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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

BASIC STRUCTURE OF THE INDIAN CONSTITUTION

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ABSTRACT:

The main objective of my paper is to bring into the light the various case laws which evolved the basic structure of the constitution into what it is today. My paper sheds relevance on the history of the basic structure, its importance and elements. The paper also focuses on how the basic structure is relevant in today's judicial system.

INTRODUCTION:

While setting up the National Commission to Review the Working of the Constitution, the National Democratic Alliance government (formed by a coalition of 24 national and regional level parties) stated that the basic structure of the Constitution would not be tampered with.

The **Basic Structure Doctrine** is an important legal principle that has shaped the interpretation of India's Constitution. From the landmark case of **Kesavananda Bharati**, this doctrine has laid down the fundamental aspects of the constitution which cannot be amended by the parliament. It safeguards the essentials of the constitution, keeping the core structure intact.

According to the Constitution, Parliament and the state legislatures in India have the power to make laws within their respective jurisdictions, although this power not being absolute in nature. The Constitution vests in the judiciary, the power to adjudicate upon the constitutional validity of all laws. If there is any law made by the Parliament which contravenes with the basic structure, then the supreme court can strike down any such law.

The **Elements of the Basic Structure Doctrine** are fundamental principles that protect the core of the Constitution, ensuring that its essence remains intact despite amendments. While Parliament has the power to amend various parts of the Constitution, including Fundamental

Rights, it cannot alter the 'basic structure.' Although the Supreme Court has not explicitly defined these components, numerous judgments have identified the following key elements that form the foundation of the Constitution's structure.

- Secularism
- Supremacy of the Constitution
- Sovereign, democratic, and republican nature of the Indian polity
- Independence of Judiciary
- Federalism
- Unity and integrity of the nation
- Freedom and dignity of the individual
- Powers of the Supreme Court under Articles 32, 136, 141 and 142.
- Welfare state
- Principle of equality
- The rule of law
- Powers of the High Courts under Articles 226 and 227
- Judicial review
- Free and fair elections
- Harmony and balance between FR and DPSPs
- Limited power of Parliament to amend the Constitution
- Separation of powers
- Parliamentary system
- Principles underlying Fundamental Rights¹

LEGAL HISTORY:

The basic structure of the Indian Constitution is an evolution of various case laws, some of which are stated below:

1. Shankari Prasad v. Union of India (1951) :²

Facts of the case: Post-independence in an attempt to promote socio-economic development the government of India introduced various agrarian reforms and reservations, across various

¹ Elements and case law history of basic structure

² AIR 1951 SC 458, 1951 SCR 89

states of the country. The reforms primarily focused on land redistribution schemes across different categories of landlords. These agrarian reforms were swiftly challenged across the High Courts of the country on the grounds that it violated the then fundamental right-right to property.

While the Allahabad and Bhopal High court validated such reforms. It was the Patna High Court which declared the Bihar Land Reforms Act 1950, as unconstitutional, violative of Article 13(2) of the Indian Constitution. With an ardent desire to promote and validate agrarian reforms the parliament, in a rather attempt to repeal the Patna High Court judgment, introduced the first Constitutional Amendment just 14 months after the constitution's original promulgation. Under the first amendment, Article 31-A and Article 31B were inserted respectively. And as a consequence of that this Supreme Court validated the agrarian reforms.

Issues Raised:

It was the case of *Shakari Prasad vs. Union of India*,² which challenged the first constitutional amendment 1951. It was contended that the first amendment violated Article 13(2), which is deemed as a protector of fundamental rights. Also, it raised other issues as well such as - whether the parliament can amend the constitution? Can the fundamental rights be amended? And, to what extent can the constitution be amended under Article 368?

Decision of the court:

It was evident that there existed a conflict between Article 13 and Article 368 of the Indian constitution. On one hand Article 368 gave legislature the power to amend the constitution at the same time Article 13 (2) restricted the same. The Supreme Court in this case used the doctrine of harmonious construction in an attempt to resolve the conflicting provisions. It was concluded that the word 'law' in Article 13 (2) is for ordinary laws and not constitutional laws. Thereby limiting the extent of 'law' under Article 13 (2). This also meant that the parliament had exclusive power under Article 368 to amend the constitution including the fundamental rights under part III of the constitution⁴. The apex court validated Article 31 A&B and also upheld the validity of the agrarian land reforms.

2. Sajjan Singh v. State of Rajasthan (1965):³

Facts of the case: Parliament passed the Constitution (Seventeenth Amendment) Act 1964, by which Article 31A was amended. 44 Acts were added to the Ninth Schedule of the Constitution, in order to preserve the legality of those Acts as well as of other Acts that were likely to be struck down. People who were impacted by one or other of those Acts were the petitioners and interveners in the Writ Petitions filed before the Supreme Court.

Issues Raised: Whether the parliament is competent to make amendments to part 3 of the constitution (which lays down the fundamental rights)?

Decision of the court:

- i. Article 368 of the Constitution empowers the Parliament to amend any article of the Constitution.
- ii. While the scope of Article 368 is restricted to constitutional law, Article 13 is only confined to ordinary legislation and does not apply to constitutional amendments.
- iii. Parliament has the power to amend the fundamental rights of the people conferred vide Part III of the Constitution.
- iv. An amendment made by resort to the first part of Article 368 of the Constitution could be struck down upon a ground such as taking away the jurisdiction of the High Courts under Article 226 or of this Court under Article 136 without complying with the requirements of the proviso.

3. Golaknath v. State of Punjab (1967) :

Facts of the case: The constitutional validity of the Punjab Security of Land Tenures Act, 1953 (hereinafter, Act of 1953) and of the Mysore Land Reforms Act, 1962 (hereinafter, Act of 1962) as amended by Act 14 of 1965 was questioned by a writ petition under Article 32 of the Constitution. ⁴

Issues Raised- Whether 'fundamental rights' in Part III can be amended and abridged by the procedure in Article 368 of the Constitution? Whether the 17th Amendment Act is invalid for

³ 1965 AIR 845, 1965 SCR (1) 933

⁴ How Basic Structure evolved through case laws ,Garg, Rachit. "Golaknath, I.C v State of Punjab (1967) : Overview and Analysis." *iPleaders*, 11 October 2022: (1967 AIR 1643, 1967 SCR (2) 762), Sajjan Singh v. State Of Rajasthan (Supra)

contravention of Article 13(2) of the Constitution? Whether the scheme of 'fundamental rights' as enshrined under the Constitution was intended to be permanent and unamendable?

Decision of the court- The majority opinion of Golak Nath case shows scepticism in their minds, about the then-course of parliament. Keeping in view the problems of fundamental rights, the majority overruled the previous decisions of the court in Shankari Prasad and Sajjan Singh.

It was declared by the majority that parliament in its power to amend the constitution, cannot amend the fundamental rights, as their power is not absolute in nature and is bound to reasonable restrictions.

-24th Constitutional Amendment Act (1971): Parliament restored its authority to amend any part of the Constitution, overriding Golaknath's restrictions, and made presidential assent mandatory.

4. Kesavananda Bharati vs State of Kerala (1973): ⁵

Facts of the case: The petitioner in this case, was the chief of Edneer Mutt, a religious sect in Kerala, the state government introduced certain Land Reforms according to which government was entitled to acquire some of sect's land, of which petitioner was the chief and hence filed a case in the Supreme Court of India for the enforcement of the following rights, Article 25(right to practice and propagate religion), Article 14 (right to equality), Article 19 (1)(f) (right to acquire property).

Issued Raised: Whether the 24th Constitutional (Amendment) Act 1971, is valid or not? Whether the constitutional amendment can be applied to Fundamental rights enshrined under part three of the constitution?

Decision of the court: The decision was passed in 1973, it was permitted by the judges so as to fulfill socio-economic obligations of the State that are given to citizens of India. The fundamental rights granted to the citizens cannot be taken away or subject to any amendments by the parliament in their power to amend the constitution under article 368.

It was laid down by the court that the doctrine of basic structure is to be followed by the Parliament while amending the constitution.

⁵ AIR 1973 SUPREME COURT 1461, 1973 4 SCC 225,

5. Indira Nehru Gandhi vs Raj Narain (1975):⁶

7Facts of the case: This case dates back to the 5th Lok Sabha General Elections that took place in India in 1971, there were two contenders Indira Nehru Gandhi and Raj Narain, with tough competition among them, Indira Nehru Gandhi won the elections, her contender did not approve of these results, he hence filed a petition before the Allahabad High Court, contending that Indira Gandhi violated model code of conduct as per provisions of Representation of People's Act, 1951, and used government resources for purpose of elections.

Issues Raised: Whether Indira Gandhi exercised malpractice during her elections? Raised the issue of Constitutional validity of Article 329-A asserted by 39th Constitutional Amendment Act.

Decision of Allahabad High Court: The court found Indira Gandhi guilty of the allegations made against her. Thereafter aggrieved by this decision, Indira Gandhi filed an appeal in the Supreme Court against the decision of High Court,

-The President passed the **39th Constitutional Amendment** which introduced a new provision, Article 329-A, provided that the election of the speaker and Prime Minister shall not be questioned in the court of law, which put a restriction on the power of Supreme Court in dealing with election cases, Shri Raj Narain challenged the validity of this amendment, arguing it was unconstitutional and should be struck down.

Decision of Supreme Court- The Supreme Court in its judgement held that Article 329-A , added by way of 39th Constitutional Amendment , 1975, is unconstitutional and void. However, the court held that the election campaign of Indira Gandhi was valid and she continued to serve as the Prime Minister of the nation.

-42nd Constitutional (Amendment) Act 1976: Parliament claimed unlimited amendment powers, barring judicial review, but later provisions limiting judicial review were invalidated by the Supreme Court.⁸

⁶ 1975 AIR 1590, 1975 SCC (2) 159

⁷ Supra

⁸ 39th and 42nd Amendment of the Constitution

6. Minerva Mills vs Union of India (1980):

⁹Facts of the case: Minerva Mills is a textile mill located near Bengaluru City, On August 20, 1970, the Central Government appointed a Committee to investigate the affairs of the Minerva Mills Ltd., as it was of the opinion that there had been or was likely to be substantial fall in the volume of production. The said Committee submitted its report, on the basis of which the Central Government passed an order dated October 19, 1971, authorising Respondent No. 2 to take over the management of the Minerva Mills Ltd. on the ground that its affairs were being managed in a manner highly detrimental to public interest.

Hence, the petitioners filed a petitioner and challenged the constitutionality of Amendments under Article 368 through Sections 4 and 55 of the Constitution (42nd Amendment) Act, 1976.

Issued Raised: Whether the amendments introduced by Sections 4 and 55 of the Constitution (42nd Amendment) Act, 1976 are violative of basic elements of the constitution? Whether the amendment made by Section 4 of the Constitution (42nd Amendment) Act, 1976 to Article 31 C of the Constitution is valid? Whether the directive principles of State policy contained in Part IV can have primacy over the fundamental rights conferred by Part III of the Constitution? (Article 31 C- protects the Directive Principles, whose implementation cannot be invalidated on the basis of Fundamental Rights.)

Decision of the court:

Section 4 of the Constitution 42nd Amendment Act is beyond the amending power of the Parliament and is void since it damages the basic or essential features of the Constitution and destroys its basic structure by a total exclusion of challenge to any law on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Article 14 or Article 19 of the Constitution, if the law is for giving effect to the policy of the State towards securing all or any of the principles laid down in Part IV of the Constitution.

Section 55 of the Constitution 42nd Amendment Act is beyond the amending power of the Parliament and is void since it removes all limitations on the power of the Parliament to amend the Constitution and confers power upon it to amend the Constitution, so as to damage or destroy its basic or essential features or its basic structure.

⁹ 1980 AIR 1789, 1981 SCR (1) 206

7. Indra Sawhney vs Union of India (1992):¹⁰

Facts of the Case: This landmark case was the miracle child of Indian judicial pragmatism, conceived at the backdrop of nationwide chaos and violent protests against the implementation of the Mandal Commission Report.

Article 16(4)- This provision enables the state to create any laws or special provisions that benefit the backward classes of citizens who do not have adequate representation in public. This provision is an enabling provision, hence any person of the backward class cannot seek special benefits as a matter of right.

Indra Sawhney, an advocate challenged the implementation of the recommendations cited in the Mandal Commission Report, by filing a public interest litigation (PIL) under Article 32 of the Indian Constitution, one of the major concerns being who will fall under the term ‘backward class’, as it has not been properly defined under the constitution.

Issues Raised: Scope and extent of Article 16(4), Definite parameters for the term ‘Backward Class of citizens’.

Decision of the court: Firstly coming to the scope of Article 16(4), the expression ‘special provisions’ not only implies reservation but also includes preferences, concessions and exemptions. The Supreme Court considered the reservations to be the highest form of special provision whereas preferences, concessions to be lesser forms.¹¹

Secondly, with providing definite parameters for the term ‘backward class of citizens’, the Supreme Court laid down boundaries for the same, limiting identification criteria and distinguishing it from the phrase “socially and educationally backward classes”.

8. S.R. Bommai vs Union of India (1994):¹²

Facts of the case:

The Janata Party is the largest party in Karnataka state legislature to form a government under the leadership of S.R. Bommai. In 1988, Janata Party and Lok Dal merged to form the Janata Dal. Due to some defections, S.R. Bommai was no longer in majority in the assembly and hence it was inappropriate to carry out administration as per the Constitution.

The government of Karnataka was dismissed by the president, and president’s rule was

¹⁰ AIR 2000 SUPREME COURT 498

¹¹ Discussing scope and extent of Article 16(4)

¹² 1994 AIR 1918, 1994 SCC (3) 1

imposed in the state, the Parliament accepted proclamation under Article 356(3). A complaint was filed by S.R. Bommai challenged the validity of the proclamation, a writ of Mandamus was also filed, the petition was filed under Article 226 of the High Court of Karnataka. The petitioners believed they must be given a chance to prove their majority through a floor test. However, the petition was dismissed by the High Court of Karnataka. A similar situation was observed in Himachal Pradesh, Madhya Pradesh, Meghalaya, Nagaland, Rajasthan. The judgement of this case was delivered by the Supreme Court in 1994.

Issues Raised:

Whether the imposition of the president's rule in the six states was constitutionally valid? Were there any political or mala-fide intentions behind the actions of the council of ministers and president.

Decision of the court:

The court held that even though Article 356 confers special powers on the President, such powers should be utilised by the President with great caution. It said that the proclamation issued must be analysed by both the houses of the Parliament as per Article 356(3).

The court in this case laid down that the power of the President to issue proclamation is not absolute and is subject to judicial review. It also laid down guidelines regarding floor test and secularism. It also declared secularism as a part of basic structure of the constitution.¹³

9. IR Coelho vs State of Tamil Nadu (2007): ¹⁴The Court ruled laws in the Ninth Schedule are not immune from judicial review if they violate the basic structure of the constitution.

PRESENT RELEVANCE:

This doctrine has contributed to the development of the Constitution in the following ways:

Limitation on power of Parliament: The Constitution sets clear boundaries on Parliament's ability to make changes, ensuring that citizen's fundamental rights are never compromised.

Protecting the core of the constitution: Basic structure of the constitution cannot be amended.

Recognition by all: This doctrine has shaped how the Constitution is interpreted and is widely accepted by all institutions across all countries.

¹³ President powers under article 356 & present relevance of basic structure, Nayak, Venkatesh. "The Basic Structure of the Indian Constitution." *ConstitutionNet*,

¹⁴ AIR 2007 SUPREME COURT 861

A check on majority rule: According to Professor Sathe, the basic structure doctrine is essentially the “ultimate counter-majoritarian” check upon democracy”.

It seeks to preserve constitutional principles envisioned by founding fathers like (Democratic, Secular, Republic, Unity, Integrity)

Expansion of Incorporated Rights: Since 1970's, the basic structure of the constitution has evolved, with more rights being included through judicial decisions.

Careful Application: As this doctrine has developed, it has become clear that while it's essential for protecting fundamental rights, it needs to be applied thoughtfully and carefully to keep our judicial system balanced.

SUGGESTION:

The basic structure doctrine has been built over the past years through various judicial case laws, our fundamental rights are inalienable rights which are granted to every citizen by the virtue of being human, hence they should not be at the option of being amended by anybody. Such a doctrine is important to prove to citizens that the constitution takes into account the responsibility of protection and equality it owes.

One of the most important ways through which the implementation of this doctrine is ensured is through judicial review, the courts examine each amendment and to make sure they do not alter the basic structure of the constitution.

CONCLUSION:

To conclude, the basic structure is the fundamental principle which protects the core of the constitution ensuring its essence remains intact despite amendments. It has safeguarded fundamental rights, maintained the balance of power, and ensured that constitutional amendments do not undermine the core values of democracy, secularism, and federalism.¹⁵

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¹⁵ Importance and Implementation of the doctrine & Conclusion of the paper. 17

India-Supreme-Court

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