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**AN ANALYSIS OF “THE IMPORTANCE OF BASIC
STRUCTURE DOCTRINE”: IN COMMEMORATION OF THE
50TH ANNIVERSARY OF THE LANDMARK JUDGEMENT
‘KESAVANANDA BHARATI V. STATE OF KERALA’**

AUTHORED BY - YOGITA KHATRI

ABSTRACT

The *24th of April* is widely celebrated in the domain of Indian democracy and political infrastructure. On this day in **1973**, in the case of *Kesavananda Bharati v. State of Kerala*¹, the Supreme Court of India rendered a significant decision in the annals of Indian judicial history. Despite the fact that *Kesavananda Bharati*, the leader of the Hindu Monastery, *Edneer Mutt*, had lost the case, the Indian people were granted the highest legal authority, namely the basic structure doctrine, which safeguards both the nation’s sovereignty and integrity in addition to its citizens' fundamental rights. It has been *50 years* since the Indian judiciary came up with and established the legal doctrine known as *the Basic Structure Doctrine*. The doctrine ensures the protection of the fundamental ideals and principles of the Constitution and it places restrictions on the Parliament's ability to modify the constitution. Since its inception, the doctrine has significantly expanded its boundaries. These dimensions highlight the transformative vision of the constitution.

Keywords: *Fundamental Rights, An Amendment, Transformative vision, The Basic Structure*

INTRODUCTION

Basic structure doctrine is described as a legal doctrine which holds that the constitution of a sovereign state has some fundamental elements that its legislature can’t change or remove. Justice *J.R. Mudholkar* initially proposed the idea that there are certain “*basic features*” of the constitution in 1964 while delivering his dissent opinion in the case of *Sajjan Singh v. State of Rajasthan*.² He wrote:

“It is also a matter for consideration whether making a change in a basic feature of the Constitution can be regarded merely as an amendment or would it be, in effect, rewriting a

¹ *Kesavananda Bharati Sripadgalvaru and Ors. v. State of Kerala and Anr. (1973) 4 SCC 225.*

² *Sajjan Singh v. State of Rajasthan, AIR 1965 SC 845.*

part of the Constitution; and if the latter, would it be within the purview of Article 368 ?”³

The *Kesavananda Bharati v. State of Kerala*⁴ case marked the official adoption of the basic structure concept, which had been established by the Supreme Court of India in an array of judgements throughout the 1960s and 1970s. As seen by the rulings in the *Shankari Prasad case*⁵ and the *Sajjan Singh case*⁶, Parliament exercised absolute power to amend the Constitution during the early years of the country's independence. But in the *Golak Nath case*⁷, the Supreme Court ruled that the parliament should not exercise its amending power in a way which infringes fundamental rights of its citizen and “*doctrine of prospective overruling*” was proposed. The administration of Prime Minister Indira Gandhi at the time passed substantial amendments to the Constitution (the 24th⁸, 25th⁹, 26th¹⁰, and 29th¹¹) in order to overturn the decisions held in the *Golak Nath case*¹² (1967) and the *RC Cooper case*¹³ (1970). In the *Kesavananda Bharati case*, the four amendments proposed by the government were all contested. The Court has addressed *five cases*¹⁴ based on fundamental structure, dealing with structural issues that cannot be altered by Parliament. These cases explain the dimensions of basic structure:

1. “*Supremacy of the Constitution*”¹⁵
2. “*Republican and democratic form of government*”¹⁶
3. “*Secular character of the Constitution*”¹⁷
4. “*Separation of powers between the legislature, the executive and the judiciary*”¹⁸
5. “*Federal character of the Constitution*”¹⁹

³ Noorani, A. G., *Ninth Schedule and the Supreme Court*, ECONOMIC AND POLITICAL WEEKLY (Mar. 3-9, 2007) <http://www.jstor.org/stable/4419299>.

⁴ *supra* note 1, at 2.

⁵ *Sri Shankari Prasad Singh Deo v. Union of India*, AIR 1951 SC 458.

⁶ *Sajjan Singh v. State of Rajasthan*, AIR 1965 SC 845.

⁷ *Golak Nath v. State of Punjab*, (1967) SCR (2) 762.

⁸ The Constitution (Twenty-fourth Amendment) Act, 1971.

⁹ The Constitution (Twenty-fifth Amendment) Act, 1971.

¹⁰ The Constitution (Twenty-sixth Amendment) Act, 1971.

¹¹ The Constitution (Twenty-ninth Amendment) Act, 1972.

¹² *Golak Nath v. State of Punjab*, (1967) SCR (2) 762.

¹³ *Rustom Cavasjee Cooper v. Union Of India*, AIR 1970 SC 564.

¹⁴ *Kesavananda Bharti v. Kerala*, AIR 1973 SC 1461; *Indira Gandhi v. Raj Narain*, AIR 1975 SC 2299; *Minerva Mills v. Union of India*, AIR 1980 SC 1789; *S.P. Sampat Kumar v. India*, AIR 1987 SC 386; *Sambamurthy v. A.P.*, AIR 1987 SC 663.

¹⁵ *Sikri, J. Kesavananda Bharati Sripadgalvaru and Ors. v. State of Kerala and Anr.* (1973) 4 SCC 225.

¹⁶ *ibid.*

¹⁷ *ibid.*

¹⁸ *ibid.*

¹⁹ *ibid.*

CONTEMPORARY DIMENSIONS OF BASIC STRUCTURE

DOCTRINE

The basic structure theory is based on the premise that the law of the land has a unique identity, that cannot be altered by Parliament. This distinct identity has different tenets which are inherently present in the constitution, but recognised at the different point of times as society changes at political and social level. In examining and connecting these tenets of the Constitution, the Court looks beyond the language of individual provisions and instead considers systemic principles. Time and again, courts have propounded the different dimensions of the basic structure.

In the *All India Judges Association v. Union of India & Ors.*²⁰, the Supreme Court of India reaffirmed that the basic structure of the Constitution includes the **judiciary's independence**, which also extends to the district judiciaries. In *Madras Bar Association v. Union of India*²¹, it was decided that the NCLT and NCLAT adhered to the separation of powers, judicial review, and judiciary independence, all of which are fundamental components of the Constitution. A recent example of how the Doctrine upholds the secular nature of the Indian state is the 2019 Supreme Court ruling in the *Ayodhya land dispute case*, whereby the court determined to preserve the **secular character** of the Indian Constitution by authorising the construction of a Ram temple at the site of contention and assigning a different plot of land for the construction of a mosque. As in the *S. R. Bommai case*, it was held that religion has no role in the matters of state and *secularism is a part of the basic structure*.

In 2019, the Supreme Court of India preserved the essence of federalism when abrogation of *Article 370*²², which provides special status to Jammu and Kashmir. The ruled that **federalism and democracy** is the elemental part of the basic structure. In *Navtej Singh Johar v. Union of India*²³, the Supreme Court by decriminalising homosexuality under section 377 of IPC, uphold **the ideal of equality** and civil liberties as protected by established doctrine. In addition, the Supreme Court acknowledged the **right to privacy** under the ambit of right to life as a fundamental right in the *K.S. Puttaswamy v. Union of India*²⁴. The fact that the Basic Structure Doctrine now protects this right, shows how crucial the doctrine is to maintaining the integrity

²⁰ All India Judges Association v. Union of India & Ors., 2023 SCC OnLine SC 673.

²¹ *Madras Bar Association v. Union of India*, (2021) 7 SCC 369.

²² INDIA CONST. art. 370.

²³ *Navtej Singh Johar and Ors. v. Union of India*, AIR 2018 SC 4321.

²⁴ *Justice K.S. Puttaswamy and Anr. v. Union of India and Ors.*, (2017) 10 SCC 1.

of the constitution.

From the instances of these judicial rulings, it is evident that the basic structure doctrine, when established, related itself to amending power of the parliament. But with the evolution of the doctrine, it applies to all types of state action to ensure that they do not damage any element of the basic structure. It is clear from this that while the fundamental framework of the Constitution remains in place, the doctrine itself is still developing and being interpreted to include as many significant elements of the document as the needs of the modern era may dictate.

THE WHEEL OF TRANSFORMATION AND THE BASIC STRUCTURE

Constitutional morality pertains to the values and principles that form the basis of the constitution and regulate the actions of both the government and its citizens. The basic elements of the constitutional morality are rule of law, social justice, right to equality and due process of law, whose adherence helps to preserve the basic structure of the Indian Constitution. The most important use of constitutional morality is the interpretation of the constitution. The Court held that *constitutional interpretation must flow from constitutional morality* in order to be consistent with the basic structure. There seems to be overlapping between these doctrines but they have some distinction. The basic structure doctrine has a wider sphere which touches the whole identity of the constitution whereas the constitutional morality is the moral conscience of the constitution which flows from the basic structure.

The Court in the cases of *Navtej*²⁵, *Joseph Shine*²⁶, and *Indian Young Lawyers Association*²⁷ had to decide whether limitations on fundamental rights were legitimate, since the State attempted to defend them by citing concerns about the public morality. In all of these judgements, the Court determined that a limitation on fundamental rights may only be upheld if it advances constitutional morality, which is derived from the basic structure of the constitution.

Further, the role judiciary has played can't be ignored as in order to get at constitutional

²⁵ *supra* note 25.

²⁶ *Joseph Shine v. Union of India*, (2019) 3 SCC 3.

²⁷ *Indian Young Lawyers Association and Ors. v. The State of Kerala and Ors.*, (2019) 11 SCC 1.

morality, they proposed *transformative constitutionalism*, which supplements the basic structure doctrine. It aims to give supreme importance to constitutional morality rather than morality of the society as perceived by its people. Recognition of *right to privacy* as a fundamental right, *decriminalisation of adultery and homosexuality* and the judgement of *Sabrimala case*²⁸, all these rulings are example of transformative constitutionalism, which is preserving the fundamental identity of the constitution as per changing needs of the society.

The purpose of having transformative constitutionalism is to have a constitution that directs the nation as a whole towards adopting the values outlined in the Preamble of the Constitution and converting from a mediaeval, patriarchal society to an egalitarian democracy. Transformative constitutionalism is the force which makes the Indian Constitution a living document. It ensures that this document changes as per dynamics and needs of society (*transformative constitutionalism*) and these changes should be in consonance with the basic structure (*constitutional morality*).

Therefore, the relevance of the basic structure doctrine, in the present times, is evident from judicial pronouncements of transformative constitutionalism ranging from *right to privacy* to *same sex marriage* and *Ayodhya land dispute* to *Sabrimala case* and *right to internet*²⁹. All these cases employed the doctrine of constitutional morality, which is based on the values of justice, liberty, equality, and fraternity, which are proclaimed in *the Preamble*³⁰ and constitute the basic structure of the constitution. The aspiration that **WE, THE PEOPLE OF INDIA**³¹ behold is the preservation of the basic structure of the constitution, as well as constant evolution of the fundamental rights, so that the wheel of social transformation keeps moving.

CONCLUSION

“The Basic Structure Doctrine”, which was formalised by the historic *Kesavananda Bharti ruling*, has now significantly expanded beyond its frontiers. The judiciary safeguarded important features of the Constitution, such as secularism, right to equality and judiciary's independence, by using the basic structure doctrine, which also served to uphold the notion of **constitutional supremacy**. In contemporary times, there have been instances of executive

²⁸ *supra* note 28, at 5.

²⁹ Anuradha Bhasin v. Union Of India, AIR 2020 SC 1308.

³⁰ INDIA CONST. preamble.

³¹ *ibid.*

overreach and the Hon'ble Chief Justice D. Y. Chandrachud has referred to *“the doctrine as the guiding north star.”* As a result, it's critical that people should understand the practicality of the basic structure doctrine at ground level, which also focuses on the role of *the fourth branch institutions* in promoting the integrity and spirit of the constitution. On the occasion of *Kesavananda Bharti's golden jubilee*, it is crucial to explain the fundamentals of the doctrine by casting light upon its contemporary relevance with regards to constitutional morality and transformative constitutionalism as these have been driving force of major judicial changes.

