

CONSTITUTION OF INDIA-A LIVING DOCUMENT: SUMMARY EXAMINATION

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“A government of laws, not of men”

-John Adams¹

ABSTRACT

As per the principles of constitutional interpretation, the theory of a living constitution or a document is the claim that the constitution has a dynamic meaning or it has the properties of an animate being in the sense that it changes. The idea is associated with views that contemporaneous society should be taken into account when interpreting key constitutional phrases. The Constitution of India is widely considered to be a living document. The primary reasons for the above assertion include the fact that the Indian Constitution can be amended according to the needs of the time and although many such amendments have already taken place, the Constitution has remained intact and its basic premises have not changed, i.e., the concept of Basic structure. Almost like a living being, the Indian Constitution keeps responding to the situations and circumstances arising from time to time. Like a living being, the Constitution responds to experience. Even after so many amendments and changes in the society, the Constitution continues to work effectively because of this ability to be dynamic, to be open to interpretations and the ability to respond to the changing situation. This is a hallmark of a truly Democratic Constitution. A constitution, which protects democracy and yet allows for evolution of new practices, becomes not only durable but also the object of respect from the citizens.

KEYWORDS: Constitution, Basic Structure, Amendments, Living Document, Dynamic, Democratic.

INTRODUCTION

Under the principles of constitutional interpretation, the theory of a living constitution or a document is the claim that the constitution has a dynamic meaning or it has the properties of an animate being in the sense that

¹ Amanda A. Mathews, John Adams Quotes, Boston College Libraries, (Jul. 25 2021 9:30 AM), <https://dlib.bc.edu/islandora/object/bc-ir:102172/datastream/PDF/view>.

it changes. The idea is associated with views that contemporaneous society should be taken into account when interpreting key constitutional phrases. Consequently, according to, David A. Strauss remarked that “*A living Constitution is one that evolves, changes over time, and adapts to new circumstances, without being formally amended. On the one hand, the answer has to be yes: there's no realistic alternative to a living Constitution.*”² The Constitution of India is widely considered to be a living document. The primary reasons for the above assertion include the fact that the Indian Constitution can be amended according to the needs of the time and although many such amendments have already taken place, the Constitution has remained intact and its basic premises have not changed, i.e., the concept of Basic structure. The judiciary has played an important role in interpreting the Constitution and in protecting the Constitution; and therefore, Constitution is a document that keeps evolving and responding to changing situations. Consequently, the Indian Constitution is neither static in the sense it can be amended nor the it is very flexible, so much so that it can be entirely changed. It is a dynamic balance between flexibility and rigidity. Therefore, the primary features, of such a Living Constitution which is of the nature of Indian Constitution are inherent flexibility, through the amendment procedure and rigidity, through the Doctrine of Basic Structure. Thus, a discussion of the Indian Constitution being a living document or document involves the provisions related to amendment procedure and the theory of Basic structure, both of which have been discussed in this Paper.

PROVISIONS FOR AMENDMENT OF THE CONSTITUTION

Amending the Constitution of India is the process of making changes to the *suprema lex*. A constitutional amendment is a modification of the constitution of a polity, organization or other type of entity. Amendments are often interwoven into the relevant sections of an existing constitution, directly altering the text. In fact, certain nations have entirely abolished and replaced their constitutions. China for instance adopted altogether new constitutions in 1954, 1975, 1978 and finally 1982.³ But in countries having strong Democratic Institutions and Legal traditions, the Constitutions are rarely abolished. Infact they are amended to suit the need of the time. For instance, the US Constitution was signed on September 17, 1787, by delegates to the Constitutional Convention in Philadelphia. In spite of its 234-year-old history, the Constitution has been amended 27 times, but is still in operation.⁴ In case of Constitution of India there have been 127 Amendment

² David A Strauss, Do We have a living Constitution, University of Chicago Law School, (Jul. 25 2021 10:21 AM), https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?referer=https://www.google.co.in/&httpsredir=1&Article=3009&context=journal_Articles.

³ Constitution of People's Republic of China, Britannica, (Jul.16, 2021, 11:32 AM), <https://www.britannica.com/place/China/Constitutional-framework>.

⁴ Constitution of United States of America, National Archives, (Jul.16, 2021, 11:35 AM), <https://www.archives.gov/founding-docs/constitution-transcript>.

Bills and 104 Amendments since it was first enacted in 1950. Despite the super-majority requirement in the Constitution, it is one of the most frequently amended governing documents in the world, and the most amended national constitution in the world amendments have averaged about two a year. This is partly because the Constitution is so specific in spelling out government powers that amendments are often required to deal with matters that could be addressed by ordinary statutes in other democracies. The procedure of amendment in the constitution is laid down in Part XX (Article 368) of the Constitution of India. This procedure ensures the sanctity of the Constitution of India and keeps a check on arbitrary power of the Parliament of India. However, there is another limitation imposed on the amending power of the constitution of India, which developed during conflicts between the Supreme Court and Parliament, where Parliament wants to exercise discretionary use of power to amend the constitution while the Supreme Court wants to restrict that power. This has led to the laying down of various doctrines or rules in regard to checking the validity/legality of an amendment, the most famous among them is the Basic structure doctrine as laid down by the Supreme Court. The Constitution of India provides for a distinctive amendment process when compared to the Constitutions of other nations. This procedure regarding the amendment of the Constitution has been somewhat borrowed from the former Constitution of erstwhile Union of South Africa (South Africa Act 1909).⁵

ARTICLE 368 OF THE CONSTITUTION: Article 368⁶ of the Constitution contains the provisions for the Amendment of the Constitution of India. It states that notwithstanding anything in this Constitution, Parliament may in exercise of its constituent power amend by way of addition, variation or repeal any provision of this Constitution in accordance with the procedure laid down in this Article. Further, an amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a two-third majority of the total membership of that House present and voting, it shall be presented to the President who shall give his assent to the Bill and thereupon the Constitution shall stand amended in accordance with the terms of the Bill. However that if such amendment seeks to make any change in Article 54, Article 55, Article 73, Article 162 or Article 241, or Chapter IV of Part V, Chapter V of Part VI, or Chapter I of Part XI, or any of the Lists in the Seventh Schedule, or the representation of States in Parliament, or the provisions of this Article, the amendment shall also require to be ratified by the Legislature of not less than one half of the States by

⁵ The Union of South Africa Act 1909, University of Wisconsin Law School, (Jul.16, 2021, 11:37 AM), https://media.law.wisc.edu/s/c_8/jzhy2/cbsa1.pdf.

⁶ INDIA Const. art. 368.

resolution to that effect passed by those Legislatures before the Bill making provision for such amendment is presented to the President for assent. Further, nothing in Article 13⁷ shall apply to any amendment made under this Article. Finally, no amendment of this Constitution (including the provisions of Part III) made or purporting to have been made under this Article whether before or after the commencement of Section 55 of the Constitution (Forty second Amendment) Act, 1976 shall be called in question in any court on any ground and for the removal of doubts, it provides that there shall be no limitation whatever on the constituent power of Parliament to amend by way of addition, variation or repeal the provisions of this Constitution under this Article.⁸

RULES OF PROCEDURE IN THE PARLIAMENT

Article 368 does not specify the legislative procedure to be followed at various stages of enacting an amendment. There are gaps in the procedure as to how and after what notice a Bill is to be introduced, the manner in which it is to be passed by each House and how the President's assent is to be obtained. This point was decided by the Supreme Court in *Shankari Prasad Singh Deo v. Union of India*⁹. Delivering the judgment, Sastri J. observed, "*Having provided for the constitution of a Parliament and prescribed a certain procedure for the conduct of its ordinary legislative business to be supplemented by rules made by each House (Article 118), the makers of the Constitution must be taken to have intended Parliament to follow that procedure, so far as it may be applicable consistently with the express provisions of Article 368, when they entrusted to it power of amending the Constitution.*"¹⁰ Hence, barring the requirements of special majority, ratification by the State Legislatures in certain cases, and the mandatory assent by the President, a Bill for amending the Constitution is dealt with the Parliament following the same legislative process as applicable to an ordinary piece of legislation. The Rules of the House in the Rajya Sabha do not contain special provisions with regard to Bills for the amendment of the Constitution and the Rules relating to ordinary Bills apply, subject to the requirements of Article 368. The Rules of Procedure and Conduct of Business make certain specific provisions regarding amendment bills in the Lok Sabha. They relate to the voting procedure in the House at various stages of such Bills, in the light of the requirements of Article 368; and the procedure before introduction in the case of such Bills, if sponsored by Private Members. Although the "special majority",

⁷ INDIA Const. art. 13.

⁸ P. Bilimoria and F. Sagar, *The Basic Structure Doctrine*, Mondaq, (Jul.16, 2021, 5:12 PM), <https://www.mondaq.com/india/constitutional-administrative-law/633634/kesavananda-bharati-v-state-of-kerala-and-the-basic-structure-doctrine>.

⁹ *Shankari Prasad Singh Deo v. Union of India*, A.I.R. 1951 S.C. 455,

¹⁰ *Ibid.*

required by Article 368 is *prima facie* applicable only to the voting at the final stage, the Lok Sabha Rules prescribe adherence to this constitutional requirement at all the effective stages of the Bill, i.e., for adoption of the motion that the Bill be taken into consideration; that the Bill as reported by the Select/Joint Committee be taken into consideration, in case a Bill has been referred to a Committee; for adoption of each clause or schedule or clause or schedule as amended, of a Bill; or that the Bill or the Bill as amended, as the case may be, be passed.

PRIVATE MEMBER'S BILLS

A Bill for amendment of the Constitution by a Private Member is governed by the rules applicable to Private Members' Bills in general. The period of one month's notice applies to such a Bill also. In addition, in Lok Sabha, such a Bill has to be examined and recommended by the Committee on Private Members' Bills before it is included in the list of business.¹¹

ROLE OF STATE LEGISLATURES¹²

The role of the States in the constitutional amendment mechanism is limited. State legislatures cannot initiate any Bill or proposal for amendment of the Constitution. They are associated in the process of the amendment only through the ratification procedure laid down in Article 368, in case the amendment seeks to make any change in any of the provisions mentioned in the proviso to Article 368. The only other provision for constitutional changes by State Legislatures is to initiate the process for creating or abolishing Legislative Councils in their respective legislatures, and to give their views on a proposed Parliamentary bill seeking to affect the area, boundaries or name of any State or States which has been referred to them under the proviso to Article 3¹³. However, this referral does not restrict Parliament's power to make any further amendments of the Bill. Further, Article 169 (1) of the Constitution¹⁴, states that notwithstanding anything in Article 168, Parliament may by law provide for the abolition of the Legislative Council of a State having such a Council or for the creation of such a Council in a State having no such Council, if the Legislative Assembly of the State passes a resolution to that effect by a majority of the total membership of the Assembly and by a majority of not less than two-thirds of the members of the Assembly present and voting." Moreover, the Proviso to Article 3 reads that no bill for the purpose shall be introduced in either House of Parliament except on the

¹¹ Private Member's Bill, Drishti IAS, (Jul.16, 2021, 12:41 PM), <https://www.drishtias.com/daily-updates/daily-news-analysis/introduction-of-private-member-s-bill>.

¹² Amendment of the Constitution of India, Legal Service India, (Jul.16, 2021, 11:37 AM), <https://www.legalserviceindia.com/article/170-Article368.htm>.

¹³ INDIA Const. art. 3.

¹⁴ INDIA Const. art. 169.

recommendation of the President and unless, where the proposal contained in the Bill affects the area, boundaries or name of any of the States, the bill has been referred by the President to the Legislature of the State for expressing its views thereon within such period as may be specified in the reference or within such further period as the President may allow and the period so specified or allowed has expired.

ROLE OF THE UNION TERRITORIES¹⁵: The Union territories have no say in constitutional amendments, including the ratification process which is only open to States. Delhi, Puducherry and Jammu & Kashmir (from 2019)¹⁶ are two Union Territories that are entitled, by special constitutional amendments, to have an elected Legislative Assembly and a Cabinet of ministers, thereby enjoying partial statehood powers. Both of these territories can participate in the ratification process.

CATEGORIES OF CONSTITUTIONAL AMENDMENTS

Thus, Amendment Procedure of Constitution of India can loosely be divided under 3 categories.¹⁷

SIMILAR TO ORDINARY MAJORITY IN THE PARLIAMENT: PROVIDED FOR IN SPECIFIC ARTICLES

There are many Articles in the Constitution, which mention that these Articles can be amended by a simple law of the Parliament. No special procedure for amendment is required in such cases and there is no difference at all between an amendment and an ordinary law. These parts of the Constitution are very flexible. These Articles, often incorporate the wording 'by law' which indicates that these Articles can be modified by the Parliament without recourse to the procedure laid down in Article 368. Examples include Article 2 which states that Parliament may by law admit into the Union, or establish, new States on such terms and conditions, as it thinks fit and Article 3 which states that Parliament may by law form a new State by separation of territory from any State or by uniting two or more States or parts of States or by uniting any territory to a part of any State; increase the area of any State; diminish the area of any State; alter the boundaries of any State and alter the name of any State.¹⁸

SPECIAL MAJORITY IN BOTH THE HOUSES SEPARATELY: UNDER ARTICLE 368 OF THE CONSTITUTION

¹⁵ Ibid.

¹⁶ Jammu and Kashmir UT, Bar and Bench, (Jul.16, 2021, 12:41 PM), <https://www.barandbench.com/news/jammu-kashmir-becomes-two-union-territories-no-legislative-assembly-for-ut-of-jk-for-now>.

¹⁷ I. P. Massey, The Process of Amendment and The Constitution A Study in Comparatives, JSTOR, (Jul.17, 2021, 2:32 PM), <https://www.jstor.org/stable/43950146>.

¹⁸ Ibid.

For amending the remaining parts of the Constitution, provision has been made in Article 368 of the Constitution. Under this Article, there are two methods of amending the Constitution and they apply to two different sets of Articles of the Constitution. Under the first method, an amendment can be made by special majority of the two houses of the Parliament. Besides the special majority in the Parliament no outside agency—like a constitution commission or a separate body—is required for amending the Constitution. Further, Amendment to the Constitution requires two different kinds of special majorities. In the first place, those voting in favour of the amendment bill should constitute at least half of the total strength of that House. Secondly, the supporters of the amendment bill must also constitute two-thirds of those who actually take part in voting. Both Houses of the Parliament must pass the amendment bill separately in this same manner (there is no provision for a joint session in this case) and therefore for every amendment bill, the said special majority is required.

SPECIAL MAJORITY AND ADDITIONAL RATIFICATION BY LEGISLATURES OF HALF OF THE STATES

This method is relatively complex as it requires Special majority of the Parliament and Consent/Ratification by at least half of the State legislatures. After the passage in the Parliament and in some cases, in State legislatures, no referendum is required for ratification of the amendment. The Process is required for example in cases of Amendment that affect the Federal Provisions of the Constitution.¹⁹

THE BASIC STRUCTURE DOCTRINE

The Basic Structure Doctrine is a judicial principle propounded by the Hon'ble Supreme Court of India that the Constitution of India has certain basic features that cannot be altered or destroyed through amendments by the parliament.²⁰ Key among these "basic features", as expounded by its most prominent proponent Justice H.R. Khanna, is the fundamental rights granted to individuals by the constitution. The doctrine thus forms the basis of a limited power of the Supreme Court to review and strike down constitutional amendments enacted by the Parliament which conflict with or seek to alter this "Basic Structure" of the Constitution. The basic structure doctrine applies only to constitutional amendments. The basic features of the Constitution have not been explicitly defined by the Judiciary, and the claim of any particular feature of the Constitution to be a

¹⁹ Ibid.

²⁰ Venkatesh Nayak, Basic Structure of the Constitution, Constitution NET, (Jul.17, 2021, 2:32 PM), <https://constitutionnet.org/vl/item/basic-structure-indian-constitution>.

"basic" feature is determined by the Court in each case that comes before it. The basic structure doctrine does not apply to ordinary Acts of Parliament, which must themselves be in conformity with the Constitution.

HISTORY AND EVOLUTION OF THE BASIC STRUCTURE DOCTRINE²¹

The Supreme Court's initial position on the question of Constitutional Amendment was that Parliament could amend any part of the Constitution by passing a Constitution Amendment Act in compliance with the requirements of Article 368. The rule extended to Fundamental Rights as well. Some relevant case laws on the matter include:

1. *State of West Bengal v. Mrs. Bela Banerjee*²²

The issue in the case was whether the compensation provided for under the West Bengal Land Development and Planning Act, 1948, was in compliance with the provision in Article 31(2) of the constitution. Article 31 (2) read that No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provides for acquisition of the property for an amount which shall be fixed by such law; and no such law be called in question in any court on the ground that the amount so fixed is not adequate. The Calcutta High Court's decision that Section 8 of the Act was *ultra vires* was confirmed by the Supreme Court which also held that Entry 42 of List III of the Seventh Schedule conferred on the Legislature the discretionary power of laying down the principles. The case is one of the early instances of checks being labeled on Parliamentary exercise of Power to amend the constitution and also provided that such a case is a justiciable issue to be adjudicated by the court.

2. *Sajjan Singh v. State of Rajasthan*.²³

The "basic feature" principle was first expounded in 1964, by Justice J.R. Mudholkar in his dissent, in the case of *Sajjan Singh v. State of Rajasthan*. He wrote, "*It is also a matter for consideration whether making a change in a basic feature of the Constitution can be regarded merely as an amendment or would it be, in effect, rewriting a part of the Constitution; and if the latter, would it be within the purview of Article 368*"

3. *I.C. Golaknath v. State of Punjab*²⁴

²¹ Ibid.

²² *State of West Bengal v. Mrs. Bela Banerjee*, 1954 A.I.R. 170.

²³ *Sajjan Singh v. State of Rajasthan*, 1965 A.I.R. 845.

²⁴ *I.C. Golaknath v. State of Punjab*, 1967 A.I.R. 1643.

In *I.C. Golaknath v. State of Punjab*, the Supreme Court deliberated as to whether any part of the Fundamental Rights provisions of the constitution could be revoked or limited by amendment of the constitution. The Supreme Court delivered its ruling, and held that an amendment of the Constitution is a legislative process, and that an amendment under Article 368 is "law" within the meaning of Article 13 of the Constitution and therefore, if an amendment "takes away or abridges" a Fundamental Right conferred by Part III, it is void. Article 13(2) reads, "The State shall not make any law which takes away or abridges the right conferred by this Part and any law made in contravention of this clause shall, to the extent of contravention, be void." The Court ruled that Fundamental Rights included in Part III of the Constitution are given a "transcendental position" under the Constitution and are kept beyond the reach of Parliament. The Court also held that the scheme of the Constitution and the nature of the freedoms it granted incapacitated Parliament from modifying, restricting or impairing Fundamental Freedoms in Part III. Parliament passed the 24th Amendment in 1971 to abrogate the Supreme Court ruling in the *I.C. Golaknath v. State of Punjab* case. It amended the Constitution to provide expressly that Parliament has the power to amend any part of the Constitution including the provisions relating to Fundamental Rights. This was done by amending Articles 13 and 368 to exclude amendments made under Article 368, from Article 13's prohibition of any law abridging or taking away any of the Fundamental Rights.

4. *Kesavananda Bharati v. State of Kerala*²⁵

By 1973, the basic structure doctrine triumphed in Justice H.R Khanna's judgment in the landmark decision of *Kesavananda Bharati v. State of Kerala*. Previously, the Supreme Court had held that the power of Parliament to amend the Constitution was unfettered. However, in this landmark ruling, the Court adjudicated that while Parliament has "wide" powers, it did not have the power to destroy or emasculate the basic elements or fundamental features of the constitution. The Supreme Court reviewed its earlier decision in *Golaknath's* case, and considered the validity of the 24th, 25th, 26th and 29th Amendments. The Court held no part of the constitution, including fundamental rights, was beyond the amending power of Parliament, but the "basic structure of the Constitution could not be abrogated even by a constitutional amendment". Further the court held that, the 24th, 25th and 29th Amendments Acts are valid and an amendment to the Constitution was not a "law" for the purposes of Article 13. Power of amendment is plenary and can be used to amend all the Articles of the constitution (including the Fundamental Rights) and "there are no inherent or implied limitations on the power of amendment under Article 368", But the power to amend does not include the power to alter the basic

²⁵ *Kesavananda Bharati v. State of Kerala*, (1973) 4 S.C.C. 225.

structure of the Constitution so as to change its identity". Article 368 does not enable Parliament to alter the basic structure or framework of the Constitution. The second part of section 3 of the Constitution (Twenty-fifth Amendment) Act, 1971 is invalid. It read "and no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy" is invalid.

5. *Indira Nehru Gandhi v. Raj Narain*²⁶

Indira Nehru Gandhi v. Raj Narain popularly known as Election case saw the Hon'ble Supreme Court reaffirm and apply the Basic Structure Doctrine. The constitutionality of Article 329A, which had been inserted by the 39th Amendment in 1975 was challenged in this case. The bench presided over by Chief Justice A.N. Ray, had to determine the degree to which amendments were restricted by the basic structure theory. The 39th Amendment attempted, among other provisions, to legitimize the election of Indira Gandhi in 1971. Article 329A put the elections of the Prime Minister and Lok Sabha Speaker outside the purview of the judiciary and provided for determination of disputes concerning their elections by an authority to be set up by a Parliamentary law. The Supreme Court struck down clauses (4) and (5) of the Article 329A, which made the existing election law inapplicable to the Prime Minister's and Speaker's election, and declared the pending proceedings in respect of such elections null and void.

6. *Minerva Mills v. Union of India*.²⁷

In this case the Doctrine evolved further. The 42nd Amendment had been enacted by the government of India in response to the *Kesavananda Bharati v. State of Kerala* judgment in an effort to reduce the power of the judicial review of constitutional amendments by the Supreme Court. In the *Minerva Mills v. Union of India*, the constitutionality of sections 4 and 55 of the 42nd Amendment was challenged. Section 4 of the 42nd Amendment, had amended Article 31C of the Constitution to accord precedence to the Directive Principles of State Policy articulated in Part IV of the Constitution over the Fundamental Rights of individuals articulated in Part III. Section 55 prevented any constitutional amendment from being "called in question in any Court on any ground". It also declared that there would be no limitation whatever on the constituent power of Parliament to amend by way of definition, variation or repeal the provisions of the Constitution. The Supreme Court declared these sections of the 42nd amendment as unconstitutional. It further endorsed and evolved the basic structure doctrine of the Constitution. Chief Justice Y.V. Chandrachud wrote, "*Since the Constitution*

²⁶ *Indira Nehru Gandhi v. Raj Narain*, (1975) A.I.R. 865.

²⁷ *Minerva Mills v. Union of India*, A.I.R. 1980 S.C. 1789.

had conferred a limited amending power on the Parliament, the Parliament cannot under the exercise of that limited power enlarge that very power into an absolute power. Indeed, a limited amending power is one of the basic features of our Constitution and therefore, the limitations on that power cannot be destroyed. In other words, Parliament cannot, under Article 368, expand its amending power so as to acquire for itself the right to repeal or abrogate the Constitution or to destroy its basic and essential features. The donee of a limited power cannot by the exercise of that power convert the limited power into an unlimited one.”

BASIC STRUCTURE: WHAT IS INCLUDED

The Hon'ble Supreme Court has declared that the Basic Structure of the Constitution is the resting upon which lies the basic foundation of the Constitution. The basic foundation of the constitution is the dignity and the freedom of its citizens which is of supreme importance and cannot be destroyed by any legislation of the Parliament. The basic features of the Constitution have not been explicitly defined by the Judiciary. At least, 20 features have been described as "basic" or "essential" by the Courts in numerous cases, and have been incorporated in the basic structure. In *Raj Narayan's case* and also in the *Minerva Mills case*, it was observed that the claim of any particular feature of the Constitution to be a "basic" feature would be determined by the Court in each case that comes before it. Some of the features of the Constitution termed as "basic" include the Supremacy of the Constitution, Rule of law, The principle of Separation of Powers, the objectives specified in the Preamble to the Constitution, Judicial Review, Articles 32 and 226, federalism (including financial liberty of states under articles 282 and 293), secularism, sovereign, democratic, republican structure, freedom and dignity of the individual, unity and integrity of the nation, The principle of equality and equal justice; The "essence" of the Fundamental Rights in Part III The concept of social and economic justice to build a Welfare State, thus Part IV in its entirety The balance between Fundamental Rights and Directive Principles The Parliamentary system of government The principle of free and fair elections Limitations upon the amending power conferred by Article 368 Independence of the Judiciary Effective access to justice Powers of the Supreme Court under Articles 32, 136, 141, 142, Legislation seeking to nullify the awards made in exercise of the judicial power of the State by Arbitration Tribunals constituted under an Act. Thus, individual jurists have given different but somewhat related items, all of which are covered under the Basic Structure Doctrine.²⁸

FURTHER EVOLUTION OF THE DOCTRINE

²⁸ Nayak, *supra* note 21.

The concept of basic structure has since been developed by the Supreme Court in subsequent cases. These include as *Waman Rao v. Union of India*,²⁹ *Bhim Singh v. Union of India*,³⁰ *S.P. Gupta v. Union of India*,³¹ *S.P. Sampath Kumar v. Union of India*,³² *P. Sambamurthy v. State of Andhra Pradesh*,³³ *Kihota Hollohon v. Zachilhu and Ors.*³⁴, *L. Chandra Kumar v. Union of India*³⁵, *P. V. Narsimha Rao v. State (CBI/SPE)*³⁶, *I.R. Coelho v. State of Tamil Nadu*³⁷ and *Raja Ram Pal v. The Hon'ble Speaker, Lok Sabha*³⁸ etc.

CONCLUSION

Almost like a living being, the Indian Constitution keeps responding to the situations and circumstances arising from time to time. Like a living being, the Constitution responds to experience. Even after so many amendments and changes in the society, the Constitution continues to work effectively because of this ability to be dynamic, to be open to interpretations and the ability to respond to the changing situation. This is a hallmark of a truly Democratic Constitution. A constitution, which protects democracy and yet allows for evolution of new practices, becomes not only durable but also the object of respect from the citizens. In the last Seventy years very, critical situations arose in the politics and constitutional development of the country. In terms of Constitutional-legal issues, the most serious question that came up again and again from 1950 was about the supremacy of the Parliament. In a parliamentary democracy, the Parliament represents the people and therefore, it is expected to have an upper hand over both Executive and Judiciary. At the same time, there is the text of the Constitution and it has given powers to other organs of the government. Therefore, the supremacy of the Parliament has to operate within this framework. At the same time all the political institutions must be responsible to the people and maintain a balance with each other. During the controversy between the Judiciary and the Parliament, the Parliament thought that it had the power and responsibility to make laws (and amendments) for furthering the interests of the poor, backward and the needy. The Judiciary insisted that all this has to take place within the framework provided by the Constitution and pro-people measures should not bypass legal procedures, and since democracy is focused on checks on arbitrary use of power. The Judiciary, in its famous *Kesavananda Bharti* ruling found a way out of the existing complications

²⁹ *Waman Rao v. Union of India*, (1981) 2 S.C.C. 362.

³⁰ *Bhim Singh v. Union of India*, 1985 A.I.R. 1650.

³¹ *S.P. Gupta v. Union of India*, A.I.R. 1982 S.C. 149.

³² *S.P. Sampath Kumar v. Union of India*, 1987 S.C.R. (3).

³³ *P. Sambamurthy v. State of Andhra Pradesh*, 1987 A.I.R. 663.

³⁴ *Kihota Hollohon v. Zachilhu & Ors.*, 1992 S.C.R. (1) 686.

³⁵ *L. Chandra Kumar v. Union of India and others*, (1987) 1 S.C.C. 422.

³⁶ *P. V. Narsimha Rao v. State (CBI/SPE)*, S.L.P. (Cri.) No.2/98.

³⁷ *I.R. Coelho v. State of Tamil Nadu and others*, A.I.R. 2007 S.C. 861.

³⁸ *Raja Ram Pal v. Hon'ble Speaker, Lok Sabha and Others*, (2007) 3 S.C.C. 184.

by turning to the spirit of the Constitution rather than its letter. The original wordings of the Constitution, nor any of the subsequent amendments do not mention the 'Basic Structure' of the Constitution. Thus, while it is a creation of judiciary, it has been accepted since Judiciary sought to achieve a balance between the Letter and Spirit of the Constitution.

