

# Doctrine of Basic Structure

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**ABSTRACT:** *The 'simple foundation' theory is considered the most important instrument in the hands of the Indian judiciary to maintain the balance of authority, the controls and balances needed for a democracy to operate smoothly. This doctrine has modified the course of the jurisprudence of Indian Civil law. The essay will pay tribute to its roots and sacrifices over the course of history to defend and conserve it. Furthermore, it is considered that the doctrine of the fundamental framework is primarily applicable to constitutional amendments, but various Supreme Court judges have interpreted this factor differently and there have been conflicting opinions on the subject. As this no longer seems to be a clear principle with the applicability of the doctrine in question, this article will try to track what numerous Supreme Court judges have said in their decisions on the applicability of the basic structure doctrine to ordinary laws and eventually end with some observations and suggestions.*

**KEYWORDS:** *Doctrine of Basic Structure; Constitution of India.*

## INTRODUCTION

The Parliament and the State Assemblies are able to make laws within their territories, according to the Indian Constitution. It is only the Senate and not the regional legislative bodies that have the authority to amend the Constitution. This control of Parliament, though, is not an absolute one. There is the right of the Supreme Court to make any statute that it deems unconstitutional invalid. Any provision that seeks to change the fundamental structure of the constitution is unconstitutional, as per the Basic Structure Doctrine[1].

There is no reference anywhere in the Indian Constitution of the word "Basic Structure." Over time and in many instances, the principle that Parliament should not pass legislation that will alter the fundamental framework of the constitution eventually grew. The idea is to uphold the essence of Indian democracy and to safeguard people's rights and freedoms. This doctrine helps uphold the essence of the constitutional text and preserve it[1].

As was apparent in the Emergence Period, the doctrine of the fundamental form helps to escape statutory excesses. This is required as a buffer against an all-powerful senate, which would have recourse to Article 368 being overused. However, there is another line of thinking that suggests that if modifications help a constitution survive, changes in the supposedly foundational aspect of the Constitution must be included[2].

During the last decade of the 20th century, the debate on the 'basic framework' of the Constitution, lying somnolent in the archives of the constitutional past of India, has reappeared in the public domain. While setting up the National Commission to Study the Functioning of the Constitution (the Commission), the government of the National Democratic Alliance (formed by a coalition of 24 national and regional. In several occasions, Justice M.N. Venkatachalaiah, the Chairman of the Commission, stressed that an investigation into the fundamental framework of the Constitution was outside the reach of the work of the Commission[2].

As even literate circles in urban India are unaware of the implications of this term, which was fiercely discussed during the 1970s and 1980s, much of the public discourse has been a victim of partial amnesia. The subsequent discussion is an effort by the power struggle between the legislative and the judicial arms of the State to map the waters of that time made turbulent[3].

The Indian Constitution is a complex text that, if appropriate, may be changed according to the needs of society. Under Article 368, the Constitution allows Parliament the authority to amend if appropriate. The Article further points out in depth the process for modification[3].

The fundamental framework theory is nothing but a judicial invention to ensure that Parliament does not abuse the right of amendment. The principle is that the core aspects of India's Constitution cannot be changed to the point that the Constitution's identity is lost in the process[4].

The Indian Constitution upholds those values that are the Parliament's guiding laws, every amendment will not modify certain principles, and this is what the fundamental framework doctrine upholds. The doctrine we have today has not always been there, but it has been promoted and upheld by this country's judicial officers over the years[4].

Via its various landmark judgments over the years, the fundamental framework theory established by the Indian Supreme Court brings in the required element of constitutionalism, which is crucial to preserving the essence of the constitution text, to conserve, defend and uphold the thicker principle of the rule of law, under which the constitution is just a dead letter law[5].

The trajectory of this doctrine's development from the principle of implicit limits to its current nature today has been little short of turbulent, with efforts to salvage it and far stronger attempts to obliterate it, for this doctrine enables the judiciary to regulate the legislature and keep it from joining the treacherous domain of arbitrariness by misusing it. This paper would aim to illustrate the roots, the vicissitudes that the fundamental structure doctrine had to suffer, and address its limits[5].

## DISCUSSION

Parliament and the state assemblies in India have the right to make laws within their respective territories, according to the Constitution. In nature, this power is not absolute. In the courts, the Constitution vests the authority to adjudicate on the constitutional validity of all statutes. If any clause of the Constitution is infringed by a law made by Parliament or the state legislatures, the Supreme Court has the right to declare such a law unconstitutional or ultra vires[6].

Notwithstanding this power, the founding fathers intended the Constitution to be an adaptable text rather than a fixed governing structure. The authority to amend the Constitution was then placed in Parliament. Article 368 of the Constitution provides the sense that the amending powers of the Parliament are absolute and cover all parts of the text. But ever since independence, the Supreme Court has acted as a check on the parliament's constitutional zeal[6].

The supreme court ruled that Parliament should not misrepresent, impair or change the core features of the Constitution under the pretext of amending it with the intention of maintaining the original principles conceived by the constitution-makers. In the Constitution, the term 'essential structure' itself cannot be identified. In the landmark Kesavananda Bharati case in 1973, the Supreme Court accepted this term for the first time. The Supreme Court has been the translator of the Constitution and the arbiter of all Parliament's amendments ever since[7].

The constitution requires the legislatures of the Parliament and the State to make laws under their respective jurisdiction. Only in Parliament may legislation be passed to amend the constitution, but this authority is not absolute. If any legislation made by Parliament is considered to be inconsistent with the Constitution by the Supreme Court, which has the authority to find the law unconstitutional. The Supreme Court thus developed the theory of the fundamental framework in order to maintain the principles and ideology of the original constitution. In compliance with the doctrine, the fundamental framework of the doctrine cannot be destroyed or changed by Parliament[7].

There were claims against the fundamental structure theory, against the basic structure and a third school of thinking that rejects the existence of something called the constitution's un-amendable basic structure. The third school argues that if they were an obstacle in their development, persons revolted not against the non-important pieces of a Constitution but against its essential ones. Where, in the people, ultimate legal sovereignty rests. Therefore, if amendments are to assist the longevity of a Constitution, they must contain amendments to the supposedly important portion of the Constitution[8].

Wherever one may put their allegiance, it is evident that the basic structure doctrine is central to India's constitutionalism, as has been seen in the Indira Gandhi period, where this doctrine was the only safeguard between an all-powerful Parliament and the citizens, owing to the irresponsible use of Article 368's legislative excesses[9].

To survive the waves of time and adapt to the evolving conditions of centuries, a constitution needs to be a living Constitution. Around the same time, moreover, there are certain intrinsic principles, a foundational basis on which the entirety of the constitution's material depends. This originalism of the structure is the basic core of the legal system expressed by the constitution text and which the courts strive to defend by their separate doctrines and pronouncements[9].

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It is generally agreed and recognized that it is possible to challenge the legality of an ordinary law on two points, namely constitutional ability, whether or not it attracts the bar of Articles 13(1) and 13(2) of the Constitution. This was kept by Y.V. as well. Chandrachud, in the case of Kesavananda Bharati, in paragraph 691 of his separate judgment[10].

### CONCLUSION & IMPLICATION

There is no controversy today over the existence of the doctrine, the only question that occurs over and over again is the substance of the same. Any of the contents have been regularly reaffirmed by the courts, although some are also in the course of deliberations. The theory of the fundamental framework grants the delicate balance between stability and rigidity which should be present in every Constitution's amending powers.

Now we may claim, for the basic feature of the Constitution, there is no hard and rapid law. Different judges hold different opinions with respect to fundamental structure theory. Although at one time, they share a similar opinion that parliament has no right to destroy, modify, or emasculate the 'essential structure' or legislative system. 'If the historical context, the preamble, the whole constitutional system and the related provisions thereof, including Article 368, are taken into account, then it is not difficult to decide which are the essential elements of the constitutional framework.

These terms refer to the doctrine of the fundamental system of more intensity, since the territorial and political structure of the constitution, the division of powers, our state's secular nature are far more definite than just incompetence or natural justice. So for the defence of the welfare state, fundamental freedom, the nation's stability and dignity, Independent Democratic Republic is highly demanded.

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