



BASIC STRUCTURE DOCTRINE: SAFEGUARDING DEMOCRACY IN THE 21ST CENTURY

Sourav vats

LLM Student, University School of Law, Rayat Bahra University Mohali

Dr. M.S. Bains

Professor, University School of Law, Rayat Bahra University Mohali

ABSTRACT:

The Basic Structure Doctrine, first articulated in *Kesavananda Bharati v. State of Kerala* (1973), remains one of the most significant judicial innovations in constitutional law. It asserts that while Parliament possesses wide powers to amend the Constitution, it cannot alter its essential features that form the foundation of India's democratic framework. In the 21st century, this doctrine has evolved into a powerful safeguard against authoritarian tendencies, ensuring the supremacy of constitutional principles over transient political majorities. Through landmark judgments, the judiciary has expanded the scope of the doctrine to protect values such as judicial independence, rule of law, secularism, and federalism. This evolution reflects the dynamic interplay between constitutional stability and societal change. By examining contemporary case law and judicial reasoning, this paper highlights how the Basic Structure Doctrine continues to act as a bulwark against constitutional erosion, reinforcing democratic resilience in an era marked by rapid political, social, and technological transformations. Ultimately, the doctrine exemplifies the living nature of the Constitution, balancing continuity with adaptability to safeguard democracy in the 21st century.

KEY-WORDS: Basic Structure Doctrine, Democracy, 21st Century, Parliament, Authority.

1. INTRODUCTION: One of the most important contributions made by the Indian judiciary to constitutional law is the Basic Structure Doctrine, which was established in *Kesavananda Bharati v. State*

of Kerala¹. Designed to prevent parliamentary excess, it guarantees that although Parliament has broad amending authority under Article 368², it is unable to change the core essence of the Constitution. From *Shankari Prasad*³ and *Golak Nath*⁴, the doctrine's development is traced in this article. It was consolidated in *Indira Gandhi v. Raj Narain*⁵ and *Minerva Mills v. Union of India*⁶, and it has since been reaffirmed in decisions like *the NJAC ruling*⁷. The Basic Structure doctrine has profoundly influenced **India's legal and political framework** by protecting key constitutional principles from being altered by Parliament. It ensures that essential features of the Constitution, such as **separation of powers and fundamental rights**, remain intact. This doctrine highlights the **balance between legislative amendments and judicial oversight**. Introduced in the 1973 *Kesavananda Bharati case*⁸, it remains vital for upholding constitutional integrity. One of the most important turning points in Indian constitutional law is the Basic Structure Doctrine. The theory, which originated with the seminal ruling in *Kesavananda Bharati v. State of Kerala*⁹, maintains that although Parliament has broad authority to amend the Constitution under Article 368, it is unable to change or eliminate its essential elements. By guaranteeing that the Constitution's identity rooted in democracy, the rule of law, secularism, separation of powers, and judicial review remains intact, these "basic features" protect the framers' intent. The theory serves as a constitutional protection against the possible tyranny of temporary parliamentary majorities in this way¹⁰.

2. THE PRE-KESAVANANDA POSITION

Parliament's authority to amend the Constitution, particularly the chapter on the fundamental rights of citizens, was challenged as early as in 1951. After independence, several laws were enacted in the states with the aim of reforming land ownership and tenancy structures. This was in keeping with the ruling Congress party's electoral promise of implementing the socialistic goals of the Constitution [contained in Article 39 (b) and (c) of the Directive Principles of State Policy that required equitable distribution of resources of production among all citizens and prevention of concentration of wealth in the hands of a few.

¹ (1973) 4 SCC 225.

² Constitution of India, Art. 368.

³ *Shankari Prasad v. Union of India*, AIR 1951 SC 458.

⁴ *I.C. Golaknath v. State of Punjab*, AIR 1967 SC 1643.

⁵ *Indira Nehru Gandhi v. Raj Narain*, 1975 Supp SCC 1.

⁶ *Minerva Mills Ltd. v. Union of India*, (1980) 3 SCC 625.

⁷ *Supreme Court Advocates-on-Record Association v. Union of India*, (2016) 5 SCC 1.

⁸ *supra* note 1.

⁹ *Ibid.*

¹⁰ Upendra Baxi, "The Basic Structure Doctrine: A Constitutional Mythology" 23 JILI 45 (1981).

Property owners adversely affected by these laws petitioned the courts. The courts struck down the land reforms laws saying that they transgressed the fundamental right to property guaranteed by the Constitution. Piqued by the unfavorable judgements, Parliament placed these laws in the **Ninth Schedule** of the Constitution through the **First and Fourth amendments** (1951 and 1952 respectively), thereby effectively removing them from the scope of judicial review¹¹.

Parliament added the Ninth Schedule to the Constitution through the very first amendment in 1951 as a means of immunizing certain laws against judicial review. Under the provisions of Article 31, which themselves were amended several times later, laws placed in the Ninth Schedule pertaining to acquisition of private property and compensation payable for such acquisition cannot be challenged in a court of law on the ground that they violated the fundamental rights of citizens. This protective umbrella covers more than 250 laws passed by state legislatures with the aim of regulating the size of land holdings and abolishing various tenancy systems. The Ninth Schedule was created with the primary objective of preventing the judiciary which upheld the citizens' right to property on several occasions from derailing the Congress party led government's agenda for a social revolution.¹²

Property owners again challenged the constitutional amendments which placed land reforms laws in the Ninth Schedule before the Supreme Court, saying that they violated Article 13 (2) of the Constitution. In 1967, an eleven-judge bench of the Supreme Court reversed its position. Delivering its 6:5 majority judgement in the *Golaknath v. State of Punjab case*¹³, Chief Justice Subba Rao put forth the curious position that Article 368, that contained provisions related to the amendment of the Constitution, merely laid down the amending procedure. Article 368 did not confer upon Parliament the power to amend the Constitution. The amending power (constituent power) of Parliament arose from other provisions contained in the Constitution (Articles 245, 246, 248) which gave it the power to make laws (plenary legislative power). Thus, the apex court held that the amending power and legislative powers of Parliament were essentially the same. Therefore, any amendment of the Constitution must be deemed law as understood in Article 13 (2).

¹¹ Constitution of India, Ninth Schedule (inserted by the First Amendment Act, 1951).

¹² Insights IAS, "Ninth Schedule of Indian Constitution: History, Issues & Judicial Review" (Aug. 22, 2025), available at <https://www.insightsonindia.com> (last visited on 22 April 2026).

¹³ Supra note 4.

The majority of judgement invoked the concept of implied limitations on Parliament's power to amend the Constitution. This view held that the Constitution gives a place of permanence to the fundamental freedoms of the citizen. In giving the Constitution to themselves, the people had reserved the fundamental rights for themselves.¹⁴ Article 13, according to the majority view, expressed this limitation on the powers of Parliament. Parliament could not modify, restrict or impair fundamental freedoms due to this very scheme of the Constitution and the nature of the freedoms granted under it. The judges stated that the fundamental rights were so sacrosanct and transcendental in importance that they could not be restricted even if such a move were to receive unanimous approval of both houses of Parliament. They observed that a Constituent Assembly might be summoned by Parliament for the purpose of amending the fundamental rights if necessary.¹⁵

In other words, the apex court held that some features of the Constitution lay at its core and required much more than the usual procedures to change them. The phrase 'basic structure' was introduced for the first time by M.K. Nambiar and other counsels while arguing for the petitioners in the Golaknath case, but it was only in 1973 that the concept surfaced in the text of the apex court's verdict.

3. EMERGENCE OF THE BASIC STRUCTURE CONCEPT- THE KESAVANANDA MILESTONE

Inevitably, the constitutional validity of these amendments was challenged before a full bench of the Supreme Court (thirteen judges). Their verdict can be found in eleven separate judgements. Nine judges signed a summary statement which records the most important conclusions reached by them in this case. Granville Austin notes that there are several discrepancies between the points contained in the summary signed by the judges and the opinions expressed by them in their separate judgements. Nevertheless, the seminal concept of 'basic structure' of the Constitution gained recognition in the majority verdict.¹⁶

All judges upheld the validity of the Twenty-fourth amendment, saying that Parliament had the power to amend any or all provisions of the Constitution. All signatories to the summary held that the Golaknath case had been decided wrongly, and that Article 368 contained both the power and the procedure for amending

¹⁴ M.P. Jain, *Indian Constitutional Law* 1352 (LexisNexis, Gurgaon, 7th edn., 2014)

¹⁵ Vajiram & Ravi, "Golaknath Case 1967: Background, Judgement, Impact" (Jan. 5, 2026), available at <https://vajiramandravi.com> (last visited on 23 April, 2026).

¹⁶ Granville Austin, *Working a Democratic Constitution: The Indian Experience* 262 (Oxford University Press, New Delhi, 1999).

the Constitution. However, it was clear that an amendment to the Constitution was not the same as a law as understood by Article 13 (2).

It is necessary to point out the subtle difference that exists between two kinds of functions performed by the Indian Parliament:

- a) it can make laws for the country by exercising its legislative power and
- b) it can amend the Constitution by exercising its constituent power.

Constituent power is superior to ordinary legislative power. Unlike the British Parliament which is a sovereign body (in the absence of a written constitution), the powers and functions of the Indian Parliament and State legislatures are subject to limitations laid down in the Constitution. The Constitution does not contain all the laws that govern the country. Parliament and the state legislatures make laws from time to time on various subjects, within their respective jurisdictions. The general framework for making these laws is provided by the Constitution. Parliament alone is given the power to make changes to this framework under Article 368. Unlike ordinary laws, amendments to constitutional provisions require a special majority vote in Parliament.¹⁷

Another illustration is useful to demonstrate the difference between Parliament's constituent power and law making powers. According to Article 21 of the Constitution, no person in the country maybe deprived of his life or personal liberty except according to procedure established by law. The Constitution does not lay down the details of the procedure as that responsibility is vested with the legislatures and the executive. Parliament and the state legislatures make the necessary laws for unifying activities for which a person may be imprisoned or sentenced to death. The executive lays down the procedure of implementing these laws and the accused person is tried in a court of law. Changes to these laws may be incorporated by a simple majority vote in the concerned state legislature. There is no need to amend the Constitution in order to incorporate changes to these laws. However, if there is a demand to convert **Article 21** into the fundamental right to life by abolishing death penalty, the Constitution may have to be suitably amended by Parliament using its constituent power¹⁸.

¹⁷ Constitution of India, Art. 368.

¹⁸ H.M. Seervai, *Constitutional Law of India* Vol. I, 307 (Universal Law Publishing, New Delhi, 4th edn., 1991).

Most importantly seven of the thirteen judges in the *Kesavananda Bharati case*¹⁹, including Chief Justice Sikri who signed the summary statement, declared that Parliament's constituent power was subject to inherent limitations. Parliament could not use its amending powers under Article 368 to 'damage', 'emasculate', 'destroy', 'abrogate', 'change' or 'alter' in the 'basic structure' or framework of the Constitution.

4. PURPOSE OF THE STUDY

This article aims to trace the historical development of the Basic Structure Doctrine in India, analyze its jurisprudential underpinnings, and situate it within a broader comparative context. By examining parallels with doctrines of constitutional identity and unamendable principles in other jurisdictions, the study highlights the doctrine's place within global constitutional discourse.

5. METHODOLOGY

The research adopts a jurisprudential-comparative methodology, combining doctrinal analysis of constitutional case law with comparative inquiry across multiple jurisdictions. The approach involves

1. Doctrinal Research: analyzing authoritative sources such as statutes, constitutional provisions, and judicial precedents in India and situating legal developments within their historical, political, and cultural contexts to understand why doctrines of constitutional limitation emerge.
2. Interpretive Synthesis: drawing conclusions on the relationship between constitutional rigidity, democratic adaptability, and the resilience of constitutional identity. Through this combined approach, the article not only revisits the Indian judicial journey from *Shankari Prasad* to the *NJAC case* (2015) but also situates it within an international conversation on safeguarding constitutional permanence.

6. HISTORICAL EVOLUTION OF THE DOCTRINE IN INDIA

a. *Shankari Prasad v. Union of India*²⁰: The Doctrine of Unlimited Amending Power *Shankari Prasad v. Union of India* (1951) was the first constitutional dispute concerning Parliament's modifying power. In order to protect land reform policies from judicial scrutiny, the petitioners contested the First Constitutional Amendment, which among other things added Articles 31A and 31B and established the Ninth Schedule.

¹⁹ *supra* note 1.

²⁰ *Shankari Prasad v. Union of India*, AIR 1951 SC 458.

They argued that because Article 13(2) forbids the State from passing "laws" that restrict basic rights, such amendments were invalid because they infringed upon such rights. The amendment was unanimously affirmed by the Supreme Court. It made a distinction between the legislative power under Articles 245–248 and the constituent power under Article 368, concluding that constitutional modifications did not qualify as "law" under Article 13(2). Parliament was therefore deemed to have the authority to change any provision of the Constitution, including the fundamental rights clause. This ruling highlighted Parliament's primacy in constitutional amendment and established the early doctrine of unrestricted amending power.

b. Golak Nath v. State of Punjab²¹: Recognition of Limited Amending Power The case of *Golak Nath v. State of Punjab* (1967) took a dramatic turn when a slim 6:5 majority ruled that Parliament lacked the power to change basic rights. According to the Court, constitutional amendments were treated as "law" under Article 13(2), which applied to them equally. According to this reasoning, any amendment that restricted or eliminated fundamental rights was unlawful. By stating that its conclusion would only apply to future modifications, the Court used the doctrine of prospective overruling to lessen the disruptive impact of this decision. This ruling was heavily condemned for judicial overreach and for putting real barriers to socioeconomic development in place, even though it stopped Parliament from altering laws pertaining to basic rights. It was significant because it prepared the ground for a constitutional conflict in *Kesavananda Bharati* (1973)

c. Kesavananda Bharati v. State of Kerala²²: The Birth of the Basic Structure Doctrine A landmark 13-judge panel's decision in *Kesavananda Bharati v. State of Kerala* marked a clear turning point in Indian constitutional jurisprudence. The question at hand was whether Article 368 gave Parliament unrestricted authority or if there were built-in limitations. The Court ruled by a narrow 7:6 majority that although Parliament might change any part of the Constitution, including fundamental rights, it could not change or eliminate the fundamental framework of the document. While the judges did not offer a comprehensive list of all the elements that made up this structure, a few characteristics repeatedly surfaced-

- Supremacy of the Constitution
- Republican and democratic form of government

²¹ *Golaknath v. State of Punjab*, AIR 1967 SC 1643.

²² *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225.

- Secularism
- Separation of powers
- Federal character
- Judicial review

This doctrine struck a delicate balance, preserving Parliament's flexibility to pursue social and economic reforms while ensuring that the Constitution's core identity remained beyond its reach. The basic structure doctrine thus became India's most celebrated judicial innovation and a unique contribution to global constitutional thought.

d. Minerva Mills v. Union of India²³: Balance Between Rights and Directive Principles The 42nd Amendment (1976) had attempted to confer unlimited amending power on Parliament and subordinated fundamental rights to directive principles. The Court invalidated these provisions, reaffirming that-

- Judicial review is an essential feature of the basic structure.
- A balance between fundamental rights and directive principles is integral to constitutional identity.

Thus, the Court reinforced that Parliament's power to amend itself is subject to constitutional limits.

e. S.R. Bommai v. Union of India²⁴: Federalism and Secularism In reviewing the dismissal of state governments under Article 356, the Court held that federalism and secularism are part of the basic structure. The ruling curtailed misuse of Article 356 for partisan ends and emphasized that constitutional principles, not political convenience, must govern federal relations.

f. I.R. Coelho v. State of Tamil Nadu²⁵: Ninth Schedule and Judicial Review This judgment extended the doctrine's reach by holding that laws placed in the Ninth Schedule after April 24, 1973, remain subject to basic structure scrutiny. In doing so, the Court reinforced that judicial review cannot be ousted by constitutional maneuvering, thereby safeguarding fundamental rights from indirect abrogation.

²³ *Minerva Mills Ltd. v. Union of India*, (1980) 3 SCC 625.

²⁴ *S.R. Bommai v. Union of India*, (1994) 3 SCC 1.

²⁵ *I.R. Coelho v. State of Tamil Nadu*, (2007) 2 SCC 1.

g. Supreme Court Advocates-on-Record Association v. Union of India (NJAC Case, 2015)²⁶: Judicial Independence in the 21st Century The 99th Constitutional Amendment and NJAC Act sought to replace the collegium system of judicial appointments with a commission involving the executive. Striking these measures, the Court reaffirmed that judicial independence is part of the basic structure. The ruling underscored the doctrine's contemporary relevance in maintaining institutional checks and balances.

7. KEY ISSUES SURROUNDING THE BASIC STRUCTURE DOCTRINE

No constitutional basis: The Constitution as a whole is a basic law, and the Basic Structure provision is an attempt to locate something even more basic than that.

This line of thought was not there in the constituent assembly.

The constituent assembly had never notified that some features were more important than others.

Scope of the Basic Structure: One of the primary debates centers around what constitutes the “Basic Structure” of the Indian Constitution.

- While certain principles like democracy, secularism, and the rule of law are widely accepted as part of the Basic Structure, there is ongoing discussion about whether specific policies or provisions, such as reservation policies, fall within this framework.
- **Constituent Power of Parliament vs. Judicial Review:** There is an ongoing debate about the balance of power between the judiciary and the legislature²⁷.
 - Critics of the doctrine have called it undemocratic since unelected judges can strike down a constitutional amendment.
 - At the same time, its proponents have hailed the concept as a safety valve against majoritarianism and authoritarianism.
- **Role of the Judiciary:** Some critics question the extent to which the judiciary should have the authority to decide what constitutes the Basic Structure.
 - There are debates about whether the judiciary is overreaching and acting as a “**super-legislature**”, the Third chamber of the Parliament.
- **Decision to include or exclude features based on subjective assessment:** The power to decide the inclusion of subjects in the Basic Structure lies with the apex court bench and the judges on it.

²⁶ *Supreme Court Advocates-on-Record Association v. Union of India*, (2016) 5 SCC 1.

²⁷ H.M. Seervai, *Constitutional Law of India* Vol. I, 307 (Universal Law Publishing, New Delhi, 4th edn., 1991).

- Hence any subject's inclusion or non-inclusion is based on a subjective assessment of the individual judge, which can vary from person to person and even time.

These issues reflect the complex and evolving nature of constitutional law and governance in India. Public discourse, judicial decisions, and academic scholars continue to shape the understanding and application of the Basic Structure doctrine.

8. CONCLUSION

The Indian constitution has its own structure and forms. Basic Structure doctrine cases are not a part of it. It has developed with the exposure and interference of the Judiciary for most of the time to protect people's basic rights and philosophy of the constitution. The formation of basic structure clearly depends upon the *Shakari Prasad* case conflict with the Union of India. As this case challenged the First Constitutional Amendment Act 1951, it pointed out the violations of constitutional parts. The Supreme Court had ordered under Article 368 to amend any part of the constitution if it's invalid. Therefore, the basic structure doctrine arose gradually. Soon, in 1967, in the *Golak Nath vs State of Punjab* case, the supreme court had held that the Parliament of India has no power to amend any part of the constitution. The Supreme Court had ordered that Article 368 will only lay down the procedure to amend the constitution and has no powers to the parliament to alter the parts of the constitution.