
THE SILENT GUARDIAN

HOW THE BASIC STRUCTURE DOCTRINE PROTECTS DEMOCRACY

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Every democracy has a paradox: a legislature representing the people, with powers bestowed on them by the Constitution, can paradoxically amend the Constitution. What, then, stops a resolute parliamentary majority from reforming or abolishing the very Constitution that empowers them? In India, a response is found in a judicial invention as elegant as it is indispensable, the Basic Structure Doctrine. It is unremarked in the Constitution, yet its implications are profound. This doctrine is the most faithful guardian of democracy.

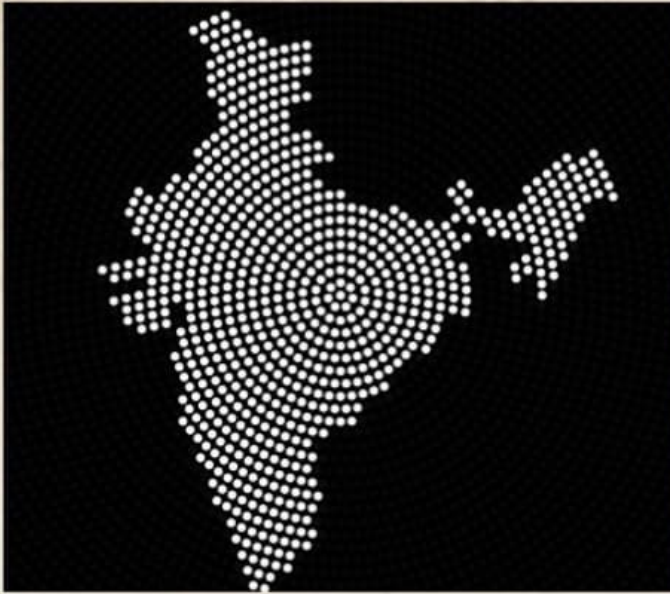
BIRTH FROM CRISIS: KESAVANANDA BHARATI, 1973

The doctrine emerged from struggle, not from peace. In the late 1960s and early 1970s, an intense conflict between Parliament and the Supreme Court occurred regarding the extent of Parliament's power concerning constitutional amendments. Indira Gandhi's government attempted to limit the right to property and to put laws concerning land reform outside the jurisdiction of the courts. In *Golaknath v. State of Punjab* (1967), it was held that the Court could not be approached regarding the amendment of Fundamental Rights. In response, Parliament enacted the 24th and 25th Constitutional Amendments, claiming unlimited power to amend the Constitution.

This constitutional impasse fell to the largest Supreme Court bench in India's judicial history- thirteen judges. In *Kesavananda Bharati v. State of Kerala* (1973), the Supreme Court reached a momentous decision by the slimmest of margins (7-6). While conceding that Parliament could amend any provision of the Constitution, the majority held that it could not, in the exercise of the amending power, alter or destroy the 'basic structure' of the Constitution. The limits of Parliament's amending power were not exhaustively defined, and so the doctrine was left to be developed on a case-by-case basis.

GUARDING THE CORE: WHAT LIES WITHIN THE BASIC STRUCTURE?

Herein lies the genius of the doctrine and the controversy. The Constitution does not have a section titled "basic structure." The doctrine is purely the work of judges, a consideration of the spirit of the Constitution rather than the words. Over the years, the Court has included the following as parts of the core: supremacy of the Constitution, republican and democratic form of government, secular character of the State, separation of powers, federalism, independence of the judiciary, judicial review, and rights of the citizens. This is a sample, rather than an exhaustive list, and, again, that is by design. Unlike a statute, the doctrine is more like a living principle, able to adapt to



lawsuits, but also able to withstand the test of time. Constitutional scholar Granville Austin refers to it as “the conscience of the Constitution”.

THE DOCTRINE TESTED: LANDMARK CONSTITUTIONAL BATTLES

The Basic Structure Doctrine was reaffirmed during pivotal moments in India's constitutional evolution. In the case of *Indira Gandhi v. Raj Narain* (1975), the Court removed the 39th Amendment, which placed the Prime Minister's election above judicial review, and therefore, the Court was removing the executive power from legal scrutiny. The Court's ruling stated that no parliamentary majority could take away the election guarantee, which is part of the Basic Structure.

The case of *Minerva Mills* (1980) added another important element. The Court removed several provisions of the 42nd Amendment (which were passed during the Emergency) that placed the Directive Principles higher than the Fundamental Rights and also placed the review of constitutional amendments beyond judicial review. It was held that the equilibrium of the rights and the directive principles was also a Basic Structure, and so was the Court's power to review amendments. The Judges stated that Parliament cannot enlarge its own

jurisdiction by decreasing the jurisdiction of the Court.

Most recently, the doctrine influenced discussions regarding the National Judicial Appointments Commission (NJAC) in 2015. The Supreme Court nullified the 99th Amendment along with the NJAC Act, stating that the basic structure doctrine would be breached if the executive's power over judicial appointments were to be fine-tuned. Irrespective of one's perspective on the collegium reform, the judgment showed the doctrine's relevance in present-day constitutional conflicts.

WHY THE BASIC STRUCTURE DOCTRINE IS DEMOCRACY'S LAST LINE OF DEFENSE

The most significant critique of Basic Structure Doctrine is that it is undemocratic. That is, unelected judges should not veto a Parliament that has an electoral mandate. This critique has merit, but so does the response. An obvious flaw in this criticism is the majoritarian view of democracy. This makes the judiciary supreme over Parliament also misreads the institutional dynamic. The Basic Structure Doctrine does not give the courts power to legislate or to impose their political preferences. It gives the courts the power to say ‘this far and no further’ to hold the line at the constitutional perimeter. Within that perimeter, Parliament retains full democratic authority. The doctrine is not judicial supremacy; it is constitutional supremacy expressed through judicial review. The difference matters enormously. It is worth recalling that in *Kesavananda Bharati* itself, the Court affirmed Parliament's broad amending power, it only refused to extend that power to the point of constitutional self-destruction. That is not overreach. That is restraint. A Parliament with a two-thirds majority is very powerful. Still, that power

does not confer a legitimate right to dismantle the Constitution that establishes the bounds of that power. This goes beyond a legalistic interpretation of the Constitution. The Constitution is not merely a rulebook. It is the social contract between the State and the people, and that contract cannot be altered by one faction of government. This principle is reflected in many parts of the world. The Basic Law of Germany, for example, has an 'eternity clauses' that provide certain parts of the law are beyond amendment, even by a unanimous vote in the legislature. In this sense, Indian law, via the courts, offers similar results, safeguarding the core of the democratic constitution from the tyranny of the majority.

There is also a deeper democratic logic to an independent judiciary standing as the guardian of constitutional essentials. Constitutional rights, by their very nature, are counter-majoritarian. The right to equality, the right against arbitrary detention, the right to freedom of expression, these protections matter most precisely when the majority would prefer to dispense with them. A constitution that can be amended away by the same majority whose power it is meant to check provides no real check at all. As Justice H.R. Khanna wrote in his famous dissent during the Emergency, "The Constitution and the laws of India do not permit the ghosts of a totalitarian past to haunt the portals of a free country." That dissent cost him the Chief Justiceship. But it established, at personal cost, the principle that judicial independence is not judicial arrogance, it is democracy's insurance against its own worst impulses.

CONCLUSION: STILL STANDING GUARD - THE DOCTRINE'S RELEVANCE IN MODERN DEMOCRACY

More than 50 years have passed since Kesavananda Bharati first articulated the Basic Structure Doctrine; it remains as essential and as debated today. In today's age of democratic decline, with elected governments routinely wielding the legal tools of power concentration, court capture, and regulatory incumbency, India's unique and self-imposed judicial restraint is instructive. It illustrates the constitution's capacity for restraint and the judicial concern that some principles are "too basic" to be surrendered to the unpredictable and ever-shifting political landscape. The Basic Structure Doctrine represents democracy's most sophisticated act of self-preservation, a constitution's capacity to protect itself from those it empowers. The Doctrine will, hopefully, anchor the aspirations of India to be a constitutional republic in both name and essence, as it does, in truth, to the aspirations of the nation in every constitutional, civil, and self-governing manner.

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