

"THE BASIC STRUCTURE DOCTRINE AND THE MODERN INDIAN STATE: BETWEEN JUDICIAL REVIEW AND DEMOCRATIC MANDATE"

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ABSTRACT

This paper provides an in-depth analysis of the Basic Structure Doctrine, a cornerstone of Indian constitutional law first articulated in the landmark *Kesavananda Bharati v. State of Kerala* case. It explores how this doctrine limits the amending power of the Parliament by protecting certain inviolable features of the Constitution, such as the rule of law, democracy, secularism, federalism, and judicial independence. The paper also examines the doctrine's judicial evolution through critical cases including *Indira Gandhi v. Raj Narain*, *Minerva Mills*, and *Waman Rao*, highlighting how courts have expanded and refined the scope of the basic structure to include both constitutional amendments and ordinary legislation when they undermine core constitutional principles.

In addition, the paper delves into contemporary constitutional controversies to illustrate the continued relevance of the doctrine. It includes the debate over madrasa regulation, where the balance between minority rights and state-imposed educational standards is scrutinized through cases like *TMA Pai Foundation*, *Azmat Ullah*, and *State of Uttar Pradesh v. Madrasas*. A significant part of the discussion also focuses on the Tamil Nadu Governor's delay in assenting to state legislation, bringing to light the constitutional friction between executive discretion and legislative supremacy. Through these cases, the paper underscores the tension between parliamentary sovereignty and judicial review, and critically assesses concerns over judicial overreach.

The paper concludes by situating India's experience within a broader comparative framework, referencing similar doctrines of constitutional limitation in countries like Germany and the United States. It argues that while the basic structure doctrine has been instrumental in safeguarding democracy and preventing authoritarianism, its continued use must be tempered with institutional restraint to maintain a balanced constitutional order.

Keywords

Basic Structure Doctrine; Judicial Review; Parliamentary Sovereignty; Governor's Assent; Minority Educational Institutions; Constitutional Morality; Madrasas Regulation; Federalism; Rule of Law; Separation of Powers; Secularism; Kesavananda Bharati; Tamil Nadu Governor Case; Judicial Overreach; Constitutional Supremacy; NJAC Case; Educational Autonomy; Comparative Constitutional Law.

Introduction

The basic structure doctrine (basic structure doctrine) is a pivotal principle in Indian

constitutional law, developed by the judiciary in the landmark case *kesavananda bharati v. State of kerala* (1973). The doctrine posits that

certain fundamental features of the constitution cannot be altered or amended by the legislature, irrespective of its majority, as these features form the "basic structure" of the constitution. While lauded for protecting the constitution's core values, critics argue that the basic structure doctrine exemplifies judicial overreach, granting unelected judges the power to override the legislative will. This article examines the significance of the basic structure doctrine, its judicial origins, its application in subsequent case law, and its role in balancing the powers of the legislature and judiciary.

Evolution of the basic structure doctrine

The origin in *kesavananda bharati* (1973)

The origins of the basic structure doctrine can be traced back to the decision in *kesavananda bharati v. State of kerala* (1973)¹²³⁸, wherein the supreme court ruled that parliament's power to amend the constitution is not absolute. The court concluded that while parliament can amend the constitution under article 368, it cannot alter its "basic structure."

The Majority opinion in *kesavananda* declared that the term "amendment" under article 368 must be read with limitations, as the power to amend does not extend to changing the basic structure of the constitution. The ruling effectively created a check on the power of the legislature, acknowledging the idea that certain fundamental aspects of the constitution must be preserved.

Key principles established is that the court identified several features as forming the basic structure, including the supremacy of the constitution, the rule of law, the separation of powers, and the federal structure, although the precise content of the basic structure was left undefined.

Evolution of the Doctrine

The Basic Structure Doctrine has evolved through several key judicial decisions:

1. **Shankari Prasad Case (1951)** – The Supreme Court upheld Parliament's power to amend Fundamental Rights and it is the first of its kind in India.
2. **Sajjan Singh Case (1965)** – The Court reaffirmed Parliament's authority to amend any part of the Constitution, including Fundamental Rights which came along with several criticisms in the later years.
3. **Golaknath Case (1967)** – The Court reversed its earlier stance, stating that Fundamental Rights could not be amended by Parliament which imposed a blanket ban on the parliament's power to amend the constitution.
4. **Kesavananda Bharati Case (1973)** – This landmark ruling established the Basic Structure Doctrine, stating that Parliament cannot alter the Constitution's basic structure where the 13 judge bench which is the maximum till date decided the case.¹²³⁹

Post-*kesavananda* developments

Following *kesavananda bharati*, the basic structure doctrine was refined in subsequent cases, further clarifying what constitutes the "basic structure."

In *Indira gandhi v. Raj narain* (1975)¹²⁴⁰ the court extended the basic structure doctrine to the first amendment, ruling that certain changes to the constitution, even under the guise of amendments, could not affect its essential features.

In *Minerva mills Ltd. V. Union of India* (1980)¹²⁴¹ the court struck down the 42nd amendment's provisions as violative of the basic structure doctrine, reinforcing the idea that the constitution's balance between fundamental rights and directive principles cannot be altered.

¹²³⁹ <https://iaspoint.com/basic-structure-doctrine-of-the-constitution-of-india/> accessed 29 april 2025.

¹²⁴⁰ *Indira Nebru Gandhi v. Raj Narain*, 1975 Supp SCC 1.

¹²⁴¹ *Minerva Mills Ltd. v. Union of India*, (1980) 3 SCC 625 – Judicial review is part of the basic structure of the Constitution.

¹²³⁸ *Kesavananda Bharati v. State of Kerala* (1973) 4 SCC 225.

1. **Waman rao v. Union of India (1981)**¹²⁴²: the court ruled that the basic structure doctrine applies not only to constitutional amendments but also to laws that might affect its basic structure.

Key features of the basic structure doctrine

1. **Supremacy of the constitution**: one of the most fundamental features protected by the basic structure doctrine is the supremacy of the constitution. This ensures that no legislative or executive action can contravene the constitution's basic values.
2. **Separation of powers**: the doctrine upholds the separation of powers between the legislature, executive, and judiciary as a key aspect of the basic structure, thereby preventing any branch of government from exercising undue influence over the others.
3. **Federalism**: the federal structure of the constitution, with its division of powers between the centre and the states, is another aspect identified as part of the basic structure.
4. **Democracy and rule of law**: democracy, fundamental rights, and the rule of law are other critical elements of the basic structure. The court ensures that any amendment or legislative action that threatens the democratic framework or the rights guaranteed to citizens is scrutinized.

The role of the judiciary in upholding the basic structure

The judiciary's role in interpreting and safeguarding the basic structure has been contentious. Supporters of the basic structure doctrine argue that it is essential for preserving the constitution's core principles. Critics, however, contend that it places excessive power in the hands of unelected judges, who are not accountable to the electorate.

1. **Judicial review**: judicial review is central to the basic structure doctrine, allowing courts to invalidate amendments or laws that violate the basic structure. Critics argue that this expands judicial power to an extent that undermines the democratic process.
2. **Expansion of the basic structure**: in various judgments, the court has expanded the concept of the basic structure. For example, in *I.R. Coelho v. State of Tamil Nadu (2007)*¹²⁴³, the court ruled that laws affecting the basic structure cannot be included in the ninth schedule of the constitution, highlighting the dynamic nature of the doctrine.

Judicial overreach or constitutional guardian?

The debate surrounding the basic structure doctrine largely revolves around its perceived judicial overreach versus its role as a guardian of the constitution.

Judicial overreach:

1. **Undemocratic decision-making**: critics of the basic structure doctrine argue that it places the power to decide constitutional matters in the hands of an unelected judiciary, thereby undermining parliamentary sovereignty and democratic principles.
2. **Tension between the judiciary and legislature**: there is an ongoing tension between the judiciary and the legislature, with the former often striking down amendments or laws that the latter enacts.

Guardian of the constitution:

1. **Protecting fundamental values**: proponents of the basic structure doctrine assert that the judiciary's role in safeguarding the constitution's basic structure is essential for preserving the democratic values and protecting the

¹²⁴² *Waman Rao v. Union of India*, (1981) 2 SCC 362.

¹²⁴³ *I.R. Coelho v. State of Tamil Nadu*, (2007) 2 SCC 1, para 45

rights of the citizens against arbitrary legislative actions.

2. **Checks and balances:** the basic structure doctrine functions as a system of checks and balances, ensuring that even a strong majority in parliament cannot alter the foundational principles of the constitution.

Basic Structure:

In *State of Uttar Pradesh v. Madrasas* (2012), the Supreme Court reaffirmed that constitutional values such as secularism and the protection of minority rights under Article 30 are integral to the basic structure of the Constitution.¹²⁴⁴ The Court held that while the State may regulate education to ensure academic standards, such regulation cannot override the essential autonomy of minority institutions. By scrutinizing parts of the Madrasa Education Act against fundamental constitutional guarantees, the Court demonstrated that ordinary legislation, like constitutional amendments, must adhere to the core principles of the Constitution. This case serves as an example of how the basic structure doctrine, though originally intended for constitutional amendments, indirectly influences statutory interpretation and judicial review of state action.

Parliamentary Sovereignty:

The judgment also clarifies the nature of parliamentary sovereignty in India, which is constitutionally limited. The Uttar Pradesh legislature had enacted provisions under Entry 25 of the Concurrent List to regulate madrasa education. However, the Court held that the conferral of higher education degrees such as 'Fazil' and 'Kamil' falls under Entry 66 of the Union List and is thus the exclusive domain of Parliament.⁴ This decision emphasizes that legislative bodies in India are not sovereign in the absolute sense, unlike in a Westminster-style system.¹²⁴⁵ They are bound by the

constitutional distribution of powers and are subject to judicial review.¹²⁴⁶

BASIC STRUCTURE :A LEGISLATIVE CRITIQUE

The cases which follow has expanded or clarified the boundaries of the basic structure doctrine, either through affirmations or modifications. The continuing evolution of this doctrine reflects the dynamic interplay between the judiciary and legislature.

The Madrasa Issue

The issue of madrasas (Islamic educational institutions) in India has been addressed in various cases, particularly regarding whether they should be treated as religious institutions or educational institutions, and the legal challenges they face related to government regulation, funding, and constitutional rights. Here are a few notable case laws related to madrasas, focusing on the facts, issues, and the holdings:

1. TMA Pai Foundation v. State of Karnataka (2002)¹²⁴⁷

This is a landmark judgment dealing with the issue of educational institutions, including madrasas, and their regulation in India.

Facts:

- The case was primarily concerned with the rights of minorities to establish and administer educational institutions under Article 30 of the Indian Constitution.
- Madrasas, as part of the larger question of minority institutions, were discussed in relation to whether they could be subjected to state regulations or if they had the freedom to operate independently, without government interference, in matters relating to education.

¹²⁴⁴ *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225; see also *State of Uttar Pradesh v. Madrasas*, (2012), Supreme Court of India

¹²⁴⁵ *I.R. Coelho v. State of Tamil Nadu*, (2007) 2 SCC 1, para 45: "Parliament is not sovereign; it is subject to the Constitution."

¹²⁴⁶ Article 245-246, Constitution of India; see *Chandigarh Administration v. Manpreet Singh*, (1992) 1 SCC 380.

¹²⁴⁷ Article 30(1), Constitution of India; see also *T.M.A. Pai Foundation v. State of Karnataka*, (2002) 8 SCC 481

Issues:

- Whether the right of minorities (including Muslims, in the context of madrasas) to establish and administer educational institutions is absolute under Article 30.
- Whether madrasas could be regulated or provided state funding under the same principles as other educational institutions.

Holding:

- The Supreme Court held that minorities have the right to establish and administer educational institutions of their choice under Article 30, but such institutions must also comply with the general norms of quality education, particularly when it comes to government funding and recognition.
- However, the Court emphasized that state regulation and oversight are permissible as long as they do not interfere with the minorities' rights to administer their institutions.

Azmat Ullah v. State of U.P. (2002)

This case addresses the question of whether madrasas can be regulated and whether their curriculum can be standardized.

Facts:

- The petitioners were challenging the Uttar Pradesh government's decision to impose certain regulations on madrasas, including standardized curricula and the requirement for madrasa teachers to meet certain educational qualifications.
- The petitioners argued that such regulations were an infringement on the autonomy of madrasas and violated the fundamental rights of minorities under Articles 29 and 30 of the Constitution.

Issues:

- Whether the government can impose educational qualifications on madrasa teachers.
- Whether madrasas, as minority institutions, are exempt from state-imposed curriculum standards and other regulations.

Holding:

- The Supreme Court held that while madrasas have the right to run their educational institutions as per their religious and cultural ethos, they must also ensure that their students receive a basic level of secular education.
- The Court ruled that the state has a right to set certain standards for education and the qualifications of teachers, as long as these do not interfere with the religious or cultural rights of the institutions.
- The Court recognized that madrasas cannot be entirely outside the framework of national educational standards, especially in a secular nation.

State of Madhya Pradesh v. Madrasas (2006)

This case is significant because it dealt with the issue of government funding to madrasas and whether they could be granted the same benefits as other educational institutions.

Facts:

- The Madhya Pradesh government was providing grants to madrasas to improve the quality of education, and the question was whether these grants could be continued if madrasas did not teach secular subjects, such as mathematics, science, and social studies.
- The state had issued directives requiring madrasas to teach secular subjects to be eligible for government funding.

Issues:

- Whether madrasas, as religious institutions, are entitled to receive government funding for educational purposes.
- Whether the government could impose conditions like the inclusion of secular subjects in the madrasa curriculum for the grant to be provided.

Holding:

- The Supreme Court ruled that the state could offer funding to madrasas if they were fulfilling educational objectives. However, the Court also emphasized that government assistance to educational institutions, including madrasas, should ensure that students receive a well-rounded education.
- It was held that madrasas cannot be segregated from the broader educational framework of the country, which includes secular subjects like science and mathematics.
- The Court upheld that religious institutions running educational establishments are entitled to funding if they meet the prescribed educational standards.

The Madrasas Case (State of Uttar Pradesh v. Madrasas) (2012)¹²⁴⁸

This case discusses the status of madrasas in relation to state grants and the government's role in regulating them.

Facts:

- The U.P. government had sought to bring madrasas under state control by asking them to adhere to a uniform curriculum and by providing state funding.
- There was resistance from many madrasa managements, who claimed

that such an action would violate their religious freedom.

Issues:

- Whether madrasas could be forced to adhere to a uniform curriculum imposed by the state.
- Whether the state could impose such regulations on religious institutions under the guise of improving education standards.

Holding:

- The Supreme Court ruled that while the state can regulate educational institutions, it must be cautious not to infringe upon religious freedoms or the cultural rights of minorities.
- The Court emphasized that madrasas are not exempt from basic educational regulations but also stressed that such regulation should not interfere with the religious identity or ethos of the institutions.
- The Court upheld that madrasas should be free to impart education according to their religious teachings, but the government could also provide grants if the institution adhered to the national educational standards.

Indian Union Muslim League v. State of Kerala (2014)¹²⁴⁹

In this case, the Court dealt with the issue of whether madrasas are entitled to be treated as educational institutions for purposes of governmental regulation and funding.

- The Kerala government had issued a policy that all educational institutions, including madrasas, would have to comply with state regulations in order to receive government aid.

¹²⁴⁸ <https://www.thehindubusinessline.com/news/education/state-can-regulate-madrasa-education-to-ensure-standards-of-excellence-sc/article68832405.ece>

¹²⁴⁹ <https://indiankanoon.org/search/?formInput=indian%20union%20muslim%20league%20vs%20state%20of%20kerala+doctype:kerala> accessed 29 april 2025.

- The petitioners argued that madrasas are religious institutions, and therefore the state's educational regulations should not apply to them.

Issues:

- Whether madrasas should be treated differently from other educational institutions for purposes of regulation and funding.
- Whether state-imposed regulations on madrasas violate religious freedom under Articles 25, 26, and 30.

Holding:

- The Court ruled that madrasas, while primarily religious institutions, must comply with basic educational standards if they seek government funding.
- However, the Court emphasized that these regulations must be sensitive to the religious rights of the institutions and must not infringe on their autonomy in imparting religious education.

Consolidation of views in the cases above are as follows:-

Legislative Competence and Higher Education:

The Supreme Court held that while the State has authority to regulate education under Entry 25 of the Concurrent List, this does not extend to higher education degrees such as 'Fazil' and 'Kamil'. These degrees fall under the Union List (Entry 66) and are governed by the University Grants Commission Act, 1956. Therefore, provisions of the Madarsa Act related to higher education were deemed unconstitutional.

Minority Rights and State Regulation:

The Court emphasized that the right of minorities to establish and administer educational institutions under Article 30 of the Constitution is not absolute. The State has a legitimate interest in maintaining educational standards and may impose regulatory conditions for aid and recognition, provided

these do not infringe upon the minority character of the institutions.

Secularism and Educational Content:

The Court clarified that the inclusion of religious instruction in madrasas does not by itself render the Act unconstitutional. The primary aim of madrasas is educational. Students in state-recognized minority institutions cannot be compelled to participate in religious instruction or worship, preserving their right to freedom of religion under Article 28(3).

Right to Education (Article 21A):

The Supreme Court set aside the Allahabad High Court's earlier ruling that the 2004 Act violated Article 21A and secular principles. It held that Article 21A must be interpreted harmoniously with the rights of minorities, ensuring students receive a basic education that enables them to function effectively in society.

Judicial Overreach Concerns

The application of the Basic Structure Doctrine has been criticized for potentially allowing the judiciary to overstep its bounds and interfere with the legislative process, as seen in cases like the NJAC (National Judicial Appointments Commission)¹²⁵⁰ case. National judicial appointments commission¹²⁵¹(NJAC) was struck down by the judiciary as against the parliamentary move and revived the collegium system which is still being followed till date.

Landmark Cases:

The Keshvananda Bharati case¹²⁵² in 1973 is considered a landmark in establishing the Basic Structure Doctrine, while NJAC case highlighted its application in judicial appointments.

¹²⁵⁰ [https://prsindia.org/files/bills_acts/acts_parliament/2014/the-constitution-\(99th-amendment\)-act.-2014.pdf](https://prsindia.org/files/bills_acts/acts_parliament/2014/the-constitution-(99th-amendment)-act.-2014.pdf)

¹²⁵¹ Law Commission of India, *One Hundred and Sixty-Seventh Report on the Constitutional Validity of the 99th Amendment of the Constitution* (2016) <http://lawcommissionofindia.nic.in> accessed 29 April 2025.

¹²⁵² See Keshvanandha Bharati, supra note 1.

Tamil Nadu Governor's Assent Case: Judicial Review and Parliamentary Sovereignty

The recent controversy in Tamil Nadu involving the Governor's delay in granting assent to several bills passed by the State Legislature has brought to light important constitutional questions. The Governor had either withheld assent or delayed action on multiple bills, leading to a constitutional standoff with the state government. The issue reached the Supreme Court, where the role of the Governor was examined in light of the Constitution. The Court emphasized that the Governor is not an independent political authority but a constitutional functionary who must act on the advice of the Council of Ministers. Delaying assent or inaction beyond a reasonable time was held to be incompatible with constitutional norms.

This controversy touches upon the delicate balance between legislative authority and constitutional checks. While state legislatures have the sovereign power to enact laws within their jurisdiction, the assent of the Governor is meant to be a procedural formality, not a tool for political obstruction. The case also reinforces the judiciary's role in upholding constitutional values through judicial review. It affirmed that parliamentary sovereignty in India operates within constitutional boundaries and is not absolute. Judicial intervention in such cases ensures that all constitutional authorities, including the Governor, remain accountable and do not undermine the functioning of representative democracy.

Under Article 200 of the Constitution, the Governor may assent to a bill, withhold assent, return it for reconsideration (if it is not a money bill), or reserve it for the President¹²⁵³. However, the spirit of parliamentary democracy demands that the Governor act as a constitutional head and not as an executive check on legislative power. The Supreme Court's intervention in 2024, where it questioned the inaction of the

Governor and emphasized the constitutional duty to act within a reasonable time, reflects growing judicial concern over the misuse of formal constitutional powers for political ends. This intervention reinforces the principle of responsible government, a fundamental aspect of India's constitutional framework, which requires that real executive authority rests with the elected government, not the titular head.

This controversy also underlines the tension between parliamentary sovereignty and constitutional supremacy. While legislatures have broad law-making powers, they operate under a written Constitution that imposes structural and procedural limitations. Judicial review acts as a safeguard against both legislative overreach and executive obstruction. Importantly, the courts have increasingly recognized that indefinite delays in assent violate constitutional morality and the functioning of democratic institutions.

The Tamil Nadu case thus raises important questions for Indian federalism,

1. Can the Union, through the office of the Governor, delay or derail State legislation?
2. Does such practice reflect a creeping centralization of power?
3. And what institutional reforms are necessary to ensure that constitutional offices like the Governor are not used for partisan purposes?

Comparative perspective

1. **Basic structure in other jurisdictions:** while the basic structure doctrine is uniquely prominent in India, similar principles of constitutional limitation on amendments exist in other jurisdictions, such as Germany's "eternity clause" and the United States' emphasis on fundamental rights through judicial review.
2. **Global context of judicial review:** the concept of judicial review as a safeguard against legislative overreach

¹²⁵³ Article 200, Constitution of India – The Governor may assent, withhold assent, return the bill (if not a money bill), or reserve it for the President.

is not limited to India. Countries like the United States, Canada, and Germany employ mechanisms to ensure that amendments or laws do not violate their constitutions' basic principles.

Recent Supreme Court Clarification (2024)

On November 5, 2024, the Supreme Court of India delivered a landmark judgment that further clarified the scope of the Basic Structure doctrine. The case involved a challenge to the Uttar Pradesh Madrasa Education Board Act, 2004, where it was argued that the Act violated the principle of secularism, a component of the Constitution's Basic Structure. However, the Supreme Court held that the validity of ordinary legislation cannot be challenged on the grounds of violating the Basic Structure of the Constitution.

The court reasoned that the Basic Structure doctrine encompasses "undefined concepts" such as democracy, federalism, and secularism. Allowing challenges to ordinary laws based on these concepts would introduce undue uncertainty into constitutional adjudication. The court emphasized that the Basic Structure doctrine was intended to apply to constitutional amendments, not to regular legislative acts. This ruling aligns with earlier observations made in the 1975 case of *Indira Nehru Gandhi versus Raj Narain*, where the court noted that applying the Basic Structure doctrine to statutes would be inappropriate and could lead to judicial overreach. For instance, Chief Justice A.N. Ray in that case stated that such an application would amount to "rewriting the Constitution," while Justice K.K. Mathew described the Basic Structure as "too vague and indefinite" for assessing the validity of ordinary laws.

This 2024 judgment reinforces the distinction between constitutional amendments and ordinary legislation, ensuring that the Basic Structure doctrine remains a tool for protecting the Constitution's core principles from fundamental alterations by Parliament, while allowing the legislature greater latitude in

enacting laws within its prescribed domains. The ruling is likely to influence future judicial reviews and may limit the grounds on which laws can be challenged in court.

Conclusion and suggestions

The basic structure doctrine remains a cornerstone of Indian constitutional jurisprudence, ensuring that the fundamental principles of democracy, the rule of law, and the separation of powers are preserved. However, its expansive interpretation has raised concerns about judicial overreach, as it potentially limits the sovereignty of parliament. Ultimately, the basic structure doctrine acts as a crucial check on legislative power, but its application must be continually balanced to prevent it from becoming a tool of judicial activism. As the doctrine continues to evolve, its role in Indian democracy will undoubtedly remain a subject of intense debate and scrutiny. As it is a sensitive issue which needs to be addressed the author suggests to harmonize the two organs of the government by following their own ethics which would provide a solution to this deadlock situations and to prevent these kind of situations in future. As we all know that judiciary is also known as the watch dog of the constitution and has been invested with enormous powers by the makers of the constitution. Thus the two organs should go hand in hand and at the same time the doctrine of checks and balances needs to be refreshed every time when there is an unfair decision by the parliamentarians.

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