



THE BLEND OF RIGIDITY AND FLEXIBILITY IN THE CONSTITUTION AMENDMENT PROCESS OF INDIA

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ABSTRACT

This article throws immense light on the concept of the blend of rigidity and flexibility in the constitutional amendment in India. It can be inferred that this concept of the blend of rigidity and flexibility has both importance and limitations. The blend helps the constitution to cope with the changing needs of the society and the country along with protection of our fundamental rights, whereas, at times there is insufficiency in the amendment process of the constitution and its adaptation. The Constitution is both rigid and flexible which makes it a perfect combination for amending it in times of emergency as well as maintaining its rigidity to protect the citizens and their valuable rights.

Keywords: Constitutional Amendment, Rigidity, Flexibility.

INTRODUCTION¹

The Indian Constitution stands as a testament to the world's largest democracy, brilliantly balancing the ideals of permanence and adaptability within its legal framework. Designed with foresight, it addresses the complexities of a dynamic society while ensuring the protection of foundational democratic principles. The amendment process is uniquely structured to embody this balance of rigidity and flexibility. The provisions for amending the Constitution allow it to evolve in response to changing social and political contexts, yet safeguard vital aspects that define the nation's character.

The Constitution's approach is characterized by a three-tier amendment process and key judicial principles that reinforce its integrity. While certain provisions can be amended with a simple majority, others demand a special majority or even ratification by state legislatures, reflecting

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¹ <https://byjus.com/free-ias-prep/major-features-of-the-constitution/>

the federal structure of governance in India. Moreover, the judiciary plays a crucial role as the custodian of the Constitution, ensuring that amendments do not undermine its basic structure. This interplay between rigid and flexible elements not only facilitates necessary reforms but also constrains arbitrary alterations, thereby maintaining a stable legal and ethical foundation. This article delves into these mechanisms, offering insights into their importance and limitations within the broader context of India's democratic framework.

RIGIDITY IN THE AMENDMENT PROCESS ²

The Indian Constitution is generally considered flexible compared to other Constitutions, but it incorporates elements of rigidity to safeguard its fundamental framework. It is primarily manifested in the following ways:

1. The Three-Tier Amendment Process:³

Article 368 of the Indian constitution, outlines three distinct methods of the amendment, each with varying degrees of complexity:

- **By Simple Majority:** Certain provisions such as those concerning the creation of new states or changes in the official language can be amended by a simple majority of both Houses of Parliament. This method does not fall under the view of Article 368, reflecting minimal rigidity.
- **By Special Majority:** Amendment that significant constitutional changes, such as altering fundamental rights or the directive principles of state policy, require a special majority. This means that at least 2/3 of the members present and voting in both houses of the Parliament must approve the amendment, along with a majority of the total membership of each house.
- **Special Majority with Ratification by States:** Amendment affecting the federal structure of India, such as changes to the distribution of legislative powers or the representation of states and Parliament, ratification by at least half of the state legislature is also required. This process underscores the federal nature of India's polity and ensures that the states have a voice and constitutional changes that directly impact them.

2. **Judicial Review:** The Indian judiciary acts as a guard of the Constitution, ensuring that amendments do not violate its basic structure. The doctrine of basic structure was established in the

² <https://www.drishtiias.com/mains-practice-question/question-550>

³ Keshavnanda Bharti v. State of Kerala (1975) 4 SCC 225

landmark case of *Keshavnanda Bharti v. State of Kerala* (1973). According to this doctrine, Parliament cannot amend the Constitution in a way that alters its essential features, such as the rule of law, secularism, democracy, and judicial independence.⁴

3. Fundamental Rights: Part III of the Indian Constitution, guarantees six Fundamental Rights to all citizens and they are one of the most important features of the Indian Constitution. No majority has the right to abrogate such rights and they're meant for promoting the idea of political democracy. These are justiciable in nature, that is, enforceable by the courts for their violation.⁵

4. Federal Structure: the Indian Constitution establishes a federal system of government, which means that there is a division of powers between the Central Government and the State Governments. This division of power is rigid and clearly defined in the Constitution. Changes to the federal structure, such as altering the number of states or the boundaries, require a Constitutional amendment, and often the consent of affected states, which helps in maintaining the integrity of the federal structure and prevents arbitrary changes.⁶

FLEXIBILITY IN THE AMENDMENT PROCESS

Despite the constitution's rigid aspects, the Indian Constitution incorporates significant flexibility to ensure its relevance in a changing socio-political environment:

1. Provisions for Simple Amendments: Certain provisions can be amended by a simple majority, making the process, straightforward and quick. For example, adjustments to the Second Schedule (salaries of public officials) or changes in the number of seats and Parliament require only a simple majority. This approach allows the Constitution to adapt to routine administrative and procedural changes without extensive deliberations.⁷
2. Absence of Supermajority in some cases: In contrast to the U.S. Constitution, which requires a two-thirds majority in both Houses of Congress and ratification by three-fourths of the States, India's amendment process does not impose such stringent requirements for most amendments. This flexibility facilitates legislative action and ensures the necessary reforms are not unduly delayed.

⁴ *Keshavnanda Bharti v. State of Kerala* (1975) 4 SCC 225

⁵ *Maneka Gandhi v. UOI* (1978) AIR 597

⁶ *State of West Bengal v. UOI* (1963) AIR 1241

⁷ *Shankari Prasad v. UOI* (1951) AIR 458

3. **Accommodating Diverse Needs:** India's diversity necessitates a flexible approach to Constitution, amendments. Provisions such as the fifth and sixth schedules, which deal with the administration of tribal areas, reflect this adaptability. Similarly, the flexibility to create new states, reorganise, boundaries, or implement special provisions for certain regions ensures that the Constitution can accommodate the country's complex and evolving needs.
4. **Parliamentary Sovereignty:** The Indian constitution follows the principle of Parliamentary Sovereignty, which means that the Parliament is the supreme legislative authority, and has the power to make and unmake laws. This flexibility allows the Parliament to pass new laws, amend existing ones and respond to the changing needs of the country without being bound by constitutional limitations. However, this flexibility is not absolute and subject to judicial review to ensure that the laws do not violate the basic structure of the Constitution.
5. **Residuary Powers:** The Constitution provides flexibility by granting the residuary powers to the Central Government, which include all subjects that are non-explicitly mentioned in the Constitution as the exclusive domain of the states or concurrent subjects. This flexibility allows the Central Government to legislate on matters that may not have been foreseen by the framers of the Constitution.⁸
6. **Directive Principles of State Policy:** While they are not enforceable, they offer a degree of flexibility by providing a framework for the government to work towards achieving social and economic justice as they can adopt policies to realise these principles according to the changing socio-economic conditions.⁹
7. **Emergency Provisions:** The Constitution includes provisions for declaring a state of emergency during times of crisis, such as war, external aggression or armed rebellion. However, these emergency powers are not absolute and subject to constitutional checks and balances, ensuring that they are not misused.¹⁰

THE NEED FOR THE BALANCED APPROACH

A rigid Constitution risks becoming obsolete as societal norms and political reality change conversely, excessive flexibility to frequent and frivolous amendments, potentially undermines the sanctity of the Constitution. The framers of the constitution avoided the extremes,

⁸ State of West Bengal v. UOI (1963) AIR 1241

⁹ Minerva Mills Ltd. v. UOI AIR (1980) SC 1789

¹⁰ Keshavnanda Bharti v. State of Kerala (1975) 4 SCC 225

recognising that India with its diverse population and we read social economic realities required a mechanism that allows for both stability and adaptability.¹¹

1. Need for Rigidity

- **Protection of Fundamental Rights:** The Constitution enshrines Fundamental Rights that protect individual liberties and equality. Rigidity in these provisions prevents arbitrary changes that could undermine democracy, freedom, and justice.¹²
- **Checks and Balances:** It ensures that any fundamental changes to the Constitution, particularly those affecting the balance of power between the Centre and states or the structure of governance, are not made arbitrarily. For instance, amendments impacting the federal structure or emergency powers (under Article 356) require a special majority and, in some cases, state ratification. This rigidity prevents the centralization of power and ensures that major changes receive broad consensus.
- **Preventing Abuses of Power:** Rigidity in amendments acts as a safeguard against the abuse of power by the government. For example, during an emergency, the *Minerva Mills* case (1980) emphasized the importance of maintaining judicial oversight and the balance between Fundamental Rights and Directive Principles, ensuring that democratic governance is not eroded.

2. Need for Flexibility

- **Addressing Contemporary Needs:** Flexibility allows for adjustments in areas like administrative procedures, electoral laws, and social justice policies without disrupting the entire constitutional framework.
- **Facilitating Progressive Governance:** It enables the government to implement progressive reforms, such as the 73rd Amendment Act (1992), which established the Panchayati Raj system, empowering local self-governments and fostering democratic participation at the grassroots level.
- **Responsive Governance:** Flexibility in amending provisions like the Second Schedule (relating to salaries of public officials) or changes in parliamentary representation allows the Constitution to remain functional in the face of administrative or procedural challenges.

¹¹ <https://byjus.com/free-ias-prep/major-features-of-the-constitution/#:~:text=A%20flexible%20constitution%20is%20one,basis%20of%20its%20amending%20procedure>.

¹² *Sajjan Singh v. State of Rajasthan* (1965) AIR 845

- Land Reforms: Amendments related to land acquisition and distribution, such as the addition of the ninth schedule, facilitated social justice objectives.
- Reservation Policies: Amendment like the ninety-third amendment, 2005, introduced as a vision and educational institutions, reflecting the constitution's responsiveness to societal demands.

3. Benefits of a Mixed Approach

- Ensuring Stability and Adaptability: It allows the Constitution to remain stable and grounded in its democratic values while also being adaptable to the needs of an evolving society. This balance ensures that core values, like the rule of law and democratic principles, are preserved, while also allowing for practical, administrative, and socio-economic changes.
- Safeguarding Federalism and Unity: The dual process for amending federal provisions—requiring both a special majority in Parliament and state ratification—ensures that changes affecting state autonomy are not made unilaterally, thus preserving the federal balance and maintaining national unity.
- Judicial Oversight and Constitutional Integrity: The Court plays a critical role in preserving the integrity of the Constitution through judicial review. While amendments can be made to adapt to new needs, they cannot violate the basic structure of the Constitution. This ensures that neither rigidity nor flexibility undermines the essential democratic framework.

COMPARATIVE ANALYSIS WITH OTHER CONSTITUTIONS¹³

India's Constitution's blend of rigidity and flexibility is often compared with other Constitutions to highlight its uniqueness.

1. The U.S. Constitution: The U.S. Constitution is considered one of the most rigid constitutions in the world. This is because its amendment required approval by a two-thirds majority in both Houses of Congress and ratification by three-fourths of the states. This rigidity has resulted in only 27 amendments since its adoption in 1787. In contrast, the Constitution has over a hundred amendments and demonstrates greater adaptability.
2. The UK Constitution: The United Kingdom operates under a constitution, which is inherently flexible. The Parliament can alter constitutional principles through ordinary legislation. While

¹³ <https://www.clearias.com/comparison-indian-constitutional-scheme/?srsltid=AfmBOopjhKS-Jp-N4Ed8CvIY4PMOZllwnRyckPHUsNf7VpAfojdLrCt>

this approach ensures adaptability, it lacks the safeguards necessary to prevent arbitrary changes, whereas India's constitution strikes a balance between rigidity and flexibility.

3. The South African Constitution: South Africa's Constitution, adopted in 1996, provides an intermediate model. Amendment requires levels of Parliamentary approval, depending upon the nature of the change and this process is similar to India's constitutional process, which reflects a blend of rigidity and flexibility.

VARIOUS AMENDMENTS IN THE INDIAN CONSTITUTION RELATE TO THE BLEND OF RIGIDITY AND FLEXIBILITY IN THE CONSTITUTIONAL AMENDMENT PROCESS¹⁴

The Constitution of India exemplifies a blend of rigidity and flexibility in its amendment process, as outlined in Article 368. Here are various amendments that demonstrate this balance:

1. Flexible Amendments (Simple Majority):¹⁵

These amendments require only a simple majority in both Houses of Parliament, akin to ordinary legislation.

- First Amendment Act, 1951: Added provisions related to land reforms and restrictions on the right to property (Article 31).
- Ninth Amendment Act, 1960: Adjusted the boundaries of India and Pakistan to give effect to the Nehru-Noon Agreement.

These changes reflect flexibility by allowing Parliament to address immediate needs without extensive procedural hurdles.

2. Rigorous Amendments (Special Majority):¹⁶

These require a special majority in both Houses of Parliament, making them more rigid.

- Seventh Amendment Act, 1956: Reorganized states on linguistic lines and abolished Part A, B, C, and D states.

¹⁴ <https://byjus.com/free-ias-prep/types-of-amendment/>

¹⁵ Shankari Prasad v. UOI AIR (1951) SC 458

¹⁶ Keshavnanda Bharti v. State of Kerala (1975) 4 SCC 225

- Thirty-Ninth Amendment Act, 1975: Placed certain laws beyond the scope of judicial review, particularly related to elections.

This process ensures critical changes are deliberated extensively, safeguarding the Constitution's stability.

3. Federal Amendments (Special Majority + State Ratification):¹⁷

For changes affecting federal provisions, the amendment must be ratified by at least half of the state legislatures.

- Forty-Second Amendment Act, 1976: Strengthened the central government's powers and added terms like "socialist" and "secular" to the Preamble.
- Seventy-Third Amendment Act, 1992: Introduced the Panchayati Raj system by amending Part IX of the Constitution.
- One Hundred and First Amendment Act, 2016: Introduced the Goods and Services Tax (GST), redefining fiscal federalism.

The requirement of state ratification ensures federalism is respected and changes reflect national consensus.

4. Judicial Safeguards and Basic Structure Doctrine:¹⁸

The Keshavananda Bharati Case (1973) introduced the doctrine of the basic structure, limiting the Parliament's power to amend the Constitution.

- Forty-Fourth Amendment Act, 1978: Reversed some provisions of the 42nd Amendment to restore checks and balances in governance.
- Ninety-Ninth Amendment Act, 2014: Attempted to establish the National Judicial Appointments Commission (NJAC), struck down by the Supreme Court for violating the basic structure.

This blend of flexibility and rigidity ensures that amendments do not undermine fundamental principles.

¹⁷ S.R. Bommai v. UOI (1994) 3 SCC 1

¹⁸ Keshavnanda Bharti v. State of Kerala (1975) 4 SCC 225

THE CHALLENGES IN THE AMENDMENT PROCESS¹⁹

While the Indian Constitution amendment process balances rigidity and flexibility, it is not without challenges, which are:

- **Political Polarisation:** Achieving the required, majority can be challenging in a fragmented political landscape.
- **Judicial Scrutiny and the Basic Structure Doctrine:** The Supreme Court of India's doctrine of the basic structure limits the scope of constitutional amendments, ensuring that certain fundamental principles cannot be altered. While this guards against misuse, it sometimes leads to prolonged litigation, delaying amendments.
- **Political Exploitation:** The rigid procedure is sometimes exploited by political parties to block amendments for partisan reasons, even when these amendments are in the larger national interest.
- **Overlapping Jurisdictions:** Certain issues like reservation policies or economic reforms often require amendments but overlap with social justice or state rights. Achieving clarity and consensus in these areas can be particularly difficult.
- **Federal Structure:** Certain amendments require the ratification of at least half of the states, which can delay or block changes, particularly when there is political divergence between the Centre and states. This ensures federal cooperation but can create deadlocks, especially on contentious issues.
- **Complexity in Procedure:** The process of amending the Constitution involves multiple layers i.e. parliamentary approval, state ratification, and sometimes judicial scrutiny. While ensuring thoroughness, this can make amendments time-consuming and difficult to enact.
- **Lack of Flexibility in Certain Areas:** Fundamental provisions like the federal structure, secularism, and the independence of the judiciary are challenging to amend due to the basic structure doctrine. While these safeguards prevent arbitrary changes, they may hinder necessary evolution in governance.

CONCLUSION

The Indian Constitution, unique blend of rigidity and flexibility is a testament to the vision of its framers. It has allowed the Constitution to endure as a living document, capable of adapting to changing times while safeguarding the principles of justice, liberty, equality, and fraternity. This

¹⁹ <https://prepp.in/news/e-492-blend-of-rigidity-and-flexibility-indian-polity-notes>

balanced approach ensures that the Constitution remains a source of stability and progress in a rapidly involving society.

LANDMARK CASE ANALYSIS

Keshavnanda Bharti v. State of Kerala (1973)

Bench: 13 Judges

Date: 24th April 1973

Citation: AIR 1973 SC 1461

Background of the Case

The petitioner, Keshavananda Bharati, was the head of a religious institution in Kerala. He challenged the Kerala Land Reforms (Amendment) Act, 1969, which imposed restrictions on the management of religious properties, arguing that the law violated his Fundamental Rights, particularly under Article 25 (freedom of religion) and Article 26 (freedom to manage religious affairs).

Key Legal Issues

- Can Parliament amend any part of the Constitution? Is this power absolute or are there constraints to its exercise, particularly concerning the Fundamental Rights and the basic structure of the Constitution?
- Does Parliament have a role in amending the basic structure of the Constitution? The issue was as to whether the Parliament was in any position to effect amendments in the Constitution that would interfere with its essential features such as democracy, secularism, federalism, etc.

Arguments from the Petitioner's side

- The Petitioner argued that while Parliament has the power to amend the Constitution, this power should not be absolute. There must be limitations to this power to prevent Parliament from altering the fundamental principles of the Constitution.
- The Petitioner contended that certain parts of the Constitution are so fundamental to its identity and function that they cannot be altered or destroyed by amendments. This includes principles such as the **secular nature** of the state, **democratic governance**, and **federalism**.

- Kesavananda Bharati's legal team argued that the Constitution is a social contract that guarantees fundamental rights and liberties to individuals. Any amendment that undermines these fundamental provisions would violate the social contract and the people's trust in the Constitution.
- The Petitioner maintained that fundamental rights form the core of the Constitution and that Parliament should not have the power to amend or alter them, as this would undermine judicial review.

Arguments from the Respondent's side

- The government argued that under **Article 368** of the Constitution, Parliament has the power to amend any part of the Constitution, including the Fundamental Rights. There should be no restrictions on the amendatory power, as it is an essential feature of a living document that can adapt to changing times.
- The Respondents contended that there is no concept of a "basic structure" within the Constitution. They argued that if the framers of the Constitution had intended to limit Parliament's power to amend, they would have explicitly stated it in the text. The Constitution should be considered flexible enough for Parliament to make changes to meet the needs of the nation.
- The Government emphasized that Parliament, as the representative of the people, is sovereign, and no organ of the government (including the judiciary) can limit its power to amend the Constitution. According to this view, any attempt to impose limits would violate the sovereignty of Parliament.
- The Government argued that the Constitution must evolve with changing circumstances and that giving Parliament unrestricted power to amend is necessary for its progress. If the Parliament is restricted, it would hinder the nation's ability to deal with emerging issues.

Summarised View of the Judgement

1. Basic Structure Doctrine:

There shall be no amendment that alters or destroys the core fabric of the Constitution. The ruling of the Court further explained that the Amendment of the Constitution Act (AI Act) also seeks to provide substantive powers to the parliament.

The judgment did not give a comprehensive definition of “basic structure” but at least made it clear that it encompasses the inter alia the following:

- The Supremacy of the Constitution
- The Principle of Democracy
- The Principle of Secularism
- The Principle of Separation of Powers
- The Principle of Federalism
- Judicial Constitutional Review
- The Rule of Law
- Enforcement of Fundamental Rights

2. The Power of Parliament to Amend the Constitution

Under Article 368 of the constitution, the power is given to Parliament to make constitutional amendments but the constraints of basic features of Constitution amendments have to be adhered to.

3. Judicial Review

The Court decided that constitutional amendments should be endorsed for greater good and that there are certain things in every constitution that should remain untouched. Where there are amendments to any structure by normal legislative process which violates the collective spirit then it shall become unconstitutional. It was pointed out that independence of the judiciary which forms part of the basic structure is paramount for the effective workings of the Constitution.

4. Impact on Fundamental Rights

The Court has determined that the Fundamental Rights that are found in Part III of the Constitution are also within the scope of the basic structure. Hence, Parliament is not empowered to alter the Constitution to eliminate or restrict these rights in any manner in which the basic structure of the Constitution would be affected. However, The First Amendment (1951) remains intact and all other amendments in the future which might have the effect of putting restrictions on the Fundamental Rights will be subject to Imposed judicial scrutiny.

Significance of the Judgment

1. Limitation on Parliamentary Power

The verdict brought an important restriction on the extent of the power that the Parliament has to amend the Constitution. It buttressed that while amendments are possible, they cannot obliterate the essential core structure of the Constitution, thus protecting the essential features of Indian democracy.

2. Establishing Judicial Review as a Fundamental Principle

By upholding the power of judicial review, the Court ensured that no amendment could override the basic structure of the Constitution even if passed by a special majority. Judicial review became essential to protect the fundamental principles enshrined in the Constitution.

3. Protection of Fundamental Rights

The case reinforced that Fundamental Rights cannot be infringed upon through constitutional amendments that alter the basic structure. This judgment ensured that Parliament cannot alter or undermine fundamental rights, even in the face of political changes.

4. Impact on Future Amendments

The Basic Structure Doctrine has been used in subsequent cases to strike down amendments or laws that attempt to alter core constitutional principles. It has acted as a check on the power of Parliament to enact amendments that might undermine the Constitution's democratic framework.

Conclusion

The *Keshavananda Bharati v. State of Kerala* (1973) case is one of the most pivotal in the history of Indian constitutional law. It established the Basic Structure Doctrine, which restrains Parliament's power to amend the Constitution, ensuring that the core principles of democracy, federalism, secularism, and judicial review are protected. The decision recognized that while Parliament has broad powers to amend the Constitution, these powers are limited when it comes to altering the foundational features that define the Constitution's identity and its commitment to democracy and justice. The case continues to serve as a key precedent for safeguarding the integrity of the Indian Constitution.