

**INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH****THE BASIC STRUCTURE DOCTRINE IN INDIA: EVOLUTION,  
DEVELOPMENTS AND CHALLENGES**

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**Abstract**

The basic structure doctrine is a great milestone in constitutional law to the effect that it is not merely a set of legal rules but a social pact representing a nation's essential values and identity. In the meantime, the judiciary has over time distilled the Constitution's key principles including its supremacy, the rule of law, the power of judicial review, secularism, federalism, democracy and the separation of powers. These elements, together, constitute the immutable core of the Constitution and guarantee that every government action (whether of the legislature, executive or judiciary) remains faithful to these fundamental principles.

Its heart lies in the commitment to maintain these core values while balancing the need to maintain constitutional flexibility with the necessity of stability. It regards judicial review as a crucial mechanism of safeguarding against abuses of power, ensuring a democratic framework. These basic features, landmark decisions and ongoing debates have made clear that any attempt to erode them would be unconstitutional.

But judicial activism has been crucial to defending these principles and yet there is an ongoing debate about when courts might go too far, especially because no one defines precisely what the "basic structure" is. This ongoing discourse is an expression of the tension between the preservation of core democratic values and constitutional evolution.

**Keywords**

Core Principles, Basic Structure, Constitution, Parliament, Fundamental Rights.

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**Introduction**

In India, the basic structure doctrine serves as a steadfast pillar of constitutional order, ensuring that no branch of government can alter the Constitution's core framework. Emerging from judicial interpretations, this principle strikes a balance between allowing the Constitution to adapt over time and preserving its fundamental values from arbitrary changes. Its origins lie in early struggles between Parliament and the judiciary during the nation's formative years, when the integrity of the constitutional framework was at risk. Simply put, while Parliament is empowered to amend many aspects of the Constitution, it is prohibited from modifying its essential features such as the rule of law, democracy, fundamental rights and separation of powers, that underpin the Constitution's identity. The fundamental features must remain intact, no matter what amendments are made. This paper aims to analyse the Doctrine of Basic structure.

**Objectives**

1. To identify and define the key components that constitute the basic structure of the Constitution.
2. To study the evolution of the doctrine through landmark case laws and judicial decisions.
3. To evaluate the role of judicial activism in enforcing and shaping the basic structure doctrine.
4. To assess how the doctrine balances constitutional flexibility with the preservation of core values.
5. To examine contemporary challenges, including debates on judicial overreach and definitional ambiguities in the basic structure.

**Hypothesis**

The basic structure doctrine effectively safeguards the core constitutional values by limiting Parliament's power to amend the Constitution, thus ensuring stability and continuity in constitutional governance; however, its inherent ambiguity in defining what constitutes the "basic structure" may lead to judicial overreach, potentially impacting the democratic balance between the judiciary and the legislature.

**Methodology**

This study employs a doctrinal research methodology, initiating with the identification of research problems derived from an extensive literature review. Data was collected exclusively from secondary sources, such as academic articles, journals, reports and newsletters.

**Historical Context**

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India's independence in 1947 marked the beginning of a journey toward a democratic polity governed by the rule of law. The framers of the Indian Constitution have formed a living document which had the capacity to adapt to societal changes. Article 368 granted Parliament the power to amend the Constitution, while Article 13 provided that laws violating fundamental rights would be void. The interplay between these provisions led to intense legal and political debates about the endless power of the Parliament to amend even the most sacrosanct provisions of the Constitution.

During the first two decades after independence, India faced challenges such as socio-economic inequality, the need for land reforms and political centralization. Many of these reforms conflicted with fundamental rights, particularly the right to property, leading to clashes between legislative ambitions and constitutional guarantees.

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

#### Shankari Prasad Case : Initial Judicial View

"In *Shankari Prasad Singh Deo v. Union of India*<sup>3</sup>, the Supreme Court upheld the validity of the First Amendment, which curtailed the right to property to facilitate land reforms." The Court ruled that constitutional amendments under Article 368 were not "laws" within the meaning of Article 13 and thus were immune from judicial review. This judgment affirmed parliamentary supremacy in amending the Constitution.

#### Re Berubari Settlement

The Supreme Court addressed issues related to the amendment of territorial boundaries between India and Pakistan. "The *Re Berubari Settlement* case<sup>4</sup> clarified that the Preamble is not a legally binding part of the Constitution. It explains the guiding principles and ideals behind the Constitution rather than providing enforceable rights. Therefore, any changes made to the Preamble do not affect the core (or "basic structure") of the Constitution."

#### Sajjan Singh Case (1965): Continued Parliamentary Authority

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<sup>3</sup>*Shankari Prasad Singh Deo v. Union of India*, AIR 1951 SC 458 (India 1951).

<sup>4</sup>*Re Berubari Settlement*, AIR 1960 SC 155 (India 1960).

“In Sajjan Singh v. State of Rajasthan<sup>5</sup>, the Supreme Court upheld the Seventeenth Amendment, which protected certain land reform laws from judicial scrutiny by placing them in the Ninth Schedule. However, Justice Hidayatullah’s dissenting opinion cautioned against unchecked parliamentary powers, hinting at the need for a framework to preserve the Constitution’s core principles.”

### Golaknath Case (1967): A Shift in Interpretation

“The Supreme Court’s stance shifted dramatically in I.C. Golaknath v. State of Punjab<sup>6</sup>, where it held that Parliament could not amend fundamental rights. The Court ruled that Article 368 only provided the procedure for amendment and did not confer substantive power.” This decision elevated fundamental rights to a sacrosanct status, sparking political backlash and setting the stage for constitutional amendments to reassert parliamentary authority.

### The 24th Constitutional Amendment

In response to the Golaknath judgment, Parliament enacted the “24th Constitutional Amendment<sup>7</sup>. This amendment explicitly empowered Parliament to amend any part of the Constitution, including fundamental rights and declared that constitutional amendments would not fall under the purview of Article 13. It also made it mandatory for the President to give assent to any constitutional amendment bill. This amendment reaffirmed parliamentary sovereignty but escalated the debate over the limits of amending power.”

### Kesavananda Bharati Case : Birth of the Doctrine

“The watershed moment came in Kesavananda Bharati v. State of Kerala<sup>8</sup>, where a 13-judge bench examined the validity of the 24th Amendment and other amendments affecting fundamental rights. By a 7:6 majority, the Court ruled that Parliament could amend the Constitution but could not alter its basic structure. The judgment defined elements such as the supremacy of the Constitution, secularism, democracy, and judicial review as part of the basic structure. This doctrine became a judicial safeguard against excessive parliamentary power.”

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<sup>5</sup>Sajjan Singh v. State of Rajasthan, 1 SCR 933 (India 1965).

<sup>6</sup>Golaknath v. State of Punjab, AIR 1967 SC 1643 (India 1967).

<sup>7</sup>24th Constitutional Amendment, 1971.

<sup>8</sup>Kesavananda Bharati v. State of Kerala, AIR 1973 SC 1461 (India 1973).

“The Court invalidated the 39th Amendment, which sought to protect the Prime Minister’s election from judicial scrutiny. The Court held that free and fair elections were part of the basic structure. (India is sovereign, democratic, republic)<sup>9</sup>.”

#### The 42nd Constitutional Amendment (1976): An Attempt to Undermine the Doctrine

During the Emergency (1975–1977), the Indira Gandhi government enacted the 42nd Constitutional Amendment, often called the “mini-Constitution.” This amendment sought to strengthen parliamentary supremacy by<sup>10</sup>:

1. Declaring that no constitutional amendment could be challenged in court.

2. Curtailing judicial review.

3. Adding fundamental duties and expanding directive principles of state policy.

The amendment aimed to neutralize the basic structure doctrine by granting Parliament unfettered amending power. However, its overreach triggered a strong judicial response in subsequent cases.

#### Minerva Mills Case (1980): Reaffirming the Doctrine

“In *Minerva Mills v. Union of India*<sup>11</sup> The Supreme Court struck down parts of the 42nd Amendment, emphasizing that the balance between fundamental rights and directive principles formed part of the Constitution’s basic structure. The Court ruled that unlimited amending power would destroy the Constitution’s identity and reiterated the indispensability of judicial review.”

#### “Waman Rao Case (1981): Strengthening the Doctrine

In *Waman Rao v. Union of India*<sup>12</sup>, the Supreme Court further clarified the doctrine of basic structure. It upheld the validity of amendments made to the Ninth Schedule before *Kesavananda Bharati* but ruled that

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<sup>9</sup>*Indira Gandhi v. Raj Narain*, AIR 1975 SC 1590 (India 1975).

<sup>10</sup>42nd Constitutional Amendment, 1976.

<sup>11</sup>*Minerva Mills v. Union of India*, AIR 1980 SC 1789 (India 1980).

<sup>12</sup>*Waman Rao v. Union of India*, 1981 SCC 362 (India 1981).

amendments made thereafter would be subject to judicial review. This judgment reinforced the retrospective application of the basic structure doctrine and strengthened judicial oversight over legislative actions.”

## **Recent Developments in the Doctrine of Basic Structure**

### **1. “S.R. Bommai vs Union of India:**

The Supreme Court declared that Federalism, Secularism and Democracy as the Constitution’s basic structure and made the President's Rule subject to judicial review<sup>13</sup>.”

### **2. IR Coelho vs. Union of India:**

“In this landmark case<sup>14</sup>, the Supreme Court ruled that any law placed in the Ninth Schedule after the Kesavananda Bharati decision must be examined to ensure it does not violate the Constitution’s core values. In other words, even if Parliament shields a law from review by putting it in the Ninth Schedule, it can still be challenged if it affects the basic structure such as democracy, rule of law, or judicial review.”

### **3. “99th Constitutional Amendment and the NJAC Act:**

The 99th Constitutional Amendment led to the creation of the National Judicial Appointments Commission (NJAC) Act, which aimed to reform the process of appointing judges by involving not only the judiciary but also the executive and independent members. However, in the NJAC case (Supreme Court Advocates-on-Record Association v. Union of India<sup>15</sup>), the Supreme Court held that the NJAC Act violated the basic structure of the Constitution because it compromised the independence of the judiciary, a core value that the basic structure doctrine protects.”

### **4. Ongoing Challenges: Criticism and Debate:**

Recent shifts in the legal landscape have ignited lively discussions among scholars and practitioners. Some critics contend that the basic structure doctrine may grant excessive power to the courts, potentially leading them to overstep their intended role. Moreover, the absence of a clearly defined “basic structure”

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<sup>13</sup>S.R. Bommai v. Union of India, 1994 SCC 1 (India 1994).

<sup>14</sup>IR Coelho v. Union of India, AIR 2007 SC 861 (India 2007).

<sup>15</sup>Supreme Court Advocates-on-Record Association v. Union of India (NJAC Case), 5 SCC 1 (India 2016).

creates uncertainty, while the doctrine has undoubtedly shielded the Constitution's core values, its ambiguous boundaries can sometimes result in inconsistent applications.

### **Global Comparisons**

Although the basic structure doctrine is an Indian innovation, similar ideas exist in other countries. For example, Germany's Basic Law, specifically Article 79(3) prevents any changes to core principles like human dignity and democratic governance. In the United States, a strong tradition of judicial review<sup>16</sup> ensures that neither constitutional amendments nor statutes can undermine the fundamental principles of the nation's constitution. These examples illustrate that protecting the essential identity of a constitution is a universal concept, transcending national boundaries.

### **Conclusion**

The basic structure doctrine stands as a profound legacy of India's judicial wisdom. It defines a core framework within the Constitution that remains untouchable, safeguarding its true essence even as the document adapts to contemporary challenges. While critics sometimes question its scope, there is no doubt about its critical role in protecting democracy, fundamental rights, and the constitutional spirit. In essence, the Indian Constitution, a living document, maintains a vital equilibrium between necessary adaptability and enduring stability, a balance that the basic structure doctrine rigorously upholds.

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<sup>16</sup>Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803).