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The Significance of Amending the Constitution for Nation-Building

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ABSTRACT

Change is the basic principle of nature. As time passes, natural principles evolve and adapt. The time is not static. The life of a nation is dynamic, living and organic. With time, the life of a nation also changes. The people's political, social, and economic needs are also changing. Social ideals change from time to time. A country's Constitution must also be changed according to time, place and circumstances. There should be certain definite principles to amend the Constitution. Such a principle may be called 'amendment of the constitution'. The constitutional amendment procedure is made to solve future possible problems. A written Constitution is incomplete without amending, often the most crucial clauses. A constitution is a set of basic rules or principles that govern a country.

Keywords: Amendment, basic structure, flexibility, fundamental rights, rigidity, statute.

I. INTRODUCTION

“An unamendable constitution is the worst tyranny of time or rather the very tyranny of time.”²

A country's Constitution establishes the fundamental principles and structure of its law and government. There are two types of Constitutions: written and unwritten. A written Constitution is established at once, but it evolves through amendments that are integrated into it. Amending a written Constitution is crucial because it enables future generations to adapt it to their requirements. The central aspect of a written Constitution is its method of amendment. It allows one to express democratic ideas about fundamental constitutional values without departing from basic constitutional principles.³The framers of a Constitution cannot predict all potential circumstances that may arise as a nation progresses or establish every law necessary to address the evolving needs of a community. It is not feasible for a written Constitution to outline all of its objectives and how they should be executed in specific detail, nor is it considered necessary

¹ Author is a Research Scholar at Banaras Hindu University, India.

² Dr Ashok Dhamija, *Need to Amend a Constitution and Doctrine of Basic Features*, 2007 Edition (Wadhwa and Company Nagpur, New Delhi).

³ Sudhir Krishnaswamy 's *Democracy and Constitutionalism in India: A study of the Basic Structure Doctrine*, published by Oxford University Press, Second Impression 2011, p.3.

or beneficial to do so.⁴

The framers of the Constitution understood that an unamendable Constitution would be worthless. After extensive research and debate on the provisions of constitutions from various countries (such as the United States of America, Australia, France, Switzerland, South Africa, and Canada), the Constituent Assembly formulated these provisions. To avoid the problems associated with rigid and flexible amendment provisions, Article 368 was designed as a fine balance between rigidity and flexibility. This means that the amendment process for the Indian Constitution is neither entirely rigid nor entirely flexible but depends on the nature and importance of the amended provisions.

While referring to the need to amend the Constitution to the changing socio-economic and political conditions, Pandit Jawaharlal Nehru said;

*"It is of the utmost importance that the people realize that this great Constitution of ours, over which we laboured so long, is not a final and rigid thing. A Constitution is responsive to the people's will, which is responsive to their ideas, in that it can be varied here and there, and they will respect it all the more. They will not fight against it when we want to change it."*⁵

Dr. B.R.Ambedkar said, *"It is the right and privilege of the highest court of the land to interpret the Constitutional law; however, at the same time, it is also the duty of the Parliament to see that objects aimed at in the Constitution are fulfilled or not by the judgement based on such interpretation. If the object is not achieved because judgement comes in the way, it is the provisions of the Constitution here and there."*⁶

The Constitution is amended to address potential challenges in its implementation. Various socio-economic and political factors shaped India's Constitution during its creation. However, these factors are not fixed and continue to evolve. Today's socio-economic issues are more intricate than in the mid-twentieth century. Changes in a State's economic principles may require amendments to the Constitution. One example is the need to amend the Constitution in response to State legislation on land reforms.

The American Constitution has two ways of amending it: initiation and ratification. To initiate the process, only Congress can do so with a two-thirds majority vote from both Houses or from a convention summoned by two-thirds of the members from both Houses. Once initiated, the amendment must be ratified by at least three-fourths of State legislatures or conventions in

⁴ Sundar Raman's 'Constitutional Amendment in India 1950-1989', published in 1989 by Eastern Law House, p.1

⁵ Parliamentary debates, vols. XII-XIII, part II, 1951, pp9616-17

⁶ Working of Indian Constitution reflections of a Parliamentarian' by D K Naikar, p74 Society for human rights law Dharwad 2000.

three-fourths of the total number of States. After ratification, the amendment becomes effective. In Switzerland, the Constitution can only be amended through a referendum. The amendment process in Australia has two stages: initiation and ratification. Amendments can only be made by an Act passed by both Houses with an absolute majority vote or by an Act passed by an absolute majority in either House for the second time after three months if one House refuses to pass it. The Act must then be sent to each State for a referendum. If a majority of voters in a majority of States approve the amendment, and if they agree, it is presented to the Governor-General for assent. After receiving Royal assent, the amendment becomes effective.⁷

(A) Meaning of amendment

The word 'amendment' comes from the Latin 'amendere,' meaning to correct or rectify. In modern usage, it implies a minor change. According to Webster's new dictionary and Funk and Wagnall's standard dictionary, the word 'amendment', when used in relation to a Constitution, carries all meanings such as alterations, revision, repeal, addition, variation or deletion of any provision of the Constitution.⁸

Oxford Dictionary of Law says, "Amendment means changes made to legislation, for the purpose of adding to, correcting or modifying the operation of the legislation⁹." Black's Law Dictionary defines 'Amendment' as "A formal revision or addition proposed or made to a statute, Constitution, pleading, order, or other instruments; a change made by addition, deletion or correction especially an alteration of the wording."¹⁰ "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, an amendment refers to a modification, improvement, or refinement.¹¹ The Indian Constitution has a mechanism allowing any provision to be changed through a prescribed procedure. The framers of the Constitution wanted a document that could evolve with the nation's growth and enable Parliament to reflect the popular will, which could sometimes lead people to take extra-constitutional measures such as revolution to change the Constitution. Article 368 of the Constitution outlines the amendment procedure and shows the framers' awareness of the dangers of extreme flexibility and rigidity. However, despite its importance, Article 368 is not perfect and has some ambiguity. Since 1951, there have been questions about

⁷ Jai S. Singh, *The Constitutional Law of India: Cases and Materials* (Central Law Publications) p.1092-93

⁸ Dr. Harichand, 'Amending Process in the Indian Constitution', 1972 P18

⁹ Oxford Law Dictionary p45

¹⁰ Garner, 'Black Law dictionary', 8th Edition, p-89 Burtom, William

¹¹ Burtom, William C, *Legal Thesaurus.... Complete and Unabridged*, Macmillan, New York, 198, p-23

the scope and nature of the amending process. A survey of the Indian constitutional amendments to date reveals that very few provisions remain untouched. Most provisions, starting with the preamble and ending with Article 394-A, have been amended over 90 times.

The meaning of the word amendment was, for the first time, sought to be explained in the case of *Sajjan Singh v. State of Rajasthan*.¹² The court held that "the amendment provision of the Constitution may include the deletion of any one or more of its provisions and substitution in their place of new provisions." The meaning given in the above case was restricted in the *Golaknath* case¹³ The majority of judges, in this case, held that "In the amendment, only major changes or improvements can be made and not includes a total repeal of the provisions already existing in this Constitution."

But *Keshavananda Bharati v. State of Kerala*¹⁴ provided the best explanation of the scope and definition of the word 'Amendment'. It proposed that "A broad definition of the word 'Amendment' will include any alteration or change. The word 'amendment' when used in connection with the Constitution, may refer to the addition of a provision on a new and independent subject, complete in itself and wholly disconnected from other provisions, or to some particular article or clause, and is then used to indicate an addition to, the striking out, or some change in that particular article or clause."

II. NEED AND IMPORTANCE OF AMENDING PROVISIONS IN THE CONSTITUTION

The purpose of the Constitution is to serve the best interests of the common people and address their needs. It is essential to make necessary changes to the Constitution to fulfil the people's aspirations. In a democratic society, the people hold ultimate power and have the right to amend the Constitution in part or whole. Imposing unamendability on the Constitution is a form of tyranny that should be avoided at all costs. A democratic Constitution must include provisions for amendment, or it would be self-contradictory. Therefore, in the Indian liberal-democratic tradition, the Parliament can amend the Constitution. However, questions arise when certain provisions are faulty, unreasonable, or inadequate. What if the makers of the Constitution did not foresee the future needs of the State? What if future generations require adjustments to the Constitution? Can the Constitution be amended to accommodate these changes? The need for an amendment arises when there is a change in society, which can happen within the first year of the Constitution's commencement.

¹² AIR 1965 SC 845.

¹³ *Golak Nath v. State of Punjab*, AIR 1967 SC 1643.

¹⁴ AIR 1973 SC 1461

In 1951, the Bihar government passed the Bihar Land Reforms Act, 1950. However, this law was challenged in the Patna High Court and was declared unconstitutional due to its violation of some of the Constitution's Fundamental Rights. Conversely, the Allahabad High Court upheld the agrarian legislation passed in Uttar Pradesh. Those who were affected by these decisions filed appeals in the Supreme Court. The Union Government, eager to end such litigation and facilitate the implementation of farming laws, introduced the Constitution (First Amendment) Bill in the Loka Sabha (Provisional Parliament), led by Prime Minister Nehru. The bill was passed and received the President's assent on June 18, 1951, introducing Articles 31-A and 31-B.

The Ninth Schedule was also inserted in the Constitution, reducing the court's power in the judicial review of legislative Acts. The Ninth Schedule was created to protect agrarian and economic reform legislation, with the primary aim of securing the Constitutional validity of Zamindari Abolition Laws in general and specified Acts in particular. This was done to establish an egalitarian society in the country, where lands were distributed equally to the landless and oppressed classes, attaining and securing economic justice. This amendment provision under the Constitution of India helped those in need, with Parliament exercising its amending power to facilitate farmers in achieving their economic goals. It's a great example of how amendment provisions under the Constitution are crucial and necessary to bring about changes people want.

John W. Burgess explains the importance of the amending clause in the following words, "A complete Constitution may be said to consist of three fundamental parts. The first is the organization of the State for the accomplishment of future changes in the Constitution. It is usually called the amending clause, and the power it describes and regulates is called the amending power. This is the most essential part of the Constitution. Its existence and truthfulness, i.e., its correspondence with real and natural conditions, depend on whether the State shall develop with peaceful continuity or suffer alterations of stagnation, retrogression and revolution. A Constitution, which may be imperfect and erroneous in its other parts, can be easily supplemented and corrected if only the State is organized in the Constitution. Still, if this is not accomplished, an error will accumulate until nothing short of revolution can save the life of the State. I don't consider, therefore, that I exaggerate the importance of this topic by devoting an entire book, in my arrangement, to its consideration."¹⁵

W. Brooke also observed and stated the importance of the amending clause in a constitution. "The fourth essential of a State Constitution is a workable method of piecemeal amendment.

¹⁵ John W. Burgess, *Political Science and Comparative Constitutional Law*, Vol. I, (1913), p.137

This item is so important that a separate section of this chapter is devoted to its consideration. The amending processes of many Constitutions furnish striking and indisputable evidence of the fact that unworkable amending provisions constitute a barrier to the progress of the State. Government is a changing, growing, developing, and dynamic institution that needs continuous adaptation to changed social and economic conditions. A Constitution whose amending provisions make it impossible to make necessary modifications in governmental institutions comes to be a sort of constitutional straitjacket. We cannot prevent governmental changes by failing to make adequate constitutional provisions. The alternative method will likely be revolutionary upheaval caused by the accumulation of grievances and social and economic maladjustments. This alternative is not pleasing to the society whose governmental tradition is based upon the orderly processes, characteristics of Anglo-Saxon institutions."¹⁶.

James Wilford Garner makes similar observations about the importance of amending clauses. He said, "No written Constitution is complete without such a provision..." Garner further states, "In some respects, the amending provision is the most important part of the Constitution."¹⁷

The purpose of amending a Constitution is to ensure its preservation as a State is not static and changes over time due to political, social, and economic conditions and advancements in science and technology. These changes can create new problems and opportunities, prompting future generations to adapt the Constitution to meet contemporary needs and philosophy. A well-drafted amending clause enables peaceful adaptation of the Constitution while avoiding the need for a revolution or stagnation with an unamendable Constitution. Therefore, the amending clause in the Constitution is crucial in avoiding undesirable situations.¹⁸

We should analyze the points made by political thinkers regarding the significance and necessity of amending the Constitution. The amending clause allows future generations to exercise their right to choose and adapt the Constitution to their evolving needs. Therefore, we must treat the amending clause with the utmost respect and seriousness it deserves.¹⁹

III. PROVISION RELATING TO AMENDMENT OF THE CONSTITUTION

Article 368. Power of Parliament to amend the Constitution and procedure therefor—

(1) Notwithstanding anything in this Constitution, Parliament may, in exercise of its constituent power, amend by way of addition, variation or repeal any provision of this Constitution in

¹⁶ W. Brooke Graves, *American State Government*, 3rd Ed., (1946), p.62.

¹⁷ James Wilford Garner, *Political Science and Government*, p.528.

¹⁸ Dr. Ashok Dhamija, 'Need to amend a Constitution and Doctrine of Basic Structure', first edition 2007, published by Wadhwa and company Nagpur, p.9.

¹⁹ 'Constitution Interpretation'. Ch. XL Whears, *Modern Constitutions* 1974 P.146-147(1964)

accordance with the procedure laid down in this article.

(2) 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:

Provided that if such amendment seeks to make any change in—

(a) Article 54, Article 55, Article 73, Article 162 or Article 341, 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.

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

(4) No amendment of this Constitution (including the provisions of Part III) made or purporting to have been made under this article [whether before or after the commencement of Section 55 of the Constitution (Forty-second Amendment) Act, 1976] shall be called in question in any Court on any ground.

(5) To remove doubts, it is as a result of this declared that there shall be no limitation whatever on the constituent power of Parliament to amend by way of addition, variation, or repeal the provisions of this Constitution under this article.²⁰

IV. THE AMENDMENT PROCEDURE OF THE CONSTITUTION OF INDIA

(A) Procedure for amendment

The procedure for the amendment of the Constitution, as laid down in Article 368, is as follows:

1. An amendment to the Constitution can be initiated only by introducing a bill in either the House of Parliament or state legislatures.

²⁰ Article 368 of the Constitution of India

2. The Bill can be introduced either by a minister or a private member and does not require prior permission of the President.
3. The Bill must be passed in each House by a special majority, that is, a majority (that is, more than 50 per cent) of the total membership of the House and a majority of two-thirds of the members of the House present and voting.
4. Each House must pass the Bill separately. In a disagreement between the two Houses, there is no provision for holding a joint sitting of the two Houses for deliberation and passage of the Bill.
5. If the Bill seeks to amend the federal provisions of the Constitution, it must also be ratified by the legislatures of half of the states by a simple majority, that is, a majority of the House members present and voting.
6. After duly passed by both Houses of Parliament and ratified by the state legislatures, where necessary, the Bill is presented to the President for assent.
7. The President must give his assent to the Bill. He can neither withhold his assent to the Bill nor return the Bill for reconsideration by the Parliament.
8. After the President's assent, the Bill becomes an Act (i.e., a constitutional amendment act), and the Constitution stands amended following the terms of the Act.

(B) Types of amendments

For amendment, the provisions of the Constitution fall under three categories. The procedure for each type is laid down in the Constitution.

- a. Amendment by simple majority—Parliament may amend several articles by simple majority. They required the passing of an ordinary law. The amendments stated in Articles 4, 169, and 239-A, etc., come under this category. The amendment of this category is expressly excluded from the purview of the procedure laid down in Article 368.
- b. Amendment by special majority—Parliament may amend several articles by special majority as specified in Article 368 (2). All amendments of the Constitution other than those stated above come under this category. They must be amended by a majority of the total membership of each House of Parliament and by a majority of not less than two-thirds of the members of that House present and voting.

- c. Amendment by special majority and ratification by at least one-half of the State Legislatures—The proviso to Article 368 (2) requires, in addition to the special majority, ratification by a resolution passed by not less than one-half of the State legislatures. Amendments in the following provisions require such ratification by States:
- i. Articles 54 and 55, relating to the election and manner election of the President); or
 - ii. Articles 73, dealing with the extent of the executive power of the Union; or
 - iii. Article 162, dealing with the extent of the executive power of the States; or
 - iv. Article 241 dealing with High Courts for Union territories; or
 - v. Chapter IV of Part V of the Constitution dealing with Union judiciary (Articles 124-147); or (vi) Chapter V of Part VI of the Constitution dealing with High Courts in the States (Articles 214-231); or
 - vi. Chapter I of Part XI (Articles 245-255, Distribution of Legislative Powers between the Union and the States); or
 - vii. Any of the lists in the Seventh Schedule; or
 - viii. the representation of States in Parliament; or
 - ix. the provisions of this article (Article 368).

A Bill for amendment of the Constitution may be initiated in either House of Parliament. It must be passed by each House by a special majority laid down in Article 368. The Bill, after both Houses have passed it and, if the amendment is such, requires ratification by the States after the required number of States has ratified it, must be presented to the President for his assent. After the President's Assent, the Constitution is deemed to be amended following the terms of the Bill.²¹

V. CONCLUSION

The Act of amending constitutions is a crucial aspect of governance that reflects nations' dynamic nature and evolving needs. While a constitution is the foundation of a nation's legal and political structure, it cannot remain static in the face of changing circumstances, values, and

²¹ Jai S. Singh, *The Constitutional Law of India: Cases and Materials* (Central Law Publications) p.1093-94

challenges. This dynamic nature is vital to ensure the Constitution remains relevant and responsive to society's evolving needs. The importance of an amendment provision in a constitution cannot be overstated. It allows for the correction of faults, adjustments to societal changes, and accommodating new ideas and values without resorting to revolutionary or extra-constitutional methods. An unamendable constitution can lead to tyranny, denying future generations the ability to shape their governance.

In India, Article 368 outlines the procedure for amending the Constitution, emphasizing the significance of a special majority in both houses of Parliament and, in some cases, ratification by state legislatures. This process ensures that amendments are made with careful consideration and broad consensus. The ability to amend a constitution is not a weakness but a strength of democratic governance. It reflects a commitment to the principle that the people are sovereign and have the right to determine the rules by which they are governed. As societies evolve, so must their governing documents. A constitution that can adapt and grow with the nation is a testament to the resilience and vitality of democratic governance.

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