PARLIAMENT 'S COMPETENCE TO AMEND THE CONSTITUITION

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ABSTRACT

'This variety in the amending process is wise but rarely found'

- KC Wheare

One of the world's most fascinating and captivating documents is the Indian Constitution. The longest constitution in the world, the Indian Constitution, provides a worldwide framework for governing and leading the nation while taking into account its social, cultural, and religious diversity. The founders of our Constitution made the constitution flexible for a reason. This is to guarantee that the text develops and grows with the country. The authors of the constitution intended for it to be flexible and dynamic rather than inflexible. Thus, the constitution grants Article 368. However, the fact that the parliament has complete authority to change the constitution is concerning since it might be utilized to create a parliament that is authoritarian. Even while this idea causes anxiety and irritation, it is not far from reality. In a number of amendments, including the 39th Amendment, the government has attempted to create a state in which the legislative branch is in charge. As a result, the judicature established the Doctrine of Basic Structure of the Indian Constitution through a number of historic decisions, and it has also put a countercheck on the legislatures by acting as the watchdog over the legislature's amending powers. This protects the Indian Constitution integrity and limits the Parliament's capricious authority.

Keywords: Constitution, Amendment, Parliament, Supreme Court, Basic structure.

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1. Introduction

"An unamendable Constitution is the worst tyranny of time or rather very tyranny of time"

-Mulford[3]

Our constitution is the most extensive in the world and is not found in any other nation. A Constitution can be described as "a document having a special legal sanctity which sets out the framework and the principal functions of the organs of the Government of a State and declares the principles governing the operation of those organs"[4]. It is a society's or a nation's foundational document that includes the foundational, fundamental, and first laws of the nation. This text, which is referred to as the nation's Grundnorm, serves as the foundation for all laws passed in the nation.

Since the Constitution is the ultimate rule of the state, both the government and the people must abide by it. It serves a variety of purposes in a contemporary welfare state. Being a storehouse for many of society's core political principles may be one of these roles. Usually, the Constitution can reflect these ideals by forbidding the government to interfere with religious freedom and by stating that the government can only punish people who have done illegal acts after a trial during which the defendant was represented by the legal counsel. The legislative, executive, and judicial branches of a contemporary welfare democracy are all equally obligated under the constitution. However, when one organ claims greater authority over the other and performs better in fulfilling its constitutional duties, this position fluctuates constantly. However, partisan or self-serving interests may drive constitutional amendments. People of power might be tempted to amend the constitution so that they can extend their reign, stay in power, marginalize the opposition or the minorities, or curtail civil and political rights since it sets rules of the political game. Such changes may undermine or even jeopardize democracy.

According to Harold J. Laski, "Law is not a closed system of eternal rules elevated above time and place; like life, it has periods of change and conservation." The justice it upholds determines how much respect it can get, and its ability to uphold justice-related ideals rests on

[3] Dr. Ashok Dhamija's 'Need to Amend a constitution' on page 12 cites Mulford, The Nation, p. 155.
[4] Wade and Philips- Constitutional Law, p.1 (4th Ed) available on https://www.legalbites.in/introduction-constitution-india#_ftn1 (last visited October 22, 2025)

its deliberate attempt to respond equally to the widest range of requests it faces[5]. For a constitution to be regarded as dynamic and ever-evolving, it must be flexible and adaptive.

The Indian Constitution has provisions for modification under article 368. Without such preparations, the populace would have no choice except to undergo an extra-revolution to alter the document. In line with the process outlined in this article, it gives the Indian Parliament the authority to amend the Constitution "by way of addition, alteration, variation, or repeal of any provision."[6] There are no limitations or exceptions to the absolute power granted by Article 368. Similarly, constitutions cannot but follow changes in the society and slow development of social mores and values, still, they need to be resistant to short-term changes and reforms that are implemented in the haste without sufficient reasoning. The difficulty, then, lies in devising an amendment process which will allow a constitution to be reformed in the interest of the people where needed, with proper consideration, and with the approval of a sufficient number of citizens, but will not permit reform due to partisan or self-seeking or destructive, or short-term motives.

2. Constitutional framework of Amendment

'*The amending process has proved itself one of the most ably conceived aspects of the constitution. Although it appears complicated, it is merely diverse'*

- Granville Austin

According to the Constituent Assembly Debates, the Constitution's writers did not intend for the Parliament's modifying authority to be restricted in any way[7]. In his address to the Constituent Assembly, Pandit Jawaharlal Nehru stated that "the Constitution must be as solid and permanent as it must also permit National growth." He claimed that "because the new Parliament would represent every adult in India, it is the right that the House elected so...should have an opportunity to make such changes as it wants to"[8]. Amendments are not only acceptable in solving the problems related to the functioning of the Constitution, but also needed to make any possible bridging between the values, ideologies, ideas, demands, and objections of the framers of the Constitution and those of modern society, as well as to keep pace with the

[5] Krishan Keshav, Constitutional Law. Singhal Publications, 2016, p280.
[6] The Constitution of India, Art. 368
[7] D.D. Basu, Commentary on the Constitution of India, 14-xisNexis, Haryana, 2013, 01260.
[8] CAD Vol.V1I 4323.

development of constitutionalism in accordance with the changing social norms. An amendment can go beyond what is necessary and even introduce revisions that reflect current trends.

2.1 Definition of Amendment

"Nature, large or small, minute or great, Protista and man, will incessantly change and evolve, will be in a state of flux, and motion forever is active"[9]. The word Amendment is a Latin word *amendere* which means to correct or fix any fallacy. Article 368 provides the Parliament with a right to amend the Constitution. An amendment is "a formal revision or addition proposed or made to a statute, construction, pleading, order, or other instrument, a change made by addition, deletion, or correction, especially an alteration of wording," according to Black's Law Dictionary[10].

Our Constitution was drafted by its authors in a way that allows it to evolve with the times and the way the country develops. It gave the means to alter the Constitution by considering the socioeconomic and political elements that are prevalent in our nation. The fact that our Constitution has an amendment mechanism, which was adopted subsequently to South Africa, therefore makes our Constitution stiff and flexible at the same time. It embraces aspects of great democracies in the world with its flexibility and rigidity.

Formal and informal amendments can be made in two ways. While the formal method is used in nations with written constitutions, like India and the USA and provides the technique of amending the Constitution itself through judicial interpretation, informal amendment can take the shape of conventions and other means[11]. The significance and influence of the provisions determine which parts of the Constitution are given more weight. The Indian Constitution can be amended in three different ways:

- Just like any other legislation passed by Parliament, the provisions that are much less vital might be changed by simple majority.

- Under Article 368, a special majority is needed for provisions that are significant and

[9] Available at https://www.marxists.orearchivehnancAvorks/1883/donlch01.htm (last visited October 22, 2025)
[10] Garner, 'Black Law Dictionary', 8th Edition, p.89
[11] Supra note at 6, p.1725-1727

essential.

- Article 368 requires that more than half of the State Legislatures ratify any laws that affect the nation or many of the states, which in turn affect the federal character of the nation.

2.2 Power and Procedure of Amendment

Article 368[12]: Parliament's authority to change the Constitution and its processes

i. Regardless of what this Constitution says, Parliament may use its Any section of this Constitution may be amended by a constituent using the process outlined in this article, either by addition, modification, or repeal.

ii. It is only possible to initiate an amendment to this Constitution by presenting a bill to that end in either of the Houses of Parliament. When the bill passes a majority of the members of that House that are present and voting, they are forwarded to the President who then signs, and the Constitution is amended to accommodate the new provisions. Subject to the caveat, that in case such an amendment intends to make any change in:

• Chapter IV of Part V, Chapter V of Part VI, or Chapter 1 of Part Xl, or.

• any of the Lists in the Seventh Schedule, or;

• Articles 54, 55, 73, 162, or 241.

• the representation of States in Parliament, or

• the textual conditions of this article, the amendment should also be ratified by at least half the legislatures of the States by way of a solution adopted by the legislatures before the bill containing the amendment is transmitted to the president to be approved.

iii. Any alteration made under this article will not be affected by anything in Article 13.

iv. No amendment to the Constitution (as of Part 111) by reason of this article, either prior or after the establishment of Section 55 of the Constitution (Forty second Amendment) Act, 1976,

[12] The Constitution of India, Article 368

claims that the amendment may be disputed in a court of law[13].

v. To make this point perfectly clear, it is now stated that the powers of Parliament under this article to add, alter, or abandon the provisions of the Constitution will in no sense be limited

The Indian Constitution differs from other written constitutions in that its modification process is less stringent. As a result, it is described as somewhat hard and partially flexible. Some components can be altered more easily than others, while others require adherence to a specific procedure. The Indian federation differs from others in that the states don't have a major impact on the overall situation. For regular laws, a combined session is called if the Rajya Sabha and Lok Sabha are at a standstill. However, a constitutional amendment cannot be approved unless both houses concur, and there is no mechanism to break the impasse in this circumstance.

2.3 Article 368 and Its modification history

The article 368 was first altered to permit the Constitution (Twenty four amendment) Act, 1971, to supersede the decision in Golak Nath case[14]. The judicial interpretation of amendments to the Indian Constitution along with the other judicial pronouncements are discussed in detail in Chapter IV[15]. Until 1967, the Supreme Court had decided in earlier cases that no section of our Constitution was not amenable and that Parliament could amend any section of our Constitution, Part III and even Art. 368[16] by complying with the provisions of Article 368.

Nevertheless, in the case of Golak Nath[17], the majority reversed these decisions and decided that even though there was no express exception specifying the scope of Article 368, the Fundamental Rights under Part III of the Constitution could not by definition be subjected to the amendment process under Article 368. Should there be a need to amend any of these Rights, a new Constituent Assembly must be convened to draft another Constitution or make radical modifications to the current one[18].

[13] Minerva Milk v. Union of India, (1980) 2 SCC 591
[14] Golak Nath v. State of Punjab, AIR 1967 SC 1643
[15] The Art of a Lawyer, 80 (Chief Justice Dr. B Malik, 9th ed.,1999) contribution by Joseph Simeone (The profession of law) p,11238.
[16] Shankari Prasad v. Union of India, AIR 1951 SC 458
[17] Golak Nath v. State of Punjab, AIR 1967 SC 1643
[18] Supra note at 13, p.11238.

However, in the *Golak Nath case*[19], the majority overturned earlier rulings and held that, despite the lack of an express exception from the scope of Article 368, the Fundamental Rights enshrined in Part III of the Constitution cannot, by definition, be subject to the amendment process provided by Article 368. If any of these Rights are to be amended, a new Constituent Assembly must be called in order to create a new Constitution or drastically alter the existing one[20]. The majority also ruled that the term "amend" refers to a modification of the current provisions rather than a significant shift. A Constitution Amendment Act must be subject to Art. 13(2) because it is a "law" created under Art. 248 and would be null and void if it attempted to change a Fundamental Rights.

The Constitution (Twenty-fourth Amendment) Act of 1971 overturned the majority ruling in the *Golak Nath case*[21]. This amendment changed Article 13 to include a new clause (4) and Article 368 to include clause (1). Consequently, it was decided that any constitutional modification enacted in accordance with Article 368 would not be considered "law" in the sense of Article 13. This implied that a constitutional amendment's legitimacy could not be contested on the grounds that it violated or diminished a fundamental right. Additionally, the amendment clearly distinguished between Parliament's legislative authority under Article 13 and its constituent authority under Article 368. In other words, Article 368 gave Parliament the authority to alter the Constitution itself, including by repealing or changing any of its sections, whereas Article 13 applied to regular laws. 'Clause (3) of Article 368' declared that 'Article 13' would not apply to constitutional revisions in order to further eliminate any doubt, and 'clause (4) was added to Article 13' to further support this assertion.

But even after these complex adjustments, the Supreme Court kept reviewing constitutional amendments and occasionally overturned them for substantive reasons. A 13-judge panel ruled by a slim 7:6 majority in '*Kesavananda Bharati v. State of Kerala'*[22] that while Parliament had broad authority to amend the Constitution, it could not change or eliminate its fundamental framework. The Court invalidated the second half of Article 31C, which had been inserted by the Twenty-fifth Amendment Act, 1971, since it aimed to take away the principle of judicial review, which was acknowledged as one of key aspects of the Constitution. The Court further

[19] Golak Nath v. State of Punjab, AIR 1967 SC 1643
[20] Supra note at 13, p.11238.
[21] Golak Nath v. State of Punjab, AIR 1967 SC 1643
[22] Kesavananda Bharti v. State of Kerala, AIR 1973 SC 1461 (paras 759, 850, 1174,1282,1395,1840, 1916, 2079).

explained that any modification that undermined the fundamental framework of the Constitution would be invalid, even though fundamental rights themselves were not unamendable.

In a similar vein, the Apex Court invalidated 'clause (4) of Article 329', which had been inserted by the Thirty-ninth Amendment Act, 1975, in '*Indira Nehru Gandhi v. Raj Narain'*[23], arguing that it went against some fundamental aspects of the Constitution. These included the rule of law (paragraphs 343 and 628), free and fair elections (paragraph 213), and the adjudication of election disputes by the courts (paragraphs 213 and 679). The Court determined that the amendment had weakened the Constitution's democratic framework by eliminating judicial review of election disputes and failing to provide an alternative forum.

The government passed the Forty-second Amendment Act, 1976, in reaction to these decisions, adding 'sections (4) and (5) to Article 368'. These provisions stated that no court could contest the legality of a constitutional change for any reason, even not adhering to Article 368's correct procedure. The Supreme Court, however, invalidated these two clauses in '*Minerva Mills v. Union of India'*[24]*,* ruling that they went against the fundamental principle of judicial review, which had already been affirmed as crucial in the '*Kesavananda Bharati case'*.

3. Evolution of Parliament Amending power

One of India's greatest challenges after gaining independence was putting an end to the exploitative Zamindari system, which had caused farmers a great deal of misery while under British control. The government prioritized land reform in order to establish a just and socialist society because India has one of the most agriculturally populated and bountiful countries. However, several landowners filed legal challenges against several land reform laws, claiming they infringed upon Article 19(1)(f) of the Fundamental Right to Property.

The matter initially arose in '*Kameshwar Prasad Singh v. State of Bihar'*[25], in which the Patna High Court declared the Bihar Land Reforms Act to be unconstitutional. The First Constitutional Amendment Act, 1951, which added Articles 31A and 31B, was passed by Parliament in response. Article 31B established the Ninth Schedule, which shielded property

[23] Indira Nehru Gandhi v. Raj Narain. AIR 1975 SC 2299
[24] Minerva Mill v. Union of India, (1980) 2 SCC 591,
[25] AIR 1951 para 91.

acquisition laws from judicial review, while Article 31A prevented challenges to legislation that violated fundamental rights under Articles 14, 19, and 21. The Supreme Court maintained this change when it was contested in *Shankari Prasad Singh v. Union of India*[26] holding that the term "law" in Article 13(2) only related to common law and not constitutional amendments made under Article 368.

The 17th Amendment Act, 1964, which added new land reform measures to the Ninth Schedule, was later contested in *Sajjan Singh v. State of Rajasthan*[27] for not being accepted by the states and for interfering with the authority of the High Courts under Article 226. By a majority vote of 3:2, the Supreme Court maintained the modification and upheld the Shankari Prasad decision. Justices Hidayatullah and Mudholkar, however, dissented, arguing that certain fundamental provisions of the Constitution might not be amendable. This theory ultimately served as the basis for the Basic Structure Doctrine.

In *I.C. Golak Nath v. State of Punjab*[28], this idea was expanded upon when the Court decided, by a 6:5 majority, that Parliament could not alter or remove Fundamental Rights. The court determined that constitutional changes were considered "law" under Article 13(2) and that Article 368 simply established the process, not the authority, to change the Constitution. It used the Doctrine of Prospective Overruling, which states that while past changes will remain enforceable, future ones will be examined, in order to prevent confusion. The 24th and 25th Constitutional Amendment Acts (1971) were passed by Parliament in response to this. The 24th Amendment made it clear that Parliament could change any part of the Constitution, including the Fundamental Rights clause, and that Article 13 would not apply to such changes.

In *Kesavananda Bharati v. State of Kerala*[29], contested the constitutionality of these reforms. After 60 days of hearing the case, a 13-judge panel ruled 7:6 that while Parliament has broad authority to amend the Constitution under Article 368, it cannot change or destroy its fundamental framework. The Court enumerated characteristics of this system, including the federal character, secularism, the separation of powers, democratic and republican government, and the supremacy of the Constitution. Therefore, Parliament might change the Fundamental Rights clause, but it couldn't change the essence of the Constitution.

[26] AIR 1951 SC 458.
[27] AIR 1965 SC 845
[28] AIR 1967 SC 1643
[29] AIR 1973 SC 1461

In *Indira Gandhi v. Raj Narain*[30], this theory was upheld when Section 4 of the 39th Amendment Act, 1975—which attempted to protect the prime minister's election from judicial scrutiny—was overturned. Since it eliminated the judiciary's jurisdiction to hear election disputes and jeopardized the free and fair elections protected by Article 329(b), the Supreme Court ruled that it breached the fundamental principles of democracy, the rule of law, and the separation of powers.

In addition, the Supreme Court considered the 42nd Amendment Act, 1976 in *Minerva Mills v. Union of India*[31], which added clauses (4) and (5) to Article 368, granting Parliament unrestricted authority to modify the Constitution without judicial review. The Court invalidated these provisions, ruling that the authority to destroy is not included in the authority to change. It underlined that the Constitution's cornerstones, Part III (Fundamental Rights) and Part IV (Directive Principles), need to be reconciled. The Court ruled that the fundamental framework includes judicial review, restricted amending power, and a balance between Directive Principles and Fundamental Rights.

The Court upheld the First and Fourth Amendments in *Waman Rao v. Union of India*[32] holding that laws added to the Ninth Schedule after *Kesavananda Bharati Case*, would only be protected if they did not violate the fundamental framework. The Court also explained that Article 31B gave older legislation limited immunity, Article 31C was only legitimate to the extent that it was supported in Kesavananda Bharati, and Article 31A strengthened the Constitution by permitting land changes.

Finally, the Supreme Court reiterated in *Raghunath Rao v. Union of India*[33], that Article 368 forbids Parliament from changing or destroying the fundamental framework of the Constitution. The Court emphasized that the Constitution, which is still paramount, is the source of authority for the legislative, executive, and judicial branches. Any modification must adhere to Article 368's correct method and cannot eliminate or alter fundamental aspects of the constitution.

[30] 1975 SCR (3) 841
[31] AIR 1980 SC 1789
[32] AIR 1981 SC 271
[33] AIR 1993 SC 1267

Therefore, the Supreme Court clearly established via these seminal rulings — from *Shankari Prasad* [34] to *Raghunath Rao*[35] — that although Parliament has extensive authority to change the Constitution, this authority is not absolute. Born in *Kesavananda Bharati*, the Basic Structure Doctrine is still the best defence against constitutional self-destruction, guaranteeing the inviolability of India's democracy, rule of law, and fundamental rights.

4. Amendment of the Constitution

The state was given the authority[36] to enact special laws for the improvement of economically and socially disadvantaged groups by the *First Amendment (1951).* In addition to introducing the Ninth Schedule to protect land reform laws and other associated legislation from judicial scrutiny, it guaranteed the protection of laws pertaining to the purchase of estates and related things. Article 31 was followed by Articles 31A and 31B. It established three further reasons for limiting freedom of speech and expression: incitement to crime, cordial relations with foreign governments, and public order. These grounds made the limits "reasonable" and, as a result, open to judicial review. Additionally, it made clear that state dealing or the state's nationalization of any business or trade cannot be declared unlawful on the grounds that it violates the freedom to trade or commerce.

Significant adjustments were made to the 2nd and 7th Schedules by the *7th Amendment (1956).* States were reformed into 14 states and 6 union territories after the four-part classification system—Part A, B, C, and D—was eliminated. Union regions were added to the high courts' authority. A joint high court serving two or more states was to be established, according to the provisions. Guidelines for the appointment of acting and supplementary judges in high courts were introduced.

The *42nd Amendment (1976)* was dubbed the "Mini Constitution" since it contained 59 clauses and made several modifications. Socialist, secular and integrity were three new words introduced into the Preamble. It declared constitutional amendments beyond judicial review, and introduced Fundamental Duties under the new Part IVA, and dictated that the president would act on the advice of the cabinet. The amendment, which added three additional Directive Principles of State Policy, increased the term of Lok Sabha and State Legislative Assemblies

[34] Shankari Prasad Singh v. Union of India, AIR 1951 SC 458.
[35] Raghunath Roo v. Union of Indio, AIR 1993 SC 1267
[36] In Depth: Major Constitutional Amendments, available on https://www.drishtiias.com/loksabha-rajyasabha-discussions/in-depth-major-constitutional-amendments (last visited October 23, 2025)

by one year, to six years, and the creation of an All India Judicial Service, administrative tribunals and other special tribunals, and Part XIV-A to the Constitution, outlined the amendment by saying that a law enacted in pursuance of Directive Principles of State Policy could not be struck down as invalid on the ground of infringing certain Fundamental Rights.

The original five-year term of the Lok Sabha and State Legislative Assemblies was reinstated by the *44th Amendment (1978).* In sections pertaining to parliamentary privileges, it eliminated references to the British House of Commons, restored provisions pertaining to the quorum in Parliament and state legislatures, and gave newspapers constitutional protection for accurately reporting on parliamentary and state legislative proceedings. The modification eliminated the clause that made the approval of the President, Governors, and Administrators the last step in issuing ordinances and gave the President the authority to send back the cabinet's recommendation for review, even though the revised recommendation is legally binding on the President. It reinstated the judicial power of the Supreme Court and High Courts, replaced internal disturbance with armed rebellion in clauses dealing with national emergency, provided that President of the United States should only declare national emergency on the written approval of the cabinet and put in place procedural safeguards regarding enforcing President of the United States Rule and national emergency. Articles 20 and 21 cannot be suspended in case of a national emergency and the right to the property was excluded in the list of fundamental rights and transformed into the right of law. Other provisions that were also scrapped included provisions that forbade the courts to adjudicate on disputes pertaining to elections involving the Speaker of the Lok Sabha, the President, the Vice-President and the Prime Minister.

Members of Parliament and state legislatures may be disqualified for defection, according to the *52nd Amendment (1985),* which also established a new 10th Schedule with the relevant information.

The *61st Amendment (1988)* lowered the voting age for state legislative assembly and Lok Sabha elections from 21 to 18.

Panchayati Raj Institutions were made constitutional by the *73rd Amendment (1992).* In addition to adding a new 11th Schedule with 29 panchayat-functional items, this amendment created a new Part-IX to the Indian Constitution, which included provisions from Articles 243 to 243O.

Urban municipal governments were made constitutional by the *74th Amendment (1992).* In addition to adding the 12th Schedule, which included 18 functional items of municipalities, it also introduced Part IX-A, which contained requirements from Articles 243-P to 243-ZG.

Article 21A of the *86th Amendment (2002)* established basic education as a fundamental right. Additionally, it created a new fundamental responsibility under Article 51-A and modified the subject matter of Article 45 in Directive Principles. Both the federal government and the states are now able to impose the Goods and Services Tax (GST) thanks to the *101st Amendment (2016).* The federal government and the states shared taxation authority prior to this amendment. For the first time in independent India, reservations for the Economically Weaker Sections (EWS) were introduced by the *103rd Amendment (2019).* EWS are granted a 10% reserve in public employment under the revision to Article 16.

The *104th Amendment (2020)* extended the reservation for Scheduled Castes (SCs) and Scheduled Tribes (STs) for an extra ten years while discontinuing the reserved seats for the Anglo-Indian community in the Lok Sabha and State Legislative Assemblies. One-third of all seats in the Lok Sabha, State legislative assemblies, and the Legislative Assembly of the National Capital Territory of Delhi—including those designated for SCs and STs—are set aside for women by the *106th Amendment (2023).* The reservation will last for 15 years, with a possible extension decided by parliamentary action, and take effect following the release of the census carried out after the Act's start.

5. Doctrine of Basic Structure

5.1 Meaning and Nature

The Constitution makes no explicit reference to the Doctrine of Basic Structure[37]. In the 1973 case of *Kesavananda Bharati v. State of Kerala*[38]*,* the Supreme Court gave birth to this judicially innovative approach. The judges came up with this idea to slow down the wave of modifications that were weakening the foundation of our Constitution. It developed the idea of the legislative, executive, and judicial parts of government having different powers.

[37] Doctrine of Basic Structure, Available on https://www.drishtijudiciary.com/constitution-of-india-doct/doctrine-of-basic-structure (last visited October 23, 2025)
[38] AIR 1973 SC 1461

According to the basic structure theory, any legislation passed by Parliament that undermines the fundamental framework of the Constitution would be deemed unconstitutional to the extent that it does so. In upholding its position as the highest court and preserving the balance of power among the legislative, executive, and judicial departments of government were the Supreme Court's primary objectives when formulating this doctrine.

Given that the Indian Constitution's drafters did not seek outside of Common law nations for inspiration, it is evident that this notion was a necessary inspiration from a civil law system rather than a "invention of the Indian judiciary".

5.2 Component of Basic Structure Doctrine

One of the fundamental tenets[39] of the Basic Structure Doctrine is the *supremacy of the Constitution.* It is deemed a violation of the fundamental structure for any amendment to attempt to weaken or dilute this primacy. It was underlined in the Kesavananda Bharati case that the Constitution is the ultimate law of the land and that no modification can change its essential framework.

Another crucial component of the Basic Structure is *the Republican and Democratic Forms of Government.* It guarantees that the government stays answerable to the people and that the will of the people is represented in how the state operates. This idea was examined and reiterated in *Indira Gandhi v. Raj Narain*[40].

A key element of the Basic Structure is *secularism*, which guarantees the state's objectivity in religious affairs. Any change aiming to create a theocratic state or weaken the secular fabric would be unlawful, according to the judiciary's constant rulings. This idea was noted and supported in the case of *S. R. Bommai v. Union of India*[41].

Another essential component of the Constitution is the *Federal Structure,* which maintains a balance of power between the federal government and the states. Any attempt to upset this delicate equilibrium or jeopardize state sovereignty would be interpreted as a violation of the

[39] Doctrine of Basic Structure, Available on https://www.drishtijudiciary.com/constitution-of-india-doct/doctrine-of-basic-structure (last visited October 23, 2025)
[40] 1975 SCR (3) 841
[41] (1994) 3 SCC 1.

fundamental framework of the Constitution.

The Basic Structure also includes the *separation of powers* between the legislative, executive, and judicial branches. By preventing any one branch from concentrating too much power, this division preserves the checks and balances system. A judge will review any alteration that upsets this equilibrium. The Indian Constitution includes *judicial review* as an essential and fundamental component. It gives the court the authority to examine the legislative and executive branches' acts to make sure they stay within the bounds of their designated authority and adhere to constitutional values.

An *independent judiciary* is an essential defence against the legislative and executive branches abusing their authority. It guarantees that all government acts respect the rule of law and stay within the bounds of the constitution. As the protector of the Constitution, the judiciary interprets its provisions, settles conflicts, and enforces the rule of law. In order to maintain judicial independence in the selection of judges for the Supreme Court and High Courts, the Supreme Court invalidated the National Judicial Appointments Commission (NJAC) Act, 2014, in the case of *Supreme Court Advocates-on-Record Association v. Union of India*[42].

5.3 Test of Basic Structure Doctrine

The Test of Basic Structure Doctrine considers not only the formal validity of a constitutional amendment but also its real impact. The Supreme Court explained in *M. Nagaraj v. Union of India*[43], that the word "amend" refers to modifying the current Constitution without altering its essence. The Court ruled that as the Constitution itself contains the authority to alter, any restrictions on that authority must likewise be established in the Constitution. The 77th Amendment Act, 1995 (which added Article 16(4A) allowing SC/STs to be reserved in promotions), the 81st Amendment Act, 2000 (which permitted the carryover of vacant reserved posts), the 82nd Amendment Act, 2000 (which added a proviso to Article 335 allowing the relaxation of qualifying marks or evaluation standards in promotions), and the 85th Amendment Act, 2001 (which gave retroactive effect to reservation in promotions with consequential seniority) were all upheld by the court in this case. Since these changes were taken from Article 16 and did not alter its fundamental framework, they were upheld. The Court

[42] (2015) 13 SCR 1
[43] AIR 2007 SC 71

verified their legitimacy and made sure they had no impact on the essential elements of the Constitution by applying the "width" and "identity" tests.

Additionally, the Court declared that the "right test" which decides the legitimacy of an amendment determines its effect rather than its form. In order to apply this, the Court looks at the terms of the statute, the type of right at issue, and whether the law's core principles are broken. For example, the Court first assesses whether a statute breaches Part III (Fundamental Rights) before placing it in the Ninth Schedule. If it does, the next stage is to determine if the fundamental framework of the Constitution is destroyed. Therefore, it is necessary to assess the extent of fundamental rights violations. The statute will be declared unconstitutional if the invasion is so severe that it damages fundamental liberties.

The more fundamental rights are violated, the stronger the defence must be. The State must defend the extent of the violation. This rule guarantees that the amendment authority cannot be arbitrarily applied to eliminate Part III protections or exclude judicial review. The fundamental idea of the Basic Structure Doctrine would be undermined if laws in the Ninth Schedule were granted immunity without judicial review. The Court stressed that under Article 368, the judiciary, not Parliament, has the authority to decide whether a modification breaches the fundamental framework.

Lastly, the Supreme Court reaffirmed that any change or harm to the fundamental framework is sufficient to find a constitutional amendment ultra vires in the *NJAC case*[44]. In keeping with the tradition of protection set up since *Golak Nath v. State of Punjab*[45],the Court upheld the application of the "width of power test" and the "direct impact and effect test" to determine whether an amendment goes beyond Parliament's constitutional jurisdiction.

5.4 Significance

The Basic Structure Doctrine holds great importance[46] in Indian constitutional law. It has preserved the balance of power, protected fundamental rights, and made sure that constitutional revisions don't compromise the essential principles of federalism, democracy, and secularism.

[44] Supreme Court Advocate-on-Record Association v. Union of India, AIR (2016) 5 SCC 1.
[45] AIR 1967 SC 1643
[46] Basic Structure Doctrine, Meaning, Significance, Evolution, available on https://vajiramandravi.com/upsc-exam/basic-structure/ (last visited October 23, 2025)

The doctrine's application has been essential in guaranteeing the following elements:

- **Encourages Constitutional Principles**: Fundamental Framework is to uphold the fundamental values and constitutional principles that the founding fathers intended.

- **Preserves Constitutional Supremacy**: The theory has assisted in preserving the Constitution's supremacy and has stopped a temporary majority in Parliament from overthrowing it.

- **Separation of powers:** By outlining a genuine separation of powers in which the Judiciary is independent of the other two organs, the Basic Structure fortifies our democracy. Granville Austin contends that the Basic Structure Doctrine strikes a compromise between the Supreme Court's and Parliament's duties to safeguard the Indian Constitution's interconnected web.

- **Preserves Fundamental Rights:** The Basic Structure shields citizens' fundamental rights from the capriciousness and authoritarianism of the legislature.

- **Constitution is a living Document:** Because of its dynamic aspect, which makes it more progressive and subject to change over time, the Constitution is a living document.

- **Judicial Activism:** By empowering the court to overturn changes that contradict the fundamental principles of the Constitution and serve as a check on the legislative and executive branches, it has promoted judicial activism in India.

5.5 Criticism

The following arguments[47] have been made against the Basic Structure Doctrine's applicability and interpretation, even though it has been widely accepted and supported by later court rulings:

- **Contrary to the separation of powers principle:** A system of checks and balances is only effective if one branch does not usurp the responsibilities of another. A court may be able

[47] Basic Structure Doctrine, Meaning, Significance, Evolution, available on https://vajiramandravi.com/upsc-exam/basic-structure/ (last visited October 23, 2025)

to examine a constitutional amendment but not alter it.

- **Vagueness and elusiveness of the Constitution's Basic Features:** The doctrine is unclear because there is no clear definition of what Basic Structure is.

- **Judicial Overreach**: The theory has recently been applied in situations that are thought to be instances of judicial overreach. Using this theory, the Supreme Court ruled that the Ex: National Judicial Appointment Commission Act of 2014 was invalid.

- **Makes the court the third and most important branch of the legislature:** By using the Basic Structure philosophy, the Judiciary functions as the third chamber, negating the purpose of the Parliament's job.

6. Comparative Constitutional Analysis

6.1 USA

The first nation to have an explicit amendment clause in its Constitution was the United States of America. Despite its inflexibility, the American Constitution has effectively adjusted to significant historical occurrences including the Industrial Revolution, the Civil War, the Great Depression, several civil rights movements, and other international conflicts. Its extraordinary adaptability is demonstrated by the fact that it has endured for more than 200 years since independence.

There are two methods to propose changes under Article V of the US Constitution:

- In both Houses of Congress, by a two-thirds majority, or

- At the request of two-thirds of the state legislatures, a convention was summoned.

An amendment must be ratified in one of two ways after it is proposed:

- By three-fourths of the states' legislatures, or

- Depending on the approach Congress decides on, by conventions in three-fourths of the states.

Thus, there are four possible ways to change the U.S. Constitution: two ways to propose an amendment and two ways to ratify it. According to the ruling in *U.S. v. Sprague*[48], Congress has complete discretion over the ratification mechanism to be used. When passing an amendment, Congress may also include a ratification deadline; if no deadline is specified, the states are free to accept or reject the amendment at any time. For example,[49] Congress set a seven-year limit for the 18th, 20th, 21st, and 22nd Amendments, but the 1924 Child Labor Amendment had no time limit and was only adopted by two States by 1939. Furthermore, a State may subsequently ratify an amendment that it first rejects, but once it does so, it cannot take it back. Additionally, save for establishing the deadline for ratification, Congress cannot force any State Legislature to ratify an amendment as held in Dillon v. Gloss[50]. A conference mechanism is used to break an impasse on amendments when both Houses of Congress cannot agree.

The ratification process emphasizes the rigor and federal character of the U.S. Constitution. Only 33 of the over 10,000 proposed amendments have been approved by Congress in the past 200 years, and 27 of those amendments have been completely ratified[51] To guarantee that any constitutional amendment represents state-level public opinion, the Founding Fathers mandated that amendments be approved by state legislatures or by special conventions in each state. It's interesting to note that state conventions only adopted one amendment the 21st Amendment, which ended prohibition[52].

According to the U.S. Supreme Court, changing the Constitution is not a typical legislative act. The Court ruled in *Hollingsworth v. Virginia*[53] that a constitutional amendment does not need the president's consent. The proposed amendment must be adopted by three-fourths of the States for the US Archivist to formally publish it as part of the Constitution and list the ratifying States.

The Court rejected the claim that ratification may involve a public referendum in *Leser v. Garnett*[54], reaffirming that it must only take place using the procedures outlined in Article V. Although two-thirds of the States have never jointly called for such a convention, the Article

[48] U.S. V. Sparague, (1931)282 US 176.
[49] The 22nd amendment took around four years to receive ratification in 36 states.
[50] Dilon v. Closs, (1921) 256 US 510.
[51] Massey, American Constitutional Law - Powers and Liberties, 2nd Ed., p. 52
[52] supra note at 13, pp. 11242–11244
[53] Hoilingsworth v. Virginia, (1798) 3 Dall 378.
[54] Lasser v. Garnett, (1922) 258 US 130.

also permits amendments to be made through a national convention. Congress has full discretion over whatever method of proposal or ratification to employ, and this alternate route is entirely optional.

6.2 Australia

According to Section 128 of the Commonwealth of Australia Constitution Act, 1900, the Constitution may only be changed in a particular way. An absolute majority of both Houses of Parliament must first approve a proposed amendment. Following passage, it must be delivered to electors in every State and Territory eligible to vote for the House of Representatives within a time frame of at least two months and no more than six months[55]. A proposed amendment may be passed again by the first House three months later if it is approved by an absolute majority in one House but rejected or failed to pass in the other. Under such circumstances, the Governor-General may present a plan to voters directly, with or without any modifications approved by both House[56].

Voting occurs according to the procedure outlined by Parliament when a proposed law is presented to the electorate. However, in states where adult suffrage is available, only half of the electorate's votes are tallied until voting requirements are consistent across the Commonwealth. The amendment needs the support of a majority of electors nationwide as well as a majority of voters in a majority of states in order to be successful. The proposal is sent to the Governor-General for the Queen's approval after these requirements are satisfied[57]. However, a majority of voters in that State must expressly agree any change that would decrease that State's representation in Parliament, change its borders, or impact its laws[58].

Sections 1–8 of the Constitution Act, which created the Federation under the Crown of the United Kingdom, cannot be changed by the Commonwealth Parliament, according to Section 8 of the Statute of Westminster, 1931[59]. Certain elements of the Constitution can only be changed by following the stringent method of Section 128; however, other parts may be changed through regular legislative processes pertaining to specific subjects. This necessitates either both Houses' approval or one House's repeated adoption of the plan after three months,

[55] Supra note at 13, p.11245
[56] Ibid
[57] Ibid
[58] Ibid
[59] Ibid

followed by a majority vote at the state and national levels. The Governor-General is then asked to sign the bill[60].

The fact that only four of the 24 proposed amendments have been approved shows how complex this procedure is. The Australian Constitution is similar to that of Switzerland, where no modification may be made without a direct vote of the people, due to its strict referendum requirements[61] The High Court ruled that the Constitution can only be changed by the process it specifies; any other approach is void. Additionally, according to *Akar v. Attorney-General*[62], a legitimate constitutional amendment cannot implicitly abolish another clause or bring back an earlier, void amendment. As a result, Australia's amendment procedure is both strict and extremely democratic, involving both direct public engagement and parliamentary approval[63].

6.3 Switzerland

On January 1, 2000, the Swiss Federal Constitution went into force after being passed by the Federal Parliament and a popular referendum. Chapter I of the Constitution addresses constitutional reform, while Title VI of the Constitution deals with the reform of the Federal Constitution and Transitional Provisions[64].

Article 192 states that any revision must go through the regular legislative procedure unless the Constitution or implementing laws specify otherwise. A complete change of the Constitution is permitted by Article 193 and may be suggested by the Federal Assembly, either of the two Councils, or the People. A public vote is used to decide the issue if the initiative originates with the people or if both chambers disagree. Both Chambers must be elected when the People approve a complete reform, and crucially, the revisions cannot contravene mandatory norms of international law.

A partial revision may be proposed by the Federal Parliament or requested by the People under Article 194, but it must adhere to international law and the unity of subject matter concept. Furthermore, the unity of form principle must be upheld by popular initiatives[65]. According to

[60] Id., at p. 11246
[61] Livingstone, Federalism and Constitution Change, 1956, p.118, 127, 135
[62] Akar v. AG, (1969) 3 All ER 384 (PC).
[63] see supra note at 13, p. 11246
[64] Id., at p.11247
[65] Ibid

Article 195, any constitutional amendment, whether complete or partial, takes effect after being accepted by the Cantons and the People.

The Initiative and Referendum are introduced in Title VI, Chapter II. Article 138 states that within 18 months of official publication, 100,000 citizens may propose a popular initiative for a complete revision, which must then be put to the people in a vote. In a similar vein, Article 139 permits 100,000 voters to suggest a partial change, either as a general proposal or a specific draft, within the same time span. The Federal Parliament has the authority to declare the initiative partially or completely unconstitutional if it contradicts international law or unity. A draft is created and put to a nationwide vote once the Parliament has approved a broad plan. If it rejects the plan, the people will still have a chance to vote on its adoption; if they do, the Parliament will have to prepare the relevant legislation. In the event of a particular draft, Parliament may present a counterproposal, and the initiative is immediately submitted to a national vote[66].

Article 140 mandates a mandatory referendum on important issues, such as constitutional revisions, admission to international organizations, and authorization of emergency federal acts that continue longer than a year. Additionally, the People vote on whether to move on with a complete amendment if both Chambers disagree, as well as on whether to reject constitutional initiatives in all or in part. Eight Canons or 50,000 citizens may request an optional referendum under Article 141 to contest federal statutes, long-term international treaties, or agreements that harmonize laws across nations[67].

Finally, Article 142 states that initiatives that are put to a popular vote are accepted by most voters, whilst those that need to be approved by the People and the Canons require a double majority. Apart from six minor Cantons, each of which has half a vote, each Canton's vote counts as one.

These clauses make it abundantly evident that the Swiss Constitution allows citizens to directly influence constitutional change using popular initiative and referendums. Amendments can be either complete or partial, proposed by the Federal Legislature or the people, and they must

[66] As adopted by the popular vote on 27th Sept 2009, in force since 27th Sept 2009.
[67] see supra note at 13, p.11241

reflect both federal balance and democratic consent[68].

7. Conclusion

"Unlimited power is apt to corrupt the minds of those who possess it and this I know my lords that where law ends tyranny begins."

- William Pitt

Everything changes with time, including the Constitution, which is the ultimate legislation governing a country. Any nation's ability to adapt is essential to its existence, and the Indian Constitution has done so more than a hundred times since it went into effect in 1950. Despite being written, it can adapt to the needs of a diverse country because it is both hard and flexible. This flexibility reflects the framers' vision, who, after bringing together over 565 divided states, drafted a constitution that was both robust and adaptable enough to guarantee stability and advancement. India is an indestructible union of destructible states, which allows for both local adaptability and national unity, in contrast to the United States.

For India to advance alongside other countries, the framers incorporated an amendment process to address historical errors and consider current events worldwide. Because of this visionary basis, India has survived despite internal divisions based on caste, religion, language, and geography. This vision was jeopardized in the 1970s, though, when Parliament, led by Indira Gandhi, attempted to weaken the judiciary and concentrate power, even going so far as to remove senior judges to safeguard her own election. During these periods, the Basic Structure Doctrine's judicial involvement became crucial to maintaining democracy and averting authoritarian control.

Critics have questioned the doctrine's constitutional foundation and accused the courts of overreaching, but it was an essential bulwark against the abuse of parliamentary power. The notion guarantees that Parliament cannot alter the fundamental elements of the Constitution, which embody the principles outlined in the Preamble: equality, justice, liberty, and fraternity. Despite not being elected, the Constituent Assembly's vision has shaped India's democratic development. Like Germany's Basic Law, which established inviolable norms following the atrocities of dictatorship, India's Basic Structure Doctrine safeguards fundamental

[68] Id., at p.11249

constitutional ideals. Future generations will therefore inherit a stronger, more equitable, and democratic country if these principles are upheld in the Preamble, Fundamental Rights, and Directive Principles.

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