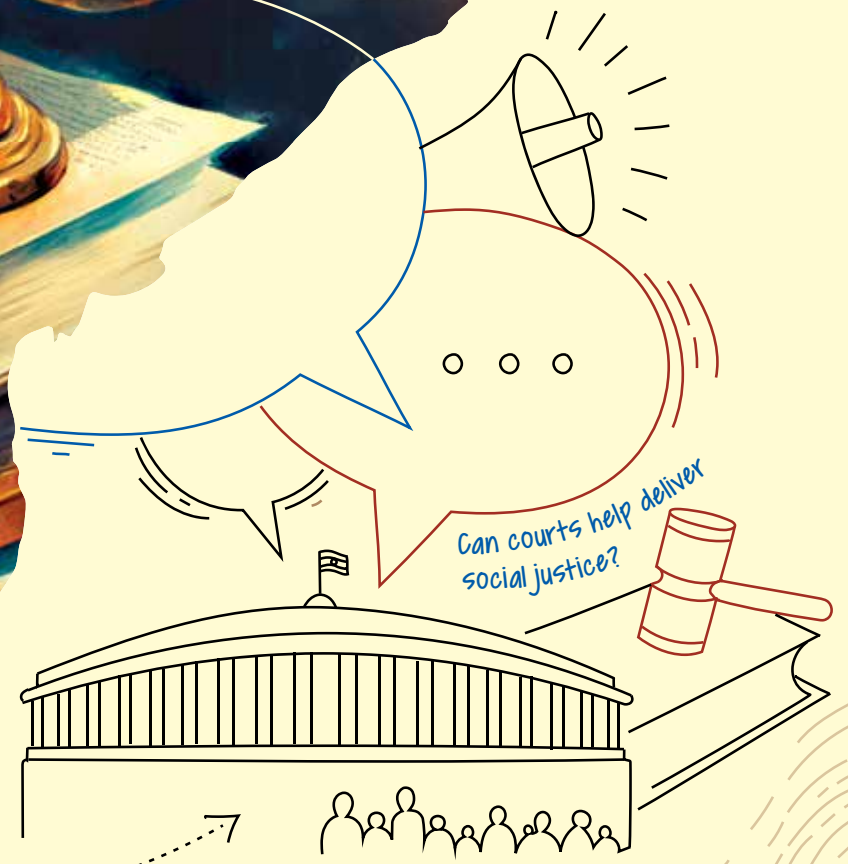


1950



Amendments to the Indian Constitution are governed by the basic structure doctrine



Can courts help deliver social justice?

## One doctrine to rule them all

A constitution is a set of fundamental principles and laws according to which a country is governed. The constitution defines the main institutions of the country and the relationship between those institutions. It also sets limits on the exercise of power by the branches of government while also setting out the rights and duties of citizens.

A constitutional amendment is the act of modifying sections of the constitution. While constitutions remain mostly inviolable, as nations progress and change, there is need for constitutions to reflect those changes. However, in most countries constitutional amendments require involved and stringent procedures.

The Constitution of India was adopted by the Constituent Assembly of India (which was assembled to frame the constitution) in 1949 and came into effect in 1950. In India, proposed constitutional amendments are governed by the 'basic structure doctrine', the idea that changes cannot violate its basic features.

Prof. Sudhir Krishnaswamy is a scholar of constitutional law. Prof. Krishnaswamy's scholarship examines the Indian Constitution in depth and analyzes how it influences governance and the democratic ideals of the Indian polity. Krishnaswamy has written extensively on the basic structure doctrine of the Indian Constitution and how the understanding of the basic structure of the constitution came about.

In 1972, the case of *Kesavananda Bharti vs Kerala* came before the Supreme Court of India. In the case, the head of a Hindu monastery in the southern Indian state of Kerala challenged the state government's attempts to restrict its ownership and management of land belonging to the monastery. The

government attempted to do this using its land reform acts. When the case eventually appeared before the Supreme Court, it decided that while the institutions of the government have wide powers and could restrict elements like property rights, they did not have the power to destroy the fundamental features or 'the basic structure' of the constitution.

The basic structural elements of the constitution that the Kesavananda judgment listed are supremacy of the constitution, democratic and republican form of government, federal character of the constitution, separation of power, individual freedom, among others. The basic structure doctrine is used by the Supreme Court of India to review any proposed amendments to the constitution to ensure that the parliament doesn't overstep when making those amendments.

Prof. Krishnaswamy analyzes the significance of the basic structure doctrine and how its theoretical basis lay in the debates of the constituent assembly that framed the document and in a careful examination of Indian legal history.

Besides his work on basic structure, Prof. Krishnaswamy has done extensive work in other areas of legal theory such as the functioning of the Supreme Court, what social justice means and whether the courts can deliver it, and recently also horizontal rights, that is the rights against individuals and not just public entities or the state.

Prof. Sudhir Krishnaswamy's scholarly work on legal theory and jurisprudence helps us better understand independent India's constitution and its judiciary, governance framework and legislative outcomes that have far-reaching consequences.