

## EDITORIAL NOTE

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The West Bengal National University of Juridical Sciences ('NUJS'), Kolkata, organised the Nani A. Palkhivala Memorial Conclave ('Conclave') on November 25, 2023. The Conclave was organised in collaboration with the Nani A. Palkhivala Memorial Trust and was supported by the Tata Group. This Conclave was being held to mark the Golden Jubilee of the *Kesavananda Bharati v. State of Kerala* ('Kesavananda Bharati') case and celebrate the legal stalwart Nani A. Palkhivala's immense contribution to the development of the basic structure doctrine. The Conclave was a significant gathering that brought together legal luminaries, scholars, and students to engage in thought-provoking discussions.

As part of the Conclave, NUJS organised the Nani A. Palkhivala Memorial Essay Competition, 2023 ('Essay Competition'). The broad theme of the Essay Competition was 'Application of Basic Structure Doctrine to Contemporary Issues'. Submissions were invited for two sub-themes: Scope of Judicial Review, and Powers of Promulgating Ordinances. The top three entries under each sub-theme were awarded cash prizes.

The NUJS Law Review here assisted in the organisation of the Essay Competition. The panel of judges that scored the entries included notable legal stalwarts such as Justice M. R. Shah, Professor Upendra Baxi, Professor Rohit De, and Jhuma Sen, to make a few. The NUJS Law Review provided chance to the winning participants to publish their work with us for this Special Issue on the Basic Structure Doctrine. It is in this light that this Special Issue was constituted to further the discussion on the said doctrine and contribute to the existing literature. The Special Issue consists of articles that focus on diverse aspects of the basic structure doctrine within the scope of the aforesaid two sub-themes. Further, Professor Upendra Baxi has also contributed a Foreword to this Special Issue that focuses on the criticisms towards the basic structure doctrine as well as a critical evaluation of them.

The NUJS Law Review had the honour of collaborating with a brilliant set of authors who, in this issue, have contributed novel argumentation and detailed research on the basic structure doctrine. With the tireless support and immense efforts of its associate members, the Editorial Board is proud to announce the release of Volume 16(4) of the NUJS Law Review.

In the winning entry for the sub-theme ‘Promulgation of Ordinances’ titled ‘Application of the Basic Structure Doctrine to the Powers of Promulgating Ordinances’, Saumyaranjan Dixit proposes the application of the basic structure doctrine to the promulgation of ordinances. Identifying the inadequacy of the present standards of judicial review applied to the exercise of the powers of promulgation, the author proposes a new model of judicial review. The author identifies the constitutional basis for the application of the basic structure test to these powers of promulgation and discusses the result that is achievable from the same. Therefore, the author proposes moving away from the intent-based test to a ‘hard review’ that is more effective in striking down offending state actions.

In a similar vein, in ‘Ordinances and the Basic Structure Review: To Test or Not To Test?’, the authors Krishna Ravishankar & Krishangee Digant Parikh, evolve a test that is basic structure compliant for application to ordinances the promulgation of which involves significant basic structure values. Once the authors have filled the gaps in the present judicial review mechanisms, they propose the application of this mechanism to the Delhi Services Ordinance case to act as a guiding force in all future decisions and clarify the review mechanism once and for all.

In the paper titled ‘Beyond Administrative Law Review: Assessing Ordinance Promulgation through the Lens of the Basic Structure Doctrine’, Om Agarwal explores the intricacies regarding the justiciability of the promulgation of ordinances in India. This analysis is fundamentally carried out by weighing the same against the basic structure doctrine. Identifying the basic structure through an exhaustive analysis of case law both in India and the United Kingdom, the author succinctly locates executive action to appropriately balance the scale of separation of powers. Finally, the author proposes a two-fold model for the motive examination of ordinances to review the condition precedent of an ‘immediate need’ of the ordinance.

In the winning entry titled ‘Gopalan, Golak Nath, & Raj Narain – Conundrum of Judicial Review vis-a-vis the Application of Basic Structure Doctrine to Ordinary Laws’ on the sub-theme of Scope of Judicial Review, Prabhu Gupta traces the constitutional development of the basic structure doctrine and explains its strong links to Indian polity and jurisprudence. Through this extensive analysis, the author has analysed several key shortcomings that hold back the doctrine from maximising its intended purpose. The author particularly discusses the power of judicial review and its importance vis-à-vis controlling the actions of the Parliament and Executive within the bounds of the Constitution. In this regard, the author flags the concern regarding the expansion of the scope of judicial review and proposes models to limit such instances.

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Pravertna Sulakshya & Pratham Malhotra, in their piece titled ‘The Mehndi of Judicial Review in Same-Sex Marriages: Infusing the Hues of Basic Structure on the Judiciary’s Palms’ the author grapples with the judicial dilemma thrown up in the landmark *Supriyo v. Union of India* case on the question of the applicability of the doctrine of basic structure to the exercise of judicial review by the Supreme Court of India. The author discusses the ever-expanding reach of the basic structure doctrine and the possibility of its violation by the very constitutional courts charged with protecting it. It substantiates this by describing instances of judicial overreach, and proposes the basic structure doctrine as the solution. Thereafter, in the context of the marriage equality case, the author proposes that a combination of the basic structure doctrine with the practice of dialogic constitutionalism bears the potential to attain incremental justice without jeopardising the Separation of Powers.

Finally, Kartikay Agarwal and Harmanjot Kaur, in their article titled ‘Harmonising Constitutional Ideals: A Modern Reassessment of the Basic Structure Doctrine’ analyse the basic structure doctrine in the present-day paradigm years after its genesis in the *Kesavananda Bharati* case. They argue that the doctrine’s scope should also be increased to cover the legislative powers of the Parliament while testing the precedential value of *Kesavananda Bharati*. They also propose that judicial review becomes a crucial element in the context in which the authors establish their stance. However, they warn and take a critical stance against unwarranted activism by the judiciary in the name of judicial review. Finally, they identify the overlaps between constitutional morality and the basic structure doctrine. This is tied together in the larger scheme of separation of powers and judicial review.

We hope the readers enjoy reading these submissions and welcome any feedback that our readers may have for us. We would also like to thank all the contributors to the issue for their excellent contributions, and hope that they will continue their association with the NUJS Law Review!

Truly,

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