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# Judicial Review of Constitutional Amendments: A Study of the Basic Structure Doctrine

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**ABSTRACT:** This study examines the emergence and development of the Basic Structure Doctrine, which limits the amending power of the legislature to preserve the core principles of the Constitution. Originating from the landmark case of *Kesavananda Bharati v. State of Kerala* (1973), the doctrine asserts that while Parliament has wide powers to amend the Constitution under Article 368, it cannot alter its “basic structure” or essential features.

The paper analyzes the scope and significance of this doctrine in maintaining the supremacy of the Constitution, safeguarding fundamental rights, and ensuring the balance of power among the organs of the State. It further explores subsequent judicial interpretations that have expanded the contours of the doctrine, identifying elements such as the rule of law, separation of powers, judicial independence, and federalism as part of the basic structure.

Additionally, the study critically evaluates debates surrounding judicial supremacy versus parliamentary sovereignty, highlighting concerns of judicial overreach and democratic legitimacy. By examining comparative perspectives and contemporary challenges, the paper underscores the continuing relevance of judicial review in protecting constitutional identity. Ultimately, the Basic Structure Doctrine emerges as a unique judicial innovation that strengthens constitutionalism and prevents authoritarian alterations to the constitutional framework.

**KEYWORDS:** Judicial Review; Basic Structure Doctrine; Constitutional Amendments; Kesavananda Bharati; Article 368; Constitutional Supremacy; Rule of Law

## I. INTRODUCTION

The Indian Constitution is a living document designed to adapt to changing social, political, and economic realities. At the same time, it embodies certain core values that define the identity of the nation. The tension between flexibility and permanence is addressed through the amending power granted to Parliament under Article 368. However, this power is not absolute. The judiciary, through the doctrine of judicial review, plays a critical role in ensuring that constitutional amendments do not destroy the fundamental essence of the Constitution. This balance gave rise to one of the most significant principles in Indian constitutional law—the Basic Structure Doctrine.

The doctrine of judicial review has long been recognized as a cornerstone of constitutional governance, ensuring that legislative and executive actions remain within the bounds of the Constitution. In India, this power extends not only to ordinary laws but also, in a unique and significant way, to constitutional amendments. The evolution of this principle has given rise to one of the most distinctive contributions of Indian constitutional jurisprudence—the Basic Structure Doctrine. This doctrine represents a judicial innovation aimed at preserving the core values and identity of the Constitution against potential excesses of parliamentary power.

The question of whether constitutional amendments could be subjected to judicial review emerged soon after the adoption of the Indian Constitution. Article 368 grants Parliament the authority to amend the Constitution, and early judicial interpretations, such as in *Shankari Prasad v. Union of India* (1951) and *Sajjan Singh v. State of Rajasthan* (1965), upheld Parliament’s unlimited power to amend any part of the Constitution, including Fundamental Rights. However, this position was reconsidered in *Golak Nath v. State of Punjab* (1967), where the Supreme Court held that Parliament could not amend Fundamental Rights, thereby introducing limitations on its amending power.



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The constitutional conflict between Parliament's authority and the judiciary's role reached its zenith in the landmark case of *Kesavananda Bharati v. State of Kerala* (1973). In this historic judgment, a thirteen-judge bench of the Supreme Court propounded the Basic Structure Doctrine, holding that while Parliament possesses wide powers to amend the Constitution, it cannot alter or destroy its "basic structure." Although the Court did not provide an exhaustive list of what constitutes the basic structure, it identified certain essential features such as the supremacy of the Constitution, the rule of law, separation of powers, judicial review, and the protection of Fundamental Rights.

The Basic Structure Doctrine thus serves as a vital check on the amending power of Parliament. It ensures that the Constitution retains its essential character and foundational principles, even as it evolves to meet changing social, economic, and political needs. Subsequent cases, such as *Indira Nehru Gandhi v. Raj Narain* (1975) and *Minerva Mills*

*v. Union of India* (1980), reaffirmed and expanded the scope of this doctrine, solidifying its position as a fundamental aspect of Indian constitutional law.

This study seeks to examine the concept of judicial review in the context of constitutional amendments, with a particular focus on the origin, development, and significance of the Basic Structure Doctrine. It explores how the judiciary has balanced the need for constitutional flexibility with the imperative of preserving its core values. By analyzing key judicial decisions and constitutional provisions, this paper aims to provide a comprehensive understanding of how the Basic Structure Doctrine operates as a safeguard against arbitrary constitutional changes.

In the doctrine of judicial review of constitutional amendments, as shaped by the Basic Structure Doctrine, represents a delicate balance between democratic will and constitutional supremacy. It underscores the role of the judiciary as the guardian of the Constitution and highlights the enduring importance of preserving its foundational principles in a dynamic and evolving polity.

### II. CONSTITUTIONAL AMENDMENTS AND THEIR PURPOSE

A constitutional amendment is a formal change or addition to the Constitution, aimed at updating its provisions to meet the needs of a changing society. Unlike ordinary legislation, constitutional amendments have a special procedure, reflecting their importance and potential impact on the fundamental structure of governance.

In India, Article 368 of the Constitution empowers the Parliament to amend the Constitution. The procedure involves the introduction of a bill in either House, which must be passed by a special majority—that is, a majority of the total membership of the House and a two-thirds majority of members present and voting. Certain amendments, especially those affecting federal features, also require ratification by at least half of the state legislatures.

The framers of the Indian Constitution intended this flexibility to enable the Constitution to adapt over time. However, they also sought to protect the Constitution from arbitrary or authoritarian changes. The potential conflict between parliamentary supremacy in constitutional amendments and judicial protection of the Constitution's spirit led to landmark legal debates and the development of the Basic Structure Doctrine.

### III. JUDICIAL REVIEW: CONCEPT AND SIGNIFICANCE

Judicial review is the power of the judiciary to examine the constitutionality of legislative and executive actions. It serves as a safeguard against the abuse of power, ensuring that all laws and government actions comply with constitutional provisions. Judicial review applies not only to ordinary legislation but, in certain jurisdictions like India, also to constitutional amendments.

The significance of judicial review of constitutional amendments lies in its role in maintaining the rule of law, democracy, and fundamental rights. It prevents majoritarian or transient legislative forces from destroying the Constitution's essential character. By placing limits on the amending power of the Parliament, judicial review preserves the balance between change and continuity in constitutional governance.



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### Judicial Review of Constitutional Amendments in India

The origin of the judicial review of constitutional amendments in India is intertwined with landmark Supreme Court cases:

#### 1. Shankari Prasad v. Union of India (1951)

In this case, the Supreme Court upheld the **First Amendment (1951)**, which curtailed certain fundamental rights to facilitate land reform and socio-economic justice. The petitioners challenged the amendment, arguing that Parliament could not abridge fundamental rights. The Court, however, held that **amendments under Article 368 are not “laws” under Article 13** and thus not subject to judicial review. This established the initial view that constitutional amendments were beyond the reach of courts.

#### 2. Sajjan Singh v. State of Rajasthan (1965)

This case reinforced the Shankari Prasad decision. The Court ruled that Parliament’s power to amend the Constitution under Article 368 is **plenary and unrestricted**, including amendments affecting fundamental rights. This view aligned with the principle of parliamentary sovereignty in the context of constitutional amendments.

#### 3. Golaknath v. State of Punjab (1967)

The Golaknath case marked a dramatic shift. The Court overruled its earlier decisions and held that **Parliament cannot amend fundamental rights** because they are part of the “basic structure” of the Constitution. Article 368 could not be used to abrogate or curtail these rights. The Court reasoned that the Constitution derives its authority from the people, and altering fundamental rights undermines this sovereign basis. This decision created a constitutional paradox, as it seemed to limit Parliament’s power drastically.

#### 4. Kesavananda Bharati v. State of Kerala (1973)

The landmark **Kesavananda Bharati case** resolved the tensions created by Golaknath. The Supreme Court, in a 7:6 verdict, articulated the **Basic Structure Doctrine**, holding that while Parliament can amend the Constitution, it **cannot alter or destroy its “basic structure”**. This doctrine introduced a judicial check on Parliament, balancing constitutional flexibility with rigidity.

### Significant Cases Shaping the Doctrine

Several landmark cases after Kesavananda Bharati have reinforced and expanded the Basic Structure Doctrine:

#### 1. Indira Gandhi v. Raj Narain (1975)

The Supreme Court invalidated certain constitutional amendments that sought to immunize the Prime Minister from judicial scrutiny in election disputes. The Court emphasized that free and fair elections, a cornerstone of democracy, are part of the basic structure and cannot be undermined by amendments.

#### 2. Minerva Mills v. Union of India (1980)

This case reaffirmed the doctrine by striking down amendments that attempted to curtail judicial review and the right to equality. The Court declared that judicial review and fundamental rights are inseparable from the Constitution’s basic structure, and Parliament cannot abrogate them even through Article 368.

#### 3. I.R. Coelho v. State of Tamil Nadu (2007)

Here, the Supreme Court held that laws placed under the Ninth Schedule after 1973 (post-Kesavananda) could still be examined if they violated the basic structure. This case reinforced that judicial review acts as a safeguard against potential misuse of constitutional amendments.

These cases illustrate the judiciary’s proactive role in maintaining the Constitution’s integrity while respecting parliamentary sovereignty.

### Rationale of the Basic Structure Doctrine

The doctrine emerged from the need to protect the **core values of the Constitution** against arbitrary or excessive amendments. The rationale can be analyzed under several perspectives:

#### 1. Constitutional Identity

A constitution embodies a nation’s ideals, philosophy, and social contract. Unlimited amending power could reduce the Constitution to a mere legislative act, eroding its identity. The Basic Structure Doctrine ensures that the Constitution retains its **essential character**, even as it evolves.

#### 2. Limiting Parliamentary Sovereignty

India follows a quasi-federal structure with a written constitution. While Parliament is sovereign in legislative matters, **constitutional sovereignty is limited**. The Basic Structure Doctrine serves as a check on parliamentary absolutism, ensuring that constitutional amendments do not undermine democratic principles, federal balance, or fundamental rights.



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### 3. Judicial Review as a Safeguard

Judicial review is integral to the basic structure. By enforcing limits on constitutional amendments, the judiciary ensures that Parliament cannot subvert constitutional supremacy. This maintains the **rule of law** and protects minorities from majoritarian excesses.

#### Components of the Basic Structure Doctrine

##### 1. Judicial Review

Judicial review ensures that laws and amendments comply with the Constitution. Without it, Parliament could enact measures that undermine democracy or fundamental freedoms.

##### 2. Separation of Powers

The doctrine safeguards the distinct roles of the legislature, executive, and judiciary. Attempts to concentrate power in one organ can be struck down.

##### 3. Federalism

India's federal structure ensures a balance between central authority and state autonomy.

Any amendment eroding this balance may be deemed unconstitutional.

##### 4. Secularism and Fundamental Rights

The protection of fundamental rights, including equality, freedom, and liberty, is non-negotiable. Secularism is integral to India's constitutional identity.

## IV. CONCLUSION

The judicial review of constitutional amendments, particularly through the lens of the Basic Structure Doctrine, represents a cornerstone of constitutional jurisprudence in safeguarding the integrity of a nation's fundamental values. While constitutional amendments reflect the will of the legislature and, by extension, the people, the judiciary ensures that this exercise of power does not erode the essential framework of the Constitution. The Basic Structure Doctrine, as articulated in landmark judgments like *Kesavananda Bharati v. State of Kerala*, strikes a delicate balance between constitutional flexibility and rigidity, preserving the foundational principles such as democracy, rule of law, separation of powers, and fundamental rights.

This doctrine underscores the role of the judiciary as the guardian of constitutional sanctity, preventing arbitrary or excessive alterations that could undermine the Constitution's core identity. At the same time, it emphasizes that amendments are not inherently immune from scrutiny, fostering accountability and protecting the ethos of constitutionalism. In essence, judicial review of constitutional amendments ensures that change remains progressive yet principled, reflecting both the evolving aspirations of society and the enduring vision of the Constitution's framers.

Ultimately, the Basic Structure Doctrine exemplifies the dynamic equilibrium between legislative supremacy and judicial oversight, reinforcing the idea that while constitutions must adapt to the needs of the times, their soul—the basic structure—must remain inviolable.

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