

## *Chapter Nine*

### *CONSTITUTION AS A LIVING DOCUMENT*

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#### **ARE CONSTITUTIONS STATIC?**

**Definition:** Constitutions are fundamental legal documents that establish the framework of governance in a country.

**Explain:** Constitutions are not static; they can evolve over time.

Changes may occur in response to societal shifts, political upheavals, or emerging ideas. While some elements remain constant, the ability to adapt is vital to ensure the constitution remains relevant.

**Example:** The Soviet Union had multiple constitutions in its 74-year history, reflecting political changes. In contrast, India's constitution, adopted in 1949, still functions today due to flexibility and interpretation.

## **HOW TO AMEND THE CONSTITUTION?**

**Definition:** Amending the constitution involves modifying its provisions while adhering to specific procedures outlined in the constitution itself.

**Explain:** Amendment processes can vary, and they are essential to keep the constitution up-to-date. India's constitution, for instance, outlines two methods for amendments: special majority in Parliament and special majority with State legislatures' consent.

**Example:** To amend articles related to State-Centre power distribution or representation, consent from half the States' legislatures is required, demonstrating the importance of consensus and State involvement.

### **Article 2:**

**Definition:** Article 2 of the Indian Constitution allows Parliament to admit new states into the Indian Union by law.

**Explain:** This article empowers Parliament to expand the territorial boundaries of India, accommodating new regions or territories into the country.

**Example:** In 1954, through Article 2, Parliament incorporated the territories of Pondicherry into India, enabling them to become Union Territories.

### **Article 3:**

**Definition:** Article 3 of the Indian Constitution grants Parliament the authority to change the existing states' boundaries, alter their names, or create new states/Union territories.

**Explain:** This article enables the reorganization of states within India, ensuring that political divisions align with changing needs and demographic realities.

**Example:** The creation of Telangana as a separate state in 2014, through the bifurcation of Andhra Pradesh, is a notable example of Article 3 in action.

### **Special Majority:**

**Definition:** Special majority refers to a higher threshold for approval in legislative bodies, typically requiring a larger percentage of votes than a simple majority.

**Explain:** In India, constitutional amendments necessitate special majority, meaning that a certain percentage of total members and those participating in voting must support the amendment.

**Example:** For an amendment to pass in the Lok Sabha, it must be supported by at least half the total members and two-thirds of those participating in the vote.

### **Ratification by States:**

**Definition:** Ratification by States involves obtaining the consent of State legislatures for constitutional amendments that impact State-Centre relations.

**Explain:** This process ensures that changes in federal relations are made with the agreement of the States, preserving their rights and interests.

**Example:** The amendment for the introduction of Goods and Services Tax (GST) required ratification by States since it affected their taxation powers.

### **WHY HAVE THERE BEEN SO MANY AMENDMENTS?**

**Definition:** Constitutional amendments refer to changes or modifications made to a country's constitution.

**Explain:**

1. **Evolving Society:** Societies are dynamic, with values, norms, and needs constantly evolving. Amendments reflect a constitution's adaptability to address emerging societal issues.
2. **Political Changes:** Changes in leadership, ideologies, or ruling parties often lead to amendments that align the constitution with the ruling party's agenda or vision.
3. **Legal Clarifications:** Amendments may be necessary to resolve ambiguities or disputes arising from the original text of the constitution.
4. **Economic Developments:** Economic progress and globalization may necessitate constitutional changes to accommodate new economic policies and international agreements.

**Example:**

- In India, the frequent amendments reflect the country's diverse and evolving landscape. Amendments have been made to accommodate reservation policies, linguistic states, and the introduction of the Goods and Services Tax (GST) to promote economic growth.
- In the United States, amendments like the 19th Amendment granting women the right to vote addressed social and political changes, while the 21st Amendment repealed prohibition in response to changing attitudes towards alcohol.
- In South Africa, post-apartheid constitutional amendments aimed to promote reconciliation, human rights, and inclusivity, reflecting the nation's transformation after decades of racial segregation.

## Conclusion:

Amendments are a natural part of constitutional governance, allowing nations to respond to evolving circumstances, uphold democratic values, and ensure that their constitutions remain relevant and effective tools for governing the nation.

## Contents of Amendments made so far:

**Definition:** Contents of Amendments refer to the specific changes and modifications made to the constitution through the amendment process.

**Explain:** Amendments can encompass a wide range of topics, including changes to fundamental rights, federalism, electoral processes, and more.

**Example:** The 73rd and 74th Amendments in India devolved powers to local governments, strengthening grassroots democracy.

## Differing Interpretations:

**Definition:** Differing Interpretations involve multiple understandings of constitutional provisions, leading to debates and legal disputes.

**Explain:** Different legal and political actors may interpret the constitution in distinct ways, which can result in legal challenges and the need for clarifications.

**Example:** The debate over the right to privacy in India involved varying interpretations of the Constitution, eventually leading to a landmark Supreme Court decision.

## Amendments through Political Consensus:

**Definition:** Amendments through Political Consensus imply that constitutional changes are made when there is widespread agreement among political stakeholders.

**Explain:** This approach ensures that amendments have broad support, enhancing their legitimacy and acceptance.

**Example:** The 42nd Amendment in India, which introduced the term "secular" into the preamble, was passed during a period of political consensus.

## Controversial Amendments:

**Definition:** Controversial Amendments are those that spark intense debates and disagreements among different sections of society.

**Explain:** Such amendments often involve sensitive issues or drastic changes to the constitution, generating strong reactions and opposition.

**Example:** The 44th Amendment, which sought to curtail fundamental rights during the Emergency in India, was highly controversial and later amended.

## BASIC STRUCTURE AND EVOLUTION OF THE CONSTITUTION:

**Definition:** Basic Structure refers to the fundamental principles and features of a constitution that are considered immutable and cannot be amended.

**Explain:** In India, the concept of the basic structure restricts the scope of amendments and preserves core constitutional values.

**Example:** In the Kesavananda Bharati case, the Supreme Court of India established the basic structure doctrine, protecting essential features of the Constitution from amendments.

## Review of the Constitution:

**Definition:** A Review of the Constitution is a process of evaluating its effectiveness and relevance, often leading to amendments.

**Explain:** Reviews ensure that the constitution remains responsive to changing needs and societal developments.

**Example:** The Constitutional Review Commission in Kenya conducted a comprehensive review of its constitution in the 2000s, leading to significant amendments.

## CONSTITUTION AS A LIVING DOCUMENT:

**Definition:** A Constitution as a Living Document recognizes that it can evolve over time to reflect changing societal norms and values.

**Explain:** This concept views the constitution as adaptable, requiring periodic updates to stay relevant.

**Example:** The U.S. Constitution, through amendments, has evolved to address issues such as voting rights, prohibition, and presidential term limits.



# Contribution of the Judiciary:

**Definition:** The Contribution of the Judiciary involves the role of the courts in interpreting the constitution and safeguarding its principles.

**Explain:** Courts play a crucial role in upholding the constitution's integrity and resolving disputes related to its interpretation.

**Example:** In India, the Supreme Court has contributed significantly to constitutional jurisprudence by interpreting fundamental rights and the basic structure of the Constitution.

## Maturity of the Political Leadership:

**Definition:** Maturity of Political Leadership pertains to the responsible and judicious handling of constitutional amendments by political leaders.

**Explain:** Political leaders must consider the long-term implications of amendments and prioritize the welfare of the nation.

**Example:** The peaceful transition of power and constitutional reforms in South Africa demonstrated the maturity of political leadership during the post-apartheid era.



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