

9. Constitution as a Living Document

Q1. Choose the correct statement from the following. A constitution needs to be amended from time to time because,

- Circumstances change and require suitable changes in the constitution.
- A document written at one point of time becomes outdated after some time.
- Every generation should have a constitution of its own liking.
- It must reflect the philosophy of the existing government.

Answer 1: A constitution needs to be amended from time to time because circumstances change and require suitable changes in the constitution

Q2. Write True / False against the following statements.

- a. The President cannot send back an amendment bill for reconsideration of the Parliament.
- b. Elected representatives alone have the power to amend the Constitution.
- c. The Judiciary cannot initiate the process of constitutional amendment but can effectively change the Constitution by interpreting it differently.
- d. The Parliament can amend any section of the Constitution.

Answer:

a) True

Explanation- As per Article 368 (2) President shall assent the constitutional amendment bills without power to withhold the bills.

b) True

c) True

d) False

Explanation- There are different ways of amending the Constitution.

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Q3. Which of the following are involved in the amendment of the Indian Constitution? In what way are they involved?

- a. Voters
- b. President of India
- c. State Legislatures
- d. Parliament
- e. Governors
- f. Judiciary

Answer:

- (a) **Voters** are not involved in the amendment of the constitution
- (b) **President of India** is involved in the amendment of constitution. An amendment bill after ratification by two houses of parliament goes to the president for his approval; he has no power to send this amendment bill back for consideration.
- (c) **State legislature** are involved for some articles of constitutions related to distribution of power between the centre and the states and articles related to representation is necessary to be consulted with the states.
- (d) **Parliament** involves in the amendment because some bills/articles are amended by simple majority. Some by special majority in both the houses of parliament separately and later, these are ratified by at least half of the states also.
- (e) **Governors** have no role in the amendment of constitution of India except those articles only which are ratified by half of the states. Because, governor also signs on the bills passed by state legislature.
- (f) **Judiciary** involves to specify the basic structure or to take care that in any case constitution's basic structure should not be changed.

Q4. You have read in this chapter that the 42nd amendment was one of the most controversial amendments so far. Which of the following were the reasons for this controversy?

- a. It was made during national emergency, and the declaration of that emergency was itself controversial.
- b. It was made without the support of special majority.
- c. It was made without ratification by State legislatures.
- d. It contained provisions, which were controversial.

Answer:

- a) It overruled the decision of the Supreme Court given in the Kesavananda case.
- b) The duration of Lok Sabha was extended from five to six years.
- c) It imposed restrictions on the power of judicial review of court.
- d) It also made changes to the preamble, seventh schedule and 53 articles of constitution
- e) Various MPs from opposition were in Jail.

Q5. Which of the following is not a reasonable explanation of the conflict between the legislature and the judiciary over different amendments?

- a. Different interpretations of the Constitution are possible.
- b. In a democracy, debates and differences are natural.
- c. Constitution has given higher importance to certain rules and principles and also allowed for amendment by special majority.
- d. Legislature cannot be entrusted to protect the rights of the citizens.

e. Judiciary can only decide the constitutionality of a particular law; cannot resolve political debates about its need.

Answer (d), Legislature cannot be entrusted to protect the rights of the citizens because issues of rights are resolved by the constitution under the Right to constitutional remedies.

Q6. Identify the correct statements about the theory of basic structure. Correct the incorrect statements.

- a. Constitution specifies the basic tenets.**
- b. Legislature can amend all parts of the Constitution except the basic structure.**
- c. Judiciary has defined which aspects of the Constitution can be termed as the basic structure and which cannot.**
- d. This theory found its first expression in the Kesavananda Bharati case and has been discussed in subsequent judgments.**
- e. This theory has increased the powers of the judiciary and has come to be accepted by different political parties and the government.**

Answer:

- a. It is an incorrect statement because constitution does not specify basic tenets, the basic structure has been evolved by the Supreme Court.
- b. It is a correct statement
- c. It is correct because the basic theory is the invention of judiciary
- d. It is a correct statement.
- e. It is a correct statement.

Q7. From the information that many amendments were made during 2000-2003, which of the following conclusions would you draw?

- a. Judiciary did not interfere in the amendments made during this period.**
- b. One political party had a strong majority during this period.**
- c. There was strong pressure from the public in favour of certain amendments.**
- d. There were no real differences among the parties during this time.**
- e. The amendments were of a non-controversial nature and parties had an agreement on the subject of amendments.**

Answer:

(c), (d), and (e)

Q8. Explain the reason for requiring special majority for amending the Constitution.

Answer:

The reasons for requiring special majority for amending the constitution are as follows:

- Special majority is required to make a distinction between an ordinary law and constitutional law.
- Special majority is needed so that the constitution does not become plaything in the hands of political parties. No political party can get it easily changed. The majority party cannot use the constitution for furthering its own interests.
- A rigid constitution is needed for a federation. India has adopted a federal form of government. Hence special majority is required for amending the constitution.
- Rigid constitution is needed to prevent the absolutism of the government.

Q9. Many amendments to the Constitution of India have been made due to different interpretations upheld by the Judiciary and the Parliament. Explain with examples.

Answer:

- The first amendment act of 1951, made changes in the constitution due to some flaws in the working of constitution and those were to be remedied.
- Under Article 19, Right to Freedom of speech and expression was held by some courts to be very comprehensive, not to take any action against any individual.
- Many laws made on abolition of Zamindari system were declared Ultra Vires by courts, hence constitution was amended.
- In the case of Keshavananda Bharti, Parliament's power to amend the constitution was checked and limited by instructing not to violate the basic structure of constitution as well as parliament can amend if clashes arise between the judiciary and the government.
- In 1971, by 24 the amendment parliament got the power to amend the constitution including the fundamental rights.
- 42nd amendment (1976) was the most controversial as amendments were made in the background of internal emergency as well as imposed some restrictions on the power of judicial review of court.
- 44th amendments cancelled most of the changes which were affected by 38th, 39th, 42nd amendments, i.e. changes in preamble to the seventh schedule, other 53 Articles, etc.
- Sometimes, judicial interpretations also changed the understanding of constitution, i.e. the Supreme Court had held that reservation in Jobs and educational institutions must not exceed 50% of the total seats.

Q10. If amending power is with the elected representatives, judiciary should NOT have the power to decide the validity of amendments. Do you agree? Give your reasons in 100 words.

1. During the period of 1970-1980, whatever amendments were made, these created a legal and political controversy, only interference of judiciary tackled them.
2. During the period of 1971-1976, the ruling party attempted to subvert the constitution by 42nd Amendment Act, again judiciary intervened and protected the basic structure of

the constitution.

3. A constitutional legal issue raises the question on the supremacy of parliament but the constitution has given the powers to every organ of government, hence, judiciary enjoys the power to decide the validity of amendments.

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