

WRAP Exams · wrapexams.com

Prelims PYQ, Mains model answers, and copy evaluation. Write to the desk for this paper, a doubt, or the AI waitlist.

ask@wrapexams.com · +91 85951 84903 · wrapexams.com

Q12

"Parliament's power to amend the Constitution is a limited power and it cannot be enlarged into absolute power." In the light of this statement explain whether Parliament under Article 368 of the Constitution can destroy the Basic Structure of the Constitution by expanding its amending power?(15).

UPSC Civil Services Mains 2019 · GS II · 15 marks · Parliament and State Legislatures

Parliament and State legislatures - structure, functioning, conduct of business, powers and privileges and issues arising out of these.

Core demand of the question

- "Parliament's power to amend the Constitution is a limited power and it cannot be enlarged into absolute power." In the light of this statement explain whether Parliament under **Article 368** of the Constitution can destroy the Basic Structure of the Constitution by expanding its amending power?

Revision summary

Article 368 is a conferred, procedural amending power, not an extra-constitutional sovereign.

Kesavananda Bharati (1973) held that Parliament cannot damage or destroy the basic structure.

Minerva Mills (1980) struck down Forty-second Amendment clauses that tried to make amending power unlimited and non-justiciable.

Limited amending power is itself part of the basic structure, so **Article 368** cannot bootstrap itself into absolute power.

Judicial review, democracy, secularism and federalism remain beyond destructive amendment.

Introduction

Article 368 is the amending clause, not a licence to write a new **Constitution**. **Kesavananda Bharati v. State of Kerala (1973)** held that the power is limited by the Constitution's basic structure. Expanding **Article 368** itself - as the Forty-second Amendment tried to do - cannot lawfully destroy that structure, because a limited power cannot, by using itself, become unlimited.

Body**What **Article 368** confers**

- **Article 368 sets the procedure for constitutional amendment:** special majority, and ratification by half the States for specified federal provisions.
- It is a constituent power in the sense that it changes the Constitution, but it is still a power conferred by the Constitution, not a power that stands above it.

- **I.C. Golaknath v. State of Punjab (1967)** had treated amendments as "law" under **Article 13** and frozen fundamental rights; the Twenty-fourth Amendment restored Parliament's express power to amend Part III. Kesavananda accepted the restoring of amending power and then limited its reach.

The basic-structure limit

- The thirteen-judge Bench in Kesavananda held that Parliament cannot alter the basic structure or framework of the Constitution.
- Illustrative features later named in the case law include supremacy of the Constitution, republican and democratic form, secularism, separation of powers, federalism, judicial review, and the essence of fundamental rights.
- **Minerva Mills Ltd. v. Union of India (1980)** struck down the Forty-second Amendment's attempt to give Directive Principles an unlimited trump over fundamental rights and to insert **Section 4** and **Section 55** language that made amending power total; the Court held that limited amending power is itself part of the basic structure.
- **Indira Nehru Gandhi v. Raj Narain (1975)** applied basic structure to a validation-and-election clause; later **I.R. Coelho v. State of Tamil Nadu (2007)** held that even **Ninth Schedule** laws after 24 April 1973 are open to basic-structure review.

Can expansion of **Article 368** destroy basic structure?

- The Forty-second Amendment inserted clauses in **Article 368** claiming that there shall be no limitation on the constituent power and that an amendment shall not be called in question in any court. Minerva Mills held those clauses void.
- A power that is limited cannot enlarge itself into an absolute power by amending the clause that confers it: that would be bootstrap, which the Court rejected.
- Waman Rao, **L. Chandra Kumar (1997)** on judicial review of tribunals, and later benches, treated judicial review as a basic feature that **Article 368** cannot take away by a clever rewording of the amending article.
- Parliament can still amend widely - including Part III, the **Seventh Schedule**, and the amending procedure itself - so long as identity features survive. Destruction is the prohibited act, not every large reform (for example the Goods and Services Tax amendments, or the 73rd and 74th Amendments, were not treated as destroying the structure).

The statement in one line

- **The quoted statement is the law after Kesavananda and Minerva Mills:** **Article 368** is limited; it cannot be enlarged into absolute power; therefore Parliament cannot destroy the basic structure by expanding its amending power.

Flow diagram

Article 368 amending power -> Kesavananda basic structure
Kesavananda basic structure -> Minerva Mills limited power is basic
42nd Amendment absolute clause -> Minerva Mills limited power is basic
Minerva Mills limited power is basic -> Cannot destroy structure by expanding 368

Conclusion

Parliament under **Article 368** cannot destroy the basic structure by expanding that Article. Kesavananda imposed the limit; Minerva Mills held that limited amending power is itself a basic feature and struck down the Forty-second Amendment's attempt to make **Article 368** unquestionable. Expansion of the clause cannot lawfully swallow the Constitution that created it.

Facts & figures

Article 368

Constitutional amending procedure: special majority, and State ratification for specified federal provisions.

Kesavananda Bharati v. State of Kerala (1973)

Thirteen-judge Bench: amending power cannot alter the basic structure of the Constitution.

Constitution (24th Amendment) Act, 1971

Restated Parliament's power to amend Part III and inserted express language in **Articles 13 and 368** after Golaknath.

Minerva Mills Ltd. v. Union of India (1980)

Struck down 42nd Amendment provisions that sought unlimited, unreviewable amending power; limited power is a basic feature.

I.R. Coelho v. State of Tamil Nadu (2007)

Ninth Schedule laws enacted after 24 April 1973 are open to basic-structure review.

WRAP Exams · Write. Read. Analyse. Practice. · <https://wrapexams.com/upsc/mains-answers/gs-2/2019/parliaments-power-to-amend-the-constitution-is-a-limited-power-and-it-cannot-be-enlarged-into-absolute-power-in-the-light-of-this-statement-explain-whether-parliament-under-article-368-of-the-constitution-can-destroy-the/> · ask@wrapexams.com · wrapexams.com