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THE CONCEPT OF BASIC STRUCTURE: A DISCOURSE IN THE CONTEXT OF THE INDIAN CONSTITUTION

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ABSTRACT

The Basic Structure of a Constitution refers to the set of fundamental values and principles that underpin its philosophy and the institutional arrangements that constitute its core identity and purpose. Any abrogation or substantial alteration of these elements risks undermining the very foundation of the constitutional order. It reflects the philosophy of Constitutionalism, asserting that certain values are intrinsic to the legitimacy of the constitutional order. These values are mutable within the immutable framework as they are to remain protected even as other aspects of the Constitution evolve to respond to social, political, or technological change. However, judicial interpretation and constitutional debates have expanded and refined the scope of what constitutes the 'basic' over time. This article examines the discourse surrounding the Basic Structure Doctrine in the context of the Indian Constitution, considering both historical and contemporary political developments. It highlights critical questions regarding how to define the boundaries of the Doctrine's expansion while attempting to incorporate new societal values, and what methodology courts should employ to decide whether a value is basic? Whether it should be guided by historical intent, structural necessity, or functional indispensability?

Keywords - Basic Structure, Constitutionalism, Tussle of Supremacy, Judicial Interpretations

The concept of basic structure is primarily linked to the idea of constitutionalism.¹ The central argument of constitutionalism is that no form of government in the world should be absolute, and to control arbitrariness in governance, it is essential that the functioning of government takes place according to the Constitution. Only the Constitution can clearly set the limits of political power and provide ways to control it, so that the people over whom power is exercised are protected from unchecked rule and are assured their fair share in governance.² The Constitution can perform this role only when it binds the powers of various organs and authorities of government within certain definite limits.³ In this broader sense, the doctrine of basic structure emerges as a philosophical corollary of constitutionalism. If the very purpose of a Constitution is to restrain authority and preserve the balance between liberty and power, then its most essential principles must themselves be safeguarded from alteration or destruction. The need to safeguard the Constitution arises from the fact that, without enduring limits, the document may be reduced to a mere instrument of political convenience, vulnerable to majoritarian impulses and short-term interests. It is precisely for this reason that something like the idea of a basic structure becomes necessary. It affirms that there are certain values and institutional arrangements, such as the rule of law, separation of powers, protection of rights, and democratic accountability that constitute the very identity of a constitutional order. To allow these to be effaced would be to undermine the *raison d'être* of the Constitution itself. Thus, the basic structure is not an external addition but an intrinsic safeguard, ensuring that constitutionalism is not hollowed out by the very actors it seeks to regulate.

MAPPING THE INDIAN TRAJECTORY

When the Constitution of India was adopted in 1950, it sought to harmonize the principles of a liberal state, protecting individual rights, with those of a welfare state, reflecting the country's imperative to address socio-economic inequalities and promote social justice.⁴ This balance was particularly necessary in the Indian context, given its vast cultural, linguistic, and regional

¹ डॉ. पायोद जोशी, मूल संरचना की अवधारणा: भारत के संविधान के संदर्भ में एक विमर्श, *Research Reinforcement Journal*, खंड 10, नवम्बर 2022-अप्रैल 2023 (ISSN 2348-3857).

² Karl Loewenstein, *Political Power and the Governmental Process* 123-25 (Univ. of Chi. Press 1965).

³ डॉ. पायोद जोशी, मूल संरचना की अवधारणा: भारत के संविधान के संदर्भ में एक विमर्श, *Research Reinforcement Journal*, खंड 10, नवम्बर 2022-अप्रैल 2023 (ISSN 2348-3857).

⁴ डॉ. पायोद जोशी, मूल संरचना की अवधारणा: भारत के संविधान के संदर्भ में एक विमर्श, *Research Reinforcement Journal*, खंड 10, नवम्बर 2022-अप्रैल 2023 (ISSN 2348-3857).

diversity, requiring a constitutional framework capable of accommodating multiple identities while ensuring equity and inclusive development. As a liberal principle, **Part III of the Indian Constitution**⁵ granted Fundamental Rights to its citizens, and as a welfare state principle, **Part IV**⁶ incorporated the Directive Principles of State Policy. “Fundamental Rights are negative obligations upon the State, whereas the Directive Principles of State Policy are positive obligations upon the State. Fundamental rights restrict the powers of government, while the Directive Principles of State Policy expand the scope of governance. Moreover, the responsibility of protecting fundamental rights lies with the judiciary, whereas the implementation of the Directive Principles of State Policy is the function of the legislature and the executive. Therefore, the judiciary has continued to give importance to fundamental rights, while the legislature has given importance to the Directive Principles of State Policy”.⁷ For this reason, a conflict has always existed between the judiciary and the legislature. Another reason for the conflict between the judiciary and the legislature in India is the two distinct and opposing structures of governance adopted by the Constitution. On the one hand, we have adopted the parliamentary system, which requires the primacy of Parliament, while on the other hand, we have adopted the federal system, which assigns judiciary a preeminent role in the constitutional interpretation and in safeguarding the balance between the Union and the States. Hence, for this reason too, the conflict between the judiciary and the legislature has continued. It is out of this very conflict that the idea of the basic structure of the Constitution was born.

Post-independence, in 1950, just after the Constitution of India came into force, many Provincial governments passed the Land Reform and Agricultural Reform Laws. While in the original Constitution on the other hand, citizens were conferred the Fundamental Right to Property. Thus, when people took recourse to the Judiciary against the Land Reform Laws, the Union Government responded in 1951 by introducing the First Constitutional Amendment (1951)⁸ to protect the land reform laws enacted by various states, by placing them in the Ninth Schedule of the Constitution⁹,

⁵ India Const. pt. III

⁶ India Const. pt. IV.

⁷ डॉ. पायोद जोशी, मूल संरचना की अवधारणा: भारत के संविधान के संदर्भ में एक विमर्श, Research Reinforcement Journal, खंड 10, नवम्बर 2022-अप्रैल 2023 (ISSN 2348-3857).

⁸ The Constitution (First Amendment) Act, 1951 (India).

⁹ India Const. Ninth Sch.

which rendered them inadmissible in the court. This effectively insulated these laws from judicial scrutiny by placing them beyond the purview of judicial review. The amendment also added Article 31(A)¹⁰, granting the state the power to acquire private property for purposes such as land reforms. This amendment was challenged in the Supreme Court in *Shankari Prasad v. Union of India* (1951,AIR455)¹¹ on the ground that Parliament does not have the authority to amend the Fundamental Right, as Article 13(2)¹² prohibits the State from making laws that take away or abridge the rights guaranteed under Part III.

The Supreme Court, in its judgment in the *Shankari Prasad* case, upheld the validity of the First Amendment made by Parliament on the ground that there is a difference between constitutional law and ordinary law. In Article 13(2), the term 'law' refers to ordinary law, not constitutional law. Therefore, Article 13(2) does not restrict Parliament from amending the fundamental rights through a constitutional amendment. The power of constitutional amendment given to Parliament under **Article 368**¹³ also includes the power to amend fundamental rights. However, this judgment also established the principle that there is a part of the Constitution in which, for making an amendment, Parliament would have to obtain the approval of the judiciary. In 1965, in the case of **Sajjan Singh v. State of Rajasthan**¹⁴, this question again came before the Supreme Court, and the Court reaffirmed its earlier judgment given in the *Shankari Prasad* case.

The real conflict between the Supreme Court and Parliament began with the judgment of the Court in the case of *Golaknath v. State of Punjab* (1967)¹⁵. In this case also, once again, the power of Parliament to amend the fundamental rights was challenged in the court (*Shankari Prasad v. Union of India*, 1951 S.C. 458). In this case, by a majority of 6 judges against 5, the Supreme Court held that Parliament cannot make any kind of amendment in Part III relating to fundamental rights. Parliament can neither take away nor abridge the fundamental rights. Chief Justice Subba Rao, while delivering the judgment, said that Article 368 only describes the procedure of amendment and not the power of Parliament to amend the Constitution. The power of Parliament to amend the

¹⁰ India Const. art. 31A.

¹¹ *Shankari Prasad Singh Deo v. Union of India*, AIR 1951 SC 458.

¹² India Const. art. 13(2).

¹³ India Const. art. 368

¹⁴ *Sajjan Singh v. State of Rajasthan*, AIR 1965 SC 845.

¹⁵ *I.C. Golaknath v. State of Punjab*, AIR 1967 SC 1643.

Constitution lies in Articles 245, 246, and 248¹⁶. The Court held that constitutional amendment is also included in the definition of 'law' mentioned in Article 13(2). (*Golaknath v. State of Punjab*, 1967 S.C. 1643). Its direct implication was that the power of constitutional amendment of Parliament is not unlimited and is subject to judicial review. In this way, this judgment ended the distinction between constitutional law and ordinary law, and by treating the right to property equally important as other fundamental rights, denied the interference of the legislature in it. However, Justice M. Hidayatullah, disagreeing with the majority judgment, held that including the right to property among the fundamental rights was a completely wrong decision of the Constitution-makers. Overall, in the *Golaknath* case, by a narrow majority of only one vote, the Court declared a constitutional amendment passed by Parliament and ratified by more than half of the States as unconstitutional, thereby asserting its supremacy over Parliament. Thus, the conflict of supremacy between the judiciary and Parliament reached its peak.

The intensity of the *Golaknath* judgment also invites reflection on the original debates in the Constituent Assembly regarding Parliament's amending power. During the debates, several members emphasized that the amendment power under Article 368 was intended to be wide but not absolute, and must operate within the framework of fundamental rights and the basic tenets of the Constitution. For instance, Dr. B.R. Ambedkar clarified that while Parliament could amend provisions of the Constitution, including Fundamental Rights, such power should not be exercised in a manner that undermines the Constitution's essential identity or transforms its democratic and republican character. Similarly, members like K.M. Munshi and N.G. Goray underscored the need to preserve the inviolability of certain guarantees, particularly those safeguarding liberty, property, and equality, to prevent transient political majorities from eroding citizens' core rights. Thus, the *Golaknath* verdict, by treating Fundamental Rights as unalterable by ordinary constitutional amendment, reflected a judicial interpretation aligned with these early discussions: the framers envisaged a constitutionally bounded amendment power, recognizing that while the Constitution must evolve, its foundational principles must remain beyond the reach of transient parliamentary majorities. This lens underscores that the confrontation between Parliament and the judiciary was

¹⁶ India Const. art. 245.
India Const. art. 246.
India Const. art. 248.

not merely about legal technicalities, but about protecting the philosophical core of the Constitution that the Constituent Assembly sought to embed.

In 1967, Nath Pai, the Member of Parliament introduced a private bill to amend Article 368 in order to restore to Parliament the power to amend fundamental rights. The Members of Parliament considered it appropriate. This bill was referred to a Joint Committee. In this committee, significant discussions took place, in which M.C. Setalvad gave an important suggestion that the power to amend fundamental rights should remain with Parliament, but the arrangement should be such that the ruling party alone, on the strength of its majority, cannot amend them. He suggested that at least a majority of one-fourth of the total members should be required for making any amendment in fundamental rights. (Nath Pai: 1967, p.224)¹⁷ Many members of the committee believed that while delivering the above judgment, the judges must have had in their minds the apprehension that some members of Parliament might have the mentality of interfering with the Fundamental Rights of citizens.¹⁸

THE DYNAMICS OF BASIC STRUCTURE DOCTRINE

The early 1970s marked a pivotal phase in India's constitutional evolution, as Parliament pursued a strong agenda to expand the state's welfare and socialist orientation. In 1970, the Indira Gandhi government nationalized banks, asserting central control over key economic resources to promote distributive justice. In 1971, it moved to abolish the privy purses of former princely rulers. Both measures were challenged in the Supreme Court. In *R.C. Kapoor v. Union of India*¹⁹, bank nationalization was struck down, and in *Madhav Rao Sindhia v. Union of India*²⁰, the abolition of privy purses was declared unconstitutional. These rulings intensified tensions between legislative ambition and judicial oversight.

¹⁷ Nath Pai, Parliamentary Debates, 1967, at 224 (India).

¹⁸ डॉ. पायोद जोशी, मूल संरचना की अवधारणा: भारत के संविधान के संदर्भ में एक विमर्श, Research Reinforcement Journal, खंड 10, नवम्बर 2022-अप्रैल 2023 (ISSN 2348-3857).

¹⁹ *R.C. Cooper v. Union of India*, AIR 1970 SC 564.

²⁰ *Madhav Rao Jivaji Rao Scindia v. Union of India*, AIR 1971 SC 530.

In response, Parliament enacted a series of constitutional amendments. The 24th Amendment (1971)²¹ clarified that any constitutional amendment enacted under Article 368 would not be considered “law” within the meaning of Article 13(2), thereby placing such amendments beyond judicial review. It also explicitly confirmed that Parliament has the power to amend any provision of the Constitution, including Fundamental Rights, in exercise of its constituent authority. The 25th Amendment (1971)²² introduced Article 31(c)²³, empowering the state to enact laws implementing Directive Principles under Article 39(b)²⁴ and (c)²⁵, even if such laws affected rights under Articles 14²⁶ or 19²⁷. The 26th Amendment (1971)²⁸ abolished privy purses, and the 29th Amendment (1972)²⁹ placed Kerala’s land reform laws in the Ninth Schedule, protecting them from judicial scrutiny. These legislative measures demonstrated Parliament’s assertion of supremacy and its attempt to implement a transformative socio-economic agenda despite judicial interventions. At the same time, they highlighted the potential risk of eroding fundamental constitutional principles, such as the balance between Fundamental Rights and Directive Principles, rule of law, and democratic accountability. This conflict crystallized the idea that certain foundational features of the Constitution must remain inviolable. It was in this context that the notion of the Basic Structure Doctrine emerged, articulating that while Parliament has wide amending powers, it cannot alter the Constitution’s essential principles. These developments set the stage for the Supreme Court, in *Kesavananda Bharati v. Union of India* (1973)³⁰, to formalize the doctrine and safeguard the core constitutional ethos.

In *Kesavananda Bharati v. Union of India* (1973), after 68 days of hearing, on 24 April, 1973, a thirteen-judge bench of the Supreme Court, by a historic 7:6 majority decision, the Supreme Court held that while the power of amendment conferred upon Parliament under Article 368 is indeed of the widest amplitude, it is not without limitation. The apex court in its landmark judgement

²¹ The Constitution (Twenty-Fourth Amendment) Act, 1971 (India).

²² The Constitution (Twenty-Fifth Amendment) Act, 1971 (India).

²³ India Const. art. 31(c).

²⁴ India Const. art. 39(b).

²⁵ India Const. art. 39(c).

²⁶ India Const. art. 14.

²⁷ India Const. art. 19.

²⁸ The Constitution (Twenty-Sixth Amendment) Act, 1971 (India).

²⁹ The Constitution (Twenty-Ninth Amendment) Act, 1972 (India).

³⁰ *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461.

articulated the Basic Structure Doctrine, which reads that the Parliament cannot amend the Constitution in a manner that destroys its 'basic structure'. Thus, the amendment power of the Union Legislature stands circumscribed by the basic structure of the Constitution which cannot be abrogated or destroyed. "Chief Justice S.M. Sikri considered that the following elements are included in the basic structure of the Constitution:

1. Supremacy of the Constitution
2. Democratic and republican form of government
3. Secular character of the Constitution
4. Separation of powers among the legislature, executive, and judiciary
5. Federal nature of the Constitution

Justice Shelat and Justice Grover, in addition to the above elements, also included the following in the basic structure:

1. Fundamental Rights
2. Directive to establish a welfare state as contained in Part IV
3. Unity and integrity of the nation

Justice Hegde and Justice Mukherjea said that Fundamental Rights alone are not part of the basic structure of the Constitution; rather, these elements are scattered in different places throughout the Constitution. They also included the following elements in the basic structure:

1. Sovereignty of India
2. Democratic system of the country
3. Unity and integrity of the nation
4. Liberty of the individual
5. Establishment of a welfare state

Justice Jagannmohan Reddy considered the following elements to be included in the basic structure of the Constitution:

1. Sovereign democratic republic
2. Social, political, and economic justice

3. Freedom of thought, expression, belief, and worship
4. Equality of opportunity and dignity.”³¹

The doctrine by its very design is left open ended which ensures that the Constitutional scholars and judges must perpetually debate what belongs to the “immutable within the mutable”.

The years immediately following Kesavananda Bharati case witnessed unprecedented constitutional turbulence. The declaration of Emergency in 1975 and the subsequent 39th Amendment³² sought to place the election of the Prime Minister and the Speaker beyond the scope of judicial review, thereby directly challenging the balance struck in Kesavananda Bharti Case. This amendment was passed in response to the Allahabad High Court ruling that had nullified Prime Minister Indira Gandhi's election on grounds of corrupt electoral practices. Around the same period, the far-reaching provisions of the 42nd Amendment (1976)³³ sought to curtail judicial power and expand parliamentary supremacy. It was in this fraught political-constitutional climate that the Court, in *Indira Nehru Gandhi v. Raj Narain* (1975)³⁴, was called upon to apply the Basic Structure Doctrine to preserve the integrity of the democratic process. The highest court in its judgement recognized “free and fair elections” as part of the basic structure when it declared certain amendments invalid that sought to immunize election outcomes by placing them beyond judicial scrutiny. This pronouncement underscores the protective ambit of the Basic Structure Doctrine in safeguarding the democratic process and ensuring the preservation of constitutionalism. The trajectory of the doctrine did not end here. The far-reaching provisions of the 42nd Amendment (1976), enacted during the Emergency, once again tested the limits of Parliament’s amending power by seeking to exclude judicial review and to tilt the balance decisively in favour of Parliamentary supremacy. The 42nd Amendment also significantly altered the status of the Right to Property under Articles 19(1)(f) and 31, which had previously guaranteed the right to acquire, hold, and dispose of property. By introducing Article 31C and reorienting the Constitution to give precedence to Directive Principles over Fundamental Rights, Parliament sought to curtail the enforceability of property rights and prioritize broader state objectives. In

³¹ डॉ. पायोद जोशी, मूल संरचना की अवधारणा: भारत के संविधान के संदर्भ में एक विमर्श, Research Reinforcement Journal, खंड 10, नवम्बर 2022-अप्रैल 2023 (ISSN 2348-3857).

³² The Constitution (Thirty-Ninth Amendment) Act, 1975 (India).

³³ The Constitution (Forty-Second Amendment) Act, 1976 (India).

³⁴ *Indira Nehru Gandhi v. Raj Narain*, AIR 1975 SC 2299.

Minerva Mills v. Union of India (1980)³⁵, Supreme Court reiterated and strengthened the judgement of *Kesavananda Bharti Case* and held that Parliament could not emasculate Fundamental Rights by privileging Directive Principles. The top court here endorsed a balance between Part III and Part IV as part of the basic structure. The Supreme Court struck down key provisions of the 42nd Amendment, holding that the limited amending power itself formed part of the basic structure and reaffirmed that judicial review and the harmony between Fundamental Rights and Directive Principles are integral to the constitutional scheme. These early cases show the doctrine being used to protect core constitutional values like democracy, judicial review, rule of law, and basic liberties.

In the decades after *Kesavananda Bharati Case*, the Supreme Court's invocation of the basic-structure doctrine in *S.R. Bommai*, *I.R. Coelho*, and the NJAC judgment must be read as judicial responses to distinct but related political pressures that threatened the Constitution's structural equilibrium. *S.R. Bommai v. Union of India* (1994)³⁶ emerged against the backdrop of repeated and politically motivated uses of Article 356 to dismiss state governments throughout the 1970s and 1980s, which was a period marked by emergency rule (1975–77), centralizing constitutional amendments (notably the 42nd Amendment), and the breakdown of single-party dominance which made central intervention into state politics a common instrument of party strategy and further the political context of the 1980s and early 1990s, which was an era marked by fragile coalition governments, and the communal tensions culminating in the demolition of the Babri Masjid in 1992. Therefore, the Court, in *Bommai*, held that the imposition of President's Rule under Article 356³⁷ was subject to judicial review and that secularism and federalism form part of the Constitution's basic structure. The decision in *S.R. Bommai v. Union of India* (1994) marked a turning point in the application of the basic structure doctrine to protect federalism, secularism, and the rule of law. The Court created a constitutional shield against the arbitrary exercise of executive power and preserving state autonomy.

³⁵ *Minerva Mills Ltd. v. Union of India*, AIR 1980 SC 1789.

³⁶ *S.R. Bommai v. Union of India*, AIR 1994 SC 1918.

³⁷ India Const. art. 356.

During the late 1980s and 1990s, thus began a phase where the Judiciary shifted its gear toward judicial assertiveness, acting not merely as an interpreter but as a guardian protecting constitutional ethos. Through the expansion of Public Interest Litigation (PIL), the Supreme Court broadened its jurisdiction to address issues of social and environmental justice, the rights of marginalized groups, and governmental accountability. This period marked a significant phase in the evolution of judicial activism, where the Court assumed an active role in areas traditionally reserved for the legislature or executive. While such activism strengthened the enforcement of constitutional rights and principles, it also rekindled debates over judicial overreach, highlighting the persistent tension between judicial authority and the separation of powers.

The trajectory of the doctrine's application further evolved in *I.R. Coelho v. State of Tamil Nadu* (2007)³⁸. Since the First Amendment (1951), the Ninth Schedule had been employed to protect land reform and redistributive measures from judicial review. However, over the decades, it became a constitutional mechanism for sheltering a wide range of laws, some of which threatened to dilute Fundamental Rights. Against this backdrop, the Court here reaffirmed that judicial review itself is part of the basic structure, and therefore, laws placed in the Ninth Schedule after *Kesavananda* cannot escape scrutiny if they contravene fundamental rights or damage the basic structure. This ruling responded to political efforts to immunize contentious legislation from constitutional challenge, reinforcing that neither Parliament nor the states could create enclaves of immunity that undermine the Constitution's foundational values. The case thus reasserted the supremacy of the doctrine as a safeguard against both legislative excess and democratic erosion.

The 99th Constitutional Amendment³⁹ and the establishment of the National Judicial Appointments Commission (NJAC)⁴⁰ reflected widespread dissatisfaction with the collegium system of judicial appointments, criticized for its opacity and lack of accountability. However, the Supreme Court, in *Supreme Court Advocates-on-Record Assn. v. Union of India* (2015)⁴¹ struck down the NJAC on the grounds that judicial independence is part of the Constitution's basic structure. This decision must be contextualized against the historical backdrop of executive

³⁸ *I.R. Coelho v. State of Tamil Nadu*, AIR 2007 SC 861.

³⁹ The Constitution (Ninety-Ninth Amendment) Act, 2014 (India).

⁴⁰ *Supreme Court Advocates-on-Record Ass'n v. Union of India*, AIR 2016 SC 117 (NJAC Case).

⁴¹ *Supreme Court Advocates-on-Record Ass'n v. Union of India*, AIR 2016 SC 117 (NJAC Case).

attempts to influence judicial appointments, particularly during the Emergency (1975–77), when judicial independence had come under direct assault. By invalidating the NJAC, the Court asserted that institutional independence is not merely an abstract constitutional value but a concrete structural guarantee necessary for the protection of democracy, the rule of law, and fundamental rights. The case illustrated the doctrine's institutionalist turn, protecting not just broad principles but the very architecture of institutions entrusted with constitutional guardianship. The Court over the years has responded by extending the basic-structure rationale to preserve democracy, federalism, judicial review, secularism, and institutional independence, continuing the dialectic begun by Shankari Prasad (1951) and Golaknath (1967) and cemented in Kesavananda.

In the twenty-first century, the relevance of the basic structure doctrine has expanded into new terrains shaped by technology as a power structure. Emerging issues such as digital rights, data privacy, and the protection of electoral integrity from technological manipulation have raised fresh questions about what constitutes essential constitutional values. Similarly, evolving societal imperatives, including gender justice, environmental protection, and the promotion of fraternity among diverse communities, demand recognition within the constitutional core. Future trajectories of the doctrine are likely to require a dynamic balancing act, accommodating these new imperatives while remaining anchored in the immutable principles of democracy, federalism, and the rule of law. Courts will increasingly face the challenge of assessing whether these emerging values meet the criteria of constitutional centrality, institutional indispensability, and functional indispensability, ensuring that the doctrine evolves in step with societal transformations without compromising the foundational identity of the Indian Constitution. These developments unfold against a political backdrop where the judiciary's evolving role as an interpreter of constitutional ethos and an agent of judicial assertion is often portrayed as "judicial overreach." Such characterisations reveal the persistent struggle between constitutional guardianship and political majoritarianism. The attempt to recast the judiciary's role not only challenges the equilibrium envisaged in the separation of powers but also tests the resilience of the Basic Structure Doctrine as the ultimate safeguard of constitutional primacy.

CONCLUSION

Deciding whether a value is “basic” must therefore rest on a calibrated, multi-factor methodology that synthesizes historical intent, structural necessity, and functional indispensability rather than privileging any single lens. Historical intent supplies critical anchors like values manifestly embedded in the constitutional scheme, which include separation of powers, federal balance, and the commitment to representative government. It should be weighed heavily, because they mark the identity the Constitution drafters sought to preserve. Structural necessity asks whether the absence of the value would destroy or radically impair the Constitution’s institutional architecture. If the value is a sine qua non for the operation of other constitutional guarantees (as judicial review is), it merits elevated protection. Furthermore, functional indispensability focuses on contemporary reality. It focuses on the questions like does a value perform an indispensable function for constitutional democracy today (for example, free and fair elections require protection from digital manipulation)? A multi-factor test therefore assesses (a) constitutional centrality, (b) institutional indispensability (whether the value is necessary to sustain other constitutional structures), (c) practical vulnerability (the degree to which ordinary statutes are unlikely to secure the value against majoritarian erosion or technological obsolescence), (d) reviewability (whether courts can craft workable standards and remedies), and (e) democratic consensus (the extent of broad societal agreement or stable political support for the value). Only where a majority of these factors point decisively toward structural protection should courts treat a value as part of the immutable core.

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