

EVOLVING LAW WITH REGARD TO AMENDMENT OF THE CONSTITUTION, AS ENSHRINED IN ARTICLE 368 OF THE CONSTITUTION OF INDIA

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This study takes a fresh look at Article 368 of the Constitution of India, focusing on how its meaning has shifted over time. Judges' rulings and lawmakers' moves have, in most cases, wedded together in ways that both expand and tighten its reach—sometimes one, sometimes the other. A closer look at old court decisions, legislative records, and even academic critiques is needed to put together the messy, ever-changing picture of how constitutional amendments are handled in India.

The law is a dynamic concept. A famous Political Scientist Harold Laski once remarked that Law follows life and likewise undergoes a period of change and a period of conservatism. But it must be amenable to change. The Constitution of India is the Supreme law of the land. As such, the Constitution has to be a dynamic entity. The instant study of amendment of the Constitution has to be seen in the light of evolving principles over the last 75 years.

Our Constitution has to be an ever – changing document. It should grow along as the nation grows. The constitution must be capable of being adapted for the ever growing needs and conditions of an evolving and changing society. If the Constitution acts as a hindrance for accepting such desirable and necessary changes, it will not under immense pressure to sustain itself. A Constitution, as such, cannot have any claim to permanence or otherwise claim absolute sanctity. In fact, one political thinker has opined that an un-amendable Constitution is the worst tyranny of time.

A written Constitution such as that of India and U.S.A. provides the method of amendment in the Constitution itself. The framers of our Constitution have made the amendment process in such a manner which could change

according to the changing times as well as the manner in which the nation is growing. It encompassed the social, economic and political factors that prevail in our country and therefore provided the means to amend the Constitution. Our Constitution is partly rigid and partly flexible so far as the amendment process is concerned.

The Indian Constitution lays down different modes of alteration of its various provisions. A very large number of provisions are open to alteration by the Union Parliament, by a simple majority, viz., the matters referred to in Articles 2– 4, 169 and 240. In other words, (a) amendment for creation of new States or reconstitution of existing States (b) Creation or abolition of Upper Chambers in the State (c) Administration of Scheduled Areas and Scheduled Tribes can be done by simple majority. However, these matters will not be treated as “amendments of the Constitution”.

However, if a matter is not covered by any of these afore – mentioned Articles, that can be effected only by enacting an Amendment, as prescribed under Article 368 of the Constitution.

As per the procedure prescribed under Article 368 of the Constitution of India, the bill for amendment of Constitution may be initiated by the introduction of a bill in either

house of parliament. Further, the said Constitution Amendment bill has to be passed separately in each house of parliament by a special majority i.e. by a majority of two – thirds present and voting and by a majority of total membership of the house. In case of a few matters relating to the federal structure of the Constitution, a special mode is prescribed, which is prescribed as follows :-

(i) the Bill for such amendment must be passed by a two-thirds majority of the members of the members of each House present and voting.

(ii) Such bill must be passed by a majority of total membership in each House

(iii) On being passed by each House of Parliament in the above manner, the bill must be ratified by legislature of half of the States in India.

The judicial pronouncements by the Hon'ble Supreme Court of India on the process and power of amendment of the Constitution have also evolved over a period of time. Prior to 1967, the Hon'ble Apex Court had through its decisions maintained that there is no portion of our Constitution that cannot be altered and that Parliament may by following the prescribed process under Article 368 may amend any provision of the Constitution, including the Part III and can even amend Article 368 itself.

But in *Golak Nath v. State of Punjab* case, reported as AIR 1967 SC 1643, the matter was adjudicated by a Bench of eleven judges. The Hon'ble Supreme Court, by a majority decision, overruled the previous decisions and laid down that:

(i) that though there is no express exception from the ambit of Art. 368, the Fundamental Rights included in Part III of the Constitution cannot, by their very nature, be subject to the process of amendment provided for Art. 368,

(ii) that if any of such fundamental Rights is to be amended, a new Constituent Assembly must

be convened for making a new Constitution or radically changing it,

(iii) that the word 'amend' means modification of the existing provisions and not any radical change

(iv) that a Constitution Amendment Act is a 'Law' made under Article. 248, it must be subject to Article 13(2)

(v) that such a law would, therefore, be void if it seeks to amend a fundamental right as it would offend article 13 (2) of the Constitution of India.

The majority decision in *Golak Nath's* case was overturned by Parliament by enacting the Constitution (24th Amendment) Act, 1971. The said Amendment inserted clause (4) in Article 13 and clause (1) in Article 368. As a result of the said amendment, it was evident that an amendment of the Constitution, passed in accordance with Article 368, will not be 'law' within the meaning of Article 13 and its validity of a Constitution Amendment Act shall not be open to question on the ground that it takes away or affects a fundamental right. This Amendment made it clear that Article 368 deals with the 'constituent' power of Parliament while Article 13 dealt with its 'legislative' power and as such, Constitution Amendment Act are not amenable to Article 13 of the Constitution.

The said Constitution (24th Amendment) Act, 1971 itself became subject matter of challenge before the Hon'ble Supreme court in *Keshava Nand Bharti Vs. State of Kerala* which was decided by the Full court of 13 Judges of the Hon'ble Supreme Court of India. The said judgement has been reported as AIR 1973 SC 1461.

By the aforesaid judgment, the majority opinion held that:

(i) the constituent power under Article 368 are different from the legislative powers under Article 348 of the Constitution

(ii) that as such the validity of Constitution Amendment Acts cannot be tested on the

¹ D D Basu Commentary on the Constitution of India – Volume 14

² *Golak Nath v. State of Punjab* AIR 1967 SC 1643

touch stone of Article 13 of the Constitution of India

(iii) that there are certain “basic Features” of the Constitution, which cannot be taken away or amended by the Parliament through Constitution Amendment Act

(iv) that ‘what is a “Basic Feature” of the constitution’ will be decided by the Hon’ble Court when issue on that point arises in the case. Some illustrative examples of Basic Features will be Supremacy of the Constitution, Rule of Law, Judicial review etc.

The judgment in the Keshavanand Bharti case still holds the field and has been reiterated by the Hon’ble Apex court in several subsequent decisions including Minerva Mills Case AIR 1980 SC 1789.⁴

The trajectory of the evolution of law on Constitution amendment will be traced along with the aforesaid lines and will be discussed in some detail in the subsequent part of this paper.

I. Abstract

This discussion digs into how Article 368 of the Indian Constitution is understood and used in ways that have shifted over time. The Courts and lawmakers both seem to have evolved and added new perspectives to an old idea. The study undertakes the examples from judicial writings, bits of legislative practice, and even scholarly commentary to reveal that our approach to constitutional amendments is not as straightforward as it once seemed. Recent court decisions, for instance, have generally broadened the boundaries of Article 368, allowing a more flexible, and sometimes even dynamic, take on how amendments should work in the face of modern, often unpredictable, socio-political challenges. This isn’t just academic chatter—such legal shifts have a real impact on governance, making constitutional

rules a bit more adaptable to the messy, complex society we live in today. By noting how legal debates can even tie into areas like healthcare policy, the research, quite frankly, suggests that a nimble legal framework might be the key to handling public health emergencies and evolving care needs. Ultimately, these insights reach far beyond constitutional law, offering policymakers and legal scholars a nuanced, if sometimes imperfect, roadmap through the tangled relationship between evolving legal standards and the quest for fair healthcare solutions in India.

II. Introduction

Constitutional amendments have been a driving force in reshaping a nation’s law, a fact that stands out in a place like India where social and political currents rarely stay still. Article 368 lays out the process for changing the constitution, and in most cases, it highlights a kind of tension between what legislators want and the longstanding power of the constitution—a tug-of-war that has sparked plenty of debate over time. Back in the day, these changes were thought of simply as tools to keep governance in step with shifting public needs, but figuring out exactly how to interpret Article 368 has become a real headache, raising questions about just how much power Parliament should really wield and what role the courts ought to play in guarding constitutional values. This study, generally speaking, examines how court decisions and legislative moves have shifted the boundaries of constitutional change, using Article 368—long the focus of judicial reviews—as its centerpiece. One major aim here is to sift through judicial precedents and legislative archives, look at some key amendments, and take a close, at times messy, look at pivotal court rulings that have together defined today’s understanding of amendment power. The research also tries to spell out what all this means for India’s future governance, especially when democracy and social justice

³ Keshava Nand Bharti Vs. State of Kerala AIR 1973 SC 1461

⁴ Minerva Mills Ltd. and Ors. v. Union Of India and Ors. AIR 1980 SC 1789

⁵ Constitution of India, Article 368

are on the line. It's not just academic curiosity at work here; this topic hits close to home for anyone interested in how diverse societies manage the health of their democratic institutions. Understanding the many shades in which Article 368 has been read is crucial—not only for legal scholars but for practitioners and policymakers caught in the mix between what lawmakers intend and how the constitution is actually interpreted in today's world. By looking around in the history and judicial debates around Article 368, the idea is to add some insightful perspectives on constitutional reform and the safeguarding of basic rights in Indian democracy. Ultimately, adjusting constitutional amendments to better reflect ideas of fairness and equality is necessary, especially as India faces modern challenges that demand a bit of flexibility from its age-old framework. All in all, this introduction sets the stage for a closer look at the interplay between constitutional evolution, legislative ambitions, and the role of the judiciary in India's legal system—a topic that clearly calls for ongoing conversation and reform.

III. Discussion

Constitutional amendments mix a number of factors with shifting legal interpretations, and you can see debates about democracy and the rule of law reappear as Article 368 of the Indian Constitution comes into play. In many cases, the courts have taken a central role – they introduced what folks call the basic structure doctrine, a sort of shield meant to limit changes that might upset core principles. This shift has changed how amendments are viewed, pushing for a careful tug-of-war between what legislators can do and the watchful eye of the courts. If you compare the flurry of reforms after 1976 with earlier times, it's pretty clear that the political mood plays a huge part, often sparking sudden moves in times of crisis. Some earlier work pointed to a rigidity in the amendment process, yet the current evidence paints a more intricate picture where political goals meet judicial restraint – implying that an active court can

actually carve out some flexibility in making changes. Even though older writings suggested that legislative power largely steered India's amendments, new data now reveal that the courts are stepping up their interpretive game, putting a twist on the old notion of unchecked parliamentary sway. The impacts of these observations run deep, both in theory and in everyday practice. Generally speaking, they add to our evolving view of constitutional law, hinting that the push-and-pull between lawmakers and judges builds a stronger, more adaptable framework which might even serve as a model for other nations facing similar hurdles. In many cases, these findings suggest that politicians need to team up with judicial insights to ensure that any changes not only stick to fundamental ideas but also meet the real needs of society. Even more, a closer look shows that public engagement really counts – folks should pay attention and get involved when political tensions trigger sudden legal shifts. In this backdrop, the changing takes on Article 368 open up a rich arena for more detailed study, offering clues about how broad socio-political forces and legal tweaks interact (N/A). All in all, this layered view of amendments lays a solid groundwork for future talks on reform, challenging old ideas about governance, law, and society's aspirations in a way that feels refreshingly organic.

IV. Impact of Judicial Decisions on Interpretative Framework

In India, judicial rulings mixed with the way we interpret changes under Article 368 really matter when you look at the nation's evolving constitutional story. Research shows that key court decisions—especially ever since the basic structure idea first came about—not only redrew the limits of what lawmakers can do but also set up important examples for reforms down the line. That basic structure notion demonstrates how court interpretations often serve as a check against legislators pushing too far, keeping the core tenets of the constitution in place. The study hints that these judicial moves have greatly influenced both

how frequently and in what manner amendments are made, as political players are slowly realizing that their proposals need to align with the court's central ideas (Chatterjee S, p. 170-190). This stands in sharp contrast to the old view of considering amendments as nothing more than legislative acts, largely operating without much judicial watch. Looking back, earlier research on the supposed rigidity of constitutional amendments often missed how a proactive judiciary has created a more layered scene—one that even allows for gradual tweaks as both politics and society shift. This fresher perspective fits with recent studies that generally argue that the court's role in protecting constitutional integrity can positively affect overall governance, even helping to foster a more participatory democratic process. The ripple effects here run deep; they underline that court decisions shape not just the legal reading of amendments but also the broader socio-political ambiance driving lawmaking. On a theoretical level, the work jumps into debates in constitutional law by suggesting that when judicial oversight steps in, accountability is boosted and democratic values are preserved, effectively softening the old split between innovative legislation and judicial restraint.⁶ On a practical note, these insights nudge lawmakers to consider judicial interpretations more proactively, ensuring that legal reforms resonate with both constitutional values and public interests. Plus, the study calls for further on-the-ground research into the judiciary's evolving role in the amendment process—an effort that could deepen our understanding of what these decisions mean for the ongoing interplay between law and governance in India. All in all, this discussion drives home the point that judicial decisions are crucial in fine-tuning our understanding of constitutional amendments, positioning the courts as key players in the steady evolution of India's constitutional democracy.

V. Introduction

Constitutional changes in India show a lively balance between what lawmakers pass and how judges choose to make sense of those rules. Looking at the amendments found in Article 368 tells us a lot about the deep, sometimes tangled, connection between legislative decisions and court interpretations. One turning point was the rise of what many call the basic structure idea – a kind of judicial shield that stops the parliament from venturing into changes that might erode the core values of the Constitution. Researchers have poked at this issue repeatedly, arguing that judicial readings not only have shaped the course of lawmaking but have also underscored the need to mix some flexibility with a firm commitment to the rule of law. It turns out that having solid constitutional safeguards is vital; these protections ensure fundamental rights while still leaving room for lawmakers to tweak rules when necessary. Academically speaking, these insights add some fresh fuel to the debates on comparative constitutionalism, with India's own approach often coming up as a kind of blueprint for other democracies that face similar challenges. On a practical level, there's a growing push for legislators to tune into judicial interpretations more proactively—arguably advocating for a transparent amendment process that resonates with public sentiment and those core constitutional values. Looking ahead, future studies should probably focus on real-world assessments of how recent amendments and the shifting readings of Article 368 influence broader social and political contexts. There's also some curiosity about how varying political vibes might alter the path of these changes, thus enriching our understanding of judicial activism's role in keeping laws reliable. More public dialogue on constitutional amendments, even if a bit messy at times, could boost democratic practices in India too. With that in mind, this work sets the foundation for a deeper dive into constitutional law by urging scholars and policymakers to mix historical, legal, and sociopolitical views when

⁶ D D Basu Shorter Constitution of India

discussing amendments. In the end, the evolving way Article 368 works out really reflects an ongoing interplay between judicial limits and legislative intent – a delicate, sometimes unpredictable dance that, generally speaking, helps uphold both democracy and justice

