

# INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

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Volume 6 | Issue 6

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2023

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# Dynamic Foundations: The Unfolding Narrative of Basic Structure Doctrine in Indian Jurisprudence, Safeguarding Fundamental Rights, Judicial Oversight in Constitutional Amendments, and its Contemporary Significance

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## ABSTRACT

*The Basic Structure Doctrine is a fundamental principle in Indian constitutional law, introduced by the Supreme Court of India in the Kesavananda Bharati v. State of Kerala case in 1973. It asserts that certain constitutional features, such as democracy, secularism, socialism, judicial review, and fundamental rights, cannot be altered by Parliament under its constituent power. This doctrine has been a subject of intense debate and controversy, with proponents arguing it is necessary to safeguard the Constitution's core values from majoritarian rule, while opponents argue it is undemocratic and undermines Parliament's sovereignty. The doctrine has evolved over time through a series of judicial pronouncements, with the Supreme Court identifying seven fundamental features of the Constitution but leaving room for further determination by the judiciary. It has also been used by the Supreme Court to strike down constitutional amendments deemed violative of the Basic Structure, such as the First, Fourth, and Seventeenth Amendments in the Golak Nath case (1967). This comprehensive exploration delves into the evolution of the Basic Structure Doctrine in Indian Jurisprudence, focusing on its pivotal role in safeguarding fundamental rights, judicial intervention in constitutional amendments, and its contemporary relevance. The research reveals the doctrinal progression from pre-Kesavananda Bharti jurisprudence to the establishment of the Basic Structure Doctrine, elucidating its pivotal role in safeguarding fundamental rights by delineating limits on parliamentary authority for constitutional amendments.*

**Keyword:** Basic Structure Doctrine, Indian Constitution, Democracy, Secularism, Judicial Review

## I. INTRODUCTION

The Basic Structure Doctrine is a fundamental principle in Indian jurisprudence that asserts that

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certain core features of the Constitution cannot be altered or amended by the legislature, even if it has the formal power to amend it. Its origins can be traced back to the *Kesavananda Bharati v. State of Kerala* case in 1973<sup>3</sup>, where the Supreme Court of India had to determine the extent of the amending power of the Parliament under Article 368 of the Constitution. The case led to a series of hearings, where the Supreme Court grappled with the implied limitations on the power of Parliament to amend the Constitution. Ultimately, the Supreme Court held that while Parliament had the power to amend the Constitution, it did not have the power to destroy or alter its basic structure. The term "Basic Structure Doctrine" was coined by Justice H.R. Khanna in his dissenting opinion in *Kesavananda Bharati*. The basic structure of India's government is characterized by its supremacy of the Constitution, a republican and democratic form of government, secularism, federalism, rule of law, and judicial review. The Constitution is the supreme law of the land, and any law inconsistent with its provisions can be struck down. The Indian state is a sovereign, socialist, secular, and democratic republic with principles of democracy and representative government. The preamble enshrines the secular character of the Indian state. Federalism distributes powers between central and state governments, while the rule of law ensures all individuals and institutions are subject to and accountable under the law. Judicial review is a key element of the basic structure, allowing the judiciary to review and strike down laws that violate fundamental rights. This doctrine limits the amending power of the Indian Parliament, asserting that certain features of the Constitution are immutable and cannot be altered through the amendment process. The Basic Structure Doctrine in India, originating from the 1973 case of *Kesavananda Bharati v. State of Kerala*, is a legal principle that states that the Constitution is the supreme law of the land, and any law inconsistent with its provisions is void. The doctrine has evolved through various judgments, with courts identifying certain principles and features as part of the basic structure. These include the supremacy of the Constitution, the democratic and republican forms of government, secularism, federalism, and separation of powers. The Supreme Court of India held that the Parliament had the authority to amend the Constitution but could not alter its basic structure. The doctrine has been invoked by the judiciary to strike down amendments that infringe upon the essential features of the Constitution. The doctrine has evolved through various judgments, with the courts identifying certain principles and features as essential. The Basic Structure Doctrine is a fundamental concept in Indian constitutional law that limits the power of Parliament to amend the Constitution. It was first enunciated by the Supreme Court of India in the landmark case of *Kesavananda Bharati v. State of Kerala* in 1973. The doctrine asserts that certain fundamental

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<sup>3</sup> *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1451

features of the Constitution, known as its "basic structure," cannot be altered or abrogated by any constitutional amendment. This doctrine serves as a safeguard to protect the core values and principles enshrined in the Constitution, ensuring that the Constitution remains a supreme and enduring document. The doctrine emerged from the need to balance the power of constitutional amendment with the preservation of the Constitution's fundamental character. These fundamental principles, such as democracy, secularism, federalism, and the rule of law, form the bedrock of Indian society, and without the doctrine, these principles would not be guaranteed to remain intact. The Basic Structure Doctrine in India is a fundamental principle that protects the core values of the Constitution, including sovereignty, unity, integrity, democratic and republican government, federal and secular character, separation of powers between the legislature, executive, and judiciary, and guaranteed fundamental rights to citizens. It has evolved over time through Supreme Court judgments and has played a crucial role in safeguarding the Indian Constitution and ensuring its enduring relevance. The doctrine has prevented the Constitution from being undermined by arbitrary amendments, preserving its essential character and protecting the fundamental rights of Indian citizens. It has also significantly impacted the balance of power between the legislature and the judiciary, asserting the judiciary's role as the guardian of the Constitution and ensuring the fundamental principles of democracy and rule of law are not compromised. The Basic Structure Doctrine is a testament to the Indian judiciary's commitment to upholding the values and principles enshrined in the Constitution, serving as a powerful safeguard against attempts to alter or dismantle the fundamental framework of Indian democracy.

## **II. SAFEGUARDING FUNDAMENTAL RIGHTS IS ESSENTIAL FOR SEVERAL REASONS**

Fundamental rights are fundamental liberties and privileges that every individual is entitled to, irrespective of their background, status, or identity. They protect human dignity, promote equality, and enable personal development. They guarantee equal opportunities for all, regardless of their race, ethnicity, gender, religion, sexual orientation, or other status. These rights also enable individual growth and participation in communities. They strengthen democracy and good governance by promoting accountability and limiting government power. They are essential for building peaceful and just societies and reducing violence and conflict. Supporting fundamental rights is crucial for specific groups, such as women, children, and minorities, who are often more vulnerable to discrimination and abuse. Governments, civil society organizations, the media, and the international community play important roles in safeguarding fundamental rights. These rights form the foundation for a fair and equitable society, ensuring respect for human dignity, freedom, and equality. They also contribute to

social harmony and stability by fostering trust in institutions and systems. Furthermore, safeguarding fundamental rights aligns societies with international human rights standards, demonstrating a commitment to human rights values.

<sup>4</sup>Fundamental rights are designed to protect human dignity, ensuring that each person is treated with respect and fairness, regardless of their background, beliefs, or characteristics. They also promote freedom and liberty, guaranteeing individuals the right to express their thoughts, beliefs, and opinions freely. They are closely tied to the rule of law, creating a framework that limits the arbitrary exercise of power by authorities and ensures consistent and fair application of the law. Fundamental rights promote equality by prohibiting discrimination based on factors such as race, gender, religion, or socioeconomic status. They establish a foundation for a society where all individuals have equal opportunities and access to resources, fostering a more inclusive and just community. In democratic governance, safeguarding fundamental rights is integral to the functioning of democracy, ensuring that individuals have the freedom to participate in political processes, express dissent, and hold those in power accountable. They are often aligned with international human rights standards, contributing to a global framework of shared values and norms.<sup>5</sup>

### **III. HISTORICAL PERSPECTIVE OF THE BASIC STRUCTURE DOCTRINE**

The Basic Structure Doctrine (BSD) is a fundamental principle of Indian constitutional law that protects the fundamental principles and features of the Constitution. It has its roots in the Indian judicial landscape and has evolved over time through landmark cases. The genesis of the BSD can be traced back to the *Kesavananda Bharati* case, which marked a turning point in Indian constitutional history. The Supreme Court, through a form of judicial review, identified certain "basic features" that could not be amended. Post-*Kesavananda Bharati*, the judiciary consistently referred to and reinforced the BSD in various cases, striking down amendments deemed to violate the basic structure. The doctrine has faced challenges and expansions over the years, as courts have had to grapple with defining new aspects of the basic structure and balancing the need for constitutional amendments with the preservation of essential features.

The BSD has played a crucial role in shaping the constitutional identity of India and ensuring the endurance of its fundamental principles. In recent years, the doctrine has been invoked in cases addressing issues such as the right to privacy and judicial appointments, demonstrating its adaptability to new challenges and its continued relevance in contemporary constitutional

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<sup>4</sup> International Covenant on Civil and Political Rights, Article 19.

<sup>5</sup> Universal Declaration of Human Rights, Article 1.

discourse. The historical perspective of the BSD reflects its evolution from a judicial response to specific constitutional amendments to a broader principle that safeguards the foundational values of the Indian Constitution. The doctrine has played a crucial role in shaping the constitutional identity of India and ensuring the endurance of its fundamental principles. It aims to protect the fundamental principles of the Indian Constitution. It is based on several key features, including the supremacy of the Constitution, the sovereignty and integrity of India, democratic and republican forms of government, federal and secular character, separation of powers, and fundamental rights and impact on Indian constitutional law, serving as a safeguard against arbitrary and radical amendments that could undermine the Constitution's core principles. It has also reinforced the role of the judiciary as the guardian of the Constitution, empowering it to review the validity of constitutional amendments. It evolved over time through key judicial decisions and constitutional amendments. The Supreme Court's groundbreaking decision in *Kesavananda Bharati v. State of Kerala* (1973), which established the principle that the Parliament cannot change the Constitution's "basic structure," is where it all began. Subsequent cases further clarified and expanded the scope of the BSD, such as <sup>6</sup>*Indira Gandhi v. Raj Narain* (1975) and <sup>7</sup>*Minerva Mills v. Union of India* (1980). Over time, the BSD became an integral part of the Indian judicial review process, with courts applying this doctrine to assess the constitutionality of amendments and other legislative actions. The judiciary asserted its role as the guardian of the Constitution and the protector of its basic structure. It plays a significant role in contemporary Indian jurisprudence, ensuring that the Constitution's foundational principles remain intact while allowing for necessary adaptations to changing societal needs. The historical perspective of the BSD highlights its evolution from a response to specific constitutional amendments to a broader constitutional principle that shapes the Indian judiciary's approach to constitutional interpretation and amendments.

The landmark case of *Kesavananda Bharati v. State of Kerala*, which the Supreme Court of India heard in 1973, is where the Basic Structure Doctrine in Indian law first emerged. Before this case, the interpretation of the amending power of the Indian Parliament under Article 368 of the Constitution was a subject of considerable debate. <sup>8</sup>The *Golaknath* case (1967) established that Parliament could not curtail or restrict any of the Fundamental Rights through constitutional amendments.

The *Kesavananda Bharati* case challenged the constitutional validity of the 24th, 25th, 26th, and

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<sup>6</sup> *Indira Gandhi v. Raj Narain*, (1975) 2 SCC 764

<sup>7</sup> *Minerva Mills v. Union of India*, (1980) 1 SCC 451

<sup>8</sup> *Golaknath v. State of Punjab*, AIR 1967 SC 1643

29th Amendments, which sought to limit the scope of judicial review and expand Parliament's amending powers. In a historic decision, a 13-judge bench held that while Parliament had the power to amend the Constitution, this power was not unlimited. The court established the Basic Structure Doctrine, arguing that there was a "basic structure" to the Constitution that was impervious to change or destruction. Secondary judgments and decisions helped in defining and refining the Basic Structure Doctrine. In *Indira Gandhi v. Raj Narain* (1975), the Supreme Court listed certain features as part of the basic structure, including democracy, rule of law, and judicial review. Over time, the judiciary added principles like federalism, secularism, and the separation of powers to the basic structure.

The Basic Structure Doctrine, a post-Kesavananda development, has been applied in numerous cases to strike down or modify constitutional amendments deemed to violate the basic structure. The judiciary has continued to play a significant role in interpreting and protecting the basic structure, acting as a check on the legislature's powers to ensure amendments do not undermine the Constitution's foundational principles. The doctrine has been instrumental in safeguarding individual rights, maintaining the balance of power between the three branches of government, and upholding the principles of equality, secularism, and social justice.

## **OVERVIEW OF THE ORIGIN AND DEVELOPMENT OF THE BASIC STRUCTURE DOCTRINE**

- The Basic Structure Doctrine (BSD) in Indian jurisprudence is a legal principle that prevents constitutional amendments from changing or destroying the fundamental principles of the Constitution. It has its roots in pre-independence constitutional debates and was first recognized in the 1973 landmark case of <sup>9</sup>*Kesavananda Bharati v. State of Kerala*.
- The BSD emerged gradually over time, with several cases leading up to the *Kesavananda Bharati* judgment. In the 1951 case of <sup>10</sup>*Shankari Prasad v. Union of India*, the Supreme Court hinted at the possibility of implied limitations on Parliament's amending power. This idea was further developed in the 1960 case of <sup>11</sup>*Golaknath v. State of Punjab*, where the Court held that Parliament could not abridge fundamental rights.

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<sup>9</sup> *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461, at para 510.

<sup>10</sup> 1951 SCR 455

<sup>11</sup> *State of West Bengal v. Anwar Ali Sarkar*, AIR 1952 SC 75

- The Kesavananda Bharati case marked a turning point in the development of the BSD. A 13-judge bench of the Supreme Court, by a narrow majority of 7:6, ruled that Parliament's amending power was not unlimited and that the Constitution possessed an indestructible "basic structure" that could not be altered. This judgment effectively established the BSD as a fundamental principle of Indian constitutional law.
- Key features of the BSD include constitutional supremacy, sovereignty and integrity of India, democratic and republican form of government, federal character of the Constitution, secular character of the Constitution, separation of powers among legislative, executive, and judiciary, and guaranteeing fundamental rights such as equality, freedom of speech, and religion.

#### **IV. ANALYSIS OF KEY JUDICIAL DECISIONS THAT SHAPED THE DOCTRINE**

The Basic Structure Doctrine (BSD) has significantly influenced Indian constitutional law, serving as a safeguard against arbitrary and radical amendments that could undermine the fundamental principles of the Constitution. It has also reinforced the role of the judiciary as the guardian of the Constitution, empowering it to review the validity of constitutional amendments.

The BSD was first introduced in the landmark case of *Kesavananda Bharati v. State of Kerala* in 1973<sup>12</sup>, which established the Supreme Court's stance on constitutional amendments. The case focused on a challenge to the Kerala government's attempt to acquire the properties of a religious institution, but became a constitutional milestone due to its broader implications on the scope of parliamentary power to amend the Constitution.

The *Kesavananda Bharati* judgment did not explicitly define the components of the basic structure, but identified certain principles like democracy, rule of law, and judicial review as part of it. Subsequent cases, including *Indira Gandhi v. Raj Narain* (1975) and *Minerva Mills v. Union of India* (1980), further expanded the list of elements considered part of the basic structure. Principles such as federalism, secularism, and the separation of powers were added over time.

Post-*Kesavananda* developments continued to evolve in subsequent cases as the judiciary applied and refined its principles. In *Kesavananda Bharati*, the majority decision held that amendments that destroy the essential features or framework of the Constitution would be unconstitutional. The doctrine was invoked in cases like *Waman Rao v. Union of India* (1981),

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<sup>12</sup> *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461, para 154.



where the court struck down an amendment that sought to alter the power of the judiciary to review legislative decisions.

The BSD remains a critical aspect of constitutional jurisprudence in India, with subsequent courts upholding and applying its principles. The judiciary has played a proactive role in protecting the basic structure by striking down or interpreting constitutional amendments that are perceived as infringing upon its core elements. In today's dynamic and evolving society, the BSD remains highly relevant, ensuring that the Constitution's core principles are preserved while allowing for necessary adaptations to changing circumstances.

## **V. DISCUSSION OF THE CONSTITUTIONAL PROVISIONS SUPPORTING THE BASIC STRUCTURE DOCTRINE**

The Basic Structure Doctrine in Indian jurisprudence is not explicitly mentioned in the Constitution but has evolved through judicial interpretation. It is based on several constitutional provisions and principles, including Article 1: Name and Territory of the Union; Article 13: Laws inconsistent with or in derogation of the fundamental rights; Article 21: Protection of life and personal liberty; Article 32: Remedies for enforcement of rights conferred by this Part; Article 142: Enforcement of decrees and orders of the Supreme Court; Article 368: Power of Parliament to amend the Constitution and procedure therefor; and the Doctrine of Implied Limitations.

The basic structure doctrine in India is based on implied limitations on Parliament's amending power, which the judiciary uses to prevent certain fundamental features from being amended. The doctrine is derived from the Directive Principles of State Policy (DPSP), which provide the moral and social background for the Constitution. The judiciary considers principles like social justice, equality, and individual freedoms from DPSP when determining the content of the basic structure. This framework protects the fundamental character of the Indian Constitution and prevents amendments that threaten its integrity, rather than being explicitly enumerated in the constitutional text. The Preamble of the Indian Constitution is a crucial document that outlines the guiding principles and objectives of the Constitution, emphasizing justice, liberty, equality, and fraternity. It reflects the foundational values that contribute to the Basic Structure Doctrine, which emphasizes democracy, socialism, and secularism.

- <sup>13</sup>Article 1 of the Constitution declares India a Union of States, emphasizing the federal structure of the Indian polity. Federalism is considered an essential feature of the basic structure, as affirmed in various judicial decisions.
- Article 21<sup>14</sup> guarantees the right to life and personal liberty, with the judiciary expanding its interpretation to include the right to privacy as a fundamental right. This reinforces the protection of individual rights, contributing to the Basic Structure Doctrine's emphasis on safeguarding fundamental rights as essential components of the Constitution.
- Article 32<sup>15</sup> provides the right to constitutional remedies for the enforcement of rights conferred by Part III, empowering individuals to directly approach the Supreme Court for the enforcement of their fundamental rights. The court's role in protecting and interpreting fundamental rights is crucial to the Basic Structure Doctrine, establishing the Supreme Court as the guardian of the Constitution and the protector of the basic structure through its power to strike down amendments that violate fundamental principles.
- Article 50<sup>16</sup> emphasizes the separation of the judiciary from the executive, emphasizing the importance of maintaining a balance and independence between the judiciary and the executive.
- Article 368 grants Parliament the power to amend the Constitution, but the Kesavananda Bharati case (1973) clarified that this power is not unlimited and cannot be used to alter the Constitution's basic structure.

## **VI. EVOLUTION OF THE BASIC STRUCTURE DOCTRINE**

The Basic Structure Doctrine in Indian jurisprudence has evolved through several landmark judicial decisions. It emerged to define the limits of the amending power of the Indian Parliament and protect the foundational principles of the Constitution. Key stages in the evolution include:

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<sup>13</sup> Constitution of India, Article 1(1): "India, that is Bharat, shall be a Union of States."

<sup>14</sup> Article 21 of the Indian Constitution states, "No person shall be deprived of his life or personal liberty except according to procedure established by law."

<sup>15</sup> Constitution of India, Article 32

<sup>16</sup> [1] M.P. Jain, *Indian Constitutional Law*, 6th ed., LexisNexis, 2014, p. 204.

- I. *Golaknath v. State of Punjab*<sup>17</sup> challenged constitutional amendments that sought to restrict judicial review and expand the amending power of Parliament. The Supreme Court held that Parliament could not abridge or take away any of the Fundamental Rights through constitutional amendments, asserting the supremacy of Fundamental Rights but not explicitly articulating the Basic Structure Doctrine.
- II. *Kesavananda Bharati v. State of Kerala* <sup>18</sup>(1973) introduced the Basic Structure Doctrine, stating that while Parliament had the power to amend the Constitution, it could not alter its basic structure.
- III. Post-*Kesavananda* Developments (1970s–1980s) refined and elaborated on the Basic Structure Doctrine, with cases like *Indira Gandhi v. Raj Narain* (1975) and *Minerva Mills Ltd. v. Union of India* (1980) clarifying and solidifying the principles of the Doctrine. *Waman Rao v. Union of India* (1981) upheld the Basic Structure Doctrine, emphasizing that the government could not nullify a judicial decision through a constitutional amendment.
- IV. *S.R. Bommai v. Union of India* (1994)<sup>19</sup> reiterated the importance of federalism as part of the Basic Structure Doctrine, expanding its scope and emphasizing the significance of maintaining a balance between central and state governments.
- V. *Justice K.S. Puttaswamy (Retd.) v. Union of India* (2017) addressed the right to privacy as a fundamental right, aligning with the broader principles protected by the doctrine.

## **EXAMINATION OF LANDMARK CASES THAT EXPANDED OR CLARIFIED THE DOCTRINE**

The Basic Structure Doctrine (BSD) is a fundamental principle of Indian constitutional law that has been expanded or clarified in several landmark cases. These cases have played a pivotal role in shaping and expanding the BSD in India, establishing it as a crucial safeguard against arbitrary amendments that could undermine the Constitution's fundamental principles and reinforcing the judiciary's role as the guardian of the Constitution.

- I. <sup>20</sup>*Kesavananda Bharati v. State of Kerala* (1973) established the BSD as a fundamental principle of Indian constitutional law, defining the "basic structure" as encompassing essential features such as supremacy of the Constitution, sovereignty and integrity of

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<sup>17</sup> I.C. Golaknath and Ors. vs State of Punjab and Anrs. (1967) AIR 1643, 1967 SCR (2) 762

<sup>18</sup> *Kesavananda Bharati v. State of Kerala*, (1973) AIR 1461, para 393.

<sup>19</sup> *S.R. Bommai v. Union of India*, [1994] 2 SCR 644, ¶ 226.

<sup>20</sup>*Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461, para 296.

India, democratic and republican forms of government, separation of powers, secular character of the Constitution, and fundamental rights.

- II. *Minerva Mills v. Union of India* (1980) further solidified the BSD and reaffirmed the judiciary's role in upholding the Constitution's basic structure. In this case, the Supreme Court struck down the 42nd Amendment to the Constitution, which had granted sweeping powers to the Prime Minister and curtailed judicial review.
- III. *Kihoto Hollohan v. Zachillha* (1992) further expanded the scope of the BSD by recognizing the concept of "unamendable provisions" within the Constitution's basic structure. The Supreme Court held that certain provisions, such as those guaranteeing the unity and integrity of the nation, were beyond the amending power of Parliament.
- IV. *Justice K.S. Puttaswamy (Retd.) v. Union of India* (2017) expanded the BSD by implicitly acknowledging the right to privacy as a fundamental right. The decision clarified that certain unenumerated rights, integral to personal liberty, are protected and contribute to the broader principles upheld by the doctrine.
- V. *I.R. Coelho v. State of Tamil Nadu* (2007) expanded the doctrine by holding that amendments to the Constitution's Ninth Schedule could be subject to judicial scrutiny if they violate fundamental rights. This case clarified that the doctrine acts as a check on constitutional amendments, including those intended to provide immunity to certain laws, ensuring that fundamental rights are not undermined.

## **VII. ANALYSIS OF THE FACTORS THAT INFLUENCED THE EVOLUTION OF THE DOCTRINE OVER TIME**

The Basic Structure Doctrine (BSD) in Indian law has evolved through various legal, political, and societal factors. Landmark cases like *Kesavananda Bharati v. State of Kerala* (1973) laid the foundation for the doctrine, with subsequent judicial decisions clarifying and expanding its principles. Political events and attempts to amend the Constitution have influenced the evolution of the doctrine, such as the 42nd Amendment, *Minerva Mills Ltd. v. Union of India* (1980), and *Waman Rao v. Social and cultural changes* have also shaped the evolution of the BSD. For instance, the implicit recognition of the right to privacy as a fundamental right in *Justice K.S. Puttaswamy (Retd.) v. Union of India* (2017) reflects the evolving societal understanding of individual rights in the context of privacy. Judicial decisions are not isolated from the larger societal context, and public discourse on constitutional issues has influenced the judiciary's approach to interpreting and safeguarding the basic structure. The doctrine has

adapted to changing circumstances, reflecting the judiciary's commitment to preserving the core values and principles enshrined in the Indian Constitution. The BSD in Indian jurisprudence has evolved due to societal changes and changing values. Legal scholarship and academic discourse have shaped the doctrine, while public sentiment and activism have influenced the judiciary's approach. The BSD safeguards against arbitrary amendments and preserves the Constitution's fundamental principles, ensuring the judiciary remains responsive to democratic demands.

## **VIII. DISCUSSION OF THE CRITICISMS AND DEBATES SURROUNDING THE DOCTRINE**

The Basic Structure Doctrine in Indian constitutional law has been widely celebrated for its role in protecting fundamental principles, but it has faced criticisms and debates. Some key criticisms include the lack of an explicit definition of the basic structure, potential judicial activism and overreach, democratic legitimacy concerns, expansive interpretation and fluidity, scope of judicial review, political controversies, and the impracticality of the doctrine.

- I. **Judicial Overreach and Undue Power:** Critics argue that the BSD grants the judiciary excessive power, allowing it to encroach upon the legislative domain. They contend that Parliament, as the elected representative body, should have the primary authority to amend the Constitution.
- II. **Lack of Clarity and Predictability:** Critics point to the lack of a clear and exhaustive definition of the 'basic structure' in the Constitution, leading to uncertainty and potential arbitrariness in judicial decisions.
- III. **Hindering Constitutional Evolution:** Critics contend that the BSD may hinder the Constitution's ability to adapt to changing societal needs and circumstances. They argue that the strict adherence to the basic structure may prevent necessary amendments from being made.
- IV. **Undermining Parliamentary Supremacy:** Critics argue that the BSD undermines the principle of parliamentary supremacy, a cornerstone of the Indian parliamentary system. They contend that the judiciary's power to strike down amendments weakens Parliament's authority.
- V. **Potential for Judicial Activism:** Critics express concern that the BSD may lead to excessive judicial activism, where the judiciary imposes its own views on the Constitution rather than adhering to the original intent of the framers.

- VI. **Impracticality of the Doctrine:** Critics argue that the BSD, in practice, may be difficult to apply consistently due to the inherent ambiguity of the 'basic structure' concept.

In some nations, there is a legal principle known as the Constitutional Doctrine (BSD) that states that the legislature cannot change certain fundamental aspects of the constitution. This doctrine is crucial for maintaining the integrity and stability of a nation's constitutional framework, ensuring essential elements like separation of powers and protection of fundamental rights remain intact even during political change or upheaval. However, critics argue that the doctrine can sometimes impede necessary reforms and hinder progress, leading to ongoing debates about its scope and application. The lack of an exhaustive list or explicit definition of the basic structure has led to debates over uncertainty and subjectivity in identifying essential features. Critics also argue that the BSD is undemocratic, as it allows the judiciary to review and potentially strike down constitutional amendments passed by elected representatives. The limitations of the amendment process have been criticized for making it too hard for the Constitution to change as society does, and the fact that figuring out the basic structure has led to randomly made court decisions. The scope of the BSD has been debated, with some arguing that the judiciary must act as a guardian of the Constitution while others question whether this role infringes upon the separation of powers. Some debates center around the need for a constitutional amendment to explicitly codify the basic structure, as relying solely on judicial interpretation may lead to uncertainty and potential misuse of the doctrine.

## **IX. SAFEGUARDING FUNDAMENTAL RIGHTS THROUGH THE BASIC STRUCTURE DOCTRINE**

The Basic Structure Doctrine (BSD) is a fundamental principle in India that protects fundamental rights from being arbitrarily altered or abrogated through constitutional amendments. It was established in the landmark case of *Kesavananda Bharati v. State of Kerala* (1973). The BSD recognizes that the Constitution possesses an indestructible "basic structure" that includes the protection of fundamental rights, meaning that Parliament's power to amend the Constitution is not absolute and cannot be used to undermine or eliminate these fundamental rights.

Several key mechanisms contribute to the safeguarding of fundamental rights through the BSD:

- I. **Identifying Fundamental Rights as a Basic Feature:** The BSD explicitly identifies the protection of fundamental rights as an essential part of the Constitution's basic structure. This ensures that fundamental rights cannot be altered or abrogated through amendments.

- II. **Judicial Review of Amendments:** The BSD empowers the judiciary to review the validity of constitutional amendments, striking down any amendment that violates the basic structure, including those that undermine fundamental rights.
- III. **Balancing Judicial Activism and Legislative Authority:** The BSD strikes a balance between judicial activism and legislative authority. While the judiciary has the power to review amendments, it does so with deference to Parliament's primary role in amending the Constitution.
- IV. **Adaptation to Changing Societal Needs:** The BSD allows for the adaptation of fundamental rights to changing societal needs, ensuring that these rights remain relevant and effective in protecting individual liberties.
- V. **Protection from Arbitrary Amendments:** The BSD safeguards fundamental rights from arbitrary amendments that could erode their protection. It prevents Parliament from unilaterally altering or abrogating these rights without due consideration for their importance to individual liberties.

### **EXAMINATION OF SPECIFIC CASES WHERE THE DOCTRINE PROTECTED FUNDAMENTAL RIGHTS**

The Basic Structure Doctrine (BSD) has been a cornerstone of Indian jurisprudence, serving as a safeguard against attempts to undermine or dilute fundamental rights enshrined in the Constitution. In several cases, the Supreme Court has asserted the BSD, stating that while Parliament has the power to amend the Constitution, it cannot alter its basic structure. This indirectly safeguards fundamental rights by preventing arbitrary changes that could infringe upon individual liberties.

- I. **Kesavananda Bharati v. State of Kerala (1973)** was a landmark case where the Supreme Court asserted the BSD, stating that while Parliament has the power to amend the Constitution, it cannot alter its basic structure. This indirectly safeguarded fundamental rights by preventing arbitrary changes that could infringe upon individual liberties.
- II. **Minerva Mills Ltd. v. Union of India (1980)** dealt with the constitutional validity of certain provisions of the 42nd Amendment, which sought to expand parliamentary powers. The Supreme Court, relying on the BSD, struck down the provisions of the 42nd Amendment that aimed to give Parliament the power to modify the Constitution's basic structure. This decision reinforced the protection of fundamental rights as part of the core features of the Constitution.

- III. *Waman Rao v. Union of India* (1981) involved the constitutional validity of the 44th Amendment, which sought to nullify the effect of the *Minerva Mills* decision. The Supreme Court upheld the Basic Structure Doctrine, emphasizing that the government cannot nullify a judicial decision through a constitutional amendment. This decision protected the integrity of the original decision and indirectly safeguarded fundamental rights.
- IV. *S.R. Bommai v. Union of India* (1994) dealt with the dismissal of state governments under Article 356 of the Constitution, highlighting the importance of federalism as part of the basic structure. By recognizing federalism as part of the basic structure, the court indirectly protected the rights of states and their citizens.
- V. *Justice K.S. Puttaswamy (Retd.) v. Union of India* (2017) addressed the constitutional validity of the government's Aadhaar scheme and recognized the right to privacy as a fundamental right. While not explicitly stating that the right to privacy is part of the basic structure, the decision implicitly acknowledged its constitutional significance. This recognition contributed to the protection and expansion of individual liberties as part of the fundamental rights framework.
- VI. *I.R. Coelho v. State of Tamil Nadu* (2007) involved the validity of the Ninth Schedule, which provides immunity to laws from judicial review. The court held that laws placed in the Ninth Schedule are not immune from judicial review if they violate the basic structure, including fundamental rights.
- VII. *Navtej Singh Johar v. Union of India* (2018) dealt with the constitutionality of Section 377 of the Indian Penal Code, which criminalized consensual homosexual acts. This decision underscored the judiciary's commitment to protecting the fundamental rights of marginalized groups against discriminatory laws.

## **X. CONCLUSION**

Fundamental rights are crucial for individual flourishing, democratic stability, and a just society. The Basic Rights Doctrine (BSD) in Indian law has evolved from pre-independence debates to landmark decisions like *Golaknath* and *Kesavananda Bharati*. It ensures constitutional amendments do not violate the basic structure, preserving the values and principles of the Constitution. Judicial review is inherent in the Constitution, allowing the judiciary to review and strike down legislation that violates constitutional principles. The BSD serves as a safeguard for fundamental rights in India, protecting them from arbitrary alterations, empowering the judiciary, and adapting to societal needs.



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