Polity & Governance · GS - II

Indian Constitution has conferred the amending power on the ordinary legislative institutions with a few procedural hurdles. In view of this statement, examine the procedural and substantive limitations on the amending power of the Parliament to change the Constitution.

EXAM YEAR	PAPER	SUBJECT
2025	GS - II	Polity & Governance

MARKS	WORD LIMIT
15	~250 words

Answer Hint

Article 368, constituent power, simple majority, special majority, State ratification, basic structure doctrine, Kesavananda Bharati, judicial review, federalism, separation of powers

Model Answer

Introduction

Article 368 gives Parliament constituent power to amend the Constitution, reflecting a balance between constitutional stability and adaptability. However, this power is procedurally regulated and substantively limited by the basic structure doctrine.

1. Procedural limitations

Constitutional provisions can be amended through different procedures:

1. Certain provisions are amendable by simple majority, outside Article 368.
2. Most provisions require a special majority in each House: a majority of total membership and two-thirds of members present and voting.

3. Federal provisions additionally require ratification by at least half of the State legislatures.

Article 368 expressly specifies special-majority requirements and identifies provisions requiring State ratification, including those concerning representation of States, Union-State relations, the Seventh Schedule and the amendment procedure itself.

There is no provision for a joint sitting to resolve disagreement between the Houses over a constitutional amendment.

2. Substantive limitation

In Kesavananda Bharati v. State of Kerala (1973), the Supreme Court established that Parliament cannot alter the Constitution's basic structure even while exercising its constituent power.

The doctrine protects fundamental constitutional features such as:

1. Supremacy of the Constitution.
2. Rule of law and judicial review.
3. Separation of powers.
4. Federalism.
5. Secularism and democracy.
6. Parliamentary government.
7. Dignity and essential Fundamental Rights.
8. Independence of judiciary.

The 42nd Amendment's attempt to exclude judicial review of constitutional amendments was substantially invalidated in Minerva Mills, reaffirming limited amending power.

Conclusion

Thus, Parliament possesses wide but not unlimited constituent power. Procedural requirements ensure deliberation, while the basic structure doctrine prevents constitutional amendment from becoming constitutional replacement.

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