

ANALYSING THE ROBUSTNESS OF DEMOCRACY THROUGH A SCRUTINY OF CONSTITUTIONAL AMENDMENTS

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ABSTRACT

Constitutional democracies are experiencing crisis as leaders across the globe abuse constitutional mechanisms, such as the formal procedure of constitutional amendments to erode democratic order. This article explores the effect of constitutional amendments on the level of democracy and how they vary during the coalition governments and majoritarian governments in India. I conclude that during the coalition era (2004-2014) a positive impact of amendments on democracy has been witnessed. Where constitutional amendments instill democratic principles in the country focusing on protecting and granting freedom guaranteed by the constitution. On the other hand, during the majoritarian period (2014- present) amendments have a negative impact on democracy since they are used as mechanisms to concentrate power into the hands of the government. This research also has its shortcomings given the time constraint it looks at only one country over a very short period of time therefore, the findings are not generalizable. Nevertheless, it opens room for further research qualitatively and quantitatively.

Keywords: constitutional amendment, democracy, coalition government, majoritarian, government

Introduction

Legislatures in parliamentary democracies are the only institutions at the national level that are directly elected by the people and thus are accountable to the citizens (Martin and Vanberg, 2005, p. 93). They also play a significant role in policy making and amending them. For the above reason, while focusing on constitutional amendments in parliamentary systems, with particular respect to the introduction of legislation, the primary emphasis of most political scientists is on understanding the politics of the government (Gamm and Huber, 2002, p. 323). "Since elections usually do not yield a legislative majority for a single party, political elites must engage in a process of complex bargaining that typically results in the formation of multiparty

coalitions, which must then strive to retain the confidence of a majority of legislators for the remainder of the parliamentary term” (Martin and Vanberg, 2005, p. 93). For the above reasons, to examine constitutional amendments in parliamentary democracies, one must understand the effects formation of governments can have. Therefore, in the following, the question ‘What is the effect of constitutional amendments on quality of democracy?’ will be answered through a qualitative content analysis. Theories such as the populist rhetoric and populist constitutions explore ways in which majoritarian governments use “tools of constitutional change to gain power” (Landau, 2018, p. 522). Their main goal is to create “systematic change” wherein basic rules on which democracy stands are changed to their advantage. So, it is easy for them to play off any existing political forces (Sellers, 2021, p. 529). In this way, governments abuse existing institutional order to bring about change by concentrating power and gradually degrading the quality of democracies. In coalition governments, this becomes relatively difficult because of the principal agent problem. It is so because, cooperation requires compromise which in multiparty governance leads to electoral losses because of different party positions. Based on the above theoretical explanation, the following hypothesis is formulated: ‘democracy is on a constant decline with the rise of constitutional amendments’ which will further be tested.

METHODOLOGY

This section of the paper includes data selection, method of analysis, and coding frame. This paper will be looking at amendment bills passed and examine their impact on the quality of democracy. The author has retrieved the transcripts of the bills passed in the Indian parliament from the PRS legislative research website and examined each original bill text (<https://prsindia.org/>). However, the number of legislative bills is significant, and given the time constraints of this paper, they all cannot be examined. Therefore, a sampling strategy has been adopted. Randomly every 10th amendment bill passed in the parliament has been reviewed and its effects on democracy have been examined. The recoding unit for this research will be paragraphs, which directly or indirectly affect the political rights and civil liberties in India, thus impacting the quality of democracy.

To examine the effect of constitutional amendments on democracy over the years, author has referred to the Freedom in the World annual global report on political rights and civil liberties by Freedom House. This report gives a holistic view of democracy since it examines countries under two broad umbrellas: political rights and civil liberties. It also further divides them into three and four sub-categories respectively being - electoral process, political pluralism and participation, functioning of government for political rights and freedom of expression and belief, associational and organisational rights, rule of law and personal autonomy and individual rights for civil liberties. With certain amendments made we are likely to see a direct negative effect on peoples’ rights and freedoms within a democracy and thus degrading its quality.

Freedom house reviews each category in each year's report. Thus, each point difference in the level of democracy can easily be examined. Therefore, for the coding frame of this paper, similar sub-categories and indicators as Freedom House uses in its report on democracy have been used and further also colour coded as shown in the appendix.

Analysis of the result

During the time period of coalition governments in India, most amendments made were not as polarized and focused more on protecting the rights of individuals and societies. They were also more progressive and concentrated on building up democratic values and principles within the country. Although there were some amendments that restrained people's political rights, they were relatively less in number because of the scrutiny each bill went through in the parliament and in the standing committees. Nevertheless, during the majoritarian period, amendments made are extremely polarized since they were not heavily scrutinized as the majority party left no room for debate in the parliament and they did not undergo review from the standing committees. Therefore, the bills passed concentrated power into the hands of the ruling party. Since "Constitutional amendment rules are gatekeepers to a constitution", and when put aside, which they are being today, they often open a window of drastic change to the democratic order of a country (Albert, 2019, p. 2). Thus, degrading the democratic values by directly or indirectly affecting individual's rights. But not all amendments are bad for democracy; some also grant more rights and protect already existing political rights in the country.

Similarly, most amendments passed during coalition governments were such that they focused more on protecting the freedoms of minorities, schedule castes and schedule tribes as guaranteed by the constitutions. But also empowered the organizational and associational rights of all the people. However, this is not always true since there were some amendments that breached civil liberties of the people. As compared to the majoritarian period where most amendments passed also did not directly constrain people's civil liberties. Since they did not change the rights and freedoms guaranteed by the constitution, but indeed made the root of it null and void. Therefore, negatively affecting the quality of democracy by indirectly constraining fundamental rights and freedoms guaranteed by the constitution. Like the Right to Information (amendment) bill, 2019 indirectly politicizes the information commission. So, in a deeper sense, people in India no longer exercise a genuine right to information as the constitution guarantees it.

Presentation of Results

Categories	Sub-categories	Coalition Era (2004-2014)	Majoritarian Period(2014-present)
Political Rights	Positive impact on political Rights Negative impact on political rights	Amendments seem to have a more positive impact on political rights during the coalition era. Which means that they help instill more democratic principles in the country.	During the majoritarian period amendments have a more negative impact on democracy, since they are used as mechanisms to concentrate power into the hands of the majoritarian party which forms the government.
Civil Liberties	Positive impact on civil liberties Negative impact on civil liberties	Similarly, while examining the impact of amendments on civil liberties, a positive pattern has been noticed during the coalition period. Amendments in this time period were more focused on protecting and granting the freedoms guaranteed by the constitution.	Similarly, amendments during the majoritarian period have a more indirect negative impact on civil liberties. They thus degrade the level of democracy by limiting the freedoms guaranteed by the constitution.

Discussion and Conclusion

As discussed in the sections above, constitutional amendments do affect the quality of democracy. While viewed individually, each amendment might not have a large impact on democracy, but when viewed all over a span of time they can cause serious harm or in still democratic principles within a country. Therefore, while answering the research question ‘what is the effect of constitutional amendments on the quality of democracy?’, it can be concluded that amendments made during the time of coalition governments had a positive impact on democracy, whereas most amendments made during the majoritarian governments have a negative impact on the quality of democracy [refer to Appendix A, Table 1 & 2] for a detailed account of constitutional amendments. Therefore, examining the case of India, an evident pattern as mentioned above has been noticed. Thus, null hypothesis is rejected.

Although this research is coherent with existing literature, it cannot be conclusive given the limited scope of the research. The findings cannot be generalizable enough because an extremely small number of amendments over a very short span of time have been examined. Nevertheless, the results found are a starting point for further research into how constitutional amendments affect the quality of democracy particularly when examined under different forms of governments. By looking at various countries with different regime types and examining the amendment bills passed within each of their parliaments the scope of the study can be enlarged. It also opens room for plenty of further qualitative and quantitative research. Additionally, research on the quality of democracy, particularly the phenomenon of democratic backsliding has recently grasped a lot of attention from the society and also in academia and is being researched a lot about. Furthermore, it is a phenomenon that people are more and more interested to read about, thus it holds relevance in today's world and also for the future.

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Appendix A: Coding frame

Table:1 Coding Frame for coalition governments (2004-2014)

Categories	Description	Indicators	Subcategory	Text
Political Rights	Political rights are rights of an individual protected by the state.	Electoral Process Political Pluralism and Participation Functioning of Government	Positive impact on political rights	<p>“In order to facilitate speedy trials, it provides that a Special Court (the state government can constitute any number of Special Courts for such areas as may be specified, to facilitate speedy trials of offences) shall be competent to take cognizance of an offence without the accused being committed to it for trial.”</p> <p>The apprentices (amendment) bill, 2007)</p> <p>“The Bill seeks the inclusion of new castes based on social, educational and economic backwardness.</p> <p>The Bill makes modifications or imposition of area restrictions in the existing communities. The List of Scheduled Castes was first notified in 1950. The list has been modified several times. The Bill amends the list in respect of 17 communities from the states of Haryana, Kerala, Madhya Pradesh, Maharashtra, Orissa, Punjab and Chattisgarh. The Bill includes synonymous communities in respect of a caste in the existing list.”</p> <p>The constitution (scheduled castes) order (amendment) bill, 2006)</p> <p>“The Bill seeks to amend the Maternity</p>

			<p>Benefit Act, 1961. The Principal Act regulates the maternity benefit available to women in factories, mines, the circus industry, plantations and shops or establishments employing 10 or more persons. It does not cover employees who are covered under the Employees' State Insurance (ESI) for certain periods before and after child-birth. Women entitled to a maternity benefit are also entitled to receive a medical bonus of Rs 250 from their employer, if no pre-natal confinement and post-natal care is provided by the employer free of charge. The Bill seeks to raise the amount of maternity bonus from Rs. 250 to Rs. 1,000 .”</p> <p>(The maternity benefit (amendment) Bill, 2007)</p> <p>‘The Bill adds a new Directive Principles of State Policy stating that the “State shall endeavour to promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies”.’</p> <p>The constitution (one hundred and eleventh amendment) bill, 2009)</p> <p>‘The Bill adds a new category of persons called “adolescent”. An adolescent means a person between 14 and 18 years of age. The Bill prohibits employment of adolescents in hazardous occupations as specified (mines, inflammable substance and hazardous processes).’</p> <p>Negative impact on The child labour (prohibition and</p>
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			political rights	regulation) amendment bill, 2012) _____ “The Bill bans conducting exit polls and publishing these results from the time the polls start until all phases of the election are completed. Appeals regarding names on the electoral rolls are submitted to the state chief electoral officer. The Bill allows appeals to be filed with the district magistrate or additional district magistrate.” The representation of people (second amendment) bill, 2008)
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<p>Civil Liberties</p>	<p>Civil liberties are how well does the state protect and give freedoms guaranteed by the constitution.</p>	<p>Freedom of Expression and Belief Associational and Organizational Rights Rule of Law Personal Autonomy and Individual Rights</p>	<p>Positive impact on civil liberties</p>	<p>‘It emphasizes that a person cannot be prosecuted for any offence punishable under the Act without the permission of the Central Government or Appropriate Commission or a Chief Electrical Inspector or an Electrical Inspector or licensee or the generating company. An Appropriate Commission could be the Central Regulatory Commission or State Regulatory Commission or Joint Commission. In order to facilitate speedy trials, it provides that a Special Court (the state government can constitute any number of Special Courts for such areas as may be specified, to facilitate speedy trials of offences) shall be competent to take cognizance of an offence without the accused being committed to it for trial.’</p> <p>Electricity (amendment) bill, 2005)</p> <p>‘The Bill amends the 1985 Act to provide for the protection of intellectual property rights of a new category of agricultural products. APEEDA is now authorised to undertake prescribed measures for registration and protection of intellectual property rights of ‘special products’ within and outside India.’</p> <p>The agricultural and processed food products export development authority (amendment) bill, 2008)</p>
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				<p>“The posts of Mukhia, Pramukhs and Adhyakshas of the District shall be reserved for SCs and STs in proportion of their population. If the reserved seats are less than fifty percent, the remaining seats shall be reserved for OBCs to the extent of their proportion in the population (This provision will not be applicable for Adhyakshas). Out of the total reserved seats, fifty percent of the posts shall be reserved for women belonging to SC, ST and OBCs.”</p> <p>The Jharkhand Panchayati Raj (amendment) bill, 2010)</p> <p>“While the Bill provides compensation for unlawful loss or gain arising from unauthorised use of data, it does not address the issue of breach of privacy. The Bill does not cover situations in which an employee who has permission to access certain data misuses such data and also does not mention a punishment in case of child pornopgraphy.”</p> <p>The information technology (amendment) bill, 2006)</p>
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Negative impact on civil liberties

Table:2 Coding Frame for majoritarian governments (2014-present)

Categories	Description	Indicators	Subcategory	Text
Political Rights	Political rights are rights of an individual protected by the state.	Electoral Process Political Pluralism and Participation Functioning of Government	Positive impact on political rights	<p>“The Act states that every woman will be entitled to maternity benefit of 12 weeks. The Bill increases this to 26 weeks. Under the Act, this maternity benefit should not be availed before six weeks from the date of expected delivery. The Bill changes this to eight weeks.”</p> <p>(The maternity benefit (amendment) bill, 2016)</p>
			Negative impact on political rights	<p>“Under the Act, states conduct the auction of mineral concessions (other than coal, lignite, and atomic minerals). Mineral concessions include mining lease and prospecting license-cum-mining lease. The Bill empowers the central government to specify a time period for completion of the auction process in consultation with the state government. If the state government is unable to complete the auction process within this period, the auctions may be conducted by the central government.”</p> <p>(The mines and minerals (development and regulation) amendment bill, 2021)</p> <p>“The principal Act provides for the imposition of a cess as an excise duty</p>

			<p>on the production of sugar The principal Act specifies the ceiling on the cess at Rs 25 per quintal under the Act. The Bill proposes to increase this ceiling to Rs 200 per quintal of sugar. The cess has been proposed to be increased in order to meet the government's expenditure on interventions to ensure payment of dues."</p> <p>(The sugar cess (amendment) bill, 2015)</p> <p>"The Bill amends the Lokpal and Lokayuktas Act, 2013 in relation to declaration of assets and liabilities by public servants. The Bill replaces these provisions to state that a public servant will no longer be required to declare his assets and liabilities electronically, and also no longer declare the assets and liabilities of the spouse and dependent children."</p> <p>(The Lokpal and Lokayuktas (amendment) bill, 2016)</p> <p>"In December 2019, Parliament adopted the Citizenship Amendment Act (CAA), which grants special access to Indian citizenship to non-Muslim immigrants and refugees from neighbouring Muslim-majority states. At the same time, the government moved forward with plans for the creation of a national register of citizens. Many observers believe that the register's purpose is to disenfranchise Muslim voters by effectively classifying them as illegal immigrants. Importantly, Muslims disproportionately lack</p>
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				<p>documentation attesting to their place of birth. Undocumented non-Muslims, meanwhile, would be eligible for citizenship through a fast-track process under the CAA.”</p> <p>(Freedom House, 2021)</p> <p>(The citizen (amendment) bill, 2019)</p>
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<p>Civil Liberties</p>	<p>Civil liberties are how well does the state protect and give freedoms guaranteed by the constitution.</p>	<p>Freedom of Expression and Belief Association and Organization Rule of Law Personal Autonomy and Individual Rights</p>	<p>Positive impact on civil liberties</p> <hr/> <p>Negative impact on civil liberties</p>	<p>“The Bill amends Article 124 (2) of the Constitution to provide for a Commission, to be known as the National Judicial Appointments Commission (NJAC). The NJAC would then make recommendations to the President for appointments of SC and HC judges.”</p> <p>The constitution (one hundred and twenty- first amendment) bill, 2014)</p> <p>‘The amendment bill makes all declaration of talaq, including in written or electronic form, to be void (i.e. not enforceable in law) and illegal. The Bill makes declaration of talaq a cognizable offence, attracting up to three years’ imprisonment with a fine.”</p> <p>The Muslim women (protection of rights on marriage) bill, 2019)</p> <p>‘The Act requires that the Central Government guarantee the repayment of the principal and annual minimum dividend payments on shares to the central warehousing corporation. The Bill seeks to do away with the Central Government’s responsibility of being a financial guarantor to the central warehousing corporation. Accordingly, provisos to certain sections relating to the government’s responsibility of being a guarantor to the central warehousing corporation are proposed to be omitted.”</p> <p>The warehousing corporations</p>
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			<p>(amendment) bill, 2015)</p> <p>‘The Bill amends Sections 13 and 16 of the Right to Information (RTI) Act, 2005. Section 13 of the original Act sets the term of the central Chief Information Commissioner and Information Commissioners at five years (or until the age of 65, whichever is earlier). The amendment proposes that the appointment will be “for such term as may be prescribed by the Central Government”. Again, Section 13 states that salaries, allowances and other terms of service of “the Chief Information Commissioner shall be the same as that of the Chief Election Commissioner”, and those of an Information Commissioner “shall be the same as that of an Election Commissioner”. The amendment proposes that the salaries, allowances and other terms of service of the Chief Information Commissioner and the Information Commissioners “shall be such as may be prescribed by the Central Government”.’</p> <p>(The right to information (amendment) bill, 2019)</p> <p>‘The Bill amends the Foreign Contribution (Regulation) Act, 2010. Act or the Foreign Contribution (Regulation) Act, 1976, the unutilised or unreceived foreign contribution may be utilised or received, only with the prior approval of the central government. The Bill adds that the government may also restrict usage of unutilised</p>
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				<p>foreign contribution for persons who have been granted prior permission to receive such contribution.”</p> <p>(The foreign contribution (regulation) amendment bill, 2020)</p>
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