



UPSC

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Indian Polity



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# 1

## CHAPTER

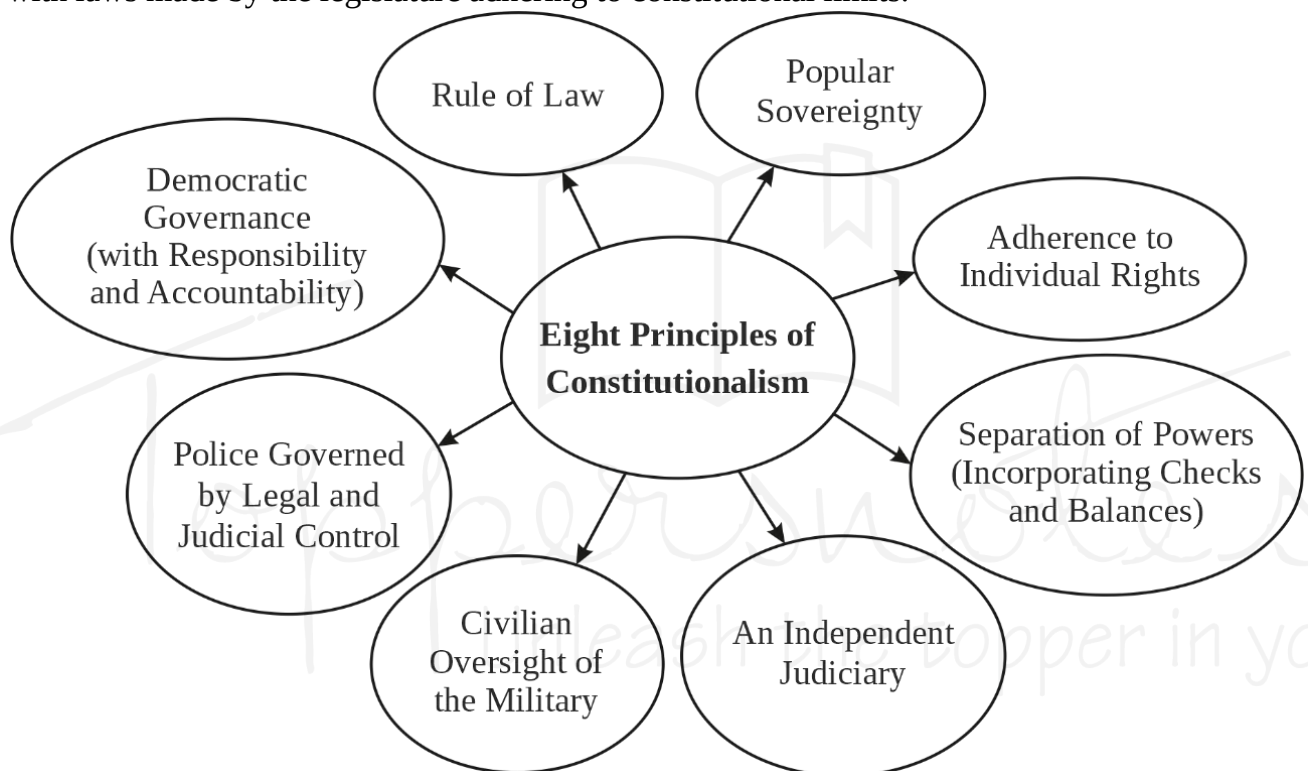
# Making of the Indian Constitution

A Constitution is the supreme law defining the government's structure, powers, and citizens' rights. Example: The Constitution of India.

## Terms Related to Constitution

### 1. Constitutionalism

- Friedrich states constitutionalism ensures the government operates within rules, promoting fairness and accountability.
- A constitution outlines governance, defining the roles of the executive, legislature, and judiciary, with laws made by the legislature adhering to constitutional limits.



### 2. Constitution vs. Constitutionalism

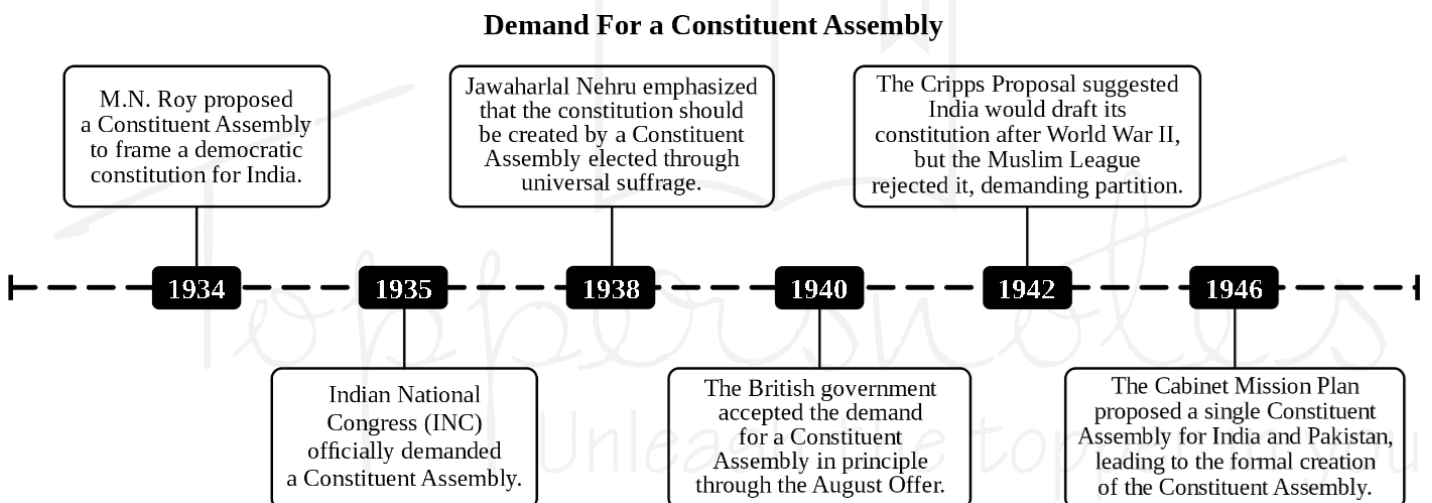
- A country may have a Constitution but lack true Constitutionalism if the government operates outside established rules, as seen in dictatorships where rights and structure are ignored, undermining fairness and accountability.

## Types of Constitution

- **Written Constitution:** A formal document outlining government structure, power distribution, and citizens' rights. Example: US Constitution.
- **Unwritten Constitution:** A constitution formed from statutes, conventions, judicial decisions, and traditions, rather than a single document. Example: UK Constitution.
- **Flexible Constitution:** It is one that can be easily amended or changed, similar to the process for passing regular laws. Eg: British Constitution.

- **Rigid Constitution:** It requires a complex and more difficult process for amendments, ensuring that changes are not made easily. Eg: US Constitution.
- **Federal Constitution:** Divides powers between central and regional governments. Example: Germany.
- **Unitary Constitution:** Centralizes power in a single national government, with limited regional autonomy. Example: UK Constitution.
- **Presidential Constitution:** Separates executive and legislative branches; the President is both head of state and government. Example: United States.
- **Parliamentary Constitution:** The executive derives authority from and is accountable to the legislature. Example: India.
- **Monarchical Constitution:** The monarch is the head of state, with either limited (constitutional) or significant powers (absolute). Example: Sweden.
- **Republican Constitution:** It establishes a form of government in which the head of state is **elected**, rather than a hereditary monarch. Eg: France
- **Theocratic Constitution:** It is based on religious laws, where the government is influenced or governed by religious authority. Example: Iran.
- **Secular Constitution:** Ensures the separation of religion from government, treating all religions equally. Example: Indian Constitution.

## Demand for a Constituent Assembly

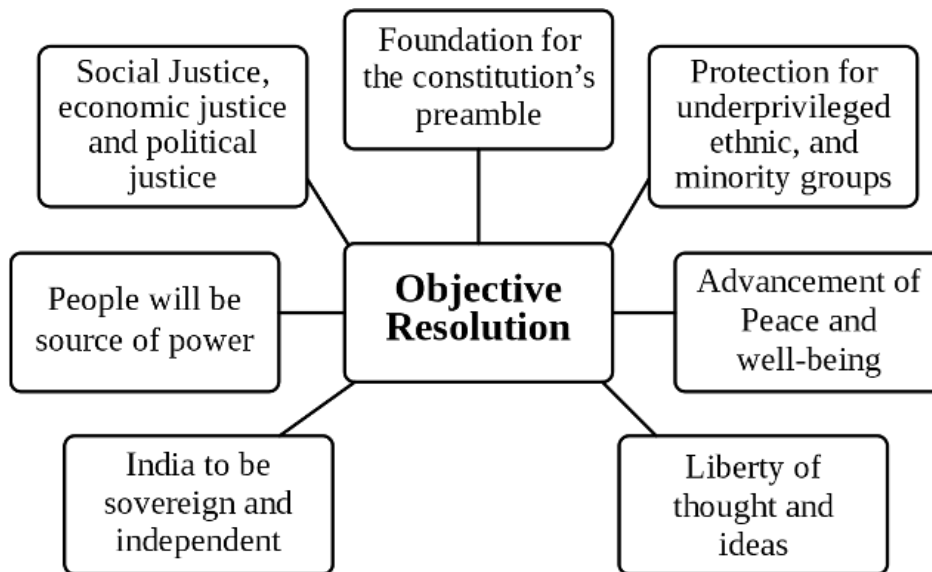


## Important Dates of Constituent Assembly

- **9th December 1946:** First sitting of the Constituent Assembly; Muslim League boycotted. Dr. Sachidanand Sinha became temporary Chairman
- **11th December 1946:** Dr. Rajendra Prasad elected President;; Vice-Presidents: H.C. Mukherjee and V.T. Krishnamachari.
- **13th December 1946:** Objective Resolution introduced by Jawaharlal Nehru.
- **22nd January 1947:** Objective Resolution and National Flag adopted.
- **15th August 1947:** Transfer of power; India and Pakistan became independent.
- **May 1949:** India ratified Commonwealth membership.
- **26th November 1949:** Constitution of India adopted. The day is also known as Constitution Day.
- **24th January 1950:** National Song and Anthem adopted; Dr. Rajendra Prasad elected 1st President; final Constituent Assembly session held.
- **26th January 1950:** Constitution of India came into force, establishing India as a Republic.

## Objective Resolution

The Objective Resolution, introduced by Jawaharlal Nehru in 1946, outlined the core principles for India's future Constitution.



## Constituent Assembly of India

The Constituent Assembly, formed in November 1946 under the Cabinet Mission Plan, was responsible for drafting India's Constitution.

Classification	Description
Establishment	In <b>November 1946</b> , the <b>Constituent Assembly of India</b> was formed under the <b>Cabinet Mission Plan</b> .
Strength	The Constituent Assembly of India had 389 members: 296 elected from provinces and 93 nominated by Princely States.
Structure	It included representatives from various groups, including Hindus, Muslims, Sikhs, Parsis, Anglo-Indians, Indian Christians, SCs, STs, and women from these communities.
Allocation of Seats	Seats in the Constituent Assembly were allocated based on population, divided among Muslims, Sikhs, and the General category in each British province.
Method of Voting	The Constituent Assembly used proportional representation via the Single Transferable Vote system for provincial representatives, while princely state representatives were nominated by their heads.
Participants	The Constituent Assembly was partly elected from British provinces and partly nominated by princely state heads, with members indirectly elected by provincial assemblies.
Absentees	Mahatma Gandhi did not participate in the Constituent Assembly, and 93 seats from princely states remained unfilled due to their opt-out.
Additional Facts	The Constituent Assembly held 11 sessions over 2 years, 11 months, and 18 days, with an expenditure of 64 lakh, and adopted the elephant as its official seal.

Changes brought by the Independence Act, 1947	The Constituent Assembly, a fully sovereign body, had dual functions: as a Legislative Body chaired by G. V. Mavalankar and as a Constituent Body chaired by Dr. Rajendra Prasad. After independence and the Muslim League's withdrawal, its membership was reduced to 299.
Leading figures	<b>Sir B. N. Rau</b> was the Constitutional Advisor and <b>H.V.R. Iyengar</b> the Secretary <b>S.N. Mukherjee</b> the Chief Draftsman and <b>Prem Behari Raizada</b> the Calligrapher. <b>Nand Lal Bose</b> and <b>B.R. Sinha</b> decorated the Constitution, Hindi calligraphy by <b>Vasant Krishan Vaidya</b> and illumination by <b>Nand Lal Bose</b> .

## Committees Formed for the Constituent Assembly

The Constituent Assembly formed various committees to focus on specific aspects of the Constitution, conducting research and discussions in smaller groups.

### Major Committees

Chairman	Committees
Jawaharlal Nehru	<ul style="list-style-type: none"> <li>➤ The Expert Committee, formed by Congress on July 8, 1946, included the Union Powers, Union Constitution, and States Committees.</li> <li>➤ Chairman: Jawaharlal Nehru</li> <li>➤ Purpose: To prepare material for the Constituent Assembly</li> <li>➤ Members: M. Asaf Ali, K.M. Munshi, N. Gopalaswami Ayyangar, K.T. Shah, D.R. Gadgil, Humayun Kabir, K. Santhanam.</li> </ul>
Dr. Rajendra Prasad	The Rules of Procedure Committee and the Steering Committee.
Sardar Patel	The Advisory Committee on Fundamental Rights, Minorities, and Tribal Areas had 5 sub-committees: <ul style="list-style-type: none"> <li>➤ <b>Fundamental Rights:</b> J.B. Kripalani</li> <li>➤ <b>Minorities:</b> H.C. Mukherjee</li> <li>➤ <b>North-East Frontier &amp; Assam Excluded Areas:</b> Gopinath Bardoloi</li> <li>➤ <b>Other Excluded Areas:</b> A.V. Thakkar</li> </ul>
Dr. B.R. Ambedkar	The Drafting Committee consisted of 7 members: <ul style="list-style-type: none"> <li>➤ Chairman: Dr. B.R. Ambedkar</li> <li>➤ Members: N. Gopalaswamy Ayyangar, Alladi Krishnaswamy Ayyar, Dr. K.M. Munshi, Syed Mohammad Saadullah, N. Madhava Rau (who replaced B.L. Mitter, who resigned due to ill health), and T.T. Krishnamachari (who replaced D.P. Khaitan after his death in 1948).</li> </ul>

### Minor Committees

- **Dr. Rajendra Prasad:** Finance and Staff Committee, National Flag Committee
- **Alladi Krishnaswamy Ayyar:** Credentials Committee
- **B. Pattabhi Sitaramayya:** House Committee, Chief Commissioners' Provinces Committee
- **Nalini Ranjan Sarkar (Non-member):** Financial Provisions Committee
- **S.K. Dar (Non-member):** Linguistic Provinces Commission
- **Jawaharlal Nehru:** Draft Constitution Committee
- **Usha Nath Sen:** Press Gallery Committee
- **S. Varadachari (Non-member):** Citizenship Committee, Supreme Court Committee
- **Dr. K.M. Munshi:** Order of Business Committee
- **G.V. Mavalankar:** Functions of Constituent Assembly Committee

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## Enactment and Commencement of the Constitution

### **Enactment:**

- The Constitution of India was adopted on **26th November 1949**.
- **284 out of 299** members of the Constituent Assembly were present and signed the Constitution.
- At adoption, the Constitution had **395 Articles, 8 Schedules**, and the **Preamble**.
- The **Preamble** was enacted last, ensuring it aligned with the final Constitution's philosophy and principles.

### **Commencement:**

- Some provisions, like **Citizenship, Elections, and Provisional Parliament**, came into force on **26th November 1949**.
- The major part, including the **establishment of the Republic**, came into force on **26th January 1950**, celebrated as **Republic Day**.

### **Key Events:**

- **January 26, 1930: Purna Swaraj Day** marked the demand for complete independence.
- **Indian Independence Act, 1947** and **Government of India Act, 1935** were repealed when the Indian Constitution came into effect.
- **Abolition of Privy Council Jurisdiction Act, 1949** ended British Privy Council's judicial authority over India.

## Sources of Indian Constitution

The Indian Constitution, a symbol of democracy, is inspired by a variety of sources that have shaped its foundations. Much like an artist blending colors to create a masterpiece, the framers integrated elements from different places to shape the guiding document of our nation.

<b>Sources</b>	<b>Provisions Borrowed</b>
<b>Govt. of India Act, 1935</b>	Federal scheme, Office of the Governor, Judiciary, Public Service Commissions, Emergency Provisions and Administrative details.
<b>British</b>	Parliamentary government, Rule of Law, Single Citizenship, Cabinet System, Parliamentary privileges, Bicameralism, and Prerogative writs.
<b>US</b>	Fundamental Rights, Independent Judiciary, Impeachment of the President, Judicial review, Removal of Judges of Supreme Court and High Court and post of the Vice-president.
<b>Irish</b>	DPSP, Method of election of President and the Nomination of Members to the Rajya Sabha.
<b>Canadian</b>	Federation with strong centre, Residuary powers to centre, Appointment of State Governors by the Centre and Advisory Jurisdiction of the Supreme Court.
<b>Australian</b>	Concurrent List and Joint sitting of both the Houses of Parliament.
<b>Germany-Weimar</b>	Suspension of Fundamental Rights during Emergency.
<b>USSR</b>	Fundamental Duties, ideal of Justice in the Preamble.
<b>French</b>	Republic and Ideals of Liberty, Equality and Fraternity in the Preamble.
<b>South African</b>	Procedure for Amendment of the Constitution and Election of members of the Rajya Sabha.
<b>Japanese</b>	Procedure Established by Law.

The making of the Indian Constitution was a collaborative effort, shaped by diverse ideas and extensive deliberations. It embodies the values of justice, equality, and liberty for a democratic republic. Its adoption laid the foundation for India's governance and the protection of citizens' rights.

# Salient Features of the Indian Constitution

The Indian Constitution, admired globally, was shaped by studying various constitutions. While it borrowed provisions, it has unique features that set it apart from others.

## Features of the Indian Constitution

- ***Longhith written Constitution:*** Originally, the Constitution of India (1949) comprised a Preamble, 395 Articles (divided into 22 Parts), and 8 Schedules. Over time, due to amendments, it has expanded to approximately 470 Articles and 12 Schedules.
  - ✓ Size attributed to diversity and vastness of India, historical factors and legal expertise in the Constituent Assembly.
- ***Sources of Provisions:*** Borrowed from various international constitutions and the Government of India Act, 1935.
  - ✓ Structural Part of the Constitution - Government of India Act, 1935.
  - ✓ Political Part of the Constitution - British Constitution.
  - ✓ Philosophical Part of the Constitution (FRs and DPSPs) - American and Irish Constitution.
- ***Federal System with Unitary Bias:*** The term Federation is not used; Article - 1 designates India as a Union of States.
  - ✓ Federal features - Two governments, Division of Powers, Written Constitution, bicameralism and constitutional supremacy.
  - ✓ Unitary features - Strong central authority, single citizenship, integrated judiciary, and emergency provisions.
- ***Rigidity and Flexibility:*** Blends rigid (USA) and flexible (UK) characteristics in the amendment process.
- ***Parliamentary form of the government:*** Executives are accountable to Parliament based on the British Westminster model.
- ***Synthesis of Parliamentary Sovereignty and Judicial Supremacy:*** Parliamentary sovereignty from the UK and Judicial Supremacy from the USA.
- ***Integrated and Independent Judiciary:*** The Supreme Court serves as the guardian of the Constitution and ensures the protection of Fundamental Rights.
- ***Fundamental Rights (Part III):*** Promotes political democracy through 6 Fundamental Rights.
- ***Directive Principles of State Policy (Part IV):*** Aim to establish social and economic democracy and promote a welfare state.
- ***Fundamental Duties:*** Added by 42nd Constitutional Amendment, listing 11 duties in Article - 51A.
- ***Secular State:*** The term Secular was added to the Preamble by the 42nd CAA. It promotes equal respect for all religions and state neutrality in religious matters.
- ***Universal Adult Franchise:*** The Voting age was lowered from 21 to 18 by 61st CAA.
- ***Single Citizenship:*** Unlike the USA, where individuals hold both state and national citizenship, India grants uniform political and civil rights to all citizens across the country.

- **Independent Bodies:** Includes Election Commission, Comptroller and Auditor General, Union and State Public Service Commissions, etc.
- **Emergency Provisions:** To ensure national sovereignty and security in times of crisis.
- **Three - Tier Government:** Article 40 promotes village panchayats, reinforcing local governance.
- **Constitutional Status to Cooperative Societies:** 97th CAA granted constitutional Status to it.

## Parts of the Indian Constitution

Parts	Description	Articles Covered
<b>I</b>	The Union and its territory	1 to 4
<b>II</b>	Citizenship	5 to 11
<b>III</b>	Fundamental Rights	12 to 35
<b>IV</b>	Directive Principles of State Policy	36 to 51
<b>IV-A</b>	Fundamental Duties	51-A
<b>V</b>	The Union Government	52 to 151
	Chapter I - The Executive	52 to 78
	Chapter II - Parliament	79 to 122
	Chapter III - Legislative Powers of President	123
	Chapter IV - The Union Judiciary	124 to 147
	Chapter V - Comptroller and Auditor-General of India	148 to 151
<b>VI</b>	The State Governments	152 to 237
	Chapter I - General	152
	Chapter II - The Executive	153 to 167
	Chapter III - The State Legislature	168 to 212
	Chapter IV - Legislative Powers of Governor	213
	Chapter V - The High Courts	214 to 232
	Chapter VI - Subordinate Courts	233 to 237
<b>VIII</b>	The Union Territories	239 to 242
<b>IX</b>	The Panchayats	243 to 243-O
<b>IX-A</b>	The Municipalities	243-P to 243-ZG
<b>IX-B</b>	The Co-operative Societies	243-ZH to 243-ZT
<b>X</b>	The Scheduled and Tribal Areas	244 to 244-A
<b>XI</b>	Relations between the Union and the States	245 to 263
	Chapter I - Legislative Relations	245 to 255
	Chapter II - Administrative Relations	256 to 263
<b>XII</b>	Finance, Property, Contracts and Suits	264 to 300-A
	Chapter I - Finance	264 to 291
	Chapter II - Borrowing	292 to 293
	Chapter III - Property, Contracts, Rights, Liabilities, Obligations and Suits	294 to 300 300-A
	Chapter IV - Right to Property	
<b>XIII</b>	Trade, Commerce and Intercourse within the Territory of India	301 to 307
<b>XIV</b>	Services under the Union and the States	308 to 323
	Chapter I - Services	308 to 314
	Chapter II - Public Service Commissions	315 to 323

<b>XIV-A</b>	Tribunals	323-A to 323-B
<b>XV</b>	Elections	324 to 329-A
<b>XVI</b>	Special Provisions relating to Certain Classes	330 to 342
<b>XVII</b>	Official Language	343 to 351
	Chapter I - Language of the Union	343 to 344
	Chapter II - Regional Languages	345 to 347
	Chapter III-Language of the Supreme Court, High Courts, and so on	348 to 349 350 to 351
	Chapter IV-Special Directives	
<b>XVIII</b>	Emergency Provisions	352 to 360
<b>XIX</b>	Miscellaneous	361 to 367
<b>XX</b>	Amendment of the Constitution	368
<b>XXI</b>	Temporary, Transitional and Special Provisions	369 to 392
<b>XXII</b>	Short title, Commencement, Authoritative Text in Hindi and Repeals	393 to 395

## Schedules of the Indian Constitution

<b>Schedules</b>	<b>Description</b>	<b>Related Articles</b>
<b>First Schedule</b>	1. Names of the States and their territorial jurisdiction. 2. Names of the Union Territories and their extent.	Article 1- 4
<b>Second Schedule</b>	Provisions relating to the emoluments, allowances, privileges and so on of:	
	1. The President of India 2. The Governors of States 3. The Speaker and the Deputy Speaker of the Lok Sabha 4. The Chairman and the Deputy Chairman of the Rajya Sabha 5. The Speaker and the Deputy Speaker of the Legislative Assembly in the states 6. The Chairman and the Deputy Chairman of the Legislative Council in the states 7. The Judges of the Supreme Court 8. The Judges of the High Courts 9. The Comptroller and Auditor-General of India	Articles 75(4), 99, 124(6), 148(2), 164(3), 188 and 219
<b>Third Schedule</b>	Forms of Oaths or Affirmations for:	
	1. The Union ministers 2. The candidates for election to the Parliament 3. The members of Parliament 4. The Judges of the Supreme Court 5. The Comptroller and Auditor-General of India 6. The state ministers 7. The candidates for election to the state legislature 8. The members of the state legislature 9. The Judges of the High Courts	Articles 75(4), 99, 124(6), 148(2), 164(3), 188, 219, 75, 84, 99, 124, 146, 173, 188 and 219

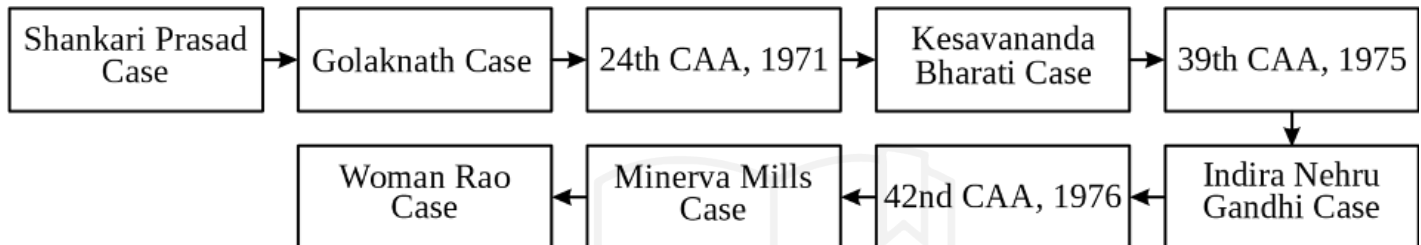
<b>Fourth Schedule</b>	Allocation of seats in the Rajya Sabha to the states and the union territories.	Articles 4(1) and 80(2)																											
<b>Fifth Schedule</b>	Provisions relating to the administration and control of scheduled areas and scheduled tribes.	Article 244																											
<b>Sixth Schedule</b>	Provisions relating to the administration of tribal areas in the states of Assam, Meghalaya, Tripura and Mizoram.	Articles 244(2) and 275(1)																											
<b>Seventh Schedule</b>	<p>Division of powers between the Union and the States in terms of List I (Union List), List II (State List) and List III (Concurrent List). Presently, the Union List contains 100 subjects (originally 97), the state list contains 61 subjects (originally 66) and the concurrent list contains 52 subjects (originally 47).</p> <table border="1"> <thead> <tr> <th colspan="3">Prominent items in the Lists</th> </tr> <tr> <th>Union List</th> <th>State List</th> <th>Concurrent List</th> </tr> </thead> <tbody> <tr> <td>Defense and Armed forces</td> <td>Public order</td> <td>Education</td> </tr> <tr> <td>Banking and insurance</td> <td>Police, Prisons</td> <td>Forests</td> </tr> <tr> <td>Currency and coinage</td> <td>Public health</td> <td>Marriage, Succession and divorce</td> </tr> <tr> <td>Foreign affairs</td> <td>Agriculture, trade and commerce</td> <td>Bankruptcy</td> </tr> <tr> <td>Atomic energy</td> <td>Local government</td> <td>Criminal Law</td> </tr> <tr> <td>Tele-communications</td> <td>Livestock and animal husbandry</td> <td>Partnership contracts</td> </tr> <tr> <td>Railways, posts and telegraphs</td> <td>Betting and gambling</td> <td>Trade unions and social security</td> </tr> </tbody> </table>	Prominent items in the Lists			Union List	State List	Concurrent List	Defense and Armed forces	Public order	Education	Banking and insurance	Police, Prisons	Forests	Currency and coinage	Public health	Marriage, Succession and divorce	Foreign affairs	Agriculture, trade and commerce	Bankruptcy	Atomic energy	Local government	Criminal Law	Tele-communications	Livestock and animal husbandry	Partnership contracts	Railways, posts and telegraphs	Betting and gambling	Trade unions and social security	Article 246
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Union List	State List	Concurrent List																											
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Railways, posts and telegraphs	Betting and gambling	Trade unions and social security																											
<b>Eighth Schedule</b>	Languages recognized by the Constitution. Originally, it had 14 languages but presently there are 22 languages. They are: Assamese, Bengali, Bodo, Dogri (Dongri), Gujarati, Hindi, Kannada, Kashmiri, Konkani, Mathili (Maithili), Malayalam, Manipuri, Marathi, Nepali, Oriya, Punjabi, Sanskrit, Santhali, Sindhi, Tamil, Telugu and Urdu. Sindhi was added by the 21st Amendment Act of 1967; Konkani, Manipuri and Nepali were added by the 71 st Amendment Act of 1992; and Bodo, Dongri, Maithili and Santhali were added by the 92nd Amendment Act of 2003.	Articles 344(1) and 351																											
<b>Ninth Schedule</b>	Acts and Regulations (originally 13 but presently 282) 19 of the state legislatures dealing with land reforms and abolition of the zamindari system and of the. Parliament dealing with other matters. This schedule was added by the <b>1st Amendment (1951)</b> to protect the laws included in it from judicial scrutiny on the ground of violation of Fundamental Rights. However, in 2007, the Supreme Court ruled that the laws included in this schedule after April 24, 1973, are now open to Judicial Review.	Article 31B																											

<b>Tenth Schedule</b>	Provisions relating to disqualification of the members of Parliament and State Legislatures on the ground of defection. This schedule was added by the 52nd Amendment Act of 1985, also known as Anti-defection Law.	Articles 102(2) and 191(2)
<b>Eleventh Schedule</b>	Specifies the powers, authority and responsibilities of Panchayats. It has 29 matters. This schedule was added by the 73rd Amendment Act of 1992.	Article 243G
<b>Twelfth Schedule</b>	Specifies the powers, authority and responsibilities of Municipalities. It has 18 matters. This schedule was added by the 74th Amendment Act of 1992.	Article 243W

## Basic Structure of the Indian Constitution

- The concept of Basic Structure evolved from Kesavananda Bharati vs State of Kerala (1973) case.
- It encompasses basic and core values which form the bedrock of the Indian Constitution. Basic structure cannot be amended by Parliament under Article 368.

### 1. Case Laws related to the doctrine of the Basic Structure



Cases	Judgement
<b>Shankari Prasad vs Union of India (1951)</b>	<ul style="list-style-type: none"> <li>➤ It challenged the constitutional validity of 1st Amendment Act (1951), which curtailed the Right to Property.</li> <li>➤ The Supreme Court held that under Article-368, Parliament can amend Fundamental Rights. Article-13 includes only ordinary law and not constitutional amendments.</li> <li>➤ Amendments abridging Fundamental Rights are not void under Article-13.</li> </ul>
<b>Golaknath vs State of Punjab (1967)</b>	<ul style="list-style-type: none"> <li>➤ It challenged the 17th Amendment (1964), which inserted certain state laws in the 9th Schedule.</li> <li>➤ The Supreme Court held that Parliament cannot abridge or take away any Fundamental Right and constitutional amendment acts are laws under Article-13.</li> </ul>
<b>Parliament's reaction to Golaknath</b>	<ul style="list-style-type: none"> <li>➤ 24th Amendment Act (1971) - The act amended Articles 13 and 368. The act states that Parliament can take away any Fundamental Right under Article-368 and such acts are not laws under Article-13.</li> </ul>
<b>Kesavananda Bharati vs. State of Kerala (1973)</b>	<ul style="list-style-type: none"> <li>➤ It challenged the 29th Constitutional Amendment Act (added Kerala land reform act to the 9th Schedule).</li> <li>➤ The Supreme Court overruled its Judgement in Golaknath Case (1967) and upheld 24th Constitutional Amendment Act.</li> <li>➤ Laid down a new doctrine of the 'basic structure' and ruled that parliament cannot alter the 'basic structure' of the Constitution.</li> <li>➤ Parliament cannot take away Fundamental Rights that form the part of basic structure.</li> </ul>

<b>39th Constitutional Amendment Act, 1975</b>	➤ It added that election disputes involving the Prime Minister and the Speaker of Lok Sabha are outside the jurisdiction of the courts.
<b>Indira Nehru Gandhi Case (1975)</b>	➤ The Supreme Court invalidated the 39th Constitutional Amendment and held that Judicial Review is a part of basic structure.
<b>42nd Constitutional Amendment Act, 1976</b>	➤ It amended Article-368, added that Parliament has no limitations on constituent powers and no amendments can be questioned in courts.
<b>Minerva Mills case (1980)</b>	<ul style="list-style-type: none"> <li>➤ The Supreme Court Invalidated the above changes under 42nd Constitutional Amendment.</li> <li>➤ The Court held that Judicial review is a part of the basic structure of the Constitution.</li> </ul>
<b>Waman Rao Case (1981)</b>	➤ Supreme Court adhered to the doctrine of the 'basic structure' and clarified that it would apply to the constitutional amendments enacted after April 24, 1973 (Kesavananda Bharati case)

## 2. Components or Elements of the Basic Structure

With various Supreme Court judgements, various elements emerged as a part of basic structure.

<b>Important Case Laws</b>	<b>Elements of the Basic Structure</b>
<b>Indira Nehru Gandhi case (1975)</b>	<ul style="list-style-type: none"> <li>➤ India as a sovereign democratic republic.</li> <li>➤ Equality of status and opportunity of an individual.</li> <li>➤ Secularism and freedom of conscience and religion.</li> <li>➤ Judicial Review</li> <li>➤ Free and fair elections which are implied in democracy.</li> </ul>
<b>Minerva Mills Case (1980)</b>	<ul style="list-style-type: none"> <li>➤ Limited power of Parliament to amend the Constitution.</li> <li>➤ Judicial Review</li> <li>➤ Harmony and balance between fundamental rights and directive principles.</li> </ul>
<b>Indra Sawhney Case (1992)</b>	<ul style="list-style-type: none"> <li>➤ Rule of law</li> </ul>
<b>S.R. Bommai Case (1994)</b>	<ul style="list-style-type: none"> <li>➤ Federalism</li> <li>➤ Secularism</li> <li>➤ Democracy</li> <li>➤ Unity and integrity of the nation</li> <li>➤ Social justice</li> <li>➤ Judicial review</li> </ul>
<b>L. Chandra Kumar Case (1994)</b>	<ul style="list-style-type: none"> <li>➤ Powers of the High Courts under Articles 226 and 227.</li> </ul>
<b>I.R. Coelho Case (2007)</b>	<ul style="list-style-type: none"> <li>➤ Rule of law</li> <li>➤ Separation of powers</li> <li>➤ Principles underlying fundamental rights</li> <li>➤ Judicial review</li> <li>➤ Principle of equality</li> </ul>

## Order of Precedence

- The Order of Precedence is an official protocol list maintained by the Ministry of Home Affairs (MHA). It ranks functionaries and authorities based on their rank and office in the Government of India.

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➤ **Purpose:**

- ✓ Used for **State and Ceremonial occasions**, such as **Republic Day parades, State banquets, and Diplomatic events**.
- ✓ **Not applicable** to the **day-to-day administration** of the government.

1. President
2. Vice-President
3. Prime Minister
4. Governors of States within their respective States
5. Former Presidents
- 5A. Deputy Prime Minister
6. Chief Justice of India = Speaker of Lok Sabha
7. Cabinet Ministers of the Union = Chief Ministers of States within their respective States = Vice-Chairperson, NITI Aayog = Former Prime Ministers = Leaders of Opposition in Rajya Sabha and Lok Sabha
- 7A. Holders of Bharat Ratna
8. Ambassadors Extraordinary and Plenipotentiary and High Commissioners of Commonwealth countries accredited to India = Chief Ministers of States outside their respective States = Governors of States outside their respective States.
9. Judges of the Supreme Court
- 9A. Chairperson of Union Public Service Commission = Chief Election Commissioner = Comptroller and Auditor General of India
10. Deputy Chairman of Rajya Sabha = Deputy Chief Ministers of States = Deputy Speaker of Lok Sabha = Members of the NITI Aayog = Ministers of State of the Union
11. Attorney General of India = Cabinet Secretary = Lieutenant Governors within their respective Union Territories.

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# 3

## CHAPTER

# Constitutional Amendments

Amending the Constitution of India is the process of modifying the nation's fundamental law or supreme law. The feature of constitutional amendment is borrowed from the South African Constitution.

- The procedure for amending the Constitution is neither completely flexible (as in Britain) nor entirely rigid (as in the USA). Instead, it is a blend of both, allowing Parliament to amend the Constitution while safeguarding its basic structure (Kesavananda Bharati case, 1973).
- Article 368, which outlines the amendment procedure, was modified by the 24th and 42nd Amendments in 1971 and 1976, respectively.
- This power is considered Parliament's Constituent Power rather than its legislative power as clarified in **Kesavananda Bharati case (1973)**.

### Procedure for Constitutional Amendment (Article 368)

#### 1. Introduction of the Bill:

- ✓ Can be introduced in **either House of Parliament** by a **minister or a private member**.
- ✓ **State legislatures cannot initiate** a Constitutional Amendment Bill.

#### 2. Role of the President:

- ✓ **No prior permission** is required from the President for introducing the bill.

#### 3. Majority Requirement:

- ✓ Requires a **special majority: (50% of the total membership + 2/3 of members present & voting)**.

#### 4. Passage of the Bill:

- ✓ Must be **passed separately** by **both Houses of Parliament**.
- ✓ **No provision for a joint sitting** in case of disagreement.

#### 5. Amendment of Federal Provisions:

- ✓ Certain provisions require **special majority + ratification by at least half the states (by a simple majority)**.

#### 6. President's Assent:

- ✓ **The 24th Constitutional Amendment** explicitly stated that **Parliament has the power to amend any part of the Constitution**.
- ✓ Made it **mandatory** for the **President to give assent** to a Constitutional Amendment Bill.
- ✓ The President **cannot withhold or return** the bill for reconsideration.
- ✓ Once the **President gives assent**, the **bill becomes an Act**, and the **Constitution is amended accordingly**.

### Types of Majorities in the Parliament

Type of Majority	Explanation
Simple Majority	Majority of the members present and voting, <b>not considered under Art.368</b> . Example: Recently, the number of SC judges was increased from 31 to 34 by the Supreme Court (Number of Judges) Amendment Act, 2019.

<b>Effective Majority</b>	Majority of the <b>effective strength of the House</b> (i.e. Total Strength minus vacancies). <b>Example:</b> 'Removal of chair of house.'
<b>Absolute Majority</b>	Majority of the total membership of the House, regardless of vacancies or absent members.
<b>Special Majority under Article 61</b>	Majority of not less than <b>2/3 of the total membership of the House.</b>
<b>Special Majority as per Article 249</b>	Majority of not less than <b>2/3 of the members present and voting.</b>
<b>Special Majority under Article 368</b>	Majority of the total membership (irrespective of the vacancies/absentees) and by a majority of not less than <b>2/3 of members present and voting.</b> <b>Example:</b> 103rd amendment to provide 10% reservation to EWS.
<b>Special Majority of Parliament &amp; Consent of States</b>	<ul style="list-style-type: none"> <li>➤ <b>Special majority + Ratification of half (50%) of the state legislatures by a simple majority.</b> Most of the <b>federal provisions</b> are amended by this method.</li> <li>➤ If one or some or all the remaining states take no action on the bill, it does not matter; the moment half of the states give their consent, the formality is completed. There is <b>no time limit</b> within which the states should give their consent to the bill.</li> </ul> <b>Example:</b> 101st Amendment related to GST.

## Amendment of the Constitution

The Constitution can be amended in 3 ways:

1. **By Simple Majority:** Certain provisions of the Constitution can be amended by simple majority and are out of scope of Article-368
  - ✓ Establishment or Admission of new States.
  - ✓ Formation of new States and alteration of areas, names or boundaries.
  - ✓ Abolition or Creation of legislative council in states.
  - ✓ 2nd Schedule
  - ✓ Salaries and allowances of the members of Parliament.
  - ✓ Citizenship - acquisition and termination
  - ✓ Delimitation of constituencies
  - ✓ 5th and 6th Schedule
  - ✓ Elections to Parliament and State Legislatures.
  - ✓ Union Territories.
2. **By Simple Majority:** Certain provisions of the Constitution can be amended under Article-368.
  - ✓ FRs, DPSPs and other provisions not covered in 1st and 3rd point.
3. **By Special Majority and require consent of States:** Amended by Special Majority and require consent of more than half of states by simple majority
  - ✓ Election to the President
  - ✓ Supreme Court and High Court
  - ✓ GST Council
  - ✓ Any of the items in 7th Schedule
  - ✓ To amend Article-368 itself.
  - ✓ Representation of states in Parliament.

## Major Constitutional Amendments

<b>Constitutional Amendments</b>	<b>Description</b>
<b>1st Constitutional Amendment, 1951</b>	<ul style="list-style-type: none"> <li>➤ Empowered the state to make special provisions for the advancement of socially and economically backward classes.</li> <li>➤ Protected laws related to land reforms by saving provisions for the acquisition of estates and related matters.</li> <li>➤ Ninth Schedule added by Jawaharlal Nehru to shield land reform laws and other legislation from judicial review. Later, Articles 31, 31A, and 31B were inserted.</li> <li>➤ Three additional grounds for restrictions on Article 19(1) were introduced:               <ol style="list-style-type: none"> <li>1. Public Order</li> <li>2. Friendly Relations with Foreign States</li> <li>3. Incitement to an Offence</li> </ol> </li> <li>➤ Validated state control over trade and business, ensuring that the nationalization of any business or trade could not be challenged on the grounds of violating the right to trade and business.</li> </ul>
<b>7th Constitutional Amendment, 1956</b>	<ul style="list-style-type: none"> <li>➤ Extended the jurisdiction of High Courts to Union Territories, enhancing judicial oversight.</li> <li>➤ Allowed the appointment of additional and acting judges in High Courts to address workload and vacancies.</li> <li>➤ Introduced the provision for a common High Court for two or more states, promoting judicial efficiency.</li> <li>➤ Abolished the classification of states into Class A, B, C, and D, reorganizing them into 14 States and 6 Union Territories for better governance.</li> <li>➤ Article 153 originally mandated a Governor for each state, but a provision was added to allow the appointment of a single Governor for multiple states when necessary.</li> </ul>
<b>14th Constitutional Amendment, 1962</b>	<ul style="list-style-type: none"> <li>➤ Incorporated Puducherry into the Indian Union, officially integrating it as a Union Territory.</li> <li>➤ Provided for the creation of legislatures and councils of ministers for the Union Territories of Himachal Pradesh, Manipur, Tripura, Goa, Daman &amp; Diu, and Puducherry, granting them greater administrative autonomy.</li> </ul>
<b>24th Constitutional Amendment, 1971</b>	<ul style="list-style-type: none"> <li>➤ Affirmed Parliament's authority to amend any part of the Constitution, including Fundamental Rights.</li> <li>➤ Made it mandatory for the President to give assent to a Constitutional Amendment Bill, removing discretion in the matter.</li> </ul>
<b>25th Constitutional Amendment, 1971</b>	<ul style="list-style-type: none"> <li>➤ Limited the right to property and protected laws under Article 39 (b) or (c) from challenges based on Article 14, 19, and 31.</li> </ul>
<b>26th Constitutional Amendment, 1971</b>	<ul style="list-style-type: none"> <li>➤ Abolished the privy purses and privileges of the former rulers of princely states.</li> </ul>
<b>36th Constitutional Amendment, 1975</b>	<ul style="list-style-type: none"> <li>➤ Ended Sikkim's associate state status and granted it the status of an full-fledged State within the Indian Union.</li> </ul>

<b>39th Constitutional Amendment, 1975</b>	<ul style="list-style-type: none"> <li>➤ Election of the President, Vice President, Prime Minister and the Speaker of the Lok Sabha beyond the scrutiny of the Indian courts. Introduced during the time of Emergency 1975–1977.</li> </ul>
<b>42nd Constitutional Amendment, 1976 (Mini Constitution)</b>	<ul style="list-style-type: none"> <li>➤ <b>Preamble Changes:</b> Added three new words—Socialist, Secular, and Integrity—reinforcing India's commitment to social justice, religious neutrality, and national unity.</li> <li>➤ <b>Fundamental Duties:</b> Introduced Part IV-A, listing citizens' responsibilities toward the nation.</li> <li>➤ <b>New Directive Principles of State Policy (DPSPs):</b> <ul style="list-style-type: none"> <li>✓ Article 39: Ensured healthy development of children.</li> <li>✓ Article 39A: Provided equal justice and free legal aid.</li> <li>✓ Article 43A: Encouraged workers' participation in industrial management.</li> <li>✓ Article 48A: Mandated protection of the environment, forests, and wildlife.</li> </ul> </li> <li>➤ <b>DPSPs vs. Fundamental Rights:</b> Established DPSPs as superior to Fundamental Rights, altering the balance of constitutional provisions.</li> <li>➤ <b>Elections:</b> Delayed delimitation of constituencies until after the 2001 Census.</li> <li>➤ <b>Parliament:</b> Made the President bound to follow the Cabinet's advice and expanded Parliament's amendment powers.</li> <li>➤ <b>Judiciary:</b> Restricted the Supreme Court's power of judicial review, making constitutional amendments immune to challenges.</li> <li>➤ <b>Federalism:</b> Shifted five subjects from the State List to the Concurrent List, enhancing central influence: <ul style="list-style-type: none"> <li>✓ Education</li> <li>✓ Forests</li> <li>✓ Weights &amp; Measures</li> <li>✓ Protection of Wild Animals &amp; Birds</li> <li>✓ Administration of Justice</li> </ul> </li> <li>➤ <b>Emergency Provisions:</b> Allowed localized emergencies and extended President's Rule in a state to one year.</li> </ul>
<b>43rd Constitutional Amendment, 1977</b>	<ul style="list-style-type: none"> <li>➤ Restored the High Courts' original powers, reaffirming their role as the principal civil courts of original jurisdiction in each state and union territory.</li> </ul>
<b>44th Constitutional Amendment, 1978</b>	<ul style="list-style-type: none"> <li>➤ Replaced the term 'internal disturbance' by 'armed rebellion' in respect of national emergency.</li> <li>➤ Made the President declare a national emergency only on the written recommendation of the cabinet.</li> <li>➤ Deleted the right to property from the list of Fundamental Rights and made it only a legal right.</li> <li>➤ Provided that the fundamental rights guaranteed by Art.20 and 21 cannot be suspended during a national emergency.</li> </ul>

<b>52nd Constitutional Amendment, 1985</b>	➤ Provided for disqualification of members of Parliament and state legislatures on the ground of defection and added a Tenth Schedule containing the details in this regard. It specifies that nominated legislator shall join any party within 6 months. It also does not specifies time the speaker should take in deciding defection cases.
<b>61st Constitutional Amendment, 1989</b>	➤ Reduced the voting age from 21 years to 18 years for the Lok Sabha and state legislative assembly elections.
<b>69th Constitutional Amendment, 1991</b>	➤ Accorded a special status to the Union Territory of Delhi by designating it as the National Capital Territory of Delhi. The amendment also provided for the creation of a 70-member legislative assembly and 7-member council of ministers for Delhi.
<b>73rd Constitutional Amendment, 1992</b>	➤ Granted constitutional status and protection to the Panchayati Raj institutions also added a new Part-IX entitled as ‘the panchayats’ and a new ‘Eleventh Schedule’ containing 29 functional items of the panchayats.
<b>74th Constitutional Amendment, 1992</b>	➤ Granted constitutional status and protection to the urban local bodies and facilitated the addition of a new Part IX-A entitled as ‘the municipalities’ and a new ‘Twelfth Schedule’ containing 18 functional items of the municipalities.
<b>84th Constitutional Amendment, 2001</b>	➤ Extended the ban on the readjustment of seats in the Lok Sabha and the state legislative assemblies for another 25 years (i.e., up to 2026) with the same objective of encouraging population-limiting measures.
<b>86th Constitutional Amendment, 2002</b>	<ul style="list-style-type: none"> <li>➤ Made elementary education a fundamental right under Article 21A.</li> <li>➤ Changed the subject matter of Article 45 in Directive Principles.</li> <li>➤ Added a new fundamental duty under Article 51A.</li> </ul>
<b>89th Constitutional Amendment, 2003</b>	➤ Bifurcated the erstwhile combined National Commission for Scheduled Castes and Scheduled Tribes into two separate bodies, namely, National Commission for Scheduled Castes (Art.338) and National Commission for Scheduled Tribes (Art.338A).
<b>97th Constitutional Amendment, 2011</b>	<ul style="list-style-type: none"> <li>➤ Constitutional status and protection to cooperative societies. It made the following three changes in the constitution: <ul style="list-style-type: none"> <li>✓ It made the right to form co-operative societies a fundamental right (Article 19).</li> <li>✓ It included a new Directive Principle of State Policy on the promotion of co-operative societies.</li> <li>✓ It added a new Part IX-B in the constitution which is entitled “The Co-operative Societies”.</li> </ul> </li> </ul>
<b>99th Constitutional Amendment, 2014</b>	<ul style="list-style-type: none"> <li>➤ Formation of a National Judicial Appointments Commission.</li> </ul> <p><b>Note:</b> In 2015, a five judge Constitution Bench of SC by 4:1 majority upheld the collegium system and struck down the NJAC as unconstitutional because it violates Independence of Judiciary.</p>
<b>100th Constitutional Amendment, 2015</b>	➤ Related to the Land Boundary Agreement (LBA) between India and Bangladesh.
<b>101st Constitutional Amendment, 2017</b>	➤ Introduced the Goods and Services Tax in the country from 1st July 2017.

<b>102nd Constitutional Amendment, 2018</b>	➤ Provided Constitutional status to National Commission for Backward Classes (NCBC)-Article 338B.
<b>103th Constitutional Amendment, 2019</b>	➤ Provided a maximum of 10% Reservation for Economically Weaker Sections (EWS). Introduced Articles 15(6) and 16(6), granting up to 10% reservation for the Economically Weaker Sections (EWS) among non-OBC and non-SC/ST groups in admissions and government jobs, excluding minority-run institutions.
<b>104th Constitutional Amendment, 2020</b>	➤ Extended the reservation of seats for SCs and STs in the Lok Sabha and states assemblies until 2030 and discontinued special representation for the Anglo-Indian community.
<b>105th Constitutional Amendment, 2021</b>	➤ Exempted the state governments from consulting the National Commission for Backward Classes with regard to the preparation and maintenance of the list of socially and educationally backward classes (SEBCs) for their own purposes.
<b>106th Constitutional Amendment, 2023</b>	➤ It reserves one-third of all seats for women in Lok Sabha, State legislative assemblies, and the Legislative Assembly of the National Capital Territory of Delhi, including those reserved for SCs and STs. It will be in force for 15 years and come into effect from 18 <sup>th</sup> Lok Sabha.

Constitutional amendments balance continuity with change, keeping the Constitution relevant while protecting its core values. A careful amendment process strengthens democracy and ensures inclusive governance.

