

## THE BASIC STRUCTURE: PROTECTOR OF THE INDIAN CONSTITUTION

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*As a student of law for life, I am amazed by Shri H.M. Seervai and Shri N.A. Palkiwala, the indisputable legends of legal profession for their scholarly contribution and therefore, I dedicate this chapter as my tribute to both of them.*

### ABSTRACT

The emergence of the Doctrine of Basic Structure is considered to be the watershed moment in the history of Constitutional Amendment jurisprudence. This doctrine was propounded by the Supreme Court at the conclusion of hearing of *His Holiness Kesavanada Bharti v State of Kerala*, and according to this doctrine, there are some primary essential character of the Indian Constitution which is immune from the parliamentary power to amend the Constitution under Article 368. The long battle which was started from the challenge of the First Constitutional Amendment in *Shankari Prasad Singh Deo v Union of India*, finally ended with the propounding of the Basic Structure doctrine in the *Kesavananda Bharti* case. In this article, the author will try to trace the origin and development of this Basic Structure doctrine and also how the Parliament, in its many unsuccessful attempt, tried to nullify its effect through various Constitutional Amendment and review of this doctrine through another 13 Judge bench, further how this doctrine has stood the test of the time and proved to be the ultimate protector of Indian Constitution.

*Keywords: Constitution, Basic Structure, Kesavananda Bharti case, Constitutional Amendment*

### INTRODUCTION-

The concept of basic structure emerged from the natural law theory. The Supreme Court introduced this concept in Indian Constitutional Jurisprudence as a means to curb the menace of Executive overreach. However, as a precaution to the hyperactive Legislature which always tries to put forth their supremacy, this concept was kept vague and always open to discussion by the Supreme Court<sup>1</sup>.

If we see from the perspective of the Constitutional Framers, they always wanted to make the Constitution of India a dynamic and organic living document which will always be open to amendment keeping in pace with the changing times. Thus, Indian Constitution itself has given the power to the Parliament of India to amend the Constitution. But, like any other power, this is also not an absolute power and to keep a check on that, there is provision of Judicial review of the Constitutional Amendment by the Indian Judiciary. This power entails the Judiciary in India to check the validity of any ordinary laws which are in violation of the Constitution or any Constitutional Amendment which is against the spirit of the constitution, and if found so, it can declare that law or Constitutional Amendment as *Ultra Virus*. The said power of doing an Amendment in the Constitution is entrusted to the Parliament under Article 368<sup>2</sup>.

The plain reading of Article 368 clearly states that the Parliament has unfettered and unrestricted power to amend any part of the constitution. Further, it is an absolute power which is being given to the parliament under the authority to amend the Constitution. But this later gave rise to the undeclared war of supremacy between the Parliament of India and the Indian Judiciary<sup>3</sup>.

To save the ethos and spirit of the Constitution, the Supreme Court in 1973 in *Kesavananda Bharti v Union of India*<sup>4</sup>, showed its innovative judicial wisdom and creativity and developed this famous doctrine related to the Constitutional Amendment of all time known as the “doctrine of basic structure” or “basic structure and framework of Indian Constitution” and thereby put an end to the legislature’s overzealousness to amend the Constitution suitable to their political needs. The intention to propound the basic structure doctrine was to sustain the original ideals of the Constitution framers. According to the basic structure doctrine the Parliament can not amend the Constitution in such a way as it would lead to distort, mutilate or disfigure the Constitutional basic and sacrosanct ideals and it would create an altogether different Constitution from that of created by the constitutional assembly<sup>5</sup>.

<sup>1</sup> Akash Baglekar, *Does Basic Structure Doctrine Applies to Ordinary Legislation*, SCC ONLINE BLOG OPED (2021).

<sup>2</sup> Article 368: Power of Parliament to amend the Constitution and Procedure therefor- (1) 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...

<sup>3</sup> Navajyoti Samanta, *Test of Basic Structure: An Analysis*, 1 NUJS LAW REVIEW 499 (2008).

<sup>4</sup> AIR 1973 SC 1461

<sup>5</sup> LAHOTI, R.C., PREAMBLE THE SPIRIT AND BACKBONE OF THE CONSTITUTION OF INDIA (1st ed. 2017).

This doctrine after its being propounded, effectively came as a tool to curb the menace of Constitutional Amendment by the Indian Parliament to disfigure it under the grab of amending it. However, it is to be kept in mind that the basic structure doctrine only applies to the Constitutional Amendment and not to the ordinary laws, as only Constitutional Amendment needs to conform to the basic structure of the Constitution of India and the ordinary laws enacted by legislature need to conform to the Constitution of India in its entirety and not just the basic structure<sup>1</sup>.

The Supreme Court has used the basic structure doctrine as a guardian to save the basic ideals of Constitution from their encroachment from the hand of executive and legislature. The judiciary in *Minerva Mills Ltd. v Union of India* has taken very vague approach to define the basic structure doctrine in a manner as, “amend as you may even the solemn document which the founding fathers have committed to your care, for you know best the needs of your generation. But, the Constitution is a precious heritage; therefore, you cannot destroy its identity.”<sup>2</sup> Therefore, the legislature is now barred from encroaching upon any provisions of the Constitution which essentially deform, deface or destroy the basic identity of the Constitution<sup>3</sup>.

### EVOLUTION OF THE BASIC STRUCTURE DOCTRINE-

The debate to amend the Constitution and the extent of parliamentary power to amend the Constitution has started from the very first year of enactment of Indian Constitution among the legal fraternity and academia with the 1<sup>st</sup> Constitutional Amendment in the year 1951.

The 1<sup>st</sup> Amendment to the Constitution by way of addition of IXth Schedule and Article 31A and 31B to bring the land reforms in the country, which empowered the Parliament to enact the laws which may abrogate the Fundamental Rights contained in Part III. This Amendment was challenged before the Supreme Court in *Shankari Prasad v Union of India*<sup>4</sup> in which Patanjali J. asserted that the word Law in Article 13 do not include Constitutional Amendment and held the Amendment to be valid, observed that, “We are of the Opinion that in the context of Article 13 law must be taken to mean rules and regulations made in the exercise of ordinary legislative power and not amendments to the Constitution made in the exercise of constituent power with the result that Article 13(2) does not affect amendments made under Article 368.”

Next in 17<sup>th</sup> Amendment wherein 44 new laws were put into the IXth Schedule was again challenged in the *Sajjan Singh v State of Rajasthan*<sup>5</sup> in Supreme Court. In this case the views expressed was that of similar to the views expressed in the Shankari Prasad case wherein the majority was expressed by Gajendragadkar CJ, K.N. Wanchoo and R. Dayal JJ. However, the minority view expressed in this case led to the foundation of basic structure doctrine, which put doubts upon the unrestricted power of the Parliament to amend the by way of *obiter dicta* only. Hidayatullah J. opined that the power of Parliament to amend the Constitution is not unlimited or Unrestricted. Mudholkar J. is of the view that Parliament do not possess the power to destroy the fundamental features of Indian Constitution<sup>6</sup>.

In the words of Hidayatullah J., “I would require stronger reasons than those given in *Shankari Prasad* to make me accept the view that Fundamental Rights were not really fundamental but were intended to be within the powers of amendment in common with the other parts of the constitution and without concurrence of the states”.

The same 17<sup>th</sup> Amendment again came up for challenge before the apex court in *Golak Nath v State of Punjab*<sup>7</sup>. In this case the court took the view of minority in Sajjan Singh’s case, the majority opinion expressed by Subba Rao CJ held that the Constitutional Amendment done by following the procedure laid down under Article 368 is ‘Law’ within the purview of Article 13(2) of Indian Constitution and therefore, it is out of power of the Parliament to amend the Constitution in such a way as to take away or abridge the fundamental rights enshrined under Part III of the Constitution. Hidayatullah J. concurring with the majority opinion expressed that fundamental rights are not playthings in the hands of majority by emphasizing their fundamentality in the Constitution<sup>8</sup>.

The parliament then in its attempt to nullify the effect created by the Golak Nath Judgment, bring forth an 24<sup>th</sup> Amendment to the Constitution of India, making a change therein the power given to the Parliament to amend the Constitution of India is unrestricted and unlimited, further Article 368 of the Constitution contains both the power and procedure to amend the constitution. It was also provided that both the Articles i.e. Article 13 and article 368 are mutually exclusive and amending power of parliament has unlimited plentitude<sup>9</sup>.

Finally, in March 1970, His Holiness Swami Kesavananda Bharti of a Kerala *math* took the objection to the government’s move to acquire the land of the math under the Kerala Land Reforms Act 1963 as amended in 1969. The said act of the Government was challenged by the math under Article 32 of the Constitution as to vindicate the abrogation of fundamental rights given to the religious institution to manage their own property without any interference by the State through its Advocate Mr. N.A. Palkhiwala and Mr. J.B. Dadachanji. But during the pendency of the said writ petition in 1971 the said Act was amended and was placed in the IXth Schedule by 29<sup>th</sup> Amendment. The petitioners were allowed to challenge the validity of 24<sup>th</sup>, 25<sup>th</sup> and 29<sup>th</sup> Amendments to the Constitution as well. The said writ petition was heard by the 13-judge bench, which is the largest number of Constitution benches ever created. At the relevant point of time, the Supreme Court comprised of only 15 Judges. This 13-

<sup>1</sup> AUSTIN, GRANVILLE, THE INDIAN CONSTITUTION CORNERSTONE OF A NATION (42nd ed.).

<sup>2</sup> (1980) 3 SCC 625.

<sup>3</sup> JAIN, M.P., OUTLINES OF INDIAN LEGAL AND CONSTITUTIONAL HISTORY (7th ed. 2016).

<sup>4</sup> 1952 SCR 89.

<sup>5</sup> AIR 1965 SC 845.

<sup>6</sup> AUSTIN, GRANVILLE, *supra* note 6.

<sup>7</sup> (1967) 2 SCR 762.

<sup>8</sup> *supra* note 3.

<sup>9</sup> BASIC STRUCTURE CONSTITUTIONALISM REVISITING KESAVANANDA BHARTI, (Narayan Sanjay Sathya Jain, ed., 1st ed. 2011).

judge bench gave it's momentous and considered to be one of the landmark judgements ever pronounced in *Kesavananda Bharti v State of Kerala*<sup>1</sup> (also popularly known as the *Fundamental Rights case*) on 24 April 1973. The 13 Judge bench was comprised of<sup>2</sup>:

1. Chief Justice S.M. Sikri
2. Justice J.M. Shelat
3. Justice K.S. Hegde
4. Justice A.N. Grover
5. Justice A.N. Ray
6. Justice P.J. Reddy
7. Justice P.G. Palekar
8. Justice H.R. Khanna
9. Justice K.K. Mathew
10. Justice M.H. Beg
11. Justice A.K. Mukherjea
12. Justice S.N. Dwivedi
13. Justice Y.V. Chandrachud

Mr. N.A. Palkhiwala, Senior Advocate was leading the arguments from the petitioner's side and Mr. H.M. Seervai, Senior Advocate and the then Advocate General of Maharashtra along with Mr. Niren De. Attorney general of India led the arguments of behalf of the respondents. The 13 judges wrote 11 judgments covering almost 700 printed pages<sup>3</sup>.

The bench while perusing the contentions from both the sides, found itself mainly divided into two blocks. The majority was of the view that the amending power of the Parliament is distinct from its legislative power and thus, has the broadest possible power to cover each and every provision of the Constitution, however, the said statement was qualified by laying down that basic structure of the Constitution is beyond the power of the Parliament and thus, unamendable<sup>4</sup>. While formulating the above principle of basic structure, it was agreed that what features would constitute the Basic Structure of the Constitution would be an open question and to be determined on the basis of particular circumstances of the actual cases. On the other hand, the minority has taken the *Golak Nath* view. However, it also categorically held that the Parliament does not have the power to effect complete abrogation of the Constitution in one stroke<sup>5</sup>.

This case, however, raised some of the most seminal questions ever raised in the annals of the Indian Constitutional Law as<sup>6</sup>:

1. What is the nature of fundamental rights? Are they natural rights or constitutionally created?
2. Can Parliament abrogate fundamental rights enshrined in Part III by exercising amendatory powers under Article 368?
3. Whether the exercise of amending power for the abrogation of fundamental rights under Part III would lead to chaotic consequences?
4. Whether granting immunity to Part II of the Constitution from the amending power would make the Constitution more ideal?
5. Whether abrogation of fundamental rights would result in violation of or denial of basic dignity?
6. Whether the power of abrogation of fundamental rights has to be exercised subject to the basic structure of the Constitution?
7. Whether, Is there a distinction between the core/essence and the periphery of fundamental rights and whether the former is immune from the sphere of the amending process?
8. Whether the right to property is part of the basic structure of the Constitution?
9. What is the nature of the relationship between fundamental rights and the directive principle of State policy?
10. Whether amendment under Article 368 is law under Article 368?
11. Whether the unamended Article 368 contained both the power and procedure to amend and whether the magnitude of the said power was unrestricted so as to qualitatively transform Article 368 itself?
12. What is the width and scope of amending power under Article 368 post the 24<sup>th</sup> Amendment and whether the same is to be exercised subject to the basic structure of the Constitution?
13. Whether there is a difference between the constituent and the amending power?
14. Whether amending bodies and Parliament have authority under the existing Constitutional framework to hold a referendum or to convoke the special Constituent Assembly to adopt a brand new Constitution by replacing the present one?
15. Whether amendatory bodies can amend Article 368 so as to create a parallel amending authority? Or can it delegate amending powers to State Legislatures by amending Article 368?
16. Whether the functions of amending body and Constituent Assembly are qualitatively different and whether the same is reflected in Article 368?
17. Whether the amending power is subject to judicial review or is it co-equal with the latter? How the concept of the basic structure is evolved and what are the features of the basic structure of the Constitution?
18. Whether there is an analytical distinction between the basic structure and parameters of judicial review?

<sup>1</sup> (1973) 4 SCC 225.

<sup>2</sup> BASIC STRUCTURE CONSTITUTIONALISM REVISITING KESAVANANDA BHARTI, *supra* note 14.

<sup>3</sup> *Id.*

<sup>4</sup> DHAVAN, RAJEEV, THE CONSTITUTION OF INDIA MIRACLE, SURRENDER, HOPE (1st ed. 2017).

<sup>5</sup> Sayan Mukherjee, *The Unconventional Dimensions of the Basic Structure Doctrine: An Insight*, 1 NLUJ (2011).

<sup>6</sup> BASIC STRUCTURE CONSTITUTIONALISM REVISITING KESAVANANDA BHARTI, *supra* note 14.

19. Whether the court laid down any evaluative criteria to elevate a Constitutional principle/provision as a feature of the basic structure of the Constitution?
20. Whether the said power is subject to any other implied limitations?
21. Where does the essence of sovereignty lie in our Constitution?
22. Is it appropriate to describe the relationship between people and the amending bodies by invoking the abstract principle of social contract?
23. Whether is it permissible to resort to external aids of interpretation to gather the intention of the Constitution framers?
24. Whether Articles 31-A and 31-B are mutually exclusive?
25. Whether Article 31-C is markedly different from Article 31-B?

Apart from the abovementioned issues, there are several other issues considered by the apex court like the significance of the Preamble, the Indian Independence Act, principles of Constitutional interpretations, the relevance of UN Charter and Part III of the Indian Constitution, the relevance of speeches delivered during Constitutional Assembly debates, the relevance of the constitutional history of other countries, the relevance of foreign judgments, etc<sup>1</sup>.

The following issues were not held by the Apex court in *Kesavananda Bharti* Case:

1. It did not lay down any evaluative criteria to identify what features would constitute as the basic structure of the Constitution.
2. It did not precisely articulate the distinction between amending power and constituent power.
3. It did not say anything on the critical question, of whether basic structure review is applicable beyond the exercise of amendatory powers.
4. There is nothing in the judgment indicating, whether the high courts can also invoke basic structure review.
5. Last but not least, there is no distinction in the judgment, whether it is to be applicable prospectively or retrospectively.

The abovementioned issues can be categorised into eleven broad categories of issues and we will now understand each of such issues one by one. The first issue was ‘What rule of interpretation should we adopt?’ in answer to this the Apex court ruled that if there is any type of ambiguity we must follow the ‘*Heydon’s Rule*’. The second issue was ‘What is meant by the word amendment or amend & what is its scope?’ to which the court held that any amendment to be made under the Constitution has to be within the four corner of the essence of the Constitution. Indian Constitution is based upon the socio-economic ideals of the freedom struggle and it is without any doubt the first and foremost a social document. It is quite evident from the Constitutional Assembly debates that many promises were being made during the course of the freedom struggle to bring some change and social revolution in society and according to those ideals our Constitution was framed and these principles and ideals are indispensable for Indian society and thus our Constitution’s basic foundation rest upon these essential characters and can’t be changed. It is these basic characters and principles which provide the vitality and organic entity to our Constitution. The Indian Parliament which itself derives its authority from the Constitution itself can’t take away or rob the identity of this Constitution. Separate from the Parliament, the Indian Constitution has its own identity, the identity related to the basic essential character on which the foundation of this Constitution rests. This Identity of the Constitution can’t be removed by any amending process. It can be further clarified in other words that our Constitution itself doesn’t lay down any procedure by which the basic identity of this Constitution can be taken away or be changed<sup>2</sup>.

The third issue was ‘What is the source of amending power?’ in an answer to this issue the court held that like previously decided cases, Article 368 of the Indian Constitution is the one and only source of amendment even after the 24<sup>th</sup> Amendment Act, still article 368 is the only source of amendment in the Constitution<sup>3</sup>.

The next issue was “can it be said that the amendment is done by the people of India directly and therefore being a sovereign, the people of India can amend anything in the Constitution?” The apex court held that India is a directly elected representative democracy and when people elect their representative, then the amendment to the Constitution is to be done by the Parliament of India only and not by the people of India. There is no provision for a referendum under the Indian Constitution or laws. Therefore it is said that the amendment to the Constitution of India is to be done by the Parliament of India and not directly by the people of India. People in India are nowhere responsible to amend the Constitution or make laws. There is no doubt that the sovereignty lies with the People of India but it is only a Political sovereignty, the legal sovereignty lies with the Constitution of India, therefore, it can be said that in India the Constitution of India is supreme and not the people of India and Parliament also has to act within the four corners of the Constitution. Once the people of India had adopted and given to themselves this Constitution they also declared to be bound by the ideals of the Constitution and therefore, even the people themselves can not rise above the principles of the Constitution and can not alter the basic structure or basic ideals/essence of this Constitution by any constitutional means<sup>4</sup>.

The fifth question which was raised was “by declaring the constituent power, has the Parliament acquired for itself, the power to rise above the Constitution and bring about any alteration in the Constitution?” the Supreme Court has held that the constituent power of the constituent assembly can not be equated with the constituent power of the Parliament given under the Constitution of India. The constitution assembly has the original constituent power under which it has created the Constitution and it was not limited by any pre-existing constitution as such. But our Parliament, on the contrary, derives its constituent powers from the Constitution itself, in fact our Indian Parliament it itself the creation of the Constitution and under the

<sup>1</sup> LAHOTI, R.C., *supra* note 5.

<sup>2</sup> *supra* note 19.

<sup>3</sup> JAIN, M.P., *supra* note 8.

<sup>4</sup> INDIA’S LIVING CONSTITUTION IDEAS, PRACTICES, CONTROVERSIES, (E. Shridharan Hasan Zoya R. Sudarshan ed., 4th ed. 2013).

disguise of its constituent power, the parliament can not rise above the principles of the Constitution and derive itself the powers of the original constituent assembly. Therefore, the Parliament has to act within the limits of the Constitution<sup>1</sup>.

The next and sixth issue was “whether Article 13(2) controls the Article 368?” in an answer to this the apex court held that Article 13(2) related to the ordinary legislative powers given to the Parliament of India or the State Legislature, but Article 368 relates to the constituent powers of the Parliament to bring amendment in the Constitution and that is beyond the scope of Article 13(2) limitation however, it is subject to the ‘basic structure doctrine’. The court is of the opinion that there is no conflict between the two Articles as their scope of application is different and thus they work in their respective field<sup>2</sup>.

The seventh issue was “whether the Fundamental Rights are amendable?” the Court held that any part of the Constitution is amendable including the Fundamental Rights but the basic structure is not. The wordings which are used in the Part III may not construe the basic structure of the Constitution but the ideals or principles behind those Fundamental Rights are the essence of the basic structure of the Constitution. The amendment of the words used in the Fundamental Rights are permissible upto the extent only that it does not in any way abridge or destroy the basic structure of the Constitution<sup>3</sup>.

The eighth issue was “whether the doctrine of implied limitation apply on the Indian Constitution?” the court held that yes it apply on Indian Constitution as well. The ninth issue was “In reference to article 368, what is the scope of judicial review?” the apex court observed that as far as judicial review is concerned, it can interfere in any amendment made by the Parliament into the Constitution on the grounds of substantive limitation i.e. basic structure doctrine and the procedural limitation i.e. Article 268(2) etc<sup>4</sup>.

The tenth issue was “What is the scope and extent of the amending power with respect to Article 368?” the apex court held that the spirit of Article 368 can not be amended. The Constitution of India can not be made too rigid or too flexible. On the other hand, also the Article 368 can not be amended in such a so as to acquire to itself the power to take away or abridge the basic structure of the Constitution<sup>5</sup>.

The last and important issue which relates to the basic structure doctrine was that “whether the doctrine of basic structure is a vague doctrine?” the court opined that the doctrine of basic can not be said to be a vague merely because it did not rigidly define what all elements come under this doctrine. First of all the court is bound to decide only those issues which are before its hands. An observation on other issues is only considered as an *obiter dicta* and will not be binding as a precedent. Further, it is not possible to declare all the possible basic essential characters in one go and it is not needed as well. The court observed that just because one concept of law can not be defined within four corners of definition it can not cease to be the concept of law. Likewise, the principle of natural justice and negligence can also not be defined as rigidly but it operate as an effective concept of law from time immemorial<sup>6</sup>.

### THE TEST OF BASIC STRUCTURE

The Judiciary while giving the notion of Basic Structure Doctrine has not given the clear cut list as to what element of the Indian Constitution comes under the umbrella of Basic Structure rather it was left open to decide as and when the particle set of facts comes before it on case to case basis thus, many scholars considered this doctrine to be a vague doctrine. In the *Minerva Mills* case the first attempt was being made to laid down the test of basic structure. Senior Advocate Mr. H.M. Seervai has said the “a precise formulation of the basic features would be a task of greatest difficulty and would add to the uncertainty of interrupting the scope of Article 368 of Indian Constitution.” The Apex Court in *M. Nagraj v Union of India* had tried to formulate a general test to decide if an amendment is against the basic structure of the Constitution. The court held that “in the matter of application of the principle of basic structure, twin tests have to be satisfied, namely, the width test and the test of identity.” The Supreme Court has again refereed to the fundamental rights case and observed that it is not only the amendment of a particular article but what is impermissible is that an amendment which adversely affects the essence of destroy the wider principles of equality, republicanism, democracy, secularism or which changes the identity of the Constitution<sup>7</sup>.

In *I.R. Coelho* case the court held that “in respect of the amendments of the fundamental rights not a change in the particular article but the change in the essence of the right must be the test for the change in the identity.” It was further observed by the court that if the golden triangle of Article 19, Article 21 and Article 14 is sought to be amended or eliminated then not only the *essence of right test* but also the *rights test* needs to be applied. According to the supreme court both these tests of *essence of right* and *rights test*, forms part of the basic structure of the Constitution<sup>8</sup>.

Further, there is another test called *impact test* which is used to determine the impact of ordinary laws on the basic structure. Which clearly means that if the impact of ordinary law has an effect on any of the rights enumerated under Part III of the Indian Constitution, then by applying this test, the answer will be in affirmative that such ordinary law is in violation of basic structure<sup>9</sup>.

### CONCLUSION

Since its inception from the 1970s this doctrine is ever evolving. The structure of this doctrine as we see today, is basically synthesis of so many judicial dictum which basically crystalized into the form of basic structure of Indian Constitution. Many judicial decisions are based upon this doctrine only and it has saved many times the basic ideals, essence and character of Indian Constitution from destruction, alteration or emasculation from the hand of the Indian Parliament. This doctrine has also invited many intense debate in the field of Constitutional Law. In the words of Subhash Kashyap as he criticizes this doctrine “ if the sovereign people through their representative cannot bring about their desired change, who will? But will be the use of this

<sup>1</sup> *supra* note 19.

<sup>2</sup> JAIN, M.P., *supra* note 8.

<sup>3</sup> SINGH, MAHENDRA, V. N. SHUKLA'S CONSTITUTION OF INDIA (14th ed. 2023).

<sup>4</sup> *Id.*

<sup>5</sup> NOORANI, A.G., CONSTITUTIONAL QUESTIONS IN INDIA THE PRESIDENT, PARLIAMENT AND THE STATES (1st ed. 2002).

<sup>6</sup> *Id.*

<sup>7</sup> *supra* note 3.

<sup>8</sup> Badar Ahmad, *The Doctrine of “Basic Structure” in the Indian Constitution: A Critique*, ALIGARH LAW JOURNAL 203 (2015).

<sup>9</sup> *supra* note 3.

change through the sovereign people at the cost of our Constitution. This doctrine has always prevented the Parliament from abusing its majoritarian power<sup>1</sup>.

This doctrine was also criticized on the point that it has its extra constitutional origin as there is lack of basic in the basic structure, the Supreme Court has indirectly assumed itself the power of veto to any constitutional Amendment. But seeing the current state of affairs into the working of the Government system if such power of amendment is allowed then the day will not be far when the government will create a new Constitution to itself to sooth its working conditions and thus create a lot of national crisis<sup>2</sup>.

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<sup>1</sup> *supra* note 19.

<sup>2</sup> LAHOTI, R.C., *supra* note 5.