

Vice President's Statement on Basic Structure of The Constitution: Basic Structure of the Constitution cannot be repealed by constitutional amendment

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The concept has evolved gradually based on the judgments of the judiciary from time to time to protect the basic structure, the basic rights of the people and the ideals and philosophy of the Constitution.

The incessant firing at the judiciary by the Union government from the shoulders of, first, the Union law minister and, then, the Vice-President of the country, began with the collegium system of appointments in the higher judiciary as the target. It has now escalated to the next phase wherein the new target is the idea of judicial review and the power to interpret the Constitution — some of the basic precincts democracies all over the world are built on.

What is the issue?

In the latest volley, Vice-President Jagdeep Dhankhar has questioned the doctrine of basic structure expounded in the 1973 Kesavananda Bharati case verdict of the Supreme Court, calling it a wrong precedent. The 13-member bench had said in its landmark judgment that the Parliament can amend the Constitution, including those parts related to the fundamental rights, but that the “basic structure of the Constitution could not be abrogated even by a constitutional amendment”.

The Vice-President now complains that the doctrine questions the Parliament’s power to amend the Constitution which, according to him, makes it difficult to say “we are a democratic nation”. He has also repeated his criticism of the Supreme Court striking down the National Judicial Appointments Commission Act, 2014, on the plea that it violated the principle of independence of the judiciary which was a basic structure of the Constitution. The judiciary cannot interfere with the law-making powers of the legislature, Mr Dhankhar, who is also the chairman of the Rajya Sabha, insists, reasoning that parliamentary sovereignty and autonomy are quintessential to the survival of democracy and hence cannot be compromised with neither by the executive, nor by the judiciary.

Why was such a statement made by the Vice President?

It cannot be the case that Mr Dhankhar who distinguished himself as an eminent lawyer before he donned the robe of a full-time politician is unaware of the legal thought behind the doctrine of basic structure that the Indian Parliament is a product of the Constitution, and not otherwise, and while the Constitution empowers the Parliament to make laws and even amend the Constitution itself, making fundamental changes to the Constitution will undo the logic of the Constituent Assembly and its product, the Constitution.

Why the controversy over the collegium system?

The government's resentment about the collegium system has in effect led to the piling up of vacancies in high courts and the Supreme Court, and several benches have noted that the delay on the part of the government in vetting the appointments recommended by the collegium has resulted in several worthy lawyers backing off from joining the bench. The court has noted that it will not claim that the collegium system is fool-proof and that the Parliament can bring in a new law after excising the parts which the court had found to be violating the constitutional principle.

Important Judgments of the Supreme Court on the Basic Structure or Principles of the Constitution:

	Case	Supreme Court Decision
1.	Shankari Prasad vs. Union of India, 1951	Supreme Court's decision- Parliament has the power to amend any part of the constitution under Article 368
2.	Sajjan Singh v. State of Rajasthan, 1965	Parliament has the power to amend any part of the constitution under Article 368
3.	Golak Nath Vs. State of Punjab, 1967	The Parliament does not have the power to amend Part III (Fundamental Rights) of the Constitution.
4.	Kesavananda Bharati vs. State of Kerala, 1971	Parliament can amend any provision, but cannot weaken the basic structure.
5.	Indira Gandhi vs. Raj Narayan, 1975	The Supreme Court also reaffirmed its concept of basic structure.
6.	Minerva Mills Vs. Union of India, 1980	The concept of basic structure was further developed by adding 'judicial review' and 'balance between fundamental rights and directive principles' to the basic features.
7.	Kihoto Hollohan vs. Zachillahu, 1992	'Free and fair elections' were added to the basic features.
8.	Indira Sawhney vs. Union of India, 1992	'Rule of law, added to the basic features.
9.	S.R. Bommai vs. Union of India, 1994	Federal structure, unity and integrity of India, secularism, socialism, social justice and judicial review reiterated as basic features

Basic Structure of The Constitution

- The basic structure (or principle) of the Indian Constitution, applicable only to constitutional amendments, states that the Parliament cannot destroy or alter the basic structure of the Indian Constitution. There have been many important decisions of the Supreme Court regarding the basic structure (principle) of the Constitution.
- The Constitution empowers the Parliament and the State Legislatures or Assemblies to make laws within their respective jurisdictions. A bill to amend the constitution can be introduced in the Parliament itself, but this power is not absolute. If the Supreme Court feels that the law made by the Parliament is not in consonance with the Constitution, then it (Supreme Court) has the power to declare it invalid. Thus, to protect the ideals and philosophies of the original Constitution, the Supreme Court laid down the Basic Structure Doctrine. According to the principle, the Parliament cannot alter or destroy the basic structure of the Constitution.

Development of Basic Structure

The term "Basic Structure" is not mentioned in the Constitution of India. The concept evolved gradually with the intervention of the judiciary from time to time to protect the basic rights of the people and the ideals and philosophy of the Constitution.

- The First Constitution Amendment Act, 1951 was challenged in the case of Union of India Vs Shankari Prasad. The amendment was challenged on the ground that it violates Part III of the Constitution and hence should be declared invalid. The Supreme Court held that under Article 368, Parliament has the power to amend any part of the Constitution, including fundamental rights. This decision was also given by the court in the case of Sajjan Singh v. State of Rajasthan.
- In 1967, the Supreme Court overruled its earlier decision in the case of Golak Nath v. State of Punjab. Supreme said Parliament has no power to amend Part III of the Constitution as fundamental rights are paramount and immutable. Article 368, as per the Supreme Court judgement, only lays down the procedure to amend the Constitution and does not give absolute powers to the Parliament to amend any part of the Constitution.

- In 1971, the Parliament had passed the 24th Constitutional Amendment Act. The Act gave full power to the Parliament to make any changes in the constitution including fundamental rights. It also ensured that all constitutional amendment bills would require the assent of the President.
- In 1973, in the case of Kesavananda Bharati v. State of Kerala, the Supreme Court upheld the validity of the 24th Constitutional Amendment Act by reviewing its decision in the Golaknath case. The Supreme Court said that the Parliament has the power to amend any provision of the Constitution but while doing so the basic structure of the Constitution should remain intact. But the Supreme Court did not give any clear definition of basic structure. It said that "the basic structure of the Constitution cannot be abrogated even by a constitutional amendment". Some of the basic features of the Constitution as listed by the judges in the judgment are as follows:
 - ⦿ Supremacy of constitution
 - ⦿ Republican and Democratic Forms of Government
 - ⦿ Secular character of the constitution
 - ⦿ Federal character of the constitution
 - ⦿ Separation of powers
 - ⦿ Unity and Sovereignty of India
 - ⦿ Personal freedom

Main criticisms of the basic structure:

- The common criticism is that this principle has no basis in the language of the Constitution. The theory has no textual basis. There is no provision stipulating that this Constitution has a basic structure and this structure is beyond the competence of the amending power.
- Opponents also believe that the doctrine gives the judiciary the power to impose its philosophy on a democratically constituted government. There is no definite explanation on what exactly the basic structure is, making the doctrine ambiguous.
- In more recent times, this principle has been applied in cases that have been regarded as examples of judicial overreach. Ex: NJAC Bill was declared null and void by SC relying on this principle.

Expected Question

Que. Consider the following-

1. Supremacy of the Constitution.
2. Republican and Democratic Forms of Government.
3. Secular Character of the Constitution.
4. Federal character of the constitution.
5. Separation of Powers.

Which of the above are listed as the basic structure of the constitution?

- (a) 1, 2 and 3
- (b) 2, 3 and 4
- (c) 3, 4 and 5
- (d) 1, 2, 3, 4 and 5

Answer : D

Mains Expected Question & Format

Que.: What do you understand by the principle of basic structure? Throw light on its development and Importance.

Answer Format :

- ❖ Explain the principle of basic structure of the constitution.
- ❖ Discuss its development and importance from time to time.
- ❖ Give a balanced conclusion.

Note: - The question of the main examination given for practice is designed keeping in mind the upcoming UPSC mains examination. Therefore, to get an answer to this question, you can take the help of this source as well as other sources related to this topic.