

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 6 | Issue 1

2023

© 2023 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to submission@ijlmh.com.

The Indian Constitution's Basic Structure: It's Development into the Foundation of the Constitution

PRAKHAR SINGH¹

ABSTRACT

Our legislators crafted the Indian Constitution and declared it to be the ultimate law of our nation in order to prevent any leadership from compromising the basic principles upon which India's democracy was built. However, because the Constitution did not explicitly define the parameters of the Parliament's modifying power, elected regimes routinely used this option to restrict people's rights under Article 368 of the Constitution this abuse remained until the Indian Constitution took precedence over the amending powers of the Parliament when the Supreme Court held in "Kesavananda Bharati vs. State of Kerala (1973)" that Article 368 did not grant the Parliament the right to change the "Basic Structure of the Constitution" Following that ruling, the Basic Structure Doctrine has frequently been cited as a defence against the misuse of legislative powers by government apparatus in a number of political debates and judicial disputes.

But how did this long and complicated journey result in the creation of the biggest safeguard of our Constitution against parliamentary powers? Furthermore, how exactly did this Doctrine serve its purpose? This paper examines the evolution of the Basic Structure Doctrine- right from the pre Kesavananda case position to the judgement day of that landmark case. It also analyses the further developments and usage of this Doctrine after 1973 towards becoming the pillar of our Constitution- a pillar which puts citizens' rights and the idea of democracy over any government or legislator in the biggest democracy of the world.

Keywords: *Constitution, Basic Structure, Parliament, Supreme Court, Democracy.*

I. INTRODUCTION

Our Constitution makers included the provision of making amendments in the Constitution in Article 368² to ensure that the supreme law of our country doesn't remain rigid and can encompass and adapt to the ever-changing notions of democracy and citizen-rights. But this power has constantly been a centre of conflict between the Parliament and the Supreme Court

¹ Author is a student at Amity Law School, Lucknow, India

² India Const. art. 368.

of India, where the Parliament has used this power arbitrarily to curb the rights of citizens while the Supreme Court has placed reasonable restrictions on it in a slew of court cases. This conflict resulted in the Supreme Court tilting the scales in favour of the supremacy of Indian Constitution over parliamentary powers in *Kesavananda Bharati vs. State of Kerala (1973)*³ by declaring that no amendment can change the “Basic Structure or Framework” of the Constitution. This came to be known as the “Basic Structure Doctrine” which included several constitutional provisions which are so fundamental to the Constitution that they can’t be amended by the Parliament. After that judgement, the doctrine has been invoked in various cases and political debates against the arbitrary use of legislative powers, while various additions have been made to the doctrine itself to include more constitutional provisions- thus ensuring that no parliamentary majority can trample the idea of Indian democracy.

“The Constitution’s authors worked diligently to provide the people with the best possible document. However, they omitted an unambiguous provision under Article 368 that would have limited the exercise of the Parliament’s modifying power. Using its constitutive authority, Parliament adopted the intricate Ninth Schedule in order to expedite agrarian changes by barring judicial review. The regulated Constitution became the uncontrolled one over time as a result of the Ninth Schedule. The Supreme Court created the new doctrine known as “Basic Structure” in the Kesavananda Bharati case in 1973 as a result, placing implied restrictions on the Parliament’s ability to change the Constitution. As a result, the uncontrolled Constitution became controlled. Yet the Supreme Court hasn’t established the benchmark for what counts as a fundamental structure. Even a single judge was granted the authority to enact an implicit amendment to the Indian Constitution, which is unfair according to the doctrine of the separation of powers, which is also one of the fundamental components of the Indian Constitution. The Judiciary also refrained from stating that the Constitutional Bench should decide on issues pertaining to basic structure.”⁴

II. HISTORICAL BACKGROUND- PRE-KESAVANANDA PERIOD

The judiciary and Parliament were often at conflict with one another on the primacy of the Constitution prior to the Kesavananda Bharati ruling. There were numerous occurrences involving parliamentary statutes and court proceedings in this conflict.

(A) Article 31, The 1st Constitutional Amendment And The IX Schedule

³ Kesavananda Bharati Sripadagalyaru & Ors. Vs. State of Kerala & Anr. , AIR 1973 SC 1461.

⁴ Dr. N. Sathish Gowda, Constitutional basis for basic structure doctrine in India: Effects and applicability, MANUPATRA, <http://docs.manupatra.in/newslines/articles/Upload/4715CF34-CCD9-4E2E-8072-71C0795456B B.pdf> (last visited Feb. 9, 2023).

The Constitution of India, upon its enactment in 1950, had declared “Right to Property” as a fundamental right in its Article 19(1) (f)⁵ while Article 31⁶ also guaranteed that no person shall be deprived of his/her property, except by authority of law. The latter also mentioned provisions for compensation if a citizen’s property is acquired by the government. However, the 1st Five Year Plan aimed to end the evil Zamindari System by abolishing the presence of intermediaries and giving the ownership of agricultural land to the actual tiller. Consequently, certain Zamindari Abolition Acts were enacted in various provinces. However, the zamindars challenged the constitutionality of these reforms because their fundamental right to property is being taken away. Several High Courts passed contrasting judgements on the issue.⁷ E.g.- The Allahabad HC upheld the Zamindari Abolition Act of United Province⁸ while Patna HC, on the other hand, declared the Bihar Land Reforms Act as unconstitutional⁹- which prompted the Parliament to pass the 1st Constitutional Amendment in 1951¹⁰ and insert Article 31A¹¹ and 31B¹² in the Constitution. The former held that acquisition of private property by the government would be immune to Article 14¹³ and 19¹⁴. The latter embedded the IX Schedule into the Constitution which consisted of a list of acts that couldn’t be challenged in any court of law thus rendering the judiciary powerless while the Parliament could make or amend any law without a care for its constitutional validity.

(B) The Shankari Prasad And Sajjan Singh Verdicts

In the case *Shankari Prasad vs. Union of India (1951)*¹⁵ it was held that “it was evident that there existed a conflict between Article 13¹⁶ and Article 368 of the Indian constitution. On one hand Article 368 gave legislature the power to amend the constitution at the same time Article 13 (2)¹⁷ restricted the same. The Supreme Court in this case used the doctrine of harmonious construction in an attempt to resolve the conflicting provisions. It was concluded that the word ‘law’ in Article 13 (2) is for ordinary laws and not constitutional laws. Thereby limiting the

⁵ India Const. art. 19, § 1, cl. f.

⁶ India Const. art. 31.

⁷ Abolition of Zamindari System, LEGALDESIRE, <https://legaldesire.com/abolition-of-zamindari-system/> (last visited Feb. 9, 2023).

⁸ Upheld U.P. Zamindari Abolition and Land Reforms Act, (1950) as constitutional in *Raja Suryapal Singh & Ors. Vs. The Uttar Pradesh Govt.*, AIR 1951 All 674.

⁹ Declared Bihar Land Reforms Act, (1950) unconstitutional in *M.D. Sir Kameshwar Singh Vs. The State of Bihar*, AIR 1951 Pat 91.

¹⁰ The Constitution (First Amendment) Act, (1951).

¹¹ India Const. art. 31, § A.

¹² India Const. art. 31, § B.

¹³ India Const. art. 14.

¹⁴ India Const. art. 19.

¹⁵ *Shri Shankari Prasad Singh Deo vs. Union of India & State of Bihar*, AIR 1951 SC 458.

¹⁶ India Const. art. 13.

¹⁷ India Const. art. 13, § 2.

extent of ‘law’ under Article 13 (2). This also meant that the parliament had exclusive power under Article 368 to amend the constitution including the fundamental rights under part III of the constitution. The apex court validated Article 31 A&B and also upheld the validity of the agrarian land reforms”.

In *Sajjan Singh vs. State of Rajasthan (1965)*¹⁸, when a request to revisit the Shankari Prasad decision was to be entertained, the SC passed a similar decision by a vote of 3:2. Nevertheless, in this case, two judges (Justices Hidayatullah and Mudholkar) issued a dissenting opinion in which they expressed their reservations about the validity of the Shankari Prasad decision and held that Article 368 does not give the Parliament the authority to amend Part III of the Constitution. Although unpopular at the time, this minority viewpoint served as the starting point for the discussion that finally resulted in the creation of the “Basic Structure Doctrine”.

(C) The Golaknath Verdict And The Aftermath

The minority view of Sajjan Singh case became the majority view of SC by 6:5 in *Golaknath vs. State of Punjab (1967)*¹⁹ where the court reversed its previous decision and held that Article 368 doesn’t empower the Parliament to amend Part III and that Fundamental Rights conferred by the Constitution are permanent. This verdict established the supremacy of Constitution over the Parliament.

To counter this, the Parliament introduced various laws which aimed to nationalise banks²⁰ and also abolish the privy purses²¹. SC struck down both moves²²- putting itself at loggerheads with the Parliament over the correct interpretation of Constitution. In retaliation, the then Prime Minister Indira Gandhi abruptly dissolved the Parliament and called for ‘snap elections’. The constitution became the hot topic of 1971 general elections, with eight out of ten manifestos promising changes in the Constitution to restore Parliament’s supremacy.

“The Indian National Congress (INC) returned to power and to fulfil its promises of socialism- it passed a slew of constitutional amendments between July 1971 and June 1972 to restore the Parliament’s supremacy over the Constitution²³. These amendments restored the Parliament’s power to amend any constitutional provision- including Part III²⁴, bound the President to

¹⁸ Sajjan Singh vs. State of Rajasthan, AIR 1965 SC 845.

¹⁹ I.C. Golak Nath & Ors. Vs. State of Punjab & Anr. , AIR 1967 SC 1643.

²⁰ Through The Banking Companies (Acquisition and Transfer of Undertaking) Act, (1969).

²¹ Through an Ordinance signed by President under India Const. art. 366, § 2.

²² In Rustom Cavasjee Cooper Vs. Union Of India, AIR 1970 SC 564 and H. H. Maharajadhiraja Madhav Rao Jiwaji Raoscindia Bahadur Vs. Union Of India, AIR 1971 SC 530 respectively.

²³ Basic Structure Doctrine, GKToday, <https://www.gktoday.in/topic/basic-structure-doctrine/> (last visited Feb. 10, 2023).

²⁴ Through The Constitution (Twenty-fourth Amendment) Act, (1971).

provide his assent to any amendment bill that was passed by both the Houses²⁵, made Articles 14 and 19²⁶ subordinates to Articles 39(b)²⁷ and 39(c)²⁸ - which state the socialistic goals of the government under Directive Principles of State Policy in Part IV and placed several restrictions on the Right to Property²⁹, and These amendments also abolished privy purses³⁰ and placed several land reform legislations under Schedule IX- thus making them immune to judicial review³¹.

All these developments from our independence till 1972 made the Constitution inferior to the Parliament's will and consequently raised the demand for a permanent solution to this power-struggle.

(D) The Kesavananda Judgement- Declaration Of Basic Structure Doctrine

In the case of *Kesavananda Bharati vs. State of Kerala*³², it was held by “the Supreme Court that the Parliament has the right to change the provision of the constitution but it shall not change the basic structure of the Indian constitution. The majority bench held that the basic structure of the constitution, meaning thereby the true essence of the constitution, shall be changed by the Parliament under Article 368 of the constitution of India. Thus, the 24th Amendment Act was completely upheld by the court and two parts of the 25th Amendment were found ultra and intra-vires”.

a. Background of the case

Kesavananda Bharati was a Hindu monk who headed the Edneer Mutt situated in Kasargod, Kerala. When the Kerala Government tried to impose restrictions on his management of the mutt through some land reform legislations³³, he filed a case in SC against this move and also against the placing of these land reform legislations in the IX Schedule to make them immune to judicial review³⁴. The case was heard by the largest-ever constitution bench in India, comprising of 13 judges.

b. Defining the basic structure doctrine

There was no unanimity in the majority view either as all judges had different views about

²⁵ *Id.*

²⁶ *Id.*

²⁷ India Const. art. 39, § B.

²⁸ India Const. art. 39, § C.

²⁹ Through The Constitution (Twenty-fifth Amendment) Act, (1971).

³⁰ Through The Constitution (Twenty-sixth Amendment) Act, (1971).

³¹ Through The Constitution (Twenty-ninth Amendment) Act, (1972).

³² *Kesavananda Bharati Sripadagalvaru & Ors. Vs. State of Kerala & Anr.*, AIR 1973 SC 1461.

³³ Through The Kerala Land Reforms (Amendment) Act, (1969) and the Kerala Land Reforms (Amendment) Act, (1971).

³⁴ Through The Constitution (Twenty-ninth Amendment) Act, (1972).

which provisions of the Constitution should be included in the Basic Structure Doctrine³⁵.

“According to Justice Sikri, the Basic Structure included the following provisions-

- The Supremacy of the Constitution
- Republican and Democratic form of Government
- Secular character of the Constitution
- Separation of powers between the Legislature, Executive and Judiciary
- Federal character of the Constitution

Justice Shelat and Grover added two more features-

- The mandate to build a Welfare State contained in the Directive Principles of State Policy
- Unity and Integrity of India

Justice Hegde and Mukherjea made a different list altogether-

- Sovereignty of India
- The Democratic Character of the Polity
- Unity of India
- Essential features of the Individual Freedoms secured to the citizens
- The Mandate to build a Welfare State

Justice Reddy identified the basic provisions of the Constitution as parts of the Preamble-

- Sovereign Democratic Republic
- Parliamentary Democracy
- Three Organs of the State
- He also said that the Constitution would not be itself without the fundamental freedoms and the directive principles.

Justice Khanna agreed to all the provisions laid down by the other six judges and stated that the word ‘amendment’ meant that the Constitution must survive without losing its identity, which meant that the Basic Structure or framework of the Constitution must survive any constitutional

³⁵ Iftikhar Hussain Bhat, *Doctrine of Basic Structure as a Constitutional Safeguard in India: Reflection in the Jurisprudence of Other Countries*, 1 IJRHS 30 (2013).

amendment”³⁶.

In light of this, the Supreme Court enhanced the authority of judicial review while also placing some restrictions on the constituent powers of the Parliament, even if it upheld Parliament’s supremacy to amend any provision of the constitution.

III. IMPORTANCE OF FUNDAMENTAL RIGHTS

“Indian citizens are entitled to six basic freedoms. These rights are unique in that without them, no one can live in a democracy. Democracy cannot operate if people lack rights. For society to grow morally and materially, basic rights are required. While the state may temporarily suspend these rights during the declaration of an emergency in order to maintain public order, security, and other circumstances, even though these rights are safeguarded by the Constitution. These rights are also justiciable, which means that the courts have the authority to defend and uphold those rights in the event that they are violated. Fundamental rights for human growth satisfy a number of essential and fundamental conditions for a good life. For democracy to exist, countries like India, Japan, France, Switzerland, and many more countries must be democratic. The Indian Constitution's Part III has various provisions establishing fundamental rights. Citizens may exercise these rights, subject to some very explicit limitations.”

IV. FURTHER DEVELOPMENTS-CONSEQUENT CASES

Following the Kesavananda decision, the “Basic Structure Doctrine” has been upheld and expanded in several cases over the years, all the while serving as a safeguard against the Parliament’s abuse of its legislative authority to tramp on the constitutionally given civil rights. The following are some of these landmark cases:

(A) The election case verdict

“After 1973, the next major case revolving around the basic structure was *Indira Nehru Gandhi vs. Raj Narain (1975)*³⁷, popularly known as the Election Case. Raj Narain had challenged the constitutional validity of the 39th Constitutional Amendment passed in 1975³⁸ which inserted Article 329 A³⁹ into the constitution and argued that it violated the “Basic Structure Doctrine”. As per Clause (4) of the Article⁴⁰, a candidate’s election as the Prime Minister can’t be legally challenged. This amendment was made in response to a plea filed in SC against Allahabad HC’s

³⁶ Arun Soni, Amendment of Indian Constitution - Article 368, LEGALSERVICEINDIA, <https://www.legalserviceindia.com/article/170-Article368.html> (last visited Feb. 11, 2023).

³⁷ *Indira Nehru Gandhi vs. Shri Raj Narain & Anr.*, AIR 1975 SC 2299.

³⁸ The Constitution (Thirty-ninth Amendment) Act, (1975).

³⁹ India Const. art. 329, § A.

⁴⁰ India Const. art. 329, § A, cl. 4.

judgement which dismissed Indira Gandhi's election as the Prime Minister".⁴¹

a. Using The Basic Structure Doctrine

Even though the Supreme Court upheld the amendment, it struck down Article 329A (4) by a majority of 4:1 declaring that it violated the "Basic Structure of Constitution" because it curbed the power of judicial review.

- **Expanding the basic structure doctrine**

Once again, all the judges from the majority expressed different views about the constitutional provisions which should be added to the basic structure⁴²-

"Justice Khanna said that Democracy is a basic feature of the Constitution and includes Free & Fair Elections.

Justice Thomas held that the power of Judicial Review is an essential feature.

Justice Chandrachud listed four basic features which he considered unamendable-

- Sovereign Democratic Republic status
- Equality of Status and Opportunity
- Secularism and Freedom of Conscience and Religion
- Rule of law

CJI Ray opined, that Democracy was a basic feature but **not** Free & Fair Elections".

Hence, even though SC accepted Indira Gandhi's election, this case still provided an opportunity to reaffirm and expand the "Basic Structure Doctrine".

(B) The Minerva Mills and Waman Rao Verdicts

"The 42nd Constitutional Amendment⁴³ declared that no constitutional amendment can be legally challenged⁴⁴ and that there is no limit to the Parliament's constituent powers⁴⁵. Article 31C⁴⁶ was also amended to prohibit any challenge laws made under the Directive Principles of State Policy. This was challenged in *Minerva Mills Ltd. vs. Union of India (1980)*⁴⁷".

41 In Election Petition No. 5 of 1971.

42 Venkatesh Nayak, the Basic Structure of the Indian Constitution, Commonwealth Human Rights Initiative, https://www.humanrightsinitiative.org/publications/const/the_basic_structure_of_the_indian_constitution.pdf (Feb. 11, 2023).

43 The Constitution (Forty-fourth Amendment) Act, (1978).

44 Through the insertion of India Const. art. 368, § 4.

45 Through the insertion of India Const. art. 368, § 5.

46 India Const. art. 31, § C.

47 *Minerva Mills Ltd. & Ors. Vs. Union Of India & Ors.*, AIR 1980 SC 1789.

a. USING THE BASIC STRUCTURE DOCTRINE

By a majority of 4:1, SC struck down clauses (4) and (5) of Article 368 and the amendment to Article 31C as inserted by the 42nd amendment as it violated the “Basic Structure Doctrine”.

b. EXPANDING THE BASIC STRUCTURE DOCTRINE

The Supreme Court also ruled that limited amending power of the Parliament is also a part of the Basic Structure Doctrine and so is the harmony between Fundamental Rights and Directive Principles of State Policy.

c. REAFFIRMING THE BASIC STRUCTURE DOCTRINE

“In *Waman Rao vs. Union of India (1981)*⁴⁸, SC upheld the *Minerva Mills* judgement while also stating that any constitutional amendment or any law placed under the IX Schedule after the *Kesavananda Bharati* judgement can be challenged in court of law because it is either beyond the Parliament’s constituent powers or it damages the Basic Structure of Constitution”.

(C) Other landmark cases and subsequent additions to the doctrine

- “In *S. P. Sampath Kumar vs. Union of India (1987)*⁴⁹, *P. Sambamurthy vs. State of A.P. (1986)*⁵⁰, - Rule of Law and Judicial Review.
- *L.Chandrakumar vs. Union of India (1997)*⁵¹ - Judicial Review by High Courts under Article 226 and by Supreme Court under Article 32.
- In *Coal Fields Ltd. vs. Jaiswal Coal Co. (1980)*⁵² - Effective Access to Justice.
- In *Bhim Singhji vs. Union of India (1985)*⁵³ - The concept of Social and Economic Justice to build a Welfare State”.

V. CONCLUSION

The Constitution of India was established as a guardian of our freedom and rights, but it was the Supreme Court which ensured that this guardian doesn’t have a chink in its armour in the form of Article 368 and that “the Basic Structure Doctrine” serves as an all-powerful shield for the Constitution, our democratic institutions and for every person that lives in the Indian Democracy. As evident, it took decades of political debates, judgements and opinions to arrive at the Basic Structure Doctrine and even more decades to uphold, reaffirm and expand it- a

⁴⁸ Waman Rao & Ors. Vs. Union Of India & Ors., AIR 1981 SC 271.

⁴⁹ S.P. Sampath Kumar vs. Union of India & Ors., AIR 1987 SC 368.

⁵⁰ P. Sambamurthy & Ors. Etc. Etc. vs. State Of Andhra Pradesh, AIR 1987 SC 663.

⁵¹ L. Chandra Kumar vs. Union of India & Ors., AIR 1997 SC 1125.

⁵² Central Coal Fields Ltd. & Anr. Vs. Jaiswal Coal Co. & Ors., AIR 1980 SC 2125.

⁵³ Maharao Sahib Sri Bhim Singhji Etc. Etc. vs. Union of India & Ors. Etc. Etc., AIR 1985 SC 1650.

cycle which continues to this very day and will also continue tomorrow.

This doctrine, ever since its declaration has ensured that the Parliament doesn't get unlimited powers to tamper with the Constitution or to hold citizen rights and freedom in a prison of political whims. The Supreme Court, through the Basic Structure Doctrine, has ensured that the vision of our freedom fighters and nation builders to see a free and equal country doesn't get desecrated by a handful of elected representatives- an event which has continually occurred in the pages of post-independence Indian history and can also occur in the future.
