

Constitutional Legacy of the Basic Structure Doctrine and the Call for Indianising Jurisprudence

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Basic Structure Doctrine Latest News

- At the inauguration of the International Mooting Academy at O.P. Jindal University, Chief Justice of India (CJI) Surya Kant, along with other Supreme Court judges, reflected on the **constitutional legacy**.
- He highlighted the 1973 Kesavananda Bharati judgment, the centrality of the Basic Structure Doctrine, and the evolving idea of 'Indianisation' of the legal system.

Significance of Kesavananda Bharati Judgment

- **Basic Structure doctrine:** It is a legal principle, established by the SC in the landmark 1973 case of Kesavananda Bharati v. State of Kerala, that states the fundamental features of the Constitution **cannot be amended** by Parliament.
- **Basic Structure as constitutional conscience:**

- CJI described the Basic Structure Doctrine as “the conscience that keeps our democracy from drifting into absolutism.”
- The doctrine is not a mere precedent but a **foundational affirmation** of constitutionalism and rule of law.
- **An act of constitutional archaeology:**
 - The CJI said the doctrine was not “judicial fancy” but an uncovering of principles embedded within the Constitution.
 - Judges “unearthed” its inherent moral core: liberty, equality, fraternity, human dignity.
- **The living constitution:**
 - The Constitution’s strength lies not in rigidity but its ability to adapt without losing moral compass.
 - Each generation must interpret it as a “**living charge**”, not a frozen document.

Judicial Perspectives on Basic Structure

- **Judicial independence and rule of law (Justice B.V. Nagarathna):**
 - The doctrine flows from judicial independence, immune from political pressure.
 - It resulted in the protection of the **core features** (supremacy of Constitution, separation of powers, fundamental rights, judicial review) of the Constitution.
- **Constitutional supremacy (Justice P.S. Narasimha):** Basic Structure is not judicial supremacy but affirmation of constitutional supremacy.
- **Natural rights foundation (Justice M.M. Sundresh):** Basic Structure was never defined because it existed as a natural right embedded in justice, liberty, and equality.

Kesavananda as a Moral Milestone (CJI)

- **Resilience of Indian democracy:**
 - The judgment proved that a young republic could assert a **moral conscience** comparable to older democracies.
 - It showcased India’s constitutional culture that bends without breaking.
- **Symbolism - The constitutional khaat:**
 - The constitution is like a khaat (text = frame; institutions = legs).
 - Restraint, balance, moral discipline are interlaced ropes that hold everything together.

Indianisation of the Legal System

- **Swadeshi jurisprudence:**
 - The SC noted that despite influences from UK and US, Indian interpretation has developed a distinct ‘swadeshi’ colour.
 - The government also endorsed building a unique Indian jurisprudence.
- **Earlier calls for indianisation:**
 - **Justice P.N. Bhagwati (1986):** India must not rely on “crutches of foreign legal order”.
 - **Justice N.V. Ramana:** Indianisation needed for easy access to justice, especially for rural litigants.
 - **Justice S.A. Bobde:** Indian texts already reflected concepts such as privacy.

- **Cases citing Indian tradition:** Decriminalising adultery and **Sabarimala** temple entry to women of a certain age quoted heavily from the Manusmriti.
- **Decolonising Indian legal thought:** Justice S. Abdul Nazeer criticized over-reliance on colonial jurisprudence and urged recognition of ancient Indian legal thinkers: Manu, Kautilya, Yajnavalkya, Brihaspati, Narada, etc.

Technological Modernisation of Justice System

- **PM (Narendra Modi):** Called for “**ease of justice**” even for the poorest. Highlighted virtual hearings, translated judgments for greater accessibility.
- **Union Law Minister (Arjun Ram Meghwal):** Judicial competence now requires e-courts, **AI-enabled systems**. Invoked B.R. Ambedkar’s warning: “Freedom is not a licence to do whatever we want.”

Key Challenges

- **Balancing amendability with constitutional stability:** Reconciling Parliament’s power to amend with preservation of Basic Structure.
- **Avoiding judicial overreach vs. ensuring constitutional supremacy:** Maintaining legitimacy of judicial review without perceptions of activism.
- **Indianisation vs. universal constitutional values:** Integrating indigenous traditions while upholding modern democratic principles.
- **Bridging the accessibility gap:** Ensuring that technology-driven reforms reach rural and marginalised populations.

Way Forward

- **Strengthening constitutional culture:** Promote civics education and constitutional awareness at all levels.
- **Continued modernisation:** Expand e-courts, digital filing, translation tools, and AI-based case management.
- **Developing native jurisprudence:** Encourage academic engagement with ancient Indian legal principles while retaining universal constitutional ethics.
- **Preserving institutional independence:** Protect judiciary from political interference to uphold rule of law.
- **Harmonising tradition with modernity:** Draw from Indian intellectual heritage without compromising rights-based democratic framework.

Conclusion

- The **enduring centrality** of the Basic Structure Doctrine is not merely as a judicial creation but as the moral anchor of Indian democracy.
- The Kesavananda Bharati judgment remains **a guiding force** as India navigates modernisation, institutional reforms and debates on Indianising its legal system.

- The call is for a justice system that is technologically advanced, socially accessible, constitutionally rooted, and culturally resonant, ensuring that the Republic continues to uphold liberty, equality, fraternity, and human dignity.

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