

INDIAN CONSTITUTION'S SUPREMACY: A TEST OF THE "BASIC STRUCTURE DOCTRINE"

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Abstract

The Indian Constitution stands as the supreme legal authority, guiding the nation through a framework of rights, responsibilities, and institutional checks and balances. A pivotal judicial development in India's constitutional law has been the emergence of the Basic Structure Doctrine, a principle that limits Parliament's power to amend certain fundamental aspects of the Constitution. This article examines the legal and philosophical basis of constitutional supremacy, the development and application of the Basic Structure Doctrine, and its role in maintaining democratic governance. It concludes by addressing the doctrine's criticisms and reiterating its significance to safeguarding India's constitutional identity.

Keywords

Basic Structure, constitution, supremacy, doctrine

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Introduction

The Constitution of India is not just a legal document but a living instrument that evolves through interpretation and application. The notion of constitutional supremacy implies that the Constitution must govern all government policies and laws. While Parliament possesses the power to amend the Constitution under Article 368, this power is not unfettered. The doctrine of "Basic Structure," first formulated in 1973, serves as a crucial judicial safeguard ensuring that certain core principles of the Constitution remain inviolable. Through the lens of the Basic Structure Doctrine, this article provides a comprehensive examination of the Constitution's supremacy and its significance for preserving democracy, human rights, and institutional integrity.

I. Theoretical Foundation of Constitutional Supremacy

The supremacy of the Indian Constitution is rooted in its written nature, rigid amendment procedures, and the establishment of judicial review. Article 13(2) of the Constitution declares that any law infringing on Fundamental Rights shall be void, highlighting the superiority of constitutional norms over ordinary legislation (The Constitution of India, 1950).

Unlike the British system of parliamentary sovereignty, India follows a model wherein the Constitution is supreme and acts as the grundnorm (Kelsen, 1945). Every organ of the state derives its power from the Constitution and remains subservient to it. This framework aims to maintain a balance among the legislature, executive, and judiciary while ensuring that no institution functions beyond its constitutional limits.

II. Evolution of the Basic Structure Doctrine

A. Pre-Kesavan Andra Era in *Shankari Prasad v. Union of India (1951)*, the Supreme Court upheld the power of Parliament to amend Fundamental Rights, holding that constitutional amendments were not "law" under Article 13 (Basu, 2013).

In *Sajjan Singh v. State of Rajasthan (1965)*, the Court reaffirmed this view, although Justice Mudholkar raised the question of whether Parliament's amending power was unlimited, laying the intellectual groundwork for future developments.

B. Golak Nath v. State of Punjab (1967) In a landmark reversal, the Court ruled that Parliament could not amend Fundamental Rights, arguing that such amendments were indeed "law" under Article 13 (*Golak Nath v. State of Punjab, 1967*). This decision sparked controversy and led to constitutional amendments reaffirming Parliament's amending power.

III. Kesavananda Bharati and the Birth of Basic Structure Doctrine

In *Kesavananda Bharati v. State of Kerala (1973)*, a 13-judge bench delivered the most significant constitutional ruling in India's history. The Court ruled that while Parliament could amend any part of the Constitution, it could not destroy its basic structure (Seervai, 2012).

Chief Justice Sikri identified several features forming part of the basic structure, including:

- Supremacy of the Constitution
- Rule of Law
- Separation of Powers
- Judicial Review
- Federalism
- Objectivism
- Democracy

The Basic Structure Doctrine was thus born as a limitation on the amending power under Article 368. It reaffirmed that constitutional integrity could not be compromised by temporary political majorities.

IV. Application and Expansion of the Doctrine

A. Indira Nehru Gandhi v. Raj Narain (1975) The Court invalidated the 39th Amendment, which attempted to place the election of the Prime Minister beyond judicial scrutiny. The Court held that "free and fair elections" and "judicial review" are basic features (*Indira Nehru Gandhi v. Raj Narain 1975*).

B. Minerva Mills Ltd. v. Union of India (1980) This case struck down sections of the 42nd Amendment that limited judicial review and gave primacy to Directive Principles over Fundamental Rights. The Court held that a limited amending power is itself part of the basic structure (*Minerva Mills Ltd. v. Union of India, 1980*).

C. I.R. Coelho v. State of Tamil Nadu (2007) The Court ruled that any law, even if placed in the Ninth Schedule, could be subject to judicial review if it violated the basic structure (*I.R. Coelho v. State of Tamil Nadu, 2007*). This ruling closed the legislative escape route of insulating laws from judicial scrutiny by placing them in the Ninth Schedule.

D. Subsequent Developments in *National Judicial Appointments Commission (NJAC) v. Union of India (2015)*, the Court struck down the 99th Amendment for violating the independence of the judiciary, reiterating its place in the basic structure. This judgment reinforced the judiciary's authority in maintaining constitutional sanctity.

V. Essential Elements Constituting Basic Structure

While there is no exhaustive list, the following elements are widely accepted:

- Supremacy of the Constitution
- Rule of Law
- Judicial Review
- Separation of Powers
- Federalism
- Parliamentary Democracy
- Secularism
- Free and Fair Elections
- Independence of Judiciary
- Harmony between Directive Principles and Fundamental Rights
- Unity and Integrity of the Nation
- Sovereign, Socialist, Secular, Democratic Republic (Austin, 2003)

VI. Constitutional Morality and Basic Structure

The Basic Structure Doctrine is not merely a legal theory but an embodiment of constitutional morality. It mandates all institutions to function within the ethical and normative confines of the Constitution. As B.R. Ambedkar emphasized, the success of the Constitution depends on adherence to its moral values (Austin, 2003). The idea is to cultivate respect for institutions, transparency, accountability, and democratic processes. Courts have invoked this principle in several cases to interpret laws and amendments.

VII. Comparative Constitutional Insights

A. Germany: Article 79(3) of the German Basic Law prohibits amendments to the principles of democracy, federalism, and human dignity. These principles are judicially protected and cannot be altered even by constitutional amendments, echoing India's basic structure concept.

B. Pakistan: The Supreme Court adopted a version of the doctrine in *Zia ur Rehman v. State (1973)*. Cases that followed, like *District Bar Association v. Federation of Pakistan (2015)* reaffirmed the importance of maintaining judicial independence and democratic principles as part of Pakistan's basic constitutional framework.

C. Bangladesh: In *Anwar Hossain Chowdhury v. Bangladesh (1989)*, the Supreme Court explicitly adopted the Indian Basic Structure Doctrine to strike down the Constitution (Eighth Amendment) Act, reinforcing secularism, democracy, and judicial independence.

D. South Africa: The 1996 Constitution allows for judicial review of amendments that violate foundational principles such as human dignity, equality, and democratic governance. These principles are outlined in Section 1 of the Constitution, which requires an extraordinary majority to amend.

E. Kenya: In *David Ndii v. Attorney General (2021)* The Kenyan High Court ruled that a number of constitutional amendments were unconstitutional because they violated the fundamental structure, such as limits on presidential power and the structure of government.

F. Uganda: The Constitutional Court in *Male Mabirizi v. Attorney General (2018)* considered but rejected the applicability of a basic structure doctrine when assessing amendments related to the removal of presidential age limits. Still, debates around judicial enforcement of core constitutional principles continue.

G. United States: Although the U.S. Constitution does not formally recognize a basic structure doctrine, the Supreme Court, through landmark rulings like *Marbury v. Madison (1803)*, has asserted the supremacy of the Constitution and the non-amendability of core federal principles through ordinary means.

These comparative insights demonstrate that the idea of inviolable constitutional principles is not unique to India. Globally, courts have been crucial in defining and defending fundamental constitutional identities from majoritarian or populist excesses.

VIII. Criticisms of the Basic Structure Doctrine

- 1. Lack of Constitutional Textual Basis:** Critics argue that the doctrine lacks explicit constitutional mention and is based on judicial interpretation.
- 2. Judicial Overreach:** It is said to undermine parliamentary sovereignty and entrust excessive power to the judiciary (Noorani, 2005).
- 3. Ambiguity:** The absence of a fixed list of basic features introduces uncertainty in constitutional law.

Despite these concerns, the doctrine has been largely hailed for preserving the constitutional identity against transient political majorities.

IX. The Doctrine and Modern Democratic Challenges

With the rise of majoritarianism, executive dominance, and populist politics, the relevance of the Basic Structure Doctrine has only increased. Legislative efforts that may infringe upon free speech, religious freedom, or judicial independence are tested against this doctrine.

Recent controversies around electoral bonds, changes to the citizenship law, and control over statutory institutions have seen challenges framed in basic structure

terms. The judiciary's role as a guardian of constitutional ethos has been emphasized repeatedly by scholars and civil society groups.

X. Significance and Continuing Relevance

The Basic Structure Doctrine continues to play a vital role in contemporary constitutional debates, especially in safeguarding fundamental rights, preserving democratic integrity, and maintaining the checks and balances envisioned by the framers. In an era where majoritarian politics can threaten constitutional values, the doctrine stands as a judicial bulwark.

It has preserved the vision of a pluralistic and democratic society envisioned by the Constituent Assembly. As long as the doctrine remains in force, the Constitution retains its ability to adapt and evolve without losing its foundational essence.

Conclusion

In India, the heart of constitutional supremacy is the Basic Structure doctrine. It is a manifestation of judicial statesmanship designed to balance change with continuity, flexibility with rigidity, and power with accountability. By restraining Parliament from altering the Constitution's core ethos, the doctrine ensures that India's democratic and secular fabric remains intact. In the long run, it is not only a guardian of legality but also a beacon of constitutional morality that continues to guide India's democratic journey.

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