Amendment of Constitution – Basic Structure Theory

- Dr. G. B. Reddy
  Department of Law
  Osmania University
  Hyderabad-500 007
Amendment of Constitution - Need

- Times & Life of Nation - Not Static
- Constitution - Living Organism
- Constitution - Drafted in one era, often inadequate for another
- Change in political, social and economic conditions of a nation
- Right of every generation to mould its future
Modes of Constitutional Change

- Informal & Formal
- Informal – through Judicial Interpretation, Conventions and Constitutional usages
- Formal – Through Amendments
- Position in USA – only 27 amendments since 1789 - Rigid procedure [U/A V]
- Position in Australia – 8 since 1901 [Sec.128]
Constitutional Amendment in India

- Article 368
- Amendment by Simple Legislative Procedure:
  Admission & Formation of New States, Citizenship, Parliamentary privileges etc.
- By Special Majority - by not < 2/3rd members of House present & voting + majority of its total membership
- By Special Majority + Ratification by not < 1/2 of State Legislatures – Entrenched Provisions
  manner of President’s election, extent of executive power of union & States, VII Schedule & jurisdiction of SC & HC etc.
Scope of Constitutional Amendment Process in India

- **I stage 1951-1973**
- **II Stage After 1973**
  - “Fundamental Rights cannot be playthings of a majority” – Hidayatullah, J & “fundamental features cannot be changed’- Mudholkar, J in *Sajjan Singh*
  - “Fundamental Rights occupy ‘transcendental position in Constitution, no authority including art.368 can amend fundamental rights, & Law includes Amendments also”- Koka Subba Rao, CJ in *Golaknath*
  - **Effect** - Law u/A 13 = Am. u/A 368
24th Am. ,1971 to neutralize Golaknath judgment
Marginal note u/A 368 changed from 'Procedure for Amendment' to 'Power of Parliament & procedure for Amendment', "parliament's power to amend any provision of Constitution'
Ratio: Amendments under challenge – upheld
Evolution of Basic structure Theory: ‘The amending power can’t be exercised to destroy or emasculate basic features/fundamental features of the constitution’ “2/3rd members of Parliament may not represent votes of majority people in this country”
7 majority judges identified 11 features of including – Supremacy of constitution, Republican & Democratic form of Govt, Secular Character, Federal character etc
Post 1973 Developments

- **Indira Nehru Gandhi v. Raj Narain (1975, SC)** - 39th Am, Cl. (4) - declared unconstitutional as violative of 3 basic features ‘free & fair elections’, ‘separation of powers’ & ‘rule of law’

- **Minerva Mills v. UoI (1980, SC)** – 42nd Am & Art. 31-C - ‘power to destroy, not a power to amend’ & ‘Harmony between F.Rts & DPSP’ & ‘Jud.Review’ are basic features

- **Kihoto Hollohan v. UoI (1993, SC)** - democracy is a Basic Feature

- **S.R. Bommai v. UoI (1994, SC)** - federalism, democracy & secularism are Basic Features

- **L. Chandra Kumar v. UoI (1997, SC)** - Judicial Review

Pertinent Issues

- Is the will of people undermined by Basic Structure Theory?
- Why the doctrine of “Political Questions” is not applied in India?
- Can the judiciary regulate the amending power and process?
- Is the Basic Structure doctrine a myth?
- Can brute majority override intention of framers of constitution?
Thank you for your Attention