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: CONTENTS :

English

1. **Dr. Babasaheb Ambedkar's Contribution in Human Right Movement in India** 1
Prof. Dr. Vinod Bhivaji Khaire
2. **The Role of Dr. B. R. Ambedkar in Indian Women and the Hindu Code Bill** 4
Savita Prabhakar Sadawarte
3. **Social Justice and Indian Constitution - An evaluative study in the light of Indian Judiciary** 7
Nandkishor K. Ramteke
4. **Role of Piggery farming as small and large scale industries in West Bengal : With accordance to Dr. Babasaheb Ambedka** 10
Dr. Ashis Biswas
5. **Ambedkar's view of caste system : A critical study** 13
Gopi Nath Mondal
6. **Dr. B. R. Ambedkar's View on Social Justice** 16
Mandira Ghosh
7. **Indian Constitution and Amending Power of the Parliament U/Art. 368** 19
Dr. Mane Sachin Babruvan
8. **Dr. Bhim Rao Ambedkar: A National Leader and a Visionary** 22
Sonam Gupta
9. **Dr. Babasab Ambedkar's Views on Nation Building and Industrialization** 24
Dr. Ajit Shivputra Ashte
10. **Dr. Ambedkar's Vision of Democracy** 27
Dr. Laxman Gajanan Kolte
11. **Humanism: Views and Approach of Dr. Babasaheb Ambedkar** 29
Dr. Rajesh N. Sonkusare
12. **Ambedkar's Social and Political Ideas** 31
Dr. Manmeet Kaur
13. **Dr. Babasaheb Ambedkar and Indian Constitution** 33
Ms. Randeep Dhoot
14. **Dr. B. R. Ambedkar's Contribution To Indian Water Policy** 36
Dr. Rajshri S. Gajghate
15. **Dr. Babasaheb Ambedkar on Annihilation of Caste - Path breaking Speech** 38
Dr. Vinod B. Khaire
16. **Dr. Babasaheb Ambedkar Cast Hinduism and Adopt Buddhism** 40
Dr. Devendra R. Bhagat
17. **Dr. Babasaheb Ambedkar's Views on Caste system and Abolition of Untouchability** 43
Lakhman Kumar, Monika Boro
18. **Dr B R Ambedkar and Women Empowerment in India** 45
Umesh S.Kurhade
19. **Dr.B.R. Ambedkar As The Main Architect of the Indian Constitution** 48
Dr. Pramodkumar Nandeshwar

मराठी

२०. डॉ.बाबासाहेब आंबेडकर यांची बौद्ध धम्माकडे वाटचाल एक अभ्यास ५१
आम्रपाली गोविंदराव तिळाळे
२१. डॉ.बाबासाहेब आंबेडकर यांचे 'मूकनायक' ५४
प्रा.डॉ.कविता चंद्रकांत लोहाळे/ताटे

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1. **Dr. Babasaheb Ambedkar's Contribution in Human Right Movement in India** 1
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Nandkishor K. Ramteke
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Dr. Ashis Biswas
5. **Ambedkar's view of caste system : A critical study** 13
Gopi Nath Mondal
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Mandira Ghosh
7. **Indian Constitution and Amending Power of the Parliament U/Art. 368** 19
Dr. Mane Sachin Babruvan
8. **Dr. Bhim Rao Ambedkar: A National Leader and a Visionary** 22
Sonam Gupta
9. **Dr. Babasab Ambedkar's Views on Nation Building and Industrialization** 24
Dr. Ajit Shivputra Ashte
10. **Dr. Ambedkar's Vision of Democracy** 27
Dr. Laxman Gajanan Kolte
11. **Humanism: Views and Approach of Dr. Babasaheb Ambedkar** 29
Dr. Rajesh N. Sonkusare
12. **Ambedkar's Social and Political Ideas** 31
Dr. Manmeet Kaur
13. **Dr. Babasaheb Ambedkar and Indian Constitution** 33
Ms. Randeep Dhoot
14. **Dr. B. R. Ambedkar's Contribution To Indian Water Policy** 36
Dr. Rajshri S. Gajghate
15. **Dr. Babasaheb Ambedkar on Annihilation of Caste - Path breaking Speech** 38
Dr. Vinod B. Khaire
16. **Dr. Babasaheb Ambedkar Cast Hinduism and Adopt Buddhism** 40
Dr. Devendra R. Bhagat
17. **Dr. Babasaheb Ambedkar's Views on Caste system and Abolition of Untouchability** 43
Lakhman Kumar, Monika Boro
18. **Dr B R Ambedkar and Women Empowerment in India** 45
Umesh S.Kurhade
19. **Dr.B.R. Ambedkar As The Main Architect of the Indian Constitution** 48
Dr. Pramodkumar Nandeshwar

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२०. डॉ.बाबासाहेब आंबेडकर यांची बौद्ध धम्माकडे वाटचाल एक अभ्यास ५१
आम्रपाली गोविंदराव तिळ्हाळे
२१. डॉ.बाबासाहेब आंबेडकर यांचे 'मूकनायक' ५४
प्रा.डॉ.कविता चंद्रकांत लोहाळे/ताटे

२१.	डॉ. बाबासाहेब आंबेडकरांचे शेतीविषयक विचार व कार्य	५७
	प्रा. दिलीप घोनमोडे	
२३.	डॉ. बाबासाहेब आंबेडकर आणि भारतीय राज्यघटना	६०
	प्रा. संदीप बळीराम बावळडे	
२४.	डॉ. आंबेडकरांचे धर्मचिंतन	६२
	डॉ. राजेश व्ही. जोरपगार	
२५.	भारतीय संविधानाची आवश्यकता	६४
	प्रा. योगेश खेमराज भोघर	
२६.	हिंदू कोडबिल व डॉ.बाबासाहेब आंबेडकर	६७
	संशोधक : विनोद डवले,	
२७.	डॉ. बाबासाहेब आंबेडकर यांचे शेती विषयक विचार	६९
	श्री.भारत चिंतामणी बंडगर	
२८.	धर्मांतरण व बोधीसत्व डॉ. बाबासाहेब आंबेडकर	७२
	प्रा.डॉ. प्रमोद देवराज सरदार	
२९.	डॉ. बाबासाहेब आंबेडकर व मानवी अधिकार	७४
	प्रा.भावना कमलकिशोर खापडे	
३०.	“कामगारोंके हित में डॉ. आंबेडकर का अमूल्य योगदान”	७७
	डॉ बिना मधुकर मून	
३१.	आंबेडकरी आंदोलन और राजनीति की दशा व दिशा	७९
	प्रा. डॉ. रविंद्रनाथ माधव पाटील	
३२.	डॉ. बाबासाहेब आंबेडकर यांचे कृषी विषयक विचार	८२
	प्रा. प्रमोद स. घोनमोडे	
३३.	लोकपत्रकार डॉ. बाबासाहेब आंबेडकर	८४
	प्रा.डॉ.सौ.उज्वला आर. पाटील	
३४.	हिंदू कोड बिल व डॉ. बाबासाहेब आंबेडकर	८७
	प्रा. जया मोतीराम डवले	
३५.	डॉ.बाबासाहेब आंबेडकरांचे जातीव्यवस्था संबंधीविचार	८८
	प्रा.गुप्ता दिपमाला तिर्थराज	
३६.	धर्मांतरण व डॉ. बाबासाहेब आंबेडकर	९०
	प्रा. तळणीकर एस. जी.	
३७.	डॉ बाबासाहेब आंबेडकर व आंदोलने	९२
	प्रा. प्रगती भाऊराव हरले (कुंकडे)	
३८.	भारतीय समाजातील स्त्रियांचे स्थान व युगप्रवर्तक डॉ. बाबासाहेब आंबेडकर	९४
	प्रा.बबन बळीराम अवघडे	
३९.	डॉ. बाबासाहेब आंबेडकर आणि बौद्ध धर्म	९७
	प्रा. लखपती वा. गायकवाड	
४०.	“डॉ बाबासाहेब आंबेडकरांचे आर्थिक विचार”	९९
	प्रा. डॉ. गजानन बन्सीलाल बनचरे	
४१.	डॉ. बाबासाहेब आंबेडकर व कृषी विषयक विचार	१०१
	डॉ. नंदकिशोर पा. मने	
४२.	डॉ. बाबासाहेब आंबेडकर व कृषि	१०४
	डॉ. जगदीश सोमाजी हटवार	
४३.	डॉ. बाबासाहेब आंबेडकरांचे शेतीविषयक दृष्टिकोण	१०६
	डॉ. रजनी डब्लु. वाढई	
४४.	डॉ. बाबासाहेब आंबेडकरांचे दलितोद्धाराचे कार्य व दलित साहित्य चळवळ	१०८
	प्रा. डॉ. ईश्वर सोमनाथे	
४५.	डॉ. बाबासाहेब आंबेडकर यांचे शैक्षणिक विचार	१११
	प्रा.डॉ.विदूतल निलकंठ ठावरी	

१९.	डॉ. बाबासाहेब आंबेडकरांचे शैलीविषयक विचार व कार्य	५७
	प्रा. दिलीप घोषमोडे	
२०.	डॉ. बाबासाहेब आंबेडकर आणि भारतीय राज्यघटना	६०
	प्रा. संदीप बळीराम चानवडे	
२४.	डॉ. आंबेडकरांचे धर्मचिंतन	६१
	डॉ. राजेश न्ही, श्रीरामार	
२५.	भारतीय संविधानाची आविष्कारता	६४
	प्रा. योगेश खेभराज भोयर	
२६.	हिंदू कोड बिल व डॉ. बाबासाहेब आंबेडकर	६६
	संशोधक : विनोद डवले,	
२७.	डॉ. बाबासाहेब आंबेडकर यांचे शैली विषयक विचार	६९
	श्री. भारत चिंतामणी बंडगर	
२८.	धर्मांतरण व लोकीसत्त्व डॉ. बाबासाहेब आंबेडकर	७१
	प्रा. डॉ. प्रमोद तेवराज सरदार	
२९.	डॉ. बाबासाहेब आंबेडकर व मानवी अधिकार	७४
	प्रा. भावना कमलकिशोर खापडे	
३०.	"कामगारांचे हित में डॉ. आंबेडकर का अमृत्य वीगदान"	७७
	डॉ. बिना मधुकर मूत	
३१.	आंबेडकरी आंदोलन और राजनीति की दृषा व दृषा	७९
	प्रा. डॉ. रविंद्रनाथ माधव पाटील	
३२.	डॉ. बाबासाहेब आंबेडकर यांचे कृषी विषयक विचार	८१
	प्रा. प्रमोद स. घोषमोडे	
३३.	लोकपन्नकार डॉ. बाबासाहेब आंबेडकर	८४
	प्रा. डॉ. सी. उज्ज्वला आर. पाटील	
३४.	हिंदू कोड बिल व डॉ. बाबासाहेब आंबेडकर	८७
	प्रा. जय्या मोतीराम डवले	
३५.	डॉ. बाबासाहेब आंबेडकरांचे जातीव्यवस्था संबंधी विचार	८८
	प्रा. गुप्ता दिपमाला तिर्थराज	
३६.	धर्मांतरण व डॉ. बाबासाहेब आंबेडकर	९०
	प्रा. तळणीकर एस. जी.	
३७.	डॉ. बाबासाहेब आंबेडकर व आंदोलने	९२
	प्रा. प्रगती भाऊराव हरले (कुवडे)	
३८.	भारतीय समाजातील स्त्रियांचे स्थान व युगप्रवर्तक डॉ. बाबासाहेब आंबेडकर	९४
	प्रा. बबन बळीराम अचवडे	
३९.	डॉ. बाबासाहेब आंबेडकर आणि बौद्ध धर्म	९७
	प्रा. लखपती चा. गायकवाड	
४०.	"डॉ. बाबासाहेब आंबेडकरांचे आर्थिक विचार"	९९
	प्रा. डॉ. गजावन बन्सीलाल बनचरे	
४१.	डॉ. बाबासाहेब आंबेडकर व कृषी विषयक विचार	१०१
	डॉ. नंदकिशोर पा. मने	
४२.	डॉ. बाबासाहेब आंबेडकर व कृषि	१०४
	डॉ. जगदीश सोमाजी हरवार	
४३.	डॉ. बाबासाहेब आंबेडकरांचे शैलीविषयक दृष्टिकोण	१०६
	डॉ. रजनी डब्ल्यू. वाढई	
४४.	डॉ. बाबासाहेब आंबेडकरांचे दलितोद्वाराचे कार्य व दलित साहित्य चळवळ	१०८
	प्रा. डॉ. ईश्वर सोमनाथे	
४५.	डॉ. बाबासाहेब आंबेडकर यांचे शैक्षणिक विचार	१११
	प्रा. डॉ. बिट्टल विलकंड ठावरी	

४६.	महान तत्वज्ञानी-श्री. बाबासाहेब आंबेडकर	११५
	डॉ. पी. अंबोली रजनीश काव्य (संपादक)	
४७.	डॉ. बाबासाहेब, आंबेडकर आणि 'अस्पृश्यता निर्मूलन'	११८
	पदा. प्रा. डॉ. योगेश चव्हाटे	
४८.	डॉ. बाबासाहेब आंबेडकरांच्या आर्थिक विचारांचा भारतीय कृषी क्षेत्रावरील प्रभाव - वर्तमान कार्यात दृष्टिक्षेपातून	१२१
	प्रा. डॉ. विनायक बागुल	
४९.	कायगाय व डॉ. बाबासाहेब आंबेडकर	१२४
	प्रा. डॉ. विठ्ठल जीवरावडे	
५०.	डॉ.बाबासाहेब आंबेडकरांचे स्त्रीमुक्तीचे विचार व कार्य	१२६
	प्रा. डॉ. रजनी आर. बंडे	
५१.	"डॉ. बाबासाहेब आंबेडकरांच्या विचार प्रणालीतील सैद्धांतिक भारतीय लोकशाही आणि आजची दशा"	१२९
	प्रा. डॉ. अनंत मूर्यमान मूर्यकर	
५२.	डॉ. बाबासाहेब आंबेडकरांचा जीवन प्रयास आणि सामाजिक, राजकीय चळवळी	१३२
	प्रा. डॉ. विलास पांडे	
५३.	डॉ. बाबासाहेब आंबेडकरांच्या आर्थिक विचारांची प्रासंगिकता	१३६
	प्रा.डॉ. प्रविण भास्करराव हाडे	
५४.	डॉ बाबासाहेब आंबेडकर और शिक्षा	१३८
	डॉ. विद्या अनिल उन्नावकर	
५५.	दलित साहित्याचे प्रेरणास्थान : डॉ.बाबासाहेब आंबेडकर	१४०
	प्रा. मीनाश्री भोयर-गऊत	
५६.	डॉ. बाबासाहेब आंबेडकरांवरील ग्रेग शायरी : मराठी लोकसाहित्यात नवा अवतार	१४४
	डॉ. लीले राजेंद्रकुमार लक्ष्मणराव	
५७.	यामनदादा कर्डक यांच्या गीतातून व्यक्त होणारे बाबासाहेब	१४७
	डॉ. मधुकुंटे पी.एम.	
५८.	हिंदू कोड बिल व डॉ. बाबासाहेब आंबेडकर	१४९
	प्रा. नीता पांडे	
५९.	महिला व डॉ. बाबासाहेब आंबेडकर	१५१
	डॉ. प्रज्ञा राजेश निनावे	
६०.	डॉ.बाबासाहेब आंबेडकर यांचे आर्थिक विचार	१५४
	डॉ. जे. एम. काकडे	
६१.	अनुसूचित जातीच्या आणि इतर मागासवर्गीय महाविद्यालयीन विद्यार्थ्यांमधील आत्मविश्वासाचा अभ्यास	१५६
	दिनेश जरांडे	

४६.	महान तत्वज्ञानी-श्री. बाबासाहेब आम्बेडकर	११५
	डॉ. सौ. अबोली रजनीश व्यास (सावदेकर)	
४७.	डॉ. बाबासाहेब, आंबेडकर आणि 'अस्पृश्यता निर्मूलन'	११८
	सहा. प्रा. डॉ. नरेन्द्र रघटाटे	
४८.	डॉ. बाबासाहेब आंबेडकरांच्या आर्थिक विचारांचा भारतीय कृषी क्षेत्रावरील प्रभाव - वर्तमान कालीन दृष्टिक्षेपातून	१२१
	प्रा. उपेंद्र विनायक बागुल	
४९.	कामगार व डॉ. बाबासाहेब आंबेडकर	१२४
	प्रा. डॉ. विठ्ठल जीवतोडे	
५०.	डॉ.बाबासाहेब आंबेडकराचे स्त्रीमुक्तीचे विचार व कार्य	१२६
	प्रा. डॉ. रश्मी आर. बंड	
५१.	“डॉ. बाबासाहेब आंबेडकरांच्या विचार प्रणालीतील सैद्धांतिक भारतीय लोकशाही आणि आजची दशा”	१२९
	प्रा. डॉ. अनंत सूर्यभान सूर्यकार	
५२.	डॉ. बाबासाहेब आंबेडकरांचा जीवन प्रवास आणि सामाजिक, राजकीय चळवळी	१३२
	प्रा. डॉ. विलास घोडे	
५३.	डॉ. बाबासाहेब आंबेडकरांच्या आर्थिक विचारांची प्रासंगिकता	१३६
	प्रा.डॉ. प्रविण भास्करराव हाडे	
५४.	डॉ बाबासाहेब आंबेडकर और शिक्षा	१३८
	डॉ. विद्या अनिल उन्नारकर	
५५.	दलित साहित्याचे प्रेरणास्थान : डॉ.बाबासाहेब आंबेडकर	१४०
	प्रा. मीनाक्षी भोयर-राऊत	
५६.	डॉ. बाबासाहेब आंबेडकरांवरील शेर शायरी : मराठी लोकसाहित्यात नवा अवतार.....	१४४
	डॉ. लोणे राजेंद्रकुमार लक्ष्मणराव	
५७.	वामनदादा कर्डक यांच्या गीतातून व्यक्त होणारे बाबासाहेब	१४७
	डॉ. मदकुटे पी.एम.	
५८.	हिंदू कोड बिल व डॉ. बाबासाहेब आंबेडकर	१४९
	प्रा. नीता पांडे	
५९.	महिला व डॉ. बाबासाहेब आंबेडकर	१५१
	डॉ. प्रज्ञा राजेश निनावे	
६०.	डॉ.बाबासाहेब आंबेडकर यांचे आर्थिक विचार	१५४
	डॉ. जे. एम. काकडे	
६१.	अनुसूचित जातीच्या आणि इतर मागासवर्गीय महाविद्यालयीन विद्यार्थ्यांमधील आत्मविश्वासाचा अभ्यास	१५६
	दिनेश जारोंडे	

Indian Constitution and Amending Power of the Parliament U/Art. 368

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1. Introduction :

A written Constitution born at one instance and therefore it is not born but grows by amendment which themselves become part of it by incorporation. The amending provision in written Constitution assumes great importance because it gives chance to successive generation to grow it as per their needs. In fact the essence of a written Constitution lies in its mode of amendment.

In order to avoid the problems which existed in rigid and flexibility provisions in amendment, Framers shaped Art.368 as fine blend of rigidity and flexibility. That means the amendment of Indian Constitution is not rigid and at the same time it is also not flexible. The flexibility and rigidity depends upon the nature and importance of the provisions of the Constitution.

While referring to the need to amend the Constitution to the changing socio economic and political conditions, Pandit Jawaharlal Nehru said, "It is the one of the us most importance that the people should realize that this great Constitution of ours, over which we labored so long, is not a final and rigid thing. A Constitution which is responsive to the people's will, which is responsive to their idea, in that it can be varied here and there, they will respect it all the more and they will not fight against, when we want to change it".

2. Meaning of Amendment :

The term 'amendment' derives from the Latin word '*amendare*.' The term 'amend' means to make right, to make correction or to rectify. In common parlance "amendment" conveys the sense of slight change.

Oxford dictionary of law says "Amendment means changes made to legislation, for the purpose of adding to, correcting or modifying the operation of the legislation."

Black's Law Dictionary defines, 'Amendment' as "A formal revision or addition proposed or made to a statute, Constitution, pleading, order, or other instrument; a change made by addition, deletion or correction specially an alteration of wording". And "In Parliamentary law, it means a 'motion that changes another motion's wording by striking out text, inserting or adding text, or substituting text."

Legally speaking amendment denotes adjustment, amelioration, betterment, change, elaboration, emanation, enhancement, improvement, notification and refinement etc.

3. Need of Amendment of Constitution :

In democratic State Constitution designed for welfare of common people. In order to fulfill the aspirations of the people, we need changes in the Constitution whenever

necessary. Therefore, in accordance with liberal-democratic tradition, the power to amend the Constitution of India has been vested in the Parliament. The need of an amendment to the Constitution comes into the picture when there is a change in the society. We can say amending clause in the Constitution enables the future generations to exercise their sovereign power of having a Constitution of their choice and of their changing needs. It is in the light of this importance that the amending clause in a Constitution needs to be considered with utmost respect and seriousness that is so properly deserves.

4. Procedure of Amendment of Indian Constitution :

The Constitution may amend from time to time in different circumstances either be informal or formal methods. In Informal method of amendment is the Constitutional text remain, but its interpretation under goes change. Informal amendment again classified as judicial interpretation and constitutional convention and usages. Whereas in judicial interpretation, an existing provision in the Constitution may get a new meaning without there being any formal amendment to the Constitution, thereby making the Constitution stand amended indirectly to that extent. The Constitutional Conventions and Usages though operating within the frame work of the Constitution nevertheless do modify their content and effect convention not made but evolved out of practices followed over a period of time.

Practically every Constitution has some formal method of Constitutional amendment. This consists of changing the language of Constitutional provision so as to adopt it to the changed context of social needs. In some countries the process may be easier is said to be flexible and in some countries it may be rigid. The formal amending process is most significant way of adopting the Constitution to changing circumstance. The formal method of an amendment is described in Part- XX of the Constitution which consists of Art.368 only

5. Power of the Parliament to Amend the Indian

Constitution :

Art.368 of the Constitution of India discusses Power of Parliament to amend the Constitution and Procedure there for.

(1) Notwithstanding anything in this Constitution, Parliament may in exercise of its constituent power amend by way of addition, variation or repeal any provision of this Constitution in accordance with the procedure laid down in this article.....

The amendments described in Art.368 are of three types firstly Amendment by simple majority vote of the Parliament secondly, Amendment by special majority votes of the Parliament and thirdly Amendment by special majority vote with half number of States' legislative Assemblies ratification.

6. Limitations to Amending power of the Parliament

The Constitution of India did not expressly provide any limitation on the power of amendment under Art.368. Therefore, under the Constitution of India, a Constitutional amendment should be considered valid provided the prescribed procedure is followed. Though the constitution of India not mentioned any expressed limitations on the amending power of parliament but Supreme Court of India time to time impose certain implied limitations on amending power. From *Keshavananda Bharathi* case to *I.R.Coelho* case, Supreme Court repeatedly said that, Parliament has no power to bring an amendment to the basic structure of the Constitution. Thereby it imposes implied limitations upon the power of Parliament. But Parliament in 42nd Amendment, inserted clause (4) and (5) of Art.368 to wash those limitations imposed upon amending power of the Constitution by the judiciary. But this amendment has been declared null and void by the Supreme Court.

Ours is the longest Constitution of the world. Originally, it consisted only 395 Articles divided into 22 parts and 8 Schedules. But after the 94 Constitutional amendments, Indian Constitution now consists of 444 articles divided into 24 parts and 12 Schedules. Since 1950 to 2006, Parliament brought 94 amendments. Out of which, 11 amendments were relating to land reforms laws which were inserted to the Ninth Schedule such as 1st, 4th, 17th, 29th, 34th, 39th, 40th, 47th, 66th, 68th and 78th.

In order to overcome the verdict given in the case of *Kameshwar Singh* and to carry out the agrarian reforms in a country, Parliament in the first instance brought First amendment by which they added Arts.31-A and 31-B read with Ninth Schedule to reduce the power of judiciary to question the constitutional validity of the land reforms legislations. Thereby Art.31-B and Ninth Schedule made controlled Constitution into uncontrolled.

Some of the important Amendments of the Indian

Constitution as following

- 7th Amendment (1956) – States Reorganization Act 1956 on the linguistic basis and abolition of Class A, B, C, D states.
- 14th Amendment (1962) – Pondicherry incorporated into Indian Union after transfer by France.
- 26th Amendment (1971) – Abolition of Privy Purse paid to the former ruler of states.
- 31st Amendment Act (1973) – Increased the elective strength of the Lok Sabha from 525 to 545. Under the Act, the upper limit of representatives of the States goes up from 500 to 525 and that of the Union Territories decreases from 25 to 20.
- 36th Amendment (1975) – Sikkim included as an Indian State
- 42nd Amendment Act (1976) - Fundamental Duties Prescribed, It is known as “mini-Constitution” or the “Constitution of India”. It is due to the Forty-second Amendment to the Indian Constitution that India became a Socialist, Secular and Democratic Republic. Changes were made to almost every part of the Constitution which includes the Preamble too. It was enacted during the period of internal emergency. It was passed by Parliament on November 11, 1976 and received Presidential assent on December 18, 1976.
- 44th Amendment Act (1978) – Right to Property deleted from the list of fundamental rights.
- 52nd Amendment (1985) - Defection to another party after election made illegal.
- 55th Amendment Act (1987) – It grants Statehood to Arunachal Pradesh which consequently became the 24th State of the Indian Union.
- 56th Amendment Act (1987) – It confers Statehood on Goa and forms a new Union Territory of Daman and Diu. Goa thus became the 25th State of the Indian Republic.
- 61st Amendment (1989)- Voting age reduced from 21 to 18
- 73rd Amendment (1993) – Introduction of Panchayati Raj, the addition of Part IX to the Constitution.
- 74th Amendment (1993) – Introduction of Nagarpalikas and Municipalities
- 86th Amendment (2002) – Right to Education (Free and compulsory education to children between 6 and 14 years)

- 101st Amendment (2016) – Introduction of GST, under this amendment, the Goods and Service Tax was introduced in India on July 1, 2017.

7. Conclusion :

Likewise Parliament in its constituent power brought many amendments to the Constitution in respect of the subject matters of right to property as well as agrarian reform. During 1950-1972, the question of amenability of Fundamental Rights came up before Supreme Court in three different cases, namely, *Shankari Prasad v Union of India*, *Sajjan Singh v. State of Rajasthan*, *Golak Nath v. State of Punjab*. Until *Golak Nath* case, the law was as follows :

- a) Constitution Amendment Acts are not ordinary law and are passed by Parliament in exercise of constituent powers.
- b) There is no limitation imposed upon the amending power of Parliament
- c) Fundamental Rights guaranteed under Part III of the Constitution are subject to Parliament's power to Amendment.

But in the *Golaknath v. State of Punjab case*, 140 by a 6 to 5 majority judgment, the Supreme Court held that fundamental rights cannot be abridged or taken away by the amending procedure in Art.368 of the Constitution. An amendment to the Constitution is "law" within the meaning of Art. 13(2) and is therefore subject to Part III of the Constitution. But In *Kesavananda Bharati v. State of Kerala case* 141 the Supreme Court reversed its own previous decision in *Golaknath*, in declaring that the decision of the majority in *Golaknath* that the word "law" in Art.13 (2) included amendments to the Constitution and the article operated as a limitation upon the power to amend the Constitution in Art.368 is erroneous and is overruled. Further, Court in this case gave a threat to the power of the

Parliament by introducing the doctrine of basic structure theory.

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