

## “Basic Structure of Doctrine”

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**BASIC STRUCTURE DOCTRINE:** The basic structure doctrine is an Indian judicial principle, most notably propounded by justice Hans Raj Khanna, that the constitution of India has certain basic features that cannot be altered or destroyed through amendments by the parliament. Key among these "basic features", as expounded by justice Khanna, are the fundamental rights guaranteed to individuals by the constitution. The doctrine thus forms the basis of a power of the Supreme Court to review and strike down constitutional amendments and acts enacted by the parliament which conflict with or seek to alter this "basic structure" of the constitution. The basic features of the constitution have not been explicitly defined by the judiciary, and the claim of any particular feature of the constitution to be a "basic" feature is determined by the court in each case that comes before it. Thus it gives extra power to court to review and strike down any constitutional amendments and act enacted by the parliament. In 1967, the Supreme Court reversed its earlier decisions in *Golaknath v. state of Punjab*. It held that fundamental rights included in part iii of the constitution are given a "transcendental position" and are beyond the reach of parliament. it also declared any amendment that "takes away or abridges" a fundamental right conferred by part iii as unconstitutional. In 1973, the basic structure doctrine was formally introduced with rigorous legal reasoning in Justice Hans Raj Khanna's decisive judgment in the landmark decision of *Kesavananda Bharati v. state of Kerala*. Previously, the Supreme Court had held that the power of parliament to amend the constitution was unfettered. However, in this landmark ruling, the court adjudicated that while parliament has "wide" powers, it did not have the power to destroy or emasculate the basic elements or fundamental features of the constitution.

### **Case laws:**

- *Shankari Prasad v. Union of India* (1951)
- *Sajjan Singh v. state of Rajasthan*
- *Golaknath v. state of Panjab* (1967)
- *Kesavananda Bharti v. state of Kerala* (1971)
- *Minerals mills v. union of India* (1980)
- *S.R Bommai v. union if India* (1994)

There is no reference in the constitution of the term basic structure. The term has developed across a number of case laws.

In the case of **Shankari Prasad Singh Deo v. Union of India**, the Constitution (1<sup>st</sup> amendment) act, 1951, which amended the fundamental rights guaranteed under the constitution was challenged. The SC contended that the parliament's power of amending the constitution under article 368 is absolute and therefore they have the power to amend the rights provided under **Part III** of the constitution. The principle laid down in *Shankari Prasad* case, was further followed by majority in **Sajjan Singh v. State of Rajasthan**. The earlier

cases were overruled by Supreme Court in the case of **Golak Nath v. State of Punjab**. The Supreme Court ruled that the parliament had no authority to change **part iii** of the constitution because the fundamental freedoms are transcendental and permanent. According to the judgment of the SC, Article 368 sets out just the process for amending the constitution and does not grant parliament full authority to change any section of the constitution.

The parliament adopted 24<sup>th</sup> amendment to the constitution in 1971. The act granted the parliament full authority to introduce any amendments to the constitution, including fundamental rights. It also made it mandatory for the president to give his assent to all the bills of amendment submitted to him by the parliament.

In 1973, in the case of **Kesavananda Bharti v. State Of Kerala**, the SC affirmed the legality of the 24<sup>th</sup> constitution amendment act by examining its verdict in Golaknath case. The SC ruled that the parliament had the right to change every clause in the constitution, but the basic structure of the constitution should be preserved. Nevertheless, the apex court did not provide a specific description of the basic structure. It held that even a constitutional amendment does not abolish the basic framework of the constitution. Throughout the decision, some of the fundamental characteristics of the constitution have been set down by judges, which are as follows:

1. Supremacy of the constitution
2. Republican and democratic form of government
3. Secular character of the constitution
4. Federal character of the constitution
5. Separation of power
6. Dignity and sovereignty of India

### **Conclusion:**

According to me there should be basic structure of doctrine in Indian constitution because it protects our fundamental rights from being

Violated and gives power to Supreme Court of India to make any law passed by the parliament unconstitutional if it violates any fundamental right of Indian citizen. Fundamental rights are called “fundamental” because they are considered to be essential for an individual to attain his fullest physical, intellectual and spiritual structure. The amending power of the parliament is limited to the limit of not violating the basic structure of the constitution. So far, as the will of the people is concerned that their fundamental rights conferred by the constitution of India and must be safeguarded and shall not be violated or infringed by any means. The people shall not be discriminated socially, economically and religiously.