



## The Amendment procedure of the Indian Constitution: with special reference to Basic Structure Theory

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### ABSTRACT

*Provision for amendment in the constitution is made with a view to overcome difficulties in future. It has been nature of the amendment in the basic law of land, i.e. Indian Constitution. Pt. Nehru was agree to flexible of Indian Constitution. In the judgment of Keshvanand Bharti Supreme Court says parliament has power to amend the constitution, but it cannot change the Basic Structure of the Constitution. First time Basic Structure theory discussed by H'ble Supreme Court of India.*

**KEYWORDS :** Indian Constitution, Preamble, Fundamental Rights, Amendment procedure of Indian Constitution, Parliament power, Basic Structure Theory

### Introduction:

Provisions for amendment of the Indian constitution is made with a view to overcome the difficulties, which may encounter in future in the working of the Constitution. No generation has monopoly of government according to their requirements. If no provisions to extra constitutional method like revolution to change the Constitution. "It has been the nature of the amending process itself in federation which has led political scientist to classify federal Constitution as rigid. The framers of the Indian Constitution were keen to avoid excessive rigidity. They were anxious to have a document which could grow with a growing nation, adapt itself to the changing need and circumstances of a growing people."

Pt. Nehru, "While we want this Constitution be as solid and permanent as we can make it, there is no permanence in the Constitution. There should be a flexibility. If you make anything rigid and permanent you stop the nation's growth."

But the framers of Indian Constitution were also aware of the fact that if the Constitution was so flexible it would be a playing of the whims and caprices of the ruling party.

### Can Parliament amend the Fundamental Rights ?

This question has assumed immense importance. Following the judgment of the Supreme Court of India in Golak Nath's case, the subsequent amendment of the Constitution, and the challenge to that Amendment in Keshvanand Bharti's case. The power of Parliament to amend the Chapter on Fundamental Rights first came up for consideration before the Supreme Court, as early as 1952, in S.P. Singh V. The Union of India. In this case, the Supreme Court upheld the First Amendment to the Constitution, which introduced certain changes in Part III relating to Fundamental Rights. Many more amendments followed, and the Seventeenth Amendment was again challenged before the Supreme Court in Sajjan Singh v. The State of Rajasthan. Here again majority opined that S.P. Singh's case was rightly decided, although the minority expressed a doubt on the correctness of that case.

In view of this doubt expressed by the minority when a similar challenge was made in I.C. Golaknath v. State of Punjab, the matter was referred to a Bench of eleven judges. The majority of six judges held that a law amending the Constitution is a "law" under Art. 13 (2), and if it abridges or restricts any fundamental right guaranteed in Part III of the Constitution, it is to that extent, void. It was realised by the majority that the consequences of their judgment would produce chaos in the country, as all similar previous amendments would have to be treated as void ab initio. To avoid such a drastic consequence, the majority judgment took cover under the American doctrine of prospective invalidity, and said that the previous Amendments would continue to be valid, even though they curtail fundamental rights.

In Keshvanand Bharti's case, and this case, in effect, overruled the earlier decision of the Supreme Court in Golak Nath's case. However, the Court cautioned that Parliament had no power to abrogate or take away fundamental rights or to completely change the fundamental features or the basic structure of the Constitution.

### What is the Basic Structure?

What then are the essentials of the basic structure of the Constitution ? Although the Judges enumerated certain essentials of the basic structure of the Constitution, but they also made it clear that they were only illustrative and not exhaustive. They will be determined on the basis of the facts in each case. In M. Nagrajan v. Union of India 5 judge Bench of the Supreme Court has explained the basic feature theory again in detail as follows. Basic structure are systematic principles underlying and connecting provisions of the Constitution. They give coherence and durability to Constitution. These principles are part of Constitutional law even if not expressly stated. This doctrine has essential developed from the German Constitution. It is not based on literal words. These principles are part of constitutional law even if not expressly stated. Theory of basic structure is based on the concept of Constitution identity. The main object behind the theory is continuity and within that continuity of identity.

The "Basic Structure" doctrine is the judge-made doctrine where by certain features of the Constitution of India are beyond the limit of the powers of amendment of the Parliament of India. On April 24, 1973, a Special Bench comprising 13 Judges of the Supreme Court of India ruled by a majority of 7-6, that Article 368 of the Constitution "does not enable Parliament to alter the basic structure or framework of the Constitution". However, overruled a decision of a Special Bench of 11 Judges, by a majority of 6-5, on February 27, 1967, that "Parliament has no power to amend Part III of the Constitution so as to take away or abridge the fundamental rights" Instead, the court propounded what has come to be known as " the basic structure" doctrine. Any part of the Constitution may be amended by following the procedure prescribed in Article 368. But no part may be so amended as to "alter the basic structure" of the Constitution. In other words the basic structure is 'Unamendable'. Or in a context in which, any constitutional amendment that violates the 'basic structure' of the Constitution would be invalid.

Thirty four years ago, on April 24, 1973, thirteen judges of the Supreme Court assembled in the Chief Justice's court packed to its capacity with lawyers and laypersons. They delivered eleven judgments in India's most celebrated case in constitutional law the Kesavananda Bharati case. For over three decades we have believed that in that case a majority of judges decided that Parliament has no power to amend the basic structure of the Constitution. Revelations of how the Kesavananda case was decided have been disclosed in later interviews with those who were involved in the case, writings of scholars, and by a revealing autobiography of Justice Jaganmohan Reddy, one of the judges in that case. This writer, a counsel in the case, kept detailed notes of the proceedings of the case. We can now piece together a collated account of how the case was decided. At the end of it, the question arises was there truly a judicial formulation of the theory of basic structure in that case, as it has come to mean today; and was the case decided in an atmosphere conducive to a detached determination of a highly contentious matter with political overtones.

### Keshvanand Bharti Judgment :

In Keshvanand Bharti, the Judges has enumerated certain essentials of basic structures as follows:

**According to Sikri, C.J.** the basic structure of the Constitution consists of the following features: Supremacy of the Constitution, Republic and Democratic forms of the Governments, Secular character of the Constitution, Separation of powers between the Legislature, the Executive and the Judiciary and Federal Character of the Constitution.

**According to Shelat and Grover, JJ.,** the basic structure of the Constitution consists of the following features: Supremacy of the Constitution, Republican and Democratic form of the Government and sovereignty of the country, Secular and Federal character of the Constitution, Demarcation of power between the Legislature, the Executive and the Judiciary, Dignity of the individual secured by various freedoms and basic rights in Part III and the mandate to build a welfare State contained by Part V, Unity and integrity of the Nation.

**According to Hegde and Mukharjee, JJ.,** the basic structure of the Constitution consists of the following features: Sovereignty of India, The democratic character of our polity, The Unity of country, Essential features of Individual freedoms secured to the citizens, Mandate to build a welfare State. However, they said that these limitations are only illustrative and not exhaustive.

**According to Jagmohan Reddy, JJ.,** the basic structure of the Constitution consists of the following features : a sovereign democratic republic, and Parliamentary democracy certainly constitute the basic structure.

J. Khanna, concurred with the majority decision but delivered a separate judgment.

#### **Conclusion :**

It is true that According to Article 368 of Indian Constitution, Parliament has power to amend the constitution but it cannot change the Basic Structure of the Constitution, because Constitution of India is a basic law of land.

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