

Basic Structure Doctrine—Absolute or Obsolete?

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Abstract

*Fundamental component; we are not bound by parliamentary democracy or by ideology. **Purpose:** The authors of the constitution, who had a developing and expanding nation in mind, gave parliament the authority to alter the document in anticipation of its being modified by and for—WE THE PEOPLE. The Parliament of India has the authority, as outlined in Article 368 of the Indian Constitution, to amend or repeal any provision within the Constitution itself. This power of amendment is independent of other provisions in the Constitution. Parliament can exercise anticipation its constituent power to modify or remove any specific provision within the Constitution by following the procedures specified in Article 368. This Constitution may only be amended by a Bill tabled in either House of Parliament that is expressly intended to do so following the Bill's passage. (a) Articles 54, 55, 73, 162, or 241; (b) Chapter IV of Part V, Chapter V of Part VI, or Chapter I of Part XI; (c) any of the Lists in the Seventh Schedule; (d) the representation of States in Parliament; or (e) the provisions of this article, the amendment must also be ratified by the legislatures of at least 50% of the States. Any law or provision included in Part III of the Indian Constitution, regardless of whether it was enacted before or after the implementation of Section 55 of the Constitution (Forty Second Amendment) Act, 1976, can be legally challenged in any court based on any grounds. It is explicitly stated that there are no limitations whatsoever on the constituent power of Parliament to introduce new elements, modify existing ones, or completely abolish the Constitution. Part XXI of the Temporary, Transitional, and Special Provisions Any modification made in accordance with this article is exempt from Article 13's requirements. This Constitution may not be changed in any way, including the clauses; however, the Indian Constitution's main core was protected by the inclusion of Article 13, which is crucial for altering. All laws that were in effect in India prior to the ratification of this Constitution and that conflict with the provisions of this Part will be invalid to the extent of the conflict. Any State law that limits or otherwise restricts the rights conferred by this section is forbidden and, to the extent that it does so, is void. Unless the context clearly indicates otherwise, the term "law" as used in this article refers to any ordinance, order, byelaw, rule, regulation, notification, custom, or usage that has legal weight in Indian territory. The answer to this question is unclear; however, with the intent of imposing any limitations on parliament's ability to amend the constitution. A significant ruling established the basic structure theory; however, this raises the question of how much the basic structure can be altered by the legislature. What use does a democratic state constitution serve if there are no limitations on modifying the law? The core principles of the doctrine are succinctly explained in this article, along with the justifications for broadening its scope through judicial pronouncements.*

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INTRODUCTION

This amending authority is the source of contention between the two supreme bodies of state. The government and venerable Supreme Court oversee the making of laws. Although it does not have total power within the state, the highest court cannot stop parliament from making legislation.

Recently, our renowned Rajya Sabha chief said that while the constitution is paramount, the parliament still has the final say.

We the People

Laws that were enacted or created by the legislature or another competent body in the Indian subcontinent prior to the publication date of this article are referred to as “laws in force,” even though certain legislation or a component of a law might not have been in force at the time this Constitution was passed or in certain places. No amendment to the Constitution enacted in accordance with Article 368's Right to Equality shall be subject to the provisions of this article [1]. However, Article 368 stipulates that any provision of the Constitution, including Article 368, may be changed by Parliament. The question of whether Part 3 of the Indian Constitution can be changed by Parliament comes up. Part 3 of the Constitution accords some fundamental rights to each person, including the following: The right to equality includes the protection of equal opportunity in employment-related affairs, equality before the law, and the elimination of discrimination based on religion, race, caste, sex, or place of birth. the freedom to gather, join, or establish a union; the right to travel; to reside anywhere in the world; to engage in any trade or activity; and other rights, which are subject to the security of the state, good relations with other nations, public order, decency, or morality. Fighting exploitation in all of its forms, including child labour, forced labour, and trafficking in persons, is a good thing. Right to the free expression, professing, and propagation of one's beliefs, as well as the right to exercise one's conscience. Any group of citizens' right to keep using their own language, culture, or script, as well as their freedom too. The constitution must be updated periodically. A stagnant constitution impedes a country's progress. In the same way that time is not constant and is continually changing, so do the political, economic, and social aspects of society. But being able to amend laws does not give you the power to run the government and pass benevolent legislation. Articles 31A and 31B, as well as the ninth schedule, were inserted by the legislature with the adoption of the first amendment in 1951 [2]. The First Amendment was ratified in 1951 by the Provisional Parliament, whose members had just finished drafting the Constitution as a part of the Constitutional Assembly.

The First Amendment Act amended Articles 15, 19, 85, 87, 174, 176, 341, 342, 372, and 376 permitted the maintenance of regulations governing the acquisition of estates, and so on. To protect other laws and the land reforms they contain from court review, a ninth schedule was added. After Article 31, Articles 31A, and 31B were added. Reason behind the changes: The Supreme Court and High Court issued a few decisions that declared certain laws to be unconstitutional, including press laws, public safety regulations, and criminal statutes. These decisions provided the immediate motivation for the amendment that stated freedom of speech is a privilege. Implications: The provisions of Article 31 prohibit challenging laws contained in the Ninth Schedule in court on the grounds that they violated people's fundamental rights. Regarding Article 31(A) has given the State extensive authority in relation to the acquisition of estates or taking over management of any property or organization in the public interest. It sought to prevent judicial review of such transactions under Articles 14 and 19 by doing so. The Ninth Schedule was frequently misused.

The ninth schedule has a list of more than 250 statutes that prevents courts from reviewing them. Very soon Change proposals may be made by the Executive and Parliament. This authority has frequently asserted its primacy. The Supreme Court must therefore fulfil the dual duty of carefully reading and evaluating them. Judges must impose restrictions on this power if they don't want to declare the arbitrary and defective changes illegal. The effects of the First Amendment Act of 1951 have given rise to several political debates regarding the value and integrity of democracy. The ninth schedule has generated debate because it is totally exempt from judicial review. As a result, there have been countless cases of law enforcement officials abusing their power. Therefore, it seems logical to go back and rectify the amendment's issues. Any state or cooperation may act in the public interest under article 31A, and anything stated in the ninth schedule is exempt from judicial review under article 31B. To shield itself from judicial review of the 9th schedule, Parliament granted itself immunity. This change was contested,

and in *Shankari Prasad v. Union of India* [3], Article 13 was found to exclusively refer to common law and not to constitutional modifications. Following this decision, Parliament will have complete authority to modify the legislation in his favor.

Then, in 1964, the legislature proposed the 17th Amendment, which also added new entries to Schedule 9 and new clauses to Article 31A barred the acquisition of land used for personal agriculture unless the property's market worth was transferred in exchange. 44 more Acts have been added to the ninth schedule. In the case of *Sajjan Singh v. State of Rajasthan* [4], this change was contested (1964). By a vote of 3:1:2, the five-judge panel upheld Shankari Prasad's case. This was contested in the *Golaknath v. Punjab State case* [5]. By a vote of 6:5, an 11-judge panel overturned the cases of Shankari Prasad and Sajjan Singh held that the legislature cannot restrict basic rights (subject to limitation and judicial) and the changes to the constitution will be governed by Article 13 (review). The government or any official has never been authorized to abuse their position of power by the Supreme Court. The 24th Amendment now includes Articles 13(4) and 368 because of this disagreement (1971). Section 368 may now be amended by the parliament in accordance with article 13(4). (3). Reasons: The Supreme Court's *Golaknath* ruling (1967), which concluded that Parliament lacked the ability to repeal any basic rights through modification to the Constitution, prompted the introduction of the Twenty-Fourth Constitutional Amendment Act. The revisions confirmed Parliament's power to alter any aspect of the Constitution, including fundamental liberties, by modifying Articles 13 and 368 required the President's approval before a law that proposed a constitutional amendment could be passed. Then, in 1972, Parliament added article 31C to the 25th Amendment and divided it into two pieces prohibited the fundamental right to property. If legislation is not passed to carry out the Directive Principles outlined in Article 39(b) or (c), it may be challenged on the basis that it infringes upon one's rights under Articles 14, 19, or 31. The parliament is altering the constitution in his favor and defending himself in this situation in accordance with the first amendment (1951). In the same session as this one, the 26th Amendment (1971) and the 29th Amendment (1972) were amended. Removed the former princely state monarchs' privy funds and privileges. Considering that the 26th Amendment (1971) prohibited privy purses. Additionally, the Indian Constitution's 9th schedule, which is excluded from judicial scrutiny and modified by the 29th amendment, covers various land reform policies (1972). They were challenged after this change. In the case of *Kesvananda Bharti v. State of Kerala* [6]. On April 24, 1973, Chief Justice Sikri ruled 7:6 in favor of upholding a decision made by 13 justices found that Article 31C's Part 2 violated the fundamental structure because it restricted judicial review, upholding the legitimacy of the amendment and the authority of parliament to alter the constitution's essential structure. This decision applied to the fundamental structural theory on April 24, 1973. The question of the Supreme Court's decision on the basic structure doctrine may now arise. Therefore, the right goal of a constitution's authors determine its fundamental structure.

Following this landmark ruling, the Supreme Court erected a barrier and cautioned Parliament against altering the essential structure of the Constitution. In *Raj Narain vs. State of Uttar Pradesh* [7], the Allahabad High Court found the prime minister guilty of Electoral Malpractices.

The government announces a state of emergency and declares that the 39th Amendment renders the President's declaration of an emergency unconstitutional established it so that lawsuits against the President, governors, and managers of Union regions are not allowed because of the legislation they pass enabling the President to declare multiple states of emergency at the same time for diverse reasons.

Reasons: It was adopted in response to the Allahabad High Court ruling that declared Raj Narain's petition to invalidate Prime Minister Indira Gandhi's election to the Lok Sabha. Abolished from judicial review are disagreements involving the speaker, president, vice president, and prime minister. They will be resolved by whichever body Parliament decides to use. The Ninth Schedule lists a few Central Acts. While the Allahabad High Court was considering this appeal. The supreme court's ability to settle electoral disputes involving the election of the president, the prime minister, the vice president, and the speaker of the Lok Sabha was eliminated by the addition of Article 329A as a result of this change.

This was contested in *Indira Gandhi v. Raj Narain* [8], It was the first notable decision in which the Kesavananda Bharti v. State of Kerala ruling was used by the Supreme Court determined that the 32nd Amendment (1976) [9], also referred to as the Indian mini constitution, was modified in response to additional criticism from the Supreme Court. Three new words, communist, secular, and integrity, were added to the Preamble. Other Citizenship Requirements (new Part IV A) rendered the president liable to the advice of the cabinet incorporated clauses for administrative courts and other organizations (Added Part XIV A). As a population control mechanism, seats in the Lok Sabha and state legislative bodies were frozen in 2001 based on the 1971 census made the constitutional amendments resistant to judicial review. curtailed the Supreme Court's and high courts' judicial review and writ competence changed the Lok Sabha and state legislatures' 5-year tenure to 6-year periods stating that fundamental rights violations cannot be used by the courts to reject legislation passed to implement Directive Principles affords Parliament the power to pass legislation to counter anti-national activities, with such legislation taking precedence over basic rights added the following three Directive Principles: equitable justice; worker engagement in the management of industries; and preservation of the environment, forests, and wildlife helped in the national emergency being declared on a portion of Indian land increased the president's initial term of office in a state from six months to a year provided the Centre the power to send troops to any state to deal with a significant law-and-order problem transferred five items from the state list to the concurrent list: public health, forestry, education, and. Wild animals and birds, weights and measures, the administration of justice, and the design and organization of all courts, excluding the Supreme Court and the High Courts. The requirement for a quorum in state and federal governments was eliminated enabling the Parliament to discuss the advantages and rights held by its committees and members on a regular basis authorized for the creation of the All-India Judicial Service. By removing the government servants' right to make a representation at the second step after the investigation, the disciplinary process was made shorter (i.e., on the penalty proposed). Articles 368(4) and 368(5) were added as a result, granting the parliament unrestricted modifying power, and article 31C was once more changed.

In *Minerva Mills v. Union of India* [10] this was disputed in cases like and others. In accordance with a 1980 decision, parliament's constrained ability to modify laws is essential to its structure and cannot be unlimited determined that because they do away with judicial review, a key component, articles 368(4) and 368(5) are unlawful. Article 31C has also been restored to its pre-1976 status.

Following this choice, the issue of whether the fundamental structural theory applies to the present or the past resurfaces. In *Waman Rao v. Union of India* [11], a five-judge court ruled that the basic structure theory applies prospectively. However, in the *IR Coelho Case* [12], A 9-judge panel reaffirmed Waman Rao's ruling that all laws added to the 9th schedule after 24 April 1973 must be subject to judicial review. This ruling is retrospective in nature.

METHODOLOGY

The data gathering and analysis for this experimental study are guided by decisions of the Supreme Court. With the aid of numerous websites and legal magazines, these judgments are examined, beginning with their fundamental structure. A thorough summary of the essential framework is provided by a few significant judgments. For this study project, I also looked at the Indian Constitution to make it easier to review case law under an amendment or changed provision. The foundations of ideology are a sensitive matter for a state, therefore I also observed various critics' interviews for more in-depth justifications.

CONCLUSION

The intended change will be implemented by WE THE PEOPLE at the expense of the constitution if the sovereign people's representatives are unable to do so. This idea is essential because it prevents parliament from abusing its majoritarian power.

But today's parliament is doing everything it can to avoid coming under the control of the judicial system, which serves as the constitution's protector. This begs the question: what sense of national honor and honesty did the constitution's founders have when they first crafted the document? As I've already said, because of how the Parliament altered the Constitution to its advantage, several amendments, including the Case Law Amendment, were contested.

So, the question now is whether the *basic structure is absolute or obsolete*. The basic structure concept is outmoded since it cannot be absolute, according to my thorough analysis for this work. No state can have a static constitution. The state's static constitution hinders its expansion. Since no authority can rule the state and only, WE THE PEOPLE run the state by carrying out our duties, the basic structural concept is out of date, and certainly, it needs to be changed. As a result, the constitution is the only source of supreme authority. Change is necessary with time, but individuality must not be sacrificed. Constituents have always considered how to expand and develop the country, but now we, the people, are taking advantage of it. Therefore, it is crucial to alter the constitution's fundamental principles and set time limits for debate to prevent the fundamental principles from being damaged by changes that become required over time. No government may exercise its amend power, which is a right to change the legislation as necessary to promote the development and efficient operation of the state for WE THE PEOPLE.

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