

CUET · POLITICAL SCIENCE · CLASS XI · CODE 323

# Constitution as a Living Document

CUET unit: Indian Constitution at Work — Constitution as a Living Document

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## Snapshot

- Establishes that the Indian Constitution is dynamic, not static — it is amendable, yet its basic premises remain intact across 74+ years (as of 26 Jan 2024).
- Explains the dual amendment mechanism under Article 368 (special majority; special majority + ratification by half the States) and a third "simple majority" route for certain articles.
- Traces 106 amendments (by 26 January 2024) and classifies them into technical, interpretive-conflict, and consensus-based categories.
- Centres the Kesavananda Bharati (1973) "basic structure" doctrine as the judicial innovation that balances rigidity and flexibility.
- Highlights judicial interpretation (creamy layer, 50% reservation cap, Minerva Mills) and political maturity as twin drivers of constitutional evolution.

## Detailed Notes

### 2.1 Core concepts

Why is a Constitution adopted nearly three quarters of a century ago still seen as relevant? Because constitutions need not be static. The Soviet Union had four constitutions during its existence (1918, 1924, 1936, 1977); France has had five republics each with a fresh constitution (1793, 1848, 1875, 1946, 1958); Russia adopted a new constitution in 1993 after the break-up of the USSR. India, in striking contrast, has retained the same Constitution since **26 January 1950** (NCERT §"Are Constitutions Static?", pp. 197–198). The reason it endures is not that it has remained unchanged but that "our Constitution accepts the necessity of modifications according to changing needs of the society" and that political practice and judicial rulings have given it flexibility — making it "a living document" rather than "a closed and static rulebook" (NCERT p. 198).

The dual character of the Constitution: it is both sacred and alterable. It is placed above ordinary law — no ordinary statute may contradict it — yet "the makers of our Constitution were also aware that it could not be a static document". They struck a balance between treating the Constitution as "a sacred document" and as an instrument requiring revision when "the perceptions of the community change" (NCERT p. 199). This balance is operationalised through **Article 368**, which empowers Parliament, in

exercise of its constituent power, "to amend by way of addition, variation or repeal any provision of this Constitution in accordance with the procedure laid down" (NCERT p. 199).

There are **three routes** by which the Constitution can be amended (NCERT pp. 200–201; diagram p. 200). The **first route** is **similar to ordinary law**: certain articles (such as Article 2 on admission of new States, Article 3 on alteration of names and boundaries) can be amended by simple majority "by law" — and these are not even counted as constitutional amendments in the strict sense. The **second route**, under Article 368, requires a **special majority** of both Houses of Parliament. The **third route**, also under Article 368, requires a special majority **plus ratification by the legislatures of half the States** — invoked when the amendment affects the federal balance, the powers of the States, or the representation of the States in Parliament.

Note that **no outside agency** — no constitutional commission, no referendum — is involved in amending the Indian Constitution. Even the President has **no power to send an amendment bill back** to Parliament for reconsideration. Only the elected representatives can finally decide; this is an expression of **parliamentary sovereignty** at the level of constitutional change (NCERT pp. 201–202).

The **special majority** under Article 368 is defined precisely: those voting in favour must be **at least half of the total strength** of that House; and supporters must also be **two-thirds of those present and voting**. Both conditions must be met simultaneously; both Houses must pass the bill **separately**; and there is **no joint sitting** for amendments (NCERT p. 202). For the third route — **ratification by States** — only legislatures of **half the States** must pass the amendment; and at the State level a **simple majority** in the State legislature is sufficient (NCERT p. 204).

Turning to the **practice** of amendment: as of **26 January 2024**, the Constitution had been amended **106 times in 74 years**. Two intense bursts of amendment activity stand out: between **1974 and 1976** (10 amendments in three years), reflecting the dominance of the Congress and the Emergency context; and between **2001 and 2003** (10 amendments in three years), under coalition-era politics with intense BJP-versus-others rivalry. This pattern shows that amendments "are not merely a function of single-party majority" — they happen in different political configurations (NCERT pp. 205–207).

Amendments fall into a **three-fold classification**. The first category is **technical or administrative**: amendments that "do not involve any controversy" — for instance, the 15th amendment raising the retirement age of High Court judges from 60 to 62, the 54th amendment on judges' salaries, the six amendments extending reservations for SCs and STs in legislatures, and the clarification that the advice of the Council of Ministers under Article 74(1) is binding on the President (NCERT pp. 207–208). The second category arises from **differing interpretations** of various clauses by the judiciary and the political executive — for instance, the conflicts between Parliament and the Supreme Court on fundamental rights vs directive principles, on the right to property, and on the scope of Parliament's amending power between 1970 and 1975



(NCERT p. 208). The third category arises from **political consensus** — for instance the **52nd and 91st amendments** on anti-defection; the **61st amendment** that lowered the voting age from 21 to 18; the **73rd and 74th amendments** on Panchayats and Municipalities; and the **77th, 81st and 82nd amendments** dealing with reservations (NCERT p. 209).

The **controversial amendments** — the **38th, 39th and 42nd** — were enacted in the background of the internal Emergency declared in June 1975. The **42nd amendment (1976)** is "particularly seen as a wide-ranging amendment" — it overrode the Kesavananda Bharati doctrine, extended the term of the Lok Sabha from **five to six years**, inserted **Fundamental Duties** into the Constitution, restricted judicial review, and made changes to the **Preamble**, the **Seventh Schedule** and **53 articles** of the Constitution — "practically a rewriting of many parts of the original Constitution". Once the new government took office after the 1977 elections, it reversed the most controversial changes by the **43rd and 44th amendments** (NCERT pp. 209–210).

The **basic structure doctrine** (Kesavananda Bharati, 1973) is "perhaps the most important development of our constitutional history". The doctrine, formulated by the Supreme Court, had three contributions: (i) it sets specific limits on Parliament's power to amend the Constitution — no amendment can violate the basic structure; (ii) it allows Parliament to amend any and every part within this limit; and (iii) the Judiciary is the final authority on what constitutes the basic structure (NCERT p. 211). The basic structure doctrine has no textual basis in the Constitution itself — it is "a judicial innovation" drawn from "the spirit rather than the letter of the Constitution" (NCERT pp. 214–215). The **Minerva Mills (1980)** decision reaffirmed Kesavananda after the 42nd amendment had tried to override it; "since then political parties have accepted the basic structure as something that is inviolable" (NCERT p. 215).

The **National Commission to Review the Working of the Constitution** (Venkatachaliah Commission) was set up by the NDA government in 2000. The Commission was boycotted by the Opposition and others on the ground that it was a precursor to rewriting the Constitution. Even so, this Commission "stuck to the basic structure" and did not recommend its abolition (NCERT p. 212).

**Judicial interpretation acts as informal amendment** — the meaning of the Constitution has expanded without changing its text. Examples include the **50 per cent cap on reservations**, the **creamy layer exclusion** for OBCs, and the broadened interpretations of the right to education, the right to life and liberty, and minority educational institutions (NCERT p. 212).

A broader theme runs through all this: **"the Constitution as a living document"**. The Constitution responds to experience; it balances letter and spirit; it survives because of political maturity and a shared founding vision. Nehru's "tryst with destiny" speech to the Constituent Assembly is cited as the source of that vision — dignity and freedom of the individual, social and economic equality, well-being, national unity, and India's contribution to world peace (NCERT pp. 213–216).

## 2.2 Definitions to memorise

Term	Definition	Page
Flexible constitution	One that can be very easily changed or modified.	200
Rigid constitution	One that is very difficult to amend.	200
Living document	A constitution that keeps responding to changing situations through amendment and interpretation.	198, 213
Article 368	Article empowering Parliament to amend the Constitution by addition, variation or repeal.	199
Special majority (Art. 368)	At least half of the total strength of a House voting in favour AND two-thirds of members present and voting.	202
Ratification by States	Approval by legislatures of half the States (simple majority sufficient) for amendments affecting federal balance.	204
Joint sitting (amendment)	Not available — both Houses must pass amendments separately.	202
Parliamentary sovereignty (in amendment)	Principle that only elected representatives can finally decide amendments — no outside agency or referendum.	202
President's role (in amendments)	Must assent; <b>cannot</b> return an amendment bill for reconsideration.	202
Articles 2 and 3	Examples of articles amendable by simple majority "by law" — not counted as constitutional amendments.	200
Basic structure doctrine	Judicial principle (Kesavananda Bharati, 1973) that Parliament cannot amend the basic structure of the Constitution.	211
42nd amendment (1976)	Emergency-era amendment — extended Lok Sabha term from 5 to 6 years; inserted Fundamental Duties; restricted judicial review; changed Preamble, Seventh Schedule and 53 articles.	209–210
43rd & 44th amendments	Post-1977 amendments that rolled back the 42nd amendment's excesses.	210
52nd amendment (1985)	Anti-defection amendment.	209
91st amendment (2003)	Further anti-defection provisions + cap on Council of Ministers.	209
61st amendment	Lowered voting age from 21 to 18.	209
73rd & 74th amendments	Constitutional status to Panchayats and Municipalities.	209
77th, 81st, 82nd amendments	Amendments dealing with reservations.	209

Term	Definition	Page
38th, 39th, 42nd amendments	Three controversial amendments passed during the Emergency (June 1975).	209–210
Minerva Mills (1980)	Supreme Court decision reaffirming the basic structure doctrine after the 42nd amendment.	215
Venkatachaliah Commission (2000)	Commission to review the working of the Constitution; did not recommend abolition of the basic structure.	212
Creamy layer exclusion	Judicial gloss excluding the better-off section of OBCs from reservation.	212
50% cap on reservations	Judicial limit on the total reservations in public employment.	212
Kesavananda Bharati (1973)	Case that established the basic structure doctrine.	211
106 amendments / 74 years	Total number of amendments by 26 January 2024.	205

### 2.3 Diagrams / processes to remember

- **"How to amend the Constitution" flow diagram (p. 200)**: three branches — (1) Simple majority similar to ordinary law (for certain articles); (2) Special majority in both Houses separately as per Article 368; (3) Special majority + ratification by legislatures of half the States, per Article 368.
- **Graph 1 (p. 206)**: Number of amendments per decade — shows 1970–1990 as the heaviest amendment period.
- **Graph 2 (p. 206)**: Years taken for every ten amendments — narrowest bars are 1974–76 and 2001–03 (10 amendments in 3 years each).
- **Check-your-progress chart (p. 205)**: matrix of subject of amendment vs whether "Special majority" only or "Ratification by States" also needed — for citizenship, freedom of religion, Union List, State boundaries, Election Commission.
- **Process for special-majority amendment**: introduce in either House → discussion → voting separately in each House → meet both special-majority conditions (half total + two-thirds of those voting) → if federal subject, ratification by half the States → President's assent (no power to return) → Constitution Amendment Act.

### 2.4 Common confusions / NTA trap points

- **"Half the States" for ratification** means **simple majority** of the State legislatures, not special majority — students often assume special majority is needed at State level too (p. 204).
- **Special majority numbers**: It is "half of TOTAL strength" + "two-thirds of those PRESENT AND VOTING" — both conditions together. Many students remember only the two-thirds rule (p. 202).

- **President's role:** For an amendment bill, the President must assent and **cannot return** it for reconsideration (p. 202).
- **No joint sitting** for amendment bills — both Houses must pass them separately.
- **No referendum** is required for ratifying a constitutional amendment in India (p. 202).
- **Basic structure is NOT in the Constitution text** — it is a judicial doctrine from Kesavananda Bharati (1973), reaffirmed in Minerva Mills (1980) (pp. 214–215).
- **42nd vs 44th amendment** confusion: the 42nd (1976) was the controversial one; the 43rd and 44th rolled back its excesses (p. 210).
- **Anti-defection** corresponds to the **52nd amendment** (and later 91st), not 42nd (p. 209).
- **Voting age** was lowered from 21 to 18 by the **61st amendment** (p. 209).
- **42nd amendment changes:** extended Lok Sabha term from 5 to 6 years, inserted Fundamental Duties, restricted judicial review, changed Preamble, Seventh Schedule and 53 articles (p. 210).
- There were **two intense bursts of amendment:** 1974–76 and 2001–03, each producing 10 amendments in three years (p. 206).
- The Venkatachaliah Commission was set up in **2000** to review the working of the Constitution; it did **not** abandon the basic structure (p. 212).

## 2.5 Key Articles / Amendments / Cases table

#	Article / Amendment / Case	Subject	Page
1	Article 368	Parliament's power to amend by addition, variation or repeal	199
2	Article 2	Admission of new States (amendable by simple majority "by law")	200
3	Article 3	Alteration of area, boundaries or names of States (amendable by simple majority "by law")	200
4	Article 74(1) clarification	Advice of Council of Ministers binding on the President	208
5	15th amendment	Raised HC judges' retirement age from 60 to 62	207
6	54th amendment	Judges' salaries	207
7	38th, 39th, 42nd amendments	Three controversial amendments enacted during the Emergency from June 1975	209–210
8	42nd amendment (1976)	Lok Sabha term 5→6 years; Fundamental Duties; judicial review restricted; changes to Preamble, Seventh Schedule, 53 articles	209–210

#	Article / Amendment / Case	Subject	Page
9	43rd & 44th amendments	Post-1977 reversal of 42nd-amendment excesses	210
10	52nd amendment (1985)	Anti-defection amendment	209
11	61st amendment	Voting age lowered from 21 to 18	209
12	73rd & 74th amendments	Constitutional status to Panchayats and Municipalities	209
13	77th, 81st, 82nd amendments	Amendments dealing with reservations	209
14	91st amendment	Further anti-defection + 15% Council of Ministers cap	209
15	Kesavananda Bharati (1973)	Established the basic structure doctrine	211
16	Minerva Mills (1980)	Reaffirmed the basic structure doctrine	215
17	Venkatachaliah Commission (2000)	Reviewed the working of the Constitution; stuck to the basic structure	212

## Practice MCQs

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## PYQ Alignment

This chapter is one of the most frequently tested in CUET Political Science — expect roughly 5–7 MCQs per year combining direct recall (Article 368, special majority arithmetic, key amendment numbers like 42nd/44th/52nd/61st/73rd/74th), statement-based questions on Kesavananda and Minerva Mills, and assertion–reason items on the "living document" theme and the rigid-flexible balance. Match-the-following pairings between amendment numbers and subject matter are an NTA favourite from this chapter.