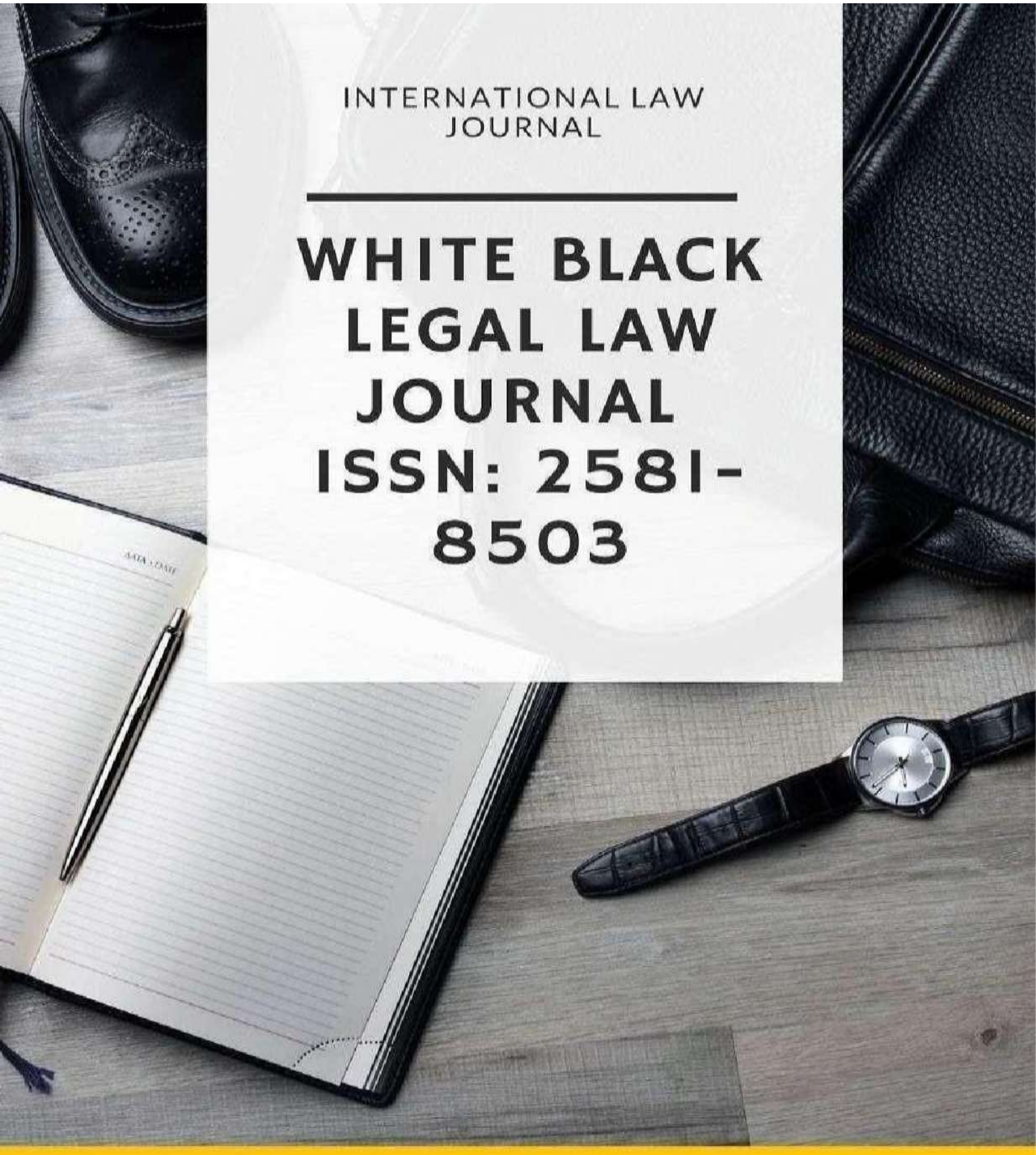

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The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

"RESHAPING OUR CONSTITUTION"

AUTHORED BY - ENA SHRIVASTAVA

ABSTRACT:

The times currently are not static[1]. Times evolve, and so does a nation's life; its social, economic, and political circumstances alter dynamically[2]. Social mores[3] and values shift from time to time, causing new difficulties and changing the complexion of existing ones. It is thus entirely feasible that a constitution written in one age and in a particular situation will be considered unsuitable in another century and scenario.

The concepts that underpin a constitution in a particular generation might be spurned[4] as outdated in the next. As a result, some apparatus, some procedure, must be in place to allow the constitution to be adjusted from occasion to occasion to meet current national demands.

Modifying the constitution to changing conditions might be unofficial or official. Unofficial approaches include conventions[5] and judicial interpretation[6], while the official method is the component process.

INTRODUCTION:

At the conclusion of 1975, certain leaders of the ruling party proposed altering the Constitution and instituting a presidential system, which would have transformed India into a dictatorial nation[7]. Lord McNaughton, one of the brightest and most knowledgeable judges, stated near the very end

[1] Not moving or changing, or staying in one place for a long time
[2] Pertaining to or characterized by energy or effective action; vigorously active of forceful; energetic
[3] The informal or unwritten rules of social behavior that are widely observed in a particular society or culture and are considered moral
[4] To refuse to accept something or someone when offered
[5] A traditional way to interpret the behavior or of doing something
[6] The process of judges interpreting the law to decide which side of the case should win
[7] Gabriel Power, 'Is India becoming a dictatorship?' (*The Week UK*, 11 July, 2019) < https://theweek.com/102206/is-india-becoming-a-dictatorship> accessed 6 July 2024

of his lifespan that he had dedicated all of his life to gaining an understanding of the law[8] and felt content that there was absolutely nothing in it.

You might or might not concur with the Irishman who remarked, "There is nothing known as a large whiskey," but there are no two ways about it: there is nothing as a flawless law. The legislation is undoubtedly faulty, and it would remain so regardless of whether it was crafted by an archangel committee.

The reason for this is that there are an unlimited number of scenarios in which justice must be served between citizens or between citizens and the state, and circumstances will certainly occur in which justice originates only once the law concludes. It is as unreasonable to anticipate a flawless legal system as it is to try to complement bubbles of soap on hat pins.

HISTORY:

The numerous characteristics that give significance and grandeur to the features of the Indian Constitution that are particularly listed in the Preamble have been brought to light by the modifications made to the Indian Constitution.

Shankari Prasad Singh v. Union of India, 1951 was the first case involving the amendability of the Constitution. In that case, the constitutionality regarding the Constitution (First Amendment) Act, of 1951, which limited the right to property granted by Article 31[9].

Following that in line, the *Constitution (Seventh Amendment) Act, 1956* removed the words and letters specified in Article 368 Clause 2 by Section 29[10] in the Indian Constitution.

The next amendment case was that of *Sajjan Singh vs. Rajasthan*[11], 1965, which called into

[8] T.V. Asokan, 'Daniel McNaughton (1813-1865)' (*National Library of Medicine*, September, 2007) < https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2902100/> accessed 6 July, 2024
[9] *Infra*, chapter XLII; *Supra*, chapter XXXII, section B
[10] Certain words and letters "specified in Parts A and B of the First Schedule" omitted by the Constitution (Seventh Amendment) Act, 1956, sec. 29
[11] AIR 1965 SC 845

question the authenticity of the *Constitution (Seventeenth Amendment) Act, 1964*[12], which hurt the property rights.

Third amendment case of *I.C. Golak Nath vs. State of Punjab*[13] talked about the constitutional validity of the *Constitution (Seventeenth Amendment) Act*[14], which was contested because, in 1967, Article 368 of the Indian Constitution permitted the Parliament to utilize its authority to restrict or eliminate any of the Fundamental Rights.

Then, the *Constitution (Twenty Fourth Amendment) Act, 1971* substituted the words "Procedure for amendment of the Constitution"[15] through section 3 of the Amendment Act, with the words under Article 368 of the Constitution.

Furthermore, the *Constitution (Twenty Fourth Amendment) Act, 1971*, through section 3 included the right of power of the Parliament[16] to utilize its constitutional authority to alter any part of the Constitution by addition, modification, or repeal while taking into account the guidelines outlined in Article 368 Clause 1.

The next key amendment that came into force was through the *Constitution (Twenty Fourth Amendment) Act, 1971*, through section 3 which included the right of the importance of the introduction of Bills in either House of Parliament[17] which is subject to approval by the chambers, as specified by Article 368 Clause 2, with a majority of at least two-thirds of the House's members participating and voting.

Then, the *Constitution (Twenty Fourth Amendment) Act, 1971* through Section 3 mentioned certain words given under Article 368 Clause 2, which were "it shall be presented to the President who shall give his assent to the Bill and thereupon"[18].

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[12] *Supra*, chapters XXXI and XXXII; *infra*, Next Chapter
[13] *I.C. Golak Nath vs. State of Punjab*, AIR 1967 SC 1643: 1967 (2) SCR 762
[14] See, *supra*, chapter XXXII; *Infra*, Next Chapter
[15] Subs. by the Constitution (Twenty-fourth Amendment) Act, 1971, sec. 3, by "Power of Parliament to amend the Constitution and procedure therefor"
[16] Ins. by the Constitution (Twenty-fourth Amendment) Act, 1971, sec. 3
[17] Article 368 renumerated as clause (2) thereof by the Constitution (Twenty-fourth Amendment) Act, 1971, sec. 3
[18] Subs. by the Constitution (Twenty-fourth Amendment) Act, 1971, sec., for certain words

Next in line amendment being done in the case of *Kesavananda Bharati vs. State of Kerala*[19], in the year 1973, which challenged the constitutional validity of both the *Constitution (Twenty Fourth Amendment) Act and the Constitution (Twenty-Fifth Amendment) Act*, through an Article 32 writ-petition in which it was held that the power to amend the Constitution is to be found in Article 368 itself, being one of the most important features of any modern Constitution.

The next amendment is done in the case of *Indira Nehru Gandhi vs. Raj Narain*[20], in the year 1975, in which the ruling of the previous case of *Kesavananda Bharti vs. the State of Kerala* was applied which talked about the non-amendability of the basic features of the Constitution. In the present case, the constitutional validity of Clause 4[21] of the *Constitution (Thirty-sixth Amendment) Act*, 1975 was challenged, on the pretext that the Amendment was a flagrant interference that was undermining a fundamental aspect of the Constitution i.e., with the judicial process[22], and after this ruling, the *Kesavananda* case ruling was invoked.

Furthermore, the key amendment which took place was that through the *Constitution (Forty Second Amendment) Act*, 1976, the words "SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC"[23], were included under the Preamble.

Another key amendment that came into force was through the *Constitution (Forty Second Amendment) Act*, 1976, the words "unity and integrity of the Nation"[24], were incorporated under the Preamble.

Additionally, the *Constitution (Forty Second Amendment) Act*[25], 1976 mentions that there will be no limitations on the Parliament's ability to exercise its constitutional authority to alter the Constitution by adding to, changing, or repealing the specified provisions. Additionally, no amendment rendered under this Constitution may be contested in any court on any grounds.

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[19] *Kesavananda Bharati vs. State of Kerala*, AIR 1973 SC 1461
[20] *Indira Nehru Gandhi vs. Raj Narain*, AIR 1975 SC 2299: 1975 Supp SCC 1; *supra*
[21] *Supra*, chapter XIX, section F; *infra*, next Chapter
[22] For Clause 4 See, *infra*, chapter XLII
[23] Subs. by the Constitution (Forty-second Amendment) Act, 1976, sec. 2, for "SOVEREIGN DEMOCRATIC REPUBLIC" (w.e.f. 3-1-1977)
[24] Subs. by the Constitution (Forty-second Amendment) Act, 1976, sec. 2, for "unity of the Nation" (w.e.f. 3-1-1977)
[25] Clauses (4) and (5) ins. by the Constitution (Forty-second Amendment) Act, 1976, sec. 55

Also, the *Constitution (One Hundred and First Amendment) Act*, 2016 talks about the inclusion of words "article 162, article 241 or article 279A"[26] which stipulates in Article 368 Clause 2 that if an amendment is made that modifies any of the aforementioned articles, the legislatures of at least half of the States must also ratify the modification.

FURTHER DISCUSSION:

Two seasonal examples may serve to highlight the significance of maintaining a separate court that the public can turn to for justice against the abuses of the administration. Maharashtra is a state with relatively good regulations, and its chief minister is a capable, civilized, and reasonable man. However, in Greater Bombay, there is a rule that prohibits any gathering of five or more people without the permission of the police commissioner[27]. This rule applies regardless of the meeting's intended location, goal, or status as public or private. As a result, social events like tea or dinner gatherings, board meetings, college lectures, funeral assemblies, and numerous other get-togethers with five or more people unavoidably account for millions of the order's violations since it was first implemented.

Constitutional amendments must be the focus of an open public discussion rather than a whisper campaign, as this is clearly in both the public and government interests. The paper is said "to possess the backing of a few of the Congress luminaries," referring to the One Journal. I sincerely hope that this isn't the case. Recommendations for the most radical and unsettling alterations to the fundamental framework of the Constitution are included in the letter.

The idea of switching to a presidential form of government is one dubious reform to our current system. The President will serve as the country's chief executive. At the point of the legislative election, the electorate would choose the President directly.

Given that it envisions a President who will be essentially unaccountable to the Indian Constitution

[26] Subs. by the Constitution (One Hundred and First Amendment) Act, 2016, sec. 15 for "article 162 or article 241" (w.e.f. 16-9-2016). Published in the Gazette of India (Extra.) Part II Section 1 dated 8-9-2016

[27] Upasana Sajeev, 'Mere Gathering of more than 5 persons not "Unlawful Assembly": Madras HC quashes case against law students protesting against Srilankan Govt.' *LiveLaw.in* (India, 10 August, 2022)

or any additional authority, this presidential framework[28] is undesirable. The Parliament's standing and authority will be significantly diminished. The President will be the Council of Ministers' ultimate authority and point of accountability.

The creation of a "superior council of the judiciary"[29] was the next planned modification to the legal system. The Law and Justice Minister, four nominees nominated by the President, four appointed through the Parliament, the Chief Justice along with two additional Supreme Court judges, along with two Chief Justices of the High Courts will make up the membership of the superior council, which will be chaired by the President. As a result, the President and the ruling party will undoubtedly have influence over ten of the fifteen appointed members of the Superior Council.

Therefore, the council will be given the right to interpret the laws, including the Constitution, and to rule on the legality of any new legislation. This authority's decision will be final and enforceable in all courts. Therefore, the Court's authority to make these decisions is immediately revoked. Furthermore, it is suggested that the Superior Council or a committee within it be given the authority to examine the performance and behavior of Supreme Court as well as High Court judges, receive accusations contrary to them, and to suggest the President that any judge be removed or even dismissed. As Justice Staple put it, this will lower the higher judiciary to the status of "Mice squeaking under the Home Minister's chair."[30]

It is proposed to amend the Constitution to state that "No law shall ever be called in question in any court of law based on constitutional authority or any other ground." Article 13 of the Indian Constitution, which states that laws are void if they conflict with fundamental rights, is to be repealed. If there is disagreement about how to correctly interpret any of the Constitution's provisions, the Parliament's interpretation, as expressed in a resolution, will be the last word and will bind the Supreme Court as well as the High Courts alike.

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[28] NEXT IAS Content Team, 'Powers and Functions of President of India' (*Nextias*, 22 April 2024) < https://www.nextias.com/blog/powers-and-functions-of-president-of-india/> accessed 10 July 2024

[29] Sarbani Sen, *The Constitution of India: Popular Sovereignty and Democratic Transformations* (Delhi, 2011; online edn, Oxford Academic, 20 Sept. 2012), https://doi.org/10.1093/acprof:oso/9780198071600.001.0001, accessed 12 July 2024

[30] Austin, Granville, 'The Judiciary under Pressure', *Working a Democratic Constitution: A History of the Indian Experience* (Delhi, 2003; online edn, Oxford Academic, 18 Oct. 2012), https://doi.org/10.1093/acprof:oso/9780195656107.003.0017, accessed 14 July 2024

It is suggested to completely repeal Article 32[31] of the Indian Constitution, which protects the right to petition the Supreme Court to have fundamental rights upheld.

As a consequence of the changes being suggested, fundamental human freedoms such as the right to practice religion as well as the freedoms of all minorities, whether they be linguistic, cultural, religious, or regional, will no longer be legally guaranteed and will not be enforceable in court. The Supreme Court along with High Courts will essentially become mere administrative appendages.

Moreover, the States' powers will cease to be guaranteed. If the Parliament makes legislation on a topic that the States are only allowed to handle under the Constitution and the Parliament decides that the bill is valid, it will take effect immediately and no court will be able to rule it invalid. Thus, a clear majority of the Parliament can completely mute the Constitution.

It is highly desirable to make it known to the public that the Government has not endorsed these amendment proposals to alleviate public concerns.

The Indian constitution's developments affect more than just our people. We are over one-seventh of the human race, and the decision we make about which of the two routes in the woods to take will have a profound effect on the global cause of democracy.

LATER DEVELOPMENTS:

In the case of *Minerva Mills Limited vs. Union of India*[32], in the year 1980, the Supreme Court reexamined the breadth and depth of the basic structural concept. The Court restated the long-standing rule that, under Article 368, the Parliament is forbidden to modify the Constitution in a way that compromises its fundamental elements or undermines its framework.

[31] Ankita M. Singh, 'Analysis of Article 32 of the Constitution of India: Right to Constitutional Remedies' (*LegalserviceIndia*, 20 September 2023) <https://www.legalserviceindia.com/legal/article-13508-analysis-of-article-32-of-the-constitution-of-india-right-to-constitutional-remedies.html> accessed 14 July 2024

[32] *Minerva Mills Limited vs. UOI*, AIR 1980 SC 1789: (1980) 3 SCC 625

Then, the case of *Waman Rao vs. Union of India*[33], in the year 1981, reaffirmed the claim that the Parliament is prohibited by Article 368 from amending the Constitution in a way that would eliminate its essential elements, and the Supreme Court in the present case ruled that the First[34] and the Fourth Amendment Acts, which were enacted in 1951 and 1955 and were within the Parliament's constituent power, were therefore legitimate and constitutional because they did not alter any fundamental or essential aspects of the Constitution as well as its fundamental structure. Moving forward, in *Raghunath Rao vs. Union of India*[35], 1993, the idea that amending the fundamental elements of the Constitution through the process outlined in Article 368 has been reaffirmed by the Supreme Court. The Court has noted the fact the Constitution has emerged as the ultimate law of the land and that all branches of government—legislative, executive, and judiciary—draw their authority and powers from it.

The Constitutional validity of the Anti-defection law[36] included by the *Constitution (Fifty-second Amendment) Act*[37], 1985 was contested because they contradicted the assertions that a legislator who switches parties is automatically removed from the Legislature and that the Speaker or Chairman of the House will make the final decision on any disqualification issue, and the mentioned issue was dealt with in the case of *Kihota Hollohan vs. Zachillu*[38], in the year 1993.

The next amendment case was *A.K. Roy vs. Union of India*[39], in the year 1982, in which Section 1(2) of the *44th Amendment Act* was contested because it breached Articles 14 and 21, which are essential components of the Constitution's fundamental framework, by giving the executive an irrational, capricious, and unguided power.

Furthermore, talking about the *Constitution (Forty-fifth Amendment) Bill, 1978*- (CB 45[40]), in which the amendment under Article 368 regarding the power of Parliament to amend the

[33] *Waman Rao vs. UOI,* AIR 1981 SC 271; *supra*, section E(b)
[34] *Supra*, chapter XXXII; *supra*; *infra*, chapter XLII
[35] *Raghunath Rao vs. UOI*, AIR 1993 SC 1267, 1287: 1933 (1) JT 374
[36] *Supra*, chapters II, section F and VI, B(iv): *Infra,* chapter XLII
[37] *Ibid*
[38] *Kihota Hollohan vs. Zachillu*, AIR 1993 SC 412: 1992 Supp (2) SCC 651, *supra*, chapter II, section F(a)
[39] *AK Roy vs. UOI*, AIR 1982 SC 710: (1982) 1 SCC 271
[40] CB 45 is the abbreviation used in the text for the Constitution (Forty-fifth Amendment) Bill, which later became the Constitution (Forty-fourth Amendment) Act

Constitution was again sought. Then, the *42nd Amendment (CA 42)* was declared to grant the Parliament unrestricted authority to modify the Constitution, including its basic features[41], but Its legitimacy was still up for debate.

WAY FORWARD AND SUGGESTIONS:

The fundamental framework of our Constitution has been altered by "The Swaran Singh Committee's Report on Constitutional Amendments"[42], but due to our massive indifference and skepticism, the recommendations received less attention in public and private than the desires of the monsoon or the provision of onions.

However, the suggestions put forward by the Swaran Singh Committee have made the already dire state of human rights even more apparent, and the public now has to take the time to understand the practical and legal ramifications of these changes as well as form and express its own opinions on these crucial issues. In the ensuing years, the public's apathy must have some of the responsibility if the plans become legislation.

[41] *Supra*, *infra*, chapter XLII

[42] Dr. Makkhan Lal, 'Swaran Singh Committee and 39th- 42nd Amendments' (*vifindia*, 31 July 2018) <https://www.vifindia.org/article/2018/july/31/swaran-singh-committee-and-39-42-amendments> accessed 16 July 2024