

A CRITICAL ANALYSIS OF THE AMENDMENT POWER OF PARLIAMENT AND THE ROLE OF JUDICIAL REVIEW IN INDIA

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Abstract

The power of Parliament to amend the Constitution is essential to adapt the nation's fundamental law to changing needs. However, this power is not absolute. Judicial review acts as a safeguard to ensure that constitutional amendments do not violate the basic structure of the Constitution. This paper critically examines the nature, extent, and limitations of the Parliament's amending power under Article 368, with reference to landmark judicial pronouncements and the evolving doctrine of basic structure. It emphasizes the vital role played by the judiciary in maintaining the balance between constitutional flexibility and constitutional supremacy.

Keywords: Amendment Power, Article 368, Judicial Review, Basic Structure Doctrine, Constitution, Indian Parliament, Supreme Court.

1. Introduction

India's Constitution is a dynamic and living document. The framers provided the Parliament with the power to amend it through **Article 368**, ensuring adaptability. However, this amending power is not unlimited. Through judicial review, particularly after the landmark **Kesavananda Bharati** judgment, the Supreme Court established that Parliament cannot alter the **basic structure** of the Constitution. This relationship between the **amendment power** and **judicial review** forms the cornerstone of Indian constitutionalism.

2. Constitutional Provisions on Amendment Power

Article 368 of the Constitution outlines the procedure for amendment. There are three types:

1. **By Simple Majority** (not under Article 368) – e.g., creation of new states.
2. **By Special Majority** – most amendments.
3. **By Special Majority and Ratification by Half the States** – e.g., changes affecting federal structure.

Article 368(2) empowers Parliament to amend “by way of addition, variation or repeal,” but this power is subject to judicial interpretation and limitations.

3. Judicial Review and Its Constitutional Basis

Judicial review is the power of courts to examine the constitutionality of laws and amendments. Though **not expressly mentioned**, it is implicit under **Articles 13, 32, 226, and 245–246**.

The Supreme Court has consistently held that judicial review is a **basic feature** of the Constitution, essential to maintaining the rule of law.

4. Evolution Through Landmark Judgments

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

The Supreme Court held that Parliament could amend fundamental rights under Article 368 and that such laws were not subject to Article 13.

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

Reaffirmed Shankari Prasad but questioned the rationale, setting the stage for deeper review.

c) Golak Nath v. State of Punjab (1967)

Held that fundamental rights are beyond the reach of Parliament and Article 368 is a legislative, not constituent power. Introduced the idea that constitutional amendments are “law” under Article 13(2).

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

Overruled Golak Nath partially. Parliament has wide amending powers, **but cannot destroy the “basic structure”**. Laid down the **Basic Structure Doctrine** – the greatest contribution of Indian constitutional jurisprudence.

e) Indira Nehru Gandhi v. Raj Narain (1975)

Struck down a constitutional amendment that tried to immunize election disputes involving the Prime Minister, as violating free and fair elections – a part of the basic structure.

f) Minerva Mills Ltd. v. Union of India (1980)

Reaffirmed that **judicial review** and **limited amending power** are parts of the basic structure.

5. Components of Basic Structure (Indicative)

Although not exhaustively defined, the following are recognized as part of the basic structure:

- Supremacy of the Constitution
- Rule of law
- Separation of powers
- Judicial review
- Fundamental rights

- Federalism
- Free and fair elections
- Independence of judiciary

6. Significance of Judicial Review over Amendments

Judicial review acts as a **check** on constitutional amendments that may:

- Violate democratic principles
- Curtail individual liberties
- Disrupt the federal structure
- Undermine the rule of law

It maintains a **balance** between parliamentary supremacy and constitutional supremacy.

7. Criticisms and Challenges

- **Parliamentary Sovereignty vs. Judicial Activism:** Critics argue that judicial review restricts the will of the elected representatives.
- **Lack of Clarity in Basic Structure Doctrine:** The undefined nature of what constitutes “basic structure” gives wide discretion to judges.
- **Delay in Judicial Decisions:** Important constitutional issues sometimes take years to be decided.

8. Comparative Constitutional Perspective

- **USA:** No express amendment limitation, but the doctrine of "unconstitutional constitutional amendments" is emerging.
- **Germany:** Certain fundamental provisions (e.g., federal structure, human dignity) are **explicitly unamendable** (Article 79(3) Basic Law).
- **South Africa:** Specific entrenched provisions require special procedures and public involvement for amendment.

India's doctrine is **unique**, developed through judicial creativity rather than textual prohibition.

9. Conclusion

The power of Parliament to amend the Constitution is both **necessary and powerful**, but its exercise must conform to the **basic features** of the Constitution. Judicial review ensures that

this power is exercised within constitutional boundaries. The dynamic interaction between Parliament and the Judiciary has shaped Indian democracy, ensuring that neither institution becomes supreme. The **basic structure doctrine** is a unique Indian contribution to constitutional law, providing a lasting safeguard for constitutional morality.

10. Suggestions

1. Codify elements of the basic structure through legislation or a constitutional schedule.
2. Strengthen constitutional literacy among lawmakers to avoid ultra vires amendments.
3. Encourage judicial restraint and objectivity in applying the doctrine.
4. Improve coordination between judiciary and legislature to avoid conflicts of legitimacy.

References (*Indicative*)

1. Constitution of India – Article 368, Article 13
2. Kesavananda Bharati v. State of Kerala, AIR 1973 SC 1461
3. Golak Nath v. State of Punjab, AIR 1967 SC 1643
4. Minerva Mills v. Union of India, AIR 1980 SC 1789
5. M.P. Jain – Indian Constitutional Law
6. D.D. Basu – Commentary on the Constitution of India
7. Seervai, H.M. – Constitutional Law of India
8. Law Commission of India Reports on Constitutional Amendments