

## THE DOCTRINE OF BASIC STRUCTURE OF THE CONSTITUTION OF INDIA

**AUTHORS – GARIMA & HANISHA SULODIA**

RESEARCH SCHOLARS AT FAIRFIELD INSTITUTE OF MANAGEMENT AND TECHNOLOGY

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### ABSTRACT

The Indian Constitution is the longest and most precious living document of India. It structures governance, safeguards rights and allocates powers among various parts of the state. But there has always been an open debate about how far Parliament can go in amending the Constitution. The idea of Basic Structure propounded through judicial construction is a significant concept in Indian constitutional law. It explains that Parliament can amend all, Article 368 is a power and Parliament can alter any provision of the Constitution, but not its basic structure or essential features. This principle serves as a shield against authoritarianism, preserving the Constitution's fundamental nature irrespective of the alterations in political circumstances.

The Indian Constitution is an inspired document that emerged from India's struggle for independence and the hard work of its founding fathers. This doctrine originated from the famous Kesavananda Bharati case (1973).. This decision marked a crucial moment in Indian constitutional law. It ensures that although the Constitution can change, it cannot be dismantled by temporary political majorities.

The framers gave Parliament broad amending powers under Article 368, but they did not clearly state if there were any limits to this power. This uncertainty triggered several court cases, starting with Shankari Prasad v. Union of India (1951) and ending with the Kesavananda Bharati case. In this case, the Supreme Court decided that Parliament could not change the basic features of the Constitution. The doctrine then became a judicial guard against authoritarianism. It helps ensure that core values like democracy, the rule of law, secularism, and judicial independence are protected from political interference.

**KEYWORDS**- Basic structure, Constitution, Amendment, Judicial Review

### INTRODUCTION

The Constitution of India reflects the will of the people and serves as the base of the nation's democratic system. When the Constitution took effect on January 26, 1950, it declared India a sovereign, socialist, secular, and democratic republic. The framers, led by Dr. B. R. Ambedkar, designed a document that could adjust to social and political changes while also maintaining its core principles. Article 368 of the Constitution outlines the process for making amendments. However, the limits of

Parliament's power to amend have faced significant judicial examination.<sup>438</sup>

The Doctrine of Basic Structure emerged as a judicial innovation to balance constitutional flexibility and stability. It stops Parliament from exercising unlimited power under the pretense of amendment. This principle ensures that certain fundamental features, such as the supremacy of the Constitution, rule of law,

<sup>438</sup> Ernst-Wolfgang Bockenforde et al., *The Historical Evolution and the Changes in the Meaning of the Constitution*, Vol. 1, CONSTITUTIONAL AND POLITICAL THEORY: SELECTED WRITINGS (2016)

separation of powers, and judicial review, cannot be removed even by a constitutional amendment. The doctrine acts as the guardian of constitutional integrity.<sup>439</sup>

The Keshvananda Bharati case has been talked about extensively by legal experts and scholars. Its stance can be summarized as follows: "Despite the procedural issues and the frustrating vagueness of the concept of 'basic structure', Upendra Baxi was insightful when he called the Kesavananda opinion 'the constitution of the future.' This future constitution, known as the basic structure doctrine, was created to evaluate the validity of the parliament's constituent power. The courts have consistently held that this doctrine only applies to the legislature's constituent power, not its legislative power. This means ordinary laws cannot be evaluated against the basic structure doctrine. However, in contrast to this established understanding, the courts have used the doctrine to invalidate ordinary laws. Thus, this raises an important question: should the doctrine be used as a standard for testing the validity of ordinary legislation? Has the judiciary already been using it indirectly?"<sup>440</sup>

The authors support applying the basic structure doctrine to ordinary legislation. They argue that the judiciary has been using this doctrine, both directly and indirectly, in recent years. Even though the doctrine was originally created to test the validity of a constitutional amendment, the idea that it cannot be used for ordinary legislation does not reflect the original intention behind its creation. The process of passing a constitutional amendment is subject to stricter rules than regular laws. Most parts of the Constitution require a special majority in Parliament. This means more than fifty percent of the total members of each House and a two-thirds majority of the members present and voting in each House. Whereas, for an ordinary bill, a simple majority of members must be present, and voting is required. Thus, for a

doctrine that applies to something claimed to be a higher norm, like a constitutional amendment, is it not logical to extend its application to assess the validity of something considered a lower norm, such as ordinary legislation? This question has been left unanswered in many judicial statements addressing the issue.

Additionally, using constitutional morality to invalidate a regular piece of legislation amounts to applying the basic structure doctrine indirectly. The doctrine of constitutional morality serves as a way to uphold the norms of the Constitution. It prevents actions that would violate the rule of law in an arbitrary way. This concept was interpreted in the case of *NCT of Delhi v. Union of India*, where it was linked to the basic structure doctrine. The ruling stated that "constitutional morality in its strictest sense implies a strict and complete adherence to the constitutional principles found in various parts of the document. It is essential that all constitutional functionaries cultivate and develop a spirit of constitutionalism, ensuring that every action they take is governed by and strictly conforms to the basic tenets of the Constitution."<sup>441</sup>

If the constituent and legislative powers were assigned to two different bodies as per the Constitution, it would have made sense to examine them separately using basic constitutional principles. However, since both powers are given to the same body under the Constitution, it raises an important question. Why shouldn't ordinary laws align with the essential values of the Constitution? Moreover, if this isn't the case, why shouldn't the basic structure doctrine apply to test the validity of these laws, just like it does for constitutional amendments?

Even though courts have claimed that the basic structure doctrine does not apply to ordinary legislation, this has not always been true, as discussed earlier. Arguments continue in court challenging the validity of ordinary laws for

<sup>439</sup> Available at <https://www.nextias.com/blog/> last visited on September 12, 2025

<sup>440</sup> *Id*

<sup>441</sup> *NCT of Delhi v. Union of India*

violating the basic structure doctrine. A recent instance is the case of *Indian Union Muslim League v. Union of India*, where the constitutionality of the Citizenship Amendment Act, 2019, was questioned for violating the principle of secularism and, thus, the basic structure doctrine.<sup>442</sup>

Furthermore, the court's remarks in *Supreme Court Advocates-on-Record Assn. v. Union of India* ('NJAC judgment') support the authors' view that courts have used the basic structure doctrine to overturn ordinary legislation. Justice Khehar clearly stated that if a challenge is made against an ordinary law based on the basic structure doctrine, it should not be deemed legally flawed. He also noted that if a challenge to ordinary legislation stems from the combined effect of multiple articles in the Constitution, it is not always necessary to list every article if that combination has already been shown to represent a basic feature of the Constitution.<sup>443</sup>

The differing interpretations of judicial review concerning the basic structure doctrine's applicability to ordinary legislation have led to confusion and excessive judicial authority. This inconsistency stems from a lack of harmony between repeated judicial statements and subsequent rulings on similar matters.

### Historical Background

Initially, the Indian judiciary viewed Parliament's amending power quite broadly. In *Shankari Prasad v. Union of India (1951)*<sup>444</sup> and *Sajjan Singh v. State of Rajasthan (1965)*<sup>445</sup>, the Supreme Court supported Parliament's ability to amend any part of the Constitution, including the Fundamental Rights. The reasoning was that Article 368 gave wide powers. An amendment was not seen as "law" under Article 13, which prevents the State from making laws that go against Fundamental Rights.<sup>446</sup>

However, this interpretation faced criticism. Many scholars argued that letting Parliament limit or remove Fundamental Rights through amendment could weaken the democratic and republican spirit of the Constitution. A key moment occurred with the landmark judgment in *I.C. Golaknath v. State of Punjab (1967)*. In this case, the Supreme Court ruled that Parliament could not amend Fundamental Rights. The Court stated that the power to amend the Constitution was not a constituent power but a legislative one. Therefore, any amendment that violated Fundamental Rights would be void under Article 13(2).

This decision led to a constitutional crisis because it greatly limited Parliament's ability to amend. In response, the government proposed the Twenty-fourth and Twenty-fifth Amendments to restore Parliament's authority. These events paved the way for the landmark *Kesavananda Bharati v. State of Kerala (1973)* case, which changed India's constitutional framework.

### Kesavananda Bharati Case: The Turning Point

In *Kesavananda Bharati v. State of Kerala (1973)*, a 13-judge Bench of the Supreme Court, the largest in its history, looked at the limits of Parliament's power to change the Constitution. The case began when Swami Kesavananda Bharati challenged certain land reform laws, arguing they violated his Fundamental Rights under Articles 25, 26, and 31.<sup>447</sup>

The Court issued a closely contested decision, with a majority of 7 to 6. It ruled that while Parliament has broad powers to change the Constitution under Article 368, it cannot change its basic structure or eliminate its essential features. Chief Justice S. M. Sikri and other judges pointed out several elements of this "basic structure," such as the supremacy of the Constitution, a republican and democratic government, secularism, the separation of

<sup>442</sup> *Indian Union Muslim League v. Union of India*

<sup>443</sup> *Supreme Court Advocates-on-Record Assn. v. Union of India (NJAC judgment)*

<sup>444</sup> *Shankari Prasad v. Union of India (1951)*

<sup>445</sup> *Sajjan Singh v. State of Rajasthan (1965)*

<sup>446</sup> *The Constitution of India, 1950, Art. 13.*

<sup>447</sup> *Ibid*

powers, and the federal nature of the Constitution.<sup>448</sup>

This ruling struck a careful balance between parliamentary authority and constitutional supremacy. It maintained the ability to amend the Constitution but limited it from erasing the fundamental principles that support it. Essentially, the Court established itself as the final protector of the Constitution's identity.

### Components of the Basic Structure

The Supreme Court has never provided an exhaustive list of what constitutes the basic structure. Instead, it has evolved through subsequent cases. However, certain features have consistently been recognized as part of the doctrine, including:

1. Supremacy of the Constitution
2. Rule of Law
3. Principle of Separation of Powers
4. Judicial Review
5. Federal Character of the Constitution
6. Sovereign, Democratic, and Republican Form of Government
7. Secularism
8. Freedom and Dignity of the Individual
9. Unity and Integrity of the Nation
10. Parliamentary System of Government

Each of these elements forms the constitutional identity of India.<sup>449</sup>

For instance, judicial review ensures checks and balances, while secularism and democracy guarantee equality and participation. Any amendment that seeks to dismantle or alter these essential principles is liable to be struck down by the judiciary.

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

The *Minerva Mills*<sup>450</sup> case is a landmark judgment that reaffirmed the **Doctrine of Basic Structure** laid down in *Kesavananda Bharati*. The case challenged the **42nd Constitutional Amendment (1976)**, which gave Parliament unlimited power to amend the Constitution and placed Directive Principles above Fundamental Rights.

The Supreme Court, under Chief Justice Y.V. Chandrachud, ruled that Parliament's power to amend under Article 368 is limited. This limitation is part of the basic structure of the Constitution. The Court invalidated sections of the 42nd Amendment that tried to disrupt the balance between Fundamental Rights and Directive Principles.<sup>451</sup>

The Court emphasized that both Parts III and IV are essential to India's constitutional framework – **neither can override the other**. It also reaffirmed that **judicial review** and **constitutional supremacy** are integral features of the basic structure.<sup>452</sup>

In essence, the *Minerva Mills* judgment strengthened the rule that **no authority, including Parliament, can alter the core principles** of the Constitution.<sup>453</sup>

### Judicial Expansion

After *Kesavananda Bharati*, several cases confirmed and broadened the basic structure doctrine. In *Indira Nehru Gandhi v. Raj Narain* (1975), the Supreme Court struck down Article 329A(4). This article had protected the Prime Minister's election from judicial review. The Court stated that judicial review is a key part of the Constitution and cannot be removed, even through a constitutional amendment.<sup>454</sup>

Later, in *Minerva Mills Ltd. v. Union of India* (1980), the Court stressed the connection between

<sup>448</sup> The Constitution of India, 1950, Art. 368

<sup>449</sup> *Id.*

<sup>450</sup> *Minerva Mills Ltd. v/s Union Of India*, 1980

<sup>451</sup> The Constitution Of India, 1950, Art 14-35

<sup>452</sup> The Constitution of India, 1950, Art 36

<sup>453</sup> *Indira Nehru Gandhi v. Raj Narain* (1975)

<sup>454</sup> *Minerva Mills Ltd. v. Union of India* (1980)

Fundamental Rights and Directive Principles. It stated that Parliament cannot change the Constitution in a way that disrupts this balance. The Court reaffirmed that "limited amending power" is part of the basic structure.<sup>455</sup>

In *Waman Rao v. Union of India* (1981), the Court explained that amendments made before *Kesavananda Bharati* were valid. However, those made after 1973 could be checked for violating the basic structure. The doctrine was also confirmed in *S. R. Bommai v. Union of India* (1994). In that case, the Court stated that secularism is part of the basic structure. It ruled that using Article 356 for political reasons was unconstitutional.<sup>456</sup>

The doctrine's strength was again tested in *I.R. Coelho v. State of Tamil Nadu* (2007). The Court ruled that even laws added to the Ninth Schedule after 1973 are subject to judicial review if they violate the basic structure. This decision reaffirmed the supremacy of the Constitution and the judiciary's role as its protector.<sup>457</sup>

### Interpretations of Result

The doctrine of basic structure is often viewed as a judicial innovation that protects Indian democracy from potential authoritarian misuse. It ensures that temporary political majorities cannot alter the nation's foundational principles. However, critics argue that the doctrine lacks a clear basis in the Constitution. They contend it gives too much power to the judiciary, allowing judges to define what the "basic structure" is.

Despite this criticism, the doctrine has effectively limited parliamentary power. It upholds the principle of constitutional supremacy, ensuring the Constitution is not used as a political tool. The doctrine has evolved over time, adapting to changing political realities while remaining true to the essence of constitutionalism.<sup>458</sup>

The doctrine is strong because it is flexible. Instead of locking the Constitution in place, it allows for change while preserving fundamental values. In a diverse and complex country like India, this balance is essential for maintaining democratic governance and protecting citizens' rights.<sup>459</sup>

### Conclusion

The doctrine of basic structure is central to the Indian Constitution. It protects the vision of the framers from political or popular manipulation. Over the years, it has upheld constitutional morality, judicial independence, and the integrity of fundamental rights. This doctrine is crucial for constitutional democracy in India, balancing the powers of the legislature and the judiciary. As India evolves, this doctrine reminds us that while change is necessary, the principles of justice, liberty, equality, and fraternity must remain strong. It is not just a judicial concept; it represents the living conscience of the Constitution.

The doctrine of basic structure captures the moral and philosophical core of the Indian Constitution. It keeps a careful balance between change and continuity. This allows the Constitution to evolve while preserving its fundamental identity. Established in the *Kesavananda Bharati* judgment, the doctrine has acted as a guardian, safeguarding the essential principles that characterize India as a democratic, secular, and republican nation.

The evolution of this doctrine has been remarkable. It emerged at a time when the balance between the legislature and judiciary was fragile. Still, it established the principle that even Parliament, while having the highest authority to make laws, does not have unlimited power to change the Constitution. This understanding protects key aspects, such as the rule of law, judicial review, and the supremacy of the Constitution. It has safeguarded the heart of India's democracy. By setting this boundary, the judiciary not only

<sup>455</sup> *Waman Rao v. Union of India* (1981),

<sup>456</sup> *S. R. Bommai v. Union of India* (1994)

<sup>457</sup> *Id.*

<sup>458</sup> *Id.*

<sup>459</sup> *Id.*

protected the Constitution from political interference but also reinforced the idea that sovereignty ultimately lies with the people and their Constitution, not with any temporary majority in Parliament.

In the decades following Kesavananda Bharati, the doctrine has clearly shown its worth. It has protected against the misuse of the constitution, as demonstrated in cases like *Indira Nehru Gandhi v. Raj Narain* and *Minerva Mills Ltd. v. Union of India*. It has reinforced secularism, federalism, and the separation of powers as key elements of governance. Most importantly, it has become a living concept, adapting to new challenges while remaining faithful to the principles in the Preamble. This ability to renew itself is what makes the doctrine uniquely Indian. It reflects the constitutional vision of unity in diversity and strength in the face of change. Yet, the doctrine faces criticism. Some scholars believe it gives the judiciary too much power to interpret, confusing judicial review with judicial superiority. However, in a democratic system as large and varied as India's, this judicial oversight serves as an important protection. The doctrine does not try to limit democracy; it aims to ensure that democracy remains meaningful, principled, and true to the values outlined in the Constitution.

Ultimately, the doctrine of basic structure is more than a legal idea. It is a constitutional philosophy that safeguards the moral foundation of the Republic. It makes sure that power, no matter how significant, stays answerable to principle. Amendments, even when intended for good, must stay aligned with constitutional ideals. Governance, no matter how ambitious, should be guided by justice. As India evolves, this doctrine will act as a lasting guardian of its constitutional identity. It serves as a guide that balances the needs of progress with the importance of preserving the core values that define the nation.

The doctrine's importance extends beyond legal boundaries. It shows India's commitment to constitutional morality and democratic

governance. It prevents the misuse of political power and ensures that constitutional amendments serve as tools for progress, not oppression. In a diverse country like India, where political changes are frequent and social inequalities exist, the doctrine of basic structure acts as the invisible thread linking the Constitution to its original ideals. It is not merely a judicial principle; it is a constitutional philosophy that safeguards the essence of India's democracy. This keeps the structure of governance strong on the solid foundations of justice, liberty, equality, and fraternity.