



AMENDMENT POWER IN THE INDIAN CONSTITUTION VIS A VIS USA AND UK CONSTITUTION: A CRITICAL ANALYSIS

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ABSTRACT

The research paper aims to study the formal method of the amendment process and further to delve into amendment procedure in other countries, so as to come to standing as to the procedural formality in India. Further, the project tends to focus on the constituent Assembly debates to find out whether it matches with the current procedural formality or are there any deviation. Further, the research paper aims to extend the study towards the constitutional provisions regarding Amendment. Further, the research paper tends to do a study of the standing by the court in case of Sankari Prasad case, Sajjan Singh case and the way it differed in the case of Golaknath case.

The research paper aims to establish an in-depth study of the amendment power and constituent power and the factors that propelled the change from Amendment Power to Constituent Power. Further, the objective is to establish a comparative framework of the amendment procedures of different countries with India like U.S.A, Canada, and Australia so as to make an effective analysis of the amendment procedure in India. The objective is to make an analysis of the stand before the court in Sankari Prasad case, Sajjan Prasad case, Golaknath case and Minerva Mills case and to find out what to how much extent the aforesaid journey is justified. The objective is also to analyze the various amendment Act that were enacted and purpose that was meant to be served by it.

KEYWORDS:- Amendment Power, Constituent Power, Ninth Schedule, Article 368 Indian Constitution

1. INTRODUCTION:-

Times are not static. Times change and consequently, the existence of a country isn't static however unique, living and natural; its political, social and monetary conditions change consistently. Social mores and goals change occasionally making new issues and modifying the composition of the old ones. It is accordingly, very conceivable that a constitution drafted in one time, and in a specific setting, might be found deficient in another period and another unique circumstance. The thoughts whereupon a constitution is situated in one age might be scorned as older style in the future. It hence becomes important to have some hardware, some interaction, by which the constitution might be adjusted every now and then as per contemporary public necessities. The methods of adjusting the constitution occasionally to new conditions may either be casual or formal. Casual techniques are legal translation and shows; the conventional strategy is the constituent cycle.

2. MATERIALS AND METHODS:-

The research paper would take into account various primary and secondary literature to study the topic of the research paper and the research paper would follow the doctrinal research methodology thereby studying the existing literature to come to the build-up of the effective analysis on the above-mentioned taken topic.

3. RESULTS AND DISCUSSION:-

A. INFORMAL METHODS:-

AA. JUDICIAL INTERPRETATION:-

For this situation, the constitutional text doesn't change, yet its interpretation goes through a transformation.¹ The words in the constitution-making them mean in one setting might be given to some degree diverse significance in another specific circumstance. "While the language of the constitution doesn't change, the conditions of a dynamic culture for which it was planned yield new and more full import to its significance".² Judicial interpretation is a course of slow and continuous transformation of constitutional principles and is to some degree imperceptible, for the change must be unravelled by an investigation of a body of judicial decisions.

AB. CONVENTIONS AND CONSTITUTIONAL USAGES:-

The activity of constitutional provisions might be changed by the development of conventions, practices, and observances. This is one more course of slow transformation, of indistinct change, where the constitutional text holds its unique structure and expressiveness, where there is no apparent adjustment on the face, yet where, on a deeper level, a change has come about such long ways as the functioning activity of the provision is concerned.³

B. FORMAL METHOD:-

For all intents and purposes, each constitution has some conventional technique for a constitutional amendment. This comprises of changing the language of a constitutional provision in order to adjust it to the changed setting of social requirements. In certain nations, the interaction might be simpler than in others and in like manner, the constitution is once in a while ordered into adaptable or unbending. An adaptable constitution is one in which corrections can be affected rather effectively, as effectively as establishing a normal law. The best illustration of such a constitution is the British Constitution which can be changed by a common Act of Parliament, and there is, in this manner, no qualification between standard administrative interaction and constituent cycle.

The changing arrangements in a constitution are vital as it empowers the country to grow calmly, the option in contrast to which might be stagnation and insurgency. In a definitive examination, be that as it may, the course of constitutional amendment ought to not be too inflexible nor excessively simple. In the previous case, the constitution might fall behind the cultural requirements; in the last option case, constitutional safeguards might be debilitated by too incessant alterations.

C. REFLECTION OF FORMAL PROCEDURES OF AMENDMENT IN FOREIGN CONSTITUTIONS:-

(CA). U.S.A:-

Art. V of the U.S. Constitution says- "The Congress, at whatever point, two-thirds of the two Houses will consider it significant, will propose an alteration to this Constitution, or on the use of the Legislatures of two-thirds of the few States, will call a show for proposing revisions, which regardless will be legitimate to all aims and purposes, as a feature of this Constitution, when sanctioned by the Legislature three-fourths thereof, as either method of ratification might be proposed by the Congress; gave that no change which might be made before the year 1,000 800 and eight will in any way influence the first and fourth clauses in the ninth section of the first article and that no State, without its assent, will be denied of its equal suffrage in the Senate."⁴

(CB). CANADA:-

Art. V of the U.S. Constitution says- "The Congress, at whatever point, two-thirds of the two Houses will consider it significant, will propose a correction to this Constitution, or on the use of the Legislatures of two-thirds of the few States, will call a show for proposing revisions, which regardless will be substantial to all plans and purposes, as a component of this Constitution, when sanctioned by the Legislature three-fourths thereof, as either method of ratification might be proposed by the Congress; gave that no change which might be made before the year 1,000 800 and eight will in any way influence the first and fourth provisos in the 10th part of the principal article; and that no State, without its assent, will be denied of its equal suffrage in the Senate."

¹ Constitutional Interpretation, Ch. XL, *Wheare Modern Constitutions*, 146-77(1964).

² Constitutional Interpretation, Ch. XL, *Wheare Modern Constitutions*, 146-77(1964)

³ M.P.Jain, "Indian Constitutional Law", Sixth Edition, Lexis Nexis Butterworths Wadhwa, pg 34 , 2011.

⁴ V.N. Shukla, "Constitution Of India", Tenth Edition, Eastern Book Company, pg 67, 2010.

(CC). AUSTRALIA:-

The course of the protected revision incorporates two stages: inception and sanction. A correction to the Constitution may be proposed by a flat out larger part of each House of Parliament, or by an outright greater part of each House in two votes taken in turn edge of least three months. Starting there, the proposed change becomes effective on underwriting at a mandate by a bigger piece of citizens projecting a polling form both in a larger piece of States and in the Commonwealth and on getting the assent of the Governor-General.⁵

D. ARTICLE 368 OF INDIAN CONSTITUTION:-

It could be noticed that Article 368 has three parts: first and foremost, it manages the change of the Constitution, besides, it assigns the body or bodies which can alter the Constitution, and finally, it recommends the structure and the way wherein the amendment of the Constitution can be affected. Like the Constitution of the U.S.A., our Constitution doesn't endorse any time limit inside which States should connote their sanction or refusal of the change alluded to them. In the U.S it has been held that if there should be an occurrence of postponement by the States for any period of time (say 15 years), it isn't for the Courts yet for Congress to say whether or not any Bill for revision is dead. That decision would not be relevant in India.

However, when in excess of a portion of the State Legislature has passed goals of endorsement, the Amendment Bill might be introduced to the president for his consent, despite the fact that others might have kept their perspectives. A perplexing inquiry under Art.368 is whether the 'unique' larger part rule applies to each stage, or just at the last stage, of passing a constitutional amending bill. Beginning around 1950, a view has been taken that this standard ought to be applied to all stages. Then again, a view may conceivably be taken that the word 'passed' in Art.368 alludes to passing at the last stage as it were. At the point when a correction charge looks to alter more than one Article of the Constitution, every proviso of the bill must be passed by the unique greater part. Under Rule 158 of the Lok Sabha Rules, 'all-out enrolment' signifies the complete number of individuals including the House regardless of any opening or non-attendants without warning.

E. SHANKARI PRASAD SINGH DEO CASE:-

Shankari Prasad v. Union of India⁶, the main case on amenability of the Constitution, the legitimacy of the Constitution (First Amendment) Act, 1951, diminishing the right to the property ensured by Art.31 was tested in a request under Article 32. It was affirmed *bury Alia*, that as Article 13(2) denied making of laws compressing basic freedoms, it restricted such encapsulation even by an amendment on the grounds that an amendment was likewise a law.

F. SAJJAN SINGH CASE:-

For the following 13 years following Shankari Prasad, the topic of amenability of the Fundamental Rights stay lethargic. A similar inquiry again in 1964 in Sajjan Singh v. State of Rajasthan⁷, when the legitimacy of the Seventeenth Constitution which added a few enactments to the Ninth Schedule making them safe from assault on the ground of infringement of Fundamental Rights was tested.⁸

G. GOLAK NATH CASE:-

For this situation, the three writ petitions were involved. One was documented by the son, daughter, and granddaughters of Golak Nath⁹. In this request, the incorporation of the Punjab Security of Land Tenures Act, 1953 in the ninth Schedule was tested on the ground that the Seventeenth Amendment by which it was so exceptionally included just as the First and Fourth Amendments abridging the fundamental rights were unconstitutional. In the other two petitions, consideration of Mysore Land Reforms Act(10 of 1962) as changed by Act 14 of 1965 had been assaulted on similar grounds.

H. AMENDMENT OF ARTICLE 368: TWENTY-FOURTH AMENDMENT:-

To kill the impact of Golak Nath, Nath Pai, M.P., presented a private part's bill in the Lok Sabha on April 7, 1967, for changing Art.368 so as to make it express that any constitutional provision could be corrected by following the technique contained in Art.368. The proposed bill was legitimized as a statement of the "Supremacy of the Parliament" which principle suggested, "the right and authority of Parliament to change even the Fundamental Rights".¹⁰

⁵ Durga Das Basu, "Shorter Constitution Of India", Thirteenth Edition, Lexis Nexis Butterworths Wadhwa, Pg. 47, 2007.

⁶ AIR 1951 SC 458.

⁷ AIR 1965 SC 845

⁸ Jagdish Swarup, "Constitution Of India", Second Edition, Volume 3, Modern Law Publication, pg. 97, 2007

⁹ AIR 1967 SC 1643.

¹⁰ Statement of Objects and Reasons appended to the Bill.

I. KESAVANANDA BHARTI CASE:-

In Kesavananda Bharti v. State of Kerala ¹¹, the constitutional legitimacy of both the Amendments, viz., 24th and 25th was tested in the Supreme Court through an Art.32 writ request by Swami Kesavananda Bharti, a mutt head of Kerala. The matter was heard by a seat comprising of the relative multitude of 13 appointed authorities of the Court in light of the fact that Golak Nath, a choice by a Bench of 11 Judges was under survey. Wide going contentions were progressed under the watchful eye of the Court for more than 60 days both for and against the legitimacy of the Amendments. Eleven opinions were conveyed by the Judges on April 24, 1973.

I. DOCTRINE OF BASIC STRUCTURE:-

The petitioners had tested the legitimacy of the Kerala Land Reforms Act, 1963. During the pendency of the petition, the Kerala Act was altered in 1971 and was put in the Ninth Scheduled by the 29th Amendment Act. The inquiry included was concerning what was the degree of the amending power given by Art.368 of the Constitution.

J. FORTY-SECOND AMENDMENT ACT 1976:-

The Central Government didn't savor the Supreme Court's pronouncements in the Indira Nehru Gandhi case announcing Cl. 4 of the 39th Amendment Act invalid. The Government especially wanted to guarantee that never in the future, the courts ought to have the ability to articulate a constitutional amendment invalid. As needs are, Art.368 was again altered by the 42nd Amendment Act sanctioned in 1976

K. MINERVA MILLS CASE:-

In Minerva Mills v. Union of India¹², the scope and degree of the doctrine of basic structure were again considered by the Supreme Court. The Court again repeated the principle that under Art.368, Parliament can't really alter the Constitution as to harm the fundamental or fundamental elements of the Constitution and annihilate its essential design.

L.CONCLUSION:-

The project tries to dissect the methodology of the judiciary in deciphering Article 368 of the Indian Constitution in this way spins around the inquiry that to what extent fundamental rights can be altered. Apparently, the Supreme Court embraced the procedure of literal interpretation of the Constitution in Shankari Parsad and Sajjan Singh. A fascinating scholastic inquiry bearing on the degree, reach, profundity, and inescapability of Art.368 was brought and talked about up in Golak Nath.

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¹¹ AIR 1973 SC 1461.

¹² AIR 1981 SC 271.