

Chapter 4 - Constitutional Amendment & Basic Structure Doctrine

Introduction:

The term 'Amendment' of the Constitution refers to the addition, removal, or modification of provisions through a prescribed procedure. Any Constitution must balance **stability** with **adaptability**. The framers of the Indian Constitution recognized this need and, under **Article 368**, empowered Parliament to amend the Constitution to meet changing circumstances. However, in the landmark **Kesavananda Bharati case (1973)**, the Supreme Court ruled that while Parliament can amend any part of the Constitution, it cannot alter its **basic structure**. This doctrine safeguards the core principles and values of the Constitution while allowing flexibility to adapt over time.

Why Amend the Constitution?

No Constitution, however well-drafted, can remain perfectly suited to a country's needs forever. As societies evolve, so must their guiding legal frameworks. That's why modern democracies—including India—embed the power to amend their Constitutions, allowing them to adapt to new social, economic, and political realities in a peaceful and orderly way.

Take the First Amendment (1951) as an example. Just a year after the Constitution came into force, the government found that courts were striking down progressive laws on land reform, claiming they violated the right to property. To protect such reforms and ensure social justice, the Constitution was amended—adding the Ninth Schedule and limiting the scope of judicial review in certain cases. This change helped India address urgent post-Independence inequalities without discarding the entire Constitution.

In India, this power is especially vital. A country of over a billion people, marked by deep diversity and constant change, cannot be governed by a static document. Whether it's expanding rights, redefining federal relations, or adjusting institutional powers, constitutional amendments help keep the document alive and responsive.

Amendment Procedure of the Indian Constitution

Article 368: *Power of Parliament to amend the Constitution and procedure therefor

(1) Notwithstanding anything in this Constitution, Parliament may in exercise of its constituent power amend by way of addition, variation or repeal any provision of this Constitution in accordance with the procedure laid down in this article.

(2) An amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting,

***[it shall be presented to the President who shall give his assent to the Bill and thereupon] the Constitution shall stand amended in accordance with the terms of the Bill:

Provided that if such amendment seeks to make any change in—

- (a) article 54, article 55, article 73, **[article 162, article 241 or article 279A]; or
- (b) Chapter IV of Part V, Chapter V of Part VI, or Chapter I of Part XI; or
- (c) any of the Lists in the Seventh Schedule; or
- (d) the representation of States in Parliament; or

This study material is a part of Mastering Indian Polity - 1st Edition | © Flaviant Network Pvt Ltd | No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise.

Chapter 4 - Constitutional Amendment & Basic Structure Doctrine

(e) the provisions of this article, the amendment shall also require to be ratified by the Legislatures of not less than one - half of the States by resolutions to that effect passed by those Legislatures before the Bill making provision for such amendment is presented to the President for assent.

*** (3) Nothing in article 13 shall apply to any amendment made under this article.

**** [(4) No amendment of this Constitution (including the provisions of Part III) made or purporting to have been made under this article whether before or after the commencement of section 55 of the Constitution (Forty-second Amendment) Act, 1976 shall be called in question in any court on any ground.

(5) For the removal of doubts, it is hereby declared that there shall be no limitation whatever on the constituent power of Parliament to amend by way of addition, variation or repeal the provisions of this Constitution under this article.]

* Marginal heading substituted by 24th Amendment, 1971 for "Procedure for amendment of the Constitution"

** Substituted by 101st Amendment, 2016 to include GST Council

*** Inserted by 24th Amendment, 1971

**** Clauses (4) and (5) were inserted by the 42nd Amendment, 1976. This section has been declared invalid by the Supreme Court in *Minerva Mills Ltd. and Others Vs. Union of India and Others* (1980)

The procedure for amending the Constitution, as outlined in Article 368, is designed to maintain a balance between flexibility and rigidity. Thus, amending the Indian Constitution is not as easy as in Britain nor as difficult as in the USA. The procedure for amending the Constitution:

Initiation & Introduction of Bill: An amendment to the Constitution can only start with a Bill introduced in either House of Parliament (Lok Sabha or Rajya Sabha), not in state legislatures (PYQ 1999). The bill can be introduced by any member of Parliament, either a minister or a private member. It does not require prior permission from the President. (PYQ 2022)

Passage of the Bill: The Bill must be passed by each House of Parliament separately, by a special majority. This means it needs a majority of the total members of that House and also a two-thirds majority of the members present and voting. If there is a disagreement between them, there is no provision for a joint sitting to resolve it.

State Ratification: If the amendment affects federal aspects of the Constitution (as mentioned in Article 368), it must be ratified by the legislatures of at least half of the states by a simple majority.

Presidential Assent: Once passed by Parliament and ratified by states (if necessary), the bill is sent to the President for his/her assent. After the 24th Amendment, 1971, the President is obligated to give assent to the bill; that is, they cannot withhold it or send it back for reconsideration.

Enactment of law: After the President's assent, the bill becomes an act, specifically a Constitutional Amendment Act. The Constitution is then amended according to the changes specified in the Act.

Types of Amendments:

Article 368 outlines two methods for amending the Constitution. One requiring a special majority of Parliament and the other involving ratification by at least half of the states with a simple majority, i.e.,

This study material is a part of Mastering Indian Polity - 1st Edition | © Flaviant Network Pvt Ltd | No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise.

Chapter 4 - Constitutional Amendment & Basic Structure Doctrine

1. **Amendment by Special Majority of Parliament** Some parts of the Constitution can be amended by a special majority of Parliament. This means a majority of the total members in each house and at least two-thirds of the members present and voting. "Total membership" refers to the full number of members in the House, regardless of vacancies or absenteeism.
Technically, this special majority is required only at the final voting stage of the bill. However, to be safe, the rules of the houses stipulate this majority for all significant stages of the bill. The Constitution allows amendments through this method to (i) Fundamental Rights, (ii) Directive Principles of State Policy, and (iii) all other provisions not covered by other types of majorities.
2. **Amendment by Special Majority of Parliament and Ratification by States:** Certain amendments after being passed by the Parliament with a special majority also require ratification by at least half of the state legislatures by a simple majority. This means that after the Parliament passes the Amendment Bill with a special majority, it must be ratified by the legislatures of at least half of the states in India. For instance, the 73rd and 74th Amendment Acts (1992 and 1993, respectively) were passed by the Parliament with a special majority and were later ratified by state legislatures. The following provisions can be amended in this way:
 - a. Election of the President and its manner. (PYQ 1995)
 - b. Extent of the executive power of the Union and the states.
 - c. Supreme Court and High Courts.
 - d. Distribution of legislative powers between the Union and the states.
 - e. Goods and Services Tax Council.
 - f. Any of the lists in the Seventh Schedule. (PYQ 1995)
 - g. Representation of states in the Parliament. (PYQ 1995)
 - h. Power of Parliament to amend the Constitution and its procedure (Article 368 itself).
3. **Amendment by Simple Majority of Parliament:** Certain provisions of the Constitution can be amended by a simple majority (i.e. 50% percent of members present and voting) of the Parliament, akin to the regular legislative process (discussed in the Legislature chapter). These amendments are distinct because they do not fall under the purview of Article 368 as 'Constitutional Amendments.' A few examples of the provisions that can be amended by simple majority are:
 - a. Passing the ordinary or money bills
 - b. Passing the Confidence and No-confidence Motions
 - c. Declaring a financial emergency
 - d. Declaring the rule of the President or the state emergency
 - e. Electing Deputy Speaker and Speaker in the Lok Sabha
 - f. Admission or establishment of new states, Formation of new states and alteration of areas, boundaries, or names of existing states,
 - g. Abolition or creation of Legislative Councils in states, etc.

Still Confused About Majorities?

Don't worry. Even the former Law Minister H.R. Gokhale, once found himself puzzled over the exact nature of the majority required to pass a constitutional amendment. While introducing the 26th Constitutional Amendment to abolish the privy purses and privileges of erstwhile princes, he wasn't sure whether the amendment required just a special majority in Parliament or if it also needed ratification by the states. If he found it confusing, it's okay for us to

This study material is a part of Mastering Indian Polity - 1st Edition | © Flaviant Network Pvt Ltd | No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise.

Chapter 4 - Constitutional Amendment & Basic Structure Doctrine

pause and check our own understanding. So let's revisit the types of majorities—this time, through simple Lok Sabha-based examples.

1. **Simple Majority:** A Simple Majority means more than 50% of the members present and voting, irrespective of the total strength of the House. For instance, imagine that on a particular day, 300 Members of Parliament (MPs) are present in the Lok Sabha. If 160 MPs vote in favour of a bill and 140 vote against, the bill passes—because the majority of those present supported it. This is a Simple Majority in action: no need to worry about total strength or a two-thirds figure.
2. **Special Majority:** This type of majority has two conditions: (i) at least 50% of the total strength of the House must participate in the vote, and (ii) two-thirds of the members present and voting must vote in favour. Let's consider this with numbers. The total strength of Lok Sabha is 545. So, at least 273 MPs must be present for the vote to be valid. If exactly 300 MPs are present, then two-thirds of 300 is 200. But even if 200 MPs vote in favour, the amendment will still fail if it doesn't also meet the requirement of having at least 273 affirmative votes. In this example, since 200 is less than 273, the amendment does not pass. That's the trick: a special majority is not just two-thirds of those present—it must also cross the 50% of total strength threshold. To understand it better, imagine a successful case. Suppose exactly 273 MPs are present, and all 273 vote in favour of the amendment. Now both conditions are fulfilled—half of the total strength is present, and all votes are in favour, which is certainly two-thirds of those present. This is a valid Special Majority and the amendment would pass.
3. **Special Majority ratified by at least half of the states:** For example, if India has 28 states, at least 14 must approve the amendment through their state legislatures after it has cleared Parliament. Only then does the amendment become law.

Relevance of the Amendment Power:

India's vast and dynamic nature demands a constitution that can adapt to changing circumstances and emerging challenges. This adaptability fosters a well-functioning democracy by several means.

Firstly, amendments enable responsive governance. They allow the Constitution to guide the government as per present needs. As society evolves, new rights emerge that need protection. The amendment process ensures such rights (for example, education as a fundamental right via the 86th Amendment, or food security via the 2013 amendment to make the right to food a legal entitlement) can be formally enshrined and safeguarded. This keeps the Constitution in tune with contemporary understandings of justice and inclusivity.

Secondly, **judicial interpretations** of the Constitution keep evolving. For example, the **right to privacy** was read as part of the right to life and personal liberty. Amendments help bring such changes formally into the Constitution, keeping it relevant to a changing society. They also allow the state to respond to new challenges like **social media and online activism**, while ensuring citizens' rights are protected.

Thirdly, **constitutional reforms** help in social progress. They break outdated practices and bring the Constitution in line with **changing societal values**. Such updates reflect the **aspirations of the people** and encourage positive social change.

This study material is a part of Mastering Indian Polity - 1st Edition | © Flaviant Network Pvt Ltd | No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise.

Chapter 4 - Constitutional Amendment & Basic Structure Doctrine

Thinking Box: Can a Constitution Legally Abolish Itself?

The Indian Supreme Court's doctrine of basic structure answers this with a firm no. Even when an amendment is passed by following the exact procedure under Article 368, it can still be declared unconstitutional if it seeks to dismantle the essential features of the Constitution. In doing so, the Court draws a distinction between constitutional change and constitutional destruction.

This raises a deeper question: Can constitutional identity be redefined by those in power, or is it something to be preserved beyond transient political majorities? The judiciary's stance suggests that some elements—like democracy, secularism, and the rule of law—form the enduring core of India's constitutional selfhood and are not open to erasure, even by Parliament.

Critique of the Amendment Procedure:

The process of amending the Indian Constitution has faced criticism due to certain procedural shortcomings. One major criticism is the absence of a **dedicated body or mechanism** like the **US Amendments Convention**, which works outside Congress to propose amendments. This system in the USA allows more deliberation and better reflection of **national interests**. In contrast, in India, amendments are handled only through **Parliament**. Critics argue that this **centralised process** may sometimes give priority to **political expediency** rather than the larger national interest.

Secondly, unlike the US, where state legislatures can propose constitutional amendments, in India only Parliament has this power. This is seen as a departure from federal principles, since states cannot directly propose changes to the Constitution. Even in the exceptional case where states pass resolutions for creating Legislative Councils, the final decision rests with Parliament, which may accept or reject such demands.

Thirdly, there is **no fixed time limit** for state legislatures to ratify or reject constitutional amendments. This open-ended process often creates **uncertainty and delays**, which can hinder the **timely implementation** of important constitutional changes.

Fourthly, unlike ordinary bills where a **joint sitting of both Houses** can resolve deadlocks, the Constitution does not provide such a mechanism for amendment bills. This is seen as a **contradiction**, since amendments have a much greater impact on the nation's governance and structure.

Fifthly, critics argue that the **amendment procedure is vague** and lacks detailed procedural guidelines. For example, in *Shankari Prasad Singh v. Union of India* (1951), the Supreme Court observed that Article 368 does not provide a "complete code." This vagueness has led to frequent **judicial intervention**, where courts interpret disputes between Parliament and other stakeholders. While necessary, this judicial role is sometimes seen as **encroaching on the legislative domain**, disturbing the balance of powers.

Informal Amendment: A Quiet Transformation?

Now that you know about formal amendments under Article 368, here's a thought—can the Constitution change without changing its words? That's where informal amendments come in. These happen when courts reinterpret

This study material is a part of Mastering Indian Polity - 1st Edition | © Flaviant Network Pvt Ltd | No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise.

Chapter 4 - Constitutional Amendment & Basic Structure Doctrine

existing provisions to expand or adapt their meaning without altering the text.

For example, Article 21 has been interpreted to include rights like shelter, clean environment, and livelihood. The judiciary has used concepts like constitutional morality and transformative constitutionalism to uphold justice and equality. But such changes can be controversial, especially when they clash with Parliament's will—like in the tussles over judicial appointments or public interest litigation. Still, these silent shifts help the Constitution evolve with the times.

Doctrine of Basic Structure:

'If you do not apply brakes, the engine of amending power would soon overrun the Constitution'. –Uppendra Baxi

The Basic Structure doctrine holds that the Parliament cannot amend certain core features of the Constitution. It emerged gradually through a series of landmark Supreme Court cases in the 1960s and 1970s.

Evolution:

The origins of the **Basic Structure doctrine** can be traced to *Shankari Prasad v. Union of India* (1951). In this case, the Supreme Court examined the constitutional validity of the **First Amendment, 1951**, which allowed the government to restrict fundamental rights for implementing land reforms and economic policies. The petitioners argued that such an amendment **violated fundamental rights** guaranteed by the Constitution.

In *Shankari Prasad v. Union of India* (1951), the Supreme Court **upheld the validity of the First Amendment Act**. It ruled that Parliament's power to amend the Constitution under **Article 368** also included the power to amend **Fundamental Rights**. The Court clarified that the word "*law*" in **Article 13** referred only to ordinary laws made by Parliament or state legislatures. Constitutional amendments under Article 368 were **not treated as "law"** for this purpose and hence were outside the scope of Article 13. This position, however, did not remain final and was later overturned in subsequent cases, paving the way for the **Basic Structure doctrine**.

In the 1965 case of *Sajjan Singh v. State of Rajasthan*, the Supreme Court upheld the power of Parliament to amend any part of the Constitution, including the fundamental rights. However, in his separate opinion, Justice J.R. Mudholkar first introduced the concept of the "**basic structure**" of the Constitution. However, the *Golak Nath* case (1967) marked a significant shift. In this case, the Supreme Court reversed its previous position on the scope of Parliament's power to amend the Constitution. The *Golak Nath* family had challenged the constitutional validity of the Seventeenth Amendment Act (1964), which had placed certain state acts in the Ninth Schedule, thereby protecting them from being challenged on the grounds of violating fundamental rights. The Supreme Court held that the fundamental rights enshrined in Part III of the Constitution have a "**transcendental and immutable**" position. The Court ruled that a constitutional amendment, being a "*law*" under Article 13, cannot abridge or take away any of these fundamental rights.

In *Sajjan Singh v. State of Rajasthan* (1965), the Supreme Court again upheld the power of Parliament to amend any part of the Constitution, including **Fundamental Rights**. However, in his separate opinion, **Justice J.R. Mudholkar** hinted at the idea of the "**basic structure**" of the Constitution for the first time. The real turning point came with the *Golak Nath v. State of Punjab* (1967) case. Here, the Court reconsidered the scope of Parliament's amending power. The *Golak Nath* family

This study material is a part of Mastering Indian Polity - 1st Edition | © Flaviant Network Pvt Ltd | No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise.

Chapter 4 - Constitutional Amendment & Basic Structure Doctrine

challenged the **Seventeenth Amendment Act (1964)**, which had put certain state laws into the **Ninth Schedule**, shielding them from being challenged for violating Fundamental Rights. The Supreme Court ruled that **Fundamental Rights in Part III are “transcendental and immutable.”** It held that a constitutional amendment is a form of “law” under **Article 13** and, therefore, Parliament cannot amend, abridge, or take away these rights.

In **1969**, Prime Minister **Indira Gandhi’s government nationalised 14 banks**, which was challenged in the Supreme Court in *R.C. Cooper v. Union of India* (1970). The Court upheld Parliament’s power to nationalise banks but struck down the law because it did not provide **adequate compensation**. Around the same time, the government’s move to **abolish privy purses**—financial allowances promised to former princes during Independence—was also challenged. In *Madhav Rao Scindia v. Union of India* (1970), the Supreme Court struck down the **presidential order** abolishing privy purses, emphasising the role of **judicial review** in constitutional matters. Faced with these judicial setbacks, Parliament responded in **1971** by passing **three major constitutional amendments** to reassert its authority:

- The 24th Amendment Act introduced clause (4) in Article 13, protecting Article 368 from the scope of Article 13, which deals with laws inconsistent with or in derogation of fundamental rights.
- The 25th Amendment Act modified Article 31 to expand the government’s power to acquire private property.
- The 26th Amendment Act nullified the Supreme Court’s decision on privy purses, effectively reinstating the government’s action.

These **1971 amendments** were challenged in court, leading to the landmark **Kesavananda Bharati case (1973)**. The Supreme Court had to decide the balance between **Parliament’s amending powers** and **constitutional limitations**. In this case, the Court **overturned its earlier Golak Nath (1967) decision**, which had restricted Parliament from amending **Fundamental Rights**. The Court upheld the **24th Amendment**, confirming that Parliament could amend **Fundamental Rights** but within certain limits, laying the foundation for the **Basic Structure doctrine**.

Along with affirming Parliament’s power, the Court introduced the “**Basic Structure**” or “**basic features**” doctrine. It ruled that while Parliament can amend the Constitution under **Article 368**, it **cannot alter the basic structure**. This means that **Fundamental Rights** or other core principles that form the essence of the Constitution **cannot be removed or destroyed** through amendments. The doctrine acts as a **safeguard**, ensuring that key values and principles of the Constitution remain **immutable**. In short, Parliament has wide powers to amend the Constitution, but it **cannot tamper with its foundational elements**, which preserve the integrity and essence of India’s constitutional framework.

In the landmark case *Indira Nehru Gandhi v. Raj Narain* (1975), the Supreme Court **reaffirmed the Basic Structure doctrine**. It struck down a provision of the **39th Amendment, 1975**, which tried to place election disputes involving the **Prime Minister and Speaker of Lok Sabha** beyond the jurisdiction of all courts. The Court held that this provision was **unconstitutional** because it violated the **basic structure** of the Constitution. By doing so, the Supreme Court **upheld judicial review** and confirmed that no part of the Constitution, including election matters, can be placed **beyond the scrutiny of courts**.

In response to this judicial interpretation, the Parliament enacted the 42nd Amendment, 1976. This amendment sought to significantly expand the amending power of Parliament by inserting new provisions in Article 368. Specifically, it declared that there are no limitations on Parliament’s constituent power to amend the Constitution and that no such amendment can be challenged in court on any ground, including the violation of Fundamental Rights. The 42nd Amendment was a direct attempt by the legislature to override the Supreme Court’s rulings on the basic structure doctrine and to make

This study material is a part of Mastering Indian Polity - 1st Edition | © Flaviant Network Pvt Ltd | No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise.

Chapter 4 - Constitutional Amendment & Basic Structure Doctrine

constitutional amendments immune from judicial scrutiny. This move was widely criticised as an assault on the independence of the judiciary and the delicate balance of power as envisaged by the Constitution.

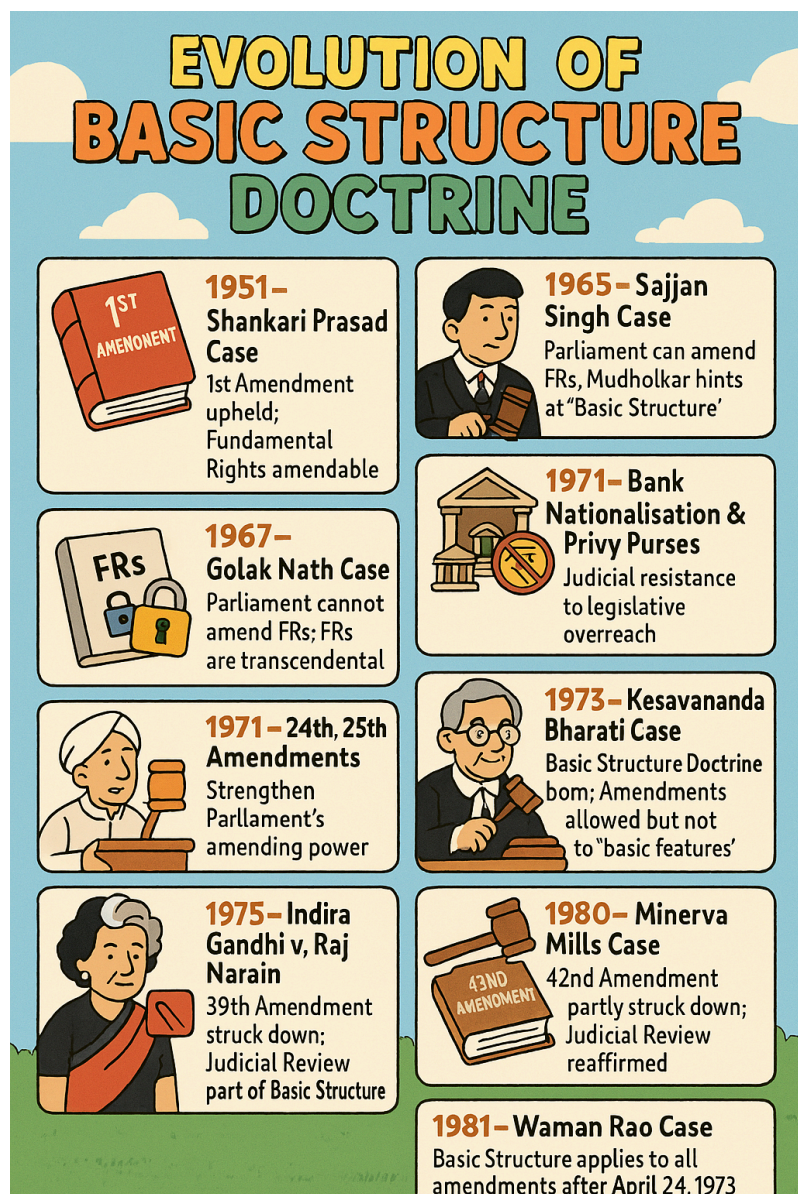
In response to these judicial interpretations, Parliament enacted the **42nd Amendment, 1976**. This amendment sought to **expand Parliament's amending power** by changing **Article 368**. It declared that there were **no limits** on Parliament's power to amend the Constitution and that **no amendment could be challenged in court**, even if it violated **Fundamental Rights**. The 42nd Amendment was a direct attempt to **override the Supreme Court's rulings** on the **Basic Structure doctrine** and make amendments **immune from judicial review**. This move was widely criticized as an attack on **judicial independence** and the **delicate balance of power** envisaged in the Constitution.

However, in the **Minerva Mills case (1980)**, the Supreme Court **struck down** this provision of the **42nd Amendment**. The Court held that **excluding judicial review** violated the **basic structure** of the Constitution. It reaffirmed that **judicial review** is a **core feature** of the basic structure. While Parliament can amend most parts of the Constitution, it **cannot alter its fundamental features**. The judgment famously observed that *"the Indian Constitution is founded on the bedrock of the balance between Part III (Fundamental Rights) and Part IV (Directive Principles). To give absolute primacy to one over the other is to disturb the harmony of the Constitution,"* thereby emphasizing that harmony between rights and principles is itself a basic feature.

In *Waman Rao v. Union of India (1981)*, the Supreme Court **reaffirmed the Basic Structure doctrine**. It ruled that this doctrine applies to **all constitutional amendments enacted after the Kesavananda Bharati judgment (24 April 1973)**. This was a significant ruling because it ensured that **any amendments passed by Parliament after that date** would be **subject to the basic structure test** and could be reviewed by the courts.

This study material is a part of Mastering Indian Polity - 1st Edition | © Flaviant Network Pvt Ltd | No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise.

Chapter 4 - Constitutional Amendment & Basic Structure Doctrine



Kesavananda Bharati Case - A Brief Background

Kesavananda Bharati was the head priest (Sripadagalvaru) of the Edneer Mutt, a Hindu religious institution located in the Kasaragod district of Kerala. He held this position from 1961 until his death in 2020 at the age of 79. The Edneer Mutt is a prominent religious institution belonging to the Advaita Vedanta school of Hindu philosophy. It was founded in the 14th century by Vidyadhiraja Teertha, a disciple of the renowned philosopher Madhvacharya. Over the centuries, the Mutt has amassed significant landholdings and other assets.

This study material is a part of Mastering Indian Polity - 1st Edition | © Flaviant Network Pvt Ltd | No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise.

Chapter 4 - Constitutional Amendment & Basic Structure Doctrine

In 1970, the Government of Kerala, led by the Communist Party of India (Marxist), introduced the Kerala Land Reforms (Amendment) Act. This legislation sought to impose restrictions on the ownership of land held by religious and charitable institutions in the state. The stated aim was to redistribute the land to landless farmers and agricultural workers. The Edneer Mutt, under the leadership of Kesavananda Bharati, challenged the constitutionality of these land reforms in the Kerala High Court. Bharati argued that the legislation violated Article 26 of the Indian Constitution, which guarantees the freedom to manage religious affairs. The case eventually made its way to the Supreme Court of India, setting the stage for the landmark Kesavananda Bharati v. State of Kerala case that would have far-reaching implications for the country's constitutional framework.

Political Fallout of the Kesavananda Bharati Ruling

The **Kesavananda Bharati judgment** was a landmark verdict that **limited Parliament's power to amend the Constitution** through the **Basic Structure doctrine**. This decision faced strong opposition from the **Indira Gandhi government**. In response, the three senior-most judges who had ruled against the government were **superseded**, and **Justice A.N. Ray**, who had supported the government, was appointed **Chief Justice of India**. During the **Emergency in 1975**, a **13-judge bench** was constituted to review Kesavananda Bharati. However, after two days, it was found that **no formal review petition** had been filed, making the review **improper**, and Chief Justice Ray had to **dissolve the bench**.

Despite the government's attempts to reverse the **Kesavananda Bharati** ruling, the **Basic Structure doctrine** survived and was not overturned through the improper review process by **Chief Justice Ray**. The **supersession of three senior judges** and efforts to influence the judiciary by appointing a "committed judiciary" had serious **political consequences** and **undermined judicial independence**.

Basic structure doctrine in other countries: The basic structure doctrine had a considerable influence beyond India's borders. Several of India's neighbouring countries, such as Bangladesh, Nepal, and Pakistan, have adopted similar doctrines, albeit with varying formulations and degrees of acceptance:

- Bangladesh: The basic structure doctrine is explicitly recognized in the Bangladeshi Constitution through Article 7B.
- Nepal: The Nepali Supreme Court has recognized the basic structure doctrine and has used it to strike down constitutional amendments.
- Pakistan: The basic structure doctrine was initially rejected in Pakistan but was later recognized by the Supreme Court in a 2015 judgment, which identified democracy, federalism, and the independence of the judiciary as protected features.

The basic structure doctrine has also found resonance in other parts of the world, including South Korea, Japan, and certain Latin American and African countries. While the specific formulations may differ, the underlying principle of protecting the core, inviolable features of a constitution have gained traction globally.

Benefits and Achievements of the Doctrine of Basic Structure:

The **Basic Structure Doctrine** acts as a **safeguard** against the unlimited power of Parliament to amend the Constitution. It is based on the principle that the Constitution is not just a legal document but reflects the **foundational values and**

This study material is a part of Mastering Indian Polity - 1st Edition | © Flaviant Network Pvt Ltd | No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise.

Chapter 4 - Constitutional Amendment & Basic Structure Doctrine

principles of the nation, as envisioned by its framers.

Firstly, one key argument in favor of the **Basic Structure Doctrine** is that it **preserves the core values and features** of the Indian Constitution. By preventing Parliament from altering or removing these essential elements, the doctrine **protects the spirit of the Constitution** and safeguards the **rights and liberties** it guarantees. For example, in the *S.R. Bommai* judgment (1994), the Supreme Court reaffirmed that principles such as **democracy, secularism, and federalism** are part of the basic structure of the Constitution and therefore beyond the reach of the amending power.

Secondly, the **Basic Structure Doctrine** also acts as a **check on unlimited power of Parliament** to amend the Constitution. Without such a limitation, the Parliament could potentially **undermine the democratic and republican character** of the state. The doctrine reinforces that Parliament is a **creature of the Constitution**, subject to its provisions and limitations. The Supreme Court's verdict in *Minerva Mills* (1980) drives this point home — the Court famously noted that a Parliament with limited powers **“cannot, by the exercise of that limited power, convert the Constitution into a blank slate or create a new Constitution”**

Thirdly, safeguarding fundamental rights is another crucial argument in favour of the Basic Structure Doctrine. It ensures that the Parliament cannot arbitrarily take away or abridge the fundamental rights of citizens through constitutional amendments. This safeguard is essential for upholding the principles of democracy, justice, and individual liberties enshrined in the Constitution.

Fourthly, the Basic Structure Doctrine upholds the **principle of constitutionalism** by establishing the Constitution as the supreme law of the land. It reinforces the idea that Parliament derives its powers from the Constitution and cannot become supreme over it. This doctrine reinforces the **rule of law** and prevents the concentration of power in any single institution.

Fifthly, by **limiting Parliament's power** to change the Constitution's essential features, the **Basic Structure Doctrine** helps **preserve India's democratic character**. It ensures that fundamental principles like **free and fair elections, separation of powers, and protection of minority rights** remain intact. The doctrine also demonstrates the judiciary's ability to exercise its **“judicial imagination”** in interpreting the Constitution and safeguarding its core principles. The Supreme Court has explicitly stated that measures which promote unchecked or arbitrary power are incompatible with basic structure. In cases like *Kihoto Hollohan* (1993) – related to the Anti-Defection Law – the Court read down provisions to ensure the Speaker's decisions in defection matters are subject to judicial review, thereby injecting accountability and fairness (and preventing partisan arbitrariness). Likewise, in *I.R. Coelho v. State of Tamil Nadu* (2007), the Court held that laws inserted in the Ninth Schedule after 1973 are not immune from judicial scrutiny if they infringe fundamental rights or basic structure. This prevents the legislature from arbitrarily immunizing its actions from constitutional compliance.

Sixthly, the **Basic Structure Doctrine** balances **adaptability and stability**. It allows the Constitution to **evolve with changing societal needs** while ensuring that its **foundational principles remain intact**. This balance between **flexibility and permanence** is vital for the **resilience and longevity** of India's constitutional framework.

This study material is a part of Mastering Indian Polity - 1st Edition | © Flaviant Network Pvt Ltd | No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise.

Chapter 4 - Constitutional Amendment & Basic Structure Doctrine

What are similar global examples?

- Germany: The Federal Constitutional Court of Germany employs a concept called "Eternity Clauses."
- South Africa: The Constitution of South Africa includes a mechanism known as "entrenched clauses"
- Brazil: Brazil's Constitution incorporates the principle of "supraconstitutional principles"

Critique of the Doctrine of Basic Structure:

The **Basic Structure Doctrine** has faced several criticisms. Firstly, one major criticism is that it has **no explicit basis in the Constitution's text**. Nowhere does the Constitution mention a "basic structure" beyond Parliament's amending power (PYQ 2022). Since the doctrine is entirely **created through judicial interpretation**, some question its **legitimacy**.

Secondly, another criticism of the **Basic Structure Doctrine** is its **ambiguity and subjectivity**. There is no **clear definition** of what exactly makes up the "basic structure" of the Constitution. This leaves room for **different interpretations by judges**, which can result in **inconsistent and unpredictable decisions**, potentially affecting the **rule of law**.

















Thirdly, some argue that the **Basic Structure Doctrine** violates the **principle of separation of powers**. By letting the **judiciary limit Parliament's constituent power**, the doctrine gives **unelected judges the authority to override decisions** of the **democratically elected legislature**. Vice President Jagdeep Dhankhar has recently criticised the doctrine, contending that "Parliamentary sovereignty and autonomy cannot be permitted to be qualified or compromised as it is quintessential to survival of democracy".

Fourthly, The **rigid limits** set by the **Basic Structure Doctrine** on Parliament's amending power can also **hinder the Constitution's evolution**. This may make it **less adaptable to changing societal needs and new challenges**, which is another common criticism of the doctrine.

Fifthly, at times, the application of the **Basic Structure Doctrine** is criticised as being **undemocratic**, since it enables **unelected judges** to override the will of the **democratically elected representatives**, thereby raising concerns about judicial overreach. Critics argue that this effectively translates the judiciary into a "third decisive chamber of parliament," potentially rendering legislative work meaningless.

Finally, there is also a lack of clarity on what exactly constitutes the "basic structure" of the Constitution. Different judgments have identified different elements as being part of the basic structure, leading to uncertainty and inconsistency in its application.

Chapter 4 - Constitutional Amendment & Basic Structure Doctrine

BENEFITS	CRITICISMS OF THE DOCTRINE
<ul style="list-style-type: none">  Safeguard Against Arbitrary Amendments  Preserves Core Constitutional Values  Limits Parliament's Amending Power  Protects Fundamental Rights  Upholds Constitutional Supremacy  Reinforces Rule of Law & Separation of Powers  Preserves Democratic Principles: Free & fair elections Minority rights: Judicial review  Balances Flexibility & Stability  Reflects Judicial Creativity 	<ul style="list-style-type: none">  No Textual Basis in Constitution  Ambiguity & Subjectivity: No clear definition of "Basic Struct"  Judicial Overreach: Unelected judges overriding elected Parliament  Violates Separation of Powers: Judiciary limits Parliament's constituent power  Hinders Constitutional Adaptability  Democratic Deficit: Judiciary as "Third Chamber" of Parliament  Inconsistency in Application Varying interpretations across judgments

Consolidation of the Elements Under the Basic Structure Doctrine:

The Kesavananda Bharati case, 1973 was a landmark decision by the Supreme Court of India that established the basic structure doctrine. The court identified several key elements that constitute the basic structure of the Indian Constitution, which cannot be amended by the Parliament. These include the supremacy of the Constitution; the separation of powers between the legislature, executive, and judiciary; the republican and democratic form of government; the secular character of the Constitution; the federal character of the Constitution; the sovereignty and unity of India; the freedom and dignity of the individual; the mandate to build a welfare state; and the parliamentary system of government.

In the Indira Gandhi v. Raj Narain case (1975), the court affirmed and recognized some additional basic features of the Constitution - the principle of equality before the law and equal protection of the laws; India's identity as a sovereign democratic republic; commitment to secularism; rule of law; the power of the judiciary to review; and free and fair elections. This case was a significant milestone in further strengthening the basic structure doctrine and protecting the core values and principles of the Indian Constitution from being altered by Parliament through constitutional amendments.

The Minerva Mills case, 1980, further built upon the basic features by reaffirming that the Parliament's power to amend the Constitution is not unlimited; the power of judicial review; and a harmonious balance must be maintained between

This study material is a part of Mastering Indian Polity - 1st Edition | © Flaviant Network Pvt Ltd | No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise.

Chapter 4 - Constitutional Amendment & Basic Structure Doctrine

the fundamental rights and the directive principles of the Constitution. The court held that the Parliament cannot use its amending power to give absolute primacy to the directive principles over the fundamental rights.

In the Bhim Singhji case (1981) the Supreme Court recognized the establishment of a welfare state and the achievement of socio-economic justice as essential features of the Constitution's basic structure. The S.P. Sampath Kumar (1987) and P. Sambamurthy (1987) cases reaffirmed that the rule of law and the power of judicial review are fundamental aspects of the basic structure. The Delhi Judicial Service Association case (1991) emphasised the extensive powers of the Supreme Court under Articles 32, 136, 141, and 142 to enforce the rule of law and protect the basic structure. The Indra Sawhney case (1992) further upheld the rule of law as a basic feature, while the Kumar Padma Prasad case (1992) recognized the independence of the judiciary as an essential component of the basic structure. In the Kihoto Hollohon case (1993), the court held that free and fair elections, as well as the sovereign, democratic, and republican structure of the Constitution, are basic features that cannot be altered. The Raghunath Rao case (1993) affirmed the principles of equality and the unity and integrity of India as integral parts of the basic structure.

The S.R. Bommai v. Union of India case (1994) was a significant milestone in the expansion of the basic structure doctrine. The court affirmed that state governments are not subordinate to the central government and emphasized the principles of cooperative federalism, holding that the President's power to dismiss a state government under Article 356 is not absolute and is subject to limitations. The court recognized secularism as a basic feature of the Constitution that cannot be altered and reiterated free and fair elections as an essential component of the democratic structure. Moreover, the court reaffirmed the principle of the unity and integrity of India as a basic feature and acknowledged the establishment of a welfare state and the achievement of socio-economic justice as essential features of the Constitution's basic structure. Importantly, the court reaffirmed the power of the judiciary to review the constitutionality of the President's actions under Article 356, ensuring adherence to constitutional principles.

The L. Chandra Kumar case (1997) dealt with the constitutional validity of Articles 323A and 323B, which were introduced through the 42nd Amendment to exclude the jurisdiction of High Courts in service matters. The Supreme Court held that judicial review is an integral and essential feature of the basic structure of the Constitution. The exclusion of the High Court's jurisdiction under Articles 226 and 227 was unconstitutional. Building upon this foundation, the All-India Judges Association case (2002) affirmed that an independent judiciary is a part of the basic structure of the Constitution. In Kuldip Nayar v. Union of India (2006), the Supreme Court held that democracy and free elections are part of the Constitution's basic structure. Additionally, the Supreme Court in M. Nagaraj v. Union of India (2006) held that the principle of equality is part of the basic structure of the Constitution but allows for reservations in promotions for the Scheduled Castes and Scheduled Tribes subject to certain conditions.

Later in the I.R. Coelho Case (2007) the court held that laws placed in the Ninth Schedule prior to the Kesavananda Bharati decision were protected from judicial review, as the basic structure doctrine was not yet firmly established at that time. However, any laws added to the Ninth Schedule after 1973 can be subject to judicial scrutiny to determine if they violate the fundamental features of the Constitution such as the rule of law, separation of powers, principles underlying fundamental rights, judicial review, and the principle of equality. This ensures that the legislature cannot simply place a law in the Ninth Schedule to shield it from scrutiny, and the judiciary retains the power to uphold the basic structure of the Constitution.

In the Ram Jethmalani Case (2011), the Supreme Court held that the powers granted to it under Article 32 to enforce

This study material is a part of Mastering Indian Polity - 1st Edition | © Flaviant Network Pvt Ltd | No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise.

Chapter 4 - Constitutional Amendment & Basic Structure Doctrine

fundamental rights are an integral part of the basic structure of the Constitution, which cannot be diluted. Building on this principle, in the *Madras Bar Association case* (2014), the Supreme Court held that the judicial review and the powers of the High Courts under Articles 226 and 227 are part of the basic structure of the Constitution.

The NJAC (National Judicial Appointments Commission) case, 2015, was a landmark judgment that struck down the NJAC Act and the 99th Constitutional Amendment, which had sought to replace the existing collegium system for appointing judges to the higher judiciary. The court ruled in a 4:1 majority that the NJAC was unconstitutional as it violated the “basic structure” of the Constitution by undermining the independence of the judiciary, which was held as an integral part of the basic structure and that it cannot be altered through constitutional amendments. The judgment reaffirmed the principle established in the *Kesavananda Bharati case* that the basic structure of the Constitution, including the independence of the judiciary, is inviolable.

PYQs

“Parliament’s power to amend the Constitution is a limited power and it cannot be enlarged into absolute power.” In the light of this statement explain whether Parliament under Article 368 of the Constitution can destroy the Basic Structure of the Constitution by expanding its amending power? PYQ 2019

Basic structure doctrine has prevented the Parliament, a creature of the constitution, from becoming the master of the constitution. Discuss this statement with the help of relevant case laws. MGP 2023

Approach: Introduce the answer by explaining the Basic Structure Doctrine. In the body of the answer, discuss how this doctrine has prevented the parliament from becoming the master of the constitution. Next, discuss why the doctrine is criticised by some. Conclude the answer by impressing the role of the doctrine in upholding and preserving the constitution.

Basic structure doctrine is a **judicial pronouncement made in the Kesavananda Bharti Case** (1973). It implies that the Indian constitution has **certain features which cannot be changed/destroyed** by the way of constitutional amendments. Basic structure doctrine holds that **amending the constitution** cannot be extrapolated to **re-writing it**.

By **limiting the amending powers of the constitution**, the doctrine **prevented Parliament from becoming the master of the constitution**:

1. Preserves the **fundamental principles** of the constitution. E.g., In **S. R. Bommai judgement**, SC ruled that **democracy, secularism**, along with **federalism** are integral part of the basic structure.
2. Protects the **powers and jurisdiction** of courts. E.g., SC invalidated the 39th amendment (**Indira Gandhi case**) for evasion of judicial review; **independence of district judiciary** is also stated as the part of the **basic structure**.
3. Put a **check on the unbridled amending power** of the Parliament. E.g., In the **Minerva Mills case (1980)**, the SC **upheld judicial review** and stressed that the holder of limited powers (Parliament) cannot use the limited powers to acquire unlimited powers.
4. **Instituted equality** as the **bedrock of the Republic**. E.g., in **M. Nagraj case**, SC declared equality as the basic feature of the constitution.

This study material is a part of Mastering Indian Polity - 1st Edition | © Flaviant Network Pvt Ltd | No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise.

Chapter 4 - Constitutional Amendment & Basic Structure Doctrine

5. Prioritises **rule of law** over **rule of men**. E.g., In the **Central Coal fields case**, the SC ruled that **access to justice** is a fundamental component of the basic structure.
6. Acts as an **antidote to arbitrariness**. E.g., In **Kihoto Hollohon** and **I R Coelho case**, related to **Anti Defection Law** and **9th schedule** respectively, the apex court held that the decision of the speaker and the immunity under 9th schedule are both subjected to judicial review.

Though celebrated for protecting the democracy, basic structure doctrine is **also criticized by some**, as:

1. It **undermines democratically sanctioned** and **well-intended laws** which pass the triple scrutiny viz., **passed by parliament, ratified by the states, and having ascent of the President**. E.g., the judiciary struck down the NJAC Act.
2. The doctrine finds no mention in any **legal jurisprudence** and is criticised as being a part of **judicial imagination** giving way for **judicial dictatorship** (dictates the basic structure).
3. Undermines the **sovereignty of elected parliament** and favours **judicial supremacy** over **constitutional supremacy**.
4. The doctrine, as per critics, also **violates** the principles of **separation of powers**, creating judiciary as a **super-legislature** and extending **judicial tyranny**.
5. The basic feature is left **open-ended** and undefined, bringing **vagueness** and **uncertainty**.

Basic structure doctrine, even though a judicial construct, has played a **seminal role** in protecting, preserving, and upholding the constitution. However, it is imperative for the three organs of the government to **work in tandem** and not in conflict in order to ensure a **smooth functioning** of the polity.

Do you agree that the procedure for amendment to the Constitution has struck a fine balance between flexibility and rigidity? MGP 2025

Approach: Introduce the answer by explaining the meaning of amendment to the constitution. In the body of the answer, first explain how the amendment procedure has struck a fine balance between flexibility and rigidity. Then, discuss the criticism of the amendment procedure. Conclude by emphasizing the intent behind the balanced procedure.

The **amendment of the constitution** involves making **additions, modifications, or removal of any provision** in the constitution in accordance with the procedure laid down for the purpose. **Article 368 in Part XX** of the Constitution outlines the authority of Parliament to amend the Constitution and the associated procedure.

The procedure for amending the constitution **strikes a fine balance between flexibility and rigidity**, as discussed below:

1. The Constitution **offers multiple methods** of amendment, each with **varying degrees of complexity** based on the requirement.
 - a. **Certain provisions can** be amended by a **simple majority** of both Houses of Parliament, outside the purview of Article 368. E.g., admission or establishment of new states.
 - b. **Most provisions** in the Constitution require a **special majority** in both houses of Parliament for amendment. E.g., Fundamental rights.
 - c. Provisions **related to the federal structure** can be amended by a special majority of Parliament along **with the consent of at least half of the state legislatures**. E.g., **amendment to Article 368**.

Chapter 4 - Constitutional Amendment & Basic Structure Doctrine

2. **Granville Austin** held that the amendment process was well-conceived and **diverse, fitting the needs of a diverse polity of a diverse nation.**

However, the procedure of amendment is **not without criticism** due to following reasons:

1. There is **no provision for a special body like the Constitutional Assembly** for amending the Constitution. The **constituent power is vested in Parliament** and only in a few cases, in the state legislatures.
2. Amendments can only be **initiated in Parliament, limiting the flexibility of state legislatures** in proposing amendments.
3. The **lack of provision for a joint sitting (Article 108)** to resolve deadlocks on constitutional amendment bills **reduces flexibility.**
4. **No time frame prescribed** in the Constitution within which the **state legislatures should ratify or reject** an amendment adds to complexity.

Despite these criticisms, the amendment process has generally **served the nation well. The procedure is neither so flexible** as to allow changes in the Constitution solely based on '**brute majority**' in Parliament **nor is it so rigid** as to be **incapable of adapting itself to changing needs.**