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REVISITING THE BASIC STRUCTURE DOCTRINE: SAFEGUARDING INDIA'S CONSTITUTIONAL IDENTITY

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Abstract

The doctrine of basic structure, championed by the landmark judgement *Kesavananda Bharati v. State of Kerala* (1973), has emerged as a critical guardian of constitutional supremacy in India⁴⁴². This doctrine prevents the Parliament from altering the Constitution's fundamental framework even through constitutional amendments. This research paper traces the evolution of this doctrine through significant judgments and scholarly discourse, exploring its legal status, strengths, ambiguities, and implications for democratic governance. Despite the doctrine's central role in Indian constitutional law, research gaps remain in terms of its scope, consistency in judicial application, and comparative relevance. Employing doctrinal and analytical methodology, this paper delves into relevant case laws and academic perspectives. The study concludes with practical suggestions to refine the doctrine's interpretation to preserve constitutional values amidst modern challenges.

Keywords: Indian Constitution, Constitutional Supremacy Basic Structure Doctrine, Constitutional Amendments, Constitutional Morality, Constitutional Identity, Judicial Review, Federalism in India, Secularism, Judicial Activism.

GRASP - EDUCATE - EVOLVE

⁴⁴² *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461.

I. Introduction

The Constitution of India stands as a monumental testament to the democratic aspirations of a newly independent nation. Described by many scholars as a "living document," it reflects a unique combination of rigidity and flexibility—firm in its foundational values yet responsive to the evolving needs of Indian society. This dual character ensures that while the Constitution remains anchored in its core principles, it is also capable of adapting to the changing social, political, and economic landscape of the country. The Indian Constitution's lasting relevance can be owed, in part, to the balance it strikes between Parliament's ability to amend the Constitution and the judiciary's role in interpreting and protecting its essential values.

At the heart of this constitutional dynamic lies the Doctrine of Basic Structure—a judicially evolved principle that acts as a sentinel of constitutional integrity. The theory was first introduced in the landmark case of *Kesavananda Bharati v. State of Kerala* (1973), in response to growing concerns about excessive legislative power and potential constitutional overreach. While Article 368 of the Constitution gives Parliament the authority to change any article of the Constitution, the debate that arose in the decades following independence was whether this power was genuinely unrestricted. Could Parliament, by a special majority, alter the Constitution to such an extent that it changes its essential character? Could a transient parliamentary majority dismantle the very framework that enables democracy, federalism, and the rule of law?

These were not merely hypothetical questions. In the decades before *Kesavananda*, a series of constitutional amendments had sought to insulate certain laws from judicial review, particularly those affecting property rights and socio-economic reforms. This tug-of-war between the legislative and judicial branches raised fundamental concerns about constitutional supremacy and the scope of parliamentary sovereignty in a democratic

republic governed by the rule of law. The basic structure doctrine emerged from this constitutional crossroads, laying down that while Parliament has wide powers to amend the Constitution, it cannot alter or destroy its 'basic structure'—those key qualities that give the Constitution its personality.

The *Kesavananda Bharati* case did not define an exhaustive list of what constitutes the basic structure. Instead, it recognized certain elements—such as supremacy of the Constitution, republican and democratic forms of government, secularism, separation of powers, and federalism—as being beyond the reach of constitutional amendments. Over time, subsequent judicial decisions have expanded and refined the content of the doctrine, making it one of the most significant contributions of the Indian judiciary to constitutional jurisprudence.

The doctrine is not without controversy. Critics argue that it grants unelected judges excessive power over the democratic process, thereby raising concerns about judicial overreach. Proponents, however, see it as a necessary check against potential authoritarianism, particularly in a polity where constitutional institutions may at times be vulnerable to political capture.

This paper aims to trace the evolution, development, and application of the basic structure doctrine in Indian constitutional law. It examines the judicial reasoning behind its inception, its doctrinal expansions in later rulings, and its enduring relevance in contemporary debates—especially in an era marked by assertive majoritarianism and rising executive dominance. The discussion also situates the doctrine within the broader framework of constitutional morality and identity, exploring how it continues to serve as a constitutional compass that protects the soul of the Indian republic. In doing so, this study reaffirms the idea that the Constitution is not just a legal document but a living covenant between the state and its people, whose basic

features must be preserved to ensure justice, liberty, and equality for future generations.

II. Research Problem and Objectives

A. Research Problem

While the doctrine of basic structure is celebrated as a cornerstone of Indian constitutionalism, it suffers from lack of precise definition and inconsistent judicial application. There is an ongoing debate on what constitutes the "basic structure" and whether this doctrine has led to judicial overreach or necessary constitutional protection.

B. Objectives of the Study

1. To trace the origin and evolution of the doctrine of basic structure.
2. To critically analyse major judgments shaping the doctrine.
3. To identify ambiguities and inconsistencies in its application.
4. To explore its relevance in contemporary constitutional issues.
5. To propose suggestions for doctrinal clarity and consistency.

III. Research Methodology

This paper follows a doctrinal and analytical legal research methodology. The research is based on a critical review of:

1. Constitutional provisions (primarily Article 368),
2. Landmark Supreme Court judgments,
3. Commentary by legal scholars,
4. Comparative jurisprudence, where relevant.
5. Secondary sources such as books, journal articles, and law commission reports have also been referred to.

IV. Evolution of the Doctrine of Basic Structure

The evolution of the Basic Structure Doctrine was the result of decades of intense constitutional debate and judicial thought. The trajectory leading to Kesavananda Bharati v.

State of Kerala reflects the Indian judiciary's struggle to strike a balance between legislative intent and constitutional sanctity. The journey began with deference to parliamentary supremacy, moved through a phase of judicial activism, and culminated in a doctrinal compromise that preserved the supremacy of the Constitution without stifling necessary constitutional amendments.

A. *Shankari Prasad v. Union of India (1951)*

The first significant judicial pronouncement on Parliament's amending power came in *Shankari Prasad Singh Deo v. Union of India*, AIR 1951 SC 458. This case challenged the validity of the First Constitutional Amendment, which inserted Article 31A and Article 31B to protect land reform laws from being struck down under the right to property (then a fundamental right). The petitioner argued that the amendment violated Part III of the Constitution and was, therefore, invalid.

The Supreme Court, however, upheld the amendment, holding that Article 368 conferred on Parliament the power to amend any part of the Constitution, including the Fundamental Rights. It reasoned that the term "law" in Article 13(2)—which prohibits the State from making laws that abridge fundamental rights—referred to ordinary legislation, not constitutional amendments. Hence, constitutional amendments did not fall within the purview of judicial review under Article 13.

This interpretation effectively established that Parliament was supreme in amending the Constitution, including its most cherished provisions, such as fundamental rights. The Court, at this stage, adopted a textual and literal approach, refraining from reading any implied limitations into Article 368. While it maintained a formal distinction between constitutional law and ordinary law, it

failed to foresee the implications of this unrestrained amending power in the hands of a political majority⁴⁴³.

B. *Sajjan Singh v. State of Rajasthan (1965)*

A decade later, in *Sajjan Singh v. State of Rajasthan*, AIR 1965 SC 845, the Supreme Court had another opportunity to address the same issue. The case involved a challenge to the Seventeenth Constitutional Amendment, which again sought to protect certain land reform laws by placing them in the Ninth Schedule.

The majority judgment, delivered by Chief Justice Gajendragadkar, reaffirmed the reasoning of *Shankari Prasad*. The Court maintained that Parliament's amending power under Article 368 extended to every part of the Constitution, including Part III. It also reiterated that an amendment under Article 368 was not "law" within the meaning of Article 13.

However, the significant development in *Sajjan Singh* was the emergence of a minority voice expressing caution. Justice Hidayatullah and Justice Mudholkar, in their concurring opinions, raised serious concerns about the unchecked power of Parliament. Justice Mudholkar explicitly questioned whether Parliament's modifying power was subject to inherent or implied limitations. He made the point: "It is also a matter for consideration whether the fundamental rights are not a part of the basic structure of the Constitution and, therefore, not amenable to amendment under Article 368."

Though not binding, these observations planted the seeds of the basic structure doctrine and suggested a possible judicial turn in future cases. It was the first time the Court seriously contemplated implied limitations on Parliament's authority, reflecting a growing judicial unease about

the scope of constitutional amendments⁴⁴⁴.

C. *I.C. Golak Nath v. State of Punjab (1967)*

The turning point came in *I.C. Golak Nath v. State of Punjab*, AIR 1967 SC 1643. The case arose from the challenge to the constitutional validity of the Seventeenth Amendment once again. However, this time, the Supreme Court, by a 6:5 majority, reversed its previous rulings and held that Parliament could not amend fundamental rights at all.

The Court reasoned that Article 368 merely prescribed the procedure for constitutional amendment, and that the power to amend was derived from the residuary powers of legislation under Article 245, read with Entry 97 of the Union List. Accordingly, the Court held that a constitutional amendment was law for Article 13 and, therefore, subject to the test of fundamental rights. In his majority opinion, Chief Justice Subba Rao stated that fundamental rights are paramount for human progress.

The *Golak Nath* ruling effectively froze Part III of the Constitution, making it immune to amendment. While it was hailed by many as a victory for individual rights, it also precipitated a constitutional crisis, as it severely constrained Parliament's ability to implement socialist reforms promised in the Directive Principles of State Policy.

In response, Parliament enacted the 24th Constitutional Amendment (1971), explicitly amending Article 368 to state that Parliament has the power to amend any provision of the Constitution, including fundamental rights, and that no amendment would be considered "law" under Article 13. This aggressive legislative pushback set the stage for the most important constitutional confrontation in

⁴⁴³ *Shankari Prasad v. Union of India*, AIR 1951 SC 458

⁴⁴⁴ *Sajjan Singh v. State of Rajasthan*, AIR 1965 SC 845

Indian history: the Kesavananda Bharati case.⁴⁴⁵

D. Kesavananda Bharati v. State of Kerala (1973)

In Kesavananda Bharati v. State of Kerala, a 13-judge bench of the Supreme Court delivered what is arguably the most significant constitutional ruling in India's history. The case challenged the validity of the 24th, 25th, and 29th Constitutional Amendments, which were enacted in response to Golak Nath to restore Parliament's amending power and give primacy to Directive Principles over Fundamental Rights.

The judgment, decided by a narrow 7:6 majority, struck a middle path between parliamentary supremacy and judicial review. The Court upheld the amending power of Parliament, including over fundamental rights, but laid down a vital limitation: Parliament could not alter the "basic structure" or essential features of the Constitution.

V. Elements of Basic Structure and Judicial Clarification

The Kesavananda Bharati judgment laid down the foundation of the basic structure doctrine, but it did not provide an exhaustive list of what constitutes the "basic structure." Subsequent Supreme Court decisions have gradually identified and reaffirmed its elements.

The following features have been held to be part of the basic structure through various judgments⁴⁴⁶:

1. Supremacy of the Constitution
2. Sovereign, democratic, and republican form of government
3. Secularism
4. Separation of powers
5. Rule of law
6. Judicial review

7. Independence of the judiciary
8. Free and fair elections
9. Unity and integrity of the nation
10. Federalism
11. Parliamentary system
12. Welfare state

Case Laws Reinforcing the Doctrine

A. **Indira Nehru Gandhi v. Raj Narain (1975)**: The Supreme Court struck down Article 329A (clause 4), which aimed to immunize the election of the Prime Minister from judicial scrutiny. The Court held that democracy is a basic feature of the Constitution⁴⁴⁷.

B. **Minerva Mills Ltd. v. Union of India (1980)**: The Court deemed the 42nd Amendment's Sections 4 and 55 unconstitutional, emphasising that the balance between Directive Principles and Fundamental Rights is an essential component of the basic structure.⁴⁴⁸

C. **Waman Rao v. Union of India (1981)**: The doctrine's retrospective effect was considered. The Court upheld amendments made before Kesavananda but ruled that post-Kesavananda amendments would be subject to basic structure review⁴⁴⁹.

D. **S.R. Bommai v. Union of India (1994)**: S.R. Bommai v. Union of India (1994): In this judgement, federalism and secularism were upheld as crucial characteristics of the Constitution. Cooperative federalism was strengthened by limiting the misuse of Article 356- the President's Rule ⁴⁵⁰.

E.I.R. Coelho v. State of Tamil Nadu (2007): The Supreme Court ruled that laws placed under the Ninth Schedule after 24

⁴⁴⁵ I.C. Golak Nath v. State of Punjab, AIR 1967 SC 1643

⁴⁴⁶ Indira Nehru Gandhi v. Raj Narain, AIR 1975 SC 2299; Minerva Mills v. Union of India, AIR 1980 SC 1789; S.R. Bommai v. Union of India, AIR 1994 SC 1918

⁴⁴⁷ Indira Nehru Gandhi v. Raj Narain, AIR 1975 SC 2299

⁴⁴⁸ Minerva Mills Ltd. v. Union of India, AIR 1980 SC 1789

⁴⁴⁹ Waman Rao v. Union of India, AIR 1981 SC 271.

⁴⁵⁰ S.R. Bommai v. Union of India, AIR 1994 SC 1918

April 1973 are subject to judicial review if they damage the basic structure⁴⁵¹.

VI. Contemporary Relevance and Criticism

A. Contemporary Relevance

The doctrine of basic structure has remained a constitutional compass in modern India. It serves as a judicial tool to prevent authoritarianism and safeguard fundamental democratic principles. In the age of majoritarian governments and populist constitutionalism, the doctrine functions as a constitutional firewall.

1. **Citizenship (Amendment) Act (CAA), 2019**, and the proposed **Uniform Civil Code** have sparked debates over secularism and equality, invoking the basic structure doctrine as a benchmark for judicial review.

2. **Abrogation of Article 370** in 2019 raised questions about federalism and democratic consent in constitutional processes, again placing the doctrine at the centre of constitutional scrutiny.

B. Criticisms of the Doctrine

Despite its noble objectives, the basic structure doctrine faces significant criticisms:

1. **Lack of definitive criteria:** Courts have not provided a conclusive list of what constitutes the basic structure. This leaves the doctrine open-ended and subject to evolving judicial interpretation.

2. **Judicial overreach:** Critics argue that the doctrine allows unelected judges to override the will of the Parliament, blurring the separation of powers. It is sometimes viewed as “judicial supremacy” under the guise of constitutionalism.

3. **Comparative divergence:** Many democracies like the UK and Australia do not follow such a doctrine, raising

questions about its necessity and appropriateness in India’s context.

4. **Inconsistency in application:** Not all amendments with wide-ranging consequences have been subjected to rigorous scrutiny under the doctrine, leading to selective invocation.

5. Nevertheless, supporters argue that the doctrine is essential in a nation where parliamentary majorities may not always respect democratic or minority rights.

VII. Research Gaps and Limitations

Several significant research gaps and restrictions still exist in the discussion of the concept of basic structure, notwithstanding a wealth of jurisprudence and scholarly engagement:

A. Lack of Codification and Predictability

One of the core criticisms is the absence of codified or uniform principles for identifying elements of the basic structure. The list is developed case by case, often depending on judicial philosophy and prevailing political climate.

B. *Unclear Scope of Judicial Review*
There is no clarity on whether every constitutional amendment should undergo a basic structure test or only those challenged in court. The threshold for invoking this doctrine is neither uniform nor predictable.

C. Inadequate Comparative Analysis

While India’s experience with this doctrine is unique, limited research has been done on how similar constitutional doctrines function in civil law and other common law jurisdictions. Comparative constitutional law could help refine the doctrine.

D. Insufficient Empirical Study

Much of the discourse is normative or doctrinal, with little empirical study on how the basic structure doctrine has influenced legislative behaviour,

⁴⁵¹ I.R. Coelho v. State of Tamil Nadu, (2007) 2 SCC 1

constitutional stability, or judicial integrity in the long run.

E. Public Awareness and Legal Education

There is a limited understanding of the doctrine among students, civil society, and even legal practitioners. This restricts informed public discourse, especially when constitutional amendments are debated in Parliament.

VIII. **Suggestions**

Given its central role in preserving constitutional values, the doctrine of basic structure must evolve with greater clarity, responsibility, and transparency. The following recommendations are meant to improve and enhance its application:

A. Codification through Judicial Guidelines

While rigid codification may defeat the doctrine's flexibility, the Supreme Court can lay down structured guidelines outlining:

1. The standards to determine what makes up the basic structure..
2. The threshold test for applying the doctrine.
3. The scope of permissible constitutional amendments.

This would ensure doctrinal consistency and predictability in constitutional adjudication.

B. Enhanced Use of Comparative Jurisprudence

India can benefit from studying other jurisdictions with entrenched constitutions such as Germany, South Africa, and Israel, where eternity clauses or unamendable provisions safeguard core constitutional values. Comparative perspectives can help develop a global standard for constitutional identity and its protection.

C. Encouraging Legislative Restraint

The Parliament must exercise its amending power with constitutional humility and deliberative maturity.

Amendments should align with democratic values and involve wide public consultation, especially for foundational changes.

D. Academic and Public Discourse

Legal academia and civil society should facilitate broader discussion on the doctrine through conferences, workshops, and research funding. Popularising constitutional values through media and educational syllabi can enhance public constitutional literacy.

E. Need for Judicial Restraint

The basic structure doctrine must be applied sincerely and sparingly by the judiciary, which should refrain from interfering in issues that are better left to political judgement. This creates a balance between institutional credibility and judicial assertiveness.

IX. **Conclusion**

The basic structure doctrine is one of the most profound and lasting contributions of the judiciary to constitutional theory. It represents a powerful assertion that constitutionalism in India is not merely about the text of the Constitution, but also about the enduring values and principles that give it life. Through this doctrine, the Supreme Court has created a vital constitutional checkpoint—a safeguard against arbitrary or ideologically driven amendments that could erode the very foundations of India's democratic framework.

Since the landmark Kesavananda Bharati judgment in 1973, the doctrine has acted as a guardian of core constitutional principles such as the separation of powers, judicial independence, secularism, federalism, and the rule of law. These elements have been repeatedly affirmed as integral to the identity of the Constitution, and beyond the reach of parliamentary majorities. In this way, the doctrine serves a dual function—it ensures continuity with the framers' vision while also allowing for controlled, progressive transformation in tune with contemporary needs.

Despite its lofty ideals, the doctrine has not been without controversy. Critics argue that it suffers from conceptual vagueness, with the boundaries of what constitutes the “basic structure” often being judicially subjective. Concerns of judicial overreach have also been voiced, particularly when courts invoke the doctrine to strike down constitutional amendments passed by elected legislatures. These criticisms highlight the ongoing tension between judicial review and parliamentary sovereignty, a theme that lies at the heart of Indian constitutionalism.

However, it is also this very ambiguity that gives the doctrine its strength. Its flexibility allows the judiciary to adapt its interpretation in response to evolving political, social, and legal challenges. The key lies in the judicial prudence with which it is applied. Over the years, the Supreme Court has used the doctrine with restraint, applying it primarily in cases where the structural integrity of the Constitution was clearly under threat. Judgments such as *Indira Gandhi v. Raj Narain*, *Minerva Mills*, and *I.R. Coelho* have reaffirmed its value in resisting authoritarian encroachments and preserving constitutional balance.

In the 21st century, as India faces increasingly complex constitutional questions—ranging from the use of state power, individual freedoms, to the role of institutions—the basic structure doctrine remains more relevant than ever. For it to continue serving as an effective constitutional sentinel, three things are essential: (1) judicial clarity in identifying core principles without encroaching upon legislative functions; (2) legislative responsibility in respecting constitutional ethos while enacting amendments; and (3) citizen awareness and engagement with constitutional values, ensuring democratic accountability at all levels. Ultimately, the doctrine of basic structure is not just a legal concept—it is a constitutional conscience, reminding all branches of government that power is not absolute, and that the soul of the Constitution must remain untouched, even as the nation evolves.

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