

BASIC STRUCTURE OF CONSTITUTION

MEANING

- Basic and fundamental provisions which constitutes basic and core building blocks of constitution.
- Judicially innovated doctrine - forwarded in Kesavananda Bharti case 1973.
- "Basic structure" term does **not mentioned in the constitution**.
- However, **Supreme Court is yet to define or clarify** as to what constitutes the 'basic structure' of the Constitution.

ORIGIN AND EVOLUTION OF BASIC STRUCTURE DOCTRINE

Shankari Prasad case 1951

- Question of amendability of FR under Art 368; challenged first CAA (Fundamental Right to Property) 1951.
- Parliament can abridge or take away any of the FR by enacting a constitutional amendment act and such a law will not be void under Art. 13 ('law' in Art. 13 includes only ordinary laws and not constituent laws)

Golakhnath case 1967

- SC ruled that the FR as 'transcendental and immutable' position
- Hence, the Parliament cannot abridge or take away any of fundamental rights.

EVOLUTION OF BASIC STRUCTURE DOCTRINE



1951

SHANKARI PRASAD CASE

Parliament has the power to amend the Constitution (incl. the Fundamental rights) under Article 368

1965

SAJJAN SINGH V. STATE OF RAJASTHAN

Parliament has the power to amend any part of the Constitution

1967

GOLAKNATH V. STATE OF PUNJAB

Fundamental rights could not be amended by the Parliament

1971

24TH CONSTITUTIONAL AMENDMENT

Article 368 & Article 13 allowed Parliament to unilaterally amend Fundamental Rights

1980

MINERVA MILLS V. UNION OF INDIA

Parliament's power to amend the constitution is limited by the Constitution itself

1976

42ND CONSTITUTIONAL AMENDMENT

Constitutional amendments protected against being called in question



1975

INDIRA GANDHI V. RAJ NARAIN

Applied basic structure doctrine for the 1st time & struck down the 39th amendment

1973

KESHAVANANDA BHARTI CASE

All parts of the Constitution can be amended keeping its 'basic structure' intact

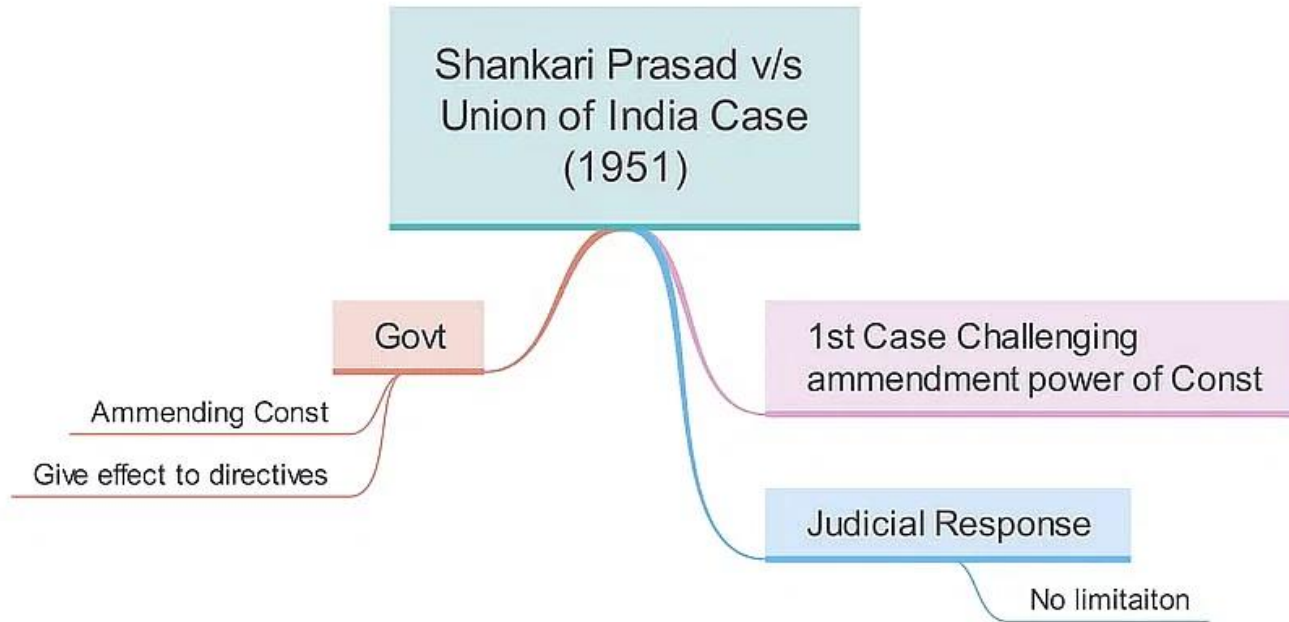
Constitutional Evolution

1. **A.K. Gopalan Case (1950):** Supreme Court ruled that Article 21 of the Constitution did not require Indian courts to apply a due process of law standard. Here, the SC took a narrow view of Article 21.

I. C. Golaknath & Ors. Vs. State of Punjab & Anrs

1967 AIR 1643, 1967 SCR (2) 762

The very object of the amendment is to change the laws of the nation as per the changing needs of the society. The absence of such provision would result in Constitution becoming too rigid.



2. Shankari Prasad Case (1951): The Supreme Court contended that the Parliament's power to amend under Article 368 also includes the power to amend the Fundamental Rights guaranteed in Part III of the Constitution.

3. Berubari Union Case (1960): In this case, the Supreme court concluded that the Preamble does not form part of the Constitution.

4. Golaknath case (1967): The Supreme Court ruled that Parliament could not curtail any of the Fundamental Rights in the Constitution.

I. C. Golaknath & Ors. Vs. State of Punjab & Anrs

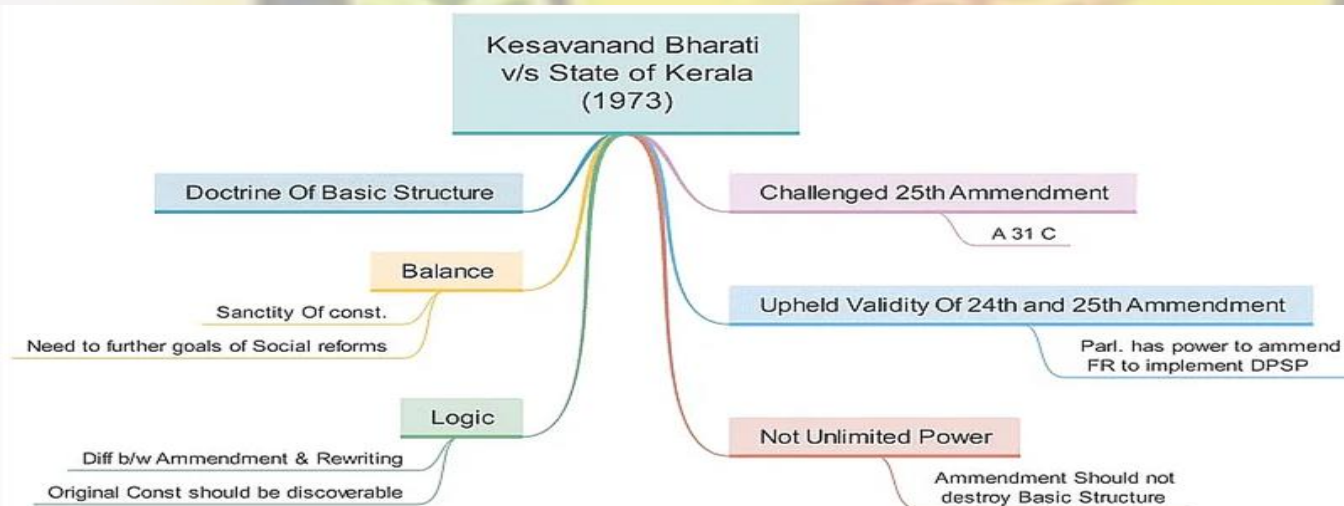
1967 AIR 1643, 1967 SCR (2) 762

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5. 24th CAA 1971: Asserted parliament has the power to abridge or take away any of the FR under Art. 368 and such an act will be out of ambit of meaning of 'law' under Art 13.

6. Kesavananda Bharati case 1973

- Overruled its judgement in the Golak Nath case (1967).
- Stated that Parliament is empowered to abridge or take away any of the FR.
- Laid down a new doctrine of the 'basic structure' of the Constitution.
- Ruled that the constituent power of Parliament under Art. 368 does not enable it to alter the 'basic structure' of the Constitution.
- Parliament cannot abridge or take away a Fundamental Right that forms a part of the 'basic structure' of the Constitution.



7. Indira Nehru Gandhi v. Raj Narain case (1975)

Indira Nehru Gandhi v. Raj Narain

Air 1975 SC 2299

Healthy democracy can only function when there is possibility of a contest of free & fair elections. The impugned amendment destroyed that possibility therefore it is violative of Basic feature of Constitution.

8. Habeas Corpus Case (1976): A much-criticised judgement of the Supreme Court which upheld the Congress government's move to unlawfully detain citizens, including political rivals, during the Emergency years.

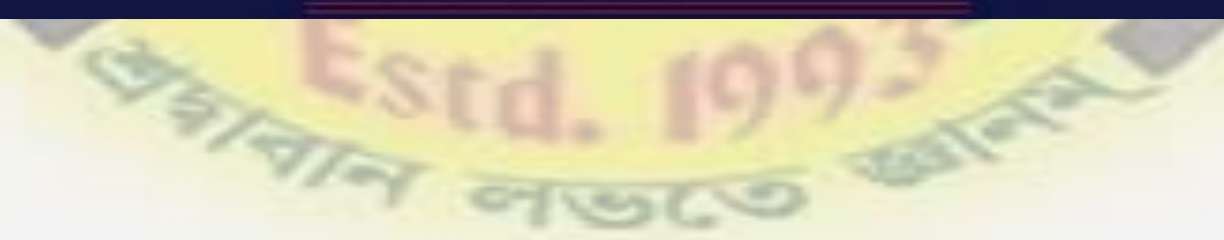
9. Maneka Gandhi Case (1978): The main issue in this case was whether the right to go abroad is a part of the Right to Personal Liberty under Article 21. The SC held that it is included in the Right to Personal Liberty. It significantly expanded the interpretation of Article 21 of the Constitution of India and overruled A.K. Gopalan case judgements.

9. Minerva Mills Case (1980): This case strengthened the Basic Structure doctrine, as it struck down two changes made to the Constitution by the 42nd Amendment Act, 1976 declaring them to be violative of the basic structure.

Minerva Mills v. Union of India

AIR 1980 SC 1789

Snatching from the citizens their power to seek constitutional remedies which were termed as *Heart & Soul of the Constitution* is an unpardonable wrong to the Constitution. This would cause an irreversible damage to the sanctity of the Constitution & hurt its spirit.



10. Shah Bano Begum Case (1985): It was a landmark case for Muslim women's fight for rights as it upheld the right to alimony for a Muslim woman and said that the Code of Criminal Procedure, 1973 is applicable to all citizens irrespective of their religion.

11. MC Mehta Case (1986): This case emerged after the Bhopal Gas Tragedy. The Supreme Court held that the measure of damages payable had to be correlated to the magnitude and the capacity of the enterprises because such compensation had to have a deterrent effect.

12. Indra Sawhney and Union of India (1993)

- This memorandum led to **widespread disturbances** in the country.
- The order was challenged in the Supreme Court.
- A **three judge bench refused to interfere on the ground that the matter was a political one.**
- Public controversy and disturbances continued.
- The **Supreme Court Bar Association moved a petition.**
- In response **Supreme Court constituted a 5 Judge Bench.**
- The early order of the Supreme Court and the O.M were stayed.
- In the meanwhile the Government changed after General Elections.
- **In 1991, the Narsimha Rao Government modified the above memorandum in two respects:**
 - One, the poorer sections among the backward classes would get preference over the other sections;
 - Two, 10% vacancies would be reserved for other "economically backward sections" of the people who were not covered by any existing reservation scheme.

S. R. BOMMAI vs. UNION of INDIA

Somappa Rayappa Bommai



11th Chief Minister of Karnataka
10th of August 1988 - 21st of April 1999

PRESIDENT'S RULE



Sentence of the Supreme Court of India

PETITIONER RESPONDENT
S. R. Bommai vs. Union of India

Date of Judgement: 03/11/1994

JUDGES: S. R. Das, A. M. Ahluwalia, S. Singh, J. B. Verma, P. B. Sawarkar, K. Ramaswami, S. C. Agrawal, Y. Chaudhary, B. J. Reddy

- Article 353: President's Rule is validly imposed in the states of Karnataka, Rajasthan, Himachal Pradesh, Madhya Pradesh, Meghalaya, Nagaland, and Sikkim.
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PRESIDENT'S POWERS

EMERGENCY PROVISIONS

Art. 74 and Art. 352-360 of the Indian Constitution

JUDICIARY OF INDIA



Consequence

Drastic reduction in the application of the Emergency Provisions



S R Bommai v. Union of India

AIR 1994 SC 1918

- The Supreme Court had laid down guidelines regarding the use of Art.356
- The Presidential proclamation dissolving a State Legislative Assembly is subject to judicial review
- If President's rule is imposed only by political consideration the court can even restore the assembly
- State assembly can be dissolved only after the parliament approves the President's rule

Elements of the Basic Structure.

- Supremacy of the Constitution.
- Sovereign, democratic & republican nature of the Indian Polity.
- Secular Character of the Constitution.
- Separation of Powers between the Leg, exec & Judiciary.
- Federal Character of the Constitution.
- Unity & integrity of the Nation.
- Welfare State (socio-economic justice).
- Judicial Review.
- Freedom & dignity of individual.
- Parliamentary System.
- Rule of Law.
- Harmony & balance between Fund Rts & DPSP.
- Principle of Equality.

Present position

- Parliament (under Art. 368) can amend any part of the Constitution including the FR subject to the 'basic structure' Doctrine.

Critiques of Basic Structure Doctrine:

Lack of Constitutional Basis:

- No constitutional provision defines the basic structure.
- Raises concerns of rewriting the constitution.
- Potentially infringes on the principle of majority rule.

Subjective Interpretation:

- The concept's definition varies among judges.
- Relies on individual judge preferences.
- Grants excessive power to judges in determining amendment validity.

Judicial Overreach:

- The judiciary, through the basic structure doctrine, may act as a third chamber of parliament.
- Diminishes the role of elected representatives in amending the constitution.

Amendment Flexibility:

- Restricts the flexibility to amend the constitution.
- Prevents necessary changes, even if they differ from the original framers' intent.
- May not serve the best interests of future generations.

SIGNIFICANCE & ARGUMENTS IN FAVOUR OF BASIC STRUCTURE

→ Constitutional Supremacy Maintenance:

- Upholds constitution's supremacy and safeguards it from temporary parliamentary majorities.

→ Preservation of Founding Principles:

- Maintains core constitutional principles and ideals envisioned by the founding fathers.

→ Protection Against Tyranny:

- Prioritizes uncertain democracy to prevent certain tyranny, ensuring a balanced power structure.

