reservation for EWS is over and above the already existing reservation bracket of 50% for SCs and STs, thereby increasing the maximum percentage of reservation in Government posts to 60%.

By a **majority of 3:2**, a five-judge Bench of the Supreme Court has upheld the validity of the Constitution (103rd) Amendment, which came into effect in January 2019. The amendment was challenged in Janhit Abhiyan vs Union of India on 7 November, 2022, and the challenge was referred to a five-judge Constitution Bench in August 2020 through WRIT PETITION (CIVIL) NO. 55 OF 2019.

Significance of first amendment

- The First Amendment Act amended articles 15, 19, 85, 87, 174, 176, 341, 342, 372 and 376.
- It inserted articles 31A and 31B.
- It inserted Ninth Schedule to the Constitution to protect the land reform and other laws present in it from the judicial review.
- First Amendment Act had set the precedent of amending the Constitution to overcome judicial pronouncements to implement the programmes and policies of the Government.
- It placed reasonable restrictions on fundamental rights and added three more grounds of restrictions on freedom of speech such as public order, friendly relations with foreign states and incitement to an offence.
- Article 19(1) (q) of the Constitution confers the right of citizens of India to practice any profession or to carry on any occupation, trade or business. The Amendment expressly provided that State trading and nationalization of any trade or business by the state is not being invalid on the ground of the violation of the right to trade or business.
- In response to the verdict on State of Madras v. Champakam Dorairajan case (1951), it made provision for special treatment of educationally and socially backward classes by adding the 9th schedule to the Constitution. It prevented the acts listed in the 9th Schedule from being subjected to judicial review.

Significance of 103rd amendment

- The Constitutional (103rd Amendment) Act got the assent of President of India on 13th January, 2018. The bill was passed in Lok-Sabha by 323 members voting in favour and 3 members against the bill. It was subsequently passed by Rajya Sabha with 165 members in the favour and only 7 members against the bill.
- It provides reservation of jobs in central government jobs as well as government educational institutions. It is also applicable on admissions to private higher educational institutions.
- It applies to citizens belonging to the economically weaker sections from the upper castes.
- This reservation is in addition to the existing reservations and subject to a maximum of ten per cent of the total seats in each category.
- The Statement of Objects and Reasons of the Bill states that people from economically weaker sections of the society have largely remained excluded from attending the higher educational institutions and public employment on account of their financial incapacity to compete with the persons who are economically more privileged.
- The bill states that it is drafted with a will to mandate Article 46 of the Constitution of India, a Directive Principle that urges the government to protect the educational and economic interests of the weaker sections of society. While socially disadvantaged sections have enjoyed participation in the employment in the services of the state, no such benefit was provided to the economically weaker sections.

CONTRIBUTION OF BOTH AMENDMENTS IN EDUCATIONAL SECTOR

The First Amendment protects students' ability to think critically and learn how to investigate a wide range of ideas. Students have the right to express their beliefs, just like any other citizen. Protecting students' rights to read, inquire and express themselves is critical to educating informed, engaged citizens. Education in a democratic society requires developing citizens who can adapt to changing times, decide important social issues, and effectively judge the performance of public officials. In fulfilling their responsibilities, public schools must educate students.

The First Amendment can help resolve this tension. It defines certain critical rights and responsibilities of participants in the educational process. It both protects the freedom of speech, thought, and inquiry, and requires respect for the right of others to do the same.

The 103rd Amendment is that it is applicable to economically weaker sections of the society. Other than the Schedule Caste, Schedule Tribes and other backward classes. The next remarkable feature of this amendment is that this 10% reservation to the economically weaker section of the society applied not only to government educational institutions and government aided educational institutions but also to private unaided educational institutions. But this reservation is not applicable to those educational institutions which are run by minority educational institution.

Amendments to made to the constitution are not within the meaning of ‘law’ as contemplated under article 13(3) hence the first amendment is declared to be constitutional. Both these amendments have proved their constitutional validity. These amendments have truly brought social justice at the doorstep of common-man. Therefore, we must accept that change is permanent.

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