



## 50 Years of Kesavananda Bharati Judgment

This editorial is based on [50 years of Kesavananda Bharati judgment](#): which was published in Indian Express on 24/04/2023. It talks about the basic structure doctrine and its importance.

**For Prelims:** [Basic Structure of Constitution](#), [Golaknath case](#), [Kesavananda Bharati case](#), [NJAC Act](#), [Fundamental rights](#)

**For Mains:** [Judicial Review](#), Significance of Kesavananda Bharati case

The concept of '[basic structure](#)' came into existence in the landmark judgment in [Kesavananda Bharati vs State of Kerala case \(1973\)](#) 50 years ago.

The basic structure doctrine is a highly controversial pluralist judicial creation that has been accepted by all branches of the government and the people of India.

Kesavananda Bharati case curtailed unlimited parliamentary sovereignty and started a new interpretive enterprise by recognizing the basic identity of the Constitution, which may not be destroyed by any amendment.

The basic structure doctrine has become a thriving aspect of constitutional **judicial review**.

### What was Kesavananda Bharati Case?

- **Kesavananda Bharati Case (1973):**
  - In this case, the **Supreme Court overruled** its **judgment** in the [Golak Nath case](#). It **upheld the validity** of the [24<sup>th</sup> Amendment Act](#) and stated that **Parliament is empowered to abridge or take away** any of the [Fundamental Rights](#).
  - At the same time, it laid down a new doctrine of the 'basic structure' (or 'basic features') of the Constitution.
  - It ruled that the constituent power of Parliament under Article 368 does not enable it to alter the 'basic structure' of the Constitution.
  - This **means that the Parliament cannot abridge or take away a Fundamental Right that forms a part of the 'basic structure'** of the Constitution.

### What are Important Cases Leading to Basic Structure Doctrine?

- **Sankari Prasad Judgment 1951:**
  - Initially judiciary was of the view that the amendment **power of the parliament is unrestricted** because it can amend any part of the constitution, even the [Article-368](#) which **provides the power to amend to the parliament**

- **Golak Nath Vs State of Punjab 1967:**
  - The Supreme Court **adopted a new vision** to see the powers of parliament that it cannot amend Part III of the constitution i.e. Fundamental rights and thus **awarded fundamental rights a “Transcendental Position”**.
- **Keshavanada Bharti Vs State of Kerala 1973:**
  - It gave birth to the **landmark judgment** which pronounced that the parliaments cannot alter or disturb the basic structure of the constitution.
  - It was held that, however, the **parliament has unfettered power** to amend the constitution, **but it cannot disturb or emasculate the basic structure or fundamental features of the constitution** as it has only the power of amendment and not of rewriting the constitution.
- **Indira Nehru Gandhi v. Raj Narain**
  - In this case, **the Supreme Court invalidated** a provision of the **39<sup>th</sup> Amendment Act (1975) which kept the** election disputes involving the Prime Minister and the Speaker of Lok Sabha **outside the jurisdiction of all courts**.
  - As per the court, this provision was **beyond the amending power of Parliament** as it affected the basic structure of the constitution.
- **Minerva Mills vs. Union of India:**
  - In the Minerva Mills case, **the Supreme Court held** that ‘**the Indian Constitution is founded on the bedrock of the balance between the Fundamental Rights and the Directive Principles**’.
  - **The Parliament can amend the Fundamental Rights** for implementing the **Directive Principles**, so long as the **amendment does not damage or destroy the basic structure** of the Constitution.

## What is the Doctrine of Basic Structure?

- The **Constitutional Bench in Kesavananda Bharati case ruled by a 7-6 verdict that Parliament could amend any part** of the Constitution **so long as it did not alter or amend the basic structure** or essential features of the Constitution.
- However, the court did not define the term ‘basic structure’, and only listed a few principles — federalism, secularism, democracy — as being its part.
- The ‘basic structure’ **doctrine has since been interpreted** to include -
  - The supremacy of the Constitution,
  - The rule of law,
  - Independence of the judiciary,
  - Doctrine of separation of powers,
  - Sovereign democratic republic,
  - The parliamentary system of government,
  - The principle of free and fair elections,
  - Welfare state, etc.
- An **example of the application of basic structure** is the **[SR Bommai case \(1994\)](#)**.
  - In this case the Supreme Court upheld the dismissal of BJP governments by the President following the demolition of the Babri Masjid, invoking a threat to secularism by these governments.

## What is the Significance of Basic Structure Doctrine?

- **Limiting Political Power:**
  - Golaknath (1967) **set limits to political power** by subjecting Article 368’s amending power to the discipline of fundamental rights.
  - Basic structure **recognized the basic identity of the Constitution**, which may not be destroyed by any amendment.
  - Basic structure **discredits the repeal of the Constitution and authorizes a constitutional amendment**, not constitutional desecration or dismemberment.
- **Wise Exercise of Judicial Review Process and Power:**
  - Kesavananda Bharati emerged as an opportunity for the **wise exercise of co-constituent power by the Supreme Court**.
  - It **articulated vast plenary powers of the executive and legislature** and repudiated

the argument of fear by holding that the **possibility of abuse of power is no ground** for its non-conferment.

▪ **Last Word Resting with the Supreme Court:**

- The Court feels that it has a responsibility to identify and uphold fundamental principles, which are crucial to maintaining the integrity of the Constitution.
- The decision in the [NJAC case \(2015\)](#) makes it compellingly **clear that the power may be exercised** only **“within the parameters of the law, nothing more and nothing less”** and the validity of amendments “cannot be tested on opinions, however strong or vividly expressed”.
- **Judicial independence is important** as the “essence” of **rule of law**, which embeds both **“decisional autonomy”** and **“institutional autonomy”**.

▪ **Constitutional Conventions and Practices:**

- Rule of law means that the “parameters of decision making and discretion” remain always circumscribed by the Constitution and demands respect for “constitutional conventions”.
- A convention according to the Chief Justice of India in matters of judicial appointments has existed since the [Government of India Act, 1935](#).
- **“Constitutional conventions and practices” mark the intersection of the unwritten Constitution with the written text.**

## What are the Issues?

▪ **No Such Provision:**

- The most common issue of the basic structure doctrine is that there has been no basis for the doctrine in the language of the Constitution.
- There is an absence of a provision that can stipulate that the Constitution has a basic structure beyond the competence of amending power.

▪ **Against Separation of Power:**

- This principle visualizes a tripartite system where the powers are delegated and distributed among three organs outlining their jurisdiction each.
- It is inconsistent with the concept of separation of power.

▪ **Subjective Matter:**

- It is seen that the basic structure doctrine gets defined differently by different judges based on their subjective satisfaction.
- This leaves the decision to decide the validity or invalidity of Constitutional Amendments influenced by the personal preferences of judges who then acquire the power to amend the Constitution.

▪ **Limitations on Powers of Elected Parliament:**

- A law made by Parliament can be declared null and void by the Courts if courts consider it against basic structure of the Constitution.
- It gives power to the judiciary that allows it to impose its philosophy on a government that is formed democratically.

▪ **No Clear Definition:**

- The lack of definite explanation as to what constitutes the basic structure, thereby leaving the doctrine ambiguous.
- It is upto the Courts to decide what constitute basic structure.

▪ **Leads to Judicial Overreach:**

- National Judicial Appointments Commission (NJAC) was unanimously enacted as an amendment to the constitution by the Parliament and passed by the legislature of twenty [out of twenty-eight] States in India.
- However, the basic structures doctrine used in cases regarded as incidents of judicial overreach like the NJAC bill.

## Conclusion

- The Basic Structure Doctrine is a **cornerstone of the Indian Constitution**, which has been **instrumental in ensuring the preservation** of the **fundamental principles of democracy and protecting the rights of citizens**. Its establishment in the Kesavananda Bharati case is a testament to the **strength and resilience of India's democratic institutions** and the **judiciary's commitment** to upholding the Constitution.



# Doctrine of Basic Structure

## Original Idea:

- German Constitution

## Landmark Judgement:

- Kesavananda Bharati case 1973 (the phrase 'basic structure of the Constitution' was used for the first time)

## Constituents of Basic Structure:

- Supremacy of the Constitution, Parliamentary system, Free and fair elections, Independence of Judiciary, Limited power of Parliament to amend the Constitution, Powers of the Supreme Court under Articles 32, 136, 141 and 142, Powers of the High Courts under Articles 226 and 227...

## Evolution

### Shankari Prasad case and Sajjan Singh case

1951 & 1965

The SC held that Parliament has the absolute power to amend the Constitution under Article 368.

Parliament cannot amend Fundamental Rights, and this power rests only with a Constituent Assembly; 24th Amendment Act, 1971 was introduced.

1967

### Golak Nath v/s State of Punjab

### Kesavananda Bharti v/s State of Kerala

1973

Parliament could amend any part of the Constitution, but it cannot not alter the basic structure or essential features of the Constitution.

The Doctrine of Basic Structure reaffirmed and a provision of the 39th Amendment Act (1975) (keeping election disputes involving the PM and the Speaker outside the jurisdiction of all courts) was invalidated.

1975

### Indira Nehru Gandhi v/s Raj Narain

### Minerva Mills v/s Union of India

1980

Judicial review and harmony between Fundamental Rights and DPSP were added to the basic structure.

The SC held that the doctrine would apply to constitutional amendments enacted after the date of the judgement in the KB case.

1981

### Waman Rao v/s Union of India

### Indira Sawhney Vs. Union of India

1992

Rule of law declared as a part of the basic structure.

Federalism, Secularism, Democracy, Unity and integrity of the nation and Social justice were iterated as basic structure of the Constitution.

1994

### S.R Bommai vs Union of India

## Significance:

- Limits the power of a majoritarian government to undermine the Constitution's central ideals.

## Criticism:

- "Basic Structure" finds no mention anywhere in the Indian Constitution. Further, there is no exclusive definition of basic structure given by the judiciary.
- The SC has assumed much power in the name of basic structure.

## **Drishti Mains Question**

"Discuss the significance and evolution of the Basic Structure Doctrine in India's Constitutional Jurisprudence. How has it impacted the separation of powers and the role of the judiciary in ensuring the protection of individual liberties and upholding the rule of law?"

### **UPSC Civil Services Examination Previous Year's Question (PYQs)**

#### **Prelims**

**Q. With reference to the Constitution of India, consider the following statements: (2019)**

1. No High Court shall have the jurisdiction to declare any central law to be constitutionally invalid.
2. An amendment to the Constitution of India cannot be called into question by the Supreme Court of India.

**Which of the statements given above is/are correct?**

- (a) 1 only  
(b) 2 only  
(c) Both 1 and 2  
(d) Neither 1 nor 2

**Ans: (d)**

**Exp:**

- The Constitution (Forty-second Amendment) Act, 1976, inserted various Articles in the Constitution to curtail, both directly and indirectly, the jurisdiction of the Supreme Court and the High Courts to review the constitutionality of laws. Article 131A gave the Supreme Court exclusive jurisdiction to decide the constitutional validity of a Central law and thus, deprived the High Courts of their jurisdiction in respect of the same.
- However, the 43rd Amendment Act of 1977 omitted/repealed Articles 32A, 131A and 226A and restored the original position of High Courts and vested them with the power to invalidate any Central law which goes against the ethos of the Constitution. Hence, statement 1 is not correct.
- The Supreme Court in Kesavananda Bharti Case (1973) laid the foundation of the doctrine of "Basic Structure", which includes judicial scrutiny. If any constitutional amendment goes against the basic structure of the Constitution, the Supreme Court has the power to call it in question. In 2015, the Supreme Court declared both the 99th Constitutional Amendment, 2014 and the National Judicial Appointments Commission (NJAC) Act, 2014 as unconstitutional and null and void. Hence, statement 2 is not correct.
- Therefore, option (d) is the correct answer

#### **Mains**

**Q. "Parliament's power to amend the Constitution is limited power and it cannot be enlarged into absolute power." In light of this statement explain whether Parliament under Article 368 of the Constitution can destroy the Basic Structure of the Constitution by expanding its amending power? (2019)**