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DOCTRINE OF BASIC STRUCTURE : A BRIEF ANALYSIS

ABSTRACT

"Doctrine of Basic Structure: A Brief Analysis" provides a comprehensive examination of the Doctrine of Basic Structure within the framework of constitutional law, particularly in the context of India. The paper aims to elucidate the main findings, methodology, results, and implications of this doctrine in a clear and accessible manner. The study begins by introducing the Doctrine of Basic Structure, a foundational principle in constitutional jurisprudence that originated from the landmark Indian Supreme Court case of *Kesavananda Bharati v. State of Kerala* (1973). This doctrine asserts that certain fundamental features of a constitution, referred to as the "basic structure," are immune from ordinary legislative amendments. In this paper we will understand how basic structure of the constitution developed through evolution of landmark cases like *Sajjan Singh*, *Golaknath* etc furthermore we will understand on what basis and what can be included in the basic structure at the same time we will understand basic structure of constitution by comparing it with other democratic countries. This research paper will explore the Doctrine of Basic Structure in simple terms. We'll look at where it came from, what it means, how it's affected things, and what it might mean for the future of the country.

KEYWORDS

Constitution, Fundamental rights, constitution, basic structure, article 13, article 368

INTRODUCTION : TO THE DOCTRINE OF BASIC STRUCTURE

The doctrine of basic structure is one of the most important concept in the constitutional law particularly within the concept of India's legal system. The date 24th august 1993¹ is a date that should be noted because on this date the supreme court of India made it clear that the basic principles of the constitution which includes all the natural rights and fundamental rights specifically cannot be change or abrogated by making constitutional amendments. On this date through the judgement of Kesavnandabharti case supreme court of India established the doctrine of basic structure of the constitution which has been protected our constitution till now and it will continue to protect our constitution.

There is nowhere mention clearly in the constitution that what is the basic structure of the constitution it has been evolved over the time with cases and their judicial interpretations starting from Shankari prasad case of 1951, Sajjan Singh case 1965, Golaknath case 1967², then the ultimate finale was the Kesavananda Bharti Case of 1973.

When the constitution makers were drafting Constitution they make sure that the government can amend the constitution as per the needs and requirement of people. But there were some articles and parts in the constitution that are its core features they are like a rock solid, like the rights of freedom, right to equality, right to vote, right to education. Article 14, article 15, article 16, article 17 and article 18 of the Indian constitution. through the court cases like Golaknath and Kesavananda Bharti it became clear that some rights are core part of the constitution that cannot be changed or amended in any situations.

Article 14 : 'The law sees no religion, caste, class, gender, race, or power while deciding the judgment', is the simple explanation of the Articles. It stands for equality in the eyes of the Judiciary.³

Article 15 : 'The law sees no religion, caste, class, gender, race, or power while deciding the judgment', is the simple explanation of the Articles. It stands for equality in the eyes of the Judiciary.⁴

Article 16 : There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.⁵

¹ AIR 1973 SUPREME COURT 1461, 1973 4 SCC 225

² I.C. Golaknath & Ors. v State of Punjab & Anrs (1967) AIR 1643

³ Constitution of India 1950, art 14

⁴ Constitution of India 1950, art 15

⁵ Constitution of India 1950, art 16

Article 17 : "Untouchability" is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of "Untouchability" shall be an offence punishable in accordance with law.⁶

Article 18 : Abolition of all titles except military and academic.⁷

All these articles gives us our natural and fundamental rights that are essential in any democratic society and hence the protector of the constitution apex court that is Supreme court has this highest responsibility to protect and safeguard fundamental rights and ensure that the core features of constitution has been preserved and protected. This research paper will aim to explore the doctrine of basic structure comprehensively. It will trace its historical evolution, elucidate its principles, assess its impact, and critically examine its future implications. By delving into this significant aspect of constitutional law, this paper seeks to provide insights into its theoretical foundations, practical applications, and broader implications for constitutional governance.

RESEARCH METHODOLOGY

This paper is of descriptive nature and the research is based on secondary data all the real credit goes to the actual researchers who work on field for properly collecting valuable data for the deep analysis of doctrine of Basic structure of the Constitution of India. Secondary sources of Information like Journals, websites, books are used for the purpose of doing valuable and informative research.

REVIEW OF LITERATURE

Through a meticulous review of relevant literature and legal precedents this paper outlines the historical background and evolution of the doctrine of basic structure of the constitution tracing its origin to the early formative years of India's democracy and the drafting of its constitution. It highlights the significance of the Kesavananda Bharti case in establishing the doctrine as a safeguard against arbitrary exercises of power, ensuring the supremacy of constitutional values.

Furthermore the review highlights the ongoing debates and discussion surrounding the Doctrine of basic structure. Scholars such as P.M Bakshi, S.P. Sathe and Rajeev Dhavan have offered diverse perspectives on the scope and limitations of the doctrine, engaging in critical

⁶ Constitution of India 1950, art 17

⁷ Constitution of India 1950, art 18

analyses of its implications for judicial activism, separation of powers and democratic governance.⁸

UNDERSTANDING AND EXPLORING THE EVOLUTION OF BASIC STRUCTURE

The constituent assembly that drafted constitution has drafted it any many parts such as part three which deals with fundamental rights⁹, part four that deals with directive principles of state policy¹⁰ and part 20 that speaks about the process and what will be the procedure that need to be followed while making important amendments in the constitution.¹¹ All these parts are interlinked with each other. When constitution was being drafted the constituent assembly consist of people with different principles. For example DR Babasaheb Ambedkar the head of constituent assembly has stated that without social equality political democracy would not work in the same way Pandit Nehru stated that without economic democracy political democracy would not work. The constitution of India was being drafted by considering principle of equality, social justice economic fairness, and most importantly it was made to ensure that the fundamental rights of people are safeguarded. Therefore land reforms Act, reservation are being implemented for the development of country they were the exceptions to the fundamental rights of the constitution there basis was on the ground of doing positive discrimination and hence we can find contradictions between article 13 and article 368 on one hand article 13 and 32 gives power to supreme court to safeguard the fundamental rights and on the other hand article 368 gives unlimited power to legislature to amend the constitution as per the need. Therefore Indian constitution is considered to be neither too rigid and neither too flexible.

If we look at the evolution of cases and establishment of basic structure then we can analyse that the main conflict or dispute was revolved between article 13 and 32 which ensures that it is the responsibility of higher courts and apex court to protect the fundamental rights of citizens and article 368 which gives powers to state to make amendment in the constitution

⁸Volume 1 P. M. Bakshi. The Constitution of India 19th edition

⁹ Constitution of India 1950, part III

¹⁰ Constitution of India 1950, Part IV

¹¹ Constitution of India 1950, part XX

and the right that was given to courts is not applicable in the case of directive principles of state policy. Therefore supreme court of India will always promote fundamental rights not directive principles of state policy and hence challenging land reforms act was baseless. But earlier right to property was in fundamental therefore this makes contradiction. Hence we can see that now right to property is not a fundamental right but a legal right.

State can acquire land if it is beneficial for social justice equality and not for individual or self centre purpose

All the cases were revolving around this question only therefore first lets understand what is the relation between article 13 and 368 basically article 13(2) states The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.¹² This basically means state cannot make a law against fundamental rights and if states make that law than that law can be removed by the supreme court it can be declared as unconstitutional invalid. This law includes act, ordinance, order, notifications, rules, regulations, byelaws all are included in the definition of law. The main dispute between them was article 13c includes all acts, statutes, bye laws but it does not include whether constitutional amendment can be declared invalid on the basis of violating or limiting fundamental rights.

In 1951 shankari prasad vs union of India new angle was opened the dispute arose from this case the contradiction was mainly between article 13 and 368 of the Indian constitution ¹³ in this case supreme court contended that the parliament's power of amending the constitution which comes under article 388 includes the power to make amendments in the fundamental rights which are guaranteed in part 3 of the constitution. The major arguments of shankari prasad was that the first constitutional amendment was invalid in itself because according to article 13 whichever act limits the freedom of fundamental rights then that act or law will be declared as constitutionally invalid. Second argument was that article 368 is a part of article 13 they are related with each other for the purpose of protecting constitutionality. Therefore it limits should be applicable on article 368.

The major argument made by union of India was it is not any law or act it is an constitutional amendment that means it amend the constitution article 13 and 368 are totally different from

¹² Constitution of India 1950, art 13(2) <https://indiankanoon.org/doc/772605/>

¹³ Sri Sankari Prasad Singh Deo vs Union Of India And State Of Biharm, on 5 October, 1951 <https://indiankanoon.org/doc/1706770/>

each other there is no connection between them. In this case supreme court was in the favour of government it stated if fundamental rights are limited by constitutional amendments then it is completely valid but if it has been violated by any other act or law then it will be constitutionally invalid. From this case we can say that supreme court stated that article 13 and 368 are not in relation with each other.

In the year 1965 another case Sajjan Singh vs State Of Rajasthan came up in this case also supreme court considered the previous judgement of Shankari Prasad and stated parliament can amend any part of the constitution including the fundamental rights.¹⁴ But here it is noteworthy to point out that two dissenting judges, in this case, remarked whether the fundamental rights of citizens could become a plaything of the majority party in Parliament.

Then in 1967 comes the case of I. C. Golaknath & Ors vs State Of Punjab¹⁵ where the same dispute again arose although in this case the ground was same but the judgement delivered by supreme court was completely different its interpretation was different from the previous cases. The Supreme Court ruled that Parliament did not have the power to amend the fundamental rights provisions of the Constitution. The court held that these rights were sacrosanct and could not be altered or abridged by constitutional amendments. This decision was based on the interpretation of Article 13 of the Indian Constitution, which provides that laws inconsistent with fundamental rights shall be void. Golaknath case marked a significant moment in Indian constitutional history, affirming the supremacy of fundamental rights while also highlighting the delicate balance of power between the judiciary and the legislature.

Total 11 judges bench was made to decide and deliver the judgement of this case with the majority of 6 : 5 they stated article 368 is a part of article 13 and making constitutional amendments cannot pass through article 13 of the constitution as this article safeguards the fundamental rights of the people. In this case through its remarkable judgement against state supreme court laid the foundations of **Doctrine of basic structure of the constitution.**

¹⁴ Sajjan Singh vs State Of Rajasthan on 30 October, 1964 <https://indiankanoon.org/doc/1308308/>

¹⁵ I. C. Golaknath & Ors vs State Of Punjab on 27 February, 1967 <https://indiankanoon.org/doc/120358/>

After 1971 there was a series of constitutional amendments made by the government to reverse the decisions that was made by the supreme court the 24th constitutional amendment was made to reverse the decision of Golaknath case through this amendment it was clearly stated that the article is completely different from article 368 by adding article 13(4) and article 368(3) through constitutional amendments.

In 25th constitutional amendments it has been clearly stated that through article 31c that directives principles of state policy cannot be challenged in the courts on the basis of article 14, 19 and 31 and the earlier word compensation was replaced by the amount and furthermore article 291 and 362 was completely removed that gives privy purses to the royal assent that were still residing in the country. All these amendments clearly shows the dispute of power between judicial head and legislative or executive head of the government. Here the system of checks and balances needed an improvement and significant development.

In the year 1972 the remarkable case of Kesavananda Bharti came up in which supreme court clearly stated its stands and established the doctrine of basic structure the judgement of this case has changed and preserved the historical value of the constitution of India.¹⁶ Through kerela land reforms act the lands of kesavananda was seized and taken by the government. In this case 13 judges bench was made to deliver judgement and decide the case the judgement of this case was total 706 pages long and on 24th august 1973 was the day on which this remarkable judgement was delivered. In this case supreme court has taken the examples of the other countries on the basic features of the constitution. For example in united states of America there was a basic spirit of constitution. And in almost all the developed democratic countries there were basic features of the constitution which cannot be removed or changed or replaced anyhow. In kesavananda Bharti case supreme court accepted Sajjan singh case and shankari prasad case and rejected the decision of golaknath case that means fundamenta rights can be limited through constitutional amendments.

¹⁶ AIR 1973 SUPREME COURT 1461, 1973 4 SCC 225 <https://indiankanoon.org/doc/257876/>

That means article 13 and 368 are not related with each other supreme court in his judgement stated that legislature had full power to make amendments in any part of the constitution but that power is not equivalent to making a constitution Parliament had the authority to amend the Constitution, this power was not unlimited. The Court ruled that Parliament could not alter the "basic structure" or essential features of the Constitution. The power of making a constitution was under the constituent assembly that is completely dissolved now the legislative assembly cannot act as a constituent assembly. In a constitution there is a basic structure which cannot be change amended or abrogated what is included in that structure will be decided by the supreme court from time to time with interpretations.

On the basis of this ground supreme court can review any constitutional amendments and can declare it unconstitutional or invalid.

What will be included in the basic structure of the constitution ?

Through kesavananda Bharti case supreme court of India established the doctrine of basic structure of the constitution although it does not specifically state that the specific part is in the basic structure of the constitution but the judgement listed some basic structures of the constitution they are as follows

1. Individual freedom
2. Separation of power
3. Secular character of the constitution
4. Federal character of the constitution
5. Democratic and republican form of government
6. Unity and sovereignty of India
7. Supremacy of the constitution

Apart from this supreme court will identify what comes in the jurisdiction of basic structure of the constitution with the interpretation of relevant cases and with the power of judicial review it can review any constitutional amendment and declare it invalid if its is limiting the rights or hindering the basic structure of the constitution. Hence from time to time many other feature were also added in the list by the supreme court for example rule of law, rule of

equality and harmony and balance between fundamental rights and directive principles of state policy. India's parliamentary system of government, which includes principles such as parliamentary sovereignty, responsible government, and the accountability of the executive to the legislature. The basic structure may also encompass principles related to human dignity, social justice, and the welfare state. This includes provisions for socioeconomic rights, affirmative action, and inclusive development policies.

These principles, among others, form the bedrock of the Indian Constitution's basic structure and are considered essential for upholding the rule of law, protecting fundamental rights, and ensuring the functioning of democratic institutions. While the basic structure doctrine has evolved through judicial decisions over time, these core principles have remained central to its interpretation and application. Any law or amendment that violates these principles can be struck down by the supreme court on the ground that they are causing distortion to the basic structure of the constitution.

COMPARITIVE ANALYSIS WITH OTHER COUNTRIES BASIC STRUCTURE OF CONSTITUTION

The Doctrine of Basic Structure of the Constitution, a cornerstone of constitutional jurisprudence in India, has parallels and differences when compared with similar doctrines in other countries. This comparative analysis aims to shed light on how the concept is understood and applied in various legal systems.

In the United States, the concept of the basic structure of the Constitution is not explicitly articulated as it is in India. However, the principle of judicial review, established by the landmark case of *Marbury v. Madison* (1803), serves a similar function. According to *Marbury*, the Supreme Court has the authority to invalidate laws that are inconsistent with the Constitution. This power is a crucial aspect of the basic structure of the U.S. Constitution, ensuring the supremacy of constitutional principles over legislative actions.¹⁷ Making

¹⁷ Joseph fawbush, *Marbury v. Madison Case Summary: What You Need to Know*, accessed on 5th April 2024 <https://supreme.findlaw.com/supreme-court-insights/marbury-v--madison-case-summary--what-you-need-to-know.html#:~:text=Madison%20resolved%20the%20question%20of,law%20and%20the%20modern%20judiciary>.

constitutional amendments in united states of America is not an easy task although each state of U.S has its own constitution but they have the concept of basic spirit of the constitution that cannot changed or amended it have similar basic features like in India it has federalism, rule of law, supremacy of law etc.

In Germany's Basic Law (Grundgesetz) also contains provisions akin to the Doctrine of Basic Structure. The Federal Constitutional Court of Germany has developed the concept of "eternity clauses," which are provisions explicitly designed to safeguard certain fundamental principles of the constitution. These clauses, found in Articles 1 and 20 of the Basic Law, establish principles such as human dignity, democracy, and the rule of law as unamendable. The Federal Constitutional Court acts as the guardian of these principles and has the authority to strike down constitutional amendments that violate them.

In South Africa, the Constitution contains a similar concept known as the "supremacy clause." Section 2 of the Constitution establishes the supremacy of the Constitution and declares that any law or conduct inconsistent with it is invalid. The Constitutional Court of South Africa has interpreted this provision expansively, affirming the basic structure of the Constitution and striking down legislative acts that violate fundamental principles, such as democracy, equality, and human rights.

While the Doctrine of Basic Structure of the Constitution finds expression in different forms across various legal systems, its fundamental purpose remains consistent: to safeguard core constitutional principles from arbitrary alteration or infringement. Whether through judicial review, eternity clauses, or supremacy clauses, these mechanisms serve to uphold the rule of law, protect fundamental rights, and ensure the integrity of democratic governance. By examining how different countries approach the preservation of their constitutional frameworks, we gain valuable insights into the universal importance of maintaining the basic structure of the Constitution as a bulwark against the erosion of fundamental principles and values.

CONCLUSION

In conclusion, the research explore and understand what is the basic structure of the constitution how it evolved through the cases and relevant constitutional amendments it underscores the significance of the doctrine of basic structure as a cornerstone of constitutional governance in India by providing a clear and concise analysis of this complex legal concept this paper contributes to a better understanding of the principles that underpin democratic institutions and the rule of law. Equality, supremacy of law and most importantly this research explores and clears all the contradictions that were between article 13, 32 and 368 which gives unlimited power to state to make amendments in the constitution. It also compares the doctrine of basic structure across various legal system such as united states of America, Germany and south Africa the comparative analysis shows that basic structure of constitution in almost all the democratic societies are similar.