

DOCTRINE OF BASIC STRUCTURE VIS-À-VIS DOCTRINE OF BASIC FEATURE

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INTRODUCTION

Did you know that the framers of the Indian Constitution provided Parliament the authority to change the document in response to "We the People's" needs and demands? Do you also know that the Constitution can be altered through the process described in Article 368, which grants Parliament the authority to do so? However, there is a safeguard in place to prevent Parliament from abusing this power; this safeguard is referred to as the "Doctrine of Basic Structure." In order to prevent Parliament from using its constitutional authority to alter the "fundamental structure of the basic law of the land," it restricts its capacity to amend the law. Therefore, a new set of concerns was brought up: Are there any limitations on the amending authority of Parliament? if the answer is "no," for whatever reason, such as the fact that the founders of the Constitution did not want such a constraint to exist, in which case they would have incorporated it into the document. The next issue is: to what extent may Parliament alter the constitution? If there are no restrictions on this power, is there any risk that Parliament's ability to change legislation under the pretext of "constituent authority" may be abused? Through judicial decisions and knowledge of the Doctrine of Basic Structure, these issues and the article's scope are further addressed. Also, the terms 'basic structure' and 'basic feature' is used interchangeably, is there any difference between these two doctrines that will also be discussed in this paper further?

WHAT IS THE DOCTRINE OF BASIC STRUCTURE?

The Constitution of India is a dynamic document that can be altered as needed to meet societal requirements. The Constitution's amendment power can be exercised by the parliament whenever necessary under Article 368. The article also specifies in great detail the process for change. "The doctrine of basic structure is nothing but a judicial innovation to ensure that the power of amendment is not misused by Parliament. The idea is that the basic features of the Constitution of India should not be altered to an extent that the identity of the Constitution is lost in the process". The basic structure theory contends that certain concepts

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outlined in the Indian Constitution, which serve as the Parliament's governing principles, cannot be altered by any amendment. Although the theory did not always exist as it does today, it has been advanced and supported by the nation's judges over time. The Indian Constitution gives the state legislatures and the Parliament the power to pass laws in their respective territories. This power is not intrinsically unqualified. The Constitution gives the judiciary the power to decide whether all legislation is constitutional. If a statute violates a provision of the Constitution that has been ratified by state legislatures or parliament, the Supreme Court can declare the statute to be ultra vires or illegal. The founding fathers wanted the Constitution to be a flexible manual for government rather than a rigid one, despite this check. Parliament was given the power to change the Constitution as a result. The Constitution's Article 368 states that Parliament has the full right to alter the entire text. But since independence, the Supreme Court has served as a regulator of Parliament's control of the constitution. The apex court said that under the guise of modifying the Constitution, Parliament could not misinterpret, harm, or alter the fundamental principles of the document in order to preserve the original aspirations envisioned by its authors. "The phrase 'basic structure' itself cannot be found in the Constitution. The Supreme Court recognised this concept for the first time in the historic Kesavananda Bharati case in 1973"¹.

EVOLUTION OF THE DOCTRINE OF BASIC STRUCTURE

The judiciary initially held the opinion that the parliament's amendment authority was unrestricted since it may change any provision of the constitution, including article 368, which grants that authority to the parliament. However, in 1967, "Golak Nath v. State of Punjab"², the Supreme Court used a fresh perspective to understand the powers of parliament, holding that it cannot modify part III of the constitution, which is related to fundamental rights, and as a result, granted fundamental rights a "Transcendental Position."

Justice J.R. Mudholkar, in his dissent in the case of "Sajjan Singh v. State of Rajasthan"³, first outlined the "basic features" principle in 1953. He wrote, "It is also a matter for consideration whether making a change in a basic feature of the Constitution can be regarded merely as an amendment or would it be, in effect, rewriting a part of the Constitution; and if the latter, would it be within the purview of Article 368?"

¹ Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225: AIR 1973 SC 1461.2

² Golak Nath v. State of Punjab, AIR 1967 SC 1643

³ Sajjan Singh v. State of Rajasthan, AIR 1965 SC 845

Keshavanada Bharti v. State of Kerala⁴, a landmark decision from 1973, established that parliaments cannot change or interfere with the fundamental framework of the constitution. Although it was decided that the parliament has unrestricted authority to change the constitution, this power does not include the ability to completely rewrite it. Instead, it only gives the parliament the ability to make changes. Although the Keshavanand case provided the idea of basic structure, it gained widespread recognition and validity as a result of subsequent cases and judgements. The emergency imposed by the then-powerful PM Indira Gandhi marked the beginning of this doctrine's main evolution. In order to stop her indictment, the administration introduced the 39th amendment, which also exempted the Prime Minister election from judicial scrutiny. However, the 39th Amendment Act was invalidated in the case of “Indira Nehru Gandhi v. Raj Narain”⁵ with the use of the doctrine of basic structure.

Shankari Prasad V Union of India ⁶	It laid down that parliament has the right to amend any part of the Constitution.
Golak Nath V State of Punjab ⁷	It laid down that Part III of the constitution that is Fundamental Rights cannot be altered.
Keshavanand Bharti V State of Kerala ⁸	It laid down that Parliament has no right to alter or amend any part of the basic structure of the Constitution.
Indira Gandhi V Raj Narayan ⁹	The fundamental framework of the constitution cannot be changed by parliament.
Minerva Mills V Union of India ¹⁰	In addition to the fundamental feature, judicial review and harmony and balance between fundamental rights and guiding principles were included.

⁴ Supra Note 1

⁵ Indra Nehru Gandhi v. Raj Narain, AIR 1975 SC 2299

⁶ Shankari Prasad Singh Deo v. Union of India, AIR 1951 SC 455

⁷ Golak Nath v. State of Punjab, AIR 1967 SC 1643

⁸ Supra Note 1

⁹ Supra Note 5

¹⁰ Minerva Mills Ltd. V. Union of India, AIR 1980 SC 178

Indira Sawhney Vs. Union of India ¹¹	The fundamental feature now includes the rule of law.
S.R Bommai vs Union of India ¹²	Secularism, socialism, social justice, the federal structure, the unity and integrity of India, and judicial review were reaffirmed as fundamental characteristics.

BASIC FEATURES OF THE CONSTITUTION IN LIGHT OF THE KESAVANADA DECISION

Each judge outlined what he believed to be the fundamental or essential elements of the Constitution separately. The prevailing position did not have a unanimous consensus either.

According to Sikri, C.J., the idea of basic structure encompassed the following:

- supremacy of the Constitution;
- republican and democratic forms of governance; and
- Separation of powers between the legislative, executive branch, and judiciary;
- federal nature of the Constitution;
- secular character of the Constitution

Two more fundamental characteristics were added to this list by Shelat and Grover:

- the nation's unity and integrity;
- the directive to create a welfare state found in the Directive Principles of State Policy.

A distinct and condensed list of fundamental characteristics was determined by Hegde and Mukherjee: India's sovereignty, the democratic nature of its government, the nation's unity, the fundamental guarantees of the citizens' personal freedoms, and the need to create a welfare state are all important factors.

Jaganmohan Reddy, J. argued that parts of the basic features were to be found in the Preamble of the Constitution and the clauses into which they translated such as:

- Independent democratic nation

¹¹ [1992 Suppl. (3) SCC 217]

¹² [1994] 2 SCR 644 : AIR 1994 SC 1918 : (1994)3 SCC1

- Parliamentary government
- three State institutions .“He said that the Constitution would not be itself without the fundamental freedoms and the directive principles”.¹³

The minority opinion, which was supported by only six of the bench's judges, held that Parliament could not modify the basic structure because the citizen's fundamental rights were a part of it.

BASICS OF THE CONSTITUTION IN ACCORDANCE WITH THE DECISION IN THE ELECTION CASE

According to Justice H.R. Khanna, democracy, which includes free and fair elections, is a fundamental aspect of the Constitution.

According to Justice K.K. Thomas, the ability for judicial review is a crucial component. Justice Y.V. Chandrachud outlined four fundamental characteristics that he believed could not be changed:

- government of laws and not of men, i.e., the rule of law;
- sovereign democratic republic status;
- equality of status and opportunity for everyone;
- secularism and freedom of conscience and religion;

The idea of separation of powers was not applicable to Parliament since it had constitutive authority that was independent of the Constitution itself, according to Chief Justice A.N. Ray. Therefore, Parliament could prevent judicial scrutiny of laws pertaining to election-related conflicts. Strangely, he believed that democracy was a fundamental principle but that free and fair elections were not. Ordinary legislation, according to Ray, C.J., was not covered by fundamental characteristics.

Ray, C.J., and Justice K.K. Mathew both agreed that the basic structure did not apply to ordinary statutes. But he believed that democracy was a necessary component and that the judiciary should settle election-related disputes on the basis of the law and the evidence.

Justice M.H. Beg disagreed with Ray, C.J. on the grounds that if Parliament's constituent power were claimed to be superior to it, a Constitution would not be necessary. Parliament

¹³ His Holiness Kesavananda Bharati Sripadagalavaru v State of Kerala and Another 1973 (4) SCC pp. 637-38

and the High Courts were unable to use their judicial authority because it was granted to the Supreme Court. He argued that the majority in the Kesavananda Bharati case correctly viewed the supremacy of the Constitution and the separation of powers as fundamental principles. Beg, J. emphasised that ordinary law was included in the theory of basic structure's purview. The majority opinion reaffirmed the notion that the Constitution had a core substance that was sacred, despite the justices' divergent opinions on what made up the fundamental structure of the document.

IT IS A BASIC STRUCTURE; NO AMENDMENT CAN BE MADE

While making the constitution it was in the mind of the proforma committee that the constitution they are making will be ever in its origin. So, for this purpose, they inserted special paras to preserve the basic structure of the constitution. There are some types of amendments that can be made to the constitution. These amendments types which can be done are as follows:- There are 3 types of amendment in the constitution, of which 2nd and 3rd type of amendments are governed by Article 368. By "Simple Majority" the first type of amendment can be done in each type of parliament house. 2nd type of amendments included such amendments that are affected by the parliament by a prescribed "Special Majority" 3rd type of amendments, include those amendments that require, in addition to such "special majority" in each house of the parliament, ratification by at least one half of the State Legislature. The constitutional amendments are required the total support of a 2/3 majority in both houses of Parliament. There are 104 amended acts till December 2021. All these amendments brought significant changes to the constitution. 1 1 2 14 14 Some major amendments are as follows:- 1. Second Amendment Act 1952 2 Seventh

Amendment Act 1956 3 Ninth Amendment Act 1960 4 Tenth Amendment Act 1961 5 12 Amendment Act 1962 Although Supreme Court keeps eye on the amendments made by the government. It can review any amendment made by the parliament. If Supreme Court seems that any amendment made by the parliament is not suitable as per the constitution, then it can change the amendment, or announce any proper order as seems suitable by law. So, we can say that Supreme Court is at the apex. Supreme Court controls the law made by the parliament. Amendments can be done to the constitution but they cannot change the basic structure of the constitution. The system of government and power distribution in the country is unique. All system is that so it can assure equal distribution of power in each sector.

DIFFERENCE BETWEEN BASIC STRUCTURE AND BASIC FEATURE DOCTRINES?

Since its origin in Kesavananda, the basic structure theory has been vigorously contested for the following reasons: first, the Court articulated the fundamental features in a highly abstract manner; and second, it declined to provide a detailed list of the fundamental parts. It is maintained that in order to provide the Parliament with the assurance and predictability it needs, the Court must produce a comprehensive list of essential characteristics.

Basic principles like democracy, secularism, the rule of law, judicial scrutiny, the separation of powers, etc., are subject to many different interpretations and are wide, "open-textured," and flexible. One of the doctrine's key flaws has been pointed out as the high level of abstraction used in the basic features' presentation. There is a claim that the basic structure's ambiguity conceals an unbounded amount of judicial power. The "vague" and abstract conceptualization of the basic features has, on the other hand, offering a wide range for the legislature to function and limited the scope of judicial involvement, rather than giving the court "limitless power" to strike down any and all amendments it pleases. A basic feature's vague phrasing opens the door to a wide range of lawful interpretations, which broadens the range of legal action that is allowed. For instance, Professor Sathe contends that the fundamental characteristic of "democracy" would justify such a significant and far-reaching shift as changing India's system of government from a Parliamentary to a Presidential one because the latter is also a "democracy."

The Supreme Court has been strongly requested to present a comprehensive list of the fundamental principles that are acknowledged by the Parliament and incorporated into the Constitution. The Court has maintained that it is much preferable to consider each case on its own merits and determine whether fundamental structure review is appropriate in each instance. What guiding concept could allow this?

The primary assumption of the exhaustiveness defence is that the elements of the fundamental structure are constant and unalterable. If this were the case, it would follow that the Court's refusal to give a list would be invalid. The fact that some principles and values are outside the purview of the legislative branch's authority at any given time must be distinguished from the reality that those values and principles are invulnerable to change or alteration throughout time. Remember that the Court did not rule that the fundamental structure could not be altered in Kesavananda and subsequent cases. Parliament was not

allowed to "damage or destroy" the fundamental framework, it was stated. This is not mere semantics because, if the fundamental characteristics are structural characteristics, that is, derived from the structural principles that support the Constitution, then a slow, incremental change at the surface might, in some circumstances, cause the structure to shift and change as well. In other words, the Constitution may be modified gradually, provision by provision, with new elements added and outdated provisions removed. While no single amendment would change the fundamental design of the Constitution, over time we may see a change in the proportions of the elements that currently make up its basic features and those that do not. The underlying structure would have changed by that time, therefore what would currently be an amendment hurting or destroying it would not have been at that point. And in that divide between "change" and "damage or destruction," which at first glance seems to be harmless, lies the answer. By employing the latter sentence, the Court makes sure that, in the absence of a new Constituent Assembly, it never completely shuts the door to intra-Constitutional change. To put it another way, the fundamental structure is immutable at any given moment, but it may turn out to be so over time.

We have made the case that "basic features" must be both abstract and illustrative by virtue of the basic structure doctrine and that both of these qualities give the Court the essential and indispensable flexibility it needs to respond appropriately to significant societal changes without turning our Constitution into a fossilized, rigid anachronism. This argument claims that the basic structure doctrine's purported main weaknesses—its ambiguity and non-exhaustiveness—are its main strengths and, in part, the foundations of its legitimacy. Concerns that judges may abuse these features to grant themselves unchecked authority There is no reason to believe that the worries that judges will misuse these components to give themselves unchecked power will come to pass. Self-righteousness has not yet been demonstrated, and there is no reason to think it will.

JUSTICE CHELAMESWAR IN SUPREME COURT ADVOCATES-ON-RECORD ASS' N V. UNION OF INDIA¹⁴

Firstly, raised the question, that whether there is any difference in the terms 'basic feature' and 'basic structure' of the Constitution as both are interchangeably used by the learned judges in various cases. He answered this in the affirmative and said, that basic structure is the sum total of basic features of the constitution. He also looked at other examples to

¹⁴ Supreme Court Advocates-on-Record Ass' n v. Union of India, (2016) 5 SCC 1, (2016) 2 SCC (LS) 253

determine how a certain article or collection of articles could be a fundamental component of the Constitution. The basic structure of the Constitution may or may not be altered by amending one or more of the articles that make up that feature. Everything depends on how the provision is being used. He claimed that no constitutional official, including the President of India or the Chief Justice of India, should be given any form of absolute power, rather than the primacy of the Chief Justice of India. The President is not required by the Constitution to follow the Chief Justice's recommendations when making judicial appointments. There is no case that can be cited as a precedent to support the idea that judges must be appointed in accordance with the law. The basic structure theory was developed to stop the Constitution's core from changing fundamentally. It cannot be contested that Judicial Primacy could be a part of the Constitution's fundamental principles. Therefore, the amendment introduced was not abrogating the basic structure of the Constitution.

CONCLUSION

Since the Constitution's initial establishment in the 1970s, it has undergone significant alteration, with more and more rights being integrated into it with each passing year. Therefore, the fundamental framework that is evident today is the consequence of years of judicial oversight of fundamental rights and the related constitutional framework. The restriction imposed by the notion of the basic structure on the dynamic nature of societal problems is sensible and well-advised. Regular legislation cannot be contested using it. Otherwise, the lid on Pandora's box would come off. It would damage the Constitution's framework. It might not be inaccurate to say that using the basic structure theory to establish the constitutionality of ordinary legislation would amount to weakening and destroying the Constitution's fundamental design. Basic Structure is the wider term, which is the total of basic features. Parliament has the right to alter or amend the basic feature as long as it does not affect or damage the basic structure of the Indian Constitution.