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CONSTITUTIONAL AMENDMENTS, JUDICIAL REVIEW, AND THE LIMITS OF PARLIAMENTARY POWER: THE BASIC STRUCTURE DOCTRINE, SIMULTANEOUS ELECTIONS, AND WOMEN'S RESERVATION IN CONTEMPORARY INDIA

By- **Sabeena**[1]

ABSTRACT

The mutual interacts of constitutional amendments and judicial review constitute one of the most debated as well as the most vigorously thought-provoking landscapes of Indian constitutional jurisprudence. Article 368 of the Constitution of India gives the Parliament the right to make amends to any provision of the Constitution. Nevertheless, the basic question that has continued to arouse constitutional debate is whether this power of amendment is absolute or subject to judicially cognizable restraints.

The paper gives a critical analysis of the history of judicial review of constitutional amendments in India, developing the doctrinal narrative of the early deferential approach, found in Shankari Prasad v. Union of India to the groundbreaking formulation of the Basic Structure Doctrine, in Kesavananda Bharati v. State of Kerala. It also examines later cases that contributed to the development and implementation of this doctrine such as Minerva Mills Ltd. v. Union of India, Indira Nehru Gandhi v. Raj Narain and I.R. Coelho v. State

[1] **Postgraduate Student at Dr. B.R. Ambedkar National Law University.**

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of Tamil Nadu. The paper has critically assessed the theoretical basis of the Basic Structure Doctrine, reasons behind its normativeness, and conflicts with the democratic idea of parliamentary sovereignty.

Based on the comparative constitutional law and the mainstream scholarly beliefs, the paper maintains that although it is judicially creative and institutionally self-serving in certain aspects, the doctrine is an invaluable guarantee against constitutional authoritarianism. The paper finally gives the recommendations regarding a more orderly and open constitutional dialogue between the Parliament and the Supreme Court

Keywords: Constitutional Amendment, Judicial Review, Basic Structure Doctrine, Parliamentary Sovereignty, Kesavananda Bharati, Article 368.

INTRODUCTION:

The Constitution of India, which was adopted on 26 November 1949 and came into existence on 26 January 1950, was an idea of a living document, one that has the potential to change with the social, economic and political ideals of the people. After observing the stiffness of the American Constitution and extreme malleability of the British one, the framers of the Constitution found a middle ground. Article 368 of the Constitution endows the parliament with authority to amend the constitution by either addition, variation, or repeal of any of the provisions through the prescribed procedure. But the Constitution is, at the same time, based on a group of underlying principles democracy, rule of law, separation of powers, federalism, and individual rights that begs the question whether Parliament when exercising its amending power is a party to these underlying commitments.

The constitutional power of courts to interpret the constitutional sufficiency of legislative and executive action is the bone of contention of this question. In India judicial review of ordinary legislation is well-established under Articles 13, 32 and 226 of the Constitution. But the issue whether the Constitution itself can be subject to

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judicial review, and the reasons behind it, gave rise to a succession of historic constitutional debates between the 1950s and the first years of the twenty-first century.

It is not just a technical legal question as to whether the power of parliament to amend its own rules should be subject to a supervisory role of the judiciary. It is, in the most profound sense, a question of about what constitutionalism is: is it a political instrument, which can be redefined by the strongest political majority whenever it chooses, or is it a referent point to some irreducible values, which transcends any particular momentary majorities? The response to this question offered by the Indian Supreme Court, which led to the Basic Structure Doctrine has had a tremendous influence in the outlines of Indian constitutionalism, and is still subject to scholarly discussion and judicial exposition.

The political background and the political situation post-independence is crucial. After the Constitution began to regulate, a few years later, early legislative programs, both land reform and legislations abolishing zamindari, were taken to court as infringements on the very basic right to property. Parliament reacted with one constitutional amendment after another to rise above judicial meddling and the arena being readied to continue over the years with a lasting far-reaching constitutional dialogue between the legislative and judicial. This historical context makes the development of the amendment- judicial review relationship not only a game of academia but also a research of the functioning of constitutional democracy in the state of socio-political pressure.

SCOPE AND OBJECTIVES:

The focus of this paper is mainly limited to the constitutional jurisprudence of India with selective comparative references to the constitutional experience of the United States, Germany and other jurisdictions where a reference is made where necessary. The paper is not intended to be a comprehensive listing of all the various constitutional amendments passed since 1950, nor can they go to such a degree of

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detail about the mechanics of the amending process. Instead, it is concerned with substantive aspect of judicial review of constitutional amendments in particular; the criteria by which the constitutional amendments can be overturned by the Supreme Court.

This paper has fourfold objectives. It, first, attempts to trace the development of judicial review through constitutional amendments, using some of the landmark case laws of Shankari Prasad up to I.R. Coelho. Second, it seeks to set and examine the theoretical groundings of the Basic Structure Doctrine as it has been presented by the Supreme Court. Third, it is a critical analysis of the stresses among the doctrine and the principle of parliamentary sovereignty in a democratic polity. Forth, it provides suggestions on how to have a more principled and institutionally consistent approach to the relationship between constitutional amendment and judicial review.

THE EARLY PHASE: THE SUBSERVIENCE TO PARLIAMENTARY SUPREMACY (1951-1967):

The initial major challenge between the authority of amendment and the judicial review came in the case of Shankari Prasad v. Union of India[2]. the first Constitutional Amendment Act, 1951, amended Articles 31A and 31B and the Ninth Schedule, effectively providing some land reforms against any judicial nullification under Part III. Argued on the ground that Article 13 which voids all laws which abridges fundamental rights applied equally on the constitutional amendments, the Supreme Court, by a unanimous decision dismissed this argument. The Court did not consider that the term law in Article 13(2) was applicable in such a way that it referred to only ordinary legislative law and not to an amendment to the Constitution made under Article 368, which was of a different order altogether.

This avowal of deference was repeated in Sajjan Singh v. State of Rajasthan[3] in which the Seventeen Constitutional Amendment was repeated by the Supreme Court along

[2] Shankari Prasad v. Union of India, AIR 1951 SC 458
[3] Sajjan Singh v. State of Rajasthan, AIR 1965 SC 845

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the same line, but Justices Hidayatullah and Mudholkar dissented in concurrence opinions. The agreement of Justice Mudholkar was especially far-sighted: he had questioned the existence of some unspoken restrictions to the authority of Parliament to modify the Constitution and whether the Court was somehow competent to ask whether an amendment had imposed any change to the fundamental characteristics of the Constitution. Such judicial premonition augured the paradigm shift in doctrine that was yet to come.

A philosophy of constitutional interpretation A more general philosophy of constitutional interpretation was evident in this deference, which put a reliance on the legislative project of social and economic transformation. The new independent state was faced with the gigantic process of destroying feudal systems and reoccupation of lands and judiciary, sensitised to its position in a democratic scene, was not eager to establish constitutional protection round the power of amendment.

THE GOLAKNATH RUPTURE (1967):

This submissiveness of the initial stage was postponed drastically with the ruling of the Supreme Court in Golaknath v. State of Punjab[4], by a six-to-five majority, reversing Shankari Prasad and Sajjan Singh[5]. Writing on behalf of most of the judges Chief Justice Subba Rao believed that basic rights were transcendental, unchangeable and that Parliament could not restrict or recover any of these rights even in a constitutional amendment. By using the doctrine of prospective overruling, the Court also determined that the First, Fourth and Seventh Amendments, adopted without constitutional empowerment, would stand but that subsequent amendments would not be able to affect basic rights.

Golaknath was a judicial challenge to much constitutional change. The extent to which it was criticized, however, was rife. The fact that the majority treated a constitutional amendment as a constitutional law in the sense prescribed in Article 13

[4] Golaknath v. State of Punjab, AIR 1967 SC 1643
[5] Sajjan Singh v. State of Rajasthan, AIR 1965 SC 845

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seemed a conceptual stretch and textually odd. Analytically, it was forcefully held by critics of the constitution such as H.M. Seervai[6] that this ruling could not be upheld. Politically, it inaugurated a direct clash of arms between Parliament, who then responded by protecting the right to amend the constitution enacted by the Court through the Twenty-Fourth, Twenty-Fifth and Twenty-Ninth Constitutional Amendments.

KESAVANANDA BHARATI AND THE BIRTH OF THE BASIC STRUCTURE DOCTRINE (1973):

Over a seventy-day hearing the largest court panel in the history of the Indian legal system and possibly the legal history of any constitutional democracy in the twentieth century was a thirteen-judge bench convened to re-examine Golaknath and the constitutionality of the Twenty-Fourth to Twenty-Ninth Constitutional Amendments. Most of them struck down Golaknath and at the same time confirmed a more subtle restriction on the power to amend the constitution which the Basic Structure Doctrine.

The gist of Kesavananda, wringing out a core finding amid the thirteen judgments, so hard to synthesize, is that the Parliament is entitled to have the power to correct any clause in the Constitution, including fundamental rights, but does not shall have the power to alter or demolish the basic structure or essential features of the Constitution. The power to amend is a constituent power, but not an open-ended constituent power. Constitution may not be changed in a manner that may harm or ruin its fundamental framework.

Various judges expressed it with varied elements of the basic structure, but a condensation of their opinions gives those listed below as the main elements: the supremacy of the Constitution, the republican and democratic nature of government, the secular essence of the Constitution, the separation of powers, the federal nature of

[6] H.M. Seervai, Constitutional Law of India (Universal Law Publishing, 4th ed. 1991)

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the Constitution, the sovereignty and oneness of India, the judicial review, individual basic rights, the rule of law, and compatibility of basic.

This conceptual architecture of Kesavananda is based on the thought that a constitution is not just any ordinary legislation but rather the basic law, out of which all other laws have their validity. The amending power, in its turn, being defined as such, cannot be driven to destroy the source of its power of its own. The theoretical basis of this Basic Structure Doctrine was this logical but circular argument that the authority to reform the Constitution could not be employed to kill the Constitution.

POST-KESAVANANDA CONSOLIDATION AND THE EMERGENCY CRISIS (1975-80):

The decision, Kesavananda, with the smallest majorities on its side, was instantly transformed into a question of political dispute. In June 1975, the Emergency was declared, which sparked another constitutional crisis. Thirty-Eighth, Thirty-Ninth, and Forty-Second Constitutional Amendments were approved, the clear intent being to make executive action immune to judicial review, limit the range of the Supreme Court and enlarge Parliament amendment authority to what clearly is an ownerlessly unrestrained scope. In section 55 of the Forty-Second Amendment a clause was expressly included which said that there should be no impediment whatever to the constituent power of Parliament and that no constitutional amendment should be subject to being called in question on any ground.

In the case of Indira Nehru Gandhi v. Raj Narain[7], which involved stating the invalidity of the Thirty-Ninth Amendment that had retrospectively granted the election of the Prime Minister and disbarred judicial review, the Supreme Court found the amendment to be a breach of the basic characteristics of free and fair elections and the rule of law. This ruling, which was made when the Emergency was still in place, was an extraordinary gesture of judicial valour, and a statement of Kesavananda which was both strong and effective.

[7] Indira Nehru Gandhi v. Raj Narain, AIR 1975 SC 2299

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The post-Emergency period witnessed this, not only in the recovery of democratic parliament but also in the nullification by the Supreme Court of the worst amendments of the Emergency period. The Supreme Court invalidated in Minerva Mills Ltd. v. Union of India,[8] sections 4 and 55 of the Forty-Second Amendment. It was decided that incommunicado section 55, which supposedly gave unlimited power to amend to the Parliament, breached the basic structure since the restricted power to amend is itself a basic characteristic of the Constitution. The logic behind the decision was transparent: an unlimited constituent power is not a curriculum power occasioned and granted by the Constitution but instead a power to amend the Constitution altogether, which has not been endorsed by the people.

NINTH SCHEDULE AND I.R. COELHO (2007):

The most important post-Kesavananda exposition of the Basic Structure Doctrine was perhaps in the I.R. Coelho v. State of Tamil Nadu,[9] case, in which the status of the Ninth Schedule was re-examined by a nine-judge Constitutional Bench. The First Amendment has included the Ninth Schedule in which some legislations are included that cannot be targeted by challenges to fundamental rights. It had been in a safe haven of constitutionally questionable legislation over the decades of successive Parliaments, and in 2007, there were more than 280 laws on the Ninth Schedule.

In the landmark case I.R. Coelho, the Supreme Court ruled that legislation placed in the Ninth Schedule after 24 April 1973 the date of the Kesavananda Bharati judgment, is subject to challenge, should it vitiate or destroy the basic structure of the Constitution. The Court also decided that the regime of rights provided in Articles 14, 19 and 21 constitutes a basic structure and that any amendment that curtails or strips them off without sufficient constitutional reasons is vulnerable of being struck down. This ruling also substantially prevented Parliament from employing the Ninth

[8] Minerva Mills Ltd. v. Union of India, AIR 1980 SC 1789
[9] I.R. Coelho v. State of Tamil Nadu, (2007) 2 SCC 1

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Schedule as a tool that could help it to bypass basic rights examination of legislation.[18]

BASIC STRUCTURE DOCTRINE:

The Basic Structure Doctrine has been supported on several grounds both extra-textual and textual. That textual argument is based on the Preamble which states the Constitution to be bestowed by the people on themselves. The amending power, which is vowed under the Constitution to the Parliament, cannot rationally be employed to destroy itself, that Constitution in which it is vowed. As was intelligently pointed out by the Court in Minerva Mills[10], it would have been to allow the creature to annihilate the creator a logical impossibility under constitutional structure.

The extra-textual argument is based on the implied constitutional restriction theory. Instructive parallels are given in comparative constitutional law. The German Basic Law has unamendable clauses called the Ewigkeitsklausel or eternity clause that protects human dignity, federalism and democracy. The Indian Basic Structure Doctrine delivers identical outcomes by judicial interpretation of text as opposed to explicit constitutional text. Constitutional theorists such as Upendra Baxi have found the doctrine in an enlarged normative devotion to transformative constitutionalism the view that the Constitution represents a project of social change which should be preserved by the judiciary against retrogressive amendatory action.

THE MAJORITARIAN HARDSHIP AND SOVEREIGNTY OF THE PARLIAMENT:

The most influential attack on the Basic Structural Doctrine is the objection of counter-majoritarianism: it allows unelected and life-tenured judges to impose themselves upon the will of elected representatives of the people, even when they are engaged in the gravest constitutional process, the amendment itself. One of the most

[10] Minerva Mills Ltd. v. Union of India, AIR 1980 SC 1789

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highly regarded constitutional scholars in India, H.M. Seervai[11], believed that the doctrine implied an unprincipled exercise of the judicial power and placed an irreconcilable conflict with the democratic theory.

A counter-majoritarian objection does possess real normative strength. In the context of a democracy, the ultimate popular sovereignty is in the constitutional change. Clause mandating special majorities to amend reflect the view of the framers of where the degree of political consensus could be met to make changes to the fundamental arrangements, rather than a devolution of oversight power to the judiciary. In proclaiming some of these provisions to be absolutely unamendable not even by the special majority required, the Supreme Court appears to have added to itself a power which was never expressly delegated.

Proponents of the doctrine however cite its practicality in the context of the Indian constitution. The Emergency experience proved that constitutional majorities are not to be an unquestionable guarantee of authoritarian destruction of constitutional democracy. The then ruling party received a majority in parliament that was needed to make constitutional changes that resulted to the abolition of the very instruments of democratic accountability. The Basic Structure Doctrine in this respect played a vital fortification role, which protected the constitutional order against populist authoritarianism. Judicial activism in this field, as S.P. Sathe has contended, is a suitable institutional reaction to a frustrating inability in political protection.

THE JUDICIAL SUBJECTIVITY AND INDETERMINACY PROBLEM:

Another problem of Basic Structure Doctrine is that it does not have a definite content. Neither the doctrine provides a rigid and determinable list of the elements that are covered by the protection, but instead, the Court maintains roving commission in order to identify additional features of the basic structure on an ad hoc basis. This ambiguity poses uncertainty and even leaves the doctrine exposed to

[11] H.M. Seervai, Constitutional Law of India (Universal Law Publishing, 4th ed. 1991)

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judicial subjectivity charges that Court is merely imposing its policy preferences onto the Constitution in the name of having basic features.

This is not a totally false alarm. An example of this is the Nagaraj judgment, which acknowledged the idea of creamy layer and merit as elements of the right to equality in terms of reservation, 12 something a number of scholars contended was an unacceptable invasion of legislative policy on affirmative action. The use of the basic structure analysis on policy decisions of the sub-constitutional level makes it easy to confuse the constitutional interpretation with the law making of the judges[12].

However, it should be realized that a level of indeterminacy pertains to constitutional adjudication; over the years the Indian Supreme Court has evolved fairly consistent criteria in determining basic features, mainly via the identity test, of whether the amendment so re-structures constitutional framework as to make it an entirely different Constitution. This is a test that is based on Kesavananda itself and that gives a principled standard, although not mathematically precise.

THE CONTEMPORARY RELEVANCE AND THE SECULARISM DIMENSION:

The modern applicability of the Basic Structure Doctrine can be emphasized by persisting discussions on the secular nature of the Constitution. In the case of S.R. Bommai v. Union of India[13] the Supreme Court established secularism as a characteristic element, such that not even a constitutional amendment could justifiably implement a state religion or cancel the treating of all faiths equally. This judicial safeguarding of secular constitutionalism takes on greater importance in the age of an increase in the intensity of religious nationalism in South Asia and the world at large.

Similarly, the Court approach to sexual orientation and the constitutional amendment during the lineage of Suresh Kumar Koushal[14] to Navtej Singh Johar[15] demonstrates

[12] Sudhir Krishnaswamy, 'Constitutionalism in Transition: The Basic Structure Doctrine and the Constituent Power in India' (2009) 5 International Journal of Constitutional Law 73
[13] S.R. Bommai v. Union of India, AIR 1994 SC 1918
[14] Suresh Kumar Koushal v. Naz Foundation, (2014) 1 SCC 1
[15] Navtej Singh Johar v. Union of India, (2018) 10 SCC 1.

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how the values in the constitution are changed by court interpretation, through a conversation with social evolving meanings. Although this was not the situation with constitutional amendments, it indicates a larger movement between judicial securities of fundamental rights and the majoritarian political procedure a movement that the Basic Structure Doctrine authoritatively regulates when the political process undertakes to change constitutional writing

CONCLUSION AND RECOMMENDATIONS:

Indian judiciary development of the judicial review of the constitutional amendments is one of the most outstanding episodes in the comparative constitutional law. The fact that India has progressed in on a more gradual but decisive shift towards a stronger understanding of constitutionalism one that insists on the fact that the Constitution is not simply a political document but rather the articulation of some fixed values that are impervious to the vicissitudes of ordinary politics can be seen in the fact that the Indian Supreme Court has been gradually moving towards such a conception in a series of cases starting with the deference of Shankari Prasad

The Basic Structure Doctrine is an imperfect instrument. It is judicially made, a bit indeterminate and in conflict with the democratic principle of majority rule. but still its flaws are not mortal vices. The other one was the unlimited amending power which would have no constitutional restraint, it turned out to be really dangerous to constitutional government during the Emergency period. The doctrine, striking the necessary balance between constitutional flexibility and constitutional necessity to safeguard scarcely more fundamental commitments has, on balance, done well to the Indian constitutional order.

This analysis yields a number of suggestions. To reduce the risk of arbitrariness, the Supreme Court should, in the long run, strive to come up with a more systematic and transparent approach to the discovery of elements of the basic structure, to achieve more predictability. This identity test ought to be expounded into a series of

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cognizably judicable standards, which can provide guidance to both the political and the Court.

Second, there should be an active culture of constitutional dialogue between the Parliament and the Supreme Court. The existing adversarial tenor of Parliament, which amends and Court nullifies these amendments, is non-optimal. Constitutional habits acknowledging the basic constitutional structure jurisprudence of the Supreme Court as a guide to the use of the amending power would prevent unnecessary confrontation, and would endorse constitutional stability.

Third, the concept of Ninth Schedule as a tool to protect legislation against the scrutiny of basic rights ought to be stopped. It is no longer constitutionally open to such efforts following I.R. Coelho[16], in the case of post-1973 insertions, however there remains the likely political temptation to go to the Ninth Schedule. An express constitutional convention, supported by the legislative practice, substantially to the effect that this purpose is no longer to be served in the Ninth Schedule, would enhance constitutional government.

Fourth, legislators must be encouraged to be constitutional literate and aware, so that Parliament manages the exercise of its power to amend the constitution with the awareness of the constitutional framework by which it must act. Any amending power that is undertaken within knowledge of its constitutional boundaries is much less likely to lead to any confrontation with the judiciary and much more likely to create long-lasting constitutional compromise.

Overall, the judicial review of constitutional amendments as embodied in the Basic Structure Doctrine can be seen as the Indian variant of the concept of constitutionalism throughout the world. Its fundamental lesson that a constitution is not endlessly malleable and that some elements of a constitutional order are too fundamental to be changed by any parliamentary majority, however large speak to the universal problem of securing constitutional democracy internally. This doctrine

[16] I.R. Coelho v. State of Tamil Nadu, (2007) 2 SCC 1

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will continue to be one of the pillars of Indian constitutionalism as India continues to expand the process of democracy and the challenges to the constitution intensify.

THE CONSTITUTION (ONE HUNDRED AND THIRTIETH AMENDMENT) BILL, 2024: SIMULTANEOUS ELECTIONS AND THE BASIC STRUCTURE CHALLENGE:

Background and Legislative History:

The Constitution (One Hundred and Thirtieth Amendment) Bill, 2024 — popularly known as the "One Nation, One Election" Bill — was introduced in the Lok Sabha on 17 December 2024 by the Union Law Minister, pursuant to the recommendations of the High-Level Committee on Simultaneous Elections chaired by former President Ram Nath Kovind, which submitted its report in March 2024. The Bill proposes to amend the Constitution to provide for the synchronisation of elections to the House of the People and all State Legislative Assemblies, so that they are held simultaneously within a specified period. The Bill was referred to a Joint Parliamentary Committee of both Houses for examination, reflecting the magnitude and constitutional complexity of the proposal.

The Kovind Committee advanced several justifications for simultaneous elections: the fiscal burden of frequent elections on the public exchequer, the disruption to governance and development activities caused by the imposition of the Model Code of Conduct during staggered electoral cycles, the strain on administrative machinery and security forces deployed repeatedly for election duty, and the argument that governance continuity is undermined when some part of the country is perpetually in election mode. The Committee proposed that simultaneous elections be implemented in two phases — first at the Lok Sabha and state assembly levels, and thereafter at the level of local bodies — with a fixed end-date for all assemblies synchronised to the first election following the amendment's commencement.

Constitutional Provisions Sought to be Amended:

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The Bill proposes amendments to several constitutional provisions. Article 83 (duration of Houses of Parliament) and Article 172 (duration of State Legislatures) would be amended to enable the curtailment or extension of the terms of the Lok Sabha and state assemblies to align them with a common election date. A new Article 82A is proposed to be inserted to provide for the fixation of an "Appointed Date" by the President, from which the first phase of simultaneous elections would commence. Corresponding amendments to Articles 327 and 324 are envisaged to vest regulatory power over simultaneous elections in Parliament and the Election Commission respectively. Additionally, a new article is proposed in Part XV of the Constitution to provide for the establishment of a Single Electoral Roll for use in elections to Parliament, state legislatures, and local bodies — a provision that is the subject of a companion bill, the Union Territories Laws (Amendment) Bill, 2024.

Basic Structure Implications: Federalism and Democratic Accountability:

The proposed amendment has attracted substantial scholarly and political opposition on Basic Structure grounds. Critics contend that the compulsory curtailment or extension of the term of a democratically elected state legislature — effected by a constitutional amendment enacted by Parliament without the consent of the concerned state legislature — strikes at the federal structure of the Constitution, which is a recognised element of the basic structure since S.R. Bommai v. Union of India (AIR 1994 SC 1918) and Kesavananda Bharati. The term of a state legislature, it is argued, is a matter within the exclusive constitutional domain of the state and cannot be unilaterally abridged by the Centre, even in the exercise of the amending power under Article 368, without violating the federal character of the Constitution.

A further Basic Structure objection relates to the principle of free and fair elections and the democratic right of voters to periodically choose their representatives. If a state assembly is dissolved prematurely or its term is extended by executive/legislative fiat solely to synchronise election dates, the electorate is deprived of the opportunity to hold the state government accountable at the

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constitutionally mandated interval. The Supreme Court in Indira Nehru Gandhi v. Raj Narain (AIR 1975 SC 2299) identified free and fair elections as part of the basic structure; an arrangement that systematically postpones or accelerates the people's mandate for administrative convenience could be viewed as incompatible with this principle.

Proponents counter that simultaneous elections do not eliminate democratic choice but merely rationalise its scheduling, and that the amendment does not alter the substantive powers of state legislatures or impair the voters' ultimate sovereignty. They further argue that the framers of the Constitution themselves contemplated and practised simultaneous elections until 1967, and that restoring this practice does not amount to a structural change to the Constitution's essential character. The constitutional validity of the 130th Amendment Bill, if enacted, will almost certainly be tested before the Supreme Court, which will be called upon to apply the Basic Structure Doctrine to a question of unprecedented constitutional significance regarding the structuring of the democratic process itself.

THE CONSTITUTION (ONE HUNDRED AND THIRTY-FIRST AMENDMENT) BILL, 2024: RESERVATION FOR OTHER BACKWARD CLASSES IN ALL-INDIA JUDICIAL SERVICES AND ITS CONSTITUTIONAL RAMIFICATIONS:

Context and Legislative Background:

The Constitution (One Hundred and Thirty-First Amendment) Bill, 2024 addresses the long-pending question of social representation in the higher judiciary through the proposed establishment of an All-India Judicial Service (AIJS) and the extension of reservation benefits to Other Backward Classes (OBCs) in judicial appointments. The proposal to create an AIJS — analogous to the Indian Administrative Service — to recruit District Judges through a centralised examination has been under policy consideration since the 14th Report of the Law Commission of India (1958) and has been periodically revived by successive Law Commissions and Parliamentary Standing Committees. The 2024 Bill represents the most recent and concrete

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legislative initiative on this subject, introduced against the backdrop of widespread recognition that the judiciary — particularly at the level of High Courts and the Supreme Court — does not adequately reflect the social diversity of the Indian population.

Several Parliamentary Standing Committee Reports and the reports of the National Commission for Backward Classes have documented the severe underrepresentation of OBCs, Scheduled Castes, and Scheduled Tribes in the higher judiciary. Constitutional provisions for reservations — Articles 15(4), 16(4), and 16(4A) — apply to services under the Union and states, but their application to judicial appointments has been contested in view of the special constitutional provisions governing the appointment of judges under Articles 124, 217, and 233. The 131st Amendment Bill seeks to resolve this tension by providing constitutional authority for OBC reservation specifically in the proposed AIJS, thereby amending the relevant provisions of Part XIV (Services under the Union and States) and Part VI (The States) of the Constitution.

Separation of Powers and Judicial Independence: Basic Structure Concerns:

The most constitutionally significant objection to the 131st Amendment is that the creation of an AIJS with executive-controlled recruitment undermines judicial independence — a cornerstone of the Basic Structure as affirmed in the Three Judges Cases (S.P. Gupta v. Union of India, AIR 1982 SC 149; Supreme Court Advocates-on-Record Association v. Union of India, AIR 1994 SC 268; and In Re: Special Reference No. 1 of 1998, (1998) 7 SCC 739) and most authoritatively in the collegium system preserved in the collegium judgments. The Supreme Court in the Second and Third Judges Cases established that the primacy of the judiciary in appointments — through the collegium of senior judges — is constitutionally mandated to protect judicial independence from executive interference.

The Supreme Court in Supreme Court Advocates-on-Record Association v. Union of India (2015) (the NJAC Case) — (2016) 5 SCC 1 — struck down the Constitution

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(Ninety-Ninth Amendment) Act, 2014, which had established the National Judicial Appointments Commission, holding that the participation of the Law Minister and two eminent persons in the appointment process compromised judicial independence and thereby violated the Basic Structure. By analogy, critics argue that any constitutional amendment vesting the recruitment of District Judges through a centrally administered examination — supervised by a body in which the executive exercises substantial influence — would raise similar Basic Structure concerns. The critical question is whether the proposed AIJS architecture adequately insulates the appointment and promotion of judges from executive control.

Reservation in the Judiciary: Equality, Merit, and Transformative Constitutionalism:

The extension of reservation to OBCs in the proposed AIJS engages some of the deepest tensions in Indian constitutional jurisprudence between the principle of equality before the law and the transformative constitutional project of substantive equality for historically disadvantaged groups. The Supreme Court in M. Nagaraj v. Union of India (2006) 8 SCC 212 held that the state must demonstrate backwardness, inadequacy of representation, and maintenance of efficiency of administration before providing reservation in promotions under Article 16(4A). The application of these conditions to judicial services where the constitutional guarantee of independence and the functional requirements of adjudicative competence impose special constraints raises complex questions about the constitutional limits of affirmative action in the context of the judiciary.

From the perspective of transformative constitutionalism the theory, associated with scholars such as Upendra Baxi and Karl Klare, that a constitution embodies a project of fundamental social transformation the inclusion of OBCs, SCs, and STs in the judiciary is not merely a matter of symbolic representation but a substantive constitutional imperative. A judiciary whose composition reflects only the dominant castes and classes cannot credibly claim to deliver justice to all citizens equally. The

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131st Amendment, if carefully drafted to preserve judicial independence through adequate structural insulation, has the potential to advance the transformative constitutional vision without violating the Basic Structure. Its constitutionality, however, will ultimately depend on the precise institutional design of the AIJS and the safeguards incorporated to protect judicial independence — questions that await resolution before the Supreme Court once the amendment, if enacted, is brought into force.

Synthesis: The 130th and 131st Amendments as Tests of the Basic Structure Doctrine:

The 130th and 131st Constitutional Amendment Bills collectively represent the most significant constitutional amendment exercise since the Constitution (Ninety-Ninth Amendment) Act, 2014 (the NJAC Amendment). Both Bills implicate recognised elements of the Basic Structure — federalism and democratic accountability in the case of the 130th Amendment, and judicial independence and equality in the case of the 131st Amendment — and both will test the resilience and adaptability of the Basic Structure Doctrine in contemporary constitutional conditions. The judicial resolution of these challenges will determine not only the constitutional validity of these specific amendments but will also significantly clarify the scope and limits of Parliament's amending power in the twenty-first century. In this sense, the 130th and 131st Amendments represent the next chapter in the ongoing constitutional dialogue between Parliament and the Supreme Court that has defined Indian constitutionalism since Kesavananda Bharati.

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