



The Basic Structure Doctrine at 50: Comparative Perspectives and Its Future Trajectory in Indian Jurisprudence

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Abstract

The Basic Structure Doctrine, established through the landmark *Kesavananda Bharati v. State of Kerala* (1973), represents one of the most significant constitutional innovations in judicial history. This paper examines the doctrine's evolution over five decades, analyzing its theoretical foundations, comparative constitutional positions, and contemporary challenges. Through doctrinal analysis and comparative methodology, this study explores how the doctrine has shaped Indian constitutional jurisprudence while examining parallel developments in other jurisdictions. The research reveals that despite periodic challenges, the Basic Structure Doctrine has emerged as a robust framework for constitutional preservation, though its application requires continuous refinement to address emerging democratic threats. The paper concludes by proposing a framework for the doctrine's future trajectory, emphasizing the need for clearer definitional boundaries and adaptive interpretation in response to evolving constitutional challenges.

Keywords: - Basic Structure Doctrine, constitutional amendments, judicial review, comparative constitutionalism, Indian jurisprudence

I. INTRODUCTION

The year 2023 marked the fiftieth anniversary of *Kesavananda Bharati v. State of Kerala* (1973), a constitutional moment that fundamentally altered the relationship between constituent power and constitutional limits in India. The Basic Structure Doctrine, articulated through a 7-6 majority decision, established that Parliament's amending power under Article 368 of the Indian Constitution, while broad, cannot destroy or damage the Constitution's basic structure (*Kesavananda Bharati v. State of Kerala, 1973*). This judicial innovation emerged from a protracted conflict between Parliament and the judiciary regarding the scope of constitutional amendments, particularly concerning fundamental rights.

The doctrine's significance extends beyond Indian borders, representing a unique contribution to global constitutional thought. While some jurisdictions have adopted similar frameworks, others continue to adhere to the principle of unlimited amendment power. After five decades, the Basic Structure Doctrine faces new challenges: executive overreach, digital authoritarianism, economic liberalization's impact on social justice, and questions about its democratic legitimacy.

This paper addresses three interconnected research questions: First, how has the Basic Structure Doctrine evolved in Indian jurisprudence over fifty years? Second, what comparative insights emerge from examining similar doctrines in other constitutional democracies? Third, what trajectory should the doctrine follow to remain relevant in contemporary constitutional discourse? These questions are explored through doctrinal analysis of judicial decisions, comparative constitutional examination, and critical evaluation of scholarly discourse.

II. THEORETICAL FRAMEWORK: CONSTITUTIONAL LIMITS AND AMENDMENT POWER

2.1 The Paradox of Constitutional Amendment

Constitutional theory grapples with a fundamental paradox: constitutions must be simultaneously stable and adaptable (*Albert, 2019*). The tension between constitutional rigidity and flexibility manifests acutely in debates about amendment

power. The concept of *pouvoir constituant* (constituent power) versus *pouvoir constitué* (constituted power), articulated by Sieyès during the French Revolution, provides theoretical grounding for understanding constitutional limits (Sieyès, 2003).

Two competing theories dominate constitutional amendment discourse. The positivist tradition, represented by (Hans Kelsen, 1945), views the constitution as the *grundnorm* (basic norm) from which all legal validity flows, suggesting that properly enacted amendments become part of the constitutional order regardless of content. Conversely, the natural law tradition, drawing from (Dworkin, 1977; Alexy, 2002), posits that certain constitutional principles possess moral weight independent of positive enactment, establishing substantive limits on amendment power.

The Basic Structure Doctrine represents a middle path, acknowledging democratic sovereignty through the amendment process while recognizing that certain constitutional essentials transcend ordinary political preferences. This approach aligns with (Ackerman, 1991) theory of constitutional moments, wherein fundamental constitutional changes require heightened democratic deliberation beyond normal legislative processes.

2.2. Foundations of the Basic Structure Doctrine

The Indian Supreme Court's journey toward the Basic Structure Doctrine occurred through three pivotal cases. In (*Shankari Prasad v. Union of India*, 1951), the Court held that Parliament's amending power was unlimited, including the power to amend fundamental rights. This position was reaffirmed in *Sajjan Singh v. State of Rajasthan* (1965), though Justice Mudholkar's dissent presaged future developments by questioning whether the Constitution's basic features could be altered (*Sajjan Singh v. State of Rajasthan*, 1965).

The turning point arrived with *Golaknath v. State of Punjab* (1967), where an 11-judge bench overruled previous decisions, holding that Parliament could not amend fundamental rights. This decision, while protecting fundamental rights, created constitutional rigidity that Parliament addressed through the 24th and 25th Amendments, asserting unlimited amending power (*Golaknath v. State of Punjab*, 1967).

(*Kesavananda Bharati*, 1973) resolved this conflict by articulating that while Parliament possesses broad amending power, it cannot destroy the Constitution's basic structure. Chief Justice Sikri identified several basic structure elements: supremacy of the Constitution, republican and democratic form of government, secular character, separation of powers, and federal character (*Kesavananda Bharati v. State of Kerala*, 1973). Subsequent cases expanded this list, though the Court has deliberately avoided exhaustive enumeration, preferring case-by-case determination.

III. DOCTRINAL EVOLUTION: FIVE DECADES OF JURISPRUDENTIAL DEVELOPMENT

3.1. The Formative Period (1973-1980)

The immediate post-Kesavananda period witnessed attempts to circumvent the doctrine. The 39th Amendment, which placed the Prime Minister's election beyond judicial review, was struck down in *Indira Nehru Gandhi v. Raj Narain* (1975), marking the doctrine's first practical application. Justice Chandrachud emphasized that free and fair elections constitute the Constitution's basic structure, demonstrating the doctrine's protective function during political turbulence (*Indira Nehru Gandhi v. Raj Narain*, 1975).

The Emergency period (1975-1977) tested the doctrine's resilience. The 42nd Amendment attempted to place constitutional amendments beyond judicial review by adding Clauses (4) and (5) to Article 368, asserting that no amendment could be questioned on any ground, including basic structure violations (Noorani, 2015). This assault on judicial review was repelled in *Minerva Mills v. Union of India* (1980), where the Supreme Court struck down these provisions, establishing that the limited nature of Parliament's amending power itself constitutes part of the basic structure (*Minerva Mills v. Union of India*, 1980).

3.2. Expansion and Consolidation (1980-2000)

This period witnessed expansion of basic structure elements. In *Waman Rao v. Union of India* (1981), the Court clarified that the doctrine applies only to post-Kesavananda amendments, providing temporal certainty while protecting earlier amendments from retrospective invalidation (*Waman Rao v. Union of India*, 1981).

S.R. Bommai v. Union of India (1994) identified secularism and federalism as basic structure elements, striking down central government actions that violated federal principles. The Court emphasized that federalism's essence lies not merely in distribution of powers but in states' autonomous spheres of operation (*S.R. Bommai v. Union of India*, 1994). This decision demonstrated the doctrine's applicability beyond constitutional amendments to executive and legislative actions.

The doctrine's scope expanded further in *L. Chandra Kumar v. Union of India* (1997), which held that judicial review by High Courts and the Supreme Court constitutes basic structure, preventing Parliament from creating alternative adjudicatory systems that bypass constitutional courts (*L. Chandra Kumar v. Union of India*, 1997).

3.3. Contemporary Applications (2000-Present)

Recent decades have seen sophisticated basic structure challenges. In *I.R. Coelho v. State of Tamil Nadu* (2007), a nine-judge bench established a two-step test for constitutional amendments placed in the Ninth Schedule: first, determining whether laws violate fundamental rights, and second, assessing whether such violations damage basic structure (*I.R. Coelho v. State of Tamil Nadu*, 2007). This nuanced approach balanced amendment power with constitutional preservation.

The National Judicial Appointments Commission (NJAC) case (*Supreme Court Advocates-on-Record Association v. Union of India*, 2015) represented a watershed moment. The Court struck down the 99th Amendment and NJAC Act, holding that judicial independence and primacy of judiciary in judicial appointments form basic structure. Critics argued this decision expanded judicial power excessively, while supporters maintained it preserved separation of powers against executive encroachment (*Supreme Court Advocates-on-Record Association v. Union of India*, 2015).

Recent developments include challenges to the Citizenship Amendment Act (2019) on basic structure grounds, arguing it violates secularism and equality. Additionally, concerns about electoral bonds, digital surveillance, and federalism challenges have invoked basic structure arguments, demonstrating the doctrine's continued relevance (Khosla, 2020).

IV. COMPARATIVE CONSTITUTIONAL PERSPECTIVES

4.1. Explicit Unamendability Clauses

Several constitutions contain explicit unamendability provisions, contrasting with India's judicially created doctrine. The German Basic Law (Grundgesetz) includes the "eternity clause" (Article 79(3)), protecting human dignity, democracy, federalism, and the rule of law from amendment (Kommers & Miller, 2012). The German Federal Constitutional Court has interpreted this clause strictly, creating a constitutional core immune from change.

France's Constitution (Article 89) prohibits amendments to the republican form of government, a provision dating to 1884. Turkey's Constitution contains extensive unamendability clauses protecting secularism, nationalism, and the state's characteristics (Articles 1-4). These explicit provisions provide clearer boundaries than India's judicially determined approach but lack flexibility to evolve with changing circumstances.

4.2. Implicit Constitutional Limits

Some jurisdictions have developed implicit limitations through judicial interpretation, paralleling India's approach. Bangladesh's Supreme Court, influenced by India's Basic Structure Doctrine, adopted a similar framework in Anwar Hossain Chowdhury v. Bangladesh (1989), striking down the Fifth Amendment for violating the Constitution's basic features (Anwar Hossain Chowdhury v. Bangladesh, 1989). The Bangladesh Court identified nationalism, socialism, democracy, and secularism as basic structure elements.

The Supreme Court of Pakistan referenced basic structure principles in Mahmood Khan Achakzai v. Federation of Pakistan (1997), though Pakistani jurisprudence has applied the doctrine inconsistently due to political instability and military interventions (Mahmood Khan Achakzai v. Federation of Pakistan, 1997). Nepal's Supreme Court has also employed basic structure reasoning, particularly regarding federalism and judicial independence.

Colombia's Constitutional Court developed the "substitution doctrine" (doctrina de la sustitución), distinguishing between constitutional amendments and substitutions. In Decision C-551/03, the Court held that constitutional reforms cannot replace the Constitution's fundamental axes with an entirely different system (Constitutional Court of Colombia, 2003). This doctrine resembles India's basic structure framework while focusing on constitutional identity preservation.

4.3. Unlimited Amendment Power Jurisdictions

Contrasting approaches exist in jurisdictions maintaining unlimited amendment power. The United States Supreme Court has consistently held that no judicially enforceable limits exist on constitutional amendments beyond procedural requirements outlined in Article V (National Prohibition Cases, 1920). This position reflects American constitutional theory's emphasis on popular sovereignty and democratic self-governance.

The United Kingdom, lacking a codified constitution, maintains parliamentary sovereignty as a fundamental principle. Parliament can enact any law, including laws of constitutional significance, without substantive limitations (Dicey, 1885/1959). However, scholars debate whether implied constitutional limits might emerge through common law constitutionalism (Goldsworthy, 2010).

4.3.1. Comparative Analysis:

Table 1. Comparative Framework of Constitutional Amendment Limitations

Jurisdiction	Type of Limitation	Specific Protected Elements	Judicial Enforcement	Theoretical Basis
India	Implicit (Judicial)	Democracy, rule of law, federalism, secularism, judicial review, separation of powers	Strong	Basic Structure Doctrine
Germany	Explicit (Constitutional)	Human dignity, democracy, federalism, rule of law	Strong	Eternity Clause (Art. 79(3))
France	Explicit (Constitutional)	Republican form of government	Moderate	Constitutional text (Art. 89)
Bangladesh	Implicit (Judicial)	Democracy, nationalism, socialism, secularism	Moderate	Basic Structure Doctrine
Colombia	Implicit (Judicial)	Constitutional identity, fundamental axes	Strong	Substitution Doctrine
United States	None (Procedural only)	None substantive	Weak	Popular sovereignty
United Kingdom	None	None	N/A	Parliamentary sovereignty

V. CRITICAL EVALUATION: STRENGTHS AND LIMITATIONS

5.1. Strengths of the Basic Structure Doctrine

The doctrine's primary strength lies in constitutional preservation against transient majorities. By establishing substantive limits on amendment power, it prevents democratic backsliding and protects minority rights against majoritarian overreach (Roznai, 2017). This protective function proved crucial during the Emergency period and continues to safeguard constitutional democracy.

The doctrine's flexibility allows organic constitutional development. Unlike rigid unamendability clauses, judicial determination enables the basic structure to evolve with societal values and emerging challenges. This adaptability distinguishes India's approach from more rigid constitutional frameworks (Barak, 2011).

The doctrine strengthens judicial review legitimacy. By grounding judicial intervention in constitutional preservation rather than substantive policy preferences, it provides a principled basis for counter-majoritarian judicial action. The requirement that amendments damaging basic structure be invalidated creates clear parameters for judicial review (Austin, 2003).

Furthermore, the doctrine contributes to global constitutional discourse. India's innovation has influenced constitutional development in multiple jurisdictions, demonstrating its intellectual robustness and practical utility. The doctrine represents a significant theoretical contribution to debates about constitutional limits and democratic governance.

5.2. Limitations and Critiques

Despite its strengths, the Basic Structure Doctrine faces significant criticisms. The democratic legitimacy critique questions judicial authority to constrain the people's amending power. Critics argue that judges, insulated from political accountability, usurp the constituent power belonging to the people (Khosla, 2020). This counter-majoritarian difficulty becomes especially acute when courts strike down amendments passed with overwhelming legislative support.

The doctrine suffers from definitional vagueness. The Supreme Court has deliberately avoided exhaustively defining basic structure elements, leading to uncertainty about which constitutional features qualify. This lack of clarity creates unpredictability and potential for arbitrary judicial decision-making (Sathe, 2002). Different benches have identified varying basic structure elements, sometimes with limited reasoning.

Concerns about judicial overreach have intensified following the NJAC decision. Critics contend that the judiciary has expanded basic structure protection beyond its original constitutional preservation purpose to advance institutional self-interest. The striking down of a constitutional amendment designed to reform judicial appointments raised questions about separation of powers and checks on judicial power (Robinson, 2016).

The doctrine potentially creates constitutional rigidity. By placing numerous constitutional features beyond amendment, it may prevent necessary constitutional evolution. Constitutional systems require periodic updating to address changing circumstances; excessive rigidity can make constitutions obsolete or drive change through extra-constitutional means (Dixon & Landau, 2015).

Application inconsistency presents another challenge. The Court has not always applied the doctrine consistently, sometimes showing deference to political branches and other times intervening aggressively. This inconsistency undermines the doctrine's predictability and raises concerns about political considerations influencing judicial decisions.

VI. FUTURE TRAJECTORY: ADDRESSING CONTEMPORARY CONSTITUTIONAL CHALLENGES

6.1. Definitional Clarity and Institutional Refinement

The doctrine's future requires greater definitional precision. The Supreme Court should develop a comprehensive framework identifying core basic structure elements with clear reasoning. While complete enumeration may prove impossible, establishing principled criteria for recognizing basic structure features would enhance predictability and legitimacy (Jacobsohn, 2006). A constitutional bench dedicated to basic structure jurisprudence could provide systematic development.

Institutional reforms could address democratic legitimacy concerns. Larger benches for basic structure cases, requirements for supermajority agreement among judges, and enhanced reasoning requirements could strengthen decisions' legitimacy. Additionally, establishing clearer standards for when basic structure review applies versus when judicial deference is appropriate would balance constitutional preservation with democratic governance (Tushnet, 2008).

6.2. Responding to Contemporary Threats

Digital authoritarianism presents novel challenges requiring basic structure application. Government surveillance capabilities, social media regulation, and digital rights implicate privacy, free speech, and democratic participation—all potentially basic structure elements. The doctrine must adapt to protect constitutional democracy in the digital age (Balkin, 2018).

Economic liberalization's impact on social justice requires doctrinal attention. As market-oriented reforms potentially threaten constitutional commitments to social and economic rights, the Court must clarify whether socio-economic justice constitutes basic structure. The Kesavananda decision referenced social justice, but subsequent jurisprudence has not fully developed this dimension (Bhatia, 2019).

Federalism challenges demand reinvigorated basic structure protection. Centralization trends through financial mechanisms, concurrent legislation, and administrative control threaten federal balance. The doctrine should robustly protect states' autonomy as a basic structure element, ensuring genuine federal governance (Rao & Singh, 2018).

Electoral integrity and democratic participation require basic structure safeguards. Campaign finance, electoral bonds, delimitation exercises, and voter access implicate democracy's foundational elements. The Court should extend basic structure protection to electoral processes beyond formal structures, encompassing substantive democratic participation (Issacharoff, 2015).

6.3. Comparative Learning and Cross-Jurisdictional Dialogue

India's Basic Structure Doctrine can benefit from comparative constitutional dialogue. Engaging with similar doctrines in Bangladesh, Colombia, and other jurisdictions can provide insights for doctrinal refinement. International constitutional courts' experiences with balancing amendment power and constitutional limits offer valuable lessons (Hirschl, 2014).

Conversely, India's experience can inform constitutional development elsewhere. As democratic backsliding threatens constitutionalism globally, the Basic Structure Doctrine provides a model for protecting constitutional essentials. Scholarly

engagement with international constitutional discourse can enhance the doctrine's theoretical foundations and practical applications.

6.4. Balancing Preservation and Evolution

The doctrine's future success depends on maintaining balance between constitutional preservation and democratic evolution. Courts must distinguish between amendments that genuinely threaten constitutional identity and those representing legitimate constitutional development. This distinction requires sophisticated constitutional theory and careful case-by-case analysis (Albert, 2015).

Developing a proportionality framework for basic structure review could enhance doctrinal application. Rather than binary invalidation, courts could assess whether amendments' constitutional benefits justify basic structure impacts. This nuanced approach would preserve amendment power while protecting constitutional essentials (Barak, 2012).

VII. CONCLUSION

The Basic Structure Doctrine's fifty-year journey demonstrates both remarkable resilience and continuing evolution. From its inception as a response to parliamentary overreach through the Emergency period's existential challenge to contemporary applications addressing digital rights and electoral integrity, the doctrine has proven adaptable and essential for constitutional preservation.

Comparative analysis reveals that while various constitutional systems address amendment limitations differently, India's judicially developed framework offers unique flexibility combined with substantive protection. The doctrine's influence on jurisdictions like Bangladesh and Colombia demonstrates its theoretical robustness and practical utility beyond Indian borders.

Moving forward, the doctrine must address legitimate concerns about democratic legitimacy, definitional clarity, and application consistency. Greater precision in identifying basic structure elements, institutional refinements to enhance decision-making legitimacy, and sophisticated engagement with contemporary constitutional challenges will determine the doctrine's continued relevance.

The Basic Structure Doctrine represents a crucial innovation in constitutional thought, balancing popular sovereignty with constitutional limits. As constitutional democracy faces unprecedented challenges globally, the doctrine's core insight—that constitutions contain essential features transcending ordinary amendment power—remains profoundly important. Its future trajectory should emphasize adaptive interpretation, comparative learning, and principled application to protect constitutional democracy while respecting democratic self-governance.

The doctrine's evolution over the next fifty years will likely be shaped by emerging challenges: technological transformation, climate change's constitutional implications, global migration, and economic inequality. These challenges will test whether the Basic Structure Doctrine can continue protecting constitutional essentials while enabling necessary constitutional adaptation. If carefully developed through principled jurisprudence, institutional refinement, and democratic engagement, the doctrine can remain a vital instrument for preserving India's constitutional democracy while serving as a model for constitutional systems worldwide.

REFERENCES

- Ackerman, B. (1991). *We the people: Foundations*. Harvard University Press.
- Albert, R. (2015). How unwritten constitutional norms change written constitutions. *Dublin University Law Journal*, 38(2), 387–418.
- Albert, R. (2019). *Constitutional amendments: Making, breaking, and changing constitutions*. Oxford University Press.
- Alexy, R. (2002). *A theory of constitutional rights*. Oxford University Press.
- Anwar Hossain Chowdhury v. Bangladesh, 41 DLR (AD) 165 (1989).
- Austin, G. (2003). *Working a democratic constitution: A history of the Indian experience*. Oxford University Press.
- Balkin, J. M. (2018). Free speech in the algorithmic society: Big data, private governance, and new school speech regulation. *UC Davis Law Review*, 51(3), 1149–1210.
- Barak, A. (2012). *Proportionality: Constitutional rights and their limitations*. Cambridge University Press.
- Barak, A. (2012). Unconstitutional constitutional amendments. *Israel Law Review*, 44(3), 321–341.
- Bhatia, G. (2019). Directive principles of state policy and constitutional interpretation: Revisiting the role of the Indian Supreme Court. *Indian Law Review*, 3(1), 1–24.
- Constitutional Court of Colombia. (2003). *Decision C-551/03*.
- Dicey, A. V. (1959). *Introduction to the study of the law of the constitution*. Macmillan. (Original work published 1885)
- Dixon, R., & Landau, D. (2015). Transnational constitutionalism and a limited doctrine of unconstitutional constitutional amendment. *International Journal of Constitutional Law*, 13(3), 606–638.
- Dworkin, R. (1977). *Taking rights seriously*. Harvard University Press.
- Golaknath v. State of Punjab, AIR 1967 SC 1643.
- Goldsworthy, J. (2010). *Parliamentary sovereignty: Contemporary debates*. Cambridge University Press.
- Hirschl, R. (2014). *Comparative matters: The renaissance of comparative constitutional law*. Oxford University Press.
- I.R. Coelho v. State of Tamil Nadu, (2007) 2 SCC 1.
- Indira Nehru Gandhi v. Raj Narain, AIR 1975 SC 2299.
- Issacharoff, S. (2015). *Fragile democracies: Contested power in the era of constitutional courts*. Cambridge University Press.
- Jacobsohn, G. J. (2006). Constitutional identity. *Review of Politics*, 68(3), 361–397.
- Kelsen, H. (1945). *General theory of law and state*. Harvard University Press.
- Kesavananda Bharati v. State of Kerala, AIR 1973 SC 1461.
- Khosla, M. (2020). *India's founding moment: The constitution of a most surprising democracy*. Harvard University Press.
- Kommers, D. P., & Miller, R. A. (2012). *The constitutional jurisprudence of the Federal Republic of Germany* (3rd ed.). Duke University Press.
- L. Chandra Kumar v. Union of India, (1997) 3 SCC 261.
- Mahmood Khan Achakzai v. Federation of Pakistan, PLD 1997 SC 426.
- Minerva Mills v. Union of India, AIR 1980 SC 1789.
- National Prohibition Cases, 253 U.S. 350 (1920).
- Noorani, A. G. (2015). *The destruction of democracy in India: Indira's India 1975–77*. Speaking Tiger.

- Rao, M. G., & Singh, N. (2018). Asymmetric federalism in India. In R. Saxena (Ed.), *Varieties of federal governance: Major contemporary models* (pp. 149–172). Cambridge University Press.
- Robinson, N. (2016). Judicial architecture and capacity. In S. Choudhry, M. Khosla, & P. B. Mehta (Eds.), *The Oxford handbook of the Indian Constitution* (pp. 391–408). Oxford University Press.
- Roznai, Y. (2017). *Unconstitutional constitutional amendments: The limits of amendment powers*. Oxford University Press.
- S.R. Bommai v. Union of India, (1994) 3 SCC 1.
- Sajjan Singh v. State of Rajasthan, AIR 1965 SC 845.
- Sathe, S. P. (2002). *Judicial activism in India: Transgressing borders and enforcing limits*. Oxford University Press.
- Shankari Prasad v. Union of India, AIR 1951 SC 458.
- Sieyès, E. J. (2003). *Political writings* (M. Sonenscher, Trans.). Hackett Publishing. (Original work published 1789)
- Supreme Court Advocates-on-Record Association v. Union of India, (2015) 5 SCC 1.
- Tushnet, M. (2008). *Weak courts, strong rights: Judicial review and social welfare rights in comparative constitutional law*. Princeton University Press.
- Waman Rao v. Union of India, AIR 1981 SC 271.