

DRAWING CONTOURS OF BASIC STRUCTURE DOCTRINE: AN APPRAISAL

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Abstract

The recent remarks of Constitutional post holders over the Basic Structure doctrine have again spurred an age-old controversy of Legislature and Judiciary conflict. Questioning judicial prudence by criticizing fundamental constitutional safeguards has become a norm in contemporary, while the same poses a threat of delegitimizing the legal wisdom of the constitutional courts. The Basic Structure Doctrine serves as the beacon of light for our darkest constitutional days by historically acting as the sole guardian against arbitrariness and irrationality of legislative decision-making. Interrogation of such paramount judicial innovation has put in doubt the authority of our judiciary to deliberate and decide over constitutional matters. This paper attempts to address the efficacy of the Basic Structure Doctrine in redressing constitutional fallacies and bypassing the rule of law. Legal Precedents and Jurisprudences have been studied to assess the present-day legitimacy of the doctrine. The paper aims to discuss the debated power struggle of our major constitutional institutions and the success of crucial constitutional provisions like Basic Structure in addressing the same. The paper also legally analyzes whether the Parliament has the legal power to disregard the constitutional wisdom of the judiciary by legislatively overruling the judicial reviews. And also, the authors will try to deliberate upon the current tussle on the Basic Structure doctrine and analyze whether it would set a wrong precedent in a constitutional democracy.

KEYWORDS: *Basic Structure; Judiciary; Parliament; Constitution; Democracy*

1. INTRODUCTION

Constitution is the will of the public and represents the *Grundnorm* constituting the basic norms establishing fundamental principles building the foundation of civil society and shouldering the sanctity of constitutional democracy. It is the supreme law of the land, setting forth a comprehensive framework of fundamental rights and directive principles designed to safeguard the basic rights of citizens, articulate core political principles, and delineate the structure, powers, and procedures of government.

There is no doubt that Constitution must be changed regularly, but the ability to change the Constitution could not be used in a way that would eliminate or weaken its fundamental or essential elements. A static constitution ultimately becomes a major roadblock to the country's advancement. A provision for amending the Constitution has been made to address any challenges our fellow citizens may face in the future as the Constitution functions because time is not

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static; it is constantly changing, just as the political, economic, and social circumstances of the people do. People would turn to extra-constitutional means, such as revolt, to modify the Constitution if there were no provisions for its revision.

Judges invented the Doctrine of Basic Structure to restrict the Parliament's ability to amend the Constitution by stating that the "*basic foundations of the basic law of the land*" cannot be altered. The Parliament, from time to time, has played with the Constitution by deliberately introducing some amendments to the Constitution to usurper the powers of judicial review from the Apex Court. In exercising its constituent power under Article 368 of the Indian Constitution, the Parliament has the authority to change any provision, including Article 368 of the Constitution. However, the Apex Court has put certain limitations, not the touch Basic Structure doctrine. The tussle started between the Parliament and judiciary on the Basic Structure doctrine around the 1970's and 1980 but is still grim today.

The Constitution acts as a bulwark against arbitrary authoritarianism and pernicious laws by establishing its supremacy over parliamentary supremacy. Nonetheless, paradoxically, the Constitution also confers upon Parliament the authority to enact and modify legislation, including the Constitution itself. When left unbridled, such power may be leveraged by the government and its Parliament to promulgate arbitrary laws imping upon individuals' fundamental rights, particularly in India, which doesn't put statutory or substantive limitations on the Parliament's amending powers.¹ In this context, the role of the judiciary, as the third arm of democracy, assumes critical importance. By exercising its review power, the judiciary has consistently upheld the Constitution's integrity, fostering constitutional interpretation and judicial innovation that safeguards the *Grundnorm's* sanctity.

One such an exemplary judicial innovation is The Basic Structure Doctrine, introduced by the Indian Supreme Court in 1973 via the seminal case of *Kesavananda Bharti v. State of Kerala*². Although the Indian Constitution confers the power of amendment upon Parliament, this authority may readily metamorphose into a dictatorial tool. In light of India's tumultuous political history, characterized by numerous attempts by Parliament to flout the law and bypass the Constitution to enact its own arbitrary will, it became imperative to impose substantive limitations on the power to amend the Constitution.³ Consequently, the highest court, consisting of a 13-judge bench, established this legal doctrine as an unassailable law that Parliament cannot amend, thus

¹ Gourab Das, *Basic Structure Doctrine of Indian Constitution*, SSRN, (Mar. 3, 2023, 10:50 A.M.), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4377908.

² *Kesavananda Bharti v State of Kerala* (1973) 4 S.C.C. 225 (India).

³ *Id.*

safeguarding the Constitution's essential features from being “damaged or destroyed.” The Basic Structure Doctrine test is applied to any legislative amendments to prevent any unconstitutional constitutional amendment from diluting the fundamentals of the Constitution itself.

Justice Chandrachud had delicately laid down, “*Amend as you may even the solemn document which the founding fathers have committed to your care, for you know best the needs of your generation. But, the Constitution is a precious heritage; therefore, you cannot destroy its identity*”.

“The expression “amendment of this Constitution” does not enable Parliament to abrogate or take away fundamental rights or to completely change the fundamental features of the Constitution so as to destroy its identity. Within these limits Parliament can amend every article”⁴

1.1 OBJECTIVES OF STUDY

The current study is carried out with the furtherance legal scholarly discourse over the most essential constitutional law doctrine and to achieve the objectives namely:

1. To understand the evolution of basic structure doctrine.
2. To analyze the legitimacy of critiques on basic structure doctrine.
3. To examine the impact of remarks of constitutional post holders with regard to basic structure doctrine.
4. To study the judicial intervention of preservation and protection of civil rights.

2. RESEARCH METHODOLOGY

To identify and analyze the criticisms and legitimacy of Basic Structure Doctrine, a quantitative research methodology has been deployed by the authors by conducting a doctrinal study through constitutional law books, constitution law judgments, scholarly articles, research papers from reputed journals and articles on the internet related to Basic Structure Doctrine. News articles in both digital and print media were additionally studied for a contemporary viewpoint on the legal issue. The current research question demanded a thorough theoretical analysis of the commentaries and differing legal opinions on the doctrine for which the doctrinal and quantitative study method was found to be best suited to highlight valid and juxtaposing arguments.

3. CRITICISM OF THE DOCTRINE

Recently, the age-old conflict between the Judiciary and Parliament has been reignited, sparking a heated debate that has led to a flurry of contentious

⁴ Kesavananda Bharti , *supra* note 2 at Chief Justice Sikri.

criticism directed at the Basic Structure Doctrine. Vice President Dhankhar criticized the Basic Structure Doctrine, contending that the courts cannot undermine or dilute parliamentary supremacy. He claimed that by being the premier elected body, the power of Parliament to amend the Constitution cannot be curtailed. Aggrieved over the Supreme Court's ruling in NJAC Judgment to strike down the 99th Constitutional Amendment, he has expressed his deep concerns alleging that it impinges on the democratic fabric of the country by allowing the unelected body of Supreme Court the power to impose its will on a democratically elected government.⁵

In response to those mentioned above, the Honorable Chief Justice DY Chandrachud proffered his endorsement of the doctrine as the North Star that guides the nation.⁶ Conversely, in a subsequent reiteration, the Vice President espoused the view of the Parliament instead of being the North Star. The incidents mentioned above have once again stirred up the debate on the issue and revived the eternal criticisms of the doctrine.

The most pervasive critique of the foretasted doctrine primarily pertains to its lack of textual basis in the constitutional language. It gives rise to a secondary concern, an apparent result of the absence of a definitive textual meaning of the basic structure of the Constitution, namely leading to varied and subjective interpretations by different judges, depending on their personal preferences.⁷ Consequently, the meaning and composition of the basic structure remain uncertain, resulting in criticism directed towards the five basic structure doctrines, as per the *Kesavananda Bharathi Case*,⁸ for being poorly defined and to be ascribed a new meaning as per the subjective preferences of different judges.

Moreover, such subjective determination of the basic structure by the judiciary impinges on the very foundation of the essential construct of “separation of powers.” It is often contended that such actions are viewed as the judiciary imposing its philosophy on the legislature and infringing upon the legislature's decision-making and amending power rightfully vested in the elected body, representing the will of the people. In this way, the judiciary may be seen as a third chamber of the Parliament, thereby restricting its freedom and

⁵ Rahul Garg, *Supreme Court Invalidated NJAC Disregarding People's Mandate: Vice President in Maiden Rajya Sabha Speech*, LIVE LAW (Dec. 7, 2022, 11:40 PM) <https://www.livelaw.in/amp/top-stories/vice-president-jagdeep-dhankhar-rajya-sabha-speech-njac-supreme-court-216088>.

⁶ Sharmeen Hakim, *Basic Structure Doctrine a North Star Which Guides Interpretation of Constitution: CJI DY Chandrachud*, LIVE LAW, (Jan 21, 2022, 10:35 PM), <https://www.livelaw.in/top-stories/cji-the-basic-structure-doctrine-a-north-star-219592>.

⁷ RehanAbeyratne, *Giving Structure to the Basic Structure Doctrine*, 1(2) INDIAN LAW REVIEW, 182- 189 (2017).

⁸ Kesavananda Bharti , *supra* note 2.

independence and imposing its philosophical perspectives on the legislative body.⁹

It is essential to assert that, despite the democratic nature of the doctrine in question, it has both supporters and opponents. The latter group predominantly consists of legislative bodies who contend that this novel judicial innovation curtails their powers. The amalgamation of historical grievances arising from a prior verdict nullifying the NJAC Bill, which aimed to introduce legislative intervention in the opaque judicial appointment process, and the current resurgence of debates on the appointment process for the higher judiciary has further conflated the issue and exacerbated the criticisms of the doctrine. Consequently, the ongoing Judiciary-Parliament power struggle has called into question the legitimacy and efficacy of the doctrine, making it imperative to address and refute these issues and debates by undertaking a comprehensive analysis of the doctrine within the context of the aforementioned persistent criticisms.

4. ADDRESSING THE QUESTION ON LEGITIMACY

The inquiry into the legitimacy of the Basic Structure doctrine necessitates a twofold analysis: first, an assessment of the doctrine's efficacy, followed by an evaluation of its criticisms. By undertaking such an analysis, we may determine whether these issues and questions with the doctrine are genuinely relevant.

4.1 Assessment of Efficacy

The constitutional provision outlined in Article 368 of the Indian Constitution concerns the authority of the Parliament to amend the Constitution, including the prescribed procedure for doing so. Nevertheless, whether this power is without limit or subject to implicit restrictions on legislative endeavors remains silent. So, Does the Parliament possess unfettered amending powers, or are there limitations in place? A negative answer to this question would suggest that the Constitution's framers intentionally refrained from imposing restrictions on the amending powers, instead granting the Parliament the authority to amend the Constitution to accommodate the evolving needs and demands of the citizenry. However, if there are no limitations on the Parliament's amending powers, the possibility of misusing the constituent power must be considered.¹⁰ The contradiction posed in this question has required a solid resolution since the

⁹ Sumeda, *Understanding the Basic Structure of the Constitution and Jagdeep Dhankar's Criticism of it*, THE HINDU, (Jan. 25, 2023, 10:30 PM), <https://www.thehindu.com/news/national/explainer-basic-structure-constitution-jagdeep-dhankar-criticism-kesavananda-bharati-supreme-court/article66379371.ece>.

¹⁰ Satya Prateek, *Today's Promise, Tomorrow's Constitution: 'Basic Structure, Constitutional Transformations and the Future of Political Progress in India*, MANUPATRA, (Mar. 25, 2023, 10:50 A.M.), <http://docs.manupatra.in/newsline/articles/Upload/FF7C80ED-4A47-4F3F-98E7-0B5F95E343B1.pdf>.

1st Constitutional Amendment in 1951. Thus, this contradiction has been a constant source of conflict between the Parliament and SC since the Independence.¹¹

After getting elected in 1966, the Indira Gandhi-led government made many constitutionally questionable parliamentary decisions like the Passing of the land reforms act, the 42nd Constitutional Amendment and the Emergency in 1975. Then parliament of her government in 1971 passed the Twenty-Fourth, Twenty-Fifth, and Twenty-Ninth Constitutional Amendments, asserting that the power to amend the Constitution was a constituent power and, therefore, Article 13 would not apply to such amendments.¹² Furthermore, Article 31 (2) was replaced, specifying that property of any kind, regardless of size, could be acquired for public purposes as long as the law provides for payment of an amount. No court could question the adequacy of the amount fixed by the law or whether the payment was made in a non-cash form.¹³

The Judiciary tried to finally resolve this contradiction mentioned above by intervening in a way that saves the sanctity of the Constitution from any future arbitrary constitutional amendments keeping in mind the welfare of the democracy and its individuals and the protection of their rights granted by the Constitution.

But this wasn't the first instance this legal contradiction had come to light; the saga is as old as the 1st amendment in 1951, posed the question to the Court whether, under Article 368, Parliament could amend the Constitution through a special majority and in compliance with prescribed procedures to abridge or take away any of the Fundamental Rights. The *Shankari Prasad case*¹⁴ answered this question affirmatively, indicating that Parliament did indeed possess this power. The argument focused on the insertion of Article 31 (A) and 31 (B) in the constitution is fundamentally void as any amendment in the constitution is subject to Article 13. The term "constitutional amendments" was not explicitly mentioned in the definition of Article 13 (3) (a). Although "law" typically comprised constitutional law, the Court ruled that "law" in Article 13 must be interpreted to entail the use of regular legislative power. As a result, amendments made in the Parliament's constituent power, which includes the ability to modify fundamental rights, are not subject to Article 13. The court after hearing this argument, pointed out that, "*We are of the opinion that in the context of Article 13 law must be taken to mean rules and regulations made in*

¹¹ Ishita Chandra, *Evolution of Basic Structure Doctrine in India*, THE TIMES OF INDIA, (Nov 18, 2022, 7:15 PM), <https://timesofindia.indiatimes.com/readersblog/legal-paradigm/evolution-of-basic-structure-doctrine-in-india-46758/>.

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ *Shankari Prasad case*, 1952 S.C.R. 89 (India).

the exercise of ordinary legislative power and not amendments to the Constitution made in the exercise of constituent power with the result that Article 13(2) does not affect amendments made under Article 368.”

The Court subsequently reaffirmed this view in the *Sajjan Singh case*¹⁵, albeit with a narrow majority, indicating that Parliament may use constitutional amendments to curtail or withdraw fundamental rights as enshrined in Part III of the Constitution. As a result, a larger Bench was convened to examine the Constitutional validity of the First, Fourth, and Seventeenth Amendments in the *Golakhnath case*¹⁶, where it was determined that constitutional amendments were considered “laws” under Article 13 and therefore the Parliament cannot utilize either legislative or constituent power to curtail or withdraw fundamental rights. This ruling contributed to the ongoing tension between the Judiciary and the Legislature as first time in the history of constitution limitations were put on the amending powers of the parliament.

But in 1970, in response to widespread public dissatisfaction with the arbitrary constitutional amendments and authoritarian laws enacted by the Indira Gandhi government, the Supreme Court began considering ways to place reasonable limitations on the unchecked power of Parliament to amend the Constitution. This culminated in the landmark *Kesavananda Bharathi judgment*¹⁷, in which the Court established the Basic Structure Doctrine. This decision overturned the *Golakhnath case*¹⁸ and upheld the legal validity of the *24th Amendment*,¹⁹ thereby solidifying the authority of Parliament to amend the Constitution. However, the caveat was that such amendments could only be deemed valid if they did not violate or undermine the Constitution's fundamental principles, the basic structure. While this ruling strengthened the power of Parliament to amend the Constitution, it also bolstered judicial review over such amendments, as *Justice Khanna* noted in the judgment that judicial review is too an integral part of the basic structure of the Constitution.

Post this case, the doctrine saved democracy from the horrors of the 39th Amendment and Indira Gandhi's Election in 1975 through the Election Case.²⁰ And then again, the question arose whether the invalidation of a law by the Court is remedied by the inclusion of said law in the Ninth Schedule of the Constitution to shield it from judicial scrutiny. Would this not constitute an unconstitutional constitutional amendment? Again, the doctrine proved instrumental in safeguarding the integrity of the Constitution, as evinced by

¹⁵ *Sajjan Singh v. State Of Rajasthan* (1965) 1 S.C.R. 933 (India).

¹⁶ *I. C. Golaknath & Ors v. State of Punjab & Anrs.* (1967) 2 S.C.R. 762 (India).

¹⁷ *Kesavananda Bharti*, *supra* note 2.

¹⁸ *I. C. Golaknath*, *supra* note 16.

¹⁹ The Constitution of India, (Twenty Fourth Amendment) Act, 1971.

²⁰ The Constitution of India, (Thirty Ninth Amendment) Act, 1971.

the *I.R. Coelho case*²¹. Where it established that the mere inclusion of an Act is put in the Ninth Schedule through constitutional amendment does not preclude the possibility of its provisions to be open to attack the ground that they destroy or damage the basic structure.

The Apex Court while emphasizing on the doctrine and held that:

“All amendments to the constitution made on or after 24th April, 1973 by which the Ninth Schedule is amended by inclusion of various laws therein shall have to be tested on the touchstone of the basic or essential features of the Constitution as reflected in Article 21 read with Article 14, Article 19 and the principles underlying them. To put it differently even though an Act is put in the Ninth Schedule by a constitutional amendment, its provision would be open to attack on the ground that they destroy or damage the Basic Structure if the fundamental right or rights taken away or abrogated pertains or pertain to the Basic Structure.”

In the Political and legal backdrop of the genesis of the Basic Structure Doctrine, it is clear that its inception aimed to act as an instrument against Majoritarianism and deter dictatorship invoked through arbitrary constitutional amendments representing political will.²² Repeated attempts have been employed to effectuate constitutional changes by exercising the "constituent power" to amend. However, the judiciary, in its role as interpreter of the Constitution, introduced the theory of "implied limitation" through the Basic Structure doctrine, which posits that while the Parliament possesses the authority to amend the Constitution, it may not do so in a manner that undermines its basic structure.²³ By providing a conceptual foundation against totalitarianism, the doctrine has walked us through the dark days of the emergency and those political times where Indian democracy had a narrow escape.²⁴ While future instances of political or democratic transgression cannot be ruled out, the judicial innovation of the Basic Structure doctrine offers a safeguard against such possibilities. The successful application of this doctrine in numerous past and ongoing cases has demonstrated its usefulness in protecting the essential tenets of the Constitution and preserving the integrity of democratic institutions.²⁵

²¹ *I.R. Coelho (Dead) By Lrs v. State of Tamil Nadu & Ors* A.I.R. 2007, SC 861 (India).

²² Sumeda, *supra* note 9.

²³ Kesavananda Bharti, *supra* note 2.

²⁴ Kaalleshwaram Raj, *Basic Structure' as democratic defence: Since Kesavananda*, IND EXP (Feb. 17, 2022, 11:40 AM), <https://www.newindianexpress.com/opinions/2023/feb/17/basic-structure-as-democratic-defence-2548092.html>.

²⁵ Rosalind Dixon & David Landau, *Transnational constitutionalism and a limited doctrine of unconstitutional constitutional amendment*, 16 NYU SOL I•CON, 606, 606–638 (2015).

Thus the efficacy of this doctrine can only be assessed by considering its insurmountable importance via its ability to counteract the perils of majoritarianism, as well as totalitarian and authoritarian regimes, by serving as a mechanism for checks and balances against government powers and state actions and by creating a harmony between preservation of individual rights and exercise of state power. And on account of standing essential to preserving all the above factors, the doctrine has proved efficient, thereby upholding the democratic essence of the Constitution.

4.2 Evaluation of Criticism

It first addressed the criticism of the doctrine as infringing the separation of powers and curbing the parliamentary power to amend. It is quite evident from the text of *Kesavananda Bharathi*, that the doctrine doesn't prohibit the parliament from using its constituent powers under Article 368 to make amendments but instead checks on it from making any such amendments that aim to 'damage', 'emasculate', 'destroy', 'abrogate', 'change' or 'alter' the 'Basic Structure' or a framework of the Constitution.²⁶

In the case, *Justice Ray* expounded on the notion that the power of amendment under Article 368 of the Constitution of India is unencumbered by any express or implied limitations and instead emphasized that the power to amend is wide and unlimited.²⁷ And *Justice Jagmohan Reddy* observed that only "essential elements constituting basic structure cannot be amended."²⁸ *Justice Palekar* also weighed in on the matter, maintaining that an amendment to the Constitution that impinges on a fundamental right enshrined in Part III of the Constitution is not rendered void and that there are no implicit or inherent restrictions on the amending power under the unamended Article 368 in its operation concerning fundamental rights.²⁹ Even *Justice Khanna* rejected the notion that there exist any inherent or implied limitations on the amending power.³⁰ In addition, he dismissed the argument the fundamental rights and the Preamble of the Constitution could not be amended at all.

The pronouncements made in the judgment make it evident that the doctrine's intention and objective do not entail imposing any express or implied limitations on the amending power of the Parliament or even put any limit to contravene any such constituent right of the Parliament. Instead, it aims to subject such amendments to judicial review. The principal objective of such

²⁶ *Kesavananda Bharti*, *supra* note 2.

²⁷ *Id.* at Para 1064.

²⁸ *Id.* at 637, Para 1159.

²⁹ *Id.* at 726, Para 1333.

³⁰ *Id.* at 767, Para 1426.

scrutiny is to safeguard the Constitution from being altered in a manner that erodes its democratic character and undermines its central ideals.³¹

Further, we address the second and third criticism regarding the lack of definitive meaning of the Basic Structure and its constituents and the absence of any theoretical text in the Constitution demarcating its composition. In this regard, it can be said that not having a definitive meaning of the term “basic structure” doesn’t diminish its value or put it on the pedestal of interpretational weapons to be used by the judiciary as per discretion. Definitions can be restrictive in constitutional law, whose purpose is to serve eternally throughout the ever changing paradigm of law, society and democracy. Therefore the Constitution provides a set of eternal intrinsic values that are supposed to guide the nation and the doctrine protects that. It cannot be like a conclusive election manifesto.³² Therefore, in the *Kesavananda Bharathi Case Justice Sikri* mentions basic elements of constitution to be considered as the Basic Structure like in the following words.

“supremacy of the Constitution, republican and democratic form of government and sovereignty of the country, the secular and federal character of the Constitution, demarcation of power between the legislature, the executive and the judiciary, the dignity of the individual (secured by the various freedoms and basic rights in Part III and the mandate to build a welfare State contained in Part IV, and unity and integrity of the nation”³³

This list of constitutional and democratic values has kept growing through the evolving judicial precedents and legal and social paradigms. It makes us realize that the Basic Structure can only be defined through a set of ever-evolving democratic and core constitutional morals instead of any textual definitive language.

In the case of *Bhim Singhji v. Union of India*,³⁴ *Krishna Iyer and Sen, J.J.*, emphasized that the idea of social and economic justice, aimed at constructing a welfare state, is an integral component of the Basic Structure. The powers bestowed upon the Supreme Court by Articles 32, 136, 141, and 142 of the Constitution, which were recognized as part of the Basic Structure in the case of *Delhi Judicial Service Assn. v. State of Gujarat*³⁵, were acknowledged. In the case of *State of Bihar v. Bal Mukund Shah and Ors.*,³⁶ the Supreme Court stated

³¹ Aqa Raza, *the Doctrine of “Basic Structure” in the Indian Constitution: A Critique*, IX-XII IND. LAW R. 242-313 (2022).

³² Kaalleshwaram Raj, *supra* note 24.

³³ Kesavananda Bharti, *supra* note 2.

³⁴ *Bhim Singhji v. Union of India*, A.I.R. 1981 SC 234 (India).

³⁵ *Delhi Judicial Service Assn. v State of Gujarat* 25(1991) 4 S.C.C. 406 (India).

³⁶ *State of Bihar v. Bal Mukund Shah and Ors* A.I.R. 2000 SC 1296 (India).

that the principles of "Separation of Powers" among the legislature, executive, and judiciary, as well as the fundamental concept of an independent judiciary, have now attained the status of being part of the basic structure of the constitution and represent the very essence of the constitutional framework.

In the case of *Kihoto Hollohan*,³⁷ the Supreme Court pronounced that democracy is an inherent characteristic of the Constitution, and the conduct of periodic elections is indispensable to the democratic system envisioned in the constitution. Similarly, the safeguarding and preservation of the integrity of the electoral process, which includes the efficacy, efficiency, and sufficiency of the mechanism for resolving electoral disputes, is equally vital. In the case of *S.R. Bommai*,³⁸ *Kuldip Singh, JJ.*, have remarked democracy and federalism as indispensable attributes of our constitution which constitute integral elements of its fundamental framework. Furthermore, in the same case, the Supreme Court ruled that secularism is an essential and intrinsic aspect of the Constitution. Additionally, the ruling in the Central Coal Fields case³⁹ determined that ensuring effective access to justice is an integral part of the fundamental structure.

Furthermore, in the *Minerva Mills case*,⁴⁰ *Justice Chandrachud* made the following observation that the Indian Constitution is built upon the foundation of striking a delicate balance between Part III (which encompasses fundamental rights) and Part IV (which encompasses directive principles). Granting absolute supremacy to one over the other would disrupt the constitutional harmony. This equilibrium and interplay between fundamental rights and directive principles constitute an indispensable element of the fundamental structure of the Constitution. In the cases of *Waman Rao*,⁴¹ *Sampath Kumar*⁴², and *Sambamurthy*,⁴³ the rule of law and judicial review were established as fundamental components of the basic structure.

The criticism also claims the grant of limitless independence to judiciary through the extensive judicial review power provided by this doctrine over constitutional amendments. Cases like *Supreme Court Advocates on Record Association v. Union of India*, have declared independence of Judiciary as a part of Basic Structure but which also state that such independence, as per the case, shall also be exercised within the limits of Constitution. This substantiates the constitutional supremacy even deeper by putting judiciary and its independence

³⁷ *Kihoto Hollohan v. Zachillhu* A.I.R. 1993 SC 412 (India).

³⁸ *S.R. Bommai v. Union of India* A.I.R. 1994 SC 1918 (India).

³⁹ *Central Coal Fields Ltd. v. Jaiswal Coal co.* 1980 Supp S.C.C. 471(India).

⁴⁰ *Minerva Mills & Ors. v. Union of India* (1980) 3 S.C.C. 625(India).

⁴¹ *Waman Rao v. Union of India*, (1981) 2 S.C.C. 362 (India).

⁴² *S.P. Sampath Kumar v. Union of India* (1987) 1 S.C.C. 124 (India).

⁴³ *P. Sambamurthy v. State of Andhra Pradesh* (1987) S.C.C. 362 (India).

under constitutional limitations. Thus ensuring that they are not ultimate but similarly subjected and limited by constitution as other democratic institutions of the country.

*State of U.P. v. Dina Nath Shukla*⁴⁴ has held Preamble to be a part of Basic Structure. While democratic principles mentioned under the preamble like Federalism⁴⁵ and Secularism⁴⁶ has also been held a part of the Basic Structure. And surprisingly the Separation of Powers⁴⁷, which the critiques of the doctrine deem so infringed by it, is also an essential element protected under the very same basic structure doctrine. Judicial review under Article 32, 226 and 227 of the Constitution⁴⁸ and free and fair elections⁴⁹ are among several other multiple such democratically essential principles which constitute the basic structure of the constitution.

Due to multiple judgments interpreting the Basic Structure doctrine, its scope and applicability, the ambiguity over its limits and definitions has been reduced. The following above judgments and multiple more have defined the doctrine through various cases adjudging where it can or cannot be applied and what principles shall be protected.

Based on the following counter-arguments, it can be retorted that the criticisms of the doctrine stand debunked, further solidifying its existence as indeed the true “North Star” of the nation⁵⁰ and the constitution giving direction to both the Judiciary and Executive in interpreting and implementing the constitutional mandates, especially during times of uncertainty and complexity for democracy.

5. CONCLUSION AND SUGGESTIONS

Based on the analysis of the efficacy of the doctrine and examination of its criticism, one can conclude that basic structure is the supremacy of the mandate of the people and constitutional supremacy is the real and absolute. The doctrine is not only legitimate legally, morally and socially but also so profoundly rooted in the history and text of the Constitution that it poses such values intrinsic to the protection and strengthening of this democracy. The doctrine aims not to loot the Parliament of its rights but to solidify the judicial review power so that it can ensure that constitutional functionaries do not overstep their limits. It strengthens such review power, which is paramount to the judicial process, which is the heart and core of democracy. The doctrine fills

⁴⁴ State of U.P. v. Dina Nath Shukla, A.I.R. 1997 SC 1095 (India).

⁴⁵ Bommai S.R. v. Union of India, A.I.R. 1994 SC 1918 (India).

⁴⁶ Valsamma Paul v. Cochin University, A.I.R. 1996 SC 1011 (India).

⁴⁷ State of Bihar v. BalmukundSah, A.I.R. 2000 SC 1296 (India).

⁴⁸ Chandrakumar L. v. Union of India, A.I.R. 1997 SC 1125 (India).

⁴⁹ Kihoto Hollohan, *supra* note 39.

⁵⁰ Sharmeen Hakim, *supra* note 6.

the central looming vacuum in India's fundamental law and has fixed the constitutional contradiction of legally sanctioned unfettered state action.

Additionally, in an evolving legal scenario, the task of the Constitution is not to be precise and defined; the doctrine leaves room for safeguarding the morals and values on the basis on which our whole nation is formed and aims to move forward. Critiquing the tenet mentioned above, which asserts that the constituent authority transitions from the elected representatives of the populace to the justices of the Supreme Court, it is imperative to bear in mind the predominant majoritarian power held by the Parliament. The judiciary assumes the role of guardian and ultimate interpreter of the Constitution while subservient to its provisions. Nevertheless, specific judicial rulings have revealed an expansion of the Supreme Court's authority under the guise of the "basic structure" concept, which can be construed as conferring veto power over constitutional amendments. This doctrine was devised initially for exceptional circumstances wherein such amendments posed a threat to the fundamental framework of the Constitution. However, it remains subjective and indistinct, as the judiciary has refrained from outlining a definitive catalog of elements constituting the "basic structure," opting to decide on a case-by-case basis instead. This approach may stem from the judiciary's apprehension of potential legislative repercussions, as providing a precise inventory of the basic structure might prompt the Parliament to propose alternative measures.

Essential to protect the sanctimony of the Rule of Law by putting a barrage on the unconstitutional constitutional amendments as propounded in I.R. Coelho; this doctrine establishes Constitutional Supremacy. The doctrine often misunderstood as a mode devised for translating Judicial dominance is instead a democratic tool of judicial review innovated to realize Constitution-based rule-making and justice.

Critiques form the backbone of democracy and are appreciated as they open dialogues necessary for our institutions' assessment, reform, or improvisation. But such analyses should, in the first place, be founded on solid grounds of reasoning and rationale not so easily refuted because of lack of substantial evidence or precedence backing the culpability. This threshold requirement for any criticism of a compelling and convincing argument is higher when coming from publicly responsible constitutional post-holders. As for their statements hold greater appeal and authority over the larger masses and have the power to influence their reverence towards democratically essential doctrines and institutions like the judiciary. Thus, public officials' unfounded or weak arguments might have ill repercussions, like instilling public distrust and disorder fervor. Therefore statements and criticism like that of the Vice President may have chances to be proven dangerous to Constitutional Supremacy and rule-based law if found not based on sound valid arguments.

Further, this calls for the performance or undertaking of such analysis and assessment regarding the reality of the criticisms to be a public duty of academics, necessary to protect such democratically essential doctrines from frivolous commentary.

Moreover, the current dispute serves as a historical reminder that the survival of the Constitution hinges on receiving political and ideological backing from its institutions and the general populace. The assertion of the basic structure serves as an institutional bulwark against the encroachment of majoritarianism, provided that we are willing to derive lessons from past mistakes. Despite its multiple criticisms, it is undeniable that Basic Structure is the best constitutional guarantee today to stand tall, shielding against autocratic whims.

“A Constitution is an ever growing thing and is perpetually continuous as it embodies the spirit of the nation. It is enriched at present by the past influence and it makes the future richer than the present.”

-Edmund Burke

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