



# Constitutionalism on Trial: The Dynamic Interplay Between Parliament and Judiciary Over Fundamental Rights

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ARTICLE DETAILS	ABSTRACT
<b>Research Paper</b>	
<b>Keywords :</b>	
<b>Parliamentary Power, Judicial Review, Fundamental Rights, Doctrine of Basic Structure, Amendment; Separation of Powers; Rule of Law etc.</b>	<i>The Constitution of India establishes a delicate balance between the powers of Parliament to legislate and amend laws, and the judiciary's duty to uphold the supremacy of the Constitution and protect fundamental rights. Since the enforcement of the Constitution, this balance has often been tested, leading to a dynamic interplay between the legislature and judiciary. This paper examines the constitutional tension arising out from attempts of the Parliament to limit or redefine fundamental rights through constitutional amendments, and consistent role of the judiciary in reviewing and at times, striking down such measures as unconstitutional. Mentioning the landmark cases, the study traces the evolution of the "Doctrine of Basic Structure" as a judicial safeguard against legislative overreach. It further explores that how this ongoing dialogue reflects the spirit of constitutionalism ensuring that no organ of the state becomes supreme and that individual rights remain protected within the democratic framework. The paper concludes that this judicial-legislative interaction, though often confrontational, ultimately strengthens constitutional democracy by reaffirming the rule of law and the inviolability of the fundamental rights.</i>

## Introduction

The Constitution of India is a living document embodying the spirit of democracy, rule of law and constitutionalism. It envisions the power balance among the three organs of the State namely- (1)

Legislature, (2) Executive, and (3) Judiciary. It ensures that none of them is supreme. However, this equilibrium has often been tested, particularly in the context of the Part III of the constitution *i.e.* fundamental rights; where the power of the Parliament to amend the constitution and the power of the Judiciary to review the laws have frequently come into conflict.

The roots of this constitutional tension lie in Parliament's attempts to assert its authority through constitutional amendments, often seeking to limit or reshape fundamental rights, while the Judiciary has firmly stood its ground to protect the core values and principles enshrined in the Constitution. This paper aims to examine the ongoing dialogue between Parliament and the Judiciary and to show how their conflicting yet complementary roles have shaped Indian constitutionalism. It argues that this tension has not weakened the constitutional system; rather, it has strengthened Indian democracy by upholding the supremacy of the Constitution and safeguarding individual liberties.

While discussing the amending power of Parliament, the review power of the Judiciary, and the supremacy of the Constitution, it becomes essential to examine various constitutional amendments and landmark judicial decisions, particularly those affecting Fundamental Rights. Parliament to amend the Constitution under Article 368 has been tested repeatedly through amendments aimed at altering the scope of Fundamental Rights. At the same time, the Judiciary has exercised its power of judicial review to ensure that such amendments do not violate constitutional limits.

These questions first came up for consideration of the Supreme Court in the case of **Shankari Prasad v. Union of India**.<sup>1</sup> In this case, the validity of the First Amendment Act, 1951 of the Constitution was challenged. The ground of the challenge was that this amendment violates the fundamental rights given in Part III of the Constitution, which are barred by Article 13. Article 13(2) provides that the State shall not make any law, which takes away or abridges the rights conferred by Part III, and any law made in contravention of this clause shall, to the extent of the contravention, be void.

The petitioners argued that the constitutional amendment passed under Article 368 is also law within the meaning of the word 'law' used in Article 13(3)(a) and is unconstitutional being against the rights given in Part III.

The Supreme Court rejected the contention of the petitioners and ruled that the power to amend the Constitution, including the Fundamental Rights, is vested in Article 368. The term 'law' used in Article

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<sup>1</sup> AIR 1951 SC 458

13 includes only those laws which are made by the exercise of ordinary legislative power and not by the exercise of constitutional amendment power. Therefore, constitutional amendment under Article 368 will be constitutional even if it is against the Fundamental Rights.

This question again came up for consideration before the Supreme Court in the case of **Sajjan Singh v. State of Rajasthan**.<sup>2</sup> In this case, the validity of the 17th Amendment Act of the Constitution was challenged. In this case, the Supreme Court approved its decision given in the case of Shankari Prasad. The Court said that if the framers of the Constitution wanted to keep the Fundamental Rights beyond amendment, they must have made clear provisions about it.

Again the same question came up before the Supreme Court in the case of **Golaknath v. State of Punjab**.<sup>3</sup> The Supreme Court, by a majority of 6:5, reversed its decision in the case of **Shankari Prasad** and **Sajjan Singh** and held that Parliament has no power to amend in Part III. The **Chief Justice Shri Subbarao**, while pronouncing the decision of the court, gave his conclusion as follows:-

1. The power to amend the Constitution is vested in Articles 245, 246 and 248 of the Constitution and not in Article 368. Article 368 provides only for the process of amendment, not the power to amend the constitution.
2. The amendment is a law within the word 'law' used in Article 13 and is void if it takes away or abridges the Fundamental Rights. The word 'law' includes all types of laws, whether it is ordinary law or constitutional amendment law.

**Chief Justice Shri Subbarao** said that Fundamental Rights have been given a natural place in the Constitution and they have been kept beyond the amending power of Parliament. In this case the principle of Prospective overruling effect was applied. That is, the constitutional amendments made before the date of this decision will remain valid, but from the date of this decision, Parliament will not have the right to amend the provisions in Part III arbitrary.

After this decision, the parliament passed the **24th Constitutional Amendment Act, 1971** to remove the difficulty arising out of the Supreme Court's decision in the **Golaknath case**, by which important amendments were made in Article 13 and Article 368, which are as follows-

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<sup>2</sup> AIR 1965 SC 845

<sup>3</sup> AIR 1967 SC 1643



1. **Clause (4) was inserted in Article 13-** “Nothing in this article shall apply to any amendment of this Constitution made under article 368”
2. **Substituted marginal notes** from “Procedure for amendment of the Constitution” to “Power of Parliament to amend the Constitution and procedure therefore” in Article 368.
3. **Inserted clause (1) in Article 368-** 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.
4. Substituted a part of sentence from “it shall be presented to the President for his assent and upon such assent being given to the Bill” to “it shall be presented to the President who shall give his assent to the Bill and thereupon” in clause (2) of Article 368. That means giving assent of the Bill for President is now mandatory.

The validity of the 24th Amendment Act of the Constitution was challenged in **Kesavananda Bharati v. State of Kerala**.<sup>4</sup> It was argued on behalf of the government that amending power of Parliament is unlimited and uncontrolled and Parliament can make any kind of amendment except the repeal of the Constitution. Other side, it has been argued on behalf of the petitioners that the power of Parliament to amend the Constitution is not unlimited. Parliament cannot destroy the Constitution, because the Constitution itself is the father of Parliament. Therefore, the Parliament can exercise its power only according to the value elements enshrined in the Constitution.

The largest ever Constitutional Bench, consisting of a total of thirteen judges, unanimously decided that Parliament has the power to amend the Fundamental Rights. The power of the Parliament to amend the Constitution cannot be put under the word ‘law’ as used in Article 13. In this case the decision given in *Golaknath's* case was reversed. It was held that the amendments made to Article 13 and Article 368 of the Constitution by 24th Constitutional Amendments only mention the powers vested in these Articles and do not extend them. The Court ruled by a majority of 7:6 that although the power of Parliament to amend the Constitution under Article 368 is extensive, but it is not unlimited. Parliament cannot make any such amendment in the constitution so that the basic element of the constitution or its basic structure is destroyed.

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

In this case, the Supreme Court propounded the principle of ‘Basic Structure’ of the Constitution. Some examples of ‘Basic Structure’ have been mentioned in this case.<sup>5</sup> And it was also said that this is just an example, not a complete list. Based on the facts of the case, it will be determined that ‘what is the basic structure of the Constitution’.

After above decision, the **42nd Constitutional Amendment Act, 1976** was made to remove the effect of the decision given in the case of Kesavananda Bharti. By this constitutional amendment act, clause (4) and clause (5) were added in article 368 which is as follows-

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.

For the removal of doubts, it is hereby declared 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.

By this amendment act, it was clarified that the power of the Parliament to amend is supreme and there is no restriction on it. The Chairman of the Constitution Amendment Committee, **Mr. Swaran Singh** said that Parliament is supreme, not the judiciary, because it is the Parliament that represents the will of the people.

Further, In **Minerva Mill v. Union of India**,<sup>6</sup> five judges Constitutional Bench unanimously held that Clauses (4) and (5) added to Article 368 by the 42nd Constitutional Amendment Act, 1976 are unconstitutional as it gives unlimited power to the Parliament to amend and It destroys the basic structure of the constitution. Parliament cannot extend its amending power.

In **Waman Rao v. Union of India**<sup>7</sup>, Parliament attempted to shield legislation from judicial scrutiny by placing them under the **Ninth Schedule** through constitutional amendments, invoking Article 31B. The issue was whether such protection could extend indefinitely, especially when Fundamental Rights were

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<sup>5</sup> Supremacy of the Constitution, Secularism of the Constitution, Division of Powers, Federal Nature, Fundamental Right, Sovereignty of India etc.

<sup>6</sup> AIR 1980 SC 1789

<sup>7</sup> AIR 1981 SC 271

affected. Whether laws inserted into the Ninth Schedule after the Kesavananda Bharti judgment (24 April 1973) were immune from judicial review? The Supreme Court drew a clear temporal line:

- Laws placed in the Ninth Schedule before 24 April 1973 are valid.
- Laws placed after that date are subject to Basic Structure review.
- Reaffirmed judicial review as a basic feature.
- Limited Parliament's use of Ninth Schedule as a "constitutional vault"
- Protected Fundamental Rights from blanket legislative immunity.

In **Kuldip Nayar v. Union of India**<sup>8</sup>, the Supreme Court examined the constitutional validity of amendments made to the Representation of the People Act, 1951 by the 44th Constitutional Amendment Act, 2003, which removed the requirement of domicile for candidates contesting Rajya Sabha elections. The petitioners argued that this change violated Article 14 and diluted the federal character and democratic principles, which form part of the basic structure of the Constitution. The Court upheld the amendment, holding that the Rajya Sabha represents the states but does not require its members to be permanent residents of the state they represent. It clarified that while Parliament has wide powers to amend the Constitution, such power is always subject to the basic structure doctrine. The judgment emphasized judicial restraint, affirming that not every constitutional change amounts to a violation of basic structure unless it fundamentally destroys core constitutional values.

In **I.R. Coelho v. State of Tamil Nadu**<sup>9</sup>, a nine-judge bench of the Supreme Court addressed the constitutional validity of laws placed in the Ninth Schedule after the landmark decision in Kesavananda Bharati. The case examined whether such laws were immune from judicial review merely by virtue of their inclusion in the Ninth Schedule under Article 31B. The Court held that all laws inserted into the Ninth Schedule after 24 April 1973 are subject to judicial review, if they violate the basic structure of the Constitution. It further ruled that Fundamental Rights under Articles 14, 19, and 21 form an essential part of the basic structure, and any amendment or legislation that damages these rights can be struck down. This judgment significantly limited Parliament's ability to bypass constitutional scrutiny and reinforced the supremacy of the Constitution and the power of judicial review in protecting fundamental rights.

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<sup>8</sup> AIR 2006 SC 3127

<sup>9</sup> (2007) 2 SCC 1



In **Supreme Court Advocates on Record Association v. Union of India**<sup>10</sup>, commonly known as the **NJAC Case**, the Supreme Court examined the constitutional validity of the 99th Constitutional Amendment Act, 2014 and the National Judicial Appointments Commission Act, 2014, which sought to replace the collegium system with a new mechanism for appointing judges to the higher judiciary. The NJAC included members from the executive and two eminent persons along with the Chief Justice of India and senior judges. The central issue before the Court was whether this change compromised the independence of the judiciary, a principle recognized as part of the basic structure of the Constitution.

By 4:1 majority, the Constitution Bench struck down both the Amendment and the NJAC Act, holding that the amendment allowed excessive executive interference in judicial appointments and thereby damaged judicial independence. The Court emphasized that judicial primacy in appointments is essential to preserve impartiality and public confidence in the judiciary. While acknowledging the need for transparency and reforms in the collegium system, the Court held that such concerns could not justify a constitutional amendment that undermines a basic feature of the Constitution. The judgment reaffirmed the supremacy of the Constitution, reinforced judicial review over constitutional amendments, and highlighted the continuing tension between Parliament and the Judiciary in Indian constitutionalism.

In **State of Tamil Nadu v. Governor of Tamil Nadu**<sup>11</sup>, the Supreme Court dealt with an important constitutional dispute arising from the Governor's prolonged inaction and refusal to grant assent to several Bills passed by the Tamil Nadu Legislative Assembly, including amendments to State university laws. The State government challenged the Governor's conduct under Article 200 of the Constitution, arguing that indefinite delay and arbitrary reservation of Bills for the President undermined democratic governance and federalism. The Supreme Court held that the Governor is a constitutional head and not an independent political authority, and therefore cannot frustrate the will of an elected legislature. The Court clarified that while the Governor may exercise limited discretion, such discretion must be exercised within a reasonable time and in accordance with constitutional conventions. Indefinite withholding of assent was held to be unconstitutional, as it violates the principles of federalism, democracy, and responsible government, which form part of the basic structure. The judgment reaffirmed judicial review over gubernatorial actions and strengthened the supremacy of the Constitution over unelected constitutional offices, marking a significant development in Centre-State relations and constitutional accountability.

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<sup>10</sup> (2016) 5 SCC 1

<sup>11</sup> Writ Petition (Civil) No. 123 of 2023



## Conclusion

The analysis in this paper highlights that Indian constitutionalism is shaped by a continuous and necessary interaction between Parliament and the Judiciary, especially in relation to Fundamental Rights. While Parliament is entrusted with broad powers to amend the Constitution and reflect the democratic will of the people, these powers are not unlimited. The Judiciary, through its power of judicial review, ensures that constitutional amendments and legislative actions do not undermine the core values and essential features of the Constitution. This ongoing tension has served as a constitutional safeguard rather than a source of instability. It has strengthened democratic governance by preserving the supremacy of the Constitution, protecting individual liberties, and maintaining the balance between constitutional flexibility and constitutional identity. The Indian experience demonstrates that constitutionalism thrives not in unchecked authority, but in principled limits, mutual restraint, and a shared commitment to uphold the rule of law and democratic ideals.