

1.1 Meaning of a Constitution

A Constitution is fundamentally a set of basic principles, rules, and laws that determine how a country is governed. It sets the structure of political authority, defines the relationship between the State and its citizens, and establishes boundaries within which governments must operate.

In simple terms, a Constitution answers three fundamental questions:

1. **Who governs the country?**
2. **How is power exercised?**
3. **What limits are placed on governmental authority?**

In India, the Constitution establishes a framework that ensures democratic governance and prevents the concentration of power. It outlines the legislature's functions, the executive's role, and the judiciary's independence. It directs how laws are to be made, interpreted, and applied. It also grants fundamental rights to protect individual liberty and dignity.

What distinguishes a Constitution from ordinary law is its **supremacy**. Ordinary laws may be amended or repealed by legislatures, but the Constitution stands above all institutions. It is the foundation upon which all other laws derive their validity.

1.2 Nature of the Indian Constitution

Introduction

The nature of a Constitution refers to its basic character, structure, and working philosophy. In constitutional studies, an important question often raised is whether a Constitution is unitary or federal. A unitary Constitution centralizes power in one authority, while a federal Constitution divides powers between different levels of government. The Indian Constitution presents a unique model that does not fit neatly into either category. Although it contains strong federal features, it also incorporates several unitary elements to preserve national unity and effective governance. Therefore, scholars frequently describe the Indian Constitution as quasi-federal or as a federal Constitution with a strong Centre.

Is the Indian Constitution Federal in Nature?

According to traditional political theory, Constitutions are classified as either unitary or federal. In a unitary system, all governmental powers are concentrated in the Central Government, and provincial or local governments function as subordinates. In contrast, a federal system involves a division of powers between the central and regional governments, with both operating independently within their respective spheres.

There has been considerable debate among constitutional experts regarding the nature of the Indian Constitution. Some scholars argue that it is quasi-federal because it gives extensive powers to the Centre. Others believe it is a true federal Constitution with special provisions for emergencies. The framers of the Constitution, however, clearly intended India to be federal. Dr. B. R. Ambedkar, Chairman of the Drafting Committee, stated that despite provisions allowing the Centre to override states in certain situations, the Constitution remains federal in character.

The Federal Principle

The concept of federalism is best explained through the views of Prof. K. C. Wheare, who defined the federal principle as a system in which powers are divided between general (central) and regional governments, each operating independently in its own sphere. Federalism thus ensures dual government, where neither level is legally subordinate to the other. The American Constitution is often cited as the classic example of federalism, as it establishes separate federal and state governments with clearly divided powers.

In India, the federal principle exists, but it is adapted to suit national conditions. The Indian Constitution establishes two levels of government—the Union and the States—but with a structure that allows flexibility and coordination rather than rigid separation.

Essential Characteristics of a Federal Constitution

1. Distribution of Powers

The division of powers between the Union and the States is a fundamental feature of federalism. In India, this distribution is clearly laid down in the **Seventh Schedule**, which contains the Union List, State List, and Concurrent List. Matters of national importance are assigned to the Union, while matters of local significance are given to the States. Subjects of common interest fall under the Concurrent List. This system ensures administrative efficiency while maintaining unity.

2. Supremacy of the Constitution

In a federal system, the Constitution is the supreme law of the land. All powers—executive, legislative, or judicial—derive their authority from the Constitution. In India, both the Union and the States must function within constitutional limits. No authority can act beyond what the Constitution permits. This supremacy ensures stability, consistency, and legal uniformity throughout the country.

3. Written Constitution

A federal Constitution must be written to avoid ambiguity and conflict. The Indian Constitution is a detailed written document that clearly defines the powers, functions, and limitations of the government. This clarity facilitates the resolution of disputes and ensures the maintenance of constitutional balance.

4. Rigidity of the Constitution

Rigidity refers to the difficulty involved in amending the Constitution. Since the Constitution is supreme, it cannot be altered easily. The Indian Constitution follows a balanced approach—some provisions can be amended by Parliament alone, while others require the consent of States. This rigidity preserves federalism and prevents misuse of power.

5. Authority of Courts

An independent judiciary is essential to maintain federal balance. Courts act as neutral arbiters in disputes between the Union and the States. In India, the Supreme Court has the final authority to interpret the Constitution and safeguard its provisions. Judicial review ensures that neither level of government exceeds its constitutional limits.

Indian Constitution: A Quasi-Federal Model

Article 1 of the Constitution states that **India is a “Union of States”**, not a federation formed by agreement among sovereign states. This indicates a strong central structure. The Supreme Court, in **State of West Bengal v. Union of India**, observed that India is quasi-federal with a tilt towards the Centre.

Unlike classical federations:

- States in India do not have separate Constitutions,
- Parliament can alter state boundaries,
- Emergency provisions allow the Centre to assume greater powers.

However, India still maintains federal principles through division of powers, constitutional supremacy, and judicial review.

Executive and Legislative Relations

The executive powers of the Union and the States are defined under Articles 73 and 162 respectively. While States have autonomy in their sphere, their executive actions must not conflict with Union laws. The Centre can issue directions to States in certain circumstances, ensuring uniformity in national administration.

Legislative powers are governed by Article 246 and the Seventh Schedule. In case of conflict between Union and State laws on Concurrent List subjects, Union law prevails. During emergencies, Parliament can legislate on State subjects, further strengthening central authority.

Financial Relations Between Centre and States

States largely depend on the Centre for financial assistance. Taxes are collected by the Union and distributed among States according to constitutional provisions. Grants-in-aid help States meet developmental needs. This financial dependence reinforces the unitary bias of the Indian federal system.

Emergency Provisions and Federal Balance

During national, state, or financial emergencies, the Centre gains overriding authority. State legislative and executive powers may be suspended or controlled. Although these provisions temporarily weaken federalism, they are designed to protect national unity and constitutional stability.

The Seventh Schedule and Distribution of Powers

One of the most important features that defines the federal nature of the Indian Constitution is the **Seventh Schedule**, which clearly demarcates legislative powers between the Union and the States. The Seventh Schedule consists of **three lists**: the Union List, the State List, and the Concurrent List. The Union List contains subjects of national importance such as defence, foreign affairs, currency, railways, and communication, over which only Parliament has the power to legislate. The State List includes subjects of local and regional importance such as police, public health, agriculture, and local government, which fall under the exclusive legislative competence of State Legislatures. The Concurrent List includes subjects such as education, forests, marriage, labour welfare, and criminal law, where both Parliament and State Legislatures can make laws. In case of any conflict, Union law prevails.

This constitutional arrangement ensures administrative efficiency while preserving national unity. At the same time, by granting States exclusive powers in certain areas, the Constitution safeguards regional autonomy. The presence of **residuary powers with the Union** further reflects the strong-centre bias of Indian federalism.

All India Services

The **All India Services (AIS)** represent another unique feature that strengthens the unitary aspect within India's federal structure. Officers of services such as the **Indian Administrative Service (IAS)**, **Indian Police Service (IPS)**, and **Indian Forest Service (IFS)** are recruited by

the Union Government but serve both the Centre and the States. Article 312 of the Constitution provides for the creation of All India Services in the national interest.

The purpose of All India Services is to ensure **uniform standards of administration**, promote national integration, and maintain administrative continuity across States. While States exercise control over officers posted within their territories, these officers remain members of national services. This dual accountability reinforces cooperative federalism by balancing national priorities with state-level governance.

Full Faith and Credit Clause

Article 261 of the Indian Constitution incorporates the principle of **Full Faith and Credit**, which requires that public acts, records, and judicial proceedings of the Union and each State be respected throughout the territory of India. This provision ensures that judicial decisions and official records are recognized across State boundaries without the need for revalidation.

The Full Faith and Credit Clause promotes legal certainty, administrative cooperation, and mutual trust between States. It prevents fragmentation of legal authority and strengthens the unity of the federal system by ensuring that the authority of law does not end at state borders.

Zonal Councils

To further strengthen coordination between States and the Centre, the Constitution provides for **Zonal Councils**, established under the **States Reorganisation Act, 1956**. India is divided into five zonal councils—Northern, Southern, Eastern, Western, and Central Zones—with an additional North-Eastern Council.

Zonal Councils serve as advisory bodies aimed at resolving inter-state disputes, promoting cooperation, and discussing issues related to economic development, law and order, and social welfare. They act as platforms for dialogue rather than adjudication and are important instruments of cooperative federalism. By encouraging discussion and consensus-building, Zonal Councils reduce Centre–State tensions and promote harmonious governance.

NITI Aayog and Cooperative Federalism

The replacement of the Planning Commission by **NITI Aayog (National Institution for Transforming India)** marked a significant shift in Centre–State relations. Unlike the centralized planning approach of the Planning Commission, NITI Aayog emphasizes **collaborative, bottom-up planning** and active participation of States in policy formulation.

NITI Aayog acts as a policy think tank that provides strategic and technical advice to both the Centre and the States. It encourages innovation, best practices, and competitive federalism while maintaining cooperative engagement. Through forums such as the Governing Council, which includes Chief Ministers of States, NITI Aayog strengthens participatory federalism and shared responsibility in national development.

Goods and Services Tax (GST) and Fiscal Federalism

The introduction of the **Goods and Services Tax (GST)** through the **101st Constitutional Amendment** represents one of the most significant reforms in India's federal structure. GST subsumed multiple indirect taxes imposed by the Centre and States into a single unified tax system to create a **“One Nation, One Tax”** regime.

GST is administered through the **GST Council**, a constitutional body comprising representatives of both the Centre and the States. Decisions of the Council are based on consensus, reflecting cooperative fiscal federalism. Although GST has increased the Centre's

influence over taxation, it has also institutionalized regular dialogue between different levels of government, ensuring shared decision-making in revenue matters.

Case Study: Kesavananda Bharati v. State of Kerala (1973)

50 YEARS OF BASIC STRUCTURE DOCTRINE

THE BENCH MAJORITY OPINION

INDIAN EXPRESS

Fundamental rights can be amended
Supreme Court reverses Golaknath case verdict

Breakdown in 3 power stations plunges Delhi in darkness

Anand Margi commits self-immolation

Justice SM Sikri CJ

Justice JM Shelat

Justice KS Hegde

Justice AN Goveer

Justice PJ Reddy

Justice HK Hanan

Justice AK Mukherja

MINORITY

Justice AN Ray

Justice D G Pallickar

Justice KK Mathew

Justice MH Beg

Justice SN Dwivedi

Justice TV Chandrabud

The court, however, held that Article 368 of the Constitution does not enable Parliament to alter the basic structure or framework of the Constitution.

Kesavananda Bharati, the sanyasi of Edneer Mutt, Kasaragod, Kerala, who passed away in Sept 2020.

(Above) Front page of The Indian Express on April 25, 1973, the day after the SC's historic judgment. The court ruled that while Parliament could amend the fundamental rights, the "basic structure" of the Constitution – including judicial review, rule of law, federalism, and the democratic structure – was inviolable. The basic features test is seen as a check on Parliament's majoritarian impulses, since it places substantive limits on its powers to change the Constitution.

Doctrine of Basic Structure

Original Idea: German Constitution

Landmark Judgement: Kesavananda Bharati case 1973 (the phrase 'basic structure of the Constitution' was used for the first time)

Constituents of Basic Structure:

- Supremacy of the Constitution, Parliamentary system, Free and fair elections, Independence of Judiciary, Limited power of Parliament to amend the Constitution, Powers of the Supreme Court under Articles 32, 136, 141 and 142, Powers of the High Courts under Articles 226 and 227...

Evolution

1951 & 1965: Shankari Prasad case and Sajjan Singh case. The SC held that Parliament has the absolute power to amend the Constitution under Article 368.

1967: Golak Nath v/s State of Punjab. Parliament cannot amend Fundamental Rights, and this power rests only with a Constituent Assembly; 24th Amendment Act, 1971 was passed.

1973: Kesavananda Bharti v/s State of Kerala. The SC held that Parliament cannot amend the basic structure of the Constitution.

1975: Indira Nehru Gandhi v/s Raj Narain. The Doctrine of Basic Structure reaffirmed and a provision of the 39th Amendment Act (1975) (keeping election disputes involving the PM and the Speaker outside the jurisdiction of all courts) was invalidated.

1980: Minerva Mills v/s Union of India. Judicial review and harmony between Fundamental Rights and DPSP were added to the basic structure.

1981: Waman Rao v/s Union of India. The SC held that the doctrine would apply to constitutional amendments enacted after the date of the judgement in the KJ case.

1992: Indira Sawhney Vs. Union of India. Rule of law declared as a part of the basic structure.

1994: S.R Bommai vs Union of India. Federalism, Secularism, Democracy, Unity and integrity of the nation and Social Justice were iterated as basic structure of the Constitution.

Significance:

- Limits the power of a majoritarian government to undermine the Constitution's central ideals.

Criticism:

- "Basic Structure" finds no mention anywhere in the Indian Constitution. Further, there is no exclusive definition of basic structure given by the judiciary.
- The SC has assumed much power in the name of basic structure.

Drishti IAS

The Kesavananda Bharati v. State of Kerala (1973) judgment is widely regarded as the most important and far-reaching decision in the history of the Indian Supreme Court. It emerged from a seemingly narrow dispute concerning property rights, yet it ultimately reshaped the constitutional landscape and permanently changed the balance between Parliament and the Constitution. The case began when Swami Kesavananda Bharati, the head of the Edneer Mutt in Kerala, challenged certain provisions of the Kerala Land Reforms Act, which sought to redistribute land to achieve social justice. The Mutt held considerable land, and the Swami feared that the new legislation would strip the religious institution of its property and hinder its functioning. While he invoked fundamental rights—particularly Article 26 (freedom to manage religious affairs) and Article 31 (then guaranteeing the right to property)—the case soon evolved into a much larger constitutional confrontation over the limits of Parliament’s power to amend the Constitution under Article 368.

This legal conflict did not arise in isolation. In the two decades preceding the case, Indian constitutional interpretation had oscillated sharply. Earlier decisions, such as Shankari Prasad (1951) and Sajjan Singh (1965), had upheld Parliament’s unlimited power to amend any part of the Constitution, including Fundamental Rights. However, in 1967, the landmark Golaknath case reversed this position by declaring that Parliament could not amend or abridge Fundamental Rights at all. This placed Parliament and the judiciary on a collision course, as the government—particularly during a period of strong central authority under Prime Minister Indira Gandhi—

wanted to push forward economic reforms, land redistribution, and policies rooted in the Directive Principles. In response to Golaknath, Parliament enacted the 24th, 25th, and 29th Constitutional Amendments to restore and expand its amending powers. These amendments were interpreted by many as attempts to override judicial scrutiny and give Parliament supremacy over the Constitution. It was against this tense backdrop that the Kesavananda case was heard.

Recognizing the gravity of the issues, the Supreme Court constituted a **13-judge bench**, the largest in its history, and heard arguments for **68 days**, making it one of the longest constitutional hearings in the world. The case featured legendary legal minds such as Nani Palkhivala and Fali S. Nariman for the petitioners, and Attorney General Niren De for the government. The central issue before the Court was profound: ***Does Parliament possess unlimited power to amend the Constitution, or are there certain foundational features that are beyond its reach?*** Put differently, could a temporary political majority fundamentally rewrite the nation's constitutional identity?

On 24 April 1973, the Supreme Court delivered an extraordinary but closely divided verdict—a **7–6 majority**. The Court held that Parliament indeed has wide powers to amend the Constitution, but **these powers are not absolute**. It cannot alter, damage, or destroy the **Basic Structure** of the Constitution. Although the judges did not provide a complete list of what constitutes this “Basic Structure,” they articulated several essential principles that could never be amended: the supremacy of the Constitution, the rule of law, judicial review, the independence of the judiciary, federalism, secularism, democracy, and the essence of Fundamental Rights. The Court therefore declared that certain foundational features form the core identity of the Constitution, and must remain permanent regardless of political shifts or legislative ambitions. This doctrine became known as the **Basic Structure Doctrine**, and it continues to be the cornerstone of Indian constitutional law.

The judgment was revolutionary because it set a constitutional boundary for Parliament, which had previously asserted unlimited amendatory power. By insisting that the Constitution, and not Parliament, is supreme, the Court prevented the possibility of authoritarian amendments and safeguarded democratic values. The decision also reaffirmed the judiciary's power of **judicial review**, ensuring that courts could continue to examine constitutional amendments and strike them down if they violated the Basic Structure. In doing so, the Court preserved the Constitution as a living document—flexible enough to adapt to changing times, yet anchored in permanent principles that protect democracy and individual liberties.

Today, the Kesavananda Bharati judgment is recognised not only as a turning point in Indian constitutional jurisprudence but also as one of the most significant judicial decisions in the world. It protected India from potential constitutional erosion and ensured that the foundational values of democracy, liberty, secularism, and justice would remain intact regardless of the political climate. More importantly, it reaffirmed that the Constitution belongs to the people—not to Parliament—and that its core ideals cannot be rewritten by transient political powers. In essence, the judgment ensured that the Constitution remains a guardian of India's democratic identity, making it a timeless landmark in safeguarding the spirit of the republic

Case Study: S.R. Bommai v. Union of India (1994)



The S.R. Bommai v. Union of India (1994) case was a landmark Supreme Court judgment that limited the central government's power to impose **President's Rule (Article 356)** in states, establishing that such proclamations are subject to judicial review and must not be arbitrary. The court ruled that a floor test in the assembly, not just the Governor's report or letters, is the definitive way to test a government's majority, and it also affirmed secularism as a basic feature of the Constitution, making anti-secular actions grounds for President's Rule. This verdict curbed misuse of Article 356, preventing politically motivated dismissals and ensuring states' autonomy within India's federal structure.

Background

- **Trigger Event:** The case arose in Karnataka when CM S.R. Bommai's government faced a split; the Governor dismissed the government without allowing Bommai to prove his majority on the floor of the Assembly, leading to a petition to the High Court and then the Supreme Court.
- **Central Issue:** The core question was the justifiability of the President's satisfaction under Article 356 and the extent of judicial review over such proclamations.

Key Findings & Principles

1. **Judicial Review of Article 356:** The Court held that the President's power under Article 356 is not absolute and the decision to impose President's Rule is subject to judicial scrutiny.
2. **Floor Test is Paramount:** A floor test in the legislative assembly is the constitutional imperative to determine majority; a Governor cannot solely rely on letters or claims of support withdrawal.
3. **Secularism as a Basic Feature:** The judgment recognized secularism as a basic structure, meaning state actions violating secular principles could justify President's Rule, but only if truly unconstitutional, not just politically inconvenient.
4. **Not Absolute Power:** The President's satisfaction must be based on relevant material, and the court can intervene if it's mala fide or irrational.
5. **Restoration of Government:** If a proclamation is struck down, the suspended government can be restored immediately.

Significance

1. **Curtails Misuse:** It ended the era of arbitrary dismissals, making it harder for the Centre to destabilize state governments for political reasons.
2. **Strengthens Federalism:** It reinforced the federal balance by protecting state governments from undue central interference.
3. **Precedent for Future Cases:** The verdict remains the definitive law on Article 356, influencing later cases like those in Uttarakhand and Arunachal Pradesh.