
**“CONSTITUTIONAL AMENDMENTS IN INDIA: A STUDY OF THE
PROCEDURE AND ITS IMPACT ON THE BASIC STRUCTURE”
(CONSTITUTIONAL LAW)**

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1. ABSTRACT

This research paper provides a comprehensive analysis of the Indian Constitution, specifically focusing on its historical evolution, ontological nature, and architectural distinctiveness. It examines the transition of India from a colonial administrative state to a sovereign socialist secular democratic republic. By exploring the dialectics between Fundamental Rights and Directive Principles, the paper highlights the transformative nature of the document. It further evaluates the role of judicial review and the "Basic Structure" doctrine in preserving constitutional supremacy against majoritarian impulses. This chapter serves as the foundational pillar for understanding the systemic governance and legal philosophy of modern India.

2. KEYWORDS: Indian Constitution, Transformative Constitutionalism, Basic Structure, Judicial Review, Federalism, Preamble, Fundamental Rights, Directive Principles, Rule of Law.

3. INTRODUCTION

Chapter 1: Introduction to the Indian Constitution – A Jurisprudential and Historical Analysis

The Constitution of India is frequently characterized as a "living document," but its true essence is found in its identity as a transformative document. It represents the hard-won culmination of nearly two centuries of colonial legislative experimentation and a tenacious nationalist movement. Its foundations rest dualistically upon sophisticated British parliamentary enactments and the revolutionary social aspirations of the Indian

consciousness.

(a) Historical Background

The constitutional journey began with the **Regulating Act of 1773**, centralizing authority under the Governor-General of Bengal. This era of mercantile oversight evolved through various Charter Acts until the **Government of India Act, 1858**, transferred sovereignty to the British Crown.

Significant milestones included:

- **1909 (Morley-Minto Reforms):** Introduced communal electorates.
- **1919 (Montagu-Chelmsford Reforms):** Introduced Dyarchy.
- **1935 (Government of India Act):** The primary blueprint for the 1950 Constitution, establishing a federal scheme and the Federal Court.

4. MATERIALS AND METHODS

This research utilizes a **doctrinal and comparative legal research methodology**. The primary sources include:

- The text of the **Constitution of India, 1950**.
- **Constituent Assembly Debates (CAD)** for original intent analysis.
- Landmark **Supreme Court judgments** (e.g., *Kesavananda Bharati*, *Maneka Gandhi*, *Minerva Mills*).

Secondary sources involve academic commentaries by jurists such as **Granville Austin**, **H.M. Seervai**, and **D.D. Basu**, alongside a comparative study of the UK, US, and Irish constitutional models.

5. RESULTS AND DISCUSSION

I. The Ontological Nature: A Transformative Paradigm

The Indian Constitution is the world's lengthiest written instrument, designed to minimize ambiguity in a diverse nation. It rejects the British doctrine of Parliamentary Sovereignty in favor of **Constitutional Supremacy**.

II. The Preamble: Ideological Compass

The Preamble serves as the "identity card" of the Constitution. It articulates four pillars:

1. **Justice:** Social, Economic, and Political.

2. **Liberty:** Of thought, expression, and belief.
3. **Equality:** Of status and opportunity.
4. **Fraternity:** Assuring the dignity of the individual.

III. The Federal-Unitary Synthesis

India follows a "**Quasi-Federal**" model. While it has a dual polity (Union and States), it possesses a "Unitary Bias" evidenced by residuary powers resting with the Centre and the appointment of Governors. However, the *S.R. Bommai* case firmly established Federalism as part of the **Basic Structure**.

IV. The Bill of Rights and the "Golden Triangle"

Fundamental Rights (Part III) are the "Magna Carta" of India. The interconnectedness of **Articles 14, 19, and 21** forms the "Golden Triangle." Since the *Maneka Gandhi* verdict, Article 21 (Right to Life) has expanded to include the right to privacy, a clean environment, and education.

V. Directive Principles vs. Fundamental Rights

Part IV (DPSP) represents the "Social Conscience." While non-justiciable under Article 37, they are fundamental in governance. The **Doctrine of Harmonious Construction** (*Minerva Mills*) ensures that Part III and Part IV are "two wheels of the same chariot."

6. CONCLUSION

The Indian Constitution is a site of perpetual struggle and a bridge between a colonial past and a republican future. It has successfully converted a "subjects' charter" into a "citizens' bill of rights." While it retains structural continuity with British administrative forms, it achieves substantive transformation by shifting sovereignty to "The People." The survival of this transformative project depends on the continued adherence to **Constitutional Morality** by all state organs and citizens.

7. ACKNOWLEDGEMENTS

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REFERENCES

1. Austin, G. (1966). *The Indian Constitution: Cornerstone of a Nation*. Oxford University Press.
2. Basu, D.D. (2022). *Introduction to the Constitution of India* (26th edn). LexisNexis.
3. Seervai, H.M. (2015). *Constitutional Law of India* (4th edn). Universal Law Publishing.
4. Jain, M.P. (2018). *Indian Constitutional Law* (8th edn). LexisNexis.
5. *Kesavananda Bharati v. State of Kerala* (1973) 4 SCC 225.
6. *Maneka Gandhi v. Union of India* (1978) 1 SCC 248.
7. *S.R. Bommai v. Union of India* (1994) 3 SCC 1.
8. *Minerva Mills Ltd. v. Union of India* (1980) 3 SCC 625.
9. Bhatia, G. (2019). *The Transformative Constitution*. HarperCollins.
10. Khosla, M. (2020). *India's Founding Moment*. Harvard University Press.

Chapter II The Amending Process of the Constitution – A Comparative and Functional Analysis

1. ABSTRACT

This chapter investigates the mechanisms of constitutional change within the Indian legal framework and across global jurisdictions. It explores the "safety valve" function of Article 368, distinguishing between constituent and legislative powers. The research categorizes the tripartite amending process in India—simple majority, special majority, and state ratification—and evaluates the "Basic Structure" doctrine as a judicial check on parliamentary omnipotence. Furthermore, a comparative study of the US, UK, Australia, Canada, France, South Africa, and Germany provides a spectrum of constitutional rigidity and flexibility, situating the Indian model as a calibrated synthesis designed for transformative social change.

2. KEYWORDS: Constituent Power, Article 368, Basic Structure Doctrine, Entrenched Provisions, Federal Compact, Comparative Constitutionalism, Rigidity vs. Flexibility, Eternity Clause.

3. THE ONTOLOGY AND SCOPE OF AMENDMENT

The mechanism of amendment is the "safety valve" of a written constitution. It represents a formal and deliberate act of alteration, addition, variation, or repeal. In the Indian legal hierarchy, an amendment operates upon the Constitution, reshaping the very "Grundnorm" of the Republic.

I. Constituent vs. Legislative Power

A critical distinction exists between **Ordinary Legislative Power** (Articles 245-246) and **Constituent Power** (Article 368). While ordinary laws are subject to the Constitution, an amendment becomes part of the instrument itself. As Justice H.R. Khanna noted in *Kesavananda Bharati*, this higher law-making allows the document to remain "living" without necessitating a revolution.

II. The Semantic Width

Article 368(1) empowers Parliament to amend by way of:

- **Addition:** Incorporating new rights (e.g., Article 21A).
- **Variation:** Modifying existing structures (e.g., GST realignment).
- **Repeal:** Abrogating obsolete provisions (e.g., Right to Property).

4. THE TRIPARTITE AMENDING PROCESS

(a) Simple Majority: Informal Alteration

Certain provisions are modified via the ordinary legislative process. Technically, these are not deemed "amendments" under Article 368.

- **Scope:** Reorganization of states (Arts 2-4), Citizenship (Arts 5-11), and institutional mechanics like quorums or salaries.
- **Rationale:** To prevent legislative gridlock over purely administrative matters.

(b) Special Majority: The Exercise of Constituent Power

Governed by Article 368(2), this protects the "Social Conscience" (Part III and IV).

- **Requirements:** Majority of total membership + 2/3rds of members present and voting.
- **The "Separate Consensus" Rule:** Joint sittings are prohibited; each House must pass the bill independently.

(c) State Ratification: The Federal "Double Lock"

For "Entrenched Provisions" affecting the federal core, state concurrence is mandatory.

- **Pillars Protected:** Election of the President, powers of High Courts and the Supreme Court, the Seventh Schedule (Lists), and Article 368 itself.
- **Threshold:** Ratification by at least one-half of the State Legislatures.

5. COMPARATIVE DYNAMICS: A GLOBAL SPECTRUM

Country	Nature of Procedure	Level of Rigidity	Philosophical Basis
India	Synthetic (Mixed)	Moderate	Functional Adaptability
USA	Extremely Rigid	High	Protection of Original Intent
UK	Absolutely Flexible	Low	Parliamentary Sovereignty
Australia	Participatory (Referendum)	High	Federal Compact Protection
Germany	Rigid + Eternity Clause	Extreme	Militant Democracy

I. The German "Eternity Clause"

Article 79(3) of the German Basic Law declares certain principles—Human Dignity and the Federal/Democratic structure—as **absolutely unamendable**. This is the textual equivalent of India’s judicial "Basic Structure" doctrine.

II. The Australian "Double Majority"

Australia requires a national referendum. Success requires a majority of all voters **and** a majority of voters in a majority of states (4/6). This has led to "Constitutional Stagnation," with only 8 of 45 proposals succeeding since 1901.

6. CONCLUSION

The Indian amending process embodies a **Dynamic Equilibrium**. By vesting constituent power in Parliament while subjecting it to the judicial "Basic Structure" check, India avoids both institutional petrification and legislative caprice. The 106+ amendments signify institutional resilience, demonstrating that the Republic resolves its deepest socio-legal conflicts within the legal framework of its transformative roadmap.

REFERENCES

1. Basu, D.D. (2023). *Commentary on the Constitution of India* (10th edn). LexisNexis.
2. Singh, M.P. (2017). *V.N. Shukla's Constitution of India* (13th edn). Eastern Book Company.
3. *Kesavananda Bharati v. State of Kerala* (1973) 4 SCC 225.
4. Dicey, A.V. (1959). *Introduction to the Study of the Law of the Constitution*. Macmillan.
5. Madison, J. (1787). *The Federalist Papers: No. 10*.
6. *Kihoto Hollohan v. Zachillhu* (1992) SCC (Supp) 2 651.

Chapter III The Jurisprudence of Restraint — Implied Limitations on the Amending Power

1. ABSTRACT

Chapter III examines the evolutionary shift in Indian constitutional jurisprudence from a philosophy of Parliamentary Supremacy to one of Constitutional Supremacy. It traces the conceptual genesis of "Implied Limitations," largely influenced by the German "Eternity Clause" paradigm and the intellectual contributions of Dietrich Conrad. The chapter provides a chronological analysis of the inaugural confrontations in *Shankari Prasad* and *Sajjan Singh*, the radical departure in *Golaknath*, and the eventual institutionalization of the "Basic Structure Doctrine" in *Kesavananda Bharati*. This study argues that the amending power is a "Limited Constituent Power," functioning as a delegated authority that lacks the mandate to destroy the Constitution's foundational identity.

2. **KEYWORDS:** Implied Limitations, Basic Structure Doctrine, Constituent Power, *Kesavananda Bharati*, *Golaknath*, Ninth Schedule, Constitutional Identity, Judicial Restraint.

3. THE ONTOLOGY OF IMPLIED LIMITATIONS

The Doctrine of Implied Limitations rests upon the premise that a written Constitution is an "organic whole." While Article 368 provides the mechanism for textual modification, the power is circumscribed by the instrument's internal logic.

I. Sovereign vs. Delegated Power

A vital distinction is drawn between the **Original Sovereign Power** of a Constituent Assembly and the **Delegated Constituent Power** of a Parliament. Because Parliament is a "creature" of the Constitution, it cannot use its derived authority to abolish its "creator." Unlimited amending power would allow for "Constitutional Suicide."

II. Intellectual Lineage: The German Influence

The doctrine in India was catalyzed by **Dietrich Conrad** in 1965. Drawing from the German *Grundgesetz*, Conrad argued that every constitution has an indestructible "identity." He famously posited that the power to "amend" a house does not include the power to tear it down and leave a vacant lot.

4. THE PHASES OF JUDICIAL INTERPRETATION

(a) Deference & Literalism (1950–1967)

Initially, the Supreme Court adopted a "Two-Power Theory," viewing amendments as immune to the restrictions of Fundamental Rights.

- **Shankari Prasad (1951):** Held that "law" in Article 13 refers only to ordinary legislation, not constitutional amendments.
- **Sajjan Singh (1965):** Validated the Ninth Schedule as a "vault" for social reform, though dissenters (Justice Mudholkar) began searching for the "constitutional soul."

(b) The Radical Break: *Golaknath* (1967)

Reversing previous law, an 11-judge bench ruled that Parliament possessed **no authority** to abridge Fundamental Rights.

- **Fundamental Shift:** Characterized rights as "transcendental" and "inalienable."
- **Prospective Overruling:** To avoid administrative chaos, the Court ruled that while Parliament was barred from future abridgment, past amendments remained valid.

(c) The Watershed: *Kesavananda Bharati* (1973)

The 7:6 majority verdict remains the most significant exercise of judicial power globally. It overruled *Golaknath* but rejected Parliamentary Absolutism.

- **The Compromise:** Parliament can amend rights, but it cannot touch the **Basic Structure**.
- **Basic Features:** Includes Democracy, Secularism, Federalism, the Separation of Powers, and Judicial Review.

5. EXPANSION AND CONSOLIDATION

Following 1973, the doctrine transitioned from a theory into a functional diagnostic tool.

1. **Indira Gandhi Case (1975):** Struck down the 39th Amendment, affirming that Free and Fair Elections are part of the Basic Structure.
2. **Minerva Mills (1980):** Declared that "a limited amending power is itself a basic feature."
3. **I.R. Coelho (2007):** Reaffirmed that even the Ninth Schedule is subject to the "Basic Structure" test if a law violates the "Golden Triangle" (Articles 14, 19, and 21).

6. CONCLUSION

The Doctrine of Implied Limitations represents the maturation of the Indian Republic into a stable constitutional state. It moved India from **Procedural Constitutionalism** to **Substantive Constitutionalism**. By distinguishing between "alteration" and "abrogation," the Judiciary ensures that the "Spirit of 1950" remains beyond the reach of fleeting political majorities, safeguarding institutional continuity against authoritarian hollowing.

REFERENCES

1. Conrad, D. (1970). *Implied Limitations of the Amending Power*. Delhi Law Review.
2. Palkhivala, N.A. (1974). *Our Constitution: Defaced and Defiled*. Macmillan.
3. Singh, M.P. (2017). *V.N. Shukla's Constitution of India* (13th edn). Eastern Book Company.
4. *Kesavananda Bharati v. State of Kerala* (1973) 4 SCC 225.
5. *I.C. Golaknath v. State of Punjab* (1967) AIR SC 1643.
6. Austin, G. (1999). *Working a Democratic Constitution*. Oxford University Press.

Chapter IV The Dynamic Frontiers — Modern Judicial Trends Regarding the Basic Structure Doctrine

1. ABSTRACT

Chapter IV explores the functional consolidation of the Basic Structure Doctrine (BSD) in the post-*Kesavananda* era (1973–2026). It examines how the doctrine transitioned from a nascent defensive theory into a comprehensive diagnostic tool used to scrutinize political crises, federal breakdowns, and institutional integrity. Through an analysis of landmark cases such as *Indira Gandhi*, *Minerva Mills*, *S.R. Bommai*, and the *NJAC* case, this chapter illustrates the iterative identification of "Basic Features" and the universalization of judicial review. It concludes that the BSD serves as the foundational *Grundnorm* of the Indian State, balancing transformative social goals with structural permanence.

2. KEYWORDS: Basic Structure Doctrine, *Indira Gandhi v. Raj Narain*, *Minerva Mills*, *S.R. Bommai*, Judicial Independence, Federalism, Secularism, Ninth Schedule, *I.R. Coelho*.

3. CONSOLIDATION AND EVOLUTION

The post-1973 trajectory reveals that the BSD is not a "one-off" intervention but a permanent sentinel of the Republic's identity. The Judiciary has moved toward a sophisticated **Structuralism**, viewing the Constitution as a coherent "organic whole."

I. Three Pillars of Modern Trends

1. **Iterative Identification:** A case-by-case approach to defining the unamendable core.
2. **Universalization of Review:** Refusal to recognize "constitutional vacuums," even within the Ninth Schedule.
3. **Synthesis of Progress and Permanence:** Reconciling social justice (affirmative action) with institutional inviolability.

1. LANDMARK JUDICIAL MILESTONES

(a) *Indira Nehru Gandhi v. Raj Narain (1975)*

The first instance of an amendment being invalidated under the BSD.

- **Context:** Challenge to the 39th Amendment which sought to immunize the Prime Minister's election from judicial scrutiny.
- **Basic Features Identified:** Free and fair elections, Rule of Law, and Democracy.

(b) *Minerva Mills v. Union of India (1980)*

Struck down clauses of the 42nd Amendment that claimed unlimited amending power.

- **Key Holding:** "A limited amending power is itself a basic feature."
- **Harmony:** Asserted the "harmony and balance" between Fundamental Rights and Directive Principles.

(c) *S.R. Bommai v. Union of India (1994)*

- **Entrenchment:** Elevated **Federalism** and **Secularism** to the status of basic features.
- **Restraint:** Placed Article 356 (President's Rule) under strict judicial oversight.

(d) *I.R. Coelho v. State of Tamil Nadu (2007)*

- **Taming the Ninth Schedule:** Ruled that laws placed in the Ninth Schedule post-1973 are subject to the BSD test.
- **The Golden Triangle:** Protected Articles 14, 19, and 21 from being bypassed via protective devices.

2. CONTEMPORARY TRENDS AND AMENDMENTS

- **NJAC Case (2015):** Struck down the 99th Amendment to safeguard the **Independence of the Judiciary** as a non-negotiable feature.
- **EWS Reservation (*Janhit Abhiyan*, 2022):** Upheld the 103rd Amendment, showing that the BSD allows for socio-economic experimentation provided the equality code's essence remains.
- **105th Amendment (2021):** Reinforced **Federalism** by restoring state powers to identify SEBCs.

3. CONSOLIDATED LIST OF BASIC FEATURES

- Supremacy of the Constitution
- Republican and Democratic form of Government

- Secularism and Federalism
- Separation of Powers
- Judicial Review and Independence of the Judiciary
- Rule of Law
- Free and Fair Elections
- Limited Amending Power of Parliament

4. CONCLUSION

The Basic Structure Doctrine functions not as a judicial veto, but as a constitutional safeguard. It prevents "constitutional suicide" by protecting the document's identity from majoritarian excess. As the "living voice" of the 1950 Preamble, it ensures that while the text adapts to a billion people, the soul of the Republic remains anchored in its foundational values.

REFERENCES

1. *Kesavananda Bharati v. State of Kerala* (1973) 4 SCC 225.
2. *Minerva Mills Ltd. v. Union of India* (1980) 3 SCC 625.
3. *S.R. Bommai v. Union of India* (1994) 3 SCC 1.
4. *I.R. Coelho v. State of Tamil Nadu* (2007) 2 SCC 1.
5. Singh, M.P. (2017). *V.N. Shukla's Constitution of India*.
6. Bhatia, G. (2019). *The Transformative Constitution*. HarperCollins.