



## Basic Structure of Constitution

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### Why in News

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The concept of '**basic structure**' came into existence in the landmark judgment in **Kesavananda Bharati vs State of Kerala case (1973)** 47 years ago.

### Background

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- Since the adoption of Indian Constitution, debates have started regarding the **power of the Parliament to amend key provisions of the Constitution**.
- In the early years of Independence, the **Supreme Court conceded absolute power to Parliament in amending the Constitution**, as was seen in the verdicts in **Shankari Prasad case (1951)** and **Sajjan Singh case (1965)**.
  - In both **the cases** the court had ruled that the term "**law**" in **Article 13** must be taken to mean **rules or regulations made in exercise of ordinary legislative power** and **not amendments to the Constitution** made in exercise of constituent power under **Article 368**.
  - This means Parliament had the power to amend any part of the constitution including Fundamental rights.
  - Article 13(2) reads, "The State shall not **make any law** which takes away or abridges the right conferred by this Part (Part-III) and any law made in contravention of this clause shall, to the extent of contravention, be void."
- However, in the **Golaknath case (1967)**, the Supreme Court held that **Parliament could not amend Fundamental Rights**, and this power would be only with a Constituent Assembly.

The Court held that an **amendment under Article 368 is "law" within the meaning of Article 13** of the Constitution and therefore, if an amendment "takes away or abridges" a Fundamental Right conferred by Part III, it is void.

- To get over the judgments of the Supreme Court in **the Golaknath case (1967)**, **RC Cooper case (1970)**, and **Madhavrao Scindia case (1970)**, the then government headed by Prime Minister Indira Gandhi had enacted major **amendments to the Constitution (the 24<sup>th</sup>, 25<sup>th</sup>, 26<sup>th</sup> and 29<sup>th</sup>)**.
- All the four amendments brought by the government were challenged in the Kesavananda Bharati case.

## Kesavananda Bharati case

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- In Kesavananda Bharati case, a relief was sought against the Kerala government vis-à-vis **two state land reform laws**, which imposed restrictions on the management of religious property.
  - The **case was challenged under Article 26**, concerning the right to manage religiously owned property without government interference.
  - **Question underlying the case:** 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?
- The Constitutional Bench in Kesavananda Bharati case ruled by a 7-6 verdict that **Parliament could amend any part of the Constitution so long as it did not alter or amend the basic structure or essential features of the Constitution**.
- However, the court **did not define the term ‘basic structure’**, and only listed a few principles — **federalism, secularism, democracy** — as being its part.
- The ‘basic structure’ doctrine has since been interpreted to include
  - the supremacy of the Constitution,
  - the rule of law,
  - Independence of the judiciary,
  - doctrine of separation of powers,
  - sovereign democratic republic,
  - the parliamentary system of government,
  - the principle of free and fair elections,
  - welfare state, etc.
- An **example** of application of basic structure is the **SR Bommai case (1994)**. In this case the Supreme Court upheld the dismissal of BJP governments by the President following the demolition of the Babri Masjid, invoking a threat to secularism by these governments.
- **Arguments related to Basic structure**

Critics of the doctrine have called it undemocratic, since unelected judges can strike down a constitutional amendment. At the same time, its proponents have hailed the concept as a safety valve against majoritarianism and authoritarianism.

- **Origin:** The basic structure theory **was first introduced by Justice Mudholkar** in the Sajjan Singh case (1965) by referring to a 1963 decision of the Supreme Court of Pakistan.

Chief Justice Cornelius of Pakistan had held that the President of Pakistan could not alter the “fundamental features” of their Constitution.

**Source: IE**