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The Evolution of Judicial Review in India: The Judiciary's Role in Safeguarding the Basic Structure Doctrine.

Rajendra

Assistant Professor, Dayanand College of Law, Chhatrapati Shahu Ji Maharaj University (CSJMU), Kanpur.

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Abstract

The basic structure doctrine changed Indian judicial review by conferring substantive limits on constitutional amendment. In fact, The significance of it ought not to be taken merely as enhancing, increasing the power of the judiciary. The doctrine concerns a prior constitutional issue: whether an authority empowered to amend a constitution may use that authority to destroy the conditions which make constitutional government possible. This essay examines the transition from the earlier acceptance of a wide-ranging power of parliamentary amendment to the settling down in *Kesavananda Bharati* and the subsequent extensions of the doctrine to electoral adjudication, limitations on amendments, judicial review, independence of tribunals and reservation. Utilizing a doctrinal approach, it clarifies the difference between the review of amendments and the review of ordinary legislation; it identifies tensions between constitutional continuity and democratic amendment. As per the defence's theory in the case, any instance in which public trust in government institutions and the rule of law is shaken gives rise to defence of necessity. The preservation of the constitution does not imply that all institutions or meanings must remain unamendable.

Keywords: *Judicial Review; Basic Structure; Article 368; Constitutional Amendments; Judicial Independence; Constitutional Identity.*

1. Introduction

Judicial review looks at whether public action is in accordance with a legal norm higher than that of the action itself¹. Assessing the validity of a constitutional amendment is much harder than assessing an ordinary piece of legislation. This is because the amendment creates a new norm.

In response to the Indian, it is the basic structure doctrine that means Parliament has a wide power of amendment but not to use Article 368² to destroy the essential identity of the Constitution. The doctrine, therefore, concerns both the institutional authority and the distinction between constitutional alteration and replacement.

This paper is organised around two questions. What made Indian courts transition from assessing laws against constitutional provisions to evaluating amendments against structural principles? What criteria can ensure that review is legally constrained rather than subject to judicial choice? The scrutiny traces various Supreme Court rulings starting from the earliest amendment cases to the tribunal's ruling in November 2025³. Its focus is on doctrinal propositions or institutional consequences and not political intentions or the relative merits of a particular regime. The central claim is that substantive limits are necessary for constitutional continuity, but the legitimacy of enforcing those limits is that their source threshold and application must be explained.

2. The constitutional architecture of review

Articles 13, 32 and 226⁴ serve as essential frameworks for evaluating state actions that infringe rights. Article 13 is concerned with laws inconsistent with fundamental rights.

The constitutional remedy under articles 32 and 226 lies with the courts.

Further, the jurisdiction of the High Courts is not restricted to the enforcement of fundamental rights alone. Under article 368, on the other hand, there is a specific amendment procedure which requires the ratification of the states⁵ in case there is any change that affects the federal arrangements. Accordingly, the constitutional text distinguishes between ordinary legislative power, judicial remedies and constituent power exercised by way of amendment.

The standard of review is affected by this. An ordinary law may be struck down on the basis of violation of legislative competence or an enforceable

Constitutional limitation⁶. Simply because a provision has been amended does not mean the provision was previously there. Change is a change. The basic structure review questions whether the alteration in question crosses the line between permissible revision and destruction of foundational commitments. Merging both these questions would either halt the amendment or allow ordinary legislation to escape consideration under the Constitution on its merits by general assertions of institutional policy.

The judicial system is another institution created by the Constitution. Just because it can impose limits does not mean it is beyond them. The decisions should always be linked to text, structural constitution and precedent, and remedies only to a defect. Thus, judicial review is not the same as judicial supremacy in all governance issues.

The unique assertion is legal: the act of another institution is inconsistent with a constitutionally imposed limitation that is duly enforceable by a court.

3. From Shankari Prasad to Kesavananda Bharati

3.1 The early distinction between law and amendment

In the cases of Shankari Prasad and Sajjan Singh⁷, the Supreme Court ruled that constitutional amendments are not covered by Article 13 in the same way as normal legislation. Parliament could therefore modify provisions affecting fundamental rights. This method preserved a genuine distinction between legislative and constituent authority. The challenge posed by this issue was to ascertain whether any real limit existed once the amendments process was followed.

I C Golak Nath v State of Punjab⁸ altered the course. Most of the judges believe that the amendment was covered within the limitation of Article 13. They held that Parliament cannot amend Fundamental Rights so they can abridge it or take it away. The judgment was held through prospective overruling. This policy made rights stronger against being amended but at the same time put the existing rights text in a rigid relationship with future constitutional change. It did not provide the eventual distinction between amending a provision and unamendable structurally.

The Twenty-fourth Amendment⁹ explicitly recognized the parliament's constituent power under Article 368 and exempted amendments from the operation of Article 13. The resulting conflict was not

just which institution would win. The issue related to the nature of delegated amendment power. Whether recognition of the constituent power would make the power unlimited, or the Constitution was of such identity that the authorised amending body could not negate this.

3.2 The constitutional settlement of 1973

In the case of *Kesavananda Bharati vs. State of Kerala*¹⁰, the thirteen-judge Bench recognised the existence of broad amendment power. The judgment held, by a seven-to-six division, that basic structure cannot be damaged or destroyed. The ruling did not create a fixed, clearly articulated list of unchanging characteristics. It meant that there should be no ban but a limit on the extent of change of every provision relating to a basic feature.

Two extremes are avoided by the settlement. Parliament could not restrict itself to the amendment of marginal matters and compliance with Article 368 did not permit self-destruction of the Constitution. The distinction enables institutions to evolve, while ensuring the conditions remain constant¹¹ so that the document is recognizable as the same constitution. The unresolved challenge is methodological; an abstract commitment such as democracy may support multiple institutional arrangements. Stating that the undertaking is fundamental does not, on the basis of that statement alone, imply that any arrangement is indispensable.

The question of whether India is a democracy has led to a significant amount of scholarly work on the subject of democracy itself. It is important to analyse the legal basis of a claimed limitation¹² to reconstruct it rather than infer validity from the amendment being desirable. A court must explain how the contested change undermines a fundamental commitment and why that impairment is more than the usual effect of a constitutional amendment.

4. Consolidation through distinct constitutional controversies

4.1 Electoral adjudication and limited amendment power

A constitutional amendment that dealt with the adjudication of certain election disputes was taken up for evaluation by the Supreme Court. The Court struck down Article 329A(4)¹³ which was added by the 39th Amendment. The separate opinions linked the defect to founding principles like democracy, equality, judicial review and the rule of law. The case showed that the exceptional constitutional treatment of a

particular dispute could itself undermine the structural conditions of lawful political competition.

*Minerva Mills v Union of India*¹⁴ was a case in which the Supreme Court struck down clauses (4) and (5) of Article 368 which declared amending power as unlimited. It also rejected the extension of the protection Article 31C applies to all Implementing Legislation. The restriction on amending power and the link between parts III and IV were therefore essential to the solidification of the doctrine. The constitutional goals cannot be pursued by removing restrictions which make this pursuit constitutionally accountable.

The two decisions do different things. *Indira Gandhi* looked at a unique arrangement regarding adjudication and electoral legality; and *Minerva Mills* was about the attempt to take away the boundaries of the power to amend itself. They both do not support treating every disagreement about government policy as a basic structure dispute. The amendments are structurally significant due to what they did to constitutional accountability and not because they addressed a serious topic.

4.2 The Ninth Schedule and the significance of impact

On 24 April 1973, Waman Rao fixed a date¹⁵ with respect to the scrutiny of constitutional amendments putting enactments in the Ninth Schedule. I R Coelho¹⁶ further stated that Ninth Schedule protection after *Kesavananda* is open to basic structure scrutiny. When the damaged principles ultimately harm basic structure components, constitutional insulation cannot be treated as decisive.

The investigation is tougher than locating any violation of a basic right. It needs to show any effect upon the relevant fundamental principle. Coelho thus requires consideration of the real effect of the rights abrogation¹⁷, especially in regard to the constitutional values reflected in Articles 14, 19 and 21. This qualification maintains the distinction between normal rights review and conferring immunity on constitutional amendments. If not, “basic structure” would merely be another name for all Part III provision.

5. Judicial independence: safeguarding adjudication without freezing institutions

In the case of *L Chandra Kumar v Union of India*¹⁸, the Supreme Court ruled that the power of judicial review enshrined in Articles 226 and 227 of the

Constitution for the High Courts, as well as Article 32, forms part of the basic structure of the Constitution. Constitutional adjudication could be supplemented by tribunal arrangements but could not exclude the oversight function guaranteed by that arrangement. The case link institutional design to practical availability of review: a right to judicial scrutiny should survive the reorganisation of adjudicatory forums.

The National Judicial Appointments Commission litigation raised an issue related but different. In 2015, the Court declared the Ninety-ninth Amendment and the NJAC Act invalid¹⁹ by a margin of four to one. The majority laid stress upon judicial independence while giving their reasoning. Chelameswar J dissented²⁰ and raised the question whether the present arrangements for appointments adequately encapsulated independence and accountability. An evaluation that accurately reflects the status of affairs must maintain this disagreement, not describe the ruling as a unanimous endorsement by judges of a single institution.

The challenge for doctrine is to draw a line between a basic value and an arrangement for its protection. Independence requires safeguards against improper influence but whether those safeguards are in place will require the analysis of appointment, tenure, removal and institutional incentives. The accounts offered by the majority and dissent in the NJAC case which contradict each other. Disagreement is present the doctrine was not eliminated. It makes reasoning about institutional necessity especially important that disagreement exists in a case where the courts are assessing arrangements concerning their composition.

The Madras Bar Association judgement of November 2025²¹ was on ordinary tribunal legislation, not a constitutional amendment. The court declared unconstitutional the provisions referring back to the earlier arrangements which had already been declared constitutionally defective, retained the controlling standards in earlier tribunal decisions and directed for the establishment of a National Tribunals Commission. The ruling shows the continuing importance of judicial independence but must not be mistaken for another amendment invalidation. This means the constitution may place restrictions on the legislatures not permitting them to merely overwrite a judgment's result and make it valid, without rectifying the defect.

Legal response space is also defined by this distinction. A legislature may alter the legal foundation of a judgment²², as long as it stays within constitutional

bounds. An unconstitutional arrangement cannot be made valid merely by stating that the earlier judgments shall not apply. As such, the 2025 tribunal litigation has a bearing on the substance of institutional safeguards rather than a mere repetition of the statutory formula as a completed constitutional answer.

6. Equality and the permissible range of constitutional change

The doctrine does not limit itself to amendments which are struck down by the Court. *Janhit Abhiyan v Union of India*²³ judgment, delivered in the month of November in 2022, upheld the 103rd amendment of the constitution. By this amendment, provisions for the economical weak section were introduced in the constitution. The five-judge Bench was divided three to two; the dissent specifically questioned the exclusion²⁴ of groups already covered by existing reservation provisions from the new arrangement. The results and disagreements are relevant to the understanding of amendment review.

The case illustrates why a constitutional document should distinguish between the assertion of fundamental equality and the dispute about a specific distributive scheme. Most judges found the amendment consistent with the basic structure²⁵, while the dissent observed that it has a structural equality problem because of its exclusionary design. Merely characterising either position as support for reservation or opposition to reservation will obscure the legal issue. The controversy was about how an amendment reshaped equality commitments in the Constitution.

An upheld amendment also goes against the assumption that the doctrine is always inhibiting of adaptation. By examining the objections, it can confirm the constitutional space for change²⁶. The seriousness of that examination is important: a high threshold must not become a conclusive declaration that Parliament may do anything the Court calls a policy choice. An account that is reasonable must explain what equality allows us to change and which aspects of equal constitutional membership are fixed.

7. A disciplined method of basic structure adjudication

Identification comes first under the requirements. A court invoking the doctrine must identify the alleged basic feature and its constitutional source²⁷. There are insufficient grounds for any reliance on the "spirit" of the constitution that is not linked to the text. The judicial pronouncements in *Kesavananda Bharati* and

subsequent cases contain examples of structural reasoning. However, the authority will not render any concept mentioned in any opinion indubitably unamendable.

Threshold of impairment second requirement. Just because there exists a connection between an amendment and the basic feature, does not mean that destruction of that feature takes place²⁸. Amendments affecting the courts, elections or the right to equality will often touch upon but not obliterate fundamental issues. As such, the analysis should locate the impairment mechanism, which may consist in the removal of an effective review, concentration of unchecked power or a similarly grave distortion. Legal consequences warrant our attention rather than the language used as a defence of the amendment.

Why We Need to Re-Justify an Institutional Baseline It is wrong of the court to assume that the existing practice is the only possible expression²⁹ of a communally recognised constitutional value. Where alternative arrangements may be possible, it should consider their protections and risks. This is of particular importance in appointments and tribunal cases, where a defence of independence can unwittingly become a defence of inherited arrangements.

It is important to different institutional reconfiguration and destruction of independence, so as to preserve authority to amend alongside judicial protection.

Secondly, the cure must match the identified deficiency. The form of relief may be affected by the severability, relatedness of the provisions³⁰, and protection of completed transactions. Waman Rao³¹ illustrates the importance of treatment; the tribunal cases highlight the need for operative institutions to fulfil constitutional obligations. The precision of remedy can minimize needless disruption without accepting an unconstitutional arrangement. Likewise, practical inconvenience alone cannot support the survival of an otherwise invalid measure.

Ultimately, principle needs institutional restraint. Judgments are assessable as legal reasoning when they are fully engaged with opposing arguments, accurately take account of majority and separate opinions, and consistently apply the damage threshold. Nick Robinson's account³² of the rise of a "good governance" court reflects the wider growth of judicial power. That explanatory account should not be interpreted as a legal authorization to replace judicial

preferences for every institutional decision. A review of basic structure will be most effective when its specific constitutional function is distinct from general oversight of the governance.

An additional safeguard is to distinguish between a disagreement over a constitutional principle and a disagreement about its institutional expression³³. The mechanisms of appointment or administrative support or public accountability may differ between the two arrangements. So, the challenger must explain how the particular change undermines that protected function, and the defending institution must respond to that account rather than just invoke its authority to amend. This reciprocal burden of justification will enable the serious constitutional objection to be heard without assuming that any departure from existing practice is destructive.

The temporal reasoning is another challenge. An amendment can produce both immediate legal effects and longer-term institutional effects³⁴. Courts need to separate consequences established by the text from predictions that rely on uncertain behaviour. The argument does not need to speculate about who may occupy the position in the future where structural risk results from cuts to oversight or accountability. If a chain of contingent events underpins an objection, the objection necessitates an explanation and evidentiary support. When it identifies which type of claim is being litigated, the doctrine is more disciplined.

Dissent shouldn't be treated as simply evidence that there was no governing principle at play³⁵ but would rather be treated as another valuable source of legal analysis. Civil disputes arising out of contract are very common involving disagreement about the basic feature involved, the severity of either party's impairment or the remedy. Those disagreements have different implications for later cases. Consequently, a judgment based on precedent should specify the necessity of the proposition to the majority result instead of compounding favourable extracts from disparate opinions into an artificial unanimous test.

Ultimately, remedial precision safeguards both constitutional alteration and constitutional ongoingness. Should the defect be confined to a separable provision³⁶, the reasoning must explain why broader invalidation is required before the rest is discarded. If the clauses constitute an inextricable arrangement, that link should be proved. The objective is not to save amendments at all costs, but to guarantee that the legal response reaches the determined structural injury and no further. When the totality of

the remedy, not just the assertion, reflects the restraint, basic structure review will be more defensible.

8. Conclusion

The progression of Indian judicial review shows consistent endeavors aimed at reconciling change with continuity in constitution. The initial cases in constitutional amendments with respect to Article 368, further elaborated in the cases of *Kesavananda Bharati*, *Minerva Mills* and *Coelho*, clarified that constituent authority is wide but limited. After disputes on tribunals, appointments and equality - when the doctrine is reinforced - it is clear that the accords are not limited to the circumstances of its birth.

It is not necessary to preserve all existing constitutional arrangements to safeguard the basic structure. The courts need to explain what basic commitments are, how the amendment that is being challenged substantially impairs them, and why the remedy does follow. Regular legislation must be subject to its constitutional tests. The proposition contends that the doctrine safeguards a constitution which is subject to alteration, not a constitution which forever remains unchanged and it curtails public power without rendering constitutional adjudication as an unlimited authority to rule.

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2. Constitution of India 1950, art 368. See also *Kesavananda Bharati v State of Kerala* (1973) 4 SCC 225.
3. *Madras Bar Association v Union of India* 2025 INSC 1330.
4. Constitution of India 1950, arts 13, 32 and 226.
5. Constitution of India 1950, art 368(2), proviso. Ratification is required for the changes specified in that proviso, not every amendment with a federal implication.
6. Constitution of India 1950, arts 13 and 245-246; *I R Coelho (Dead) by LRs v State of Tamil Nadu* (2007) 2 SCC 1.
7. *Shankari Prasad Singh Deo v Union of India* AIR 1951 SC 458; *Sajjan Singh v State of Rajasthan* AIR 1965 SC 845.
8. *I C Golak Nath v State of Punjab* AIR 1967 SC 1643.
9. Constitution (Twenty-fourth Amendment) Act 1971, ss 2-3.
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13. *Indira Nehru Gandhi v Raj Narain* 1975 Supp SCC 1; Constitution (Thirty-ninth Amendment) Act 1975.
14. *Minerva Mills Ltd v Union of India* (1980) 3 SCC 625.
15. *Waman Rao v Union of India* (1981) 2 SCC 362. 24 April 1973 is the cut-off date adopted for Ninth Schedule review; it is not the date of the *Waman Rao* judgment.
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20. *Supreme Court Advocates-on-Record Association v Union of India* (2016) 5 SCC 1, dissenting opinion of J Chelameswar J.
21. *Madras Bar Association v Union of India* 2025 INSC 1330, paras 151-155.
22. For the distinction between curing a constitutional defect and simply overriding a judicial result, see *Madras Bar Association v Union of India* 2025 INSC 1330.
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29. Compare the majority opinions and Chelameswar J's dissent in *Supreme Court Advocates-on-Record Association v Union of India* (2016) 5 SCC 1.
30. For an example of provision-specific constitutional invalidation, see *Minerva Mills Ltd v Union of India* (1980) 3 SCC 625.
31. *Waman Rao v Union of India* (1981) 2 SCC 362.
32. Nick Robinson, 'Expanding Judiciaries: India and the Rise of the Good Governance Court' (2009) 8(1) *Washington University Global Studies Law Review* 1.
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