



Basic Structure: An End to Irrational Amendments

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ABSTRACT

India, recognized as a secular country, is the land of multicultural sects. She is the second most populous country in the world. India has taught me, that we should admire unity in diversity, that we should be polite to one another and in the end, we should stand with our people. I personally believe, this is India. But on the other hand, her past is too scary, in the realm of the British crown. Witnessing the past atrocities by the British rule, she had faced many revolts, movements, etc. to snatch its freedom from the British crown. Finally, after the struggle of around 200 years, India took its freedom and in order to regulate its people, came up with a legal document so that the past suffered won't repeat under any circumstances. India is governed by this social legal document which is the supreme law or umbrella law of the land, known to us as the Constitution of India.

The Constitution was drafted by the Constituent Assembly with the view, as far as possible to fulfil the people's needs. All those subject matters foreseen, which they found necessary to govern a country were considered and mentioned in this constitution. Moreover, the framers of the Constitution were very clear of the fact that society is dynamic and so the laws cannot be made static. The law needs to be amended or made as per the changing scenario of the society.

The Drafting Committee were well known about the truth that the necessity of society changes from time to time and by keeping this in mind, the framers of the Constitution gave amending powers to the legislature whenever required. But they did not focused on the words of Lord Acton "Power tends to corrupt, and absolute power corrupts absolutely", and didn't put any such restrictions on the provisions of the amending powers. Hence, its consequences left us with the challenges being aroused by the Parliament because of their act of misusing the provisions of amending powers given to them. Revisiting the past actions of the parliament, one can clearly see that the Parliament were never interested in exercising their powers to fulfill their duties in upholding the features of the constitution.

Rather the leaders were more active in using these powers for their personal interests. The body polity behaves the way they want, do what, what they desire, and the most reliable example can be seen from the emergency period 1975. To put a limitation on such irrational amendments and to protect the Indian constitution from diminishing its value, judiciary came up with a doctrine, known as basic structure i.e., the saviour of our Indian constitution. This paper relates with the precious areas of application and diversification of basic structure doctrine, its ability to limit the amendment and to protect the individual's right i.e., Fundamental rights. The paper also shows a wider range of applicability of basic structure as to where can be more emphasized upon to lead to a greater purveyance of fundamental rights and more on our belief on basic structure.

KEYWORDS: Basic Structure, Amending powers, Law, Fundamental rights, judiciary.

1. INTRODUCTION

A Constitution needs to be a living Constitution², to endure the tides of time and adapt to the changing requirements of generations. At the same time, however, there are some intrinsic values on which the entire content of the Constitution rests. The originality of this framework is the very essence of the legal system embodied in constitutional documents, which courts seek to protect through various teachings and statements. It would be a different story if the folk spirits had to demolish the old building and request a new one, requiring a separate procedure. Until then, the specific commodities that bring the nation together in certain ways must be protected from interference that is premature and does not reflect the true will of the collective.

The basic structural principles that the Supreme Court of India has developed over the years through numerous landmark decisions, provide the essential elements of constitutionalism. The rule of law, without which the constitution is just a dead law. The course of development of this doctrine from the theory of implicit constraints to its present form has been nothing short of turbulent, with attempts to save it and even greater attempts to obliterate it. Prevent it from entering the dangerous realm of tyranny by exploiting Article 368 of the Indian Constitution. This essay attempts to trace the origins and evolution of the Framework's tenets i.e. Basic structure and discusses its limitations.

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² David A. Strauss, "Do we have a Living Constitution" 59 Drake L. Rev. 973 (2011).

2. BACKGROUND: BASIC STRUCTURE DOCTRINE

The origins of basic structure theory can be traced back to lectures given by Professor Dietrich Conrad, former head of department of law of the South Asian Institute at Heidelberg University, Germany. Few could have predicted that the impact of this lecture would be of such a magnitude that it would permanently change the future of the Indian Constitution. In the *Golaknath v. Punjab*³ case (hereafter referred to as the *Golaknath* case), the doctrine of implied limitation was applied by M.K. Nambiar, a lawyer, but was ignored by the Supreme court. During a visit to India in 1965, Conrad gave a lecture on "Implicit Limitations on the Amending Power" at the Faculty of Law at the B.H.U. varanasi. A paper written on this subject was sent to T.S. Rama Rao for his comments to Madras, where it caught Nambiar's attention. Conrad raised some very important and seemingly simple questions in his 1965 lecture, but lacking simple answers, allowed him to emphasize its important nature.

His questions included: Could a constitutional amendment abolish Article 21 through the effective exercise of its amendment powers under Article 368? Acting on the Prime Minister's advice, can the Amendment Power change Article 368 to give all powers to the President? Could the amending power abolish the Constitution itself and reintroduce monarchy?⁴

Some of these questions today seem easy to answer in the light of basic structural theory, and solutions can be offered by even those with rudimentary knowledge of the field, but *Golaknath* and *Kesavananda Bharati v. the State of Kerala*⁵ (hereafter *Kesavananda* case *Bharati*) is when these questions seemed like real puzzles because the underlying structural tenets did not exist in their present form. How did Conrad come up with this "implicit limit doctrine"? The answer lies in Section 79(3) of the Basic Law of the Federal Republic of Germany, which expressly excludes changes to the provisions concerning the federal structure and the principles laid down in Sections 1 to 20⁶. Germany took these lessons from its past, the Nazi era. This Germany's bygone was acknowledged by the Supreme Court in the *M. Nagaraj v Indian Union* case. This doctrine, therefore, is not an "invention of the Indian judicial system" as some believe, but a necessary departure from the civil law system when the drafters of the Indian constitution consulted nothing but common law countries. It was clearly an inspiration.

While this theory of implied limitations was not accepted in the *Golaknath* case, it was considered by the majority to be of great importance, and the situation when legislature sought to change the structure of the law enshrined in another law, was shelved for later addressing when a Clause Repeals the Part 3 of the Constitution. This argument was later taken up by Nani Palkhivala in the *Kesavananda Bharati* case and successfully transformed into the doctrine of Basic Structure. And by these years, many features have been pronounced by the Supreme court within this doctrine.

3. BASIC STRUCTURE: AN OVERVIEW

The constitution is dynamic. Edmund Burke said about it: It enriches the present by the influence of the past, making the future richer than the present. Part XX of the Indian Constitution under Article 368⁷ deals with the amendment of the Constitution.

It offers 3 types of amendments i.e., Amendment by Simple Majority⁸; Amendment by Special majority⁹ and Amendment by Special majority and Ratification by States¹⁰. The Constitution must be amended from time to time. A Constitution which is a static constitution becomes a big hurdle in the path of the progress and development of the nation. As the time is not static; it goes on changing in the same way the political, economic and social conditions of the people also goes on changing, so for that reason provision of amendment of the Constitution is made with a view to overcome the difficulties of 'we the people' which may encounter in future in the working of the Constitution.

If there were no provision made for the amending the provisions of the Constitution, people would have recourse to extra-Constitutional methods like revolution to change the same. Our Constitution-makers were so vigilant about the integrity of India that they gave us a scheme in the Constitution that if a citizen have a claim of even 101 rupees against the government (whether Central or State) one would get a decree against the Government and that decree will be charged on the Consolidated Fund of India and the same shall be payable as a matter of right and no State Legislature or the Parliament can deny to repay it . What the sense of national solidarity and glory of India the constituent assembly had before 75 years ago but today time and again the Parliament is leaving no possibility to keep itself out from the scope of the judiciary which is the protector of the Constitution¹¹.

³ (1997) 2 SCR 762

⁴ Behind the Basic Structure Doctrine- On India's debt to a German Jurist, Professor Dietrich Conrad" 18 (9) *Frontline* (April 28- May 11, 2001)

⁵ AIR 1973 SC 1461

⁶ These mostly dealt with human rights, democratic and social set-up.

⁷ Article 368 of the Indian Constitution reads as: —Power of the Parliament to amend the Constitution and procedure thereof.

⁸ Amendment by simple majority of each house of Parliament- it is like an ordinary bill. Formation of new States, creation or abolition of Legislative Councils (Arts. 4, 169 and 239-A) is made by such procedure. Thus, amendment at the instance of the States, or amendment by State Legislatures, is included in such category. Amendments under this category are expressly excluded from the purview of Article 368

⁹ Means majority of „total members of each House" and by a majority of at least two-third „present and voting". All amendments, other than those referred in amendment by simple majority, come within this category, e.g., powers of Election Commission

¹⁰ The States are given an important voice in the amendment of these matters which are required to be ratified by the legislature of not less than one-half of the States.

¹¹ Madras High Court Judge, Justice T. Mathivanan on November 27, 2010 while speaking at the Law Day at Kumbakonam Bar Association

This doctrine as unfolded in the *Keshavananda Bharti* seeks to resolve a legal dilemma which arises in written Constitutions in contrast with those provisions of the Constitution which protects the fundamental rights and those which gives power to the Parliament to amend the Constitution¹². But the Constitution is a supreme law; therefore, one cannot destroy its features i.e., identity¹³. Thus the legislature is barred from any act which may damage, emasculate, destroy, abrogate, change or alter such provision, which destroys the identity of the constitution.

Over the years, the judiciary has incorporated specific provisions of the Constitution into this prestigious club¹⁴, but mostly in abstract ideas such as sovereignty, democracy, federalism, judicial independence, and judicial review leaving behind the tedious world of specific rules. The drafters of the Constitution took great care and effort to provide the citizens with the best constitution. However, they did not add explicit provisions to Section 368 to limit the amending power exercised by legislatures. As a result, legislatures has exercised their constitutional powers to add a ticklish ninth¹⁵ schedule rarely to respond the agricultural reform but to preclude judicial review. Gradually, the Ninth Schedule turned a regulated constitution into an unregulated constitution. Consequently, in the case of *Kesavananda Bharathi*¹⁶ in 1973, the Supreme Court transformed an uncontrolled constitution into a controlled constitution by introducing a new doctrine called the "basic structure" that imposes implicit limits on the legislature's power to amend it. However, the Supreme Court has failed to set benchmarks or guiding principles for basic structures. Contrary to separation of powers theory, which is one of the basic structures of the Indian constitution, even the individual judges were given the power to implicitly amend the Indian constitution, which is truly unjust. The judiciary did not even say that the Constitutional Council should decide the issues related to Basic structure. From the evolution of the Framework, we can therefore conclude that the Framework is the product of the judiciary's attempt to find something higher within the constitutional framework that will thwart the tyrannical executive branch. The basic structure provided by the *Kesavananda Bharti*, judiciary protected the primacy of the constitution, the republican and democratic form of government. The secular nature of the Constitution maintains the gap between separation of powers and the quasi-federal character of the Constitution.

4. THE GOLAKNATH PRONOUNCEMENT

Back in 1967, a Supreme court bench consisting of 11 judges reversed its position. In its 6:5 majority in *Golaknath v. State of Punjab*¹⁷, Chief Justice Subba Rao took the bizarre position that Article 368, which contains provisions for amending the Constitution, merely stipulated the procedure for amendment. Section 368 does not give Parliament the power to amend the Constitution however, the power of parliament to amend (constitutional power) stems from other provisions of the constitution (Articles 245, 246, 248) that give parliament the power to legislate (full legislation). Thus, the Supreme Court has ruled that Parliament's amending powers and legislative powers are essentially the same. Amendments to the Constitution must therefore be regarded as laws within the meaning of Article 13(2). The majority vote evoked the notion of an implicit limit to Parliament's power to amend the Constitution. This view took the view that the Constitution gives a firm place to the fundamental liberties of the citizens. When the people gave themselves a constitution, they reserved their basic rights to themselves. According to the majority, Article 13 reflects this limitation of parliamentary powers. Parliament, by virtue of this structure of the Constitution and the nature of the liberties granted therein, could not alter, limit, or interfere with fundamental liberties. Because of their transcendental importance, they decided that even if such a move were unanimously approved by both houses of Parliament, it would not be possible to restrict fundamental rights. Noted that a Constituent Assembly may be convened to amend the fundamental rights in response to need of the people. In other words, the Supreme Court has ruled that some functions of the Constitution are at their core and require far more procedures than usual to change. The term "basic structure" was introduced by M.K. Nambiar and other attorneys while defending plaintiffs in the *Golaknath* case but it was only in 1973 that the concept penned in the text of the apex court's verdict.

5. UNFOLDING THE BASIC STRUCTURE: THE KESHAVANANDA MILEPOST

As a matter of course, the constitutionality of these amendments was challenged before the Supreme Court's full bench of 13 judges. Nine judges signed a summary statement outlining the main conclusions reached in the case. The judgment can be found in 11 separate verdicts. Granville-Austin notes that there are some discrepancies between the points contained in the judges' signed summaries and the opinions they expressed in their separate judgments¹⁸.

However, the concept of "basic structure" was approved by the majority vote. All judges upheld the validity of the 24th Amendment to the Constitution, declaring that Parliament holds the power to amend any or all provisions of the Constitution. All signatories to the abstract believed that the *Golaknath* case was erroneously decided and that Article 368 contained both powers and procedures to amend the Constitution. However, they recognized that constitutional amendment is not equivalent to law within the meaning of Article 13(2). A subtle distinction exists between the two types of functions performed by the Indian Parliament:

¹² Whether a feature is "basic" or not is to be determined from time to time by the court as and when the question arises. See, Jain, M.P.-Indian Constitutional Law, Sixth edition 2010, reprint 2012, p. 1645

¹³ *Minerva Mills v. Union of India*, AIR 1980 SC 1789

¹⁴ In *Kesavananda* case the following ideals were accepted as 'basic structure', Sikri, C.J. explained that the concept of basic structure included supremacy of the Constitution, republican and democratic form of government, secular character of the Constitution, separation of powers between the legislature, executive and the judiciary, federal character of the Constitution

¹⁵ Ninth Schedule was inserted in the 1st Amendment of Indian Constitution

¹⁶ 25 AIR 1973 SC 1473

¹⁷ *I.C. Golaknath v. State of Punjab*, AIR 1967 SC 1643.

¹⁸ See Austin, *Working a Democratic Constitution*, p.265.

- a) by exercising its legislative power¹⁹ it can make laws for the country;
- b) can even amend the whole constitution by exercising its constituent Power.

Constitutional power is superior to ordinary law. Unlike the British Parliament, which is a sovereign body (without a written constitution), the powers and functions of the Indian Parliament and State Legislatures are subject to constitutional limits. The Constitution does not contain all the laws that govern the country. State legislatures and legislative branches may legislate on various subjects within their respective jurisdictions. The Constitution provides the general framework for enacting these laws. Only Parliament has been vested by the power to change the provisions by using Article 368 framework. Amendments to constitutional clauses require a special majority in parliament, as opposed to normal laws.

6. BASIC STRUCTURE: REAFFIRMED

A. INDIRA GANDHI CASE

Finally in 1975, the Supreme Court had another opportunity to adjudicate on the basic structure of the Constitution. Prime Minister Indira Gandhi's victory in election was challenged on the grounds of election manipulation and stood upheld by the Allahabad High Court in 1975. Then, she appealed in the Apex court of the land, against the decree passed by the Allahabad High Court. The vacation judge- Justice Krishna Iyer, considering the pendency of the case before it, and respecting the Prime Minister post, passed an interim order stating, Indira Gandhi will serve as her prime minister on the condition that she receive no salary and speak or vote in parliament until the case is decided. Meanwhile, Congress using its legislative powers passed the 39th Amendment to the Constitution, depriving the Supreme Court off its power to decide petitions of any persons holding the office of the President, Vice President, Prime Minister and Lok Sabha Speaker. Instead, an agency formed by Parliament will be empowered to resolve such electoral disputes. The express provision, sec.4 of the Amendment Bill, effectively blocked every attempt to challenge the election of a person who holds any of the above offices in court. This was clearly a preventive action in favor of Smt. Indira Gandhi's election which was subject to ongoing controversy. Amendments were also made to the Representation of People's Acts of 1951 and 1974 and were included in the Ninth Schedule, along with the Election Laws Amendment Act 1975, to save the Prime Minister from being dishonored in the event of an adverse decision by the Supreme Court.

The government's bad faith was evidenced by the hasty passage of the 39th Amendment. This law was introduced on August 7, 1975 and passed in the House of Representatives on the same day. The Rajya Sabha (upper house) passed it the very next day and the President gave his approval two days later. The change was approved by the state legislature in a special session and was released on August 10th, 1975. When the Supreme Court opened its hearing the next day, the attorney general asked the court to dismiss the case in light of the new amendments.

Advocates of political opponent Raj Narain, who challenged Indira Gandhi's election, contended the amendment as it violates the basic structure of the constitution by interfering with the conduct of free and fair elections and the power of judicial review. Advocates also argued that Parliament did not have the authority to exercise its constituent powers to confirm elections that the High Court had already declared invalid. Four amongst the five judges upheld the 39th Amendment, but only after removing parts that intended to limit jurisdiction in current electoral disputes. Justice Beg, J. fully upheld the amendment, Mrs Gandhi's election was verified under the revised electoral law. Judges reluctantly accepted Parliament's power to pass laws with retroactive effect.

B. THE MINERVA MILLS CASE

Less than two years after parliamentary remediation (amending) powers were restored to near absolute terms, in 1976²⁰, Minerva Mills (Bangalore), a struggling industrial company was nationalized by the government. Due to which, the owners of the Minerva Mills challenged the constitutionality of the 42nd Amendment before the Supreme Court of India. Mr. N.A. Palkhivala, a well-known constitutional lawyer and advocate of the petitioner, not only challenged the government's actions solely as a violation of their fundamental rights to property but also challenged the amending powers of the Parliament. Mr. Palkhivala claimed that the 42nd²¹ Amendment gives unlimited amending powers to Parliament. Attempts to exempt constitutional amendments from judicial review violates basic structure doctrine, as recognized by the Supreme Court in the Kesavananda Bharati case and later on in Indira Gandhi's election case. He further argued that Article 31C, as amended, was constitutionally evil because it contravened the preamble and the fundamental rights of the Constitution as guaranteed to the citizens. It also struck down the judicial review powers. Chief Justice Y.V. Chandrachud, who passed a majority vote (4:1), confirmed both claims. The majority retained the power of judicial review of constitutional amendments. They argued that clause 4 and 5 of Article 368, gives Parliament unlimited power to amend the Constitution. They said it would preclude the court's ability to challenge the amendment even if it undermines or destroys the basic structure of the constitution.

¹⁹ By virtue of the powers conferred upon it in Articles 245 and 246, Parliament can make laws relating to any of the 97 subjects mentioned in the Union List and 47 subjects mentioned in the Concurrent List, contained in the Seventh Schedule of the Constitution. Upon the recommendation of the Rajya Sabha (Council of States or the Upper House in Parliament) Parliament can also make laws in the national interest, relating to any of the 66 subjects contained in the State List.

²⁰ Minerva Mills Ltd. v Union of India (1980) 3 SCC 625.

²¹ The Constitution (Forty-second amendment) Act 1976 [corresponding to Article 368 (4) & (5)]

A judge who agreed with Chandrachud, C.J. ruled that the limited power to amend itself is a fundamental feature of the Constitution. Opposition judge Bhagwati J. also agreed with this view, stating that no matter how high his authority, he could not claim to be the sole judge of power and action according to the Constitution²² and held that the amendment to Article 31c was unconstitutional because it destroyed the harmony and balance between fundamental rights and policy principles that are essential or fundamental features of the Constitution²³.

The Section 31c amendment remains a dead letter as it has not been repealed or deleted by Parliament. However, cases under it are decided as they existed before the 42nd Amendment. In a separate case involving a similar agrarian dispute, the Supreme Court ruled that all constitutional amendments made after the date of the Kesavananda Bharati ruling are subject to judicial review. Since the date of the Kesavananda Bharati judgment, all laws included in the ninth schedule were also subject to judicial review²⁴. They can be challenged on the grounds that they are outside the constitutional powers of Parliament or that they subvert the basic structure of the Constitution. In essence, the Supreme Court strikes a balance between its power to interpret the Constitution and the power of Parliament to amend it.

7. CONCLUSION

The "basic structure" doctrine has been the subject of intensive debate as to its origin in constitutional law. But this point raises the question as to whether the Framework of Basic Structure Doctrine is really that basic? Subhash Kashyap criticizes the basic structure theory in the words "if the sovereign people, "we the people" through their representatives cannot bring about their desired change, then who will²⁵? This doctrine is very important because it is anti-majoritarian in nature and prevents Parliament from exercising the powers of the majority or making arbitrary amendments. It is also sometimes criticized for having extra-constitutional origins, as the basic structure is groundless and the Supreme Court has veto power over all constitutional amendments by using this. But without such restrictions on Parliament's power to amend, the day may come when criticizing a government in power will be criminalized. Criticizing this doctrine by arguing that constitutional power transfers from elected representatives to the judges of the Supreme Court, we must not forget the powers of the majority conferred on legislatures. This doctrine is the final interpreter and subject of the Constitution. This doctrine was intended for special use in times when constitutional amendments threatened the basic constitutional framework. In the absence of a definitive list established by the judiciary, it is said that the basic structure is determined on a case-by-case basis. If framework of Basic Structure offered, the judiciary may fear that Parliament may propose other alternatives to deminish the features proposed by the Constitution. I am grateful to Professor Dietrich Conrad for warning us during his visit to India of the implicit and inherent limitations of parliamentary amendment powers. Palkhivala filed it (basic structure doctrine) in the Kesavananda case and in Golakh Nath it was tried by Mr. M.K. Nambiar but due to judicial hesitation, it took about five years from Golakh Nath to Kesavananda Bharti case to be approved.

This doctrine protects our fundamental rights and all actions of Parliament are now subject to this doctrine, ending arbitrary amendments by the Parliament. In the case of I.R. Coelho, the Ninth Schedule was enacted to implement the Land Reform Act, and history clearly shows the purpose for which the Schedule was used. Many of them had nothing to do with agricultural reform, but various decrees were included in the schedule to protect them from judicial scrutiny. The Framework Doctrine is a response to questionable steps taken to abuse Schedule 9, and the decision as a whole is laudable²⁶. Nani A. Palkhivala delivered a speech on the 24th Constitutional Amendment, concluding with the words "...Let the Constitution of India be sovereign."²⁷ Congress has tried many times to bring about constitutional change in the exercise of its "constitutional power", but only the judiciary can change it as it pleases, but not the constitution. introduced the theory of this implicit limit in the form of Constitutional framework. The reason why the basic structure of the constitution cannot be changed is that the wording of Article 368 itself applies to the "constitution as amended by law." Therefore, Mr. Pandit Kanahiya Lal Mishra's argument seems very strong that the Constitution will be changed in the light of the provisions it contains, but the basic structure of the Constitution will remain the same. , the constitution is maintained. Because it is clear that if the basic structure of the constitution changes, the constitution will not change. But since the Constitution was passed in 1949, we have watched Congress amend it while trying to pass it. Likewise, when

²² Such a position seems contrary to the philosophy of separation of powers that characterise the structure of governance in India. The Constitution provides for a scheme of checks and balances between the three organs of government namely, the legislature, the executive and the judiciary, against any potential abuse of power. For example, the judges of the Supreme Court and the High Courts in the States are appointed by the executive i.e. the President acting on the advice of the Prime Minister and the Chief Justice of the Supreme Court. But they may be removed from office only if they are impeached by Parliament. This measure helps the judiciary to function without any fear of the executive. Similarly, the executive is responsible to Parliament in its day to day functioning. While the President appoints the leader of the majority party or a person who he believes commands a majority in the Lok Sabha (House of the People or the Lower House) a government is duty bound to lay down power if the House adopts a motion expressing no confidence in the government

²³ Bhagwati, J. upheld its validity and concurred that the government's takeover of the sick mill was valid

²⁴ Waman Rao v Union of India 1981 2 SCC 362. The Supreme Court decided this case along with that of Minerva Mills. Bhagwati, J. who was in the minority again incorporated his opinions on both cases in a single judgment.

²⁵ Kashyap, Subhash C.- Our Constitution, Edition 2011, Reprint 2014, p. 340the agrarian reforms.

²⁶ One of the Act, namely the Tamil Nadu Backward Class Act, 1993 which provide for 69 percent reservation and runs counter to the Apex Court's ruling in the Mandal case [1992 Supp (3) SCC 217] which was inserted in the Ninth Schedule by the Seventy-Sixth Amendment, 1994. This clearly shows how the Parliament used this Schedule to avoid the inconvenience of judicial review.

²⁷ let the Constitution remain sovereign, and let the people retain their sovereignty by giving these rights into themselves. If that will happen, then alone you will find that the freedom will survive."

in doubt, Parliament has no choice but to amend²⁸. Basic Structural Doctrine is a means of giving impetus to the living principle of the rule of law, and it implies that no one is above the Constitution, that the Constitution is supreme.

²⁸ See Inder Malhotra -When in doubt, amend; Indian Express; 21 August 2009; Neither the Supreme Court's 'basic structure' judgement nor Indira Gandhi's suspension of judges nor even the proclamation of emergency halted the supremacy between the Parliament and the Supreme Court.