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# **JUDICIAL REVIEW OF CONSTITUTIONAL AMENDMENTS IN INDIA: FROM PARLIAMENTARY SUPREMACY TO THE BASIC STRUCTURE DOCTRINE**

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## **Abstract**

The power of constitutional amendment under Article 368 of the Constitution of India has been one of the most contested domains of Indian constitutional jurisprudence. While the framers envisaged flexibility to ensure constitutional adaptability, early judicial interpretation oscillated between parliamentary supremacy and constitutional supremacy. The Supreme Court's evolving stance from *Shankari Prasad* through *Golak Nath* to the landmark decision in *Kesavananda Bharati* fundamentally reshaped the balance of power between Parliament and the judiciary.

The emergence of the Basic Structure Doctrine marked a decisive constitutional moment, placing substantive limits upon Parliament's amending authority. This doctrine, though not textually expressed, has since become the cornerstone of Indian constitutional identity. Subsequent decisions such as *Indira Nehru Gandhi v. Raj Narain*, *Minerva Mills*, and later cases have expanded, clarified, and defended the doctrine against political challenge.

This paper critically examines the trajectory of judicial review over constitutional amendments in India, analysing whether the shift from parliamentary sovereignty to constitutional supremacy represents judicial innovation, necessity, or constitutional overreach. It further evaluates the theoretical legitimacy, democratic implications, and comparative relevance of the Basic Structure Doctrine. By tracing doctrinal evolution and contemporary application, the

study argues that judicial review of constitutional amendments has become an essential safeguard for preserving constitutional morality and democratic governance.

### Keywords

Judicial Review; Constitutional Amendments; Article 368; Parliamentary Supremacy; Basic Structure Doctrine; Constitutional Supremacy; Separation of Powers; Fundamental Rights; Kesavananda Bharati; Indian Constitutional Law.

## Introduction

The Constitution of India, adopted in 1950, was conceived as a transformative charter intended to guide a newly independent nation toward democratic governance, social justice, and constitutional morality. Unlike rigid constitutions that resist alteration, the framers of the Indian Constitution incorporated a structured amendment mechanism under Article 368 to ensure adaptability to changing political, economic, and social realities.<sup>1</sup> The question that has persistently animated Indian constitutional discourse, however, is whether Parliament's amending power is unlimited or whether it is subject to substantive judicial control.

In the early years of the Republic, the Supreme Court of India adopted a deferential stance toward Parliament's authority to amend the Constitution.<sup>2</sup> This approach appeared to endorse a model closer to parliamentary supremacy, permitting amendments even if they affected Fundamental Rights. However, tensions emerged as Parliament sought to curtail property rights and insulate land reform laws from judicial scrutiny through constitutional amendments.<sup>3</sup> The conflict between legislative ambition and judicial guardianship gradually intensified, culminating in one of the most significant constitutional confrontations in comparative constitutional law.

The turning point arrived with the landmark judgment in *Kesavananda Bharati v. State of Kerala* (1973), wherein a thirteen judge Bench articulated the Basic Structure Doctrine.<sup>4</sup> While affirming Parliament's wide amending authority, the Court held that this power is not absolute and cannot be exercised in a manner that destroys or abrogates the "basic structure" of the

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<sup>1</sup> Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford University Press 1966).

<sup>2</sup> *Shankari Prasad Singh Deo v. Union of India* AIR 1951 SC 458.

<sup>3</sup> *Sajjan Singh v. State of Rajasthan* AIR 1965 SC 845.

<sup>4</sup> *Kesavananda Bharati v. State of Kerala* (1973) 4 SCC 225.

Constitution. Although the doctrine lacks explicit textual grounding, it has since become an enduring principle governing constitutional amendments in India.

Subsequent decisions have reaffirmed and expanded this doctrine. In *Indira Nehru Gandhi v. Raj Narain*,<sup>5</sup> the Court invalidated a constitutional amendment that sought to immunise the election of the Prime Minister from judicial review. Later, in *Minerva Mills Ltd. v. Union of India*,<sup>6</sup> the Supreme Court further clarified that limited amending power itself constitutes part of the Constitution's basic structure. Through these decisions, the judiciary positioned itself as the ultimate guardian of constitutional identity.

This judicial evolution has generated sustained scholarly debate. Critics argue that the Basic Structure Doctrine represents judicial overreach, enabling unelected judges to impose unwritten limitations on a democratically elected Parliament.<sup>7</sup> Proponents contend that it safeguards constitutionalism by preventing authoritarian capture and ensuring continuity of foundational values.<sup>8</sup> The debate implicates deeper questions about separation of powers, democratic legitimacy, and the nature of constituent power.

The present research traces the doctrinal journey from parliamentary supremacy to constitutional supremacy as articulated by the Supreme Court of India. It seeks to analyse whether the development of judicial review over constitutional amendments represents a necessary evolution to preserve democracy or an assertion of judicial supremacy. In doing so, the study situates Indian jurisprudence within broader comparative constitutional theory while remaining attentive to its unique historical and political context.

### Statement of Problem

The constitutional scheme of India establishes a carefully structured balance between flexibility and rigidity. Article 368 empowers Parliament to amend the Constitution, reflecting the framers' intention that the document should evolve with the nation. Yet the Constitution also proclaims itself supreme, embodying fundamental principles such as democracy, rule of law, separation of powers, and protection of Fundamental Rights. The tension between amendability

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<sup>5</sup> *Indira Nehru Gandhi v. Raj Narain* 1975 Supp SCC 1.

<sup>6</sup> *Minerva Mills Ltd. v. Union of India* (1980) 3 SCC 625.

<sup>7</sup> H.M. Seervai, *Constitutional Law of India* (4th edn, Universal Law Publishing 1996).

<sup>8</sup> Upendra Baxi, 'The Indian Supreme Court and Politics' (1980) 1 *Eastern Book Company Journal* 35.

and constitutional supremacy lies at the heart of Indian constitutional jurisprudence.

The principal problem arises from the ambiguity surrounding the scope of Parliament's amending power. If Article 368 confers unlimited authority, Parliament could theoretically alter or even abolish core constitutional features, including judicial review, federalism, or democratic governance. Such an interpretation risks transforming a constitutional democracy into a system of legislative absolutism. Conversely, if the judiciary imposes substantive limitations not expressly contained in the constitutional text, questions arise regarding democratic legitimacy and separation of powers.

The Supreme Court's development of the Basic Structure Doctrine attempted to resolve this tension by articulating implied limits on the amending power. However, the doctrine itself is not codified in the Constitution and lacks an exhaustive definition. Its contours have evolved through judicial interpretation, leading to uncertainty about which features constitute the "basic structure" and how such determinations should be made. This indeterminacy invites criticism that the doctrine may enable subjective judicial policymaking.

Another dimension of the problem concerns constitutional theory. The amending power is often conceptualised as an exercise of constituent power delegated to Parliament. Whether such delegated constituent power can be judicially reviewed is a contested issue. Some scholars argue that once acting under Article 368, Parliament functions as a sovereign constituent body immune from ordinary judicial scrutiny. Others maintain that since Parliament derives authority from the Constitution, it cannot exercise a power destructive of the Constitution's identity.

The issue gained renewed relevance in light of the 103rd Constitutional Amendment, which introduced reservations for economically weaker sections. The subsequent judicial review of this amendment reopened debates regarding equality, substantive justice, and the limits of Parliament's authority. It demonstrates that the conflict between constitutional flexibility and structural preservation remains alive and evolving.

Thus, the core problem addressed in this research is whether judicial review of constitutional amendments represents a constitutionally legitimate safeguard against majoritarian excess or an expansion of judicial supremacy beyond textual mandate. Resolving this dilemma requires

historical analysis, doctrinal examination, and theoretical evaluation of the relationship between Parliament and the judiciary in India's constitutional order.

### Objectives of the Study

The present research seeks to undertake a comprehensive doctrinal and theoretical examination of judicial review of constitutional amendments in India. The study is guided by the following objectives:

- 1. To trace the historical evolution** of judicial interpretation of Parliament's amending power under Article 368, from the early decisions of *Shankari Prasad* and *Sajjan Singh* to the transformative ruling in *Kesavananda Bharati*.
- 2. To critically analyse the emergence and development of the Basic Structure Doctrine**, including its conceptual foundations, judicial articulation, and subsequent expansion in cases such as *Indira Nehru Gandhi*, *Minerva Mills*, and later constitutional challenges.
- 3. To examine the theoretical legitimacy of judicial review of constitutional amendments**, particularly in relation to doctrines of parliamentary sovereignty, constitutional supremacy, and separation of powers.
- 4. To evaluate contemporary applications** of the Basic Structure Doctrine, including its role in reviewing recent constitutional amendments such as the 103rd Constitutional Amendment.
- 5. To assess the democratic implications** of the judiciary's power to invalidate constitutional amendments and determine whether such review strengthens or undermines constitutional governance.
- 6. To propose a principled framework** for balancing constitutional adaptability with preservation of foundational values in the Indian constitutional scheme.

Through these objectives, the study aims to contribute meaningfully to ongoing academic and judicial discourse on the nature and limits of constituent power in India.

### Research Questions

1. What was the original judicial understanding of Parliament's amending power under Article 368 of the Constitution of India?
2. How and why did the Supreme Court evolve from endorsing parliamentary supremacy to formulating the Basic Structure Doctrine?

3. What are the constitutional and theoretical foundations of the Basic Structure Doctrine?
4. Does judicial review of constitutional amendments enhance constitutional supremacy, or does it amount to judicial overreach?
5. How has the Supreme Court applied the Basic Structure Doctrine in contemporary constitutional amendment cases?

### **Hypothesis**

This research proceeds on the hypothesis that judicial review of constitutional amendments in India, culminating in the Basic Structure Doctrine, represents a constitutionally legitimate and necessary evolution to preserve constitutional supremacy and democratic governance, rather than an instance of judicial overreach.

It is further hypothesised that although Article 368 grants Parliament wide amending authority, such power is inherently limited by the structural principles and foundational values embedded within the Constitution. The Supreme Court's articulation of implied limitations through the Basic Structure Doctrine reflects an effort to maintain the integrity of constitutional identity while allowing reasonable flexibility.

However, the hypothesis also recognises that the doctrine's indeterminate scope may generate concerns of subjectivity. Therefore, its continued legitimacy depends upon principled judicial reasoning, restraint, and consistency in application.

### **Research Methodology**

The present study adopts a doctrinal and analytical research methodology, primarily focusing on the interpretation of constitutional provisions, judicial decisions, and scholarly writings relating to the amending power under Article 368 of the Constitution of India.

### **Doctrinal Analysis**

The core of this research is based on an in depth examination of landmark judgments of the Supreme Court of India, including *Shankari Prasad v. Union of India*,<sup>9</sup> *Sajjan Singh v. State of*

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<sup>9</sup> *Shankari Prasad Singh Deo v. Union of India* AIR 1951 SC 458.

*Rajasthan*,<sup>10</sup> *I.C. Golak Nath v. State of Punjab*,<sup>11</sup> *Kesavananda Bharati v. State of Kerala*,<sup>12</sup> *Indira Nehru Gandhi v. Raj Narain*,<sup>13</sup> and *Minerva Mills Ltd. v. Union of India*.<sup>14</sup> These decisions are analysed to trace the judicial transformation from parliamentary supremacy to the doctrine of constitutional supremacy embodied in the Basic Structure Doctrine.

The study also evaluates subsequent constitutional amendment cases, including the judicial scrutiny of the 103rd Constitutional Amendment in *Janhit Abhiyan v. Union of India*,<sup>15</sup> to assess contemporary application of the doctrine.

### Analytical and Theoretical Approach

The research engages with constitutional theory, particularly the concepts of:

- Constituent power vs. constituted power
- Parliamentary sovereignty vs. constitutional supremacy
- Separation of powers
- Democratic legitimacy and judicial review

Theoretical perspectives from leading constitutional scholars are incorporated to assess the normative foundations of judicial review over constitutional amendments.

### Comparative Perspective

Where relevant, the study briefly refers to comparative constitutional experiences, particularly the absence of an explicit basic structure limitation in jurisdictions such as the United Kingdom and the United States, in order to contextualise the uniqueness of the Indian approach.

### Sources of Data

The research relies upon:

- Primary sources: Constitutional provisions, Supreme Court judgments, constitutional amendment texts.
- Secondary sources: Scholarly books, peer reviewed journal articles, law commission reports, and constitutional commentaries.

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<sup>10</sup> *Sajjan Singh v. State of Rajasthan* AIR 1965 SC 845.

<sup>11</sup> *I.C. Golak Nath v. State of Punjab* (1967) 2 SCR 762.

<sup>12</sup> *Kesavananda Bharati v. State of Kerala* (1973) 4 SCC 225.

<sup>13</sup> *Indira Nehru Gandhi v. Raj Narain* 1975 Supp SCC 1.

<sup>14</sup> *Minerva Mills Ltd. v. Union of India* (1980) 3 SCC 625.

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This methodology enables a structured and critical examination of both doctrinal evolution and theoretical implications of judicial review in India.

## Literature Review

### Early Constitutional Debates and Parliamentary Supremacy

The question of whether Parliament possesses unlimited authority to amend the Constitution has attracted sustained academic engagement since the early years of the Republic. Initial scholarship reflected a constitutional optimism that Parliament, as the representative body of the people, could be trusted with broad amending powers. Granville Austin observed that the framers deliberately crafted a Constitution that was neither rigid nor flexible but adaptable to India's socio economic transformation.<sup>16</sup> This adaptability, he argued, was essential to fulfil the transformative aspirations embedded in the Directive Principles of State Policy.

Early judicial interpretation in *Shankari Prasad v. Union of India*<sup>17</sup> and *Sajjan Singh v. State of Rajasthan*<sup>18</sup> upheld Parliament's power to amend Fundamental Rights, effectively endorsing a model approaching parliamentary supremacy. Commentators such as H.M. Seervai defended this position, asserting that the amending power under Article 368 was plenary and that amendments, once validly enacted, formed part of the Constitution itself and were beyond ordinary judicial scrutiny.<sup>19</sup> According to this view, to restrict the amending power would contradict the democratic will expressed through Parliament.

However, dissenting voices emerged. Justice Hidayatullah's observations in *Sajjan Singh* hinted at concern regarding the vulnerability of Fundamental Rights if left entirely at the mercy of parliamentary majorities.<sup>20</sup> Academic criticism soon followed, suggesting that unlimited amendability risked eroding the supremacy of the Constitution itself. Upendra Baxi argued that the Indian Constitution was conceived as a charter of limited government, and any interpretation granting Parliament absolute power would undermine this foundational premise.<sup>21</sup>

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<sup>16</sup> Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford University Press 1966).

<sup>17</sup> *Shankari Prasad Singh Deo v. Union of India* AIR 1951 SC 458.

<sup>18</sup> *Sajjan Singh v. State of Rajasthan* AIR 1965 SC 845.

<sup>19</sup> H.M. Seervai, *Constitutional Law of India* (4th edn, Universal Law Publishing 1996).

<sup>20</sup> *Sajjan Singh v. State of Rajasthan* AIR 1965 SC 845 (Hidayatullah J, concurring).

<sup>21</sup> Upendra Baxi, 'The Indian Supreme Court and Politics' (1980) 1 *Eastern Book Company Journal* 35.

The turning point in scholarly discourse came with *I.C. Golak Nath v. State of Punjab*,<sup>22</sup> where the Supreme Court held that Parliament could not amend Fundamental Rights. While the decision was later partially overruled, it catalysed theoretical debate regarding the nature of constituent power. Scholars began distinguishing between the original constituent power of the people and the derivative amending power of Parliament.<sup>23</sup> This distinction laid the groundwork for later justification of implied limitations.

Thus, early literature reveals an intellectual trajectory from faith in parliamentary supremacy toward concern for constitutional supremacy. The debate was not merely technical but normative, engaging questions of democracy, constitutional identity, and the protection of individual liberties.

### **The Basic Structure Doctrine: Judicial Innovation or Constitutional Necessity?**

The watershed moment in Indian constitutional jurisprudence arrived with the Supreme Court's decision in *Kesavananda Bharati v. State of Kerala*,<sup>24</sup> wherein a thirteen judge Bench reconsidered the scope of Parliament's amending power under Article 368. The judgment produced eleven separate opinions, reflecting deep judicial division, yet a narrow majority converged on a transformative proposition: while Parliament possesses wide authority to amend the Constitution, it cannot alter its "basic structure." The doctrine thus introduced implied substantive limitations upon the amending power.

Scholarly reaction to the decision was immediate and polarised. Supporters characterised the doctrine as a necessary safeguard against authoritarian constitutional alteration.<sup>25</sup> Upendra Baxi described the ruling as a "judicial triumph for constitutionalism," arguing that it preserved the supremacy of the Constitution over transient political majorities.<sup>26</sup> Similarly, S.P. Sathe contended that the doctrine represented a creative yet legitimate interpretation grounded in the structure and spirit of the Constitution.<sup>27</sup> These scholars emphasised that Article 368 confers a derivative constituent power, which cannot logically extend to self destruction of the

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<sup>22</sup> *I.C. Golak Nath v. State of Punjab* (1967) 2 SCR 762.

<sup>23</sup> V.N. Shukla, *Constitution of India* (Eastern Book Company, various editions).

<sup>24</sup> *Kesavananda Bharati v. State of Kerala* (1973) 4 SCC 225.

<sup>25</sup> S.P. Sathe, *Judicial Activism in India* (Oxford University Press 2002).

<sup>26</sup> Upendra Baxi, 'The Supreme Court under Trial' (Eastern Book Company 1980).  
S.P. Sathe (n 2).

<sup>27</sup> S.P. Sathe (n 2).

constitutional order.

Critics, however, questioned the textual legitimacy of the doctrine. H.M. Seervai argued that the Constitution does not expressly limit the amending power and that the Court's invention of the basic structure amounted to judicial legislation.<sup>28</sup> From this perspective, the decision risked upsetting the democratic balance by granting unelected judges final authority over constitutional evolution. Some scholars further suggested that the lack of a definitive list of basic features introduced doctrinal uncertainty.<sup>29</sup>

Comparative constitutional theorists have also engaged with the Indian experience. Yaniv Roznai situates the Basic Structure Doctrine within a broader theory of unconstitutional constitutional amendments, arguing that even formally valid amendments may be substantively invalid if they destroy constitutional identity.<sup>30</sup> Indian jurisprudence thus contributed significantly to global constitutional thought by articulating the concept of implied substantive limits on amendment powers.

Subsequent judicial elaboration reinforced the doctrine's normative foundation. In *Indira Nehru Gandhi v. Raj Narain*,<sup>31</sup> the Court invoked basic structure principles to invalidate an amendment shielding the Prime Minister's election from judicial review. In *Minerva Mills Ltd. v. Union of India*,<sup>32</sup> the Court further clarified that limited amending power itself forms part of the basic structure. Academic commentary widely interpreted these decisions as consolidating constitutional supremacy over parliamentary supremacy.<sup>33</sup>

Despite sustained criticism, the doctrine has endured for five decades. Its resilience suggests that it has moved from controversial innovation to entrenched constitutional principle. Yet scholarly debate persists regarding its scope, methodological clarity, and democratic implications. The literature therefore reflects an ongoing tension between fidelity to textual amendment procedures and the preservation of constitutional identity.

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<sup>28</sup> H.M. Seervai, *Constitutional Law of India* (4th edn, Universal Law Publishing 1996).

<sup>29</sup> M.P. Jain, *Indian Constitutional Law* (LexisNexis, latest edn).

<sup>30</sup> Yaniv Roznai, *Unconstitutional Constitutional Amendments: The Limits of Amendment Powers* (Oxford University Press 2017).

<sup>31</sup> *Indira Nehru Gandhi v. Raj Narain* 1975 Supp SCC 1.

<sup>32</sup> *Minerva Mills Ltd. v. Union of India* (1980) 3 SCC 625.

<sup>33</sup> V.N. Shukla, *Constitution of India* (Eastern Book Company, various editions).

## Contemporary Debates and the Future of the Basic Structure Doctrine

In the decades following *Kesavananda Bharati*, the Basic Structure Doctrine transitioned from contested innovation to constitutional orthodoxy. However, contemporary scholarship continues to interrogate both its doctrinal coherence and its democratic implications. The literature now focuses less on whether the doctrine exists and more on how it should be applied, defined, and constrained.

One major line of debate concerns indeterminacy. Critics argue that the absence of a definitive list of basic features grants the judiciary expansive discretion.<sup>34</sup> While the Court has identified elements such as judicial review, rule of law, federalism, secularism, and separation of powers as components of the basic structure, it has refrained from articulating an exhaustive catalogue.<sup>35</sup> Scholars such as Sudhir Krishnaswamy contend that although flexibility allows adaptation to evolving constitutional values, it may also introduce unpredictability.<sup>36</sup> This indeterminacy, according to some critics, risks transforming the doctrine into a vehicle for judicial policy preferences.

Another strand of literature explores the relationship between democratic theory and judicial supremacy. Critics grounded in majoritarian theory argue that constitutional amendments enacted through rigorous parliamentary procedures reflect the sovereign will of the people.<sup>37</sup> From this standpoint, judicial invalidation of amendments may appear counter majoritarian. However, defenders respond that constitutional democracy is not synonymous with simple majority rule; it entails structural constraints designed to protect minority rights and prevent authoritarian drift.<sup>38</sup> The Basic Structure Doctrine is thus framed as a guardian of constitutional identity rather than a usurpation of democratic authority.

Recent judicial engagement with the 103rd Constitutional Amendment has revived academic interest in the doctrine's scope. In *Janhit Abhiyan v. Union of India*,<sup>39</sup> the Supreme Court upheld the amendment introducing reservations for economically weaker sections, while reaffirming the continuing vitality of the Basic Structure Doctrine. Scholarly commentary on

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<sup>34</sup> Aharon Barak, *The Judge in a Democracy* (Princeton University Press 2006).

<sup>35</sup> *Minerva Mills Ltd. v. Union of India* (1980) 3 SCC 625.

<sup>36</sup> Sudhir Krishnaswamy, *Democracy and Constitutionalism in India* (Oxford University Press 2009).

<sup>37</sup> Jeremy Waldron, 'The Core of the Case Against Judicial Review' (2006) 115 *Yale Law Journal* 1346.

<sup>38</sup> Ronald Dworkin, *Freedom's Law: The Moral Reading of the American Constitution* (Harvard University Press 1996).

<sup>39</sup> *Janhit Abhiyan v. Union of India* (2022) 10 SCC 1.

this decision reflects divergent interpretations some view it as a reaffirmation of judicial restraint, while others question whether equality jurisprudence has been subtly recalibrated.<sup>40</sup> The case demonstrates that the doctrine remains central to contemporary constitutional politics. Comparative constitutional scholarship further situates India within a global trend recognising implicit limits on amendment powers. Jurisdictions such as Germany incorporate explicit “eternity clauses,” while others rely on judicially developed principles.<sup>41</sup> Indian jurisprudence, lacking textual eternity provisions, has relied upon interpretive reasoning to achieve similar protective outcomes. This comparative lens has enhanced the intellectual legitimacy of the Basic Structure Doctrine in global constitutional discourse.

Ultimately, modern literature suggests that the doctrine’s future depends upon principled application and judicial self restraint. If invoked sparingly and justified through rigorous reasoning, it strengthens constitutionalism. If applied expansively without clear standards, it may provoke institutional tension. The continuing scholarly engagement underscores that judicial review of constitutional amendments remains one of the most dynamic and theoretically rich areas of Indian constitutional law.

### **Evolution of Judicial Review: From *Shankari Prasad* to *Golak Nath***

The evolution of judicial review of constitutional amendments in India reflects a gradual but profound transformation in constitutional philosophy. The Supreme Court’s early approach was marked by deference to Parliament, yet subsequent judicial reflection revealed increasing concern over the protection of Fundamental Rights and constitutional identity. The period between 1951 and 1967 laid the doctrinal foundation for the emergence of the Basic Structure Doctrine.

#### ***Shankari Prasad v. Union of India* (1951): Affirmation of Parliamentary Supremacy**

The First Constitutional Amendment Act, 1951 introduced Articles 31A and 31B to protect land reform legislation from judicial scrutiny. The amendment was challenged on the ground that it violated Fundamental Rights, particularly the right to property under Article 31.

In *Shankari Prasad v. Union of India*,<sup>42</sup> the Supreme Court upheld the validity of the

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<sup>40</sup> Gautam Bhatia, *The Transformative Constitution* (HarperCollins 2019).

<sup>41</sup> Yaniv Roznai, *Unconstitutional Constitutional Amendments* (Oxford University Press 2017).

<sup>42</sup> *Shankari Prasad Singh Deo v. Union of India* AIR 1951 SC 458.

amendment. The Court distinguished between “law” under Article 13(2) and constitutional amendments enacted under Article 368. It held that the term “law” in Article 13 referred to ordinary legislative enactments and did not include constitutional amendments. Consequently, Parliament could amend Fundamental Rights without violating Article 13.

This decision effectively endorsed parliamentary supremacy in the context of constitutional amendment. The Court reasoned that since Article 368 expressly provided a procedure for amendment, it implicitly authorised alteration of any part of the Constitution, including Part III.

Scholars have observed that the Court’s reasoning reflected an early judicial reluctance to confront Parliament in matters of socio economic reform.<sup>43</sup> The decision prioritised constitutional flexibility over structural limitation.

#### ***Sajjan Singh v. State of Rajasthan (1965): Emerging Doubts***

The issue resurfaced in *Sajjan Singh v. State of Rajasthan*, where the Seventeenth Constitutional Amendment was challenged. The majority reaffirmed *Shankari Prasad*, maintaining that Parliament could amend Fundamental Rights.

However, the case is significant for the doubts expressed in separate opinions. Justice Hidayatullah and Justice Mudholkar raised concerns about whether certain essential features of the Constitution might lie beyond amendment. Justice Mudholkar, in particular, questioned whether the Constitution possessed a “basic feature” that could not be altered.

Although the majority did not adopt this reasoning, these observations planted the conceptual seeds of the Basic Structure Doctrine. Academic commentators later recognised *Sajjan Singh* as a transitional moment in constitutional thought.<sup>44</sup>

#### ***I.C. Golak Nath v. State of Punjab (1967): Judicial Assertion***

The Supreme Court revisited the issue in *I.C. Golak Nath v. State of Punjab*. In a narrow majority decision, the Court overruled *Shankari Prasad* and held that Parliament could not amend Fundamental Rights. Chief Justice Subba Rao reasoned that constitutional amendments

<sup>43</sup> Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford University Press 1966).

<sup>44</sup> M.P. Jain, *Indian Constitutional Law* (LexisNexis, latest edn).

fell within the meaning of “law” under Article 13(2) and were therefore subject to its prohibition.

The Court invoked the doctrine of prospective overruling to avoid invalidating earlier amendments. While this judgment strengthened judicial protection of Fundamental Rights, it also generated institutional tension. Parliament responded by enacting the 24th Constitutional Amendment, explicitly affirming its power to amend any provision of the Constitution.

Academic commentary on *Golak Nath* is divided. Some scholars praise it as a bold defence of rights, while others criticise it for doctrinal inconsistency and for unduly constraining democratic governance.<sup>45</sup> Regardless of evaluative stance, the case marked a decisive shift away from unqualified parliamentary supremacy.

### **From Conflict to Constitutional Settlement**

The period between *Golak Nath* and *Kesavananda Bharati* was characterised by confrontation between Parliament and the judiciary. Constitutional amendments sought to restore and expand parliamentary power, while judicial reasoning increasingly emphasised constitutional supremacy.

This evolving dialogue ultimately culminated in the articulation of the Basic Structure Doctrine in 1973 a doctrine that attempted to reconcile flexibility with structural preservation. The jurisprudential journey from *Shankari Prasad* to *Golak Nath* thus represents the formative phase of India’s constitutional transformation.

### ***Kesavananda Bharati* and the Birth of the Basic Structure Doctrine**

The decision in *Kesavananda Bharati v. State of Kerala*<sup>46</sup> represents the most significant constitutional turning point in Indian judicial history. Delivered by a thirteen judge Bench the largest ever constituted by the Supreme Court of India the judgment fundamentally recalibrated the relationship between Parliament and the judiciary. It sought to resolve the constitutional crisis that had emerged after *Golak Nath* and Parliament’s subsequent assertion of amending supremacy through the 24th, 25th, and 29th Constitutional Amendments.

<sup>45</sup> H.M. Seervai, *Constitutional Law of India* (4th edn, Universal Law Publishing 1996).

<sup>46</sup> *Kesavananda Bharati v. State of Kerala* (1973) 4 SCC 225.

### **Background: Constitutional Confrontation**

Following *Golak Nath*, Parliament enacted the 24th Constitutional Amendment Act, 1971, explicitly affirming that it could amend “any provision” of the Constitution, including Part III. The 25th Amendment curtailed the right to property and attempted to limit judicial review of laws implementing Directive Principles. These amendments were challenged in *Kesavananda Bharati*, where the petitioner, head of a religious mutt in Kerala, contested state land reform legislation and the constitutional amendments supporting it.

The central constitutional question was whether Parliament’s power under Article 368 was unlimited or whether there existed inherent substantive constraints.

### **Majority Opinion: Limited Amending Power**

By a narrow majority of 7 6, the Supreme Court held that while Parliament possesses wide powers to amend the Constitution, this power is not absolute. It cannot alter the “basic structure” or “essential features” of the Constitution. However, the Court upheld the validity of the 24th Amendment, recognising Parliament’s authority to amend Fundamental Rights subject to these implied limitations.

Chief Justice S.M. Sikri identified certain elements forming part of the basic structure, including:

- Supremacy of the Constitution
- Republican and democratic form of government
- Secular character of the Constitution
- Separation of powers
- Federal character

Other judges elaborated additional components, though no exhaustive list was provided. This open textured articulation ensured flexibility but also introduced interpretive discretion.

### **Theoretical Justification**

The Court’s reasoning rested on the distinction between constituent power and constituted power. Parliament, although exercising amending authority, derives its power from the Constitution itself and therefore cannot destroy the source of its authority. Justice H.R. Khanna’s pivotal opinion reasoned that if Parliament could abrogate essential features, the Constitution would cease to exist in its present identity.

This interpretive move effectively entrenched constitutional supremacy over parliamentary supremacy. It affirmed that even constitutional amendments are subject to judicial review if they violate the Constitution's basic structure.

### **Academic Responses**

The scholarly response to *Kesavananda Bharati* has been extensive and deeply divided. Supporters describe the decision as a "constitutional moment" that preserved Indian democracy from potential authoritarian transformation. Upendra Baxi characterised it as an affirmation of limited government and constitutional morality.

Critics, however, question the absence of explicit textual grounding for the doctrine. H.M. Seervai argued that the Court exceeded its interpretive mandate by introducing substantive limits not contained in Article 368. From this perspective, the doctrine risks enabling judicial supremacy.

Comparative scholars have noted that the Indian approach parallels constitutional systems that incorporate eternity clauses, such as Germany's Basic Law, though in India the limitation is judicially crafted rather than textually entrenched.<sup>47</sup>

### **Constitutional Legacy**

The immediate aftermath of *Kesavananda Bharati* witnessed further constitutional struggle during the Emergency (1975-77), yet the Basic Structure Doctrine survived political turbulence. It has since been reaffirmed in multiple decisions, becoming a defining feature of Indian constitutional identity.

The judgment thus marks the decisive shift from a model approaching parliamentary sovereignty to one firmly rooted in constitutional supremacy.

## **Expansion and Consolidation of the Basic Structure Doctrine: From *Indira Nehru Gandhi to Minerva Mills***

The articulation of the Basic Structure Doctrine in *Kesavananda Bharati* did not end constitutional contestation. Instead, it inaugurated a new phase in which the Supreme Court

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<sup>47</sup> Yaniv Roznai, *Unconstitutional Constitutional Amendments* (Oxford University Press 2017).

was called upon to define, apply, and defend the doctrine in politically charged circumstances. The period between 1975 and 1980 proved decisive in consolidating constitutional supremacy.

### ***Indira Nehru Gandhi v. Raj Narain (1975): Judicial Review as Basic Structure***

The immediate test of the doctrine arose during the Emergency. Following the Allahabad High Court's judgment invalidating Prime Minister Indira Gandhi's election for electoral malpractice, Parliament enacted the 39th Constitutional Amendment Act, 1975. This amendment inserted Article 329A(4), which sought to immunise the election of the Prime Minister and Speaker from judicial review.

In *Indira Nehru Gandhi v. Raj Narain*, the Supreme Court invoked the Basic Structure Doctrine to strike down this provision. The Court held that free and fair elections and judicial review form part of the basic structure of the Constitution. By insulating the Prime Minister's election from scrutiny, the amendment violated these essential features.

This decision marked a significant expansion of the doctrine. It was no longer confined to abstract structural principles but was applied to concrete political action. Scholars have described the ruling as a reaffirmation of constitutional accountability during a period of executive dominance.<sup>48</sup> It demonstrated that even constitutional amendments enacted during extraordinary political conditions remain subject to judicial control.

### **The 42nd Amendment and Judicial Response**

During the Emergency, Parliament enacted the 42nd Constitutional Amendment Act, 1976 often termed the "Mini Constitution." Among other changes, it attempted to curtail judicial review by amending Article 368 to declare that no constitutional amendment could be questioned in any court on any ground.

This attempt to exclude judicial scrutiny directly challenged the authority asserted in *Kesavananda Bharati*. The amendment sought to restore parliamentary supremacy by nullifying the Basic Structure Doctrine.

### ***Minerva Mills Ltd. v. Union of India (1980): Limited Amending Power as Basic Structure***

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<sup>48</sup> Upendra Baxi, 'The Emergency, the Supreme Court and Constitutionalism' (1978) 14 *Economic and Political Weekly* 1893.

The Supreme Court confronted this challenge in *Minerva Mills Ltd. v. Union of India*. The Court struck down clauses of the 42nd Amendment that excluded judicial review and expanded Parliament's amending power without limitation.

Chief Justice Y.V. Chandrachud held that **limited amending power itself is a part of the basic structure**. Parliament cannot enlarge its own authority so as to destroy the constitutional balance. The Court further emphasised that harmony between Fundamental Rights and Directive Principles constitutes a basic feature of the Constitution.

This decision consolidated the doctrine in three critical ways:

1. It reaffirmed judicial review as a basic feature.
2. It clarified that Parliament's amending power is inherently limited.
3. It reinforced the equilibrium between Parts III and IV of the Constitution.

Academic commentary widely regards *Minerva Mills* as the definitive affirmation of constitutional supremacy. By invalidating an amendment designed to curtail judicial power, the Court entrenched its role as guardian of constitutional identity.

### **Doctrinal Maturity**

Through *Indira Nehru Gandhi* and *Minerva Mills*, the Basic Structure Doctrine evolved from a theoretical limitation to an operational constitutional principle. The judiciary demonstrated willingness to apply it even in politically sensitive contexts.

Scholars observe that this phase transformed the doctrine from a contested innovation into a settled constitutional norm. The Supreme Court's authority to review constitutional amendments became firmly embedded within India's constitutional architecture.

## **Contemporary Application: The 103rd Constitutional Amendment and Equality Jurisprudence**

The Basic Structure Doctrine, though articulated in the 1970s, continues to shape contemporary constitutional adjudication. One of the most significant recent tests of the doctrine arose in relation to the 103rd Constitutional Amendment Act, 2019, which introduced a 10% reservation in education and public employment for Economically Weaker Sections (EWS) of citizens who do not fall within existing reserved categories.

The amendment inserted Articles 15(6) and 16(6), enabling the State to provide reservation on

the basis of economic criteria. Its constitutional validity was challenged on the ground that it violated the equality code of the Constitution and disrupted the established framework of affirmative action jurisprudence.

### ***Janhit Abhiyan v. Union of India (2022): Judicial Scrutiny***

In *Janhit Abhiyan v. Union of India*, a Constitution Bench of the Supreme Court upheld the 103rd Amendment by a 3 2 majority. The majority held that economic criteria could validly form the basis of affirmative action and that exclusion of SCs, STs, and OBCs from the EWS category did not violate the Basic Structure Doctrine.

The Court reaffirmed that constitutional amendments remain subject to basic structure review. However, it concluded that the amendment did not damage the equality principle or the identity of the Constitution.

### **Equality as Part of the Basic Structure**

Indian constitutional jurisprudence has long recognised equality as a foundational principle. In *Indira Nehru Gandhi* and *Minerva Mills*, the Court identified equality and rule of law as part of the basic structure. The challenge in *Janhit Abhiyan* was therefore framed around whether the introduction of economic reservation altered the essential identity of equality under the Constitution.

The dissenting judges expressed concern that exclusion of historically disadvantaged classes from the EWS quota could distort the substantive equality framework developed through earlier judgments such as *Indra Sawhney v. Union of India*. The dissent viewed the amendment as potentially undermining the constitutional vision of social justice.

### **Recalibration or Continuity?**

Academic reactions to the decision remain divided. Some scholars interpret the ruling as a pragmatic recognition of evolving socio economic realities. Others argue that it represents a recalibration of equality jurisprudence that may dilute earlier commitments to caste based disadvantage as the primary basis for reservation.

Importantly, the case demonstrates that the Basic Structure Doctrine continues to function as a living constitutional safeguard. Even while upholding the amendment, the Court reiterated that

Parliament's power remains limited and subject to judicial scrutiny.

### **Constitutional Implications**

The 103rd Amendment case illustrates that the doctrine has matured from a defensive mechanism against overt constitutional destruction to a nuanced tool for balancing constitutional change with structural preservation. Rather than acting as an absolute barrier, it operates as a constitutional checkpoint.

The decision confirms that while Parliament retains significant flexibility to address emerging policy concerns, its authority is framed within a constitutional order whose foundational identity cannot be abrogated.

### **Critical Evaluation: Judicial Supremacy or Constitutional Necessity?**

The evolution of judicial review of constitutional amendments in India inevitably raises a normative question: does the Basic Structure Doctrine represent a legitimate safeguard of constitutionalism, or does it mark the ascendancy of judicial supremacy over democratic will? This section critically evaluates the competing arguments.

### **The Case for Constitutional Necessity**

Proponents of the doctrine argue that it is indispensable for preserving the identity of the Constitution. The Indian constitutional framework establishes a limited government bound by fundamental rights, separation of powers, and judicial review. If Parliament were authorised to alter these foundational principles without constraint, the Constitution could be transformed into an instrument of majoritarian absolutism.

The doctrine therefore functions as a structural guarantee of constitutional supremacy. Sudhir Krishnaswamy contends that the amending power is a derivative form of constituent power and cannot logically extend to destruction of the constitutional order from which it originates. In this view, the judiciary's role is not to usurp democratic authority but to protect the enduring framework within which democracy operates.

Comparative constitutional theory lends support to this reasoning. Yaniv Roznai's theory of unconstitutional constitutional amendments posits that even formally valid amendments may be substantively invalid if they destroy constitutional identity. Many modern constitutions

incorporate “eternity clauses” that explicitly protect core features from amendment. India, lacking such textual safeguards, relies on judicial interpretation to achieve similar protection. Furthermore, historical experience during the Emergency (1975-77) reinforces the need for institutional checks. The attempt to exclude judicial review through the 42nd Amendment demonstrates how majoritarian power can threaten constitutional balance. The Supreme Court’s intervention in *Minerva Mills* thus appears as a defence of democratic structure rather than its negation.

### **The Case for Judicial Overreach**

Critics, however, argue that the Basic Structure Doctrine lacks textual foundation. Article 368 does not expressly impose substantive limits upon Parliament’s amending authority. H.M. Seervai famously described the doctrine as judicial invention unsupported by constitutional text. From this perspective, the judiciary has arrogated to itself a power not contemplated by the framers.

Democratic theorists such as Jeremy Waldron caution against strong form judicial review on the ground that constitutional interpretation should remain primarily within the domain of democratically accountable institutions. Allowing courts to invalidate constitutional amendments risks undermining the principle of popular sovereignty.

Another criticism concerns indeterminacy. Because the Court has not provided an exhaustive list of basic features, the doctrine may enable discretionary judicial expansion. If not applied with restraint, it could evolve into a broad veto over constitutional reform.

### **Reconciling the Debate**

The tension between these perspectives reflects deeper constitutional theory. The Indian Constitution proclaims itself supreme, yet entrusts amendment to Parliament. The judiciary’s assertion of basic structure review seeks to reconcile these dual commitments by distinguishing between amendment and abrogation.

Rather than replacing parliamentary sovereignty with judicial supremacy, the doctrine arguably establishes a dialogue between institutions. Parliament retains broad authority to amend; the judiciary intervenes only when core structural principles are endangered. The survival of the doctrine across political regimes suggests that it has become embedded within constitutional

practice.

Ultimately, the legitimacy of the Basic Structure Doctrine depends upon judicial discipline. Its application must be grounded in principled reasoning, historical understanding, and respect for democratic processes. When exercised cautiously, it operates as a constitutional safeguard; when expanded without clear standards, it risks institutional friction.

### Conclusion

The trajectory of judicial review of constitutional amendments in India reflects one of the most profound constitutional transformations in comparative jurisprudence. From the early affirmation of parliamentary supremacy in *Shankari Prasad* to the conceptual breakthrough in *Kesavananda Bharati*, the Supreme Court gradually redefined the relationship between amendment power and constitutional identity. The articulation of the Basic Structure Doctrine marked the decisive shift from a model approximating legislative sovereignty to one firmly grounded in constitutional supremacy.

The doctrine emerged not in a vacuum, but in response to institutional conflict and political turbulence. Parliament's attempts to insulate constitutional amendments from judicial scrutiny, particularly during the Emergency, underscored the vulnerability of constitutional democracy to majoritarian excess. In striking down provisions of the 39th and 42nd Amendments, the Supreme Court asserted that the Constitution is not merely a legal document subject to alteration at will, but a normative framework embodying enduring principles such as rule of law, separation of powers, judicial review, federalism, and democratic governance.

At the same time, the doctrine has not eliminated Parliament's authority to amend the Constitution. Rather, it has reframed that authority as limited and derivative. The judiciary has consistently recognised Parliament's broad competence to pursue socio economic transformation, provided that such amendments do not damage the foundational identity of the Constitution. Even in contemporary cases such as the challenge to the 103rd Constitutional Amendment, the Court reaffirmed both the vitality of the Basic Structure Doctrine and the continuing flexibility of constitutional evolution.

Critiques of judicial overreach remain intellectually significant. The absence of explicit textual limits under Article 368 raises legitimate concerns regarding democratic legitimacy and

interpretive discretion. Yet the persistence of the doctrine across five decades suggests that it has become an integral component of India's constitutional architecture. Its endurance reflects not merely judicial assertion but institutional acceptance.

Ultimately, the evolution from parliamentary supremacy to the Basic Structure Doctrine represents a maturation of Indian constitutionalism. It affirms that constitutional democracy requires both adaptability and restraint. The amending power must remain sufficiently flexible to respond to changing realities, yet sufficiently bounded to preserve constitutional identity. The Supreme Court's jurisprudence seeks to balance these imperatives.

In this sense, judicial review of constitutional amendments does not signify judicial supremacy over Parliament. Rather, it represents a structural dialogue between institutions one aimed at ensuring that constitutional change does not devolve into constitutional destruction. The Basic Structure Doctrine stands today as both a shield against authoritarian alteration and a testament to the resilience of India's constitutional order.

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