

Basic Structure Doctrine

Basic Structure of Constitution

Background

Land reforms post-Independence



Natural Resource

Help! Govt is violating right to property by giving my 500 acre land to hungry people

COLONIAL INDIA : British changed India's agrarian society

- Zamindars owned vast land
- Farmers became landless

INDEPENDENT INDIA : Govt brought land reforms

- Govt abolished Zamindari system
- Zamindars alleged that gov't's action of distributing their land to the poor, **violated their right to property.**

Champakam Dorairajan case 1951



National Resource

Help! Govt is violating equality by reserving seats for everyone

- Govt Order (Madras) 1927 distributed medical & engineering **seats to all sections of society** (42% to Non-Brahmin Hindus, 14% to Backward Hindus, 14% to Brahmin Hindus, 14% to Harijan Hindus, 7% to Christians, 7% to Muslims)

- A Brahmin woman challenged it as **violation of her right to equality.** Both the Madras High Court and the Supreme Court ruled in her favour.



Parliament

DPSP directs us to reduce inequalities. When poor will have land and education, competition will be on equal footing.



Court

Rights are in Part-3 (FR).
Welfarism is in Part-4 (DPSP).
Part-4 cannot override Part-3.
DPSP cannot override FR.



Parliament

CONSTITUTION (FIRST AMENDMENT) ACT, 1951

Ok, then we will put **Welfarism** in Part-3 :
Article 31A : Govt can acquire Estates
Article 15(4) : Govt can make special provisions for SC, ST and socially and educationally backward classes

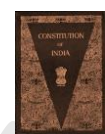
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|------|------|------|--------------------------------------|--|
| 1951 | 1961 | 1971 | Shankari Prasad case, 1951 | 1 st Amendment was challenged. Supreme Court upheld 1st amendment. |
| 1952 | 1962 | 1972 | | |
| 1953 | 1963 | 1973 | Golak Nath case, 1967 | SC ruled that Parliament cannot amend Fundamental Rights |
| 1954 | 1964 | 1974 | | |
| 1955 | 1965 | 1975 | 24 th Amendment Act, 1971 | Parliament brought it against Golak Nath judgement. It said that Parliament can amend anything in the Constitution. i.e. Parliament gave itself unlimited power to amend the Constitution. |
| 1956 | 1966 | 1976 | | |
| 1957 | 1967 | 1977 | Kesavanand Bharti case, 1973 | Parliament can amend anything in Constitution, but not 'Basic Structure' i.e. Parliament does not have unlimited power |
| 1958 | 1968 | 1978 | | |
| 1959 | 1969 | 1979 | | |
| 1960 | 1970 | 1980 | | |

- In 1950s, SC allowed Parliament to change FRs **to help weaker sections** (poor landless uneducated people)
- In 1971, Parliament enacted 24th amendment **to get unlimited powers**
- In 1973, SC said that Parliament has wide powers, but it **cannot destroy Constitution**

Basic Structure of Constitution

Concept

- Donee of limited power, cannot use that limited power, to get unlimited power.
- Limited power can't be enlarged into absolute power.
- Power receiver can't destroy power giver.



Constitution



Parliament

Constitution gave Parliament amending power.

- Can Parliament amend absolutely anything?
- Can Parliament destroy the Constitution?



Owners



Watchman

Owner gave Watchman power to control gate.

- Can Watchman stop absolutely anyone?
- Can Watchman stop the Owner?



Genie



Aladdin

Genie gave Aladdin power to ask 3 wishes.

- Can Aladdin ask unlimited wishes?
- Can Aladdin destroy the Genie?

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Basic Structure of Constitution

Facts for Prelims

<https://www.indiatoday.in/india/story/kesavananda-bharati-edneer-mutt-kerala-constituion-1719474-2020-09-07>

INDIA TODAY
Kesavananda Bharati: Seer who lost his case but won India a constitutional guarantee
 Edneer Mutt seer Kesavananda Bharati moved the Supreme Court in 1970 challenging land reform laws that Kerala had just passed. He lost the case but the Kesavananda Bharati case turned out to be a landmark ensuring that constitutional law prevailed in India.

Kesavanand Bharti case

| | |
|--------------------------------|-----------------------------|
| 24 th April 1973 | Date of judgement |
| 24 th Amendment | Upheld by Supreme Court |
| 13 Judge bench (by 7:6 ruling) | Largest bench in SC history |
| Won : Government | Two main parties |
| Lost : Kesavanand Bharti | |

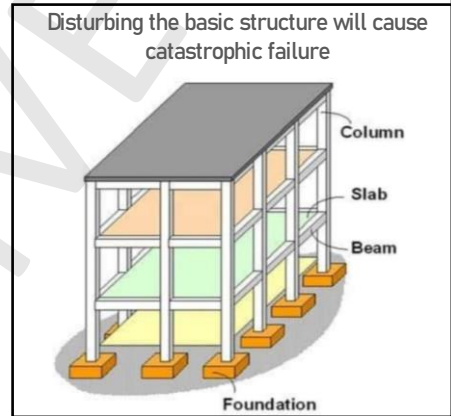
* Real winner were the people of India who got protection from arbitrary legislative action.

Which of the following statements are correct about the Basic Structure of Constitution?

- It is defined in Constitution. **FALSE**
- It was introduced by Supreme Court in response to the 42nd amendment. **FALSE**
- It can be amended by special majority in Parliament, ratified by 50% states by simple majority. **FALSE**
- Judiciary decides what comes under basic structure. **TRUE**

From various judgements, following are some the things that form the basic structure. Candidates must learn last two points. For other points, just think about the implications of Parliament removing that feature.

- ✓ Supremacy of Constitution **Parliament**
- ✓ Limited power of Parliament to amend the Constitution
- ✓ Separation of powers, Federalism
- ✓ Parliamentary system
- ✓ Welfare state (socio-economic justice)
- ✓ Harmony and balance between FRs and DPSPs
- ✓ Rule of Law, Principle of Equality, Secularism
- ✓ Freedom and dignity of the individual
- ✓ Democracy, Free and fair elections
- ✓ Judicial review, Independence of Judiciary
- ✓ Powers of SC u/a 32, 136, 141, 142
- ✓ Powers of HC u/a 226, 227



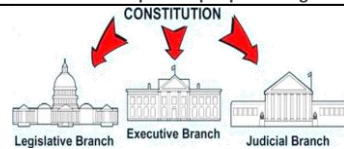
- Supreme Court**
- ❑ **Article 32:** right to approach SC for enforcement of fundamental rights
 - ❑ **Article 136:** Special leave petition (except military tribunal & court martial)
 - ❑ **Article 141:** SC decision binding on other courts
 - ❑ **Article 142:** SC can pass any order necessary to do "complete justice"

- High Courts**
- ❑ **Article 226:** issue order/writ for FR or other purpose
 - ❑ **Article 227:** HC has superintendence on courts / tribunals in its area

Basic Structure of Constitution

Prelims PYQs

- 2014 Prelims** A Constitutional Government is one which
- places effective **restrictions on individual liberty** in the interest of State Authority
 - places effective **restrictions on** the Authority of the **State** in the interest of individual liberty
- Which of the above statements are correct?
- (a) 1 only (b) **2 only ✓**
 (c) Both 1 and 2 (d) Neither 1 nor 2



- 2021 Prelims** Constitutional govt means
- a representative govt of a nation with federal structure
 - a govt whose Head enjoys nominal powers
 - a govt who Head enjoys real powers
 - a govt limited by the terms of the Constitution ✓**

- 2020 Prelims** A constitutional govt by definition is a
- government by legislature
 - popular government
 - multi-party government
 - limited government ✓**

Constitutionalism:

- ✓ It means that Govt has limited powers
- ✓ It prevents monopolization of power by dividing power between Legislature, Executive, Judiciary.
- ✓ It is based on principles like : Separation of power, Rule of law, independent judiciary, etc.
- ✓ Having a written Constitution is not enough for Constitutionalism. Example: Apartheid in South Africa (government discriminated against Blacks)

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Q. What was the Kesavanand Bharti case?

<https://judgments.ecourts.gov.in/KB/>

Kerala enacted land reform laws to redistribute land from large landowners to landless poor. Kesavanand Bharti (head of Edneer Mutt in Kerala) challenged the land reforms as a violation of his rights.

KEY LEGAL ISSUES

- 1) Does **Kerala** Land Reforms Act violate Right to Property ?
- 2) Does **Parliament** have unlimited power to amend Constitution ?
- 3) Does **Constitution** have a basic structure that cannot be amended ?



Kesavanand Bharti's arguments

MAIN ARGUMENTS

Government's arguments

- ✓ Parliament's power to amend the Constitution is not unlimited.
- ✓ Constitution has some fundamental features which cannot be amended.
- ✗ Right to property is a fundamental feature of Constitution. Land Reform Acts are violating Right to property.



- ✗ Parliament's power to amend the Constitution is unlimited.
- ✗ Parliament can amend anything in the Constitution.
- ✓ Land Reforms Act is a reasonable restriction on Right to property. It will reduce poverty and promote social justice.

OUTCOME

- Supreme Court upheld land reform acts, and powers of Parliament to amend the Constitution, subject to not altering the basic structure.
- Although Kesavanand Bharti lost the case, the judgement protected our Constitution from arbitrary legislative action.

Q. How has Kesavanand Bharti ruling contributed to evolution of the Constitution.

Source: Ncert Class-11 Ch-9

Kesavanand Bharti ruling has contributed to evolution of the Constitution in the following ways:

- It imposed limits on Parliament's power to amend the Constitution.
- It allowed Parliament to amend anything in the Constitution (except basic structure).
- It allowed judiciary to decide what is basic structure, and which amendment violates basic structure.

Q. What is the significance of Doctrine of Basic Structure in 21st century India?

It serves as a check on powers of Parliament

- 40% Parliamentarians have serious criminal cases against them.
- The doctrine ensures that Parliament cannot make any law that violates rights of the people.

It preserves fundamental values

- It ensures that as a living document, Constitution can respond to changing times, but without losing its fundamental values.

It protects our federal structure

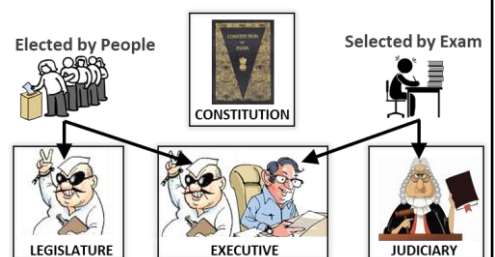
- SC has prevented misuse of Article 356 (president's rule) multiple times.
- In Bommai case 1994, SC said that States have an independent Constitutional existence, and are not appendages (attachment/accessory) of the Centre.

It protects Rule of Law from Rule of Men

- Winning elections does not give license to rule as per wish.
- The doctrine assures the public that even arrogant law-makers are bound by law of the land.

It is necessary to maintain independence of judiciary

- Govt is litigant in 46% of all court cases.
- A Judiciary appointed by govt will create conflict of interest.
- Hence, by striking down 99th Amendment (NJAC), Supreme Court protected independence of judiciary.



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Q. Was Supreme Court right in inventing DBS, despite Constitution not mentioning any such thing?

- ✓ It is a **judicial innovation** to check amending powers of Parliament.
- ✓ It was **introduced by Supreme Court** in Kesavanand Bharti case, 1973.
- ✓ It was **needed because Constitution** does not explicitly restrict amending powers of Parliament.

Arguments Against DBS

SC was wrong in inventing such a doctrine because

- **Not in Constitution** : It is not mentioned in Constitution
- **No definition or list** : Supreme Court has neither defined, nor given complete list
- **Against democracy** : Since it restricts powers of Parliament, it is against democratic principles
- **Other countries** : No other country has any such doctrine

Hence, it is alleged that DBS is an example of judicial overreach by Supreme Court.

Arguments in Support of DBS

However, SC was right in inventing such a doctrine because

It is implicit in Constitution

- Part-V of Constitution defines powers of three organs, i.e. no organ got unlimited powers.
- Donee of limited power cannot convert that limited power, into unlimited power.
- Separation of Power and Judicial review are meaningless if Parliament has all the powers.

Full list is not needed

- Actions of Parliament can be unpredictable.
- So Supreme Court must keep the doctrine flexible, to tackle unforeseeable challenges

It protects Democracy

- It protects people by guaranteeing free and fair elections, rule of law (not rule of men).

Other countries : USA, France, Germany, etc do not give unlimited powers to their Parliament.

India could have followed the British model of Parliamentary sovereignty. But unlike Britain, India went on to become a Republic, and gave itself a written Constitution. Hence, Supreme Court as guardian of Constitution, explicitly stated what was already implicit in the Constitution.

Q. Can Supreme Court's judgement on Basic Structure Doctrine be reversed? Explain.

Supreme Court's judgment can be reversed in two ways:

1. **Larger bench** of Supreme Court reverses earlier judgement
2. **Parliament enacts law** to overturn Supreme's court's judgement [Link](#) [Link](#)

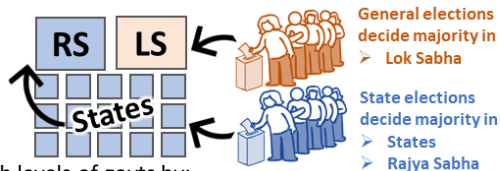
LARGER BENCH OF SUPREME COURT

- 15 judge bench with at least 8 judges ruling in govt's favour, can overturn 1973 judgment
- This can be accomplished if govt dominates the process of selecting judges by:
 - Appointing only favourable judges among those recommended by Collegium
 - Replacing Collegium system with National Judicial Appointments Commission

LAW MADE BY PARLIAMENT

Such Constitutional amendment will require

- 2/3rd majority in Lok Sabha
- 2/3rd majority in Rajya Sabha
- Simple majority in 50% of states



This can be accomplished if same party dominates both levels of govts by:

- **Double-engine govt** i.e. asking people to vote for same party in Centre and states
- **Opposition free India** i.e. when there are multiple weak parties, but only one strong party
- **Simultaneous elections** i.e. increase probability of same party coming to power at both levels

| | | | | | |
|-----------|-------|----------|-----------|-----------|------|
| 2019 | 2020 | 2021 | 2022 | 2023 | 2024 |
| Lok Sabha | State | Assembly | elections | Lok Sabha | |

Note: Parliament does not overturn the judgement, but enacts law to make the judgement ineffective.

- Court ruled against Banks Board Bureau, Govt changed its name to FSIB [Link](#)
- Court gave Delhi govt power over administrative services, Govt created new committee for it. [Link](#)

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Q. Which article is the source of Basic structure doctrine?

Supreme Court's "**interpretation**" is the source of Basic structure doctrine.

Q. Who gave Court the power to interpret Constitution?

Court's work is to solve disputes.

Constitution gave Court power to interpret the Constitution. Like Article 145(3) says that at least 5 judge bench should be formed to "interpret" the Constitution.

Q. So what did Court interpret in Kesavanand Bharti case?

Court interpreted that Parliament has limited power to amend the Constitution.

Q. If it is not politicians, then who should have unlimited power, judges?

No one should have unlimited powers, because absolute power corrupts absolutely. Power should be distributed through a system of checks and balances, as done by Constitution in Part-5.

Q. In democracy, Govt is elected by People. Why should any limits be imposed on elected government?

Almost all democracies impose limits on govt.

Because without limits, Democracy will become Dictatorship.

For example, Germany became a Totalitarian state because its elected govt had unlimited power.

Q. Please explain

- Nazi party got most votes in 1932 elections
- Govt overrode the Constitution and gave itself unlimited power
- Govt made people happy through public works like Autobahn (Highways), but eroded civil rights
- Within 10 years Germany became a Totalitarian state, and Germans didn't even realize it

Remember: Unlimited power makes Party strong, but country weak.

Elections → Unrestricted legislative power → Infra to make people happy → Attack on civil rights → Totalitarian state



The worldwide Great Depression hit Germany in 1929. Chancellor Heinrich Brüning's government pursued a policy of fiscal austerity and deflation which caused unemployment of nearly 30% by 1932.^[65] The Nazi Party led by Adolf Hitler became the largest party in the Reichstag after a special election in 1932 and Hindenburg appointed Hitler as chancellor of Germany on 30 January 1933.^[66] After the Reichstag fire, a decree abrogated basic civil rights and the first Nazi concentration camp opened.^{[67][68]} On 23 March 1933, the Enabling Act gave Hitler unrestricted legislative power, overriding the constitution,^[69] and marked the beginning of Nazi Germany. His government established a centralised totalitarian state, withdrew from the League of Nations, and dramatically increased the country's rearmament.^[70] A government-sponsored programme for economic renewal focused on public works, the most famous of which was the Autobahn.^[71] <https://en.wikipedia.org/wiki/Germany>

Q. But British Parliament also has unlimited power. Britain has not become dictatorship.

British voters and MPs are quite different from India. British voters are so liberal that they made person of foreign descent as the Prime Minister. Same cannot be said about polity in India. So, what's suitable for Britain, may not be suitable for India.

Q. I support unlimited legislative power for Parliament. Convince me to change my view.

Sir your experience in the govt is more than my age. I cannot change your view. But if I may, I would like to ask you, if your view will remain the same, in case the party you consider most dangerous for India, gets special majority in Centre and states.

- Drafting new Constitution for new India [Link](#)
- Re-interpreting the existing Constitution [Link](#) [Link](#) [Link](#)
- Should people's representatives have unlimited legislative powers? [Link](#)
- Ncert class-11 Indian Constitution at work, Ch-1 Constitution: Why & How [Link](#)
- Without the basic structure, we will end up with Constitution without Constitutionalism [Link](#)
- Why being a democracy is not enough? Why Democracies adopt written Constitution to become Republic. [Link](#)

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