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COMPREHEND AND ANALYZE THE PROCESS OF CONSTITUTIONAL AMENDMENT IN INDIA

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ABSTRACT

An outline of the Indian Constitution. The constitutional amendment in India is a crucial mechanism for maintaining the balance between flexibility and rigidity in governance. Inscribed in Article 368 is amendment process enables modifications to constitutional provisions to address evolving socio-political and economic needs. This paper comprehensively examines the procedure, classification, and implications of constitutional amendments in India. It explores the Amendments can be made by a special majority with state approval a simple majority or a special majority The study also analyses important amendments and landmark judgement.

RESEARCH OBJECTIVE

This Research Aims To:

1. Comprehend the constitutional amendment process in India and its significance.
2. Analyze the legal and procedural framework governing amendments.
3. Examine key constitutional amendments and their impact on governance and society.
4. Explore the role of the judiciary in shaping and limiting the power of amendments.
5. Identify challenges and propose reforms to enhance the amendment process.

RESEARCH QUESTION

1. How do simple majority, special majority and special majority with state ratification differ in their application?
2. What are the criteria for determining which type of amendment applies to a particular constitutional change?
3. What is the step-by-step process of amending the Indian Constitution as outlined in Article 368?
4. How does the amendment process ensure a balance between constitutional rigidity and flexibility?

RESEARCH METHODOLOGY

This research follows a qualitative and analytical approach:

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1. Doctrinal Research: Analysis of constitutional provisions, case laws, and parliamentary debates.
2. Case Study Approach: Studying landmark constitutional amendments and Supreme Court judgments.
3. Interpretative Analysis: Evaluating the impact of amendments on governance, federalism, and democratic principles.

INTRODUCTION

The Indian constitution is enacted on 26 Nov 1949 and Effectuated on 26 Jan 1950. Indian constitution is written one and lengthiest one that provides the legal framework for Governance while making sure the protection of fundamental rights and democratic principle. The constitution incorporates a provision for amendments under Article 368. The procedure that is distinct as it includes three different procedures that is simple majority of parliament, special majority and special majority with state ratification. Throughout year amendments have played a vital role. Influencing India's political and judicial system while discussing topics like federalism, social justice, and governance changes.

TYPES OF CONSTITUTIONAL AMENDMENTS IN INDIA :

A simple majority of the parliament can amend modification in special majority of legislators and the parliaments particular majority must approve amendment and a minimum of half of state legislatures has to endorse it¹.

SIMPLE MAJORITY OF PARLIAMENT

Creation or admission of new states. creation of new states and changes to existing states borders, territories, or titles. elimination or establishment of state legislative councils. The second schedule contains the president's, governors', speakers', judges', and other officials' salaries, benefits, and privileges. Parliamentary quorum. Members of Parliament's salaries and benefits. Parliamentary process rules. Parliament Rights its committees and its members. English language usage in Parliament. Number of Supreme Court puisne judges. Granting the Supreme Court further jurisdiction. Obtaining and losing citizenship. Elections for state legislatures and the parliament. Constituency delineation. Union lands Fifth Schedule: Management of Tribes and Scheduled Areas. Tribal lands are administered under the Sixth Schedule.

SPECIAL MAJORITY OF PARLIAMENT

An amendment to large number of the Constitution necessitates a particular majority in Parliament which consists over and above half of the total membership of rajya sabha and lok sabha. along

with a two-thirds vote who present and voting in each House. The phrase total the term membership describes entire the quantity of members that make up residence of any openings or absences.

Although particular majority is only necessary for voting during the bill's third reading stage House rules have included provisions for the special majority requirement for all of the bill's effective stages out of caution.

Fundamental Rights, Directive Principles of State Policy and Any Additional clauses not included in the first and third categories are among the provisions that can be changed in this manner.

SPECIAL MAJORITY OF PARLIAMENT AND CONSENT OF STATES

A particular majority of Parliament and a simple majority from half of the state legislatures are both capable of amending the Constitution's provisions related to the federal structure of government. It does not matter if one, several, or all other states take no action on the measure; the process complete once half of the states consent. There is no mandated timeframe for states to ratify the law. This is the mechanism through which the subsequent clauses may be amended.

- i. The presidential election procedure.
- ii. The quantity of administrative power held by the states and the union.
- iii. High courts and the Supreme Court.
- iv. Any of the seven schedules list the legislative authority of the states and the union.
- v. allocation of the Union's and the states legislative authority. any of the Seventh Schedule's lists. state portrayal the legislature.

Parliament's authority to change the Constitution and its processes (specifically, Article 368).

ARTICLE 368 FOLLOWS

- Legislation must be introduced in either the Lok Sabha or the Rajya Sabha to begin the process of amending the Constitution; state legislatures cannot do this.
- The bill does not need the president's previous approval and can be proposed by a private member or a minister.

- A special majority, or a majority of 2/3 of the House's members in attendance and casting ballots. whereas a majority over and above 50% House's total membership are required to pass the law in each House. The bill must be passed independently by each House.
- There's not clause allowing the two Houses to convene jointly for the purpose of discussing and passing the measure in the event of a disagreement.
- If the law aims to change anything, the legislatures of half the states must ratify it by a simple majority or a majority of the House members present and voting.
- federal provisions of the Constitution.
- The bill forwarded to the president for assent once it has been properly approved by both houses of parliament and, if required, endorsed by state legislatures.
- bill needs president's approval. He is unable to refuse to sign the bill or send it back to the Parliament for review.
- The bill is enacted as a constitutional amendment act once it receives the president's approval, and the Constitution is changed to align with the provisions of the Act.

RESTRICTIONS ON THE PARLIAMENT'S AMENDING POWERS

Parliament cannot have unrestricted authority to change the Constitution the Constitution is supreme.

BASIC STRUCTURE DOCTRINE

Basic structural doctrine is one of the most important limitations on Parliament's amending authority. According to this Supreme Court-established principle, changes cannot change or eliminate some of the Constitution's essential elements. The Constitution's primacy, the rule of law, the division of powers, and citizens' fundamental rights are some of these characteristics. The basic structure theory serves as a defense against possible parliamentary abuses of power.

EVOLUTION OF THE BASIC STRUCTURE DOCTRINE

PROCEDURAL REQUIREMENTS

Constitution specifies particular steps that must be taken in order for amendments to be deemed legitimate. Higher levels of approval are frequently needed for these processes, such

as ratification by a specific number of state legislatures or a two-thirds majority in both Houses of Parliament. By preventing hurried or widely unpopular revisions, these procedural rules support stability and continuity in government.

SUBJECT MATTER LIMITATIONS

The Constitution specifically protects several topics from amendment. For example clauses pertaining to the president's authority, the representation of states in Parliament and citizens fundamental rights are frequently protected from change. Regardless of the political environment this constraint guarantees that important facets of governance and individual liberty continue to exist.²

HISTORICAL AMENDMENTS IN INDIA

Since the beginning, the Indian Constitution has undergone a number of revisions aimed at addressing growing political, social, and economic challenges. These modifications have taken on important roles in determining the development of India's legal system and democracy. Each of these modifications is significant because it promotes social justice through the expansion of rights based on race and color, political stability and governance improvements, and other reforms related to economic growth. A few of the more significant changes are listed below

FIRST AMENDMENT

The First Amendment Bill, which was introduced in 1951, amended the Indian Constitution in a number of ways that primarily concerned freedom of speech and expression. The statute imposed certain restrictions on the right to free speech by enabling the state to impose reasonable limitations on its exercise to purposes of maintaining social order, preventing contempt of court and fostering animosity between various groups. Despite addressing these restrictions the amendment also introduced Article 19(2) to the Constitution. Earlier rulings fall the 1951 constitutional amendment is included in this amendment. Shankari Prasad v Union of India ruling and 1965 Sajjan Singh v State of Rajasthan ruling &

² Indian constitution 1950, available at <https://www.drishti judiciary.com/to-the-point/ttp-constitution-of-india/amendment-process-under-the-coi> (last visited on march 26,2025)

upheld the parliament's authority to make constitutional amendments legalize any provision of it including the fundamental rights of Indian citizens.

42ND AMENDMENT

The most significant pieces in Indian constitutional history is 42nd Amendment Act 1976. These measures, commonly referred to as the national emergency amendments, were implemented in Indira Gandhi the prime minister at the time proclaimed a state of emergency in 1975. It significantly strengthened the central government's power over state governments, escalating concerns that federalism is being threatened. The new concept of Fundamental Duties of Indian citizens was also introduced & the balance of power between the legislative, executive and judicial arms of government was altered.

Major judgments pertaining to this amendment include *Minerva Mills Ltd. v Union of India* in which the Supreme Court of India reaffirmed its constitutional interpretation of the constitution's basic framework and attempted to repeal specific portions of the 42nd Amendment.

44TH AMENDMENT

The 44th Amendment Act of 1978 which attempted to abolish parts of the 42nd Amendment's provisions is one of the new laws. In order to uphold the Doctrine of the Basics it addressed the restoration of a number of rights that had been curtailed or suspended during the Emergency. In addition to providing a more thorough explanation of the judicial review doctrine, this amendment limited the executive branch's power, especially by outlining how it may declare a state of emergency.

73RD AND 74TH AMENDMENTS

By creating three-tiered Panchayati Raj Institutions in rural areas and tracking municipalities in urban areas, the 73rd and 74th constitutional amendments of 1992 categorized important changes in local self-government. The goal of these changes was to decentralize the local bodies and consolidate the centre so that they could rule themselves. Among those significant changes pertaining to alleviation are the following: The Supreme

Court of India noted *State of Karnataka v. Ranganatha Reddy* that the government must guarantee the continuous transfer of authority and resources to order the dispersal of resources and power.³

CASE LAW

SHANKARI PRASAD VS UNION OF INDIA⁴

BACKGROUND

After India enforced its constitution in 1950 many laws aimed challenged in courts the grounds. Particularly the Article 19(1)(f) and Article 31. Several landowners affected and approached the courts. Arguing that land reform laws is unconstitutional.

ISSUES

Does Article 368 give Parliament the authority to change fundamental rights, or is it beyond its purview?

SUMMARY OF FACTS

The indian government introduced land reform act for abolish the landowners system and divid up land. The petitioner approach the court for violating fundamental Rights. Especially right to property Article 19 (1)(f) and article 31. After the first amendment the protect land reform acts from being struck down.

JUDGEMENT

In a majority ruling in support of the Union of India. the Supreme Court of India maintained constitutionality of First Amendment Act 1951.

³Indian constitution 1950, available at <https://www.jusscriptumlaw.com/post/amendment-process-of-the-constitution-of-india> (last visited on march 26, 2025)

⁴AIR 1951 SC 458

SAJJAN SINGH VS STATE OF RAJASTHAN⁵

FACT OF THE CASE

The petitioner contested the constitutional revisions that included certain land reform regulations of Constitution's 9th Schedule. He maintained these changes infringed against Parliament's constitutional amendment authority and fundamental rights, especially property rights guaranteed by Article 31.

ISSUES

1. Is Parliament had Ability to change fundamental rights Article 368.
2. Whether First, Fourth and Seventeenth Amendments were constitutionally valid.
3. Whether such amendments needed to be ratified by a majority of state legislatures.

JUDGMENT

The Supreme Court's five-judge panel decided 4:1 in favor of the modifications. The Court determined that Parliament has authority to amend the Constitution including fundamental rights under Article 368. It concluded that an amendment could not be overturned for infringing basic rights since it was not a "law" as defined by Article 13(2). The Court ruled that unless the amendment had an impact on federal provisions, state legislatures did not need to ratify it.

MINERVA MILLS LTD V UNION OF INDIA⁶

FACTS OF THE CASE

The 1974 sick textiles undertaking, led to the nationalization of Karnataka's Minerva Mills textile industry. Sections 4, 55 in 42nd Constitutional Amendment Act. 1976, which gave Parliament complete power to amend Constitution and eliminated judicial scrutiny of such revisions were contested by the corporation as unconstitutional.

ISSUES

⁵ AIR 1965 SC 845

⁶AIR 1980 SC 1789

1. Whether the amendment that removed **judicial review** violated the **basic structure doctrine**?
2. Whether Parliament could amend **any part** of the Constitution without limitation?

SUPREME COURT'S DECISION

Basic Structure Doctrine Upheld the Court & principle that Parliament cannot alter the Constitution in a way that undermines its fundamental framework which was established in *Kesavananda Bharati v. State of Kerala* 1973. invalidated 42nd Amendment's Sections 4 and 55. Limitations on Parliament capacity to modify Fundamental Rights were eliminated in Section 4. Judicial scrutiny of constitutional amendments was prohibited by Section 55. These clauses were declared unconstitutional by the Court because they went against the fundamental tenets of democracy, the rule of law and judicial scrutiny.

STATE OF KARNATAKA V RANGANATHA REDDY ⁷

FACTS OF THE CASE

In order to successfully take over private companies that dealt in necessities, the Karnataka government passed legislation to nationalize the distribution of those goods. Ranganatha Reddy and other private businessmen contested the law, claiming it infringed upon their fundamental rights, including Article 19(1)(g): the freedom to engage in any trade, business, or profession. Because the law only applied to specific enterprises, it violated Article 14: The Right to Equality. Since the government seized companies without providing just recompense, Article 31 (before it was abrogated) guaranteed the right to property.

ISSUES

1. Did the Karnataka law violate the right to trade and business under Article 19(1)(g)?
2. Was the law discriminatory and arbitrary under Article 14?
3. Was the government's nationalization a violation of property rights (Article 31)?

⁷ 1977 4 SCC 471

SUPREME COURT'S DECISION

Nationalization was constitutional: The Karnataka statute was supported by the court, which concluded that the state has the authority to acquire companies when doing so serves the greater good of the public. Article 19(1)(g) Not entirely so The Court ruled that reasonable limitations on the right to trade are permissible when doing so serves the general benefit. As the defender of the public interest, the government may monopoly some industries. Article 14 Not Violated: The Court ruled that a governmental monopoly in a particular industry is acceptable if it is supported by the public interest, rejecting the claim that the regulation was discriminatory. Rights to Property (Article 31) Not Unchangeable Article 31 at the time stipulated that the state had to provide compensation when it purchased property. The Court decided that the government had the right to nationalize companies and that compensation was a question of legislative policy.

KESAVANANDA BHARATI VS STATE OF KERALA⁸

BACKGROUND OF THE CASE

The Kerala property Reforms Act 1963 which sought to redistribute property and limit land ownership was opposed by the head of the Keralan religious group the edneer mutt is kesavananda bharati. Claiming that law infringed upon his fundamental rights under Article 14 , Article 19(1)(f) which was later eliminated by the 44th Amendment and Article 25 he filed a petition under Article 32 of the Constitution. The 24th, 25th and 29th Constitutional Amendments were ratified by Parliament while the case was still ongoing granting it unrestricted authority to change the Constitution including fundamental rights.

ISSUES

1. Does Parliament have unlimited capabilities to amend the Constitution Article 368?
2. Can Parliament modify or abolish Fundamental Rights?
3. Is there any limitation on Parliament's amending power?

⁸ 1973 4 S.C.C. 225 India

SUPREME COURT'S LANDMARK JUDGMENT

This judgement delivered on april 24 1973 by a 7:6 majority 13 judge bench. This judgement specially stated Basic Structure Doctrine Introduced and Parliament can amend the Constitution but not its basic structure.

GOLAKNATH V STATE OF PUNJAB⁹

BACKGROUND OF THE CASE

In Punjab, the Golaknath family possessed about 500 acres of property. Ownership was limited to 30 acres per individual under the Punjab Security of Land Tenures Act 1953. and the government reclaimed remaining land for redistribution. The Golaknath family contested the law claiming that it infringed upon their fundamental rights including Article 31, Article 19(1)(f) was later repealed by the 44th Amendment and Article 14 Using Article 368 which grants Parliament power to change the fundamental rights. Punjab administration supported the bill.

ISSUES

1. Does Parliament have the power to amend Fundamental Rights?
2. Can constitutional amendments be considered "law" under Article 13(2)?

SUPREME COURT'S DECISION

This decision had a 6:5 majority and an 11-judge bench. The Supreme Court reversed its previous decisions, including as those in Sajjan Singh 1965 and Shankari Prasad 1951 which had supported Parliament's unrestricted modifying authority. The Court decided that Constitutional Amendments Are Subject to Article 13(2), Parliament Cannot Amend Fundamental Rights, Violating fundamental rights would be unlawful. Doctrine of Prospective Overruling was introduced. Court decided that this ruling would only apply to upcoming changes and did not invalidate earlier amendments.

⁹ 1967 2 S.C.R. 762 India

CONCLUSION

The process of constitutional amendment in India makes ensuring that rigidity and flexibility are balanced as stated in Article 368 Constitution of India. It permits amendments to the Constitution while upholding its fundamental ideas and democratic ideals. Three categories of amendment processes three types of majorities simple, special and special majority with state ratification each needing varying degrees of state and legislative involvement. By avoiding capricious changes, this system protects federalism, parliamentary democracy and fundamental rights. The flexibility and durability of India's Constitution are demonstrated by the amendment process, which permits the required modifications to satisfy changing political and social demands while preserving the essential framework. It is one of the most well-organized amendment procedures in the world since it permits democratic progress while guaranteeing stability and continuity in governance.

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