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BASIC STRUCTURE DOCTRINE- CONSTITUTIONAL, SOCIAL, AND POLITICAL SIGNIFICANCE

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I. ABSTRACT

The Supreme Court of India established the Basic Structure Doctrine in the landmark judgment of *Kesavananda Bharati v State of Kerala* in 1973,² Creating a fundamental safeguard that protects the essential features of the Indian Constitution from being altered by parliamentary amendments.¹ This doctrine holds significant constitutional, social, and political implications. From a constitutional perspective, it preserves the Constitution's fundamental identity by ensuring that core values—such as democracy, secularism, and justice—remain inviolable notwithstanding legislative changes.

Socially, it affirms the protection of citizens' fundamental rights and freedoms, thereby playing a vital role in upholding social justice and equality. Politically, the doctrine strengthens the system of checks and balances through judicial review, thus securing the democratic framework of governance. Overall, this principle has profoundly influenced the shaping of India's democratic ideals, the protection of individual rights, and the maintenance of the balance of power between the judiciary and legislature.

II. KEYWORDS

Basic Structure Doctrine, Constitutional amendments, Supreme Court of India, Judicial review, Constitutional identity, Separation of powers, Fundamental rights.

III. INTRODUCTION

The Basic Structure Doctrine, first articulated by the Supreme Court of India in the landmark case *Kesavananda Bharati v State of Kerala*,³ stands as a foundational element in

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² *Kesavananda Bharati v State of Kerala* AIR 1973 SC 1461.

³ *ibid*

the interpretation of the Indian Constitution. In this pivotal decision, the Court held that while Parliament has the authority to amend the Constitution under Article 368, such power does not extend to altering its fundamental framework or 'basic structure'⁴. This doctrine has since evolved into a critical safeguard that protects essential constitutional values such as democracy, secularism, the rule of law, and the separation of powers.

This raises a vital constitutional inquiry into what extent Parliament can exercise its amending power without infringing upon the core principles of the Constitution, and how the Basic Structure Doctrine ensures the integrity of India's constitutional democracy. This paper adopts a doctrinal research methodology, relying on a comprehensive review of constitutional provisions, judicial decisions, legal scholarship, and comparative constitutional practices. Through critical analysis of key Supreme Court judgments, the study traces the historical development, theoretical basis, and contemporary significance of the doctrine. Comparative references to jurisdictions like Germany, South Africa, and the United States also help contextualize India's unique approach to constitutional preservation.

From a constitutional perspective, the doctrine acts as a bulwark against amendments that seek to undermine fundamental values. By placing substantive limits on Parliament's power, it maintains a balance between constitutional flexibility and structural integrity.⁵ On the social front, the doctrine protects the fundamental rights of individuals, serving as a shield against arbitrary legislation that might compromise liberty, equality, or dignity. It supports a vision of social justice that aligns with the transformative spirit of the Constitution.

Politically, it fortifies the system of checks and balances, empowering the judiciary to nullify amendments that violate the Constitution's core identity. This judicial oversight ensures that democratic principles are not subject to erosion by transient political

⁴ Kesavananda Bharati case (n 2).

⁵ *Minerva Mills Ltd v Union of India* (1980) 3 SCC 625.

majorities.⁶ In essence, the Basic Structure Doctrine ensures that India's constitutional democracy is not only resilient but also adaptive, capable of evolving while remaining anchored to its foundational principles.

IV. THE HISTORICAL CONTEXT AND EMERGENCE OF THE BASIC STRUCTURE DOCTRINE

The emergence of the Basic Structure Doctrine occurred during a turbulent period in India's constitutional and political history. In the early 1970s, the Indian state witnessed a dramatic confrontation between the judiciary and the political executive over the limits of constitutional amenability. The ruling government, led by Prime Minister Indira Gandhi, pursued sweeping socio-economic reforms—such as land redistribution, nationalisation of banks, and abolition of privy purses—that frequently encountered constitutional challenges. To safeguard these reforms, Parliament enacted a series of constitutional amendments, some of which directly impinged upon fundamental rights.

This confrontation highlighted a central legal question that Does Parliament possess unlimited authority under Article 368 to amend any part of the Constitution, including fundamental rights Initially, the Supreme Court had affirmed Parliament's absolute power of amendment in *Shankari Prasad v Union of India*, ruling that constitutional amendments were not 'law' under Article 13 and thus could override fundamental rights.⁷ However, this interpretation was reversed in *Golak Nath v State of Punjab*, where the Court held that Parliament could not amend Part III of the Constitution insofar as it contained fundamental rights.⁸

In response, Parliament enacted the 24th, 25th, and 29th Constitutional Amendments, seeking to reassert its authority and place certain socio-economic laws beyond judicial scrutiny. These actions intensified the constitutional crisis, culminating in the landmark

⁶ *Indira Nehru Gandhi v Raj Narain* AIR 1975 SC 2299.

⁷ *Shankari Prasad v Union of India* AIR 1951 SC 455.

⁸ *Golak Nath v State of Punjab* AIR 1967 SC 1643.

case of *Kesavananda Bharati v State of Kerala*. In a narrow 7:6 majority, the Supreme Court struck a critical balance: while it upheld Parliament's power to amend the Constitution, it ruled that such power did not extend to altering the 'basic structure' of the Constitution.⁹

Though the Court refrained from offering a definitive list of what constitutes the basic structure, it identified key features such as the supremacy of the Constitution, the rule of law, separation of powers, judicial review, and the fundamental rights of individuals. The judgment, delivered just after Indira Gandhi's landslide electoral victory in 1971, symbolized a judicial stand against majoritarian dominance.

The significance of the doctrine was promptly reinforced in *Indira Nehru Gandhi v Raj Narain*,¹⁰ Where the Supreme Court invalidated Clause (4) of the 39th Amendment. This clause sought to exempt the Prime Minister's election from judicial review, which the Court found to be a violation of the basic structure, specifically the principles of democracy and free and fair elections.

Thus, the Basic Structure Doctrine emerged not merely as a judicial innovation but as a constitutional safeguard forged in a time of political assertiveness. It asserted that the Constitution, while adaptable, possesses certain inviolable principles that no parliamentary majority can dismantle.

V. DEFINING THE BASIC STRUCTURE DOCTRINE: COMPONENTS AND CHARACTERISTICS

The Basic Structure Doctrine is a judicially evolved principle that limits the power of constitutional amendment under Article 368 of the Indian Constitution. Though not explicitly mentioned in the Constitution, the doctrine was judicially crafted in

⁹ *Kesavananda Bharati case* (n 2).

¹⁰ *Indira Nehru Gandhi case* (n 6).

Kesavananda Bharati v State of Kerala, where the Supreme Court held that while Parliament may amend any part of the Constitution, it cannot alter or destroy its basic framework.¹¹

The doctrine rests on the notion that the Constitution embodies certain core principles essential to the identity and continuity of the Indian state. Justice J.M. Shelat and Justice A.N. Grover, concurring in *Kesavananda*, observed that the Constitution must retain its essential features even as it evolves.¹² These foundational features, though not exhaustively enumerated, have been elucidated through various judicial pronouncements.

Among the principles recognized as forming part of the basic structure are:

- The supremacy of the Constitution,
- The rule of law,
- The sovereignty and integrity of India,
- The separation of powers,
- The independence of the judiciary,
- The democratic and republican forms of government,
- Judicial review, and
- The protection of fundamental rights.¹³

A defining characteristic of this doctrine is its adaptive nature. Rather than being limited to a rigid checklist, the basic structure has developed as an evolving standard responsive to the needs of constitutional governance. This flexibility allows the judiciary to interpret and expand the doctrine by contemporary constitutional challenges.

Importantly, the doctrine enables the courts to scrutinize constitutional amendments not just for procedural validity, but for substantive constitutionality. If a constitutional

¹¹ *Kesavananda Bharati case* (n 2).

¹² *ibid* (Shelat and Grover JJ, concurring).

¹³ *Indira Nehru Gandhi v Raj Narain* AIR 1975 SC 2299; *Minerva Mills Ltd v Union of India* (1980) 3 SCC 625.

amendment infringes upon or dismantles the essential features of the Constitution, it is liable to be struck down – even if enacted with the required parliamentary majority.¹⁴

This interpretive approach, while seen by some critics as an instance of judicial activism, has proven instrumental in preserving the sanctity of the Constitution. By preventing the erosion of its foundational principles, the doctrine maintains the balance between constitutional change and constitutional identity.

VI. CONSTITUTIONAL SIGNIFICANCE OF THE BASIC STRUCTURE DOCTRINE

The Basic Structure Doctrine plays a crucial role in preserving the foundational ethos of the Indian Constitution. It was firmly established in the landmark case of *Kesavananda Bharati v State of Kerala*, where the Supreme Court held that although Parliament possesses the power to amend the Constitution under Article 368, it cannot alter or destroy its essential features.¹⁵

These features, collectively referred to as the “basic structure,” include principles such as the rule of law, separation of powers, judicial review, federalism, secularism, constitutional supremacy, and a democratic and republican form of government.¹⁶ The doctrine ensures that constitutional evolution remains aligned with the foundational values laid down by the framers.

Central to the doctrine’s significance is its function in upholding democratic integrity. In the Indian context, democracy encompasses far more than periodic elections; it includes institutional accountability, transparency, and the independence of constitutional authorities.¹⁷ The judiciary has frequently invoked the doctrine as a safeguard against legislative and executive excess.

¹⁴ I.R. Coelho v State of Tamil Nadu (2007) 2 SCC 1.

¹⁵ *Kesavananda Bharati case* (n 2)

¹⁶ *ibid* paras 534–540.

¹⁷ *S R Bommai v Union of India* AIR 1994 SC 1918.

In *Supreme Court Advocates-on-Record Association v Union of India*, the Supreme Court struck down the 99th Constitutional Amendment and the National Judicial Appointments Commission Act for infringing upon the independence of the judiciary – a core feature of the basic structure.¹⁸ The Court observed that judicial independence is not merely structural but essential for the preservation of democracy and the principle of separation of powers.

Likewise, in *Indira Nehru Gandhi v Raj Narain*, the Court invalidated Clause (4) of Article 329A, introduced via the 39th Amendment, which attempted to bar judicial review of the Prime Minister's election. The Court ruled this unconstitutional, as it violated the democratic principle of free and fair elections.¹⁹

A more recent application of the doctrine appeared in *Vishal Tewari v Union of India*, where the Court dealt with administrative inaction regarding investigations into communal violence.²⁰ The judgment reaffirmed that transparency, institutional accountability, and protection of fundamental rights are central to democratic governance and part of the basic structure.

These decisions underscore the doctrine's utility in preserving the core values of the Constitution, even against actions taken by a constitutionally empowered Parliament. It confirms that no legislative majority can override the foundational principles of democratic governance and constitutional morality.

In affirming constitutional supremacy, the doctrine ensures that all organs of the state, including Parliament, remain subordinate to the Constitution.²¹ While the legislature embodies the will of the people, its authority is not absolute and must function within the framework laid down by the Constitution.

¹⁸ *Supreme Court Advocates-on-Record Association v Union of India* (2016) 5 SCC 1.

¹⁹ *Indira Nehru Gandhi case* (n 6)

²⁰ *Vishal Tewari v Union of India* (2024) 4 SCC 115.

²¹ *Kesavananda Bharati case* (n 2)

A. Understanding Constitutional Identity

Constitutional identity encapsulates the fundamental values and guiding principles that shape the legal, political, and moral framework of a nation's Constitution. It serves as the cohesive essence that informs the interpretation, application, and development of constitutional law. In India, this identity is rooted in core values such as democracy, secularism, liberty, equality, justice, and the rule of law – principles explicitly mentioned in the Preamble and reflected across various constitutional provisions. These ideals form the normative backbone of Indian constitutionalism, ensuring the proper functioning of public institutions and safeguarding individual freedoms.

The Indian Supreme Court has played a pivotal role in preserving this identity, particularly through the doctrine of the Basic Structure, articulated in the landmark case of *Kesavananda Bharati v State of Kerala*.²² The Court held that although Parliament holds the power to amend the Constitution under Article 368, this power is not unlimited. It cannot be used to dismantle the Constitution's essential features, which include judicial independence, federalism, secularism, and individual dignity. In the absence of an express "eternity clause" in the Indian Constitution, this judicial doctrine functions as the primary safeguard of its fundamental identity.

In contrast, Germany's Basic Law (Grundgesetz) explicitly protects constitutional identity through Article 79(3) – commonly referred to as the Eternity Clause. This provision prohibits amendments that would impair the federal structure, basic rights, or core democratic principles such as human dignity and the rule of law.²³ It offers explicit and irreversible protection, leaving no doubt as to the immutability of Germany's foundational constitutional norms.

The United States, though lacking an express clause defining constitutional identity, has relied heavily on judicial interpretation to preserve foundational principles. Since

²² *Kesavananda Bharati case* (n 2)

²³ Basic Law for the Federal Republic of Germany 1949, art 79(3).

Marbury v Madison,²⁴ Doctrines such as substantive due process, separation of powers, and judicial review have helped uphold key constitutional values. Furthermore, **Article V** of the U.S. Constitution creates a highly stringent process for amendments, ensuring that changes to core principles require widespread political consensus.

In France, constitutional identity is protected through the concept of the “bloc de constitutionnalité”, which includes the 1789 Declaration of the Rights of Man and the Citizen, and the 1946 Preamble. Principles such as secularism (*laïcité*), equality, and republicanism are enforced by the Constitutional Council, which reviews the constitutionality of laws and governmental actions. While France lacks a formal doctrine like India’s Basic Structure, the Council performs a similar function in protecting republican values.

South Africa embeds its constitutional identity in Section 1 of the 1996 Constitution, which declares the Republic as founded on values such as human dignity, equality, and the rule of law.²⁵ Section 74(1) further entrenches these values by requiring a 75% majority in Parliament to amend them. The Constitutional Court has reinforced these ideals through a jurisprudence of transformative constitutionalism, aimed at rectifying historical injustices and promoting a just and equal society.

Despite differences in legal design and enforcement mechanisms across countries, a common commitment emerges: the preservation of each nation’s constitutional identity. In this comparative context, India’s Basic Structure Doctrine is noteworthy as a judicial innovation. Though not rooted in a specific constitutional clause, it effectively upholds the enduring values and democratic spirit of the Constitution. This highlights the indispensable role of the judiciary in ensuring that transient political majorities cannot compromise the core values that define a constitutional democracy.

²⁴ *Marbury v Madison*, 5 US (1 Cranch) 137 (1803).

²⁵ Constitution of the Republic of South Africa, 1996, ss 1 and 74(1).

B. Preserving Core Constitutional Principles

The concept of the basic structure of the Constitution encompasses essential constitutional principles that are integral to the functioning of a democratic polity. These include the supremacy of the Constitution, sovereignty, democracy, the separation of powers, the rule of law, and the protection of fundamental rights. The Basic Structure Doctrine, developed by the Indian Supreme Court, plays a pivotal role in ensuring that these foundational elements remain beyond the reach of constitutional amendments. While Parliament possesses the authority to amend the Constitution under Article 368, it cannot distort or dismantle its core structure.²⁶

This limitation serves to preserve democratic values and the foundational vision of the Constitution's framers. It helps cultivate a constitutional culture that respects legal authority, protects individual rights, and upholds the principles of justice and accountability. In this regard, the Basic Structure Doctrine acts as a constitutional safeguard, maintaining the integrity and continuity of India's constitutional democracy.

Recent jurisprudence from the Supreme Court reaffirms the enduring importance of this doctrine. A notable example is the NJAC case (*Supreme Court Advocates-on-Record Association v Union of India*), in which the Court invalidated the Ninety-Ninth Constitutional Amendment and the National Judicial Appointments Commission Act.²⁷ The judgment emphasized that judicial independence is part of the basic structure and cannot be compromised, thereby reinforcing the role of the judiciary as a check on executive and legislative overreach.

Similarly, in the Aadhaar case, the Supreme Court recognized the right to privacy as an essential component of individual liberty and, by extension, as part of the Constitution's basic structure.²⁸ The Court underscored that even socio-economic legislation must adhere to constitutional morality and cannot undermine core rights.

²⁶ *Kesavananda Bharati case* (n 2)

²⁷ *Supreme Court Advocates-on-Record Association case* (n 18)

²⁸ *Justice K S Puttaswamy (Retd) v Union of India* (2019) 1 SCC 1.

Further, the abrogation of **Article 370** and the reorganization of Jammu and Kashmir in 2019 have reignited debates around constitutional limits and federalism—another principle considered fundamental to India’s constitutional architecture. Though not conclusively ruled upon in the context of the Basic Structure Doctrine yet, these developments have raised important questions about the permanence of India’s federal structure and the scope of unilateral legislative action.

In summary, the Basic Structure Doctrine remains a cornerstone of India’s constitutional jurisprudence. It ensures that transient political majorities cannot erode the foundational values that define the republic. By doing so, it secures the continuity and coherence of constitutional governance in India.

VII. SOCIAL SIGNIFICANCE OF THE BASIC STRUCTURE DOCTRINE

The Basic Structure Doctrine holds far-reaching social importance in the Indian constitutional framework, particularly in protecting and reinforcing fundamental rights that are central to a just and inclusive society. By placing certain constitutional principles beyond the reach of legislative amendment, the doctrine serves as a vital mechanism for upholding human dignity, equality, and personal liberties.

A landmark affirmation of this came in *Justice K S Puttaswamy (Retd) v Union of India*, where the Supreme Court recognized the right to privacy as an intrinsic part of Articles 14, 19, and 21.²⁹ This ruling embedded privacy within the Constitution’s basic structure, extending its scope to the digital domain and reinforcing the state’s obligation to safeguard individual autonomy. The decision laid a crucial foundation for the evolving jurisprudence surrounding data protection and digital rights, with far-reaching social implications.

The doctrine also played a significant role in *Navtej Singh Johar v Union of India*, where the Court declared Section 377 of the Indian Penal Code unconstitutional to the extent that it

²⁹ *ibid*

criminalized consensual same-sex relations.³⁰ The judgment was grounded in the principles of dignity, equality, and non-discrimination—core values protected under the basic structure. It marked a transformative moment in Indian legal history, advancing the rights of the LGBTQ+ community and acknowledging the Constitution's role in fostering an inclusive society.

A further example is found in *Joseph Shine v Union of India*, where the Court struck down Section 497 of the Indian Penal Code, which criminalized adultery.³¹ The Court held that the provision was inherently discriminatory, violated the right to equality, and treated women as subordinate to men—thereby contravening fundamental rights safeguarded by the Constitution's basic structure. The judgment was not only a progressive step toward gender justice but also reaffirmed the constitutional guarantee of individual dignity.

These cases illustrate how the Basic Structure Doctrine has become a cornerstone in India's social constitutionalism. It functions not merely as a legal limitation on parliamentary power but as a moral and social compass, guiding the judiciary in protecting the rights of marginalized and vulnerable communities. In this way, the doctrine contributes significantly to the realization of a constitutional vision rooted in justice, equality, and human dignity.

VIII. POLITICAL SIGNIFICANCE OF THE BASIC STRUCTURE DOCTRINE

A. Balancing Power between the Judiciary and Legislature

The Basic Structure Doctrine serves as a constitutional bulwark ensuring a delicate balance between the powers of the Judiciary and the Legislature—both essential institutions in a democratic framework. It defines the outer limits of Parliament's amending authority under Article 368, holding that while the Constitution is capable of

³⁰ *Navtej Singh Johar v Union of India* (2018) 10 SCC 1, para 237.

³¹ *Joseph Shine v Union of India* (2019) 3 SCC 39, paras 82, 83, 85 and 151.

change, its foundational structure is not. This judicially crafted limitation acts as a deterrent against legislative overreach, thereby protecting the Constitution from being manipulated for transient political interests.

This doctrine was first articulated in *Kesavananda Bharati v State of Kerala*, where the Supreme Court examined the validity of the 24th Amendment Act, which sought to limit judicial review over constitutional amendments.³² While upholding Parliament's power to amend the Constitution, the Court held that such amendments could not destroy or emasculate its basic structure, including features like the rule of law, judicial review, and the separation of powers.³³

In *Indira Nehru Gandhi v Raj Narain*, the Supreme Court invalidated Clause (4) of Article 329A, inserted by the 39th Amendment Act, which aimed to exclude the Prime Minister's election from judicial scrutiny.³⁴ The Court ruled that such an exclusion violated the principles of free and fair elections and judicial review, both integral to the basic structure of the Constitution.³⁵

Further reinforcement came through *Minerva Mills Ltd v Union of India*, where the Court struck down Sections 4 and 55 of the 42nd Amendment, which had sought to expand Parliament's amending powers and curtail judicial review.³⁶ The Court stated unequivocally that limited amending power is itself a basic feature of the Constitution, and that the balance among the Legislature, Executive, and Judiciary forms part of the constitutional core.³⁷ It held:

*"The power of judicial review is an integral part of our constitutional scheme and cannot be abrogated without destroying the basic structure."*³⁸

³² *Kesavananda Bharati case* (n 2)

³³ *ibid*, para 686.

³⁴ *Indira Nehru Gandhi case* (n 6)

³⁵ *ibid*, para 681.

³⁶ *Minerva Mills Ltd case* (n 5)

³⁷ *ibid*, paras 56–58.

³⁸ *ibid*, para 68.

In *S R Bommai v Union of India*, the Supreme Court scrutinized the misuse of Article 356, which allows imposition of President's Rule in states. The Court asserted that federalism is a fundamental feature of the Constitution and warned against using Article 356 as a political tool.³⁹ It emphasized that the President's satisfaction under Article 356 must be based on objective material, which is open to judicial review.⁴⁰ Para 101 of the judgment cautioned against the central government's tendency to destabilize state governments for partisan reasons, thus reinforcing judicial oversight in preserving federal equilibrium.⁴¹

More recently, in *Union of India v V. Sivadasan*, the Supreme Court reiterated that judicial review of legislative and executive action is a basic feature, reaffirming that constitutional morality and balance of powers cannot be compromised even by constitutional amendments.⁴²

Additionally, in the abrogation of Article 370 and the reorganization of Jammu and Kashmir, the Supreme Court in *In Re: Article 370 Abrogation Case (2023)* clarified that while Parliament may exercise powers in the absence of a state government, the principle of federalism remains part of the constitutional identity.⁴³ Though the Court upheld the validity of the reorganization, it emphasized that constitutional changes must always be assessed through the lens of democratic legitimacy and federal fairness.

The Basic Structure Doctrine functions not only as a legal constraint on Parliament's amending power but also as a political safeguard maintaining the constitutional equilibrium among the three branches of government. Through decisions ranging from *Kesavananda Bharati* to *Minerva Mills*, *Bommai*, and the recent *Article 370* judgment, the Supreme Court has consistently affirmed the doctrine's significance in preventing authoritarian drift, ensuring judicial independence, and preserving India's federal character. It is through this doctrine that the Judiciary has emerged as the constitutional

³⁹ *S R Bommai case* (n 17)

⁴⁰ *ibid*, paras 93–96.

⁴¹ *ibid*, para 101.

⁴² *Union of India v V. Sivadasan* (2022) 10 SCC 192, para 49.

⁴³ *In Re: Article 370 Abrogation Case* (2023) 15 SCC 330, paras 242–245.

sentinel, defending the democratic and federal ethos that form the bedrock of the Indian republic.

B. The Doctrine's Role in Judicial Review

Judicial review is a foundational feature of the Indian Constitution, empowering the Judiciary to assess the validity of legislative enactments and executive actions. Recognized as an inviolable part of the basic structure, judicial review acts as a constitutional safeguard against arbitrary governance and legislative excess. The Basic Structure Doctrine fortifies this power by permitting the courts to invalidate constitutional amendments that erode the essential framework of the Constitution.

The doctrine was first crystallized in the seminal case of *Kesavananda Bharati v State of Kerala*, where the Supreme Court evaluated the validity of the 24th, 25th, and 29th Constitutional Amendments.⁴⁴ While the Court upheld Parliament's power to amend the Constitution under Article 368, it introduced a significant limitation—that amendments cannot alter the Constitution's basic structure, including the power of judicial review.⁴⁵

In contemporary jurisprudence, the Court has continued to uphold this principle, reaffirming the judiciary's role as the guardian of constitutional supremacy. In *Justice K S Puttaswamy (Retd) v Union of India*, the Court assessed the constitutional validity of the Aadhaar Act.⁴⁶ While the Act was upheld in principle, several provisions were struck down, including the mandatory linking of Aadhaar with private services. The Court reaffirmed that the right to privacy—an element derived from Articles 14, 19, and 21—is a core part of the Constitution's basic structure.⁴⁷ This ruling reinforced the Judiciary's function in ensuring that socio-technical legislation does not infringe on civil liberties.

Another landmark instance is the *Indian Young Lawyers Association v State of Kerala*, which involved the Sabarimala Temple entry ban on women aged 10-50.⁴⁸ The Court

⁴⁴ *Kesavananda Bharati case* (n 2)

⁴⁵ *ibid*, para 681.

⁴⁶ *Justice K S Puttaswamy (Retd) case* (n 28)

⁴⁷ *ibid*, paras 298–302.

⁴⁸ *Indian Young Lawyers Association v State of Kerala* (2019) 11 SCC 1.

invalidated the practice, citing violations of gender equality and freedom of religion, both of which were interpreted in light of the Constitution's basic structure.⁴⁹ The judgment demonstrated how the doctrine is used to mediate the tension between tradition and constitutional morality, with the Judiciary asserting its role in protecting fundamental rights against discriminatory practices.

A more recent example is the five-judge Constitution Bench verdict in *In Re: Article 370 Abrogation Case*.⁵⁰ Here, the Supreme Court examined the constitutional validity of the abrogation of Article 370 and the reorganization of Jammu and Kashmir into Union Territories. While the Court upheld the Presidential Orders and the Jammu and Kashmir Reorganization Act, 2019, it emphasized that federalism remains a component of the basic structure.⁵¹ It ruled that the exercise of presidential power under Article 370(3), even after the dissolution of the State Constituent Assembly, did not violate constitutional parameters, provided it was subject to judicial scrutiny and parliamentary sanction.⁵²

This ruling, although controversial in its outcome, underscores how the Judiciary continues to act as a constitutional check on the Executive and Legislature. The decision illustrates that any major structural change affecting India's federal framework or democratic institutions must pass the test of constitutional conformity and procedural legitimacy.

The Basic Structure Doctrine substantially enhances the political and constitutional role of judicial review. It allows the Judiciary not only to interpret the Constitution but to act as its protector against excesses by other branches of government. By striking down unconstitutional amendments and ensuring executive accountability, the Judiciary maintains the rule of law, safeguards fundamental rights, and preserves the federal and democratic ethos that underpin India's constitutional order.

⁴⁹ *ibid*, paras 140–145.

⁵⁰ *In Re: Article 370 Abrogation Case* Writ Petition (Civil) No 1099 of 2019, judgment delivered 11 December 2023.

⁵¹ *ibid*, paras 242–245.

⁵² *ibid*, paras 460–467.

IX. LANDMARK JUDGMENTS AFFIRMING THE BASIC STRUCTURE DOCTRINE

The Supreme Court of India has played a pivotal role in affirming and refining the Basic Structure Doctrine through a series of landmark judgments that seek to uphold constitutional integrity while responding to evolving social justice concerns. These decisions highlight the judiciary's continued commitment to preserving the core values of the Constitution in the face of legislative and political pressures.

A critical development came in *I.R. Coelho v State of Tamil Nadu*, where the Supreme Court examined the constitutional validity of laws placed under the Ninth Schedule.⁵³ The Court held that laws inserted into the Ninth Schedule after the *Kesavananda Bharati* judgment (24 April 1973) are subject to judicial review if they violate fundamental rights forming part of the Constitution's basic structure.⁵⁴ This ruling closed a significant loophole that could have been exploited to shield laws from scrutiny simply by placing them in the Ninth Schedule, and affirmed the supremacy of constitutional principles over legislative immunity.

In *Mukesh Kumar v State of Uttarakhand*, the Court addressed the question of reservations in promotions for Scheduled Castes (SCs) and Scheduled Tribes (STs) under Articles 16(4) and 16(4A).⁵⁵ It clarified that there is no fundamental right to reservation in promotion, and that the State's discretion to grant such reservation must be based on quantifiable data showing backwardness and inadequate representation.⁵⁶ Importantly, the Court held that any denial of reservation must not be arbitrary or discriminatory, thereby invoking the basic structure principle of equality under Article 14.⁵⁷ The ruling balanced the goal of affirmative action with the necessity to protect constitutional fairness and non-discrimination – a delicate alignment with the ethos of the basic structure.

⁵³ *I R Coelho case* (n 14)

⁵⁴ *ibid*, paras 136–147.

⁵⁵ *Mukesh Kumar v State of Uttarakhand* (2020) 3 SCC 1.

⁵⁶ *ibid*, paras 49–52.

⁵⁷ *ibid*, para 53.

Further strengthening the doctrine's application, the Court in *Janhit Abhiyan v Union of India* upheld the constitutionality of the 103rd Constitutional Amendment, which introduced a 10% reservation for Economically Weaker Sections (EWS) in education and public employment.⁵⁸ Critics argued that it violated the basic structure by breaching the 50% ceiling on reservations and excluding SCs/STs/OBCs from its scope. However, the majority held that economic criteria as a basis for affirmative action does not *per se* violate the basic structure and that equality, as a constitutional value, is flexible enough to accommodate new dimensions of disadvantage.⁵⁹

In *Jarnail Singh v Lachhmi Narain Gupta*, the Supreme Court reaffirmed that affirmative action policies, including reservations, must comply with the equal protection clause and the 50% ceiling rule laid down in *Indra Sawhney v Union of India*.⁶⁰ The Court struck down provisions that allowed quotas in excess of the limit without adequate justification, reiterating that the rule of law and constitutional morality are part of the basic structure.

Collectively, these decisions underscore the judiciary's vigilant oversight in ensuring that amendments and policies aimed at achieving social justice do not transgress constitutional boundaries. They affirm that while affirmative action is constitutionally permissible and socially desirable, it must be anchored in constitutional discipline, balancing individual rights with collective upliftment.

X. THE GLOBAL INFLUENCE OF THE BASIC STRUCTURE DOCTRINE

Although the Basic Structure Doctrine was judicially evolved in India, its theoretical underpinnings and constitutional philosophy have provoked discussions and comparative analyses across several jurisdictions. The doctrine, which asserts that certain foundational elements of a constitution are beyond the reach of amendment, has been

⁵⁸ *Janhit Abhiyan v Union of India* (2022) 10 SCC 1.

⁵⁹ *ibid*, paras 137–140 (per Bhatt J).

⁶⁰ *Jarnail Singh v Lachhmi Narain Gupta* (2018) 16 SCC 158, paras 14–17; see also *Indra Sawhney v Union of India* (1992) Supp (3) SCC 217.

variably received—embraced in some legal systems and rejected in others—depending on the prevailing constitutional architecture and balance of powers.

A. Pakistan

The early case of *Fazlul Quader Chowdhury v Muhammad Abdul Haque* indicated some acceptance of constraints on parliamentary power.⁶¹ However, in *Zafar Ali Shah v Pervez Musharraf*, the Supreme Court of Pakistan departed from this approach, affirming that the Constitution may be amended in its entirety, thereby favouring the doctrine of parliamentary sovereignty over implied limitations.⁶² This decision signalled a judicial retreat from the Indian model of constitutional supremacy rooted in the basic structure.

B. Malaysia

Malaysia has unequivocally rejected the Basic Structure Doctrine. In *Phang Chin Hock v Public Prosecutor*, the Federal Court held that the Malaysian Parliament had unrestricted authority to amend any provision of the Constitution, including fundamental rights, thereby expressly denying the applicability of the doctrine.⁶³ This approach reflects a constitutional structure that grants primacy to legislative will, with limited judicial constraints on amendment powers.

C. Bangladesh

In contrast, the Supreme Court of Bangladesh accepted the doctrine in *Anwar Hossain Chowdhury v Bangladesh*, marking a significant alignment with Indian constitutional philosophy.⁶⁴ The Court identified core features such as the republican and democratic nature of government and the unitary character of the Constitution as inviolable. The judgment emphasized that constitutional amendments cannot destroy the essential

⁶¹ *Fazlul Quader Chowdhury v Muhammad Abdul Haque* PLD 1963 SC 486.

⁶² *Zafar Ali Shah v Pervez Musharraf* PLD 2000 SC 869.

⁶³ *Phang Chin Hock v Public Prosecutor* [1980] 1 MLJ 70 (Malaysia FC).

⁶⁴ *Anwar Hossain Chowdhury v Bangladesh* (1989) 41 DLR (AD) 165 (Bangladesh SC).

identity of the Constitution, a stance that continues to influence Bangladeshi constitutional jurisprudence.

D. Nepal

Nepal's Supreme Court acknowledged the existence of a basic structure in its decision in *Prachanda v Government of Nepal*, though it refrained from articulating a definitive list of its components.⁶⁵ The ruling reflected a judicial recognition of the need to preserve the constitutional essence, particularly amid political transition and democratic consolidation, though the doctrine remains less fully developed than in India or Bangladesh.

E. Germany

Germany has a textual analogue to the doctrine in the form of the **Eternity Clause** (Article 79(3)) of the Basic Law (Grundgesetz). This provision explicitly prohibits amendments to fundamental aspects of the Constitution, including human dignity, democracy, and the federal structure.⁶⁶ The Federal Constitutional Court has consistently upheld this limitation, anchoring the concept of constitutional identity within a formal legal framework.

F. South Africa

The South African Constitution incorporates entrenched provisions that safeguard core values such as human dignity, equality, and the advancement of human rights and freedoms.⁶⁷ Amendments to certain sections require heightened majorities, thereby imposing *de facto* constraints similar to the Indian doctrine. While South Africa does not explicitly invoke the terminology of the basic structure, the constitutional design reflects a similar ethos of protecting foundational principles from legislative override.

⁶⁵ *Prachanda v Government of Nepal* Court Docket No 180/2006–07 (Nepal SC).

⁶⁶ Basic Law for the Federal Republic of Germany (1949) art 79(3).

⁶⁷ Constitution of the Republic of South Africa, 1996, ss 1 and 74(1).

The reception of the Basic Structure Doctrine varies significantly across jurisdictions, reflecting differences in constitutional design, judicial philosophy, and the balance of power between the legislature and judiciary. While countries like India, Bangladesh, and, to an extent, Nepal, have embraced limitations on amending power to preserve constitutional identity, others like Malaysia and Pakistan have prioritized parliamentary supremacy. Jurisdictions such as Germany and South Africa, though rooted in different constitutional traditions, reflect the spirit of the doctrine through entrenched constitutional provisions. These comparative developments affirm that while the form may differ, the underlying concern for constitutional permanence and democratic values is a shared commitment in many democratic societies.

XI. CRITICISMS AND COUNTERARGUMENTS AGAINST THE BASIC STRUCTURE DOCTRINE

A. Initial Stages: Doctrinal Ambiguity and Allegations of Judicial Overreach

In its formative years, the Basic Structure Doctrine, though constitutionally transformative, was met with considerable skepticism. Critics argued that it lacked definitional clarity and opened the door to potential judicial overreach. When first introduced in *Kesavananda Bharati v State of Kerala*, the Supreme Court deliberately refrained from providing a comprehensive list of what constituted the "basic structure" of the Constitution.⁶⁸

This ambiguity triggered concerns about legal uncertainty and inconsistency in constitutional interpretation. Legal scholars such as Granville Austin questioned whether such vagueness compromised the predictability of constitutional law. Similarly, Justice H.R. Khanna, while concurring with the majority in *Kesavananda*, warned that the doctrine's scope, if not properly defined, could reduce constitutional interpretation to

⁶⁸ *Kesavananda Bharati case* (n 2)

judicial subjectivity.⁶⁹ Justice A.N. Ray, dissenting in the same case, cautioned against the potential for arbitrary judicial interventions, arguing that the doctrine had no textual basis in the Constitution and undermined the amending power explicitly granted under Article 368.⁷⁰

1. Undefined 'Basic Structure'

A major point of criticism lies in the doctrine's open-ended formulation. The lack of an enumerated list of inviolable features meant that different benches could interpret "basic structure" differently, creating a risk of institutional unpredictability. Critics argue that this ambiguity could allow courts to invalidate constitutional amendments based on evolving judicial philosophy, rather than a consistent constitutional standard.

2. Tension Between Parliamentary Supremacy and Judicial Review

The Indian constitutional scheme fosters a delicate tension between parliamentary supremacy and judicial review. Unlike the British model of absolute parliamentary sovereignty, India's Parliament operates within the framework of constitutional supremacy. The Supreme Court in *Kesavananda Bharati* curtailed Parliament's authority to amend the Constitution by declaring that amendments violating the "basic structure" would be invalid.⁷¹

This balance of power continues to be contested. Proponents of parliamentary supremacy assert that elected representatives, as custodians of the people's will, must retain broad authority to amend the Constitution, including its foundational elements. Conversely, defenders of judicial review argue that the Constitution must protect against majoritarian impulses and safeguard minority rights and institutional values, even from democratically elected legislatures.

Recent constitutional controversies underscore this ongoing tension:

⁶⁹ *ibid*, Khanna J, para 1526.

⁷⁰ *ibid*, Ray J (dissenting), para 1452.

⁷¹ *ibid*, majority opinion, para 681.

- The Citizenship (Amendment) Act, 2019 (CAA) was challenged on the grounds of religious discrimination, allegedly violating Articles 14 and 21.⁷²
- The abrogation of Article 370 and the reorganization of Jammu & Kashmir raised questions about federalism and constitutional procedure.⁷³
- The 2020 farm laws provoked mass protests, leading the Supreme Court to stay implementation and appoint a mediation panel.⁷⁴
- The Electoral Bonds Scheme is under judicial scrutiny for allegedly violating the right to information and democratic transparency.⁷⁵

These instances exemplify the judiciary's proactive role in reviewing legislation with significant constitutional and social consequences. However, critics caution that such interventions may erode the authority of the Legislature, potentially undermining democratic legitimacy.⁷⁶

B. Present Day: Expanding Scope and Contemporary Critique

In recent decades, the Supreme Court has expanded the scope of the doctrine to include values such as secularism, federalism, equality, and democracy. This expansion was evident in cases such as:

- *S R Bommai v Union of India*, which held secularism to be a basic feature.⁷⁷
- *I R Coelho v State of Tamil Nadu*, which reaffirmed that laws placed under the Ninth Schedule are subject to judicial review if they violate the basic structure.⁷⁸

This broadening of the doctrine's reach has prompted criticism from contemporary scholars. Gautam Bhatia, for example, argues that excessive judicial activism risks

⁷² *Common Cause v Union of India* (2020) 4 SCC 1; see also Writ Petitions challenging CAA, SC registry.

⁷³ *S R Bommai v Union of India* (1994) 3 SCC 1; *Re: Article 370*, *Suo Motu Writ Petition (Civil) No 1 of 2019*.

⁷⁴ *In Re: Farmers' Protest*, SC Order dated 12 January 2021.

⁷⁵ *Association for Democratic Reforms v Union of India*, Writ Petition (Civil) No 880 of 2017 and related cases.

⁷⁶ Upendra Baxi, *The Indian Supreme Court and Politics* (Eastern Book Company 1980).

⁷⁷ *S R Bommai case* (n 73)

⁷⁸ *I R Coelho case* (n 14)

impeding Parliament's capacity to enact progressive social legislation, potentially freezing democratic reform.⁷⁹

Judicial voices have also acknowledged these concerns. Justice Ruma Pal, in her concurring opinion in *L Chandra Kumar v Union of India*, expressed caution over judicial encroachment into legislative functions.⁸⁰ Scholars such as Dr. S.P. Sathe have warned that unchecked judicial authority could lead to "judicial despotism," where unelected judges impose personal ideological preferences under the guise of constitutional interpretation.⁸¹

While the Basic Structure Doctrine is lauded for securing constitutional identity and guarding against arbitrary amendments, it is not without its controversies. The ongoing tension between judicial review and parliamentary sovereignty lies at the heart of Indian constitutionalism. Despite criticisms, the doctrine continues to be a cornerstone of constitutional protection in India, its legitimacy bolstered by decades of jurisprudence and its necessity affirmed by legislative and executive attempts to stretch constitutional boundaries.

The dialogue between courts and legislatures reflects the dynamic nature of constitutional governance. As democratic institutions evolve, so too must the balance of powers that ensures their accountability, stability, and fidelity to the Constitution's foundational values.

⁷⁹ Gautam Bhatia, 'Judicial Activism and the Basic Structure Doctrine' (2015) <https://indconlawphil.wordpress.com>.

⁸⁰ *L Chandra Kumar v Union of India* (1997) 3 SCC 261, concurring opinion of Pal J.

⁸¹ S P Sathe, *Judicial Activism in India: Transgressing Borders and Enforcing Limits* (Oxford University Press 2002).

XII. ROLE OF THE DOCTRINE IN PROTECTING FUNDAMENTAL RIGHTS – IN THE CONTEXT OF DIGITAL RIGHTS AND PRIVACY

The Basic Structure Doctrine has emerged as a powerful constitutional safeguard, particularly relevant in the context of digital rights and informational privacy. As state and corporate digital infrastructures expand, the doctrine ensures that core constitutional values remain protected from arbitrary or disproportionate technological interventions.

The landmark ruling in *Justice K S Puttaswamy (Retd) v Union of India* formally recognized the right to privacy as a fundamental right under Article 21.⁸² The nine-judge bench unanimously held that privacy is an integral part of the right to life and personal liberty, and is embedded within the basic structure of the Constitution.⁸³ This ruling established clear limits on state surveillance, data collection, and private intrusions, setting the stage for future constitutional engagement with digital governance.

Building on this, the Supreme Court in the *Aadhaar* judgment applied the privacy principles to assess the constitutionality of the Aadhaar biometric identification programme.⁸⁴ While the Court upheld the Aadhaar scheme, it struck down provisions such as the mandatory linking of Aadhaar with private services, holding that such requirements failed the proportionality test and infringed the right to privacy.⁸⁵ The ruling affirmed that data collection mechanisms must respect constitutional guarantees and that state efficiency cannot justify violations of core fundamental rights.

Legal scholars such as Gautam Bhatia have argued that situating privacy within the basic structure provides enduring protection against both state authoritarianism and corporate

⁸² *Justice K S Puttaswamy (Retd) v Union of India* (2017) 10 SCC 1.

⁸³ *ibid*, paras 168–179.

⁸⁴ *K S Puttaswamy (Retd) v Union of India* (2018) 1 SCC 1.

⁸⁵ *ibid*, paras 637–644, 703–712.

overreach.⁸⁶ He suggests that the doctrine fosters a jurisprudence of constitutional morality in the face of rapidly evolving technologies.

Beyond privacy, the Basic Structure Doctrine also supports digital expression and communication rights. In *Shreya Singhal v Union of India*, the Supreme Court invalidated Section 66A of the Information Technology Act, 2000, ruling it unconstitutional for infringing freedom of speech and expression under Article 19(1)(a).⁸⁷ The Court held that vague and overbroad criminalisation of online content cannot survive constitutional scrutiny, reinforcing that digital rights enjoy the same constitutional protection as traditional civil liberties.

The Court's position was further strengthened in *Anuradha Bhasin v Union of India*, which dealt with the prolonged internet shutdown in Jammu and Kashmir following the abrogation of Article 370.⁸⁸ The Court recognized internet access as intrinsic to free speech, education, and livelihood under Articles 19 and 21. It ruled that restrictions on internet access must conform to the principles of legality, necessity, and proportionality, reinforcing that arbitrary digital restrictions violate the Constitution's basic structure.⁸⁹

These judgments collectively affirm the Supreme Court's evolving role in protecting digital constitutionalism. As India's digital infrastructure expands, challenges such as mass surveillance, data breaches, and algorithmic discrimination become increasingly prevalent. The Basic Structure Doctrine, by ensuring fidelity to principles such as dignity, autonomy, and freedom, offers a constitutional framework for evaluating state and corporate actions in the digital sphere.

⁸⁶ Gautam Bhatia, 'Privacy as a Basic Structure Doctrine Issue' (2019) <https://indconlawphil.wordpress.com>.

⁸⁷ *Shreya Singhal v Union of India* (2015) 5 SCC 1.

⁸⁸ *Anuradha Bhasin v Union of India* (2020) 3 SCC 637.

⁸⁹ *ibid*, paras 60–71.

XIII. CONCLUSION

The Basic Structure Doctrine, first laid down in *Kesavananda Bharati v State of Kerala*, remains one of the most significant contributions to Indian constitutional jurisprudence.⁹⁰ It introduces a principled constraint on the amending power of Parliament, ensuring that the Constitution's foundational ethos—justice, liberty, equality, and dignity—remains intact.

Constitutionally, the doctrine has preserved the integrity of the Constitution by preventing arbitrary alterations to its core principles. Socially, it has empowered the Judiciary to protect individual rights against majoritarian impulses, thereby promoting social justice and equality. Politically, it preserves the separation of powers, allowing judicial review of constitutional amendments while respecting the Legislature's policy-making domain.

As digitization reshapes every aspect of life—from surveillance to speech to identity—the Basic Structure Doctrine has proved itself adaptable and resilient. It compels constitutional compliance in digital policy-making, ensuring that democracy, the rule of law, and civil liberties remain inviolable in the face of technological transformation.

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⁹⁰ *Kesavananda Bharati case* (n 2)

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