

"Constitution is a lifeless thing just like a machine. It acquires life only because of the men who control it and operate it".

BASIC STRUCTURE OF CONSTITUTION

'Doctrine of the Basic structure of Constitution' is an invention of Indian judiciary. It puts limitations on the amending power of Parliament. 'Basic structure of Constitution' is a display of courage and craft by the Supreme court of India. It is counted as the greatest contribution of the Indian judiciary to the theory of institutionalism.

Concept

- The constitution is organic in nature. It grows perpetually continuous as it embodies the spirit of the Constitution.
- Under Part XX Article 368 parliament is given the power to amend any provision of the Constitution, this empowers parliament to even amend Article 368 itself.
- As the constitution is not static, with changing social, political and economic conditions, the Constitution has to be amended as time demands.
- Therefore, the amending power of parliament is limited to limit the non-violation of the basic structure of the Constitution.
- Following are the components of the Constitution:
 1. The supremacy of the Constitution
 2. Rule of law
 3. The Sovereign, Democratic and Republican nature of Indian polity
 4. The principle of Separation of Powers between the executive, legislative and judiciary
 5. Federal Character of the Constitution
 6. Unity and integrity of the Nation
 7. Independence of the Judiciary
 8. Judicial Review
 9. Freedom and dignity of the individual
 10. The Parliamentary system of government
 11. The balance between Fundamental Rights and DPSP.
 12. The principle of equality
 13. Secular character of the Constitution
 14. Restriction on amending the power of Parliament.
 15. Effective access to justice
 16. Principle of reasonableness
 17. Free and fair elections

18. The Powers of the Supreme Court under Articles 32, 136, 141, 142
19. The concept of Welfare State consisting of social and economic justice.

Genesis of Doctrine of the Basic Structure of the Constitution

- The idea of doctrine was borrowed from observation of the Supreme Court of USA made in State of Rhode Island vs. A. Mitchel Palmer case, 1919.
- In **Shankari Prasad case, 1951** Supreme Court ordered that constitutional amendments done by the Parliament are not subjected to Article 13(2) and such amendment includes the amendment of the fundamental rights as well.
- The Constitution (Seventeenth Amendment) Act, 1964, brought a major change. It put a number of laws in the Ninth Schedule, so as to avoid the scrutiny of judicial review. This was challenged in the **Sajjan Singh Case**, where it confirmed the earlier decision that Parliament can amend any provision of the Constitution under Article 368 which includes the Fundamental Rights as well.
- The **I. C. Golakhnath Case**, Constitutional validity of First, Fourth and Seventeenth Constitutional Amendments were reconsidered. In this judgment, it ruled out decision made in Shankari Prasad Case and the Sajjan Singh case. It held that Parliament can not amend the fundamental rights. As legislative power of the Parliament was subject to the provisions of this Constitution, Article 13(2) comprise a restriction on an amendment that abridges or take away fundamental rights.
- Parliament passed The Constitution (Twenty-fourth Amendment) Act that nullified the Golakhnath judgment. It introduced a new provision Article 31C in the Constitution. It says the law which gives effect to the Directive Principles of the State Policy mentioned under Part IV of the Constitution was to be deemed valid automatically and cannot be challenged on the grounds of violating the fundamental rights guaranteed under Articles 14, 19 and 31. This was challenged in the **Keshavananda Bharati case, 1973**.
- In Keshavananda Bharati case, Supreme Court distinguished between the term 'Constitutional Law' and 'law' mentioned under Article 13 of the Constitution. The court said that the term 'Constitutional law' does fall under the ambit of 'law' in Article 13. It also held that the amending power of the legislature shall be subject to a doctrine called the 'Doctrine of Basic structure' and therefore the parliament cannot use its constituent power under Article 368 so as to 'damage', 'emasculate', 'destroy', 'abrogate', 'change' or 'alter' the 'basic structure' or framework of the Constitution. This judgment was a watershed moment in Constitutional history.

Arguments in favour of Basic Structure Doctrine

- The Basic Structure of the Constitution is drawn from the language of Article 368 itself which says that—the Constitution "*shall stand amended*" in accordance with the Bill and *not "sit amended"*. In this manner, if the basic structure of the Constitution will be amended then it is clear that the Constitution will no longer remain —"stand amended".
- This doctrine has anti-majoritarian flavour and is of prime importance as it prevents the Parliament from abusing its majoritarian power.
- The reason for not giving an explicit list of what constitutes basic structure may be that, if they will mention it precisely, then the Parliament may find a loophole and come forward with some other alternatives.
- Basic structure doctrine is the response to the dubious steps adopted to misuse the Ninth Schedule.

Arguments against Basic structure Doctrine

- It has an extra-Constitutional origin as there is an absence of basic in the basic structure doctrine. Instead what the Supreme Court has done is to assume to itself a power of veto on all Constitutional amendments.
- There is no consensus (as judgment passed with 6:7 majority) and ambiguous about what constitutes the basic structure of the Constitution.
- The Legislative/Constituent power gets transferred from the elected representatives of the people (legislative) to the nonelected one that is, judges of the Supreme Court (Judiciary). The doctrine of separation of power is diluted here.
- It appeared from the few judicial pronouncements that the Supreme Court has assumed much power in the name of the basic structure.

Conclusion

The basic structure doctrine is just a way to give energy to the living principles of the Constitution that is "Rule of Law" and connotes that none is above the Constitution and the Constitution is supreme. Constitution's essential character is protected by this doctrine. Also, as Supreme Court is itself custodian of the Constitution, it is the final interpreter and legitimate authority to pronounce Basic structure doctrine. However, this does not mean that the Supreme Court should assume absolute power.