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THE ULTIMATE PRECEDENCE IN LAW SCIENCES: FLEXIBLE STRUCTURE DOCTRINE AS THE NEW LEGAL PARADIGM

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A. Abstract:

This paper critically reexamines the Kesavananda Bharati judgment of 1973, which introduced the "basic structure doctrine" as a cornerstone of Indian constitutional law. While acknowledging its historical significance, the paper challenges the rigidity of the doctrine and advocates for a "flexible structure doctrine" that prioritizes adaptability, inclusivity, and the welfare of society. By proposing a framework that requires unanimous approval from all three branches of government for constitutional amendments, it ensures balanced decision-making and dynamic governance. This transformative approach redefines constitutional jurisprudence, establishing a timeless precedent in law sciences and setting the ultimate standard for governance in an evolving world.

B. Introduction:

The Kesavananda Bharati v. State of Kerala case, adjudicated by the Supreme Court of India in 1973, stands as a pivotal moment in constitutional law, not only within India but also influencing jurisprudence globally. This landmark judgment introduced the **Basic Structure Doctrine**, establishing that while Parliament holds extensive authority to amend the Constitution, it cannot alter its fundamental framework.

i. Background of the Case

In 1970, Kesavananda Bharati, the head of the Edneer Mutt, a Hindu monastic institution in Kerala, challenged the Kerala government's attempts to impose restrictions on the management of religious property under the Kerala Land Reforms Act, 1963. Initially centred on property rights, the case's scope expanded to question the extent of Parliament's power to amend the Constitution, especially concerning fundamental rights.

ii. Constitutional Amendments in Question

The case scrutinized several constitutional amendments:

- **24th Amendment (1971):** Asserted Parliament's authority to amend any part of the Constitution, including fundamental rights.
- **25th Amendment (1972):** Introduced Article 31C, prioritizing certain Directive Principles over fundamental rights and limiting judicial review.
- **29th Amendment (1972):** Added Kerala land reform acts to the Ninth Schedule, aiming to shield them from judicial scrutiny.

iii. Supreme Court's Judgment

On April 24, 1973, a 13-judge bench delivered a split verdict (7-6 majority), articulating the Basic Structure Doctrine:

- **Parliament's Amending Power:** While Parliament can amend the Constitution under Article 368, it cannot alter its "basic structure."
- **Validation and Invalidation:**
 - Upheld the 24th Amendment, affirming Parliament's power to amend fundamental rights.
 - Struck down parts of the 25th Amendment that curtailed judicial review, deeming them violative of the basic structure.

iv. Defining the Basic Structure

The Court identified several elements constituting the Constitution's basic structure, including:

- Supremacy of the Constitution
- Republican and democratic form of government
- Secular character of the Constitution
- Separation of powers among the legislature, executive, and judiciary
- Federal character of the Constitution
- Protection of fundamental rights

v. Impact and Significance

The Kesavananda Bharati judgment has had profound implications:

- **Judicial Review:** Empowered the judiciary to invalidate constitutional amendments that infringe upon the basic structure, ensuring a check on parliamentary authority.
- **Global Influence:** The Basic Structure Doctrine has been adopted in other jurisdictions, such as Bangladesh, where the Supreme Court invoked it in **Anwar Hossain Chowdhury v. Bangladesh (1989)** to strike down amendments curtailing judicial powers.

- **Constitutional Balance:** Established a balance between Parliament's power to amend the Constitution and the preservation of its core principles, safeguarding democratic governance.

vi. Subsequent Developments

The doctrine has been reaffirmed in various cases, notably:

- **Indira Nehru Gandhi v. Raj Narain (1975):** Applied the Basic Structure Doctrine to invalidate clauses of the 39th Amendment affecting free and fair elections.
- **Minerva Mills Ltd. v. Union of India (1980):** Reiterated that amendments destroying the Constitution's essential features are invalid.

The Kesavananda Bharati case remains a cornerstone of constitutional law, underscoring the inviolability of the Constitution's fundamental tenets. It serves as a testament to the judiciary's role in upholding the supremacy of the Constitution and protecting democratic values against potential legislative overreach.

C. Observations & Discussions:

i. There's nothing like "Basic Structure Doctrine"

The Keshavananda Bharati vs. State of Kerala judgment, with its "basic structure doctrine," has been widely regarded as a landmark case in Indian constitutional law. However, it is time to challenge and critically reassess this precedent for its underlying assumptions about governance and constitutional sanctity.

The Supreme Court's assertion that the Constitution's "basic structure" is immutable assumes that the Constitution, as drafted, is supreme and untouchable. But **jurisprudence, not the Constitution, should be supreme.** What is "right" and "just" must guide governance, not the rigid sanctification of a document written in a specific historical context. Constitutions, like all human constructs, can and must evolve when they are found fundamentally lacking or outdated.

The **basic structure doctrine** also presumes that concepts like secularism and separation of powers are universally applicable and inviolable. But history tells us otherwise. Monarchies and centralized systems without strict separation of powers have often demonstrated stability, efficiency, and cultural cohesion. For example:

- Monarchies like ancient China or pre-revolutionary Europe showcased governance models that thrived for centuries.

- Modern constitutional monarchies, such as in the UK, blend centralized authority with democratic principles effectively.

Moreover, **secularism is not a universal truth**. A nation may choose a religious foundation or maintain secular independence based on its cultural, ethical, and historical identity. The imposition of secularism as a "basic structure" disregards this diversity. Secularism, while integral to many modern constitutions, is not universally applicable nor historically ubiquitous. Several examples illustrate this:

- In ancient civilizations like Egypt, Mesopotamia, and medieval Europe, religion and governance were intertwined. Theocracies, such as the rule of the Pharaohs or the Papal States, demonstrated stability and cultural flourishing for extended periods.
- The Byzantine Empire thrived for over a millennium, integrating religious principles into its governance structure.
- The Islamic Republic explicitly rejects secularism and operates under a theocratic framework. While it faces criticism, it remains an example of a functional government aligned with cultural and religious identity.
- A Buddhist kingdom that integrates spiritual principles into its governance, prioritizing Gross National Happiness over GDP as a measure of progress.

Secularism works well in diverse societies (e.g., India, the USA), but imposing it as a universal truth disregards cultural specificities and historical identities.

Republican governance provides stability through structured representation. It enables a long-term vision, often facilitated by non-partisan decision-making bodies such as senates. Historical examples like Ancient Rome during its early Republic and the United States demonstrate how this system fosters enduring governance. However, republican governance is not without its drawbacks. It carries the risk of elitism and detachment from grassroots needs, as decision-makers may become insulated from the populace. Additionally, bureaucratic inertia inherent in this system can impede timely responses to urgent crises.

Democratic governance, on the other hand, emphasizes direct representation of the populace. It is highly responsive to immediate public sentiment and needs, exemplified by Scandinavian countries where democratic principles enhance social equity and overall societal well-being. Despite its advantages, democracy has its flaws. Populist policies, while appealing in the short

term, can undermine long-term stability. Furthermore, democratic systems are vulnerable to mob mentality or decisions influenced by poorly informed masses, which can lead to suboptimal outcomes.

Certain alternative systems of governance have also demonstrated effectiveness in specific historical and cultural contexts: For instance,

- Constitutional monarchies, such as the United Kingdom, balance democratic institutions with a symbolic monarchy. This hybrid model provides continuity and unity while retaining democratic accountability.
- Similarly, centralized authoritarian models, such as ancient China under Confucian principles, prioritized social harmony and efficient administration. These systems show that alternative forms of governance can achieve stability and progress when tailored to the unique needs of a society.

Fundamental rights, while foundational to democratic governance, have often required change to align with evolving societal values and priorities.

1. South Africa (Apartheid Era):

- Fundamental rights were biased under apartheid laws.
- The new Constitution (1996) introduced an egalitarian framework, erasing discriminatory practices and ensuring equality.

2. United States:

- The Civil Rights Movement of the 1960s forced a re-evaluation of "fundamental rights," leading to the abolition of segregation and the Voting Rights Act.
- The Second Amendment debate today underscores that rights must evolve with societal needs.

3. India:

- The right to property was removed as a fundamental right through the 44th Amendment (1978), reflecting the need to prioritize social justice over absolute property rights.

ii. The Dynamic Nature of Constitutions

Every constitution must be a living document. The rigidity implied by concepts like the basic structure doctrine should not prevent necessary reforms that align with contemporary justice and societal needs. Examples include:

1. Post-WWII, the Japanese Constitution has remained unchanged, even as critics argue it does not reflect modern geopolitical realities.
2. The German Constitution includes provisions for amendments, reflecting its adaptability to changing circumstances.

The principle of what is “right” or “just” must take precedence over textual rigidity. This philosophy aligns with the idea of natural law and justice. To this end:

1. **Every word** of the Constitution must be open to change if it serves the greater good.
2. Governance must prioritize:
 - Justice over legal formalism.
 - Pragmatism over ideological dogma.

iii. Summary of Proposed Framework for Future Constitutions and Governance Paradigm

The framework emphasizes the need for adaptability and inclusivity in constitutional design, ensuring it evolves with societal needs while safeguarding justice and progress.

1. **Universal Governance Principles:** Constitutions must prioritize universal values like justice, equity, and public welfare to remain relevant and inclusive.
2. **Amendment Mechanism:** A robust amendment process requiring consensus across the legislative, judicial, and executive branches ensures balanced decision-making, preventing overreach by any single entity.
3. **Periodic Review:** Mandatory reviews every 25 years will help assess the constitution's relevance and align it with contemporary challenges and societal changes.

A New Governance Paradigm

The governance model advocates granting legislatures the authority to amend constitutions when necessary for the nation's best interest. This prevents judicial overreach from constraining legislative actions and undermining democracy. A unanimous approval mechanism across all three branches of government ensures accountability, inclusivity, and power balance.

Key Recommendations:

- **Reject Rigidity:** Constitutions should remain dynamic, capable of adapting to changing times and societal needs.

- **Prioritize Governance Principles:** Focus on justice, progress, and public welfare over rigid adherence to documents.
- **Encourage Innovation in Governance:** Establish a globally applicable model for legal and political systems that promotes innovation and inclusivity.

This summary encapsulates the original ideas, retaining key points and emphasizing their significance in constitutional and governance reforms.

D. Final Discussions:

The Kesavananda Bharati judgment of 1973 was often acknowledged as groundbreaking for introducing the "basic structure doctrine." But it has been shown that this decision was fundamentally flawed. The so-called "basic structure doctrine" is neither basic nor universally applicable, as it imposes rigidity that contradicts the dynamic and evolving nature of governance and justice.

The core premise of the basic structure doctrine rests on the immutability of certain constitutional principles, an idea that is untenable. Constitutions, as human constructs, must be adaptable to changing societal needs and values. In my view, the doctrine fails to acknowledge that every word of a constitution must be open to scrutiny and change if it serves the greater good. This is why I advocate for a shift from a rigid "basic structure doctrine" to a "flexible structure doctrine," which recognizes the necessity of constitutional evolution.

i. A Groundbreaking but Incorrect Decision

Although the Kesavananda Bharati case is historically significant, it's actually a rigid interpretation of constitutional sanctity that undermines the principles of justice, pragmatism, and inclusivity. The judgment enshrined the supremacy of the judiciary over legislative intent, leading to judicial overreach that stifles legislative and executive flexibility. In my opinion, this rigidity has become a barrier to necessary reforms, preventing governance structures from aligning with contemporary realities.

ii. The Real Truth: Flexible Structure Doctrine

I propose a transformative shift to what I call the "flexible structure doctrine." Basically, this means:

1. Every element of a constitution should be subject to change if it aligns with the principles of justice and societal welfare.
2. Amendments must involve consensus across all three branches of government—legislative, judicial, and executive—to ensure accountability, inclusivity, and balanced power.
3. Governance should prioritize dynamic adaptation over rigid adherence to outdated principles, focusing on the welfare of the people above all.

If the principles outlined here are implemented, one can confidently say that it would represent a genuine breakthrough in constitutional law. Unlike the Kesavananda Bharati judgment, which constrained progress through its rigid doctrine, the flexible structure doctrine would advocate and usher in a new era of accountability, flexibility, and inclusivity. By requiring unanimous approval from all three branches of government for constitutional amendments, this framework ensures that decisions are made in the nation's best interest, balancing the diverse needs of society.

iii. Vision for the Path Forward

This vision is not just a critique of the past but a roadmap for the future. A proposal is for periodic reviews of constitutions every 25 years to ensure relevance and alignment with societal progress. By rejecting rigidity and embracing innovation, this model sets a precedent for nations worldwide to adopt governance systems that prioritize justice, equity, and public welfare.

While the historical significance of the Kesavananda Bharati case is acknowledged, it pales in comparison to the transformative potential of the flexible structure doctrine. If embraced, this approach would redefine constitutional law and governance, marking the most significant advancement in human jurisprudence and securing what I see as the ultimate truth for generations to come.

E. Conclusion:

The Kesavananda Bharati judgment of 1973, while groundbreaking, was fundamentally flawed in its rigidity, as the "basic structure doctrine" fails to embrace the dynamic nature of

governance. This paper introduces the "flexible structure doctrine," a transformative framework advocating adaptability, inclusivity, and unanimous approval across all branches of government for constitutional amendments. By prioritizing justice, progress, and societal welfare, this approach redefines constitutional law, representing a true 360-degree breakthrough in legal sciences and establishing the ultimate truth for future governance.

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