



## Procedure of Amendment | 11 Jan 2019

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**For Prelims:** Parliament, Article 368, Amending Powers of Parliament, Basic Structure Doctrine, Kesavananda Bharati Case, Simple Majority, Special Majority

**For Mains:** Amending powers of Parliament and Basic Structure Doctrine

### Why in News?

- In 2019, the [Parliament](#) passed the [Constitution \(124<sup>th</sup>\) Amendment Bill 2019](#) by a special majority.
  - The bill, however, saw arguments on the amendment procedure, including whether the Bill should be ratified by state Assemblies, and questions related to aided and unaided institutions.

### What is the Procedure for Amending the Indian Constitution?

- **Article 368** in Part XX of the Constitution deals with the **power of parliament to amend the constitution** and its procedures.
  - It states that the Parliament may amend the Constitution by way of **addition, variation or repeal of any provision** in accordance with the procedure laid down for the purpose.
  - However, the Parliament **cannot amend those provisions which form the 'basic structure' of the Constitution**. This was ruled by the Supreme Court in the **Kesavananda Bharati case (1973)**.
- It provides for two types of amendments, that is, by a **special majority of Parliament** and the special majority of parliament along with the **ratification of half of the states legislatures by a simple majority**.
- Amendment of certain provisions of the Constitution requires amendment by a simple majority of each house present and voting. These amendments are **not deemed to be amendments under Article 368**.

### What is a 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.

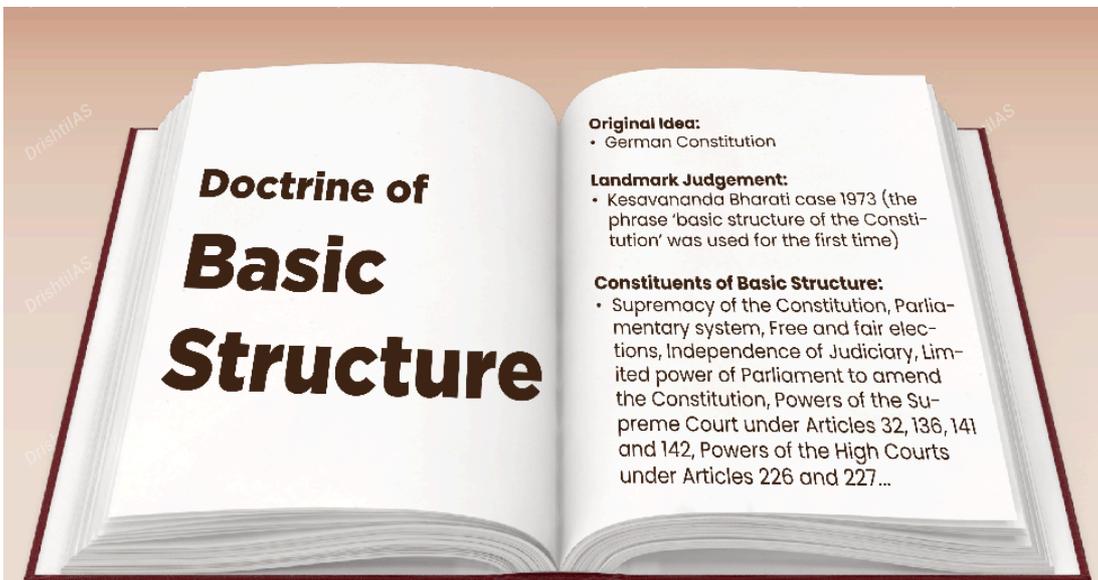
- **These provisions include**
  - [Formation of new states](#) and alteration of areas, boundaries or names of existing states,
  - Abolition or creation of legislative councils in states,
  - Use of [official language](#),
  - [Citizenship](#) – acquisition, and termination,
  - Elections to [Parliament](#) and state legislatures,
  - [Fifth Schedule](#) – administration of scheduled areas and scheduled tribes,
  - [Sixth Schedule](#) – administration of tribal areas.

## What is a Special Majority?

- **About:**
  - Under [Article 368\(2\)](#), [Parliament](#) can amend the Constitution by passing a Bill with a special majority.
  - [Fundamental Rights](#) and [Directive Principles of State Policy \(DPSP\)](#) are the two most important provisions that can be amended by the special majority, but the amendments should be within **Basic structure of the constitution**.
  - **All provisions that do not require ratification by states**, and those that come directly under the purview of Article 368, can be amended by the special majority.
- **Special Majority with Consent of Half of States:**
  - Those provisions of the Constitution which are **related to the federal structure of the polity** can only be amended by a special majority of the Parliament and also with the consent of half of the state legislatures by a simple majority.
  - Important provisions that require ratification by the states include the [election of President](#), [Supreme Court and High Courts](#), representation of states in Parliament, [distribution of legislative powers](#) between the Union and the states, and the extent of executive power of the Union and the states.
  - Most importantly, an **amendment to Article 368 itself**, requires ratification by the states.

## What are the Restrictions to Parliament's Amending Power?

- In the landmark [Kesavananda Bharati case 1973](#), the supreme court has ruled that parliament has the power to amend any part of the constitution **but it cannot alter the “basic structure of the constitution”**.
- The constituents of basic structure are not clearly defined by the court. However, it has been interpreted to provisions like values enshrined in preamble like **secularism, equality etc., federalism, separation of power, independence judiciary, rule of law etc.**



## Evolution

