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POWER OF PARLIAMENT TO AMEND CONSTITUTION ARTICLE 368: AN OVERVIEW

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I. ABSTRACT

Article 368 of the Constitution of India empowers Parliament to amend the Constitution by way of addition, variation or repeal. A sustained debate surrounds the question whether this power extends far enough to alter or destroy the structure on which the Constitution rests. This paper critically examines the amending power of Parliament and the tension between parliamentary supremacy and constitutionalism, together with the role of the judiciary in protecting the essential features of the Constitution. The early decisions in Sri Sankari Prasad Singh Deo and Sajjan Singh recognised a broad amending power, while Golaknath denied Parliament the power to abridge fundamental rights. Kesavananda Bharati resolved the conflict through the basic structure doctrine, which Minerva Mills, the NJAC case and Janhit Abhiyan later applied. Adopting the doctrinal method, the paper tests the doctrine against the Constitution (One Hundred and Sixth Amendment) Act, 2023, which reserves one-third of the seats in the Lok Sabha, the State Legislative Assemblies and the Delhi Legislative Assembly for women. The Act came into force on 16 April 2026, but the reservation remains inoperative until delimitation after the next census, and the Constitution (One Hundred and Thirty-first Amendment) Bill, 2026 failed in the Lok Sabha for want of the special majority. The paper concludes that the amending power is wide but limited, and it proposes procedural reforms to strengthen deliberation on constitutional amendments.

II. KEYWORDS

Constitutional Amendment, Article 368, Judicial Review, Basic Structure Doctrine.

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III. INTRODUCTION

The Constitution of India is the supreme law of the land, and every other law derives its authority and validity from it.[2] Parliament has amended the Constitution 106 times since its commencement.[3] These amendments respond to changing social, economic and political conditions, and they range from the linguistic reorganisation of States and changes to emergency powers and reservations to the introduction of the Goods and Services Tax. Behind them lies a long-standing debate on the relationship between the amending power under Article 368 and judicial review under Article 13.[4] This paper examines how the judiciary controls the amending power of Parliament, traces the evolution of that control and compares the Indian position briefly with that of Germany and Bangladesh.

The Indian Constitution permits change over time while preserving its identity. Article 368 empowers Parliament to amend the Constitution by addition, variation or repeal through a special majority procedure, and critics argue that governments have used this power for political gain. The Constitution (First Amendment) Act, 1951 inserted Articles 31A and 31B and the Ninth Schedule to protect agrarian reform legislation, including laws abolishing zamindari, from challenge under Part III; it also expanded the grounds of restriction in Article 19(2) and added Article 15(4).[5]

The challenge to this amendment in *Sri Sankari Prasad Singh Deo v Union of India* forms the starting point of this study.[6] The Supreme Court first limited the amending power in *Kesavananda Bharati v State of Kerala* (1973) by introducing the basic structure doctrine.[7] The Constitution (Forty-second Amendment) Act, 1976 then inserted clauses (4) and (5) in Article 368 to bar judicial review of amendments and to declare the amending power unlimited, and it widened Article 31C.[8] In *Minerva Mills Ltd v*

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[2] Constitution of India 1950, arts 13 and 245(1).
[3] Legislative Department, Ministry of Law and Justice, Government of India, 'Constitution Amendment Act 1 to 106' https://legislative.gov.in/document-category/constitution-amendment-act-1-to-106/ accessed 31 October 2026.
[4] Constitution of India 1950, arts 13 and 368.
[5] The Constitution (First Amendment) Act 1951, ss 2–5 and 14.
[6] *Sri Sankari Prasad Singh Deo v Union of India* AIR 1951 SC 458.
[7] *Kesavananda Bharati v State of Kerala* (1973) 4 SCC 225.
[8] The Constitution (Forty-second Amendment) Act 1976, ss 4 and 55.

Union of India (1980), the Supreme Court struck down those clauses and the expanded Article 31C as violative of the basic structure.[9]

Part 2 examines the scope of and procedure under Article 368 and the early judicial approach to amendments. Parts 3 to 6 set out the statement of problem, the objectives, the research questions and the research methodology. Part 7 discusses the debate between parliamentary supremacy and constitutionalism in the light of the ideas of A V Dicey and Hans Kelsen. Part 8 traces the evolution of judicial review from *Sri Sankari Prasad Singh Deo* to the Twenty-fifth Amendment, and Part 9 analyses *Kesavananda Bharati*. Part 10 examines the later application of the doctrine, offers a brief comparative note and interprets the word 'amendment'. Part 11 analyses the women's reservation amendment, and Part 12 presents the conclusions and suggestions.

This paper seeks to show that the Indian Constitution is not a static document but a living one, which evolves through the interaction between Parliament and the judiciary.

A. Statement Of Problem

The problem concerns the extent to which Parliament may amend the Constitution and the manner in which the judiciary protects constitutional identity by limiting that power through judicial review. The paper also analyses how the Constitution can change to meet the needs of the country without altering the structure on which it rests. Finally, it asks whether 'amendment' permits Parliament only to modify or remove particular provisions, or also to abrogate or replace the Constitution as a whole.

B. Objectives of the Study

1. To analyse the nature and scope of the amending power of Parliament under Article 368 (Part 2).
2. To examine the balance between the amending power and judicial review in the light of parliamentary supremacy and constitutionalism (Part 7).

[9] *Minerva Mills Ltd v Union of India* (1980) 3 SCC 625.

3. To trace the evolution of the amending power through the leading decisions of the Supreme Court (Parts 8 to 10).
4. To analyse the women's reservation amendment of 2023 and its current status (Part 11).
5. To interpret the meaning of the word 'amendment' in Article 368 (Part 10.4).

C. Research Questions

This paper addresses the following research questions:

1. To what extent does Article 368 permit Parliament to alter or abridge fundamental rights?
2. How does the basic structure doctrine limit the amending power, and how have the courts applied it since *Kesavananda Bharati*?
3. Does the word 'amendment' in Article 368 include the power to abrogate or replace the essential features of the Constitution?
4. Does the Constitution (One Hundred and Sixth Amendment) Act, 2023 satisfy the basic structure test?

D. Research Methodology

This study adopts the doctrinal method of legal research. It relies on primary sources, namely the text of the Constitution of India, the Constitution Amendment Acts and the judgments of the Supreme Court of India. It also draws on secondary sources, including treatises, commentaries, journal articles and official publications of the Government of India. The study is analytical and descriptive, and it makes brief comparisons with the Basic Law of Germany and the jurisprudence of the Supreme Court of Bangladesh. Citations follow the OSCOLA style.

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IV. THEORETICAL FRAMEWORK OF CONSTITUTIONAL AMENDMENTS

A. Article 368: Scope and Procedure

Article 368 falls under Part XX of the Constitution of India.[10] It empowers Parliament, in exercise of its constituent power, to amend the Constitution by way of addition, variation or repeal of any provision, and it prescribes the procedure for doing so.[11]

Article 368 thus performs two functions:

1. It confers the power of amendment on Parliament.
2. It prescribes a special procedure that distinguishes constitutional amendment from ordinary legislation.

This special procedure reflects the higher status of the Constitution over ordinary legislation.[12]

The Constitution prescribes three methods of amendment for different provisions. An amendment under Article 368 begins with the introduction of a Bill in either House of Parliament.[13]

1. **Simple majority:** Parliament may alter certain provisions, such as those relating to Articles 2 to 4, 169 and 239A, by an ordinary law passed by a simple majority. Articles 4(2), 169(3) and 239A(2) expressly provide that such a law shall not be deemed an amendment of the Constitution for the purposes of Article 368.[14]

[10] Constitution of India 1950, pt XX, art 368.
[11] Constitution of India 1950, art 368(1).
[12] Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford University Press 1966) 145–155.
[13] Constitution of India 1950, art 368(2).
[14] Constitution of India 1950, arts 4(2), 169(3) and 239A(2); J N Pandey, *Constitutional Law of India* (Central Law Agency 2023) 873.

2. **Special majority:** The Bill must be passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting.[15]

3. **Special majority and ratification by the States:** Where the amendment seeks to change any matter specified in the proviso to Article 368(2), the Bill also requires ratification by the Legislatures of not less than one-half of the States before it is presented to the President for assent. The proviso contains the five clauses set out in Table 1.[16]

Table 1: Matters requiring ratification under the proviso to Article 368(2)

Clause	Matters covered
(a)	Articles 54, 55, 73, 162, 241 and 279A
(b)	Chapter IV of Part V, Chapter V of Part VI and Chapter I of Part XI
(c)	Any of the Lists in the Seventh Schedule
(d)	The representation of States in Parliament
(e)	The provisions of Article 368 itself

Finally, the Bill must be presented to the President, who shall give assent to it, and the Constitution then stands amended in accordance with its terms.[17] The 'present and voting' limb of the special majority carries real weight. On 17 April 2026, the Lok Sabha voted 298 to 230 on the Constitution (One Hundred and Thirty-first Amendment) Bill, 2026. The Bill commanded a majority of the total membership of the

[15] Constitution of India 1950, art 368(2).
[16] Constitution of India 1950, art 368(2), proviso, cls (a)–(e).
[17] Constitution of India 1950, art 368(2); The Constitution (Twenty-fourth Amendment) Act 1971, s 3.

House but fell short of 352 votes, being two-thirds of the 528 members present and voting, and therefore failed.[18]

B. Early Judicial Approach to Amendments

In *Sri Sankari Prasad Singh Deo v Union of India*, decided on 5 October 1951, a five-judge bench of the Supreme Court upheld the First Amendment.[19] The Court held that 'law' in Article 13(2) refers only to rules made in exercise of ordinary legislative power and does not include amendments made in exercise of constituent power under Article 368. Articles 31A and 31B therefore stood, even though they curtailed the right to property.[20]

In *Sajjan Singh v State of Rajasthan*, decided on 30 October 1964, the Supreme Court upheld the Constitution (Seventeenth Amendment) Act, 1964, which added further land reform laws to the Ninth Schedule.[21] The majority reaffirmed *Sri Sankari Prasad Singh Deo* and held that the power to amend under Article 368 differs from ordinary law-making power, so that an amendment abridging fundamental rights does not fall within Article 13(2). Hidayatullah and Mudholkar JJ, however, doubted whether Parliament could abridge fundamental rights in this manner.

These early judgments treated Article 368 as a flexible procedure and placed amendments beyond challenge under Article 13. They formed the backdrop against which the basic structure doctrine later emerged. They also raised a concern: if Parliament could amend every provision without limit, a transient majority could reshape the Constitution to suit its own needs.

V. PARLIAMENTARY SUPREMACY VS. CONSTITUTIONALISM

This study centres on the conflict between parliamentary supremacy and constitutionalism. Parliamentary supremacy places the whole law-making power in

[18] '131st Amendment Bill On Women's Reservation Defeated in Lok Sabha' *Outlook* (17 April 2026) https://www.outlookindia.com/national/131st-amendment-bill-on-womens-reservation-defeated-in-lok-sabha accessed 31 October 2026.
[19] *Sri Sankari Prasad Singh Deo v Union of India* AIR 1951 SC 458; [1952] SCR 89.
[20] ibid.
[21] *Sajjan Singh v State of Rajasthan* AIR 1965 SC 845.

the legislature, which may make or unmake any law.[22] Constitutionalism, by contrast, places the Constitution above Parliament. The Constitution limits what Parliament may do, and a transient majority cannot change its identity.[23]

Both ideas operate in India in some form. The central question is whether ultimate authority lies with Parliament or with the Constitution, and the Indian answer lies between the two models.[24] The question is not merely theoretical. It determines the extent of Parliament's power and the role of the judiciary in protecting the Constitution and the rights it guarantees to the people.[25]

The doctrine of parliamentary sovereignty owes its classic statement to A V Dicey. In his account, Parliament has the right to make or unmake any law, and the law recognises no person or body as having a right to override or set aside its legislation.[26] The courts therefore apply Acts of Parliament and do not test their constitutional validity.[27]

Constitutionalism draws on a wider tradition that treats a written constitution as a legal limitation on every organ of government, including the legislature.[28] Hans Kelsen supplies one theoretical support for judicial review through his hierarchy of norms, under which each norm derives its validity from a higher norm and the constitution stands at the apex of positive law.[29] For Kelsen, the *Grundnorm* is not the constitutional text itself but the presupposed norm that validates the first historical constitution.[30] On this view, a statute that conflicts with the Constitution lacks validity, and a court may declare it void.

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[22] A V Dicey, *Introduction to the Study of the Law of the Constitution* (10th edn, Macmillan 1959) 39–40.
[23] Sudhir Krishnaswamy, *Democracy and Constitutionalism in India: A Study of the Basic Structure Doctrine* (Oxford University Press 2009); *Kesavananda Bharati* (n 6) [1426] (Khanna J).
[24] M P Jain, *Indian Constitutional Law* (8th edn, LexisNexis 2018) 20–22.
[25] Constitution of India 1950, Preamble.
[26] Dicey (n 21) 39–40.
[27] ibid 40.
[28] Charles Howard McIlwain, *Constitutionalism: Ancient and Modern* (rev edn, Cornell University Press 1947) 21–22.
[29] Hans Kelsen, *Pure Theory of Law* (Max Knight tr, University of California Press 1967) 221–222.
[30] ibid 193–195.

India follows neither model in full and combines elements of both.[31] The Constitution is supreme, and Articles 13, 32 and 226 empower the courts to strike down laws that violate it.[32] Judicial review keeps legislation within constitutional limits and protects fundamental rights.[33] At the same time, Article 368 confers a wide amending power on Parliament, which allows the Constitution to respond to social and political change.[34]

The Supreme Court initially read this power broadly and held that amendments are not 'law' under Article 13, which made Parliament's power appear unlimited. In *Kesavananda Bharati*, the majority reconciled the competing positions. Sikri CJ identified the supremacy of the Constitution, republican and democratic government, its secular character, the separation of powers and its federal character as basic features,[35] while Khanna J held that the power to amend does not include the power to abrogate the Constitution or to destroy its basic structure.[36] Parliament therefore holds a wide but not absolute power, and the Constitution remains supreme without becoming rigid.

This balance sustains Indian constitutional democracy. Parliament retains the power to adapt the Constitution, while the judiciary protects its core values and the rights of the people. Neither institution stands above the other; each operates within limits that the Constitution itself sets.

VI. EVOLUTION AND MILESTONES OF JUDICIAL REVIEW

During the early constitutional phase, from 1950 to 1967, the Supreme Court declined to interfere with amendments made under Article 368 and treated them as distinct from ordinary laws. Article 13(2) renders void any law that takes away or abridges fundamental rights, but the Court held that this bar did not reach constitutional

[31] Jain (n 23) 20–22.
[32] Constitution of India 1950, arts 13, 32 and 226; *Kesavananda Bharati* (n 6) [292] (Sikri CJ).
[33] Jain (n 23) 12–15.
[34] Constitution of India 1950, art 368.
[35] *Kesavananda Bharati* (n 6) [292] (Sikri CJ).
[36] ibid [1426] (Khanna J).

amendments. This phase reflects deference to parliamentary supremacy, although the Court remained conscious of the importance of fundamental rights.

The foundational decisions of this phase are *Sri Sankari Prasad Singh Deo v Union of India*,[37] which upheld the Constitution (First Amendment) Act, 1951, and *Sajjan Singh v State of Rajasthan*,[38] which upheld the Seventeenth Amendment.

The decision in *I C Golaknath v State of Punjab* marked a decisive change in the review of amendments.[39] The petitioners challenged Punjab land reform legislation, placed in the Ninth Schedule by the Seventeenth Amendment, which curtailed their property rights. On 27 February 1967, an eleven-judge bench held by a majority of 6:5 that Parliament could not amend Part III so as to take away or abridge fundamental rights. The majority held that a constitutional amendment is 'law' within Article 13(2) and therefore falls within judicial review where it infringes fundamental rights, and it overruled *Sri Sankari Prasad Singh Deo* and *Sajjan Singh*.

By applying the doctrine of prospective overruling, the Court left the earlier amendments intact. The decision created difficulties for the Government, whose reform programme depended on amendments. Parliament responded with the Constitution (Twenty-fourth Amendment) Act, 1971, which declared that Parliament may amend any provision of the Constitution, including Part III, in exercise of its constituent power; inserted Article 13(4) and Article 368(3) to exclude amendments from the scope of Article 13; and made presidential assent to an amending Bill mandatory.[40] The Constitution (Twenty-fifth Amendment) Act, 1971 further narrowed judicial review in matters of property.[41]

It replaced 'compensation' with 'amount' in Article 31(2), so that the adequacy of the amount fixed for acquired property could not be questioned in court. It also inserted Article 31C, which protected laws giving effect to the principles in Article 39(b) and (c) from challenge under Articles 14, 19 and 31, and barred the courts from questioning

[37] *Sri Sankari Prasad Singh Deo* (n 5).
[38] *Sajjan Singh* (n 20).
[39] *I C Golaknath v State of Punjab* AIR 1967 SC 1643.
[40] The Constitution (Twenty-fourth Amendment) Act 1971, ss 2 and 3.
[41] The Constitution (Twenty-fifth Amendment) Act 1971, ss 2 and 3.

a law that carried a declaration to that effect. These developments led directly to *Kesavananda Bharati*.

VII. KESAVANANDA BHARATI AND THE BASIC STRUCTURE DOCTRINE

Kesavananda Bharati v State of Kerala is the defining decision on the limits of the amending power.[42] The petitioner challenged the Kerala land reform legislation and, during the proceedings, obtained leave to challenge the validity of the Twenty-fourth, Twenty-fifth and Twenty-ninth Amendments. The central issue was whether Parliament's power to amend the Constitution is unlimited. The Union argued that it is, while the petitioners contended that the power cannot be exercised to alter the basic structure of the Constitution.

On 24 April 1973, a bench of thirteen judges, the largest in the history of the Court, decided the case by a majority of 7:6. The majority held that Parliament may amend any provision of the Constitution, including Part III, but cannot alter its basic structure.[43] The six dissenting judges held the power to be unlimited. Khanna J supplied the decisive seventh vote; he held that the power to amend permits change but does not extend to the abrogation of the Constitution or the destruction of its basic structure.[44] The majority judges differed on the content of the basic structure, but their opinions identified features such as the supremacy of the Constitution, republican and democratic government, secularism, the separation of powers, federalism, the unity and integrity of the nation and the essential features of individual freedoms.[45]

The Court upheld the Twenty-fourth and Twenty-ninth Amendments. It upheld the first part of Article 31C, inserted by the Twenty-fifth Amendment, but struck down the second part, which barred the courts from examining whether a law carrying the declaration actually gave effect to Article 39(b) or (c), because judicial review forms

[42] *Kesavananda Bharati v State of Kerala* (1973) 4 SCC 225; AIR 1973 SC 1461.
[43] ibid, 'View by the majority'.
[44] ibid [1426] (Khanna J).
[45] *Kesavananda Bharati* (n 41) [292] (Sikri CJ); see also the opinions of Shelat and Grover JJ and of Hegde and Mukherjea JJ.

part of the basic structure.[46] The decision overruled *Golaknath* to the extent that it denied Parliament the power to amend Part III, yet it preserved the idea of implied limits on amendment in the form of the basic structure doctrine.[47] This holding set the stage for *Minerva Mills*, in which the Court used the doctrine to invalidate Parliament's attempt to make its own amending power unlimited.

VIII. POST-KESAVANANDA APPLICATION

A. Consolidation of the Doctrine, 1975 to 2007

In *Indira Nehru Gandhi v Raj Narain*,[48] the Supreme Court examined the Constitution (Thirty-ninth Amendment) Act, 1975,[49] which inserted Article 329A to place disputes over the election of the Prime Minister and the Speaker beyond judicial scrutiny. The Court struck down clause (4) of Article 329A and applied the basic structure doctrine to protect democracy, free and fair elections, judicial review and the separation of powers. In *Minerva Mills Ltd v Union of India*,[50] decided in 1980, the Court held that Parliament cannot convert its limited amending power into an unlimited one and that the harmony between Parts III and IV forms part of the basic structure. In *Waman Rao v Union of India*[51] and *I R Coelho v State of Tamil Nadu*,[52] the Court held that laws placed in the Ninth Schedule after 24 April 1973 remain open to review if they damage or destroy the basic structure.

B. Developments after 2007

Three further developments refine the doctrine. First, the Constitution (Forty-fourth Amendment) Act, 1978 had omitted Article 19(1)(f) and Article 31 and inserted Article 300A, so that the right to property became a constitutional right rather than a fundamental right.[53] The property disputes that drove *Golaknath* and the Twenty-fifth Amendment therefore no longer arise under Part III, and the contest between the

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[46] *Kesavananda Bharati* (n 41), 'View by the majority'.
[47] ibid; *Golaknath* (n 38).
[48] *Indira Nehru Gandhi v Raj Narain* 1975 Supp SCC 1; AIR 1975 SC 2299.
[49] The Constitution (Thirty-ninth Amendment) Act 1975.
[50] *Minerva Mills Ltd v Union of India* (1980) 3 SCC 625; AIR 1980 SC 1789.
[51] *Waman Rao v Union of India* (1981) 2 SCC 362.
[52] *I R Coelho (Dead) by LRs v State of Tamil Nadu* (2007) 2 SCC 1.
[53] The Constitution (Forty-fourth Amendment) Act 1978, ss 2, 6 and 34.

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amending power and fundamental rights has shifted to other features of the Constitution.

Second, in *Supreme Court Advocates-on-Record Association v Union of India*, decided on 16 October 2015, a five-judge bench struck down the Constitution (Ninety-ninth Amendment) Act, 2014 and the National Judicial Appointments Commission Act, 2014 by a majority of 4:1.[54] The majority held that the independence of the judiciary, including its primacy in judicial appointments, forms part of the basic structure and that the NJAC diluted it. The decision remains the clearest modern use of the doctrine against an amendment under Article 368.

Third, in *Janhit Abhiyan v Union of India*, decided on 7 November 2022, the Court upheld the Constitution (One Hundred and Third Amendment) Act, 2019, which introduced reservation for economically weaker sections, by a majority of 3:2.[55] The majority found no breach of the basic structure, while the minority held that the exclusion of the backward classes from the new quota violated the equality code. These decisions show that an amendment crosses the line only when it damages or destroys an essential feature, and not merely when it alters or abridges a fundamental right.

C. Comparative Perspective

Other constitutional systems also limit the power of amendment. Article 79(3) of the Basic Law for the Federal Republic of Germany expressly prohibits amendments that affect the division of the Federation into Länder, the participation of the Länder in legislation, or the principles laid down in Articles 1 and 20.[56] Bangladesh reached a similar position through judicial decision. In *Anwar Hossain Chowdhury v Bangladesh*, the Appellate Division struck down the part of the Eighth Amendment that created permanent benches of the High Court Division outside Dhaka, drawing on the basic structure reasoning of *Kesavananda Bharati*.[57] The Indian and Bangladeshi limits are

[54] *Supreme Court Advocates-on-Record Association v Union of India* (2016) 5 SCC 1.
[55] *Janhit Abhiyan v Union of India* (2023) 5 SCC 1.
[56] Basic Law for the Federal Republic of Germany 1949, art 79(3).
[57] *Anwar Hossain Chowdhury v Bangladesh* (1989) 41 DLR (AD) 165.

judge-made, whereas the German limit is textual; all three systems, however, shield a core of constitutional identity from the amending power.

D. Interpretation of Article 368

The power of Parliament to amend the Constitution, although wide, is subject to limits. It permits Parliament to modify or remove existing provisions, but not to change the structural features on which the constitutional framework rests. Under the literal rule, the words 'addition, variation or repeal' in Article 368(1) suggest a broad power. Under the principle of harmonious construction, however, Article 368 must be read together with the other provisions of the Constitution and not in isolation. Purposive interpretation, applied in *Kesavananda Bharati*, requires that an amendment must not destroy the identity and aims of the Constitution. Structural interpretation completes this reading, since the essential features cannot be removed or replaced. Accordingly, the word 'amend' in Article 368 means to change or improve the Constitution within its existing framework; it does not include the power to abrogate the Constitution or to replace its basic structure.[58]

IX. CONSTITUTIONAL AMENDING POWER AND THE WOMEN'S RESERVATION

A. Provisions and Current Status

The Constitution (One Hundred and Sixth Amendment) Act, 2023 is the most recent amendment to the Constitution.[59] It inserted Article 330A, which reserves one-third of the seats in the Lok Sabha for women, including one-third of the seats reserved for Scheduled Castes and Scheduled Tribes, and Article 332A, which makes corresponding provision for the State Legislative Assemblies. It also inserted clauses (ba), (bb) and (bc) in Article 239AA(2) to extend the reservation to the Legislative Assembly of the National Capital Territory of Delhi. Article 334A provides that the reservation shall take effect after a delimitation exercise based on the first census taken

[58] *Kesavananda Bharati* (n 41) [292] (Sikri CJ) and [1426] (Khanna J).
[59] The Constitution (One Hundred and Sixth Amendment) Act 2023.

after the commencement of the Act, shall cease after fifteen years unless Parliament extends it by law, and shall rotate after each subsequent delimitation.[60]

The Central Government appointed 16 April 2026 as the date on which the Act came into force.[61] The reservation, however, remains inoperative until the post-commencement census and delimitation are complete. The Government then introduced the Constitution (One Hundred and Thirty-first Amendment) Bill, 2026 to apply the reservation from 2029 through a delimitation based on the 2011 census, but the Bill failed in the Lok Sabha on 17 April 2026 for want of two-thirds of the members present and voting.[62] As of October 2026, therefore, the Act is in force but its reservation is not yet operative.

B. Basic Structure Analysis

The amendment pursues substantive equality by enhancing the political participation and representation of women. It rests on Article 15(3), which permits special provisions for women, and its object accords with the promise of equality of status and opportunity in the Preamble.[63] A challenge on basic structure grounds could proceed on three lines.

First, a petitioner might argue that reserving one-third of the seats curtails the choice of voters and the right of other candidates to contest, and thus offends the equality guaranteed by Article 14.

Second, the rotation of reserved seats after each delimitation may weaken the link between a representative and her constituency.

Third, the deferral of the reservation to an uncertain post-census delimitation may be said to render the guarantee illusory.

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[60] Constitution of India 1950, arts 239AA(2)(ba)–(bc), 330A, 332A and 334A.
[61] Ministry of Law and Justice (Legislative Department), notification under s 1(2) of the Constitution (One Hundred and Sixth Amendment) Act 2023 appointing 16 April 2026; 'Centre Brings 2023 Women's Reservation Law Into Force From April 16 Amid Parliament Debates On Amendments' *LiveLaw* (17 April 2026) https://www.livelaw.in/top-stories/centre-brings-2023-womens-reservation-law-into-force-from-april-16-while-parliament-debates-new-amendments-530608 accessed 31 October 2026.
[62] *Outlook* (n 17).
[63] Constitution of India 1950, art 15(3) and Preamble.

None of these arguments appears strong. *Janhit Abhiyan* holds that a reservation measure offends the basic structure only if it destroys the equality code, and the NJAC case shows that the doctrine targets the destruction of an essential feature, not the alteration of electoral arrangements.[64] Reservation of seats for Scheduled Castes and Scheduled Tribes under Articles 330 and 332 has operated since 1950 without being held inconsistent with democracy.[65] The fifteen-year limit and the rotation of seats keep the measure temporary and proportionate. In the author's view, the amendment passes the basic structure test because it strengthens democracy and equality rather than destroying them. The failure of the One Hundred and Thirty-first Amendment Bill shows, moreover, that the procedural limb of Article 368(2) remains a real safeguard: even a wide amending power requires broad political consensus.

X. CONCLUSION AND SUGGESTIONS

A. Conclusion

The interpretation of Article 368 shows that the Constitution strikes a deliberate balance between permanence and adaptability. It changes with the needs of the people without losing the structure on which it rests. On the first research question, the study finds that Article 368 permits Parliament to amend any provision, including Part III, and therefore to abridge fundamental rights. *Sri Sankari Prasad Singh Deo* and *Sajjan Singh* recognised this wide power, and *Kesavananda Bharati* confirmed it after *Golaknath* had denied it.

On the second question, the basic structure doctrine limits the amending power by prohibiting amendments that damage or destroy the essential features of the Constitution. *Indira Nehru Gandhi v Raj Narain* protected free and fair elections, *Minerva Mills* secured the harmony between Parts III and IV and denied Parliament an unlimited amending power, and the NJAC case protected the independence of the judiciary. On the third question, the word 'amendment' permits change within the existing framework but not the abrogation or replacement of that framework.

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[64] *Janhit Abhiyan* (n 54); *Supreme Court Advocates-on-Record Association* (n 53).
[65] Constitution of India 1950, arts 330, 332 and 334.

On the fourth question, the women's reservation amendment satisfies the basic structure test because it advances equality and democratic representation. As of October 2026, the Act is in force, but the reservation remains inoperative until delimitation after the next census, and the attempt to advance it through the One Hundred and Thirty-first Amendment Bill failed for want of the special majority. The literal, harmonious, purposive and structural principles of interpretation together ensure that Article 368 is read with the rest of the Constitution. The present constitutional position therefore represents a balance between the amending power and the identity of the Constitution.

B. Suggestions

The study offers the following suggestions; each linked to its findings:

1. **Minimum period of debate:** Parliament should require a minimum interval, such as thirty days, between the introduction of a constitutional amendment Bill and its passage, with a fixed minimum time for debate in each House. This responds to the concern noted in Part 2 that the amending power may serve political ends. The objection that such a rule would delay urgent amendments can be met through a narrow exception approved by a special majority.
2. **Mandatory committee scrutiny:** Every amendment Bill should be referred to a Departmentally Related Standing Committee or a Joint Parliamentary Committee before passage. Committee scrutiny would improve deliberation on the issues identified in Parts 7 and 11, although it may lengthen the process.
3. **Basic structure statement:** The Government should table, with every amendment Bill, a reasoned statement explaining how the Bill complies with the basic structure doctrine set out in Parts 9 and 10. Such a statement would assist both Parliament and the courts, though critics may regard it as a formality.
4. **Consolidated list of basic features:** When a suitable case comes before a Constitution Bench, the Supreme Court should consolidate the basic

features recognised so far. Greater clarity would reduce uncertainty, but a closed list risks rigidity, so the list should remain illustrative.

Finally, the amending power of Parliament and the reviewing power of the judiciary must remain in balance, so that the Constitution can adapt without losing its identity.

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