
EVOLUTION AND SIGNIFICANCE OF BASIC STRUCTURE DOCTRINE IN INDIA

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ABSTRACT

The “Doctrine of Basic Structure” was devised by the Judicial system 53 years ago, by the landmark judgement *Kesavananda Bharti Sripadagalvaru v. State of Kerala*¹². The lengthy judgement of the Hon’ble Supreme Court was the desperate attempt of the judiciary to guard the constitutional integrity against the arbitrary amendment by the Legislature.

The paper is an attempt to provide the reader a comprehensive analysis of the various judgements such as *Sankari Prasad v. Union of India*², *Sajjan Singh v. State of Rajasthan*³, *Golak Nath v. State of Punjab*⁴, *Kesavananda Bharti Sripadagalvaru v. State of Kerala*⁵⁶, *Indira Nehru Gandhi v. Raj Narain*⁶, *Minerva Mills v. Union of India*⁷⁸, and followed by *Indra Sawhney v. Union of India*⁸. The paper provides a brief overview of these judgements and also provides the critical analysis of the “Doctrine of Basic Structure”. The paper is an attempt to help the reader to form a clear opinion about the doctrine of the basic structure. Herein cited in the footnotes, are the relevant official sources and various research papers and judgements of the court that I have used to write this paper.

¹ (1973) 4 SCC 225

² SCC 966

³ AIR 1965 SC 845

⁴ AIR 1967 SC 1643

⁵ (1973) 4 SCC 225

⁶ Supp SCC 1

⁷ (1980) 3 SCC 625

⁸ Supp (3) SCC 217

Introduction

The Basic Structure Doctrine finds its origins in the interpretive battles surrounding Article 368, the constitutional provision that empowers Parliament to amend one of the most vital components of the Constitution of India itself. This power allows the Constitution to reflect the "felt need of the times" as society evolves, ensuring that the document remains a living instrument rather than a static text. Even as this power was conceived, the language it carried within it carries the seeds of its own limitation. Article 368, as it originally stood, employed two distinct terms **"amend"** in the substantive clause and **"change"** in the proviso clause. The phrase **"the Constitution shall stand amended"** in the Article 368 implies that, even after alterations or modifications are carried out, what remains must still be recognisable as a constitution, it cannot be repealed in its entirety, leaving nothing behind. Similarly, the word **"change"** used in the proviso permits modification or substitution, but does not sanction total repeal. These linguistic distinctions served as a pointer towards the idea that Parliament's amending power, however wide, was never meant to be unlimited, an idea that would eventually crystallise into the Basic Structure Doctrine.

The phrase **"basic structure"** was introduced for the first time not by the Court, but by M.K. Nambiar and other counsels while arguing for the petitioners in the Golak Nath case⁹. It was only later, in 1973, that the concept found formal expression in the text of the Hon'ble Supreme Court's verdict. The question of parliamentary supremacy was tested once again when Parliament introduced laws aimed at providing greater access to bank credit for the agricultural sector and ensuring a more equitable distribution of wealth and resources of production. This was done through two major steps: the nationalisation of banks, and the derecognition of former princely rulers in a bid to abolish their privy purses. Payments that had been promised to them in perpetuity as an incentive to comply to the Indian Union at the time of independence. This set the stage for the Hon'ble Supreme Court to finally decide the limits of Parliament's amending power.

Article 368 and The Amending Powers

Article 368 of the Indian Constitution serves as the primary mechanism for constitutional flexibility, granting Parliament the constituent power to amend the document by way of

⁹ AIR 1967 SC 1643

addition, variation, or repeal. This power is essential for ensuring that the Constitution remains a living document capable of evolving to meet the "felt need of the times" as society changes.

The article outlines three distinct methods of amendment

- those requiring a simple majority (similar to ordinary legislation),
- those requiring a special majority of two-thirds of members present and voting in each House, and
- those affecting the federal structure, which also require ratification by at least half of the state legislatures.

Historically, the scope of this amending power has been a central point of contention between the Judiciary and the Legislature. Early landmark cases such as *Shankari Prasad*¹⁰¹¹ and *Sajjan Singh*¹¹ upheld Parliament's authority as nearly absolute, ruling that constitutional amendments were not subject to the same limitations as ordinary laws and could even abridge Fundamental Rights. This view was famously reversed in the *Golak Nath* case¹², where the Hon'ble Supreme Court held that Article 368 merely laid down the procedure for amendment and did not confer the substantive power to take away the rights protected in Part III.

In response, the Parliament enacted the 24th Amendment Act in 1971 to explicitly clarify that Article 368 provides both the power and the procedure to amend any part of the Constitution. However, the ultimate limitation on this power was established in the landmark *Kesavananda Bharati* case¹³, which introduced the Basic Structure Doctrine. This doctrine asserts that while Parliament's amending power is broad, it is not unlimited, the Article 368 does not authorize the destruction or abrogation of the Constitution's inherent structure or the basic structure. The Hon'ble Supreme Court drew this interpretation by the linguistic requirement in Article 368 that the Constitution must "**stand amended,**" signifying that the document must remain a constitution even certain alterations and modifications and preserve its core identity or the basic structure.

There is an important difference between legislative power and constituent power. They are

¹⁰ (1973) 4 SCC 225

¹¹ SCC 966

¹² AIR 1967 SC 1643

¹³ (1973) 4 SCC 225

distinct in origin have their own limitations. Legislative power is the ordinary power of a legislature to make laws for governance, and this power is always bound by the Constitution. However, the constituent power, on the other hand, is the special power used to amend, add to, or remove the provisions of the Constitution itself. In India, Parliament's constituent power derivative, and not the original one like the Constituent Assembly, which had drafted the Constitution from scratch. The Parliament itself is a creation of the Constitution. This means Parliament can only use its amending power within the boundaries set by the very document that gives it authority in the first place.

This relationship between the two powers was at the heart of the early constitutional cases. In *Shankari Prasad*¹⁴ and *Sajjan Singh*¹⁵, the Hon'ble Supreme Court initially held that constituent power stood above ordinary legislative power and was not bound by Article 13(2) of the constitution, which stops the State from making any law that takes away Fundamental Rights. However, this view changed in *Golak Nath*¹⁶, where the Hon'ble Court held that the power to amend the Constitution was really just a type of legislative power, meaning constitutional amendments could be reviewed by courts in the same way as ordinary laws.

This back-and-forth was finally settled in *Kesavananda Bharati*¹⁷, which brought back the distinction between the two powers while also introducing the **Basic Structure Doctrine**. The Hon'ble Court held that although Article 368 gives Parliament wide constituent power, this power is not unlimited and it cannot be used to damage, emasculate, or destroy the essential identity of the Constitution itself. This idea is backed by the specific wording of Article 368, which says the Constitution shall stand amended. The Hon'ble Court read this to mean that the Constitution must continue to exist as a constitution, keeping its core structure and founding principles intact even after it has been amended.

Analysis of Hon'ble Supreme Court's Judgements

The Basic Structure Doctrine was not formulated in a single day. It is formulated after thousand of arguments by the brilliant advocates, sr. advocates of the country. Not only the advocates bult also the brilliant minds of the Hon'ble Judges of the country helped formulate this basic

¹⁴ (1973) 4 SCC 225

¹⁵ SCC 966

¹⁶ AIR 1967 SC 1643

¹⁷ (1973) 4 SCC 225

structure doctrine. Few of the landmark cases that helped in the formulation are: -

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

This question first came before the Hon'ble Supreme Court of India in Shankari Prasad v. Union of India in the year 1951. Herein, in this case the First Constitutional Amendment was challenged before the Hon'ble Supreme Court, on the ground that the amendment in the question abridged the fundamental rights in the Part-III of the Constitution of India, specifically the right to property by introducing the Ninth-Schedule along with **Article 31-A** and **Article 31-B**.

The primary question before the Hon'ble Court was whether the term "**law**" in **Article 13(2)**, which bars the State from making any law that takes away Fundamental Rights, also covers the constitutional amendments made under **Article 368**. The Hon'ble Supreme Court, in its decision rejected this claim and upheld the amendment done by the Parliament. The reasoning of the court was that, Article 13(2) only applies to the legislative power and not the constituent power exercised under the Article 368. The Hon'ble Court said that the power to amend the Constitution is itself a part of the Constitution and is therefore not subject to the limitations placed on Fundamental Rights. This judgement gave the Parliament a wider power to alter the constitution using the Article 368 of the constitution itself.

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

Few years later, again the question arose before the Hon'ble Supreme Court in Sajjan Singh v. State of Rajasthan 1965. In this case the validity of the **Seventeenth-Constitutional amendment** was challenged before the Hon'ble Supreme Court. The particular amendment added the 44 land reform laws in the Ninth-schedule, providing them immunity from the judicial review. The view from the Shankari Prasad v. Union of India was upheld in this case as well, the hon'ble court held that the constituent power stands above the legislative power. However, Hon'ble Justice Hidayatullah and Justice Mudholkar presented their dissenting opinion raising doubts on the unchecked authority and power to amend the constitution. Hon'ble Justice Mudholkar's dissent is seen as a visionary observation, he used the term "basic structure" for the first time, questioning whether altering the basic features of the Constitution could truly be called a mere amendment, or whether it would, in substance, amount to rewriting of the Constitution altogether.

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

There came a turning point in the I.C. Golak Nath v. State of Punjab 1967, where an eleven-judge bench was constituted to reconsider the decision of the Hon'ble Supreme Court on the Sajjan Singh v. State of Rajasthan, and whether the Parliament had the power to amend the fundamental rights at all. By a cutting **6:5** majority, the court reversed its stance from the earlier cases, and held that the fundamental rights are the transcendental and too important to be changed or altered by the Parliament.

The Hon'ble Court further held that the **Article 368** provided nothing but the procedure for the amendment and did not by itself confers any substantive powers to the Parliament. To avoid disturbing the many land reform laws that had already been passed, the Court came up with the idea of '**prospective overruling**'. This meant that all the amendments made in the past would still remain valid, but from the date of this judgment onward, Parliament would no longer have the power to take away Fundamental Rights.

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

At last came the landmark judgement of the Hon'ble Supreme Court on the long-debated question of the amending powers of the Parliament. The case was decided by the largest constitutional bench ever assembled – a 13-judge bench. The case challenged the **24th, 25th, and 29th Amendment**, all of which Parliament had enacted to nullify the Golak Nath verdict.

The core issue before the Court was whether Parliament's amending power was truly absolute, or whether it carried certain inherent limitations. By a bare majority of **7:6**, the Court overruled Golak Nath, and in doing so, introduced the **Basic Structure Doctrine**, holding that while Parliament could amend any part of the Constitution, it could not alter its “basic structure” or “essential features” of the constitution.

The judgment highlighted traits like democracy, secularism, the rule of law and judicial review as unwritten and fundamental, thus allowing the Constitution to remain itself even as it is amended, protecting the constitutionalism of the constitution.

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

This doctrine of the Basic Structure was soon put to test the year 1975 in Indira Nehru Gandhi

v. Raj Narain. This case arose out of a challenge to the election of then Prime Minister Indira Gandhi, and to the **39th Constitutional Amendment** that followed, which sought to place the election of the Prime Minister and the Speaker beyond the reach of judicial review.

This amendment was enacted in the period of the Emergency (1975-76), when there was much political unrest and suppression of dissent. It was here that for the first time the Supreme Court ruled on a constitutional amendment and found it unconstitutional in the light of the Basic Structure Doctrine. The judges believed that free and fair elections, the rule of law and judicial review were integral to the Constitution, and so integral that they could not be removed even through Parliament's constituent power.

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

The doctrine of Basic Structure was further strengthened in *Minerva Mills v. Union of India* in 1980, where the **42nd amendment** done by the Parliament was challenged before the Hon'ble Court. This amendment aimed to provide precedence to the Directive Principles over the Fundamental Rights, as well as barring the judiciary from reviewing any constitutional amendments altogether. The Hon'ble Court agreed that the provisions of the amendments struck at the very identity of the constitution, consequently striking down the offending clauses, and reaffirming that judicial review is itself a basic feature of the constitution that cannot be taken away.

The Hon'ble Supreme Court further held that the fundamental rights and the directive principles have harmony and balance between themselves and forms a core element of the basic structure of the constitution, and neither can be used to undermine the other.

Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217

The scope of the doctrine was again tested in *Indra Sawhney v. Union of India*, however, in a different context. In this case, the question was whether reservation can be said to be part of the Basic Structure, and it was basically the case on the validity of the government's policy in providing **27%** reservation to **Other Backward Classes (OBCs)** in public employment. The Supreme Court gave its support to the reservation scheme, but limited the number of reservations to **50%** of the total strength to balance with the principle of equality. The Court decided that the purpose of the reservation was not to discriminate against the majority group but to promote substantive equality, and thus, it accepted that it was an integral part of the

Constitution's fundamental structure.

Conclusion

The Basic Structure Doctrine is the highest protection of the Constitution that an independent Judiciary can bring against any kind of arbitrary or absolute legislative excess. This doctrine did not come into existence in a single stroke of a pen. It was rather influenced by decades of interpretation of Article 368 ranging from a belief that Parliament has virtually unlimited power to amend the Constitution to a more sophisticated concept of constitutionalism. The power to amend is necessary to ensure that the Constitution is a living instrument that accommodates the felt need of the times, but it was never unlimited, and the limits were built into the Constitution's very terms, as discussed above, in **Article 368**.

With the passage of time, the judiciary, starting from Shankari Prasad to Kesavananda Bharati, began to realize that some elements like democracy, secularism, rule of law, and judicial review were not subject to the amendment power of Parliament. The principles were reinforced once again in Indira Nehru Gandhi, Minerva Mills and other cases, where it was held that the principles contained in the Constitution are so fundamental that they cannot be eliminated even by the exercise of constituent power. The doctrine also provides a balance necessary between the Fundamental Rights and Directive Principles, treating these two as two pillars of the Constitution equally.

The Basic Structure Doctrine although it has played a crucial role as a constitutional protection, has however, been the subject of consistent criticism for the absence of a precise definition for it. There is no comprehensive or codified definition of the **basic structure** in the Constitution, nor in the Kesavananda Bharati judgment. Instead, various judges on the same bench found various characteristics to constitute it, federalism, secularism, judicial review, rule of law, and more. So, the doctrine was and has always been open to interpretation, and, in many respects, open to the whim of judges. However, the critics say that this nature of the doctrine makes it a **slippery slope** and a matter for individual decision, leaving Parliament and its citizens unsure as to what it entails.

Despite of the criticism, the doctrine continues to play an important role in Indian constitutional law, quietly making sure that the Constitution keeps changing with time, without ever losing what makes it truly the Constitution.