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Parliament's Power to Amend the Fundamental Rights

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ABSTRACT

Constitution of a country is the basic law of the land which provides the rights and duties of citizen along with the organization of government, its powers. All the constitutions are equipped with provision for an amendment to cope with future needs of the people. This study deals with what extent and range of amendment can be permitted in case of the constitutions of USA, India, and Ethiopia. The three constitutions are amendable according to their amending provisions and that of India is more flexible to amendments when compared with other two constitutions.

Keywords: Constitution, Fundamental Rights, Parliament's Power.

1. INTRODUCTION

The fundamental law of the land is its constitution. The constitution is the “superior or supreme” law of sovereign India. It is the governing power of the country. The father of the constitution Dr. B.R. Ambedkar made the constitution and on January 26, 1950, is when the constitution of India came into effect. The constitution of India is an organic document which defines the powers and functions of the various organs of the state and their inter se relationship. It consists of fundamental political principles, powers, and duties of government institutions and fundamental rights, directive principles and the duties of citizens. The Constitution was designed to be a means to achieve the welfare of the common man and must respond to the popular needs. The constitution is the governing power of the country which has all the provisions related to the governing the country one such provision is the “Amendment” which is included in our constitution under article 368. Article 368 was included in our constitution in Constituent Assembly on 17th September 1949 by Dr. B.R. Ambedkar chairman of the drafting committee. The need for an amendment to the Constitution comes into the picture when there is a change in the society.

Meaning of Amendment: The term ‘Amendment’ derives from the Latin word ‘Amender’. The term ‘amend’ means to make right, to make a correction or to rectify. And “In Parliamentary law, it means a ‘motion that changes another motion’s wording by striking out text, inserting or adding text, or substituting text.’ Legally speaking amendment denotes adjustment, amelioration, betterment, change, elaboration, emanation, enhancement, improvement, notification, and refinement etc.

As quoted by Late Prime Minister Pt. Nehru “While we want this constitution to be as solid and permanent as we can make it, there is no permanence in the constitution. There should be a certain flexibility. If you make anything rigid permanent you stop the nation’s growth, of a living, vital, organic people.... In any event, we could not make this constitution so rigid that it cannot be adopted to changing conditions. When the word is in a period of transition what we may do today may not be wholly applicable tomorrow”.

As quoted by Hugh Evander Willis in his book on the Constitutional Law of the United States says, “If no provisions for the amendment were provided, there would be a constant danger of revolution. If the method of the amendment were too easy, there would be the danger of too hasty action all the time. In either case, there would be a danger of the overthrow of our political institutions. Hence the purpose for providing for the amendment of the Constitution is to make it possible gradually to change the Constitution in an orderly fashion as the changes in social condition make it necessary to change the fundamental law to correspond with such social changes.”

The Constitution was intended to be a way to accomplish the welfare of the basic man and should react to the prominent needs. Keeping in mind the end goal to satisfy the desires of the general population, we require changes in the Constitution at whatever point vital. In a vote based system, neither the Constitution nor the legislature is preeminent: the general population is incomparable and they have the privilege to change the Constitution somewhat or totally. The need for an alteration to the Constitution comes into the photo when there is an adjustment in the general public. This occurred within a year from the date of the beginning of the Constitution.

2. PROCEDURE FOR AMENDMENT

The modes adopting the Constitution from time to time to new circumstances may either be informal or formal methods.

Informal Method of the amendment is one in which the Constitutional text does not change, but its interpretation under goes change. The words in the Constitution having one meaning in one context may be given somewhat different meaning in another context. Following are Informal methods.

- Judicial Interpretation
- Constitutional Conventions and Usages.

3. FORMAL METHODS

For all intents and purposes, each Constitution has some formal strategy for Constitutional change. This comprises of changing the dialect of Constitutional arrangement in order to embrace it to the changed setting of social needs. In a few nations, the procedure might be less demanding is said to be adaptable and in a few nations, it might be unbending. The formal correcting process is a huge method for embracing the Constitution to the evolving condition. The formal strategy for a change is depicted in Part-XX of the Constitution which comprises of Art.368 as it were. The title of the said part XX is a revision of the Constitution. Art.368 has itself been radically revised on three events in 1956, 1971 and 1976.

4. POWER TO AMEND THE CONSTITUTION

Article 368, as initially stood was titled as "Methodology for alteration of the Constitution" it presented control on the Union Parliament to change the Constitution. The Constitution (24th Amendment) Act, 1971 substituted the first Art.368. The title is supplanted by a new title, "energy to revise the Constitution and method in this manner";

The Constitution (42nd Amendment) Act, 1976 further corrected Art.368 to the impact pronouncing "the constituent energy of Parliament as boundless and total" and barring impedance by the courts in the exercise of the power, on any ground. Art.368 of the Constitution of India talks about Power of Parliament to alter the Constitution and Procedure hence.

(1) Notwithstanding anything in this Constitution, Parliament may in the exercise of its constituent power revise by a method for expansion, variety or nullification any arrangement of this Constitution as per the strategy set down in this article.

(2) A correction of this Constitution might be started just by the presentation of a Bill for the reason in either House of Parliament, and when the Bill is passed in each House by a greater part of the aggregate participation of that House by a larger part of at the very least 66% of the individuals from that house present and voting, it should be introduced to the President who might give his consent to the Bill and immediately the Constitution should stand altered as per the terms of the Bill: Provided that if such revision looks to roll out any improvement 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,
- (d) The representation of States in Parliament, or
- (e) The provisions of this Article, the amendment shall also require being ratified by the Legislature 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.

(3) Nothing in Article 13 shall apply to any amendment made under this article.

(4) No alteration of this Constitution (counting the arrangements of Part III) made or implied to have been made under this article whether previously or after the initiation of Section 55 of the Constitution (Forty second Amendment) Act, 1976 might be brought being referred to in any court on any ground.

(5) For the expulsion of questions, it is therefore pronounced that there might be no restriction whatever on the constituent energy of Parliament to change by a method for expansion, variety or cancelation the Provisions of this Constitution under this Article.

The amendments described in Art.368 are of three types

- Amendment by a simple majority vote of the Parliament
- Amendment by a special majority vote of the Parliament
- Amendment by special majority vote with half number of States' legislative Assemblies ratification.

Can the Parliament amend fundamental rights?

Parliament's changing force with regards to essential rights is secured under Article 13(2) which gives that the state might not institute any 'law' that takes away or condenses at least one major rights. On the off chance that any such law is made, the law should be announced as unlawful and void to the degree of such infringement. The Supreme Court of India has deciphered this Article from multiple points of view till the last circumstance was come to in 1973. In the Keshavananda Bharti versus State of Kerala, 1973, Supreme Court held that Parliament, in its activity of its forces under Article 368, can change any piece of the Constitution including basic rights. In any case, such an altering energy of the Parliament isn't boundless however it is constrained to the degree of not

decimating the Basic Structure of the Constitution. The Supreme Court presented the 'tenet of essential structure' for this situation as it were.

Overview of the amendment of FUNDAMENTAL RIGHTS cases.

Shankari Prasad Vs. Union of India AIR 1951:

- This case came up before the SC and indicated FR could be amended
- It challenged the validity of the First AA to the Constitution of India
- It purported to abridge FR under Part III of the Constitution
- SC held power to amend FR is held by Article 368

Golaknath Vs. State of Punjab AIR 1967

- SC overruled the earlier decision and held that Parliament does not have the power to amend Part III of the Indian Constitution
- The doctrine of prospective overruling was invoked
- This doctrine was used to preserve the constitutional validity of the 17th AA

24th Amendment act 1971

- This restored constitutional power to the Parliament to amend part of the Indian Constitution including FR.

Keshavananda Bharti Vs. State of Kerala AIR 1973

- It held that the Parliament under Indian Constitution is not supreme and it cannot change the basic structure of the Indian Constitution.

42nd Amendment act 1976

- It held that it is ultra Vires of Parliament to make laws seeking any amendment of the constitution which would infringe, restrict or diminish rights of individuals.

Minerva Mills Vs. Union of India, AIR 1980

- In this case, SC gave key elucidations on the translation of tenet of the fundamental structure and administered the Parliament has the ability to alter the constitution in a way that is restricted by the constitution.