



BASIC STRUCTURE DOCTRINE

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ABSTRACT

The Basic Structure Doctrine stands as a cornerstone of Indian constitutional law, emerging from judicial interpretation to limit Parliament's amending power under Article 368 at a time when the democratic nature of India itself was challenged. A historic 13-judge bench decided whether India was to abandon democracy or revitalise it. This doctrinal research project employs a qualitative, analytical methodology, drawing on primary sources like landmark Supreme Court judgments (Shankari Prasad, Golaknath, Kesavananda Bharati, Indira Nehru Gandhi v. Raj Narain, and Minerva Mills) and constitutional provisions (Articles 13, 368), alongside secondary academic commentaries to examine the history of this rock-solid doctrine and the challenges thrown at it by executives commanding huge majorities in the Legislature.

Keywords: Basic Structure Doctrine, Article 368, Constitutional Law, Parliament, Article 13.

INTRODUCTION

On 26th January 1950, India became a republic, finally throwing off the last chains of almost 200 years of ruthless colonialism after its Constitution, a truly revolutionary document, came into force. No longer was India a Crown Colony or a Dominion, but it could steer its own ship of destiny. The Constitution of India, adopted in 1950, represents the culmination of one of the most ambitious exercises in constitutional design in modern history, especially for a desperately poor, newly independent country where only 1 in 10 people could read and write. It sought to reconcile the conflicting demands of flexibility and rigidity espoused by two very different schools of thought:¹ majority rule and minority rights, parliamentary sovereignty and constitutional supremacy. At the heart of this balancing act lies the power of constitutional amendment under Article 368. This tension between amendability and immutability gave rise

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¹Gautam Bhatia, *The Transformative Constitution* (HarperCollins 2019) xlii–liv.

to one of the most significant judicial innovations in Indian constitutional law: the Basic Structure Doctrine.

The doctrine emerged not from the text of the Constitution but from judicial interpretation, most notably in *Kesavananda Bharati v. State of Kerala* (1973),² where the Supreme Court held that Parliament's amending power, though wide, is not unlimited. Certain features of the Constitution, forming its "basic structure," cannot be abrogated or destroyed. The doctrine thus acts as a constitutional bulwark, ensuring that core principles such as the supremacy of the Constitution, the separation of powers, judicial review, and the rule of law remain inviolable.

Over time, the Basic Structure Doctrine has evolved into the cornerstone of Indian constitutional jurisprudence. It has been invoked to strike down amendments that threatened to upset the balance of democracy and individual rights, including in *Indira Nehru Gandhi v. Raj Narain* (1975)³ and *Minerva Mills v. Union of India* (1980).⁴ The doctrine represents an assertion of judicial supremacy in safeguarding constitutionalism, but it has also invited criticism for its lack of textual basis and potential to undermine parliamentary sovereignty.

This project examines the origin, evolution, and continuing relevance of the Basic Structure Doctrine. It traces its development through landmark cases, analyses its jurisprudential significance, and evaluates the challenges it faces in a dynamic political and constitutional environment. The doctrine, while judicially crafted, has become indispensable to the preservation of India's democratic identity.

RESEARCH FRAMEWORK

The study traces the doctrine's origin amid early tensions between parliamentary sovereignty and judicial review. In *Shankari Prasad* (1951) and *Sajjan Singh* (1965), the Court upheld plenary amending powers, even over fundamental rights, but dissents hinted at inviolable 'basic features.' *Golaknath* (1967) marked a pivot, deeming fundamental rights unamendable, prompting the 24th, 25th, and 29th Amendments. These conflicts culminated in *Kesavananda Bharati* (1973), where a 13-judge bench (7:6) ruled that Parliament cannot destroy the Constitution's basic structure elements like supremacy, democracy, secularism, separation of powers, judicial review, and federalism, thus inventing a judicial check on amendments.

² *Kesavananda Bharati v State of Kerala* 4 SCC 225.

³ *Indira Nehru Gandhi v Raj Narain* Supp SCC 1.

⁴ *Minerva Mills Ltd v Union of India* 2 SCC 591.

EVOLUTION AND SIGNIFICANCE

Post-Kesavananda, the doctrine was reinforced in *Indira Gandhi v. Raj Narain* (1975), invalidating the 39th Amendment for undermining free elections, and *Minerva Mills* (1980), striking parts of the 42nd Amendment to preserve limited amending power and harmony between fundamental rights and directive principles. It safeguards constitutionalism against majoritarian excesses, evolving into a bulwark for democracy while adapting to challenges like populism and judicial overreach.

OBJECTIVES AND CHALLENGES

The project meets five objectives: tracing historical origins; analysing key precedents; evaluating scope for preserving supremacy; identifying criticisms (e.g., lack of textual basis, vagueness in defining elements); and assessing contemporary threats from political developments. Critics argue it undermines sovereignty, yet its endurance underscores normative legitimacy in India's post-colonial context. This doctrine, absent explicit constitutional text, exemplifies judicial innovation, influencing global jurisprudence (e.g., Bangladesh, Pakistan) and ensuring India's Constitution remains a 'living document' balancing change and continuity.

RESEARCH METHODOLOGY AND OBJECTIVES

This project adopts a doctrinal research methodology, relying primarily on the analysis of constitutional provisions, judicial decisions, and scholarly writings. The focus is on tracing the origin, evolution, and application of the Basic Structure Doctrine within the Indian constitutional framework by using these sources to understand a key pillar of modern Indian democracy.

The primary sources include: Landmark judgments of the Supreme Court of India (*Kesavananda Bharati v State of Kerala*, *Golak Nath v State of Punjab*, and *Minerva Mills v Union of India*). Constitutional provisions, particularly Articles 13, 368, and related interpretative debates.

The secondary sources include: Academic commentaries, journal articles, and authoritative books analysing constitutional theory and judicial review.

The research employs a qualitative and analytical approach, critically examining how judicial pronouncements have shaped the doctrine, its implications for constitutional supremacy, and its continuing relevance in contemporary challenges. The work does not involve empirical or field-based study due to impracticality, but instead focuses on normative and jurisprudential analysis.

RESEARCH OBJECTIVES

1. To trace the historical background and origin of the Basic Structure Doctrine in Indian constitutional law.
2. To examine and analyse key judicial precedents related to the Basic Structure Doctrine, especially *Kesavananda Bharati*, *Golak Nath*, and *Minerva Mills*, which established and evolved the doctrine.
3. To evaluate the scope and significance of the Basic Structure Doctrine in preserving constitutional supremacy and democratic governance.
4. To identify the criticisms and limitations of the doctrine as highlighted by jurists and scholars.
5. To assess the contemporary and future challenges to the doctrine in light of political, judicial, and constitutional developments.

ORIGIN

The Constitution of India, adopted in 1950, was written to be a dynamic and living document. It sought to balance parliamentary sovereignty with constitutional supremacy. Yet, from the very beginning, tension arose between Parliament's power to amend the Constitution and the judiciary's duty to protect its essential character. This conflict laid the foundation for the emergence of the Basic Structure Doctrine.

The earliest confrontation came in *Shankari Prasad Singh Deo v Union of India* (1951),⁵ where the validity of the First Amendment, which was related to and curtailed the property right, was challenged. The Supreme Court held that Parliament's power to amend the Constitution under Article 368 was plenary, and that an amendment could not be struck down on the ground that it violated fundamental rights. In this view, the amending power was considered distinct from

⁵ *Shankari Prasad v Union of India* AIR 1951 SC 458.

ordinary legislative power, and thus beyond judicial review, and therefore gave the legislature more power in effect.

This approach was reaffirmed in *Sajjan Singh v State of Rajasthan* (1961),⁶ where the Court once again upheld Parliament's power to amend fundamental rights. However, a notable shift occurred through the powerful dissents of Justices Hidayatullah and Mudholkar. Justice Mudholkar, in particular, hinted at the idea that the Constitution might have certain "basic features" which even Parliament could not destroy. This dissent was not only the first reference to a 'basic structure of the Constitution' but also planted the seed for the doctrine that would later evolve.

However, the judiciary's stance changed dramatically in *I C Golaknath v State of Punjab* (1967).⁷ Here, the Supreme Court by a narrow majority (6:5) ruled that Parliament could not amend fundamental rights at all, as the amending power was located in Article 368, but the procedure prescribed was legislative in nature and not constitutional. The Court held that fundamental rights were "transcendental" and placed beyond the reach of Parliament. This judgment provoked intense criticism, as it appeared to freeze Parliament's ability to adapt the Constitution to social and economic realities and was a very rigid interpretation of the Constitution and a return to the so-called "Gopalan era."⁸

The political backlash to *Golaknath* was swift. The Parliament, headed by Indira Gandhi, enacted the 24th and 25th Amendments, which essentially confirmed its unlimited amending power whilst excluding the right to judicial review. This set the stage for the watershed case of *Kesavananda Bharati v State of Kerala* (1973), where the Supreme Court, sitting in its largest ever bench of thirteen judges, delivered a historic judgment.

EVOLUTION AND KESAVANANDA BHARATI

The Basic Structure Doctrine was not first created in 1973; rather, it was the product of two decades of tension between Parliament and the Judiciary, between the desires of a newly independent India to implement vast socio-economic reform to undo two centuries of exploitation, and the need to maintain the guarantees of liberty and justice in the Constitution. The saga of *Kesavananda Bharati v State of Kerala* (1973) is, in this profound sense, as much

⁶ *Sajjan Singh v State of Rajasthan* AIR 1965 SC 845.

⁷ *Kesavananda Bharati v State of Kerala* (1973) 4 SCC 225 (SC).

⁸ Gautam Bhatia, *The Transformative Constitution* (HarperCollins 2019)

about politics and people as it is about law. The Supreme Court in *Golak Nath v State of Punjab* (1967) determined that Parliament could not amend Part III of the Constitution in a manner that abridged Fundamental Rights. The decision was a defeat for the political leadership, who saw the judiciary as a handbrake on their desired socialist social reform agenda. In response, Parliament quickly enacted the 24th, 25th, and 29th Amendments to the Constitution to redefine and expand upon the Parliament's amending authority. It was into this context of confrontation between the judiciary and Parliament that the *Kesavananda* matter arose.

Background to the Case: The petitioner, His Holiness Kesavananda Bharati, was the head of the Edneer Mutt, a religious institution in Kerala. In 1970, his property rights were threatened by the Kerala government's land reform legislation, which sought to impose ceilings on landholdings and redistribute surplus land. Kesavananda Bharati challenged the constitutionality of these reforms, invoking his Fundamental Rights under Articles 25, 26, and 31. At first glance, the case seemed to be about land rights and religious freedom, but it quickly escalated into a broader confrontation about the scope of Parliament's amending power under Article 368.

The government, led by Prime Minister Indira Gandhi, argued that Parliament's amending power was absolute and unlimited—that it could amend any part of the Constitution, including Fundamental Rights. The petitioners, however, contended that the Constitution was not infinitely malleable: there were certain essential features that could not be destroyed, even by Parliament.

The Judgement: The case was heard by a 13-judge Bench, the largest in the Supreme Court's history. Arguments stretched over 68 days, reflecting the immense constitutional stakes. The judgment, delivered on 24 April 1973, ran into more than 700 pages and produced 11 separate opinions.

By a narrow margin of 7:6, the Court held that while Parliament had wide powers to amend the Constitution, these powers were not unlimited. It could not alter or destroy the basic structure or essential features of the Constitution. Though the judges differed on what exactly constituted this "basic structure," several principles emerged as central: the supremacy of the Constitution, republican and democratic form of government, secularism, separation of powers, judicial review and federalism.

The Kesavananda case has had lasting importance. Not only did it settle, at least as a matter of principle, the conflict between the role of Parliament and the role of the judiciary, but it did so reasonably. It did not end in clear victory and defeat for either party; Parliament's amending authority was established, but only to a point. Over the years since, the basic structure doctrine has been reaffirmed in earlier Supreme Court cases such as *Indira Nehru Gandhi v Raj Narain* (1975) Supp SCC 1 (where the Court reaffirmed judicial review and free and fair elections as part of basic structure) and *Minerva Mills v Union of India* (1980) 3 SCC 625 (where the Court reaffirmed limited amending authority and harmony of Fundamental Rights and Directive Principles as part of basic structure). Kesavananda can thus be characterised as the keystone of Indian constitutionalism. Most importantly, it changed the Constitution, which was previously regarded as a flexible document with available amendments, into a balanced charter where continuity is preserved from the fears representative of transient political will. Kesavananda also represents another step in developing the role of the Court as the intact guardian of constitutional identity. This doctrine is a notable contribution of India to comparative constitutional law, not least to demonstrate how a post-colonial partisan democracy was able to create a domesticated answer to constitutional supremacy versus democratic change.

FUTURE CHALLENGES

While Kesavananda Bharati v State of Kerala (1973) established the doctrine of basic structure, its true strength lay not in the judgment itself but in its survival in the decades that followed. The Court had drawn a fragile line between Parliament's democratic authority and the Constitution's permanence. But was that line robust enough to withstand political challenges, populist mandates, and judicial overreach?

Post-Kesavananda Reinforcements: The doctrine quickly faced its first test in *Indira Nehru Gandhi v Raj Narain* (1975), arising from the challenge to Indira Gandhi's election as Prime Minister. The 39th Amendment sought to immunise the election of high offices, including the Prime Minister, from judicial review. The Supreme Court struck it down, holding that free and fair elections form part of the basic structure. This was a bold assertion: the doctrine was not an abstract principle but a live shield against authoritarian overreach.

Shortly thereafter, in *Minerva Mills v Union of India* (1980), the Court again invoked basic structure to strike down sections of the 42nd Amendment that sought to give Parliament unlimited amending power. The Court declared that the limited amending power itself is a part

of the basic structure, reaffirming that constitutional supremacy cannot be surrendered to parliamentary majorities, however overwhelming they may be.

CONCLUSION

The Basic Structure Doctrine, born from the crucible of *Kesavananda Bharati* (1973), has profoundly shaped Indian constitutionalism by imposing implicit limits on Parliament's amending power under Article 368. This judicial innovation reconciled parliamentary sovereignty with constitutional supremacy, safeguarding core features like democracy, secularism, judicial review, and federalism against transient majoritarian impulses.

From its origins in early cases like *Shankari Prasad* and *Golaknath* to reinforcements in *Indira Gandhi v. Raj Narain* and *Minerva Mills*, the doctrine evolved as a resilient shield, striking down amendments threatening democratic essentials. It underscores the judiciary's role as guardian of the Constitution's identity, transforming a flexible document into a balanced charter resilient to political exigencies.

Yet, criticisms persist: its non-textual basis invites charges of judicial overreach, vagueness in defining elements fosters inconsistency, and rigidity hampers adaptation to modern challenges like executive dominance and populism. Scholars debate its counter-majoritarian tilt, yet affirm its necessity in preventing constitutional backsliding.

In contemporary India, amid political polarisation and institutional frictions (e.g., gubernatorial delays, regulatory debates), the doctrine retains vital relevance, demanding judicious application to balance review with restraint. Ultimately, it embodies India's post-colonial genius, which is a jurisprudential bulwark ensuring the Constitution endures as democracy's eternal keel.