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Paper : ADVANCED CONSTITUTIONAL LAW

Module : AMENDMENT OF THE CONSTITUTION AND DOCTRINE
OF BASIC STRUCTURE



Component - I - Personal Details

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Component - I (B)- Description of Module

Description of Module	
Subject Name	Law
Paper Name	Advanced Constitutional Law
Module/ Name/Title	Amendment of the Constitution and Doctrine of Basic Structure
Module Id	30
Pre-requisites	Basic understanding of Indian Constitution
Objectives	To understand the Amending Power and Procedure in the Constitution
Keywords	Constitution of India, Amendment, Basic Structure

Component - II

Module 30- Amendment of the Constitution and Doctrine of Basic Structure

Structure

1. Objective
2. Introduction
3. Learning Objectives
4. Constitutional Amendments in India
5. Amending Power of parliament
6. Emergence of the Basic Structure Doctrine
7. Consolidation of Basic Structure Doctrine after *Kesavananda*
8. Basic Structure Debate
9. Summary

1. Objective

In this module you can learn about the nature and scope of amending power as well as the procedure to Indian Constitution. You can also understand the basic structure doctrine propounded by the Supreme Court of India to limit the amending power of parliament and its role in safeguarding constitutional liberty.

2. Introduction

The constitution of a country is described as the “supreme law¹ reflecting the general will of the people. To be reflective of the will of the people constitution cannot remain a static document. It has to be responsive to changing conditions.² The framers of the Indian Constitution included article 368 as a formal method to amend the constitution whenever required. According to Oxford’s *Dictionary of Law* “Amendment means changes made to legislation for the purpose of adding to, correcting or modifying the operation of the legislation.³ *Kesavandand Bharati* case defines amendment in a broader term as including any alteration or change.⁴ On the face of it, it appears that the amendment procedure to the Constitution reflects both flexibility and rigidity. A data mining of the Indian constitutional amendments reveals that there are very few

1 K.C. Wheare: *Modern Constitutions*, (Oxford University Press London, 1951), 91.

2 *Encyclopaedia of Social Sciences*, (Macmillan, New York, 1951), Vol. II, 21.

3 N.D. Arora, Political Science for Civil Services Main Examination, https://books.google.co.in/books?id=z8F1b0gZ3ZkC&pg=SA18-PA1&lpg=SA18-PA1&dq=amendment+meaning+black%27s+law+dictionary&source=bl&ots=Nmf8uKM-ff&sig=_F95Jdap8t5vxs-A1GSLBg5IKy1&hl=en&sa=X&ei=Lf-qVMSDHMiVuASmg4DQDA&ved=0CFEQ6AEwCQ#v=onepage&q=amendment%20meaning%20black%27s%20law%20dictionary&f=false. (Accessed on 10th Dec 2014)

4 *Ibid.*

provisions that remain untouched today. The current module deals with amending power and procedure of Indian Constitution and discusses the extent of that power, controversies surrounding it and limitations on that power through the basic structure doctrine propounded by the supreme court of India.

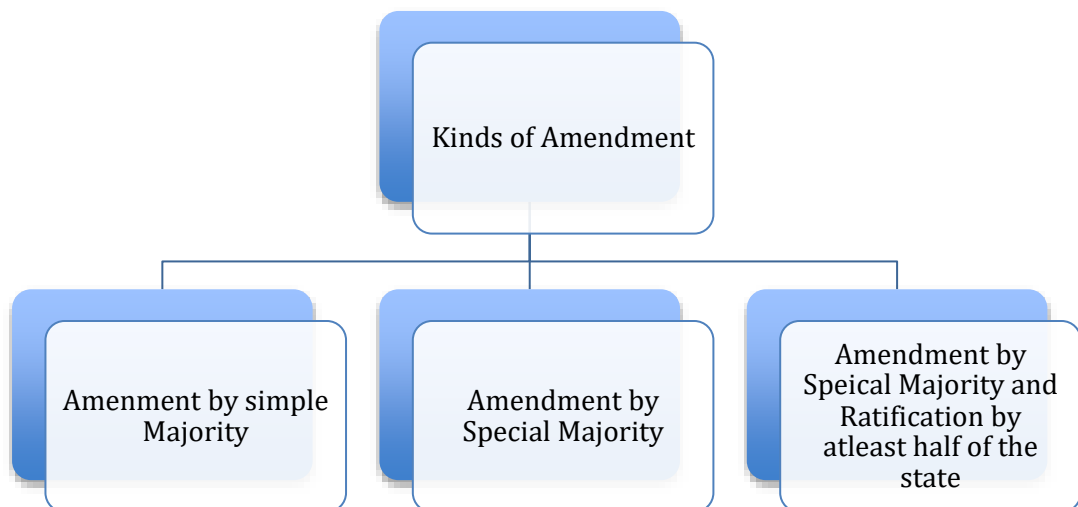
3. Learning Objectives

This module would provide a briefing on the amendment procedure of Indian constitution. The chapter will give a clear understanding of the historical and political forces operated in a multitude of constitutional amendments. Chapter will also provide a clear understanding of the doctrine of basic structure propounded by Supreme Court of India.

4. Constitutional Amendments in India

Amending procedure to the Indian constitution is reflective of the desire of Constituent legislative assembly to put in place a dynamic document. In the words of Jawaharlal Nehru *“While we want this Constitution to be as solid and as permanent a structure as we can make it, nevertheless there is no permanence in Constitutions. There should be certain flexibility. If you make anything rigid and permanent, you stop a nation’s growth, the growth of a living, vital, organic people. Therefore, it has to be flexible.”*⁵ Constitution of India provides for three distinct amending processes which combines flexibility and rigidity.

1. Amendment by a simple Majority: Certain provisions can be amended by a simple majority almost like passing an ordinary law. For instance creation of new states, alteration in the size of states, or qualification of Citizenship etc.
2. Amendment by special majority: Most provisions of the constitution requires amendment through a special majority’ Special majority is where 2/3rd members of house present and voting including majority of its total membership.
3. Amendment by special majority and ratification by at least one half of the State. Legislatures. For instance election of president, list of subjects in the seventh schedule Relationship between Centre and states etc.



Article 368 of the constitution which deals with the last two categories of amendment lays down that parliament can add, vary or repeal any provision of this Constitution in accordance with the procedure laid down. Art 368(2) lays down that amendment may be initiated in either house of parliament and has to be passed by a majority of total membership and by a majority of not less than two-thirds of the members of that House present and voting. In addition to these requirements certain amendments require not just special majority but ratification by the Legislatures of not less than one-half of the States.⁶

5 Amending Power of parliament

Parliament's authority to amend the Constitution, especially fundamental rights of citizens, created a conflict situation between parliament and judiciary. In the wake of Independence, creation of a social order elaborated in Article 39 (b) and (c) of the Directive Principles of State Policy⁷ was prominently played in the mind of the Constituent Assembly. Land reforms were introduced to achieve redistribution of wealth. Constitutional validity of these legislative measures was often challenged as violative of the fundamental right to property guaranteed under Art 31 of the

⁶ Constitution of India, Article 368 (2) An amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of that House present and voting, it shall be presented to the President who shall give his assent to the Bill and thereupon the Constitution shall stand amended in accordance with the terms of the Bill: Provided that if such amendment seeks to make any change in provides for special majority and ratification by state legislatures for amending following Articles

- (a) Article 54, article 55, article 73, article 162 or Article 241, or
- (b) Chapter IV of Part V, Chapter V of Part VI, or Chapter I of Part XI, or
- (c) any of the Lists in the Seventh Schedule, or
- (d) the representation of States in Parliament, or
- (e) the provisions of this article

⁷ *Ibid.* Article 39 Certain principles of policy to be followed by the State. —The State shall, in particular, direct its policy towards securing (b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good; (c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment contained in Article 39 (b) and (c) of the Directive Principles of State Policy that required equitable distribution of resources of production among all citizens and prevention of concentration of wealth in the hands of a few. Socialistic goals of the constitution is contained in the above Article.

constitution. The courts upheld the sanctity of fundamental right to property and declared land reforms legislation to be ***ultravires in on many occasions***.⁸

In order to overcome these discomfoting decisions, First amendment to the constitution was passed which added Arts 31 A and Art 31 B and 9th schedule to the Constitution. Art 31 A provided that any law providing for the land reforms and acquisition cannot be challenged on the ground that it is violative of any of the fundamental rights guaranteed under Constitution. Art 31 B gave blanket protection to those legislation which are inserted in the 9th schedule making it beyond the scope of judicial review on the ground of its incompatibility with fundamental rights. The Ninth Schedule was added with the primary objective of preventing the judiciary from invoking the argument of fundamental rights and upholds citizens' right to property.⁹The Constitution (First amendment) Act 1951 was challenged in *Shankari Prasad v. Union of India*¹⁰ on the ground that it takes away or abridges the rights conferred by Part III of the Constitution. Petitioners argued that Article 13 prohibits enactment of a law infringing or abrogating the Fundamental Rights, and that the word "law" in Article 13(2) should include constitutional amendment.¹¹ Therefore, the validity of such an amendment has to stand the scrutiny of fundamental rights.¹²Supreme Court rejected the argument and held that there is a clear distinction between amending power and general legislative power. Amending power of the parliament is to be located in Article 368 of the Constitution. Art 13(2) merely deals with ordinary law making powers of parliament and legislatures.¹³ The case validated the positions of the government and authority of Parliament to amend all provisions of the constitution including fundamental rights. This dictum was followed and upheld in the case of *Sajjan Singh v. State of Rajasthan*¹⁴ wherein the validity of the Constitution 17th Amendment Act, 1964 was challenged. The Constitution (seventeenth Amendment) Act, 1964 had expanded the list of ninth schedule adding certain legislation to the list.¹⁵

Encouraged by these verdicts land reforms proceeded unchallenged. In 1967, *Golaknath v. State of Punjab*¹⁶ an eleven-judge bench of the Supreme Court headed by Chief Justice Subba Rao interpreted and taken a snoopng position that Article 368, of the constitution merely laid down the amending procedure and does not deal with the power of amendment.¹⁷ He observed that the amending power of Parliament can be found in other provisions specially Articles 245, 246, 248 dealing with legislative powers.¹⁸ This was distinctively different from the previous positions of the court

8 *Sir Kameshwar Singh Darbhanga v. The Province of Bihar* AIR 1950 Patna 392.

9 Bibhu Prasad Mohapatra, Rights as a site of struggle, http://www.idfresearch.org/pdf/Rights_as_a_Site_of_Struggle.pdf, accessed 27 May 2014.

10 *Sankari Prasad Singh Deo v. Union of India*. (1951). AIR. SC 458.

11 Constitution of India (n 4) Article 13 (2) states- "The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void."

12 Nayak Venkatesh, "The Basic Structure of the Indian Constitution"

http://www.humanrightsinitiative.org/publications/const/the_basic_structure_of_the_indian_constitution.pdf, (Accessed 22nd May 2014).

13 *ibid*.

14 *Sajjan Singh v State of Rajasthan* AIR. 1965 SC 845.

15 *The Constitution (Seventeenth Amendment) Act 1964*.

16 AIR 1967 SC 1643.

17 V.N.Shukla, *Constitution of India Revised* by M.P.Singh, (Eastern Book Company, Allahabad) 885.

18 *Golaknath v. State of Panjab*, AIR, 1967 SC 1643 See also Constitution of India, (n6) Article 246. Subject-matter of laws made by Parliament and by the Legislatures of States.- (1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters

which tried to differentiate between legislative and amending power of parliament. Secondly court relied on the implied limitations on Parliament's power to amend the Constitution. Fundamental rights are held to be sacrosanct for the protection of individual rights. The sacrosanctity of fundamental rights cannot be altered even by an absolute majority of parliament.¹⁹ The amendment to fundamental right can be brought about only by the convening the Constituent Assembly.²⁰ The decision perhaps stems from the fact that fundamental rights are the bedrock of any democratic structure and need to be protected against any alterations.

6. Emergence of the Basic Structure Doctrine

The Parliament reacted to this decision in *Golaknath v. State of Punjab* by bringing successive amendments. The Constitution (Twenty Fourth Amendment) Act 1971 incorporated a new clause to 368 that any constitutional provision could be amended by following the "procedure" contained in Article 368.²¹ Limitations of Article 13 (2) of the Constitution with regard to fundamental rights is inapplicable to any amendment of the Constitution under article 368.²² The Constitution (Twenty Fifth Amendment) Act 1971 introduced Article 31C and explicitly gave higher sanctity to Directive Principles of State policy over fundamental rights. The impact of it has been huge as it diluted the earlier interpretations and perspectives that fundamental rights are supreme over directive principles.²³ Directive Principles contained in Articles 39(b) and (c) were now sought to be given precedence over fundamental rights contained in Articles 14 and 19.²⁴ The Constitution (Twenty-Ninth Amendment) Act 1971 further enlarged the 9th schedule by adding some Kerala land reforms legislations to the 9th schedule.

The validity of these above amendments were challenged in the historic case of *Keshavanand Bharati v. State of Kerala*²⁵ Majority of the judges did not agree with the view taken by the court in *Golaknath* case regarding the implied limitation of amending power. The Court upheld the Constitution (Twenty Fourth Amendment) Act 1971 and held that Article 368 confers power to amend all the provisions of

enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union List"). (2) Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List"). (3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the "State List"). (4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included [in a State] notwithstanding that such matter is a matter enumerated in the State List. 248. Residuary powers of legislation.- (1) Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List.

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ *The Constitution (Twenty-fourth amendment) Act 1971.* It amended Article 368 by adding "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."

²² *ibid.*, The amendment added (3) Article 368 and provided "Nothing in Article 13 shall apply to any amendment made under this Article."

²³ *The Constitution (Twenty-fifth amendment) Act 1971* The amendment added Art 31 C and provided "31C. Saving of laws giving effect to certain directive principles.- Notwithstanding anything contained in Article 13, no law giving effect to the policy of the State towards securing the principles specified in clause (b) or clause (c) of Article 39 shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Article 14, Article 19 or Article 31; and no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy."

²⁴ Ashlesha Galgale, Doctrine of Basic Structure: The reason thereof, <http://www.nirmauni.ac.in/law/ejournals/previous/article2-v1i2.pdf>. (Accessed 27th May 2014).

²⁵ AIR 1973 SC 1461.

constitution including fundamental rights.²⁶This case is credited with bringing basic structure doctrine to the Indian constitutional realm.

The counsel who argued for the petitioners suggested that there can be three possible meanings of amendment: (i) to improve or better; to remove an error. The question of improvement being considered from the standpoint of the basic philosophy underlying the Constitution but subject to its essential features.

(ii) to make changes which may not fall within (i) but which do not alter or destroy any of the basic features, essential elements or fundamental principles of the Constitution.²⁷

(iii) to make any change whatsoever including changes falling outside category (ii). Category (i) and (ii) have a common factor, namely that the essential features cannot be damaged or destroyed. Court upheld the view and ruled that parliament cannot use the amending power to destroy or abrogate or emasculate the "Basic feature of constitution."²⁸ Significantly it was left for the courts to decide which part of the constitution was considered as a part of the basic feature.

The fundamental ideology of non- amendability of the basic features of the constitution; has been summarized by Hedge and Mukherjee, JJ., that "*Our Constitution is not a mere political document. It is essentially a social document. It is based on a social philosophy and every social philosophy like every religion has two main features, namely, basic and circumstantial. The former remains constant but the latter is subject to change. The core of a religion always remains constant but the practices associated with it may change. Likewise, a constitution like ours contains certain features which are so essential that they cannot be changed or destroyed.*"²⁹ While infallibility is no attribute of a Constitution, its fundamental character and basic structure cannot be overlooked. Otherwise the power to amend may include the power to repeal.³⁰

(a) Basic Features of the Constitution from the lens of Kesavananda

Justice Sikri who gave the majority opinion in the seminal case went on to highlight some of the features which they consider as constituting basic structure.³¹

- Supremacy of the Constitution
- Separation of Powers between the legislature, the executive and the judiciary
- Republican and the democratic form of Government;
- Secular character of the Constitution
- Federal character of the constitution
- The dignity of the individual secured through Fundamental Rights
- The unity and integrity of the nation
- Parliamentary system³²

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ Keshavamutthy, C. V.: *Amending Power under the Indian Constitution--- Basic Structure Limitations*, (New Delhi, Deep & Deep Publications, 1982) 79.

³⁰ Iyer, Krishna, V.R., *A Constitutional Miscellany*, (2nd Edn., Eastern Book Company, Lucknow, 2003) 134.

³¹ Kesavananda, (n 25).

³² *Ibid.*

Shelat, J. and Grover, J. added two more basic features to this list:

- Welfare state on the basis of the Directive Principles of State Policy
- Unity and integrity of the nation

Hegde, J. and Mukherjea, J. added more features to the list

- Sovereignty of India
- Democratic character of the nation
- Unity of the country³³



Basic Structure

The minority view was delivered by Justice A.N. Ray who held that all parts of the Constitution were essential and no distinction could be made between its essential and non-essential parts.³⁴ With regard to fundamental rights, the case of *Golaknath* interpreted all fundamental rights to be non-amendable. *Kesavananda* case took a different position laying down that only the fundamental rights which forms the basic structure is beyond the purview of amendability.

7. Consolidation of Basic Structure Doctrine after *Kesavananda*

Basic structure doctrine was a new beginning in Indian constitutional realm and a turning point in judicial history. Many believe that on that day Indian judiciary saved the constitution of India and democratic spirit from the possible absolute tyranny of the majority. According to V. N. Shukla the fact that the judiciary has a say in the matter of amendment of the Constitution is the most notable aspect of the doctrine of basic structure.³⁵ The period after *Kesavananda* saw the expansion and consolidation of the basic structure doctrine. Supreme Court was presented with the opportunity to deliberate on basic structure in the case of *Raj Narain v. Indira Nehru*.³⁶ The issue at stake was The Constitution (Thirty Ninth Amendment) Act 1975 which removed the

³³ *Ibid.*

³⁴ *Ibid.*

³⁵ Shukla, V. N.: *Constitution of India*, 10th edition, (Lucknow, East Book Company, 2009) 897

³⁶ *Indira Gandhi v. Raj Narain* AIR 1975 SC 2299.

power of the Supreme Court to adjudicate on matters regarding elections of the President, Vice President, Prime Minister and Speaker of the Lok Sabha.³⁷ Court while upholding validity of the thirty-ninth amendment struck down the part which sought to take away the power of judicial review.³⁸ Court reiterated the significance of the basic structure concept and added the following features to the structural ambit of basic structure doctrine.

- Democracy including free and fair elections,
- The power of judicial review ,
- Sovereign democratic republic,
- Equality of status and opportunity,
- Secularism and freedom of conscience and religion,
- Rule of law³⁹

Later judgments strengthened this concept further by widening the concept of Basic Structure. In the case of *Minerva Mills*⁴⁰ Supreme court struck down clauses (4) and (5) of the Article 368 inserted by The Constitution (Forty Second Amendment), 1976⁴¹ on the ground that these clauses destroyed the essential feature of the basic structure of the constitution. It was ruled by the court that a limited amending power itself is a basic feature of the Constitution.⁴² They also declared harmony and balance between fundamental rights and directive principles is an essential feature of the basic structure of the Constitution.”⁴³

In *Waman Rao v. Union of India*, the court held that all constitutional amendments made after the date of the *Kesavananda Bharati* were open to judicial review.⁴⁴ In *L. Chandra Kumar v. Union of India*⁴⁵ and *S.P. Sampath Kumar v. Union of India*⁴⁶ court held that the power of judicial review over legislative action vested in the High Courts under Article 226 and in the Supreme Court under Article 32 of the Constitution are an integral part and essential feature of the Constitution. Effective access to justice is part of the ‘Basic Structure’ according to the decision in *Central Coal Fields Ltd. v. Jaiswal Coal*.⁴⁷ In *I.R. Coelho v. State of Tamil Nadu*⁴⁸ the Supreme Court applied the doctrine and held that: “All amendments to the Constitution made on or after 24th April, 1973 by which the Ninth Schedule is amended by inclusion of various laws therein shall have to be tested on the touchstone

³⁷The Constitution (Thirty–Ninth amendment) Act 1975.

³⁸The Supreme Court struck down Section 4 of the Thirty-ninth amendment Act, i.e. Article 329A of the Constitution.

³⁹ Raj Narain, (n36)

⁴⁰*Minerva mills v. Union of India* AIR 1980 SC 1789.

⁴¹The Constitution (fourty –Second amendment) Act 1976 amended article and provided Amendment of article 368.- In Article 368 of the Constitution, after clause (3), the following clauses shall be inserted, namely:- "(4) No amendment of this Constitution (including the provisions of Part III) made or purporting to have been made under this article whether before or after the commencement of section 55 of the Constitution (Forty-second Amendment) Act, 1976] shall be called in question in any court on any ground. (5) For the removal of doubts, it is hereby declared that there shall be no limitation whatever on the constituent power of Parliament to amend by way of addition, variation or repeal the provisions of this Constitution under this Article.

⁴² *Minerva*, (n 40).

⁴³ *Ibid*.

⁴⁴*Waman Rao v. Union of India*. (1981). 2 SCC 587.

⁴⁵1995 AIR 1151.

⁴⁶AIR 1987, SC 368.

⁴⁷1980 Supp. SCC 471.

⁴⁸2007 2 SCC 1.

of the basic or essential features of the Constitution as reflected in Article 21 read with Article 14, Article 19 and the principles underlying them.⁴⁹ The court held that fundamental right of equality, as a part of the basic structure of Constitution, would include Article 15⁵⁰ and Article 16.⁵¹ The inclusion of Article 15 and Article 16 to the list of Basic Structure implies that the Government will have to adequately justify its laws providing reservation to any particular caste or religion without getting the benefit of absolute immunity, by conveniently placing it under Ninth Schedule.

8. Basic Structure Debate

The doctrine of Basic structure has been invoked in a number of cases since Keshavananda. The Doctrine has assumed significant dimension in Constitutional debates and infact the debate over what constitutionalism means in India today mostly revolves around the interpretation and validity of this doctrine.⁵² When we trace the genesis of the basic structure doctrine, it is found in the academic circles to a lecture given by a German scholar, Dieter Conrad, in 1965 in India on the "Implied Limitations of the Amending Power."⁵³ In the words of Prof Conrad the concept of a basic structure giving coherence and durability to a Constitution has a certain intrinsic force which would account for its appearance in various jurisdictions and under different circumstances.⁵⁴ He supported his propositions through putting forward fictitious Constitutional Amendments and doubting its credibility.⁵⁵

An analysis of Keshavananda Bharati points that judges heavily relied on the above proposition of limited amending power, the Court observed

*““Since the Constitution had conferred a limited amending power on the Parliament, the Parliament cannot under the exercise of that limited power enlarge that very power into an absolute power. Indeed, a limited amending power is one of the basic features of our Constitution and therefore, the limitations on that power cannot be destroyed. In other words, Parliament cannot, under Article 368, expand its amending power so as to acquire for itself the right to repeal or abrogate the Constitution or to destroy its basic and essential features. The donee of a limited power cannot by the exercise of that power convert the limited power into an unlimited one.”*⁵⁶ The doctrine even spread to other jurisdictions. The Supreme Court of Bangladesh adopted it in 1989 expressly relying on the reasoning in the Kesavananda case of 1973.⁵⁷

⁴⁹ Ibid.

⁵⁰(n6)Constitution of India Art 15 Constitution Of India, Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.—(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

^{ibid} Article 16.Equality of opportunity in matters of public employment. —(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

⁵²Pratap Bhanu Mehta,*The Inner Conflict of Constitutionalism Judicial Review and the Basic Structure, India's Living Constitution, Ideas Practices, Controversies*, Edited by Zoya Hasan,E.Sreedharan.R.Sudarshan,Permanent Black) 179.

⁵³A.G. Noorani, "Behind Basic Structure Doctrine," *Frontline*, April 28, 2001.

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ Kesavananda,,(n25) para 1462

⁵⁷ Anwar Hossain Chowdhary vs. Bangladesh; 41 DLR 1989 App. Div. 165, 1989 BLD (Spl.) 1).
<http://www.hinduonnet.com/fline/fl1809/18090950.htm> Accessed 27th February 2014

It is difficult to explain how and where the majority judges discovered this unique doctrine to curtail the parliamentary power to amendment, which the court had repeatedly held before to be unfettered.⁵⁸ The analysis of Article 368 and its plain reading does not give any clear indication regarding the limited amending power of Parliament. The constituent assembly debates also give no indication of such a doctrine being part of the constitution. Basic structure doctrine has helped to protect the core of constitution.⁵⁹ But judiciary is not above errors. The question arises in an unusual event where the judiciary error in declaring any amendment as ultra vires on the basis of basic structure, who will come to the rescue?

The basic issue associated with Basic Structure doctrine is that there is no clear demarcation of what constitute basic structure. As a result of this situation, the judiciary has emerged as the most powerful wing of the "State" in comparison to the legislature and the executive.⁶⁰ Further the term basic structure itself is misleading. Can there be some provisions which are considered to be more important? Can it interpreted to mean that some provisions are more important or Basic and others secondary.⁶¹ If parliament cannot amend Part 111 even with recourse to 368, No other power can actually amend the constitution. Perhaps it is time parliament should sit down and tries to debate on what constitutes basic structure and insert a list of provisions which constitute the basic features in the Constitution as has been done in Germany.

Summary

By the end of this module you have acquired a familiarity with the power and procedure of amendment of Indian constitution. You have understood the significance of having amendment procedure in constitution and its vital role in reflecting the changing general will of the people. You have also understood the tussle between judiciary and parliament over amending fundamental rights. You must have also got a substantial insight into one of the most fundamental aspect of Indian constitution's Basic structure.

⁵⁸Madhava menon, *Basic Structure after 30 years, The Supreme Court versus the Constitution, a challenge to federalism* (Sage Publications New Delhi,) 61.

⁵⁹Baxi, Upendra, (1974). 'The Constitutional Quicksands of Kesavananda Bharati and the Twenty-Fifth Amendment'. 1 SCC (Jour) 45.

⁶⁰<http://www.ebc-india.com/lawyer/articles/2000v2a1.htm> (Accessed on 19 th Feb2014).

⁶¹ V.N.Shukla, (n 35), 882.