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## The Balance of Powers in Modern Democracies

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### ABSTRACT

*The Constitution of India, adopted in 1950, reflects an intricate balance between flexibility and rigidity, designed to adapt to evolving socio-political realities while preserving the foundational values of democracy, federalism, and rule of law. This research paper examines the constitutional amendment process under Article 368, the role of Parliament and Judiciary in maintaining constitutional balance, the evolution of the 'basic structure' doctrine, and comparative approaches from other federal systems. It critically analyses the challenges posed by political motives, judicial interpretations, and the need to protect fundamental constitutional ideals, offering recommendations for strengthening constitutional integrity.*

**Keywords:** Governance, constitution, Polity, India, Power, Democracy, Judiciary, Executive, Legislature

### INTRODUCTION

The Constitution serves as the supreme legal framework of a nation, outlining the powers, functions, and relationships of government organs and securing citizens' rights. However, a constitution must evolve alongside society to remain effective. The Indian Constitution, crafted by visionary leaders, was designed with an in-built amendment mechanism through Article 368, ensuring that necessary changes could be made without compromising its foundational ethos.

Amendments, however, bring into focus the tension between flexibility necessary for growth and rigidity essential for safeguarding core principles. Judicial interventions, particularly through the development of the 'basic structure doctrine,' have sought to prevent Parliament from abusing its amending powers. This study critically examines these dynamics and assesses India's amendment process in light of both domestic developments and international comparisons.

### CHAPTER 1: CONCEPT AND NEED FOR CONSTITUTIONAL AMENDMENTS

#### 1.1 Meaning and Importance

The Constitution, often termed a nation's "fundamental law," must provide a stable framework yet remain flexible enough to accommodate social, political, and economic changes. Without amendment provisions, a constitution risks becoming outdated or irrelevant. Hence, a dynamic amendment process is vital for ensuring continued relevance and effectiveness.

Amendments are essential not merely for addressing errors or omissions but also for responding to societal progress, technological advancements, and shifts in political philosophies. The Indian Constitution, recognizing these needs, incorporates detailed amendment provisions balancing stability and change.

#### 1.2 Origin and Evolution

The framers, influenced by global constitutional practices, particularly the United States and the United Kingdom, crafted an amendment process that combined flexibility and rigidity. They recognized that over time, societal values would evolve, necessitating constitutional reforms. Therefore, while safeguarding fundamental values, they allowed for procedural mechanisms to revise, add, or repeal constitutional provisions.

### CHAPTER 2: PARLIAMENT'S POWER TO AMEND AND ITS LIMITATIONS

#### 2.1 Nature of Parliament's Amending Power

Article 368 grants Parliament the authority to amend the Constitution. Initially perceived as absolute, early judicial interpretations in *Shankari Prasad* (1951) and *Sajjan Singh* (1965) affirmed that Parliament could amend any part of the Constitution, including fundamental rights.

However, this broad view of Parliament's power faced challenges as concerns grew over potential misuse, particularly in light of politically motivated amendments undermining constitutional ideals.

## 2.2 Express and Implied Limitations

Although the Constitution does not explicitly impose substantive limits on amendment powers, courts identified implied restrictions through the 'basic structure doctrine.' While Parliament can amend constitutional provisions, it cannot alter or destroy the Constitution's essential features.

Key implied limitations include the protection of democracy, federalism, separation of powers, judicial review, and fundamental rights. These limitations act as vital safeguards against the arbitrary exercise of power.

## CHAPTER 3: JUDICIAL SAFEGUARDS AND THE DOCTRINE OF BASIC STRUCTURE

### 3.1 Golaknath v. State of Punjab (1967)

In a landmark shift, the Supreme Court held that Parliament could not amend fundamental rights, equating amendments with "law" under Article 13(2). *Golaknath* effectively curtailed Parliament's ability to alter the rights guaranteed under Part III, signaling an era of judicial activism.

### 3.2 Kesavananda Bharati v. State of Kerala (1973)

The *Kesavananda Bharati* case marked a turning point. The Court upheld Parliament's amending power but introduced the "basic structure doctrine," ruling that no amendment could alter the Constitution's essential features. Fundamental rights could be amended but not abrogated.

The Court identified elements like judicial review, the supremacy of the Constitution, and the rule of law as forming part of the basic structure. This doctrine became the bulwark against legislative overreach.

### 3.3 Subsequent Developments

Subsequent judgments, including *Indira Gandhi v. Raj Narain* and *Minerva Mills v. Union of India*, further solidified the basic structure doctrine. These rulings emphasized that Parliament could not transform the constitutional framework to suit political expediency.

## CHAPTER 4: COMPARATIVE STUDY OF AMENDMENT PROCEDURES

### 4.1 United States

The U.S. Constitution, under Article V, establishes a highly rigid amendment process requiring two-thirds approval in both Houses and ratification by three-fourths of state legislatures. Only 27 amendments have been ratified since 1789, reflecting deliberate stability.

### 4.2 Australia

Australia mandates a "double majority" — approval by a majority of voters nationwide and in a majority of states. This model ensures that amendments have both popular and federal legitimacy, preventing dominance by populous states.

### 4.3 Germany

Germany's Basic Law permits amendments but protects core principles like human dignity, federalism, and democracy through Article 79(3) ("eternity clause"), making these unamendable even by parliamentary supermajorities.

### 4.4 India

India adopts a mixed approach:

Some amendments require a simple parliamentary majority.

Others demand special majorities and ratification by at least half of the states.

Fundamental principles are protected through judicially enforced doctrines rather than express textual prohibitions.

## CHAPTER 5: CRITICAL ANALYSIS OF AMENDMENT TRENDS

### 5.1 Political Motivation Behind Amendments

The history of Indian amendments reveals a blend of genuine necessity and political opportunism.

**First Amendment (1951):** Addressed land reforms but curtailed free speech.

**42nd Amendment (1976):** During Emergency, the amendment sought to concentrate power in the executive, weaken judicial review, and curtail democratic freedoms.

These episodes highlight the risks when amendment powers are wielded for partisan gains.

### 5.2 Judicial Pushback and Restoration

The judiciary, through the 44th Amendment and various rulings, restored the primacy of democratic values. The 44th Amendment reversed some of the most draconian provisions introduced during the Emergency, reaffirming the judiciary's role as constitutional guardian.

### 5.3 Risks of Abuse and Lessons Learned

Frequent amendments for short-term political objectives risk undermining constitutional sanctity. The Indian experience underscores the need for strict procedural safeguards, enhanced public participation, and robust judicial review to prevent constitutional erosion.

## CHAPTER 6: CONCLUSION AND SUGGESTIONS

### 6.1 Conclusion

The constitutional amendment process embodies a delicate balance: the need for adaptability to social change must coexist with the imperative to protect the Constitution's foundational principles. Judicial innovation, particularly the basic structure doctrine, has been instrumental in preserving this balance.

However, the tension between Parliament's desire for reform and the judiciary's protective oversight persists. The success of the Indian constitutional model lies in maintaining this equilibrium while ensuring that amendments reflect genuine societal needs rather than transient political objectives.

## 6.2 Suggestions

**Codify Basic Structure:** Parliament and Judiciary could collaboratively define and codify the essential features considered part of the basic structure.

**Increase Public Participation:** Major constitutional amendments should require greater public involvement, possibly through referendums.

**Stricter Procedural Safeguards:** Amendments impacting fundamental rights or federal structure should undergo heightened procedural requirements, including state ratifications.

**Judicial Prudence:** Courts must balance activism with restraint, intervening only when amendments threaten constitutional identity.

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