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With this thought, we hereby present to you

BASIC STRUCTURE DOCTRINE - ORIGIN AND REASONS

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BASIC STRUCTURE DOCTRINE - ORIGIN AND REASONS

“The Kesavananda Bharati ruling, which established the basic structure concept, has made the Indian Constitution stronger. The basic structure doctrine, in her opinion, is a great illustration of transformative Constitutionalism.” – **Justice BV Nagarathna (Judge, SC)**

Abstract:

In the Indian Constitution, the term “Basic Structure” is not stated. The idea was gradually developed, with the judiciary occasionally interfering to defend the fundamental rights of the populace as well as the principles and philosophy underlying the constitution. The Basic Structure concept was established by a judge, according to which some aspects of the Indian Constitution are exempt from the scope of the Indian Parliament’s ability to alter it. The Supreme Court initially acknowledged the term “basic structure” in the famous case of Keshavananda Bharati Sripadagalvaru case (24th April 1973) to restrict the Parliament’s ability to modify the Constitution so that it cannot use its “constituent power” to change the “basic structure of the basic law of the land.” Although an attempt to have it approved under the pretext of “necessary implied restraint on the amending power of the Parliament” was made by M. K. Nambiyar in the Golakh Nath case in 1967, it took the Indian judiciary nearly 50 years to overcome its hesitation and declare in the Keshavananda case what German Professor Dietrich Conrad had already stated in his lecture that he delivered in India in 1965. In this paper, the raised propositions are covered and discussed in several Parts. The constitutional doctrine known as “Basic Structure” is covered in Part II. Part III of the article discusses Shankari Prasad v. Union of India (1951), Part IV discusses Sajjan Singh v. State of Rajasthan (1965), Part V discusses I. C. Golakhnath v. State of Punjab (1967), and Part VI discusses Keshavananda Bharati v. State of Kerala (1973). In Part VII, where the Hon’ble Supreme Court applied the theory of 24th April

1973 in the I. R. Coelho case (2007), the constitutional-unconstitutional game played by Parliament under disguise of the Ninth Schedule of the Constitution was discussed. In Part VIII, the Basic Structure doctrine is discussed in relation to the Pramati Educational and Cultural Trust case (2014), in which the Supreme Court applied the doctrine and ruled that Articles 15(5) and 21-A of the Indian Constitution are in accordance with its essence and do not contravene it. The latest cases were also discussed in this paper. In this Article, We will go into great detail on the development of the basic structure doctrine and the elements of the Indian Constitution that the illustrious courts have deemed to be essential. The Berubari case serves as the beginning point for the author's analysis of the multifaceted aspects of the notion of basic structure, which concludes with a brief look at recent rulings. The author's perspective on the matter is then presented, and the document is concluded with final remarks.

Keywords: Basic Structure, Basic Law, Fundamental Rights, Constituent Power, Keshavananda Bharati, Ninth Schedule, Amendment.

INTRODUCTION

In the Indian Constitution, the term "Basic Structure" is not stated. The idea was gradually developed, with the judiciary occasionally interfering to defend the fundamental rights of the populace as well as the principles and philosophy underlying the constitution. The Basic Structure concept was established by a judge, according to which some aspects of the Indian Constitution are exempt from the scope of the Indian Parliament's ability to alter it.

The constitution must be amended to account for and manage the conflict between the political system and constitutional principles as a result of the changing needs of the public. The Indian Constitution's Article 368 discusses amendments made in response to new difficulties and also takes into account unexpected and unforeseen events that the constitution's authors did not take into consideration. Any modification proposed by the Parliament is examined by the judiciary, which then renders a judgement on its legality. Nevertheless, in the early years of India's independence, the scope of the Parliament's amending powers gave rise to a never-ending dispute between the Parliament and the Supreme Court. The Indian Constitution gives the Parliament and state legislatures the power to pass laws within their respective purviews. This power isn't unqualified. The Constitution gives the judiciary the power to determine whether all legislation are constitutional. If a statute violates any

aspect of the Constitution, the Supreme Court can decide it to be ultra vires or invalid.

The Supreme Court¹ initially acknowledged the term “basic structure” in the famous case of *Keshavananda Bharati v. State of Kerala*² in 1973. Since that time, the Supreme Court has come to be considered as the Constitution’s translator and the final judge of any amendments made by Parliament. As a result, Parliament is no longer allowed to abolish, distort, or alter the Constitution’s core provisions while pretending to do so.

The basic structure theory, which the court advanced, states that any provision of the constitution may be modified by adhering to the process outlined in Article 368. However, nothing in the constitution may be changed in a way that would change its fundamental structure. The idea of basic structure asserts that certain principles set forth in the Indian Constitution, which are the guiding principles for the Parliament, cannot be changed by any amendment. Although the theory did not always exist as it does today, it has been advanced and supported by the nation’s judges over time. Thus, the question arises: Are the Parliament’s modifying powers not subject to any restrictions? If the answer to this question is not “yes,” for whatever reason—for example, because the Constitution’s framers did not intend for such a restriction to exist, in which case they would have included it in the Constitution—then the next question is: How far can the Parliament change the fundamental law of the land? Are there any chances that the modifying power of the Parliament will be exploited under the guise of “constituent power” if there is no restriction on it?³ Through judicial rulings, this paper aims to provide answers to these concerns and others of the same sort.

BACKGROUND

It was disputed that Parliament had the right to change the Constitution, particularly with regard to individuals’ fundamental rights, as early as 1951. Following independence, a number of laws were passed to alter the tenancy and property ownership structures. This was done in consideration of the

¹ Kumar, Virendra. “Basic Structure Of The Indian Constitution: Doctrine Of Constitutionally Controlled Governance [From Kesavananda Bharati To I.R. Coelho].” *Journal of the Indian Law Institute*, vol. 49, no. 3, 2007, pp. 365–98. JSTOR, (27 Oct. 2022), <http://www.jstor.org/stable/43952120>

² (1973) 4 SCC 225: AIR 1973 SC 1461

³ The best illustration is provided by Mrs. Indira Gandhi, the former prime minister of India, who enforced a state of emergency during which time the Forty-Second Constitutional (Amendment) Act, 1976, an attempt to amend the Constitution, was passed. This argument was made by Nani Palkhivala as well in the *Keshavananda Case*, and it ultimately turned up to be accurate.

electoral pledge made by the current government's Congress party to carry out the socialistic objectives of the Constitution [found in Article 39(b) and (c) of the Directive Principles of State Policy], which called for a just distribution of production resources among all citizens and the prevention of wealth concentration in the hands of a small number of individuals. The courts heard cases from property owners who were harmed by these statutes. The courts declared the land reform unconstitutional because they did not adhere to the Fundamental Right to Property.

Through the First⁴ and Fourth Amendments (1951 and 1952, respectively), Parliament added these laws to the Ninth Schedule of the Constitution, effectively removing them from the purview of judicial review and ensuring that any laws included in this Schedule could not be declared unconstitutional⁵. This action was motivated by the unfavourable rulings. The major goal of the Ninth Schedule was to stop the judiciary from undermining the Congress party-led government's plans for a social revolution⁶. Property owners claimed that the constitutional modifications that placed the rules governing land reform to the Ninth Schedule violated Article 13 (2) of the Constitution, which guarded citizens' fundamental rights. They contended that any modification to the Constitution had the status of a law as defined by Article 13 (2) and that neither the Parliament nor state legislatures were allowed to pass legislation that would rescind the basic rights that were promised to every person. In the decisions of *Sajjan Singh v. State of Rajasthan*⁷ and *Shankari Prasad Singh Deo v. Union of India*⁸, the Supreme Court rejected these defences and maintained Parliament's authority to change any part of the Constitution, even those that have an effect on the citizens' fundamental rights⁹.

CONCEPT OF THE “BASIC STRUCTURE” DOCTRINE

The Constitution is natural law. According to **Edmund Burke**, “a Constitution is an ever-growing thing and is perpetually continuous as it embodies the spirit of the nation,” The impact of the past

⁴ The Constitution (First Amendment) Act, 1951 (India), <https://legislative.gov.in/constitution-first-amendment-act-1951>

⁵ Beshara, Christopher J. “Basic Structure Doctrines and the Problem of Democratic Subversion: Notes from India.” *Verfassung Und Recht in Übersee / Law and Politics in Africa, Asia and Latin America*, vol. 48, no. 2, 2015, pp. 111. JSTOR, (Accessed 27 Oct. 2022) <http://www.jstor.org/stable/26160109>

⁶ Explained: LJP wants quota law to be included in Ninth Schedule; what is this?, *INDIAN EXPRESS*, (27 Oct. 2022) <https://indianexpress.com/article/explained/ninth-schedule-of-the-constitution-explained-6265890/>

⁷ AIR 1965 SC 845.

⁸ AIR 1951 SC 458

⁹ Ria Goyal, Case Commentary on Waman rao and Ors.v. UOI: Analysing the Basic Structure Doctrine and its Evolution, *MANUPATRA*, (21 October, 2022), <https://articles.manupatra.com/article-details/Case-Commentary-on-Waman-Rao-and-Ors-vs-Union-of-India-Analysing-the-Basic-Structure-Doctrine-its-Evolution>

enriches it at this time, and it enriches the future more than the present. The amendment of the Constitution is covered in Part XX of the Constitution under Article 368. There are three different ways to alter it: by simple majority¹⁰, by special majority¹¹, and by special majority and ratification by the States.¹² The Constitution must be changed on a regular basis. A unchanging constitution puts a significant barrier in the way of the country's advancement. A provision for amending the Constitution has been made in order to address any challenges "we the people" may face in the future as the Constitution functions because time is not static; it is constantly changing, just as the political, economic, and social conditions of the people perform.

If there were no provision for the Constitution's modification, citizens would turn to extra-constitutional means, such as revolt, to alter it. Our Constitution's authors were so concerned with preserving India's integrity that they provided us with a system whereby, if a citizen had a claim against the government (whether it be at the Central or State level) for even 100 rupees, they would issue a decree against it, which would then be charged to the Consolidated Fund of India and payable without recourse from any State Legislature or the Parliament.¹³ The Constitution's framers had a feeling of India's integrity and honour before 65 years had passed, but today the Parliament is doing everything it can to avoid falling under the jurisdiction of the court, which serves as the Constitution's protector. This concept, as it was developed in the *Keshavananda Bharathi*¹⁴, aims to address a legal issue that occurs in written constitutions as a result of the interaction between the sections that protect fundamental rights and those that give the Parliament the authority to change the Constitution.¹⁵

According to **Chandrachud, C.J.**, "the Indian Constitution is founded on the bedrock of the balance between Parts III and IV," he said in the *Minerva Mills case*.¹⁶ Giving one thing absolute precedence

¹⁰ Amendment by simple majority of each house of Parliament- it is like an ordinary bill. Formation of new States, creation or abolition of Legislative Councils (Arts. 4, 169 and 239-A) is made by such procedure. Thus, amendment at the instance of the States, or amendment by State Legislatures, is included in such category. Amendments under this category are expressly excluded from the purview of Article 368.

¹¹ means having a majority of "all members of each House" and at least two-third of those present and voting. This category includes all amendments, excluding those referred to in amendments by a simple majority, such as the authority of the Election Commission.

¹² The States have an important voice in the amendment of these provisions, which must be approved by the legislatures of at least half of the States.

¹³ Even the Privy Purse was charged to the Consolidated Fund of India, but it has since been revoked.

¹⁴ *Keshavananda Bharathi v. State of Kerala*, (1973) 4 S.C.C. 225

¹⁵ Whether a feature is "basic" or not is to be determined from time to time by the court as and when the question arises. See, Jain, M.P.-Indian Constitutional Law, Sixth edition 2010, reprint 2012, p. 1645

¹⁶ (1980) 3 SCC 625

over another would upset the balance of the Constitution. This balance and harmony between fundamental rights and guiding principles is a key component of the Constitution's core design. In the cases of *Waman Rao*,¹⁷ *Sampath Kumar*,¹⁸ and *Sambamurthy*,¹⁹ it was ruled that the rule of law²⁰ and judicial review were the fundamental structures. According to the decision in the *Central Coal Fields case*,²¹ effective access to justice is a fundamental component of the structure. "Democracy is a basic feature of the Constitution, and elections conducted at regular prescribed intervals are essential to the democratic system envisaged in the Constitution," the Supreme Court stated in *Kihoto Hollohon*.²² In order to maintain the quality, effectiveness, and sufficiency of the machinery for resolving election disputes, it is also necessary to safeguard the electoral process's integrity. **Sawant and Kuldip Singh, JJ.**, stated in the *Bommai case*²³ that "Democracy and Federalism are essential features of our Constitution and are part of its basic structure." In the same case, the Supreme Court determined that secularism is a fundamental or essential component of the constitution. The court noted in *M. Nagraj v. Union of India*²⁴ that a constitutional amendment should not destruction the identity of the Constitution and that the theory of the Basic Structure is the only basis for determining whether a constitutional amendment is lawful. The Constitution's Basic Structure recognises the equality doctrine as the cornerstone of democracy.²⁵ The Supreme Court used this principle in a recent decision, *I.R. Coelho v. State of Tamil Nadu*,²⁶ and determined that

"All amendments to the Constitution made on or after April 24, 1973, which amend the Ninth Schedule by adding a variety of laws therein, must be evaluated against the standard of the fundamental or essential elements of the Constitution, which are reflected in Article 21 read with Article 14, Article 19, and the guiding principles of those articles. To put it another way, even though a Constitutional amendment added an Act to the Ninth Schedule, its provisions could still be challenged on the grounds that they compromise or undermine the Basic Structure if the fundamental right or rights being taken away from or abrogated are related to the Basic Structure."

¹⁷ *Waman Rao v. Union of India*, (1981) 2 SCC 362

¹⁸ *S.P. Sampath Kumar v. Union of India* (1987) 1 SCC 124.

¹⁹ *P. Sambamurthy v. State of Andhra Pradesh* (1987) SCC 362

²⁰ Rule of law was also held impliedly as basic structure in the *Golak Nath Case* by Justice Mudholkar.

²¹ *Central Coal Fields Ltd. v. Jaiswal Coal co.* 1980 Supp SCC 471

²² AIR 1993 SC 412.

²³ *S.R. Bommai v. Union of India* AIR 1994 SC 1918.

²⁴ (2006) 8 SCC 212.

²⁵ AIR 2007 SC 71.

²⁶ AIR 2007 SC 861

The Chief Justice of the United States, **John Marshall**, once stated of the Constitution's future: "A Constitution is framed for ages to come, but its course cannot always be tranquil."²⁷ The basic or essential features²⁸ of the Constitution, such as the sovereign, democratic, and secular nature of the polity, rule of law, the independence of the judiciary, the fundamental rights of citizens, etc., could not be destroyed or diminished via the use of the amending power. As **Justice Chandrachud** had so effectively stated:

"amend as you may even the solemn document which the founding fathers have committed to your care, for you know best the needs of your generation. But, the Constitution is a precious heritage; therefore, you cannot destroy its identity."²⁹

The judiciary has not provided an exhaustive or exclusive definition of the fundamental structure. The theory of basic structure has been defined by the judiciary using a case-by-case approach. The perceptive **Justice Mathew** observed in the **Indira Gandhi case**³⁰ that "the concept of basic structure as a brooding omnipresence in the sky, apart from specific provisions of the constitution, is too vague and indefinite to provide a yardstick for the validity of an ordinary law"

"BASIC STRUCTURE": ITS JUDICIAL JOURNEY

The doctrine of basic structure has gone through four stages in its development:

First Stage - Beginning with the Shankari Prasad decision and concluding with the I.C. Golaknath decision The judiciary first believed that the parliament's amendment power was unretractable since it may change any provision of the constitution, including article 368, which grants the parliament the authority to alter. But in 1967, in Golaknath v. State of Punjab, the Supreme Court established a fresh perspective to perceive the powers of parliament that it cannot alter part III of the constitution, i.e., fundamental rights, and as a result gave fundamental rights a "Transcendental Position."

In his dissent in the case of Sajjan Singh v. State of Rajasthan, Justice J.R. Mudholkar first outlined the "basic features" principle in 1953.

In his paper, he stated, "It is also a matter for consideration whether making a change in a basic feature of the Constitution can be regarded merely as an amendment or would it be, in effect, rewriting a part of the Constitution; and if the latter, would it be within the purview of Article 368?"

²⁷ see, Indian Constitution: Sixty Years of Our faith, Indian Express; 2 February 2010.

²⁸ opp. cit. M.P. Singh.

²⁹ Kesavananda Bharati v. State of Kerala (1973) 4 SCC 225.

³⁰ AIR 1975 SC 2299.

The Second Stage (Main stage) - began with the Post-Golaknath Scenario and concluded with the Keshavananda case judgement. The landmark decision Keshavananda Bharathi v. State of Kerala, issued in 1973, stated that parliaments cannot change or upset the fundamental framework of the constitution. Although it was determined that the parliament had unrestricted power to amend the constitution, this power does not include the ability to amend the law's main provisions or alter their basic structure.

The third stage - which begins with the case of Post Keshavananda and concludes with the case of Indira Gandhi, Although the Keshavanand case provided the idea of basic structure, it gained widespread recognition and validity as a result of later cases and judgements. The emergency imposed upon it by then-powerful PM Indira Gandhi marked the beginning of this doctrine's main evolution. In order to avert her indictment, the administration introduced the 39th amendment, which also exempted the Prime Minister election from review by the courts. However, the idea of basic structure was used to invalidate the 39th amendment act in the case of Indira Nehru Gandhi v. Raj Narain.

The fourth stage – Judgement like Vaman Rao case and Minerva Mill case

The Supreme Court made significant clarifications about the application of the basic structure doctrine in the Minerva Mills case.

Two important components were introduced under the limited authority of parliament to change the constitution:

- To maintain harmony and balance between the rights and directive principles.
- Judicial review

IMPORTANT JUDGMENTS OF SUPREME COURT REGARDING BASIC STRUCTURE

- Shankari Prasad v. Union of India Parliament can amend any part of the Constitution. Parliament cannot amend Part III of the constitution (Fundamental Rights)
- Golak Nath v. State of Punjab The basic structure of the constitution cannot be altered or modified by parliament.

- Keshavananda Bharathi v State of Kerala Parliament cannot amend the basic structure of the constitution
- Indira Gandhi v. Raj Narayan Judicial review and harmony & balance between fundamental rights and directive principles were added to the basic feature
- Minerva Mills v. Union of India 'Free and fair' elections were added to the Basic structure
- Kihoto Hollohan v. Zachillhu Rule of law was added to the basic feature
- Indira Sawhney v. Union of India federal structure unity and integrity of india, secularism, socialism, social justice and judicial review were reiterated as basic features
- S.R. Bommai v. Union of India Democracy and Federalism are essential feature of our Constitution and are part of its basic structure.

IN DETAIL STUDY ABOUT THE EMERGENCE OF DOCTRINE OF BASIC STRUCTURE

The German Constitution of 1949 establishes that certain parts of the law are immune from alteration in order to address defects in the Weimar Constitution that were exploited during the Hitler era and to prevent reverting to the idea of basic structure.

The *Kesavananda Bharati v. State of Kerala* decision³¹

In 1970, Sri Kesavananda Bharati, Senior Head of a Hindu Mutt located in Edneer, a village in the District of Kerala, opposed attempts by the Kerala government to impose limitations on the

³¹ (1973) 4 S.C.C. 225

administration of its property under the two State land reform legislation. The Land Reforms Amendment Act, 1969, was introduced by the Kerala state government. The act gave the government the right to purchase a portion of the chosen land, of which Bharati was the principal owner. As a result, on March 21, 1970, the petitioner approached the Apex Court pursuant to Article 32 to enforce his or her rights under

- Articles 25 (Right to practice and propagate religion),
- Article 26(Right to manage religiously affairs),
- Article 14(Right to Equality),
- Article 19(1) (f) (Freedom to acquire property),
- Article 31(Compulsory Acquisition of Property).

While the Court was considering the petition, the Kerala State Government passed the Kerala Land Reforms (Amendment) Act, 1971.

The Kerala Land Reforms Act, 1963, passed by the state government, was challenged in the current case as being unconstitutional. He argued that the contested Act infringed upon his fundamental rights, which were protected by paragraphs 14, 19(f), 25, 26, and 31. The 24th, 25th, and 29th amendments were voted by the parliament in 1971, 1971, and 1972, respectively, while the Supreme Court was hearing the case.

The petitioner modified it and challenged the legality of the 24th, 25th, and 29th Amendments in order to support his case before the court. A Supreme Court panel of 13 judges heard the case. Separate judgements were rendered by 11 judges.

24th Amendment Act, 1971

- Neutralize the effect of Gokul Nath case
- To emphasise its amending authority and get over the Golak Nath case, the parliament made several changes to Articles 13 and 368.

25th Amendment Act, 1971

- Inserted a new article 31 C

29th Amendment Act, 1972

The Kerala Land Reforms (Amendment) Act, 1969 and 1971, was added to the Constitution's Ninth Schedule in order to protect it from criticism for violating fundamental rights.

A majority of seven judges overruled the *Golak Nath's case* ruling and upheld the constitutionality of the 24th, 25th, and 29th Amendments. The court ruled that while parliament has the authority to change any element of the constitution, including the preamble, the changes must not alter the fundamental provisions of the document. According to the court, the phrase "amend" in Article 368 does not provide the Parliament the authority to change the fundamental framework of the Indian Constitution. In other words, Parliament cannot change the basic feature of the Constitution by using its amending power. The majority of the judges noted that certain fundamental aspects of the constitution cannot be changed through the use of the authority granted by article 368; any constitutional amendment that aims to change or eliminate this fundamental structure is ultra vires.

Some of the components of basic structure are

- Supremacy of the Constitution
- Rule of the law
- Separation of powers
- Judicial review
- Articles 32 and 226
- Federalism
- Secularism
- Sovereign
- Democratic
- Objectives specified in the Preamble to the Constitution
- Principle of equality, not every feature of equality but the quintessence of equal justice, 'essence' of other Fundamental Rights in Part III,

Republican structure Freedom and dignity of the individual,

- Unity and integrity of the Nation,
- Concept of social and economic justice, Part IV in total,

- Independence of judiciary etc.

The Supreme Court's first category of rulings included those of Chief Justice Sikri, Justices Shelat and Grover, Hegde and Mukherjea, and Justice Jagannathan Reddy, who concluded that the Constitution's amending power was constrained by a number of explicit and implicit restrictions, including the Fundamental Rights.

Included six judges Justices A.N. Ray, Palekar, Mathew, Dwivedi, Beg, and Chandrachud, who were members of the second group, ruled in six different decisions that there were no restrictions on Parliament's ability to modify the Constitution.

Although the word "amendment" in Article 368 has a limited meaning, **Justice Khanna** decided that the amending authority is plenary in every sense and cannot be used to nullify the Constitution. Any constitutional change required to ensure that it didn't "have the effect of destroying or abrogating the basic structure or framework of the Constitution after the amendment."

In their conclusions, they noted that Article 368 did not provide anyone the authority to undermine, abrogate, demolish, or otherwise amend or modify the Constitution's core principles, tenets, or framework.

According to **Sikri, CJ.**, the concept of basic structure included the following elements: Republican form of government, maintenance of the separation of powers, supremacy of the Constitution, and federal character of the Constitution.

Shelat, J., and **Grover, J.** added two basic features to this list.

The mandate to build a welfare state contained in the Directive Principles of State Policy.

Unity and integrity of the nation

Hegde, J., and **Mukherjea, J.** identified a distinct and simplified list of basic features:

India's sovereignty, democracy, national unity, basic individual liberties, and the duty to establish a welfare state.

In the case of *I.C. Golak Nath and Others v. State of Punjab and Anr*,³²

Any further action taken in this direction would be illegal and unconstitutional unless Part III in general and Article 13(2) in particular were to be followed, as stated by the Supreme Court in Article 368, which forbids the restriction or removal of fundamental rights through the use of a mandatory procedure.

In *Indira Sawhney v. Union of India*³³

Validity of the Mandal Commission Report and the scope and application of Article 16(4) of the Constitution were the issues before the S C. It is not comparable to be as socially and educationally disadvantaged in Article 16(4) as it is in Article 15(4). It is impossible to define a citizen's backward class solely and only in terms of economic factors. It is important to consider someone's social, educational, and financial background. Maximum reservation percentage is 50%.

Unamendability of basic structure in itself constitutes basic structure of constitution.

In *Minerva Mills v. Union of India*³⁴

The Supreme Court was asked to rule on the constitutionality of Section 4 of the Constitution (42nd Amendment) Act of 1976, which amended Article 31C of the Constitution.

The court determined that Section 4 of the 42nd Constitutional Amendment Act is invalid because it goes beyond the scope of parliamentary amendment. By completely preventing any challenge to any law that is in conflict with, or by taking away or limiting any rights granted by Articles 14 or 19, if law is to give effect to state policy towards securing all or any of the principles outlined in Part IV of Constitution, it damages the fundamental or essential feature of the constitution and destroys its basic structure.

- Parliament's ability to change the constitution is limited.
- Harmony and balance between directive principles and fundamental rights.
- The basic features of the judicial review power were observed and recognised.

*Waman Rao v. Union of India*³⁵

The Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 set a limit on agricultural

³² AIR 1967 SC 1643

³³ AIR 1993 SC 477, 1992 Supp 2 SCR 454

³⁴ (AIR 1980 SC 1789)

³⁵ (1981) 2 SCC 362

holdings. The court rejected the argument that the Kesavananda Bharati ruling could be applied retrospectively, that is, to changes and laws passed before the judgement was rendered, even though this act's legality had been contested for years.

We maintain that all Acts and Regulations included in the Ninth Schedule prior April 24, 1973 will be fully protected by Article 31B as far as the legality of Article 31B read with the Ninth Schedule is concerned. It will not be possible to challenge those laws and regulations on the grounds that they violate any of the rights guaranteed by part III of the constitution, take those rights away, or otherwise limit those rights. The many constitutional amendments that added items to the ninth schedule on or after April 24, 1974, are legitimate as long as they do not alter or undermine the fundamental framework of the Indian Constitution.

*M. Nagraj v. Union of India*³⁶

In this case, the article 14 doctrine of equality was acknowledged as a fundamental component of the constitution.

APPLICATION OF BASIC STRUCTURE

*Indira Gandhi v. Raj Narayan*³⁷, commonly referred to as Election Case. The election of the appellant to the Lok Sabha was declared invalid under the Representation of Peoples Act, 1951, in this case. The appellant, Mrs. Indira Nehru Gandhi, the prime minister filed an appeal from these judgements before the Supreme Court. While the appeal was pending, the parliament passed the Constitution 39th Amendment Act, 1975, inserting article 329A in the words of the constitution to invalidate the Allahabad High Court's decision and also withdraw the jurisdiction of all courts, including the Supreme Court, to hear cases involving elections for the speaker and prime minister, including the present appeal, which was sub-Judice before the SC.

Clause (4) of newly inserted article 329A, which directly impacted the on-going appeal, stated that no law enacted prior to the commencement of the 39th Amendment in so far as it relates to election petitions would apply or would be deemed to have applied to the election of the prime minister to

³⁶ AIR 2007 SC 71

³⁷ (AIR 1975 SCC 2299)

either house of parliament. It also stated that such an election would not be deemed to be void or ever to have become void, notwithstanding any decision of any court prior to the 39th Amendment. The Supreme Court applied the basic structure theory and invalidated clause (4) of Article 329-A on the grounds that it was outside the scope of the Parliament's ability to amend the Constitution because it would have destroyed its fundamental principles. This clause was interpreted to include democracy in the sense of free and fair elections, equality in the sense of the separation of powers and the rule of law.

In the *Raj Narayan* case, the court regarded the constitutional grounds of the basic structure as binding precedent and affirmed its right to apply the doctrine to a new set of legal and factual circumstances. The court ruled in *L. Chandra Kumar v. Union of India*³⁸ that the basic structure theory applies to the judicial review powers granted by Articles 32 of the Supreme Court and 226 of the High Court, and that these powers cannot be diminished by transferring them to administrative tribunals.

In *M. Nagraj v. Union of India*³⁹

In order to express concerns about the retroactive application of Articles 16(4A) and 16(4B), the court considered the 77th, 81st, and 85th Amendments. Although it was argued that because the right to equality is a part of the constitution's basic structure, these amendments cannot be made, the court felt that the basic structure doctrine was inappropriate in this case because, while the right to equality does continue to be a part of the constitution's basic structure, the ability to implement seniority or create equity is not.

In *R. Coelho v. State of Tamil Nadu*⁴⁰

The court ruled that all regulations, not simply constitutional amendments, that threaten the basic structure of the Constitution are subject to judicial review. In this case, amendments to the Ninth Schedule were challenged, and the court determined that they are subject to judicial review and may be invalidated if they violate fundamental rights.

³⁸ (1997) 3 SCC 261

³⁹ (1999), 7 SCC 580

⁴⁰ (2006) 8 SCC 212

*State of West Bengal v. Committee for Protection of Democratic Rights, West Bengal*⁴¹

The fundamental rights, which are guaranteed in Part III of the constitution, are inherent and cannot be curtailed by any clause or law. Any legislation that eliminates or restricts such rights would be violative of the basic structure doctrine.

Article 368 limits the ability of Parliament to change the Constitution, and the Supreme Court is the last arbiter of constitutional interpretation. The basic structure idea essentially restricts Parliament's ability to modify the Constitution. The Constitution's fundamental provisions are not subject to any strict rules. Judges have varying opinions about the theory of the basic structure, but they eventually came to the same conclusion. Parliament does not have the authority to change the "basic structure" or framework of the constitution.

Even the nine judges who adhered to some variants of the notion of implicit boundaries did not do so for the same reasons, according to Rajeev Dhavan.

The ratio decidendi of the Kesavananda Bharati case is difficult to ascertain, according to **Mr. Seervai**. A set of principles can, at best, be clarified, and the degree of agreement or disagreement with each premise can be indicated.

Prof. Upendra Baxi vehemently disputes the analytic viability of such theories and believes that it is erroneous to believe (with due respect) that eminent judges will somehow prevail when renowned jurists are unable to systematise the holding of a case.

*Janhit Abhiyan v. Union of India*⁴²

The 103rd Constitutional Amendment, which created a 10% reservation for members of economically weaker sections (EWS) in public employment and education, was upheld by the Supreme Court by a vote of 3:2. Justice Maheswari cited a long list of decisions from the Supreme Court to assess the claim that using economic criteria as the only justification for affirmative action violates the basic structure concept.

⁴¹ AIR 2010 SC 1476

⁴² 2022 LiveLaw (SC) 922

- *Kesavananda Bharati v. Kerala State And Anr*⁴³, the Supreme Court had ruled that one of the fundamental goals of the Constitution was to create a welfare state. He pointed out that the State cannot refuse affirmative action to the economically disadvantaged just because they do not experience any other disadvantages in its effort to promote comprehensive social-economic justice.
- *M.R. Balaji and Others v. State of Mysore*⁴⁴, It is important to remember that the Court has already determined that affirmative action must be based on an objective strategy, unaffected by external factors, and intended to achieve social and economic justice.
- In *R. Chitralakha and Anr. v. State of Mysore and Ors*⁴⁵., the Apex Court recognised a definition of “backwardness” that excluded caste consideration in favour of characteristics like occupation, income, and other economic variables. It was claimed that if a classification passes the other requirements, the simple exclusion of caste will not render it unlawful.
- Another case cited was *Janki Prasad Parimoo v. State of J&K & Ors*⁴⁶., in which the Supreme Court stated that India’s social and educational backwardness is linked to its economic backwardness.
- He emphasised the point made by CJ AN Ray in *State of Kerala And Anr. v. N.M. Thomas And Ors*⁴⁷. regarding substantive equality—namely, that providing equal opportunities to those who are not equal only serves to exacerbate inequity. Differential treatment in selection criteria so fits under the definition of equality. The Government’s affirmative duty to eradicate social, economic, and other inequities is important to constitutional law, Justice Ray had also stated.

CONCLUSION

The basic structure of the Constitution is well established because its contents cannot be fully ascertained with any sort of certainty prior to a ruling by the Supreme Court. The Kesavananda Bharati case, which overruled the Golaknath judgement, made it possible for the Parliament to carry out its duties to establish a welfare state and an egalitarian society. However, the supreme court has

⁴³ Supra note 31

⁴⁴ 1963 AIR 649, 1962 SCR Supl. (1) 439

⁴⁵ 1964 AIR 1823, 1964 SCR (6) 368

⁴⁶ 1973 AIR 930, 1973 SCR (3) 236

⁴⁷ 1976 AIR 490, 1976 SCR (1) 906

often cited the rule of law, the independence of the judiciary, the fundamental rights of individuals, the sovereign, democratic, and secular nature of the polity, among other vital elements of the Constitution. The acceptance of the “basic structure doctrine” in instances after Kesavananda Bharati, notwithstanding severe condemnation of the so-called “view of the majority,” clearly and unequivocally states that this “view of the majority” is the law of India. Finding the basic structural theory shouldn’t be difficult if the preamble, the overall structure of the constitution, and the relevant sections therein, including article 368, are all kept in mind. There is at present no debate on the doctrine’s existence; the only issue that continually arises is its content. While some of its contents are now being discussed, several have been consistently upheld by the Courts.



W H I T E B L A C K
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