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Abstract

This article is about the basic structure of doctrine. This evolution changes our Constitution and our vision toward different cases. In this, we study the 1st Amendment in 1951, the 17th Amendment in 1964, the 24th Amendment in 1971, the 25th Amendment in 1972, the 26th Amendment in 1971, the 29th Amendment in 1972, the 39th Amendment in 1975, and the 42nd Amendment in 1976. We study this with the case challenged by it.

There is a significance of this doctrine which makes us know how important this doctrine is for the Constitution. Then there is a criticism of this doctrine which shows that no matter how to try to make a doctrine perfect but somewhere loophole left and at last there is a conclusion if this doctrine.

Introduction

The basic structure of doctrine is a common law legal doctrine that the Constitution of a sovereign state has specific characteristics. According to this, the Parliament and the State Legislature can make laws within their jurisdiction. However, the power of the Parliament is not unlimited. It can be declared void by the Supreme Court of India. As per the doctrine of the basic structure of the Indian Constitution, any amendment that tries to change the basic structure of the Constitution is invalid.(Byju's)¹

About Doctrine of Basic Structure

It is based on two Articles of the Indian Constitution, i.e., Art 13 and Art 368. This battle is always between the Supreme Court of India and the Parliament. As Parliament continuously makes laws,

¹ Byjus "What is the Basic Structure Doctrine of Indian Constitution" <https://byjus.com/free-ias-prep/landmark-cases-relating-basic-structure-constitution/>

whereas the Supreme Court continuously denies them. It is a war between the superpower court and the superpower Parliament .

Elements of Basic Structure

No mention that Kesavananda Bharati Case brought basic structure into the limelight. It is held that the basic structure of the Indian Constitution could not be abrogated even by constitutional Amendment .

The judgment listed some basic structures of the Indian Constitution, i.e. Supremacy of the Constitution, Unity and sovereignty of India, Democratic and republican form of government, Federal character of the Constitution, and Secular character of the Constitution. Separation of power and Individual freedom.

Over time other features were also added i.e. Rule of law, Judicial review, Parliamentary system, Rule of equality, Harmony and balance between the Fundamental Rights and DPSP, Free and fair elections, Limited power of the Parliament to amend the Constitution, Power of the Supreme Court of India under Articles 32, 136, 142 and 147 and Power of the High Court under Articles 226 and 227 .

Evolution of Doctrine of Basic Structure

The concept of the basic structure of the Constitution evolved over time. In this, we study the changes in Amendment with the landmark cases which challenge that Amendment. Its evolution takes place in many ways .

1st Amendment (1951): As in this, Art31(a) empowered the state to make special provisions for the advancement of socially and economically backward classes, and Art31(b) added as according to this, any laws made by Parliament automatically come under schedule 9, which means no Judicial review will take place. This challenge is by the case Shankari Prasad Devi vs. Union of India AIR 1951 SC 458. In this case, the judgment is based on the logic that the word law mentioned in Art 13 includes only ordinary law but not a constitutional amendment.(Pandey, 2022)²

² J.N Pandey (2022) "Constitutional Law of India"

17th Amendment (1964): As more provisions added to Art31(A) and more entries are there in schedule 9. This was challenged by the case Sajin Singh vs. Union of India, as it is a bench of 5 judges, and the decisions came in a ratio of 3:2, and it conformed to the judgment of the Shakari Prasad case. Then it is challenged by the case Golaknath vs. the State of Punjab 1967 AIR 1643, which is a bench of 11 judges. The decision comes in the ratio of 6:5, which overrules both cases, and it is given that the constitutional amendment act is also a law under Art 13.(Pandey, 2022)³

24th Amendment (1971): As in Art13(4) Nothing shall apply to any amendment of Art368 and in Art 368(3) Nothing shall apply in Art13 made under this amendment.(Pandey, 2022)⁴

25th Amendment (1972): Add Art31(c) dividing it into two parts:

Firstly, to bring DPSP in order, if any laws are made, they cannot be considered unconstitutional on the grounds of Art14, Art19, and Art31.

Secondly, No law containing a declaration for giving effect to such policy shall be questioned in any court on the ground that it does not give effect to any policy.(Pandey, 2022)⁵

26th Amendment (1971): Abolition of Privy purses. It refers to a special status given to the ruling class which continued from the British time. It also went against the idea of equality which was mentioned in constitution Part III. This also increased the economic pressure on Independent India and there were also many unwanted challenges like poverty , hunger and security. Therefore prime minister Indira Gandhi argued to abolish Privy purses . So by 26th Amendment 1971 it was abolished . The reason behind its abolishment as it went against the idea of equality, it also gave birth to the concept of rulership and special privilege which was incompatible with principles of democracy, equality and social justice.(Pandey, 2022)⁶

29th Amendment (1972): It is focused only on the connection between Art 31 (a) and 31(b). It was argued that Art31(b) is closely related to Art31(a) and that only law that fell under Art31(a)

³ J.N Pandey (2022) " Constitutional Law of India "

⁴ J.N Pandey (2022) " Constitutional Law of India "

⁵ J.N Pandey (2022) " Constitutional Law of India "

⁶ J.N Pandey (2022) " Constitutional Law of India "

could be listed under the ninth schedule by Art31(b). It was contested by Kesavananda Bharati vs State of Kerala 1967 AIR 1643. It is a bench of 13 judges, and the ratio is 7:6, headed by C. J. Sikri on 24 April 1973. As this case gave an essential structure for the Amendment, it is valid and confirms that Parliament can amend the Constitution but expect a basic structure.

The following case was Raj Narian vs. the State of UP 1975 AIR 865; this judgment was given by the Allahabad court, which found PM Indira Gandhi guilty of malpractice while the appeal was pending in the court. However, the government introduced the 39th Amendment and declared an emergency.(Pandey, 2022)⁷

39th Amendment (1975): Art329(a) added that the Election of Prime Minister, President, vice president, and Speaker of Lok Sabha was no longer subject to judicial review.

Then the case of Indira Gandhi v Raj Narian (1975) 2 SCC 159 is the first case in which the Kesavananda Bharati judgment was applied by SC and declared newly added Art329(a)(4) unconstitutional as it violates the basic structure.(Pandey, 2022)⁸

42nd Amendment (1976): It is also called the mini-constitution of India. In this, Art 368(4) and Art 368(5) were added, which conferred unlimited power to Parliament, and Art31(c) was amended again.

This is a Challenge by Minerva Mill vs. Union of India : AIR 1980 SC 1789: The court states that Parliament's power cannot be unlimited. It also states that Art 368(4) and Art 368(5), which give unlimited power, are unconstitutional since they are part of the basic structure. Art31(c) is restored to the 1976 position.(Pandey, 2022)⁹

Significance of Basic structure

1.Constitutionalism: The concept of constitutionalism in preventing the majority from destroying the Constitution of India.

⁷ J.N Pandey (2022) " Constitutional Law of India "

⁸ J.N Pandey (2022) "Constitutional Law of India "

⁹ J.N Pandey (2022) " Constitutional Law of India "

2. Uphold Federal Structure: As we know, India has a federal structure, and it is distinguished by the traditional features of the federal system, such as the supremacy of the Constitution, the division of power between the Union and State government, etc.
3. Democracy: The main idea of the Constitution is democracy which is secured by limiting the constitutional power and the power of Parliament.
4. Preservation of Fundamental Concepts: It also preserves fundamental concepts of the Constitution of India.
5. Separation of Power: It strengthens our Constitution by dividing power in which the judiciary is independent and has the power to decide without being pressured. (Unacademy)¹⁰

Criticism of Basic Structure

1. A most common criticism is that doctors needs have no basis in our Constitution. Doctrine is not text-based, and no provision stipulated in the Constitution has a basic structure.
2. Its detractors also believe it accords the judiciary with the power to impose its philosophies.
3. There needs to be a clear definition of basic structure, which makes a vague notion.
4. The doctrine lacks a scriptural foundation. (IAS Parliament)¹¹

Conclusion

The basic structure can balance fundamental democracy, separation of power, and basic individual rights in our country. By virtue of its complexity, its implementation could be better, but as Aristotle understood so long ago, nothing ever happens. It can be seen that the Supreme Court of India cannot give the final word on the basic structure. It is a scenario that may change in the future. As we know, India is well established, and the content can only be taken to finality once the Supreme Court of India spells out the final judgment. In today's time, many questions about the basic structure are raised. Recently, it is in highlight as there is a tussle over the collegium system of the appointment of the judges. As vice president had talked about the Supreme Court verdict, which struck down the NAJC and the 99th Amendment. Mr. Dhankar also questioned the landmark case of the Kesavananda case verdict. So while in today's time, as when the basic

¹⁰ Forum IAS " Significance of basic structure" <https://blog.forumias.com/answered-examine-the-doctrine-of-basic-structure-discuss-its-evolution-and-significance/>

¹¹ IAS Parliament "What are the criticisms of the doctrine?" <https://www.iasparliament.com/current-affairs/basic-structure-doctrine#:~:text=Vague%20%2D%20Basic%20structure%20doctrine%20is,bench%20had%20their%20own%20conclusion.>

structure is completed 50 years, questions still arise on this structure due to different views of the people or have been different points of view.