

# RIGIDITY AND FLEXIBILITY OF INDIAN CONSTITUTION



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## INTRODUCTION

Part XX of the Constitution under Article 368 deals with the amendment of the Constitution. The rigidity and flexibility of Indian Constitution is one of its salient features. We can see that some of the constitutions like American is considered to be rigid. The constitution of United Kingdom is completely based on amendability and can be called as a flexible. But Indian constitution is a middle ground between both these extremes.

## BODY

Rigidity/Procedural Norms in Indian Constitution

### 1. Basic structure doctrine

- The Basic Structure Doctrine states there are certain fundamental structures and founding principles of the constitution which make the backbone of the constitution. Parliament have no power to amend these basic structure
- **For Example:** In Keshavananda Bharati Case. Articles related to federal system cannot be easily changed. Special provisions are required in such cases. The Legislative, Judiciary & Executive have also been directed to work in a specific way within their boundaries.

### 2. Special majority

- Procedure under article 368 requiring special majority itself acts as a check on

too flexible power to the legislature to amend the constitution. For instance, it took many decades for the legislature to form Panchayat raj system as 3rd tier of government.

- **Example:** To pass a constitutional amendment bill which does not affect federalism, Removal of judges of SC/HC, Removal of CEC/CAG

### 3. Resolution by the state legislature

- Those provisions of the Constitution which are related to the federal structure of the polity can be amended by a special majority of the Parliament and also with the consent of half of the state legislatures by a simple majority.
- **Example:** Election of the President and its manner, Extent of the executive power of the Union and the states, Supreme Court and high courts, Distribution of legislative powers between the Union and the states.

### 4. Check and balance

- Being lengthiest written, it has detailed polity and administrative principles, which need to be followed by the legislature, judiciary, and executive. Defiance of which could result in unconstitutional acts like prescribed age for elections, trying to subvert judicial independence leading to terming non-constitution even a majority backed law like NJAC.

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## 5. Judicial review

- Judicial review is one of the important techniques by which the Courts examine the actions of the legislature, the executive and the other governmental agencies and decide whether or not these actions are valid and within the limits set by the Constitution.
- The Supreme Court's Power of Judicial review extends to Constitutional Amendments. For Example: Supreme Court on rejected the National Judicial Appointments Commission (NJAC) Act and the 99th Constitutional Amendment.

## FLEXIBILITY IN INDIAN CONSTITUTION

### 1. Simple Majority

- A number of provisions in the Constitution can be amended by a simple majority of the two houses of Parliament outside the scope of Article 368.
- Most parts of the Indian Constitution can be amended without concurrence of states or just by a simple majority in Parliament under article 368, to be able to reflect on changing society like considering the right to privacy or right to choose one's life partner as a fundamental right under the right to life (Article 21).

### 2. Without state consent

- Amendments involving the creation of new states in the Indian Union, administration of Union Territories, creation or abolition of State legislative bodies, etc... require only a simple majority of the members present and voting in the Union Parliament.
- The state views may not be even considered. E.g. Jammu and Kashmir was made a union territory in spite of opposition from the state political leaders.

### 3. Majority Driven

- When the ruling government has majority in parliament and state governments, the amendment procedure becomes too flexible. Example: 42nd constitutional amendment amended almost every major section without much opposition as the central government had majority in parliament as well as in several states.
- Some of the recent amendments like Economically weaker section reservation passed without deliberations shows that the rigidity is issue specific.

### 4. Living Document

- The makers of the Constitution were aware of the fact that there may be some faults or mistakes in the Constitution;

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they knew that the Constitution could not be totally free of errors.

- Ex: The 86th Constitutional Amendment in 2002, provided Right to Education as a fundamental right in Part-III of the Constitution. It shows the importance of education in contemporary times.

## 5. Flexible any other countries

- Indian Constitution has become more flexible than any other Constitution known to us. It thus proves that the nature of a Constitution does not always depend upon the procedure of amendment expressly prescribed in it; much really depends upon the attitude of the Government and its rivals in the Parliament.
- Compare to other countries, Indian society is composed of different communities. Hence makers of constitution made procedure of amendment as simple as possible.

## 6. Social change:

- People's social, cultural, and political situation is starting to shift. If the constitutional changes were not made, we would not be able to encounter the future difficulties and it would become a hurdle in the path of development.
- Ex: The Central Government of India has introduced 124th Constitution Amendment Bill in the Parliament to provide reservation for Economically Weaker Sections (EWS) among the general category candidates.

## CONCLUSION

Thus, such a balance of rigidity and flexibility makes Indian Constitution a living document that responds to changing time along with making it durable to protect the basic tenet of democracy, ideals on which the country was formed like those enshrined in the Preamble.

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