Title of the Article: KESAVANANDA BHARATI v. STATE OF KERALA (1973): RELATIONSHIP BETWEEN FUNDAMENTAL RIGHTS AND PARLIAMENT'S POWER TO AMEND THE CONSTITUTION

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ABSTRACT

This review examines Kesavananda Bharati v. State of Kerala (1973), focusing on the relationship between Fundamental Rights and Parliament's power to amend the Constitution. The case came from a constitutional challenge involving Kerala land reform measures and the 24th, 25th and 29th Constitutional Amendments. It raised the wider question whether Parliament's amending power under Article 368 was unlimited, particularly when Fundamental Rights were affected. The review traces the constitutional development from Shankari Prasad and Sajjan Singh through Golaknath, and explains the importance of Articles 13, 14, 19, 25, 26, 31, 32 and 368 in Kesavananda Bharati v. State of Kerala (1973) case. The 13-judge Supreme Court bench, by a 7:6 majority, held that Parliament could amend every part of the Constitution, including Fundamental Rights, but could not alter or destroy the Basic Structure of the Constitution. The article shows the difference between Fundamental Rights and the broader Basic Structure Doctrine and explains why the judgment became a constitutional limit on the exercise of amendment power of Parliament. The article is based on primary constitutional and judicial sources, supported by the ISC Political Science textbook.

Keywords: Fundamental Rights; Kesavananda Bharati; Basic Structure Doctrine; Article 368; Judicial Review.

INTRODUCTION

What are Fundamental Rights?

Fundamental Rights are the basic rights of the people which are written in the constitution of the country. It is protected by the Constitution and Supreme court is guardian, interpreter, protector of the Fundamental Rights. In case any law is found to be against any Fundamental Rights of the people, the Supreme court declares it unconstitutional and declares it null and void. It is listed in part XX of the Constitution.[9]

Relevance of Fundamental Rights in the Kesavananda Bharati Case

The *Kesavananda Bharati v. State of Kerala* (1973) has a relevance of Fundamental Rights, because the case was regarding the Kerela Land Reforms Act. The petitioner invoking protections under Articles 14, 19, 25, 26 and 31. The case raised the wider question of how far Parliament's amending power extended to Fundamental Rights and whether the power to amend the Constitution under Article 368 was unlimited or limited. [11]

The case is significant because it reshaped the relationship between Fundamental Rights and Parliament's amending power. The Court held that Fundamental Rights could be amended under Article 368, but Parliament could not use its amending power to alter or destroy the Basic Structure of the Constitution. Thus, the power of constitutional amendment was recognised as broad but subject to the Basic Structure limitation[11]

Research Question: How did the Kesavananda Bharati judgment change the relationship between Fundamental Rights and Parliament's power to amend the Constitution?

Aim: To examine the constitutional development leading to Kesavananda Bharati, the Fundamental Rights and constitutional provisions involved, the Supreme Court's 1973 ruling, and the limits placed on Parliament's amending power by the Basic Structure Doctrine.

MATERIALS AND METHODS

This article examines *Kesavananda Bharati v. State of Kerala (1973)* using primary constitutional and judicial sources, including the Constitution of India, relevant Constitutional Amendments, and the Supreme Court's 1973 Basic Structure Judgment. The author's ISC Political Science project provided the initial framework for the review. [1,5,6,7,8,11] The ISC Political Science textbook and a legal resource on the Basic Structure Doctrine were used to support the explanation and interpretation of the constitutional issues. [9,10] The study is doctrinal and qualitative in nature and does not involve surveys, interviews, experiments, or statistical analysis. The principal sources consulted are listed in the References section.

RESULTS AND DISCUSSION

6.1 Constitutional Development Leading to Kesavananda Bharati

6.1.1 Shankari Prasad v. Union of India (1951)

In *Shankari Prasad v. Union of India* (1951), the Supreme Court accepted that Parliament could amend the Constitution even when the amendment affected Fundamental Rights. It distinguished a constitutional amendment made in exercise of the amending power from 'law' contemplated by Article 13(2). Consequently, the Court did not treat Article 13(2) as a restriction on Parliament's power to amend Part III of the Constitution.[2]

6.1.2 Sajjan Singh v. State of Rajasthan (1965)

Sajjan Singh v. State of Rajasthan (1965) reaffirmed the position taken in Shankari Prasad. The Court again accepted Parliament's authority to amend Fundamental Rights through the constitutional amendment procedure. [3]

6.1.3 I.C. Golaknath v. State of Punjab (1967)

The position changed in I.C. Golaknath v. State of Punjab (1967). By a 6:5 majority, the Supreme Court held that Parliament could not abridge or take away Fundamental Rights through the amendment procedure. The Court treated a constitutional amendment as 'law' for Article 13(2), although the ruling operated prospectively. This created a direct constitutional conflict between the protection of Fundamental Rights and Parliament's understanding of its amending power. [4]

6.1.4 Twenty-Fourth Constitutional Amendment, 1971

The Twenty-Fourth Amendment was enacted in response to Golaknath. It expressly affirmed Parliament's power to amend any provision of the Constitution and altered Article 368 to clarify the constitutional amendment power. It also addressed the application of Article 13 to constitutional amendments and made the President's assent to amendment bills mandatory and inserted clauses in Articles 13 and 368 to separate constituent power from ordinary law. [5]

6.1.5 Twenty-Fifth Constitutional Amendment, 1971

The Twenty-Fifth Amendment modified the constitutional protection relating to compulsory acquisition and inserted Article 31C in connection with laws giving effect to certain Directive Principles, particularly Article 39(b) and (c). It therefore raised further questions about the relationship between Fundamental Rights and constitutional measures pursuing socio-economic

objectives. [6] In Kesavananda Bharati, the Court upheld the first part of Article 31C, which protected laws implementing Article 39(b) and (c) from challenge under Articles 14, 19 and 31. However, the provision seeking to exclude judicial review was held invalid. This aspect of the judgment was significant because it affirmed that Parliament could not completely exclude judicial review of the constitutional validity of such provisions.[11]

6.1.6 Twenty-Ninth Constitutional Amendment, 1972

The Twenty-Ninth Amendment placed specified Kerala land reform laws in the Ninth Schedule. This connected the land reform dispute directly with the constitutional amendments under challenge in Kesavananda Bharati. [7]

6.1.7 Transition to Kesavananda Bharati

The sequence from Shankari Prasad to Golaknath, followed by the 24th, 25th and 29th Amendments, created the constitutional setting for the 1973 case. The Supreme Court therefore had to determine both the scope of Parliament's amending power and whether that power had any substantive constitutional limit. [1,11]

6.2 Background of Kesavananda Bharati v. State of Kerala

Kesavananda Bharati, head of the Edneer Mutt in Kerala, challenged land reform measures that affected the Mutt's property and related interests. The petition was filed on 21 March 1970, and judgment was given on 24 April 1973. The case was heard by a historic 13-judge bench of the Supreme Court. The constitutional challenge involved Articles 14, 19, 25, 26 and 31, along with the wider question of the extent of Parliament's power under Article 368. [1,11]

Note - Article 31 was a Fundamental Right at the time of the case. It was later omitted from Part III by the Forty-Fourth Constitutional Amendment, 1978, and the right to property is now protected under Article 300A. [8]

6.3 Important Constitutional Provisions Involved

The following provisions were identified in the project as relevant to the constitutional challenge:

Provision	Right / Constitutional Area	Relevance Identified in the Project
Article 13	Protection of Fundamental Rights	Restricts the State from making laws that take away or abridge Part III rights; its meaning became central to the amendment-power dispute. [11]
Article 14	Right to Equality	The petitioners argued that the relevant amendments and land-reform measures affected equality before law. [11]
Article 19	Right to Freedom	Article 19 guarantees specified freedoms to citizens, including freedom of speech and expression, but these freedoms are subject to

		reasonable restrictions on the grounds specified in the Constitution. In the context of the case, the petitioners challenged measures affecting rights protected under Article 19. [11]
Article 25	Freedom of Religion	The Mutt contended that restrictions on its property affected its religious rights. [11]
Article 26	Management of Religious Affairs	The Mutt argued that its right to administer the religious institution was adversely affected. [11]
Article 31	Right to Property (then a Fundamental Right)	The land-reform measures affected property rights and formed part of the constitutional challenge. [11]
Article 32	Constitutional Remedies	The petitioner approached the Supreme Court seeking protection of alleged Fundamental Rights. [11]

Article 368	Constitutional amendment	Provided the constitutional framework for Parliament's power to amend the Constitution. [11]

Table 1: Fundamental Rights and constitutional provisions identified in the article.

6.4 Parliament's Amending Power under Article 368

Under the current Article 368, an amendment Bill may be introduced in either House of Parliament and must be passed by a majority of the total membership of that House and by a majority of not less than two-thirds of the members present and voting. Certain amendments also require ratification by at least one-half of the State Legislatures. Finally, the Bill must be presented to the President, who is constitutionally bound to give their assent. [8]

In the context of Kesavananda Bharati, the central constitutional issue was whether Parliament's constituent power under Article 368 was unlimited or limited. The Supreme Court held that Parliament has a wide power to amend the Constitution, including Fundamental Rights, but that this power does not extend to altering or destroying the Basic Structure of the Constitution. [11]

6.5 Judgment and Ruling of the Supreme Court

The Court held that Parliament has the power to amend every part of the Constitution, including provisions relating to Fundamental Rights. The majority rejected the reasoning in Golaknath that Article 13(2) prohibited Parliament from amending Fundamental Rights. It held that a constitutional amendment made in exercise of the constituent power under Article 368 is not 'law' within the meaning of Article 13(2). However, the constituent power under Article 368 is subject to the substantive limitation imposed by the Basic Structure Doctrine.**[11]**

At the same time, the Court imposed a substantive limit: Parliament cannot alter or destroy the Basic Structure of the Constitution. Thus, Fundamental Rights were not made completely unamendable. Instead, their amendment became subject to the wider constitutional principle that the essential identity and framework of the Constitution must be preserved. [11]

The decision therefore created a constitutional balance. Parliament retains a broad constituent power to adapt the Constitution to changing circumstances, while judicial review provides a means of preventing an amendment from destroying the Constitution's essential character.[11]

Table 2. Outcome of the Constitutional Amendments in Kesavananda Bharati

Constitutional Amendment	Outcome in Kesavananda Bharati
24th Amendment, 1971	Upheld[11]
25th Amendment, 1971	Partly upheld; the exclusion of judicial review was invalidated[11]
29th Amendment, 1972	Upheld, subject to the Basic Structure limitation[11]

6.6 Basic Structure Doctrine: Scope of Parliament's Amending Power

Primary source used in this section: Reference [11] — Supreme Court of India (1973), *His Holiness Kesavananda Bharati Sripadagalvaru & Ors. v. State of Kerala & Anr.*, W.P. (C) No. 135 of 1970, judgment dated 24 April 1973, Written Judgment, 502 pages. All paragraph and page references in the following tables refer specifically to this official 502-page Supreme Court PDF. [11]

The Basic Structure Doctrine established that Parliament has a wide power to amend the Constitution under Article 368, including provisions relating to Fundamental Rights, but that power is subject to the limitation that Parliament cannot alter or destroy the Constitution's Basic Structure. The seven judges forming the majority did not provide one identical or exhaustive list of Basic Structure features. Their separate opinions identified different but overlapping constitutional principles.[11]

Table 3. What Parliament Can Change

What Parliament can change	**Judge(s) supporting the proposition**	**Para.**	**Official 502-page PDF p.**	**Ref.**
Every provision of the Constitution, provided the basic foundation and structure remain intact	Sikri C.J.	316	p. 43	[11]
Every Article and every Part of the Constitution, subject to preservation of the basic elements/features	Hegde & Mukherjea JJ.	705	p. 128	[11]
Fundamental Rights can be amended/abridged, provided the Basic Structure remains unaffected	Khanna J.	1568	p. 360	[11]
The amending power includes the power to add, alter or repeal constitutional provisions, subject to	Khanna J.	1488	p. 333	[11]

What Parliament can change	Judge(s) supporting the proposition	Para.	Official 502-page PDF p.	Ref.
the Basic Structure limitation				

Table 4. Basic-Structure Features Identified in the Separate Majority Opinions

No.	Basic-Structure feature identified in the majority opinions	Judge(s) expressly supporting it	Para.	Official 502-page PDF p.	Ref.
1	Supremacy of the Constitution	Sikri C.J.; Shelat & Grover JJ.	316; 620	pp. 43; 105	[11]
2	Republican form of Government	Sikri C.J.; Shelat & Grover JJ.; Jaganmohan Reddy J.	316; 620; 1206	pp. 43; 105; 236	[11]
3	Democratic form of Government	Sikri C.J.; Shelat & Grover JJ.; Hegde & Mukherjea JJ.; Jaganmohan Reddy J.; Khanna J.	316; 620; 705; 1206; 1480	pp. 43; 105; 128; 236; 331	[11]

No.	Basic-Structure feature identified in the majority opinions	Judge(s) expressly supporting it	Para.	Official 502-page PDF p.	Ref.
4	Secular character of the Constitution/State	Sikri C.J.; Shelat & Grover JJ.; Khanna J.	316; 620; 1480	pp. 43; 105; 331	[11]
5	Federal character of the Constitution	Sikri C.J.; Shelat & Grover JJ.	316; 620	pp. 43; 105	[11]
6	Separation/demarcation of powers between Legislature, Executive and Judiciary	Sikri C.J.; Shelat & Grover JJ.	316; 620	pp. 43; 105	[11]
7	Dignity and freedom of the individual	Sikri C.J.; Shelat & Grover JJ.	317; 620	pp. 43; 105	[11]
8	Unity and integrity of the nation	Shelat & Grover JJ.; Hegde & Mukherjea JJ.	620; 705	pp. 105; 128	[11]
9	Sovereignty of India/country	Shelat & Grover JJ.; Hegde & Mukherjea JJ.; Jaganmohan Reddy J.	620; 705; 1206	pp. 105; 128; 236	[11]

No.	Basic-Structure feature identified in the majority opinions	Judge(s) expressly supporting it	Para.	Official 502-page PDF p.	Ref.
10	Parliamentary democracy and judicial review	Jaganmohan Reddy J. — Parliamentary democracy; Khanna J. — judicial review. *Justice Khanna held the second part of Article 31C invalid because it excluded judicial review.	1206; 1529	pp. 236; 347	[11]

Note: The seven judges constituting the majority did not provide a single identical or exhaustive list of Basic Structure features. The features presented in this table are those identified or discussed in the separate majority opinions and should not be understood as a single unanimously formulated list.

Fundamental Rights and the Basic Structure

Kesavananda Bharati changed the relationship between Fundamental Rights and Parliament's amending power. The judgment did not make Fundamental Rights completely unamendable. Parliament could amend Fundamental Rights under Article 368, but an amendment affecting them could not alter or destroy the Constitution's Basic Structure. Fundamental Rights are an important part of the Constitution, while the Basic Structure is broader and includes principles such as constitutional supremacy, democracy, secularism, federalism, separation of powers, and

judicial review. Thus, the judgment balanced Parliament's power to amend the Constitution with the judiciary's responsibility to protect its essential constitutional identity and features. [11]

CONCLUSION

The review of Kesavananda Bharati v. State of Kerala (1973) shows that the Supreme Court played a crucial role in protecting the Constitution and preserving the constitutional framework of Fundamental Rights. The judgment clarified that although Parliament has a wide power to amend the Constitution under Article 368, that power is not unlimited: Parliament cannot alter or destroy the Constitution's Basic Structure. Parliament can amend Fundamental Rights, but it cannot alter or destroy the Basic Structure of the Constitution. **[11]** The decision therefore established a balance between Parliament's need to amend the Constitution and the need to preserve constitutional supremacy and judicial review. The Basic Structure Doctrine remains important because it protects the essential identity of the Constitution while allowing constitutional change through the amendment process. [10,11]

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REFERENCES

1. Supreme Court of India. (1973). *Kesavananda Bharati Sripadagalvaru v. State of Kerala & Anr.*, Writ Petition No. 135 of 1970. Basic Structure Judgment. Supreme Court of India. https://judgments.ecourts.gov.in/KBJ/?p=home
2. Supreme Court of India. (1951). *Shankari Prasad Singh Deo v. Union of India & State of Bihar*. Supreme Court of India. https://api.sci.gov.in/judgment/judis/1174.pdf
3. Supreme Court of India. (1965). *Sajjan Singh v. State of Rajasthan*. Supreme Court of India. https://api.sci.gov.in/jonew/judis/3130.pdf
4. Supreme Court of India. (1967). *I.C. Golaknath v. State of Punjab*. Supreme Court of India. https://api.sci.gov.in/judgment/judis/2449.pdf
5. Legislative Department, Ministry of Law and Justice, Government of India. (1971). *The Constitution (Twenty-Fourth Amendment) Act, 1971*.

https://www.legislative.gov.in/static/uploads/2025/07/2a321e3e1deabf4a8e1b878b640414d7.pdf

6. Legislative Department, Ministry of Law and Justice, Government of India. (1971). *The Constitution (Twenty-Fifth Amendment) Act, 1971*. https://www.legislative.gov.in/static/uploads/2025/07/a9a6ff5abe015dc06b265ecc9485f7a7.pdf

7. Legislative Department, Ministry of Law and Justice, Government of India. (1972). *The Constitution (Twenty-Ninth Amendment) Act, 1972*. https://www.legislative.gov.in/static/uploads/2025/07/32c2b9a302c83703871e081351af5f49.pdf

8. Legislative Department, Ministry of Law and Justice, Government of India. *The Constitution of India* *https://www.legislative.gov.in/static/uploads/2025/07/c9fe9c9b6840524844316f74bb1c556c.pdf*

9. Ghai, K. K. (2026). *ISC Political Science for Class XII: New Syllabus*. Sixteenth Revised Edition. Kalyani Publishers.

10. Supreme Court of India. (1973). *Kesavananda Bharati: Conclusions of the Judgment — Majority Opinions*. Basic Structure Judgment. Supreme Court of India https://judgments.ecourts.gov.in/KBJ/?p=home/conclusion

11. Supreme Court of India. (1973). *His Holiness Kesavananda Bharati Sripadagalvaru & Ors. v. State of Kerala & Anr.*, W.P. (C) No. 135 of 1970, judgment dated 24 April 1973. Written judgment, 502 pages. https://api.sci.gov.in/jonew/judis/29981.pdf