



Digital Constitution Museum, Digital History Lab
Advanced Study Institute of Asia, SGT University

Teaching Module

Module 5

A Living Constitution – Amendments, Courts, and Change

I. Why a Constitution Must Be Able to Change

No constitution is written for a frozen society. The framers of the **Constitution of India** understood that India would change economically, socially, and politically in ways they could not fully anticipate. A constitution that could not adapt would either collapse or be ignored.

At the same time, a constitution that could be altered at will would lose authority. If every political majority could rewrite foundational principles, constitutionalism would dissolve into ordinary politics.

This tension, between permanence and flexibility, lies at the heart of Indian constitutional design.

The Constitution was therefore imagined not as a sacred text, but as a **living framework**, capable of growth while retaining a stable core.

II. The Amendment Power: Article 368

The power to amend the Constitution is laid down in Article 368. Parliament may amend most provisions, but different levels of difficulty apply depending on the subject.

Some amendments require:

- a special majority in Parliament
- Others require:
- ratification by at least half of the state legislatures

This graded process reflects an important idea: not all constitutional provisions are equal. Some relate to day-to-day governance; others define the structure of the republic itself.

Early on, amendments were frequent. They dealt with land reform, reorganisation of states, and administrative clarity. The political mood of the early republic favoured strong legislative authority to pursue social change.

But this raised a critical question: **Are there limits to the amending power?**

III. Parliament Versus the Constitution

By the 1960s and early 1970s, conflict between Parliament and the judiciary intensified. Parliament sought to amend the Constitution to overcome judicial obstacles to land reform and redistribution. Courts, meanwhile, insisted that certain rights could not be erased by amendment.

This struggle culminated in one of the most important constitutional moments in Indian history: the **Kesavananda Bharati v. State of Kerala** decision.

In this case, the Supreme Court held that while Parliament has wide powers to amend the Constitution, it **cannot alter its basic structure**.

IV. The Basic Structure Doctrine

The Basic Structure doctrine is not explicitly mentioned in the Constitution. It is a judicial creation. According to the Court, certain features are so fundamental that they lie beyond amendment.

These include:

- supremacy of the Constitution
- rule of law
- separation of powers
- judicial independence
- federalism
- secularism
- democratic governance

The exact list is not closed. It evolves through interpretation.

What this really means is that constitutional authority does not reside solely in Parliament. It is shared between institutions, each acting as a check on the other.

The doctrine has been praised as a safeguard against authoritarianism and criticised as judicial overreach. Both views have force. What matters is that it fundamentally reshaped Indian constitutionalism.

V. The Emergency and Constitutional Trauma

The Emergency declared between 1975 and 1977 tested the Constitution more severely than any other event. Fundamental Rights were suspended. Opposition leaders were jailed. Press freedom was curtailed.

What made this moment particularly disturbing was that much of it was **technically constitutional**. Emergency provisions were invoked, amendments were passed, and formal procedures were followed.

This exposed a hard truth: constitutional breakdown does not always arrive through illegality. It can arrive through **legal abuse**.

In the aftermath, public trust in constitutional institutions was shaken. Subsequent amendments and judicial decisions strengthened safeguards, particularly around personal liberty and judicial review.

The Emergency became a cautionary memory embedded in constitutional interpretation.

VI. The Judiciary as Interpreter and Innovator

The Constitution assigns courts the role of interpretation, but over time the judiciary has taken on a more expansive function. Through interpretation, courts have reshaped the meaning of rights, governance, and accountability.

Public Interest Litigation opened the doors of the courts to those unable to access traditional legal remedies. Procedural rules were relaxed. Letters and newspaper reports were treated as petitions.

This transformed the judiciary into a forum for social justice claims. Environmental protection, labour rights, prison reform, and access to food and shelter entered constitutional discourse.

Critics argue that this has blurred the separation of powers. Supporters argue that it has kept the Constitution responsive to social need.

Both views point to the same reality: the Constitution evolves not only through amendment, but through **interpretive practice**.

VII. Constitutional Change Outside the Text

Not all constitutional change happens on paper. Political conventions, administrative practices, and public expectations also shape how the Constitution functions.

Coalition politics altered the balance between the centre and states. Economic liberalisation changed the state's role in welfare and regulation. Technology reshaped ideas of privacy, speech, and surveillance.

Courts have responded by interpreting existing provisions in new ways, often stretching language written in the mid-twentieth century to address twenty-first-century realities.

This informal evolution keeps the Constitution relevant, but it also raises concerns about legitimacy and accountability.

VIII. Who Owns the Constitution?

One of the most enduring questions of constitutional democracy is ownership. Does the Constitution belong to Parliament, to courts, or to the people?

The Indian Constitution answers indirectly. Authority is distributed. No single institution is sovereign. Each derives power from the Constitution and is limited by it.

Citizens, meanwhile, engage with the Constitution not only through voting or litigation, but through protest, debate, and public discourse. Constitutional meaning is constantly renegotiated in public life.

This makes the Constitution less a static rulebook and more a **shared argumentative space**.

IX. Continuity Through Conflict

The endurance of the Constitution lies not in consensus, but in its capacity to absorb conflict. Amendments, judgments, protests, and political movements have all reshaped constitutional understanding without tearing the system apart.

This resilience is not guaranteed. It depends on institutional restraint, civic culture, and public commitment to constitutional values.

The framers anticipated disagreement. What they hoped to prevent was collapse.

X. The Constitution as a Democratic Inheritance

To inherit a constitution is not merely to obey it. It is to interpret it responsibly, to criticise it honestly, and to reform it cautiously.

A living constitution demands vigilance. It asks each generation to decide not only what the Constitution allows, but what it should become.

In this sense, the Constitution is unfinished by design.

Questions for Discussion and Reflection

1. Why did the framers include an amendment procedure in the Constitution?
2. Should there be limits on Parliament's power to amend the Constitution?

3. What is the significance of the Basic Structure doctrine?
4. How did the Emergency change constitutional thinking in India?
5. Has judicial interpretation strengthened or weakened democracy?
6. Can constitutional change occur without formal amendment?
7. Who should ultimately decide the meaning of the Constitution?
8. What responsibilities does a “living constitution” place on citizens?