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## Is Law As Perfect As Science?

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### Abstract

There are lakhs of suits both civil and criminal files with various courts right from Magistrate Courts to Supreme Court. Actually, the cases should be settled within the frame work of law of limitation. In Indian Courts, the losing party appeals to higher courts where occasionally trial court judgments are reversed and its superior court upholds the judgement of trial court. The basic structure doctrine is an Indian judicial principle. Courts in India have failed to come to a common consensus in defining most of the Acts. The legal system is not as perfect as science. Law is always treated as a Social Science.

**Keywords:** Basic Structure Doctrine, Fundamental Rights, Judgments, Judicial System

### Introduction

Ever since Indian Constitution was approved on 29<sup>th</sup> November, 1949 and brought into operation with effect from 26-01-1950 which date is declared as Indian Republic Day, there are lakhs of suits both civil and criminal files with various courts right from Magistrate Courts to Supreme Court. These cases are not disposed of quickly and timely due to incessant adjournments, lack of evidence and death of litigants, change of judges dealing with allotted cases and some other reasons. The abnormal delay hinders justice to the genuine parties of the cases. Actually, the cases should be settled within the frame work of law of limitation. It may be noted in this connection regarding disposal of cases in American Courts. How justice can be expedited is illustrated by the American practice. In USA, a civil suit may not take more than six months for its disposal. The Speedy Trial Act requires a criminal case to be tried within a total of one hundred days. There is also a law which says that the charge must be brought before the court within thirty days, failing which the case is dismissed (Indian Administration by Shriram Maheshwari). In Indian Courts, the losing party appeals to higher courts where occasionally trial court judgments are reversed and its superior court upholds the judgement of trial court. On certain reasons, the judgements in the same court are reversed upon a review petition filed by the

losing party. A detailed study is made hereunder on Basic Structure Doctrine. Management of Constitution has taken several turns and twists by the decision makers which often leads to conflicts and rests disharmony, disparity, confusion, chaos. Arguments often end up by pointing out who is wrong and if matters are discussed in a congenial and convergent atmosphere, it will end up by searching where and what is wrong. This is common sense is absent in almost all the organisations. This type of attitude among the people, especially at the helm should be done away with to establish peaceful environment around us.

### **Management of Constitution**

There are umpteen definitions on Management expounded by experts in all fields. To sum up, Management can be stated as process of designing and maintaining an environment in which individuals working together in groups efficiently accomplish selected goals. Management of Constitution is that how the provisions of it are interpreted differently and sometimes with deviations in order to suit the cases concerned. When Rule of Law is applicable to all irrespective of the position, is it observed in letter and spirit? It is left to the wisdom of the concerned.

### **Basic Structure Doctrine**

The basic structure doctrine is an Indian judicial principle that the Constitution of India has certain Basic Features that cannot be *altered or destroyed through amendments by the Parliament*. Key among these basic features, are the Fundamental Rights granted to individuals by the Constitution. The doctrine thus forms the basis of a limited power of the Supreme Court to review and strike down constitutional amendments enacted by the Parliament which conflicts with or seek to alter this “basic structure” of the Constitution. *The basic features of the Constitution have not been explicitly defined by the Judiciary* and the claim of any particular feature of the Constitution to be a “basic” feature is determined by the Court in each case that comes before it.

### **Fundamental Rights**

In 1967, the Supreme Court reversed its earlier decisions in Golaknath versus State of Punjab. It held that Fundamental Rights included in Part III of the Constitution are given a “transcendental”

position and are beyond the reach of Parliament. It also declared any amendment that “takes away or abridges” a Fundamental Right conferred by Part III as unconstitutional. Six years later in 1973, the largest ever Constitution Bench of 13 judges heard arguments in Kesavananda Bharati Vs. State of Kerala (case citation AIR 1973 SC 1461). The Supreme Court reviewed the decision in Golaknath versus State of Punjab and considered the validity of the 24<sup>th</sup>, 25<sup>th</sup>, 26<sup>th</sup> and 29<sup>th</sup> Amendments. The Court held by a margin of 7-6 that although no part of the constitution including fundamental rights, was beyond the amending power of Parliament (thus overruling the 1967 case), the ‘basic structure of the constitution could not be abrogated even by a constitutional amendment’. The decision of the judges is complex, consisting of multiple opinions taking up one complete volume in the law reporter “Supreme Court Cases”.

In Indira Nehru Gandhi versus Raj Narayan and Minerva Mills versus Union of India, the Constitution Benches of the Supreme Court used the basic structure doctrine to strike down the 39<sup>th</sup> Amendment and parts of 42<sup>nd</sup> Amendment respectively and paved the way for restoration of Indian Democracy.

### Definitions

The basic features of the Constitution have not been explicitly defined by the Judiciary. At least 20 features have been described as “basic” or “essential” by the Courts in numerous cases and have been incorporated in the basic structure. The Basic Structure is defined differently by Supreme Court in different cases as below:

1. Chief Justice S.M. Sikri writing for majority, indicated that the basic structure consists of the following :
  - The Supremacy of the Constitution
  - A republican and democratic form of Government
  - The secular character of the Constitution
  - Maintenance of the Separation of Powers
  - The Federal character of the Constitution
2. Justice Shelat and Grover in their opinion added three features to the CJ’s list.

- The mandate to build a Welfare State contained in the Directive Principle of State Policy.
  - Maintenance of the Unity and Integrity of India
  - The Sovereignty of the country
3. Justice Hegde and Mukherjea, in their opinion, provided a separate and shorter list.
- The Sovereignty of India
  - The Democratic character of the polity
  - The Unity of the country
  - Essential features of individual freedoms
  - The mandate to build a Welfare State
4. Justice Jaganmohan Reddy preferred to look at the preamble, stating that the basic features of the constitution were laid out by that part of the document and thus could be represented by :
- A sovereign Democratic Republic
  - The provision of Social, Economic and Political Justice
  - Liberty of Thought, Expression, Belief, Faith and Worship
  - Equality of status and Opportunity.

### Conclusion

It is observed not only in the above cases, but also in many other cases. Courts in India have failed to come to a common consensus in defining most of the Acts. Moreover, the laws are often failing to set right many social evils. To cite a few examples – Nirbhaya law could not contain the continuance of rape cases. Murders and suicides are increasing despite protection by the Government through its policies and programmes. Drunk drivers have no fear despite punishments to cancel the licences. Court orders to do away with cock fights, Jallikattu, etc. which come under wagering agreements, could not be stopped and a great amount of disrespect is shown to Court directives. Disposal of cases are getting abnormally delayed and thereby justice denied to the genuine parties.

In spite of a strong Constitution, stronger Governments and strongest Judiciary, the country is failing to control the growing maladies. The Supreme Court's position on constitutional amendments laid out in its judgments is that Parliament can amend the Constitution but cannot destroy the "Basic Structure". What does it actually mean? Law is same. All judges and Lawyers studied the same texts and why different opinions? It means, the legal system is not as perfect as science. Law is always treated as a Social Science where 2 x 2 need not be 4 because it always comes under the classification of "Hypothesis". Darwin's theory of human evolution is today questioned as none of our ancestors ever saw or mentioned an ape turned into a man. Hence this theory also comes under verification.

Therefore, the legal principle of estoppel is subject to testing. Criticise the judgment but not the judge. Lengthy arguments in Courts cause adjournments of the cases posted on that day. It is well said that Justice should not only be done, but must also be seen to be done. The judgment is that what judges say it is, Supreme Court had modified its November 2016 interim order and made playing of 52 seconds National Anthem in cinema halls made optional before commencement of every show. One should know that our National Anthem is declared as the best one in the world as per UNESCO. The apex court directive on emission norms of Bharat State-4 (BS-4) vehicles on 'Automatic Head light on" (AHO) with effect from 01-04-29017 during day time also appears to be absurd as felt by the users of vehicles. European countries have low visibility affected by the climate. The regions are cloudy most of the time and rain and snow make things even worse for pedestrians and passers-by. This caused numerous accidents. This kind of climate is not seen in Indian tropical conditions except during the short foggy days. Glowing headlights during bright light affects low performance of battery life. Most of the vehicle users felt it unwise decision. AHO may not avert the accidents. Hope Supreme Court will reverse its opinion.

When four senior judges of Supreme Court dissented publicly in January 2018, the following comments were expressed by some legal experts:

- It is their duty as Supreme Court Judges to protect the Constitution and Democracy.
- If the Judiciary is divided, it will have a direct effect on the very survival of Democracy.

- The full facts are not out in the public domain and may never be.

The conflict expressed by the above four judges is on the Administrative issues of the Chief Justice of India. Their conflict is a disagreement between the judges who perceive that they are in competitive concerns. Conflicts generally exist whenever an action by one party is perceived as interfering with the goals, needs or actions of another party.

To finally conclude, it can be deliberately stated the views of some generalists and specialists:

- How long a judgment is valid? The answer in view of above foregoing, “The judgments are valid until they are reversed”.
- Former President of India Dr. K.R. Narayanan left a question. We have failed the Constitution or Constitution has failed us? This is to be debated.
- Twists and turns based on people, situations, changes, modifications, alterations, etc., are the necessities in the Management of Management.

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