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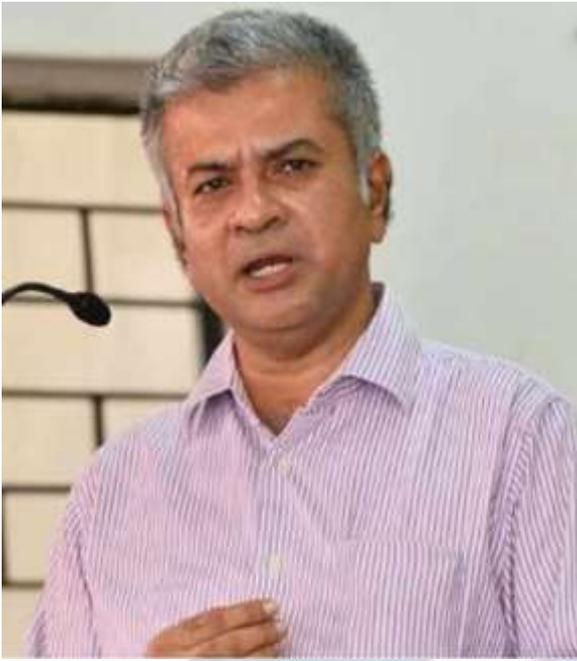
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## ***ABOUT US***

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated 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

# **THE AMENDMENTS OF THE INDIAN CONSTITUTION: A LEAP TOWARDS DEVELOPMENT**

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## **Abstract**

*The Indian Constitution is a Living and Organic Document<sup>1</sup>. It has to maintain its pace with the change in society. Therefore, it becomes necessity of time to amend the Indian Constitution as per new developments of the society. This procedure should be followed in a positive manner so to avoid power-tussle between the Deemed Sovereign Parliament and the Supreme Court of India (Guardian of the Indian Constitution). This amending power should become strength of the Indian Constitution for development of the nation. This Research Paper goes in depth with respect to various aspects of Amendment of the Indian Constitution.*

**Keywords:** *Fundamental Rights, Power tussle, Judicial Review, Doctrines of Prospective Over-ruling and the Basic structure, Article 32, 226 and 368 of the Indian Constitution<sup>2</sup>.*

## **Introduction**

Amendment of Indian Constitution

This is the formal declaration of changes in the Indian Constitution via. addition, variation or repealing is known as the Amendment of Indian Constitution. It is presented in the form of numbers along with its year of its assent eg: Constitution 1<sup>st</sup> Amendment Act, 1951. It is initially presented in the form of Draft Bill (Amendment Bill) before the Central Legislature and after passing of this Bill through the both Houses of this Legislature along with the assent (signature) of the President of India, it will take the form of Amendment Act as differentiated from Amendment Bill.

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<sup>1</sup> Saurabh Chandri v. Union of India, AIR 2004 SC 361.

<sup>2</sup> Articles 32, 226 and 368 of the Indian Constitution.

## Procedure for Amendment of Indian Constitution

The Indian Constitution specified two modes of Amending Procedure viz.

1.) Informal modification: It is also known as **De facto method** and can be made via. Judicial Interpretation, changes in conventions and constitutional usages and legislation by filling the gaps.

2.) Formal modification: It is also known as **De jure method** and 3 types of amending procedure comes under this type viz.

i) Amendment by Simple Majority ii) Amendment by Special Majority and iii) Amendment by Special Majority plus Ratification by half of the States.

### i) Amendment by Simple Majority<sup>3</sup>

This is outside the purview of Article 368 of the Indian Constitution. This is done by the simple majority vote of members present and voting by them in both Houses of the Parliament. This can be done at the instance of Parliament (Articles 2 to 4, 11, 73(2), 135, 137 etc. and Schedules V and VI)<sup>4</sup>, State Legislatures (Articles 164(5), 186 & 195) and States (Article 169)<sup>5</sup>.

### ii) Amendment by Special Majority<sup>6</sup>

This is specified within the Article 368(2) of the Indian Constitution viz.

*“Article 368 (2)<sup>7</sup>: 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.”*

This clearly specifies the procedure requires 2/3<sup>rd</sup> majority (Special majority) to be followed by both Houses of the Parliament and after that assent of President is required.

### iii) Amendment by Special Majority plus Ratification by half of the States<sup>8</sup>

This Special Procedure is mentioned under Proviso to Article 368 (2), viz.

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<sup>3</sup> As specified in the above mentioned Articles of the Indian Constitution.

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

<sup>6</sup> Article 368(2) of the Indian Constitution

<sup>7</sup> Ibid.

<sup>8</sup> Proviso to Article 368(2) of the Indian Constitution

**“Proviso to Article 368(2)<sup>9</sup>:** *Provided that if such amendment seeks to make any change in—*

*(a) article 54, article 55, article 73, article 162 or article 241, 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.”*

This clearly specifies the procedure requires 2/3<sup>rd</sup> majority (Special majority) to be followed by both Houses of the Parliament along with ratification of that Resolution by not less than ½ of the States and after that assent of President is required.

### **Scope of Power of Amendment of Indian Constitution by Parliament**

Amendment of Fundamental Rights of the Indian Constitution

It is the Supreme Court, the guardian of Indian Constitution, who will define the scope of this power along with Limitations upon this power. It is clarified with the Judgements of Case Laws coming before the Apex Court from time to time, viz.

- a) **Shankari Prasad Case<sup>10</sup>:** The Constitutional validity of the Constitution 1<sup>st</sup> Amendment Act, 1951 was challenged w.r.t. Article 31 (A) & 31 (B) because it tried to take away or abridge the Fundamental Rights specified in the Indian Constitution. But, the Supreme Court held that Parliament can take away or abridge the Fundamental Rights specified in the Indian Constitution i.e. Parliament is supreme and can do any amendment without any limitations upon its power. Parliamentary sovereignty is maintained by the Supreme Court till date of its Judgement.
- b) **Sajjan Singh Case<sup>11</sup>:** The Constitutional validity of the Constitution 17th Amendment Act, 1964 was challenged on the basis of procedural non-compliance of the Proviso to Article 368 (2). It affected powers of the High Court specified in Article 226 of the Indian Constitution. But, the Supreme Court reinforced the same Judgement as above that Parliament is supreme and can do any amendment without any limitations upon its power. Parliamentary sovereignty is maintained by the Supreme Court with this

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<sup>9</sup> Ibid.

<sup>10</sup> Shankari Prasad v. Union of India, AIR 1951 SC 455.

<sup>11</sup> Sajjan Singh v. State of Rajasthan, AIR 1965 SC 845.

Judgement over the time span of 15 years after enactment of the Indian Constitution.

- c) **Golak Nath Case<sup>12</sup>**: The Constitutional validity of the Constitution 1<sup>st</sup> Amendment Act, 1951; 4th Amendment Act, 1955 and 17th Amendment Act, 1964 was challenged on the basis of violation of Articles 14, 19 (f) and 31 (2). The Supreme Court over-ruled its previous Decisions by 6:5 majority i.e. reverted its own decisions given in above two specified cases. The Supreme Court clarified that from onwards the Date of the Judgement of this Case, Fundamental Rights are unamenable (not amendable) i.e. Doctrine of Prospective Over-ruling was evolved and applied in Constitutional Jurisprudence. This is done to avoid chaos in the Country because if these Amendment Acts are declared void ab-initio and unconstitutional then there will be flood of New Case Filing by citizens from all over India upon these voidness of these Amendments Acts and reopening of back date finally decided closed cases. From onwards, there will be no possibility of Infringement of Fundamental rights by the Central Legislature while amending the Indian Constitution.
- d) This started power tussle between deemed Sovereignty of Central Legislature and Judiciary, the Guardian of Indian Constitution. It leads to enactment of the Constitution 24<sup>th</sup> Amendment Act, 1971 which brought vast changes in Article 368 and Article 13 of the Indian Constitution to nullify the decision of the Golak Nath Case.
- e) **Keshvananda Bharati Case<sup>13</sup>**: The Constitutional validity of the Constitution 24th Amendment Act, 1971; 25th Amendment Act, 1971 and 29th Amendment Act, 1972 was challenged on the basis of violation of Fundamental Rights and also known by the name "Fundamental Rights Case". There was 7:6 majority decision given by the 13 Judges Special Bench. This decisive Judgement was given by **Khanna J.**, who held that the amending power of the Parliament cannot be used to alter the Basic Structure of Indian Constitution and does not include the Fundamental Rights within it including the Right to property under this Doctrine of Basic Structure. Onwards from the date of Judgement of this Case (April 24, 1973), there was no immunity to different Legislations included in the 9<sup>th</sup> Schedule after this date under Article 31 B of the Indian Constitution. Hence, no blanket immunity be available by the 9<sup>th</sup> schedule to different Legislations and will be declared void and unconstitutional upon not passing the test of Doctrine of Basic Structure i.e. Doctrine of Judicial Review get concretised from this

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<sup>12</sup> Golak Nath v. State of Punjab, AIR 1971 SC 1643.

<sup>13</sup> Keshvanand Bharati v. State of Kerala, AIR 1973 SC 1461.

specified date.

- f) **Election Case<sup>14</sup>**: The Supreme reasserted that Amendments to the Fundamental Rights are not allowed by Indian Parliament as it against the Doctrine of Basic Structure.
- g) **I.R.Coleho Case<sup>15</sup>**: The provision of the Blanket Immunity provided by the 9<sup>th</sup> Schedule of the Indian Constitution is removed by the Judgement of this Case i.e. Amendments of the Indian Constitution onwards will be under the scrutiny of this Doctrine of Basic Structure.
- h) **Minerva Mills Ltd. Case<sup>16</sup>**: It led to declaration of the Clause 4 and 5 of Article 368 as unconstitutional by emphasising upon inclusion of Doctrine of Judicial Review and maintaining of harmony and balance between Fundamental Rights and Directive Principles of State Policy.
- i) **Waman Rao Case<sup>17</sup>**: The Supreme Court upheld that the Right to Property does not clash with the Basic Structure Doctrine and it can be amendable.
- j) **Indra Sawhney Case<sup>18</sup>**: The Apex Court held that Equality, the Fundamental Right is the part of the Doctrine of Basic Structure.
- k) **S. R. Bommai Case<sup>19</sup>**: The Supreme Court specified that the features of Secularism, an essential part of the fundamental rights is part of the Basic Structure of the Indian Constitution which are unamenable.
- l) **L. Chandra Case<sup>20</sup>**: The Supreme Court reinforced that Judicial Review is a integral part of the Doctrine Basic Structure and hence upon this basis it declared Clauses 2 (d) and 3 (d) respectively of Article 323-A and 323-B as unconstitutional because these provisions denuded the High Courts and the Supreme Court of their power of Judicial Review provided under Article 226, 227 and 32 of the Indian Constitution. The power of Article 32, Fundamental right cannot be altered by Amendment Act.

### **Loophole of this Power of Amendment towards Ordinary Legislations**

After studying the Power of Amendment under Indian Constitution, one thing is clear that Ordinary Legislations had not to pass the validity test of this Doctrine like Constitutional Amendment Acts. It is also been supported through Judgements of different Case Laws with

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<sup>14</sup> Indira Gandhi v. Raj Narain, AIR 1975 SC 2299.

<sup>15</sup> I.R.Coleho v. State of Tamil Nadu, AIR 2007 SC 861.

<sup>16</sup> Minerva Mills v. Union of India, AIR 1975 SC 1789.

<sup>17</sup> Waman Rao v. Union of India, AIR 1981 SC 271.

<sup>18</sup> Indra Sawhney v. Union of India, AIR 2000 SC 498.

<sup>19</sup> S R Bommai v. Union of India, AIR 1994 SC 1918.

<sup>20</sup> L.Chandra Kumar v. Union of India, AIR 1997 SC 1125.

the advent of time. It means that strictness of Amendment Procedures are not required to be followed by the Ordinary legislation and their Amendments i.e. strictness is not be followed same as that in cases of Constitution Amendment Acts.

In **Election Case**<sup>21</sup>, 5:3 majority verdict was in favour of Ordinary Legislations have been relaxed from the Strict Procedure of Constitution Amendment Act.

Further, in **State of Karnataka v. Union of India**<sup>22</sup>, the Apex Court again held that Ordinary Legislations should not require to follow the Strict Procedure of Constitution Amendment Act.

Again, in **Kuldip Nayar v. Union of India**<sup>23</sup>, the Supreme Court unanimously held that this Strict Procedure does not need to be applied to the Ordinary Legislations.

### **Conclusion**

From 1950s, till date there have been regularly accepted by the Indian Supreme Court except few instances that Strict Procedure of Constitution Amendment should be followed for putting the checks and balances upon the working of so called Deemed Sovereign Parliament from working in unrestrained manner by the Supreme Court. Therefore, it is special tool for maintenance of the Constitutionalism in India. That is why, the Supreme Court is called as the Guardian of Indian Constitution. This duty became the necessity of the time because this duty is provided by the Indian Constitution itself. Therefore, this Power of amendment of the Indian Constitution should be used as positive tool regarding controlling the power tussle for the progress and development of this Country. The end of power tussle will be beneficial towards the development of the Country by maximum utilisation of its available resources.

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<sup>21</sup> Supra note 8.

<sup>22</sup> State of Karnataka v. Union of India, AIR 1997 SC 1361.

<sup>23</sup> Kuldeep Nayar v. Union of India, AIR 2006 SC 3627.