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## HOW BASIC STRUCTURE DOCTRINE PROTECTS CONSTITUTIONAL RIGHTS



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The Constitution of India enshrines a vision of justice — social, economic, and political — and a commitment to equality in status and opportunity. But history has shown us that these ideals are often contested terrain.

In the early decades after independence, as India grappled with urgent demands for land reform, social equity, and economic stability, the pillars of democracy — the legislature, the executive, and the judiciary — often stood at odds.

From the 1950s until the 1970s, India was crying out for reforms — agrarian and economic. Land redistribution was key, but it clashed directly with the constitutional right to property — then a Fundamental Right under Articles 19 and 31.

After years of wars, economic disparities, and political turmoil, public pressure on the government was mounting, and so the government moved to abolish the *zamindari* system by acquiring private property.

But this clashed with the Fundamental Right to Property under Articles 19 and 31 of the Constitution. These reforms were challenged in courts; some were struck down. In response, Parliament passed the First Amendment in 1951, introducing Article 31A, Article 31B, and the Ninth Schedule to shield such laws from judicial review.

*Shankari Prasad v. Union of India* (1951) was the first case to test this. Shankari Prasad Singh Deo, a *zamindar*, challenged the First Amendment Act, arguing that the State cannot make any law which takes away fundamental rights.

But the Supreme Court disagreed. The court ruled that Parliament could indeed amend the Constitution — including the part on Fundamental Rights. Soon after Shankari Prasad, a Jalandhar-based family, the Golaknaths, which owned vast farmlands, reopened the same questions, challenging the Punjab Security and Land Tenures Act, 1953.

Once again, the spotlight was on a single, seismic question: Could Parliament rewrite the Fundamental Rights? In *Golaknath*, the Supreme Court — by the slimmest of margins, 6:5 — drew the line. Fundamental Rights are “transcendental” and “immutable” — and therefore are beyond the reach of Parliament. This sent shockwaves through political corridors.

Riding on a landslide victory in the fifth Lok Sabha elections, the government wasted no time in flexing its muscle. Within five months Parliament bulldozed through the 24th Amendment, expressly granting Parliament the power to amend any provision of the Constitution and tied the President's hands by mandating assent to any constitutional amendment bill.

The battle wasn't over. The clash between Parliament's desire for reform and the judiciary's role as guardian of the Constitution was about to reach its biggest showdown in the history of India — *Kesavananda Bharti v State of Kerala* (1973). *Kesavananda Bharti* challenged the limit of property one can hold under the Kerala Land Reforms Act. The question — can Parliament amend Fundamental Rights — rose again.

The courtroom witnessed the finest from the Bombay Bar — Nani Palkhivala, Fali Nariman and Soli Sorabjee — defending the petitioner and a determined HM Seervai represented the government in what would become India's longest argued case with the largest constitutional bench ever assembled.

The Supreme Court overturned the *Golaknath* verdict, ruling that while Parliament has the power to amend any part of the Constitution, it cannot alter its “basic structure”. That structure — a democratic, secular, federal republic which preserves separation of powers — is the very DNA of India.

It gave birth to the basic structure doctrine, a safeguard against unchecked parliamentary power. But, this legal victory was only the beginning. Two years later, the judiciary faced the same questions at a time when India's political waters churned with unrest.

Severe fiscal and oil crises resulted in bold economic reforms. An electoral triumph in light of powerful social movements led a presumptuous government to take drastic steps to cling to power. On June 25, 1975, a national Emergency was declared. Civil liberties were suspended, dissent was crushed, and the very essence of democracy was threatened.

The Emergency was more than a political crisis — as the government suspended fundamental rights, the Constitution's basic structure was once again under siege. As we mark 50 years since that day, the lessons remain urgent.

The “basic structure” isn't just a legal doctrine — it's the first and last line of defence.

The memory of this dark day urges us to protect judicial independence, civil liberties, and tolerate dissent — because without checks, freedoms, and the liberty to speak out, democracy is just a word.

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