

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary
Peer Reviewed

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced, stored, transmitted, or distributed in any form or by any means, whether electronic, mechanical, photocopying, recording, or otherwise, without prior written permission of the Managing Editor of the *International Journal for Legal Research & Analysis (IJLRA)*.

The views, opinions, interpretations, and conclusions expressed in the articles published in this journal are solely those of the respective authors. They do not necessarily reflect the views of the Editorial Board, Editors, Reviewers, Advisors, or the Publisher of IJLRA.

Although every reasonable effort has been made to ensure the accuracy, authenticity, and proper citation of the content published in this journal, neither the Editorial Board nor IJLRA shall be held liable or responsible, in any manner whatsoever, for any loss, damage, or consequence arising from the use, reliance upon, or interpretation of the information contained in this publication.

The content published herein is intended solely for academic and informational purposes and shall not be construed as legal advice or professional opinion.

**Copyright © International Journal for Legal Research & Analysis.
All rights reserved.**

ABOUT US

The *International Journal for Legal Research & Analysis (IJLRA)* (ISSN: 2582-6433) is a peer-reviewed, academic, online journal published on a monthly basis. The journal aims to provide a comprehensive and interactive platform for the publication of original and high-quality legal research.

IJLRA publishes Short Articles, Long Articles, Research Papers, Case Comments, Book Reviews, Essays, and interdisciplinary studies in the field of law and allied disciplines. The journal seeks to promote critical analysis and informed discourse on contemporary legal, social, and policy issues.

The primary objective of IJLRA is to enhance academic engagement and scholarly dialogue among law students, researchers, academicians, legal professionals, and members of the Bar and Bench. The journal endeavours to establish itself as a credible and widely cited academic publication through the publication of original, well-researched, and analytically sound contributions.

IJLRA welcomes submissions from all branches of law, provided the work is original, unpublished, and submitted in accordance with the prescribed submission guidelines. All manuscripts are subject to a rigorous peer-review process to ensure academic quality, originality, and relevance.

Through its publications, the *International Journal for Legal Research & Analysis* aspires to contribute meaningfully to legal scholarship and the development of law as an instrument of justice and social progress.

PUBLICATION ETHICS, COPYRIGHT & AUTHOR RESPONSIBILITY STATEMENT

The *International Journal for Legal Research and Analysis (IJLRA)* is committed to upholding the highest standards of publication ethics and academic integrity. All manuscripts submitted to the journal must be original, unpublished, and free from plagiarism, data fabrication, falsification, or any form of unethical research or publication practice. Authors are solely responsible for the accuracy, originality, legality, and ethical compliance of their work and must ensure that all sources are properly cited and that necessary permissions for any third-party copyrighted material have been duly obtained prior to submission. Copyright in all published articles vests with IJLRA, unless otherwise expressly stated, and authors grant the journal the irrevocable right to publish, reproduce, distribute, and archive their work in print and electronic formats. The views and opinions expressed in the articles are those of the authors alone and do not reflect the views of the Editors, Editorial Board, Reviewers, or Publisher. IJLRA shall not be liable for any loss, damage, claim, or legal consequence arising from the use, reliance upon, or interpretation of the content published. By submitting a manuscript, the author(s) agree to fully indemnify and hold harmless the journal, its Editor-in-Chief, Editors, Editorial Board, Reviewers, Advisors, Publisher, and Management against any claims, liabilities, or legal proceedings arising out of plagiarism, copyright infringement, defamation, breach of confidentiality, or violation of third-party rights. The journal reserves the absolute right to reject, withdraw, retract, or remove any manuscript or published article in case of ethical or legal violations, without incurring any liability.

CONSTITUTIONAL AMENDMENTS AND JUDICIAL REVIEW IN INDIA: A CRITICAL ANALYSIS OF THE BASIC STRUCTURE DOCTRINE

AUTHORED BY - MONISA MANSOOR

Student: Christ University, Pune Lavasa

Declaration of Originality:

I hereby declare that the manuscript submitted for publication is my original work and has been written entirely by me. The content of this paper has not been previously published, in whole or in part, in any journal, book, or other publication, nor is it currently under consideration for publication elsewhere.

I further affirm that all sources of information used in this work have been duly acknowledged and cited in accordance with the required academic standards. This manuscript does not contain any form of plagiarism and complies with the ethical guidelines prescribed for scholarly publications.

I take full responsibility for the authenticity and accuracy of the content presented in this submission.

Monisa Mansoor

monisamansoor.19@gmail.com

Abstract

One of the most important and longstanding debates of Indian Constitutional Law is the connection between the constitutional amendments and judicial review. The given paper is the in depth analysis of the development, extent, and validity of judicial review over the constitutional amendments with the specific emphasis on the development and usage of the Basic Structure Doctrine. Although Article 368 of the Constitution of India grants the Parliament the authority to amend the Constitution, lack of a clear substantive restraint has traditionally created conflict between the sovereignty of the parliament and the supremacy of the Constitution. Over an extended period of historical judicial litigation, the Supreme Court of India has gradually been able to define the boundaries of this relationship, the result of which has been the development of the Basic Structure Doctrine in Kesavananda Bharati v. State of Kerala (1973).

This paper follows the chronological development of the amending power starting with the early judicial deference, the aggressive approach taken in Golaknath and the ultimate synthesis of doctrines as was reached in Kesavananda Bharati. It also examines the recent cases over the past four decades which have made the doctrine both limited and more rigid, as well as its functions in providing some insulation against constitutional diminution. The paper has critically analyzed the validity of the judicial review in this regard with issues of judicial overreach and accountability to the people taken into account. It postulates that even though it is indeterminate, the Basic Structure Doctrine is still an essential constitutional device which does not change the identity, continuity, and integrity of the Indian Constitution but permits a principled democratic development.

Keywords: *Constitutional Amendments, Judicial Review, Basic Structure Doctrine, Constitutional Supremacy, Parliamentary Sovereignty*

Introduction

The Constitution of India is a design of well considered stability and flexibility, that introduces an ideal mechanism which allows its own evolution¹. Such duality can be seen in the clauses of the constitutional amendments according to which Parliament has all options on possible alterations in the Constitution in line with the shifting social, political and economic

¹ M.P. JAIN, *INDIAN CONSTITUTIONAL LAW* 3–5 (8th ed. 2018).

circumstances². Simultaneously, there exist some principles that the Constitution rests on, which outline its identity and validity.

The cooperation between constitutional reforms and judicial review has dominated the paradigm of Indian constitutionalism³. The core issue of this debate lies in determining whether the power of Parliament to amend the Constitution can be limited by some inherent boundary. This question leads to some essential issues of the essence of constitutional supremacy, the boundaries of the power of democracies, and the place occupied by courts as the protectors of constitutional principles.

The development of a concept known as the Basic Structure Doctrine is a unique way that the court adopted these issues⁴. It is an effort towards balancing both the necessity to have some flexibility in the Constitution and the necessity to maintain the key characteristics of the Constitution. This paper is going to discuss the development of this doctrine, and the critical study of its implications on the constitutional government in India and the developments further.

Constitutional Framework of Amendment

Article 368 gives Parliament the power to make constitutional amendments, including the procedure and the power to make constitutional amendments⁵, which is in contrast to ordinary legislations since in some instances, the state legislatures are to ratify the reforms made. Such progressive amendment process shows that the framers believed that any change to the constitution has to be gradual and agreeable.

The framers of the Constitution were conscious that a compromise was required between inflexibility and flexibility⁶. They wanted to avoid the extreme inflexibility of the constitutions, like that belonging to the United States, but they also desired to prevent the extreme elasticity of the British system of parliamentary sovereignty. Article 368 was therefore a device that would enable the Constitution to change without jeopardizing its stability.

² INDIA CONST. art. 368.

³ V.N. SHUKLA, *CONSTITUTION OF INDIA* 1020 (13th ed. 2017).

⁴ Id. at 1025.

⁵ INDIA CONST. art. 368.

⁶ JAIN, *supra* note 1, at 1800–02.

The Constitution however does not specify the substantive boundaries of the amending power. This has been an interpretative issue of controversy, which has resulted in different judicial views on the scope of Parliamentary power.

Research Objective

To examine the validity of judicial review over constitutional amendments, the development of the basic structure doctrine and its current utility as a constitutional constraint on the amending power of the Parliament.

Research Question

Whether judicial review over constitutional amendments is constitutionally and democratically warranted in the Indian context and how this debate led to the evolution of Basic Structure Doctrine and to what degree does it today provide principled and workable restriction on the amending power of parliament?

Research Methodology

The research in this paper is based on a doctrinal and analytical method of legal study. It is mainly founded on the analysis of primary and secondary sources of law. The main sources will be the Constitution of India and landmark judgments of the Supreme Court which influenced the interpretation of Article 368 and the breadth of judicial review. This analysis mainly relies on key judicial decisions as they show how the constitutional doctrine has changed over time. These rulings are not just reviewed based on holdings but the justification and the philosophy. The research will also operate at a level of academic commentary and scholarly literature to offer a wider point of view of the issues at hand. The approach is qualitative, and it aims at interpreting information but not quantitative data. It is aimed at studying the conceptual grounds of the Basic Structure Doctrine and measuring the consequences of its doctrine to constitutional government. It is hoped through an analysis of opposing sides of the debate and theoretical constructs that the study can critically and impartially evaluate the matter.

Early Judicial Interpretation

During the early years of the adoption of the Constitution, the deferential attitude to the amending power of Parliament took place in the Supreme Court because of the wish to honor

the democratizing decision made by the legislative organ and to enable socio economic changes within a newly independent state⁷. The Supreme Court in the case of *Shankari Prasad v. Union of India (1951)* was able to impose the validity of the First Constitutional Amendment with the view that constitutional amendments were not classified as law in the meaning provided in Article 13 of the Constitution, so that they could not be opposed on the ground that they had violated Fundamental Rights⁸. With this adherence being repeated in the case of *Sajjan Singh v. State of Rajasthan (1965)* when the Court once again supported the power of Parliament to amend Fundamental Rights⁹, there were also spirally emerging conjectures who did not consider the wisdom of giving unrestricted amending authority. The genesis of judicial restraint under consideration therefore expressed a clash of interests between submission to parliamentary power and a new concern over constitutional identity.

Another important constitutional jurisprudence development was the ruling of the case of *I.C. Golaknath v. State of Punjab in 1967*¹⁰. The case was the first of its kind, in that the Supreme Court took a contrary stand to its previous ruling and ruled that Parliament lacked the authority to amend Fundamental Rights. The Court had the rationale that constitutional amendments were included in definition of law in Article 13, and thus could not abridge or deprive Fundamental Rights. The case of *Golaknath* was a triumphant statement of Judicial power and a stipulation of the sacredness of Fundamental Rights. Nonetheless, the ruling also brought forth substantial controversy, especially its effect on the legislation of Parliament to make changes in socio economic reforms. In reply, the Parliament passed the Twenty-F¹¹ourth Amendment which clearly stated that it had the authority to make amendments in any part of the Constitution that included Fundamental Rights. The disagreement between the courts and the legislature following the case of *Golaknath* predetermined the development of this dispute into a more significant one in the landmark case of *Kesavananda Bharati*.

Kesavananda Bharati v. The State of Kerala (1973) decision was a landmark in the Indian constitutional law¹² and the Supreme Court sought a compromise between parliament and the constitutional restriction, which would alter the constitutional landscape essentially. The Court in a narrowly divided decision stated that although the Parliament had enormous powers to

⁷ Id. at 1805.

⁸ *Shankari Prasad v. Union of India*, A.I.R. 1951 S.C. 458.

⁹ *Sajjan Singh v. State of Rajasthan*, A.I.R. 1965 S.C. 845.

¹⁰ *I.C. Golaknath v. State of Punjab*, A.I.R. 1967 S.C. 1643.

¹¹ SHUKLA, supra note 3, at 1026.

¹² *Kesavananda Bharati v. State of Kerala*, (1973) 4 S.C.C. 225 (India).

amend the Constitution, this was not infinite. It is not one of the powers to be practiced in a way that will destroy or change the fundamental framework of the Constitution¹³The so called Basic Structure Doctrine brought forward substantive concerns on the amending power. The doctrine denotes subtle interpretation of constitutional governance. It recognises the necessity of changing the Constitution but making sure that change is not made at the expense of the fundamental identity of the Constitution. The Court noted the existence of several features that constituted the basic structure which included Supremacy of the Constitution, rule of law, separation of powers and principle of judicial review. Notably, the Court did not give a comprehensive definition of the basic structure that will remain fixed in time and thus left the doctrine to evolve over time¹⁴. Kesavananda Bharati has its importance in its innovative version of doctrines as well as in its validation of the supremacy of the constitution. It provided that the Constitution cannot be considered as a purely political document but it is more a legal document that sets boundaries on each of the branches of government.

Post-Kesavananda Developments

The judgment in *Kesavananda Bharati v. State of Kerala (1973)* represented a critical stage in the development of the Indian constitutional jurisprudence, because it gave the Parliament the mandate to enhance amending power under Article 368, whilst not explaining what exactly the Basic Structure Doctrine entailed, what were its limitations, and how to be applied in practice¹⁵. The following court rulings were important in making such aspects clear, hence making the doctrine an important foundation of Indian constitutional law. The initial application of the Basic Structure Doctrine came with the case of *Indira Nehru Gandhi v. Raj Narain (1975)* and this case came up in the light of the high political and constitutional upheaval¹⁶. This amendment actually tried to inoculate the electoral controversy of the top executive office in the jurisdiction of the courts effectively deteriorating the principle of accountability.

The Supreme court used the Basic Structure Doctrine to invalidate the amendment in deciding on this case. The Court believed that democracy under the Indian Constitution does not just warrant merely a holding of elections, but rather the wider principle of free and fair elections which is conducted under a condition of equality as well as under the supervision of the

¹³ Id

¹⁴ JAIN, supra note 1, at 1825.

¹⁵ JAIN, supra note 1, at 1820–25.

¹⁶ *Indira Nehru Gandhi v. Raj Narain*, 1975 Supp. S.C.C. 1 (India).

judiciary. It also underlined the fact that judicial review and rule of law is also part of ensuring integrity of democratic processes¹⁷. The amendment breached these fundamental principles, and the decision, as it was, was noteworthy both in guaranteeing that an amendment was invalidated to the constitution, but also in proving that the Basic Structure Doctrine was a substantive and enforced restriction of the amendment power of Parliament.

This doctrine was again strengthened and developed in the case of *Minerva Mills v. Union of India (1980)* which contemplated a challenge to provisions of the forty second amendment to the constitution¹⁸, which was restrained in the state of emergency and was aimed to enhance the amending authority and curb the judicial review of the constitution. Particularly, Article 368, clauses (4) and (5) were added to proclaim that no matter of questioning the constitutional amendments would be called in any court and that no restraint of the powers of Parliament amending the Constitution would be provided. These provisions were declared unconstitutional by the Supreme Court which said that they contravened the fundamental framework of the Constitution. The Court noted that the Constitution is in the premise of limited government, and that the power of amendment is in itself limited. It believed that a narrowness of the amending power was a fundamental characteristic of the Constitution, and Parliament could not cause it to be turned into an open one. Together with this the decision of the *Minerva Mills* also highlighted the necessity to balance between the Fundamental Rights and Directive Principles of State Policy, and the court characterized that this harmony is a crucial element of the constitutional structure¹⁹.

The other development was in *Waman Rao v. Union of India (1981)*, in which the Supreme Court took issues on legislation that was put in the Ninth Schedule of the Constitution. Parliament had been using the Ninth Schedule to shield against judicial review certain laws including land reform laws²⁰. The Court permitted adjustments to the Constitution following the day of the *Kesavananda Bharati* ruling which refers to 24 April 1973 to be reviewed in view of the Basic Structure Doctrine. This ruling added a time constraint where the laws added in the Ninth Schedule could be overturned in the event that they had breached the fundamental construction. Meanwhile the Court further affirmed previous amendments and saved constitutional continuity and stability.

¹⁷ Id.

¹⁸ *Minerva Mills v. Union of India*, (1980) 3 S.C.C. 625 (India).

¹⁹ Id.

²⁰ *Waman Rao v. Union of India*, (1981) 2 S.C.C. 362 (India).

The doctrine was further broadened in the case of the *I.R. Coelho v. State of Tamil Nadu (2007)* in which a nine judge bench of the Supreme Court revived the issue of the Ninth Schedule²¹. The question was whether laws contained in the Ninth Schedule could not be subjected to judicial scrutiny in so far as they infringed on fundamental rights that comprised the basic structure. This ruling contributed greatly to enhancing the doctrine as it made it clear that the Parliament cannot resort to constitutional tools to prevent judicial review of laws that violate fundamental constitutional values. The ruling affirmed the sovereignty of the Constitution and highlighted the judiciary to safeguard its essential values.

The latter case, which is relatively new and has made one of the most substantial usages of the Basic Structure Doctrine, is *Supreme Court Advocates-on-Record Association v. Union of India (2015)*, often known as the NJAC case²². In the case, the Supreme Court had ruled on the validity of the Ninety Ninth Constitutional Amendment, which would substitute the system of collegium judicial appointment. The amendment was meant to bring more executive interference in the way judges were appointed which had in its issue more doubts on judicial independence.

The Court dismissed the amendment as it lacked judicial independence which is one of the basic pieces of the basic structure of the Constitution. It had rationalized that any system that destroys the principle of separation so far as the judiciary is concerned will be a blow on the rule of the law and the checks and balances system. That judgment reinstated that the Basic Structure Doctrine remains active as a crucial guard against constitutional amendments that jeopardize the wholeness of democratic institutions²³.

All these decisions represent the dynamic character and development of the Basic Structure Doctrine. The doctrine has evolved over time by judicial interpretation in reaction to new constitutional issues as they arose rather than being perceived to have a certain fixed set of principles²⁴. This flexibility has helped the doctrine to be up to date in a shifting constitutional environment. Simultaneously, propagation of the doctrine has formulated significant concerns as far as limits of judicial authority are concerned. Opponents claim that it is because the doctrine is more open ended giving too much discretion in the hands of the judiciary thus most

²¹ *I.R. Coelho v. State of Tamil Nadu*, (2007) 2 S.C.C. 1 (India).

²² *Supreme Court Advocates-on-Record Ass'n v. Union of India*, (2016) 5 S.C.C. 1 (India).

²³ *Id.*

²⁴ SHUKLA, *supra* note 3, at 1030–32.

likely creating confusion and inconsistency in municipal interpretation. The advocates, however, argue that this is needed to keep the main values of the Constitution alive when faced with the changing political and social situations.

To sum up, the post Kesavananda events have been critical in the process of re constitutionalizing the Basic Structure Doctrine so as to make it an effective constitutional protection. With a number of landmark rulings, the Supreme Court has outlined its comprehension, strengthened its power and broadened its practice. It has become part and parcel of the Indian constitutional government ensuring that the constitutional power to amend the Constitution lies within the margins of constitutional supremacy and rule of law.

Analysis

The judicial review is a constituent element of the constitutional governance in India²⁵. It provides that all the activities of the state including the amendments made to the Constitution are in line with the Constitution. Here, judicial review can be used as a measure to prevent the misuse of the power of the constituent.

The validity of judicial review has been subject to debate though. Its advocates claim that there is a need to safeguard the constitutional values and avert the excess of the majority. The opponents, however, argue that it compromises the ideals of democracy since unelected judges are appointed to interfere with the will of legislators. Such tension portrays a greater dispute between constitutional dominance and mass rule. It is difficult to establish a balance, which would not violate democratic decision making and at the same time uphold the Constitution's integrity.

The Basic Structure Doctrine has been important in maintaining the identity of the Constitution and a continuation of democratic rule²⁶. It has helped to avert misuse of the amending power and protect basic concepts like the rule of law and judicial independence. Meanwhile, some crucial issues concerning the doctrine, such as its open ended character and judicial precedence, ought to be of concern. Lack of clarity with respect to the basic structure gives place to flexibility but it also leaves one uncertain in its application. Nonetheless, the doctrine is a

²⁵ L. CHANDRA KUMAR v. UNION OF INDIA, (1997) 3 S.C.C. 261 (India).

²⁶ JAIN, supra note 1, at 1830.

feasible approach to address the problem of constitutionally based governance. It offers a system that is tolerant to stability, as well as change so that the Constitution is still a living document without being lost in its essence.

Conclusion

The development of the amendment of the Indian constitution and judicial review convey the aim of striking a balance between the competing values in the constitution. The Basic Structure Doctrine is a singular and original response to this difficulty and offers a process of maintaining the identity of the Constitution and permits its development²⁷. Despite the limitations, which the doctrine has, the doctrine is a vital element of Indian constitutionalism. It helps to have a constitutional change informed by core values and makes the use of power limited by constitutional imperatives. In any dynamic and nonhomogenous democracy such as in India, the Basic Structure Doctrine is an important mechanism that prevents the decline of the constitutional principles. It has become a monument to the eternal power and flexibility of the Indian Constitution so that it now remains a source of democratic administration and the rule of law.

References

Cases:

- *Indira Nehru Gandhi v. Raj Narain*, 1975 Supp. S.C.C. 1 (India).
- *I.R. Coelho v. State of Tamil Nadu*, (2007) 2 S.C.C. 1 (India).
- *Kesavananda Bharati v. State of Kerala*, (1973) 4 S.C.C. 225 (India).
- *L. Chandra Kumar v. Union of India*, (1997) 3 S.C.C. 261 (India).
- *Minerva Mills v. Union of India*, (1980) 3 S.C.C. 625 (India).
- *Sajjan Singh v. State of Rajasthan*, A.I.R. 1965 S.C. 845.
- *Shankari Prasad v. Union of India*, A.I.R. 1951 S.C. 458.
- *Supreme Court Advocates-on-Record Ass'n v. Union of India*, (2016) 5 S.C.C. 1 (India).
- *Waman Rao v. Union of India*, (1981) 2 S.C.C. 362 (India).

Constitution & Statutes:

- *INDIA CONSTITUTION*
- *The Constitution (Twenty-Fourth Amendment) Act, 1971.*

²⁷ SHUKLA, supra note 3, at 1035.

Books:

- *M.P. JAIN, *INDIAN CONSTITUTIONAL LAW* (8th ed. 2018).*
- *V.N. SHUKLA, *CONSTITUTION OF INDIA* (13th ed. 2017).*

