

Doctrine of Basic Structure

Charvi Mahajan

ABSTRACT

The Basic Structure Doctrine, enshrined in the seminal *Kesavananda Bharati* case of 1973, is a bulwark of Indian constitutional law that circumscribes Parliament's authority under Article 368 to alter the Constitution without amending its essential structure. The doctrine ensures that fundamental tenets like the superiority of the Constitution, rule of law, separation of powers, judicial review, federalism, secularism, and safeguarding of basic rights are not touched. Emerging from previous judicial reasoning in cases such as *Shankari Prasad* (1951), *Sajjan Singh* (1965), and *I.C. Golaknath* (1967), the doctrine responds to the dilemma between parliamentary sovereignty and constitutional integrity. It has been pivotal to transformative constitutionalism, allowing the Constitution to evolve in response to changes in society without jeopardizing its founding ethos. Classic judgments such as *Indira Gandhi v. Raj Narain* (1975), *Minerva Mills v. Union of India* (1980), *S.R. Bommai v. Union of India* (1994), *National Judicial Appointments Commission* (2015), and *Navej Singh Johar v. Union of India* (2018), have solidified the doctrine's function in ensuring judicial independence and social justice. Though detractors claim it involves overmuch judicial power, the doctrine is still a necessary bulwark against arbitrary amendments, ensuring constitutional flexibility within rigidity. It uses the doctrinal research method, examining the judgments and legal literature to evaluate the impact of the doctrine and how it interacts with transformative constitutionalism, providing suggestions for preserving this fine balance.

Keywords: Basic Structure Doctrine, Kesavananda Bharati, Transformative Constitutionalism, Judicial Review, Constitutional Amendments

INTRODUCTION

BACKGROUND INFORMATION

The Constitution of India rests the power to make constitutional amendments in Article 368, that is Parliament may by law alter any provision thereof¹. But that power is not unbridled, as has been made amply clear by the Basic Structure Doctrine enunciated in *Kesavanand Bharati* case of 1973. The purpose of this doctrine is to see that amendments do not override the basic structure/principles under which constitution has been framed. It has been an essential aspect of Indian constitutional law for more than five decades, noting that some basic features remain immune from reinterpretation or erasure at the hands of a mere parliamentary amendment. It is the type of constitutionalism which searches to institutionally transform a state, and society from an authoritarian or semi- authoritarian system, by using legal mechanisms-including those in the Constitution-to effect such change. The idea is to develop a Constitution which caters for the changing needs of society whilst maintaining basic features.

STATEMENT OF PROBLEM

The question is if the Basic Structure Doctrine successfully blocks possible abuses of constitutional power as the balance between Parliament's power to amend the Constitution and the preservation of its basic structure is delicate.

OBJECTIVES

- To understand how the Basic Structure Doctrine originated and developed.
- To make an assessment of the impact of the said doctrine on constitutional amendments.

¹ H.M. Seervai, *Indian Constitutional Law* 921 (3rd ed. 1996).

- To explore the relationship between the Basic Structure Doctrine and Transformative Constitutionalism.
- To identify the main Judicial Interpretations/Rulings regarding the doctrine.
- To give some recommendations to balance between flexibility and rigidity of the constitution.

METHODOLOGY

The instant study propounds a doctrinal research approach, primarily concentrating on judicial decisions, constitutional provisions, and academic writings. This will further be accompanied by the comparative evaluation as far as the state of such doctrines in other countries is concerned, which will in turn make this research international. This way, the following Supreme Court judgments as well as the legal literature concerned with the Basic Structure Doctrine is framed throughout the elaboration of the influence of these judgments to Indian constitutional law and transformative-constitutionalism.

THE ORIGINS AND EVOLUTION OF THE BASIC STRUCTURE DOCTRINE

The foundation of the Indian constitutional law is the Basic Structure Doctrine that bars even the Indian Parliament from changing the basic structure of the Constitution even if it wished to do so under Article 368 of the Constitution. This head shall try to focus on analyzing features of historical evolution of this doctrine from the moment it started developing as the doctrine till present moments as well as the components of the mentioned doctrine and the most important judgments that contributed to the further development of this doctrine.

Historical Background

In case of India, the Basic Structure Doctrine was first employed in the year 1973 through the judgment delivered in *Kesavananda Bharati*. Here, the extent of parliamentary amendment in terms of the Constitution under Article 368 was under consideration of the Indian Supreme Court. This judgment of the Court was historic in the annals of Indian constitutional law making and set the ratio that although the parliament has vast powers to amend the Constitution it cannot alter the basic structure thereof. The judgment was in response to growing apprehensions that encapsulated some unfettered freedom of parliament could potentially obliterate whatever may be deemed sacrosanct in the Constitution. Before *Kesavananda Bharati*, Indian judiciary took a different view on amendments to constitution. In *Shankari Prasad* (1951) and *Sajjan Singh* (1965), cases, Supreme court upheld parliament's non-restrictive powers of amendment including fundamental rights. However, this approach changed with *Golak Nath* case in 1967. In *Golak Nath*, Supreme court held that Fundamental rights could not be amended by parliament hence leading to stricter interpretation of amending powers².

Key components of the basic structure of the organization are the following:

1. Supremacy of the Constitution: The Constitution is the supreme source of the state and for this any laws and amendments in the country must not contradict the Constitution.
2. Rule of Law: Everybody is under the law and any law applied or enforced has to be fairly so applied or enforced on everybody including the individuals and institutions.
3. Separation of Powers: The three arms of government; the legislature, the executive and the judiciary are well balanced so that each is closely watched by the other.
4. Judicial Review: The judiciary also called the judicial branch has some degree of power that can make legislation or a constitutional amendment null and void.
5. Federalism: Therefore, the share of powers between the central and state governments maintain the federal structure in the country.
6. Secularism: The state has no favoritism with any religion and Individuals are free to choose their religion of choice.

² Amit Kumar, DOCTRINE OF BASIC STRUCTURE AS A SAFEGUARD TO CONSTITUTIONAL SUPREMACY IN INDIA(2023).

7. Protection of Fundamental Rights: Basic rights provided by the Constitution of the India include fundamental rights that citizens have and these are inalienable. It is within these that the constitution is built and which add the stability and the continuity.

Judicial Interpretations

The judiciary also has been discharging the onerous duty of explaining and expanding the elements of the basic structure through several path-breaking judgements³. In *INDIRA GANDHI V. RAJ NARAIN*⁴, the apex court also said a constitutional amendment aimed at taking away the jurisdiction of the election petition against the Prime Minister is unconstitutional since it violated the provision of basic structure of constitution, and encroached on the rule of law and jurisdiction of the judiciary. By annulling the amendments intended to curb the availability of constitutional remedies, the Court also supported the doctrine in *Minerva Mills Ltd. v. Union of India* (1980)⁵. The Court added that the balance between the rights and the principles becomes a part of the basic structure. Federalism and secularism was added to the basic structure by *S.R. Bommai v. Union of India*⁶. The Court ruled that Article 356 (President's Rule) was applied only strictly on the basis of principles of federalism and laid down the ground that all the actions that come under this article could be set aside by the judiciary. Welfare – The basic structure doctrine was affirmed in the *Waman Rao v. Union of India*⁷ judgement; further stated, all amendment pre-Kesavananda were legal but post-Kesavananda, amendment should be under the basic structure doctrine. As by these and the other landmark decisions the Supreme Court has worked out and elaborated the Basic Structure Doctrine, by means of which the given fundamental structure of Constitution is saved from the potentially detrimental amendments. But this function of the judiciary in the process assertively validates the proposition that constitutional law is not a set and frozen edifice in India but is, in fact, a growing tree.

TRANSFORMATIVE CONSTITUTIONALISM AND THE BASIC STRUCTURE DOCTRINE

Transformative constitutionalism aims at getting rid of the gap between the constitution and the socio political environment of a particular country⁸. For this purpose, the Basic Structure Doctrine, in India, has a significant role since it prevents revolutionary alterations to demolish the building blocks of the Constitution⁹. This section discusses how the doctrine has engendered transformative constitutionalism through judgments that followed it, as shown above, played the twin part of empowering and limiting the full realization of constitutionalism in India.

Defining Transformative Constitutionalism

Transformative constitutionalism is the idea that calls for the implementation of social change through the use of constitutional provisions in order to confirm society to the set reveres of constitutionalism including justice, equality and liberty among others¹⁰. It is the process whereby the judiciary plays an important role in exercising the Constitution in addressing modern challenges hence the protection of the marginalized in the society. This shall be done in order to keep the Constitution as a living document and to meet the needs of the society while holding on the founding principles.

Facing and experiencing the Basic Structure Doctrine

Thus, the Basic Structure Doctrine is transformative in the project of constitutionalism but also imposes limits on this project. It helps in making reforms because any changes and improvements that seek to introduce social justice and equity in the provision of rights cannot compromise the Constitution's principles. At the same time, it limits such

³ J.S. Khera, *The Indian Supreme Court and Constitutional Law* 350 (2018)

⁴ *Indira Gandhi v. Raj Narain*, A.I.R. 1975 S.C. 2299

⁵ *Minerva Mills Ltd. v. Union of India*, A.I.R. 1980 S.C. 1789

⁶ *S.R. Bommai v. Union of India*, A.I.R. 1994 S.C. 1918.

⁷ *Waman Rao v. Union of India*, AIR 1981 SC 1138

⁸ N. Patel, *Transformative Constitutionalism in India: A Case Study*, 14 Const. L. Rev. 78, 85 (2022).

⁹ K. Gupta, *The Role of Transformative Constitutionalism in Indian Legal Evolution*, 22 Asian Legal Rev. 102, 107 (2021)

¹⁰ Gaurav, M. (2023) 'Transformative constitutionalism', *Max Planck Encyclopedia of Comparative Constitutional Law* [Preprint]. doi:10.1093/law-mpeccol/e847.013.847.

changes by checking the legislative and the executive branches from straying too far away from the Constitution's form and structure.

Judicial review

National Judicial Appointments Commission (NJAC) Case (2015):

In the case of National Judicial Appointments Commission the 99th amendment of Constitution of India was declared invalid by the Supreme Court of India and the NJAC Act which intended to replace collegiums system of appointing judges by a commission made up of members both from executive and judiciary. The court ruled that independence of judiciary is an inbuilt characteristic which any change in the Constitution towards that provision will be unconstitutional. This measure prevented possible takeover over powers critical for transformative constitutionalism as part of the separation of powers doctrine and protected its judicial immunity.

Navtej Singh Johar v. Union of India (2018):

In this particular judgment the court repeal the criminalization of consensual same sex relationships. The Court also emphasized that through necessary constitutional adaptations, constitution may retain its allegiance to principles like human dignity, liberty and equality even while remaining responsive to changing societal needs—it is much more flexible than some might imagine. This principle epitomizes transformative constitutionalism because it aligns legal order with modern trends in protection of individual rights and notions justice are evolving.

LANDMARK CASES

1. I.C. Golaknath v. State Of Punjab

Initially in the case of Shankari Prasad AIR 1951 SC 451 and Sajjan Singh AIR 1965 SC 845 the Supreme Court also decided the power to amend the constitution with Parliament is absolute. However, the Golaknath case raised a question with the fact that it differs from the previous perception in which it challenged whether the Parliament could amend fundamental rights. The case had a profound role in holding a vital position in the Indian constitutional law. In the case petitioners itself that is the Golaknath family challenged the acquisition of their farmlands by Punjab Government through the Punjab Security and Land Tenures Act. They noted that their rights enshrined under the constitution in regard to article 19 was the right to property and article 31 was the compulsory acquisition of property. The bench of Supreme court in majority by 6:5 stated that, the Parliament cannot amend fundamental rights which are under Part III of the constitution as these rights are “ultra vires” and beyond amendment, and under article 368, the parliament does not have the power to repeal these rights. This case marked a revolution because it meant that the provisions of fundamental rights were positioned away from any alteration by the parliament. This decision cultivated an environment of agitation among the lawmakers that had earlier resulted in constitutional changes meant to reverse the above ruling. However, it paved way for the introduction of basic structure doctrine because it highlighted on the necessity of placing a check on the amending power of the Parliament.

2. Keshvananda Bharti v. State of Kerala¹¹

One can say that, in terms of constitutionalism in India, the Kesavananda Bharati case is one of the most important case ever. It directly dealt with the question of the degree to which Parliament has the power to amend the Constitution and introduce, as well as set out the parameters of, the Basic Structure Doctrine that remains integral to Indian constitutional law today. Kesavananda Bharati, a religious figure of Shaiva monastery at Guruvayoor, Kerala, sought to prevent the Kerala government to place limitations on the functioning of the sect and the management of its properties. This case gave the apex court a chance to reconsider and even alter the principles that were declared in Golaknath. In Kesavananda Bharati case, the test was set by the 13-judge bench of the Supreme Court by a 7 to 6 majority in the basic structure theory that though Parliament has the

¹¹ Kesavananda Bharati v. State of Kerala, A.I.R. 1973 S.C. 1461

power to amend any part of the constitution including Article 368, their power is limited. In other words the Court clarified that amendments are only capable of changing the provisions of the Constitution but cannot modify its “basic structure that forms its fundamental characteristics”¹². While it was not exhaustive on those aspects constituting this basic structure, it referred to the supremacy of the Constitution, the rule of law, separation of powers, and basic rights as part of it. Kesavananda Bharati judgement in effect is a balance between the parliamentary supremacy and the judicial usurpation. It acknowledged the role of the Parliament in making alterations on the Constitution while at the same time maintaining the fact that the essence of the constitution cannot be changed at all. The above judgment practically reversed the Golaknath decision in a sense that, it permits the parliament to amend the fundamental rights though it imposed the limitation that such amendments should not destroy the basic structure.

Each of the cases, the I. C. Golaknath case and the Keshvananda Bharti case had a significant influence on the evolution of India’s Constitution. The significance of Golaknath it was that it formed the provision of basic structure and put into scrutiny the authority of Parliament regarding the amendment of the constitution of India. Whereas Kesavananda Bharati built on this principle by adding the Basic Structure Doctrine, which means that the key principles of the Constitution are safe from the overbearing legislative. It is exemplified through the struggle between maintaining the Constitution and adapting to the changes in society by means of making certain amendments. By these judgments, the Supreme Court has upheld traditions on the Indian Constitution that has remained rigid as well as flexible, being a living constitution protecting the Democracy and Fundamental Rights.

CONCLUSION

The Basic Structure Doctrine has impacted the Indian constitutional law greatly as to protect the Constitution’s fundamental principles at the same time allowing the amendments that are essential. This doctrine has developed by the cases such as I. C. Golaknath v. State of Punjab (1967) and Kesavananda Bharati v State of Kerala (1973), safeguarding democracy and prevention of alteration of Basic Structure. The journey was initiated with Golaknath case, where the Supreme Court held that fundamental rights could not be amended by the Parliament and stressed upon the necessity of restraints on the legislative powers to safeguard Constitution’s core principles. In Keshvananda Bharti case the court elaborated on this by developing the Basic Structure Doctrine that defined the core framework of the Constitution as including the supremacy of the Constitution, the rule of law, and the separation of powers, the judiciary’s power of review, federalism and the secularism as well as the protection of the fundamental rights. Transformative constitutionalism, that is the process of bringing constitutional mandates in tune with contemporary realities is very much bound to this doctrine. Case laws like, National Judicial Appointments Commission (NJAC) case (2015) and Navtej Singh Johar v. Union of India (2018) posit the judiciary’s functioning in protecting the doctrine for judicial autonomy in order to uphold the basic structure and evolve constitutionalism for changing societal relevant principles. Some opposition has claimed that constitutionalizing affords too much authority to the judicial branch while others have traced problems concerning the amendment process. Hence, it is still necessary to regard it as an important brake of the parliamentary sovereignty, which preserves the citizens’ rights against the arbitrary changes by the parliament. Therefore, the Basic Structure Doctrine safeguards the Indian Constitution’s unity and conservation, along with protecting the principle of constitutional legitimacy and integrating the transformative elements with the constitution’s structure. This duality enables the Constitution to continue to change whilst also remained protected to the extent that the democracy’s core principles and rights of the people of India are not compromised.

¹² R. Sinha, *The Evolution of the Basic Structure Doctrine: Case Analysis*, 19 Legal Stud. Q. 112, 119 (2021)