

Basic Structure Doctrine

First Published: September 12, 2016 | Last Updated: September 12, 2016

The constitution empowers the legislative bodies {Parliament / state legislative assemblies} in the country to make laws in their respective jurisdictions. However, this power is not absolute but is subject to *judicial review*. Power of judicial review makes Supreme Court guardian of not only fundamental rights but the constitution itself. However, at the time of enactment of the constitution, the Supreme Court derived its power to review the acts via article 13, article 226 and article 245 mainly. Article 13 declares that any law which contravenes any of the provisions of part –III {Fundamental Rights} shall be null and void. Articles 32 and 226 entrust Supreme Court and High Courts with roles of the protector and guarantor of fundamental rights Article 245 states that the powers of both Parliament and State legislatures are subject to the provisions of the constitution.

Once the constitution was in force and Supreme Court was established, a long struggle started between Judiciary and Parliament, which ultimately culminated in what is known as Basic Structure Doctrine. The gist of this long struggle is that *while parliament went on an amendment spree to achieve its socio-economic and political goals, Supreme Court kept reviewing these amendments and striking down those which were not consistent with explicit provisions of the constitution {mainly article 13, 32, 226 and 245}*.

Contents [\[hide\]](#)

[Beginning of Tussle – The Right to Property](#)

[Reversal of the verdict: Golak Nath Case](#)

[Nationalisation of Banks and Abolition of Privy purses](#)

[Nationalization of Banks](#)

[Privy Purse Case](#)

[24th amendment](#)

[25th Amendment](#)

[26th amendment](#)

[29th amendment](#)

[Kesavanada Bharti Case, 1973](#)

[Background](#)

[Verdict](#)

[Major outcomes of the Kesavananda Bharati's case](#)

Basic Structure Doctrine

[Indira Gandhi v. Raj Narain Case \(1975\)](#)

[The Kesavananda Bharti verdict case review bench](#)

[Basic Structure concept reaffirmed in Post Kesavananda's Case](#)

[List of Basic structure of the Constitution according to different cases:](#)

[Significance of the Basic Structure Doctrine](#)

[Criticisms about Kesavananda Bharti case](#)

[Criticism of Basic Structure doctrine](#)

[Forty-second Amendment Act, 1976](#)

[Minerva Mills v. Union of India\(1980\) and Waman Rao v. Union of India\(1981\)](#)

[Implications of Kesavananda Bharati case on the independence of judiciary](#)

[Conclusion](#)

Beginning of Tussle – The Right to Property

After independence, the Government of India started to implement agrarian reforms with the aim of reforming land ownership and tenancy structures and to implement the socialistic goals of the Constitution contained in Article 39 (b) and (c) of DPSP which required equitable distribution of resources of production among all citizens and prevention of concentration of wealth in the hands of a few.

However, initially, right to property was enshrined as fundamental right under article 19 and 31. When the provinces started passing the Zamindari abolition acts, property owners approached courts because these acts were violating their fundamental right to property. When the supreme court reviewed these laws, it followed the constitution religiously and *upheld the fundamental right to property of Zamindars* and struck down the Zamindari abolition laws.

Thus, parliament needed to *secure the constitutional validity of these laws*. This led to the first amendment of the constitution in 1951. Via this amendment, Article 31B and a Ninth Schedule were inserted in the Constitution.

To immunize the law and to prevent it from the scope of judicial review, Art. 31B and the Ninth Schedule were introduced in the Constitution by the

Constitution *First Amendment Act 1951* by the Parliament and it effectively placed these laws in *the ninth Schedule of the Constitution*.

What the government exactly did was that *it placed 13 laws passed by the states*{i.e. the laws which were passed to abolish Zamindari etc.} into the 9th schedule and then put Article 31-B which said that any law placed in 9th schedule shall not be deemed to be void only on the ground that it takes away some fundamental rights. This ensured that laws placed in 9th schedule are not challenged in Supreme Court and government can continue with its social engineering and land reforms.

The net result of this enactment was that government found a way to curtail down the power of judicial review. This 9th schedule was such a powerful instrument that starting from 13 acts in 1951, *it has now 284 acts*; and none of these acts can be challenged on the ground that they violate the fundamental rights. The 9th schedule was initially for laws against property rights, but then it was also used to put in laws that were not even distantly related to property rights. This implies that there was indeed a misuse of the 9th schedule which we would discuss sometimes later in our modules.

However, the 1st amendment itself was now challenged because it would violate article 13(2) and Article 14 {Right to Equality}. The challenge came mainly in two cases viz. *Sankari Prasad Singh Deo v. Union of India (1952)* and *Sajjan Singh v. State of Rajasthan (1955)*. But those were the times when a free India was just born and there was dire need of radical agrarian reforms to curb poverty and change the system of unequal distribution of land. Further, Supreme Court did not see any threat in 9th schedule because it supported the statecraft of the leaders such as Nehru and Shastri. Obviously, Supreme Court supported the Legislature, and rejected the challenges to the 1st amendment.

In the *Sankari Prasad Singh Deo* and *Sajjan Singh* cases Supreme Court not only upheld the power of Parliament to amend any part of the Constitution including fundamental rights but also brought out the distinction between legislative power and constituent power and held that “law” in Art.13 did not include an amendment of the Constitution made in the exercise of constituent power and Fundamental Rights were not outside the scope of amending power.

^^You must cite this example if you are asked about cooperation between Judiciary and legislature.^^

But this bonhomie between judiciary and legislature did not last long. During Indira Gandhi’s tenure, power under Article 31-B was aggressively used {and mis-used too} which provoked the judiciary to clip the wings of the legislature.

Reversal of the verdict: Golak Nath Case

Basic Structure Doctrine

Golak Nath case is related to property of two brothers {Henry and William Golaknath}. They had some 500 acres of land in Jalandhar. Under the Punjab Security and Land Tenure Act, the state government held that they could keep some 20 acres and rest was declared surplus land.

The Golak Nath family challenged the case courts on the ground that it denied them constitutional right to acquire and hold property; and practice any profession; and equality before the law / equal protection of law. Since the Punjab act was placed in Ninth Schedule via 17th amendment, the Golak Nath family also sought to declare it ultra vires.

An eleven judge bench of the Supreme Court with a 6-5 majority reversed its earlier held position. Supreme Court ruled that the Parliament *had no power to amend Part III of the Constitution* and *overruled* its earlier decision in *Shankari Prasad and Sajjan Singh case*. Further, the majority judgement invoked the *concept of implied limitations* on Parliament's power to amend the Constitution. The bench observed the following:

- Article 368 merely laid down the amending procedure.
- Article 368 did not confer upon Parliament the power to amend the Constitution.
- The amending power of Parliament arose from other provisions contained in the Constitution such as Articles 245, 246, 248 all of which gave it the power to make laws (plenary legislative power).
- The amending power and legislative powers of Parliament were essentially the same. Hence, law under Art.13 includes the amendment laws also.
- Constitution gives a place of permanence to the fundamental freedoms of the citizen. In giving the Constitution to themselves, the people had reserved the fundamental rights for themselves.
- Parliament could not modify, restrict or impair fundamental freedoms due to this very scheme of the Constitution and the nature of the freedoms granted under it.

Basic Structure Doctrine

- The fundamental rights were so sacrosanct and transcendental in importance that they could not be restricted even if such a move were to receive unanimous approval of both houses of Parliament.
- They observed that a Constituent Assembly might be summoned by Parliament for the purpose of amending the fundamental rights if necessary.

In light of the above points, it was held that any amendment of the Constitution must be deemed law as understood in Article 13 (2).

Nationalisation of Banks and Abolition of Privy purses

The Golak Nath verdict came at a time when the Indira Gandhi Government was on a social engineering spree. Meanwhile, two major events happened and both were challenged in court. These were Nationalization of Banks and abolition of Privy Purse.

Nationalization of Banks

In 1969, the government nationalized 14 major banks and the paltry compensation was to be made payable in bonds that matured after 10 years. The government decision was challenged in *Rustom Cavasjee Cooper vs Union of India, 1970* case which is also known as Bank Nationalization case. In this case, the Supreme Court though upheld the right of parliament to nationalize the banks and other industries but it said that:

- Constitution guarantees the right to compensation, that is, the equivalent money of the property compulsorily acquired.
- A law which seeks to acquire or requisition property for public purposes must satisfy the requirement of Article 19(1)(f) {Right to Property}.

The net outcome of this judgement was that compensation was increased.

Privy Purse Case

When Sardar Patel was pursuing the princes for signing the instrument of accession, they were assured of a privy purse, which was a sort of annual pension or grant. They were also allowed to hold their honorary titles, other symbols of their order such as flying their own flags etc. as a part of this privy purse package. We note here that originally, the constitution had made the arrangement of privy purse as a “permanent feature”. It was also decided that the Privy Purse *could not at any time be “increased, or decreased” for reason or whatsoever.*

Basic Structure Doctrine

Though the amount paid as a part of the privy purse was insignificant, yet people started opposing it. Why? Firstly, hereditary privileges were not in consonance with the principle of equality. Secondly, it became an election issue. In 1967 elections, Indira Gandhi had supported the demand to abolish Privy Purses. Her government tried to amend the constitution but this amendment was not passed in Rajya Sabha. Then, an ordinance was issued.

Promulgation of ordinance for abolition of Privy Purse was considered a constitutional betrayal of the solemn assurance given by Sardar Patel to all the erstwhile princes. This ordinance was challenged in Supreme Court in *Madhav Rao Scindia v. Union of India, 1970*. The Supreme Court for obvious reasons struck down the ordinance, though government had pleaded that it is being done to give effect to directive principles. This gave a major election issue to Indira Gandhi, and she was able to garner public support against Privy Purse. She got a massive victory in 1971 election. This was followed by a series of amendment of the constitution. With this, what *could never be increased or decreased for reason whatsoever* was abolished forever.

Indira Gandhi government was on an amendment spree to fix the issues arising out of these cases. The amendments done during that period are as follows:

24th amendment

The 24th amendment, 1971 restored the parliamentary power to amend any part of the constitution including the part III.

Hitherto, any constitutional amendment bill once passed in both the houses and sent to President was on mercy of president to become a law. This amendment made president duty bound to give assent to a Constitution Amendment Bill when presented to him. Thus, today, any constitution amendment passed in both houses of parliament is sure to become a law because President can not withhold assent or return it back.

25th Amendment

The right to property still was intact and to override the Supreme Court judgement in nationalization case, the government brought in 25th amendment of the constitution. This amendment brought the following changes:

- Amendment of Article 31A which now meant that: If the government acquires your property for public purpose and pays you a paltry compensation, you cannot question that in court.
- Insertion of Article 31C which meant that: If the government has made some law to realize any of the Directive Principles under article 39 {Certain principles of policy to be followed by the State}, then it will not

Basic Structure Doctrine

be reviewed under the lens of Article 13; and it will not be void on ground that it takes away rights conferred by Article 14, 19 or 31. If a law declares that it is for giving effect to such policy, it cannot be questioned in the court on the ground that it does not give effect to such policy.

26th amendment

The 26th Amendment (1971) abolished the Privy Purse.

29th amendment

The 29th Amendment (1972) added two Kerala Land Reforms Amendment Acts (1969 and 1971) to the Ninth Schedule, which is meant for Acts that the State legislatures and Parliament wanted to keep beyond judicial review.

Thus, till 1972, the tussle between legislature and judiciary continued with judiciary losing its powers of striking down the erring acts due to many amendments targeted only at Supreme Court judgements. In such scenario, the Kesavanada Bharti Case was filed in Supreme Court.

Kesavanada Bharti Case, 1973

The *Kesavananda Bharati* case was the culmination of a serious conflict between the judiciary and the government, which was headed by Mrs Indira Gandhi. The case sought to find answers to the following questions: was the power of Parliament to amend the Constitution unlimited? In other words, could Parliament alter, amend, abrogate any part of the Constitution even to the extent of taking away all fundamental rights?

Though, the phrase ‘basic structure’ was introduced for the first time by M.K. Nambiar and other counsels while arguing for the petitioners in the Golaknath case, it was only in the kesavanada Bharati’s case that the concept surfaced in the text of the apex court’s verdict. ³In this context, it is also pertinent to note that, actually this doctrine of “basic structure” is introduced into India by a German scholar, Dietrich Conrad.

Background

Kesavananda Bharati, the pontiff of a religious mutt in Kerala, in 1970, took objection to the attempts of the government to acquire, under the Kerala Land Reforms Act, 1963, land belonging to the mutt. The mutt challenged the Act before the Supreme Court by filing a writ petition seeking to protect the fundamental right of religious institutions to manage their own property without undue restrictions by the state. When this petition was pending, the 24th Amendment to the Constitution (amending Articles 13 and 368) was adopted. It was followed by the 25th, 26th and 29th Amendments.

Basic Structure Doctrine

The 29th Amendment (1972) added two Kerala Land Reforms Amendment Acts (1969 and 1971) to the Ninth Schedule, which is meant for Acts that the State legislatures and Parliament wanted to keep beyond judicial review. Kesavananda subsequently challenged this amendment, but as the challenges to the other amendments raised similar issues, they were heard together. Kesavananda Bharati became the lead petitioner since he had filed the petition first.

The validity of these amendments was challenged before a Constitution Bench comprising five judges, which then referred it to a 13 judge Bench, which heard the case for over six months before delivering its verdict on April 24, 1973.

Verdict

Chief Justice Sikri and Justices J.M. Shelat, K.S. Hegde and A.N. Grover were determined to defend the concept of implied limitations on Parliament's amending power, which was the bedrock of the Golaknath judgment. All the four judges were part of the majority judges whose verdicts went against the government's moves to nationalise banks and abolish privy purses. The Supreme Court had decided these cases between the Golaknath and Kesavananda cases.

Justices A.N. Ray, K.K. Mathew, D.G. Palekar, M.H. Beg, and S.N. Dwivedi were pro-government judges on the Kesavananda Bench, and their collective view was that Parliament had unfettered powers to amend the fundamental rights.

Justices H.R. Khanna, A.K. Mukherjea, P. Jaganmohan Reddy and Y.V. Chandrachud were non-committal at the start of the Kesavananda hearing.

In the final outcome, the number of Sikri-led judges went up to six, with two additions. They were Justices Reddy and Mukherjea. Justice Chandrachud joined the remaining five judges who decided that Parliament had the unlimited amending power. Justice Khanna thus became the only judge who could tilt the scales one way or the other. By signing the note circulated by Chief Justice Sikri, Justice Khanna apparently joined the Sikri-led judges, thus giving them the bare majority on the Bench.

Nine judges signed a summary statement which records the most important conclusions reached by them in this case.

In this case the validity of the *Twenty-fifth Amendment Act* was challenged along with the *Twenty-fourth and Twenty-ninth Amendments*. The Court by majority overruled the Golak Nath case which denied the Parliament's power to amend Fundamental Rights of the citizens. The majority held that Art.368 even before the 24th Amendment contained the power as well as the procedure of amendment. The Supreme Court declared that Art.368 did not enable the

Basic Structure Doctrine

Parliament to alter the basic structure or framework of the Constitution and Parliament could not use its amending power under Art.368 to 'damage', 'emasculate', 'destroy', 'abrogate', 'change' or 'alter' the 'basic structure' or framework of the Constitution.

Most importantly seven of the thirteen judges in the Kesavananda Bharati case, including Chief Justice Sikri who signed the summary statement, declared that Parliament's constituent power was subject to inherent limitations. Parliament could not use its amending powers under Article 368 to 'damage', 'emasculate', 'destroy', 'abrogate', 'change' or 'alter' the 'basic structure' or framework of the Constitution.

This is how the development of this Basic Structure Doctrine evolved because of some controversial laws included in the Ninth Schedule. This doctrine counts as one of the greatest contribution of Indian judiciary in the field jurisprudence.

Major outcomes of the Kesavananda Bharati's case

- The seminal concept of 'basic structure' of the Constitution gained recognition in the majority verdict
- All judges upheld the validity of the Twenty-fourth amendment saying that Parliament had the power to amend any or all provisions of the Constitution.
- All signatories to the summary held that the Golaknath case had been decided wrongly and that Article 368 contained both the power and the procedure for amending the Constitution.
- An amendment to the Constitution was not the same as a law as understood by Article 13 (2).
- Unlike ordinary laws, amendments to constitutional provisions require a special majority vote in Parliament.

In summary the majority verdict in Kesavananda Bharati recognised the power of Parliament to amend any or all provisions of the Constitution provided such an act did not destroy its basic structure. But there was no unanimity of opinion about what constitutes basic structure. Though the Supreme Court very nearly returned to the position of Sankari Prasad (1952) by restoring the supremacy of Parliament's amending power, in effect it strengthened the power of judicial review much more.

Indira Gandhi v. Raj Narain Case (1975)

This was the first case to apply basic structure doctrine. In this case, Court had to examine the validity of the *Thirty Ninth Amendment* Act by which Art.329-A was inserted into the Constitution. 329-A dealt with special provision as to elections to Parliament in the case of Prime Minister and Speaker. Along with this Art.329-A, the Parliament added 38 unrelated laws in the Ninth Schedule. Further some issues were also raised that whether the Representation of the People (Amendment) Act, 1974 and the Election Laws (Amendment) Act, 1975 are unconstitutional because these Acts destroy or damage basic structure or basic features?

Basic Structure concept reaffirmed in this case. The Supreme Court's five-judge Constitution Bench unanimously applied the basic structure doctrine to invalidate Article 329A as it was beyond the amending power of the Parliament and destroyed the basic feature of the Constitution. But, it upheld the Prime Minister's election on the basis of the retrospective amendment to the electoral law.

Justice Y.V. Chandrachud listed four basic features which he considered unamendable:

- Sovereign democratic republic status.
- Equality of status and opportunity of an individual.
- Secularism and freedom of conscience and religion.
- 'Government of laws and not of men' i.e. the rule of law.

The Kesavananda Bharti verdict case review bench

Immediately after the decision of the Election case, an attempt was made by Chief Justice Ray to review the *Kesavananda Bharati* decision by constituting another Bench of 13 judges. The bench was constituted on the pretext of hearing a number of petitions relating to land ceiling laws which had been languishing in high courts. The petitions contended that the application of land ceiling laws violated the basic structure of the Constitution. In effect, the Review bench was to decide whether or not the basic structure doctrine restricted Parliament's power to amend the Constitution.

In a major embarrassment to Ray, it was revealed that no one had filed a review petition. How this Bench was then constituted? was the question that surfaced in the minds of many. Also the other judges strongly opposed this impropriety and the 13-judge Bench was dissolved after two days of arguments.

Basic Structure concept reaffirmed in Post Kesavananda's Case

Basic Structure Doctrine

After Kesavananda Bharati's case, Supreme Court in many cases invoked this doctrine of basic structure. The doctrine of non-amendability of the basic features of the Constitution implies that there are certain provisions in the Constitution which cannot be amended even by the following prescribed procedure under Article 368. The Basic Structure concept got highlighted in various judgements of Supreme Court such as Indira Nehru Gandhi, Minerva Mills, Waman Rao and I.R. Coelho etc.

List of Basic structure of the Constitution according to different cases:

The following are the basic or essential features of the Constitution according to the observations of Judges of Supreme Court in different cases. There is no exact list of as to what these basic features are.

1. Kesavananda Bharati case

- Chief Justice Sikri, C.J:
- Supremacy of the Constitution
- Republican and democratic form of government
- Secular character of the Constitution
- Separation of powers between the legislature, executive and the judiciary
- Federal character of the Constitution
- Justices Shelat, J. and Grover, J.:
 - The mandate to build a welfare state contained in the Directive Principles of State Policy.
 - Unity and integrity of the nation
 - Sovereignty of the country
- Justices Hegde, J. and Mukherjea, J.:
 - Democratic character of the polity
 - Unity of the country
 - Essential features of the individual freedoms secured to the citizens

Basic Structure Doctrine

- Mandate to build a welfare state Unity and integrity of the nation
- Justice Jaganmohan Reddy, J.:
 - Equality of status and the opportunity
 - Sovereign democratic republic
 - Justice – social, economic and political
 - Liberty of thought, expression, belief, faith and worship
- 2. *Indira Nehru Gandhi v. Raj Narain, 1975:*
 - Justice H.R. Khanna:
 - Democracy is a basic feature of the Constitution and includes free and fair elections.
 - Justice K.K. Thomas :
 - Power of judicial review is an essential feature.
 - Justice Y.V. Chandrachud:
 - Sovereign democratic republic status
 - Equality of status and opportunity of an individual
 - Secularism and freedom of conscience and religion
 - Government of laws and not of men i.e. the rule of law
- 3. *Nachane, Ashwini Shivram v. State of Maharashtra, 1998:*
 - The doctrine of equality enshrined in Art.14 of the Constitution, which is the basis of the Rule of Law, is the basic feature of the Constitution.
- 4. *Raghunath Rao v. Union of India case, 1993:*
 - The unity and integrity of the nation and Parliamentary system.
- 5. *R. Bommai v. Union of India, 1994 and Poudyal v. Union of India, 1994:*
 - Secularism and “Democracy and Federalism are essential features of our Constitution and are part of its basic structure.”
- 6. *P. Sampath Kumar v. Union of India (1987), L.Chandrakumar v. Union of India (1997), Waman Rao v. Union of India(1981), Subhesh Sharma v. Union of India (1991), Minerva Mills v.Union of India(1980):*

Basic Structure Doctrine

- “Judicial review is a part of the basic constitutional structure and one of the basic features of the essential Indian Constitutional Policy.” Several Articles in the Constitution, such as Arts.32, 136, 226 and 227, guarantee judicial review of legislation and administrative action.

7. *Kihoto hollohan Vs. Zachillhu, 1992:*

- Democracy is a part of the basic structure of our Constitution, and rule of law; and free and fair elections are basic features of democracy.

8. Chandra Kumar v. Union of India (1997):

- Chief Justice Sikri
 - The supremacy of the constitution.
 - A republican and democratic form of government.
 - The secular character of the Constitution.
 - Maintenance of the separation of powers.
 - The federal character of the Constitution.
 - Justices Shelat and Grover
 - Maintenance of the unity and integrity of India
 - The sovereignty of the country
 - The sovereignty of India
 - The democratic character of the polity
 - The unity of the country
 - Essential features of individual freedoms
 - The mandate to build a welfare state
- ### 9. In a plethora of various other cases:
- Independence of judiciary is a basic feature of the Constitution as it is the *sine qua non* of democracy

Significance of the Basic Structure Doctrine

The doctrine of Basic Structure is one of the greatest contributions of Indian Judiciary to theory of constitutionalism. The doctrine of Basic Structure helped in maintaining the supremacy of the Constitution and to prevent its destruction by a temporary majority in Parliament.

It acts as a limitation upon the constituent power and has helped in arresting the forces which may destabilize the democracy. Parliament does not and should not have an unlimited power to amend the Constitution. This basic structure doctrine, as future events showed, saved Indian democracy.

It helps to retain the basic ideals of the Constitution which was meticulously constituted by the founding fathers our Constitution

It is widely believed that if the Supreme Court had held that Parliament could alter any part of the Constitution, India would most certainly have degenerated into a totalitarian State or had one-party rule. Most importantly, the Constitution would have lost its supremacy. For instance, the amendments that were made during the Emergency would have derailed the democratic set up of our Constitution. If Parliament were indeed supreme, the following amendments would have become part of the Constitution.

- The 39th Amendment prohibited any challenge to the election of the President, Vice-President, Speaker and Prime Minister. This was made to nullify the adverse Allahabad High Court ruling against former Prime Minister Indira Gandhi.
- The 41st Amendment prohibited any case, civil or criminal, being filed against the President, Vice-President, Prime Minister or the Governors, not only during their term of office but forever. Thus, if a person was a governor for just one day, he acquired immunity from any legal proceedings for life.

Criticisms about Kesavanada Bharti case

Many critics have questioned the anti-democratic character and more generally the political legitimacy, of the basic structure doctrine. Granville Austin notes that there are several discrepancies between the points contained in the summary signed by the judges and the opinions expressed by them in their separate judgements. The crucial sentence in the note relating to Article 368 not enabling Parliament to alter the basic structure was in fact lifted from only one (Justice H.R.Khanna) of the 11 judgments in the case. It is said that a single

Basic Structure Doctrine

judge's view became the holding of the majority of judges. Also, the verdict was believed to be delivered in haste without even debating the conclusion in the court to create a majority that did not exist.

Criticism of Basic Structure doctrine

The following are the major criticisms advanced by the critics:

- The doctrine does not have a textual basis. There is no provision stipulating that this Constitution has a basic structure and that this structure is beyond the competence of amending power.
- The concept of the “basic structure of the Constitution” cannot be defined. What constituted the basic structure of the Constitution? Each judge defines the basic structure concept according to his own subjective satisfaction. This leads to the fact that the validity of invalidity of the Constitution Amendment lies on the personal preference of each judge and the judges will acquire the power to amend the Constitution
- The attempt by a constitutional court to review the substance of the constitutional amendments would be dangerous for a democratic system in which the amending power belongs to the people or its representatives, not to judges.
- An amendment to a Constitution may be necessary even to change the original intention of the Constitution framers, which may not augur well for the subsequent generation which is to work with the Constitution. Therefore to hold that an amendment not falling in the line with the original intention of the founding fathers is not valid.

Forty-second Amendment Act, 1976

The parliament reacted to the Basic Structure concept by enacting the 42nd Amendment Act(1976). A committee under the Chairmanship of Sardar Swaran Singh to study the question of amending the Constitution.

Based on its recommendations, the government incorporated several changes to the Constitution including the Preamble, through the Forty-second amendment which was passed in 1976 and came into force on January 3, 1977. Article 368 was amended and was made to have no limitation on the constituent power of

Parliament and no amendment can be questioned in any court on any ground including the contravention of any of the fundamental rights. The changes made to the Constitution by this amendment was so widespread that it was sometimes called as a “*mini constitution*”.

Among other things the amendment:

- gave the Directive Principles of State Policy precedence over the Fundamental Rights contained in Article 14 (right to equality before the law and equal protection of the laws), Article 19 (various freedoms like freedom of speech and expression, right to assemble peacefully, right to form associations and unions, right to move about and reside freely in any part of the country and the right to pursue any trade or profession) and Article 21 (right to life and personal liberty). Article 31C was amended to prohibit any challenge to laws made under any of the Directive Principles of State Policy;
- laid down that amendments to the Constitution made in the past or those likely to be made in future could not be questioned in any court on any ground;
- removed all amendments to fundamental rights from the scope of judicial review and
- removed all limits on Parliament’s power to amend the Constitution under Article 368.

Minerva Mills v. Union of India(1980) and Waman Rao v. Union of India(1981)

The Forty-second amendment was challenged before the Supreme Court by the owners of Minerva Mills, a sick industrial firm which was nationalized by the government in 1974. It was argued that Section 55 of the amendment had placed unlimited amending power in the hands of Parliament. The attempt to immunize constitutional amendments against judicial review violated the doctrine of basic structure which had been recognized by the Supreme Court in the Kesavananda Bharati and Indira Gandhi Election Cases. Also, it was argued that this deprived courts of the ability to question the amendment even if it damaged or destroyed the Constitution’s basic structure.

Basic Structure Doctrine

In the *Minerva Mills* case, the Supreme Court struck down section 4 and 55 of the 42nd Amendment Act 1976. It also provided key clarifications on the interpretation of the basic structure doctrine. The court ruled that the power of the Parliament to amend the constitution is limited by the constitution. Hence the parliament cannot exercise this limited power to grant itself an unlimited power. Hence the parliament cannot usurp the fundamental rights of individuals, including the right to liberty and equality.

After this case, Supreme Court in *Waman Rao v. Union of India* once again reiterated and applied the doctrine of basic features of the Constitution. In this case, implications of the basic structure doctrine for Art.31-B were reexamined by a five-judge bench of the Supreme Court. Insofar as Art.31-B was concerned, the Court drew a line of demarcation at April 24th, 1973 i.e. the date of *Kesavananda Bharti's* decision and held it should not be applied retrospectively to reopen the validity of any amendment to the Constitution which took place prior to 24-04-1973, that means all the amendments which added to the Ninth Schedule before that date were valid. All future amendments were held to be challengeable on the grounds that the Acts and Regulations which they inserted to the Ninth Schedule damaged the basic structure.

Implications of Kesavananda Bharati case on the independence of judiciary

The very next day of the *Kesavananda Bharathi* case judgement, on April 25, 1973, Indira Gandhi's government struck a blow at the independence of the judiciary. It superseded three most senior Judges of the Supreme Court and appointed Justice A.N. Ray as a successor to Chief justice Sikri. The superseded judges, Justices Shelat, Hegde and Grover, who were on the side of Sikri on the *Kesavananda* Bench resigned in protest.

Conclusion

The basic structure doctrine, as future events showed, saved Indian democracy to a greater extent. *Kesavananda Bharati* case will always occupy a hallowed place in our constitutional history. No wonder this made Bangladesh to adopt the Basic Structure doctrine in 1989, by expressly relying on the reasoning in the *Kesavananda* case, in its ruling on *Anwar Hossain Chowdhary v. Bangladesh*.