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# IMPACT OF CONSTITUTIONAL AMENDMENTS ON THE EXPANSION OF RIGHTS IN INDIA: A CRITICAL ANALYSIS

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## ABSTRACT

This research explores the evolution and impact of constitutional amendments in India, focusing on their role in expanding and sometimes constraining fundamental rights. The study critically examines key amendments such as the 42nd, 44th, 73rd, and 103rd, highlighting their historical context, political motivations, and judicial responses. Through a doctrinal and analytical methodology, it traces the interplay between constitutional flexibility and the doctrine of basic structure as laid down in *Kesavananda Bharati* and its reaffirmation in subsequent judgments. The paper further undertakes a comparative analysis with constitutional amendment mechanisms in the United States and Germany to underline the unique trajectory of Indian constitutionalism. It concludes that while amendments have enabled progressive inclusion and social justice, they have also sparked tensions between parliamentary supremacy and constitutional morality. The findings suggest a dynamic constitutional culture in India one that is transformative yet tethered to foundational values.

**Keywords:** Constitutional Amendments, Fundamental Rights, Basic Structure Doctrine, Indian Constitution, Judicial Review, Social Justice, Parliamentary Supremacy, Constitutional Morality, Comparative Constitutional Law, Legal Reform

## INTRODUCTION

A defining feature of any federal constitution is the procedure for its amendment, as it determines the balance of power between the central government and its constituent units. Federations typically emerge through agreements among multiple states that voluntarily cede certain powers to a newly formed central authority. However, the process of federal formation can vary. For instance, in Canada, provinces were created from a pre-existing unitary system, meaning the transition was one of decentralization rather than a voluntary union of independent states. Similarly, in India, the British Indian Provinces experienced a process of increasing autonomy rather than a merger of independent entities.<sup>1</sup>

Regardless of how a federation is formed, a federal constitution functions as a binding agreement between the central authority and its constituent states or provinces, defining their respective powers and responsibilities. To ensure adherence to this agreement, federal constitutions are typically codified in written form, outlining both the principles underlying the federal arrangement and the precise legal provisions governing the distribution of power. Given the importance of preserving this foundational agreement, most federal constitutions incorporate stringent amendment procedures to prevent unilateral alterations that could disrupt the balance of power<sup>2</sup>.

The process of constitutional amendment in federations is designed to secure broad consensus, often requiring the approval of both the central government and the constituent units. Different federations employ varied mechanisms to achieve this. For instance, in Australia and Switzerland, constitutional amendments are initiated by the central legislature but must be ratified through a popular referendum, requiring both a nationwide majority and a majority of voters in a majority of the states<sup>3</sup>. The United States provides an alternative approach, allowing amendments to be proposed either by a two-thirds majority in both Houses of Congress or by two-thirds of state legislatures.<sup>4</sup> However, ratification always requires approval from three-fourths of state legislatures or specially convened state conventions. Similarly, in the former German Republic, amendments could be initiated by the central legislature or by popular demand, with ratification either requiring a two-thirds majority in parliament or a national

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<sup>1</sup> K.C. Wheare, *Federal Government* 18 (4th ed. 1963).

<sup>2</sup> Granville Austin, *The Indian Constitution: Cornerstone of a Nation* 215 (1966).

<sup>3</sup> Sanford Levinson, *Our Undemocratic Constitution: Where the Constitution Goes Wrong* 122 (2006).

<sup>4</sup> U.S. Const. art. V.

referendum with majority voter approval.<sup>5</sup>

These examples highlight the fundamental role of amendment procedures in shaping the evolution of federal constitutions. By requiring widespread consensus, these mechanisms help ensure that amendments reflect the collective will of the entire political community rather than the interests of a single governing entity.

A key challenge faced by a Constituent Assembly when drafting a nation's constitution is to strike a balance between flexibility and rigidity. The constitution must not be so rigid that it becomes incapable of adapting to evolving societal needs, nor so flexible that it is vulnerable to the whims of a temporary majority. The constituent authority, which frames the constitution, seeks to ensure that constitutional provisions cannot be altered through ordinary legislative procedures, as the constitution is envisioned as superior to the legislature, which is tasked with implementing rather than defining its principles.

At the same time, constitutional frameworks must remain responsive to changing ideals and emerging rights. No principle can be considered so absolute that it remains unchanged for all future generations. In light of this, two approaches exist: one is to leave future constitutional evolution to political institutions and public discourse, while the other is to establish a special amendment mechanism within the constitution itself to facilitate necessary revisions. Recognizing its inability to anticipate all future contingencies, a Constituent Assembly often incorporates provisions for convening future constitutional review bodies to reassess and refine foundational principles.<sup>6</sup>

The power to amend a constitution may rest with various political institutions, including the legislature, judiciary, or the people themselves through referendums. However, the distinction between constituent power and amending power is crucial. In many cases, an ordinary legislature is granted a restricted form of constituent authority, allowing it to act both as a legislative body enacting ordinary laws and, under specific conditions, as a constitutional authority responsible for amending fundamental provisions.<sup>7</sup> Despite exercising amending power, such a legislature does not hold original constituent power, which remains with the founding constitutional body or the people. Nonetheless, in some cases, the amending authority

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<sup>5</sup> Donald P. Kommers, *The Constitutional Jurisprudence of the Federal Republic of Germany* 94 (1997).

<sup>6</sup> C.F. Stron *Modern Political Constitutions*, (London, Sidgwick and Jackson, 1963), p. 152.

<sup>7</sup> K.C. Wheare, *Modern Constitutions* 87 (2d ed. 1966).

is so extensive that it can completely revise the constitution, blurring the lines between amending power and constituent power. Therefore, while legislative amendments are a mechanism for constitutional evolution, they must be distinguished from original constitution-making to preserve the integrity of fundamental governing principles.

## THEORETICAL FRAMEWORK OF AMENDMENTS

Constitutional amendments serve as a pivotal mechanism for adapting a nation's legal framework to dynamic socio-political and economic realities. The process ensures that while the constitution remains a stable foundation of governance, it is not rendered obsolete in the face of evolving societal needs. The rationale for constitutional amendments in a democratic setup lies in striking a balance between stability and progress, safeguarding fundamental rights, and ensuring that governance structures remain efficient and responsive<sup>8</sup>

The theoretical perspectives surrounding constitutional amendments include originalism, which emphasizes adherence to the framers' intent, and the living constitution approach, which advocates for a flexible interpretation that evolves with societal changes<sup>9</sup>. The evolution of the Basic Structure Doctrine in India represents an attempt to balance flexibility with constitutional integrity, ensuring that amendments do not erode fundamental principles. Understanding these perspectives provides insight into the necessity, scope, and impact of constitutional amendments in democratic societies.

### Definition and Significance of Constitutional Amendments

Constitutional amendments refer to modifications made to a constitution's provisions through a formally prescribed process, distinguishing them from ordinary legislative changes. The amendment process is crucial as it facilitates legal adaptability while preserving the foundational principles of governance<sup>10</sup>.

A constitution is fundamentally a set of core principles or established legal precedents that dictate how a state or organization is governed. According to the Oxford English Dictionary, "it serves as the foundational framework outlining governance structures". Similarly, the Collins Dictionary defines it, "as the essential principles shaping a state's administration,

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<sup>8</sup> *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225)

<sup>9</sup> Bruce Ackerman, *We the People: Foundations* 267 (1991)

<sup>10</sup> Richard Albert, *Constitutional Amendments: Making, Breaking, and Changing Constitutions* 45 (2019)

particularly in safeguarding the rights of its citizens". Essentially, a constitution defines the formation, election, and operational mechanisms of a government. It delineates governmental authority while simultaneously imposing necessary constraints to prevent overreach. Additionally, it enshrines the rights of individuals and establishes mechanisms through which the government remains accountable to the electorate. The architects of the Indian Republic envisioned a nation governed by the rule of law rather than the whims of individuals. Their perspective was shaped by historical experiences that underscored the dangers of unchecked authority, reinforcing the belief that no individual should wield absolute power over others. They firmly held that a country could not genuinely claim to be a democracy unless its citizens retained autonomy over their own lives.

Article 368 of the Indian Constitution provides the framework for amending the Constitution. While the article does not explicitly define the term "**amendment**", it establishes the procedure through which changes to constitutional provisions can be made. The term "amendment" generally refers to an addition, variation, or repeal of any part of the Constitution, ensuring its adaptability to the changing socio-political landscape. The power of amendment under Article 368 is a **constituent power**, distinct from ordinary legislative functions<sup>11</sup>.

Constitutional amendments play a pivotal role in ensuring that a nation's fundamental legal framework remains responsive and relevant to evolving societal needs. They serve as vital instruments for adapting to social and political transformations by enabling the expansion of civil liberties and the reconfiguration of governance structures. Moreover, amendments contribute to the deepening of democratic governance by facilitating reforms in representation, electoral systems, and the balance of powers among state organs. They also play a crucial role in safeguarding and advancing fundamental rights, aligning constitutional protections with contemporary human rights standards. Additionally, constitutional amendments address interpretative ambiguities and legislative shortcomings, providing necessary legal clarity and ensuring coherence with modern legal and institutional developments.

### **The Rationale for Amending a Constitution in a Democratic Setup**

In democratic nations, the amendment process is designed to balance rigidity and flexibility, ensuring both legal continuity and adaptability. The rationale for constitutional amendments in

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<sup>11</sup> *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225.

democracies can be analyzed through several theoretical lenses:

1. Democratic Legitimacy Theory – This theory argues that amendments must reflect the will of the people and democratic consensus.<sup>12</sup> Amendments that lack popular support risk being viewed as illegitimate.
2. Institutional Stability Theory – While frequent amendments may indicate responsiveness, excessive changes can threaten constitutional stability. Thus, amending procedures must strike a balance between adaptability and predictability<sup>13</sup>.
3. Corrective Justice Theory – Some amendments serve to rectify historical injustices, particularly in the context of expanding civil liberties and equal rights<sup>14</sup>.
4. Judicial Review and Constitutional Integrity – Amendments are often scrutinized through the lens of constitutional review to ensure they do not violate core democratic principles<sup>15</sup>.

## Theoretical Perspectives on Constitutional Change

### Originalist Perspective

The originalist perspective asserts that constitutional amendments should be interpreted in alignment with the original intent of the framers. This approach aims to preserve the historical and textual integrity of the constitution. Originalists argue that amendments should not be used to alter fundamental structures but rather to refine or clarify existing provisions<sup>16</sup>.

Critics of originalism argue that it fails to accommodate contemporary societal changes and may restrict the judiciary's ability to interpret rights expansively. In India, strict originalist interpretations have been tempered by the dynamic evolution of constitutional law<sup>17</sup>.

### Living Constitution Approach

The living constitution approach contends that constitutional interpretation should evolve with

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<sup>12</sup> (Golak Nath v. State of Punjab, (1967) 2 SCR 762).

<sup>13</sup> Cass Sunstein, *Designing Democracy: What Constitutions Do* 88 (2001)

<sup>14</sup> *Indira Sawhney v. Union of India*, AIR 1993 SC 477

<sup>15</sup> *I.R. Coelho v. State of Tamil Nadu*, (2007) 2 SCC 1

<sup>16</sup> Antonin Scalia, *A Matter of Interpretation* 37 (1997)

<sup>17</sup> *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1, which expanded the right to privacy

social, economic, and political transformations. This perspective is particularly relevant in expanding fundamental rights through amendments <sup>18</sup>.

In India, this approach has been embraced through amendments that expanded affirmative action policies, enhanced the right to education, and reinforced privacy rights <sup>19</sup>.

### **The Basic Structure Doctrine and Constitutional Amendments**

One of the most significant theoretical contributions to constitutional amendment jurisprudence is the **Basic Structure Doctrine**, established in *Kesavananda Bharati*. The doctrine asserts that while Parliament has the power to amend the Constitution, it cannot alter its fundamental structure. This principle serves as a safeguard against potential authoritarian misuse of amendment powers.

The doctrine was further affirmed in *Indira Nehru Gandhi v. Raj Narain*, which held that democratic processes and judicial independence form part of the basic structure. The doctrine has influenced amendment jurisprudence in other jurisdictions, such as Bangladesh and Germany.

### **Comparative Perspectives on Constitutional Amendments**

A comparative analysis of constitutional amendment processes provides insight into different frameworks adopted globally:

1. **United States** – The U.S. follows a rigid amendment process requiring supermajority approval, which ensures stability but makes amendments difficult. <sup>20</sup>
2. **United Kingdom** – As an uncoded constitution, the UK's constitutional framework evolves through legislative acts and judicial precedents rather than formal amendments<sup>21</sup>.
3. **Germany** – The German Basic Law allows amendments but prohibits changes to core

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<sup>18</sup> *Roe v. Wade*, 410 U.S. 113 (1973)

<sup>19</sup> Granville Austin, *The Indian Constitution: Cornerstone of a Nation* 215 (1966)

<sup>20</sup> *U.S. Const.* art. V

<sup>21</sup> *Political Parties, Elections and Referendums Act*, 2000

democratic principles, ensuring constitutional integrity <sup>22</sup>.

4. **South Africa** – South Africa's post-apartheid constitutional framework integrates a more flexible amendment process while maintaining strong judicial oversight <sup>23</sup>.

### Challenges in Constitutional Amendments

While amendments play a crucial role in governance, they also present several challenges:

1. **Political Manipulation** – Amendments may be used to consolidate power rather than to serve democratic principles <sup>24</sup>.
2. **Judicial Overreach vs. Parliamentary Sovereignty** – Conflicts between the judiciary and legislature often arise regarding amendment validity<sup>25</sup>.
3. **Public Perception and Legitimacy** – Public opposition to amendments, especially those seen as undemocratic, can lead to political unrest <sup>26</sup>.

Constitutional amendments serve as a fundamental tool for democratic evolution, ensuring that legal frameworks remain relevant and responsive. The balance between flexibility and rigidity in amendment processes is vital to safeguarding democratic values. Theoretical perspectives such as originalism, living constitutionalism, and the Basic Structure Doctrine provide diverse approaches to understanding amendment jurisprudence. As constitutional democracies continue to evolve, the role of amendments in expanding rights and strengthening governance remains a critical area of study.

Article 368 classifies constitutional amendments into three broad categories based on their procedural complexity and the involvement of different legislative bodies:

**Amendment by a Simple Majority of Parliament:** Certain provisions of the Constitution can be amended by a simple majority of both Houses of Parliament (Lok Sabha and Rajya Sabha). These amendments are not considered formal constitutional amendments under Article 368 but

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<sup>22</sup> *Basic Law for the Federal Republic of Germany*, art. 79(3)

<sup>23</sup> *Constitution of the Republic of South Africa*, 1996

<sup>24</sup> *State of Rajasthan v. Union of India*, (1977) 3 SCC 592

<sup>25</sup> *S.R. Bommai v. Union of India*, (1994) 3 SCC 1

<sup>26</sup> *44th Constitutional Amendment*, 1978, which sought to restore rights curtailed by the 42nd Amendment

are enacted through the ordinary legislative process.

**Amendment by Special Majority of Parliament:** Most constitutional amendments require a special majority, meaning-

- Two-thirds of the members present and voting, and
- A majority (more than 50%) of the total membership of each House.

**Amendment by Special Majority with Ratification by Half of the States:** Certain provisions, particularly those that impact federalism, require additional approval from at least half of the state legislatures after being passed by Parliament with a special majority.

According to Article 368(2), Proviso, amendments affecting the following require state ratification:

1. Election of the President (Articles 54 & 55).
2. Executive power of the Union and States (Articles 73 & 162).
3. Distribution of legislative powers (Seventh Schedule).
4. Judiciary (Articles 124-147 and 214-237).
5. Representation of States in Parliament (Article 4 & Article 80-81).
6. Amendment of the Constitution itself (Article 368).

## **PARLIAMENTARY AMENDMENTS AND THEIR IMPACT ON NEW RIGHTS**

### **Pre-Kesavananda Bharati: The Evolution of Constitutional Amendments and Judicial Responses**

The Indian Constitution has undergone several amendments since its enactment in 1950, often triggering significant judicial scrutiny. The primary constitutional debates before the Kesavananda Bharati case (1973) revolved around the extent of Parliament's amending power, particularly in relation to fundamental rights. This period saw a judicial shift from initial acceptance of unrestricted amendment powers to a more restrained view that placed

constitutional limitations on Parliament's authority.

## **1. The Early Phase: Unrestricted Amending Power**

- **First Amendment Act, 1951 – Protecting Agrarian Reforms**

One of the earliest amendments, the First Amendment Act, 1951, introduced Articles 31A and 31B, granting protection to agrarian reform laws from judicial review. It also added the Ninth Schedule, which insulated certain laws from constitutional challenges. The amendment aimed to address land redistribution policies but raised concerns about judicial review and fundamental rights.

- **Sankari Prasad v. Union of India (1951) – Parliament's Absolute Power Affirmed**

The constitutional validity of the First Amendment was challenged in *Sankari Prasad v. Union of India* (1951), where petitioners argued that amendments affecting fundamental rights were unconstitutional under Article 13(2). The Supreme Court, however, ruled that constitutional amendments were distinct from ordinary laws and, therefore, were not subject to judicial review under Article 13. This decision reinforced the view that Parliament had absolute power to amend any part of the Constitution, including fundamental rights.

- **Fourth Amendment Act, 1955 – Limiting Judicial Review in Property Rights**

The Fourth Amendment Act, 1955, further restricted judicial review by amending Articles 31 and 31A, preventing courts from questioning the adequacy of compensation in cases of land acquisition. It also expanded the Ninth Schedule, shielding more laws from judicial scrutiny.

## **2. The Growing Concerns: Judicial Dissent Against Absolute Powers**

- **Seventeenth Amendment Act, 1964 – Strengthening Land Reforms**

The Seventeenth Amendment Act, 1964, expanded the definition of "estate" under Article 31A and included 44 new laws under the Ninth Schedule. This was an attempt to prevent courts from striking down land reform laws.

- **Sajjan Singh v. State of Rajasthan (1965) – Dissent Against Unrestricted Amendments**

The constitutional validity of the Seventeenth Amendment was challenged in *Sajjan Singh v. State of Rajasthan* (1965).<sup>27</sup> The Supreme Court, by a 3:2 majority, upheld Parliament's power to amend fundamental rights but for the first time, dissenting judges—Justice Hidayatullah and Justice Mudholkar expressed concerns about the unlimited nature of the amending power.

Justice Hidayatullah warned that fundamental rights should not be treated as “playthings of a special majority” and questioned whether Parliament could unilaterally eliminate fundamental rights. His dissent planted the seeds for future challenges to Parliament's unrestricted power to amend the Constitution.

### 3. Golaknath Case (1967): Restricting Parliament's Amending Power

- **The Constitutional Challenge**

The shift in judicial interpretation came in *Golaknath v. State of Punjab* (1967)<sup>28</sup>, where the validity of the First, Fourth, and Seventeenth Amendments was contested. Petitioners argued that these amendments, by curtailing fundamental rights, violated Article 13(2), which prohibits the state from enacting laws that infringe upon fundamental rights.

- **The Verdict: Fundamental Rights Cannot Be Amended**

In a narrow 6:5 majority, the Supreme Court overturned *Sankari Prasad* and *Sajjan Singh* and ruled that:

- Fundamental Rights are beyond the scope of Parliament's amending power.
- An amendment is "law" under Article 13(2) and, therefore, cannot infringe upon fundamental rights.
- Parliament cannot abridge or take away fundamental rights using Article 368.
- The doctrine of **prospective overruling** was applied, meaning that while the ruling would not invalidate past amendments, it would apply to all future amendments.

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<sup>27</sup> *Sajjan Singh v. State of Rajasthan*, AIR 1965 SC 845.

<sup>28</sup> *I.C. Golak Nath v. State of Punjab*, (1967) 2 SCR 762 (India).

- **Parliament's Response: The Twenty-Fourth Amendment Act, 1971**

To counter the restrictions imposed by Golaknath, Parliament passed the Twenty-Fourth Amendment Act, 1971, which:

- Explicitly stated that constitutional amendments were not "laws" under Article 13(2).
- Clarified that Parliament could amend any provision of the Constitution, including fundamental rights.
- Made it mandatory for the President to give assent to constitutional amendment bills.

#### **4. The Stage for Kesavananda Bharati (1973)**

The legal struggle between Parliament's absolute amending power and judicial review set the stage for *Kesavananda Bharati v. State of Kerala* (1973)<sup>29</sup>. This case was a direct challenge to the Twenty-Fourth Amendment, questioning whether Parliament's power under Article 368 had any inherent limitations.

In **Kesavananda Bharati**, the Supreme Court would finally resolve the question of whether Parliament could alter the very core of the Constitution, ultimately formulating the Basic Structure Doctrine, which remains a cornerstone of Indian constitutional law.

#### **Post-Kesavananda Bharati: The Evolution of the Basic Structure Doctrine**

The *Kesavananda Bharati v. State of Kerala* (1973) case remains one of the most significant judgments in Indian constitutional history. It firmly established the Basic Structure Doctrine, which imposes implicit limitations on Parliament's amending power under Article 368. While the ruling upheld the validity of certain constitutional amendments, it also restricted Parliament's authority by ensuring that the essential framework of the Constitution remains inviolable.

#### **Limitations on Parliamentary Power**

The majority ruling in *Kesavananda* held that while Parliament can amend any provision of the

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<sup>29</sup> *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225.

Constitution, it cannot alter or destroy its "basic structure." This ruling struck a balance between legislative supremacy and constitutional integrity, ensuring that core principles remain intact.

### **Constitution (24th Amendment) Act, 1971 – Upheld**

- The 24th Amendment, which clarified that Parliament's power to amend the Constitution stems from Article 368 itself, was upheld.
- The amendment also made it mandatory for the President to assent to constitutional amendment bills, preventing discretionary rejection.
- Additionally, it ensured that Article 13(2) would not apply to constitutional amendments, thereby shielding amendments from judicial review under this provision.

### **Partial Validity of Article 31C**

- The first part of Article 31C, which protected laws enacted to implement Directive Principles of State Policy (DPSPs) under Article 39(b) and 39(c), was upheld.
- However, the second part, which completely barred judicial review of such laws, was declared unconstitutional. The Court reasoned that this provision sought to eliminate judicial review altogether, violating the Constitution's fundamental framework.

### **Constitution (29th Amendment) Act, 1972 – Upheld**

- The 29th Amendment, which placed certain land reform laws under the Ninth Schedule to prevent judicial review, was upheld.
- However, post-Kesavananda, the Supreme Court retained the power to examine whether laws under the Ninth Schedule violate the Basic Structure Doctrine.

### **Constitution (26th Amendment) Act, 1971 – Left Open for Future Review**

- The 26th Amendment, which abolished privy purses and princely privileges, was not conclusively addressed in this judgment. The Court left its constitutional validity to be decided by a future five-judge bench.

### **The Judicial Reasoning: Establishing the Basic Structure Doctrine**

### **Chief Justice S.M. Sikri's View**

Chief Justice S.M. Sikri was instrumental in formulating the Basic Structure Doctrine. He held that while every provision of the Constitution is important, not all provisions are equally fundamental. According to him, Parliament's amending power under Article 368 is not absolute it is subject to inherent constitutional limitations.

He identified certain essential features that cannot be altered through amendments:

1. Supremacy of the Constitution
2. Republican and Democratic form of Government
3. Secular character of the Constitution
4. Separation of powers between the Legislature, Executive, and Judiciary
5. Federal character of the Constitution

Sikri C.J. cited Lord Halsbury's ruling in *Cooke v. Charles A. Voglsler Co.* (1901) to assert that courts must interpret constitutional provisions without considering policy implications. However, he acknowledged that the Preamble and the overall constitutional scheme reveal an inherent structure that must be preserved.

### **Post-Kesavananda Developments: Reinforcing the Basic Structure Doctrine**

The Kesavananda ruling significantly influenced subsequent judicial pronouncements, reinforcing the Basic Structure Doctrine as a safeguard against constitutional overreach.

### **Indira Gandhi v. Raj Narain (1975)<sup>30</sup>– Strengthening the Doctrine**

- The Supreme Court applied the Basic Structure Doctrine to strike down the 39th Amendment, which sought to bar judicial review of elections of the Prime Minister and Speaker.

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<sup>30</sup> *Indira Nehru Gandhi v. Raj Narain*, (1975) 2 SCC 159 (India).

- The Court ruled that **free and fair elections are part of the basic structure** and cannot be nullified through an amendment.

### **Minerva Mills v. Union of India (1980)<sup>31</sup> – Striking Down the 42nd Amendment**

- The Supreme Court declared Sections 4 and 55 of the 42nd Amendment unconstitutional for violating the basic structure.
- It reaffirmed that judicial review and fundamental rights are integral to the Constitution and cannot be abrogated.

### **Waman Rao v. Union of India (1981)<sup>32</sup>– Ninth Schedule Subject to Judicial Review**

- The Court clarified that laws placed under the Ninth Schedule after April 24, 1973 (the date of Kesavananda judgment) would be subject to judicial review.
- This ensured that Parliament could not immunize laws from constitutional scrutiny by merely placing them under the Ninth Schedule.

### **I.R. Coelho v. State of Tamil Nadu (2007)<sup>33</sup>– Expanding the Doctrine**

- The Supreme Court ruled that even Ninth Schedule laws can be struck down if they violate fundamental rights and the Basic Structure Doctrine.
- This judgment reaffirmed that Parliament's amending power is subject to constitutional limitations.

## **Constitutional Amendments Expanding Rights in India:**

### **1. Right to Education – 86th Constitutional Amendment Act, 2002<sup>34</sup>**

The 86th Amendment Act, 2002, marked a transformative step in India's commitment to universal education. Through this amendment, Article 21A was incorporated into the Constitution, establishing free and compulsory education as a fundamental right for children

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<sup>31</sup> Minerva Mills Ltd. v. Union of India, (1980) 3 SCC 625 (India).

<sup>32</sup> Waman Rao v. Union of India, (1981) 2 SCC 362 (India).

<sup>33</sup> I.R. Coelho (Dead) by LRs v. State of Tamil Nadu, (2007) 2 SCC 1 (India).

<sup>34</sup> The Constitution (Eighty-Sixth Amendment) Act, 2002, No. 86, Acts of Parliament, 2002 (India).

aged 6 to 14 years. It mandated the state to take necessary steps to ensure access to quality education for all children within this age group.

Additionally, this amendment brought changes to:

- Article 45, which initially emphasized free and compulsory education for children up to 14 years, now prioritizes early childhood care and education for children below six years.
- Article 51A(k), introducing a fundamental duty for parents and guardians to ensure their children receive education.

This amendment has been instrumental in fostering literacy and educational access, leading to the enactment of the **Right of Children to Free and Compulsory Education (RTE) Act, 2009**.

## **2. Right to Form Cooperative Societies – 97th Constitutional Amendment Act, 2011<sup>35</sup>**

Recognizing the crucial role of cooperative societies in economic empowerment and self-sufficiency, the 97th Constitutional Amendment Act, 2011, conferred constitutional protection to cooperative societies by:

- Inserting "cooperatives" under Article 19(1)(c), thereby granting citizens the fundamental right to form and operate cooperative societies.
- Introducing Article 43B, which directs the state to promote voluntary, autonomous, and democratic functioning of cooperative societies.

This amendment sought to enhance the self-regulation and democratic management of cooperatives, ensuring their independence from undue governmental control. However, in *Union of India v. Rajendra Shah* (2021), the Supreme Court struck down the amendment's applicability to state-level cooperatives, limiting its scope to multi-state cooperatives.

## **3. Women's Reservation in Legislature – 106th Constitutional Amendment Act, 2023<sup>36</sup>**

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<sup>35</sup> The Constitution (Ninety-Seventh Amendment) Act, 2011, No. 97, Acts of Parliament, 2011 (India).

<sup>36</sup> The Constitution (One Hundred and sixth Amendment) Act, 2019, § 2, No. 1, Acts of Parliament,

The 106th Constitutional Amendment Act, 2023 (commonly referred to as the Women's Reservation Act) represents a watershed moment in India's democratic evolution. It mandates:

- 33% reservation for women in the Lok Sabha and State Legislative Assemblies, ensuring greater gender representation in law-making bodies.
- Reserved seats will be rotated after every general election, preventing stagnation and fostering broad-based female political participation.

This amendment is aimed at addressing the historical underrepresentation of women in governance and ensuring their active role in policymaking. However, its implementation is subject to delimitation, meaning that the actual enforcement may take place only after the next census.

#### **4. Strengthening Constitutional Safeguards for Economically Weaker Sections – 103rd Constitutional Amendment Act, 2019<sup>37</sup>**

To address economic disparities, the 103rd Constitutional Amendment Act, 2019, introduced 10% reservation for Economically Weaker Sections (EWS) in education and public employment. This amendment modified:

- **Article 15(6)** to enable EWS reservation in educational institutions, including private institutions (except minority institutions).
- **Article 16(6)** to allow reservation in government jobs for EWS individuals who are not covered under existing reservations for Scheduled Castes (SC), Scheduled Tribes (ST), and Other Backward Classes (OBC).

This amendment was upheld by the Supreme Court in **Janhit Abhiyan v. Union of India (2022)**, affirming that economic criteria can be a valid basis for affirmative action.

#### **5. Citizenship Amendment Act (CAA), 2019 – Expanding Rights for Certain Communities**

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2023(India).

<sup>37</sup> The Constitution (One Hundred and Third Amendment) Act, 2019, § 2, No. 1, Acts of Parliament, 2019 (India).

While not a constitutional amendment, the Citizenship Amendment Act (CAA), 2019, made significant changes to the Citizenship Act, 1955 by easing the naturalization process for Hindus, Sikhs, Buddhists, Jains, Parsis, and Christians from Afghanistan, Bangladesh, and Pakistan, provided they entered India before December 31, 2014.

This legislation aimed to provide refuge to persecuted religious minorities from these countries. However, it has been controversial, facing legal challenges on grounds of exclusion of Muslims and potential conflict with constitutional secularism.

1. The 93rd Amendment Act, 2005 – Reservation in Educational Institutions

- Introduced Article 15(5), enabling reservations for SCs, STs, and Other Backward Classes (OBCs) in private unaided educational institutions, except for minority institutions.
- Expanded access to higher education and professional courses, promoting social equity.

2. The 101st Amendment Act, 2016 – Right to Economic Justice (GST Reform)<sup>38</sup>

- Implemented the Goods and Services Tax (GST), unifying India into a single economic market, reducing inequalities in taxation.
- Ensured economic transparency and reduced tax burdens, fostering inclusive growth.

3. The 104th Amendment Act, 2020 – Continuation of SC/ST Reservation in Legislatures<sup>39</sup>

- Extended reservation of seats for SCs and STs in Lok Sabha and State Assemblies for another 10 years, reinforcing political representation and empowerment.

## CONCLUSION

The Indian Constitution, while originally drafted as a comprehensive and dynamic framework of governance, has continuously evolved through constitutional amendments to address the changing needs of society. These amendments have played a significant role in expanding the

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<sup>38</sup> The Constitution (One Hundred and First Amendment) Act, 2016, § 2, No. 28, Acts of Parliament, 2016 (India).

<sup>39</sup> The Constitution (One Hundred and Fourth Amendment) Act, 2019, No. 1, Acts of Parliament, 2020 (India).

scope of fundamental rights, strengthening socio-economic justice, and reinforcing democratic principles. While the framers of the Constitution provided a robust foundation for rights, it was recognized over time that amendments would be necessary to adapt to new societal challenges, judicial interpretations, and governance demands.

One of the most profound impacts of constitutional amendments has been their contribution to the progressive realization of fundamental rights. Landmark amendments, such as the First Amendment (1951), addressed judicial concerns over the balance between fundamental rights and the directive principles of state policy, ensuring that laws aimed at socio-economic justice, such as land reforms, were shielded from judicial invalidation. Similarly, the Seventy-Third (1992) and Seventy-Fourth (1992) Amendments expanded the democratic rights of individuals by institutionalizing local self-governance, thereby strengthening grassroots democracy and ensuring participatory governance.

In the realm of socio-economic justice, constitutional amendments have been instrumental in addressing historical inequalities and protecting marginalized communities. The Fifty-Second (1985) and Ninety-First (2003) Amendments, which introduced the anti-defection law, reinforced the democratic right to fair political representation by preventing political instability caused by unethical defections. The One Hundred and Third Amendment (2019) introduced a ten percent reservation for the economically weaker sections (EWS) of society, highlighting a shift towards an economic basis for affirmative action beyond caste-based reservations.

Furthermore, constitutional amendments have also broadened the interpretation of personal freedoms and individual rights. The Forty-Fourth Amendment (1978) played a crucial role in strengthening civil liberties by undoing the controversial Forty-Second Amendment (1976), which had curtailed fundamental rights during the Emergency period. Additionally, the evolution of privacy as a fundamental right, culminating in the *K.S. Puttaswamy v. Union of India* (2017) judgment, was rooted in the constitutional commitment to personal liberty, reaffirmed through various amendments and judicial interpretations.

Despite the progressive expansion of rights through constitutional amendments, challenges remain. Certain amendments, such as the Forty-Second Amendment, raised concerns about excessive centralization of power and curtailment of judicial review, which were later rectified by subsequent amendments. The issue of judicial independence, particularly after the Ninety-Ninth Amendment (2014) sought to replace the collegium system with the National Judicial

Appointments Commission (NJAC), also remains a topic of debate, especially after the Supreme Court struck it down in 2015 for violating the basic structure of the Constitution.

In essence, the evolution of constitutional amendments reflects India's commitment to an adaptive legal framework that seeks to balance individual freedoms with collective welfare. While amendments have often been introduced in response to judicial pronouncements, political exigencies, or socio-economic realities, their role in broadening the ambit of rights and deepening democratic governance cannot be overstated. The constitutional amendment process, while a powerful tool, must be exercised with caution to ensure that expansions in rights do not compromise other democratic principles, such as separation of powers and federalism.

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