



Legal Framework on Constitutional Amendments: A Case Study of the Amending Power of the Parliament of India

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Abstract

The power of Parliament to amend the Constitution of India is a pivotal aspect of the country's legal framework that ensures adaptability and responsiveness to changing social, political, and economic contexts. This study explores the intricacies of the amending power under Article 368 of the Indian Constitution, which delineates the processes and limitations of constitutional amendments. Through a case study approach, the analysis highlights landmark Supreme Court judgments that have shaped the scope and interpretation of the amending power, notably the Kesavananda Bharati case, which established the "basic structure doctrine," positing that certain fundamental features of the Constitution cannot be altered or destroyed by amendments.¹ By critically assessing both the capabilities and constraints of parliamentary amending power, this study elucidates the dynamic tension between flexibility and stability in the Indian constitutional framework, underscoring the essential role of amendments in fostering constitutional evolution.

This abstract encapsulates the significance of understanding the legal framework surrounding constitutional amendments in India, revealing the challenges and opportunities it presents for governance and legal integrity. The legal framework governing constitutional amendments in India is a complex and essential mechanism that ensures the Constitution's relevance in a dynamic socio-political environment. The abstract provides a comprehensive analysis of the amending power of the Parliament as articulated in Article 368 of the Indian Constitution and examines its implications through a case study approach. Beyond the analysis of judicial precedents, this research investigates the practical implications of parliamentary amendments in shaping contemporary Indian governance and addressing societal issues. It considers case studies of major amendments, such as the 73rd and 74th Amendments, which empowered local self-governments, and the 42nd Amendment, often referred to as the "mini-Constitution," which sought to expand parliamentary authority but was later critiqued for overreach.²

Keywords: Basic structure doctrine, challenges, complex, implications, Mini-Constitution.

1. INTRODUCTION

The Indian Constitution, a living document, allows for amendments to adapt to changing societal needs and values. The amending power of the Parliament of India is unique as it embodies both flexibility and rigidity, reflecting the dynamic relationship between law and society. This paper analyses the legal framework surrounding constitutional amendments in India, examining the scope of Parliament's powers, the procedure for amendments, significant amendments, and judicial interpretations that have shaped the understanding of these powers.

The Constitution of India was enacted in 1950, establishing a framework for governance while accommodating the need for evolution through amendments. The amending process is crucial because it provides a mechanism for adapting the Constitution in response to the challenges of governance and the aspirations of the populace. This paper scrutinizes the legal basis for constitutional amendments, particularly focusing on the role and powers of the Indian Parliament.³

2. LEGAL FRAMEWORK OF CONSTITUTIONAL AMENDMENTS IN INDIA

Constitutional Provisions

The amending power is enshrined in Article 368 of the Indian Constitution, which outlines the procedure for amending the Constitution. Article 368 provides a dual process for amendments, categorizing them into two types:

1. **Simple Majority Amendments:** Changes that can be made by a simple majority of the members present and voting in both Houses of Parliament., amendments related to the change in the representation of States in Parliament.⁴
2. **Special Majority Amendments:** Amendments that require a special majority, which entails:
 - a) A majority of the total membership of each House.
 - b) A majority of the members present and voting in each House.

Specific provisions, such as the federal structure, fundamental rights, and the representation of states, require not just a parliamentary majority but also the ratification by half of the state legislatures.

3. SCOPE OF PARLIAMENT'S AMENDING POWER

The Parliament of India holds extensive powers to amend the Constitution, covering a wide array of provisions. However, the Supreme Court has interpreted these powers to ensure that certain fundamental structures cannot be amended. The landmark case of **Kesavananda Bharati v. State of Kerala (1973)** established the "Basic Structure Doctrine," which prevents Parliament from altering the fundamental framework of the Constitution.

4. SIGNIFICANT CONSTITUTIONAL AMENDMENTS

The evolution of the Indian Constitution through various amendments reflects the changing socio-political landscape. Some pivotal amendments include:

- a) **The 1st Amendment (1951):** Introduced restrictions on the right to property and aimed to enhance the stability of the political system.
- b) **The 42nd Amendment (1976):** Known as the "Mini-Constitution," it aimed to curtail judicial review and increase the power of Parliament, significantly affecting the federal structure.
- c) **The 73rd and 74th Amendments (1992):** These amendments empowered local self-governments, ensuring decentralization and democratic governance at the grassroots level. ⁵

As of now, the latest significant amendment to the Indian Constitution is the **104th Amendment**, which was enacted on January 25, 2020. This amendment primarily addresses the reservation of seats for Scheduled Castes (SCs) and Scheduled Tribes (STs) in the Lok Sabha and State Legislative Assemblies.

Key Features of the 104th Amendment

- d) **Extension of Reservation:** It extends the reservation for Scheduled Castes and Scheduled Tribes in the Lok Sabha and state assemblies for another ten years, until January 25, 2030.
- e) **Abolition of Reservations for Anglo-Indians:** The amendment also effectively ends the provision for the nomination of Anglo-Indians to the Lok Sabha and State Assemblies. Previously, the President could nominate two Anglo-Indians to the Lok Sabha and one to each State Assembly; however, this provision was removed.

5. JUDICIAL INTERPRETATION AND ITS IMPACT

The Supreme Court's decisions have underscored the importance of the Basic Structure Doctrine. For instance:

- a) **Minerva Mills v. Union of India (1980)** reinforced the notion that Parliament cannot amend the Constitution in a manner that abrogates the basic structure.
- b) **I.R. Coelho v. State of Tamil Nadu (2007)** further crystallized the Basic Structure Doctrine by declaring that laws that violate fundamental rights cannot be saved by amendments.

Judicial interpretation involves the courts' interpretations of laws and constitutional provisions, shaping their implementation and sometimes altering their intended meaning. This process plays a crucial role in maintaining the rule of law and ensuring that the Constitution is applied in a manner that reflects contemporary values and societal changes.

6. LATEST IMPACT OF JUDICIAL INTERPRETATION IN INDIA

A) Right to Privacy (Puttaswamy Judgment, 2017)

- i. **Background:** In 2017, the Supreme Court of India ruled that the right to privacy is a fundamental right under Article 21 (Right to Life) of the Constitution.
- ii. **Impact:** This landmark decision has had significant implications for data protection laws, Aadhaar (biometric identification) usage, and surveillance issues, prompting discussions about individual rights versus state interests.

B) Decriminalization of Section 377 (Navtej Singh Johar Case, 2018)

- i. **Background:** The Supreme Court decriminalized consensual same-sex relationships by reading down Section 377 of the Indian Penal Code.
- ii. **Impact:** This ruling marked a crucial step towards LGBTQ+ rights in India, promoting inclusivity and affecting laws and societal attitudes towards sexual orientation.

C) Sabarimala Temple Case (2018)

- i. **Background:** The Supreme Court allowed women of all ages to enter the Sabarimala temple, which had previously banned women of a certain age.
- ii. **Impact:** This ruling was seen as a victory for gender equality, sparking debates on religious freedoms versus women's rights and leading to widespread societal discussions.

D) Farm Laws Repeal (2021)

- i. **Background:** The Supreme Court stayed the implementation of new farm laws in late 2020 amidst large protests by farmers.
- ii. **Impact:** Although the laws were eventually repealed by the government in 2021, the judicial intervention highlighted the judiciary's role in mediating disputes between the state and the citizens.

E) Constitutional Validity of the Citizenship Amendment Act (CAA)

- i. **Background:** The CAA, which provides a pathway to Indian citizenship for non-Muslim refugees from neighbouring countries, has faced scrutiny and legal challenges.
- ii. **Current Status:** As of early 2025, the Supreme Court is still deliberating on the constitutionality of the CAA, and its final judgment could profoundly impact immigration, citizenship rights, and secularism in India.

CONCLUSION

The power of Parliament to amend the Constitution is an essential aspect of Indian democracy, enabling the constitution to respond to contemporary challenges. However, the existence of the Basic Structure Doctrine acts as a safeguard, ensuring that fundamental principles such as democracy, secularism, and the rule of law remain inviolable. The ongoing dialogue between Parliament and the judiciary concerning constitutional amendments underscores the dynamic nature of Indian constitutionalism.⁶

This paper highlights the need for a balanced approach towards amendments, advocating for a continuous review of both legislative intentions and judicial interpretations. As India progresses, the amending power of Parliament will remain pivotal in shaping the constitutional landscape and addressing the needs of an evolving society.⁷

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