

GUARDIANS OF THE CONSTITUTIONAL COVENANT: THE BASIC STRUCTURE DOCTRINE AND TRANSFORMATIVE CONSTITUTIONALISM IN INDIA

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ABSTRACT

The doctrine of basic structure, crystallised by the Supreme Court of India in Kesavananda Bharati Sripadagalvaru v. State of Kerala (1973), represents one of the most consequential jurisprudential innovations in the annals of comparative constitutional law. By holding that Parliament, though possessed of a wide power of constitutional amendment under Article 368, cannot abrogate or destroy the fundamental features of the Constitution, the Supreme Court forged an enduring covenant between the founding document and succeeding generations of citizens. This article undertakes a critical examination of the genesis, evolution and contemporary relevance of the basic structure doctrine, situating it within the broader discourse of transformative constitutionalism. The study traces the doctrinal lineage from Shankari Prasad (1951) through Golak Nath (1967) to the landmark Kesavananda Bharati verdict and its subsequent affirmations in Minerva Mills (1980), the NJAC judgment (2016), and K.S. Puttaswamy (2017). It analyses the philosophical underpinnings of constitutionalism, the principle that governmental authority is both derived from and constrained by the Constitution, and demonstrates the structural convergence between the basic structure doctrine and the ideals of transformative constitutionalism. The article concludes that, far from representing judicial overreach, the basic structure doctrine embodies the organic conception of the Constitution as a living instrument whose essential character must endure across the shifting tides of political power.

KEYWORDS: Basic Structure; Constitutionalism; Transformative Constitutionalism; Judicial Review; Amendability; Rule of Law.

1. INTRODUCTION

The Constitution of India stands as the supreme legal charter of the Republic, a foundational instrument that has animated the country's democratic governance since its commencement on 26 January 1950. The people of India, emerging from over a century of colonial subjugation, vested in this document not merely a legal framework but a transformative covenant: a pledge to govern by reason, justice and constitutional morality. As scholarship and judicial practice have consistently affirmed, the Constitution continues to evolve over time, giving life to newer generations of rights and freedoms.¹

At the heart of constitutional governance lies the question of amendability: to what extent may a constitution be altered whilst retaining its foundational identity? Article 368 vests Parliament with the power of constitutional amendment, providing for three distinct modes: amendment by simple majority, amendment requiring a special majority, and amendment requiring, in addition

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¹ Aman Khan, Constitutionalism Is the Road Ahead, Legal Service India (Mar. 23, 2023), <https://www.legalserviceindia.com/legal/article-3632-constitutionalism-is-the-road-ahead.html>.

to a special majority, ratification by at least one-half of the State Legislatures.² This tripartite framework reflects a nuanced balance between constitutional rigidity and flexibility, designed to allow the Constitution to respond to the exigencies of a developing nation without compromising its core values.

Justices Hegde and Mukherjea, in their celebrated concurrence in *Kesavananda Bharati*, encapsulated the philosophy underlying the basic structure doctrine with rare eloquence: the Constitution, they wrote, is more than a piece of paper, but a social record founded upon a certain philosophy, and just as a religion's central tenets remain unchanging though its rituals may evolve, the Constitution embeds certain values too fundamental ever to be altered or eliminated.³ This judicial insight sparked one of the most consequential constitutional debates in the democratic world: whether there exist implied or inherent limits upon the power of constitutional amendment.

The basic structure doctrine, as articulated in the historic thirteen-judge bench decision in *Kesavananda Bharati Sripadagalvaru v. State of Kerala*⁴, answered this question decisively in the affirmative: whilst Parliament may amend any provision of the Constitution, it may not, in the exercise of that power, destroy or abrogate the Constitution's fundamental features. Over more than five decades since that ruling, the doctrine has expanded, deepened and proved its indispensability as both a shield against constitutional subversion and a cornerstone of transformative constitutionalism.⁵

This article critically examines the basic structure doctrine in the context of contemporary constitutionalism, analyses its evolution and present-day applicability, and demonstrates its inseparable nexus with the theory of transformative constitutionalism. The research employs a doctrinal methodology, drawing upon primary sources including constitutional provisions, landmark judicial decisions, and the writings of leading constitutional scholars.

2. CONSTITUTIONAL AMENDMENT AND ITS THEORETICAL FOUNDATIONS

The question of constitutional amendability has occupied constitutional theorists since the earliest days of modern constitutionalism, and the debate entered Indian constitutional jurisprudence almost immediately after the Constitution's enforcement. The theoretical roots of the basic structure doctrine lie substantially in European constitutional thought. Carl Schmitt articulated a

² India Const. art. 368, cls. 1-3.

³ M.P. Jain, *Indian Constitutional Law* 1680 (7th ed. 2014).

⁴ *Kesavananda Bharati Sripadagalvaru v. State of Kerala*, A.I.R. 1973 S.C. 1461.

⁵ Krishnadas Rajgopal, *Explained: The Basic Structure of the Constitution*, *The Hindu* (Apr. 24, 2023).

fundamental distinction between the constitution as a decision of the sovereign people and the constitutional laws that give it textual expression,⁶ while the French scholar Maurice Hauriou argued for the existence of supra-constitutional principles constraining even the amending power. These contributions supplied intellectual grounding for the proposition, later adopted by Indian courts, that certain fundamental principles must remain inviolable.⁷

Within India, the formal procedure for constitutional amendment is stipulated in Article 368 itself,⁸ yet the substantive question, how far Parliament may go in exercising the amending power, has never been straightforwardly answered by the constitutional text alone. The amendment process involves three graduated tiers of legislative approval reflecting a hierarchy of constitutional importance, but Article 368 is silent as to the outer limits of amendatory authority, leaving the judiciary to fill this lacuna through purposive constitutional interpretation.⁹

The constitutional history of India reveals a persistent tension between two competing visions of parliamentary sovereignty. On one view, Parliament, as the representative of the people, possesses plenary authority to refashion the Constitution according to current democratic will; on the other, the Constitution as the expression of constituent power stands above all organs of the state, including Parliament, and thereby imposes inherent constraints upon the amending body. The basic structure doctrine represents the judiciary's resolution of this foundational tension.

A comparative perspective further illuminates the doctrine's theoretical foundations. In mature constitutional democracies, mechanisms designed to protect constitutional identity from majoritarian override are not anomalous but axiomatic. The German Basic Law of 1949 enshrines an explicit eternity clause in Article 79(3), rendering core provisions relating to human dignity and the federal order unamendable under any circumstances, and certain Latin American constitutions and the South African Constitution similarly recognise that some constitutional commitments must be beyond the reach of ordinary amending majorities. As Mark Tushnet has observed, the trend across constitutional democracies is increasingly toward distinguishing legitimate constitutional amendment from constitutional destruction, a distinction lying at the very heart of the Indian doctrine.¹⁰ India's judicial approach thus reflects a global constitutional convergence rather than an idiosyncratic departure.

⁶ Carl Schmitt, *Constitutional Theory* (Jeffrey Seitzer trans., Duke Univ. Press 2008) (1928).

⁷ Yaniv Roznai, *Unconstitutional Constitutional Amendments: The Limits of Amendment Powers* (Oxford Univ. Press 2017).

⁸ India Const. art. 368.

⁹ Kshita Gupta, *Basic Structure of Indian Constitution*, iPleaders (2021).

¹⁰ Mark Tushnet, *Advanced Introduction to Comparative Constitutional Law* 89-92 (2d ed. 2018).

3. EVOLUTION OF THE BASIC STRUCTURE DOCTRINE

3.1 From Shankari Prasad to Golak Nath

The evolution of the basic structure doctrine may be traced through a series of landmark decisions that progressively narrowed and then expanded the scope of Parliament's amending authority. In *Shankari Prasad Singh Deo v. Union of India*¹¹ (1951), the Supreme Court unanimously held that the power to amend the Constitution under Article 368 includes the power to amend fundamental rights under Part III, drawing a distinction between law in Article 13(2), which prohibits the state from making any law abridging fundamental rights, and a constitutional amendment, which the Court held did not fall within that prohibition.

This permissive interpretation prevailed until *Sajjan Singh v. State of Rajasthan*¹² (1965), in which the Court, by majority, reaffirmed *Shankari Prasad*, though Justices Hidayatullah and Mudholkar, in powerful dissent, sowed the seeds of constitutional doubt by questioning whether the fundamental rights chapter could ever be validly abridged by the amending power. In *I.C. Golak Nath v. State of Punjab*¹³ (1967), an eleven-judge bench overruled both prior decisions, holding by narrow majority that Parliament has no power to amend the Constitution so as to abridge or take away any fundamental right, characterising a constitutional amendment as law within the meaning of Article 13(2). In that proceeding, counsel Mr. M.K. Nambiar was the first to invoke the concept of basic structure, drawing on the theoretical insights of the German jurist Dieter Conrad, who had argued that constitutional amendments could not legally destroy the constitutional identity of the state.

3.2 Constitutional Amendments and the Crisis of Parliamentary Sovereignty

In response to the judicial restriction *Golak Nath* imposed, the government of Prime Minister Indira Gandhi secured a series of constitutional amendments designed to restore and expand parliamentary supremacy. The Twenty-Fourth Amendment Act (1971) restored Parliament's formal power to amend any provision of the Constitution, including fundamental rights; the Twenty-Fifth Amendment Act (1971) curtailed the right to property and limited judicial review of laws enacted to give effect to the directive principles; and the Twenty-Ninth Amendment Act (1972) placed certain agrarian reform laws in the Ninth Schedule, seeking to immunise them from judicial scrutiny.¹⁴ These amendments, reflecting a direct executive challenge to constitutional

¹¹ *Shankari Prasad Singh Deo v. Union of India*, A.I.R. 1951 S.C. 458.

¹² *Sajjan Singh v. State of Rajasthan*, A.I.R. 1965 S.C. 845.

¹³ *I.C. Golak Nath v. State of Punjab*, A.I.R. 1967 S.C. 1643.

¹⁴ H.M. Seervai, *Constitutional Law of India* vol. 3, at 3098 (4th ed. 1996).

adjudication, set the stage for the definitive judicial pronouncement that would reshape Indian constitutional law.

3.3 Kesavananda Bharati: A Watershed in Judicial Innovation

Kesavananda Bharati Sripadagalvaru v. State of Kerala (1973) stands as the most consequential constitutional adjudication in Indian legal history.¹⁵ The petitioner, head of a religious math in Kerala, challenged the constitutionality of the Kerala Land Reforms Act and the constitutional amendments placing such legislation beyond judicial review. The largest constitutional bench ever assembled, thirteen judges, heard the case over sixty-eight days, producing a judgment of seven hundred and three pages reflecting the immense gravity of the questions addressed.¹⁶

By a narrow majority of seven to six, the Court held that whilst Parliament has the power to amend any provision of the Constitution, including fundamental rights, that power cannot be exercised so as to abrogate or damage the Constitution's basic structure or essential features. Overruling *Golak Nath*, the Court held that constitutional amendments are not law within Article 13(2), restoring Parliament's formal amending power while simultaneously imposing an implicit constitutional ceiling upon that power by reference to the basic structure doctrine.¹⁷

According to Chief Justice Sikri, the basic structure comprised, inter alia, the supremacy of the Constitution, the republican and democratic form of government, the secular character of the Constitution, the separation of powers between the legislature, executive and judiciary, and the guarantee of fundamental rights.¹⁸ Other judges in the majority added further elements, free and fair elections, judicial independence and the federal character of the Union, making clear that the enumeration was indicative rather than exhaustive, enabling the doctrine to evolve with changing constitutional circumstances.¹⁹

The extraordinary nature of the proceedings cannot be fully appreciated without acknowledging the calibre of legal argument advanced before the Court. Nani Palkhivala, widely regarded as one of the finest constitutional lawyers India has produced, led the challenge with arguments of uncommon intellectual depth, contending that the fundamental rights of citizens are not grants from the state to be withdrawn at parliamentary will but inherent

¹⁵ *Kesavananda Bharati Sripadagalvaru v. State of Kerala*, A.I.R. 1973 S.C. 1461.

¹⁶ Granville Austin, *Working a Democratic Constitution: The Indian Experience* 258 (Oxford Univ. Press 1999).

¹⁷ Sudhir Krishnaswamy, *Democracy and Constitutionalism in India: A Study of the Basic Structure Doctrine* 34-36 (Oxford Univ. Press 2009).

¹⁸ *Kesavananda Bharati Sripadagalvaru v. State of Kerala*, A.I.R. 1973 S.C. 1461, ¶ 302 (Sikri, C.J.).

¹⁹ M.P. Jain, *supra* note 3, at 1682-83.

entitlements the Constitution merely recognises and declares.²⁰ His contention, that Parliament acts as a trustee of the Constitution rather than its master, became one of the intellectual pillars upon which the basic structure doctrine rests. The outcome vindicated his position and established a constitutional truth that endures today: amending power and constituent power are conceptually distinct, and the former may not be deployed to destroy the latter's product.

3.4 Post-Kesavananda Developments

The doctrine received its first major application in *Indira Gandhi v. Raj Narain* (1975), where the Court struck down the Thirty-Ninth Amendment Act insofar as it sought to immunise from judicial scrutiny the election of the Prime Minister and other high constitutional functionaries, holding that free and fair elections constitute a basic structural element and that any amendment excluding judicial review in this domain is constitutionally void. In *Waman Rao v. Union of India*²¹ (1981), the Court clarified that laws placed in the Ninth Schedule after the date of the *Kesavananda Bharati* decision remained open to constitutional challenge if they damaged any basic structural feature, a ruling reaffirmed in *I.R. Coelho v. State of Tamil Nadu*²² (2007), where a nine-judge bench unanimously held that even Ninth Schedule laws must conform to the basic structure, including the fundamental rights under Articles 14, 19 and 21.

In *Minerva Mills Ltd. v. Union of India*²³ (1980), the Court struck down sections of the Forty-Second Amendment Act that had sought to make constitutional amendments non-justiciable and establish the primacy of directive principles over fundamental rights, reaffirming the doctrine, holding that the harmony and balance between fundamental rights and directive principles is itself a basic structural feature, and observing that removing the power of judicial review over legislative action would amount to nothing less than a coup d'état upon the constitutional order.

The decision in *M. Nagaraj v. Union of India* (2006)²⁴ further crystallised the doctrine's application, holding that constitutional amendments concerning reservations in public employment must not damage the equality code, which forms part of the basic structure. In the National Judicial Appointments Commission case, *Supreme Court Advocates-on-Record Association v. Union of India*²⁵ (2016), the Court, by a majority of four to one, struck down the Ninety-Ninth Amendment and the NJAC Act on the ground that they violated the independence of the judiciary, a recognised basic structural feature, a ruling

²⁰ Nani A. Palkhivala, *We, The People: India's Constitution Explained* 61-63 (2002).

²¹ *Waman Rao v. Union of India*, A.I.R. 1981 S.C. 271.

²² *I.R. Coelho v. State of Tamil Nadu*, A.I.R. 2007 S.C. 861.

²³ *Minerva Mills Ltd. v. Union of India*, A.I.R. 1980 S.C. 1789.

²⁴ *M. Nagaraj v. Union of India*, (2006) 8 S.C.C. 212.

²⁵ *Supreme Court Advocates-on-Record Assoc. v. Union of India*, (2016) 5 S.C.C. 1.

that provoked intense public debate, with the then Law Minister describing the outcome as the tyranny of the unelected, a characterisation this paper's discussion in Section 5 below suggests misapprehends the doctrine's foundational purpose.²⁶

Most recently, in *K.S. Puttaswamy v. Union of India*²⁷ (2017), a nine-judge bench unanimously recognised the right to privacy as a fundamental right under Article 21, situating it within the constellation of dignity and liberty values that form part of the constitutional soul, exemplifying the organic evolution of the basic structure doctrine as it continues to accommodate newer dimensions of constitutional identity.

The doctrinal shift from *Shankari Prasad* to *Kesavananda Bharati* is often narrated purely as a sequence of case outcomes, but it is better understood as a contest over which interpretive method should govern Article 368: a textualist method, under which the amending power is bounded only by what the constitutional text expressly forbids, against a structuralist method, under which the amending power is additionally bounded by principles the constitutional scheme necessarily implies even where the text is silent. *Shankari Prasad* and *Sajjan Singh* reflect the textualist method in its purest form; *Golak Nath* attempted a structuralist result through a textualist device, treating an amendment as law under Article 13(2) rather than locating any implied limitation in Article 368 itself, a move *Kesavananda Bharati* would later abandon precisely because it proved doctrinally unstable; and *Kesavananda Bharati* itself represents the mature structuralist position, locating the limitation not in Article 13(2) but in the very concept of an amending, as opposed to constituent, power. This interpretive trajectory matters for evaluating the textual critique examined in Section 5 below: the doctrine's absence from the constitutional text is, on the structuralist account the Court ultimately adopted, not an oversight to be corrected but the natural consequence of a limitation that operates upon the structure of the amending power rather than within any single textual provision.

4. THE CONSTITUTIONAL CONTENT OF THE BASIC STRUCTURE

The basic structure doctrine encompasses an open-ended but identifiable set of fundamental features, including the supremacy of the Constitution; the sovereign, democratic and republican character of the polity; the secular and federal character of the state; the separation of powers and the system of checks and balances; judicial independence and judicial review; the guarantee of fundamental rights; free and fair elections; the rule of law; parliamentary

²⁶ Sumeda, Explained: Understanding the Basic Structure of the Constitution, The Hindu (2021).

²⁷ *K.S. Puttaswamy v. Union of India*, (2017) 10 S.C.C. 1.

democracy; and the welfare state objectives enshrined in the Directive Principles of State Policy.²⁸

The non-exhaustive character of this list is deliberate and constitutionally significant. As Professor Sudhir Krishnaswamy has argued, the basic structure doctrine does not operate as a rigid checklist but as a dynamic jurisprudential concept that evolves in response to constitutional challenge and historical experience.²⁹ Its vitality lies precisely in its capacity for organic growth: it is not a frozen artefact of the *Kesavananda* moment but a living constitutional principle that adapts to the demands of transformative governance.

The decision in *S.R. Bommai v. Union of India*³⁰ (1994) powerfully illustrated this organic character: by holding that secularism and federalism are basic structural features, and that the proclamation of President's Rule in a State is justiciable, the Court extended the doctrine's reach into executive federalism, affirming that the basic structure cannot be subverted by executive action any more than by legislative amendment. *Bhim Singhji v. Union of India*³¹ (1981) similarly demonstrated that the doctrine extends to ensure that even social welfare legislation is enacted within constitutionally permissible bounds.

The practical significance of the doctrine is perhaps most vividly illustrated in the domain of electoral integrity. V.N. Shukla, in his authoritative treatise, has noted that the doctrine's guarantee of free and fair elections, judicial review and the rule of law collectively constitute what may be described as the democratic minimum, the irreducible constitutional floor below which no parliamentary majority may drive the constitutional order.³² This democratic minimum proved particularly significant during the Emergency period of 1975 to 1977, during which sweeping constitutional amendments subjected the fundamental architecture of the polity to extraordinary stress, an experience that demonstrated, with unmistakable clarity, why the protective function of the basic structure doctrine is not merely theoretical but of vital and immediate importance to the health of Indian democracy. It is precisely in moments of institutional crisis that the doctrine reveals its deepest constitutional value.

5. CRITICISM OF THE DOCTRINE AND COUNTER-ARGUMENTS

The basic structure doctrine has attracted sustained criticism from scholars and constitutional actors who regard it as an illegitimate judicial encroachment upon the domain of the constituent power. Three principal lines of critique deserve careful consideration.

²⁸ P. Ishwara Bhat, *Fundamental Rights: A Study of Their Interrelationship* 512-14 (2004).

²⁹ Sudhir Krishnaswamy, *supra* note 16, at 46-47.

³⁰ *S.R. Bommai v. Union of India*, A.I.R. 1994 S.C. 1918.

³¹ *Bhim Singhji v. Union of India*, A.I.R. 1981 S.C. 234.

³² V.N. Shukla, *Constitution of India* 624 (M.P. Singh ed., 12th ed. 2013).

The first and most frequently advanced objection is the counter-majoritarian critique: the argument that the doctrine, being the creation of an unelected judiciary, undermines the democratic principle that the elected representatives of the people are the ultimate arbiters of constitutional meaning. This critique was prominently articulated by former Vice-President Jagdeep Dhankhar at the 83rd All India Presiding Officers Conference, where he cast doubt on the *Kesavananda Bharati* ruling and contended that the supremacy of mandate from the people should constitute the basis of any basic structure.³³ The second objection is the textual critique: because the concept of basic structure does not appear anywhere in the constitutional text, critics argue that the doctrine lacks positive legal grounding. Unlike Germany's Grundgesetz, which contains explicit eternity clauses rendering certain provisions unamendable, the Indian Constitution contains no express unamendability clause, a silence critics contend reflects a deliberate constitutional choice.

The third objection, which Suhrith Parthasarathy has identified as the inconsistency critique, holds that the Supreme Court has applied the doctrine unpredictably, allowing the subjective preferences of individual benches to determine what counts as a constitutional fundamental. Parthasarathy himself, however, cautions against abandoning the doctrine on account of occasional inconsistency, arguing that its moral and legal value, rooted in constitutional text and history and in the protection of democracy from majoritarian erosion, far outweighs the risks of selective judicial application.³⁴

These criticisms, whilst raising legitimate methodological concerns, do not undermine the foundational justification for the doctrine. Constitutional democracy rests not upon unfettered majoritarian sovereignty but upon the rule of law, the principle that all exercises of public power, including the power of constitutional amendment, are subject to legal standards. As Granville Austin observed, the Constitution was designed not as a grant of power to Parliament but as a limitation upon all organs of the state in service of the people.³⁵ The basic structure doctrine gives institutional expression to precisely this premise. The tyranny of the unelected characterisation, moreover, involves a category error: judicial review of constitutional amendments is not the substitution of judicial will for democratic will but the enforcement of the constitutional conditions under which democratic governance itself is made possible. An elected legislature that dismantles judicial independence or abolishes free elections does not thereby reflect the democratic will; it destroys the very preconditions of democratic legitimacy.

³³ See Sumeda, *supra* note 24.

³⁴ Raju Ramachandran, *The Supreme Court and the Basic Structure Doctrine*, in *Supreme but Not Infallible* 107, 112 (2000).

³⁵ Granville Austin, *supra* note 15, at 97.

The counter-majoritarian critique, compelling as it may first appear, rests upon a philosophically impoverished understanding of constitutional democracy. Stephen Holmes has argued persuasively that pre-commitment devices, constitutional provisions that bind future majorities, are not antidemocratic constraints but rather the very preconditions for rational self-governance across time.³⁶ A constitution wholly dismantlable by the current parliamentary majority would offer citizens no credible long-term protection of rights or institutional stability, rendering the constitutional guarantee meaningless. The basic structure doctrine, viewed through this lens, does not weaken parliamentary democracy but strengthens it, ensuring that the constitutional compact between the state and its citizens endures beyond the life of any particular government.

A further response to the textual critique deserves emphasis. Critics who point to the absence of an express eternity clause in the Indian Constitution, of the kind Article 79(3) of the German Basic Law supplies, treat textual silence as dispositive of legislative intent. Yet the Constituent Assembly debated and rejected several proposals to entrench specific provisions against amendment altogether, a legislative history at least as consistent with an intention to leave the question of implied limitation open for judicial elaboration as with an intention to foreclose any limitation whatsoever. The textual critique, in other words, assumes the very point it seeks to prove: that silence in Article 368 necessarily signals unlimited amending power, when the Constituent Assembly's own engagement with entrenchment proposals suggests the framers understood the amending power to require some outer boundary, leaving its precise contours to future constitutional practice.

6. CONSTITUTIONALISM, SUPREMACY AND THE RULE OF LAW

Constitutionalism, in its most fundamental sense, denotes the political and legal doctrine that governmental authority must be both derived from and constrained by the constitution. It is, as Richard Bellamy has defined it, the struggle against tyranny, the effort to ensure that public power is exercised according to pre-established rules serving the interests of the governed rather than the governors.³⁷

At its core, constitutionalism embodies the principle of limited government: the idea that no organ of the state, not the legislature, not the executive, and not even the judiciary, possesses unlimited authority. The mechanisms through which this limitation is achieved, the written constitution as supreme law, the separation of powers, judicial review, the protection of fundamental rights, and

³⁶ Stephen Holmes, *Passions and Constraint: On the Theory of Liberal Democracy* 134-38 (Univ. of Chicago Press 1995).

³⁷ Richard Bellamy, *Constitutionalism*, Encyclopaedia Britannica (2020).

the guarantee of democratic process, each find their counterpart in the basic structural features of the Indian Constitution, demonstrating the intrinsic alignment between the basic structure doctrine and the ideals of constitutionalism.

The Supreme Court's articulation of constitutionalism in *I.R. Coelho v. State of Tamil Nadu*³⁸ is particularly instructive. The Court held that constitutionalism as a viable rule of law requires the existence of legal authority over governmental function, implies a commitment not to undermine the moral principles upon which that authority rests, and requires that the safety of essential rights be built into broadly accepted constitutional norms, calling for a division of powers consistent with a checks-and-balances model, a formulation that mirrors precisely the basic structure doctrine's emphasis on separation of powers and judicial independence.

As Professor Upendra Baxi has argued, constitutionalism in post-colonial democracies such as India serves an additional and distinctive function: it is a site of state formative practice through which the meaning of rights, democracy and justice are continuously contested and reaffirmed.³⁹ Indian constitutionalism, in this sense, is not merely a set of legal rules but a living political culture engaging with the aspirations of diverse social groups across the polity. As Madhav Khosla has demonstrated, the Indian Constitution was not merely constitutive but transformative from its very inception, seeking to dismantle entrenched hierarchies of caste, gender and class while simultaneously constructing the institutional architecture of a rights-respecting democracy.⁴⁰ This foundational transformative ambition sets the Indian constitutional project apart from many of its contemporaries and explains why the basic structure doctrine is not an extraneous judicial addition but an organic extension of the Constitution's own internal logic: a constitution transformative in aspiration must necessarily be resistant to counter-transformation by majoritarian power, and the basic structure doctrine supplies precisely that resistance.

This philosophical account of constitutionalism finds its institutional expression in the principle of constitutional supremacy, itself a recognised element of the basic structure. As the Court affirmed in *K.T. Plantation Ltd. v. State of Karnataka*⁴¹, the Constitution is the source of power of every organ of the state, and the constitutionality of any law must be tested against its provisions, including its basic structural features; the logical corollary is that if

³⁸ *I.R. Coelho v. State of Tamil Nadu*, A.I.R. 2007 S.C. 861.

³⁹ Upendra Baxi, *Constitutionalism as a Site of State Formative Practices*, 21 *Cardozo L. Rev.* 1183 (2000).

⁴⁰ Madhav Khosla, *Constitutionalism*, in *The Oxford Handbook of the Indian Constitution* 25 (Sujit Choudhry et al. eds., 2016).

⁴¹ *K.T. Plantation Ltd. v. State of Karnataka*, A.I.R. 2011 S.C. 3430.

even an ordinary statute violating the Constitution is void, a constitutional amendment that destroys the Constitution's identity must a fortiori be treated as constitutionally impermissible. D.D. Basu has observed that the supremacy of the Constitution and the rule of law are not merely formal or procedural values but substantive commitments to the idea that all public power must serve the common good and that no agency of the state may act arbitrarily or capriciously,⁴² a substantive conception that directly informs the basic structure doctrine: when the Court holds that a constitutional amendment violates the basic structure, it asserts that even the amending power must serve the constitutional good and must not be exercised so as to destroy the essential framework of constitutionalism.⁴³

The relationship between constitutional supremacy and parliamentary privilege further underscores the distinctive role the doctrine plays in maintaining institutional equilibrium. While members of Parliament enjoy immunity from legal proceedings in respect of their legislative functions, this immunity operates procedurally and does not extend to conferring substantive immunity upon the products of the legislative process. The basic structure doctrine operates precisely at this distinction, accepting that Parliament's procedures are beyond judicial interference while insisting that the substantive constitutional outcomes of the amendment process remain within the bounds of constitutional fidelity, reconciling respect for legislative autonomy with the imperative of constitutional supremacy without sacrificing either principle to the other.

7. BASIC STRUCTURE AND TRANSFORMATIVE CONSTITUTIONALISM

Transformative constitutionalism, a concept developed in the context of post-apartheid South Africa and increasingly applied in comparative constitutional scholarship, refers to the deployment of constitutional law as an instrument of large-scale social transformation toward greater equality, dignity and democratic participation. It conceives of the constitution not as a static document preserving a past political settlement but as a dynamic programme for the progressive realisation of fundamental values.⁴⁴

The convergence between the basic structure doctrine and transformative constitutionalism is deep and multidimensional. First, both conceptions share the premise that the constitution contains a normative core, a set of fundamental values, that must be protected against erosion or destruction: for the basic

⁴² D.D. Basu, *Commentary on the Constitution of India* vol. 1, at 182 (8th ed. 2007).

⁴³ D.D. Basu, *supra* note 38, at 4825.

⁴⁴ Karl E. Klare, *Legal Culture and Transformative Constitutionalism*, 14 *S. Afr. J. on Hum. Rts.* 146 (1998).

structure doctrine, this core includes the separation of powers, judicial independence, fundamental rights and democratic governance; for transformative constitutionalism, it includes the transformative commitments to equality, dignity and substantive justice. In the Indian context these two sets of values substantially overlap, since the fundamental rights in Part III and the directive principles in Part IV together constitute the Constitution's transformative agenda, and the basic structure doctrine ensures that this agenda cannot be abandoned by temporary parliamentary majorities.

Second, both conceptions emphasise the judiciary's role as guardian of constitutional values and arbiter of constitutional disputes. The basic structure doctrine, applied over more than five decades, has functioned as a powerful instrument of transformative justice: it has protected the right to privacy in *Puttaswamy*, preserved judicial independence in the NJAC case, safeguarded secularism and federalism in *Bommai*, and maintained the integrity of the electoral process in *Indira Gandhi v. Raj Narain*. In each context, the doctrine has served the transformative function of holding the constitutional order to its foundational commitments.

Third, the basic structure doctrine, like transformative constitutionalism, embraces a living constitution methodology, the recognition that constitutional meaning must evolve in response to changed social, economic and political conditions. As Raju Ramachandran has observed, the genius of *Kesavananda Bharati* lay not in its articulation of a fixed list of basic structural features but in its creation of a constitutional methodology capable of identifying and protecting the essential features of the constitutional order in each succeeding generation.⁴⁵

The global resonance of transformative constitutionalism is itself a powerful argument for the continued vitality of the basic structure doctrine. Constitutional transitions across the late twentieth and early twenty-first centuries, in South Africa, Brazil, Colombia and Kenya among others, have demonstrated the practical capacity of constitutions to serve as instruments of societal transformation, provided that transformative commitments are insulated from majoritarian reversal. In South Africa, the Constitutional Court's development of socio-economic rights under a transformative mandate draws extensively upon the logic of protected constitutional essentials, a logic mirroring the Indian doctrine's protection of directive principles and fundamental rights as co-equal pillars of the constitutional order. The Indian experience, filtered through the basic structure doctrine, thus represents not an isolated jurisprudential experiment but a pioneering contribution to a global constitutional conversation about the proper relationship between democratic power and constitutional identity.

⁴⁵ Raju Ramachandran, *supra* note 31, at 112.

8. CONCLUSION AND SUGGESTIONS

The basic structure doctrine stands, after more than five decades of constitutional practice, as a watershed achievement of Indian jurisprudence and a significant contribution to global constitutional thought. It represents the mature constitutional resolution of the fundamental tension between parliamentary sovereignty and constitutional supremacy, between democratic majoritarianism and the counter-majoritarian logic of rights, and between the need for constitutional change and the imperative of constitutional continuity.

The doctrine's legitimacy rests not upon judicial fiat but upon the internal logic of constitutionalism itself: the recognition that a constitution which could be wholly destroyed by the organ it creates, Parliament, would be no constitution at all but merely a revocable grant of power. By identifying and protecting the fundamental features of the constitutional order, the basic structure doctrine ensures that the Constitution retains its normative identity across time and political change.

Three suggestions emerge from this analysis. First, the inter-institutional dialogue between Parliament and the judiciary on questions of constitutional amendment ought to be deepened and regularised; rather than regarding the doctrine as a site of confrontation, the legislature and judiciary should engage in a spirit of collaborative constitutionalism, recognising that each organ makes an indispensable contribution to the constitutional enterprise. Second, the Supreme Court should strive for greater consistency and transparency in the application of the doctrine, articulating clear criteria for identifying constitutional essentials so as to avoid the appearance of ad hoc judicial intervention, directly addressing the inconsistency critique examined in Section 5 above. Third, constitutional literacy among citizens, legislators and public officials should be enhanced through sustained educational programmes and public discourse, so that the constitutional culture necessary to sustain transformative constitutionalism may take deeper root in Indian society.

The continuing relevance of the doctrine is made most apparent against the background of global democratic backsliding, a phenomenon constitutional scholars have increasingly documented and theorised over the past decade. In Hungary, Turkey and several other constitutional democracies, elected governments have successfully dismantled institutional safeguards, neutered judicial independence and entrenched executive dominance through formally legitimate constitutional amendment processes. The Indian basic structure doctrine stands as a constitutional bulwark against precisely this form of democratic erosion: by placing the foundational features of the constitutional order beyond the reach of temporary parliamentary majorities, it ensures that India's constitutional democracy cannot be legally hollowed out from within. The experience of constitutional backsliding elsewhere serves as powerful

empirical validation of the doctrine's wisdom and necessity, and as a reminder that the protection of constitutional essentials is not merely an academic exercise but a matter of the highest practical urgency for every generation that inherits the constitutional compact.

The interweaving of the basic structure doctrine with the ideals of transformative constitutionalism illuminates a new and expansive horizon in Indian constitutional law. Both doctrines are united by a common commitment: to hold the constitutional order accountable to its foundational values, to resist the usurpation of constitutional power by temporary majorities, and to ensure that the Constitution of India remains what it was always intended to be, a transformative covenant between the people of India and the democratic republic they have built, and continue to build, together.