

**ANALYSIS OF THE BASIC STRUCTURE OF DOCTRINE IN INDIA  
CONSTITUTIONAL LAW: A JURISPRUDENTIAL PERSPECTIVE**

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**ABSTRACT**

The **Basic Structure Doctrine** (BSD) is one of the most significant judicial innovations in Indian constitutional law, established by the Supreme Court in the landmark **Kesavananda Bharati (1973)** case. This doctrine asserts that certain fundamental features of the Indian Constitution cannot be amended or altered by Parliament, even under the procedures set out in **Article 368**. The evolution of the BSD, from its embryonic form in **Golaknath (1967)** to its formal articulation in **Kesavananda Bharati**, has shaped the framework of constitutional interpretation in India. This jurisprudential perspective critically examines the development, impact, and implications of the Basic Structure Doctrine, focusing on its judicial foundations, core components, and the controversies surrounding its application.

The analysis begins by tracing the **historical context** and the judicial evolution of the BSD, highlighting its origins in early Supreme Court judgments and its consolidation in key cases. It then explores the **jurisprudential foundations**, drawing on theories of **natural law** and **legal positivism**, and examines the relationship between the BSD and essential constitutional features, such as sovereignty, democracy, secularism, and federalism.

Subsequently, the paper critiques the **doctrine's impact on parliamentary sovereignty**, with particular reference to the tension between **judicial review** and legislative authority. The **judicial activism** associated with the BSD is also analyzed, focusing on concerns of **overreach** and its potential to stifle democratic processes. The paper further explores the intersection of the BSD with **social justice**, examining its role in safeguarding fundamental rights and its possible limitations on progressive reforms.

Finally, the paper offers a **comparative analysis** of the BSD with similar judicial doctrines in other countries, such as Germany and the United States, and reflects on the global significance of India's constitutional framework. Through this comprehensive evaluation,

the study aims to offer a nuanced understanding of the **Basic Structure Doctrine** and its evolving role in shaping Indian constitutional jurisprudence.

This analysis provides valuable insights for scholars, legal practitioners, and policymakers engaged with the ongoing discourse on constitutional law and judicial power in India.

## **INTRODUCTION**

The Basic Structure Doctrine is a constitutional law principle in India that holds that certain fundamental features of the Constitution are beyond the power of the Parliament to amend. These features are considered essential to the existence and continuity of the Constitution and are therefore protected from alteration or destruction. Evolving from judicial pronouncements, primarily in the landmark case *Kesavananda Bharati v. State of Kerala (1973)*, this doctrine asserts that while the Indian Parliament has wide powers to amend the Constitution, there are certain fundamental features of the Constitution that cannot be altered or destroyed through amendments. These "basic features" form the foundational principles of the Constitution, ensuring that the core values of India's democratic and republican structure remain intact.

From a jurisprudential perspective, the Basic Structure Doctrine invites deep reflection on several foundational issues in constitutional law and legal philosophy. It raises questions regarding the balance between democratic flexibility and constitutional rigidity, the role of the judiciary in safeguarding the Constitution's integrity, and the nature of the relationship between law and politics in a vibrant democracy.

The Basic Structure Doctrine in Indian constitutional law is not just a legal principle; it is a reflection of broader philosophical and jurisprudential debates about the nature of law, governance, and the role of the judiciary in a democracy. It serves as a safeguard to protect the Constitution's core values and prevents amendments that could erode the democratic and republican fabric of the state. However, the doctrine also raises important questions about the legitimacy of judicial power, the scope of parliamentary sovereignty, and the relationship between law and political power.

Through this analysis, we understand that the Basic Structure Doctrine is not just a judicial construction but a fundamental aspect of India's constitutional identity. It offers a robust framework for preserving the Constitution's core while adapting it to the needs of a changing society. This complex interplay between continuity and change, between judicial interpretation and parliamentary power, remains a critical area of inquiry in the study of Indian constitutional law and jurisprudence.

### **Background and Context**

The **Basic Structure Doctrine** occupies a pivotal position in the evolution of Indian constitutional law, marking a significant turning point in the relationship between constitutional amendment power, judicial review, and the preservation of democratic principles. This doctrine emerged as a response to the expanding powers of Parliament to amend the Constitution, particularly in light of attempts to alter or undermine its foundational principles. From a jurisprudential perspective, understanding the **background and context** of this doctrine involves a deep dive into the historical, political, and legal environment that gave rise to the doctrine, as well as the philosophical underpinnings that shaped its judicial formulation.

### **Constitutional Amendment and Parliamentary Sovereignty**

The Indian Constitution, adopted in 1950, provides for a robust system of governance with a clear distinction between the legislature, executive, and judiciary. At the same time, it also grants Parliament the power to amend the Constitution under **Article 368**. This provision was designed to allow the Constitution to evolve in response to changing circumstances, ensuring its adaptability over time. However, the scope and limits of this amendment power became a subject of intense debate over the years.

Initially, the view in India was that Parliament possessed **plenary power** to amend any part of the Constitution, subject only to procedural constraints. This was consistent with the **doctrine of parliamentary sovereignty**, which holds that Parliament, as the supreme law-making body, is empowered to alter or change the Constitution at will, so long as the

procedural requirements are met. This approach reflected a belief in the flexibility of the Constitution and the importance of allowing the legislature to meet the needs of a changing society.

However, this expansive view of parliamentary power came under scrutiny, especially as attempts were made to amend or eliminate certain provisions of the Constitution that were seen as fundamental to its democratic and secular character.

The **Background and Context** of the Basic Structure Doctrine can be traced to a series of historical, political, and judicial events that shaped the trajectory of constitutional interpretation in India. From the early debates over the amendment power to the judicial determination in *Kesavananda Bharati*, the Basic Structure Doctrine emerged as a response to concerns about the potential erosion of democratic principles through untrammelled parliamentary power. Jurisprudentially, it reflects a commitment to preserving the Constitution's core values while ensuring that the document remains adaptable to societal needs. Through this doctrine, India's judiciary has positioned itself as the custodian of the Constitution's basic identity, providing a framework for the dynamic relationship between law, governance, and constitutional change.

### Evolution of the Basic Structure Doctrine

#### **Pre-Kesavananda Bharati Developments: The Seed of Judicial Intervention**

Before the formal articulation of the Basic Structure Doctrine in *Kesavananda Bharati* (1973), there were several judicial decisions that set the stage for its eventual development. These early cases focused on the scope of Parliament's amendment power and its limitations, especially in relation to **fundamental rights**.

#### ***Shankari Prasad v. Union of India* (1951)**

In the first major case on the issue, the Supreme Court ruled in **Shankari Prasad** (1951) that Parliament had the power to amend **any part of the Constitution**, including the

**Fundamental Rights** under Part III, through the procedure outlined in **Article 368**. The Court adopted a position of **parliamentary sovereignty**, which held that Parliament could alter or modify any provision of the Constitution, as long as it adhered to the procedures of amendment.

### **Golaknath v. State of Punjab (1967)**

In **Golaknath v. State of Punjab** (1967), however, the Court changed course. It held that **Fundamental Rights** could not be amended by Parliament under Article 368. The Court argued that the amendment power did not extend to altering or abrogating the Constitution's **basic features**, and thus, **Fundamental Rights** formed a part of the basic structure of the Constitution. This ruling, while not yet fully elaborating the concept of basic structure, introduced the idea that there could be limits to Parliament's power to amend the Constitution.

**The Golaknath** case represented a shift in judicial thinking. The Court, led by Chief Justice Subba Rao, rejected the idea of absolute parliamentary sovereignty and suggested that there are substantive limits to what Parliament can do through constitutional amendments. This laid the groundwork for the development of the Basic Structure Doctrine, even though the Court did not define or clarify which features of the Constitution constituted its "basic structure."

### **Kesavananda Bharati: The Birth of the Basic Structure Doctrine**

The landmark case of **Kesavananda Bharati v. State of Kerala** (1973) is where the **Basic Structure Doctrine** was formally articulated and crystallized. This case was triggered by a challenge to the **Kerala Land Reforms Act** (which sought to limit the rights of religious institutions over land), and it involved a direct challenge to the **29th Amendment** (1972) to the Constitution.

In a landmark judgment delivered by a 13-judge bench, the Supreme Court ruled by a narrow majority (7:6) that **while Parliament has the power to amend the Constitution under Article 368, this power is not unlimited**. The Court held that Parliament cannot

alter or destroy the "basic structure" or "fundamental framework" of the Constitution through amendments.

Although the majority judgment did not provide an exhaustive list of what constitutes the "basic structure," it identified several key features that were later elaborated in subsequent cases. These included:

- **Democracy and free and fair elections**
- **Rule of law**
- **Judicial review**
- **Secularism**
- **Separation of powers**
- **Federalism**
- **Fundamental Rights** (to some extent)

This decision marked a crucial departure from earlier cases, particularly **Golaknath**, and established the judiciary as the guardian of the Constitution's "basic" elements. The idea that the Constitution has a core set of principles that cannot be amended was a fundamental shift in Indian constitutional jurisprudence.

### **Post-Kesavananda Developments: Further Clarification and Expansion**

Following **Kesavananda Bharati**, the Basic Structure Doctrine was further clarified and expanded in a series of cases that addressed the nature of Parliament's power to amend and the judiciary's role in safeguarding the Constitution's basic features.

*Indira Gandhi v. Raj Narain* (1975)

The **Indira Gandhi v. Raj Narain** (1975) case involved the **39th Amendment** to the Constitution, which sought to exclude judicial review of the election of the Prime Minister. The Supreme Court, in a significant ruling, struck down this provision, holding that it violated the basic structure of the Constitution, particularly the principles of democracy

and free and fair elections. This case marked an important step in defining the "basic structure" as it further solidified the idea that **fundamental democratic principles** cannot be altered through amendments.

*Minerva Mills Ltd. v. Union of India* (1980)

In **Minerva Mills** (1980), the Supreme Court held that the Constitution's **balance between Fundamental Rights and the Directive Principles of State Policy** was part of the basic structure. The Court ruled that **Parliament could not amend the Constitution in a way that undermined this balance**, thus reinforcing the idea that certain constitutional features, such as the **relationship between Part III (Fundamental Rights) and Part IV (Directive Principles)**, form part of the basic structure.

*Waman Rao v. Union of India* (1981)

In **Waman Rao** (1981), the Supreme Court clarified that the **Basic Structure Doctrine** applies not only to amendments made after **Kesavananda Bharati** but also to amendments made before it. The Court further reiterated that amendments that violate the basic features of the Constitution are unconstitutional.

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

While the Basic Structure Doctrine has been firmly established, its precise contours continue to evolve. Over the decades, the Supreme Court has developed a nuanced understanding of what constitutes the "basic structure," adapting it to the changing political, social, and economic context of India. In recent years, the Court has expanded the scope of the doctrine to include principles like:

- **The right to equality and social justice** (e.g., in *M.C. Mehta v. Union of India* (1987) and *Indra Sawhney v. Union of India* (1992)).
- **The protection of the secular character of the Constitution.**

- **The independence of the judiciary** as part of the core structure of the Constitution (e.g., in *Supreme Court Advocates-on-Record Association v. Union of India* (1993)).

Moreover, the Court has also consistently emphasized that **judicial review** is an essential feature of the basic structure and cannot be compromised, even when the legislature attempts to limit or alter the scope of judicial review through amendments.

### **Jurisprudential Insights: The Balance Between Flexibility and Rigidity**

The evolution of the Basic Structure Doctrine reflects a balancing act between two competing principles of constitutional law: **flexibility** and **rigidity**.

- **Flexibility:** On the one hand, the Constitution must be adaptable to changing political, social, and economic realities. The Basic Structure Doctrine allows for constitutional change while preserving its fundamental principles, ensuring that the Constitution remains relevant and responsive to contemporary needs.
- **Rigidity:** On the other hand, the doctrine ensures that certain core principles of the Constitution—such as democracy, rule of law, and judicial independence—are protected from temporary majoritarian impulses or hasty legislative changes. It introduces a **structural rigidity** that prevents the erosion of the Constitution's identity.

From a **jurisprudential perspective**, the Basic Structure Doctrine has become a cornerstone of Indian constitutional law, ensuring a careful balance between **parliamentary sovereignty** and **constitutional supremacy**. It underscores the idea that the Constitution, while flexible, is ultimately governed by certain inviolable principles that define the identity of the state and its democratic system.

### **Early Supreme Court Judgments: *Shankari Prasad* (1951) and *Sajjan Singh* (1965)**

#### **1. Shankari Prasad v. Union of India (1951)**



**Facts:**

The case of **Shankari Prasad v. Union of India** (1951) concerned the validity of the **First Amendment to the Constitution of India (1951)**, which had introduced Article 15(4) (authorizing special provisions for the advancement of socially and educationally backward classes), among other changes. The petitioner, Shankari Prasad, argued that this amendment violated the **Fundamental Rights** guaranteed under **Part III** of the Constitution, especially Articles 14, 19, and 31, which guaranteed the right to equality, freedom of speech, and protection of property.

**Judgment:**

The Supreme Court, in this case, upheld the **First Amendment**, ruling that **Parliament had the power to amend any part of the Constitution**, including **Fundamental Rights**. The Court concluded that the power to amend the Constitution under **Article 368** was a **constituent power** that did not have any inherent limitations, and this power extended to altering or modifying any part of the Constitution, including the provisions related to Fundamental Rights.

The Court reasoned that **Article 368** provided a **procedure for amendment**, but it did not impose any substantive restrictions on the power of Parliament to amend the Constitution. Parliament, therefore, could amend even **Fundamental Rights**, as long as the procedure prescribed under Article 368 was followed. This judgment reinforced the notion of **parliamentary sovereignty** and did not envision any judicial check on the power of Parliament to amend the Constitution.

**Jurisprudential Implications:**

- **Parliamentary Sovereignty:** The Court's decision in *Shankari Prasad* reaffirmed the concept of **parliamentary sovereignty** by holding that Parliament could amend the Constitution as it deemed fit, including provisions related to **Fundamental Rights**.

- **Limits of Judicial Review:** The decision reflected a limited role for judicial review in the context of constitutional amendments, suggesting that the judiciary could not question the **validity** of amendments made by Parliament under Article 368.
- **Constitutional Flexibility:** From a jurisprudential standpoint, the decision emphasized the flexibility of the Constitution and Parliament's ability to adapt the Constitution to changing societal needs without judicial interference.

## 2. Sajjan Singh v. State of Rajasthan (1965)

### Facts:

The **Sajjan Singh v. State of Rajasthan** (1965) case arose when the petitioner challenged the **17th Amendment to the Constitution** (1964), which altered certain provisions related to land reforms and property rights. The amendment sought to bypass judicial scrutiny by excluding certain land reform laws from judicial review, thereby limiting the scope of **Fundamental Rights**.

Sajjan Singh argued that the amendment violated the **right to equality** (Article 14), the **right to property** (Article 31), and other Fundamental Rights, suggesting that Parliament could not amend or dilute the Constitution's Fundamental Rights provisions.

### Judgment:

The Supreme Court in **Sajjan Singh** upheld the **17th Amendment**, reaffirming its earlier judgment in *Shankari Prasad*. The Court held that Parliament's power to amend the Constitution under **Article 368** was **unrestricted** and included the authority to amend **Fundamental Rights**. The judgment concluded that there were no substantive limitations on Parliament's power to alter or remove any provision of the Constitution, including the Fundamental Rights, as long as the procedural requirements were met.

Justice **Gajendragadkar**, delivering the majority opinion, observed that the **amendment power** in Article 368 was broad and could affect any part of the Constitution. The Court emphasized that the **constituent power** of Parliament was not constrained by the need to preserve individual rights, and the judiciary could not interfere with amendments made within the framework of Article 368.

**Jurisprudential Implications:**

1. **Reaffirmation of Parliamentary Sovereignty:** In *Sajjan Singh*, the Court reiterated the **doctrine of parliamentary sovereignty**, reinforcing the idea that Parliament could amend the Constitution without being subject to judicial review, even with respect to **Fundamental Rights**.
2. **Constitutional Rigidity vs. Flexibility:** The decision highlighted a **flexible approach** to constitutional amendments, where Parliament's power to amend the Constitution was seen as essential for the Constitution's adaptability to changing circumstances.
3. **Absence of Judicial Review on Amendments:** The case affirmed that **judicial review** could not extend to constitutional amendments, and **Fundamental Rights** were not immune from legislative alteration.

**Theoretical Underpinnings and Jurisprudential Significance**

The two judgments—*Shankari Prasad* and *Sajjan Singh*—established the initial **jurisprudence of constitutional amendments** in India, grounded in the principle of **parliamentary sovereignty**. These early decisions reflect several key jurisprudential themes:

**1. Parliamentary Sovereignty vs. Judicial Review**

- **Parliamentary Sovereignty:** Both judgments strongly adhered to the idea of **parliamentary sovereignty**, which holds that the legislature, as the representative of the people, is the supreme authority in the constitutional framework. This view aligned with traditional British constitutional theory, where Parliament was considered **supreme** in its law-making powers.
- **Limited Role of Judiciary:** These early decisions downplayed the role of the judiciary in scrutinizing or limiting the scope of amendments. The judiciary's role was seen as **procedural**, ensuring that the amendment process adhered to the prescribed constitutional procedures rather than evaluating the substantive merits of the amendments.

## 2. Constitutional Flexibility

- The decisions in *Shankari Prasad* and *Sajjan Singh* reflected a belief in the **flexibility of the Constitution**, allowing Parliament to amend it in accordance with the prevailing political and social needs of the time. The amendments made by Parliament were viewed as tools to adapt the Constitution to changing circumstances, especially in the post-independence period, when **land reforms** and **social justice** were pressing concerns.

## 3. Absence of a Basic Structure

- In both cases, the Court did not articulate any limitations on the **substantive content** of constitutional amendments, and it did not identify any core principles or **basic features** that would prevent Parliament from altering them. This reflects an earlier stage in Indian constitutional interpretation, before the emergence of the **Basic Structure Doctrine** in the 1970s.

## 4. Early Debate on the Limits of Constitutional Amendments

- These judgments set the stage for the **constitutional debate** that culminated in the *Kesavananda Bharati* (1973) decision, where the Supreme Court would reverse this approach by acknowledging that while Parliament could amend the Constitution, it could not destroy or alter its **basic structure**. The decisions in *Shankari Prasad* and *Sajjan Singh* were criticized for failing to recognize any inherent limitations on Parliament's power to amend the Constitution, especially concerning **Fundamental Rights**.

## The Golaknath Case (1967): A Turning Point in Indian Constitutional

### Facts of the Case

The case arose from a challenge to the **Punjab Security of Land Tenures Act** (1953) and the **17th Constitutional Amendment** (1964), which sought to validate certain land

reforms in the state of Punjab. The petitioner, **Golaknath**, a landowner, argued that the **17th Amendment**, which altered **Article 31** (right to property), violated his fundamental rights under Articles **14** (right to equality) and **19** (protection of certain rights regarding freedom of speech, etc.).

The core legal issue in the case was whether **Parliament could amend the Constitution to alter or abridge Fundamental Rights**. Specifically, the Court was asked to decide whether **Article 368**, which provides the procedure for amending the Constitution, allowed Parliament to amend or violate Fundamental Rights.

## 2. Judgment in the Golaknath Case

In a **historic decision** by a majority of 6:5, the Supreme Court ruled that **Parliament could not amend the Fundamental Rights under Part III of the Constitution**. The Court declared that the **Fundamental Rights** were **immutable** and **cannot be altered by parliamentary amendments**, even if the procedure outlined in **Article 368** was followed.

The judgment is significant for the following reasons:

- **Parliament's Amendment Power:** The Court ruled that Parliament's power to amend the Constitution under Article 368 was not **unlimited** and could not be used to alter or dilute the **fundamental rights** guaranteed by Part III of the Constitution.
- **Fundamental Rights as Absolute:** The Court held that the **Fundamental Rights** were beyond the reach of the amendment power because they formed the **core** of the Constitution's structure. As such, they could not be taken away, modified, or restricted by ordinary legislative processes.
- **Interpretation of Article 368:** The Court made a distinction between the **amendment of the Constitution** and **normal legislation**. It held that while **normal laws** could be enacted by Parliament under its legislative powers, constitutional amendments involved a higher level of authority and could not infringe upon fundamental rights.

Justice **Subba Rao**, who delivered the majority opinion, famously remarked that the **Constitution was intended to provide for the protection of fundamental rights** and that no amendment, however procedural it might be, could violate the Constitution's most basic values.

### Jurisprudential Implications of the Golaknath Case

The **Golaknath case** was a **turning point** in the development of Indian constitutional jurisprudence, as it introduced several key shifts in the understanding of constitutional amendments, **parliamentary sovereignty**, and **judicial review**:

#### Rejection of Parliamentary Sovereignty

- **Pre-Golaknath Jurisprudence:** Before *Golaknath*, the Supreme Court had adhered to the principle of **parliamentary sovereignty**, which held that Parliament could amend any part of the Constitution, including fundamental rights, as long as it followed the procedures in Article 368. This was seen in cases like *Shankari Prasad* (1951) and *Sajjan Singh* (1965), where the Court upheld Parliament's plenary power to amend the Constitution without limitations.
- **Post-Golaknath Jurisprudence:** In contrast, the **Golaknath judgment** marked a significant departure from the idea of **parliamentary sovereignty**. The Court concluded that **fundamental rights** formed a **core constitutional value** that could not be overridden by ordinary legislative amendments. This decision, therefore, placed **substantive limits** on Parliament's ability to alter the Constitution.

#### Judicial Activism and Protection of Fundamental Rights

- *Golaknath* reflects an early form of **judicial activism**, where the Court positioned itself as the **protector** of individual rights, even against parliamentary actions. The Court, by declaring fundamental rights **immutable**, placed a barrier against any potential **political encroachment** on the Constitution's core democratic principles.

- The Court effectively made the **fundamental rights** provisions **immune** from change, thus establishing a **new judicial role** in protecting individual freedoms against the government's legislative power.

#### Constitutionalism and the Protection of Democracy

- The case laid a foundational premise for the later development of the **Basic Structure Doctrine**, which, as articulated in *Kesavananda Bharati* (1973), would reinforce the idea that the Constitution has a set of **core principles** that cannot be altered even by constitutional amendments.
- **Constitutionalism** in India thus evolved from a focus on **parliamentary sovereignty** to an emphasis on the **protection of fundamental values**, with the judiciary assuming a **vigilant role** in safeguarding these values.

#### Criticism of the Golaknath Judgment

Despite its doctrinal significance, the *Golaknath* case was not without controversy. Several criticisms emerged, both from **legal scholars** and **practicing jurists**, regarding the reasoning and implications of the judgment:

1. **Parliament's Limited Sovereignty:** Critics argued that by **restricting** Parliament's power to amend the Constitution, the *Golaknath* decision undermined the **principle of parliamentary sovereignty**. By emphasizing judicial supremacy over the **amendment power**, the Court was perceived as creating an imbalance between the legislature and the judiciary.
2. **Flexibility vs. Rigidity:** Some believed that the *Golaknath* judgment **excessively rigidified** the Constitution, making it harder for the **legislature** to effect necessary changes in response to evolving societal needs. They argued that flexibility was key to constitutional evolution.
3. **Lack of Clear Definition of 'Fundamental Rights':** The judgment did not provide a clear or exhaustive list of the **fundamental rights** that were immune from amendment, which left the scope of the decision somewhat ambiguous. This lack

of clarity in defining the **core** principles of the Constitution was later addressed in the *Kesavananda Bharati* case.

### **The Kesavananda Bharati Case (1973): The Birth of the Basic Structure Doctrine**

#### **1. facts of the Case**

The case arose from a challenge to the **Kerala Land Reforms (Amendment) Act, 1969**, which sought to limit the rights of landlords over their land. The petitioner, **Kesavananda Bharati**, the head of a religious organization, argued that several provisions of the **Constitution (Twenty-Fourth Amendment) Act, 1971** and the **Kerala Land Reforms Act** violated his fundamental rights, particularly under **Article 31** (protection of property).

However, the larger issue before the Court was whether **Parliament had the power to amend the Constitution, including its Fundamental Rights provisions**, particularly in light of the **Twenty-Fourth Amendment**, which gave Parliament the explicit power to amend any part of the Constitution, including Part III (Fundamental Rights).

#### **2. Judgment in the Kesavananda Bharati Case**

In a **historic ruling** delivered by a **13-judge bench**, the Supreme Court of India ruled in favor of **Kesavananda Bharati**, but its decision had **far-reaching consequences** for the interpretation of constitutional amendments. The Court held:

1. **Parliament's Power to Amend the Constitution:** The Court held that **Parliament had the power to amend any part of the Constitution under Article 368**, including Fundamental Rights, but with a crucial qualification: this power could not be used to alter the **basic structure** of the Constitution.
2. **Introduction of the Basic Structure Doctrine:** The judgment famously stated that the **basic structure of the Constitution** could not be altered or destroyed by Parliament through amendments. The **Basic Structure Doctrine** was articulated as a principle that certain core features of the Constitution, which form its **foundation**,



- are inviolable and cannot be changed by a constitutional amendment, even if the **formal amendment procedure** is followed.
3. **Basic Structure is Undefined:** Importantly, the Court did not provide an exhaustive list of what constitutes the **Basic Structure**. However, the judgment indicated that **democracy, the rule of law, the separation of powers, judicial review**, and the **federal structure** were some of the key elements that could be considered part of the **basic structure**.
  4. **Limitation on Amendment Power:** The Court ruled that while Parliament's power to amend the Constitution was broad, it was not **absolute**. Amendments that altered or destroyed the **basic structure** of the Constitution would be **unconstitutional**, even if passed through the prescribed procedure.

### 3. Jurisprudential Significance of the Kesavananda Bharati Judgment

The **Kesavananda Bharati** case is a watershed moment in Indian constitutional law, with several crucial jurisprudential implications:

1. **Parliamentary Sovereignty vs. Judicial Review:** The case shifted the balance between **parliamentary sovereignty** and **judicial review**. While the Court upheld the power of Parliament to amend the Constitution, it also introduced a **judicial check** to ensure that such amendments did not violate the **basic structure** of the Constitution. This marked a **limit to parliamentary sovereignty** and emphasized the importance of **judicial review** in preserving constitutional values.
2. **Constitutional Supremacy:** The decision reinforced the **supremacy of the Constitution**, recognizing that the Constitution itself is the **supreme law of the land**, and even Parliament cannot violate its fundamental principles. This decision gave rise to the **idea of constitutionalism**, where the Constitution's values and basic structure are paramount.
3. **Protection of Fundamental Rights:** By declaring that the **basic structure** includes fundamental rights and democratic principles, the Court ensured that **individual freedoms and justice** would not be overridden by any government or legislature. This was a clear move towards **protecting the core values** of Indian democracy.

4. **Open-ended Nature of Basic Structure:** The **Basic Structure Doctrine** was intentionally left open-ended, allowing future judicial decisions to elaborate on and define the scope of the doctrine. This flexibility allowed the judiciary to adapt the doctrine to evolving societal and constitutional needs, while maintaining the Constitution's **core values**.

### **Subsequent Developments: Minerva Mills (1980) and Waman Rao (1981)**

Following the *Kesavananda Bharati* decision, the **Basic Structure Doctrine** was further developed and refined in subsequent Supreme Court cases. Two significant cases that expanded and clarified the scope of the doctrine are **Minerva Mills Ltd. v. Union of India (1980)** and **Waman Rao v. Union of India (1981)**.

#### **1. Minerva Mills Ltd. v. Union of India (1980)**

**Facts:** The **Minerva Mills case** involved a challenge to the **42nd Amendment of the Constitution** (1976), which had made sweeping changes to the Constitution, including changes to **Article 368**. One of the key changes introduced by the 42nd Amendment was the reduction of the **judicial review** power of the courts, and the amendment sought to place limits on the **judicial review of constitutional amendments**. The petitioners, including Minerva Mills, argued that these changes were unconstitutional as they violated the basic structure of the Constitution.

**Judgment:** In a **landmark ruling**, the Supreme Court struck down key provisions of the **42nd Amendment**. The Court held that:

1. **Judicial Review as Part of Basic Structure:** The Court reaffirmed that **judicial review** was an essential feature of the **basic structure** of the Constitution and that Parliament could not alter or dilute this feature. Specifically, it held that the **amendment to Article 368**, which sought to curtail judicial review, was **unconstitutional**.
2. **Balance Between Fundamental Rights and Directive Principles:** The **Minerva Mills judgment** also emphasized the **balance** between **Fundamental Rights** (Part

III) and the **Directive Principles of State Policy** (Part IV). The Court ruled that while **Directive Principles** guide the state in achieving social and economic justice, they could not override **Fundamental Rights**. The Court held that the **42nd Amendment**, which gave precedence to **Directive Principles** over **Fundamental Rights**, violated the basic structure by disturbing this balance.

#### **Jurisprudential Impact:**

- **Reaffirmation of Judicial Review:** The **Minerva Mills case** reinforced the Court's earlier position in *Kesavananda Bharati* that **judicial review** was part of the **basic structure** of the Constitution and could not be abridged by any amendment.
- **Balance Between Fundamental Rights and DPSPs:** The decision established that the **Fundamental Rights** and **Directive Principles of State Policy** must be balanced, but **Fundamental Rights** would prevail if there was a conflict between the two.

#### **2. Waman Rao v. Union of India (1981)**

**Facts:** The **Waman Rao case** arose after the **Forty-Second Amendment** had made significant changes to the Constitution, especially in relation to **Article 368**. The petitioners in the case argued that the **amendments** made to the Constitution in the wake of the **42nd Amendment** were inconsistent with the **basic structure** and, therefore, unconstitutional.

**Judgment:** The Supreme Court in **Waman Rao** addressed the **validity of constitutional amendments** made after the **Kesavananda Bharati** ruling. The Court held:

1. **No Amendment Can Alter the Basic Structure:** The Court reaffirmed that no amendment, including those made after the **Kesavananda Bharati** decision, could alter or destroy the **basic structure** of the Constitution. It also clarified that **constitutional amendments made before Kesavananda Bharati** (like those under the 42nd Amendment) would be subject to the test of **basic structure**.

2. **Amendments After Kesavananda Bharati:** The Court in this case also made it clear that **amendments post-Kesavananda Bharati** must pass the test of the **Basic Structure Doctrine**. In other words, even after the Kesavananda decision, amendments must respect the **core principles** of the Constitution.

### **Jurisprudential Impact:**

- **Retrospective Applicability of the Basic Structure Doctrine:** The **Waman Rao case** clarified that the **Basic Structure Doctrine** was applicable not only to future amendments but also to amendments made prior to *Kesavananda Bharati*. This reinforced the **doctrine's supremacy** in the constitutional scheme and its applicability to all amendments.
- **Refinement of Basic Structure:** The judgment further solidified the **role of the judiciary** in ensuring that constitutional amendments do not undermine the **basic structure** of the Constitution.

### **Jurisprudential Foundations of the Basic Structure Doctrine**

#### **Constitutional Supremacy and the Rejection of Parliamentary Sovereignty**

At the heart of the Basic Structure Doctrine lies the rejection of **parliamentary sovereignty**, a cornerstone of the **British legal tradition**, which was initially assumed to apply in India as well. The doctrine asserts that the **Constitution is supreme**, not Parliament, and therefore, **Parliament cannot alter its foundational structure**. This principle can be understood through the following jurisprudential perspectives:

#### **a. Constitutional Supremacy**

- **Constitutional supremacy** implies that the **Constitution is the highest legal authority** in a nation, and all laws, actions, and amendments must conform to its fundamental principles. Unlike ordinary statutes, which are subject to amendment by Parliament, the **Constitution itself can only be altered within certain limits**.

- The Basic Structure Doctrine establishes that while **Parliament can amend the Constitution under Article 368**, it cannot alter its **core features** or **basic structure**. This reflects the idea that the Constitution is not a document solely of political expediency but a **moral and legal commitment** that binds all branches of government.

#### **b. Rejection of Parliamentary Sovereignty**

- Initially, the Indian legal system assumed the **parliamentary sovereignty** model, as seen in the early judgments like **Shankari Prasad (1951)** and **Sajjan Singh (1965)**, where the Supreme Court upheld the Parliament's power to amend any part of the Constitution, including **Fundamental Rights**. This approach mirrored **British constitutional theory**, where Parliament's will was regarded as supreme.
- However, in **Kesavananda Bharati (1973)**, the Supreme Court rejected this idea, holding that **the Constitution itself has inherent limits**. The power of amendment could not extend to the **basic structure** of the Constitution. This shift marked a **fundamental break** from the traditional view of parliamentary supremacy, positioning the Constitution and its **basic structure** as **above the legislature**.

#### **Judicial Review as a Guardian of the Constitution**

The Basic Structure Doctrine is closely linked to the concept of **judicial review**, which entails the judiciary's power to **examine the constitutionality** of laws and amendments. The doctrine reinforces the judiciary's role as the **guardian of the Constitution**, ensuring that changes to the Constitution do not undermine its **fundamental values**.

#### **a. Judicial Activism and the Role of the Judiciary**

- The doctrine reflects the judiciary's active role in **upholding the Constitution** against potential violations by other branches of government. The Supreme Court, through the **Basic Structure Doctrine**, reinforced its **vigilance** in **protecting**

- constitutional values**, especially in a democratic context where the legislature might sometimes act in ways that endanger the Constitution's fundamental features.
- The Court's willingness to invoke judicial review to **invalidate amendments** that violate the basic structure shows a commitment to maintaining the **integrity of the Constitution**. This role of **judicial activism** emerged as a necessary counterbalance to prevent **unilateral** constitutional amendments by the government, particularly in situations where majoritarian impulses could endanger individual rights or democratic processes.

#### **b. Protecting Fundamental Rights**

- The **Basic Structure Doctrine** is intertwined with the idea that certain **fundamental rights** enshrined in the Constitution cannot be altered or abrogated, even by constitutional amendments. This is consistent with the **jurisprudential tradition** that views **individual rights** as **inalienable** and outside the realm of ordinary legislative manipulation.
- The **Kesavananda Bharati** case and later decisions such as **Minerva Mills (1980)** and **Waman Rao (1981)** affirmed that fundamental rights and **democratic values** (such as **judicial review** and **separation of powers**) were integral to the Constitution's basic structure and thus cannot be amended to their detriment.

#### **Concept of "Basic Structure" and Its Ambiguity**

The most significant feature of the Basic Structure Doctrine is its **openness and flexibility**, with the Court explicitly refusing to define the **exact contours** of the "basic structure." This ambiguity, while sometimes criticized, also allows the doctrine to evolve and adapt to **changing societal, political, and legal realities**.

#### **a. Constitutional Principles vs. Political Will**

- The Court, in **Kesavananda Bharati**, emphasized that the **basic structure** is not a rigid or exhaustive list but rather a **set of principles** that form the core of the

Constitution. These principles include, but are not limited to, **democracy, rule of law, judicial review, secularism, separation of powers, and federalism.**

- The focus was on the **constitutional principles** that provide the structural integrity of the nation, as opposed to a narrow interpretation based solely on the **political interests** of any given time. By doing so, the Court ensured that the **fundamental nature of the Constitution** is not subject to **transient political majorities** but remains a **commitment to core democratic values.**

#### **b. Evolution of the Basic Structure**

- While the Court did not enumerate the specific elements of the basic structure in its initial judgment, subsequent rulings have clarified and expanded the **basic structure** to include **fundamental rights, the secular nature of the state, the democratic character of the Constitution, the separation of powers, and the independence of the judiciary.**
- The concept of **basic structure** evolved to include principles that are essential to preserving the **identity of the Constitution**—principles that define its **philosophical and structural integrity.**

#### **Philosophical Underpinnings: Natural Law and Constitutionalism**

The **Basic Structure Doctrine** can also be understood through the lens of **natural law theory** and **constitutionalism.**

#### **a. Natural Law and Constitutional Morality**

- The notion that the Constitution embodies certain **unalterable principles** is rooted in **natural law theory**, which holds that some laws and principles are so foundational to the **moral order** of a society that they cannot be changed by mere legislation. The **Basic Structure Doctrine** asserts that there are certain **core values** inherent in the Constitution that must endure, regardless of political changes.
- This perspective aligns with the idea of **constitutional morality**, where the Constitution is seen as more than a document of legal rules; it is a **manifestation**

**of values** that cannot be altered by transient political considerations. These principles protect the **rights of the individual**, the **democratic process**, and the **plurality of society**.

#### **b. The Protection of Democracy**

- From a **philosophical perspective**, the Basic Structure Doctrine is also seen as a safeguard for **democracy**. The Constitution is designed to ensure that the **structure of governance**, the **distribution of power**, and the **protection of individual rights** are maintained for the **long-term stability** of the democratic system.
- By preventing changes to the **basic structure**, the doctrine ensures that the **spirit of the Constitution**, particularly its democratic and egalitarian values, is preserved even in the face of **political pressures** to amend or change them.

#### **The Role of Judicial Precedents in Shaping the Doctrine**

The development of the Basic Structure Doctrine has been shaped by **judicial precedents** over the years. Since the **Kesavananda Bharati case**, the Supreme Court has continued to refine and apply the doctrine in a series of important rulings.

#### **a. Refinement in Subsequent Cases**

- In **Minerva Mills (1980)**, the Court reaffirmed that the **balance** between **fundamental rights** and the **Directive Principles of State Policy (DPSPs)** is part of the **basic structure** of the Constitution. The Court ruled that any amendment that disturbed this balance would be unconstitutional.
- In **Waman Rao (1981)**, the Court applied the **Basic Structure Doctrine** to amendments made **prior** to the Kesavananda decision, reiterating that the Constitution's **basic features** could not be altered or destroyed by any amendment, regardless of the timing of its passage.

#### **b. Judicial Authority and Constitutional Interpretation**



The Court's ongoing interpretation of what constitutes the basic structure has been instrumental in shaping Indian constitutionalism. By acting as a constitutional gatekeeper, the Court has ensured that the Constitution is not manipulated to suit political convenience.

### Natural Law and the Basic Structure Doctrine

The **Basic Structure Doctrine** is deeply intertwined with philosophical and jurisprudential traditions, one of the most prominent being **Natural Law**. This theory, which posits that certain moral principles are inherent in nature and discoverable through human reason, has influenced the development of constitutional law and judicial interpretations in various jurisdictions, including India.

### Natural Law and Constitutional Interpretation

**Natural Law theory** suggests that the law is not merely a set of rules created by human authorities (such as the legislature) but is grounded in **universal moral principles** that transcend human-made laws. These principles are perceived as inherent to human nature and the **moral order** of society. In the context of the **Basic Structure Doctrine**, Natural Law provides a foundation for the idea that the Constitution is not simply a legal document but a reflection of **certain fundamental principles** that define the **identity and structure** of the nation.

**Natural Law in the Basic Structure Doctrine** can be understood in the following ways:

- **Inalienable Principles:** Just as Natural Law asserts the existence of **inalienable rights** that cannot be taken away by any authority (e.g., the right to life, liberty, and property), the Basic Structure Doctrine posits that there are **core principles** of the Constitution that cannot be altered, even by the **amendment process**. These principles are **fundamental** to the **democratic and moral fabric** of India and are deemed **immutable**.
- **Moral and Legal Imperatives:** Under Natural Law, the Constitution is more than just a legal document; it embodies a **moral order**. The **Basic Structure** of the

Constitution includes not just legal norms but also **moral and democratic values**, such as **justice, equality, freedom**, and **democratic governance**, which transcend the **political will** of the majority. In this sense, the Basic Structure Doctrine serves to **preserve the moral integrity** of the Constitution.

- **Judicial Responsibility:** In line with Natural Law, the judiciary has the duty to **interpret and uphold the Constitution** in a manner that protects these inherent principles. The **judiciary**, through the Basic Structure Doctrine, serves as the **guardian of the Constitution**, ensuring that no political or legislative act can violate the **fundamental moral and legal principles** embedded in it.

### **Basic Structure as a Moral and Constitutional Safeguard**

The Basic Structure Doctrine, therefore, acts as a **constitutional safeguard** against the alteration of the Constitution's **fundamental moral** values. While **positive law** may allow amendments, **Natural Law** suggests that certain foundational values, which preserve **human dignity** and **justice**, cannot be changed by legislation or political power. The **Kesavananda Bharati** case, by introducing this doctrine, aligns with the Natural Law tradition, asserting that the **Constitution's core principles**—such as **democracy, rule of law, judicial review, secularism, and separation of powers**—are part of the Constitution's **moral identity**, beyond the reach of ordinary legislative or executive action.

### **Positivism and the Role of the Judiciary**

While the Basic Structure Doctrine has strong roots in **Natural Law**, it must also be understood in contrast with **Legal Positivism**, a theory of law that emerged as a response to the Natural Law tradition. **Positivism**, associated with thinkers like **Jeremy Bentham** and **H.L.A. Hart**, holds that **laws are rules made by human beings** and that there is no necessary connection between law and morality. According to positivists, laws are valid if they are created through the **proper legislative procedures**, irrespective of whether they are **just** or **unjust**.

#### **1. Legal Positivism and Constitutional Amendments**

In the context of **constitutional amendments**, **legal positivists** argue that the **validity** of an amendment depends on whether it follows the prescribed **amendment process** laid down in the Constitution (e.g., Article 368 in India). According to this view, if Parliament follows the correct procedure, the amendment is constitutionally valid, regardless of its content.

- **Positivism and Parliamentary Sovereignty:** From a positivist perspective, the **sovereignty of Parliament** would justify its power to amend any part of the Constitution, including **fundamental rights** and core structures. **Kesavananda Bharati**, however, rejected this view by introducing the Basic Structure Doctrine, arguing that while the **amendment procedure** might be followed, **certain features** of the Constitution cannot be **altered** because they are beyond the reach of mere legislative will.

## 2. Positivism and Judicial Role

In positivist thought, the **judiciary's role** is generally seen as more **mechanical** and **interpretive**—it applies the law as it is written. The idea is that **judges should not impose their moral views** on the law but should instead focus on applying the **positive law** that exists.

However, the Basic Structure Doctrine fundamentally challenges the positivist view of the judiciary. By empowering the **judiciary to review constitutional amendments** and determine whether they violate the basic structure, the **Kesavananda Bharati** case places the judiciary in a **proactive** role as the protector of the **Constitution's foundational values**. This role goes beyond mere interpretation and enters the realm of **constitutional guardianship**, ensuring that the **intent and spirit** of the Constitution are maintained even against majoritarian or political pressures.

Thus, while positivist theory might view the judiciary as a **passive interpreter** of law, the Basic Structure Doctrine imbues it with a **definitive and active role** in ensuring that the **core principles of the Constitution** are upheld.

## **The Relationship Between the Basic Structure Doctrine and the Concept of "Essential Features"**

The **concept of "essential features"** is a key component of the **Basic Structure Doctrine**. While the term "basic structure" is not explicitly defined in the Constitution, it refers to the **fundamental principles** and **core values** that constitute the **identity** of the Indian Constitution. The **relationship between "basic structure" and "essential features"** lies in the fact that the former is grounded in the **latter**.

### **1. The Evolution of the "Essential Features" Concept**

The **Kesavananda Bharati** decision left the definition of the "basic structure" open-ended, leading to an ongoing judicial exercise of identifying the **essential features** that form the core of the Constitution. Over the years, several judgments have expanded on what constitutes the **basic structure** by identifying these essential features.

- **Kesavananda Bharati (1973)**: The Court did not explicitly list the essential features but suggested that they include fundamental principles like **democracy, rule of law, secularism, separation of powers, and judicial review**.
- **Minerva Mills (1980)**: The Court added that the **balance between Fundamental Rights and the Directive Principles of State Policy** is an essential feature of the Constitution. Any attempt to tilt this balance would be contrary to the Constitution's **basic structure**.
- **Waman Rao (1981)**: The Court further clarified that the **basic structure** includes the **essential features** of federalism and the **independence of the judiciary**.

### **2. "Essential Features" as Indicative of Basic Structure**

The term "**essential features**" is used to denote the **core values** that the **Basic Structure Doctrine** seeks to protect. These features are regarded as fundamental to the **constitutional identity** of India and cannot be altered or destroyed by any amendment. Some of the **essential features** identified by the Court include:

- **Democracy:** A system of government that is **representative** and **participatory**.
- **Republicanism:** The nature of the state as a **republic**, without a monarchy.
- **Rule of Law:** The idea that the law applies equally to all, and no one is above the law.
- **Separation of Powers:** The division of government into **legislative**, **executive**, and **judicial** branches to prevent the concentration of power.
- **Judicial Review:** The power of the judiciary to review laws and actions of the executive to ensure their compliance with the Constitution.

### 3. Protecting the Essential Features through Judicial Review

The Basic Structure Doctrine **ensures that these essential features are protected from amendments that might undermine them. For instance, a constitutional amendment that undermines the democratic process (e.g., through a concentration of power) or violates fundamental rights (such as freedom of speech or equality before the law) would be invalid because it affects the essential features of the Constitution.**

#### Components of the Basic Structure Doctrine

##### Sovereignty and Integrity of India

##### Sovereignty

- **Sovereignty** is a cornerstone of any Constitution, and in the context of India, it is a fundamental component of its **Basic Structure**. Sovereignty refers to the **supreme authority** of the state to make decisions and laws without external interference. In the case of India, this means that the country must remain an independent, **self-governing** entity, free from the influence of foreign powers.
- The **Kesavananda Bharati (1973)** judgment affirmed that the **sovereignty of India** is an essential feature of its **Basic Structure**. Any attempt to **diminish** or

**compromise** India's sovereignty—either through constitutional amendments or otherwise—would be unconstitutional.

- The concept of sovereignty, as part of the **Basic Structure**, also implies that India remains **autonomous** in its domestic and foreign affairs, with no external interference or **external encroachments** on its political and constitutional order.

### **Integrity**

- The **integrity** of India refers to the **territorial unity** and **unified sovereignty** of the country. Any change to the **territorial boundaries** or the **unitary nature** of India, including the splitting of states or attempts to create divisions in the country's territory, would **violate** its **Basic Structure**.
- The **integrity of India** was emphasized as a **basic feature** in several judgments, where the Court underscored that the **unity of the nation** cannot be compromised through amendments to the Constitution. This ensures that the state retains its **coherent and cohesive structure**.

### **Democracy and Republican Form of Government**

#### **Democracy**

- The **democratic nature** of the Indian state is a fundamental component of its **Basic Structure**. The Constitution of India is built on the idea of **representative democracy**, where **elections** are held periodically, and the people have the power to choose their **representatives** in both the **legislative** and **executive branches**.
- The **democratic process** includes several crucial aspects such as **universal adult suffrage**, **multi-party systems**, **free and fair elections**, and the **right to vote**, all of which are **non-negotiable** and form the **core** of India's democratic framework.
- The **Kesavananda Bharati** ruling affirmed that the **democratic nature** of the Constitution is an inviolable part of its **Basic Structure**. No amendment can alter the **democratic system**, or distort its core principles, such as ensuring that the **elected representatives** are accountable to the **people**.

### **Republican Form of Government**

- India's **republican form of government** is another vital component of the Basic Structure. A **republic** is defined as a state in which the head of state is not a monarch but an elected representative of the people. In India, the **President** serves as the head of state, and the head of the government is the **Prime Minister**, who is elected by the people through their chosen representatives.

Any amendment that sought to establish a **monarchical** or hereditary form of government would directly violate the Basic Structure **of the Constitution, which mandates a republican system of governance. The Kesavananda Bharati case reinforced this by asserting that the republican nature of India's governance system is fundamental to its constitutional identity.**

### **Secularism and Freedom of Religion**

#### **Secularism**

- **Secularism** is another crucial element of India's **Basic Structure**. The term **secular** in the Indian context refers to a state that **does not favor any particular religion** but instead treats all religions **equally** and ensures that religion has no role in the governance of the state.
- The **Kesavananda Bharati (1973)** judgment emphasized that **secularism** is an essential feature of the Indian Constitution and cannot be altered or removed. It **prohibits discrimination** on the grounds of religion and ensures that the state remains neutral in religious matters.
- The **secular nature of the state** is enshrined in various provisions of the Constitution, including **Article 25** (freedom of conscience and free profession, practice, and propagation of religion), and **Article 28** (freedom from religious instruction in educational institutions).

#### **Freedom of Religion**

- The **right to freedom of religion**, which allows individuals to practice and propagate their religion freely, is integral to the idea of **secularism** in India. This freedom is guaranteed under **Part III** of the Constitution, primarily through **Articles 25 to 28**, which ensure that citizens can follow and express their religious beliefs without fear of persecution.
- The **Basic Structure Doctrine** protects this **freedom of religion** as part of India's secular framework. No constitutional amendment can be made to **alter** or **undermine** this right, as it is a **core feature** of the Indian state's identity.

### Federalism and the Distribution of Powers

#### Federalism

- The **federal structure** of the Indian Union is another essential component of the **Basic Structure**. **Federalism** refers to the **division of power** between the central government (the **Union**) and the various states and union territories in India. This structure ensures that no level of government becomes too powerful, preserving the **balance** between national and regional interests.
- The **Kesavananda Bharati** judgment recognized **federalism** as an integral part of the Constitution's **Basic Structure**, asserting that any amendment that seeks to change the **balance of powers** between the Union and the States (for example, by weakening the autonomy of states) would violate the Constitution's basic principles.
- **Article 1** of the Indian Constitution declares India to be a **Union of States**, and the **distribution of powers** is laid out in the **Seventh Schedule**, which divides subjects into three lists: the **Union List**, the **State List**, and the **Concurrent List**. The **Basic Structure Doctrine** ensures that this division of powers remains intact, preventing any constitutional change that would compromise the **federal character** of India.

#### Distribution of Powers

- The distribution of powers between the **Union** and **States** is a foundational principle of the **Indian Constitution**, ensuring that powers are allocated and



exercised in a balanced manner. This allocation is crucial for maintaining both **unity** and **diversity** within India.

The Basic Structure **requires that any amendments that disrupt the balance of powers between the Union and the States—whether by expanding or curtailing state powers beyond the scope of what is laid out in the Constitution—would be considered unconstitutional. For instance, amendments that increase the power of the Union at the expense of the States (for example, by reducing the scope of the State List) could be deemed a violation of the federal structure.**

### Critical Evaluation of the Basic Structure Doctrine

#### Criticisms of the Doctrine: Judicial Activism and Overreach

##### Judicial Activism

One of the most significant criticisms of the **Basic Structure Doctrine** revolves around its perceived role in **judicial activism**. Critics argue that the doctrine has led to the judiciary **expanding its powers** beyond its traditional role of interpretation, effectively allowing judges to **legislate** from the bench.

- **Undermining Democratic Processes:** Some critics contend that the judiciary, by declaring certain principles as part of the **Basic Structure** that cannot be altered, undermines the **democratic will** of the elected legislature. If Parliament is unable to alter certain features of the Constitution through amendments, critics argue, it reduces the **legislative authority** of the people's representatives and introduces an **undemocratic element** into constitutional changes.
- **Judicial Overreach:** The term **judicial overreach** is often used to describe the situation where the judiciary steps into the territory of the legislature, thereby potentially overstepping its constitutional mandate. Critics argue that the **Basic Structure Doctrine** grants the judiciary excessive power in matters traditionally within the purview of Parliament, like determining the **scope of constitutional**

**amendments.** This, they argue, compromises the **democratic accountability** of Parliament, as it allows unelected judges to impose their views on what the Constitution should or should not contain.

### **Subjectivity and Uncertainty**

- Another criticism is the **vagueness** and **subjectivity** surrounding what constitutes the "basic structure." The **Kesavananda Bharati (1973)** judgment refrained from providing a definitive list of **basic features**, leaving this task to the courts in subsequent cases. Critics argue that this has led to **inconsistency** and **lack of clarity**, as different benches of the Supreme Court have interpreted the doctrine in varying ways. This results in **judicial discretion** that could be influenced by **personal views** or political inclinations of the judges, further blurring the lines between judicial interpretation and judicial **legislation**.

### **The Doctrine's Impact on Parliamentary Sovereignty**

A foundational principle of the Indian Constitution is **parliamentary sovereignty**, meaning that the **Parliament** has the power to make, alter, and repeal laws, including constitutional amendments, within the framework set by the Constitution. However, the Basic Structure Doctrine has raised significant questions regarding the scope of this sovereignty.

### **Limits on Constitutional Amendments**

- The **Basic Structure Doctrine** restricts Parliament's ability to amend the Constitution by declaring that certain **core features** cannot be altered, even through the amendment process outlined in **Article 368**. This has led to concerns about the **erosion of parliamentary sovereignty**, as it places limits on the **law-making** powers of Parliament, especially when it comes to **constitutional amendments**.
- While **Article 368** allows Parliament to amend the Constitution, the Basic Structure Doctrine ensures that this power is not **absolute**. This means that while Parliament

can make amendments, it cannot touch the **core principles** that define India's identity as a **sovereign, democratic, secular republic**.

### Parliamentary Authority vs Judicial Review

- The tension between **judicial review** and **parliamentary authority** has often been at the heart of debates surrounding the Basic Structure Doctrine. Proponents of the BSD argue that it is necessary to preserve the **fundamental values** of the Constitution, even in the face of **political pressures** or shifts in public sentiment. However, opponents view this as an **undue interference** with the **legitimate functions** of the legislature.
- The **Golaknath (1967)** case and the **Kesavananda Bharati (1973)** decision, in particular, exemplify this clash between the **supremacy of Parliament** and the **activist role of the judiciary**. Critics suggest that the Basic Structure Doctrine gives the **Supreme Court** the power to decide on constitutional changes based on subjective principles, thereby shifting the balance of power from **Parliament** to the **judiciary**.

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