

---

# DOCTRINE OF BASIC STRUCTURE: EVOLUTION AND SIGNIFICANCE

---

Devika Saini, Gujarat National Law University, Gandhinagar

## ABSTRACT

This article examines the significance of Basic structure doctrine as a key legal principle of Indian Constitutional law. It was originally established by the Hon'ble Supreme Court of India in the landmark judgment *Kesavananda Bharati v. State of Kerala* (1973), presided over by then Chief Justice of India S.M. Sikri, heading a 13-judge constitutional bench, which limited the legislature's power to amend the Constitution under Article 368. The paper discusses the background, key issues raised, and the judgment delivered by the apex court, followed by the evolution of Basic Structure doctrine in India's constitutional history through subsequent developments. It highlights how the Supreme Court of India has refined its judicial reasoning in subsequent cases in order to prevent legislative overreach. Lastly, the article concludes by underscoring the continued relevance of Basic Structure doctrine, emphasizing how it has become an integral part in the Indian legal system by safeguarding individual rights and maintaining a system of checks and balances, ensuring that no organ of government exceeds its jurisdiction.

**Keywords:** Basic structure doctrine, Constitutional law, *Kesavananda Bharati* case, Article 368, Judicial Reasoning, Legislative Overreach, Evolution of Doctrine, Checks and Balances, Jurisdiction, Separation of Power.

## Introduction

The basic structure doctrine is a crucial legal principle which asserts that Parliament cannot enact any law which violates the basic structure of the constitution, and if such a law is enacted, then judiciary holds the power to declare the law null and void. This doctrine was formally established by the Supreme Court of India in the landmark judgement of *Kesavananda Bharati v. State of Kerala (1973)*<sup>2</sup>. Although, this doctrine is not explicitly mentioned in the constitution but it has been evolved through judicial interpretation over time. The core elements of basic structure include secularism, judicial review, rule of law, separation of powers, federalism, sovereign democratic republic structure. It expands the power of judiciary in maintaining the rule of law and ensures public welfare. It establishes a system of checks and balances between the different organs of government by preventing the legislative encroachment on people's rights.

### **His Holiness Kesavananda Bharati Sripadagalvaru & Ors. v. State of Kerala & Anr. (1973)**

**Background:** Kesavananda Bharati case originated from Kerala Land Reforms Act, 1963 aiming to re-distribute excessive land from large landholders to landless and poor people. This act was primarily enacted to abolish landlordism and restructure the agrarian sector. Land of Sri Kesavananda Bharati was acquired under Kerala Reforms Act, 1963 therefore, he challenged the constitutionality of the Act in the Kerala High Court.

In the meantime, Parliament of India also passed **24<sup>th</sup> Amendment Act** which gave Parliament the power to amend any provision of the constitution including Fundamental Rights of citizens enshrined in Part-III of the Constitution of India.

**25<sup>th</sup> amendment** was also enforced which curtailed Fundamental Right- Right to Property under Article 31 of the Constitution of India and strengthened the power of State to acquire private property for public use and the compensation would also be decided by the Parliament leaving scope for exploitation.

**29<sup>th</sup> amendment** placed two major Kerala Land reforms under Schedule 9 of the Indian Constitution protecting them from judicial review. These two land reforms are Kerala Land Reforms (Amendment) Act, 1969 and the Kerala Land Reforms (Amendment) Act, 1971.

Eventually, the case went to Supreme Court of India where Kesavananda Bharati challenged 24<sup>th</sup>, 25<sup>th</sup> and 29<sup>th</sup> Constitutional Amendment Act. The largest constitutional bench of 13 judges in Indian history was constituted in this landmark case of legal history.

### **Issues raised**

Kesavananda Bharati case raised critical constitutional questions regarding the extent of Parliament's amending power

1. Whether Parliament's constitutional amending power was absolute in nature, are there any implied limitations to it?
2. It questioned the constitutionality of 24<sup>th</sup>, 25<sup>th</sup> and 29<sup>th</sup> constitutional amendment acts.
3. The relationship between Fundamental Rights and Directive Principle of State Policy, and whether fundamental rights could be violated in order to enforce directive principle of state policy.
4. Whether laws under 9<sup>th</sup> schedule of the constitution are completely immune from judicial review?
5. Petitioner's rights under Articles 25, 26, 14, 19(1)(f) and 31 of the Constitution of India were violated.

### **Judgment**

The landmark verdict was delivered by largest ever constitutional 13-judge bench on 24 April, 1973 presided over by then Chief Justice of India S.M. Sikri in 7:6 majority. The Basic Structure doctrine was instituted in this case by Supreme Court of India upholding that Parliament has the power to amend the constitution under Article 368 but cannot emasculate the basic principles of the constitution. Supreme Court did not give an exhaustive list but provided an indicative list elaborating what constitutes the basic structure, which includes supremacy of law, federalism, secularism, judicial review, separation of power, sovereign, rule of law and identifying the basic structure from a case-to-case basis.

24<sup>th</sup> constitutional amendment was upheld by the court whereas part I and II of 25<sup>th</sup> Constitutional Amendment was declared *intra vires* (within the powers) and *ultra vires* (beyond

the powers) respectively.

The apex court specified in this judgment that Parliament has the power to amend fundamental rights under Article 368 which gives exclusive power to Parliament to amend the constitution by addition, variation or repeal of any provision, but Parliament shall not amend the constitution in such a manner which violates the basic and fundamental features of the constitution thereby, enforcing rule of law and supremacy of constitution.

### **Evolution of Basic Structure Doctrine**

The Basic Structure Doctrine has evolved through a series of judgments by the Supreme Court of India between 1951-1980 culminating in the landmark case of *Kesavananda Bharati v. State of Kerala*.

#### **1. *Shankari Prasad Singh Deo v. Union of India (1951)*<sup>3</sup>**

Supreme Court upheld the 1<sup>st</sup> Constitutional amendment made by parliament and held that the legislature can amend the Fundamental Rights. Article 13(2) stating that no “law shall take away fundamental rights” was in contravention with this judgment as Supreme Court of India held that constitutional amendments are not ordinary laws, therefore they are exempt from this restriction.

#### **2. *I.C. Golaknath v. State of Punjab (1967)*<sup>4</sup>**

SCI in this judgement overturned its previous judgement of Shankari prasad case, that “fundamental rights are amendable by parliament”, Supreme court in this case by a majority of 6:5 held that Parliament cannot make an amendment to the constitution in a manner that encroaches upon the Fundamental Rights of citizens and any amendment which abridges the rights of people shall be deemed as null and void.

#### **3. *Kesavananda Bharati v. State of Kerala (1973)***

The landmark judgement in the constitutional history of India which laid down the Basic Structure Doctrine, limiting the amending power of parliament delivered by the largest-ever constitutional bench in 7:6 majority denoting the extent of altering power of parliament.

#### 4. *Indira Gandhi v. Raj Narain (1975)*<sup>5</sup>

It is also famously known as the Election Case which decided the validity of two controversial clauses which were added via 39<sup>th</sup> Constitutional Amendment Act, 1975, clause 4 of Article 329A validated the elections of Prime Minister and Speaker of Lok Sabha and clause 5 of the same article stated that their elections are outside the purview of judicial review and no appeal shall be made before Supreme Court in case of disagreement over the legitimacy of elections. Supreme Court in this case held that clause 4 and 5 of Article 329A shall be deemed as unconstitutional on the grounds of violating the basic structure of the constitution are arbitrary in nature and not within the ambit of judicial review.

It was the first time when basic structure doctrine was applied in a case.

#### *Minerva Mills Ltd. v. Union of India (1980)*<sup>6</sup>

The Supreme Court of India reinforced the basic structure doctrine by striking down 42<sup>nd</sup> Constitutional Amendment Act, 1976 often referred to as “Mini-Constitution”, which significantly expanded legislature’s power and curtailed the power of judicial review in legislative matters. The case clarified the extent of parliament’s law-making and amending power and defined that legislature’s power is not absolute in nature. By striking down key features of 42<sup>nd</sup> CAA, 1976 Supreme Court of India reinforced the supremacy of law, judicial review and balance between Fundamental Rights and Directive Principles of State Policy.

### **Conclusion**

The basic structure doctrine remains the cornerstone of Indian constitutional law and has been consistently applied in various judicial decisions. It bolsters the supremacy of the Constitution in our nation and ensures a system of checks and balances within the organs of government. Although it has been refined numerous times by Hon’ble Supreme Court of India through its judgments, the continued relevance and application of this doctrine is a testament to its significance in our legal system. The Basic Structure doctrine strikes a balance between the amending power of Parliament and the power of judicial review. While it has been criticised for the extent of judicial intervention in constitutional matters, it nevertheless serves, in an evolving constitutional framework, as a vital safeguard in protecting individual rights and preventing authoritarian overreach.

## **Bibliography**

### **Cases**

1. *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461
2. *I.C. Golaknath v. State of Punjab*, AIR 1967 SC 1643
3. *Shankari Prasad v. Union of India*, AIR 1951 SC 458
4. *Indira Nehru Gandhi v. Raj Narain*, AIR 1975 SC 2299
5. *Minerva Mills Ltd. v. Union of India*, AIR 1980 SC 1789

### **Statutes**

1. Constitution of India, Part III Fundamental Rights
2. Constitution of India, Part XX Article 368
3. 42<sup>nd</sup> Constitutional Amendment Act, 1976
4. 44<sup>th</sup> Constitutional Amendment Act, 1978

### **Web Sources**

1. <https://judgments.ecourts.gov.in/KBJ/?p=home%2Fbackground>
2. <https://www.manupatracademy.com/legalpost/manu-sc-0075-1980>
3. <https://www.legalserviceindia.com/legal/article-14650-basic-structure-doctrine-rethinking-the-foundations-of-indian-constitutional-law.html>