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Q12

Indian Constitution has conferred the amending power on the ordinary legislative institutions with a few procedural hurdles. In view of this statement, examine the procedural and substantive limitations on the amending power of the Parliament to change the Constitution.

UPSC Civil Services Mains 2025 · 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

- Explain how Parliament amends the Constitution through ordinary legislative machinery plus special procedure
- List procedural limitations under **Article 368**
- List substantive limitations, especially basic structure
- Show how the two together fence the amending power

Revision summary

Article 368 uses Parliament's Houses, not a standing constituent assembly, with special majority and no joint sitting.

Federal provisions need ratification by at least half the States.

Ordinary Acts cannot amend the Constitution.

Kesavananda, Minerva Mills, Indira **Gandhi** and **I.R. Coelho** set substantive basic-structure limits, including judicial review and rights-DPSPs balance.

NJAC 2015 shows the doctrine applying to institutional design, not only to rights texts.

Introduction

The Constitution does not create a separate constituent assembly for every change. **Article 368** gives the **amending power to Parliament** - the same Houses that pass ordinary laws - and then plants **procedural hurdles** so that a fleeting majority cannot treat the document as a rulebook. Procedure is not the only fence. Since **Kesavananda Bharati**, substance is fenced too.

Body**Ordinary institutions, special path**

An amendment begins as a **Bill in either House** (money-bill tricks do not apply). It needs **special majority**: a majority of the **total membership** of each House and a **two-thirds majority of members present and voting** (**Article 368(2)**). There is **no joint sitting** to break a deadlock - unlike ordinary legislation under **Article 108**. Some provisions, listed in the

proviso to 368(2), also need **ratification by not less than half of the State legislatures** before the President's assent. Those are the **federal clauses**: election of the President, extent of executive power, judiciary, distribution of legislative competence, representation of States in Parliament, **Article 368** itself.

- **So the "ordinary legislative institutions" are real**: same MPs, same buildings. The hurdles are **quorum of will, no joint sitting, State ratification** for the federal core, and **Presidential assent** (now generally bound once the Houses have validly passed the Bill, after the 24th Amendment's logic).

Ordinary law **cannot** amend the Constitution. **Article 13** and the distinction in **I.C. Golaknath** (later undone in part) still teach students that a simple majority Act is not 368. **Minerva Mills** restored the primacy of 368's own limits against a Parliament that tried to use amendment to immunise all amendments.

Substantive limitations

Kesavananda Bharati v. State of Kerala (1973) held that Parliament cannot abrogate the **basic structure**. Later cases filled the catalogue: **supremacy of the Constitution, rule of law, separation of powers, judicial review, federalism, secularism, free and fair elections, dignity, and the harmony of fundamental rights and directive principles - not a closed list**. **Indira Nehru Gandhi v. Raj Narain** struck a clause that sought to place a Prime Minister's election beyond judicial review. **Minerva Mills** struck the attempt to give Directive Principles a blank cheque over rights and to make 368 unlimited. **I.R. Coelho** held that even **Ninth Schedule** laws after 24 April 1973 can be tested if they damage basic structure. **NJAC (2015)** applied the doctrine to appointments.

- **Emergency and 42nd Amendment history show why the doctrine exists**: a numerically ordinary Parliament had tried to become a **perpetual constituent assembly**.

How the fences work together

Procedure stops a thin majority and protects States. Basic structure stops a thick majority from emptying the document. Courts do not sit as a third House on every comma; they sit as a **boundary rider**. Critics (parliamentary sovereignty school) call this a veto. The Indian reply, after 1975-77, is that **unlimited amendment is not democracy**, it is self-coronation.

- **Federal ratification plus basic structure together mean**: Parliament can modernise GST (**101st**), reservations (**103rd, 106th**), and local government (**73rd, 74th**), and cannot lawfully convert the Republic into a one-person instrument.

Flow diagram

Parliament -> Special majority
 Special majority -> State ratification if federal
 Special majority -> Basic structure
 Basic structure -> Kesavananda Minerva Coelho

Conclusion

Parliament amends with its ordinary Houses and an extraordinary majority, sometimes with the States. It cannot use that power to destroy the Constitution's identity. Procedure and basic structure are the two limitations the question asks for.

Facts & figures

Article 368(2) proviso

Requires ratification by not less than half of the State legislatures for specified federal provisions.

Kesavananda Bharati (1973)

Held that amending power does not include the power to destroy the Constitution's basic structure.

I.R. Coelho (2007)

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

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