

## Basic Structure Doctrine

### Why in news?

Vice-President Jagdeep Dhankar's remark that courts cannot dilute parliamentary sovereignty sparked a debate on separation of powers, bringing the focus back to the basic structure doctrine of the Constitution.

### What is the current issue?

- Currently, there is a tussle going on between the executive and the judiciary over the collegium system of appointing judges.
- The Vice-President has talked about the Supreme Court verdict which struck down the **National Judicial Appointments Commission (NJAC)** and the 99th Amendment in 2015.
- Mr. Dhankar also questioned the landmark ***Kesavananda Bharati case*** verdict.
- He said that he does not subscribe to the idea that the judiciary can strike down amendments passed by the legislature on the ground that they violate the '**basic structure**' of the Constitution.

### What is the basic structure doctrine?

- In 1973, a 13-judge Constitution Bench ruled in ***Kesavananda Bharati v. State of Kerala*** that **Article 368** does not enable Parliament to amend the basic framework of the document.
- The historic ruling came to be known as the basic structure doctrine — a judicial principle that the Constitution has certain basic features that cannot be altered or destroyed by amendments by Parliament.
- Over the years, various facets of the basic structure doctrine have evolved, and are **not openly defined** by the judiciary.

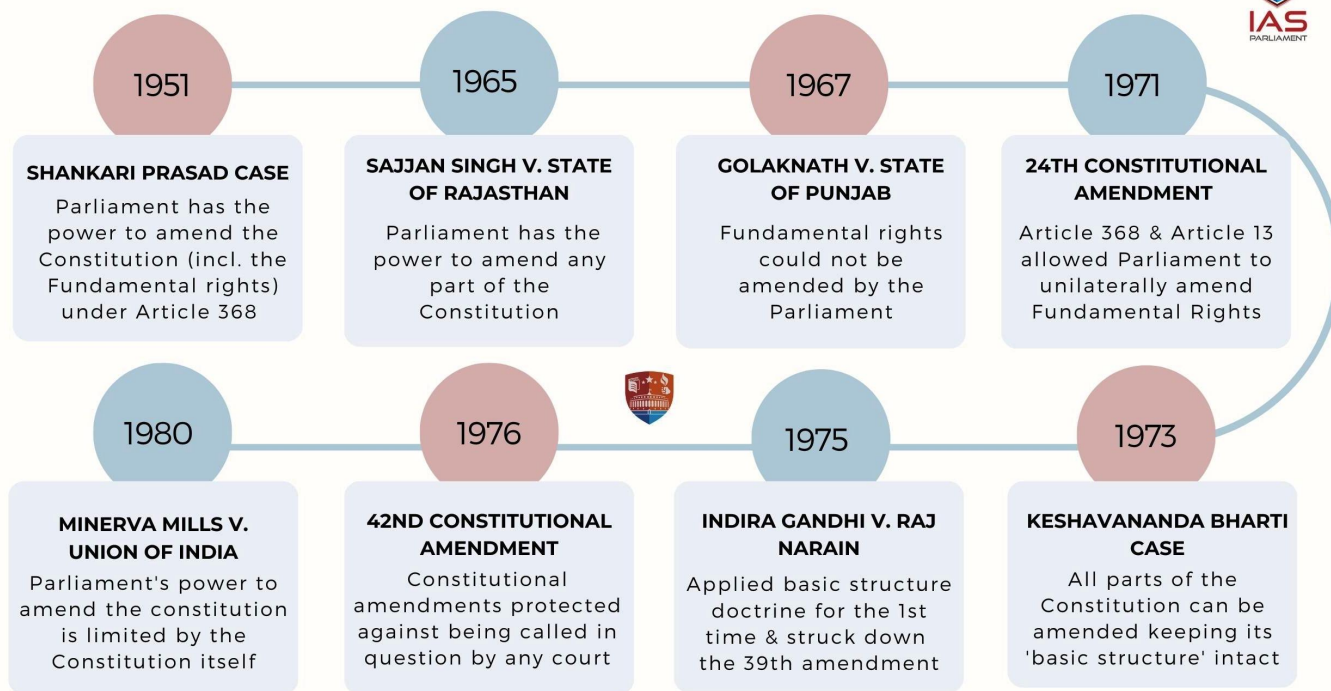
## CONSTITUENTS OF THE BASIC STRUCTURE

Federal & secular character of the Constitution	Democratic character of our policy	Liberty of thought, expression, belief, faith and worship
Welfare state and egalitarian society	Equality of status and opportunity	Separation of powers
Dignity of the individual	Unity and integrity of the nation	Sovereignty of India

### How did the basic structure doctrine evolve?

- **Shankari Prasad Case (1951)** - The Court upheld that under Article 368, the Parliament has the power to amend the Constitution including the Fundamental rights.
- **Sajjan Singh v. State of Rajasthan (1965)** - The Court reiterated the Parliament's power to amend any part of the Constitution.
- **I.C. Golak Nath v. State of Punjab (1967)** - The Supreme Court held that Parliament could not curtail fundamental rights guaranteed under the Constitution.
- The term 'basic structure' was first used in this case, by lawyer **M.K Nambyar**.
- The then government enacted the 24<sup>th</sup>, 25<sup>th</sup> and 29<sup>th</sup> Constitutional (Amendment) Acts that gave Parliament uncontrolled power to alter or even abolish any fundamental right.
- **Kesavananda Bharti Case (1973)** - The Supreme Court held that although Parliament has the power to amend any part of the Constitution, it could not use this power to alter or destroy its "basic structure".
- The verdict also made it clear that judicial review was only part of a system of checks and balances to ensure constitutional functionaries do not exceed their limits.
- **Indira Gandhi v. Raj Narain (1975)** - The basic structure theory was applied for the first time and the independent conduct of elections was categorized as basic structure
- **Minerva Mills case (1980)** - It pertained to the 42<sup>nd</sup> Amendment Act introduced by the Indira Gandhi government.
- In a majority verdict, the top court upheld the power of judicial review of constitutional amendments.

## EVOLUTION OF BASIC STRUCTURE DOCTRINE



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### Why is basic structure so significant?

- The basic structure of the Constitution is its **living spirit**, holding up the body of its text.
- It is the **soul of the Constitution**, inextricably linked to the values enshrined in the Preamble, without which the document and the ideas that make it sacred would collapse.
- Granville Austin's *Working of a Democratic Constitution* said that the basic structure doctrine is fairly said to have become the **bedrock of constitutional interpretation** in India.
- The courts have clarified that the basic structure aims to **secure the rule of law** essential for preservation of the democratic system.

### What are the criticisms of the doctrine?

- **Judicial overreach** - Its critics believe that the doctrine gives the judiciary the power to impose itself over a democratically formed government.
  - For instance, the NJAC judgment in 2015 has been termed as the "tyranny of the unelected".
- **Separation of powers** - It is said to be inconsistent with the principle of separation of powers.
- **Vague** - Basic structure doctrine is criticized for its vagueness as it has been left open before the judiciary to decide the same on the case to case basis.
  - In Kesavananda Bharti v. State of Kerala, each of the judges on the bench had their own conclusion.
- **Basic nature** - A doctrine in Constitutional sense can only be said Constitutional when it has a Constitutional genesis thus raising the question "Is the doctrine of basic structure really basic?"

## References

1. [The Hindu | The basic structure of the Constitution](#)
2. [The Hindu | Understanding the 'basic structure' of the Constitution](#)

