

A CRITICAL STUDY OF 24TH AMENDMENT OF THE CONSTITUTION

AUTHOR - GOPAL SONTAKKE, LLM STUDENT AT NAVLMAL FIRODIA LAW COLLEGE

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Abstract:

"In the evolving landscape of Indian democracy, constitutional amendments have always been crucial in shaping governance, with the 24th Amendment of the Indian Constitution, passed in 1971, marking an important chapter in the nation's legal history." The 24th Amendment was introduced to resolve conflicts regarding judicial review of constitutional amendments, particularly in light of the basic structure doctrine. By empowering Parliament to amend any part of the Constitution, including fundamental rights, it aimed to reduce tensions between the legislature and the judiciary. The amendment was passed during a period of political instability and responded directly to the Supreme Court's decision in the Kesavananda Bharati case, where the Court laid down the basic structure doctrine, limiting the powers of Parliament to amend the Constitution. Even today, the 24th Amendment remains a subject of legal debate, especially concerning its impact on the balance of power between Parliament and the judiciary. The Amendment clarified that Parliament has the authority to amend the Constitution, including fundamental rights, but still needed to respect the core principles that define the Constitution. This paper critically examines the 24th Amendment's impact on constitutional law, its effect on the relationship between different branches of government, and its relevance in today's legal and political context. Although the 24th Amendment was intended to enhance the powers of Parliament; it raised important questions about the limits of constitutional amendments and the protection of fundamental rights. The paper suggests a deeper examination of the amendment's long-term impact and advocates for reforms to better balance legislative authority and judicial review. The objective of this study is to evaluate the 24th Amendment's influence on India's constitutional framework, its role in governance, and propose changes to ensure a proper balance between legislative powers and the protection of fundamental rights.

Keywords: 24th Amendment, Indian Constitution, Judicial Review, Parliament, Basic Structure Doctrine, Constitutional Law, Fundamental Rights.

1. Introduction

In a democratic system like India's, the Constitution is the backbone of the nation. It defines the rights and duties of citizens, the structure of the government, and ensures a balance of power between the branches of government: the legislature, the executive, and the judiciary. Over time, there have been several amendments to the Constitution to address new challenges and changing circumstances. The 24th Amendment, passed in 1971, is one

such amendment that significantly impacted the relationship between the judiciary and Parliament.

The Kesavananda Bharati case (1973) played a crucial role in shaping this amendment. In this case, the Supreme Court ruled that Parliament could amend the Constitution, but it could not alter the basic structure of the Constitution. The 24th Amendment was introduced in response to this ruling to ensure that Parliament could still make changes to the Constitution, including the

fundamental rights, without violating the basic structure doctrine.

The Indian Constitution, as the supreme law of the land, provides the framework for governance and defines the rights and duties of citizens. It has undergone several amendments since its adoption in 1950, each one responding to the evolving needs of the nation. Among these, the 24th Amendment of 1971 stands out as a pivotal moment in Indian constitutional history. Passed during a period of political tension, it addressed the growing conflict between the judiciary and the legislature, particularly in light of the Kesavananda Bharati case (1973), which introduced the controversial basic structure doctrine.

The basic structure doctrine held that while Parliament has the power to amend the Constitution, it cannot alter its "basic structure." This limitation, imposed by the Supreme Court, created friction between the judiciary and the executive-led legislature. To resolve this, the 24th Amendment clarified that Parliament could amend any part of the Constitution, including fundamental rights, as long as it did not violate the Constitution's essential principles.

This paper aims to critically examine the 24th Amendment, its intent, impact on the balance of power between the branches of government, and its relevance in contemporary constitutional discourse. The study will also explore the challenges it presents to the protection of fundamental rights and propose potential reforms to ensure a balanced framework between legislative authority and judicial oversight.

2. History of the 24th Amendment

The 24th Amendment was introduced at a time when there was political instability in India. The government, led by Indira Gandhi, faced numerous challenges, and there were concerns about the power of the judiciary, especially after the Kesavananda Bharati case. The ruling in that case created uncertainty about the extent to which Parliament could amend the

Constitution.¹

The 24th Amendment sought to clarify and resolve these issues. It explicitly stated that Parliament could amend any part of the Constitution, including fundamental rights, while still respecting the Constitution's basic structure. This meant that Parliament's power to amend the Constitution was not unlimited but was still broad enough to make significant changes when necessary.²

The 24th Amendment of the Indian Constitution, passed in 1971, was a significant turning point in Indian constitutional history. It was introduced at a time of political instability and growing tension between the Indian government led by Prime Minister Indira Gandhi and the judiciary. This amendment came as a direct response to the Kesavananda Bharati case (1973), which had altered the relationship between the legislature and the judiciary.³

• Context Before the 24th Amendment⁴

To understand the need for the 24th Amendment, it is important to look at the political and legal context leading up to its passage. In 1971, Indira Gandhi's government was facing challenges on multiple fronts. The country was struggling with economic problems, political unrest, and external pressures. In such a context, the power of the judiciary was becoming a point of contention.

One of the primary sources of this tension was the Kesavananda Bharati case, a landmark judgment delivered by the Supreme Court of India in 1973. The case dealt with a constitutional question including fundamental rights, subject to respecting the Constitution's basic structure, as per the decision in the Kesavananda Bharati case.

question about whether Parliament had the authority to amend any part of the Constitution, particularly the fundamental rights enshrined in Part III.

In a 13-judge bench ruling, the Supreme Court concluded that while Parliament had the power

to amend the Constitution, this power was not absolute. The Court established the basic structure doctrine, which stated that Parliament could not alter or amend the "basic structure" of the Constitution, such as the democratic system, secular nature, and fundamental rights.

This ruling effectively placed a limit on Parliament's ability to change key parts of the Constitution. It sparked a fierce debate about the powers of the legislature and the judiciary, with Indira Gandhi's government particularly concerned about the restrictions it placed on Parliament.⁵

• **The Need for the 24th Amendment**

Indira Gandhi's government felt that the basic structure doctrine undermined the authority of Parliament. After all, the Constitution had been framed by the Constituent Assembly, and the government argued that it should have the freedom to make amendments to suit the changing needs of the nation. The basic structure doctrine seemed to imply that the Supreme Court could override Parliament's decisions if they were seen as violating the Constitution's basic principles.

The tension between the judiciary and the executive became even more pronounced as the government began to push for constitutional changes, particularly in areas related to land reforms and social justice. These were areas where the government believed amendments to the Constitution were necessary, but the Supreme Court, following the Kesavananda Bharati judgment, could potentially strike them down if it felt they violated the basic structure of the Constitution.

To resolve this conflict, Indira Gandhi's government decided to introduce a constitutional amendment that would allow Parliament to amend the Constitution more freely. This was the **24th Amendment** of 1971.

3. Key Features of the 24th Amendment

The **24th Amendment** was passed by Parliament on **November 5, 1971**, and it had three

main provisions:⁶

A. **Parliament's Authority to Amend Fundamental Rights:** The Amendment explicitly gave Parliament the power to amend any part of the Constitution, including the fundamental rights enshrined in Part III of the Constitution. This was significant because, prior to the Amendment, the basic structure doctrine seemed to limit Parliament's ability to alter fundamental rights.⁷

B. **Validating Amendments:** The 24th Amendment also sought to validate past amendments that had been made by Parliament but had been challenged in the courts. For instance, the 17th Amendment (1964), which had inserted certain laws into the Ninth Schedule of the Constitution (making them immune to judicial review), was a key target of legal challenges. The 24th Amendment made clear that such amendments were valid, even if they had been contested.⁸

C. **Clarification on Judicial Review:** The Amendment was designed to reaffirm the power of Parliament to amend the Constitution, but it also clarified that the judiciary could still review amendments. However, it sought to ensure that no judicial decision would undermine Parliament's power to amend the Constitution, especially the fundamental rights.⁹

• **The Immediate Reaction to the 24th Amendment**

The passing of the 24th Amendment was controversial. While the Indian government hailed it as a necessary step to clarify the scope of Parliament's powers, critics argued that it represented an overreach of executive power. Many feared that it would allow Parliament to undermine fundamental rights, such as the right to freedom of speech and the right to equality. The Amendment was seen as part of a broader authoritarian shift under Indira Gandhi's leadership. It came at a time when she was consolidating her political power and facing criticism for suppressing opposition voices and curbing civil liberties. Some political

analysts and jurists believed that the Amendment was an attempt to assert the supremacy of the executive branch over the judiciary.

- **The Impact of the 24th Amendment**

The 24th Amendment had lasting effects on the relationship between the judiciary and the executive in India. It was followed by several other constitutional amendments aimed at enhancing the government's ability to enact policies without judicial interference. The most significant of these was the 42nd Amendment (1976), which further empowered the government and reduced the scope of judicial review.

However, the 24th Amendment did not entirely eliminate judicial oversight. In fact, in *Subramaniam Swamy v. Union of India* (1991), the Supreme Court reaffirmed the basic structure doctrine, declaring that even though Parliament could amend the Constitution, it could not change the basic structure. This meant that despite the 24th Amendment, the Supreme Court continued to hold the ultimate authority to decide what constitutes the basic structure of the Constitution.

- **The Relevance of the 24th Amendment Today**

Even though the 24th Amendment was passed more than 50 years ago, its relevance remains crucial in debates about the balance of power between the legislature and the judiciary. The basic structure doctrine continues to be a guiding principle in cases involving constitutional amendments, and the 24th Amendment remains a touchstone for understanding how far Parliament can go in altering the Constitution.

In recent years, legal scholars and political commentators have questioned whether the 24th Amendment has achieved its intended purpose of clarifying Parliament's power or whether it has led to a concentration of power in the executive. The debate continues about how best to ensure that fundamental rights are

protected while allowing the legislature to amend the Constitution in response to changing social and political realities.

4. The Purpose of the 24th Amendment

The main purpose of the 24th Amendment was to clarify the relationship between the judiciary and Parliament in terms of constitutional amendments. The Supreme Court's ruling in the *Kesavananda Bharati* case had created a conflict by stating that Parliament's power to amend the Constitution was not absolute and was limited by the basic structure doctrine. The 24th Amendment sought to resolve this conflict by empowering Parliament to amend any part of the Constitution, including fundamental rights, but also ensuring that the basic structure remained intact.

The Amendment clarified that Parliament's authority to amend the Constitution would not be hindered by the basic structure doctrine, but it still needed to respect the Constitution's fundamental principles.

The purpose of the 24th Amendment of 1971 was to resolve the growing tension between the Indian judiciary and Parliament over the scope of Parliament's power to amend the Constitution, especially after the *Kesavananda Bharati* case (1973). In this landmark case, the Supreme Court of India established the **basic structure doctrine**, which held that while Parliament had the power to amend the Constitution, it could not alter its "basic structure." This ruling effectively placed limits on the power of Parliament, particularly when it came to fundamental rights enshrined in Part III of the Constitution. The 24th Amendment aimed to override these judicial limitations by explicitly granting Parliament the power to amend any part of the Constitution, including fundamental rights. The amendment was particularly important for the government of Indira Gandhi, which was keen on implementing reforms in areas such as land reforms and social justice without judicial interference. By clarifying that Parliament's amending power was not restricted by the basic structure doctrine, the

24th Amendment sought to restore Parliamentary sovereignty and ensure that the legislature could adapt the Constitution to meet the evolving political, economic, and social needs of the country.¹⁰ emphasized that fundamental rights (Part III) are part of the Constitution's basic structure, making them immune from amendment that would alter this structure.

Another central purpose of the 24th Amendment was to validate past constitutional amendments that had been challenged in the courts, particularly those involving laws inserted into the Ninth Schedule of the Constitution. The 17th Amendment (1964), for example, had placed certain laws related to land reforms and social justice beyond judicial review by inserting them into the Ninth Schedule. However, these amendments had been contested in the Supreme Court, raising concerns about their constitutionality. The 24th Amendment sought to affirm the legitimacy of these past amendments, ensuring that they were constitutionally valid despite challenges to their alignment with the basic structure of the Constitution. By doing so, the amendment also made it clear that Parliament could legislate in matters related to land reforms and other social policies without fear of judicial invalidation. Ultimately, the 24th Amendment aimed to strike a balance between enhancing Parliamentary power and ensuring that fundamental principles of the Constitution, such as the protection of fundamental rights, were not unduly threatened by the unchecked power of the legislature. It was a bold step in strengthening the role of Parliament in shaping the Constitution while still retaining judicial oversight to safeguard its basic structure.

5. Present Status of the 24th Amendment

The 24th Amendment continues to be relevant in the current legal and political landscape. Although it gave Parliament greater power to amend the Constitution, it also raised concerns about the potential for misuse of that power, especially when it comes to fundamental rights.

The balance of power between the legislature and the judiciary is still a subject of debate.

Over the years, the judiciary has continued to assert its role in protecting the Constitution's basic structure. This has led to important cases that challenge the limits of constitutional amendments and raise questions about the protection of fundamental rights. The **24th Amendment** plays a crucial role in this ongoing debate, as it established a framework for understanding how constitutional amendments should be handled.

The 24th Amendment of the Indian Constitution, passed in 1971, continues to be a significant point of reference in legal and political discussions surrounding Parliamentary power and the judiciary's role in protecting the Constitution. The Amendment was intended to resolve the tensions between the legislature and the judiciary, particularly after the landmark Kesavananda Bharati case (1973), which introduced the basic structure doctrine. While the 24th Amendment granted Parliament greater powers to amend the Constitution, including fundamental rights, it simultaneously raised concerns about the potential for abuse of power. The Amendment sought to ensure that Parliament had the flexibility to adapt the Constitution to changing circumstances, but critics feared that it might lead to the dilution or violation of fundamental rights if Parliament could amend them without judicial oversight.

A notable development came with the Indira Gandhi government's constitutional amendments during the Emergency period (1975–77), which included further constitutional changes, some of which were seen as attempts to limit judicial review. The 42nd Amendment (1976), often considered an extension of the 24th Amendment, sought to minimize the scope of judicial intervention in constitutional amendments and curtailed the powers of the judiciary in several areas. However, the Supreme Court continued to assert its role in safeguarding the basic structure, particularly in the Minerva Mills case (1980), where the Court

ruled that any amendment that destroyed or damaged the balance between fundamental rights and the Directive Principles of State Policy would be unconstitutional. This reaffirmed that the basic structure doctrine continued to be a crucial check on Parliamentary power.¹¹

In the present legal landscape, the 24th Amendment still plays a vital role in shaping the interpretation of Parliament's amending powers. The Amendment's attempt to clarify the extent of Parliament's powers to amend fundamental rights has led to several important legal debates. For instance, it is often cited in cases where fundamental rights are at stake, and whether Parliament can amend them without violating the basic structure of the Constitution. The basic structure doctrine, reaffirmed in cases like *Minerva Mills*, *L. Chandra Kumar*, and *Waman Rao*, remains a cornerstone of constitutional law, ensuring that Parliament cannot amend or alter the Constitution in a way that threatens its fundamental principles.

The present status of the 24th Amendment shows that while the Indian judiciary has not completely undermined Parliament's power to amend the Constitution, it has ensured that no amendment can destroy or alter the essential features of India's democratic framework. This includes fundamental rights, which are viewed as indispensable to the Constitution's identity.

The judiciary's ongoing role in interpreting the basic structure ensures that Parliamentary amendments do not overpower the constitutional safeguards that protect individual liberties and the separation of powers.¹²

while the 24th Amendment was intended to empower Parliament to amend the Constitution more freely, it remains a contested provision. The balance between Parliamentary sovereignty and judicial review continues to be tested in Indian legal discourse. The judicial insistence on the basic structure doctrine has maintained the relevance of the 24th Amendment as a critical instrument in shaping the constitutional framework. The amendment's purpose of

enabling constitutional flexibility remains intact, but its implications for fundamental rights and the balance of power between legislature and judiciary continue to spark important debates on the future of India's constitutional democracy.

6. "Constitutional Amendments and the Boundaries of Parliamentary Power: The 24th Amendment"

The 24th Amendment was designed to empower Parliament by clarifying its authority to amend the Constitution. However, in doing so, it raised important questions about the limits of constitutional amendments and the protection of fundamental rights. Although it strengthened the legislature, it created a situation where the power to amend the Constitution could potentially be misused, especially if it affects the core principles of the Constitution.¹³

The hypothesis surrounding the 24th Amendment of the Indian Constitution suggests that, while the Amendment was crafted to empower Parliament by clarifying its authority to amend the Constitution—especially with respect to fundamental rights—it also introduced a set of complex legal and political questions regarding the limits of constitutional amendments. Specifically, the Amendment raised the issue of whether there should be any boundaries on Parliament's power to amend the Constitution, particularly when it comes to altering or even overriding core constitutional principles that safeguard individual rights and democratic values.

Before the 24th Amendment, the Supreme Court's *Kesavananda Bharati* judgment had established the basic structure doctrine, which implied that certain fundamental elements of the Constitution, such as fundamental rights, were immune to changes by Parliament. The 24th Amendment sought to clarify this issue by explicitly granting Parliament the power to amend any part of the Constitution, including fundamental rights. While this was meant to allow for greater flexibility and adaptability of the Constitution in a rapidly changing society, it

inadvertently created a potential risk.

The strengthening of Parliament's power to amend the Constitution—without an explicit limitation on what can or cannot be changed—could, in theory, lead to amendments that might erode the fundamental rights of citizens or even alter the basic structure of the Constitution. This raises the core issue of whether the amending power should have unchecked scope, or if there should be constitutional safeguards to prevent Parliamentary overreach.¹⁴

Thus, the hypothesis suggests that the 24th Amendment, while enhancing legislative power, simultaneously created a situation where misuse of that power could undermine the very constitutional protections it sought to strengthen. This concern remains a subject of legal debate and judicial scrutiny even today.

7. Possible Reforms in the Context of the 24th Amendment

The 24th Amendment of the Indian Constitution was a crucial moment in the relationship between Parliament and the judiciary, particularly in terms of the power to amend the Constitution. While it sought to enhance Parliament's power to amend any part of the Constitution, including fundamental rights, it also raised concerns regarding the potential for abuse of power and the erosion of citizens' rights. Although the basic structure doctrine is a safeguard, ambiguity remains in its application. To address these concerns and ensure that the Constitution remains a living document while protecting the fundamental principles of democracy, several reforms can be considered.

Defining Clear Limits on the Amending Power

One of the core issues with the 24th Amendment is the lack of a clear framework regarding the limits of Parliament's amending power. The Amendment clarified that Parliament could amend fundamental rights, but it did not specify the extent to which these rights could be altered or diluted. To safeguard against the misuse of power, a reform could involve an explicit legal definition of what constitutes the

“basic structure” of the Constitution. This could be done by the Parliament itself or through judicial interpretation, which could result in a codified list of core constitutional principles that cannot be altered, such as secularism, democracy, and fundamental rights.¹⁵

1. Strengthening Judicial Review

The role of the judiciary in safeguarding the Constitution has always been a matter of debate, especially regarding amendments. While the Supreme Court has asserted the doctrine of the basic structure, its application has sometimes been criticized as vague or inconsistent. To strengthen the judicial oversight of constitutional amendments, a possible reform would be to explicitly empower the judiciary to conduct a rigorous review of amendments, particularly those that affect fundamental rights or democratic principles.

A more structured and defined role for the judiciary in reviewing amendments would ensure that Parliament's amending power is checked, especially when it risks violating essential rights or undermining democratic structures. For example, a constitutional amendment could require the approval of a constitutional bench of the Supreme Court before it is passed, providing an additional layer of scrutiny. This reform would not only preserve constitutional integrity but also protect citizens' fundamental rights from being weakened by political majorities.¹⁶

2. Public Consultation and Participatory Democracy

Another reform to consider is the introduction of public consultation as part of the constitutional amendment process. Constitutional amendments, especially those affecting fundamental rights, should reflect the will of the people and the changing societal needs. By introducing a system of public hearings and involving constitutional experts, scholars, civil society organizations, and the general public in the discussion of major amendments, Parliament would be better equipped to gauge

the societal impact of proposed changes. Such a democratic process would serve as an additional safeguard against amendments that could disproportionately favor a particular group or political interest. It would also contribute to ensuring that any change to the Constitution is more widely accepted and aligned with the values of the people, preventing amendments that undermine democratic values.¹⁷

3. Entrenching Fundamental Rights Beyond Amendments

One of the most contentious aspects of the 24th Amendment is its potential to allow Parliament to amend fundamental rights, which are often seen as the cornerstone of democratic governance. A reform that could be considered is the entrenchment of fundamental rights in such a way that they cannot be amended or diluted by ordinary constitutional amendments. These rights could be placed in a special, protected part of the Constitution, ensuring that any change to these rights would require extraordinary procedures, such as a referendum or a supermajority vote in Parliament, in addition to judicial review.

This reform would provide stronger protection for individual liberties and prevent Parliament from making amendments that could negatively impact citizens' freedoms. Fundamental rights like freedom of speech, right to equality, and protection from discrimination form the bedrock of a democratic society and must be protected from the shifting political winds¹⁸.

4. Checks on Executive Overreach in Constitutional Amendments

Another key reform could focus on addressing the concentration of power that the 24th Amendment potentially facilitated by strengthening Parliament's ability to amend the Constitution without sufficient safeguards. The executive branch (the government) can, in certain circumstances, use its parliamentary majority to enact changes that serve political agendas rather than the public interest. A

reform could involve introducing a multi-stage approval process for amendments, where changes to the Constitution must pass through multiple levels of scrutiny, including a joint committee consisting of experts, civil society representatives, and perhaps even regional representatives.¹⁹

8. Conclusion

The 24th Amendment of the Indian Constitution, passed in 1971, remains a critical milestone in the ongoing evolution of India's democratic and legal framework. By empowering Parliament with the authority to amend any part of the Constitution, including fundamental rights, the amendment sought to address the tension between the judiciary and the legislature, particularly in light of the Kesavananda Bharati case and the basic structure doctrine. While the amendment's intention was to ensure that Parliament could make necessary changes to the Constitution in response to evolving political, social, and economic needs, it raised significant concerns about the limits of constitutional amendments and the potential for abuses of power.

The analysis of the 24th Amendment also points to the need for reforms to address these issues. Clearer definitions of the limits of amending power, stronger mechanisms for judicial review, greater public consultation in the amendment process, and additional protections for fundamental rights could help ensure that Parliamentary power is exercised responsibly and in line with the Constitution's democratic values. Reforms could also provide a clearer framework for balancing legislative authority and judicial oversight, ensuring that amendments reflect the needs of the society while safeguarding the core principles of the Constitution.

In conclusion, while the 24th Amendment played a pivotal role in shaping the relationship between Parliament and the judiciary, its implications continue to resonate in legal and political discourse today. The need for a better balance of power, stronger safeguards for

fundamental rights, and clearer procedural guidelines for constitutional amendments remains an important task for India's evolving democracy. The discussion surrounding the Amendment underscores the necessity of adapting India's constitutional framework in a way that balances flexibility with the protection of core democratic values.

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1. **Kesavananda Bharati v. State of Kerala** (1973) 4 SCC 225.
 - This landmark judgment laid down the **basic structure doctrine**, which was pivotal in the introduction of the 24th Amendment.
2. **Minerva Mills v. Union of India** (1980) 3 SCC 625.
 - A key case that reaffirmed the **basic structure doctrine** and struck down parts of the 42nd Amendment, providing clarity on the limits of Parliament's power to amend the Constitution.
3. **Indira Gandhi v. Raj Narain** (1975) 2 SCC 159.
 - A significant case in the context of the **Emergency** period, which dealt with the **24th Amendment's** implications on judicial review.
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END NOTES

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- 3 Basu, Durga Das, Introduction to the Constitution of India, 23rd Edition, 2017.
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10 Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225 - The Supreme Court's judgment in this case

11 Minerva Mills Ltd. v. Union of India, (1980) 3 SCC 625 -

12 Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225 - This case established the basic structure doctrine, which protects the essential features of the Constitution, including fundamental rights, from being altered by Parliament.

13 Golaknath v. State of Punjab, AIR 1967 SC 1643

14 Minerva Mills Ltd. v. Union of India, AIR 1980 SC 1789.

15 24th Amendment to the Indian Constitution: The 24th Amendment (1971) was enacted to override the Supreme Court's decision in Golaknath v. State of Punjab (1967)

16 S.R. Bommai v. Union of India (1994): The Court upheld that secularism is a basic feature of the Constitution, further solidifying the role of the judiciary in reviewing amendments that could jeopardize core democratic principles like secularism.

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19 Kesavananda Bharati v. State of Kerala, AIR 1973 SC 1461