

Plenary Power of Amendment under the Constitution

Fateh Khan^{1*}, Jaffar Khan², Aftab Khan³

Abstract

The Indian Constitution, drafted by Dr. BR Ambedkar, is the supreme law of the country and is known for its vastness and incorporation of India's traditions, history, geography, and cultural diversity. The Constitution is the largest-written Constitution in the world and was created over the course of about 2 years, 11 months, and 18 days. The Constitution is based on the principle of "rule of law, which is well-embedded in Article 13 of the Indian Constitution. The Constitution gives power to the legislative, executive, and judiciary branches and provides citizens with certain rights to live with equality, freedom, dignity, and protection from exploitation, as well as the right to constitutional remedy for enforcement of fundamental rights. Part 3 of the Constitution deals with the fundamental rights of citizens, which are guaranteed by six broad categories of fundamental rights: the right to equality, the right to freedom, the right against exploitation, the right to freedom of religion, cultural and educational rights, and the right to constitutional remedies. The Constitution also includes Part 4, which deals with directive principles of state policy, and Part 20, which deals with the amendment of the Constitution. Any changes made in the Constitution affect the power of any branch and its citizens. Therefore, to understand the contradictions, one must understand Article 13, Part 3, Part 4, and Part 20 of the Constitution. The Constitution is the world's largest written constitution and took approximately 2 years, 11 months, and 18 days to complete. These features form the basic structure of the Constitution and include principles such as democracy, rule of law, secularism, and judicial independence. Re-examining the fundamental structure doctrine has been a topic of debate and discussion, with some contending that doing so would interfere with democracy by restricting the parliament's ability to amend the Constitution. According to some, the doctrine of fundamental structure is essential for protecting the foundational principles of the Constitution from being altered in a way that undermines their integrity and core values.

Keywords: Amendment, directive principle of state policy, fundamental rights

INTRODUCTION

Purpose

To find the answer to the question "Is there a need to revisit the basic structure doctrine?"

The answer to this query is more complex than it first appears. Basically, to understand the answer or to come to any conclusion, we should know our constitution. It is in this part where there may be contradictions with regards to interpretation. Situations that gave rise to the basic constitutional structure theory need or have relevance for the basic structure doctrine in today's time.

*Author for Correspondence

Fateh Khan
E-mail: mail2fateh@gmail.com

¹⁻³Student, Department of Law, Children Welfare Centre Law College, Maharashtra, India

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METHODOLOGY

We can understand this part only after understanding the aspects and circumstances which led to the birth of the doctrine of the basic structure of the Constitution.

1. Significance difference between Part 3, Part 4, and Part 20 of the Constitution

2. Areas in the Constitution where there may be conflicts
3. Position of the Supreme Court with respect to amendments to the Constitution.
4. Propounding the doctrine of the basic structure of the Constitution
5. Need of the doctrine of the basic structure of the Constitution
6. Use of the doctrine by the court to protect the Constitution
7. A list of the features that constitute the basic structure of the Constitution.
8. Citation of the doctrine in cases after Kesavandan Bharati
9. Intervention of the judiciary in directing the state to make the law.

SIGNIFICANT DIFFERENCE BETWEEN PART 3, PART 4, AND PART 20 OF THE CONSTITUTION

Various situations gave rise to the theory of basic constitutional structure. While certain provisions of the constitution were borrowed from the constitutions of the UK, the USA, France, and the USSR, they were prepared keeping in mind India's traditions, historical, geographical, and cultural diversity. In fact, Ambedkar, who was assisted by a drafting committee, studied 60 other constitutions during its preparation. The Indian Constitution is the longest-written Constitution in the world. It took around 2 years, 11 months, and 18 days to prepare the Indian Constitution, and the original copy of the constitution was written by hand by calligrapher Prem Behari Narain Raizada in a flowing italic style [1].

India has always functioned and believed in the principle of "rule of law", long before it was coined by Lord Edward Coke or propounded and defined by A.V. Dicey. Although the Constitution does not explicitly state anything related to the rule of law, it can be observed that it is well-embedded in Article 13 of the Indian Constitution. People who believe in the rule of law will have faith and trust in the Constitution and will consider it supreme and above everything else. It is this very Constitution, which gives power to the legislative, executive, and judiciary, and makes them obligated to perform their duties without any arbitration. This Constitution gives certain rights to its citizens to live their lives with equality, freedom, and dignity, and gives them protection from exploitation and right to constitutional remedy for enforcement of fundamental rights. Hence, any changes made in the Constitution will either, give more power or weaken the power of any branch (legislative, executive, or judiciary) and will also affect its citizens, who are the end recipients of the consequences of the changes.

When it comes to interpreting or implementing the law, there are bound to be some contradictions in the Constitution. To understand these contradictions, we shall try to understand Part 3, especially Article 13, Part 4 and Part 20 of the Constitution.

Part 3 of the Constitution deals with the fundamental rights of the citizens and is covered in Articles 12–35.

Part 4 of the Constitution deals with directive principles of state policy and is covered in Articles 36–51.

Part 20 of the Constitution deals with amendments to the Constitution and is covered under Article 368.

ARTICLE 13 OF THE CONSTITUTION

According to Article 13,

1. All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.
2. 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.
3. In this article, unless the context otherwise requires,

- a. “Law” includes any ordinance, order, bye-law, rule, regulation, notification, custom, or usage having in the territory of India the force of law;
 - b. “Laws in force” include laws passed or made by a legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.
4. Nothing in this article shall apply to any amendment of this Constitution made under Article 368 [2].

PART 3 OF THE CONSTITUTION: FUNDAMENTAL RIGHTS

The Constitution of India offers all citizens, individually and collectively, some human rights which are inviolable. These rights are guaranteed in the Constitution in the form of six broad categories of fundamental rights. Articles 12 to 35 contained in Part III of the Constitution deal with fundamental rights, which are as follows:

1. Right to Equality (Articles 14–18). This includes the right to equality before the law, the prohibition of discrimination on the grounds of religion, race, caste, sex, or place of birth, and the abolition of untouchability.
2. Right to Freedom (Articles 19–22). This includes the right to freedom of speech and expression, the right to assemble peacefully and without arms, the right to form associations or unions, the right to move freely throughout the country, the right to practice any profession or occupation, and the right to reside and settle in any part of the country [3].
3. Right against Exploitation (Articles 23 and 24). This includes the prohibition of forced labour, the prohibition of human trafficking, and the prohibition of child labour.
4. Right to Freedom of Religion (Articles 25–28). This includes the right to practice, profess, and propagate any religion. The state has no official religion. Every person has the right to freely practice his or her faith, establish and maintain religious and charitable institutions.
5. Cultural and Educational Rights (Articles 29 and 30). This includes the right to preserve one’s language, script, and culture, and the right to education.
6. Right to Constitutional Remedies (Article 32). This includes the right to approach the courts for the enforcement of fundamental rights [4].

We should also be aware that there is one more fundamental right in the Constitution, i.e., the right to property. However, this right was removed from the list of fundamental rights by the 44th Constitutional Amendment.

The reason for this was that the rights mentioned previously posed an obstacle to achieving socialism and the fair distribution of wealth and property among the populace. Hence, the right to property is now a legal right and not a fundamental right.

It is due to changes in “fundamental rights” by the parliament (Legislature), and the circumstances in which these changes were made compelled the Supreme Court to propound the theory of “basic structure of the Constitution” so as to safeguard fundamental features of the Constitution from being altered or destroyed by parliament [5, 6].

CHARACTERISTICS OF FUNDAMENTAL RIGHTS

The characteristics of fundamental rights are distinct from ordinary legal rights in terms of their enforcement. Unlike legal rights, where the lower courts must be approached first, if a fundamental right is violated, an aggrieved person can directly approach the Supreme Court. While some fundamental rights are applicable to all citizens, others are extended to all persons, including foreigners. Nonetheless, it should be noted that these rights are not unconditional and may be limited by rational and justifiable constraints, such as concerns for national security, public morality, decency, and fostering amicable international relationships. Additionally, fundamental rights are justiciable, meaning

that they can be enforced through the courts, and individuals can directly approach the Supreme Court if their rights are violated. During a national emergency, fundamental rights may be suspended, except for those guaranteed under Articles 20 and 21. The application of fundamental rights may also be restricted in areas under martial law or military rule.

While parliament can amend fundamental rights through constitutional amendment, such changes cannot alter the basic structure of the Constitution which safeguards people's rights due to the implementation of the basic structure doctrine [7].

PART 4 OF THE CONSTITUTION: DIRECTIVE PRINCIPLES OF STATE POLICY

Part IV of the Indian Constitution is known as the "Directive Principles of State Policy" and contains a set of guidelines for the government to follow in the governance of the country. Unlike the fundamental rights, the directive principles are not enforceable by the courts, but they are nevertheless considered an important part of the Constitution.

The directive principles of state policy aim to establish a welfare state and promote the economic and social well-being of the people. They include provisions for:

1. Promotion of social justice and equality, and the elimination of inequality in income, status, and opportunity among individuals or groups [8].
2. Provision for adequate means of livelihood and an economic distribution that is equitable.
3. Protection of the rights of workers and laborers, and provision for humane conditions of work.
4. Provision of the right to education, healthcare, and nutrition.
5. Promotion of scientific research, the development of the arts and culture, and the protection of monuments and places of historical importance.
6. Promotion of environmental protection and preservation of natural resources.
7. Promotion of international peace and security [9].

PART 20 OF THE CONSTITUTION: AMENDMENT TO THE CONSTITUTION

Article 368 as it is:

1. Notwithstanding anything in this Constitution, parliament may, in exercise of its constituent power, amend by way of addition, variation, or repeal any provision of this Constitution in accordance with the procedure laid down in this article.
2. An amendment of this Constitution may be initiated only by the introduction of a bill for the purpose in either house of parliament, and when the bill is passed in each house by a majority of the total membership of that house and by a majority of not less than two-thirds of the members of that house present and voting, it shall be presented to the President, who shall give his assent to the bill and thereupon the Constitution shall stand amended in accordance with the terms of the bill, provided that if such amendment seeks to make any change in:
 - a. Article 54, Article 55, Article 73, Article 162, or Article 241, or
 - b. Chapter IV of Part V, Chapter V of Part VI, Chapter I of Part XI, or
 - c. Any of the lists in the Seventh Schedule, or
 - d. The representation of states in parliament, or
 - e. The provisions of this article and the amendment shall also require ratification by the legislatures of not less than one-half of the states ^{5 ***} by resolutions to that effect passed by those legislatures ^{240 1} [Power of Parliament to amend the Constitution and procedure therefore] ^{1 Subs.} by the Constitution (Twenty-fourth Amendment) Act, 1971, s. 3, for "Procedure for the Amendment of the Constitution". ^{2 Ins.} by s. 3, *ibid.* ^{3 Art.} 368 renumbered as cl. (2) thereof by s. 3, *ibid.* ^{4 Subs.} by s. 3, *ibid.*, for "it shall be presented to the President for his assent and upon such assent being given to the Bill,". ⁵ The words and letters "specified in Parts A and B of the First Schedule" are omitted by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch. before the bill making provision for such an amendment is presented to the President for assent [10].

3. Nothing in Article 13 shall apply to any amendment made under this article.
4. No amendment of this Constitution (including the provisions of Part III) made or purported to have been made under this article [whether before or after the commencement of Section 55 of the Constitution (Forty-second Amendment) Act, 1976] shall be called in question in any court on any ground.
5. For the removal of doubts, it is hereby declared that there shall be no limitation whatsoever on the constituent power of parliament to amend by way of addition, variation, or repeal the provisions of this Constitution under this article.

AREAS IN CONSTITUTION WHERE THERE MAY BE CONFLICTS

Part 4 of the Constitution which deals with the “directive principle of state policy” contains ideal goals which the state will strive to achieve for its people, and in order to achieve these goals, the government will be compelled to take such decisions through relevant “amendments” from time to time to bring them into law for the betterment of the larger, more deprived section of society which might affect the “fundamental rights” mentioned in Part 3 of the Constitution of a few individuals [11].

One such decision was related to land reforms done by various states, through which the government put limitations on the land owned by the landlords and brought the law aimed at taking away the excess land from them for redistribution of land from the rich to the poor. In a broader sense, it encompasses the governance of land ownership, operation, leasing, sales, and inheritance, with legal amendments being necessary for the redistribution of land itself. Land reform is particularly critical in agrarian economies like India, where there is a significant scarcity of land, coupled with an unequal distribution of land, and a large rural population living below the poverty line. There are strong economic and political grounds to support land reform, and it was given the highest priority on the policy agenda during the time of India’s independence.

The provision for making necessary amendments to the Constitution is already explained in Article 368, which shall be used by the government in order to mould the law for the betterment of citizens. But taking away the land from citizens will affect their fundamental right which is protected under Article 13 of the Constitution [12].

So with respect to the amendment, the question remains, what are the limitations of such changes in the Constitution?

Does the power to change the Constitution equal the creation of the Constitution or rewriting the entire Constitution?

POSITION OF THE SUPREME COURT WITH RESPECT TO AMENDMENTS TO THE CONSTITUTION

Initially, the Supreme Court held the position that no part of the Indian Constitution was beyond amendment, and the parliament had the power to amend any provision, including fundamental rights and Article 368, by passing a Constitution Amendment Act that meets the requirements of Article 368.

This position was affirmed unanimously in the case of *Shankari Prasad Singh Deo v. Union of India* (AIR 1951 SC 458), where the Supreme Court declared that “the terms of Article 368 are perfectly general and empower parliament to amend the Constitution without any exception whatever”. The court interpreted Article 13 to mean that the term “law” referred to rules or regulations created through ordinary legislative power and did not apply to amendments made to the Constitution through constituent power. Therefore, Article 13(2) did not impact amendments made under Article 368.

In another important case, *Sajjan Singh v. State of Rajasthan, 1965 AIR 845*, the Supreme Court, ruled by a majority of 3-2 that parliament has the authority to amend all provisions of the Constitution through Article 368. The court found it unhelpful to interpret that the term “law” in Article 13(2), which may put a limitation on Article 368 by specifying its boundaries [13].

However, this approach was changed by the Supreme Court in the landmark case of *Golaknath*. In the *Golaknath v. State of Punjab 1967 AIR 1643* case, the Supreme Court, with the largest bench ever assembled at that time consisting of eleven judges, overturned its earlier rulings by a narrow 6-5 majority. The central issue in question was whether any part or provision of the Constitution's fundamental rights could be modified or restricted through an amendment of the Constitution. The court ruled that amending the Constitution constituted a legislative process. Additionally, the court found that an amendment made under Article 368 qualifies as "law" as defined in Article 13 of the Constitution. In light of the conclusion that amending the Constitution is a legislative process, any constitutional amendment that limits or reduces any fundamental right that is protected under Part III of the Constitution would be considered null and void. The court further established that fundamental rights are accorded a "transcendental position" under the Constitution and are positioned outside the jurisdiction of parliament. According to the court, the Constitution's framework and the nature of the freedoms it confers on citizens render parliament incapable of modifying, limiting, or impairing the fundamental freedoms outlined in Part III.

In retaliation to this government headed by Indira Gandhi having a majority in Parliament, the 24th Amendment was passed in 1971 to override the Supreme Court's decision. It amended the Constitution to expressly specify in Article 13 and Article 368 that Article 368 was excluded from the prohibition of Article 13, thereby granting parliament the power to amend any part of the Constitution including any part or provision of the fundamental rights. It also made it obligatory for the President to give his assent, when a Constitution amendment bill was presented to him [14].

PROPOSING THE DOCTRINE OF THE BASIC STRUCTURE OF CONSTITUTION

The power of Article 13 on Article 368, was again challenged in the landmark case of "*Kesavananda Bharati v. State of Kerala (case citation: AIR 1973 SC 1461)*" where the largest constitution bench of 13 judges held, considering the validity of the 24th, 25th, 26th, and 29th amendments delivered the ruling on 24th April 1973, by a 13-0 majority holding the amendments under the 24th, 25th, and 29th as valid (a 7-6 majority held only the second part of Section 3 of the 25th amendment, which put the state policies made under the directive principle of Part 4, violating the basic structure outside judicial purview, as invalid).

10 judges held that the I.C. *Golaknath* case was wrongly decided, and held that the amendment cannot be held as law under Article 13.

7 judges held that under Article 368, parliament has full power to amend any part of the Constitution (including the fundamental rights of the citizen).

7-6 judges also held that, since it is only a 'power to amend', it does not include the power to alter /destroy the basic structure of the Constitution so as to change its identity which means that power "to amend" is not equal to power "to create".

In this landmark case, the Supreme Court propounded the "doctrine of the basic structure of the Constitution" which put limitations on the power of amendment by the parliament if they transgressed the basic structure. Renowned Jurist and Civil Lawyer, Mr. Nani Palkhiwala presented the case against the government in both the I.C. *Golaknath* and *Kesavanda Bharti* cases.

Later on, in *Indira Nehru Gandhi v. Raj Narain, 1975*, also known as the Election Case, Indira Gandhi was found guilty by the Allahabad High Court for misusing the state machinery during the election poll. She was granted bail by the Supreme Court, which accepted her appeal against the verdict and allowed her to continue as Prime Minister for six months, i.e., the expected time for hearing and delivering judgement, but refused to reinstate her as a member of parliament. Subsequently, through the President, she imposed a state of emergency and tried to legitimize the election by making the 39th Constitution

amendment and inserting Article 329A which put the election of the Prime Minister and Lok Sabha Speaker outside the scope of the judiciary [15].

When 13 bench judges came together to decide on the degree of restriction under the basic structure doctrine, Nanibhai Palkhivala again came to the forefront against the government's application for reconsideration, which compelled the judges to accept his arguments against the government's request.

Subsequently, the Supreme Court reinforced the basic structure doctrine and struck down clauses 4 and 5 of Article 329A, which made the existing election law inapplicable to the Prime Minister and Speaker's election and her pending proceeding null and void.

NEED OF THE DOCTRINE OF THE BASIC STRUCTURE OF THE CONSTITUTION

Although Indira Gandhi was a great leader who took amazing decisions, like bank nationalisation, abolishing the Privy Purse, supporting the Bangladesh Liberation Movement, etc., however, the line between being a great boss and acting like a dictator is blurry. It is sometimes evident that she did not accept any decisions which undermined her ability to govern or rule without any accountability while she was in power. When the Supreme Court ruled against her, she not only imposed an emergency but brought several amendments which not only suited her, but also tried to shift the political power towards parliamentary sovereignty thereby installing legislative supremacy and giving ground-breaking power to the prime minister's office. In order to do that, she stripped the judiciary of its power through the 42nd Amendment which, due to its length, is also known as the "Mini-Constitution". In fact, this angered people so much that another Janta party (who were in opposition at the time) when promised to restore the constitution to the condition it was before the emergency, won the 1977 general election and were brought to power by the people of India. Although they tried restoring the Constitution to its pre-emergency position through the 43rd and 44th Amendments to some extent they could not fully achieve their objective [16].

USE OF THE DOCTRINE BY THE COURT TO PROTECT THE CONSTITUTION

In *Minerva Mills v. Union of India, 1980*, the Supreme Court overruled two provisions which granted the parliamentary amendment of the Constitution absolute immunity from judicial review and which accorded supersedence to the "directive principle of state policy" over "fundamental rights", citing and endorsing the basic structure doctrine of the Constitution.

Chief Justice Y.V. Chandrachud (who earlier was one of the dissident judges in the Kesavnandan Bharati Judgement, changed his then opinion/view) wrote

"Since the Constitution conferred a limited amending power on the parliament, it cannot, under the exercise of that limited power, enlarge that very power into an absolute power. Indeed, a limited amending power is one of the basic features of our Constitution and therefore, the limitations on that power cannot be destroyed. In other words, parliament cannot, under Article 368, expand its amending power so as to acquire for itself the right to repeal or abrogate the Constitution or to destroy its basic and essential features. The donee of a limited power cannot, by the exercise of that power, convert the limited power into an unlimited one.

List of the Features Constituting the Basic Structure of the Constitution

Through various rulings, the Supreme Court has established a non-exhaustive list of features that comprise the basic structure of the Constitution.

1. Supremacy of the Constitution
2. Rule of law
3. The principle of separation of powers
4. The objectives specified in the preamble to the Constitution of India
5. Judicial review

6. Articles 32 and 226
7. Federalism (including the financial liberty of states under Articles 282 and 293)
8. Secularism
9. The sovereign, democratic, and republican structures
10. Freedom and dignity of the individual
11. Unity and integrity of the nation
12. The principle of equality, not every feature of equality, but the quintessence of equal justice
13. The “essence” of other fundamental rights in Part III
14. The concept of social and economic justice—to build a welfare state: Part IV of the Constitution
15. The balance between fundamental rights and directive principles
16. The parliamentary system of government
17. The principle of free and fair elections
18. Limitations upon the amending power conferred by Article 368
19. Independence of the judiciary
20. Effective access to justice
21. Powers of the Supreme Court of India under Articles 32, 136, 141, and 142
22. Legislation seeking to nullify the awards made in exercise of the judicial power of the state by arbitration tribunals constituted under an act

The court has also ruled that the basic structure doctrine covers not only the Constitution’s clauses but also the fundamental ideals and principles upon which they are based.

Citation of the Doctrine in Cases After Kesavandan Bharati

Even after the inception of the doctrine in 1973, this has been used as a reference in various cases thereafter including the *Indira Nehru Gandhi v. Raj Narain case* (1975) and *Minerva Mill’s case* (1980) as explained earlier. Apart from these, the Supreme Court has cited and used the doctrine in *Waman Rao Case* (1981), which draws the line of demarcation as the *Kesavanda Bharati case*, i.e., 24th April 1973, and held that this change made under the doctrine will apply prospectively and not retrospectively, meaning any validity of any amendment made in the Constitution before this case will not be reopened. The petitioner raised a challenge to the amendment of the Kerala Land Reform Act being placed under the 9th Schedule which gives it protection from being challenged in court.

In *Indra Sawhney v. Union of India* (1992), the Supreme Court examined the scope and extent of the reservation of jobs in favour of the backward class provided under Article 16(4). It held validity under certain conditions and added the rule of law to the list of basic features of the Constitution.

In the *S.R. Bommai case* (1994), the Supreme Court tried to put a stop to the rampant misuse of Article 356 (regarding the imposition of President’s Rule on states).

Although there was no question of constitutional amendment, the Supreme Court clarified that if any policies of the state government are against the basic Constitution, it will provide a valid ground for the centre to use the power under Article 356.

This doctrine is also accepted in various other countries like Bangladesh, Belize, Malaysia, Pakistan, and Uganda.

INTERVENTION OF THE JUDICIARY IN DIRECTING THE STATE TO MAKE THE LAW

The Supreme Court has time and again come to protect citizens’ rights from misuse of the law or directed the parliament to bring in the law needed for society.

Maneka Gandhi v. Union of India (1978)

Maneka Gandhi’s passport was impounded by the government without providing a reason. The Supreme Court held that the right to travel abroad is a part of the right to personal liberty under Article

21 of the Constitution. The court declared that the government could not deprive a person of his or her personal liberty without following the procedure established by law.

Olga Tellis v. Bombay Municipal Corporation (1985)

The Bombay Municipal Corporation had evicted pavement dwellers from the city's footpaths. The Supreme Court held that the right to life under Article 21 of the Constitution includes the right to livelihood and shelter. The court ordered that the evicted people be rehabilitated in housing projects.

Swaran Singh Case (1998)

The Supreme Court held the UP Governor's pardon of a murder convict as unconstitutional.

Vishaka v. State of Rajasthan (1997)

The Supreme Court laid down guidelines to prevent sexual harassment of women in the workplace. The court held that sexual harassment violates the fundamental rights of women under Articles 14, 19, and 21 of the Constitution. The guidelines issued in this case are now known as the Vishakha Guidelines and have been incorporated into the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013.

Navtej Singh Johar v. Union of India (2018)

In this case, the Supreme Court of India struck down a colonial-era law criminalizing homosexuality, stating that the law violated the fundamental rights of LGBT individuals. The government and legislature had failed to repeal the law, and it was left to the judiciary to correct this misuse of power.

Aruna Shanbaug vs. Union of India (2011)

In this case, the Supreme Court of India established the right to die with dignity as a fundamental right and allowed passive euthanasia in certain cases. It also laid down guidelines for advanced medical directives.

It is our judiciary, which through evolution and the requirements of society brought necessary changes and deviations from normal practice followed by other countries' judiciaries, propounded and gave birth to many revolutionary concepts/laws which made it one of the best judicial systems in the world. Be it propounding the concept of "absolute liability" by Justice Bhagwati which made companies absolutely liable when dealing with dangerous and hazardous elements, chemicals, etc. and compelled them to compensate as per their financial capacity to the victim, which otherwise were safe through certain exceptions available in the earlier "strict liability" concept accepted in general by the world judiciary. Or incorporating and implementing a "collegium system" for the appointment of judges, thus making our judicial system neutral to external influence by the legislature.

There are many more examples of how the judiciary has intervened for the protection of rights that were either neglected and curtailed, or not recognised. It is our robust judicial system which gives the power and faith to each and every citizen to fight for their rights, even when the aggressors are otherwise very powerful and almost invincible.

It is possible that the legislature and executive may, sometime in the greed of gaining power, pass a law or make amendments to an existing law, which may take the path that is suitable to get them the majority of votes and enable them to come to power. At times, they even conveniently choose to ignore taking appropriate steps or actions, which otherwise are already laid down in the Constitution. For example, "the state will strive to implement a uniform civil code", a directive which has already been laid down in the Constitution but has not been implemented by any government till date, even after multiple reminders by the judiciary.

CONCLUSION

It is the Constitution that is supreme and gives the power while also explaining the duties to the pillars of democracy, i.e., legislative, executive, judiciary, and media. It is intended to protect the country and its citizens while also striving for the development of its people and the nation.

Hence, its power and position are greater than any of its pillars, be they legislative, executive, etc.

Doing away with the basic structure doctrine will render our Indian judiciary a toothless tiger. Its power and position to protect the constitution and every citizen's right will get diluted and affected by the plenary power of the parliament, whenever they are in the absolute majority.

In order to reveal the true nature of a legal concept, one must anticipate any extreme cases it may bring forward. Hence, with an absolute majority, if the government or political parties decide to pass an act with an absolute majority to give away a major portion of land to China or bring back Britishers or any dictator to rule us again, can that be allowed? Ideally, no one can imagine such a superficial and hypothetical situation, but this should lead us to ponder the basic question, i.e.,

Should there be a limit to making the changes?

Yes, there should be a limit to the amending power of parliament so that they cannot use the power to destroy any part or entire constitution. No legislation has the absolute power above the Constitution or the power to erase and rewrite the Constitution itself which is more supreme than any of the pillars of democracy.

It is our Constitution which safeguards the people and the secular fabric of the country. It is the duty of the citizen, judiciary, executive, and even legislature to safeguard and protect the Constitution from any changes which alter or change its basic structure. As a result, there is no need to revisit the doctrine of basic constitutional structure.

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