

# Basic Structure of Indian Constitution

[UPSC Notes]

## Basic Structure Doctrine: The Basic Structure of Indian Constitution

The Indian Constitution makes no reference to the phrase "Basic Structure." Over time and through several instances, the notion that the Parliament cannot propose laws that would modify the fundamental framework of the constitution eventually emerged. The goal is to safeguard people's rights and liberties while preserving the distinctive features of Indian democracy. The Indian Constitution's Basic Structure theory aids in defending and preserving the document's original intent.

The Kesavananda Bharati case was the one that made this idea popular. According to its conclusions, even a constitutional amendment could not change the "fundamental framework of the Indian Constitution." The judgement proposed some basic structures of the constitution as:

1. Supremacy of the Constitution
2. Secular character of the Constitution
3. Federal character of the Constitution
4. Unity and sovereignty of India
5. Individual freedom
6. Democratic and republican form of government
7. Separation of power

This list of fundamental structural traits has grown over time to include numerous other features, which will be covered separately in this article. The SC has the authority to invalidate any statute or amendment that contravenes these rules on the premise that they alter the Constitution's fundamental principles.

## Evolution of the Theory of Basic Structure Doctrine

Over time, the idea of the constitution's fundamental design changed. With the aid of several important decisions pertaining to this theory, we will discuss this progression in this part.

- Shankari Prasad Case of 1951
  - In this instance, the SC argued that the ability of the Parliament to amend the Constitution under Article 368 also encompassed the ability to alter the Fundamental Rights protected by Part III.
- Sajjan Singh case of 1965

- The Supreme Court ruled that any provision of the Constitution, including the Fundamental Rights, may be amended by the Parliament in this case as well.
  - It is significant to note that two judges who dissented from the majority opinion, in this case, questioned whether the ruling party in Parliament could use the fundamental rights of individuals as a plaything.
- Golaknath case of 1967
    - The court's former position that the Fundamental Rights could be modified was reversed in this instance.
    - It declared that the Fundamental Rights are not subject to the parliamentary restraint set forth in Article 13 and that a new Constituent Assembly will be needed to modify the Fundamental Rights.
    - Additionally, it was noted that while Article 368 outlines the process for amending the Constitution, it does not grant Parliament the authority to do so. Fundamental Rights now hold a "transcendental standing" because to this case.
    - The idea of implied restrictions on the Parliament's ability to modify the Constitution was used in the majority judgement. According to this perspective, the Constitution permanently secures the fundamental liberties of the people.
    - These rights had been set aside by the people when they granted themselves the Constitution.
  - Kesavananda Bharati case of 1973
    - This case served as a turning point in the development of the basic structure doctrine.
    - The SC ruled that although if the Parliament had the authority to amend any portion of the Constitution, including the Fundamental Rights, the fundamental framework of the Constitution can not be abolished even with the use of a constitutional amendment.
    - According to the ruling, the parliament may only change the constitution—not completely rewrite it. The power to alter is not the same as the power to destroy.
    - This is the legal justification under Indian law for the judiciary's power to invalidate any amendment made by Parliament that conflicts with the Constitution's fundamental principles.
  - Indira Nehru Gandhi v. Raj Narain case of 1975
    - In this case, the SC used the basic structure theory to invalidate Clause(4) of Article 329-A, which was added by the 39th Amendment in 1975 on the premise that it was outside the scope of the Parliament's amending power because it damaged the fundamental elements of the Constitution.
    - While the Emergency Period was going on, Parliament approved the 39th Amendment Act. This Act exempted the election of the Prime Minister, the Lok Sabha's speaker, the President, the Vice President, and the Vice President from judicial review.
    - The government took this action to block Indira Gandhi from being tried by the Allahabad High Court for engaging in unethical electoral procedures.

- Minerva Mills case of 1980
  - The Basic Structure concept is once again strengthened by this instance. The ruling declared two modifications introduced to the Constitution under the 42nd Amendment Act of 1976 to be in violation of the fundamental framework and invalidated them.
  - It is quite evident from the ruling that the Constitution, not the Parliament, is superior.
  - The Court expanded the list of fundamental structure aspects in this instance by two features. They were the equilibrium between fundamental rights and DPSP, as well as judicial review.
  - The courts determined that the Constitution's ability to be limited in its amendment is a fundamental aspect of it.
- Waman Rao Case of 1981
  - The Basic Structure theory was reaffirmed by the SC.
  - Additionally, it established a boundary as April 24, 1973, the date of the Kesavananda Bharati ruling, and stated that it should not be applied retroactively to examine the legitimacy of any change to the Constitution that occurred before that day.
  - The Constitution (29th Amendment) Act, 1972, which included the Kerala Land Reforms Act of 1963, along with its amending Act to the Constitution's 9th Schedule, was challenged by the petitioner in the Kesavananda Bharati case.
    - In order to give land reform laws a "protective umbrella," the First Amendment introduced the 9th Schedule and Article 31-B to the Constitution in 1951.
    - In order to keep them from being contested in court, this was done.
    - According to Article 13(2), no law may be passed by the state that conflicts with fundamental rights, and any law that does so is null and void.
    - Now, Article 31-B shields statutes from the aforementioned examination. Even though laws passed under it violate fundamental rights, they cannot be overturned in court because they are listed in the 9th Schedule.
  - According to the Waman Rao case, modifications to the 9th Schedule made up until the Kesavananda ruling are lawful, but those made beyond that point may be subject to review.
- Indra Sawhney and Union of India of 1992
  - The scope and application of Article 16(4), which mandates the reservation of jobs for members of underprivileged sections, were scrutinised by the SC. With a few restrictions (such as the exclusion of the creamy layer, no reservations in promotions, the total reserved quota shall not exceed 50%, etc.), it supported the constitutional legitimacy of the 27% reservation for OBCs.
  - Rule of Law was now included in the list of fundamental elements of the constitution.
- S.R. Bommai case of 1994
  - The SC attempted to stop the egregious misuse of Article 356 (concerning the imposition of the President's Rule on states) in this ruling.

- Although a constitutional amendment was not at issue in this instance, the idea of fundamental doctrine was nevertheless used.
- According to the Supreme Court, a state government's practices that are in opposition to a fundamental aspect of the Constitution constitute a legal basis for the use of Article 356's central power.

As was seen in the Emergence Era, the idea of the basic structure aids in the prevention of legislative excesses. This is necessary as a defence against a supreme parliament that would abuse Article 368 excessively. However, there is a different school of thought that claims that in order for an amendment to help a constitution survive, it must also make adjustments to what is considered to be its fundamental provisions.

## Elements of Basic Structure Doctrine

Although not precisely defined, the idea of basic structure establishes a scope establishing the frame or framework of the constitution through the contents that have been supplied by the judiciary. Since the basic structure of the constitution is occasionally upgraded with new elements, the Supreme Court has not yet determined the precise basic structure of the constitution.

- Supremacy of the constitution
- Rule of law
- Sovereignty, liberty and republic nature of Indian polity
- Judicial review
- Harmony and balance between directive principles and fundamental rights
- The division of authority
- Federal nature
- Parliamentary Legislative system
- Principle of quality
- Nation's integrity and unity.
- Democratic elections.
- SC's authority under Articles 32, 136, 142, and 147
- The HC's authority under Articles 226 and 227.
- Parliament's ability to change the constitution is limited.
- State of Welfare
- Individual liberty and dignity.
- The Basic Structure notion was emphasised in a number of Supreme Court decisions, including those in the cases of Indira Nehru Gandhi, Minerva Mills, Waman Rao, and I.R. Coelho, among others.

## Significance of Basic Structure Doctrine

The significance of the Basic Structure Doctrine is immense. These pointers have been briefly discussed below;

- The fundamental structure concept serves as evidence for the constitutionalist thesis that majority rule by force cannot destroy the core of the COI.
- Because it serves as a check on constituent power, the fundamental concept preserved Indian democracy; otherwise, unrestricted parliamentary power may have transformed India into a totalitarian state.
- Retaining the fundamental principles of our constitution, which our founding fathers so painstakingly crafted, is beneficial.

- By clearly defining a real division of powers in which the judiciary is autonomous, free of any interference of the other two organs, it improves our democracy. Additionally, it has greatly increased the Supreme Court's power, making it the most dominant court in the world.
- It gave people fundamental rights that no state organ can alter by restricting the legislative branch's ability to amend laws.
- Unlike the fixed character of prior judgments, it is dynamic in nature and more progressive and adaptable over time.

## Criticism of the Basic Structure of Indian Constitution

- The notion is frequently criticised for having no legal foundation in the language of the Constitution. The doctrine lacks a scriptural foundation. There is no clause stating that the fundamental framework of this Constitution is outside the purview of the right to alter it.
- Detractors of the concept further contend that it gives the judiciary the power to enforce its philosophy on a democratically elected government.
- The doctrine is unclear because there is no clear definition of what exactly comprises the basic structure.
- The doctrine has recently been used in cases that have been viewed as instances of judicial overreach. Ex: The SC used this theory to declare the NJAC bill null and void.

## Conclusion

The "Rule of Law" premise of the Constitution, which states that no one is superior to the Constitution and that the Constitution is supreme, is simply given life by the basic structural idea. This idea safeguards the fundamental character of the Constitution. Additionally, because the Supreme Court is the guardian of the Constitution, it is the last arbiter and has the right to enunciate the Basic Structure theory. However, this does not mean that the Supreme Court should assume absolute power.