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ARTICLE 368 AND THE BASIC STRUCTURE DOCTRINE: SAFEGUARDING CONSTITUTIONAL IDENTITY IN INDIA

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Abstract

The power of the Indian Parliament to amend the Constitution under Article 368 is a vital feature of India's constitutional framework, enabling the Constitution to adapt to changing social, political, and economic needs. At the same time, this power is subject to important constitutional limitations to preserve the foundational values of the Constitution. This article examines the scope and evolution of Parliament's amending power through significant judicial decisions, particularly *Golaknath v. State of Punjab* and *Kesavananda Bharati v. State of Kerala*. These landmark cases shaped the constitutional position regarding the extent of Parliament's constituent authority and led to the development of the Basic Structure Doctrine. The doctrine establishes that while Parliament may amend any part of the Constitution, it cannot alter or destroy its essential features, such as democracy, secularism, federalism, and judicial review. The article further analyses the role of the judiciary in safeguarding constitutional supremacy and maintaining a balance between constitutional flexibility and rigidity within India's democratic system.

Keywords: Article 368, Constitutional Amendment, Parliament, Amending Power, Basic Structure Doctrine, Judicial Review, Constitutional Supremacy, Kesavananda Bharati, Golaknath Case, Indian Constitution, Constitutional Flexibility, Constituent Power.

Introduction

The Constitution of India declares India into a Sovereign, Socialist, Secular, Democratic Republic Country. The Constitution of India passed by the constituent assembly on 26 Nov 1949. The Constitution of India is considered as the longest written Constitution has 395

Articles and 12 schedules. The Constitution and the pattern of government will require a major change. Article 368 of Indian Constitution provides the procedure of Amendment. Amending the Constitution of India is the process of making changes to the nation's fundamental law or supreme law. The procedure of amendment in the constitution is laid down in Part XX (Article 368) of the Constitution of India. This procedure ensures the sanctity of the Constitution of India and keeps a check on arbitrary power of the Parliament of India.

Part XX of the Constitution containing Article 368 is of the Constitution." titled as "Amendment The time is not static; it goes on changing". With it, the life of a nation also changes. The social, economic and political conditions of the people go on changing. Law, particularly the Constitutional law of the country, must also change in order to adapt it to the changing needs, the changing philosophy, the changing life, of the people. It, therefore, requires some mechanism for the law to serve the contemporary needs of the people. Such a mechanism is known as the amendment of the law, the amendment of the Constitution of the country.

There Are **two types of Amendment** Procedure,

Rigid

The Amendment of the Constitution cannot be done easily. The Bill can only be passed with the special process of legislation. In order to achieve that, the Bill passed by the parliament must be sent to the State Legislature in which $\frac{1}{2}$ of its members signed it. Only then the Amendment of the Indian Constitution can be done appropriately.

Flexible

The procedure for Amending the Indian Constitution can be done easily. The Bill can be passed in Parliament with the ordinary process of legislation with half of the members of the State legislature and enacted in the various terms such as the selection of president and distribution of Powers and functions and to maintain good relations between State and State the Centre.

Indian Constitution is both Rigid and Flexible, it is difficult to amend practically Flexible. As per Article 368 of the Indian Constitution, An Amendment can be introduced in either of houses, later it can be passed by a special majority or by a simple majority. Later if the bill is passed by majority it will sent to the president for his assent.

Various ways to Amend the Indian Constitution

The Constitution of India has distributed powers equally to the State and the Centre legislation to maintain relationships between them. There are three ways to amend the Indian Constitution, which are mentioned below:

1. Simple majority for Amendment under Article 368-

Simple majority means the member of the house present as well as vote to amend the Constitution before the president's permission. In the time of disagreement, there will be no joint sitting for the discussion. More than 50% of its member's vote is required in various changing situations, such as changing the name of any state and recognising new states. Based on Article 368, The Parliament can be established or dissolved the State's Legislative Council and the salaries of the president as well as vice-president. Moreover, The Judges form the both the courts pass an ordinary bill and distribute powers as well as authority between the states.

2. Special majority for Amendment under Article 368-

Special majority means 2/3rd majority of both houses present as well as vote to modify the Constitution. Any bills, including ministers as well as private bills, must be introduced in the Constitution. The bills are passed without affecting the structure of federalism of the Constitution in various provisions such as in case of impeachment of any judges of both the courts and Chief Election Commissioner. Its main motto is to prevent easy amendment of Fundamental Rights and Directive Principles of State Policy.

3. The Approval of the State legislature by special majority –

The amendment of the Constitutional powers and procedure relies on the hands of the House of Parliament. The House of Parliament must pass the Bill by a majority of 2/3rd of its members and by half of the total memberships. It is also mandatory to have the approval from the State Legislature with one-half of its members by simple majority.

The circumstances in which the State Legislature amend the Constitution is through using a Rigid Method such as giving consent in the election for president and giving provision to both the Courts including Supreme Court and High Court and introducing any State in the parliament.

New Clause were added in Article 368

1. A new heading was introduced as 'Parliament's power to amend the Constitution'.
2. Parliament may change, add, repeal any prevision of this Constitution in accordance with the procedure provided.

368. Power of Parliament to amend the Constitution and Procedure therefor:

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. An amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting, it shall be presented to the President who shall give his assent to the Bill and thereupon the Constitution shall stand amended in accordance with the terms of the Bill:

Provided that if such amendment seeks to make any change in –

- (a) article 54, article 55, article 73, article 162, article 241 or article 279A or
- (b) Chapter IV of Part V, Chapter V of Part VI, or Chapter I of Part XI, or
- (c) any of the Lists in the Seventh Schedule, or
- (d) the representation of States in Parliament, or
- (e) the provisions of this article,

the amendment shall also require to be ratified by the Legislatures of not less than one-half of the States by resolutions to that effect passed by those Legislatures before the Bill making provision for such amendment is presented to the President for assent.

2. Nothing in article 13 shall apply to any amendment made under this Article.

3. No amendment of this Constitution (including the provisions of Part III) made or purporting to have been made under this article whether before or after the commencement of section 55 of the Constitution (Forty-second Amendment) Act, 1976 shall be called in question in any court on any ground.

4. For the removal of doubts, it is hereby declared that there shall be no limitation whatever on the constituent power of Parliament to amend by way of addition, variation or repeal the provisions of this Constitution under this article.

5. As per the procedure laid out by article 368 for amendment of the Constitution, an amendment can be initiated only by the introduction of a Bill in either House of Parliament. The Bill must then be passed in each House by a majority of the total membership of that House

and by a majority of not less than two-thirds of the members of that House present and voting. There is no provision for a joint sitting in case of disagreement

between the two Houses. Total membership in this context has been defined to mean the total number of members comprising the House irrespective of any vacancies or absentees on any account vide Explanation to Rule 159 of the Rules of Procedure and Conduct of Business in Lok Sabha.

Amendment Of Basic Structure

1. [**Golaknath V/s State of Punjab \(1967 AIR 1643, 1967 SCR \(2\) 762\)**](#)

In the Golaknath case, Amendment via the power granted to the parliament by Article 368 were considered final and outside the ambit of article 13. However, in the Golaknath case, the supreme court observed that an Amendment of the Constitution Ordinary Law and not a constituent law. Hence, Amendment, being ordinary laws needed to pass the test of Article 13. The court states that any amendment that violated the provision of Article 13 would be void. In short, the Supreme Court of India in the Golaknath case, gave the judgment that Constitutional Amendments would not have the power to curtail the fundamental rights of Indian citizens.

The Judgment Subba Rao

Justice Subba Rao come to the Constitution that the 17th Amendment violated the fundamental rights of acquiring any land and indulging in any lawful profession granted to Indian citizens by the constitution. However, since he used to doctrine of prospective overruling, the supreme court ruling did not affect the validity of 17th Amendment and the 1953 Law. Justice Subba Rao according the parliament would have no power to make any Amendment to part III of the constitution that deals with fundamental rights of the citizens. This judgment established that the fundamental rights are beyond the amending power of the Parliament. Thus, providing a solid foundation for the doctrine of the basic structure of Indian Constitution.

1. [**Kesavananda Bharati V/S State of Kerala 24 April, 1973**](#)

Kesavananda Bharti was the chief of the Edneer Mutt, a religious institution in Kasaragod district Kerala. The Government of Kerala impose restrictions on the ownership of the land in 1970. Kesavananda Bharti challenged constitutionality of the land reforms Amendment Act

1969, in the Kerala High Court. The Act illustrated that the government was entitled to acquire the land religious institution of which Kesavananda was the chief. He then moved to the Supreme Court under Article 32 of the Constitution of India for enforcement of his guaranteed under Article 14 (Right to equality) Article 19(1)(f) (freedom to acquire property), Article 25 (Right to practice and propagate religion), Article 26 (Right to manage religion affairs) and Article 31 (Compulsory Acquisition of Property).

When the matter was still pending in the court the Kerala government passed another act called Kerala Land Reforms (Amendment) Act 1971. The case was heard in the Supreme Court from Oct 31, 1972 to March 23, 1973, and was the longest hearing in the court's history 68 days.

The Judgment Shelat and Grover, JJ

Held that preamble to the Constitution contains the clue to the fundamentals of Constitution. According to the learned judges, Part III and IV of the Constitution which respectively embody the fundamental rights and the directive principle have to be balanced and harmonised. This balance and harmony between two integral parts of the Constitution forms a basic element of the Constitution which cannot be altered. The word 'Amendment' occurring in Article 368 must therefore be construed in such a manner as to preserve the Power of Parliament to amend the Constitution, but not so as to result in damaging or destroying the structure and identity of the Constitution. There was thus an implied limitation on the amending power which prevented the parliament from abolishing or changing the identity of the Constitution or any of its Basic Structure.

Views of Various other Judges

Sikri C.J.

According to him the parliament has the power to amend under Article 368 but has limited power. The parliament cannot change or cause damage to the basic structure as well as the fundamental rights of the people. According to him the change in the fundamental right will affect the public interest. Thus, there is an implied limitation on the Amendment Power of the Parliament.

Justice Jaganmohan Reddy

According to him, the word Amendment does not give the power of parliament regarding Amendment part III or basic structure. If the parliament made any change in the basic structure that will result in damage to the fundamental rights.

Justice Mukherjee

According to him, the Constitution is a social document and not a political document. The Constitution has two part basic and circumstantial. Article 368 gives the power to the parliament to amend the circumstantial part as per the circumstances but parliament has no power to amend the basic part of the Constitution.

42nd Amendment

The **42nd Constitutional Amendment Act, 1976**, enacted during the tenure of Indira Gandhi, is one of the most significant amendments to the Constitution of India and is often referred to as the “Mini-Constitution” due to its extensive changes. It added the words “Socialist” and “Secular” to the Preamble and replaced “unity of the nation” with “unity and integrity of the nation.” The amendment also attempted to expand Parliament’s amending power and limit judicial review, raising questions about constitutional supremacy. However, the Supreme Court, in *Minerva Mills v Union of India*, reaffirmed that judicial review and limited amending power are part of the basic structure, thereby maintaining the balance between Parliament and the judiciary.

Conclusion

Article 368 of the Indian Constitution provides the procedure of the Constitution. Indian Constitution is neither rigid or Flexible because under article 368 of the Constitution can be Amended by the simple majority and by the majority of not less than 2/3 member of each house, Indian Constitution both Rigid as well as Flexible As per Article 368of the Indian Constitution, An Amendment can be introduced in either of houses, later it can be passed by a special majority or by a simple majority. Later if the bill is passed by majority it will sent to the president for his assent. Parliament’s power to amend the Constitution under Article 368 is significant but not absolute. The Basic Structure Doctrine, established by the Supreme Court in the *Golaknath* case of 1967, ensures that certain fundamental principles of the Constitution remain inviolable the integrity and identity of the Constitution over time. While Parliament can

amend the Constitution to adapt to changing needs, it cannot do so in a manner that alters its basic structure, thus preserving the core values and principles upon which the Indian democratic system is built.

However, in my views, the court by giving the judgments tries to increase their powers and put express limitation on the parliament. The Article 368 is silent of the parliament has the power to amend a basic structure or not, but that also does not mean that the Article 368 put the limitation regarding the Amendment of basic structure as well as part III of the Constitution.

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