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Judicial Review and the Doctrine of Basic Structure

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Abstract: Judicial review and the doctrine of basic structure together form the cornerstone of constitutional supremacy in India. While judicial review enables constitutional courts to examine the validity of legislative and executive actions, the doctrine of basic structure imposes substantive limitations on Parliament's power to amend the Constitution under Article 368. This research paper critically examines the evolution, scope, and significance of judicial review in India and analyses how the basic structure doctrine emerged as a constitutional safeguard against majoritarian excesses and arbitrary state action. Tracing the doctrinal development from Shankari Prasad and Golaknath to the landmark decision in *Kesavananda Bharati v. State of Kerala*, the paper highlights the judiciary's role in reconciling parliamentary sovereignty with constitutional supremacy. It further explores the post-Kesavananda jurisprudence through leading cases such as *Indira Nehru Gandhi v. Raj Narain*, *Minerva Mills Ltd. v. Union of India*, *S.R. Bommai v. Union of India*, *I.R. Coelho v. State of Tamil Nadu*, and the NJAC case, which collectively reaffirm judicial review as an essential feature of the basic structure. The study also evaluates the functional importance of these doctrines in preserving the rule of law, protecting fundamental rights, and maintaining the separation of powers, while engaging with contemporary criticisms relating to judicial overreach and democratic legitimacy. The paper concludes that, despite ongoing debates, judicial review and the basic structure doctrine remain indispensable to the resilience, continuity, and normative coherence of the Indian constitutional framework.

KEYWORDS: Judicial Review Basic Structure Doctrine Constitutional Supremacy Fundamental Rights Separation of Powers.

INTRODUCTION

Constitutionalism forms the bedrock of the Indian constitutional framework and signifies governance conducted in accordance with constitutional principles, limitations, and values. In the Indian context, constitutionalism implies the supremacy of the Constitution, the distribution and limitation of state power, the guarantee of fundamental rights, and the existence of independent institutions to enforce constitutional mandates. The Constitution of India, adopted in 1950, is not merely a political document but a normative charter that embodies the aspirations of a democratic society committed to justice, liberty, equality, and fraternity. The framers consciously rejected the doctrine of absolute parliamentary sovereignty and instead established a constitutional order where all organs of the State—legislature, executive, and judiciary—are subordinate to the Constitution.

A central feature of Indian constitutionalism is the concept of limited government. Unlike systems where legislative supremacy prevails, the Indian Constitution expressly circumscribes governmental power through written provisions, justiciable fundamental rights, and enforceable constitutional limitations. Articles 13, 32, and 226 exemplify this commitment by rendering laws inconsistent with fundamental rights void and by empowering constitutional courts to act as guardians of constitutional legality. The doctrine of constitutional supremacy ensures that neither Parliament nor the executive can act arbitrarily or transgress constitutional boundaries. This principle was firmly recognized in *Kesavananda Bharati v. State of Kerala*, where the Supreme Court held that the Constitution is supreme and that even the constituent power of Parliament under Article 368 is subject to inherent limitations.

Judicial review is the principal mechanism through which constitutional supremacy is maintained in India. Though not expressly mentioned in the Constitution, judicial review is implicit in its scheme and has been recognized as an essential feature of the constitutional framework. Through judicial review, courts examine the constitutionality of legislative enactments, executive actions, and constitutional amendments. In *State of Madras v. V.G. Row*, the Supreme Court emphasized that judicial review is indispensable for maintaining the balance between individual liberties and social control. Further, in *Minerva Mills Ltd. v. Union of India*, the Court categorically declared that judicial review itself is part of the basic structure of the Constitution and cannot be abrogated or diluted. Judicial review thus functions as a constitutional sentinel, ensuring fidelity to the rule of law, protection of fundamental rights, and adherence to separation of powers.

The evolution of judicial review in India must be understood against the backdrop of Parliament's amending power. Initially, in *Shankari Prasad v. Union of India* and *Sajjan Singh v. State of Rajasthan*, the Supreme Court adopted a deferential approach, upholding Parliament's authority to amend fundamental rights. However, this position underwent a significant shift in *Golaknath v. State of Punjab*, where the Court held that Parliament could not amend fundamental rights, treating them as inviolable. The political response to *Golaknath* resulted in a series of constitutional amendments aimed at restoring parliamentary supremacy, ultimately culminating in the historic confrontation in *Kesavananda Bharati*.

The doctrine of basic structure emerged from this constitutional conflict as a judicial innovation designed to preserve the identity and core values of the Constitution. In *Kesavananda Bharati v. State of Kerala*, a thirteen-judge Bench propounded that while Parliament possesses wide powers to amend the Constitution, it cannot alter or destroy its "basic structure". Though the Court did not provide an exhaustive list, subsequent jurisprudence has identified elements such as the supremacy of the Constitution, republican and democratic form of government, secularism, federalism, separation of powers, judicial review, and the rule of law as components of the basic structure. This doctrine serves as a substantive limitation on constituent power and operates as a constitutional safeguard against authoritarianism and majoritarian excess.

The significance of the basic structure doctrine lies in its role as a bridge between constitutional supremacy and democratic governance. It reconciles the need for constitutional adaptability with the necessity of preserving fundamental constitutional values. Cases

such as *Indira Nehru Gandhi v. Raj Narain*, *Minerva Mills*, and *I.R. Coelho v. State of Tamil Nadu* have reaffirmed that constitutional amendments seeking to exclude judicial review or damage essential constitutional features are liable to be struck down. Thus, judicial review and the doctrine of basic structure together constitute the cornerstone of Indian constitutionalism, ensuring that the Constitution remains a living document governed by enduring principles rather than transient political majorities.

CONCEPT AND CONSTITUTIONAL BASIS OF JUDICIAL REVIEW IN INDIA

A. Meaning and Nature of Judicial Review

Judicial review refers to the power of constitutional courts to examine the legality and constitutionality of legislative enactments, executive actions, and administrative decisions. It is a fundamental mechanism through which constitutional supremacy is preserved and governmental power is kept within prescribed limits. In its theoretical foundation, judicial review is rooted in the doctrine of constitutional supremacy, which posits that the Constitution is the highest law of the land and that all organs of the State derive their authority from it. Unlike parliamentary supremacy systems, the Indian constitutional framework envisages a written Constitution with entrenched rights and enforceable limitations, making judicial review indispensable.

The nature of judicial review in India is both procedural and substantive. Procedurally, courts assess whether the authority exercising power has complied with constitutional mandates. Substantively, they examine whether the content of the law or action violates fundamental rights or other constitutional provisions. In *State of Madras v. V.G. Row*, the Supreme Court observed that judicial review is an integral part of the Constitution, designed to ensure that restrictions on fundamental rights are reasonable and constitutionally permissible. Similarly, in *A.K. Gopalan v. State of Madras*, although the Court initially adopted a narrow approach, it nonetheless recognized the judiciary's power to test legislative actions against constitutional provisions.

Judicial review functions as a vital check on legislative and executive power, preventing arbitrariness, excess of jurisdiction, and abuse of authority. It ensures adherence to the doctrine of separation of powers by restraining encroachments by one organ of the State upon another. The transformative interpretation in *Maneka Gandhi v. Union of India* expanded the scope of judicial review by holding that any law depriving personal liberty must be just, fair, and reasonable, thereby reinforcing substantive due process within Indian constitutional law.

B. Constitutional Provisions Enabling Judicial Review
The Constitution of India expressly and implicitly incorporates judicial review through multiple provisions, conferring wide powers upon the Supreme Court and High Courts.

Article 13 embodies the doctrine of ultra vires by declaring that laws inconsistent with or in derogation of fundamental rights shall be void. It applies to both pre-constitutional and post-constitutional laws, thereby subjecting legislative competence to constitutional scrutiny. In *Deep Chand v. State of Uttar Pradesh*, the Supreme Court clarified that Article 13 renders unconstitutional laws void ab initio, reinforcing the supremacy of fundamental rights.

Article 32, described by Dr. B.R. Ambedkar as the “heart and soul of the Constitution,” guarantees the right to constitutional remedies. It empowers the Supreme Court to issue writs such as habeas corpus, mandamus, prohibition, quo warranto, and certiorari for enforcement of fundamental rights. In *Romesh Thappar v. State of Madras*, the Court affirmed that Article 32 itself is a fundamental right and forms the cornerstone of judicial review in India.

Article 226 confers writ jurisdiction upon High Courts, enabling them to issue writs not only for enforcement of fundamental rights but also “for any other purpose.” This provision gives High Courts wider powers than the Supreme Court in certain respects and ensures decentralized constitutional enforcement. The expansive interpretation of Article 226 in *Dwarka Nath v. ITO* underscores its role as a remedial and supervisory jurisdiction.

In addition, Article 131 grants original jurisdiction to the Supreme Court in disputes involving the Union and States, reinforcing federal judicial review. Article 136 provides special leave jurisdiction, enabling the Court to correct grave miscarriages of justice. Article 143 empowers the President to seek advisory opinions from the Supreme Court on questions of law or fact of public importance. Collectively, these provisions institutionalize judicial review as an essential constitutional function.

C. Judicial Review as a Basic Feature of the Constitution

Judicial review has been unequivocally recognized as a basic feature of the Constitution, immune from abrogation even by constitutional amendment. In *Kesavananda Bharati v. State of Kerala*, several judges identified judicial review as an essential element of the Constitution’s basic structure. This position was conclusively affirmed in *Minerva Mills Ltd. v. Union of India*, where the Supreme Court struck down clauses of the Forty-second Amendment that sought to curtail

judicial review, holding that limited amending power and judicial review are inseparable from constitutional supremacy.

The relationship between judicial review and the rule of law is intrinsic. Rule of law demands that all power be exercised within legal bounds and subject to judicial scrutiny. In *L. Chandra Kumar v. Union of India*, the Court held that the power of judicial review vested in the Supreme Court and High Courts under Articles 32 and 226 forms part of the inviolable basic structure, as it ensures legality, accountability, and constitutional governance.

D. Comparative Perspective

From a comparative standpoint, judicial review in India draws inspiration from both the United States and the United Kingdom. In the U.S., judicial review was judicially evolved in *Marbury v. Madison* (1803), establishing the power of courts to invalidate unconstitutional laws. However, the U.S. model operates within a strict separation of powers framework. In contrast, the U.K. traditionally follows parliamentary sovereignty, with limited judicial review confined to administrative actions and human rights compatibility under the Human Rights Act, 1998. India adopts a hybrid model, combining American-style judicial review with constitutional supremacy, thereby granting courts a more expansive role in preserving constitutional values.

Evolution of Parliament’s Amending Power: Pre-Kesavananda Phase

The evolution of Parliament’s amending power prior to *Kesavananda Bharati v. State of Kerala* represents a formative phase in Indian constitutional jurisprudence, marked by an intense judicial-legislative dialogue on the scope of Article 368 and the inviolability of Fundamental Rights. During this period, the Supreme Court oscillated between deference to parliamentary sovereignty and concern for constitutional limitations, ultimately laying the doctrinal groundwork for the basic structure theory.

A. Shankari Prasad v. Union of India (1951)

The first authoritative judicial pronouncement on Parliament’s amending power came in *Shankari Prasad v. Union of India*, which challenged the constitutional validity of the First Constitutional Amendment Act, 1951. The amendment sought to curtail the right to property under Articles 19(1)(f) and 31 by inserting Articles 31A and 31B, thereby immunising agrarian reform laws from judicial review.

The principal issue before the Supreme Court was whether a constitutional amendment made under Article 368 amounted to “law” within the meaning of Article 13(2), which prohibits the State from making

laws abridging Fundamental Rights. The Court adopted a textual and positivist interpretation, holding that the term “law” in Article 13 referred only to ordinary legislative enactments and not to constitutional amendments. Consequently, Parliament’s power to amend the Constitution extended to all its provisions, including Fundamental Rights.

The Court’s reasoning was grounded in the doctrine of parliamentary sovereignty within constitutional limits, treating Article 368 as a self-contained provision conferring plenary constituent power. Judicial review was thus excluded from examining the substantive validity of constitutional amendments. This judgment firmly established the supremacy of Parliament in the constitutional amendment process and subordinated Fundamental Rights to constituent power.

B. Sajjan Singh v. State of Rajasthan (1965)

The validity of Parliament’s amending power was revisited in *Sajjan Singh v. State of Rajasthan*, where the Seventeenth Constitutional Amendment Act, 1964—further modifying land reform protections—was challenged. The Supreme Court, by majority, reaffirmed the reasoning in *Shankari Prasad* and upheld Parliament’s authority to amend Fundamental Rights.

However, *Sajjan Singh* is jurisprudentially significant not merely for reaffirming parliamentary supremacy but for the incipient judicial doubt expressed in the concurring opinions. Justices J.R. Mudholkar and M. Hidayatullah questioned whether there existed implied limitations on the amending power under Article 368. Justice Mudholkar, in particular, raised the possibility that the Constitution possesses certain “basic features” which cannot be altered, although he refrained from conclusively endorsing such a doctrine.

These observations, though obiter dicta, marked a subtle shift in constitutional interpretation. They suggested that constitutional amendments might be subject to inherent limitations derived from the Constitution’s structure and philosophy, foreshadowing the later articulation of the basic structure doctrine.

C. Golaknath v. State of Punjab (1967)

A decisive break from earlier jurisprudence occurred in *Golaknath v. State of Punjab*, where an eleven-judge Bench reconsidered the correctness of *Shankari Prasad* and *Sajjan Singh*. The case arose from a challenge to the validity of the First, Fourth, and Seventeenth Constitutional Amendments, which restricted the right to property.

By a narrow majority of 6:5, the Supreme Court held that Parliament had no power to amend Fundamental Rights. The Court adopted a teleological and rights-centric interpretation, characterising Fundamental Rights as “transcendental” and immutable. It reasoned that Article 368 merely prescribed the procedure for amendment and did not confer substantive amending power. Consequently, any amendment abridging Fundamental Rights was treated as “law” under Article 13(2) and rendered void.

A notable jurisprudential innovation in *Golaknath* was the application of the doctrine of prospective overruling, borrowed from American constitutional law. The Court declared that its ruling would apply only to future amendments, thereby preserving the validity of past constitutional amendments. This approach was adopted to avoid constitutional chaos while simultaneously restraining Parliament’s future actions.

The *Golaknath* decision profoundly altered the constitutional balance by subordinating Parliament’s constituent power to judicial interpretation. However, it also attracted criticism for judicial overreach and for unsettling the amending framework envisaged by the Constitution. The judgment effectively constitutionalised judicial supremacy over constitutional change, triggering a sharp legislative response.

D. Constitutional Response: 24th, 25th, and 29th Amendments

In response to *Golaknath*, Parliament enacted a series of constitutional amendments aimed at restoring its amending authority and limiting judicial review.

The Twenty-fourth Constitutional Amendment Act, 1971 explicitly affirmed Parliament’s constituent power by amending Article 368 to state that Parliament may amend “any provision” of the Constitution. It also inserted Article 13(4), clarifying that constitutional amendments are not “law” for the purposes of Article 13.

The Twenty-fifth Constitutional Amendment Act, 1971 further restricted the right to property by amending Article 31 and introducing Article 31C, which accorded primacy to certain Directive Principles of State Policy over Fundamental Rights and sought to exclude judicial review of laws enacted to give effect to those principles.

The Twenty-ninth Constitutional Amendment Act, 1972 placed certain land reform laws in the Ninth Schedule, thereby seeking to immunise them from judicial scrutiny.

Collectively, these amendments represented a decisive assertion of parliamentary supremacy and set the stage for a constitutional confrontation between Parliament and the judiciary. The legitimacy of these amendments, and the broader question of whether Parliament's amending power was unlimited, ultimately culminated in the landmark decision of *Kesavananda Bharati v. State of Kerala*, which fundamentally redefined the contours of constitutional amendment and judicial review.

Kesavananda Bharati v. State of Kerala (1973): Birth of the Basic Structure Doctrine

The decision of the Supreme Court in *Kesavananda Bharati v. State of Kerala* stands as the most significant constitutional pronouncement in Indian legal history. It fundamentally altered the understanding of Parliament's amending power under Article 368 and firmly entrenched judicial review as a constitutional sentinel. The case resolved the long-standing conflict between parliamentary sovereignty and constitutional supremacy by propounding the Doctrine of Basic Structure, which continues to shape Indian constitutional law.

A. Facts and Constitutional Questions

His Holiness Swami Kesavananda Bharati, the head of the Edneer Mutt in Kerala, challenged the constitutional validity of the Kerala Land Reforms Act, 1963, as amended, on the ground that it violated his fundamental rights under Articles 14, 19(1)(f), 25, and 26. During the pendency of the petition, Parliament enacted the Twenty-fourth, Twenty-fifth, and Twenty-ninth Constitutional Amendments, expressly asserting its power to amend any part of the Constitution, including Fundamental Rights.

The case thus transcended an individual grievance and raised profound constitutional questions regarding the extent of Parliament's constituent power, the relationship between Fundamental Rights and Directive Principles of State Policy, and the legitimacy of judicial review over constitutional amendments.

B. Issues Before the Court

The thirteen-judge Constitution Bench was constituted to decide, inter alia, the following issues:

1. Whether Parliament's power to amend the Constitution under Article 368 was unlimited;
2. Whether Fundamental Rights could be amended or abrogated;
3. Whether the Twenty-fourth, Twenty-fifth, and Twenty-ninth Amendments were constitutionally valid;
4. Whether there existed any implied or inherent limitations on the amending power of Parliament.

These issues required the Court to reconsider the correctness of *Shankari Prasad*, *Sajjan Singh*, and *Golaknath*, thereby testing the very foundations of Indian constitutionalism.

C. Majority and Minority Opinions

The Court delivered an unprecedentedly fragmented judgment running into multiple opinions. By a narrow majority of 7:6, the Supreme Court held that Parliament's power to amend the Constitution is wide but not unlimited. The majority overruled *Golaknath* to the extent that it denied Parliament the power to amend Fundamental Rights, but simultaneously rejected the view that such power was absolute.

Chief Justice S.M. Sikri, speaking for the majority in substance, held that Article 368 does not confer unlimited constituent power and that Parliament cannot alter the "basic structure" or essential features of the Constitution. Judges such as Justices Shelat, Grover, Hegde, Mukherjea, and Reddy concurred in identifying implied limitations on the amending power.

The minority judges, including Justices A.N. Ray, Mathew, Beg, Palekar, Dwivedi, and Chandrachud, upheld absolute parliamentary sovereignty, contending that no part of the Constitution was immune from amendment and that judicial review over constitutional amendments undermined democratic legitimacy.

Despite the lack of a single ratio decidendi, the majority view prevailed, and the Basic Structure Doctrine was authoritatively established.

D. Doctrine of Basic Structure: Meaning and Scope

The Doctrine of Basic Structure posits that while Parliament may amend any provision of the Constitution, it cannot alter, destroy, or abrogate its fundamental identity. This doctrine is not explicitly mentioned in the Constitution but is derived from its overall scheme, philosophy, and purpose.

The Court rejected a purely literal interpretation of Article 368 and adopted a structural and purposive approach, holding that constitutional amendments are subject to substantive judicial review. The doctrine operates as a constitutional limitation on constituent power, ensuring continuity of constitutional values and preventing authoritarian transformations under the guise of amendment.

Importantly, the Court clarified that the doctrine does not freeze the Constitution but allows for evolution and reform, provided the core principles remain intact.

E. Elements of Basic Structure Identified

Although Kesavananda Bharati did not provide an exhaustive list, the judges identified several features forming part of the basic structure, later reaffirmed and expanded through subsequent case law.

1. Supremacy of the Constitution

The Constitution is the supreme law, and all organs of the State derive their authority from it. Parliament itself is a creature of the Constitution and cannot claim sovereignty independent of it.

2. Republican and Democratic Form of Government
Democracy, free and fair elections, and representative governance were recognised as essential features. This principle was later reinforced in *Indira Nehru Gandhi v. Raj Narain*.

3. Secularism

Though not expressly mentioned in the original Constitution, secularism was acknowledged as an implicit constitutional value, later affirmed in *S.R. Bommai v. Union of India*.

4. Federalism

The division of powers between the Union and the States and the autonomy of States were recognised as part of the constitutional structure, limiting central dominance.

5. Separation of Powers

The demarcation of functions among the legislature, executive, and judiciary was held to be fundamental, preventing concentration of power.

6. Judicial Review

Judicial review was identified as a cornerstone of constitutional governance. The power of courts to test constitutional amendments themselves ensures the enforceability of the basic structure.

F. Significance of the Judgment

The significance of Kesavananda Bharati lies in its role as a constitutional bulwark against absolutism. It harmonised the need for constitutional flexibility with the necessity of preserving foundational values. The judgment preserved judicial review as a continuing check on constituent power and decisively rejected the notion of unfettered parliamentary sovereignty.

Subsequent decisions such as *Minerva Mills Ltd. v. Union of India*, *Waman Rao v. Union of India*, and *I.R. Coelho v. State of Tamil Nadu* have reaffirmed and operationalised the doctrine, making it an enduring feature of Indian constitutional law.

In essence, Kesavananda Bharati transformed the Indian Constitution from a document amendable at will into a value-oriented charter, safeguarded by

judicial interpretation. It represents the constitutional moment where judicial review and basic structure converged, securing the supremacy, identity, and moral authority of the Constitution.

Post-Kesavananda Judicial Developments

The post-Kesavananda Bharati era represents the consolidation and operationalisation of the Doctrine of Basic Structure through sustained judicial engagement. During this phase, the Supreme Court of India progressively clarified the content, scope, and enforceability of the doctrine while reaffirming judicial review as an inviolable constitutional feature. The Court used the doctrine not merely as a theoretical limitation on Parliament's amending power but as a practical tool to invalidate constitutional amendments and executive actions that threatened the constitutional identity.

A. *Indira Nehru Gandhi v. Raj Narain* (1975)

The first major application of the basic structure doctrine occurred in *Indira Nehru Gandhi v. Raj Narain*. The case arose from the invalidation of Prime Minister Indira Gandhi's election by the Allahabad High Court on grounds of electoral malpractice. In response, Parliament enacted the Thirty-ninth Constitutional Amendment, inserting Article 329A, which sought to immunise the election of the Prime Minister and Speaker from judicial scrutiny.

The Supreme Court struck down clauses (4) and (5) of Article 329A, holding that free and fair elections are an essential feature of democracy and hence part of the basic structure. The Court further held that judicial review of electoral disputes is integral to maintaining democratic legitimacy. Justice H.R. Khanna observed that democracy postulates the rule of law, and exclusion of judicial review would destroy the democratic fabric of the Constitution.

This judgment was significant in two respects. First, it confirmed that constitutional amendments are subject to judicial review on the touchstone of basic structure. Second, it explicitly recognised judicial review itself as a basic feature, reinforcing the Court's role as the final interpreter of the Constitution.

B. *Minerva Mills Ltd. v. Union of India* (1980)

Minerva Mills Ltd. v. Union of India represents the most authoritative reaffirmation of the basic structure doctrine after Kesavananda Bharati. The case challenged sections 4 and 55 of the Forty-second Constitutional Amendment Act, 1976, which sought to (a) give primacy to Directive Principles of State Policy over Fundamental Rights, and (b) exclude judicial review of constitutional amendments by declaring Parliament's amending power to be unlimited.

The Supreme Court struck down these provisions, holding that limited amending power itself is part of the basic structure. Chief Justice Y.V. Chandrachud famously held that “to destroy the limitations on the amending power is to destroy the Constitution itself.” The Court also emphasised the harmony and balance between Fundamental Rights and Directive Principles, observing that neither can be given absolute primacy without distorting the constitutional scheme.

The judgment firmly entrenched judicial review as a structural necessity and rejected any attempt to convert parliamentary power into absolute sovereignty. *Minerva Mills* thus transformed the basic structure doctrine from a theoretical principle into a potent instrument of constitutional control.

C. *Waman Rao v. Union of India* (1981)

In *Waman Rao v. Union of India*, the Supreme Court addressed concerns regarding the retrospective application of the basic structure doctrine. The petitioners challenged various constitutional amendments placing laws in the Ninth Schedule to immunise them from judicial review.

The Court held that all constitutional amendments enacted after 24 April 1973 (the date of the *Kesavananda Bharati* judgment) would be subject to the basic structure test, whereas amendments enacted prior to that date would remain valid. This ruling introduced the doctrine of prospective application of the basic structure principle.

The decision in *Waman Rao* provided much-needed certainty and stability to constitutional jurisprudence. It balanced respect for parliamentary action prior to *Kesavananda* with the necessity of preserving constitutional identity thereafter.

D. *S.R. Bommai v. Union of India* (1994)

S.R. Bommai v. Union of India marked a decisive expansion of the basic structure doctrine into the domain of federalism and secularism. The case examined the constitutional validity of proclamations issued under Article 356, whereby several State governments were dismissed.

A nine-judge Bench held that federalism and secularism are part of the basic structure of the Constitution. The Court ruled that the President’s satisfaction under Article 356 is subject to judicial review and that arbitrary or mala fide use of President’s Rule would be unconstitutional.

The judgment significantly curtailed executive discretion and reinforced judicial review as a safeguard against central overreach. It also constitutionalised secularism as a core value, holding

that any State government acting contrary to secular principles could legitimately be dismissed. *Bommai* thus operationalised the basic structure doctrine in the context of Centre-State relations and executive accountability.

E. *I.R. Coelho v. State of Tamil Nadu* (2007)

The scope of judicial review over Ninth Schedule laws was conclusively settled in *I.R. Coelho v. State of Tamil Nadu*. The case arose from challenges to laws placed in the Ninth Schedule after *Kesavananda Bharati*, which were claimed to be immune from judicial scrutiny under Article 31B.

A nine-judge Bench held that laws inserted into the Ninth Schedule after 24 April 1973 are subject to judicial review if they violate Fundamental Rights forming part of the basic structure. The Court clarified that the mere placement of a law in the Ninth Schedule does not grant absolute immunity.

This judgment reconciled Articles 31B and 368 with the basic structure doctrine and reaffirmed that constitutional supremacy cannot be undermined by constitutional devices. *I.R. Coelho* ensured that Fundamental Rights and judicial review remain enforceable even against constitutionally protected legislation.

F. *Supreme Court Advocates-on-Record Association v. Union of India* (NJAC Case, 2015)

In *Supreme Court Advocates-on-Record Association v. Union of India*, commonly known as the NJAC case, the Supreme Court examined the constitutional validity of the Ninety-ninth Constitutional Amendment Act, 2014 and the National Judicial Appointments Commission Act, which sought to replace the collegium system of judicial appointments.

By a 4:1 majority, the Court struck down the amendment, holding that judicial independence is a core component of the basic structure. The inclusion of executive members in the NJAC was found to compromise the autonomy of the judiciary and violate the separation of powers.

The judgment reaffirmed that judicial review over constitutional amendments extends to institutional design and structural arrangements. It underscored that reforms, however well-intentioned, must conform to the Constitution’s foundational principles. The post-*Kesavananda* jurisprudence transformed the doctrine of basic structure into a living constitutional principle. Through cases such as *Indira Gandhi*, *Minerva Mills*, *Bommai*, *I.R. Coelho*, and the NJAC decision, the Supreme Court systematically identified, applied, and enforced core constitutional values. Judicial review emerged not merely as a

procedural safeguard but as a substantive guarantor of constitutional identity, ensuring that constitutional change remains evolutionary rather than revolutionary.

INTERRELATIONSHIP BETWEEN JUDICIAL REVIEW AND THE DOCTRINE OF BASIC STRUCTURE

The doctrines of judicial review and basic structure are not independent constitutional concepts but are deeply interwoven and mutually reinforcing principles forming the core of Indian constitutionalism. Judicial review is the mechanism through which constitutional limitations are enforced, while the doctrine of basic structure supplies the substantive standards that judicial review protects against legislative and constituent excess. Together, they ensure the supremacy of the Constitution, preservation of fundamental rights, and maintenance of constitutional equilibrium.

Judicial Review as an Essential Component of Basic Structure

Judicial review has been unequivocally recognised by the Supreme Court as an integral and essential feature of the basic structure of the Constitution. This position was first articulated in *Kesavananda Bharati v. State of Kerala*, where several judges identified judicial review as indispensable to the constitutional scheme. The rationale is rooted in the principle that constitutional supremacy would be rendered illusory if there were no institutional mechanism to test the validity of legislative, executive, or even constituent actions.

This recognition was authoritatively reaffirmed in *Minerva Mills Ltd. v. Union of India*, wherein the Court struck down clauses (4) and (5) of Article 368 introduced by the Forty-second Amendment, which sought to exclude judicial review of constitutional amendments. The Court held that removing judicial review would dismantle the Constitution's basic framework, as it would eliminate the only organ capable of enforcing constitutional limitations. Judicial review thus operates as the enforcement arm of the basic structure, without which the doctrine itself would be ineffective.

Basic Structure Doctrine as a Limitation Enforced Through Judicial Review

The doctrine of basic structure does not function autonomously; it derives its operative force through judicial review. It is the judiciary that identifies, interprets, and enforces the limits imposed by the basic structure doctrine on Parliament's amending power under Article 368. In this sense, judicial review acts as the procedural vehicle, while the basic

structure doctrine constitutes the substantive restraint.

In *Indira Nehru Gandhi v. Raj Narain*, the Supreme Court invalidated a constitutional amendment that sought to immunise the election of the Prime Minister from judicial scrutiny, holding that exclusion of judicial review and destruction of free and fair elections violated the basic structure. This case illustrates how judicial review operationalises the doctrine by scrutinising constitutional amendments for structural violations.

Similarly, in *I.R. Coelho v. State of Tamil Nadu*, the Court held that laws placed in the Ninth Schedule after 24 April 1973 are subject to judicial review if they infringe fundamental rights forming part of the basic structure. The judgment clarified that constitutional devices cannot be used to bypass judicial scrutiny, reaffirming the judiciary's role as the final arbiter of constitutional validity.

Protection of Fundamental Rights Through Both Doctrines

The interrelationship between judicial review and the basic structure doctrine is most evident in the protection of Fundamental Rights. Judicial review provides the remedial mechanism for enforcement of rights under Articles 32 and 226, while the basic structure doctrine ensures that Parliament cannot abrogate or emasculate these rights through constitutional amendments.

In *Kesavananda Bharati*, the Court held that Fundamental Rights are amendable but not destructible, as their total abrogation would damage the Constitution's basic structure. This nuanced position preserved constitutional flexibility while safeguarding essential liberties. The approach was reinforced in *Maneka Gandhi v. Union of India*, where judicial review expanded the substantive content of Article 21, ensuring that laws affecting personal liberty must meet standards of fairness, reasonableness, and non-arbitrariness.

Furthermore, *I.R. Coelho* clarified that Fundamental Rights such as Articles 14, 19, and 21 constitute the "golden triangle" of the Constitution and form part of its basic structure. Judicial review thus acts as the means through which the judiciary ensures that neither ordinary legislation nor constitutional amendments infringe upon these core rights.

Maintenance of Constitutional Balance and Checks and Balances

A critical function of both doctrines lies in maintaining constitutional balance and the system of checks and balances among the organs of the State. Judicial review prevents legislative and executive

overreach, while the basic structure doctrine restrains constituent power from transforming the constitutional identity.

In *S.R. Bommai v. Union of India*, the Supreme Court subjected the exercise of President's Rule under Article 356 to judicial review, holding that federalism and secularism are part of the basic structure. This decision exemplifies how judicial review enforces structural limitations to preserve the federal balance and prevent misuse of executive power.

The NJAC case (*Supreme Court Advocates-on-Record Association v. Union of India*) further illustrates this interrelationship. The Court struck down the Ninety-ninth Constitutional Amendment, holding that judicial independence and separation of powers are part of the basic structure and that judicial review must safeguard the autonomy of the judiciary from executive interference.

Through these decisions, the Supreme Court has ensured that no organ of the State becomes supreme and that constitutional governance remains balanced, accountable, and rule-based.

The interrelationship between judicial review and the doctrine of basic structure represents the normative core of Indian constitutional law. Judicial review gives life and enforceability to the basic structure doctrine, while the doctrine provides substantive content and limits that judicial review protects. Together, they safeguard Fundamental Rights, preserve constitutional identity, and maintain institutional balance. Far from undermining democracy, this symbiotic relationship strengthens constitutional democracy by ensuring that power—whether legislative, executive, or constituent—remains subject to constitutional discipline.

Critical Analysis and Contemporary Debates

The doctrines of judicial review and basic structure have profoundly shaped Indian constitutional jurisprudence. While widely celebrated as safeguards against authoritarianism and constitutional erosion, they have also generated sustained academic, political, and judicial debate. The core of this debate revolves around the legitimacy, scope, and consequences of judicial intervention in constitutional governance.

A. Judicial Overreach vs Constitutional Guardianship

One of the most persistent criticisms of the basic structure doctrine is that it facilitates judicial overreach, enabling courts to intrude into the domain of the legislature and substitute judicial wisdom for democratic choice. Critics argue that by invalidating constitutional amendments enacted by Parliament under Article 368, the judiciary effectively assumes a

constituent role, undermining the separation of powers.

This criticism gained prominence after decisions such as *Minerva Mills Ltd. v. Union of India*, where the Supreme Court struck down portions of the Forty-second Amendment and reaffirmed that Parliament's amending power is limited. Detractors contend that such decisions vest excessive discretionary power in judges, whose interpretations of "basic structure" may reflect subjective values rather than constitutional text.

Conversely, proponents argue that judicial review in this context constitutes constitutional guardianship, not overreach. In *Kesavananda Bharati v. State of Kerala*, the Court emphasized that judicial intervention is justified to prevent the destruction of the Constitution's identity. From this perspective, the judiciary acts as a trustee of constitutional values, ensuring that transient political majorities do not dismantle foundational principles such as democracy, secularism, and rule of law.

B. Vagueness and Indeterminacy of Basic Structure

Another significant critique concerns the vagueness and indeterminacy of the basic structure doctrine. The Supreme Court has consciously refrained from providing an exhaustive or definitive list of elements constituting the basic structure. While this flexibility allows the doctrine to evolve, it also creates uncertainty and unpredictability.

In *Kesavananda Bharati*, different judges identified different elements as part of the basic structure, leading to doctrinal ambiguity. Subsequent cases such as *S.R. Bommai v. Union of India* and *I.R. Coelho v. State of Tamil Nadu* expanded the list to include secularism, federalism, and the "golden triangle" of Articles 14, 19, and 21. Critics argue that such incremental expansion risks transforming the doctrine into an open-ended judicial veto over constitutional change.

However, supporters contend that the indeterminate nature of the doctrine is a constitutional strength rather than a weakness. It allows the judiciary to respond to evolving threats to constitutional values. As observed in *L. Chandra Kumar v. Union of India*, rigid constitutional formulas may fail to protect constitutional integrity in changing political contexts.

C. Democratic Legitimacy and Parliamentary Sovereignty

A central constitutional tension lies between democratic legitimacy and parliamentary sovereignty on the one hand, and judicial review on the other. Parliament, as an elected body, claims

democratic legitimacy to amend the Constitution in accordance with the will of the people. Judicial invalidation of constitutional amendments raises questions about the legitimacy of unelected judges overriding representative institutions.

This argument was forcefully advanced by the minority in *Kesavananda Bharati*, where Justice A.N. Ray emphasized that constitutional amendments reflect popular will and should not be constrained by judicially created limitations. Similar concerns resurfaced in political reactions to the NJAC judgment, where the Court struck down the Ninety-ninth Constitutional Amendment despite near-unanimous parliamentary support.

Nonetheless, Indian constitutionalism rejects the notion of absolute parliamentary sovereignty. The Constitution itself establishes constitutional supremacy, not legislative supremacy. As clarified in *Indira Nehru Gandhi v. Raj Narain*, democracy is not merely about majority rule but about governance within constitutional limits. Judicial review thus derives legitimacy from the Constitution itself, not from popular mandate.

D. Judicial Review in the Era of Constitutional Amendments

In the contemporary era, judicial review faces new challenges arising from frequent constitutional amendments, complex governance structures, and heightened executive power. The judiciary has increasingly been called upon to assess amendments affecting institutional independence, federal balance, and civil liberties.

The NJAC case (*Supreme Court Advocates-on-Record Association v. Union of India*) exemplifies the modern application of the basic structure doctrine to questions of institutional design and judicial independence. While the judgment was praised for preserving judicial autonomy, it was also criticised for resisting structural reform and perpetuating opacity in judicial appointments.

Similarly, debates continue over whether judicial review should adopt a more restrained posture in economic and social policy matters, especially when amendments are enacted to implement Directive Principles. The challenge lies in ensuring that judicial review remains a constitutional safeguard rather than an impediment to democratic governance.

The critical debates surrounding judicial review and the doctrine of basic structure reflect the dynamic tension inherent in constitutional democracy. While concerns of overreach, vagueness, and democratic legitimacy persist, the doctrines have largely functioned as stabilising forces in Indian

constitutional law. They ensure that constitutional change remains anchored to enduring values, preserving the Constitution as a normative charter rather than a mutable political instrument.

CONCLUSION

The doctrines of judicial review and basic structure form the twin pillars of Indian constitutional jurisprudence, ensuring that the Constitution remains a living, resilient, and value-oriented document. Through the course of this research, it becomes evident that these doctrines operate not merely as legal abstractions but as practical mechanisms that safeguard constitutional identity, protect fundamental rights, and maintain the balance of power among the organs of the State.

Summary of Key Findings

The historical and judicial evolution of these doctrines underscores a consistent theme: the Indian Constitution envisages a limited government whose powers are constrained by constitutional norms and principles. From the pre-*Kesavananda Bharati* era of Shankari Prasad, Sajjan Singh, and Golaknath, it was clear that parliamentary sovereignty had been assumed to be supreme. However, the *Kesavananda Bharati v. State of Kerala* judgment crystallized the understanding that Parliament's amending power is wide but not unlimited, giving birth to the basic structure doctrine.

Subsequent jurisprudence has operationalised this doctrine. In *Indira Nehru Gandhi v. Raj Narain*, the Court reaffirmed that free and fair elections and judicial review are integral features of the basic structure. *Minerva Mills Ltd. v. Union of India* emphasized the harmony between Fundamental Rights and Directive Principles, while *S.R. Bommai v. Union of India* expanded the scope to include federalism and secularism. *I.R. Coelho v. State of Tamil Nadu* and the NJAC case (*Supreme Court Advocates-on-Record Association v. Union of India*) further demonstrate the adaptability of the doctrine in addressing contemporary challenges such as judicial independence and legislative attempts to circumvent constitutional safeguards.

Role of Judiciary in Preserving Constitutional Identity
The judiciary has acted as the custodian of the Constitution, interpreting and enforcing the limits of legislative and executive power. Judicial review functions as both a procedural and substantive mechanism to ensure that constitutional amendments and state action do not transgress the boundaries of the basic structure. Decisions such as *Waman Rao v. Union of India*, which introduced prospective application of the doctrine, illustrate the Court's careful balancing of legal continuity with the need to protect constitutional values.

Through these decisions, the judiciary has preserved the rule of law, maintained separation of powers, and reinforced fundamental rights. The doctrine of basic structure empowers the judiciary to invalidate amendments that threaten essential features such as democracy, secularism, federalism, judicial independence, and the supremacy of the Constitution. In effect, the courts function as a stabilizing force, ensuring that transient political majorities cannot undermine the foundational principles of constitutional governance.

Enduring Relevance of Judicial Review and Basic Structure Doctrine

The enduring relevance of these doctrines lies in their capacity to adapt to evolving political, social, and economic contexts. While critics argue that judicial review may sometimes constitute judicial overreach, the doctrine of basic structure provides a normative benchmark against which the legitimacy of constitutional amendments can be evaluated. By safeguarding the core values of constitutionalism, the judiciary ensures that amendments serve the broader goals of justice, equality, and liberty, rather than short-term political expediency.

The basic structure doctrine also fosters institutional accountability. Cases such as the NJAC judgment demonstrate that judicial review protects the independence of the judiciary, while S.R. Bommai illustrates the Court's role in maintaining federal equilibrium. In combination, these doctrines function as a dynamic check on the concentration and abuse of power, reinforcing the resilience and integrity of the Indian constitutional system.

Future of Constitutional Amendments and Judicial Oversight

Looking forward, the interplay between judicial review and the basic structure doctrine will continue to shape the trajectory of constitutional amendments. Parliament remains empowered to amend the Constitution to reflect socio-economic reforms and policy innovation; however, such amendments must respect the inviolable features of the Constitution. Judicial review ensures that these changes do not erode the constitutional ethos, thus striking a balance between constitutional evolution and preservation. Emerging challenges—ranging from technological governance, federal decentralization, to protection of minority rights—will likely test the limits of both doctrines. The judiciary will need to maintain a careful equilibrium between activism and restraint, ensuring that constitutional amendments remain instruments of progress without compromising the core identity and structural integrity of the Constitution.

In conclusion, the doctrines of judicial review and basic structure are indispensable to Indian constitutionalism. They ensure that the Constitution remains supreme, resilient, and value-oriented, capable of balancing the competing demands of change and continuity. By safeguarding democracy, fundamental rights, federalism, and judicial independence, these doctrines have established a framework in which governance is accountable, constitutional amendments are disciplined, and the constitutional identity of India is preserved for future generations. The interplay between judicial review and the basic structure doctrine remains a defining feature of India's constitutional landscape, exemplifying the enduring relevance of judicial oversight in sustaining a vibrant and robust constitutional democracy.

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