

## The Constitution and the Indian Society: A Balancing Transformation

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### *Abstract*

*Law and society both are dynamic concepts. The purpose of law is to regulate the conflicting interest of the society which is ever changing and every subordinate law regulating them derives its authority from the supreme law of the land i.e. 'the Constitution' which sets out the noble vision to be achieved by the respective Country. Therefore, Constitution consists of several principles for establishing stronger polity and better governance of the society. The framers of the Constitution of India, while framing the Constitution, has incorporated sovereignty, federalism, socialism, secularism, fundamental rights, directive principles, independent judiciary, parliamentary form of government as the basic principles of Constitution, in order to achieve the objective that are laid down in the Preamble of the Constitution of India. The purpose of the study is to look into the modification, variation and alteration that have been made, by way of amendment or repeal, in these principles from the day the Constitution of India came into existence. An attempt has been made to analyse those areas where the social changes impacted upon these principles of the Constitution of India and how these principles has transformed the society as well. In so doing the Indian independent judiciary has played a remarkable role of balancing between the two from the beginning.*

*As a significant result changes has been made to those principles, to some extent, to persuade the social changes according to the need of the changing society and to maintain stability and orderly life in the society. Therefore, it can claim that the Constitution and social changes are interdependent. The concept of balance between the principles of the Indian Constitution and the social change is maintaining ever since.*

**Key Words:** Constitution of India, Indian Society, Transformation

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## **I.Introduction**

There is a strong relationship between law and society as the basic purpose of law is to regulate the conflicting interest of the vast majority of people in a society. Though law is the product of the society, it is always considered to be the most important instrument of transforming society. It is because there are two principle foundations for the improvement of society as well as that of law. Firstly; law to be specific and abiding, must keep pace with the changing notion of the society and secondly; the law made by the authorised law making authority compels the society to change according to it. Every such law whether changing the society or is changing according to the society, derives its validity from the supreme law of the land i.e. the Constitution of India. Here comes the utmost important task of the Constitution. In order to maintain its stability with the social growth, the framers of the Indian Constitution have incorporated the element of flexibility into the Constitution which is inherently rigid in nature<sup>2</sup>. To quote the observation made by the member of the Constituent Assembly, Jawaharlal Nehru on 8<sup>th</sup> Nov 1948;

“While we want this constitution to be as solid and as permanent a structure as we can make it, nevertheless there is no permanence in Constitutions. There should be certain flexibility. If you make anything rigid and permanent, you stop a nation’s growth, the growth of a living, vital, organic people”<sup>3</sup>.

From the above statement it can be derived that it was always in the mind of the framers of the Constitution of India that there must be some place under the Constitution of India by which changes can be made in the Constitution according to social needs in order to secure the permanence of the Constitution. Insertion of the provisions of amendment under the Constitution of India is the instrument. However there are certain basic principles under the Constitution which the Court reiterated are immune from the power of amendment conferred by Article 368 of the Constitution of India. A law made to alter these principles

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<sup>2</sup>DURGA DAS BASU, INTRODUCTION TO THE CONSTITUTION OF INDIA 33 (11<sup>th</sup> ed.1985).

<sup>3</sup>Constituent Assembly Debates, VOL.VII(Dated 8-11-1948) 322-323.<https://www.constitutionofindia.net> (last visited Nov 25, 2019).

or framework of the Constitution can be declared as ultra-vires by court. Therefore, it is required that a strict balance or harmony is necessary to be maintained while amending the provisions of the Constitution to bring about changes in the law according to the changing needs of the society and to change the society as well. Therefore, an attempt has been made under this article to explain the relationship between Constitution and social change particularly in context of the basic principles of the Constitution of India.

Now we shall discuss firstly, what the relationship between law and society is and what social change is. Secondly, how the Constitution of India which is the supreme law of the land is maintaining balance with social change.

## **II. The Relationship Between Law and Society**

To answer this question we have to, at first, discuss what law is. There are more definitions of law than we can possibly discuss. Keeping in mind that there are far more definitions of law than we possibly can discuss here, the definitions below represent some of the principle approaches to define law. These are as follows;

### **II.I. Law and Official Authority**

According to Donald Black, a leading law and society scholar, “Law is governmental social control. It is, in other words, the normative life of a state and its citizens, such as legislation, litigation and adjudication”.<sup>4</sup>

Black views law as social control by the government. Social control is defined as the regulation over the actions of individuals and groups. The second portion calls attention to the role of the law in shaping the “normative life of a state and its citizens”.

### **II.II. Law and Court**

According to Oliver Wendell Holmes;

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<sup>4</sup>DONALD BLACK, THE BEHAVIOR OF LAW,2, (2010) (ebook).

“The prophecies of what the Courts will do in fact and nothing more pretentious, are what I mean by law”<sup>5</sup>.

### **II.III. Law, Coercion and Specialisation**

Max Weber, the most influential sociological theorist, lays down that;

“An order will be called law if it is externally guaranteed by the probability that coercion (physical or psychological), to bring about conformity or avenge violation, will be applied by a staff of people holding themselves, especially ready for that purpose”<sup>6</sup>.

### **II.IV. Law and Justice**

According to Salmond;

“laws are the bodies of principles that tribunals recognize and apply while administering justice. Even Roscoe Pound defines laws to mean principles that public tribunals recognize and enforce”.

Justice according to Greek philosopher Aristotle means the distribution of equal amounts to those who are equals<sup>7</sup>.

### **II.V. Law and Social Integration**

Bronis law Malinowski idea about law was a good one. He claimed that;

“Law is a body of binding obligations regarded as right by one party and acknowledged as the duty by the other, kept in force by the specific mechanisms of reciprocity and publicity inherent in the structure of... society”<sup>8</sup>.

Another approach to discuss the relation between law and the society is to see what the functions of law are. Among the different functions that law performs includes social control, dispute resolution and social change.

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<sup>5</sup>HOLMES, *THE PATH OF THE LAW*, 10 HARV. L. REV. 457, (1897reprinted1927).

<sup>6</sup>MAX WEBER, *ECONOMY AND SOCIETY* 34 (Guenther et al. eds.,1978) (ebook).

<sup>7</sup>DR. N.V. PARANJPE, *JURISPRUDENCE AND LEGAL THEORY*143( 6<sup>th</sup> ed. 2011).

<sup>8</sup>PAUL BOHANNAN, *THE DIFFERING REALMS OF THE LAW*, <https://www.jstor.org>.(last visited Nov. 25, 2019)

### III. Law as an Instrument of Social Control

Law is the primary institution that relies on to ensure social control in large and diverse societies<sup>9</sup>. People have different values, various income levels and attitudes and sometime, therefore, informal social pressure often may not be sufficient to ensure social control. Friedman lists the function of law, Firstly, the law defines, usually in written form the deviant behaviour that is subject to legal punishment, Secondly, the law defines the institution and procedure that will punish individuals who engage in deviant behaviour. Thirdly, the law defines the procedure that is used to investigate and detect crime<sup>10</sup>. However Lon L. Fuller has mentioned that law is not only an instrument of social control but also an instrument which facilitate human interaction in a society<sup>11</sup>.

#### III.I. Law as an Instrument of Dispute Resolution

Friedman defines a dispute as the

“assertion of inconsistent claims over something of values”<sup>12</sup>.

Disputes may also be resolved through negotiation. A dispute or conflict that is translated into a legal disagreement may lead to complaint before a court. The legislature may also intervene to resolve a dispute by passing a law that resolves a conflict.

#### III.II. Law as an Instrument of Social Change:

Before discussing what function does law performs as an instrument of social change it is required to discuss what is meant by the termsocial change. In the next paragraph some of the definition of the term social change has been given.

Social change is a universal process. It occurs everywhere and every time. It is noticeable and hardly discernible when changes occurred. Social changes may be constructive or destructive. Sociologist MacIver and Page in his book

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<sup>9</sup>MATTHEW LIPPMAN, LAW AND SOCIETY 58(2020) (ebook).

<sup>10</sup>*Id.*

<sup>11</sup>*Id.*

<sup>12</sup>*Id.*

“Sociology” mentioned that social change refers to a process responsive to many types of changes; to change in the man-made condition of life; to change in the attitudes and beliefs of man and to the changes that go beyond the human control to the biological and physical nature of things<sup>13</sup>. Sociologist M.E. Jones said that social change is a term used to describe variation in or modification of any aspect of social processes, social pattern, social interaction or social organisation<sup>14</sup>. Basically it is the changes in existing pattern of social life by a variety of medium and law is one of such medium. However many time as a consequence of the changes in the pattern of the society lead to enactment of different laws.

Law, through legislative and administrative responses to new social conditions and ideas, as well as through judicial re-interpretation of Constitutions, statutes or precedents increasingly articulates and sets the course for major social change. It is always claimed that law is a desirable and highly efficient means of social change, preferable to other instruments of change. In many areas of life such as education, race, relation, housing, transportation, energy, utilisation, protection of the environment and crime prevention, the law and litigation is important instrument of change.

It is this presence at the top of the priority list, father and the fundamental designer of the Indian Constitution Dr. B.R. Ambedkar embedded Article 368 to the Constitution which gives that

“Any piece of the Constitution might be revised by embracing suitable strategy with the exception of obliterating the essential structure of the Constitution”<sup>15</sup>.

In India, each law and legal authority must derive its validity from the Constitution of India which is the supreme law of the land. Therefore, in order

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<sup>13</sup>C.N. SHANKAR RAO, SOCIOLOGY, 543 (Re. ed.2012).

<sup>14</sup>Anil K. Mahapatra, *Constitution of India: An Instrument of Social Change*, (2016) <http://magazines.odisha.gov.in/Orissareview/2016/Jan/engpdf/14-18.pdf>. (last visited Nov 25, 2019).

<sup>15</sup>SOZHIYA.S. & MS. M. JAYAPREETHI, *LAW AS AN INSTRUMENT OF SOCIAL CHANGE*, 120 IJPAM, 4123-4135 (2018).

to introduce any changes in the law to bring about changes according to the needs of the society, amendment of the Constitution is necessary but for every minor new situation it cannot be amended that is why the basic principles or structure theory is propounded by various jurist under the Constitution of India so that a balance of harmony can be maintained. In the next paragraph these basic structure or principles are discussed.

#### **IV. Social Change and the Basic Structure of the Constitution**

There are no defined principles under the Constitution of India. For the first time, in *Keshavananda Bharati v. State of Kerala*,<sup>16</sup> Justice Khanna made it clear that amendment of the Constitution necessarily contemplates that the Constitution has not to be abrogated. The word amendment postulates that the old Constitution survives without the loss of its identity despite the changes and continues even though it has been subjected to alterations. As a result of the amendment the old Constitution cannot be destroyed, it is retained though in the amended form. What then is meant by the retention of the old Constitution? It means the retention of the basic structure or framework of the old Constitution. Chief Justice Sikri held that Supremacy of the Constitution, republican and democratic form of Government, Secular character of the Constitution, federal character of the Constitution etc. are the basic features. In *Minerva Mills Ltd v. Union of India*<sup>17</sup> the Supreme Court has held that independence of judiciary is part of the basic structure. In *M. Nagaraj v. Union of India*<sup>18</sup> Supreme Court held that basic structure is systematic principles underlying and connecting provisions of the Constitution. These principles are the part of the Constitutional law even if not expressly stated. In the next paragraph these principles are discussed one by one along with the changes that have been made under the Constitution of India through the process of amendment keeping in mind to maintain balance with the social change.

From the analysis of the above mentioned cases it is appeared that our Constitution of India has some basic structure or principles e.g. federalism, secularism, fundamental rights, socialism, sovereignty, judicial independence,

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<sup>16</sup> AIR 1973 SC 1461.

<sup>17</sup> AIR 1980 SC 1789.

<sup>18</sup> AIR 2007 SC 71.

cabinet form of government, directive principle of state policy which are to be kept in mind while amending the Constitution of India to afford stability with social change. Little effort has been made on the part of the author of this article to show how amendment has been made under the Constitution of India without amending the basic principles of the Constitution of India and keeping in mind the societal needs so that a balance can be made with the principles of the Constitution of India and social change.

#### **IV.I. Sovereignty**

The starting word of the Preamble to the Constitution of India i.e. 'we the people of India' denotes that the ultimate power is vested upon the 'people of India' and for this purpose to be achieved the framers of the Constitution of India has made this Country a Sovereign, Socialist, Secular and Democratic, Republic<sup>19</sup>. Indian national movement was always asserting that the sovereignty resides in the people of India. On January 22, 1947 the Constituent Assembly has passed the Objective Resolution, which inter alia declared that all power and authority of the sovereign independent India, its constituent parts and organs of Government are derived from the people<sup>20</sup>. Dr. B.R. Ambedkar who piloted the Constitution through the Assembly, has admitted that

“Beyond doubt Sovereignty vests with the people”<sup>21</sup>.

Parliament has the power to amend the Constitution according to the need of the situation but it does not confer sovereignty upon the Parliament. The presence of Article 368 in the Constitution of India does not necessarily imply that the people have deduced themselves of the ultimate power of having another Constitution. That power is theirs in reserve, to be exercised when they deem proper<sup>22</sup>.

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<sup>19</sup>V. N. SHUKLA, *CONSTITUTION OF INDIA*, 1 (Mahendra Pal Singh eds., 13<sup>th</sup> ed. 2019)

<sup>20</sup>S. N. DWIVEDI, *LOCATION OF SOVEREIGNTY IN INDIA*, 9 JILI (Jan.-Mar. 1967).

<sup>21</sup>*Id* at 82.

<sup>22</sup>*Id* at 83.



#### IV.II. Federalism

Presence of dual Government, distribution of powers between federal government and the States, Supremacy of the Constitution, authority of the Court etc., it is because of these basic federal features that our Supreme Court has described the Constitution as federal<sup>23</sup>.

At the same time, it has some peculiar features which create anticipation that the Constitutional system of India is basically federal but of course with striking unitary features<sup>24</sup>. Keeping in mind the mode of formation of the Union, no equality of State's representation, presence of residuary power upon the Union, retention of control of the Centre through Governor's special responsibility, presence of Temporary Provisions under Part XXI of the Constitution of India such as Article 369, 370, 371 and 371-A to 371-J (added through amendment), are some of the example of such unitary features of the Constitution of India. Article 368 of the Constitution of India is the instrument through which amendment was made to tackle that situation. The chairman of drafting committee Dr. Ambedkar had thus rightly said that Our Constitution would be both unitary as well as federal according to the requirements of time and circumstances<sup>25</sup>.

#### IV.III. Secularism

Secularism in India, especially in the realm of the Courts, is often a discourse whose goal is to reconcile the competing authority of religion and state within the political space of the nation<sup>26</sup>. India has no official state religion. In matters of personal law the applicable code of law is unequal and personal law based on an individual's religion applies on matter of marriage, divorce, inheritance etc... There was no mention of the term 'secular' under the Constitution of India.

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<sup>23</sup>DURGA DAS BASU, INTRODUCTION TO THE CONSTITUTION OF INDIA 50-51 (11<sup>th</sup> ed. 1985).

<sup>24</sup>*Id.*

<sup>25</sup>ANIRUDDHA V. BABAR, *DR. AMBEDKAR'S CONTRIBUTION TO FEDERALISM ENSHRINED IN THE CONSTITUTION OF INDIA*, 7 FACJ (2017).

<sup>26</sup>DEEPA DAS ACEVEDO, *SECULARISM IN THE INDIAN CONTEXT*, 38 JABF(2013).

It is only after the 42<sup>nd</sup> amendment that the term 'secular' has been incorporated under the preamble of the Constitution of India<sup>27</sup>.

Secularism has made great impact on Indian society. It has influenced personal laws of different religion. Marriage has become a civil contract rather than a religious sacrament. The concept of dissolution of marriage has recognised in every religion and the authority of religion over conditions of marriage and divorce has markedly declined. Inter religious marriage are increasing in number. The taboos of the society based on caste structure have been rejected by the modern generation. Focus has been given on the protection of the rights of women irrespective of their religion. There is now free social intercourse.

#### **IV.IV. Socialism**

Socialism is acknowledged as the cherished goal of Indian political system<sup>28</sup>. Socialism lays emphasis on the welfare of the people, it seeks to provide equality to the people and tries to remove exploitation of one class by the others and ensures economic and political equality to all<sup>29</sup>. Under Article 14 to 18 of the Constitution of India right to equality is defined in which all citizens are equal before the law. On the basis of any caste, creed or religion nobody should be denied of his legal right, thus ensuring social equality. Private Banks were nationalised, public utility services were established. In other social reform education was made free and compulsory up to the age 14 to all. Steps were also taken for the benefit of backward classes, to bring justice and progress for them. It is so significant and imperative for the modern democratic polity that the Indian Constitution despite being permeated with the spirit of socialism necessitated the 42<sup>nd</sup> amendment in 1976 to get the word socialism inserted in the Preamble of the Constitution as one of the basic principle. Social and economic justices are the pillars of socialism<sup>30</sup>. The framers of our Indian Constitution have prescribed these fundamental principles in shape of directive

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<sup>27</sup>INDIA CONST. (Forty Second Amendment) Act, 1942.

<sup>28</sup>DR.PRITY TIWARI, *THE IDEOLOGY OF SOCIALISM IN INDIAN CONSTITUTION*, 4(1) IJAR,(2018).

<sup>29</sup>*Id.*

<sup>30</sup>*Id.*

principles of state policy in part IV of our Constitution to establish a welfare state based on the principle of socialism.

#### **IV.V. Fundamental rights**

In *Golak Nath v. State of Punjab*<sup>31</sup>, the validity of the Constitution First Amendment Act, 1951, the Constitution Fourth Amendment Act, 1955 and the Constitution Seventeenth Amendment Act, 1964 was challenged. In these above three amendment acts affected or abridged the right to property. The amendment were, considered necessary to obviate the adverse effect of some of the judicial decisions which virtually had the effect of frustrating what Parliament considered important socio economic measures for the welfare of the Country. Besides the Parliament considered that directive principle of State policy could not duly implemented so long the provisions regarding right to property remained as originally enacted in the Constitution and as interpreted by the Supreme Court. These amendments could have been avoided if the Supreme Court had adopted a more flexible and constructive approach to the provisions relating to the right to property as read with Part IV of the Constitution<sup>32</sup>. This was emphatically acknowledged by Mr. Justice Hidayatullah in *Golak Nath case*<sup>33</sup>. In construing provisions of the Constitution the interpretation to be favoured should be dynamic, flexible and constructive and not static, rigid or intransigent and the import of Part III must be adaptable to the changing social circumstances and the changing needs of the society<sup>34</sup>.

No doubt, number of amendments to the Constitution since its adoption illustrates the fact that the amending power has been used rather freely up to now. This frequency of amendments has been criticised by many as a sign of weakness on the part of the Government as well as the Legislature. Rapid successive amendments of the Constitution are not conducive to the constitutional stability and call for a note of caution or circumspection on the part of the legislature in future<sup>35</sup>. It must be at the same time be noted that

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<sup>31</sup>AIR 1967 SC 1643.

<sup>32</sup>R. S. GAE, *AMENDMENT OF FUNDAMENTAL RIGHTS*, 9 JILLI, (Oct.-Dec. 1967).

<sup>33</sup>AIR 1967 SC 1643.

<sup>34</sup>*Id.*

<sup>35</sup>*Id.*

though the Constitution has been amended many a times, most of the fundamental rights including right to equality, right relating to freedom of speech and expression, assembly, associations or unions and free movement, right to freedom of religion and cultural and educational rights conferred by Part III have practically remained unaltered.

The recent development to the fundamental right is the insertion of right to privacy as an intrinsic part of the right to life and personal liberty under Article 21 and as a part of the freedom guaranteed by Part III of the Constitution. On 24<sup>th</sup> August 2017 the Supreme Court of India<sup>36</sup> ruled that:

“Right to privacy is an integral part of Right to Life and Personal Liberty guaranteed in Article 21 of the Constitution”<sup>37</sup>.

#### **IV.VI. Directive Principle of State Policy**

The framers of our Constitution has realised that in a Country like India, political democracy would be useless without socio-economic democracy. Accordingly, they incorporated few provisions in Constitution with a view to achieve amelioration of the socio- economic condition of the masses. These principles have played a crucial role in legislative and administrative policy making in the country as they seeks to build a social justice society. Even though there has been deficiencies in the implementation of the policies as they are not made enforceable by the court but the principles there are nevertheless fundamental in the governance of the country. Directive principles were implemented through Land Reform Act, Nationalisation of Bank and Industries, Welfare Scheme of the Weaker Section of the Society, Panchayat Raj System, Equal Remuneration Act, Environmental Safeguards, Compulsory Education for children etc. apart from it the Minimum Wages Act 1948, the Child Labour Prohibition and Regulation Act 1986, Bonded Labour system Abolition Act,

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<sup>36</sup>Justice Puttaswamy v. Union of India, (2017) 10 SCC 1.

<sup>37</sup>*Id.*

1976, The Trade Unions Act, The Factories Act, The Maternity Benefit Act, are such an exemplary social legislation having wider social impact<sup>38</sup>.

#### **IV.VII. Parliamentary form of Government**

The Constitution of India establishes a parliamentary form of government both at the Centre and at the States<sup>39</sup>. The reason for this is that the people of India are accustomed to this type of government from the British era. The essence of the parliamentary form of government is its responsibility to the legislature. The President is the constitutional head of the state. The real executive power is vested in the council of minister and the head of them is Prime Minister. Council of ministers is directly elected by the people of India. The system of Universal Franchise has introduced. AlladiKrishnaswamiAyyar has quoted thus “The Assembly has adopted the principle of adult franchise with an abundant faith in the common man and the ultimate success of democratic rule and in the full belief that the introduction of the democratic government on the basis of adult suffrage will promote the well-being...”<sup>40</sup>This system provide an opportunity to citizens to take part in the affairs of the government. This system provides accountability of ministers to the legislature.

#### **IV.VIII. Independent Judiciary**

The famous maxim “*ubi jus ibi remedium*” the meaning of which is where there is a right there is remedy finds no meaning without an independent and impartial judiciary with a power of judicial review. For these purposes the Constitution of India has made provision for the establishment of various court at different level of state with the Supreme Court at its head. It is the custodian of the rights of the citizen. The role of Judiciary has been remarkable in the matter of social change. The Public Interest Litigation/Social Interest Litigation has revolutionised the

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<sup>38</sup>Anil K. Mahapatra, *Constitution of India: An Instrument of Social Change*, (2016) <http://magazines.odisha.gov.in/Orissareview/2016/Jan/engpdf/14-18.pdf>. (last visited Nov 25, 2019).

<sup>39</sup>V.N. SHUKLA, *CONSTITUTION OF INDIA* 36 (Mahendra Pal Singh eds. 13<sup>th</sup> ed. 2019).

<sup>40</sup>CONSTITUENT ASSEMBLY DEBATES, VOL. XI, p. 835 (Dated Nov. 23, 1949) <https://www.constitutionofindia.net> (last visited Nov 25, 2019).

judicial system<sup>41</sup>. This Judicial Activism was mainly carried forward by the way of making Article 21 of the Constitution of India an umbrella provision by stretching the ambit of the provision<sup>42</sup>. The Shah Bano case<sup>43</sup>, Vishakha case<sup>44</sup>, Nirbhaya case<sup>45</sup> most recently the Hedaya case<sup>46</sup>, Transgender case<sup>47</sup>, Triple Talaq case<sup>48</sup>, Adultery case<sup>49</sup>, Sabarimala Temple case are the example of such cases which has transformed the society.

## V. Conclusion

In conclusion we may conclude by saying that law is such a broad phenomenon that there are more definitions than one can mention and it similarly perform a huge number of functions. Among those function it can be claimed that social transformation is one of the prime function of law. Since law of a Country derives its validity from its Constitution each and every law has to fulfil the criteria laid down under the Constitution. Laws in India derive its validity from the Constitution of India. If any law is made which abrogate the provisions of the Constitution of India it became ultra-vires. On the other side, social change is a universal process and it is a criteria which every legislature or interpreter of law has to follow while making any law for its durability under the society. As a long time has been passed since the Constitution of India has come into existence societal need has also been growing. Therefore in order to keep pace with the social growth or change the framers of the Constitution of India has embedded within itself Article 368 which serve as an instrument to maintain harmony with the social change but it is followed that after the Constitution of India has been passed a long list of amendment has been made under variety of provision of the Constitution of India. There comes the role of basic structure or

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<sup>41</sup>Anil K. Mahapatra, *Constitution of India: An Instrument of Social Change*, (2016) <http://magazines.odisha.gov.in/Orissareview/2016/Jan/engpdf/14-18.pdf>. (last visited on Nov 25, 2019).

<sup>42</sup>*Id.*

<sup>43</sup>AIR 1985 SC 945

<sup>44</sup>AIR 1997 SC 3011

<sup>45</sup>(2017) 6 SCC 1.

<sup>46</sup>AIR 2018 SC 343.

<sup>47</sup>AIR 2014 SC 1863.

<sup>48</sup>(2017) 9 SCC 1.

<sup>49</sup>AIR 2018 SC 1676.

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principle theory. That principle which is reiterated by the Court is performing its function of maintaining balance so that very foundation of the Constitution of cannot be changed.