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# **PRESERVING FUNDAMENTAL PRINCIPLES: ANALYSING CONSTITUTIONAL AMENDMENTS AND BASIC STRUCTURE DOCTRINE**

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## **ABSTRACT: -**

*The Constitution, referred to as the “General Will” of the people, is a fundamental law that establishes the roles and authority of the various state agencies. Not only is it the fundamental law of the land, but it also serves as the basis for all other laws that must be made in accordance with the needs of the country. Because a nation’s history is not static, a constitution written in one age and under one set of circumstances may be deemed inappropriate or insufficient in another era and under different circumstances. If the Constitution prevents such desirable and necessary reforms from occurring, it will not be able to withstand the pressure. The authors of the Indian Constitution incorporated Article 368 as a statutory procedure to allow for constitution modification. The Basic Structure Doctrine is a pivotal element in Indian constitutional law, ensuring that the core principles of the Constitution remain inviolate amidst legislative amendments. Originating from the landmark Kesavananda Bharati case in 1973, this doctrine asserts that while Parliament holds the power to amend the Constitution, it cannot alter its fundamental framework. This paper analyses the evolution of Doctrine, its application in significant cases and its role in safeguarding the essential features of Constitution. By examining the cases and the doctrine's implications, the paper underscores its importance in maintaining the balance between constitutional flexibility and the preservation of foundational principles.*

**KEY WORDS: -** Constitution, Article 368, Judicial Interpretation, Constituent Assembly, Basic Structure.

## **INTRODUCTION:**

The Constitution, which is “Supreme Law of the state” is enforceable against both the government and the populace. It serves a variety of purposes in a contemporary welfare state. One of these roles might be to act as a clearinghouse for a number of societal political fundamentals. In terms of substance, the Constitution can reflect these ideals by prohibiting governmental interference with religious freedom, and in terms of procedure, it stipulates that government can only punish persons for criminal activities after a trial at which the defendant has been represented by his counsel. In terms of their constitutional obligations, the legislative, executive, and judicial branches of a contemporary welfare democracy are all on an equal footing. However, when one organ claims to have more power over the other and to perform constitutional tasks more effectively, this stance changes with time. On the other hand, alterations to a constitution could be brought about by political or self-serving objectives. Because a constitution establishes the “political game’s” rules, individuals in authority may be tempted to alter the rules in order to strengthen their position, maintain their hold on power. Such adjustments might erode democracy altogether. In order to resolve any future issues that may arise in the functioning of the Constitution, provisions for amending the Indian constitution have been made. No generation has the exclusive right to form the government in accordance with their needs. Although there is no express restriction on the power of the parliament to amend the constitution set forth in Article 368.<sup>1</sup> The preservation of fundamental principles within a constitutional framework is crucial for maintaining the integrity and stability of a nation’s legal and political system. Central to this effort is the Basic Structure Doctrine, a judicial principle that prevents the alteration of the essential features of a constitution through amendments. Originating from the landmark judgment in *Kesavananda Bharati v. State of Kerala*<sup>2</sup> by the Supreme Court of India, this doctrine asserts that while the parliament has wide powers to amend the constitution, it cannot destroy or emasculate its basic structure. Over time, the judiciary has played a pivotal role in interpreting and enforcing this doctrine, balancing the need for constitutional flexibility-

## **MEANING OF AMENDMENT:**

In common usage, an amendment refers to a formal change or addition proposed or made to a law, contract, constitution, or other legal documents. In the context of constitutional law, an amendment typically involves altering, adding, or repealing specific provisions within a constitution to address new issues, resolve ambiguities, or adapt to changing political, social, or

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<sup>1</sup> INDIA CONST. art. 368.

<sup>2</sup> *Kesavananda Bharati Sripadagalvaru ... vs State Of Kerala And Anr*, (1973) 4 SCC 225.

economic conditions. The process for making amendments often requires a special procedure that is more rigorous than the process for passing ordinary legislation, reflecting the significance and potential impact of such changes. This may include steps such as supermajority approval in the legislature, ratification by a certain number of states or provinces, or approval by a public referendum, depending on the country's legal framework.

### **METHOD OF AMENDMENT: -**

The modern era is dynamic. It is very likely that a constitution that was created in one age and under a certain context will be deemed insufficient in a later era and within a different context. Underlying principles of the constitution could be viewed as outmoded by the following generation. As a result, it becomes essential to have some tools or a procedure that would allow the constitution to be periodically modified to suit changing national requirements. Both informal and formal procedures can be used to periodically update the constitution to changing conditions. The formal technique is the constitutional process, while informal methods include judicial interpretation and conventions.

#### **I. Formal method**

Almost every constitution contains a formal process for amending it. The procedure may be simpler in certain nations than in others, and as a result, the constitutions are sometimes categorized as flexible or rigid. A flexible constitution is one that can be amended relatively easily, just like enacting a regular law. The British Constitution, which can be changed by a regular Act of Parliament, is the best illustration of such a constitution. Thus, there is no distinction between the constituent process and regular legislative process.

It is believed that the process for amending the constitution should ensure that fundamental principles be changed only after careful examination and deliberation. Thus, the legislative and constituent processes can be distinguished; the former refers to the creation of a regular law, while the latter refers to the change of the constitution. A constitution will lose all permanence and supremacy if it is simply amendable by passing a regular law.

Perhaps the most significant means to modify the constitution to reflect new information is through formal amendment. In this regard, judicial interpretation may be somewhat helpful, but it cannot alter the underlying law's wording, and some desired changes might not be possible without amending the constitution verbatim. There may be instances when the rules established by the

courts seem to go against social norms and political demands, in which case they may need to be altered. The numerous revisions made to Article 31 of the Indian Constitution, which deals with the fundamental right to property, to get around an unfavourable judicial reading thereof, serve as an illustration of such a circumstance.

## **II. Informal methods**

- Judicial Interpretation: -

Although the constitutional text remains unchanged in this situation, its interpretation does. In the constitution, words that have one meaning in one context may have a slightly different meaning in another. The courts have a deciding influence in this process because it is their job to interpret the constitution.

The best example is United States, where the Supreme Court occasionally gave words and phrases in the constitution new meanings in order to make the document from the laissez-faire era of the 18th century serve the needs of a vast, expanding, and highly industrialized civilization of the twentieth century without making many formal changes to its text.

In India as well, the judicial interpretation process is ongoing. The Supreme Court has left the door open for changes in constitutional interpretation so that the Indian Constitution can be adjusted to new circumstances by finding that it can occasionally review its decisions.

- Conventional and Constitutional Usage: -

The development of conventions, traditions, and observances may alter how constitutional provisions are applied. This is yet another instance of a gradual transformation and subtle shift, where the constitutional text is unchanged in terms of form and wording, where there is no obvious change on the surface, but where there has been a change in the way the provisions operate and function.

One way such conventions work is that they can effectively repeal a constitutional provision without really doing so.

Two, a Convention may function by shifting authority granted by the constitution to one authority to another.

Three, a Convention may amend a constitution by adding to one of its clauses.

## **PROCESS OF AMENDMENT:**

The Indian Constitution provides a detailed process for amendments, allowing for changes to adapt to evolving needs while protecting the document's fundamental principles. Amendments to the Indian Constitution are covered under Article 368, which outlines the procedure and types of amendments. They can be categorized into three broad types:

### **1. Simple Majority Amendments:**

These amendments pertain to provisions that can be altered by a simple majority of members present and voting in both Houses of Parliament. This type of amendment does not fall under the scope of Article 368.

Examples: Changes related to the formation of new states, alterations in the boundaries of states, creation or abolition of Legislative Councils in states, and certain aspects of citizenship.

### **2. Special Majority Amendments:**

These require a special majority for their passage. This means that the amendment must be approved by a majority of the total membership of each House of Parliament, and by a majority of not less than two-thirds of the members of that House present and voting.

Examples: Provisions related to the Fundamental Rights, Directive Principles of State Policy, and other significant articles such as Article 368 itself.

### **3. Special Majority and Ratification by States:**

Certain amendments require, in addition to a special majority in Parliament, ratification by at least half of the state legislatures. This type of amendment is used for changes that affect the federal structure of the country.

Examples: Amendments involving the election of the President, the extent of executive power of the Union and the States, the distribution of legislative powers between the Union and the States, and the powers of the Supreme Court and High Courts.

## **AMENDMENT TO FUNDAMENTAL RIGHTS:**

The Constitution, enshrines a set of Fundamental Rights that guarantee civil rights to all citizens, ensuring equality, freedom, and justice. These rights, listed in Part III of the Constitution, form the cornerstone of India's democratic framework. However, the dynamic nature of society and the state necessitates occasional amendments to the Constitution, including its Fundamental Rights. From its inception, the Indian Constitution included mechanisms to amend its provisions, recognizing the need for adaptability. Article 368 grants Parliament the power to amend the Constitution. However, this power has been a subject of intense debate, particularly regarding the

extent to which Fundamental Rights can be amended.

### **Key Amendments to Fundamental Rights**

- First Amendment (1951): Introduced restrictions on freedom of speech and expression to ensure public order and protect against abuses.<sup>3</sup> It also added Article 31A and 31B to protect land reform laws from judicial review.<sup>4</sup>
- Fourth Amendment (1955): Modified property rights under Article 31 and clarified compensation provisions for property acquisition.<sup>5</sup>
- Twenty-fourth Amendment (1971): Asserted Parliament's authority to amend any part of the Constitution, including Fundamental Rights (Article 13 and 368).<sup>6</sup>
- Forty-second Amendment (1976): Restricted judicial review and prioritized Directive Principles over Fundamental Rights.<sup>7</sup>

### **Judicial Advocacy:**

#### ***Shankari Prasad v. Union of India*<sup>8</sup> (1951)**

The First Amendment Act, 1951, introduced Articles 31A and 31B to protect land reform laws from being challenged on the grounds of violation of Fundamental Rights.

The constitutionality of the First Amendment was challenged, arguing that it violated the Fundamental Rights guaranteed by the Constitution.

The Supreme Court upheld the amendment, stating that Parliament has the power to amend any part of the Constitution, including Part III. The court interpreted Article 368 as giving Parliament the constituent power to amend the Constitution without restrictions.

#### ***Sajjan Singh v. State of Rajasthan*<sup>9</sup> (1965)**

The Seventeenth Amendment Act, 1964, further protected laws related to land reforms from judicial review by including them in the Ninth Schedule.

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<sup>3</sup> The Constitution (First Amendment) Act, 1951, s. 3.

<sup>4</sup> The Constitution (First Amendment) Act, 1951, s. 5.

<sup>5</sup> The Constitution (Fourth Amendment) Act, 1955, s. 3.

<sup>6</sup> The Constitution (Twenty-fourth Amendment) Act, 1971, s. 2.

<sup>7</sup> The Constitution (Forty-second Amendment) Act, 1976, s. 55.

<sup>8</sup> *Shankari Prasad v. Union of India*, AIR 1951 SC 458.

<sup>9</sup> *Sajjan Singh v. State of Rajasthan*, AIR 1965 SC 845.

Petitioners argued that the amendment violated the Fundamental Rights and the basic framework of the Constitution.

The Supreme Court reaffirmed its decision in *Shankari Prasad*, holding that Parliament could amend any provision of the Constitution, including Fundamental Rights. The court noted that the power to amend the Constitution was comprehensive and could include changes to Part III.

***Golaknath v. State of Punjab***<sup>10</sup> (1967)

The petitioners challenged the validity of the Seventeenth Amendment Act, 1964 and the main question was whether Parliament had the power to amend Fundamental Rights.

In a landmark judgment, the Supreme Court overruled its earlier decisions in *Shankari Prasad* and *Sajjan Singh*. The court held that Parliament could not amend Fundamental Rights. It invoked the doctrine of prospective overruling, declaring that the Parliament would have no power from the date of the judgment to amend Fundamental Rights.

***Kesavananda Bharati v. State of Kerala*** (1973)

The case challenged the Twenty-fourth, Twenty-fifth, and Twenty-ninth Amendments, which sought to override the *Golaknath* ruling and asserted Parliament's power to amend the Constitution.

The issue was whether there were any limitations on Parliament's power to amend the Constitution under Article 368.

The Supreme Court held that while Parliament had wide powers to amend the Constitution, including Fundamental Rights, it could not alter the "basic structure" of the Constitution. This landmark judgment established the Basic Structure Doctrine, ensuring that essential features like the supremacy of the Constitution, democratic and secular character, and the integrity of the nation remained inviolable.

**BASIC STRUCTURE DOCTRINE:**

The Basic Structure Doctrine is a judicial principle in Indian constitutional law that limits Parliament's power to amend the Constitution. It was established by the Supreme Court in the

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<sup>10</sup> *Golak Nath v. State of Punjab*, AIR 1967 SC 1643.

landmark case of *Kesavananda Bharati* (1973). The doctrine holds that while Parliament can amend most parts of the Constitution, it cannot alter or destroy its “basic structure” or fundamental rights. This includes essential elements such as the supremacy of the Constitution, the principles of secularism and democracy, and the separation of powers among the legislative, executive, and judicial branches. The doctrine emerged to prevent potential abuse of power by the legislature, ensuring that amendments do not undermine the core values and principles enshrined in the Constitution. It has been invoked in several key cases to strike down amendments deemed to violate the basic structure, thus playing a crucial role in maintaining the Constitution's integrity and balance of power.

The Apex Court in different cases has laid down what the basic features in the Constitution:

***Kesavananda Bharti v. State of Kerala,***

- I. Rule of Law
- II. Judicial Review
- III. Democracy.<sup>11</sup>

***Indira Nehru Gandhi v. Raj Narain*<sup>12</sup> (1975)**

The case involved the Thirty-ninth Amendment, which sought to place the election of the Prime Minister and the Speaker of Lok Sabha beyond the scrutiny of the judiciary.

The Supreme Court struck down the amendment, affirming that judicial review is part of the basic structure of the Constitution. The judgment reinforced the *Kesavananda Bharati* decision, emphasizing that amendments must respect the basic structure.<sup>13</sup>

In the *Minerva Mills Ltd. v. Union of India*<sup>14</sup> (1980) case, the Supreme Court of India reaffirmed and expanded upon the Basic Structure Doctrine. The Court held that the basic structure cannot be altered by amendments, even under Article 368. In this case, the Court identified and emphasized several key components as part of the Constitution's basic structure, including:

1. Limited power of the Parliament to amend the Constitution.
2. Fundamental Rights in certain cases.

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<sup>11</sup> J.N. PANDEY, CONSTITUTIONAL LAW OF INDIA 844 (Central Law Agency 2020)

<sup>12</sup> *Indira Nehru Gandhi v. Raj Narain*. AIR 1975 SC 2299.

<sup>13</sup> PRITHIVI RAJI AND MURTAZA S. NOORANI- Constitutional Amendment: A Critical Analysis, volume 2| issue 3, 2020, <https://www.ijlsi.com/wp-content/uploads/Constitutional-Amendment-A-Critical-Analysis.pdf>, (last visited 21<sup>st</sup> July. 2024, 23:41).

<sup>14</sup> *Minerva Milk v. Union of India*, (1980) 2 SCC 591.

3. Judicial Review
4. Harmony and Balance between Fundamental Rights and Directive Principles.<sup>15</sup>

***S.P. Sampath Kumar Etc vs Union Of India & Ors,***<sup>16</sup>

In *S.P. Sampath Kumar*, the Supreme Court upheld the establishment of administrative tribunals under the Administrative Tribunals Act, 1985, but emphasized that such tribunals must provide an effective alternative to the High Courts.

***L. Chandra Kumar v. Union of India***<sup>17</sup>

In *L. Chandra Kumar*, the Supreme Court expanded on this principle, ruling that the power of judicial review vested in the High Courts and the Supreme Court under Articles 226 and 32, respectively, is an integral part of the basic structure. The Court held that the exclusion of judicial review by administrative tribunals was unconstitutional. It mandated that decisions of these tribunals should be subject to scrutiny by the High Courts.

**42<sup>nd</sup> Amendment Act and Article- 368:**

After *Kesavananda Bharati* case and *Indira Nehru Gandhi* case 42<sup>nd</sup> Amendment Act 1976 was passed which incorporated clause (4) and (5) under Article 368.

1. **Article 368(4):** This clause stated that no amendment to the Constitution, including amendments that affect fundamental rights, made under Article 368 could be questioned in any court on any ground.<sup>18</sup>
2. **Article 368(5):** This clause declared that there shall be no limitation on the constituent power of Parliament to amend the Constitution under Article 368.<sup>19</sup>

These provisions were intended to give Parliament unrestricted power to amend any part of the Constitution, including fundamental rights, and to prevent judicial review of such amendments.

***Minerva Mills v. Union of India***<sup>20</sup>

However, these clauses were later nullified by the Supreme Court's ruling in the *Minerva Mills Ltd. v. Union of India* (1980) case, which reaffirmed the Basic Structure Doctrine and struck down these provisions as unconstitutional.

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<sup>15</sup> See J.N. PANDEY, supra note 11.

<sup>16</sup> *S.P. Sampath Kumar Etc vs Union of India & Ors*, 1987 SCC SUPL. 734.

<sup>17</sup> *L. Chandra Kumar vs Union Of India And Others*, 1997 (3) SCC 261.

<sup>18</sup> INDIA CONST. art. 368 cl. 4.

<sup>19</sup> INDIA CONST. art. 368 cl. 5.

<sup>20</sup> *Minerva Mills Ltd. & Ors vs Union Of India & Ors*, 1981 SCR (1) 206.

### ***Waman Rao v. Union of India*<sup>21</sup> (1981)**

The case questioned the validity of amendments to the Constitution that placed certain laws in the Ninth Schedule, shielding them from judicial review. The Supreme Court ruled that laws placed in the Ninth Schedule after the *Kesavananda Bharati* judgment were open to judicial review if they violated the basic structure. This reinforced the idea that the Ninth Schedule is not immune to the basic structure test.

### ***IR Coelho v. State of Tamil Nadu*<sup>22</sup>**

This case dealt with the validity of the Ninth Schedule laws. The Supreme Court held that any law placed in the Ninth Schedule after April 24, 1973 (the date of the *Kesavananda Bharati* judgment), could be reviewed and struck down if it violated the basic structure of the Constitution.

## **CONCLUSION:**

The legitimacy of the Basic Structure Doctrine has been contested and its constitutionality has been questioned by numerous critics of judicial overreach and numerous constitutional experts. The Indian judiciary may have gone over the line from the outside, but it did so to protect the foundational principles upon which our nation was founded. The Preamble, which outlines the goals and aspirations of both the country's citizens and the country's founding fathers or framers, gives clear insight into the vision of founding fathers.

The Basic Structure Doctrine stands as a vital safeguard in the Indian constitutional framework, ensuring the preservation of fundamental principles amidst legislative and political changes. Established by the Supreme Court in the landmark *Kesavananda Bharati* case and subsequently reinforced in cases like *Minerva Mills*, *S.P. Sampath Kumar*, and *L. Chandra Kumar*, *IR Coelho* the doctrine asserts that while Parliament has the power to amend the Constitution, it cannot alter its core structure.

This doctrine's significance lies in its role as a protector of the Constitution's essential features, including the supremacy of the Constitution, the rule of law, the separation of powers, and the fundamental rights of citizens. By restricting Parliament's amending power, the Basic Structure Doctrine ensures that the foundational values of the Indian Republic—such as democracy, secularism, and federalism—are maintained and cannot be eroded by transient political majorities.

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<sup>21</sup> *Waman Rao v. Union of India*, AIR 1981, 2 SCC 362, 1981 2 SCR 1.

<sup>22</sup> *I.R.Coelho (Dead) By Lrs vs State Of Tamil Nadu & Ors*, AIR 2007 SC 861.

The Basic Structure Doctrine is not merely a judicial innovation but a crucial constitutional safeguard. It embodies a commitment to preserving the enduring principles that define the Indian state, ensuring that the Constitution remains a living document, capable of evolving while retaining its core ethos. This balance between change and continuity is fundamental to the stability and integrity of India's constitutional democracy. We should understand that the foundation of this democracy is the constitution. Although it was revolutionary of our founding fathers to include mechanisms for amending the constitution, it is crucial that such provisions not be abused. The fabric of our democracy could be torn by misuse leading to an overabundance of legislative or executive power.

