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INDIAN CONSTITUTION AND ITS SELF IMPOSED WOUNDS

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Abstract: The inaugural meeting of the "Constituent Assembly was held on December 6, 1946". India's Constituent Assembly established a drafting committee on August 29, 1947, following the country's independence, and it submitted the Draft Constitution in February 1948. It was approved by the "Constituent Assembly on 26th November, 1949", following significant debates and several changes. The end product was possibly the most complex Constitution ever created for a population with the widest range of languages, religions, and ethnic backgrounds. It would be improper to give all the credits to the constituent assembly for drafting such a huge document as they did not do it from the scrape.

On January 26, 1950, we adopted this exemplary Constitution. Barely did we know that in the upcoming years, our Constitution would sustain self-imposed injuries at the hands of none other than our entrusted officials, who facetiously had an obligation to validate and safeguard our Constitution.

This article focuses on the "constitutional amendments" that came into force which has done major anguish to our constitution. The U.S.A. Apex court, in the case of "*Dred Scott v. Sanford*[1]" gave the judgement that "slaves have no rights and were chattel". This ruling, according to Chief Justice Charles Evans Hughes, was "self-imposed" in nature. This phrase has been cadged to set apart those amendments that have done major harm to our Constitution. In some instances, the catastrophes were somehow reinstated but it still left some irreversible cicatrices.

Due to limitation of words this article would only focus on few constitutional amendments.

Keywords: **consistent assembly, constitution, self-imposed, injuries, amendments.**

THE FIRST AMENDMENT AND NINTH SCHEDULE

"They would say 'means are after all means'. I would say means are after all everything… There is no wall of separation between means and end." --- MOHAN DAS KARAMCHAND GANDHI

In 1951, a provincial parliament was created with a limited franchise votes– just prior to the general elections – which planned to introduce the first amendment to our Constitution that curtailed major Indian discretions. The inceptive infringements of our basic fundamental rights and the antecedents it placed for the present and the future gave such wounds to the Indian liberalism, that it is yet to recover from it completely. This is the account of "the first war of Indian liberalism," which included "unlikeliest of characters" on both edges of the clash strings.

[1] 60 U.S. 393 (1856).

Few of us are still unaware of the fact that V. K. Thiruvenkatachari, a "former advocate general of Madras", was the one to propose the Ninth Schedule for the first time into the Indian Constitution. It's a fascinating narrative that how this concept of Ninth Schedule became the first amendment to our Constitution that was adopted in the year 1951. Prior to the independence, the leader of the congress party Pandit Nehru had pledged to scrape away the Zamindari's holdings and huge freeholds and revamp those holdings of the land to the agronomists. The main concept behind this was the communal equity at large and honest allocation of opulence. After attaining the Independence, for the successful implementation of the thought of equity, several land reform laws were introduced by the then parliament. But the path to achieve these were not so simple and clear. The government trying its best in social engineering encountered countable dilemmas and all these precedents were challenged in the court of law and some of them also vouchsafed injunction to such lands that were acquired by the state.[2] Several of the issues brought up include:

- If independent privatized possessors take over the huge agricultural land wholly, then they might prove to be inefficient to single handily perform the cultivation.
- Leads to land patching and areas of incompetency. For wide reaching cultivation, the patching of land ordinarily won't aid.
- In nations like Zimbabwe, land reforms had contributed to economic deflation and food shortages.
- The leading remonstrance therein affiliated to the volume of recompense. Some of the government workers suggested that the recompense must be just and fair but others disagreed.

While these constitutional revisions were being discussed, the "Patna High Court" overturned The Land Reform Act of 1950 on the grounds of unconstitutionality of the provisions as it contravened the Fundamental Rights under Article 14 of the Indian constitution because it discriminatorily categorized the zamindars for the sake of compensatory payments.[3] Looking at wide spread distrust amongst the citizens, the then Law minister, Dr. B. R. Ambedkar was urged by Pandit Nehru to draught the required constitutional modifications. Dr. B. R. Ambedkar actively recommended that in the scenario where the Head of State I.e. the President, has specified the acceptance for procurement of assets then no further queries on reimbursements ought to be discussed in any court of law. Even after considerable disbeliefs by President Dr. Rajendra Prasad regarding the Land Reforms was put up and a letter was also addressed by Sardar Vallabhai Patel, at the time when he was Bombay, to Pandit Nehru requesting more time so that the Law Ministry can ponder upon the questions raised by the President and can find answers to them but it was all in vain. And even after all of this Pandit Nehru was very determined to pass this Land Reform and it is also conceived that Pandit Nehru pressurized the council to give assent or else he would resign from his post. Though Dr. Rajendra Prasad was unsatisfied with the demands of Pandit Nehru he gave his approval to the Bill.

The Government became concerned that the entire agrarian reform programmes might be in jeopardy as a result of these judicial rulings. The 1951 Constitutional Amendment introduced the Ninth Schedule in order to prevent legislation enacted for agrarian reform from colliding with adverse weather. The President may certify and include in this new schedule all acts relating to land reform laws. These laws would be regarded as being legal going forward and couldn't be challenged for breaking the Constitution. Later, the idea made by V.K. Thiruvenkatachari was transformed into Article 31A, Article 31B, and Ninth Schedule of Indian Constitution. According to Article 31A, laws that dealt with the purchase of real estate, communisation of industries, the extinction of mineral leases or their early termination could not be contested on the rationale that they contravened Article 14 (right to equality), Article 19 (right to various freedoms including free speech etc.) and Article 31 (right to property; now repealed). Even further, Article 31B stated that no Acts or Regulations included in the Ninth Schedule shall be adjudged to be null or to have ever flatter unlawful because they infringed upon any Fundamental Right. Such legislation could not be regarded as null despite any ruling, decision, or directive from a court or tribunal. This basically resulted in the form that if any law that comes under the Ninth Schedule then it will have entire immunity from getting challenged in any legal proceedings on the basis of any infringement of rights. This attempt and the First Amendment was harshly attacked by the Supreme Court Bar Association and the media expressing its concern over all this passed a resolution which believed that this decision has been taken in pure haste and it needs more pondering upon.

As a result, we can see that the First Amendment established the pattern for the Constitution's frequent amendment in order to overturn rulings. In spite of the inconvenience to the public, it also started the practise

[2] Kalawati v. Bisheshwar (1968) 1 SCR 223 (India).
[3] State of Bihar v. Kameshwar Singh (1952) 1 SCR 889 (India).

of retroactive revisions. The Ninth Schedule soon became the target of serious misuse. In 1951 "thirteen laws were inserted in the Ninth Schedule; seven in 1955; forty-four in 1964; two in 1972; twenty in 1974; thirty-four in 1975 and another fifty-nine in 1976". More than 80 laws were added to the Ninth Schedule during the Emergency, and the entire procedure of securing ratification from two thirds of the States, the Lok Sabha, and the Rajya Sabha took just a few days! After that, the Ninth Schedule's list of legislation kept growing, and it presently comprises 284 Acts. Despite the fact that many laws are related to land reform legislation, other Acts have nothing to do with the nationalisation or scrapping of zamindari. Many acts like FERA, MRTP etc. are also the part of this schedule which do not have any connection with the Land Reforms. The Ninth Schedule's inclusion of revisions to election laws was the biggest abuse. Legally, until the concept of basic structural doctrine was developed, a statute restricting the liberty of media may be added to the Ninth Schedule and nothing would be done regarding that. The Ninth Schedule was further exploited by re-enacting legislation that were declared unconstitutional and adding them to the Ninth Schedule again. Retrospective validation of these statutes occurred in various instances. It is undeniable that the Ninth Schedule was used in ways for which it was never meant. It was inescapable that at some point, the Ninth Schedule's legality would be called into doubt.

Following the development of the fundamental structural theory in the historic Kesavananda case[4], there is no statute that is exempt from judicial examination. The ability of Parliament to change the Constitution could not include changing the Constitution's fundamental design. Incorporating unconstitutional laws into the Ninth Schedule would constitute an indirect violation of the fundamental structure. Even after the Kesavananda Bharati ruling, the legislature made an effort to avoid court review by approving the 42nd amendment, which once more allowed for the modification of fundamental rights. The 42nd amendment's deceit by the parliament was rectified by the Apex Court in the Minerva Mills case, nevertheless. The Supreme Court has arrived to a conclusion that Parliament cannot arbitrarily insert laws in the Ninth Schedule and preclude judicial scrutiny. It was determined in the case of I. R. Coelho that every statute that entered into force after April 24, 1973 must pass muster under Articles 14, 19, and 21. In addition, the court reaffirmed its earlier decisions and stated that any act that does not adhere to the fundamental principles of the constitution is subject to challenge and judicial review. It has said unequivocally that the Constitution is the highest law.

24TH AMENDMENT – THE BEGNING OF ONSLAUGHT

The Constitution was altered 23 times after 1951. And ironically none "wounded" the Constitution. The 24th and 25th amendments were initiated in Parliament on July 22, 1971. These signalled the start of recurrent assaults on the Constitution's integrity. The changes were quick but equally harmful, unlike the 42nd amendment. They were meant to override Supreme Court rulings, just as the first amendment. The first amendment's strategies of eliminating zamindari grounds and calling for industry communisation was the only distinction. The 24th and 25th amendments would effectively put the Constitution at the whim of any regnant government that could get the necessary Parliamentary majority of two-thirds and the ability to get two-thirds of the State must ratify it. In the infamous Golaknath case[5], the Apex Court overturned a previous ruling that had said that Parliament has the authority to change any part of the Constitution, inclusive of the section related to basic rights[6], by a majority of 6:5. According to Golaknath's decision, Part III of the Constitution's protection of Fundamental Rights barred Parliament from removing or restricting any of those rights. In 1967, a decision in the Golaknath case was made. These changes, though, were established in 1971. There is no evidence that any economic reform initiative between 1967 and 1971 was hampered by the Golaknath verdict. It was never proven that the execution of any socioeconomic changes was hindered by basic rights.

The 24th amendment stated that any Article 368-related provisions of the Constitution might be changed by "addition, variation, or repeal" by Parliament. The President had the authority to refer a law to Parliament for reconsideration under Article 368. The 24th amendment mandated that the President has no choice but to sign the bill once the Constitution had been altered by the necessary majority specified in Article 368(2). It was made plain in a matching change to Article 13 that a Constitutional amendment adopted in accordance with Article 368 could not be invalidated on the grounds that it restricted or eliminated any basic right. The

[4] His Holiness Kesavananda Bharathi v State of Kerala (1973) SC 1461 (India).
[5] Golaknath v State of Punjab (1967) SC 1643 (India).
[6] Sajjan Singh v State of Rajasthan (1965) SC 845 (India).

Parliament's goal was very clear: there would be no judicial review and it would have the authority to suspend any or all basic rights.

26TH & 28TH AMENDMENTS – THE BREACH OF TRUST

26TH AMENDMENT:

In July 1971, Parliament also approved the 26th Amendment Act, a contentious development in our constitutional history that eliminated the Privy Purses. The modification was not in the public interest because the entire sum granted to the prior rulers as a privy purse was just Rs. 4 crores yearly and was getting small-scaled every year. The princely States made up 48% of undivided India's territory, and 28% of its people lived there.[7]

The Indian Independence Act of 1947 called for the termination of the British crown's supreme authority over the Indian States, and each Sovereign was given the choice of submitting to India's or Pakistan's dominion or becoming a sovereign independent State. The Ministry of States was established by the Indian government and was headed by Sardar Vallabhai Patel. It is unnecessary to go into detail about the monumental undertaking that Patel undertook with V. P. Menon here. A number of kings joined India as part of the agreement, and Article 291 of the Constitution granted them a privy wallet that was not subject to income tax. This privy purse was billed to India's Consolidated Fund in accordance with Article 362. The privy money that was paid was far smaller than the Maharajas' income. The rulers had surrendered equities valuing Rs. 77 crores in exchange for the secret purse. In Delhi, a number of palaces, homes, etc., were turned over to the government and used as government buildings.

Following independence, certain Congress leaders once more suggested doing away with privy purses. Sardar Vallabhai Patel made a resignation threat. He emphasized to them that India could not break the commitment it made to the rulers in exchange for their signature on the Instrument of Accession. The elimination of the privileges and privy purses granted to the kings was suggested by a number of Congress party leaders. To Pandit Nehru's credit, he declined this suggestion on the grounds that the government shouldn't go back on its word. He had also mentioned how the expense associated with the bathroom purses was going down. Thus, moved a formal resolution at the Bhubaneswar and Congress party convention was rejected. This demonstrates that Pandit Nehru honoured the Constitution's guarantees and opposed any move to do away with privy purses.

Respect for the Constitution also faded with Pandit Nehru and Lal Bahadur Sastri's passing. The Government's policies were maintained within the boundaries of the Constitution prior to their deaths. After 1967, attempts were made to integrate the Constitution into the governing party's strategy. The Congress party took back control, although with much less force. By presenting the 24th Amendment Bill, the idea to eliminate privy purses was brought up once more. On the same evening, a de-recognition order for the Princes was prepared. In Hyderabad at the time was President V.V. Giri. To acquire his signature, a police officer was dispatched by a special aircraft. All rulers received an order dated September 6, 1970, revoking their recognition. Within several days, The Supreme Court received a plea from the Maharaja of Gwalior seeking to overturn the President's decree on the basis of unconstitutionality under Article 32 of Indian Constitution. The matter was heard and it took less than four months for its disposal. The Supreme Court struck down the Presidential Order of derecognizing the princes.[8]

Mrs. Gandhi won the election in 1971 with a big majority. To ban privy purses, the 26th amendment was proposed. Articles 291 and 362 of the Constitution were targeted for deletion. (The formerly assured privy purse payment, it was charged to the Consolidated Fund of India and free from income tax in accordance with Article 362.) Article 363A, which officially de-recognized the Princes and did away with privy purses, was likewise included by the 26th amendment. On the grounds that it eliminated the distinction between former rulers and others, which is a requirement for reaching shared brotherhood, this was affirmed. According to the court, the 26th Amendment did not go against the fundamental framework.[9]

[7] Madhavrao Scindia v. Union of India (1971) SC 530, 545 (para 21) (India).
[8] Madhavrao Jiwajirao Scindia v Union of India (1971) SC 530 (India).
[9] Raghunathrao Ganpatrao v Union of India (1983) SC 1267, 1287-1288 (India).

28TH AMENDMENT:

The 28th amendment, which aimed to repeal Article 314, was perhaps even more repugnant. This provision guaranteed to erstwhile civil servants that they would be eligible for compensation, a pension, and other benefits under the pre-independence laws. The 28th Amendment's preamble said that:

> "The concept of a class of officers with immutable conditions of service is incompatible with the changed social order. It is, therefore, considered necessary to amend the Constitution to provide for the deletion of Article 314 and for the inclusion of a new Article 312A which confers powers on Parliament to vary or revoke by law the conditions of service of the officers aforesaid and contains appropriate consequential and incidental provisions."

Social structures may shift, but the constitutional promise should be upheld. The nation cannot unilaterally break its pledge on the pretext of "social order" change, just as a surety cannot unilaterally cancel his assurance on the grounds that future conditions have switched.

CONCLUSION

Consequently, the Constitution has endured despite tragic attacks. Its integrity and holiness have frequently been preserved by the fundamental structural idea. There is now a suggestion that a new Constitution be adopted in order to fulfil "social objectives" among some circles. Although we have failed the Constitution, it is not the Constitution that has failed us. It is ridiculous to think that a new Constitution will improve conditions for millions of Indians. There is no clause in our constitution that prevents us from taking serious action to raise the economic and social standing of our citizens. Its high time that we learn from our past mistakes and try to fulfil the motive of our constitution for which it was created.