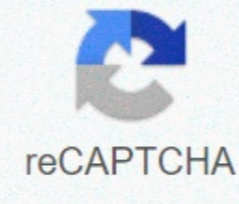




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Structure of the constitution of india

The basic structure of India's constitution or doctrine applies during the time of amendments to India's constitution. This basic structure states that the Indian government cannot touch or destroy. The basic features of the constitution, which are: Supremacy of the Republican and Democratic Constitution of the Government. Secular character of the Constitution Separation of the Power Federal Character of Constitution Unity and Sovereignty of India Individual Freedom State Welfare Article 32 and 226 Rule of Law Balance B/T Fundamental Rights and DPSP The Principal of Free and Fair Electoral Evolution of the Basic Structure the word Basic Structure is not mentioned in the IAO. This concept of constitution came before us because of the protection of the rights of individuals and the ideals and philosophy of the IIC. The constitution provides power to parliament and the state legislature both to make laws within their respective jurisdiction, and in the matter of modification, bills are only introduced into parliament, but this is not an absolute power. Here, if any of these laws or laws are inconsistency with the LIC made by parliament, the Apex court has the right and power to declare such law or laws null and void. The First Constitution Amendment Act of 1951 was challenged in Shankari Prasad vs. Shankari Prasad. The amendment was challenged for violating Part III of the Constitution and must therefore be considered invalid. The Supreme Court held that Parliament, under Article 368, has the power to amend any part of the constitution, including fundamental rights and Article 368. The Court handed down the same judgment in Sajjan Singh Vs State of Rajasthan[2] in 1965. the Constitution has basic characteristics was first theorized in 1964, by Judge J.R. Mudholkar Wrote: It is also a question to consider whether making a change in a basic characteristic of the Constitution can be considered simply as an amendment or would be, in effect, rewriting a part of the Constitution; and if the latter were to fall within the scope of Article 368? In the Golak Nath case [3], SC transferred the previous decision and issued an order that parliament has no absolute power to amend Part III, as fundamental rights are momentous and immutable. According to Art.368, parliament has no power to amend any part of the constitution, they can only change the caveat as needed. In 1971, parliament passed the 24th Constitutional Amendment Act and parliament again gained its absolute power to amend the Constitution also includes fundamental rights. It also made this mandatory for the president to give his on the bills passed by parliament. In kesavananda Bharti,[4] SC has the previous validity of the act of the 24th amendment and stated that Parliament has the power to amend any provision only, but the basic structure and fundamental rights must remain is beyond the rectifying power of parliament. But the Apex Court did not clear the definition of basic structure. They stated that the basic structure of the Constitution could not be repealed even by a constitutional amendment. Indira Gandhi v/s Raj Narain case,[5] in this case SC reaffirmed and applied the Basic Structure Doctrine and toppled clause (4) of Article 329-A, which was added in the 39th amendment on the grounds that it was beyond the power to modify parliament and destroys the Basic FEATURE. This 39th Amendment Act was passed during the 1975 Emergency. The Minerva Mills case,[6] SC's ruling vilified 2 changes made to the constitution under the 42nd Amendment. SC is clear that Parliament is not supreme rather than a Constitution. SC added 2 more features to the BF list. 1. Balance of Judicial Review between Fundamental Rights and DPSP. The judge vilified the limited power of modification that he himself was a basic feature. Final notes: Shankari Prasad vs. Shankari Prasad vs. No. Union of India, AIR1951 SC 455 Sajjan Singh V. Rajasthan AIR State 1965 SC 845. Golak Nath V. State of Punjab AIR 1967 SC 1643,1967 SCR (2) 762. Kesavananda Bharti V. State of Kerala AIR1973 SC 225. Indira Gandhi V. Raj Narain AIR 1975 SC 865, 1975 SCR (3) 333 Minerva Mills V. Union of India AIR1980 SC 1789. This document provides a legal analysis of the doctrine of the Basic Structure of the Indian ConstitutionCompiled by Venkatesh NayakIntroductionThe debate on the basic structure of the Constitution, which is somnolent in the archives of India's constitutional history during the last decade of the twentieth century, has reappeared in the public sphere. In creating the National Commission to Review the Work of the Constitution (the Commission), the Government of the National Democratic Alliance (formed by a coalition of 24 parties at the national and regional levels) stated that the basic structure of the Constitution would not be manipulated. Judge M.N. Venkatchalalaiah, President of the Commission, has stressed on several occasions that an investigation into the basic structure of the Constitution was beyond the scope of the Commission's work. Several political parties -- particularly Congress (I) and the two opposition communist parties -- have made it clear that the review exercise was the government's ploy to seek legitimacy for its design of adopting radical constitutional reforms thus destroying the basic structure of the document. Much of the public debate has been the victim of partial amnesia, as even the literate circles of urban India are unsure of the ramifications of this concept, which was debated to footballer during the 1970s and 1980s. The next debate is an attempt to trace the waters of that period that becomes for the power struggle between the legislative and judicial weapons of the State.According to the Constitution, Parliament and state legislatures in India have the power to make laws within their Jurisdictions. This power is not absolute in nature. The Constitution confers on the judiciary the power to rule on the constitutional validity of all laws. If a law made by Parliament or state legislatures violates any provision of the Constitution, the Supreme Court has the power to declare such law invalid or ultra vires. Despite this control, the founding fathers wanted the Constitution to be an adaptable document rather than a rigid framework for governance. Hence, Parliament was endowed with the power to amend the Constitution. Article 368 of the Constitution gives the impression that Parliament's amending powers are absolute and cover all parts of the document. But the Supreme Court has acted as a brake on Parliament's legislative enthusiasm since independence. In order to preserve the original ideals envisaged by the constitutional ones, the Apex court held that Parliament could not distort, damage or alter the basic characteristics of the Constitution under the pretext of changing it. The basic structure phrase itself cannot be found in the Constitution. The Supreme Court first recognized this concept in the historic Kesavananda Bharati case in 1973. [1] Since the Supreme Court has been the interpreter of the Constitution and the arbiter of all amendments made by the Parliamento.La pre-Kesavanada position Parliament's authority to amend the Constitution, in particular the chapter on the fundamental rights of citizens, was challenged as long as 1951. After independence, several laws were enacted in the states with the aim of reforming land ownership and leasing structures. This was in line with the electoral promise of the ruling party of the Congress Party to implement the socialist objectives of the Constitution [contained in article 39(b) and (c) of the State Policy Principles Directive] which required an equitable distribution of production resources among all citizens and the prevention of the concentration of wealth in the hands of a few. The owners - adversely affected by these laws - asked the courts. The courts overturned land reform laws by saying they violated the fundamental right to property guaranteed by the Constitution. Awakened by unfavourable judgments, Parliament placed these laws on the Ninth List of [2] the Constitution through Amendments Nos 1951 and 1952 respectively, effectively excluding them from the scope of judicial review. [Parliament added the Ninth List to the Constitution through the first amendment in 1951 as a means of immunating certain anti-control laws In accordance with the provisions of Article 31, which in turn were amended several times later, the laws included in the Ninth Annex -- relating to the acquisition of private property and the compensation payable for such acquisition -- cannot be challenged against a court for violating the fundamental rights of citizens. This protective umbrella covers more than 250 laws passed by state legislatures with the aim of regulating the size of land holdings and abolishing various leasing systems. The Ninth List was created with the main objective of preventing the judiciary - which defended citizens' property rights on several occasions - from derailing the Congress party's agenda for a social revolution. [3] The owners again challenged the constitutional amendments that placed land reform laws on the Ninth List before the Supreme Court, saying that they violated Article 13(2) of the Constitution.Article 13(2) provides for the protection of the fundamental rights of the citizen. [4] Parliament and state legislatures are clearly prohibited from making laws that can remove or shorten the fundamental rights guaranteed to the citizen. They argued that any amendment to the Constitution had the status of law as understood in Article 13(2). In 1952 (Sankari Prasad Singh Deo v. Union of India [5]) and 1955 (Sajjan Singh v. Rajasthan[6]), the Supreme Court rejected both arguments and confirmed Parliament's power to amend any part of the Constitution, including that affecting citizens' fundamental rights. However, significantly, two dissenting judges in Sajjan Singh v.Rajasthan raised questions about whether citizens' fundamental rights could become a majority party toy in Parliament.Golaknath's verdict In 1967 a court of eleven Supreme Court judges revoked their position. Delivering his 6:5 majority judgment at Golaknath v. State of Punjab [7], the President of the Supreme Court Subba Rao set out the curious position that Article 368, which contained provisions relating to the amendment of the Constitution, merely established the amendment procedure. Article 368 does not confer on Parliament the power to amend the Constitution. Parliament's amending power (constituent power) arose from other provisions contained in the Constitution (Articles 245, 246, 248) which gave it the power to formulate laws (full legislative power). The apex court therefore held that the amending power and legislative powers of Parliament were essentially the same. Therefore, any amendment to the Constitution should be considered law as understood in Article 13(2). The majority trial invoked the concept of implicit limitations on Parliament's power to amend the Constitution. This view held that the Constitution gives rise to the permanence of the fundamental freedoms of the citizen. When the themselves, the people had reserved fundamental rights for themselves. Article 13, according to the majority opinion, expressed that limitation of Parliament's powers. Parliament could not modify, restrict or undermine fundamental freedoms because of this Constitution and the nature of the freedoms granted under it. The judges stated that fundamental rights were so sacrosanct and momentous of importance that they could not be restricted even if such a measure received unanimous approval from both chambers of Parliament. They noted that a Constituent Assembly convened by Parliament in order to change fundamental rights if necessary. In other words, the apex court held that some features of the Constitution were at its core and required much more than the usual procedures for changing them. The basic structure phrase was first introduced by M.K. Nambiar and other lawyers while arguing for petitioners in the Golaknath case, but it was not until 1973 that the concept appeared in the text of the apex court's verdict. Nationalization of banks and abolition of privileged pursesIn a few weeks after Golaknath's verdict, the Congress party suffered heavy losses in parliamentary elections and lost power in several states. Although a bill by a private member - presented by Barrister Nath Pai - that sought to restore the supremacy of Parliament's power to amend the Constitution was introduced and debated on both the house floor and the Select Commission, it could not be approved due to the political compulsions of the time. But the opportunity to test parliamentary supremacy came once again when Parliament introduced laws to provide greater access to bank credit for the agricultural sector and ensure an equitable distribution of wealth and production resources and by: a) nationalizing banks and (b) uncapthating with princes in an attempt to take away their privileged pockets, to those who were promised perpetuity - as a sop to join the Union - at the time of The Independence of India. Parliament reasoned that it was implementing the State Policy Principles Directive, but the Supreme Court approved both measures. At this point, it was clear that the Supreme Court and Parliament were in the relative situation of fundamental rights against the Principles of State of Directive at Policy.At level, the battle was about The supremacy of Parliament over the power of the courts to interpret and defend the Constitution. On another level, contention was about the sanctity of property as a fundamental right jealously guarded by a much smaller affluent class than that of the large impoverished masses for whose benefit congressional government claimed to implement its socialist development program. Less than two weeks after the Supreme Court overturned the President's order by unaware of the princes, in a rapid to secure the mandate of the people and strengthen their own stature, Prime Minister Indira Gandhi dissolved the Lok Sabha and called a rapid survey. For the first time, the Constitution itself became the electoral issue in India. Eight out of ten in the 1971 elections, changes were made to the Constitution in order to restore the supremacy of Parliament. A.K. Gopalan of the Communist Party of India (Marxist) came to the measure of saying that the Constitution is eliminated by the stock of locks and barrel and replaced by one that enshrined the real sovereignty of the people[8]. The Congress party returned to power with a two-thirds majority. The electorate had endorsed the socialist agenda of the Congress party, which, among other things, talked about making basic changes to the Constitution to restore the supremacy of Parliament. Through a series of amendments made between July 1971 and June 1972, Parliament sought to recover the lost ground. He restored for himself the absolute power to amend any part of the Constitution, including Part III, that deals with fundamental rights. [9] Even the President became obliged to give his approval to any amendment law passed by both chambers of Parliament. Several curbs on the correct property were passed to the law. The right to equality before the law and equal protection of laws (Article 14) and the fundamental freedoms guaranteed under Article 19[10] were subordinated to Article 39(b) and (c) of the State Policy Principles Directive. [11] The private purses of the ancient princes were abolished and a whole category of legislation dealing with agricultural reforms was placed on the Ninth List beyond the scope of judicial review. [12] Emergency of the Concept of Basic Structure- Kesavanada's milestoneInevitably, the constitutional validity of these amendments was challenged before a full supreme court bank (thirteen judges). Your verdict can be found in eleven separate sentences. [13] Nine judges signed a summary statement recording the most important conclusions reached in this case. Granville Austin notes that there are several discrepancies between the points contained in the summary signed by the judges and the views expressed by them in their separate trials. [14] However, the seminal concept of basic structure of the Constitution gained recognition in the majority verdict. All the judges confirmed the validity of the twenty-fourth amendment by saying that Parliament had the power to amend any or all of the provisions of the Constitution. All signatories to the summary argued that the Golaknath case had been wrongly decided and that Article 368 contained both the power and the procedure for amending the Constitution.However, they were clear that an amendment to the Constitution was not the same as a law as understood in Article 13(2). [It is necessary to point out the subtle difference between two functions performed by the Indian Parliament: (a) it can make laws for the country by exercising its legislative power[15] and(b) it can amend the Constitution by exercising its constituent power. Constituent power is superior to ordinary ordinary law Unlike the British Parliament which is a sovereign body (in the absence of a written constitution), the powers and functions of the Indian Parliament and state legislators are subject to limitations laid down in the Constitution. The Constitution does not contain all the laws governing the country. Parliament and state laws establish laws from time to time on various issues, within their respective jurisdictions. The general framework for making these laws is provided for by the Constitution. Parliament is the only one empowered to make changes to this framework under Article 368 [16]. Unlike ordinary laws, amendments to constitutional provisions require a special majority vote in Parliament.Another illustration is useful in demonstrating the difference between Parliament's constituent power and law-making powers. According to article 21 of the Constitution, no person in the country may deprive himself of his life or personal freedom, except in accordance with the procedure established by law. The Constitution does not lay down the details of the procedure, as this responsibility lies with the legislatures and the executive. Parliament and state legislatures make the necessary laws by entifying offensive activities for which a person may be imprisoned or sentenced to death. The executive establishes the procedure for the application of these laws and the accused is tried in a court of law. Changes to these laws can be incorporated by a simple majority into the legislator concerned. There is no need to amend the Constitution to incorporate changes into these laws. However, if there is a requirement to make Article 21 the fundamental right to life, in provoking the death penalty, the Constitution may have to be properly amended by Parliament using its constituent power. Most importantly, seven of the thirteen judges in the Kesavananda Bharati case, including Supreme Court President Sikri, who signed the summary statement, declared that Parliament's constituent power was subject to inherent limitations. Parliament could not use its amending powers under Article 368 for 'damage', 'emasculatation', 'destroy', 'abrogate', 'change' or 'alter' the 'basic structure' or framework of the Constitution.Basic features of the Constitution in accordance with Kesavanada's verdictThe Control Judge established separately, which he thought were the basic or essential elements of the Constitution. Nor was there unanimity of opinion at the majority point of view. Sikri, C.J. explained that the concept of basic structure included:• supremacy of the Constitution• Republican and democratic form of government• secular character of the separation of powers between the legislature, the executive and the judiciary• the federal nature of the ConstitutionShelat, J. and Grover, J. added two more basic features to this list: • the mandate to build a welfare state contained in the Directive State Policy• unity and integrity of the Hegde nation, J. and Mukherjea, J. identified a separate and shorter list of basic characteristics:• India's sovereignty • the democratic nature of the policy • unity of the country• essential characteristics of individual freedoms assured to citizens • to build a welfare stateJaganmohan Reddy, J. stated that the elements of the basic features were found in the Preamble to the Constitution and the provisions :• Sovereign Democratic Republic • Parliamentary Democracy• Three State bodiesI said that the Constitution would not in itself be without the fundamental freedoms and principles of the directive. [17] Only six judges on the bench (therefore a minority opinion) agreed that the fundamental rights of the citizen belonged to the basic structure and that Parliament could not change it. Minority OpinionThe minority opinion The opinion of the minority delivered by

Judge A.N. Ray (whose appointment to the post of President of the Court above the chiefs of three senior judges, shortly after the pronouncement of verdict Kesavanand, was widely regarded as politically motivated), Judge M.H. Beg, Judge K.K. Mathew, and Judge S.N. Dwivedi also agreed that Golaknath had been wrongly decided. They confirmed the validity of the three contested amendments before the court. Ray, J. argued that all parts of the Constitution were essential and that no distinction could be made between its essential and non-essential parts. All of them agreed that Parliament could make fundamental changes to the Constitution by exercising its power under Article 368. In it summarizes the majority verdict in Kesavananda Bharati recognized Parliament's power to amend any or all of the provisions of the Constitution provided that such an act did not destroy its basic structure. But there was no unanimity of opinion on what designates that basic structure. Although the Supreme Court almost returned to the position of Sankari Prasad (1952) restoring the supremacy of Parliament's amending power, it in effect further strengthened the power of judicial review. [18] Concept of reasserted back structure- the case of the Indira Gandhi elections In 1975, the Supreme Court again had the opportunity to rule on the basic structure of the Constitution. The High Court of Allahabad confirmed a challenge to the election victory of Prime Minister Indira Gandhi on grounds of electoral malpractice in 1975. Pending the appeal, the holiday judge, Judge Krishna Iyer, granted a stay that allowed Smt. Indira Gandhi to serve as Prime Minister on the condition that she did not take out a salary and speak or vote in Parliament until solve the case. Meanwhile, Parliament approved the thirty-ninth amendment to the Constitution that dismissed the authority of the Supreme Court to resolve petitions concerning the elections of the President, Vice-President, First and President of the Lok Sabha. On the other hand, a body constituted by Parliament would have the power to resolve such electoral disputes. Section 4 of the Amendment Bill effectively thwarted any attempt to challenge the choice of a holder, occupying any of the previous offices in court. This was clearly a preventive action designed to benefit Smt. Indira Gandhi, whose election was the subject of the ongoing dispute. Amendments were also made to the Peoples' Representation Laws of 1951 and 1974 and placed on the Ninth List together with the Electoral Law Amendment Act of 1975 to save the Prime Minister from shame if the apex court delivered an unfavourable verdict. The government's bad intention was demonstrated by the haste in which the thirty-ninth amendment was adopted. The bill was introduced on August 7, 1975 and approved by the Lok Sabha on the same day. The Rajya Sabha (High House or House of the Elders) spent it the next day and the President gave his consent two days later. The amendment was ratified by state legislatures in special sessions on Saturdays. It was contemplated on August 10. When the Supreme Court opened the case for its hearing the next day, the Attorney General asked the Court to dismiss the case in light of the new amendment. Raj Narain's lawyer, who was the political opponent who challenged Ms. Gandhi's election, argued that the amendment went against the basic structure of the Constitution, as it affected free and fair elections and the judiciary. The lawyer also argued that Parliament did not have jurisdiction to use its constituent power to validate an election that was declared null and void by the High Court. Four out of five judges on the bench confirmed the thirty-ninth amendment, but only after bringing down that part that sought to curb the power of the judiciary to resolve in the current electoral dispute. [19] A judge, Beg, J. confirmed the amendment in its entirety. Gandhi was declared valid on the basis of amended electoral laws. The judges reluctantly accepted Parliament's power to transfer laws that have a retroactive effect. Basic characteristics of the Constitution according to the verdict of the electoral case Again, each judge expressed views on what amounts to the basic structure of the Constitution: According to Judge H.R. Khanna, democracy is a basic feature of the Constitution and includes free and fair elections. Judge K.K. Thomas argued that the power of judicial review is an essential feature. Judge Y.V. Chandrachud listed four basic features that he considered unattainable: • State of the sovereign democratic republic • equality of and an individual's opportunity • secularism and freedom of conscience and religion • Government of laws and not of men, that is, the rule of law Agreement with the President of the Supreme Court A.N. Ray, the constituent power of Parliament was above the power of Parliament Parliament therefore, and is therefore not bound by the principle of separation of powers. Parliament could therefore exclude laws relating to electoral disputes from judicial review. He believed, curiously, that democracy was a basic feature, but not free and fair elections. Ray, C.J. argued that ordinary legislation did not fall within the scope of the basic characteristics. Judge K.K. Mathew agreed with Ray, C.J. that ordinary laws did not have the core structure. But he argued that democracy was an essential feature and that electoral disputes must be decided on the basis of the law and facts by the judiciary. Judge M.H. Beg disagreed with Ray, C.J. on the grounds that it would be unnecessary to have a Constitution that said that Parliament's constituent power was above it. [20] The judiciary was granted to the Supreme Court and the High Courts and Parliament were unable to carry them out. He argued that the supremacy of the Constitution and the separation of powers were basic characteristics as understood by the majority in the Kesavananda Bharati case. Beg, J. stressed that the doctrine of the basic structure also included ordinary legislation within its scope. Despite disagreement among the judges over what constituted the basic structure of the Constitution, the idea that the Constitution had a fundamental content that was sacrosanct was confirmed by the majority opinion. Kesavananda's review bank in three days of the decision on the Ray, C.J. election case convened a court of thirteen judges paratitced Kesavanada's verdict on the pretext of hearing a series of petitions related to land-roof laws that had been languishing in the upper courts. The petitions argued that the application of landceiling laws violated the basic structure of the Constitution. Indeed, the review bench had to decide whether or not the doctrine of the basic structure restricted Parliament's power to amend the Constitution. The decision in the case of banking nationalization was also reviewed. Meanwhile, Prime Minister Indira Gandhi, in a speech in Parliament, refused to accept the underdog of the basic structure. [21] It should be remembered that there is no specific request requesting a review of Kesavananda's verdict filed before the apex court, a fact observed with great displeasure by several members of the bench. N.N. Palkhivala appearing on behalf of a coal mining company argued eloquently against the measure to re-watch Kesavananda's decision. Ultimately, Ray, C.J. dissolved the bank after two days of listening. Many have suspected indirect government involvement in this episode seeking to undo an unfavorable judicial precedent set by Kesavananda's decision. However, no concerted efforts were made to continue the case. The declaration of a national emergency in June 1975 and the consequent suspension of off-world freedoms, including the right to move the courts against pre-trial detention, diverted the country's attention from The Swaran Singh Committee and the Quadragésata De la Cuadragés second amendments Soon after the National Emergency Declaration, the Congress party formed a committee under the chairmanship of Sardar Swaran Singh to study the issue of the amendment of the Constitution in the light of past experiences. Based on its recommendations, the government incorporated several changes to the Constitution, including the Preamble, through the squared second amendment (adopted in 1976 and entered into force on January 3, 1977). Among other things, Amendment: a) gave the Directive Principles of State Policy precedence over Fundamental Rights contained in Article 14 (right to equality before the law and equal protection of laws), Article 19 (various freedoms such as freedom of expression and expression, the right to meet peacefully, the right to form associations and trade unions, the right to move and reside freely anywhere in the country and the right to practice any profession) and Article 21 (right to life and personal freedom). Article 31c was amended to prohibit any challenge to the laws under any of the Principles of State Policy of the Directive; [22] (b) established that amendments to the Constitution introduced in the past or those that could be unfounded could not be challenged in any court for any reason; c) deleted all amendments to fundamental rights from the scope of judicial review and) removed all limits on Parliament's power to amend the Constitution under article 368. 368.

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