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AMENABILITY UNDER THE INDIAN CONSTITUTION

AUTHORED BY - AYANA YADAV

Constitutional Provisions on Amendment (Article 368)

The Indian Constitution, adopted on 26th January 1950, recognized the inherent need for its adaptability by including a specific provision for amendment.¹ This provision, enshrined in Article 368 of the Constitution, forms the cornerstone of the amendment process in India.² Article 368, as originally enacted, laid down the procedure for amending the Constitution but underwent significant evolution through judicial interpretation, particularly the landmark Kesavananda Bharati case.³

Original Article 368: The original Article 368, contained in Part XX of the Constitution, provided the procedure for amending the Constitution.⁴⁸ It stated that an amendment could be initiated by the introduction of a bill in either House of Parliament. The bill had to be passed by each House by a special majority, defined as a majority of the total membership of that House and a majority of not less than two-thirds of the members present and voting. After the bill was passed by both Houses, it had to be presented to the President for assent. The President was bound to give his assent to the bill. Certain amendments, particularly those affecting the federal structure of the Constitution, also required ratification by the legislatures of at least one-half of the States.

Amendments to Article 368: Article 368 has been amended several times since its inception.⁴ The most significant amendments were the 24th, 42nd, and 44th Amendments.

24th Amendment Act, 1971: This amendment was enacted in response to the Supreme Court's judgment in *Golaknath v. State of Punjab*.⁵ The *Golaknath* case held that Parliament's power

¹ INDIA CONST. pmb.; Granville Austin, *The Indian Constitution: Cornerstone of a Nation* 50–52 (Oxford Univ. Press 1966).

² INDIA CONST. art. 368.

³ *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225 (India). ⁴⁸ INDIA CONST. art. 368 (original text).

⁴ Id.; *The Constitution (Twenty-fourth Amendment) Act, 1971*; *The Constitution (Forty-second Amendment) Act, 1976*; *The Constitution (Forty-fourth Amendment) Act, 1978*.

⁵ *Golaknath v. State of Punjab*, AIR 1967 SC 1643 (India).

to amend the Constitution did not extend to taking away or abridging fundamental rights. The 24th Amendment overruled Golaknath and explicitly declared that Parliament had the power to amend any part of the Constitution, including the fundamental rights.⁶ It also made it obligatory for the President to give his assent to a Constitutional Amendment Bill.

42nd Amendment Act, 1976: This amendment, enacted during the Emergency, made significant changes to the Constitution, including adding the words "Socialist" and "Secular" to the preamble, introducing the concept of Directive Principles of State Policy being superior to Fundamental Rights and curtailing the power of judicial review.⁷ It also altered Article 368 to state that there would be no limitation on Parliament's power to amend the Constitution and that no amendment could be questioned in any court.

44th Amendment Act, 1978: This amendment, enacted after the Emergency was lifted, sought to undo some of the changes made by the 42nd Amendment.⁸ It removed the provisions that curtailed judicial review and restored the balance between the legislature, the executive, and the judiciary. It also strengthened the protection of fundamental rights.

Current Status of Article 368: Currently, Article 368(1) confers upon Parliament the power to amend the Constitution.⁹ Article 368(2) lays down the procedure for amendment:

- An amendment can be initiated by the introduction of a bill in either House of Parliament.
- The bill must be passed by each House by a special majority, as defined in Article 368(2),
- i.e., a majority of the total membership of that House and a majority of not less than two-thirds of the members present and voting.
- If the amendment seeks to make any change in any of the provisions mentioned in the proviso to clause (2), the amendment bill shall also be ratified by the Legislatures of not less than one-half of the States.
- When the bill is presented to the President, the President shall give his assent to the bill.¹⁰
- Significance of Article 368: Article 368 is of paramount importance for several

⁶ The Constitution (Twenty-fourth Amendment) Act, 1971.

⁷ The Constitution (Twenty- second Amendment) Act, 1976.

⁸ The Constitution (Forty-fourth Amendment) Act, 1978

⁹ INDIA CONST. art. 368(1).

¹⁰ INDIA CONST. art. 368(2)

reasons:¹¹

- It ensures that the Constitution remains a "living document" that can adapt to changing circumstances.¹²
- It provides a mechanism for rectifying any flaws or shortcomings in the Constitution.
- It serves as a safety valve, allowing for peaceful and orderly change, thereby reducing the risk of social unrest.
- It reflects a compromise between the need for stability and the need for change.

However, the power of amendment under Article 368 is not absolute. The Supreme Court's interpretation of Article 368, particularly the doctrine of "basic structure," has placed significant limitations on Parliament's power.¹³

The Evolution of the Doctrine of Basic Structure

The doctrine of "basic structure" is the single most significant judicial limitation on Parliament's power to amend the Indian Constitution. This doctrine, which was not explicitly mentioned in the Constitution itself, was developed by the Supreme Court through a series of landmark cases. It provides that while Parliament has the power to amend the Constitution, it cannot alter or destroy the "basic structure" or the essential features of the Constitution. This doctrine serves as a safeguard against any attempt to fundamentally alter the democratic principles and values enshrined in the Constitution.

The evolution of the basic structure doctrine can be traced through several key cases:

Shankari Prasad Singh Deo v. Union of India, [1951] 2 SCR 89.

This was one of the earliest cases concerning the power of Parliament to amend the Constitution. The petitioners challenged the Constitution (First Amendment) Act, 1951, which had inserted Articles 31A and 31B into the Constitution.¹⁴ These articles protected certain laws relating to the abolition of the zamindari system from being challenged on the ground that they violated fundamental rights. The petitioners argued that Parliament's power to amend the Constitution did not extend to taking away or abridging fundamental rights.

¹¹ H.R. Khanna, *Making of India's Constitution 201–03* (Eastern Book Co. 2008).

¹² Richard Albert, *Constitutional Amendments: Making, Breaking, and Changing Constitutions 12–13* (Oxford Univ. Press 2019).

¹³ *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225 (India).

¹⁴ *Shankari Prasad Singh Deo v. Union of India*, [1951] 2 SCR 89 (India).

The Supreme Court rejected this argument and upheld the validity of the First Amendment. The Court held that the power to amend the Constitution under Article 368 included the power to amend any part of the Constitution, including fundamental rights.

The Court reasoned that the amendment power was a constituent power and that the term "law" in Article 13 (which prohibits the state from making

Sajjan Singh v. State of Rajasthan, AIR 1965 SC 845.

This case further solidified the position established in Shankari Prasad. The petitioners challenged the Constitution (Seventeenth Amendment) Act, 1964,¹⁴ which included certain land reform laws in the Ninth Schedule, thereby immunizing them from judicial review.

The argument was that the amendment violated fundamental rights and exceeded Parliament's power to amend the Constitution.

The Supreme Court again upheld the validity of the amendment, reiterating the view that Article 368 conferred on Parliament the power to amend all parts of the Constitution, including fundamental rights. The Court reasoned that if fundamental rights could not be amended, it would make the amendment process impossible, as almost every amendment would touch upon fundamental rights. However, the minority opinion by Justice Hidayatullah hinted at the possibility of implied limitations on the amending power, suggesting that Parliament could not fundamentally alter the structure of the Constitution. This dissenting view laid the groundwork for the future development of the basic structure doctrine.

Golaknath v. State of Punjab, AIR 1967 SC 1643.

This landmark case marked a significant shift in the Supreme Court's approach to the amendment power.¹⁵ The petitioners challenged the Constitution (Seventeenth Amendment) Act, arguing that it violated their fundamental rights under Articles 14, 19, and 31. The Supreme Court, by a majority of 6:5, overruled its earlier decisions in Shankari Prasad and Sajjan Singh.

The Court held that the power to amend the Constitution under Article 368 was not a constituent power but a legislative power. As a legislative power, it was subject to the limitations imposed

¹⁵ Golaknath v. State of Punjab, AIR 1967 SC 1643 (India)

by Article 13(2), which prohibits the state from making any law that takes away or abridges fundamental rights. The Court concluded that a constitutional amendment that took away or abridged fundamental rights was therefore void. The Court effectively barred Parliament from amending fundamental rights. This decision was a major setback for the government, which sought to implement land reforms and other social welfare measures. The decision caused considerable controversy and raised questions about the relationship between Parliament and the judiciary. Chief Justice K. Subba Rao delivered the majority opinion, which emphasized the inviolability of fundamental rights. Justice Madholkar in his opinion gave a warning that if the Parliament could not amend the fundamental rights, it would ultimately lead to its own destruction.

Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225.

This case is the locus classicus of the Basic Structure Doctrine.¹⁶ It involved a challenge to the Kerala Land Reforms Act and a series of constitutional amendments, including the 24th, 25th, 26th, and 29th Amendments. The 24th Amendment had been enacted to overrule the Golaknath decision and explicitly gave Parliament the power to amend all parts of the Constitution, including fundamental rights. The 25th Amendment had inserted Article 31C, which gave precedence to certain Directive Principles of State Policy over fundamental rights. The 29th Amendment had included certain land reform laws in the Ninth Schedule.

The Supreme Court, by a majority of 7:6, overruled Golaknath to the extent that it held that Parliament could not amend fundamental rights. The Court upheld the 24th Amendment, reaffirming Parliament's power to amend any provision of the Constitution. However, the Court also laid down the landmark doctrine of "basic structure." The Court held that while Parliament had the power to amend the Constitution, this power was not unlimited. Parliament could not alter or destroy the "basic structure" or the essential features of the Constitution.

The Court did not provide an exhaustive list of the features that constituted the "basic structure." However, it did offer some examples, including the supremacy of the Constitution, the rule of law, the separation of powers, the independence of the judiciary, the secular character of the Constitution, the federal structure, and the democratic form of government. The Court held that any amendment that violated these essential features would be

¹⁶ Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225 (India)

unconstitutional. The Court upheld the validity of Article 31C to the extent that it protected laws giving effect to the Directive Principles in Article 39(b) and (c) of the Constitution, which dealt with the equitable distribution of resources. However, it struck down the part of Article 31C that gave precedence to all Directive Principles over fundamental rights. The Kesavananda Bharati judgment is a landmark in the history of Indian constitutional law. It established a crucial check on Parliament's amending power and affirmed the Supreme Court's role as the ultimate guardian of the Constitution.

Impact of the Kesavananda Bharati judgment on the constitutional amendment process

The Kesavananda Bharati judgment had a profound impact on the constitutional amendment process in India. It drastically altered the dynamics between the Parliament and the Judiciary and introduced a mechanism by which the Courts could limit the Parliament's power of amendment.

Judicial Review of Amendments: It established the principle that constitutional amendments were subject to judicial review. This means that any amendment could be challenged in the Supreme Court on the ground that it violated the "basic structure" of the Constitution. This has led to the Courts reviewing the amendments to see whether it complies with the doctrine of basic structure or not.

Limitations on the Amending Power: It imposed significant limitations on Parliament's power to amend the Constitution. Parliament could no longer amend the Constitution in a way that would undermine the fundamental principles and values enshrined in the Constitution.

Protection of Fundamental Rights: It strengthened the protection of fundamental rights by preventing Parliament from taking away or abridging them in a way that would violate the basic structure.

Balance of Power: It restored the balance of power between the Parliament and the Judiciary. It affirmed the role of the Judiciary as the ultimate guardian of the Constitution and its power to check the excesses of the Parliament.

Evolution of the Doctrine: It set the stage for the further evolution and refinement of the basic structure doctrine. The Supreme Court has since identified more aspects as being part of the basic structure.

Political Implications: The judgment had significant political implications. It led to a period of tension between the government and the judiciary, and it influenced the subsequent enactment of constitutional amendments.

Impact on Subsequent Amendments: Any amendment could be challenged in the Supreme Court. This resulted in the amendments being made very carefully to ensure that it would not violate the basic structure or the essential features of the Constitution.

The Kesavananda Bharati judgment remains a cornerstone of Indian constitutional law. It has shaped the amendment process and continues to influence judicial decisions on the limits of Parliament's power. The judgment has been instrumental in preserving the democratic values enshrined in the Constitution and ensuring its continued relevance.

Subsequent interpretations and applications of the Basic Structure Doctrine

The Kesavananda Bharati judgment did not provide an exhaustive list of the features that constituted the "basic structure." It left it to the Supreme Court to determine on a casebycase basis what constituted the essential features of the Constitution. The Court has, over the years, identified several more features as being part of the basic structure.

Subsequent judgments have clarified and expanded the scope of the doctrine.

Indira Nehru Gandhi v. Raj Narain, 1975 Supp SCC 1.

This case, decided during the Emergency, involved a challenge to the 39th Amendment to the Constitution.¹⁷ The 39th Amendment had placed the election of the President, Vice President, Prime Minister, and Speaker of the Lok Sabha beyond the scrutiny of the judiciary. The Supreme Court, though upholding the amendment on other grounds, struck down clause (4) of the amendment, which sought to bar judicial review of elections to the office of the Prime Minister and Speaker of the Lok Sabha. The Court held that free and fair elections were a part of the basic structure of the Constitution. This case further reinforced the basic structure doctrine by including democratic principles and the rule of law among the essential features of the Constitution. It demonstrated the Court's willingness to uphold the basic structure even in the face of a powerful executive.

¹⁷ Indira Nehru Gandhi v. Raj Narain, 1975 Supp SCC 1 (India).=

Minerva Mills Ltd. v. Union of India, AIR 1980 SC 1789.

This case involved a challenge to the 42nd Amendment to the Constitution, particularly Sections 4 and 55.¹⁸ These sections had amended Article 368 to remove all limitations on Parliament's power to amend the Constitution and to immunize constitutional amendments from judicial review. They had also introduced Article 31C, which gave precedence to all Directive Principles of State Policy over fundamental rights.

The Supreme Court struck down Sections 4 and 55 of the 42nd Amendment, holding that they were unconstitutional. The Court reiterated the basic structure doctrine and held that the limited amending power under Article 368 was itself a part of the basic structure. The Court reasoned that the power to amend did not include the power to destroy the basic structure or to create a totally uncontrolled power of amendment. The Court also held that judicial review was an essential feature of the Constitution and that the attempt to exclude it was unconstitutional. It invalidated the part of Article 31C which gave precedence to all Directive Principles over Fundamental Rights, holding that the balance between Directive Principles and Fundamental Rights formed part of the basic structure. *Minerva Mills* reaffirmed the supremacy of the Constitution and the importance of judicial review in safeguarding the basic structure.

Waman Rao v. Union of India, AIR 1981 SC 271.

This case dealt with the question of whether the basic structure doctrine could be applied retrospectively to constitutional amendments passed before the *Kesavananda Bharati* judgment.¹⁹ The Court held that the basic structure doctrine would apply prospectively, meaning that it would apply to constitutional amendments passed after April 24, 1973 (the date of the *Kesavananda Bharati* judgment). Amendments made prior to that date would not be subject to the basic structure test. The Court carved out an exception for amendments included in the Ninth Schedule. The judgment provided much-needed clarity on the applicability of the basic structure doctrine, but it also led to complex issues regarding the validity of pre-*Kesavananda Bharati* amendments included in the Ninth Schedule.

L. Chandra Kumar v. Union of India, (1997) 3 SCC 261.

This case addressed the constitutional validity of tribunals established under Article 323A and

¹⁸ *Minerva Mills Ltd. v. Union of India*, AIR 1980 SC 1789 (India).

¹⁹ *Waman Rao v. Union of India*, AIR 1981 SC 271 (India).

323B of the Constitution.²⁰ These tribunals were designed to provide alternative dispute resolution mechanisms in various areas. The main issue was whether the tribunals' decisions could be subject to judicial review by the High Courts and the Supreme Court.

The Supreme Court held that judicial review was an essential feature of the Constitution and that it formed part of the basic structure. The Court ruled that the tribunals could not completely exclude the jurisdiction of the High Courts and the Supreme Court. It held that the decisions of the tribunals would be subject to judicial review by the High Courts and the Supreme Court. The Court affirmed that judicial review was a fundamental part of the democratic structure and the rule of law. The judgment underscored the importance of judicial independence and the right to seek redress from the courts. The judgment also reaffirmed that even where specialized tribunals are created, the jurisdiction of the High Courts and Supreme Court must be preserved to ensure judicial oversight.

I.R. Coelho v. State of Tamil Nadu, (2007) 2 SCC 1.

This case dealt with the validity of laws included in the Ninth Schedule to the Constitution.²² The Ninth Schedule was added by the First Amendment to protect certain laws from judicial review on the ground that they violated fundamental rights. The question before the Court was whether laws placed in the Ninth Schedule after the Kesavananda Bharati judgment were immune from judicial review.

The Supreme Court held that the Ninth Schedule did not confer absolute immunity from judicial review. The Court ruled that any law included in the Ninth Schedule after April 24, 1973, could be challenged on the ground that it violated the basic structure of the Constitution. The Court applied the "rights-based" approach and held that a law could be challenged if it violated the fundamental rights or any of the basic structures of the Constitution. This was a landmark judgment that significantly narrowed the scope of the Ninth Schedule. The Court clarified that the Ninth Schedule was not a safe haven for laws that violated the basic structure of the Constitution. The decision affirmed the supremacy of the basic structure doctrine and reinforced the judiciary's role in protecting fundamental rights.

The subsequent interpretations of the basic structure doctrine highlight its dynamic and

²⁰ L. Chandra Kumar v. Union of India, (1997) 3 SCC 261 (India) ²²
I.R. Coelho v. State of Tamil Nadu, (2007) 2 SCC 1 (India).

evolving nature. The Court has consistently reaffirmed the doctrine's importance in safeguarding the Constitution's essential features and protecting fundamental rights. The basic structure doctrine continues to be a critical element in the Indian constitutional landscape. The Courts have identified many elements of the basic structure. Some of the features of the basic structure include:

- Supremacy of the Constitution
- Rule of Law
- Separation of powers
- Independence of the Judiciary
- Secularism
- Federalism
- Democratic form of government
- Free and fair elections
- Welfare State
- Limited amending power
- Harmony and balance between the Fundamental Rights and the Directive Principles
- Judicial Review

The doctrine continues to evolve as new challenges arise and as societal values and understanding change.

Categories of Amendments

The Indian Constitution provides for different categories of amendments, each with its own specific procedure. These categories reflect the varying importance of different constitutional provisions and the need to ensure a balance between flexibility and stability. Article 368 lays down the broad procedure for amending the constitution, but different sections of the constitution require different approaches to ensure stability.

Amendments by Special Majority (Article 368(2))

The most common and general type of amendment is carried out under Article 368(2). This requires a "special majority" in both Houses of Parliament. This special majority is defined as follows:

- A majority of the total membership of that House (i.e., more than 50% of the total number of members).

- A majority of not less than two-thirds of the members of that House present and voting.
- This process is designed to ensure a high degree of deliberation and consensus before a constitutional amendment is approved. It prevents any amendment from being passed by a simple majority and requires substantial support from across the political spectrum.

Procedure:

Introduction: A Bill for amending the Constitution is introduced in either House of Parliament.

Special Majority in Each House: The Bill must be passed by each House of Parliament by the special majority as defined above.

Presidential Assent: Once the Bill is passed by both Houses, it is presented to the President for assent. The President is bound to give his assent to the Bill. (This was established by the 24th Amendment.)

Gazette Notification: After the President gives his assent, the amendment comes into effect and is published in the Official Gazette.

This category of amendments is used for the majority of changes to the Constitution. It allows Parliament to amend a wide range of provisions, including those relating to the fundamental rights, the Directive Principles of State Policy, the Union and State governments, and other administrative and procedural aspects.

Examples:

- Amendments to the fundamental rights (subject to the basic structure doctrine).
- Amendments to the provisions regarding the executive, legislature, and judiciary at the Union and State levels.
- Amendments to the provisions relating to citizenship.
- Amendments to the provisions relating to the election of the President and VicePresident.

Amendments Requiring Ratification by States (Article 368(2) Proviso)

Certain amendments, particularly those affecting the federal structure of the Constitution, require a further step: ratification by the legislatures of a majority of the States. These amendments involve changes that have a direct impact on the powers and rights of the States,

so the Constitution rightly provides a safeguard to ensure the States have a say in those changes.

Provisions requiring State Ratification: The proviso to Article 368(2) specifies the provisions of the Constitution that require ratification by at least one-half of the States before the amending bill can be presented to the President for assent. These provisions generally relate to the federal structure of the country. They include:

- Articles 54 and 55 (relating to the election of the President).
- Chapter IV of Part V (relating to the extent of the executive power of the Union).
- Chapter I of Part VI (relating to the extent of the executive power of the State).
- Chapter IV of Part VI (relating to the High Courts).
- Chapter V of Part VI (relating to the High Courts).
- Article 241 (relating to the High Courts for Union territories).
- Any of the provisions of Article 368 itself (e.g., an amendment to the amendment process).
- Any of the provisions relating to the distribution of legislative powers between the Union and the States (Seventh Schedule).

REPRESENTATION OF STATES IN PARLIAMENT.

Procedure:

- **Introduction:** A Bill for amending the Constitution is introduced in either House of Parliament.
- **Special Majority in Each House:** The Bill must be passed by each House of Parliament by the special majority, as defined in Article 368(2).
- **Ratification by State Legislatures:** After the Bill is passed by both Houses, it is sent to the State legislatures for ratification. At least one-half of the States must ratify the Bill by a resolution passed by the legislature. There is no time limit prescribed within which the states have to ratify the Amendment
- **Presidential Assent:** Once the Bill has been ratified by the required number of States, it is presented to the President for assent. The President is bound to give his assent to the Bill.
- **Gazette Notification:** After the President gives his assent, the amendment comes into effect and is published in the Official Gazette.

This category of amendments reflects the federal nature of the Indian Constitution. It ensures

that the States have a voice in any changes that affect their powers and rights. It strengthens the principle of federalism and prevents the Central Government from unilaterally altering the structure of the Indian Union.

Examples:

- Amendments affecting the election of the President.
- Amendments altering the boundaries or powers of the States.
- Amendments affecting the distribution of legislative powers between the Union and the States (such as changes to the Union List, State List, or Concurrent List).
- Amendments affecting the representation of the States in Parliament.

Amendments by Simple Majority (Outside Article 368)

Certain provisions of the Constitution can be amended by a simple majority in Parliament, that is, a majority of the members present and voting in each House. These amendments are not subject to the procedure laid down in Article 368. These amendments are essentially treated as ordinary legislative acts. These amendments do not involve a formal constitutional amendment process under Article 368. They usually relate to relatively minor matters and do not alter the fundamental structure of the Constitution.

Provisions Amendable by Simple Majority:

- Formation of new States (Article 3)
- Alteration of the boundaries of States (Article 3)
- Creation or abolition of Legislative Councils in States (Article 169)
- Second Schedule (Emoluments, allowances, privileges of President, Governors, Speakers, Judges etc.)
- Quorum in Parliament or State Legislature (Article 100, 189)
- Use of English language (Article 348)
- Citizenship (Article 11)
- Constitution of the Parliament, the State legislatures etc.

Procedure:

- Introduction: A Bill is introduced in either House of Parliament.
- Simple Majority in Each House: The Bill must be passed by each House of Parliament by a simple majority of the members present and voting.

- **Presidential Assent:** The Bill is presented to the President for assent. The President is bound to give his assent.
- **Gazette Notification:** After the President gives his assent, the amendment comes into effect and is published in the Official Gazette.

These amendments are handled through the normal legislative process, reflecting the fact that the changes are not considered fundamental to the constitutional structure. They usually relate to administrative or organizational matters rather than core constitutional principles.

Examples:

- Creation of new States or alteration of State boundaries (e.g., the creation of Telangana).
- Amendments to the Second Schedule, dealing with the emoluments and allowances of various constitutional functionaries.
- Matters related to citizenship.
- Changes to the composition or organization of Parliament or State Legislatures.

Analysis of Important Constitutional Amendments

The Indian Constitution has been amended numerous times since its adoption. Some amendments have had a significant impact on the country's legal, political, and social landscape. Studying these amendments provides insights into the evolving nature of the Constitution and the challenges faced by the Indian polity. This section examines some of the more important constitutional amendments.

The 1st, 4th, and 17th Amendments.

These amendments were primarily concerned with addressing early challenges to land reforms and the government's efforts to implement socio-economic policies.

The 1st Amendment Act, 1951: Enacted shortly after the Constitution came into force, the First Amendment was a response to judicial challenges to land reform legislation and other measures aimed at social justice. It made several significant changes:

- It inserted Articles 31A and 31B into the Constitution. Article 31A protected laws relating to the acquisition of estates and other property from being challenged on the ground that they violated fundamental rights. Article 31B validated certain laws

included in the Ninth Schedule, immunizing them from judicial review.

- It amended Article 19 to allow for "reasonable restrictions" on the right to freedom of speech and expression, the right to assemble peacefully, and the right to form associations, in the interests of the security of the State, friendly relations with foreign states, public order, decency, or morality.
- It added a new clause, Article 15(4), which empowered the state to make special provisions for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes. This provided a constitutional basis for affirmative action policies.
- It also amended Article 31 to provide for "just compensation" when property was acquired by the state.

The First Amendment was a significant step in the direction of social and economic reform. It sought to balance the fundamental rights with the need for social justice and state action. It laid the groundwork for the implementation of land reforms, the abolition of the zamindari system, and other social welfare measures.

The 4th Amendment Act, 1955: This amendment further strengthened the government's ability to implement land reforms and other social welfare measures. It amended Article 31 again to clarify the meaning of "compensation" and provided that the adequacy of compensation would not be questioned in the courts. It also expanded the scope of Article 31A to protect laws relating to the management of property by the state and the amalgamation of corporations. The Fourth Amendment aimed to further insulate land reform legislation from judicial scrutiny. It expanded the scope of the Ninth Schedule and sought to clarify the compensation payable to the property owners.

The 17th Amendment Act, 1964: This amendment further expanded the scope of Article 31A and the Ninth Schedule. It included more land reform laws in the Ninth Schedule, further immunizing them from judicial review. The 17th Amendment was a continuation of the trend established by the First and Fourth Amendments. It reinforced the government's commitment to land reforms and sought to overcome judicial challenges to these policies.

These early amendments demonstrated the government's determination to pursue social and economic reforms and to overcome obstacles posed by the courts and established property rights. These amendments set a trend for balancing the individual rights with the rights of the

community.

The 24th, 25th, 26th, 39th, and 42nd Amendments.

These amendments are often grouped together because they reflect a period of intense political and legal debate, particularly concerning the relationship between Parliament and the judiciary. The Golaknath case and the events of the Emergency had a significant impact on these amendments.

The 24th Amendment Act, 1971: This amendment was passed in response to the Supreme Court's judgment in *Golaknath v. State of Punjab*, which had held that Parliament could not amend fundamental rights. The 24th Amendment sought to overturn this decision. It amended Article 368 to explicitly state that Parliament had the power to amend any part of the Constitution, including fundamental rights. It also made it obligatory for the President to give his assent to a Constitutional Amendment Bill. This was a significant move to reassert the Parliament's supremacy in the amendment process.

The 25th Amendment Act, 1971: This amendment was enacted to give effect to the Directive Principles of State Policy, particularly those relating to economic equality. It amended Article 31C to provide that laws giving effect to the Directive Principles in Article 39(b) and (c), relating to the equitable distribution of resources and the prevention of concentration of wealth, would be immune from challenge on the ground that they violated fundamental rights under Articles 14, 19, and 31. The amendment also provided that the amount of compensation payable for the acquisition of property by the state could not be questioned in the courts. This amendment aimed to give precedence to certain Directive Principles over the Fundamental Rights.

The 26th Amendment Act, 1971: This amendment abolished the privy purses and special privileges of the former rulers of princely states. This was a significant step towards social and economic equality. The amendment aimed to remove inequalities and to integrate the princely states into the democratic framework.

The 39th Amendment Act, 1975: This amendment was enacted during the Emergency. It placed the election of the President, Vice-President, Prime Minister, and Speaker of the Lok Sabha beyond the scrutiny of the judiciary. This meant that any disputes relating to their elections could not be challenged in the courts. This amendment was widely criticized as an attempt to

undermine judicial review and to protect the position of the Prime Minister.

This amendment curtailed judicial review.

The 42nd Amendment Act, 1976: This amendment, enacted during the Emergency, was one of the most controversial and far-reaching amendments to the Constitution. It made extensive changes to the Constitution, many of which were designed to strengthen the power of the executive and to curtail the role of the judiciary. Some of the key changes included:

Preamble: It added the words "Socialist" and "Secular" to the Preamble of the Constitution.

Directive Principles: It gave precedence to the Directive Principles of State Policy over fundamental rights.

Fundamental Duties: It added a new chapter on Fundamental Duties, setting out the duties of citizens.

Judicial Review: It curtailed the power of judicial review by excluding certain laws from judicial scrutiny. It also provided that no amendment to the Constitution could be questioned in any court.

Parliamentary Supremacy: It sought to establish the supremacy of Parliament by removing all limitations on its power to amend the Constitution.

Tenure of Lok Sabha and State Assemblies: It extended the tenure of the Lok Sabha and State Assemblies from five years to six years.

Administrative Tribunals: It provided for the establishment of administrative tribunals.

The 42nd Amendment was highly controversial and was widely criticized as an assault on democratic values and an attempt to establish an authoritarian regime. It was viewed as an attempt to concentrate power in the executive and to undermine the role of the judiciary. These amendments marked a turbulent period in Indian constitutional history, characterized by efforts to reconcile competing values and tensions between the judiciary, the legislature, and the executive.

The 44th, 73rd, 74th, 97th, 100th, 101st, 102nd, 103rd, 104th, and 105th Amendments.

These amendments represent a diverse range of changes, from restoring the balance of power to addressing contemporary socio-economic issues and federalism.

The 44th Amendment Act, 1978: This amendment was enacted to undo some of the changes made by the 42nd Amendment, after the Emergency was lifted. It sought to restore the balance between the legislature, the executive, and the judiciary. Key provisions included:

Restoration of Judicial Review: It removed the provisions that curtailed judicial review and restored the power of the courts to review constitutional amendments.

Protection of Fundamental Rights: It strengthened the protection of fundamental rights by deleting the right to property from the list of fundamental rights and making it a legal right.

Emergency Provisions: It made the provisions relating to the declaration of Emergency more stringent and provided for safeguards against its misuse. It also provided that a proclamation of Emergency could be issued only on the written advice of the Cabinet.

Tenure of Lok Sabha and State Assemblies: It reduced the term of the Lok Sabha and State Assemblies back to five years.

Free Press: It restored the freedom of the press.

The 44th Amendment marked a return to constitutional normalcy after the Emergency and aimed to strengthen the safeguards for democracy and fundamental rights.

The 73rd Amendment Act, 1992: This amendment was a landmark step towards decentralization and the empowerment of local self-government. It added a new Part IX to the Constitution, titled "The Panchayats." It provided for a three-tier system of Panchayati Raj institutions at the village, intermediate, and district levels. Key provisions included:

Establishment of Panchayats: It mandated the establishment of Gram Panchayats (village councils) in every village.

Elections: It provided for direct elections to the Panchayats.

Reservation for SCs/STs and Women: It provided for reservation of seats for Scheduled Castes, Scheduled Tribes, and women in the Panchayats.

State Election Commission: It provided for the establishment of State Election Commissions to conduct elections to the Panchayats.

State Finance Commission: It provided for the establishment of State Finance Commissions to review the financial position of the Panchayats and to recommend measures to improve their financial health.

Powers and Functions: It specified the powers and functions of the Panchayats, including the preparation of plans for economic development and social justice.

The 73rd Amendment sought to empower the local communities and to bring the government closer to the people.

The 74th Amendment Act, 1992: This amendment, enacted simultaneously with the 73rd Amendment, dealt with urban local bodies (municipalities). It added a new Part IXA to the Constitution, titled "The Municipalities." Key provisions included:

Establishment of Municipalities: It provided for the establishment of Municipalities at the town, city, and metropolitan levels.

Types of Municipalities: It provided for three types of Municipalities: Nagar Panchayats (for transitional areas), Municipal Councils (for smaller urban areas), and Municipal Corporations (for larger urban areas).

Elections: It provided for direct elections to the Municipalities.

Reservation: It provided for reservation of seats for Scheduled Castes, Scheduled Tribes, and women in the Municipalities.

State Election Commission and State Finance Commission: It provided for the establishment of State Election Commissions and State Finance Commissions to conduct elections and review the financial position of the Municipalities, respectively.

Powers and Functions: It specified the powers and functions of the Municipalities, including the preparation of plans for economic development and social justice.

The 74th Amendment, like the 73rd, sought to promote decentralization and the empowerment of local self-government in urban areas. It aimed at giving more power to the municipalities.

The 97th Amendment Act, 2011: This amendment related to cooperative societies. It inserted a new Part IX-B into the Constitution, titled "The Cooperative Societies." It aimed to provide constitutional status and protection to cooperative societies and promote their autonomous and democratic functioning. Key provisions included:

Right to form Cooperative Societies: It made the formation of cooperative societies a fundamental right.

Incorporation and Management: It provided for the incorporation and management of cooperative societies.

Elections: It mandated periodic elections to the cooperative societies.

State Cooperative Societies: It also introduced provisions related to the State Cooperative Societies.

The 97th Amendment aimed to ensure that cooperative societies function democratically and autonomously.

The 100th Amendment Act, 2015: This amendment related to the exchange of territories between India and Bangladesh. It gave effect to the agreement entered into between the two countries for the exchange of certain enclaves and the settlement of boundary disputes. The amendment involved the transfer of certain territories to Bangladesh and the acquisition of certain territories from Bangladesh.

The 101st Amendment Act, 2016: This amendment introduced the Goods and Services Tax (GST), a comprehensive indirect tax system, in India. It amended the Constitution to provide for the levy and collection of GST on the supply of goods or services or both.

The amendment introduced a dual GST model, with both the Central government and the State governments having the power to levy and collect GST. It aimed to create a unified national market and to simplify the indirect tax regime. It also established the Goods and Services Tax Council (GST Council), which is responsible for making recommendations on various aspects of GST.

The 102nd Amendment Act, 2018: This amendment provided constitutional status to the National Commission for Backward Classes (NCBC). It inserted a new Article 338B in the Constitution to define the powers, functions, and responsibilities of the NCBC. It also gave the NCBC the power to investigate and monitor all matters relating to the safeguards provided for the socially and educationally backward classes.

The 103rd Amendment Act, 2019: This amendment provided for economic reservation for Economically Weaker Sections (EWS) in the general category. It inserted clauses (6) and (7) in Article 15 and a new clause (6) in Article 16 to provide for 10% reservation for EWS in educational institutions and government jobs. This reservation is in addition to the existing reservations for SCs, STs, and OBCs.

The 104th Amendment Act, 2020: This amendment extended the reservation for Scheduled Castes (SCs) and Scheduled Tribes (STs) in the Lok Sabha and State legislatures for a further period of ten years (until 2030). It also removed the provision for the nomination of Anglo-Indian members to the Lok Sabha and State legislatures. The amendment aimed to continue the representation of SCs and STs in the legislature and to remove the special provisions for the Anglo-Indian community.

The 105th Amendment Act, 2021: This amendment allowed the States and Union Territories to identify and specify the Socially and Educationally Backward Classes (SEBCs). It clarified that the power to identify SEBCs lay with the State governments and Union Territories. The amendment was enacted in response to a Supreme Court judgment that had questioned the power of the States to identify SEBCs. The amendment sought to restore the power of the States

to identify SEBCs and to ensure that the reservation benefits reach the intended beneficiaries.

These amendments reflect a wide range of concerns and demonstrate the ongoing process of adapting the Constitution to meet the changing needs of Indian society. They highlight the interplay between social justice, federalism, economic development, and the preservation of democratic values.

Challenges and Criticisms of the Indian Amendment Process

While the Indian Constitution provides for a comprehensive amendment process, it has also faced several challenges and criticisms over the years.²¹

The Basic Structure Doctrine: The Basic Structure Doctrine, while lauded for protecting the Constitution's fundamental principles, has also been criticized for its vagueness and the lack of a clear definition of the "basic structure."²² This ambiguity has led to uncertainty and litigation.²³ Critics argue that the judiciary, in defining the basic structure, has effectively exercised legislative power and that this limits the sovereignty of the Parliament. The doctrine, as interpreted by the courts, has also led to the rejection of amendments that the legislature deemed necessary.

Lack of Public Participation: The amendment process in India does not involve direct public participation, such as referendums. The power to amend rests solely with the Parliament and, in some cases, with the State legislatures.

Challenges and Criticisms of the Indian Amendment Process (Continued)

The Basic Structure Doctrine (Continued):

- **Vagueness and Subjectivity:** As mentioned, the lack of a precise and exhaustive definition of the "basic structure" has been a persistent criticism. The judiciary's interpretation of this doctrine has evolved over time, leading to debates about judicial activism and the potential for arbitrary decisions. The absence of a clear set of criteria

²¹ Richard Albert, *Constitutional Amendments: Making, Breaking, and Changing Constitutions* 12–13 (Oxford Univ. Press 2019); INDIA CONST. art. 368.

²² *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225 (India); H.M. Seervai, *Constitutional Law of India* 313–15 (4th ed. Universal Law Pub. 1996).

²³ Abhinav Chandrachud, *Republic of Rhetoric: Free Speech and the Constitution of India* 142–44 (Penguin Random House 2020).

makes it difficult for Parliament to anticipate whether a proposed amendment will be upheld by the courts.

- **Judicial Overreach:** Some critics argue that the Basic Structure Doctrine gives the judiciary excessive power, allowing it to veto the will of the elected representatives of the people.²⁴ They believe that the amendment process should be primarily the domain of the legislature, which is directly accountable to the electorate. The judiciary is, in this view, encroaching on the domain of the legislative by defining its boundaries.
- **Hindrance to Reform:** Some argue that the Basic Structure Doctrine can hinder necessary reforms and make it difficult to adapt the Constitution to changing circumstances. It can prevent the implementation of policies that the government believes are essential for the country's progress. The doctrine has been blamed for holding back certain important reforms.

Lack of Public Participation (Continued):

- **Democratic Deficit:** The absence of direct public participation, through mechanisms like referendums or citizen assemblies, can be seen as a democratic deficit. Some argue that the amendment process should be more inclusive and that the public should have a direct say on important constitutional changes. This lack of involvement can create a sense of disconnect between the constitution and the people it is meant to serve.
- **Elite Process:** The current process is largely an elite affair, involving only the Parliament and, in certain cases, the State legislatures. This can lead to decisions that are not fully representative of the diverse views and interests of the Indian population.
- **Lack of Awareness:** The general public often has limited awareness of the details of the Constitution and the amendment process. This lack of awareness makes it difficult for the public to engage meaningfully in the process.
- **Complexity and Rigidity:** While the Indian Constitution is considered "semirigid," the amendment process can still be complex, particularly when State ratification is required. This complexity can slow down the process and make it more challenging to enact necessary changes.
- **Lengthy Process:** The requirement for a special majority in Parliament, and ratification by half the States for certain amendments, can make the amendment process lengthy and timeconsuming. This can delay the implementation of important reforms and make

²⁴ Upendra Baxi, "The Indian Constitution as a Living Document," Seminar, No. 615, Nov. 2010, https://www.india-seminar.com/2010/615/615_upendra_baxi.htm.

it difficult to respond quickly to emerging challenges.

- **Political Obstruction:** The need for a broad consensus, often across political parties, can be difficult to achieve, especially in a multi-party democracy. This can lead to political gridlock and prevent the passage of amendments that are supported by a majority of the population.
- **Overuse of the Ninth Schedule:** The inclusion of laws in the Ninth Schedule, intended to protect them from judicial review, has been criticized as undermining the rule of law and the principle of judicial review. The Supreme Court has attempted to limit the scope of the Ninth Schedule, but it remains a controversial aspect of the amendment process. This has been seen as an abuse of the amendment process and a way to circumvent the principles of the Constitution.
- **Undermining Judicial Review:** The Ninth Schedule was used to shield certain laws from judicial review, essentially preventing challenges to legislation that might otherwise be struck down as unconstitutional. This practice undermines the role of the judiciary and weakens the protection of fundamental rights.
- **Erosion of Rule of Law:** Critics argue that the Ninth Schedule has led to an erosion of the rule of law by creating a class of laws that are immune from judicial scrutiny. This undermines the principle of equality before the law and can lead to arbitrary and unjust outcomes.
- **Lack of Transparency:** The process of including laws in the Ninth Schedule has often lacked transparency and public debate. This can raise concerns about accountability and the potential for misuse.
- **Impact of Political Instability:** The amendment process can be affected by political instability and the shifting political landscape. Changes in government or the political balance in Parliament can affect the prospects of passing amendments.
- **Partisan Politics:** The amendment process can be influenced by partisan politics, with different parties having different priorities and agendas. This can make it difficult to reach a consensus on important constitutional changes.
- **Coalition Governments:** In periods of coalition governments, it can be even more challenging to secure the necessary majorities in Parliament, especially if the coalition partners have conflicting interests.
- **Impact of Elections:** Elections and the shifting political landscape can have a significant impact on the amendment process, with the prospects of passing amendments changing depending on the political alignment in the Parliament.

- **Need for Periodic Review:** There is a need for periodic reviews of the Constitution and the amendment process to ensure that it remains relevant and responsive to the changing needs of society. Such reviews could identify areas where the amendment process could be improved and updated.
- **Updating the Constitution:** Periodic reviews could help identify provisions that need to be updated or amended to reflect current social, economic, and political realities.
- **Simplifying Procedures:** Reviews could also explore ways to simplify the amendment process and make it more efficient.
- **Addressing Emerging Challenges:** Reviews could help identify emerging challenges and develop strategies for addressing them through constitutional amendments.

The challenges and criticisms of the Indian amendment process highlight the need for ongoing evaluation and reform. Striking the right balance between flexibility and stability, ensuring public participation, and safeguarding the basic structure of the Constitution are essential for maintaining the integrity and relevance of the Indian Constitution.

CONCLUSION

The paper's exploration of amenability under the Indian Constitution demonstrates the unique balance India has struck between constitutional flexibility and the preservation of its core principles. Article 368 provides a robust procedural framework for amendments, allowing the Constitution to evolve in response to changing societal needs. However, the development and entrenchment of the Basic Structure Doctrine by the Supreme Court have ensured that this power is not absolute—Parliament cannot amend the Constitution in a manner that destroys its essential features, such as democracy, rule of law, and fundamental rights.

Through the analysis of landmark cases and major amendments, it is evident that the Indian approach to constitutional amenability is characterized by an ongoing dialogue between the legislature and the judiciary. This dynamic has fostered both adaptability and stability, enabling the Constitution to address contemporary challenges while safeguarding foundational values. Despite criticisms regarding potential judicial overreach and the complexity of the amendment process, the Indian model has largely succeeded in maintaining constitutional integrity and democratic legitimacy.

In conclusion, the Indian experience with constitutional amenability serves as a compelling

example of how a written constitution can remain both resilient and responsive. The interplay between amendment procedures and substantive limitations continues to shape the trajectory of constitutional governance in India, ensuring that the Constitution remains a living document, capable of guiding the nation through changing times.

