

BASIC STRUCTURE OF CONSTITUTION-AN ANALYSIS OF CONSTITUTIONAL FRAMEWORK AND KEY ELEMENTS

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Abstract

The Basic Structure of Constitution is a fundamental concept in constitutional law that defines the essential features and principles of a constitution that cannot be altered or amended by the government. This paper analyzes the constitutional frameworks and key elements that form the basic structure of constitutions in various countries. The study examines the constitutional principles and values that are considered fundamental to the functioning of a democratic society, such as the rule of law, the separation of powers and the protection of fundamental rights.

The paper examines constitutional frameworks of various countries, including India, the USA, and the UK, and analyzes the similarities and differences between their constitutional structures. The study also analyzes the key elements of a constitution, such as the preamble, the fundamental rights chapter, and the directive principles of state policy, and explains their significance in the constitutional framework.

The study finds that the "*basic structure of the Constitution*" is essential to a democratic society's functioning and serves as a buffer against the arbitrary exercise of power by the government. The paper concludes that the basic structure doctrine is an important tool for protecting the constitutional values and principles that form the foundation of a democratic society. The study recommends that constitutional scholars and policymakers should pay close attention to "*the basic structure of constitution*" when creating and putting into place constitutional frameworks in their respective nations.

Introduction:

A country's legal system is governed by its constitution, which is a key document that lays forth its guiding ideals, beliefs, and traditions. The basic structure of a constitution refers to the fundamental principles and values that form the foundation of a legal system. The concept of the "*basic structure of the Constitution*" is essential to preserving the integrity and stability of the constitutional framework. "*The basic structure doctrine*" provides a framework for interpreting and applying constitutional provisions, ensuring that they are not violated or undermined by the government or other entities. Although concept of basic structure has been a talk of the town since years but the final affirmation of the doctrine was affirmed in the famous case of "*Kesavananda Bharati v. State of Kerala*" in 1973. Since then the doctrine have been established in case to case to ensure that the Parliament does not misuse its power under Art.368 to amend the constitution in such a way that it erase the very basic feature of the Constitution. There are certain characteristics of a Constitution which are very basic to it and parliament through its legislature cannot alter such basic features.

Background And Significance Of The Basic Structure Of A Constitution:

The concept of the basic structure of a constitution originated in India in the 1960s. The Supreme Court of India, in the landmark case of "*Kesavananda Bharati v. State of Kerala*", established the doctrine of the basic structure of the constitution. The court determined that the operation of the Indian Constitution depends on several fundamental elements, including the supremacy of the Constitution, the separation of powers, and the protection of fundamental rights, such essential features are essential for the proper functioning of the democratic society and cannot be amended or altered by the government.

Since then, several constitutional systems have accepted and used the fundamental structure idea around the world, including the United States, South Africa, and Australia. The doctrine has become an essential tool for preserving the integrity and stability of constitutional frameworks, safeguarding against the government's arbitrary use of its power, and protecting fundamental rights.

Research Objective And Methodology:

The objective of this research paper is to provide a comprehensive analysis of the basic structure of a constitution, its origins, and its implications on constitutional law. The research aims to examine the key elements that constitute the basic structure of a constitution, including the separation of powers, fundamental rights, judicial independence, federalism, and the supremacy of the constitution.

The research methodology involves a thorough review of scholarly articles, legal texts, and judicial decisions. The study examines various constitutional frameworks from around the world, including the United States, India, South Africa, Australia, and the European Convention on Human Rights, and analyzes the similarities and differences between their constitutional structures. The research also explores the evolution of the basic structure doctrine, its conceptual framework, and judicial

review's role in its application. The study aims to provide a comprehensive understanding of the basic structure of the constitution and its significance in jurisprudence of a country.

Evolution of the Basic Structure Doctrine:

2.1 Origins and Historical Background:

The United States Constitution and the notion of implied powers serve as the foundation for the idea of the fundamental elements of a constitution. According to the idea of implied powers, the federal government possesses some implied powers that are not expressly specified in the Constitution but are required to carry out its listed functions. Later, in the 1960s, the idea of a constitution's fundamental components was created and used in India.

2.2 Kesavananda Bharati Case in India:

In the famous decision of *Kesavananda Bharati v. State of Kerala* (1973), the Indian Supreme Court developed the theory of the basic structure of the constitution. The court, in this case came up with the basic structure doctrine and held that there are certain basic features of the Indian Constitution, such as separation of powers, the supremacy of the Constitution, and the protection of fundamental rights, are essential to the functioning of a democratic society and thus they cannot be amended or altered by the government. The court was also of the opinion that the power conferred by the Constitution under Art.368 is not unlimited and must be exercised within the framework of the basic structure of the Constitution.

2.3 Influence and Spread of the Doctrine:

The basic structure doctrine of the constitution has since been adopted and applied in various constitutional frameworks around the world, including the USA, UK, South Africa and Australia. The doctrine has become an essential tool for preserving the integrity and stability of constitutional frameworks, safeguarding against the unbridled exercise of power by the government, and thus the protection fundamental rights.

Understanding the Basic Structure Doctrine:

3.1 Conceptual Framework:

The basic structure doctrine is a conceptual framework that establishes the fundamental principles and values that form the foundation of a legal system. The doctrine holds that certain essential features of a constitution, such as the separation of powers, fundamental rights, judicial independence, federalism, and the supremacy of the constitution, are inviolable and cannot be amended or altered by the government.

3.2 Judicial Review and its Role:

The "*basic structure doctrine*" is closely tied to the concept of judicial review, which is the power of the judiciary to review and strike down laws and actions that are *ultra vires* the Constitution. The doctrine provides a framework for interpreting and applying constitutional provisions, ensuring that they are not violated or undermined by the government or other entities.

3.3 Balancing Constitutionalism and Democracy:

The "*basic structure doctrine*" is often seen as a tool for balancing constitutionalism and democracy. The doctrine ensures that the government is not able to arbitrarily amend or alter the Constitution, which safeguards the integrity and stability of the constitutional framework.

Key Elements of the Basic Structure of the Constitution:

4.1 Separation of Powers:

The separation of powers is a fundamental principle of the basic structure of a constitution. It is the principle that the executive, judicial, and legislative departments of government ought to be distinct from one another. By doing this, it is made sure that neither branch of the government has an excessive amount of authority and that the government functions within the bounds of the Constitution.

4.2 Fundamental Rights:

Fundamental rights are a key element of the basic structure of the constitution. These are the rights that are inherent to all individuals and are protected by the Constitution. The rights to life, liberty, and property as well as the freedoms of speech and expression, equality before the law, and the right to a fair trial are all considered fundamental rights.

4.3 Judicial Independence and Rule of Law:

Independence of the judiciary and the rule of law are important elements of the basic structure of a constitution. Judicial independence ensures that the judiciary is free from political influence and is able to make impartial decisions. The rule of law guarantees that government functions within the confines of the Constitution and that the rights of individuals are protected.

4.4 Federalism and Distribution of Powers:

Federalism and the distribution of powers are key elements of the basic structure of a constitution. Federalism is the principle that power is divided between the central government and the states or provinces. The division of powers guarantees that no branch of the government has an excessive amount of authority and that the government functions within the bounds of the Constitution.

4.5 Supremacy of the Constitution:

An essential component of a constitution's core design is the supremacy of the Constitution. The idea behind this is that the Constitution is the supreme law of the land and that all laws and government operations must adhere to it. And those government functions or legislatures which are not in conformity with the Constitution are *ultra vires* to it.

Comparative Analysis of Constitutional Frameworks:

5.1 United States Constitution:

The Constitution of the United States of America works on federal system that ensures separation of powers within different organs of the government, the legislature, the executive and the judiciary and that such power are not used arbitrarily by any organ. Their Constitution also includes a Bill of Rights that protects those rights which are very fundamental and basic, rights such as freedom of speech, religion, and the press. The Constitution also establishes the concept of judicial review, which gives the judiciary the authority to examine and overturn legislation that are unconstitutional.

5.2 Constitution of India:

The Constitution of India, just like that of USA is a federal system that establishes a separation of powers between the legislative, executive, and judicial branches of government. Indian Constitution also includes a Bill of Rights that protects fundamental rights, such as freedom of speech, expression, religion, and the press. The Constitution also establishes the principle of judicial review.

5.3 European Convention on Human Rights:

In 1950, the Council of Europe approved the European Convention on Human Rights (ECHR), which is a global agreement. The Convention was adopted to insure and protect fundamental human rights and freedoms in Europe. The Agreement also includes a number of fundamental rights, such as the right to life, freedom of speech, and the right to a fair trial. The ECHR also establishes a special court for the enforcement of the Convention which is known as the European Court of Human Rights.

5.4 South African Constitution:

The South African Constitution was adopted in 1996 and is one of the most progressive constitutions in the world. The Constitution includes a Bill of Rights that protects fundamental rights, such as the right to life, freedom of speech and expression, and right to a fair trial. Just like the Constitution of India and the US, the Constitution of South Africa also establishes a separation of powers between the three organs of the government, the legislative, executive, and judiciary. The Constitution recognizes 11 official languages and establishes the principle of affirmative action to address past inequalities.

5.5 Australian Constitution:

The Australian Constitution was adopted in 1901 and is a federal system like that in India, USA and Europe. The Australian Constitution also includes a Bill of Rights that protects fundamental rights. However, unlike many other constitutions, the Australian Constitution does not include an explicit Bill of Rights in its constitution. The Constitution also creates the idea of responsible governance, which states that the Parliament is the government's primary accountability body.

Implications and Criticisms of the Basic Structure Doctrine

6.1 Ensuring Constitutional Stability:

"The Basic Structure Doctrine" is a legal principle that was established by the Supreme Court of India in the 1970s. The doctrine holds that certain provisions of the Indian Constitution are so fundamental that they cannot be amended, even by the Parliament. The Basic Structure Doctrine ensures constitutional stability by preventing the Parliament from making changes to the Constitution that would undermine the "basic structure of the Constitution".

6.2 Protection of Fundamental Rights:

The Basic Structure Doctrine also protects fundamental rights by ensuring that they cannot be easily amended or removed from the Constitution. The doctrine recognizes that certain fundamental rights, such as "*the right to equality, the right to freedom of speech and expression, and the right to life and liberty*", are essential to the functioning of a democratic society. By protecting these rights, The Basic Structure Doctrine guarantees that the Indian Constitution continues to represent the ideals of the Indian people and remains a living text.

6.3 Judicial Activism and Judicial Restraint:

The Basic Structure Doctrine has been criticized for promoting judicial activism, which is the idea that the judiciary should play an active role in interpreting the Constitution and protecting fundamental rights. Some critics argue that the doctrine gives too much power to the judiciary and undermines the separation of powers between the legislative, the executive, and the judiciary. Others argue that the doctrine promotes judicial restraint, which is the idea that the judiciary should limit its role to interpreting the Constitution and enforcing the law.

6.4 Criticisms and Limitations:

The Basic Structure Doctrine has been criticized for being vague and open to interpretation. Some critics argue that the doctrine gives too much power to the judiciary and neglect the democratic process by allowing those judged who are not

democratically elected to make decisions that should be made by elected representatives of the people. Others contend that the doctrine is too rigid and prevents the Constitution from evolving to meet the changing needs of society.

Case Studies:

7.1 Marbury v. Madison (1803):

Marbury v. Madison was a famous and landmark case in the US that led to the establishment of the principle of judicial review, which is the power of the judiciary to review and strike down those laws which are not in consistent with the constitution as that are unconstitutional. The case involved a dispute over the appointment of judges by President John Adams. The Supreme Court affirmed that the law that provided the Court the authority to hear the case was unconstitutional, thereby establishing the principle of judicial review.

7.2 Golaknath v. State of Punjab (1967):

Golaknath v. State of Punjab was a famous case in India that established the Basic Structure Doctrine. The case involved a dispute over the authority of the Parliament to alter the Constitution. The Supreme Court ruled that the Parliament did not have the authority to amend the Constitution in such a way that would infringe upon the fundamental rights of citizens. The Court held that the Constitution had a basic structure that could not be amended by the Parliament.

7.3 Minerva Mills Ltd. v. Union of India (1980):

This is another landmark case in India that expanded upon the Basic Structure Doctrine. This case involved a tussle over the power of the Parliament to amend the Constitution. Supreme Court ruled that the Parliament did not have the power to amend the Constitution in a way that would alter the basic structure of the Constitution. The Court held that the basic structure of the Constitution included separation of powers, rule of law, and protection of fundamental rights.

7.4 Republic of South Africa v. Grootboom (2000):

Republic of South Africa v. Grootboom was a landmark case in South Africa that established the right to housing as a fundamental right. The case involved a dispute over the government's failure to provide housing to poor and homeless citizens. The Apex Court ruled that the government had a duty to provide adequate housing to all citizens, and that the right to housing was a fundamental right protected by the Constitution.

7.5 United States v. Lopez (1995):

United States v. Lopez was another landmark case in US that limited the power of the federal government to regulate commerce. In the case, the validity of the Gun-Free School Zones Act, which made it illegal for anybody to have a gun near a school, was in question. SC ruled that the law was unconstitutional because it exceeded the power of the federal government to control commerce. The Court held that the regulation of firearms in school zones was a matter for the states, not the federal government.

Conclusion

In several nations throughout the world, including India, the Basic Structure Doctrine has been established as a legal theory. According to this argument, the government or any other authority cannot change any essential aspects of a constitution. These characteristics are thought of as the fundamental framework of the constitution and are crucial to preserving its reliability and stability.

In the famous case of Golaknath v. State of Punjab, the Basic Structure Doctrine was first established in India. The Indian Supreme Court determined that the Parliament could not change the Constitution in a way that would violate citizens' basic rights. The Court further broadened this theory in the case of Minerva Mills Ltd. v. Union of India, holding that the Parliament could not change the Constitution in a way that would compromise the Constitution's fundamental design.

The Doctrine has been applied in several other nations to safeguard individuals' fundamental rights and to make sure that their constitutions are solid and long-lasting. It has been employed to invalidate laws that are held to be unconstitutional and to stop the government from abusing its power.

In conclusion, the Basic Structure Doctrine is an important legal principle that has had a significant impact on constitutional law worldwide. It has helped to safeguard the fundamental rights of citizens and to warrant that the constitution remains a stable and enduring document. It has been used in many countries to strike down laws that are deemed unconstitutional and to prevent the government from overreaching its authority.

In summary, this research has explored the Basic Structure Doctrine and its significance in constitutional law. It has examined the origins of the doctrine in India and its subsequent expansion in other countries. The research has also explored the impact of the doctrine on constitutional law and its use in striking down unconstitutional laws.

Overall, the Basic Structure Doctrine is an important legal principle that has helped to safeguard the fundamental rights of citizens and to confirm that the constitution remains a stable and enduring document. It has had a significant impact on constitutional law worldwide and will likely continue to be an important legal principle in the future.