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# Importance Of Amendment And Its Criticism

*Authored By - Navdeep Kaur*

## **Abstract**

An amendment is a procedure to make changes in the existing Laws as we all know that time is not static, it is dynamic. As time passes the requirements of society also change, so with the change in the requirements the change in the earlier system also requires. Amendment has an important role to play to meet the needs of the society, that is why much importance has been attached to the Amendment under Article 368 of the Constitution of India. Indian constitution provides for a distinctive amendment process as compared to the constitution of the world. It may be described as partly rigid and partly flexible. some amendments of the constitution take effect by simple majority, some by special majority, and some by ratification.

A bill to amend the constitution may be introduced in either house of the parliament. It must be passed by each house by a majority of not less than  $\frac{2}{3}$ <sup>rd</sup> of the members of that house present and voting. When both houses pass a bill it shall be presented to the president for his assent who shall give his assent to the bill and thereupon the constitution shall stand amended. But a bill that seeks to amend the provisions mentioned in article 368 requires in addition to the special majority mentioned above the ratification by the  $\frac{1}{2}$  of the states.

In my research paper, I will be discussing the procedure of the Amendment and criticism of the same

## **Introduction:**

The amendment is an important procedure due to which it is easy to cope with the new requirements is possible as time is not static. Article 368 of the Constitution of India prescribes two types of procedures for the Amendment.

**Amendment by Simple Majority:** Article that can be amended by parliament by a simple majority as that required for the passing of an ordinary law the amendments contemplated in

articles 5, 169, and 239 can be amended by simple majority. These articles are specifically excluded from the purview of the procedure prescribed in article 368.

***Amendment by Special Majority:*** Articles of the constitution that can be amended by the special majority as laid down in article 368. All constitutional amendments other than those referred to above come within this category and must be affected by a majority of the total membership of each house of parliament as well as by a majority of not less than  $2/3^{\text{rd}}$  of the members of that house present and voting.

A bill to amend the constitution may be introduced in either of the houses of the parliament. It must be passed by each house by a majority of the total membership to that house and by a majority of not less than  $2/3$  of the members of that house present and voting. When both houses pass a bill it shall be presented to the president for his assent who shall give his assent to the bill and thereupon the constitution shall stand amended. But a bill that seeks to amend the provision mentioned in article 368 requires in addition to the special majority mentioned above the ratification by the  $1/2$  of the states.

***Amendment by special majority and ratification by states:***

Articles that require in addition to the special majority mentioned above ratification by not less than  $1/2$  of the state legislatures. The states are given an important voice in the amendment of these matters. These are fundamental matters where states have important power under the constitution and any unilateral amendment by the parliament may vitally affect the fundamental basis of the system built up by the constitution. This class of articles consists of amendments that can seek to make any change in the provisions mentioned in article 368. The following provisions require such ratification by states:

Election of presidents-article 54 and 55.

The extent of executive powers of the union and states articles – articles 73 and 162.

Article dealing with judiciary, supreme court, the high court in the states and union territories-article 124,147,214,231,241.

Distribution of legislative power between centre and state – art 245 to 255.

Any of the list of 7<sup>th</sup> schedule.

Representation of states in parliament 4<sup>th</sup> schedule.

Article 368 itself.

## Analysis of the amendment procedure:<sup>1</sup>

Indian constitution provides for a distinctive amendment process as compared to the constitution of the world. It may be described as partly rigid and partly flexible. Some amendments of the constitution take effect by simple majority, some by special majority, and some by ratification.

A bill to amend the constitution may be introduced in either house of the parliament. It must be passed by each house by a majority of not less than  $\frac{2}{3}$ <sup>rd</sup> of the members of that house present and voting. When both houses pass a bill it shall be presented to the president for his assent who shall give his assent to the bill and thereupon the constitution shall stand amended. But a bill that seeks to amend the provisions mentioned in article 368 requires in addition to the special majority mentioned above the ratification by the  $\frac{1}{2}$  of the states.

### Criticism:

During the 50 years of the Constitution, more than 80 amendments have taken place. The founding fathers of the Indian constitution who granted more rights to the people without balancing them with their duties perhaps did not foresee the emergence of the present political environment, wherein the political players of various segments in the country are more interested in fulfilling their individual aspirations than the aspirations of the people. There is an element of truth in this criticism. The fact is that the ease in the amending process of the Indian Constitution is due to the one-party dominance both at the Centre and the State. Yet, on close examination, it will be seen that there were compelling circumstances that led to the constitutional amendments. While some amendments were a natural product of the eventual evolution of the new political system established under the Constitution in 1950, there were others necessitated by practical difficulties. The first amendment! took place in June 1950.

The question of whether Fundamental Rights can be amended under Article 368 came for consideration of the Supreme Court in **Shankari Prasad v. Union of India**. It challenged the validity of the 1st amendment to the Constitution. In this case, it was held that a constitutional amendment will also be held valid even it abridges or takes away any of the fundamental rights. A similar decision was given by the hon'ble Supreme Court in **Sajjan Singh v. State of Rajasthan** which challenged the validity of the 17th Amendment. In **Golaknath v. State of**

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<sup>1</sup> Jain MP, Indian constitutional law, lexis nexis buttersworth, wadhwa Nagpur, 2011, p:1744.



Punjab, the validity of the Constitution (17th Amendment) Act, 1964 was again challenged, which inserted certain State Acts in Ninth Schedule. The Supreme Court in its landmark decision overruled the decision given in the Shankari Prasad and Sajjan Singh's case. It held that the Parliament had no power from the date of this decision to amend Part III of the Constitution so as to take away or abridge the Fundamental rights. Eleven judges participated in this decision with the ratio being 6: 5. The judges were worried about the numerous amendments made to abridge fundamental rights since 1950. It apprehended that if the courts were to hold that the Parliament had the power to take away fundamental rights, a time might come when these rights are completely eroded. The Chief Justice applied the doctrine of Prospective Overruling and held that this decision will have only prospective operation and, therefore, the 1st, 4th and 17th Amendments will continue to be valid.

It means that all cases decided before the Golaknath's case shall remain valid. In order to remove difficulties created by Golaknath's decision Parliament enacted the 24th Amendment.

The amendment has made the following amendments:

- (1) it added a new clause (4) to Article 13 which provides that nothing in this Article shall apply to any amendment of this constitution made under Article 368.
- (2) it submitted a new heading to Article 368 power of Parliament to amend the Constitution and Procedure therefore. Instead of Procedure for amendment of the Constitution.
- (3) It inserted a new sub section (1) in Article 368 which provides that notwithstanding anything in the Constitution, Parliament may, in exercise of its constituent power may amend by way of addition, variation, or repeal any provision of this Constitution in accordance with the procedure laid down in the Article. Thus the 24th amendment restored the amending power of the Parliament. The validity of the 24th amendment was challenged in the case of **Keshavnand Bharati v. State of Kerala**. It challenged the validity of the Kerala Reforms Act, 1963. but during the pendency of the petition the Kerala Act was placed in the Ninth Schedule by the 29th Amendment. The question involved was the extent of the amending power conferred by Article 368 of the Constitution. A Special bench of 13 judges was constituted to hear the case. The Court by majority overruled the Golaknath's case which denied Parliament the power to amend fundamental rights of citizens. It held that the 24th amendment merely made explicit which was implicit in the unamended Article 368. The Court held that under the Article 368 Parliament is not empowered to amend the basic structure or framework of the Constitution. After the decisions of the Supreme Court in Keshavnand Bharati and Indira

Gandhi cases the Constitution (42nd Amendment) Act, 1976, was passed which added two new clauses, namely, clauses

(4) provided that no constitutional amendment (including the provision of Part III) or purporting to have been made under Article 368 whether before or after the commencement of the Constitution (42nd Amendment) Act, 1976 shall be called in any court on any ground. Clause

(5) removed any doubts about the scope of the amending power. It declared that there shall be no limitation whatever on the constituent power of Parliament to amend by way of addition, variation or repeal of the provisions of the Constitution under this Article. Thus by inserting this clause it was made clear that the basic structure of the Constitution could be amended. In **Minerva Mills v. Union of India**, the Supreme Court by 4 to 1 majority struck down clauses (4) and (5) of Article 368 inserted by the 42nd amendment, on the ground that these clauses destroyed the essential feature of the basic structure of the Constitution. Since these clauses removed all limitations on the amending power and thereby conferred an unlimited amending power, it was destructive of the basic structure of the Constitution. The judgment of the Supreme Court thus makes it clear that the Constitution not the Parliament is supreme in India. The Parliament owes its existence to the Constitution and it cannot take priority over the Constitution. Therefore, this landmark decision ended the long controversy between the Courts and the Executive.

The amendment process was incorporated in the Constitution by the Draftsmen of the Constitution to help India adapt itself to the changing circumstances. Society is never stagnant. It is ever-changing. Therefore, the amending procedure was made partly flexible so as to make it easy for the Legislature. But the Parliament started thinking that it has unlimited amending power. It assumed itself to be the supreme law when the Constitution is the supreme law of the land. The Parliament started making amendments which were destroying the basic structure of the Indian Constitution. But after the landmark decisions of *Keshavananda Bharati* and *Minerva Mills* the Court by its power of judicial review has curtailed the amending power of the Parliament. The amendments made by the Parliament can no more affect the basic structure of the Constitution. But, looking at the ease with amendments can take place depending on the whims and fancies of the ruling government and the POLITICS IN THE POLITICS OF INDIA we cannot say how long the rights of the citizens are safe and unobstructed.<sup>2</sup>

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<sup>2</sup> Retrieved from < <http://www.legalservicesindia.com/articles/pol.htm> > last accessed on 05-1-23.

## Conclusion:

Change is a process. Laws are made to facilitate the working of society. A law can remain into force till it satisfies the needs of th society. In order to maintain this aspect, it has to undergo change as the society progresses and acquire new shape according to the present day to day demands so as to provide solution to the complexities. The term amendment mean, a minor change or addition designed to improve a text, piece of legislation, etc. A [change](#) or addition to a [legal](#) document which, when properly signed, has the [same](#) legal [power](#) as the original document.<sup>3</sup>Times are not static , time changes and therefore the life of a nation is not static but dynamic, living and organic.; its political , social and economic conditions change continuously . Social mores and ideals change from time to time creating new problems and altering the complexion of old ones. It is therefore, quite possible that a constitution drafted in one era and in a particular context, may be found inadequate in another era and another context. So in these cases amendment needed. there is various procedure for amendment it is informal formal etc. There are also many drawbacks During the 50 years of the Constitution, more than 80 amendments have taken place. The founding fathers of the Indian constitution who granted more rights to the people without balancing them with their duties, perhaps did not foresee the emergence of present political environment, wherein the political players of various segments in the country are more interested in fulfilling their individual aspirations than the aspirations of the people. There is an element of truth in this criticism. The fact is that the ease in the amending process of the Indian Constitution is due to the one party dominance both at the Centre and the State. Yet, on close examination it will be seen that there were compelling circumstances which led to the constitutional amendments. While some amendments were a natural product of the eventual evolution of the new political system established under the Constitution in 1950, there were others necessitated by practical difficulties. The first amendment took place in June, 1950.

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<sup>3</sup> Retrieved from<<http://www.investorwords.com/191/amendment.html#ixzz2tgPLc0PQ>> last visited on 05-1-23..