

The Limitation on Amendments to Constitution of India

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Abstract

Purpose: The Paper aims to put into focus that the basic structure doctrine of the ideology of constitutionalism is not only a binding precedent in law but an expression of the basic features of the constitution of India which have stood the test of time to keep the nation together in peace and harmony.

Methodology: Critical Analysis and discussion on principles put into interpretation. **Findings:** The country cannot afford to dilute the basic structure doctrine as set out by the Supreme Court as the same represents the very foundation of the Indian polity.

Keywords: Basic structure doctrine, supreme court, Indian polity, hierarchical

INTRODUCTION

The legal system operates as a structured set of norms arranged in a hierarchy, where each norm gains its authority from a superior norm. Ensuring that legal systems possess a sense of consistency and harmony is crucial. Within a legal framework, the constitution, whether documented or not, holds the utmost significance as it encompasses the most authoritative norm [1]. The Doctrine of Basic structure carries the characteristics of the grund norm as propounded by Kelsen. The grund norm being the basic norm of the legal system is the criterion for testing the validity of allotted norms of the legal order and is immutable. The Basic Structure as considered by the Supreme Court is immutable and like the grundnorm Basic Structure is the norm of all other norms in the Legal system [2].

BRIEF DISCUSSION

The political Doctrine of constitutionalism upholds the supremacy of the Constitution and the Indian Constitution in Article 13 recognises the Rule of Law and supremacy of the Indian Constitution over all other laws.

The Supreme Court of India is the Guardian and sentinel of the Constitution of India and this principle finds expression in Article 32 of the Constitution which article Ambedkar called the soul of the Constitution of India If the State violates the fundamental rights of the citizens it is the judiciary which gives the citizens an umbrella of protection. The law declared by the Supreme Court of India is binding on all Courts in India as per Article 141 of the Constitution. In this context the core values of the Constitution of India reflected in the Basic structure Doctrine as propounded by the Honourable Supreme Court in Keshavananda Bharathi v/s State of Kerala [3] has cast a positive effect on all institutions of governance.

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The emergence and development of the Basic Structure Doctrine can be linked to several landmark cases decided by the Supreme Court of India, including:

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- (a) In the case of *Shankari Prasad* [4], the Supreme Court of India held that the power of Parliament to amend the Constitution under Article 368 encompasses the authority to amend Fundamental Rights as well. This decision was grounded in the interpretation that the term "law" in Article 13 pertains exclusively to ordinary legislation and does not extend to constitutional amendment Acts.
 - (b) The *Golaknath* judgment marked a significant departure from the earlier *Shankari Prasad* decision. In *Golaknath* [5], the Supreme Court declared that Fundamental Rights occupy a sacred and unalterable position, and thus, Parliament does not possess the authority to curtail or remove any of these rights. This ruling effectively overturned the previous judgment in *Shankari Prasad*. It also opined that constitutional amendment is also a law under Article 13.
 - (c) In response to the *Golaknath* judgment, Parliament passed the 24th Amendment to the Indian Constitution. This amendment introduced a provision within Article 368, explicitly asserting that Parliament has the authority to modify or abrogate any of the Fundamental Rights guaranteed by the Constitution. This constitutional amendment was enacted to counter the limitations imposed by the *Golaknath* decision.
 - (d) In the *Keshavananda Bharati* case, the Supreme Court of India upheld Parliament's authority to amend or limit Fundamental Rights through constitutional amendments, including the 24th Amendment. However, the Court introduced a crucial caveat: while Parliament had the power to amend, it could not alter or undermine the fundamental structure of the Constitution. This decision established the Basic Structure Doctrine, which stipulated that certain core principles and features of the Constitution were beyond the scope of amendment and remained inviolable.
 - (e) Following the Supreme Court's ruling in the *Keshavananda Bharati* case, Parliament passed the 42nd Amendment to the Indian Constitution. This amendment included changes to Article 368, explicitly asserting that there are no limitations on Parliament's constituent power to amend the Constitution. Additionally, it attempted to restrict the jurisdiction of the Courts in questioning these amendments. This amendment was seen as an attempt to reinforce Parliament's authority in the amendment process and limit the judiciary's role in reviewing such amendments.
 - (f) The 42nd Amendment to the Constitution came to be challenged in the *Minerva Mills* case [6] in which case the Supreme Court invalidated the clauses taking away judicial review by the Supreme Court in *Minerva Mills Ltd.* case stating that judicial review is a part of the basic structure Doctrine

The Basic features of the Constitution of India as highlighted by the Supreme Court of India through its various judgements are:

Constitutional supremacy, the rule of law, freedom of the people, and the republican aspect of Indian politics the harmony and balance of fundamental rights and Directive Principles, Separation of Powers, Federal Character, Parliamentary Rule of Equality, National Unity and Integrity, Free and Fair Elections, High Courts' Authority under Articles 226 and 227, Welfare State, Individual Freedom and Dignity, and Judicial Independence

The Honourable Supreme Court in its judgement in *Supreme Court Advocates on Record v/s Union of India* [7] setting aside the National Judicial Appointments Act reiterated that independence of the judiciary and Rule of Law are basic features of the Indian Constitution.

It is pertinent to note that ever- since the Doctrine of Basic features of the Constitution in particular the basic feature of Judicial Review has been invoked by the Supreme Court to question the amendments and laws on the limitations on the Power of Parliament to amend the Constitution the Executive and the Legislative have always expressed their disapproval on the vesting of such powers on the Supreme Court of India but the framers of the Constitution of India have cast this solemn duty of protection to the Constitution on the judiciary and the same cannot be wished away.

Preserving the independence of the judiciary, a fundamental component of the Basic Structure Doctrine, is paramount. This ensures that the citizens of India always have a judiciary dedicated to upholding the Constitution of India rather than being aligned with the current government in power. This commitment to an impartial judiciary is vital for the integrity and fairness of the legal system and the protection of citizens' rights and liberties.

The verdict of the Supreme Court of India in the ADM Jabalpur case represents the failure of the Supreme Court to protect the freedoms of the citizens during the dark days of the Emergency and the case reminds us of what can happen to citizens when constitutional provisions of the Constitution are transgressed and the lapses are condoned by the judiciary 'hence the need for an independent judiciary. For the first time in Supreme Court history a ninejudge bench led by former Chief Justice of India J.S.Khanna in Justice VKS Puttuswamy v/s Union of India [8] condemned the majority opinion in the habeas corpus Case and found the judgement flawed. The court affirmed that life and personal liberty are inherent to human existence and, in doing so, has upheld its role as a champion of the people. This decision has cleared any stain on the court's history. It emphasized the need to interpret fundamental rights and the Directive Principles of State Policy in a harmonious manner, as these principles are not conflicting but rather serve as supplementary and complementary elements, constituting a fundamental aspect of the Indian Constitution.

The Supreme Court of India in S R Bommai v/s Union of India [9] upheld secularism and federalism as basic features of the Constitution of India to be kept in mind while exercising powers under Article 356 of the Constitution of India.

The Basic features Doctrine of the Constitution of India has stood the test of time since 24th April 1973 and draws sustenance from the Doctrine of Stare Decisis. The Doctrine of Stare Decisis seeks to maintain consistency and continuity in precedents relating to well established legal principles.

CONCLUSIONS

The future of India, as an united and cohesive nation rests on safeguarding the basic features of the Constitution of India reflected in the Basic Structure Doctrine and it is the Supreme Court of India which would have to do justice to the role assigned to it, by the framers of the Constitution as the watchdog of the Constitution and any talk of revisiting the Doctrine of Basic structure of the Constitution of India would be the deathknell of the constitutional values and thus bring about the disintegration of Bharat.

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