

Navigating Change and Stability: The Evolution and Enduring Strength of the Indian Constitution

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Constitution of any State, being the supreme legal document establishes various institutions, provides their powers and functions. It also enables, 'people of nation' to identify themselves as citizens and familiarises them with their role and responsibility in a constitutional setup. It is a mirror to their shared history and collective goals for the future. Therefore, it is essential that constitution is stable, providing citizens with a sense of, if not permanence, then certainty regarding their identity. However, being a living document, constitution also has to adjust with the changing times and accommodate the changing aspirations of the society. Thus, it is the right balance between the conflicting demands of change and stability that will ensure constitutional endurance. The Indian Constitution has endured for seven decades and has the potential to guide future generations as well. It is a masterpiece which has been carefully crafted out by its founding fathers. It is specific, inclusive and flexible, the three features adding strength to its design. However, in recent times, the constitutional values have been at risk of exaggerated political imagination and ambitions of the ruling government. This paper is a humble attempt to celebrate the defining moments of the India's constitutional journey, its history, the reasons for its endurance.

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I. Introduction

"Constitutions are made, not found. They do not fall miraculously from the sky or grow naturally on the vine. They are human creations, products of convention, choice, the specific history of a particular people, and (almost always) a political struggle in which some win and others lose. Indeed, in this vein one might even want to argue

that our constitution is more something we do than something we make: we (re)shape it all the time through our collective activity".

- H.F. Pitkin¹

The above quote by political scientist Hannah Fenichel, stands true for the Constitution of India. Indian Constitution is a product of collective endeavour of its citizens, who form(ed)

¹ Hanna Fenichel Pitkin, *The Idea of a Constitution*, 37 J. LEGAL EDUC. 167 (1987).

a complex composition of people with diverse religions, ethnicity, political ideologies, however were(are) united by their joint struggle to free India from British rule and look(ed) forward to a shared future in which their existence was(is) characterised by dignity and hope. The constitutional journey of India has completed seven decades. This journey has not been smooth. However, it is an accomplishment that despite the political turmoil, social upheavals and economic difficulties, the Constitution of India has endured in its original form, and people of India have remained united and prospered, under its benedictions. It is worth, rather important to visit and keep revisiting the foundational stages and defining moments of this collective pursuit, lest Indians forget the values and ethos inculcated by their Constitution.

Stability is considered to be the worthiest objective of Constitution.² However, caution must be observed, while romanticising the idea of a stable Constitution. Such notion is guided by conservatist outlook which receives every change in law with distrust, demanding for the sake of *stare decisis*, valid explanation for any deviation from the past.³ In the words of Professor Roscoe Pound, “Law must be stable, and yet it cannot stand still”.⁴ Constitution is a living law, and to remain relevant for generations to come it has to make appropriate accommodations according to the changing times. To command obedience, it has to be adjusted according to the changing aspirations of people. In the conflicting demands of change and stability it has to find some path of compromise. As Justice Benjamin Cardozo said, “Rest and motion, unrelieved and unchecked, are equally destructive”.⁵

This paper is divided into five sections. Part I of the paper, introduces the theoretical ground on which deliberations of this paper are founded followed by Part II, in which the dynamics of Constituent Assembly of India have been discussed, what dreams the makers of Constitution had for the New India and how they hemmed it, in the Constitution. Under part III, the author analyses as to how the Constitution of India has endured for seven decades, considering three parameters of constitutional design, such as its specificity, inclusivity and flexibility. Part IV of the paper reflects on the doctrine of basic structure, developed in the famous *Kesavananda Bharti Case*, as a judicial innovation for constitutional endurance in India. The doctrine of basic structure is in fact, an iron casket around the constitutional values. Part V, concludes the paper with suggestions to cherish the constitutional unity and makes an appeal to the Indians to keep the sanctity of constitutional values intact in national conscience. As, citizens of a nation play an equally significant role along with the established institutions in growth and endurance of the Constitution.

II. The Constituent Assembly of India- The Maker of Her Destiny

“The Constituent Assembly is a nation on the move, throwing away the shell of its past political and possibly social structure, and fashioning for itself a new garment of its own making”.

- Pt. Jawaharlal Nehru⁶

India’s period of ill fortune had ended with her independence, and she had to rediscover herself.⁷ The members of the assembly were not just responsible for building institutions of governance, establishing processes, defining

² Robert B. McKay, *Stability and Change in Constitutional Law*, 17 VAND. L. REV. 203 (1963).

³ Jerre S. Williams, *Stability and Change in Constitutional Law*, 17 VAND. L. REV. 221 (1963).

⁴ ROSCOE POUND, *INTERPRETATION OF LEGAL HISTORY* 1 (Harvard University Press 1923).

⁵ JUSTICE BENJAMIN N. CARDOZO, *THE GROWTH OF THE LAW* 2 (Yale University Press 1924).

⁶ Gurmukh Nihal Singh, *The Idea of Indian Constituent Assembly*, 2 Indian Journal of Political Science 263 (1941).

⁷ Jawaharlal Nehru, *Tryst with Destiny*-Speech made to the Indian Constituent Assembly, (Delhi, August 15, 1947) available at https://www.cam.ac.uk/tryst_with_destiny (last visited on February 05, 2022).

rights, but they were in fact, charting out destiny of India and its people. The whole nation was looking at this constituent assembly with hope for peace, stability and a better future. India had suffered two centuries of exploitative British Raj and subsequent partition of her territory, which was followed by brutal massacre of its people and largest human migration, the history of mankind had ever witnessed.⁸ Constitution had to heal the people, it had to light the way for making new India. 'We the people of India', the inaugural words of the Constitution, signified that Indians were no more subjects in their own land. They were citizens of an independent nation and responsible for their collective future.

Constitution making in India was a mammoth task. It had to be, as Constitution has to accommodate expectations of its newly independent citizens, which were numerous and diverse. It had to celebrate the national struggle for freedom and also imbibe the values that guided the movement. It had to create national institutions, define rights and provide for provisions that will keep India united, despite of its diversity. It had to incorporate varied interests and also ensure that no one group dominates the other, while also assisting the under-privileged segment of the society to improve their conditions. It had to free India from chains of traditional-unequal social order and from oppression of a political setup that was foreign. Constitution had to take India to a new era of equality, justice and freedom. Therefore, it took almost three years in constitution-making, before Indians adopted, enacted and gave themselves to the Constitution.⁹

Constituent assembly was constituted through indirect election by existing provincial legislature as due to considerations of speed.¹⁰ It had representation from almost all segments of society including the marginalised section of women, minorities and scheduled communities. Substantial input was received from civil society and private individuals.¹¹ Public enthusiasm was evident from the fact that, Constituent Assembly received telegrams, postcards and petitions from school going students to housewives to postmasters, staking claims, making demands and offering suggestions for the constitutional draft.¹² The lawyers primarily dominated the Assembly and this led to predominance and clarity of legal language in the text. Inspiration and lessons from other nations' constitutional experience was also taken as is reflected in many provisions of the Constitution.¹³ For instance, Bill of Rights of United States of America inspired the much-revered Part III of the Indian Constitution comprising of Fundamental Rights. Emergency provisions were borrowed from Constitution of Germany (Grundgesetz). Directive Principles of the State Policy was taken from the Constitution of Ireland. Furthermore, provisions from Constitution of Australia, Canada, South Africa were also incorporated in the constitution draft with modifications suiting to Indian needs.¹⁴ Borrowings from the Government of India Act, 1935 were also merged which was introduced to facilitate, India's transition to independence.¹⁵

The desire to generate a social transformation in the Indian society dominates the debates and

⁸ Rohit De, *The Indian Constitution: Moments, epics and everyday lives*, 18(3) *International Journal of Constitutional Law*, 1022 (2020).

⁹ The Preamble, The Constitution of India, 1950.

¹⁰ Sumit Sarkar, *Indian Democracy: The Historical Inheritance*, in *THE SUCCESS OF INDIA'S DEMOCRACY* 23 (Atul Kohli, 1999).

¹¹ *Id.*

¹² ROHIT DE, A PEOPLE'S CONSTITUTION: THE EVERYDAY LIFE OF THE LAW IN THE INDIAN REPUBLIC 2 (Princeton University Press 2018).

¹³ Uday Balakrishnan, "The origin of the Constitution", *The Hindu*, January 24 2020, available at <https://www.thehindu.com/opinion/op-ed/the-origin-of-the-constitution/article30636383.ece> (last visited on February 05, 2022).

¹⁴ Jagat Narain, *Constitutional Changes in India- An Inquiry into the Working of The Constitution*, 17 INT'L & COMP. L.Q. 879 (1968).

¹⁵ B.L. FADIA, *INDIAN GOVERNMENT AND POLITICS*, 89 (Sahitya Bhawan, 2011).

discussions of the Constituent Assembly.¹⁶ Constitutional unity had to be ushered amongst the people of India who were multi-lingual, multi-ethnic, multi-religious.¹⁷ Their identity as an Indian had to supersede, any other group identity. This provided foundation for many decisions taken by the assembly. For this, the Assembly adopted parliamentary form of government, universal adult franchise, fundamental rights, directive principles of state policy and many other features in the Constitution.¹⁸ The objective of national unity and stability is also reflected in framing of federal and language provisions. The adoption of federal structure and emergency provisions aim at ensuring domestic stability.¹⁹ Protection and promotion of marginalised section was also essential to makers of constitution. Establishment of institutions such as Election Commission, Union and State service commission, Language Commission, Finance Commission and commission for scheduled communities and other institutions, ensured that aims of transforming India are achieved with finest administrative potential. Each provision in the Constitution was discussed and debated at great length. The fruit of these deliberations gave world the largest constitution of all times, comprising of 395 articles in 22 parts and 8 schedules. According to Dr. Bhim Rao Ambedkar, it was on 26th January 1950 that India had become an independent country.²⁰

The composition of Constituent Assembly had not been free from criticism. That it was dominated by a single party, Congress was much heatedly debated. The sovereignty of the assembly was also questioned, as the Cabinet Mission Plan imposed certain restrictions in its

activities.²¹ However, the members of the assembly contested that it was sovereign because the Assembly's authority came from the people of India. British leaders like Winston Churchill and Lord Simon named regarded the Constituent Assembly as Hindu body representing the interests of Hindu alone.²² Allegations of being an unrepresentative body where the members did not get elected by exercising universal adult franchise were also made. The fact that the assembly was dominated by politicians and lawyers and did not give room to other sections, made it a bulky document with dominant legal language. Some critics also called Constitution of India as a lawyer's paradise.²³

Despite the criticism, the Constituent Assembly was successful in charting out a constitution, that was an instrument of social cohesion and a detailed administrative outline, only due to the extraordinary sense of unity that bound its members. They did disagree, and many a times rather strongly, but all knew that their intentions were noble and goals were same even if they differed in the means for achieving them. In the words of Granville Austin, "*the atmosphere of the Assembly, generally speaking, was one of trust in the leadership and a sense of compromise among the members.*"²⁴ The decisions in the Assembly were reached through consensus. To achieve the common goal, the Assembly members, held lengthy and frank deliberations. However, it is the respect and acknowledgement towards the difference in opinion is what helped them reach consensus and added strength to the Indian Constitution.

¹⁶ GRANVILLE AUSTIN, THE INDIAN CONSTITUTION: CORNERSTONE OF A NATION 2 (Oxford University Press, 1972).

¹⁷ Hanna Lerner, *The Indian Founding: A Comparative Perspective*, in THE OXFORD HANDBOOK OF INDIAN CONSTITUTION, 108 (Sudhir Chaudhary, Madhav Khosla & Pratap Bhanu Mehta, 2016).

¹⁸ ORNIT SHANI, HOW INDIA BECAME DEMOCRATIC: CITIZENSHIP AND THE MAKING OF UNIVERSAL FRANCHISE 5 (Cambridge University Press 2018).

¹⁹ Granville, *supra* note 16, at 2.

²⁰ Constituent Assembly of India, Debates (Proceedings) - Volume XI, November 25, 1949, available at <http://loksabhapn.nic.in/writereaddata/cadebatefiles/C25111949.html> (last visited on January 20, 2022).

²¹ Fadia, *supra* note, at 80.

²² *Id.*

²³ IVOR JENNINGS, SOME CHARACTERISTICS OF THE INDIAN CONSTITUTION, 86 (Oxford University Press 1953).

²⁴ Granville, *supra* note 16, at 4.

The virtue of acceptance and tolerance towards different opinions, is what the Indians have to be reminded of in present times for preservation of Constitution and of the Indian Life

III. India's Secret to Constitutional Endurance

Similar to human life, the life of a constitution may take many twists and turns and also undergo various stages of development.²⁵ However not all constitutions are able to survive and like human beings the causes for demise of constitution can be many. Indian Constitution has completed seven decades of its existence. Many countries such as Pakistan, Bangladesh and Sri Lanka, have found it difficult to maintain their post-independence constitutions.²⁶ Drafted in the euphoria of decolonization, these constitutions failed to stand the test of time. They have been suspended or repealed or have faced political opposition. Amidst such instability of constitution in its neighbouring countries, the Constitution of India has endured in its original form with more than hundred amendments whenever they were needed.

The constitutional survival may depend on various factors. For the purpose of this paper, the author will analyse the reasons for durability of the Indian Constitution from its design factor. The elements of constitutional design have almost as dramatic an effect on constitutional morality.²⁷ Design factor concerns, the content and the process of drafting constitution. Unlike the environmental factors, which are the national and international events which may impact the longevity of constitution, the design factor is focussed on the genetic composition of the constitution which promote its endurance.²⁸ One has to acknowledge that if certain features of the

constitution promote stability, the constitution is likely to survive in the face of external pressure. Therefore, the role of the constitutional makers of India is noteworthy and a defining reason in the durability of the design of constitution.

The present evaluation regarding the endurance of Indian constitution is based on three parameters namely, specificity, inclusivity and flexibility. This assessment is motivated from a book titled *The Endurance of National Constitutions* by Zachary Elkins, Tom Ginsburg and James Melton.²⁹ The Constitution of India has testified successfully on all these three parameters, thus making it one of the longest surviving constitutions.

A. Specificity

Specificity stands for the degree of detailing in the constitution and the scope of topics that it covers. There are two conflicting views regarding the endurance of a detailed constitution. One school of thought supports that, a loosely drafted constitution such as that of United States of America, is more superior than the detailed constitutions as its makers have been precise in their drafting by not specifying details and leaving it to ordinary law and custom. They are of the view that excessive length and detailing in the constitution invites frequent amendments and early obsolescence.³⁰ The other school of thought argues that clarity and specificity in constitutional text may facilitate its endurance as it will generate clear understanding of provisions and the purpose it aims to achieve. Specificity demands careful drafting and hard bargaining, both of which may demand time and political resources. Therefore, specified constitutions turn out to be costly. Another parameter of specificity, that is, scope of constitution will be dependent on the

²⁵ ZACHARY ELKINS ET. AL., *THE ENDURANCE OF NATIONAL CONSTITUTIONS* 123 (Cambridge University Press, 2009).

²⁶ Sudhir Krishnaswamy, *Constitutional Durability*, Seminar (2010) available at <https://eprints.soas.ac.uk/17278/1/semsearch.htm> (last visited on February 10, 2022).

²⁷ Elkins, *supra* note 25, at 123.

²⁸ Krishnaswamy, *supra* note 1.

²⁹ ZACHARY ELKINS ET. AL., *THE ENDURANCE OF NATIONAL CONSTITUTIONS* (Cambridge University Press, 2009).

³⁰ A.E Dick Howard, *The Indeterminacy of Constitutions*, 31(2) Wake Forest Law Review 385 (1996).

context. The demand for constitutionalization of any topic will be determined by particular place and time in which constitution is being written.³¹

Specificity whether in terms of scope or detail helps in enduring constitution in three ways.³² First, a detailed constitution can provide for mechanisms to address pressurising situations that are not imminent but may happen in future. Secondly, because specificity is costly, it may help to preserve constitution. Interest groups may try to get the policies concerning them, included in the constitutional text. By inclusion of provisions covering various groups there are less chances for renegotiation of constitutional text in future.³³ Thirdly, specificity produces motivation for parties to invest resources in keeping the constitution up-to-date. A constitution with a broader scope encourages the interest groups to pay attention to constitutional bargain and keep a check on its operation as it will be in their interest if the constitutional text is in tune with the contemporary realities.³⁴

India's Constitution has turned out to be world's lengthiest constitution due to the emphasis that its makers laid on specificity. The Constitution of India is an extremely detailed document. One of the reasons for same is that, it is a document that was developed in the backdrop of decolonization. India had just won its freedom and the expectations from Constitution were many. It not only had to commemorate the freedom struggle, but also chart out a blueprint on which foundations of New India had to be laid. It had to provide for rights, institutions of governance, shock absorbers of instability such as emergency provisions, create room for flexibility through amendments etc. The transformation of Indian society through Constitution was one of the agenda of its makers, which was responsible for

some of the details.³⁵ For example, the makers of Constitution, explicitly stated out the provisions regarding rights of minorities in great detail.³⁶ Untouchability was constitutionally abolished.³⁷ Religious freedom was clearly guaranteed in the Constitution.³⁸ Limits on the power of State organs such as that of legislature, executive and judiciary were specified and various other aspects of governance and public life were defined in detail.³⁹ It can be said that because of continuing oppressive inequalities in the social set up of India, the framing of Constitution was seen as a one-time bargain to constitutionalise rights and opportunities by various interests groups. The Constitution makers too wanted to accommodate and specify as much as they could, thereby providing entrenched detailing in constitutional provisions. Excessive detailing in the Indian Constitution has been subject to criticism, however it has stood the test of time.

B. Inclusivity

Inclusivity refers to the breath of participation, while drafting the constitution and during its enforcement. It also denotes, the inclusiveness of constitutional provisions, that are able to provide stakes to a larger number of groups.

Constitution throughout the world is a valued and respected public document. There is a sense of attachment that citizens feel towards an inclusive Constitution, due to their participation in its making. The constitution which is publicly formulated, debated and discussed openly, is more likely to produce awareness about the constitution and attachment which is crucial for its self-enforcement. The survival of the constitution and the attachment to the constitution, itself is reciprocal.⁴⁰ However, successful constitutions are those, that are able to

³¹ Elkins, *supra* note 25, at 84.

³² *Id.*

³³ MADHAV KHOSLA, *INDIA'S FOUNDING MOMENT: THE CONSTITUTION OF A MOST SURPRISING DEMOCRACY* 111 (Harvard University Press, 2020).

³⁴ De, *supra* note 12, at 3.

³⁵ M.P. Singh, *Interpreting and Shaping the Transformative Constitution of India*, in THE

CONSTITUTION at 67, 73 (The Supreme Court of India, 2017).

³⁶ Elkins, *supra* note 25, at 152.

³⁷ Article 17, The Constitution of India.

³⁸ Article 25 to Article 28, The Constitution of India.

³⁹ Part V & Part VI, The Constitution of India.

⁴⁰ Elkins, *supra* note 25, at 78.

command allegiance even from the later generations who had no role in its making. There is a possibility that the future generation do not find a role for themselves in the document their ancestors had created. Therefore, the sense of attachment to Constitution has to be passed throughout generations through debate and discussions, and by revisiting and celebrating constitutional history.

The approval stage is as essential as the drafting stage and is important for constitution's survival, distinct of its content. When constitutions are approved in secret, they are likely to create mistrust amongst the masses and that has an impact on its enforcement. Hence publicity is essential for constitutional life.⁴¹ Therefore, ratification by the public through a referendum or by the elected body that is inclusive or representative of public, will likely foster attachment to the constitution thereby promoting its self-enforcement. Inclusive drafting and passing process and constitutional provisions are able to increase chances of enforcement in two ways. First, by increasing the knowledge of the contents of the document, making it visible and involving public in its approval to reflect societal consent. Secondly, by expanding the stake that the citizens have in the document and which has a positive impact on their attachment to it.

Indian constitution successfully testifies on the parameter of inclusivity as well. It has been inclusive, both at the stage of its drafting and while accommodating interests of various groups. The Constituent Assembly of India which was mostly inclusive as it comprised of members representing various segments of the society. It had representation from the Scheduled Communities, Linguistic Minorities, Women, Anglo-Indians, Religious Minorities such as Muslims, Sikhs, Parsis. The inclusive character of

the Indian Constitution is also reflected in its provisions that provide for recognition and protection of rights of varied groups of persons based on their gender, caste, religion, region and language.⁴² The ability of the Indian people, to recognise inclusivity as an essential feature of their constitutional success, and their response to the same by developing new strategies of constitutional inclusion will be significant in ensuring that Indian Constitution endures for ages to come.⁴³

C. Flexibility

Constitution requires mechanisms to adjust overtime. It needs ways in which it can make accommodations and changes to survive as a living document and maintain its organic growth. To quote Justice Marshall, "A constitution, intended to endure for ages to come, and consequently, to be adapted to the various crises of human affairs"⁴⁴. However, an over flexible constitution invites instability. Therefore, a balance has to be struck to safeguard survival of constitution. Flexibility makes way for the constitution to fine-tune with the advent of new political and social developments in the country. A rigid constitution which does not allow for such upgradation in the constitution suffers the risk of becoming an outdated text and thereby not enjoy support from the citizens. Hence certain level of flexibility in the constitution is must. Flexibility, can be provided in two ways. First, formally through amendments. Secondly through judicial interpretation of the existing constitutional provisions.⁴⁵

Indian Constitution under the criteria of flexibility emerges as a balanced document. It is neither too flexible nor rigid. Constitution of India has been amended for more than hundred times in seven decades. It has been at the receiving end of critics for being too flexible, who have also, often lamented the incapability of the

⁴¹ *Id.*

⁴² Meneka Guruswamy, "Our Constitution, A Beacon of Freedom", November 28, 2021, *The Indian Express*, available at <https://indianexpress.com/article/opinion/columns/i>

ndian-constitution-a-beacon-of-freedom-7643596/ (last visited on February 4, 2022).

⁴³ Krishnaswamy, *supra* note 26, at 2.

⁴⁴ Justice John C. Marshall, in *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 159, 203 (1819).

⁴⁵ Elkins, *supra* note 25, at 82.

government to rule in accordance with the constitution and therefore introducing amendment in constitution text accordingly.⁴⁶ However the flexibility of the Indian Constitution has been an important reason for its survival. An unchanged Constitution, not adaptable to the pulse of the society is likely to be overthrown. This fact was even acknowledged by the makers of Indian Constitution. Pandit Jawaharlal Nehru said,

*"While we want this Constitution to be as solid and as permanent a structure as we can make it, nevertheless there is no permanence in Constitutions. There should be a certain flexibility. If you make anything rigid and permanent, you stop a Nation's growth, the growth of a living vital organic people. . . We should not make a Constitution such as some other great countries have, which are so rigid that they do not and cannot be adapted easily to changing conditions. Today especially, when the world is in turmoil and we are passing through a very swift period of transition, what we may do today may not be wholly applicable tomorrow. Therefore, while we make a Constitution which is sound and as basic as we can, it should also be flexible and for a period we should be in a position to change it with relative facility."*⁴⁷

The founders knew that it was impossible to anticipate all challenges that the newly independent state may face in future.⁴⁸ Acknowledgment on part of the makers, that mistakes in drafting was inevitable despite caution and the need of the constitutional text to accommodate and adapt with changing times, led to inclusion of amendment provisions in the Indian Constitution. As a result, a variable amendment formula was derived. Some constitutional provisions could be amended by simple majority in the Parliament. Some provisions needed a special majority through vote of two-third members present in both the houses of Parliament so long as an absolute majority is

represented. Few provisions needed special majority of Parliament and additional ratification by half the States.⁴⁹

Thus, all the three factors namely, specificity, inclusivity and flexibility have been the secret to constitutional endurance in India.

IV. Doctrine of Basic Structure- The Iron Casket Around Constitution

*"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."*⁵⁰

Times are not static and so is the life of a nation. It is dynamic, living and organic. The political, economic and social conditions of a nation, in fact change continuously.⁵¹ Therefore, to ensure constitutional endurance, it was necessary to provide for some mechanism in the Constitution itself which kept it in tune with the national needs. Amendment was one such technique.⁵² However, in India, the threat to constitutional endurance has many a times come through constitutional amendment. After the enactment of Constitution, at many instances it was observed that Parliament tried to over-reach the power granted to it under Article 368. Under this context, celebrating the role of the Indian Judiciary in preservation of the Constitution becomes essential. The Indian Judiciary through its interpretation and power of judicial review has also made the Constitution, relevant since ages. It has also been instrumental in safeguarding the rights and guarantees of citizens against political over-reach. The political turmoil in the country and the desperate attempts by the governments to make way for their aspirations through constitutional amendments, created the background for judicial innovation of the

⁴⁶ Krishnaswamy, *supra* note 26 at 4.

⁴⁷ Constituent Assembly of India, Debates (Proceedings) - Volume VII, November 8, 1948, available at <http://164.100.47.194/loksabha/writereaddata/cadebatefiles/C08111948.html> (last visited on February 10, 2022).

⁴⁸ Elkins, *supra* note 25, at 153.

⁴⁹ Article 368, The Constitution of India.

⁵⁰ *Minerva Mills v. Union of India*, AIR 1980 SC 1789.

⁵¹ M.P. JAIN, INDIAN CONSTITUTIONAL LAW, 1754 (Lexis Nexis 2011).

⁵² Narain, *supra* note 14, at 893.

doctrine of basic structure. In this part the author does not analyse the cases and situations leading to the formulation of doctrine of basic structure, but instead only reflects upon the various aspects of the doctrine and how it has been instrumental in ensuring constitutional endurance.

The doctrine of basic structure was introduced by the Supreme Court of India in the famous *Keshvananda Bharti Sripadagalvaru v. State of Kerala* and ever since the doctrine has become the most famous innovation in the Indian constitutional jurisprudence.⁵³ It is also popularly called 'Essential Features Case' and was delivered on April 24, 1973.⁵⁴ This case elaborated at great length the constitutional jurisprudence of amendments in the Indian Constitution.⁵⁵ The evolution of the doctrine of basic structure was due to the ever-growing concern of preservation of constitutional values in amidst political excess in India. With the aim to protect the original ethos of the Constitution, the Apex Court declared, "the Parliament could not distort, disfigure and mutilate the basic features of the Constitution".⁵⁶ This firm stance taken by the Supreme Court of India, had in fact put a halt on the growing practice of the legislature to accommodate political aspirations through amendment in Constitution, which may alter the fundamental structure of the Constitution. Basic structure acted as a saviour to the ideals of the Indian Constitution from the encroachment of the executive and legislature which altered the very fundamentals of the respected document. The judiciary in *Keshvananda Case*, barred the legislature from any act on their part which could damage, destroy, abrogate, change or alter such provisions which fiddle with the identity of the Constitution. The Court held that the term "amend" in Article 368 has a restrictive connotation and the court can look into the

validity of the act of executive and legislature if it destroys any fundamental feature of the Constitution.⁵⁷ *Keshavananda* also addressed an important question which was left undecided in *Golak Nath Case*⁵⁸ as to whether the Parliament has the authority to overhaul the entire Constitution and introduce a new Constitution. To this, the court answered, "Parliament can only do that which does not modify the basic feature of the Constitution".⁵⁹ Had the court answered otherwise, it could have served as a severe blow to the endurance of Indian Constitution.

The *Keshvananda* judgement ensured that legitimate political expressions are not choked and Parliament is allowed to make necessary adjustments in the Constitution suitable to the needs of the time. However, it also did not confer on Parliament, an unbridled power to exercise amending procedure under Article 368. Now, any amendment to Constitution, has to qualify the test of basic structure and if it fails to do so, it is to be declared ultra vires the Constitution. The doctrine of basic structure has gained the reputation of being, the most assertive standard of constitutional spirit and philosophy.⁶⁰

V. Conclusion

The journey of the Indian Constitution over the past seven decades stands as a testament to its enduring strength, adaptability, and the vision of its framers. Despite facing numerous challenges be it political upheavals, social transformations, or economic crises the Constitution has remained the bedrock of Indian democracy, guiding the nation through periods of uncertainty and change. Its specificity, inclusivity, and flexibility have allowed it to withstand the test of time, ensuring both stability and responsiveness to the evolving aspirations of the people.

⁵³ *Kesavananda Bharati Sripadagalvaru v State of Kerala* (1972) 4 SCC 225.

⁵⁴ Satya Prateek, *Today's Promise, Tomorrow's Constitution: 'Basic Structure', Constitutional Transformations and the Future of Political Progress in India*, 1 NUJS L. REV. 427 (2008).

⁵⁵ *Id.*

⁵⁶ *Id.* at 500.

⁵⁷ Navajyoti Samanta & Sumitava Basu, *Test of Basic Structure: An Analysis*, 1 NUJS L. REV. 509 (2008).

⁵⁸ *Golaknath v. State of Punjab*, AIR 1967 AIR SC 1643.

⁵⁹ Samanta & Basu, *supra* note 56, at 62.

⁶⁰ *Id.* at 437.

Safeguarding the basic structure doctrine and upholding the spirit of constitutionalism is essential for preserving the unity and identity of the nation. It is imperative that both institutions and citizens remain vigilant, cherishing and defending the constitutional ethos as a collective responsibility. By nurturing this rich constitutional heritage and reinforcing its values in the national conscience, India can continue to progress as a vibrant, inclusive, and just society, true to the ideals envisioned by its founding fathers.