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# **FROM FLEXIBILITY TO ENTRENCHMENT:** **THE JOURNEY OF CONSTITUTIONAL** **AMENDMENTS IN INDIA**

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## **ABSTRACT**

Amendments to the Constitution involve specific actions or measures that facilitate such modifications. These actions typically involve the removal of existing provisions and the introduction of new laws. These changes are vital for rejuvenating the text and enhancing democracy. Over time, constitutions must evolve to address inefficiencies, adapt to new circumstances or public demands, and reflect contemporary views on rights. Although constitutions may naturally evolve through new political standards or judicial interpretations, formal amendments are necessary to alter the actual wording of the constitutional text. Consequently, most modern constitutions have established guidelines for when and how these formal amendments should occur. Generally, constitutions require a more rigorous process for amendments than for ordinary legislation, such as a legislative supermajority, direct public approval in a referendum, or a combination of several stringent methods. In some cases, citizens themselves can initiate a process leading to a referendum on constitutional change. The process of amending a constitution raises complex legal issues regarding its role in safeguarding constitutional democracy, and these issues vary based on the interpretation of the constitution used.

## **The Amendability of the Constitution**

The amendability of a constitution distinguishes it as the foundational framework of a nation's governance, separate from ordinary statutory laws. Embedded within the constitution itself, the process for amendments serves to uphold the document's integrity and the stability of the legal system, encapsulating the highest legal principles governing the country.

Specialized Amendment Process acknowledges the constitution's elevated status, requiring more rigorous standards than ordinary laws. This involves obtaining higher thresholds of approval, such as a two-thirds majority in legislative houses, and may include steps like ratification by

states or public referendums.

Constitutional Entrenchment protects certain parts of the constitution from amendments without meeting stringent criteria, safeguarding fundamental rights and the basic structure from arbitrary changes that could destabilize the nation's legal and governmental structure.

Specific Provisions in National Constitutions, like Article V of the U.S. Constitution or Article 368 of the Indian Constitution, illustrate the deliberate complexity and rigor involved in the amendment process, underscoring the constitution's durability and steadfastness.

Exceptions to the Amendment Process exist in some constitutional frameworks, where certain aspects may be amended through less stringent processes, carefully outlined and subject to rigorous scrutiny.<sup>1</sup>

In essence, the arduous and complex process of amending a constitution ensures changes reflect broad consensus and deep consideration, maintaining the constitution's role as the cornerstone of national law and governance. This system reinforces the sanctity and stability of the constitutional order, ensuring that fundamental changes are made thoughtfully and responsibly, reflecting the collective will and long-term interests of the nation.

## **CHINA**

China's constitutional framework stands as a departure from conventional norms, presenting distinctive features that redefine the relationship between constitutional law and legislative processes. Unlike in many countries where constitutions are upheld as the paramount legal authority, subject to stringent amendment procedures, China's approach diverges significantly.

Centralized within the National People's Congress (NPC), China's highest legislative body, the power to amend the constitution is seamlessly integrated with the ordinary legislative functions. This integration implies that constitutional changes do not undergo a more intricate or rigorous process compared to ordinary legislation. Consequently, the absence of special procedures streamlines the amendment process, potentially enhancing governance agility but also raising concerns about the safeguarding of fundamental legal principles.

Unlike jurisdictions with explicit procedures for constitutional amendments, China's constitution lacks such distinctions, implying a more streamlined but potentially less fortified approach to constitutional changes. This arrangement has profound implications for governance and legal stability, as significant alterations to fundamental laws can be made with relative ease.

Moreover, the absence of formalized mechanisms for entrenching constitutional provisions

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<sup>1</sup> Dr.Durga Das Basu's Comparative Constitutional Law ,309,(Justice G B Patnaik,Yasobant Das,Rita das,3 rd ed.2014)

further underscores China's unique approach to governance. While practical or political constraints may hinder certain amendments, there is no legal mandate necessitating more rigorous criteria for altering foundational constitutional principles.

In essence, China's constitutional framework reflects its distinctive political and legal culture, emphasizing centralized power and party leadership over formal legal processes. This approach, while fostering responsiveness in governance, also raises questions about the durability and protection of fundamental legal structures in the face of political shifts.

## USA

Article V of the United States Constitution stands as a cornerstone in maintaining the equilibrium of the federal government, particularly concerning the representation of states in the Senate. It upholds the principle of equal state representation in the Senate, ensuring that each state, regardless of size or population, holds an equal voice in the national legislature.<sup>2</sup>

Contextually, the United States Senate comprises two senators from each state, a result of the Great Compromise during the Constitutional Convention of 1787. Article V solidifies this arrangement by stipulating that no state shall lose its equal suffrage in the Senate without its consent, thus safeguarding state sovereignty and protecting smaller states from potential domination by larger ones.<sup>3</sup>

The implication of this clause is significant, as it effectively renders this aspect of the Constitution unamendable under normal circumstances. Since any change would require the consent of the affected state, which is highly improbable, this provision remains a permanent feature of the legislative structure. While the Constitution generally allows for amendments through a defined process, the provision regarding state equality in the Senate adds an extra layer of complexity. This underscores the commitment to federalism, ensuring that federal legislative power is balanced and that the interests of states as sovereign entities are preserved.

In essence, Article V's provision regarding state representation in the Senate underscores the foundational principles of American governance, highlighting the delicate balance between state and federal powers and the lengths to which the Constitution goes to protect these dynamics.

## FRANCE

Article 89 of the French Constitution governs the process of constitutional amendments and

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<sup>2</sup> Navisha Uzaira Khan, Kohelica Nag, *Comparative Study Of The Amendment Procedure In India, Switzerland, Canada, Usa, France And Germany*, International Journal of Research and analytical review, 260, 276 (2023), available at <https://www.ijrar.org/papers/IJRARTH00136.pdf,last> seen on 26/04/2024

<sup>3</sup> Ullman v. United States, 350 U.S. 422, 428 (1956)

includes specific provisions aimed at protecting the fundamental characteristics of the French state. This article is crucial in ensuring that certain essential attributes of the nation—its territorial integrity and its republican form of government—are preserved from alteration through constitutional amendments.

**Protection of Core State Characteristics:** Under Article 89, any constitutional amendment that could potentially damage the territorial integrity of France is strictly prohibited. This means that any changes that might lead to the loss of French territories or alterations in its current borders are not permissible under this article. This safeguard is designed to maintain the nation's complete and indivisible territory.<sup>4</sup>

Similarly, Article 89 also protects the republican form of government, which is the foundation of France's political system. The term "republican" in this context refers to a system characterized by the absence of a monarchy and a government that is elected by the people. The article ensures that no amendment can transform France from a republic to any other form of governance, such as a monarchy or dictatorship.

**Amendment Process:** The amendment process detailed in Article 89 is deliberately rigorous, requiring multiple steps:

**Proposal Stage:** An amendment can be proposed by the President of the Republic on the recommendation of the Prime Minister or by members of Parliament.

**Approval Stage:** Once proposed, the amendment must be approved by both houses of Parliament — the National Assembly and the Senate. Each must pass the proposed amendment in identical terms.

**Ratification Stage:** Following parliamentary approval, the amendment must either be ratified through a referendum or by a three-fifths majority vote of the Congress, a joint session of both Parliamentary houses convened at the Palace of Versailles.

**Significance and Implications:** This stringent process and the specific prohibitions within Article 89 reflect the dedication to maintaining the foundational principles of the French state. By making it difficult to alter critical aspects of the state's structure and government, Article 89 provides a stable political and legal environment, which is essential for the functioning of democracy.

**Historical and Contemporary Relevance:** Historically, the inclusion of these prohibitions in the French Constitution is rooted in France's turbulent history with various forms of governance, including periods of monarchy, empire, and republic. The current constitutional framework is

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<sup>4</sup> Navisha Uzaira Khan, Kohelica Nag, *Comparative Study Of The Amendment Procedure In India, Switzerland, Canada, Usa, France And Germany*, International Journal of Research and analytical review, 260, 276 (2023), available at <https://www.ijrar.org/papers/IJRARTH00136.pdf.last> seen on 26/04/2024

designed to avoid the instabilities of the past by solidifying the republican form of governance and ensuring the territorial integrity of France.

In contemporary terms, this article acts as a safeguard against fleeting political trends or populist movements that might seek to alter these fundamental aspects of the French state. It ensures that any change to critical state characteristics must undergo a thorough scrutiny and broad consensus, thereby reinforcing the resilience of the French constitutional structure.

### **WEST GERMANY**

Article 79(3) of the German Constitution, known as the Basic Law, embodies a crucial safeguard termed the "eternity clause," which preserves the foundational structure and core principles of the German state. This clause ensures that specific essential aspects of the constitution remain inviolable and unchanged, irrespective of legal or political developments.<sup>5</sup>

The scope of the eternity clause encompasses several key provisions:

1. **Division of the Federation into States:** This safeguards the federal structure of Germany, maintaining the political and territorial integrity of the states within the federal system.
2. **Participation of the States in Legislation:** It ensures that the states retain significant roles in federal legislation, crucial for cooperative federalism.
3. **Basic Principles Laid Down in Articles 1-20:** These include fundamental rights and democratic principles, securing the core values of modern German democracy.

Implications of the eternity clause include:

**Stability and Continuity:** It contributes to the stability of the German constitutional order by ensuring that any changes respect entrenched principles.

**Protection Against Authoritarianism:** By preventing legal amendments that undermine democracy or the rule of law, it acts as a bulwark against authoritarian tendencies.

The amendment process outside the eternity clause entails a two-thirds majority in both the Bundestag and the Bundesrat, ensuring broad consensus across the political spectrum.

The inclusion of the eternity clause in the German Basic Law is rooted in historical context, particularly the experiences of the Weimar Republic and the Third Reich. It serves as a preventive measure against totalitarianism, reflecting a commitment to democracy and human dignity.

In contrast, India utilizes the Basic Structure Doctrine, a judicially developed concept that

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<sup>5</sup> Mathias Reimann, Takeover: German Reunification Under A Magnifying Glass the Imperfect Union: Constitutional Structures of German Unification. by Peter E. Quint. Princeton: Princeton University Press.1997. Pp. Xi, 482. \$75., 96 Mich. L. Rev. 1988, 1995-96 (1998)

protects inherent features of the constitution, like secularism and fundamental rights. This doctrine introduces a dynamic element of judicial review, ensuring that constitutional amendments comply with the fundamental ethos of the constitution.<sup>6</sup>

Both approaches face challenges and criticisms; while the German model may restrict necessary evolutionary changes, the Indian approach can lead to uncertainties and debates over the scope of the basic structure.

In essence, the eternity clause in the German Constitution and the Basic Structure Doctrine in India exemplify distinct mechanisms for safeguarding fundamental principles within constitutional frameworks, reflecting each nation's unique historical context and approach to governance.

## CANADA

Article 91(1) of the Canadian Constitution, established in 1949, stands as a pivotal component in delineating the boundaries of legislative authority between the federal Parliament and provincial governments, crucial for upholding Canada's federal structure.

Key aspects of Article 91(1) include its division of powers, where it delineates areas exclusively under federal control while also limiting the federal government's ability to amend the Constitution regarding matters within provincial jurisdiction. This provision safeguards provincial autonomy by requiring a different process for amendments involving matters reserved for provincial governance, thus fostering a balance of power between federal and provincial authorities.

The significance of Article 91(1) lies in its foundational role in Canadian federalism, preventing federal overreach into provincial jurisdictions vital for regional administration and responsiveness to local needs. Moreover, it dictates the complex constitutional amendment procedures in Canada, emphasizing broader consensus-building mechanisms like the "7/50 formula" to ensure provincial input and consent.

This provision also promotes intergovernmental relations, necessitating a cooperative approach to constitutional changes involving jurisdictional powers. By fostering negotiation and consensus-building between federal and provincial governments, Article 91(1) maintains harmony within the federal system.<sup>8</sup>

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<sup>6</sup> Encyclopedia Britannica, Germany, <http://www.britannica.com/EBchecked/topic/231186/Germany>

<sup>7</sup> Section 79 of the Basic Law for the Federal Republic of Germany

<sup>8</sup> Navisha Uzaira Khan, Kohelica Nag, *Comparative Study Of The Amendment Procedure In India, Switzerland, Canada, Usa, France And Germany*, International Journal of Research and analytical review, 260, 276 (2023), available at <https://www.ijrar.org/papers/IJRARTH00136.pdf,last> seen on 26/04/2024

In a broader context, Article 91(1) reflects Canada's evolving respect for provincial rights within its federal structure, adapting to societal changes while protecting diverse provincial interests. By upholding the delicate balance of power, this constitutional safeguard promotes stability and cooperation across different levels of government, ensuring that the federal government respects provincial authorities and engages in collaborative governance processes for any constitutional amendments.

### **SPECIAL PROCEDURE BUT NO ENTRENCHMENT :INDIA**

The evolution of constitutional amendment processes and the interpretation of fundamental rights in India provide a rich case study in constitutional law, particularly illustrating the dynamic between judicial interpretation and legislative actions. Here's an elaboration on how these developments unfolded, showcasing the complexities and nuances of constitutional amendments in India.

#### 1. Initial Understanding and Judicial Interpretation

Initially, the Constitution of India did not explicitly protect any part of it from amendments. As long as the amendment followed the special procedure outlined in Article 368, it was considered valid. This understanding was unanimously supported by the Supreme Court as early as 1951<sup>9</sup>. Under this interpretation, the entire constitution, including the provisions related to fundamental rights, was amendable

#### 2. Shift in Judicial Perspective: Golak Nath Case (1967)

The Golak Nath case marked a significant turning point. In this case, the Supreme Court declared that an amendment to the Constitution was still a "law" under the meaning of Article 13(2), which states that the state shall not make any law which takes away or abridges the rights conferred by Part III (the Fundamental Rights) and any law made in contravention of this clause shall be void. Based on this interpretation, the Supreme Court held that a constitutional amendment that sought to alter or remove any fundamental rights would be void. This effectively rendered Part III of the Constitution unamendable, despite no such express reservation in Article 368 itself.

#### 3. Reversal and Establishment of the Basic Structure Doctrine: Kesavananda Bharati Case (1973)

The Supreme Court revisited and overturned the Golak Nath decision in the landmark Kesavananda Bharati case. This decision was pivotal in defining the scope of Parliament's power to amend the Constitution. The court held that Article 13(2) referred to ordinary laws made by Parliament and not to constitutional amendments enacted under Parliament's constituent power.

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<sup>9</sup> Shankari Prasad v. union of India AIR1951SC458 (followed by the majority in sajjan singh vs state of Rajasthan AIR1965 SC 845)

Thus, the court concluded that constitutional amendments were not laws under Article 13(2) and could, therefore, modify or abrogate fundamental rights.

However, the Kesavananda Bharati<sup>10</sup> case went further to establish the "Basic Structure Doctrine." This doctrine posits that while the Constitution could be amended, certain foundational features or the 'basic structure' of the Constitution could not be destroyed or altered by amendments. These foundational features include the supremacy of the Constitution, the democratic republican form of government, the separation of powers, and the secular and federal character of the state.

4. Legislative Response: 24th Amendment Act (1971) In response to the Golak Nath decision, Parliament passed the 24th Amendment Act in 1971, which amended Article 13 and Article 368. This amendment explicitly excluded constitutional amendments from being considered as "laws" under Article 13(2) and clarified the amending power under Article 368, ensuring that amendments to the Constitution, including those affecting fundamental rights, could not be challenged as infringing the rights protected by Part III of the Constitution.

### **DOCTRINE OF BASIC FEATURES**

Despite the Full Bench in the Kesavananda case allowing the amendment of Fundamental Rights under the power of Article 368, it also introduced a broad and somewhat nebulous sphere of entrenchment through judicial interpretation by formulating the doctrine of 'basic features.' This doctrine posits that there are implicit limitations to the amending power conferred by Article 368, which doesn't expressly protect any part of the Constitution. While the method of 'necessary implication' is a legitimate way to interpret the text of a constitution, as with any ordinary statute, the idea of 'implied limitations' has not been widely accepted in judicial opinions both globally and in India. However, proponents of the 'basic features' doctrine in the Kesavananda case relied on this concept to establish this new doctrine. The questionable nature of this stance was notably articulated by Chief Justice Beg in the Karnataka case, where he observed:

"We cannot overlook that in Kesavananda Bharati's <sup>11</sup>case the very majority of nine learned judges of this Court, which rejected the theory of 'implied limitations' on express plenary legislative powers of constitutional amendment, accepted, we say so with the utmost respect, limitations which appeared not easily distinguishable from implied limitations on plenary legislative powers, even though they were classified as parts of the 'basic structure of the Constitution'."

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<sup>10</sup> Golakh Nath v.state of Punjab ,AIR 1967 SC 1643

<sup>11</sup> Keshvanand Bharti v.state of Kerala,AIR 1973 SC 1461

Regarding the interpretation of the term 'amend' in Article 368, the majority in Kesavananda recognized that while 'amend' could imply various degrees of change, it does not extend to a total 'repeal' or complete revision of the Constitution. An 'amendment' implies that despite any changes, the identity of the original Constitution must remain intact, meaning the 'basic structure' or essential framework of the Constitution cannot be altered through the amending power. This interpretation was necessitated partly due to the realization of the inadequacy of 'implied limitations.' The interpretation of 'amend' has varied, as seen in some state constitutions in the USA, where the term has been broadly interpreted by American courts. However, the 24th Amendment Act of 1971 clarified that 'amend' includes the power to 'repeal' provisions within the Constitution, reinforcing the breadth of Parliament's amending power but also specifying that this does not extend to altering the Constitution's core essence.

The doctrinal shift seen in Kesavananda and subsequent interpretations emphasize the complex interplay between constitutional text, judicial interpretation, and legislative amendment, reflecting the dynamic nature of constitutional law in maintaining the balance between flexibility and the preservation of foundational principles.

Justice Mathew acknowledged that even if we accept the proposition that amendments can fundamentally alter the Constitution, it does not necessarily mean that the 'basic features' of the existing Constitution cannot be amended under Article 368:<sup>12</sup>

"An amendment that introduces a significant shift, such as replacing a parliamentary system with a presidential system of government or a republic with a monarchy, does not equate to an abrogation or repeal of the Constitution. No matter how substantial the change, there must still be a framework through which the state is constituted and organized".

Following Justice Mathew's reasoning, it could logically be argued that under the powers granted by Article 368, it is possible to repeal all provisions of the Constitution, except for one, leaving no basis for assuming the immutability of any so-called 'basic features' in the face of amendment. The weakest argument put forth in support of the doctrine of basic features, as observed with due respect, is the analogy drawn from civil procedure law concerning the amendment of pleadings. This analogy was initially suggested in Kesavananda<sup>13</sup>, yet Justice Khanna firmly rejected it:

"A Constitution cannot be treated merely as a legal document, akin to a plaint or a written statement."

Justice Khanna's perspective was later endorsed by Chief Justice Beg in the Karnataka case, where he provided reasons for this view. Regrettably, despite these insights from two larger

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<sup>12</sup> Art.368 of The Indian Constitution

<sup>13</sup> Keshvanand Bharti v.state of Kerala,AIR 1973 SC 1461

Benches, Chief Justice Chandrachud, in Waman's case, noted:

"The extent to which an amendment of a pleading is permissible depends on its consistency with the original: one cannot amend it to the extent of transforming the original into its opposite. For this reason, comparisons between the original and the amended versions are made. Such comparisons, although challenging, can be meaningful even in the complex arena of constitutional law. What were the fundamental assumptions of the Indian Constitution at its inception? And does the... Amendment violate these foundational assumptions?"

As previously mentioned, the term 'amend' carries different implications depending on the document in question. For instance, a plaint is a pleading in a dispute between parties, where the defendant must respond to the claims made by the plaintiff. Consequently, the principles of civil procedure stipulate that a plaintiff should not be allowed to amend their pleading in a way that introduces conflicting claims or surprises the defendant.

### **ANALOGY OF AMENDMENT OF PLEADING NOT APPLICABLE**

With respect, one of the weaker arguments put forward to support the doctrine of basic features is the analogy to amending legal pleadings, borrowed from civil procedure law. This analogy, first suggested in the Kesavananda case, was strongly rejected by Justice Khanna who stated:

"A Constitution cannot be seen as just another legal document like a plaint or written statement."

This perspective was supported by Chief Justice Beg in the Karnataka case, providing further reasoning. Despite these earlier opinions, Chief Justice Chandrachud in Waman's case observed:

"The extent to which a pleading may be amended depends on its consistency with the original; you cannot amend it to become the opposite of what it was. Comparing the original with the amendment can be useful, even in the complex area of constitutional law. What were the fundamental principles of the Indian Constitution at its inception? And does the amendment violate these principles?"<sup>14</sup>

As I have mentioned before, the term 'amend' varies in meaning depending on the document. In a court case, a plaint outlines the plaintiff's arguments, and the defendant must respond accordingly. Civil procedure rules generally prohibit plaintiffs from amending their pleading in a way that introduces conflicting arguments or surprises the defendant at a late stage. Such a scenario does not apply to a Constitution, which is a framework for governing a country and

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<sup>14</sup> Uddin, Mohammad Moin, and Rakiba Nabi. "JUDICIAL REVIEW OF CONSTITUTIONAL AMENDMENTS IN LIGHT OF THE 'POLITICAL QUESTION' DOCTRINE: A COMPARATIVE STUDY OF THE JURISPRUDENCE OF SUPREME COURTS OF BANGLADESH, INDIA AND THE UNITED STATES." *Journal of the Indian Law Institute*, vol. 58, no. 3, 2016, pp. 313–36. *JSTOR*, <http://www.jstor.org/stable/45163394>. Last seen on 26/04/2024

should be interpreted liberally unless explicitly made unamendable by its framers.

This very nature of a Constitution also makes the analogy of the scope of 'amendment' in relation to ordinary statutes inappropriate. For ordinary statutes, 'amend' and 'repeal' signify different actions with different outcomes. While repeal means completely removing a statute as if it never existed, amendment involves modifying a part of the statute—sometimes removing parts and possibly adding new ones—to better achieve its original intent or a new purpose.

"A statute is amended when it is partially or wholly retained, and something is added to or removed from it, or it is altered in some way to enhance its completeness or effectiveness in achieving its intended or a new purpose."<sup>15</sup>

In contrast:

"The effect of repealing a statute is to erase it entirely from the records of Parliament as though it had never been passed, except for dealing with actions that were initiated and completed under its jurisdiction while it was still in force."

Thus, when the term 'amend' is used concerning an ordinary statute, it implies that some part of that statute remains post-amendment.

Indeed, some constitutions differentiate between 'amendment' and 'revision' for various types of changes, establishing different procedures for each.

Switzerland : A notable example is the Constitution of Switzerland, which has distinct processes for partial amendments and total revisions. Articles 119-120 outline the procedure for a 'total revision' of the Constitution, while Article 121 addresses the process for a 'partial revision' or amendment.

Some American State Constitution : Therefore, if the amendment process outlined in Article 121 is utilized, it does not permit a total revision or repeal of the Constitution. This approach is mirrored in some U.S. state constitutions, which also delineate two distinct procedures for 'amendment' and 'revision,'

West Germany :The Constitution of West Germany similarly achieves this distinction between amendment types, albeit indirectly. Article 79 allows for the amendment of constitutional provisions, except for certain protected or entrenched sections. However, Article 146 states, "This Basic Law shall cease to be in force on the day on which a Constitution adopted by a free decision of the German people comes into force."

This means that if the entire existing Constitution from 1949 is to be repealed or replaced, it must be done through a plebiscite involving the German people. Meanwhile, the process for partial

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<sup>15</sup> Dr.Durga Das Basu's Comparative Constitutional Law ,315,(Justice G B Patnaik, Yasobant Das,Rita das,3 rd ed.2014)

amendments is managed by the Federal Legislature, which requires a two-thirds majority in each house.

U.S.A., Japan, France :

Most constitutions, including those of the USA, Japan, and France, typically adopt a model similar to the U.S. Constitution, which allows for the 'amendment' of the Constitution as outlined in Article V, without providing any means for its repeal or complete revision. Similarly, Article 96 of Japan's 1946 Constitution and Article 89 of the Fifth French Republic's Constitution of 1958 follow this pattern. Section 128 of the Australian Constitution Act of 1900 uses the term 'alteration' of the Constitution, a broad term that encompasses any type of change, except for those provisions that are specifically protected or entrenched.

India

The doctrine of basic features and the concept of amending the constitution have spurred considerable legal debate in India, especially post the landmark Kesavananda Bharati case. Here's a simplified rephrasing of the intricate discussion on these topics:

India's Constitution allows for amendments through Article 368, which permits changes by way of variation, addition, or repeal. Initially, Article 368 didn't include specific clauses addressing the scope of amendments, but this was changed with the Constitution (24th Amendment) Act, 1971.

Considering various constitutional frameworks, like those of the USA where no clear distinction is made between 'amendment' and 'total revision', the Indian Supreme Court has had to determine what 'amend' truly encompasses when no provisions for a complete revision exist. In Kesavananda, some justices looked to U.S. state court decisions for guidance, where interpretations varied significantly based on whether state constitutions allowed separate procedures for 'amendment' versus 'revision'.<sup>16</sup>

Some state constitutions in the USA permit distinct processes for 'revision', which often involves comprehensive changes akin to introducing a new constitution. This is generally reserved for a special body directly elected by the people, reflecting the view that replacing a constitution is a significant action that shouldn't be handled by the usual legislative process.

On the flip side, in systems without specific 'revision' provisions, like the national U.S. Constitution, 'amendment' can encompass any change, including fundamental alterations. This broad interpretation has also been upheld by the U.S. Supreme Court, which has resisted placing

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<sup>16</sup> Malek, Md. A. (2017). *Vice and virtue of the Basic Structure Doctrine: a comparative analytic reconsideration of the Indian sub-continent's constitutional practices*. Commonwealth Law Bulletin, 43(1), 48–74. <https://doi.org/10.1080/03050718.2017.1358648>, Last seen on 26/04/2024

limitations on amendments, irrespective of the nature of the changes proposed.

In India, this discussion has evolved into the 'basic features' doctrine established by the Kesavananda case, which suggests that while the constitution can be amended, such amendments shouldn't alter the core principles or 'basic structure' of the document. This theory has since been both refined and expanded in various rulings, making the scope of what constitutes a 'basic feature' somewhat fluid and subject to judicial interpretation.<sup>17</sup>

Moreover, the Indian judiciary has taken a stance that while fundamental rights can be amended, such changes shouldn't eradicate essential elements of these rights. This nuanced approach suggests a balance between allowing constitutional evolution and preserving its foundational principles. However, the lack of a clear, definitive list of what constitutes these 'basic features' leaves much to judicial discretion, adding a layer of unpredictability to constitutional amendments.

As the doctrine of basic features continues to evolve, it poses both challenges and opportunities for interpreting the flexibility and rigidity of the Indian Constitution. This complexity underscores the ongoing dialogue between legal theory and practical governance in maintaining the relevance and sanctity of the constitution in changing times.

## **CONCLUSION**

The discussion surrounding the amendment of constitutions, particularly in the context of India, underscores the delicate balance between constitutional flexibility and stability. The evolution of India's doctrine of basic features, as established in the Kesavananda Bharati case, illustrates a significant jurisprudential shift towards protecting the core principles of the Constitution while still allowing for necessary adaptations.

The Indian Supreme Court's nuanced approach—distinguishing between amendments that alter the constitutional structure and those that preserve the 'basic structure'—has created a unique safeguard against the erosion of fundamental constitutional principles. This has been achieved by establishing that while amendments are permissible, they should not destroy the constitution's identity or its essential features, which include the supremacy of the constitution, the rule of law, and fundamental rights among others.

However, the application of the basic features doctrine has also introduced complexities into the legal process. The lack of a clear and definitive list of what constitutes these 'basic features' leaves much to judicial discretion, which can lead to unpredictability in constitutional amendments. This

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<sup>17</sup> Dr.Durga Das Basu's Comparative Constitutional Law ,316(Justice G B Patnaik,Yasobant Das,Rita das,3 rd ed.2014)

ambiguity requires the judiciary to continuously interpret and define the scope of these features, making constitutional law a dynamic and ever-evolving field.

In conclusion, the development of the basic features doctrine in India serves as a critical tool for maintaining the integrity of the constitution against potential misuse of the amending powers. It ensures that while the constitution remains a living document, adaptable to the needs of changing times, it does not compromise on the fundamental principles that form the foundation of the nation's democratic ethos. This balance is crucial for the ongoing development of constitutional governance and legal jurisprudence in India, ensuring that amendments enhance rather than undermine the document that lies at the heart of the world's largest democracy.

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