

Constitution Of India And Doctrine Of Basic Structure: An Overview

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Abstract:

If I find the constitution being misused, I shall be the first to burn it.

..... **Dr. Babasaheb Ambedkar**

The Constitution of India is a supreme, special, legal document which gives clear roadmap to all three organs of the government in Centre and State to perform the its duties and functions within its sphere. No organ of the government is supreme. All three organs of the government should work within the boundary of the Constitution. There must be an express provision under the Constitution to consider, the validity of the actions of the individual organ as well as to justify their orders. But, when there is a gap in Constitutional law to check the unjustified actions of the government, then judiciary can evolve or invent some doctrine to uphold the constitutional supremacy. The doctrine of basic structure of the Constitution has become very controversial principle and ambiguous one. This doctrine does not have a textual basis. There is no provision stipulating that the Constitution has a basic structure and this structure is beyond the competence of amending power. Moreover, not having its origin in the text of the Constitution, the concept of the “basic structure of the Constitution” cannot be defined. However the Subject matter of Basic Structure becomes very fruitful not only to maintain national unity and integrity of India but also it become very helpful to maintain internal healthy atmosphere within the entire territory of India.

The Constitution makers gave the power to amend the Constitution in the hands of the Parliament by making it neither too rigid nor too flexible with a purpose that the Parliament will amend it as to cope up with the changing needs. The Parliament

in exercise of its constituent power under Article 368 of the Indian Constitution can amend any of the provisions of the Constitution and this power empowers the Parliament to amend even Article 368 itself. The “Doctrine of Basic Structure” is a judge-made doctrine to put a limitation on the amending powers of the Parliament so that the “basic structure of the basic law of the land” cannot be amended in exercise of its “constituent power” under the Constitution. So the question arises, is not there any limitation on the amending powers of the Parliament? If the answer of this question is not in affirmative with a reason that the Constitution makers did not intend for such limitation otherwise they would have provided for such limitation in the Constitution, then another question arises to what extent can the Parliament amend the basic law of the land? And, if there will be no limitation on the amending power of the Parliament, then there is chances that this power of amendment in the name of “constituent power” can be abused.

Introduction

Subject matter of Basic Structure Theory :

Supreme Court in series of cases considered following are the subject matters of basic structure and same cannot be altered or amended by the Parliament under Article 368 of the Indian Constitution. They are:

- Supremacy of the Constitution and democratic form of government- Secular character of the Constitution- Separation of powers between the legislature, executive and the judiciary-Federal character of the Constitution.
- The mandate to build a welfare state contained in the Directive Principles of State Policy-Unity and Integrity of the nation and Sovereignty of the country
- Democratic character of the polity-Unity of the country-Essential features of the individual freedoms secured to the citizens- Mandate to build a welfare state.
- Unity and integrity of the nation· Equality of status and the opportunity. Sovereign democratic republic and Justice - social, economic and political-Liberty of thought, expression, belief, faith and worship. Democratic character of the polity-Unity of the country-Essential features of the individual freedoms secured to the citizens-Mandate to build a welfarestate.

- Democracy and the Preamble to the Indian Constitution guarantees equality of status and of opportunity and that the Rule of law is the basic structure of the Constitution
- The doctrine of equality enshrined in Art.14 of the Constitution, which is the basis of the Rule of Law, is the basic feature of the Constitution.²⁰
- Independence of judiciary is a basic feature of the Constitution as it is the sine qua non of democracy.
- Secularism and Democracy and Federalism are essential features of our Constitution and are part of its basic structure.
- Judicial review is a part of the basic constitutional structure and one of the basic features of the essential Indian Constitutional Policy. Several Articles in the Constitution, such as Arts. 32, 136, 226 and 227, guarantee judicial review of legislation and administrative action.
- The unity and integrity of the nation and Parliamentary system.

Adding many subject matters to the Basic structure, judiciary has completely tightened the hand. As a general rule, Judiciary has been adding many aspects as basic structure and directed the parliamentarian not to change or alter above mentioned subject matters in the interest of our nation.

Effects of Basic Structure Theory on Amendment Power of the Parliament :

The “Basic Structure” doctrine is the judge-made doctrine whereby certain features of the Constitution of India are beyond the limits of the amending powers of the Parliament. Though the Court held that the power of Parliament to amend the Constitution was impliedly limited by the doctrine of basic structure, it did not clearly define or explain what constitutes the basic structure.

According to Prof. Upendra Baxi, the effect of the decision in Keshavananda Bharathi’s case on amendment power of the Parliament rendered so far indicate the following limitations alone, viz.,

- Total repeal of the Constitution would be violative of the basic structure,
- Any expansion of Art.368 to achieve consequence of total repeal would similarly be violative of the basic structure,
- Any attempt to deprive the Court of its power of judicial review of Constitutional amendment would also be transgressive of basic structure,

- Freedoms guaranteed by Arts. 14, 19 and 21 constitutes to limit the power of amendment,
- Any attempt to abrogate Part IV of the Constitution may violate basic structure and The democratic nature of the Constitution may not be validly transformed by the use of Art. 368.

Kesavananda Bharati Sripadagalvaru & Ors. v. State of Kerala & Anr. the 13-Judge Bench of this Court, while partially overruling Golak Nath by a majority of 7-6, held that though any part of the Constitution could be amended by the Parliament, its basic structure could not be damaged. It is also seen that, with respect to the doctrine of basic structure introduced in Kesavananda case observed that all the decisions made prior to the introduction of the doctrine shall remain valid. The impact of this decision had been that all the acts and regulations that were included under Ninth Schedule to the Constitution prior to the Kesavananda decision were to remain valid while further amendments to the Schedule could be challenged on the grounds of violation of the doctrine of basic structure.

Conclusion :

The Indian Constitution's basic structure doctrine has been pivotal in influencing its growth and interpretation. The basic structure doctrine has been applied to various cases, with the judiciary recognizing several essential features of the Constitution.

These include the Constitution's supremacy, the rule of law, democracy, secularism, federalism, and the separation of powers between the executive, legislature, and judiciary. These features have been identified as unalterable, non-negotiable and cannot be amended, abrogated, or repealed. Moreover, the basic structure doctrine has been used to prevent constitutional amendments that seek to undermine the Constitution's essential features. The judiciary has the power to strike down amendments that are perceived as harmful to the Constitution's basic structure. The Kesavananda Bharati and the Minerva Mills cases have demonstrated this.

The judiciary is the protector and final interpreter of the Constitution and it is also below the Constitution. But it also appeared from the few judicial pronouncements that the Supreme Court has assumed much power in the name of basic structure, which may be termed as power of veto to every Constitutional amendment. This doctrine was meant for special use in times when Constitutional amendments threatened the basic framework of the Constitution. This doctrine is subjective and vague. As there is no clear cut list laid down by the judiciary that this constitutes

the “basic structure” and has said that it will be decided on a case to case basis. Probably, the reason may be that the Judiciary is afraid of the Legislature that if they will give a clear cut list of basic structure, then the Parliament may come forward with some other alternatives. The basic structure doctrine is a means to give momentum to the living principles of the “Rule of Law” and connotes that none is above the Constitution and the Constitution is supreme.

In conclusion, the basic structure doctrine is an indispensable tool in the growth and interpretation of the Indian Constitution. It safeguards the Constitution's crucial features, ensuring that it remains an ever-evolving, living document. By striking down laws and constitutional amendments that undermine the Constitution's basic structure, the basic structure doctrine has played a pivotal role in preserving the Constitution's importance and upholding its values, hence become the cornerstone of Indian democracy.

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