

## BURNISHED LAW JOURNAL

Critically examine the Basic Structure Doctrine. Explain your reason behind your support or lack of support for this Doctrine. Provide alternatives if needed.

### Introduction

The Constitution of India empowers the Indian Parliament and the State Legislatures to formulate or make laws within their respective jurisdiction. Bills to amend the constitution can only be introduced within the Parliament, but this power isn't absolute. If the Supreme Court of India finds any law made by the Parliament inconsistent with the constitution or which violates the provisions of the Constitution in any aspect, Therefore the Supreme Court of India has got the power or right to declare that law to be invalid or unconstitutional or void. So, to preserve the ideals, morals and philosophies of our original constitution, the Supreme Court has laid down the basic structure doctrine. According to the doctrine of basic structure, the Parliament cannot destroy or alter the fundamental structure or basic structure of the doctrine.

### Evolution of the Basic Structure Doctrine

The term "Basic Structure" is not mentioned anywhere in our Indian Constitution. This concept of basic structure evolved gradually with the intrusion of the judiciary from time to time in order to protect the basic rights or necessary rights of the people and the principles and the viewpoint of the constitution.

The 1<sup>st</sup> Constitutional Amendment Act, 1951 was challenged in the Shankari Prasad vs. Union of India case<sup>1</sup>. In this case the amendment was challenged on the ground that it violates the Part-III of the constitution and therefore, it should be considered invalid. The Supreme Court said in this case that the Parliament, under Article 368, has the power to amend or change any part of the constitution including fundamental rights. The same ruling was given by the supreme court of India in case of Sajjan Singh v. State of Rajasthan<sup>2</sup> in 1965.

In the case of Golak Nath v. State of Punjab, 1967 the Supreme Court of India overruled its earlier decision. The Supreme Court said that the Parliament has no power to amend Part III of the constitution because the fundamental rights enshrined in our Indian Constitution are inspiring and unchallengeable. According to the Supreme Court ruling, Article 368 only lays down the procedure that 'how to amend the constitution' and does not give complete powers to the parliament to amend any part of the constitution.

In 1971 The Parliament of India had passed the Twenty-fourth Constitutional Amendment Act which gave the complete power to our Indian parliament to make any changes in the constitution including the fundamental rights. It also made it compulsory for the President to give his acceptance on all the Constitution Amendment bills sent to him.

In the case of Kesavananda Bharti v. State of Kerala, 1973, the Supreme Court upheld the validity of the 24<sup>th</sup> Constitution Amendment Act by revising its decision in Golaknath v. S/O Punjab case. The Supreme Court said that the Parliament has power to modify any provision of the constitution, but when doing so, the basic structure of the constitution is to be maintained and taken care of. But the Apex Court did not give any clear definition of the basic structure. It said that the "basic structure of the Constitution could not be repealed even by a constitutional amendment". In the judgement, some of the basic features of the Constitution were listed by the judges. Different Justices and of the Supreme Court of India gave various view about the basic structure doctrine by the verdict of Keshvanada Bharati case. The various justices included in the verdict was Chief Justice of India that time S.M Sikri, and other prominent justices in that case

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<sup>1</sup> 1951 AIR 458

<sup>2</sup> 1965 AIR 845, 1965 SCR (1) 933

included A.N. Grover, A.N. Ray, D.G. Palekar, H.R. Khanna, J.M. Shelat, K.K. Mathew, K.S. Hegde, P. Jaganmohan Reddy, S.N. Dwivedi and Y.V. Chandrachud<sup>3</sup>.

According to Chief Justice S.M Sikri concept of basic structure included Supremacy of the Constitution, Republican 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.

While Justice A.N. Grover and Justice J.M. Shelat added two more basic features in the list of Chief Justice S.M Sikri and they were Unity and Integrity of Nation and The mandate to build a welfare state contained in Directive Principles of State Policy.

Justice K.S. Hegde and Justice Mukherjea both of them identified a separate and a shorter list of basic features doctrine which was quite different from other judges which we look previously they are Unity of the nation, Sovereignty of India, Democratic character of polity, Essential features of the Individual freedoms secured to the citizens and Mandate to build a welfare state.

Justice P. Jaganmohan Reddy stated that elements of the basic features were to be found in the Preamble of our Indian Constitution and the provisions into which they translated such as Sovereign Democratic Republic, Parliamentary Democracy, Three organs of State.

### Conclusion

At last I want to conclude my essay by saying that unwritten constitution comes under the rule of law given by Proff. AV Dicey which talks about Supremacy of Constitution and Judges made the laws which highlights the Indian Constitution, which was written by Dr B R Ambedkar and Uplifted in case of Keshvananda Bharti v. S/O Kerala.

### Remedies:

1. Make the Indian Constitution Flexible
2. Constitution should be easy to amend

“Times Change but essence of the Constitution never change”  
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<sup>3</sup>Venkaresh Nayak, The Basic Structure of Indian Constitution,  
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