

# **Constitution of India Unit IV**

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## **Amendment of Indian Constitution under 368**

The Constitution of India lays down the framework on which Indian polity is run. The Constitution declares India to be a sovereign socialist democratic republic, assuring its citizens of justice, equality, and liberty. The Constitution lays down the basic structure of government under which the people chose themselves to be governed. It establishes the main organs of government - the executive, the legislature and the judiciary. The Constitution not only defines the powers of each organ, but also demarcates their responsibilities.

The Constitution is superior to all other laws of the country. Every law enacted by the government has to be in conformity with the Constitution. The Constitution lays down the national goals of India - Democracy, Socialism and National Integration. It also spells out the Fundamental Rights, Directive Principles and Duties of citizens. The Draftsmen of the Indian Constitution took inspiration from Constitutions all over the world and incorporated their attributes into the Indian Constitution. For example Part III on Fundamental Rights is partly derived from the American Constitution and Part IV on Directive Principles of State Policy from the Irish Constitution.

A Constitution should be a dynamic document. It should be able to adapt itself to the changing needs of the society. Sometimes under the impact of new powerful social and economic forces, the pattern of government will require major changes. Keeping this factor in mind the Draftsmen of the Indian Constitution incorporated Article 368 in the Constitution which dealt with the procedure of amendment. Due to Article 368 the Indian Constitution can neither be called rigid nor flexible but in fact it is partly rigid

and partly flexible. Articles of the Indian Constitution can be amended by a simple majority in the Parliament (Second Schedule, Article 100(3), 105, 11, 124, 135, 81, 137), or by special majority that is majority of the total membership of each house and by majority of not less than two thirds of the members of each house present and voting, or by Ratification by the State Legislatures after special majority (Article 73, 162, Chapter IV of Part V, Chapter V of Part VI, Seventh Schedule, representation of the State in Parliament and provisions dealing with amendment of the Constitution).

Constituent power is the area in the history of Indian Constitutional Law which has led to most serious disagreements between Parliament and Judiciary, the conflict involving Parliamentary Supremacy on one hand and on the other Judicial review of the Scope and extent of the power and the manner in which such power is to be exercised. Constituent power is termed as a power which is exercised by a representative body authorized by a Constitution to amend the Constitution. This amending power is one of the most desirable powers in a Constitution, if a Constitution as a fundamental document is to continue. John Burgess is of the opinion that the first and most important part is the organization of the State for the accomplishments of future changes in the Constitution, which is the amendment clause.

Classification of amendment procedures can be classified in two heads as rigid and flexible. Rigid procedures means difficult to amend the constitution like that of U.S., Australia, Canada and Switzerland and flexible procedure means in which procedure to amend is easy, and can be done even by passing a normal legislation like that of United Kingdom. But in Indian constitution though the procedure is classified as Rigid but it has practically proved to a flexible one.

In India Article 368 provides the power of amendment. The procedure to be followed in India is not strictly rigid or flexible, and further there is a difference in procedure when it affects the federal character of the Union. An amendment can be proposed in either of the Houses. In India all constitutional amendments can be generally effectuated by a Special Majority, i.e., it must be passed by both the houses, with more than 50% of total number of members along with two thirds of members present and voting.

**The clause 2 of Art 368 also specifies certain situations in which apart from above mentioned special majority ratification by more than half of the number of States is required, they are:**

- *Election of the President.*
- *Extent of executive power of the Union & State.*
- *Provisions dealing with the Supreme Court.*
- *Provisions dealing with High Courts in the States & Union territories*
- *Distribution of legislative power between Centre and State*
- *Representation of States in Parliament.*
- *Seventh schedule*
- *Art.368itself.*

In either of the two procedures after the bill is passed it is reserved for Presidential assent, which in turn is bound to give it. In India the procedure has proved to be far more flexible, till now as much as 96 amendments have been made. Dr. Ambedkar in the Constituent Assembly while defending the procedure contented that the procedure for amendment in the Indian Constitution is a simple procedures, as compared to US, Australia or Canada, and deliberately models of convention and referenda are avoided. He further said that it may be possible that in future this power may be used for partisan motives and hence some rigidity is required in the procedure.

. The founding fathers of the Indian constitution who granted more rights to the people without balancing them with their duties, perhaps did not foresee the emergence of present political environment, wherein the political players of various segments in the country are more interested in fulfilling their individual aspirations than the aspirations of the people. There is an element of truth in this criticism. The fact is that the ease in the amending process of the Indian Constitution is due to the one party dominance both at the Centre and the State .Yet, on close examination it will be seen that there were compelling circumstances which led to the constitutional amendments. While some amendments were a natural product of the eventual evolution of the new political system established under the Constitution in 1950, there were others necessitated by practical differences.

Necessity of Amending Provisions in the Constitution: Provisions for amendment of the constitution is made with a view to overcome the difficulties which may encounter in future in the working of the constitution. The time is not static; it goes on changing .The social, economic and political conditions of the people go on changing so the constitutional law of the country must also change in order toward it to the changing needs, changing life of the people. If no provisions were made for amendment of the constitution, the people would have recourse to extra constitutional method like revolution to change the constitution. The framers of the Indian constitution were anxious to have a document which could grow with a growing nation, adapt itself to the changing circumstances of a growing people. The Constitution has to be changed at every interval of time. Nobody can say that this is the finality. A constitution which is static is a constitution which ultimately becomes a big hurdle in the path of the progress of the nation.

Restriction on parliament power of Amending Provisions in the Constitution and Judicial Review: The framers of the Indian constitution were also aware of that fact that if the constitution was so flexible it would be like playing cards of the ruling party so they adopted a middle course. It is neither too rigid to admit necessary amendments, nor flexible for undesirable changes. India got independence after a long struggle in which numerous patriots sacrificed their life. They knew the real value of the freedom so they framed a constitution in which every person is equal and there is no discrimination on the basis of caste, creed, sex and religion. They wanted to build a welfare nation where the social, economical, political rights of the general person recognize. The one of the wonderful aspect of our constitution is Fundamental rights and for the protection of these rights they provided us an independent judiciary. According to constitution, parliament and state legislature in India have the power to make the laws within their respective jurisdiction.

This power is not absolute in nature. The constitution vests in judiciary, the power to adjudicate upon the constitutional validity of all the laws. If a laws made by parliament or state legislature violates any provision of the constitution, the Supreme Court has power

to declare such a law invalid or ultra virus. So the process of judicial scrutiny of legislative acts is called Judicial Review. Article 368 of the Constitution gives the impression that Parliament's amending powers are absolute and encompass all parts of the document. But the Supreme Court has acted as a brake to the legislative enthusiasm of Parliament ever since independence. With the intention of preserving the original ideals envisioned by the constitution-makers. To Abraham Lincoln, democracy meant a Government of the people, by the people and for the people. So in democratic nation whenever any law passed by parliament violates any provision of constitution or takes away any fundamental rights of the person, the Supreme Court has right and power to strike down that law or act. According to me this jurisdiction of Supreme Court is essential for protection of basic features of the constitution

## Judicial Response

*Shankari Prasad v. Union of India.* In this case first time the question whether fundamental rights can be amended under Article 368 came for consideration of the Supreme Court. In that case the Validity of the First Constitutional Amendment which added Article 31-A and 31-B of the Constitution was challenged. It was contended that though it may be open to Parliament to amend the provisions in respect of the fundamental rights, the amendments, would have to be tested in the light of the provisions contained in Art.13(2) of the Constitution. The Supreme Court, with a bench of five judges, unanimously rejected the contention that in so far as the First Amendment took away or abridged the fundamental rights conferred by Part III it should not be upheld in the light of the provisions of article 13(2). Shastri J: delivering the judgment of the court said that although "law" must ordinarily include constitutional law, there is a clear demarcation between ordinary law, which is made in the exercise of legislative power, and constitutional law, which is made in the exercise of constituent power. Dicey defines constitutional law as including "all rules which directly or indirectly affect the distribution or the exercise of the sovereign power in the State." The terms of Article 368 are perfectly general and empower Parliament to amend the Constitution, without any exception whatever.

**Shastri J.** was here implementing Dicey's doctrine of parliamentary sovereignty. He

recognized that an amendment in terms of article 368 was the "exercise of sovereign constituent power" and that there was no indication that the constitution-makers intended to make fundamental rights immune from constitutional amendment. Therefore "law" in article 13 must be taken to mean rules or regulations made in the exercise of ordinary legislative power and not amendments to the Constitution made in the exercise of constituent power. Article 13 (2) did not affect amendments made under article 368.

Notwithstanding the First Amendment, agrarian legislative measures adopted by the States were effectively challenged in the High Courts and two further amendments were passed to save the validity of those measures. The Constitution (Fourth Amendment) Act, 1955, amended article 31-A, while the Constitution (Seventeenth Amendment) Act, 1964, amended article 31-A, again and added 44 Acts to the Ninth schedule.

*Sajjan Singh v. State of Rajasthan* The validity of the Seventeenth Amendment was challenged in this case. The main contention before the five-judge bench of the Supreme Court was that the Seventeenth Amendment limited the jurisdiction of the High Courts and, therefore, required ratification by one-half of the States under the provisions of article 368. The court unanimously disposed of this contention, but members of the court chose to deal with a second submission, that the decision in the Shankari Prasad case should be reconsidered. The Chief Justice (Gajendragadkar C.J.) in delivering the view of the majority (Gajendragadkar C.J., Wanchoo and Raghubar Dayal JJ.) expressed their full concurrence with the decision in the earlier case. The words "amendment of this constitution" in article 368 plainly and unambiguously meant amendment of all the provisions of the Constitution; it would, therefore, be unreasonable to hold that the word "law" in article 13(2) took in Constitution Amendment Acts passed under article 368.

They went on to point out that, even if the powers to amend the fundamental rights were not included in article 368, Parliament could by a suitable amendment assume those powers. The Chief Justice also dealt in his judgment with the wording of article 31B. That article, he considered, left it open to the Legislatures concerned to repeal or amend Acts that had been included in the Ninth Schedule. But the inevitable consequence would be that an amended

provision would not receive the protection of article 31B and that its validity could be examined on its merits.

Hidayatullah and Mudholkar JJ., in separate judgments, gave notice that they would have difficulty in accepting the reasoning in Shankari Prasad's case in regard to the relationship of articles 13 (2) and 368. Hidayatullah J. said that he would require stronger reasons than those given in that case to make him accept the view that the fundamental rights were not really fundamental, but were intended to be within the power of amendment in common with other parts of the Constitution. The Constitution gives so many assurances in Part III that it would be difficult to think that they were the play things of a special majority." Mudholkar J. took the view that the word "law" in article 13 (2) included an amendment to the Constitution under article 368. Article 368 does not say that when Parliament makes an amendment to the Constitution it assumes a different capacity, that of a constituent body. The learned Judge recalled that India had a written constitution, which created various organs at the Union and State levels and recognized certain rights as fundamental.

The judgments in *Sajjan Singh's* case were to provide the outlines of what was to become, and still is, a national debate on the method by which the Indian Constitution can be amended. As an Indian commentator has pointed out the doubts expressed by Hidayatullah and Mudholkar JJ. in *Sajjan Singh's* case about the correctness of the decision in Shankari Prasad's case were to be confirmed by the majority in the next case to be considered (*Golak Nath's* case). *Golak Nath's* case was itself to be overruled by a majority in the *Keshvananda bharti's* case, this time in favour of Mudholkar J's view that certain features of the Constitution were basic and unalterable. The minority judges in *Keshvananda's* case were to return to the view of the court in Shankari Prasad's case and the majority in *Sajjan Singh's* case.

*Golakhnath v. State of Punjab*. The doubts of the minority judges in *Sajjan Singh's* case as to the correctness of the decision in Shankari Prasad's case were raised before a bench of eleven judges of the Supreme Court in this case, in which the validity of the First and Seventeenth Amendments to the Constitution in so far as they affected fundamental rights was again challenged. The Fourth Amendment was also challenged. This time a majority of six judges to

five decided that Parliament had no power to amend any of the provisions of Part III, so as to take away or abridge the fundamental rights enshrined therein. The majority were, however, faced with the problem that, if the First, Fourth and Seventeenth Amendments were at a late stage to be invalidated, the impact on social and economic affairs would be chaotic. On the other hand, the court considered that it had a duty to correct errors in the law. It, therefore, adopted a doctrine of prospective overruling[4] under which the three constitutional amendments concerned would continue to be valid, and the decision to the effect that Parliament had no power to amend the provisions of Part III would operate for the future only.

Given this "policy and doctrinaire decision to favour Fundamental Rights", the majority judgment of Subha Rao C.J. proceeded to accept the following propositions:

- (i) Article 368 with its marginal note "Procedure for amendment of the Constitution" dealt only with the procedure for amendment. Amendment was a legislative process and the power of Parliament to make amendments was contained in article 248 and Entry 97 in List I of the Seventh Schedule (the Union List) which confer residuary legislative powers on the Union Parliament.
- (ii) An amendment to the Constitution, whether under the procedural requirements of article 368 or under any other article, is made as part of the normal legislative process. It is, therefore, a "law" for the purpose of article 13(2).

The judgment of three of the dissentients.( Wanchoo, Bhargava and Mitter JJ.) in the Golak Nath" case was delivered by Wanchoo J. The learned observed that Art.368 carried the power to amend all parts of the constitution including the fundamental rights in part III of the constitution. They reaffirmed the correctness of the decisions in cases of Shankri Prasad and Sajjan singh.

**To get over the decision of the Supreme Court in Golaknath's case the Constitution 24th Amendment Act was passed in 1971. The Twenty-fourth Amendment made changes to articles 13 and 368:**

- (i) A new clause was added to article 13: "(4) Nothing in this article shall apply to any

amendment of this Constitution made under article 368."

(ii) Amendments were made to article 368:

a) The article was given a new marginal heading: "Power of Parliament to amend the Constitution and procedure therefore."

b) A new clause was added as clause (1): "(1) Notwithstanding anything in this Constitution, Parliament may in exercise of its constituent power amend by way of addition, variation or repeal any provision of this Constitution in accordance with the procedure laid down in this article.

c) Another clause was added as clause (3): "(3) Nothing in article 13 shall apply to any amendment under this article."

Another amendment to the old article 368 (now article 368(2)) made it obligatory rather than discretionary for the President to give his assent to any Bill duly passed under the article.

### **Basic Structure:**

The Supreme Court recognized BASIC STRUCTURE concept for the first time in the historic Kesavananda Bharati case in 1973. Ever since the Supreme Court has been the interpreter of the Constitution and the arbiter of all amendments made by parliament. In this case validity of the 25th Amendment act was challenged along with the Twenty-fourth and Twenty-ninth Amendments. The court by majority overruled the Golak Nath case which denied parliament the power to amend fundamental rights of the citizens. The majority held that article 368 even before the 24th Amendment contained the power as well as the procedure of amendment. The Supreme Court declared that Article 368 did not enable Parliament to alter the basic structure or framework of the Constitution and parliament could not use its amending powers under Article 368 to 'damage', 'weaken', 'destroy', 'abrogate', 'change' or 'alter' the 'basic structure' or framework of the constitution. This decision is not just a landmark in the evolution of constitutional law, but a turning point in constitutional history.

*Kesavananda Bharti v. State of Kerala.* It is a landmark of the Supreme Court of India, and is the basis in Indian law for the exercise by the Indian judiciary of the power to judicially review, and strike down, amendments to the Constitution of India passed by the Indian Parliament which conflict with or seek to alter the Constitution's basic structure. The judgment

also defined the extent to which the Indian Parliament could restrict the right to property, in pursuit of land reform and the redistribution of large landholdings to cultivators, overruling previous decisions that suggested that the right to property could not be restricted.

**Majority Judgement:**

**Sikri C. J.**

Held that the fundamental importance of the freedom of the individual has to be preserved for all times to come and that it could not be amended out of existence. According to the learned Chief Justice, fundamental rights conferred by Part III of the Constitution cannot be abrogated, though a reasonable abridgement of those rights could be effected in public interest. There is a limitation on the power of amendment by necessary implication which was apparent from a reading of the preamble and therefore, according to the learned Chief Justice, the expression "amendment of this Constitution", in Article 368 means any addition or 'change in any of the provisions of the Constitution within the broad contours of the preamble, made in order to carry out the basic objectives of the Constitution. Accordingly, every provision of the Constitution was open to amendment provided the basic foundation or structure of the Constitution was not damaged or destroyed. Shelat and Grover, JJ. held that the preamble to the Constitution contains the clue to the fundamentals of the Constitution. According to the learned Judges, Parts III and IV of the Constitution which respectively embody the fundamental rights and the directive principles have to be balanced and harmonized. This balance and harmony between two integral parts of the Constitution forms a basic element of the Constitution which cannot be altered. The word 'amendment' occurring in Article 368 must therefore be construed in such a manner as to preserve the power of the Parliament to amend the Constitution, but not so as to result in damaging or destroying the structure and identity of the Constitution. There was thus an implied limitation on the amending power which precluded Parliament from abrogating or changing the identity of the Constitution or any of its basic features.

**Hegde and Mukherjea, JJ.**

Held that the Constitution of India which is essentially a social rather than a political document is founded on a social philosophy and as such has two main features basic and

circumstantial. The basic constituent remained constant; the circumstantial was subject to change. According to the learned Judges, the broad contours of the basic elements and the fundamental features of the Constitution are delineated in the preamble and the Parliament has no power to abrogate or emasculate those basic elements of fundamental features. The building of a welfare State, the learned Judges said, the ultimate goal of every Government .but that does not mean that in order to build a welfare State, human freedoms have to suffer a total destruction. Applying these tests, the learned Judges invalidated Article 31C even in its un-amended form.

**Jaganmohan Reddy, J.**

Held that the word 'amendment' was used in the sense of permitting a change, in contradistinction to destruction, which the repeal or abrogation brings about. Therefore, the width of the power of amendment could not be enlarged by amending the amending power itself. The learned Judge held that the essential elements of the basic structure of the Constitution are reflected in its preamble and that some of the important features of the Constitution are justice, freedom of expression and equality of status and opportunity. The word 'amendment' could not possibly embrace the right to abrogate the pivotal features and the fundamental freedoms and therefore, that part of the basic structure could not be damaged or destroyed. According to the learned Judge, the provisions of Article 31C, as they stood then, conferring power on Parliament and the State Legislatures to enact laws for giving effect to the principles specified in Clauses (b) and (c) of Article 39, altogether abrogated the right given by Article 14 and were for that reason unconstitutional. In conclusion, the learned Judge held that though the power of amendment was wide, it did not comprehend the power to totally abrogate or emasculate or damage any of the fundamental rights or the essential elements of the basic structure of the Constitution or to destroy the identity of the Constitution. Subject to these limitations, Parliament had the right to amend any and every provision of the Constitution.

**Khanna, J.**

Broadly agreed with the aforesaid views of the six learned Judges and held that the word 'amendment' postulated that the Constitution must survive without loss of its identity, which meant that the basic structure or framework of the Constitution must survive any amendment

of the Constitution. According to the learned Judge, although it was permissible to the Parliament, in exercise of its amending power, to effect changes so as to meet the requirements of changing conditions, it was not permissible to touch the foundation or to alter the basic institutional pattern. Therefore, the words "amendment of the Constitution" in spite of the width of their sweep and in spite of their amplitude, could not have the effect of empowering the Parliament to destroy or abrogate the basic structure or framework of the Constitution.

Indira Nehru Gandhi v. Raj Narayan. Basic Structure concept reaffirmed in this case. The Supreme Court applied the theory of basic structure and struck down Cl(4) of article 329-A, which was inserted by the 39th Amendment in 1975 on the ground that it was beyond the amending power of the parliament as it destroyed the basic feature of the constitution. The amendment was made to the jurisdiction of all courts including SC, over disputes relating to elections involving the Prime Minister of India.

Basic Features of the Constitution according to the Election case verdict Again, each judge expressed views about what amounts to the basic structure of the Constitution: Justice Y.V. Chandrachud listed four basic features which he considered unamendable:

- a) Sovereign democratic republic status.
- b) Equality of status and opportunity of an individual.
- c) Secularism and freedom of conscience and religion.
- d) 'Government of laws and not of men' i.e. the rule of law.

2nd Amendment: After the decision of the Supreme Court in *Keshvanand Bharti* and Indira Nehru Gandhi case the constitution (42nd Amendment) Act, 1976 was passed which added two new clauses, namely, clause (4) and (5) to Art.368 of the Constitution. It declared that there shall be no limitation whatever on the constituent power of parliament to amend by way of addition, variation or repeal of the provisions of the Constitution under this Article. This Amendment would put an end to any controversy as to which is supreme, Parliament or the Supreme Court. Clause (4) asserted the supremacy of the parliament. It was urged that Parliament represents the will of the people and if people desire to amend the Constitution through Parliament there can be no limitation whatever on the exercise of this power. This

amendment removed the limitation imposed on the amending power of the Parliament by the ruling of the Supreme Court in Keshvanand Bharti's case. It was said that the theory of 'basic structure' as invented by the Supreme Court is vague and will create difficulties. The amendment was intended to rectify this situation.

Minerva Mill v. Union of India. In this case the validity of 42nd amendment Act was challenged on the ground that they are destructive of the 'basic structure' of the Constitution. The Supreme Court by majority by 4 to 1 majority struck down clauses (4) and (5) of the article 368 inserted by 42nd Amendment, on the ground that these clauses destroyed the essential feature of the basic structure of the constitution. It was ruled by court that a limited amending power itself is a basic feature of the Constitution.

**The historical Judgement laid down that:**

The amendment made to Art.31C by the 42nd Amendment is invalid because it damaged the essential features of the Constitution. Clauses (4) and (5) are invalid on the ground that they violate two basic features of the Constitution viz. limited nature of the power to amend and judicial review. The courts cannot be deprived of their power of judicial review. The procedure prescribed by Cl.(2) is mandatory. If the amendment is passed without complying with the procedure it would be invalid. The Judgement of the Supreme Court thus makes it clear that the Constitution is Supreme not the Parliament. Parliament cannot have unlimited amending power so as to damage or destroy the Constitution to which it owes its existence and also derives its power.

L.Chandra kumar v. Union of India. Article 323-A and 323-B, both dealing with tribunals, were inserted by the 42nd Amendment. Clause 2(d) of Art.323-A and Clause 3(d) of 323-B provided for exclusion of the jurisdiction of the High Court under Art.226 and 227 and the Supreme Court under Art.32. The Supreme Court in this case held these provisions as unconstitutional because they deny judicial review which is basic feature of the Constitution. It held that the power of judicial review vested in the High court under Art.226 and right to move the Supreme Court under Art.32 is an integral and essential feature of the Constitution.

## **Conclusion:**

Effect of Keshvanand Bharti case.

Keshvanand over ruled Golaknath but did not reestablish parliamentary supremacy. It stated that fundamental rights may be amended by the parliament, but not all of them. Those fundamental rights which constitute the basic structure of the Constitution cannot be abridged. Golaknath gave primacy to fundamental rights. Keshvanand recognizes that some other provisions in the Constitution may be equally important. If they form the basic structure they are unamendable. Under Art.368 the parliament cannot rewrite the entire Constitution and bring in a new one.

By invalidating part of Art.31-C keshvanand prevented the state legislature from exercising power to virtually amend the constitution. Art.31-C lays down that if a state legislature makes a law which contains a declaration that it is to giving effect to the policy contained in Art.39(b)and(c) then no court may scrutinize it. Thus a state legislature could make review proof law. Keshvanand denied them such power. Power of judicial review shall remain with the court, legislative declaration cannot destroy it.

Keshvavand is an example of judicial creativity of the first order. It protected the nation from the attacks on the Constitution by a passing 2/3 majority which may be motivated by narrow party or personal interests. The basic feature cannot be mauled.

### **The effect of the various decisions of the Supreme Court may be thus summarized:**

Parliament has limited powers to amend the constitution.

Parliament cannot damage or destroy the basic features of the Constitution.

The Procedure prescribed for the amendment is mandatory. Non compliance with it will result in invalidity of the amendment.

Clauses (4) and (5) inserted in Art. 368 by the 42nd Amendment Act are invalid because they take away the right of judicial review.

Parliament cannot increase its amending power by amending Art. 368.

Golaknath and later Kesavanand were subjected to a lot of criticism. It was said that there are no express limitations to the amending power. The courts are enlarging their powers by inventing implied limitations. It was contended that the doctrine of basic features leads to uncertainty. Nobody can foretell with certainty what the basic features are. The Parliament does not know where it stands—what power it possesses. Without uncontrolled power the Parliament cannot bring about socio-economic reforms.

The answer to these comments is—the Supreme Court has adopted a purposive approach. Most of the amendments that were invalidated were no part of any socio-economic reforms. Some of them had nothing to do with public welfare. The 39th and 42nd Amendments were made to ensure power to one individual and one party. The standard of political morality is low. Within political parties democracy hardly breathes and power is concentrated in the hands of a single individual or a coterie. Majority of the people are apathetic and easily led by attractive slogans. All these situations compelled the Supreme Court to rule in favour of limited powers and protect the freedom of the people. Uncertainty is part of life. Most of the legal concepts e.g. negligence, reasonableness, public interest and natural justice are not susceptible to exact definitions. The 39th and 42nd Amendments have clearly shown that unlimited amending power can be and effective instrument to usher dictatorship. The doctrine of implied powers is a safety device to prevent such occurrence.

The amendment process was incorporated in the Constitution by the Draftsmen of the Constitution to help India adapt itself to the changing circumstances. Society is never stagnant. It is ever- changing. Therefore the amending procedure was made partly flexible so as to make it easy for the Legislature. But the Parliament started thinking that it has unlimited amending power. It assumed itself to be the supreme law when the Constitution is the supreme law of the land. The Parliament started making amendments which were destroying the basic structure of the Indian Constitution. But after the landmark decisions of Keshavnand Bharati and Minerva Mills the Court by its power of judicial review has curtailed the amending power of the Parliament. The amendments made by the Parliament can no more affect the basic structure of the Constitution. But, looking at the ease with amendments can take place depending on the whims and fancies of the ruling government and the POLITICS IN THE POLITICS OF INDIA

we cannot say how long the rights of the citizens are safe and unobstructed.

Now we can say, there is no hard and fast rule for basic feature of the Constitution. Different judge keep different views regarding to theory of basis structure. But at one point they have similar view that parliament has no power to destroy, alter, or emasculate the 'basic structure' or framework of the constitution. If the historical background, the preamble, the entire scheme of the constitution and the relevant provisions thereof including Article 368 are kept in mind then there can be no difficulty, in determining the basic elements of the basic structure of the Constitution. These words apply with greater force to doctrine of the basic structure, because, the federal and democratic structure of the constitution, the separation of powers, the secular character of our state are very much more definite than either negligence or natural justice. So for the protection of welfare state, fundamental rights, Unity and integrity of the nation, Sovereign democratic republic and for Liberty of thought, expression, belief, faith and worship, interpretation of judiciary is mandatory.