

MARCH 2021. ISSUE 05
31-MAR-2021

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DOCTRINE OF BASIC STRUCTURE



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Evolution:

The doctrine of basic structure is a judge-made doctrine that was evolved during the Indra Gandhi period, propounded by the Indian Judiciary on 24th April 1973 in the Kesavananda Bharati case (1973) 4 SCC 225, to limit the amending powers of the Parliament. The first attempt was in the year 1967 in the Golak Nath case to restrain the power of the Parliament but it took half of the decade for the Indian Judiciary to pronounce on the Kesavananda Bharati Case.

Meaning:

The basic structure is an Indian Judicial principle that has certain basic features that cannot be altered or destroyed through the amendment of the Parliament. There is no explicit definition to explain what is considered as the basic feature of the Indian Constitution by the judiciary. The doctrine of basic structure was amended to put a limitation on the amending powers of the Parliament so that the basic law of the land cannot be amended in the exercise of its constituent power.

The doctrine of basic structure has been amended as a distinct and independent type of judicial review that applies to state action which ensures that such action does not amount to damage or destroy the basic feature of the Constitution. Article 368 of the Constitution grants power to the Parliament to make amendments and while amending Parliament shall not alter the basic structure of the Constitution.

Pre-Kesavananda Bharati Case:

The Parliament's power to amend the Constitution on the fundamental rights of citizens was challenged in 1951. The ninth Schedule of the Constitution was added through the first amendment in 1951, which was done with the primary objective of preventing the judiciary from upholding the citizen's rights to property. Article 13(2) provides for the protection of the fundamental rights of the citizens. Parliament and the State Legislatures cannot make laws that take away or abridge the fundamental rights guaranteed to the citizen.



The Golaknath Judgment:

In 1967, the eleven judge bench of the Supreme Court held that Article 369 did not confer upon Parliament the power to amend the Constitution. The constitutional power of the Parliament is to deal with Article 245, 246, 248 which gave the power to make laws. Thus, the apex court held that the amending power and legislative powers of Parliament are the same. Therefore, any amendment of the constitution must be deemed to be law as per Section 13(2) of the Constitution of India.

Post-Kesavanada Bharati Case:

The Constitutional Bench upheld that Twenty-Fourth amendment saying that Parliament has the power to amend any or all of the provisions of the Constitution and subsequently held that the Golaknath case has been decided wrongly and that Article 368 of the Constitution had both the power and procedure for amending the Constitution. In the Review Bench, it has to decide whether or not the basic structure doctrine restricted the Parliament's power to amend the Constitution.

CASE LAWS

Case 1

Sajjan Singh V. State of Rajasthan

Held - The arguments are rejected and upheld the power of Parliament and the State legislatures are clearly prohibited from making laws that may take away or abridge the fundamental rights guaranteed to the citizens.

Case 2

Minerva Mills V. Union of India, (1980) 3 SCC 625.

Held - The power of judicial review of constitutional amendments are deal with under Article 368(4) and (5) which conferred unlimited power on Parliament to amend the Constitution. Though deprived courts of the ability to question the amendment even if it damaged or destroyed the Constitution's basic structure.



Case 3

Waman Rao V. Union of India, (1981) 2 SCC 362.

Held - It is a case relating to dispute involving agricultural property, the apex court held that all Constitutional amendments made after the date of Kesavananda Bharati judgment were open to judicial review.

Case 4

Skill Lotto Solutions Pvt.Ltd V. Union of India & Ors., Writ Petition (Civil) No.961 of 2018.

Held - The Supreme Court held that the importance of Article 32 of the Constitution of India is an integral part of the basic structure of the Constitution. Article 32 is meant to ensure observance of rule of law. Article 32 provides for the enforcement of fundamental rights which is the most potent weapon.

Case 5

Supreme Courts Advocates on /record V. Association and Another, Writ Petition (Civil) No. 13 of 2015.

Held - The constitution Bench of the Supreme Court declared National Judicial Commission (NJAC) unconstitutional as it violated India's Basic Structure of Constitution.

DISCLAIMER

This write up has been sent to you for information purposes only and is intended merely to highlight legal maxims. The information and/or observations contained in this issue do not constitute legal advice and should not be acted upon in any specific situation without appropriate legal advice. The views expressed in this issue do not necessarily constitute the final opinion of M/s.Wallcliffs Law Firm and should you have any queries in relation to any of the issues set out herein or on other areas of law, please feel free to contact us on mail@wallcliffs.com.



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