



DELHI LAW ACADEMY

CONSTITUTION OF INDIA

Sample : Amendments to Constitution

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AMENDMENTS TO CONSTITUTION

The Amending Body

1. In most cases, Parliament has the sole authority to amend the Constitution.
2. However, in some special cases, an amendment passed by Parliament needs to be ratified by at least half State Legislative Assemblies.

Source of the amending power

Article 368(1):

- In exercise of its constituent power
 - **Parliament may amend** any provision of this Constitution
 - *by addition, variation or repeal*
 - in accordance with procedure laid down in this article

Amending Procedure

Article 368(2):

- **Initiation of amendment:**
 - by introduction of a Bill in either House of Parliament
- **Passing of the Bill:**
 - by each House
 - by a majority of total membership of that House and
 - by a majority of not less than 2/3rd members present and voting
- **Assent of President:**
 - The Bill then shall be presented to the President
 - who **shall** give his assent



Ratification by State Legislatures

- An amendment requires to be ratified
 - by *not less than one-half of State Legislatures*
 - if it seeks to make any change in...
 - Articles 54, 55, 73, 162 and 241
 - provisions relating to Judiciary and distribution of legislative powers
 - any of the three Lists in the Seventh Schedule
 - representation of States in Parliament
 - provisions of Article 368

Limitations on the amending power

1. Article 368 of the Constitution does not in any way put any limitations on the constituent powers of Parliament, other than prescribing a special procedure of State Assembly ratification in some specified cases.
2. However, the Supreme Court of India came up with a novel limitation in 1973 while propounding the Basic Structure Doctrine in [Kesavanand Bharti v. State of Kerala](#).

The single most important judgment in India's Constitutional Law history is undoubtedly the 13-Judge Bench Majority Judgment in Kesavananda Bharati case delivered on 24th April 1973. No study of Constitutional Law can be complete without understanding this judgment. But it is easier said than done. Reason is simple. It is an exceptionally lengthy judgment, running in 502 printed pages.

We present below the gist of the operating part of the judgment:

Principle

*The Supreme Court laid down **the Theory of Basic Structure** in this case. It was held that some of the provisions of the Constitution of India form its basic structure*



which are not amendable by Parliament by exercise of its constituent power under Article 368.

Gist of the Operating Part

(1) L.C. Golak Nath v. State of Punjab [1967 SC], which had held that fundamental rights were beyond the amending powers of Parliament, **was overruled**

(2) The Constitution 24th Amendment Act 1971, giving power to Parliament to amend any part of the Constitution, **was valid**

(3) *Article 368, as amended, was valid but it did not confer power on the Parliament to alter the basic structure or framework of the Constitution*

The court, however, did not spell out in any exhaustive manner as to what the basic structure/framework was except that some judges gave a few examples.

(4) The amendment of Article 368(4) excluding judicial review of a constitutional amendment was unconstitutional

Amendments to Article 368

- Originally, article 368 contained only ‘procedure for amendment’
- Two clauses were added by the 24th Amendment
 - These were held **valid** in Kesavananda Bharati case
- Two more clauses were added by the 42nd Amendment
 - These were struck down by the Supreme Court
 - in Minerva Mills case in 1980 as **unconstitutional**



Issue

Whether Fundamental Rights could be taken away by Parliament by Constitutional Amendments?

Stage 1

[Shankari Prasad v. Union of India \[1951 SC\]](#)

- Supreme Court held that
 - ‘Law’ in Art 13(3) did not include Amendments u/a 368
- Thus, Parliament could amend Fundamental Rights

Stage 2

[Golak Nath v. State of Punjab \[1967 SC\]](#)

- Supreme Court reversed its decision of 1951 in Shankari Prasad case
- Supreme Court held that Parliament could not take away or abridge FRs
 - even by constitutional amendments

Stage 3

[24th Amendment, 1971](#)

- Parliament added clause (4) in Article 13
 - “Nothing in this Article shall apply to amendments u/A 368”
- Parliament added clause (3) in Article 368
 - “Nothing in Article 13 shall apply to amendments made under this Article”

Stage 4

[Keshavanand Bharti v. State of Kerala \[1973 SC\]](#)



- Supreme Court upheld validity of the 24th Amendment
- Supreme Court propounded the **Basic Structure doctrine**

Stage 5

42nd Amendment, 1976

- Parliament added clause (4) to Article 368
 - “No amendment u/A 368 shall be called in question in any court on any ground”
- Parliament added clause (5) to Article 368
 - “There is no limitation whatsoever on amending power of Parliament”

Stage 6

Minerva Mills v. Union of India 1980

- Clauses (4) and (5) of Art 368 were struck down by the Supreme Court
- Clause (4) was held as violative
 - of the basic feature of ***‘judicial review’***
- Clause (5) was held as violative
 - of the basic feature of ***‘limited amending power of the Parliament’***

Current Legal Position

- Parliament's amending power under article 368
 - is **limited** by the Basic Structure doctrine
- Parliament's amending power is **not unlimited**
- Parliament's amending power is **subject to judicial review**



IMPORTANT CONSTITUTIONAL AMENDMENTS

1st Amendment, 1951

- Added Clause (4) to Article 15:
 - State was empowered to make special provisions for SEBCs
- Added Article 31A
 - saving laws providing for acquisition of estates, etc
- Added Article 31B and Ninth Schedule
 - to protect from judicial review
 - land reform and other laws included in it
- Added three more grounds of restrictions on freedom of speech & expression
 - public order
 - friendly relations with foreign states
 - incitement to an offence

7th Amendment, 1956

- Abolished existing classification of states
 - in four categories: Part A, B, C and D States
- and reorganised them
 - into 14 States and 6 Union Territories
- Extended jurisdiction of high courts to union territories
- Provided for establishment of
 - a common high court for two or more States

9th Amendment, 1960

- Enabled cession of Indian territory of Berubari Union to Pakistan
 - as per 1958 Treaty between India and Pakistan

10th Amendment, 1961

- Incorporated Dadra & Nagar Haveli in Indian Union



12th Amendment, 1962

- Incorporated Goa, Daman & Diu in Indian Union

14th Amendment, 1962

- Incorporated Pondicherry in Indian Union

24th Amendment, 1971

- Added Articles 13(4) and 368(3)
 - Parliament was empowered to amend any part of Constitution including FRs
- Made it compulsory for President
 - to give his assent to a Constitutional Amendment Bill

25th Amendment, 1971

- Added Article 31C
 - Any law made to give effect to principles in Article 39 (b) or (c)
 - cannot be challenged for violation of FRs u/a 14 and 19

26th Amendment

- Abolished privy purses
 - and privileges of former rulers of Princely States

31st Amendment

- Increased number of Lok Sabha seats
 - from 525 to 545

36th Amendment, 1975

- Deleted Art 2A and Tenth Schedule
 - Sikkim was made a *full-fledged* State



42nd Amendment, 1976

- Added “socialist”, “secular”, “integrity” to Preamble
- Added Fundamental Duties for citizens: Part IVA
- President made bound by advice of Council of Ministers: Art 74
- Provided for administrative and other tribunals: Part XIVA
- Scope of Article 31C expanded to include all Directive Principles
- Added three new Directive Principles: Art 39A, 43A, 48A
- Shifted 5 subjects from State List to Concurrent List:
 - Education, forests, protection of wild animals and birds, weights and measures, administration of justice
- Froze seats in Lok Sabha and Legislative Assemblies at 1971 census level
- Raised tenure of Lok Sabha and Legislative Assemblies
 - from 5 to 6 years
- Took away the right of a civil servant to make representation
 - at the second stage after the inquiry, i.e. on the penalty proposed

44th Amendment, 1978

- Deleted Right to Property from Chapter III, made it a legal right under Art 300A
- Empowered President to send back Council’s advice for reconsideration, Proviso to Art 74
- Gave protection to publication of true reports of all legislatures, Art 361A
- Made several changes in Art 352
- Articles 20 and 21 taken beyond suspension power of President during Emergency, Art 359

52nd Amendment, 1985

- Added Tenth Schedule [Anti-defection Law]



61st Amendment, 1989

- Amendment of article 326
 - Reduced voting age from 21 years to 18 years for Lok Sabha and Legislative Assemblies

65th Amendment, 1990

- Amendment of article 338
 - Established a multi-member National Commission for SCs and STs
 - in place of Special Officer for SCs and STs

69th Amendment, 1991

- Inserted 239AA
 - Accorded special status to Union Territory of Delhi
 - Designated it as National Capital Territory of Delhi
 - Provided for a Legislative Assembly and Council of Ministers

73rd Amendment, 1992

- Inserted Part IX
 - Granted Constitutional status and protection to Panchayat Raj institutions
 - Added Eleventh Schedule, containing 29 functional items for Panchayats

74th Amendment, 1992

- Inserted Part IXA
 - Granted Constitutional status and protection to urban local bodies
 - Added Twelfth Schedule containing 18 functional items for municipalities



77th Amendment, 1995

- Inserted article 16(4A)
 - Provided for reservation in **promotions** in govt jobs for SCs and STs
 - Nullified Supreme Court ruling in Indira Sawhney case prohibiting reservation in promotions

81st Amendment, 2000

- Inserted article 16(4B)
 - Empowered State to consider unfilled reserved vacancies of a year
 - as a separate class to be filled up in succeeding years
 - Such vacancies are not to be considered for 50% ceiling on reservations

82nd Amendment, 2000

- Amendment of article 335
 - Provided for relaxation in qualifying marks and lowering of standards of evaluation
 - for promotions in favour of SCs and STs

86th Amendment, 2002

- Inserted article 21A
 - Elementary education made a fundamental right
- Amended article 45
 - Provided for early childhood care and education of children upto 6 years
- A new Fundamental Duty added in article 51A
 - Parents or guardians to provide opportunities for education
 - to children between 6 and 14 years of age



88th Amendment, 2003

- Inserted article 268A
 - Provided for imposition of **service tax**
 - Taxes on services are to be levied by Centre
 - but their proceeds are to be collected and appropriated by both Centre and States on principles formulated by Parliament

89th Amendment, 2003

- Amended article 338
 - Provided for a National Commission for Scheduled Castes
- Inserted article 338A
 - Provided for a separate National Commission for Scheduled Tribes

91st Amendment, 2003

- Inserted article 75(1A):
 - Number of ministers in Union Council of Ministers
 - shall not exceed 15% of Lok Sabha strength
- Inserted article 75(1B):
 - A Member of Parliament disqualified for defection
 - shall also be disqualified to be appointed as a Minister
- Inserted article 164(1A) and 164(1B)
 - Amended Tenth Schedule:
 - Exemption from disqualification on spilt by 1/3rd members of a legislature party deleted

92nd Amendment, 2003

- Bodo, Dogri, Maithili and Santhali
 - were included in the Eighth Schedule



93rd Amendment, 2005

- Added clause (5) to Article 15
 - Empowered State to make special provisions
 - for socially and educationally backward classes or SCs or STs
 - in admission to educational institutions, public or private, aided or unaided
- This amendment nullified SC judgment in P A Inamdar case
 - which held that State could not impose reservation policy on unaided private colleges

97th Amendment, 2011

- Amended article 19(1)(c):
 - Right to form co-operative societies made a Fundamental Right
- Inserted article 43B
 - State to promote formation and working of co-operative societies
- Inserted Part IXB
 - Provided for formation and working of co-operative societies

98th Amendment, 2012

- Inserted article 371J
 - Provided for special provisions for Hyderabad-Karnataka region
 - Provided for institutional mechanism for equitable allocation of funds
 - to develop the region and to enhance its human resources and
 - to promote employment by providing for
 - local cadres in service and
 - reservation in educational institutions



99th Amendment, 2014

- Amended articles 124, 217 and 222
- Added articles 124A, 124B and 124C
 - Provided for establishment of **National Judicial Appointments Commission**
 - for appointment of Supreme Court and High Court judges and
 - for transfer of High Court judges

Note:

- This Amendment has been struck down
 - by the Supreme Court **on 16.10.2015**, as **unconstitutional**
 - on the ground that *it strikes at the independence of judiciary*
 - which is a basic feature of the Constitution

100th Amendment, 2015

- Amended the First Schedule
 - 111 Indian enclaves are transferred to Bangladesh
 - in lieu of transfer of 51 Bangladeshi enclaves to India

Note:

- This Amendment gives effect to
 - the India-Bangladesh Land Boundary Agreement of 1974

101st Amendment Act 2016

- Inserted article 246A
 - Parliament and State Legislatures have been empowered to make laws with respect to **goods and services tax**
 - Parliament has been empowered to make laws with respect to **inter-state goods and services tax**
-



- Deleted article 268A
 - This article provided for levy of Service Tax
- Inserted article 269A
 - Provides for **apportionment** of inter-state goods and services tax between the Union and the States
- Inserted article 279A
 - Provides for constitution of a **Goods and Services Tax Council**.

Note

- This Amendment introduced goods and services tax in India

102nd Amendment Act 2018

- Inserts a new Article 338B
 - for establishment of a National Commission for Backward Classes
 - for the socially and educationally backward classes
 - to investigate and monitor the safeguards provided for these classes
- Inserts a new Article 342A to provide
 - that the President may specify the socially and educationally backward classes for a State or UT and
 - that the Parliament may by law include in or exclude from the Central List of socially and educationally backward classes so specified
- Inserts a new Clause (26C) in Article 266 to define
 - "socially and educationally backward classes" as the backward classes so deemed under article 342A
- Amends Clause (10) of Article 338
 - to exclude other backward classes from the jurisdiction of the National Commission for Scheduled Castes

Note

- This Amendment gives constitutional status
 - to the National Commission for Backward Classes



103rd Amendment Act 2019

- Inserted clause (6) in Article 15:
 - Enables the State to make special provision for advancement of economically weaker sections of citizens
 - Enables the State to make special provision
 - for their admission to educational institutions including private educational institutions, whether aided or unaided by State
 - which in case of reservation would be in addition to the existing reservations and subject to a maximum of 10% of total seats in each category
- Inserted clause (6) in Article 16:
 - Enables the State to make reservation of appointments
 - in favour of economically weaker sections of citizens other than classes mentioned in clause (4)
 - in addition to existing reservation and subject to a maximum of 10% of posts in each category

Note

- The Constitution 103rd Amendment Act 2019:
 - enables reservation in educational institutions and public appointments to economically weaker sections of citizens

104th Amendment Act 2019

- Extends reservation to SCs and STs in Lok Sabha and State Legislative Assemblies under articles 330 and 332 for another 10 years
- Amends article 334: Reservation to SCs and STs to expire after 80 years from the commencement of the Constitution, i.e. by 25 January 2030
- Does not extend nominations in Lok Sabha and State Legislative Assemblies under articles 331 and 333 for Anglo-Indian community
- There would be no such nominations for the Anglo-Indian community beyond 25th January 2020
