

The Basic Structure Doctrine is Being Slowly Hallowed Out

Astha Tripathi¹

ABSTRACT

The Basic Structure Doctrine has long been regarded as the cornerstone of Indian constitutionalism, safeguarding the Constitution from destructive constitutional amendments. However, contemporary constitutional challenges increasingly arise not through formal amendments but through gradual institutional and executive practices that erode constitutional values while preserving the constitutional text. This article examines the evolution of the Basic Structure Doctrine from its conceptual origins to its judicial development through landmark rulings, and the Electoral Bonds judgment. It argues that constitutional erosion manifested through executive overreach, weakened institutional independence, tribalization, misuse of ordinances, opacity in political funding, and distortions of federalism, poses a greater threat to constitutional democracy than direct constitutional amendment.

The paper contends that the doctrine, though effective in limiting Parliament's amending power, remains largely reactive and insufficient to address subtle forms of constitutional degradation. It advocates strengthening institutional safeguards, enhancing judicial responsiveness, promoting a culture of constitutionalism, and reinforcing democratic accountability to ensure that the doctrine continues to protect not only the constitutional text but also its underlying values. Ultimately, the article concludes that the future of the Basic Structure Doctrine depends upon its ability to respond to evolving threats that undermine the Constitution without formally altering it.

KEYWORDS

Basic Structure Doctrine; Constitutional Erosion; Judicial Review; Constitutionalism; Federalism; Separation of Powers.

¹ Student at Faculty of Law, The Maharaja Sayajirao University of Baroda, Gujarat.

INTRODUCTION

On a November afternoon in 2025, students at a university in Haryana watched thirteen actors enacting out a courtroom drama that had, half a century earlier, been decided by a single member of the Supreme Court. The basic structure doctrine, said Chief Justice Surya Kant, as he delivered his closing remarks to the gathered students, is “conscience that keeps our democracy from becoming majoritarian,” the rope that binds “our traditional Indian khaat, a cot,” said the chief justice, “in whose frame and legs the text of our constitution and institutions is carved, but whose interlaced rope of restraint and balance keeps it from collapsing.” It is an elegant formulation, in which there is perhaps just the merest hint of resignation, for no rope is indestructible.²

Sixty years after being voted on, by a single member of the Supreme Court, the basic structure doctrine still has not been repealed, not formally. But the very fact that it has to be continually asserted, its methodology reinvoked, its range reasserted, is in itself a sign that, however indelible its imprint on the Constitution may be, its presence in practice is increasingly questioned. The erosion of constitutional norms and conventions, the capture of agencies and institutions long thought to be independent, the sheer number of ordinances promulgated and then allowed to stand, the manipulation of the federal structure, are all acts, none of which, strictly speaking, violates the Constitution but each of which chips away at the foundations of our constitutional order.

It is not that these acts are not “violations,” in a formal sense, but rather that they are violations precisely because they occur within the formal framework of the Constitution. They are, in other words, the slow dismantling of a system through acts sanctioned by it. The reason why this matters is that while constitutional democracies are rarely overthrown by a single stroke, they often unravel, nonetheless, over time, as a result of actions that, while individually legitimate, cumulatively undermine the very basis of the system. Modern constitutional orders, in other words, face not only the threat of majoritarian capture embodied in an openly majoritarian amendment but also the menace of a more insidious form of capture that leaves the constitutional text essentially untouched.

² Basic Structure Is the Weave That Keeps India’s Constitutional ‘Khaat’ Steady: Chief Justice of India Surya Kant, LiveLaw (Nov. 29, 2025), <https://www.livelaw.in/top-stories/basic-structure-is-the-weave-that-keeps-indias-constitutional-khaat-steady-chief-justice-of-india-surya-kant-311683>.

ORIGINS OF THE DOCTRINE

The idea behind the basic structure doctrine did not originate in *Kesavananda Bharati*, or even in India. It can, in fact, be traced to Germany in 1965, when Dietrich Conrad, in his lectures in India, asked himself if Parliament, by virtue of the amending power given to it in Article 368, could simply repeal the fundamental rights and freedoms of Indians or replace the Indian Constitution altogether with a wholly new one.³ The problem with such a reading of the Constitution is that it devalues its very nature as a Constitution, for if even its most essential elements can be amended, there is little difference between a Constitution and any other piece of legislation. The moment the amending power ceases to be limited in any way, it ceases to be amendable and, by extension, constitutes a law not of the land but of the moment, the prevailing winds of opinion.

The Indian judiciary's understanding of this danger was not immediate. In *Shankari Prasad v. Union of India*,⁴ in 1951, the Court ruled that Parliament had the right to amend any part of the Constitution, including the sections dealing with fundamental rights, since such amendments did not fall under the purview of Article 13, thereby rendering them perfectly valid. In 1965, in *Sajjan Singh v. State of Rajasthan*,⁵ the court returned to the same issue, finding no inconsistency with Articles 13 and 19, even as several justices expressed their misgivings. The most explicit of these was the view, subsequently reiterated and expanded upon in *I.C. Golaknath v. State of Punjab (1967)*,⁶ that Parliament actually had no amending power at all, that the authority to amend the Constitution rested exclusively with the judiciary, which not only laid down the fundamental rights but also their limitations.

What the court in *Golaknath* did not realize, or refuse to admit, was that by removing any amending power from Parliament it had effectively neutered the Constitution's ability to adapt to changing needs. The most obvious flaw in this approach, however, was that in constraining amendments Parliament could scarcely be said to be amending the Constitution at all, since amendments, by definition, leave the amended text effectively unchanged. The most comprehensive formulation of this view came in the eleven-judge bench in *Kesavananda Bharati v. State of Kerala (1973)*, which, as the largest constitutional assembly in India's history, was tasked with deciding the single most important constitutional question of its time:

³ Dietrich Conrad, Limitation of Amendment Procedures and the Constituent Power, 15-16 Indian Y.B. Int'l Aff. 375 (1970).

⁴ *Shankari Prasad Singh Deo v. Union of India*, AIR 1951 SC 458.

⁵ *Sajjan Singh v. State of Rajasthan*, AIR 1965 SC 845.

⁶ *I.C. Golaknath v. State of Punjab*, AIR 1967 SC 1643.

namely, whether or not, and to what extent, Parliament's constituent power could be amended. During the proceedings, counsel for the petitioner, M.K. Nambiar, famously invoked the term "basic structure," which the court eventually adopted when it ruled, by the closest possible decision of 7:6, that while Parliament could amend any part of the Constitution, it could not amend, abrogate, or destroy its basic structure.⁷

What the decision the court took the most prudent course, which ensured that neither the people nor Parliament had cause to complain. While the ruling in *Golaknath* was formally repealed, the basic structure theory was advanced as a limiting principle that would prevent Parliament from diluting the Constitution beyond recognition. The power of Parliament to amend the Constitution, in other words, was recognized as a power to amend within the Constitution, not above it. This was particularly important, for despite all its limitations, the doctrine of basic structure preserved the principle of popular sovereignty, and the primacy of the Constitution as an expression of the people's will over Parliament's. Unlimited amending power would have rendered the latter identical to the former, defeating the very point of having a written Constitution. Thus, the basic structure doctrine was, in its way, a defense of the Constitution against majoritarian capture, but also one that recognized the necessity of such capture in an evolving society.

Its greatest achievement, perhaps, was that it did not simply survive the many challenges to its validity over the last five decades, but continued to evolve and expand its scope. With the exception of a few initial remarks by Justice S.M. Sikri, who presided over the original *Kesavananda Bharati* hearing, the doctrine's development was gradual and cumulative. At first, the basic structure was viewed in terms of broad constitutional principles including the supremacy of the Constitution itself, the republican and democratic forms of government, secularism, separation of powers, and the federal system, all of which were seen as its basic structure.

A more comprehensive treatment of the doctrine came in *Indira Nehru Gandhi v. Raj Narain* (1975)⁸ in which the Court ruled that free and fair elections formed an indistinguishable part of the Constitution's basic structure. The doctrine was further elaborated upon in *Minerva Mills Ltd. v. Union of India* (1980),⁹ which famously ruled that Parliament's constituent power was

⁷ *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461; (1973) 4 SCC 225. On M.K. Nambiar's submissions and the Court's adoption of the "basic structure" formulation, see Granville Austin, *Working a Democratic Constitution: A History of the Indian Experience* 258–77 (1999).

⁸ *Indira Nehru Gandhi v. Raj Narain*, AIR 1975 SC 2299.

⁹ *Minerva Mills Ltd. v. Union of India*, AIR 1980 SC 1789.

itself a crucial element of the basic structure. Most notably, however, was the observation that another essential element was the very limitation of Parliament's constituent power, imposed by the Constitution on itself, as well as the principle of judicial review and the necessary harmony between the fundamental rights and directive principles of the Constitution. Thus, while Parliament was empowered to amend the Constitution, its inability to amend its amending power created a situation in which the Constitution retained its supremacy over Parliament, and by extension, the people it represented.

Several subsequent judgments further elaborated upon the doctrine, adding federalism and secularism to the list of principles that could not be amended, while also laying the foundation for the protection of the independence of the judiciary, including through its appointment process. As the judiciary, and particularly the Supreme Court, expanded its mandate, with each judge asserting their jurisdiction over an ever-growing number of issues, the principle of judicial review itself became an essential aspect of the basic structure. In *S.R. Bommai v. Union of India (1994)*,¹⁰ for instance, the Court ruled that federalism and secularism formed an integral part of the Constitution's basic structure, which in turn significantly restricted the use of Article 356, the controversial and often abused presidential power to dismiss state legislatures.

WHAT COUNTS AS "BASIC STRUCTURE"

In *Kesavananda Bharati*, the Supreme Court declined to specify what, precisely, constituted the basic structure, choosing instead to leave it as an open textured formulation that could be expanded upon in later judgments. This it has done, consistently, and frequently, as constitutional issues arose. Even within *Kesavananda Bharati*, there is some debate over what the basic structure actually entailed. The opinion delivered by Chief Justice S.M. Sikri provides one such treatment, while other justices' dissents and concurrences offer alternative views.

The most common understanding of the basic structure incorporates various constitutional principles including the supremacy of the Constitution, the republican and democratic framework, secularism, separation of powers, and the federal system. The list does not end there, however, for over the following decades, and especially after the advent of the doctrine, the judiciary frequently added new items to this list when revisiting the doctrine. In *Indira*

¹⁰ *S.R. Bommai v. Union of India*, (1994) 3 SCC 1.

Nehru Gandhi v. Raj Narain, for instance, Justice H.R. Khanna cited the principle of free and fair elections as one of the fundamental constitutional basics.

Minerva Mills Ltd. v. Union of India (1980) saw the Court, in one of its finest hours, observe that the very limitation of Parliament's constituent power was one of the basic structures of the Constitution, as well as the principle of judicial review and the harmony between the fundamental rights and directive principles of the Constitution. Parliament could certainly amend the Constitution, but it could not do so in a manner that expanded its amending power to the point that it could amend its amending power.

Several subsequent judgments also contributed to the doctrine, adding items to the list of essential constitutional principles, particularly in regard to federalism and secularism. They also provided the foundation for the judiciary's own independence, particularly in respect to the appointment of its judges. The doctrine, in other words, allowed for a dynamic constitutional development that responded to emerging challenges without undermining the core constitutional ethos.

That ethos, however, was not fixed or frozen in time, and could, in fact, evolve. For although it initially did not explicitly encompass it, judicial review eventually became one of the basic structures as well, through subsequent rulings. Most recently, the appointment of judges has been reinterpreted in accordance with the basic structure doctrine, thereby creating, as explained in the National Judicial Appointment Commission (NJAC) judgment,¹¹ additional constraints on the very process of appointing judges.

HOW EROSION HAPPENS WITHOUT REVERSAL

Not once has any government dared to amend the Indian Constitution, since *Minerva Mills* in 1980. The lesson was clear openly challenging the basic structure doctrine risked outright condemnation by the courts. But there are other ways to weaken a constitution, besides outright amendment. And perhaps more worryingly, these methods are much less likely to generate an immediate, resounding public reaction.

Consider the shift that has happened over the last decade, with the gradual transplantation of adjudicatory responsibilities from the main constituent courts to various tribunals. On several occasions, questions have been raised about the fairness of the process by which judges are selected to serve on these new courts. If executive interference is a factor, even if indirectly,

¹¹ Supreme Court Advocates-on-Record Ass'n v. Union of India, (2016) 5 SCC 1 (the "NJAC case").

then the basic structure doctrine is compromised as India's federalism is written into the Constitution. It was not an amendment that threatened judicial independence, but rather a structural change to how justice was administered, and by whom.

A similar point can be made about the Electoral Bonds Scheme. In the case of *Association for Democratic Reforms v. Union of India (2024)*,¹² the Supreme Court ruled the anonymization of political donations to be illegal but the damage had been done long before the scheme was declared void. Political parties had operated under the protection of this opacity for nearly six years, and the public's ability to make informed choices was significantly impeded during that time. Between the time that the scheme was implemented and its repeal, numerous national elections had already taken place. Was democracy truly upheld throughout this period? The right to vote is meaningless if voters are unable to make truly informed judgements about what they are voting for. The basic structure the electoral college had not changed, but its integrity had certainly been questioned in the eyes of the public.

Taking Federalism as another example, in *State of Tamil Nadu v. Governor of Tamil Nadu (2025)*,¹³ the Supreme Court ruled that the Tamil Nadu Governor could no longer ignore the State Legislative Assembly and refuse assent to Bills but this too came too late. The Governor of any state holds far too much power, and abuse of this power can have far reaching consequences. If the Union government wishes to rescind a Bill, it can do so directly but a state government can prolong, or indefinitely adjourn, a Bill's passage through the legislature, without formally rejecting it. This, in essence, constitutes a veto even though such a power is not formally granted to the Governor by the Constitution. It certainly did not help that no amendment to the said Constitution had occurred either, to clarify the situation. The very existence of the Union-State relationship is written into India's most sacred legal document, and the basic structure of India's politics is far more fragile than many would care to admit.

A similar observation can be made about the ordinance making power, the Union government's ability to enact law without parliamentary approval when Parliament is in recess. There is nothing wrong with the ordinance making power, as such, there are situations in which it is necessary. But when it is made a staple of governance, an evasion around the tedious but essential parliamentary process, that is when the danger begins. Debate in Parliament, even when it consists solely of the government party, always serves to bolster a law's legitimacy,

¹² *Ass'n for Democratic Reforms v. Union of India*, (2024) 5 SCC 1.

¹³ *State of Tamil Nadu v. Governor of Tamil Nadu*, 2025 INSC 481 (W.P. (C) No. 1239 of 2023, decided Apr. 8, 2025).

however small that reinforcement might be. The government knows this and so it exploits the ordinance making power to enact as many laws as possible without parliamentary debate. Once again, the basic structure is not formally altered but laws pass through this country with far less democratic legitimacy than they otherwise would.

What do all these examples have in common? They all represent ways in which the Indian government has circumvented the Constitution, without formally amending it. The basic structure doctrine was a response to one particular threat constitutional amendment but the real threat comes from other, more subtle sources of pressure. There is no way of stopping the government from making laws but there are ways of diminishing said laws' legitimacy. A government that does not amend the Constitution can still enact a law with seriously damaging implications for the country. Thus, the basic structure doctrine fails to take into account the subtleties of institutional power dynamics. It is all well and good for the judiciary to stand united against a blatantly anti-constitutional amendment but when the government does not openly challenge the Constitution, instead undermining it in more roundabout ways, not even the best-intentioned judges know quite what to do.

Constitutional scholars have begun referring to this phenomenon as erosion, as opposed to amendment or revision.¹⁴ It encapsulates the ways in which a democratic government can gradually diminish the powers of its constitution without outright abolishing it for instance, by centralizing too much institutional power in the presidency or prime minister-ship. It is a slow, steady process that leaves the constitution's letter largely intact, while hollowing out its spirit. Each step on its own might seem insignificant but in aggregate, they constitute a fundamental redefinition of the relationship between liberty and power. India's constitutional development in recent years is increasingly reminiscent of this process. And so we must ask ourselves not whether our Constitution, as it stands, will survive a blatantly unconstitutional amendment but whether it will withstand a series of increasingly subtle amendments, each of which seems reasonable on its own.

LANDMARK JUDICIAL RESPONSES

Invariably, as soon as such practices began to erode constitutional pillars, the judiciary responded but invariably, it was too late to prevent damage from being done. In examining

¹⁴ David Landau, *Abusive Constitutionalism*, 47 U.C. Davis L. Rev. 189 (2013).

various Supreme Court cases, one finds patterns and parallels that speak directly to the issue at hand.

The first significant case that illustrates this point is *S.R. Bommai v. Union of India (1994)*. Prior to its hearing, it had already become common practice for the Union Government to dismiss State Governments at the first sign of trouble no matter how inconsequential the dispute might be. The Union Government did so with relative impunity, despite the fact that such action was entirely contrary to the spirit of the Indian Constitution. However, in its judgement, the Supreme Court noted that it was the very federalism enshrined in the Indian Constitution that prevented such action from being taken in the future a large part due to the court's decision making the use of Article 356 subject to judicial review. The federalism of the Indian Union, the court ruled, was a basic structure that could not be tampered with, no matter how inconvenient it might be to the Union Government.¹⁵

Another landmark case that illustrates the point well is *Supreme Court Advocates on Record Association v. Union of India (2015)*, usually referred to as the NJAC case. In it, the Supreme Court ruled that the Ninety-Ninth Constitutional Amendment Act which created the National Judicial Appointments Commission was unconstitutional, because it interfered with the separation of powers. Even though it passed with the support of nearly every political party in the country, it failed to withstand scrutiny from the country's highest court. The court ruled that the independence of the judiciary was a basic structure, one that could not be tampered with, no matter how well intentioned the amendment might have been.¹⁶

The third case that merits special mention is the Electoral Bonds judgement of *Association for Democratic Reforms v. Union of India (2024)*.¹⁷ In its ruling, the Supreme Court stated that political funding transparency was a basic structure of the Constitution but once more, it was too late to prevent damage from being done. The anonymization of political donations had already been in place for nearly six years, during which time, political parties had exploited the loophole to the detriment of the public interest. The very idea of electoral bonds as a means of donation was an affront to democracy, because it obstructed the people's right to an informed choice.

¹⁵ *S.R. Bommai v. Union of India*, supra note 10.

¹⁶ *Supreme Court Advocates-on-Record Ass'n v. Union of India*, supra note 11.

¹⁷ *Ass'n for Democratic Reforms v. Union of India*, supra note 13.

They all responded to perceived constitutional threats but in every case, the damage had been done long before any court rulings could reverse it. It is important to remember that the judiciary only acts when presented with a tangible issue and even then, it is forced to act long after the fact. When it comes to the separation of powers, the judiciary does not enjoy the luxury of being proactive, as its mandate instructs it to only intervene when asked to do so. The very existence of the electoral college and the federal structure of the Indian Union testify to that principle. The separation of powers is inherently reactive which is why, when it comes to protecting the basic structure of the Constitution, the judiciary can only play a corrective role.

That, in itself, is not a problem so long as the correction takes place in due time. The integrity of the judicial review process has long been held sacred and justifiably so, considering how critical it is to democracy. The separation of powers is not perfect and in some ways, it is deliberately limited but it is still the most viable option available. The Indian Constitution provides for a system of checks and balances, but not one of them is truly preventative, the checks only serve to limit the damage. The corrective powers of the system only take effect when an unconstitutional law is already in place, when damage has already occurred and, as mentioned above, in some cases, this damage is irreversible. The electoral college may be prevented from tampering with the direct elections of the President of India but can it really be prevented from interfering with the indirect elections of federal judges?

The judiciary has served as the guardian of the Indian Constitution for as long as the country has had one but in order to truly be its firm guardian, it must be more than just the first responder to every unconstitutional act. It must be present at every stage but that is not how constitutional law works. Checks and balances exist for a reason and any attempt to dismantle them from within will inevitably lead to consequences. Most significantly, it is important to understand that the integrity of the basic structure is best preserved not by preventative measures, but by the timely removal of damage inflicted upon it. The separation of powers was designed to provide exactly that but its corrective powers are limited by the fact that they only take effect after damage has been done. The very nature of this system creates a built in delay, one that leaves the country vulnerable to manipulation in the interim.

THE DANGER OF SILENT EROSION

The basic structure was supposed to be a theoretical minimum a floor below which Parliament's amending powers could not go, a barrier against the outright abolition of the Constitution's essential character. It has been most effective in practice precisely because it has limited the

ability of Parliament to act unilaterally. However, as a limitation on Parliament, it has proven to be significantly less effective. Most contemporary constitutional crises in India are no longer the result of direct constitutional amendment but emanate from executive, institutional, or even policy level pressures. A Governor's wilful and prolonged withholding of assent to legislation is not a constitutional amendment but may have repercussions on the federal character enshrined in the Constitution. A tribunal, whose existence is not formally guaranteed by the Constitution, whose judges may be subject to continued executive interference, whose funding and jurisdiction may be manipulated at will, does not formally violate India's commitment to an independent judiciary but may render such independence a mere formality. It is entirely possible to have a functional democracy while gradually de jure eroding many of its cherished institutions. The erosion of institutional guarantees may occur even as their formal vestiges remain in place so long as no single action formally deletes them. By the same token, the basic structure doctrine may simultaneously remain a theoretical maximum while being steadily undermined in its practical consequences.

It is this particular danger that makes the basic structure potentially self-defeating. The more successful it is at preventing formally specified amendments, the more tempting it becomes for other agencies to circumvent it not by formally deleting or amending the Constitution but by manipulating other constitutional instruments to achieve roughly similar effects. In other words, the very success of the basic structure as a theoretical maximum renders it a vulnerability, a point of weakness for those seeking to circumvent it. As a result, the basic structure's influence may quietly dissipate, its practical impact steadily diminished, even if its very existence as a theoretical framework remains formally intact.

SAFEGUARDING THE DOCTRINE GOING FORWARD

Obviously, if this is to be prevented, the very foundations of our basic structure require reinforcement. The doctrine needs to be fortified not only in theory but in practice. The basic structure requires stronger institutional guarantees for the continued existence and independence of various critical agencies, the tribunals, the judiciary, the territorial integrity of states, etc. As long as the basic structure remains primarily a theoretical innovation, its continued survival will remain precarious. If Parliament, in its desire to amend the Constitution, decides to weaken significantly the independence of the judiciary, the separation of powers as a basic structure will cease to exist. The expansion of the executive's role in appointments to various tribunals, the weakening of safeguards for these appointments, or the introduction of

overly broad guidelines concerning their tenure, all run the risk of substantially diminishing the independence of the judiciary in practice, even if that independence survives nominally.

A similar concern applies to a prolonged withholding of assent to bills by a Governor one that goes far beyond the realm of theoretical niceties. It may prove deeply problematic for the functioning of the federal system if such a situation were to occur. This is why the judiciary's recent interventions in response to these issues are so critical, as is the need to establish clearer institutional rules around them. The basic structure doctrine requires not only periodic reaffirmation in the form of *Kesavananda Bharati* but also actual institutional guarantees, without which it cannot survive.

Another key area of focus concerns the doctrine's relationship with various policy level instruments. The constitutionalised role of ordinances needs to be carefully evaluated while emergency rule is often a necessity, their misuse can considerably diminish the separation of powers between the legislature and the executive. The basic structure was created to prevent Parliament from becoming too powerful, but such power imbalances occur at the state level as well, particularly when it comes to the relationship between the Governor, Lieutenant Governor, and the state legislature. Additionally, many scholars argue that it is now time to formally codify the basic structure within the Constitution, ideally by amending Article 368.

While such a move would go a considerable way in addressing some of the concerns raised above, it also raises fresh issues. Any specific enumeration of basic structures makes their modification or deletion considerably easier, at least from a formal standpoint. It may diminish the flexibility and adaptability of the doctrine in the face of unforeseen circumstances. Ironically, the fact that it has survived for more than five decades may eventually undermine its survival.

Finally, it is crucial to develop what one might call a culture of constitutionalism. No set of legal and institutional guarantees, however well intentioned, can survive if the broader political and public spheres do not regard it as such. Constitutional values and institutions need to be embedded within the broader social fabric made part of the political discourse, popular consciousness, and every day public life if they are to survive. This is where the free and responsible press has its role, as do active civil society organisations. After all, it is not the judiciary that ultimately enforces the Constitution, it is society as a whole. Even more importantly, it is not merely the judiciary, it is the various other governmental and policymaking agencies that have a responsibility to ensure that the basic structure doctrine

receives the respect it is due, so that its continued relevance can be ensured for the years to come.

CONCLUSION

Minerva Mills was never formally repealed, and, at least for now, no future Government seems inclined to repeal it.¹⁸ It has survived not only its initial controversy but also the tests of time, democracy, and constitutional crises. Nevertheless, as the events of recent years have shown, it has proven to be a fragile security against the slow and steady erosion of democratic institutions. *Kesavananda Bharati* may have safeguarded the Indian Constitution against a direct attack by Parliament, but Parliament does not have to attack the Constitution outright in order to weaken it.¹⁹

Constitutional values and institutions can be gradually dismantled, one step at a time, without ever formally abolishing them even, or perhaps especially, when that abolition takes place through mechanisms that fall outside the auspices of the Constitution itself. The basic structure doctrine does not necessarily make the Constitution impervious to change in fact, it does the opposite. It facilitates change by allowing Parliament to amend the Constitution, albeit within strictly specified limits. However, in doing so, it leaves the door open for other forces the executive or even the judiciary to facilitate additional, supplementary changes that, when taken together, considerably weaken the Constitution as a whole.

The basic structure doctrine may well survive, but its survival will no longer be assured it will steadily grow more vulnerable to challenges from both within and outside the Constitution. That is the cost of making it a living and breathing document. It will persist, as it has done for the last half century, so long as it continues to be actively upheld in both practice and theory. Its survival is by no means guaranteed, but its continued relevance will always be contingent upon its ability to serve as an organising principle for Indian constitutionalism. The question is not so much whether the basic structure doctrine will endure but whether the basic structure itself will endure whether Indian democracy will continue to follow the model first articulated by *Kesavananda Bharati*.

¹⁸ *Minerva Mills Ltd. v. Union of India*, supra note 9.

¹⁹ *Kesavananda Bharati v. State of Kerala*, supra note 7.