

***What is the Basic Structure Doctrine of Indian Constitution?***

There is no mention of the term “Basic Structure” anywhere in the Constitution of India. The idea that the Parliament cannot introduce laws that would amend the basic structure of the constitution evolved gradually over time and many cases. The idea is to preserve the nature of Indian democracy and protect the rights and liberties of people. This Basic Structure doctrine of the Indian Constitution helps to protect and preserve the spirit of the constitution document.

It was the Keshavananda Bharati case that brought this doctrine into the limelight. It held that the “basic structure of the Indian Constitution could not be abrogated even by a constitutional amendment”. The judgement listed some basic structures of the Constitution as:

- Supremacy of the Constitution
- Unity and sovereignty of India
- Democratic and republican form of government
- Federal character of the Constitution
- Secular character of the Constitution
- Separation of power
- Individual freedom

Over time, many other features have also been added to this list of basic structural features. Some of them are:

- Rule of law
  - Judicial review
  - Parliamentary system
  - Rule of equality
  - Harmony and balance between the Fundamental Rights and DPSP
  - Free and fair elections
  - Limited power of the parliament to amend the Constitution
  - Power of the Supreme Court of India under Articles 32, 136, 142 and 147
  - Power of the High Court under Articles 226 and 227
- Any law or amendment that violates these principles

can be struck down by the SC on the grounds that they distort the basic structure of the Constitution.

The concept of the basic structure of the constitution evolved over time. Few Cases that helped in the evolution of the doctrine of basic structure are as follows:

***Shankari Prasad Case (1951)***

- The Supreme Court contended that the Parliament’s power of amending the Constitution under Article 368 included the power to amend the Fundamental Rights guaranteed in Part III as well.

***Sajjan Singh Case (1965)***

- The Supreme Court held that the Parliament can amend any part of the Constitution including the Fundamental Rights.
- It is noteworthy to point out that two dissenting judges, in this case, remarked whether the Fundamental Rights of citizens could become a plaything of the majority party in Parliament.

***Golaknath Case (1967)***

- Supreme Court reversed its earlier stance that the Fundamental Rights can be amended.
- It said that Fundamental Rights are not amenable to the Parliamentary restriction as stated in Article 13 and that to amend the Fundamental rights a new Constituent Assembly would be required.
- Also stated that Article 368 gives the procedure to amend the Constitution but does not confer on Parliament the power to amend the Constitution. This case conferred upon Fundamental Rights a ‘transcendental position’.
- The majority judgement called upon the concept of implied limitations on the power of the Parliament to amend the Constitution. As per this view, the Constitution gives a place of permanence to the fundamental freedoms of the citizens.
- In giving to themselves the Constitution, the people had reserved these rights for themselves.

***In Keshavananda Bharati Case (1973)***

- This case was considered as the historical landmark

case, where for the first-time Supreme Court recognized the basic structure concept. In this case, the validity of the 25th Amendment was challenged with the 24th and 29th Amendment was also questioned. The court by majority overruled the judgement of Golaknath case.

- It was held that even before the 24th Amendment the Parliament has the limited power to amend the Constitution by following the proper procedure. The Supreme Court also declared that Article 368 of the Constitution does not allow the Parliament to change, damage the basic structure of the Constitution. This landmark judgement changes the history of the Constitution.

#### ***In Indira Nehru Gandhi v. Raj Narayan Case (1975)***

- Under this case, once again the basic structure concept was reaffirmed. The Supreme Court applied the same theory and struck down the 4th clause of Article 329 A on the ground that the Amendment is beyond the power of the Parliament and it destroyed the basic structure of the Constitution. The Amendment was made regarding the jurisdiction of all courts including the Supreme Court, regarding the dispute of an election of the Prime Minister of India.

Article 329: Bar to interference by courts in electoral matters, Notwithstanding anything in this Constitution
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Article 329(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under Article 327 or Article 328, shall not be called in question in any court;
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Article 329(b) No election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature
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#### ***42nd Amendment***

- Immediately after the decision of the Supreme Court in Keshavananda Bharti and Indira Gandhi case, the Parliament introduced the 42nd Amendment and added the word Secular, Socialist and Integrity in the Preamble and add clause 4 and 5 to the Article 368 of the Constitution.
- It indirectly declares that there is no limitation on the power of the Parliament regarding the amendment. Even after the judgement of the Supreme Court, the Parliament has the unrestricted power to change or

repeal any part of the Constitution.

- Thus, this amendment creates a question regarding the supremacy i.e., who is supreme Parliament or Supreme Court? Through this Amendment, the Parliament declared the concept of basic structure invented by the Supreme Court is vague and unlawful.

#### ***In Minerva Mills Case (1980)***

- In this case, the validity of the 42nd Amendment was challenged, as it destroyed the basic structure of the Constitution and regarding clause 4 and 5 of Article 368.
- The Supreme Court by majority struck down the clauses added by the 42nd Amendment and stated that the limited power of the Parliament is in the basic structure itself.

#### ***Waman Rao Case (1981)***

- The SC again reiterated the Basic Structure doctrine.
- It also drew a line of demarcation as April 24th, 1973 i.e., the date of the Keshavananda Bharati judgement, and held that it should not be applied retrospectively to re-open the validity of any amendment to the Constitution which took place prior to that date.
- The Waman Rao case held that amendments made to the 9th Schedule until the Keshavananda judgement are valid, and those passed after that date can be subject to scrutiny.

#### ***Indra Sawhney and Union of India (1992)***

- SC examined the scope and extent of Article 16(4), which provides for the reservation of jobs in favour of backward classes. It upheld the constitutional validity of 27% reservation for the OBCs with certain conditions (like creamy layer exclusion, no reservation in promotion, total reserved quota should not exceed 50%, etc.)
- Here, 'Rule of Law' was added to the list of basic features of the constitution.

#### ***S.R. Bommai Case (1994)***

- The government at the Centre dismissed the State Government using Article 356, without giving Bommai a chance to prove his majority and imposed President's Rule.
- In this judgement, the Supreme Court tried to curb

the blatant misuse of Article 356 (regarding the imposition of President's Rule on states).

- In this case, there was no question of constitutional amendment but even then, the concept of basic doctrine was applied.
- The Supreme Court held that policies of a state government directed against an element of the basic structure of the Constitution would be a valid ground for the exercise of the central power under Article 356.

### ***In L. Chandra Kumar Case (1997)***

- Under this case, the validity of the Article 323A and 323B was challenged, both deals with the exclusion of the High Court under Article 226 and 227 and the Supreme Court under Article 32 was inserted by the 42nd Amendment.
- The SC, in this case, declared both the provisions unconstitutional and held that the power of judicial review under Article 226, 227, and 32 were given by the basic structure and the Parliament has no power to amend that.

<b>Articles 226 and 227 are the parts of the constitution which define the powers of the High Court</b>
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Article 226, empowers the High courts to issue, to any person or authority, including the government (in appropriate cases), directions, orders or writs, including writs in the nature of Habeas Corpus, Mandamus, Prohibition, Quo Warranto, Certiorari or any of them.
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Article 227 determines that every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction (except a court formed under a law related to armed forces).
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### ***Evaluation of the various Judgements of Supreme Court***

The Supreme Court through Golaknath, Keshavananda Bharti, S.R. Bommai and various other cases tried to put an implied limitation on the amending powers of the Parliament, if we summarize the judgements of all the cases discussed in this Article, the court always tries to pressurise on few things that are:

- Parliament has limited power to amend the Constitution.
- The Parliament cannot damage the basic structure of the Constitution
- Article 368 does not provide the power to the Parliament regarding the amendment in Part III of the Constitution.
- The Parliament by amending Article 368 cannot increase its amendment powers.

### ***Criticism***

- There is no provision for a special body to change the Constitution, such as a Constitutional Convention (as in the United States) or a Constitutional Assembly.
- The Parliament has the authority to propose a constitutional modification. Except in one situation, when passing a resolution seeking the creation or elimination of Legislative Councils in the states, State Legislatures are unable to introduce any bill or proposal to modify the Constitution.
- The majority of the Constitution can be changed by Parliament alone, using either a special majority or a simple majority. The assent of state legislatures is required only in a few circumstances, and even then, only in half of them.
- The Constitution makes no provision for the State Legislatures to ratify or reject an amendment that is presented to them. It is also silent on the question of whether nations can revoke their permission after giving it.
- If there is a deadlock over the passage of a constitutional change bill, there is no provision for a joint sitting of both Houses of Parliament.
- The procedure for amending a document is comparable to the procedure for enacting legislation. The constitutional amendment legislation must be carried by Parliament in the same way as other laws, with the exception of the special majority requirement.
- They give a lot of room for the courts to intervene.

### ***Conclusion***

Article 368 of the Indian Constitution provides the procedure of Amendment. Indian Constitution is neither rigid nor flexible because under Article 368 the Constitution can be amended.

In 72 years of the Constitution, 105 Amendments are already done. The 42nd Amendment is considered as the mini-Constitution, the terms Socialist, Secular, Integrity was inserted through it. The First Amendment was done in the year 1950, itself.

The court by giving the judgements tries to increase their powers and put express limitations on the Parliament. The Article 368 is silent on the matter whether the Parliament has the power to amend the basic structure or not, but that also does not mean that the Article 368 put the limitation regarding the Amendment of basic structure as well as Part III of the Constitution.