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**Doctrine of Basic Structure: A judicial innovation**

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**ABSTRACT:**

The Basic Structure Doctrine, a judicial innovation in Indian constitutional law, serves as a check on the amending powers of Parliament. Rooted in the interplay between Article 13, which nullifies laws infringing upon fundamental rights, and Article 368, which empowers Parliament to amend the Constitution, the doctrine emerged to safeguard the Constitution's core principles. Through landmark cases such as *Kesavananda Bharati v. State of Kerala* (1973)<sup>1</sup> and *Minerva Mills v. Union of India* (1980),<sup>2</sup> the Supreme Court delineated the inviolable elements of the Constitution, ensuring that amendments do not alter its essential framework. This paper explores the evolution of the Basic Structure Doctrine, tracing its development through significant constitutional amendments and judicial pronouncements.

**Keywords:** Constitutional Amendments, Judicial Review, Basic Structure Doctrine

**INTRODUCTION:**

The Indian Constitution, as a dynamic document, accommodates changes through the process of amendments. However, the tension between the power to amend and the preservation of fundamental rights presents a unique constitutional challenge. Article 13<sup>3</sup> stipulates that any law contravening fundamental rights is void, while Article 368 grants Parliament the authority to amend the Constitution, including fundamental rights.<sup>4</sup> This paradox raises crucial questions about the extent of Parliament's amending powers: Can it amend the Constitution in a way that abrogates fundamental rights? The Basic Structure Doctrine provides a judicial resolution to this conundrum. Although the term "basic structure" is not explicitly mentioned in the Constitution, it has been interpreted by the Supreme Court to prevent any amendment that would alter the Constitution's essential features. This doctrine has evolved through various judicial decisions, particularly in response to amendments that aimed to limit judicial review and alter fundamental rights. This paper examines the historical development and judicial

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<sup>1</sup> *Kesavananda Bharati v. State of Kerala* (1973)

<sup>2</sup> *Minerva Mills v. Union of India* (1980)

<sup>3</sup> INDIA CONST. art. 13.

<sup>4</sup> INDIA CONST. art. 368.

articulation of the Basic Structure Doctrine, beginning with early amendments like the First and Seventeenth Amendments, leading up to the seminal judgment in *Kesavananda Bharati v. State of Kerala* (1973), and subsequent cases such as *Indira Gandhi v. Raj Narain* (1975) and *Minerva Mills v. Union of India* (1980). Through these cases, the Supreme Court has consistently emphasized the inviolability of the Constitution's basic structure, reinforcing the balance between constitutional flexibility and the protection of fundamental rights.

### **Basic Structure Doctrine:**

Article 13 of the Indian Constitution states that any laws that are inconsistent with or in derogation of fundamental rights will be void. However, Article 368 gives Parliament the power to amend the Constitution. This raises the question of whether Parliament can amend the Constitution and amend the fundamental rights, or if not, to the fullest extent, can Parliament amend it partially? The answer to this question is provided by the Basic Structure Doctrine, which states that Parliament cannot alter or amend any law that would change the basic structure of the Indian Constitution.<sup>5</sup> While the term "basic structure" is not explicitly mentioned in the Indian Constitution, it has evolved through various amendments and court cases.

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

In the first amendment of 1951<sup>6</sup>, the Parliament introduced Article 31A,<sup>7</sup> which empowered the state to acquire any estate or cooperative in the public interest and extinguish or modify the rights of its owners. To protect itself from judicial review, the Parliament subsequently introduced Article 31B, which barred judicial review of any matter included in the Ninth Schedule. In response, the Supreme Court ruled in *Shankari Prasad v. Union of India*<sup>8</sup> that Article 13 applied only to ordinary laws and not to constitutional amendments. (At that time, the right to property was also a fundamental right.)<sup>9</sup>

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<sup>5</sup> Kumar, Virendra. "BASIC STRUCTURE OF THE INDIAN CONSTITUTION: DOCTRINE OF CONSTITUTIONALLY CONTROLLED GOVERNANCE [From Kesavananda Bharati to I.R. Coelho]." *Journal of the Indian Law Institute* 49, no. 3 (2007): 365–98. <http://www.jstor.org/stable/43952120>.

<sup>6</sup> THE CONSTITUTION (FIRST AMENDMENT) ACT, 1951

<sup>7</sup> INDIA CONST. art. 31 A.

<sup>8</sup> AIR 1951 SUPREME COURT 458

<sup>9</sup> Lexpeeps, <https://lexpeeps.in/right-to-property-journey-from-fundamental-right-to-constitutional-right/>, (last visited May. 6, 2024).

In the 17th Amendment (1964)<sup>10</sup>, the Parliament added additional provisions in Article 31A and numerous other entries in the Seventh Schedule. This amendment was challenged in the case of *Sajjan Singh v. State of Rajasthan (1964)*<sup>11</sup>, where a five-judge bench upheld the Shankari Prasad case. Subsequently, the amendment was further challenged in the case of *Golaknath v. State of Punjab (1961)*<sup>12</sup>. In this case, an 11-judge bench overruled both the previous judgments and held that there would always be limitations of judicial review on Parliament's amendment powers. The bench also held that Parliament could not abridge fundamental rights and that Article 13 would apply to constitutional amendments. In 1971, the 24th Amendment<sup>13</sup> to the Constitution introduced Article 13 (4), which states that the provisions of Article 13 do not apply to amendments made under Article 368. Additionally, Article 368 (3) was added, specifying that Article 13 does not apply to amendments made under Article 368. In the 25th Amendment of 1971<sup>14</sup>, the Parliament added Article 31C, which divides Article 31C into two parts:

1. No law enacted to implement Directive Principles can be declared unconstitutional on the grounds that it violates Article 14 (Equality before the law), Article 19 (Freedom of speech and expression), or Article 31 (Right to property).
2. No law containing a declaration for implementing such a policy shall be challenged in any court on the grounds that it does not effectively implement such a policy.

In the 26th Amendment<sup>15</sup> of 1971, the Parliament enacted the abolition of the Privy Purses. Subsequently, in the 27th Amendment of 1971<sup>16</sup>, the Parliament placed land reform acts and amendments to these acts under Schedule 9 of the Constitution. In the *Kesavananda Bharati v. State of Kerala (1973)*<sup>17</sup> case, the 13-judge Bench delivered a significant judgment on April 24, 1973, introducing the 'Basic structure doctrine' for the first time. The Court upheld the amendment's validity and affirmed that Parliament can amend the constitution, except for the basic structure. Consequently, Article 31C, Part (ii), which states that no law containing a declaration for implementing such a policy shall be challenged in any court on the grounds of

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<sup>10</sup> The Constitution (Seventeenth Amendment) Act, 1964

<sup>11</sup> AIR 1965 SUPREME COURT 845

<sup>12</sup> 1967 SCR (2) 762

<sup>13</sup> The Constitution (Twenty-fourth Amendment) Act, 1971

<sup>14</sup> The Constitution (Twenty-fifth Amendment) Act, 1971

<sup>15</sup> The Constitution (Twenty-sixth Amendment) Act, 1971

<sup>16</sup> The Constitution (Twenty-seventh Amendment) Act, 1971

<sup>17</sup> AIR 1973 SUPREME COURT 1461

ineffective implementation, was declared unconstitutional. This was because Part (ii) contravened the basic structure by restricting judicial review. The Court further stated that to determine the scope of the 'basic structure,' the intention of the constitution makers must be ascertained. In the 39th Amendment of 1975<sup>18</sup>, the Parliament added Article 379A, which effectively removed the Supreme Court's jurisdiction to adjudicate electoral disputes pertaining to the election of the Prime Minister, President, Vice President, and Speaker of the Lok Sabha. This amendment was challenged in the landmark case of *Indira Gandhi v. Raj Narain (1975)*<sup>19</sup>, where the Supreme Court applied the principles established in the Kesavananda Bharati case. The Court declared the newly added Article 329A,<sup>20</sup> Clause 4, to be unconstitutional as it violated the basic structure of the Constitution by curtailing the scope of judicial review. In 1976, the 42nd Amendment<sup>21</sup> to the Constitution of India introduced Articles 368(4) and 368(5), granting the Parliament unrestricted power to amend the Constitution. This amendment was challenged in the landmark case of *Minerva Mills v. Union of India and Others (1980)*<sup>22</sup>. The Supreme Court ruled that the Parliament's amending power is not absolute and that certain fundamental aspects of the Constitution, including the limited amending power itself, form part of the "basic structure" of the Constitution. Consequently, the Court declared Articles 368(4) and 368(5) unconstitutional and restored Article 31C, which had been amended by the 42nd Amendment, to its pre-1976 position. In the case of *Waman Rao V. Union of India*<sup>23</sup>, it was determined that the Basic structure doctrine has a prospective effect, not retrospective. It was established that any law placed in the 9th schedule after April 24, 1973, shall be subject to judicial review. This judgment was later upheld in the case of *IR Coelho (2007)* by the 9-judge bench.

## CONCLUSION:

The Basic Structure Doctrine represents a pivotal judicial innovation in Indian constitutional law,<sup>24</sup> ensuring that the Constitution's fundamental principles remain inviolable despite Parliament's wide-ranging amending powers under Article 368. This doctrine emerged from

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<sup>18</sup> The Constitution (Thirty-ninth Amendment) Act, 1975

<sup>19</sup> AIR 1975 SUPREME COURT 2299

<sup>20</sup> INDIA CONST. art. 329A.

<sup>21</sup> The Constitution (Forty-second Amendment) Act, 1976

<sup>22</sup> 1980 AIR 1789

<sup>23</sup> (1981)2SCC362

<sup>24</sup> Manshi\_2003, Basic Structure Doctrine: Rethinking the Foundations of Indian Constitutional Law, legalserviceindia, (May. 27, 2024, 7:19 AM),<https://www.legalserviceindia.com/legal/article-14650-basic-structure-doctrine-rethinking-the-foundations-of-indian-constitutional-law.html>

the inherent conflict between Article 13, which invalidates laws that infringe upon fundamental rights, and Article 368, which grants Parliament the authority to amend the Constitution, including fundamental rights. Through landmark judgments such as *Kesavananda Bharati v. State of Kerala* (1973) and *Minerva Mills v. Union of India* (1980), the Supreme Court has defined and protected the basic structure of the Constitution, maintaining a balance between constitutional flexibility and the safeguarding of essential democratic principles. The evolution of the Basic Structure Doctrine underscores the judiciary's role in upholding constitutional integrity. By establishing that certain fundamental features such as judicial review, the rule of law, and the separation of powers cannot be amended or abrogated, the Supreme Court has reinforced the Constitution's durability and adaptability. The doctrine has also highlighted the limits of parliamentary sovereignty, ensuring that any amendments must respect the core values enshrined in the Constitution. The application of the Basic Structure Doctrine to various amendments, particularly those seeking to limit judicial review or alter fundamental rights, has prevented potential overreach by the legislative branch. This judicial oversight has maintained the Constitution's core identity, even as it adapts to changing societal needs. Cases like *Indira Gandhi v. Raj Narain* (1975) and *Minerva Mills v. Union of India* (1980) demonstrate the judiciary's commitment to preserving the democratic framework and fundamental rights that form the Constitution's backbone. The Basic Structure Doctrine serves as a crucial guardian of the Indian Constitution's core principles, ensuring that amendments do not undermine its essential framework. By delineating the limits of Parliament's amending power, the doctrine preserves the Constitution's integrity and reinforces the foundational values of democracy, justice, and the rule of law. As the Indian Constitution continues to evolve, the Basic Structure Doctrine will remain a cornerstone of constitutional jurisprudence, protecting the fundamental tenets that define India's democratic ethos.

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