



How basic is the basic structure of the Indian Constitution ?

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Abstract : *The Basic Structure Doctrine has been described as a judicial innovation in India. Since its inception in the famous Kesavanand Bharti case in 1973, the doctrine of Basic Structure has played a vital role in the constitutional, legal, political, social and economic development of India. Thereafter, a great number of cases provided a firm conceptual basis for the doctrine. Now all the constitutional amendments have to pass the Basic Structure filter created by the Supreme Court. The court empowered itself to judge the constitutionality of amendments and revoke any that*

compromises the basic features of the constitution. But the introduction of Basic Structure also resulted in conflict between the Parliament and the Judiciary for supremacy. The present research work aims at making an inquiry into the legitimacy of the Basic Structure Doctrine which requires answers to three fundamental questions – Is any restriction upon Parliament's power of constitutional amendment justified? If yes, then is judiciary the correct organ to impose such a restriction? If yes, then what is the precise meaning and content of the Basic Structure Doctrine. On the basis of the qualitative analysis of data, attempts have been made to assess the role of Basic Structure in strengthening the capacity and integrity of the Indian Constitution.

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Introduction :

India has often faced situations where its paramount democratic institutions have clashed with one another. One such run-in was the struggle for power between the judiciary and the legislature which reached its boiling point in the mid-1970s (Mody 2013:3). The Basic Structure Doctrine is an Indian judicial principle which implies that the constitution of India has certain basic features that cannot be altered or destroyed through amendments by the Parliament. Although Article 368 of the constitution gives the power to the Parliament to make amendment in the constitution but this power is not absolute in nature and is limited with the Doctrine of Basic Structure. The Parliament's authority to amend the constitution was challenged as early as in 1951 in *Shankari Prasad vs Union of India* case and the Basic Structure Doctrine was first expounded in *Sajjan Singh vs State of Rajasthan* case. Till this case the parliament had the power to amend any part of the constitution but in *Golak Nath vs State of Punjab* the Supreme Court reversed its earlier decisions and held that Parliament cannot amend the Fundamental rights. However, the Supreme Court recognized the Basic Structure Doctrine for the first time in *Kesavananda Bharti vs State of Kerela* case in the year 1973. In this case, the Supreme Court held that Parliament's amending power is limited, while Parliament is entitled to amend any part of the Constitution, the amending power does not extend to damaging or destroying the basic features of the Indian Constitution (Fadia 2011: 120).

In *Kesavananda Bharti* case, the Supreme Court not only made a strategic retreat over the amendment to the Fundamental rights but significantly broadened the scope of judicial review by assuming the power to scrutinise all the constitutional amendments - not just Fundamental

Rights but all those that destroyed the basic features of the Indian Constitution. In *Indira Gandhi vs Raj Narain* the Supreme Court struck down the 39th constitutional amendment recognizing that it violates certain fundamental tenets forming part of basic features like free and fair elections and the rule of law. However, the Parliament passed the 42nd constitutional amendment which rejected the Doctrine of Basic Structure and curtailed the power of Judicial Review. Through this amendment Parliamentary supremacy was established beyond any shadow of doubt. In *Minerva Mill* case various clauses of 42nd amendment were struck down by the Supreme Court and that marked the beginning of an era of judicial review in India with Supreme Court firmly entrenched as the final arbiter of the Constitutional interpretation of India. Further, many more cases came before the Supreme Court which cleared and strengthened the concept of Basic Structure. In *L Chandra Kumar* case the Court struck down the clause 2(d) of Article 323A and declared it as invalid and unconstitutional as they damage the power of judicial review which is a basic feature of the Constitution. In *S.R. Bommai* case, secularism and federalism were declared as basic features of the constitution. In *Kihota Hollhan* case the Supreme Court struck down para seven of the Tenth Schedule and declared democracy as the basic feature. In *Waman Rao and I.R. Coelho* case the Supreme Court held that any law which is placed under Ninth Schedule would be open to challenge if it destroys the Basic Structure of the Constitution. Thus from various cases the Court with the help of the term Basic Structure tries to preserve the basic ideals of the Constitution. However, the conflict between the Parliament and Judiciary on Basic Structure of the constitution is still going on. What emerged out of this tussle between the Parliament and Judiciary is that, all laws and constitutional amendments are now subject to judicial review and laws that transgress

the Basic Structure are likely to be struck down by the Supreme Court.

Although the judges enumerated certain essentials of the basic structure of the constitution, they also made it clear that they are only illustrative and not exhaustive. They will be determined on the basis of facts in each case. In *M.Nagraj vs Union of India* the Court explained the theory of Basic Structure again in detail. Basic Structures are systematic principles underlying and connecting provisions of the Constitution. They give coherence and durability to constitution. Like ordinary legislation, constitutional amendments are also likely to be held unconstitutional. It also implies the supremacy and finality of judicial review in determining the validity of the constitutional amendments. The court further evolved the criteria of determining the validity of constitutional amendments by basing on postulates like spirit and philosophy of the constitution, While introducing the doctrine of the Basic Structure Supreme Court of India was at the zenith of its creativity. Moreover, though the doctrine limited the power of Parliament to amend the constitution, the court did not close all avenues for substantially altering or repealing the basic document. This Doctrine is intended to operate only as shield against arbitrariness of Parliament and not against people.

Objectives :

- To understand the meaning and importance of the Basic Structure of our constitution.
- To assess the elements that constitute the Basic Structure of the constitution.
- To analyze the judgements of Supreme Court which critically examine the Basic Structure of the Constitution.

Hypotheses :

The hypotheses formulated were :

The Supreme Court has acted as a brake to the legislative enthusiasm of parliament since independence and tried to establish its supremacy over Parliament.

The Parliament should not be given the power to amend the basic structure of the constitution as the Parliament can distort damage or alter the basic features of the constitution under the pretext of amending it.

In India Constitution is supreme and all the three organs of government – Executive, Legislative and Judiciary while exercising their power, should show respect to the basic structure of the constitution.

Methodology :

This research work was an empirical study based on collecting both primary and secondary data. The sample size included 15 respondents. This sample was selected on the basis of qualitative interpretation. Method Primary data included Scheduled Interview and Secondary data included Books, Newspapers and Internet. Collected data was analyzed through analysis of interview.

Result and Discussions :

This study tried to gauge the level of information regarding the constituents of the Basic Structure. The universe was Patna and qualitative study was opted for this research work. It made an attempt to bring out opinions of different people from different sections of the society on this issue.

The M.L.As held that Judiciary has coined the term Basic Structure in order to establish its supremacy over the Parliament and also argued that the doctrine is very vague as the Court has not clearly defined the term Basic Structure Doctrine.

The MLAs asserted that in a democracy the parliament representing the people must have the final say in any amendment to the constitution. When the Constitution makers themselves gave power to the Parliament to amend the Constitution and did not impose any limitations then no one can limit its amending power.

However, lawyers opined that the Judiciary coined the term Basic Structure Doctrine in order to preserve the original ideals of the Constitution and there is no intention of the Judiciary to establish its supremacy over the Parliament. It has really been a significant initiative of the Judiciary to sustain the basic structure of the constitution.

The teachers accepted the fact that the power to amend the constitution is also a legislative power and therefore just like laws the constitutional amendment should also be subject to review and must be in conformity with the spirit and philosophy of the Constitution. They supported the doctrine but also warned against its misuse by the judges with the intention of imposing judicial supremacy over the Parliament and said that Judiciary should enlist all the basic features to the Basic Structure Doctrine through discussion between the Parliament and the Judiciary.

Under 368 of the constitution although the Parliament has the power to amend any part of the constitution, yet it cannot use this power to alter or destroy the basic structure or the framework of the constitution. Although Basic Structure Doctrine is described as one of the finest judicial innovations yet it has not received complete acceptance in our polity due to its ambiguity. It provides an outstanding study on lack of consensus among jurists for it has not been precisely defined by the judiciary. However, the fact that a complete list of the essential elements constituting the basic structure cannot be enumerated does not provide any ground for denying that they do not exist. There are many concepts of law which are not

capable of exact definition but it does not mean that it does not exist. It can also be argued that every provision of the constitution is essential; otherwise it would not have been put in the constitution. If the historical background, Preamble, Fundamental Rights and Directive Principles of State Policy are kept in mind, it will not be difficult to define the Basic Structure. The fear of the Basic Structure becoming counter majoritarian or causing democratic imbalance does not appear to be fully true.

The Supreme Court can establish its supremacy over the Parliament under the guise of the Basic Structure Doctrine as the doctrine has not been clearly defined or it is not clear what the doctrine actually comprises. It is only the Supreme Court that can declare any features as the basic features. But the Supreme Court has not misused this doctrine in any of the cases till now. The Basic Structure Doctrine cannot always be derogatory to the Parliamentary democracy. The term Basic Structure was evolved not to establish the supremacy of the Judiciary or to curtail the power of the Parliament. Rather it acts as the saviour of the original ideals of the constitution. The doctrine of Basic structure has gained an incontrovertible status in the Indian constitutional system (Jayavedan 2013:286). It is unlikely that this doctrine would be abrogated rolling back the constitutional position to the pre Kesavanand days. It is yet to be seen whether the doctrine will satisfy the requirements of the next millennium. Nevertheless, it is beyond dispute that the Supreme Court of India will be remembered for the unique contribution in the constitutional jurisprudence namely, the basic structure. The relevance and necessity of the doctrine of basic structure could be assessed and understood better if we contemplate what may happen in its absence (Jayavedan 2014:214). The allegation that the

Basic Structure Doctrine replaces parliamentary sovereignty with judicial supremacy holds no force. It is the constitution which is sovereign and supreme and not any of the three wings of the state.

Conclusion :

The functioning of the Parliament and the Judiciary ultimately aims at serving the common man. Both have always functioned to accomplish a common purpose namely, public welfare. These institutions have been by and large successfully sustaining the colossal structure of Indian democracy. The Indian constitution provides separation of power among the three organs of the government and this fine and delicate balance needs to be maintained for the success of federal polity. In order to remove the ambiguity and vagueness a full fledged forum of discussion should be provided to the Parliament and the Judiciary and one more schedule i.e. **13th schedule should be added to the constitution in which judiciary should enlist all the basic features.** This will reduce the fear of establishing the supremacy of Judiciary over the Parliament. The Basic Structure Doctrine should be treated as a set of constraints that makes democracy work. The Basic Structure Doctrine should be used only as safety-valve against arbitrary use of the amending power of the Parliament. The Court when adjudicating upon the Basic Structure should act as an umpire of the continuing legitimacy of the democratic process and to enforce the structural conditions within which democracy can be meaningful. In the end it can be said that understanding and appreciation of each other's domain of work and the adoption of the rule of harmony and mutual trust will go a long way in the healthy growth of Indian democracy.

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