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EVOLUTION OF BASIC STRUCTURE DOCTRINE IN INDIA

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ABSTRACT

The Constitution of India is a comprehensive document widely considered as one of the most compact documents of constitutional democracy. It has carried all the important elements of an independent nation; it was a modern constitution for the time being but as the demands of society changed with the time there was a need for reforms.. This article aims at the evolution of “ Basic Structure” of the constitution and analyse the important timelines where the debates regarding the basic doctrine emerged throughout different periods of the society, it squarely covers the important cases of Shankari Prasad vs Union of India [1951], Sajjan Singh vs State of Rajasthan [1965], Golaknath vs State of Punjab [1967] with these cases, it analyses the Kesavananda Bharati Vs State of Kerala[1973] where the supreme court for the first time discussed the importance of Basic Structure Doctrine as an important safeguard for the constitution of India. Lately in this article, redefined discussions like the Minerva Mills Vs Union of India and The NJAC case regarding “The Doctrine” have been mentioned. Moreover, it deals with the quintessence, facts and the issues raised, showing the pattern of change it went through as per the need of the hour. This work introduces us to the supreme law of land with a much deeper understanding of the amendments followed by the outset of Indian Judiciary. It has summarized the enduring legacy of evolution of basic structure that has for centuries acted as a mainspring of Indian Constitutional Law.

Sri Sankari Prasad Singh Deo vs Union of India AIR 1951 SC 458, 1951 SCR 89

It was one of the court cases that contributed to the development of the Doctrine of Basic Structure in India. The persistent battles for Indian independence within the judges led to this particular case. The topic of whether or not the parliament can change the basic rights under Article 368 arose in this case. A challenge was also made to the constitutionality of the First Amendment of the 1951 Constitution, which limited the Fundamental Right to Property under Article 31. The main point raised was that laws that restrict fundamental rights cannot be passed by using Article 13.

Facts

To abolish the zamindari system throughout India, certain state legislatures in Bihar, Uttar Pradesh and Madhya Pradesh passed the Zamindari Abolition Act. This law aimed to

redistribute vast land holdings held by wealthy zamindars among the local residents. “Some zamindars, feeling aggrieved, challenged this law in the courts, arguing that it was illegal and violated their Fundamental Right to Property as guaranteed by Part III of the Constitution.”²⁵¹

Issues Raised

1. Does the parliament's 1951 first constitutional amendment, which added Articles 31A and 31 B, still stand?

- In 1951, the government of India wanted to abolish the zamindari system, which was present in the constitution by the first amendment and inserted Articles 31A and 31B. In this, the Supreme Court upheld the validity of the first constitutional amendment.
- Article 31A states that the law allows the state to acquire estates, manage property, manage mergers, revoke or alter corporation

²⁵¹ Sankari Prasad vs Union of India[1951] SCR 405



rights, terminate or modify mining leases, and ensure compensation for state property seizure.

- Article 31B states that no Acts and Regulations in the Ninth Schedule are void or deemed void if they conflict with or abridge any rights conferred by these provisions. Despite court judgments or orders, these Acts and Regulations remain in force, subject to the power of any competent Legislature to repeal or amend them, despite any court or tribunal ruling to the contrary.

2. Can the parliament modify Article 368, which deals with basic rights, in Part III of the Constitution??

- The Supreme Court, in 5 judge bench, gave the judgment that the parliament can amend the constitution under Article 368, and it also held that the parliament can also amend the fundamental rights of the constitution, which is in part III

Quintessence

In the Shankari Prasad Case, the Supreme Court ruled that Parliament can change the Constitution in various ways under Article 368, including changing basic rights. Though it is a landmark judgment, one can critically claim it to be a blindsided judgment as it clearly jeopardizes the fundamental rights of citizens, thus leaning in favor of the state. A five-judge bench of the Supreme Court upheld the First Constitutional Amendment Act by a 3:2 majority. The Court ruled that Article 368 of the Constitution granted the Parliament the power to amend every part of the Constitution, including Part-III on Fundamental Rights and Article 368 itself.

Sajjan Singh v. State of Rajasthan: AIR 1965 SC 845

It is important to construct the fundamental framework of the Indian Constitution. Here, a few essential components serve as the cornerstone of our constitutional system. Fundamental rights are among these necessities. The Indian Constitution's Article 368 allowed the Parliament to change any provision,

including the Fundamental Rights, before introducing the fundamental structural idea.

Fact

Court challenges were made to agricultural reform laws in 1951. "To aid State Legislatures in carrying out their legislative mandates, the Constitution (First Amendment) Act of 1951 established Articles 31A and 31B. The Ninth Schedule's Acts were guaranteed not to be null or invalid retrospectively by Article 31A."²⁵² Still, there were issues with certain legislative initiatives. In order to resolve these concerns, the Constitution (Seventeenth Amendment) Act 1964 was approved by Parliament, adding 44 Acts to the Ninth Schedule and amending Article 31A in further ways.

Issue Raised

1. Does an amendment made to one of the fundamental rights specified in Article 368 constitute "law" according to Article 13? (2)?

- Article 13(2) says, The State is prohibited from creating laws that abridge or remove the rights conferred by this Part, and any law contravening this clause will be void.

- The Supreme Court stated that the law under Article 13(2) also gives the parliament the power to amend the constitution. The parliament can also amend the constitution which violates the fundamental rights of the citizens.

2. Does Parliament have the authority to alter any basic right in Part III of the Constitution under Article 368??

- Parliament can amend the fundamental right under Article 368 by the constitutional amendment; even the law which the parliament has passes it is violative the fundamental rights.

3. Does the 26th Amendment Act, which eliminated the princely rights and privy funds of the former princely state rulers, have legal standing?

²⁵² Sajjan Singh v. State of Rajasthan [1965] 1 SCR 933 (Supreme Court Of India)



- The Supreme Court declared the Constitution (Seventeenth Amendment) Act, 1964, which added Acts to the Ninth Schedule and modified Articles 31A and 31B, to be constitutionally valid. The Court decided that Article 368 gives the authority to change or alter the Constitution, including the Part III guarantee of basic rights. The Court upheld the fundamental rights in Part III and dismissed the Shankari Prasad case.

Quintessence

The Supreme Court decided that the Constitution (Seventeenth Amendment) Act, 1964, which added Acts to the Ninth Schedule and modified Articles 31A and 31B, is legally valid. The Court held that the ability to alter or amend the Constitution, including the basic rights protected by Part III, is granted by Article 368. The substantive part of Article 368 applied to the incidental and unimportant adjustments made by Parliament. The Court declared that the basic rights under Part III were not unchangeable and dismissed the Shankari Prasad case.

I.C. Golaknath V. State Of Punjab (1967 AIR 1643, 1967 SCR (2) 762)

This instance has prompted a lot of questions. The paramount question, however, pertained to the parliament's authority to modify the basic rights guaranteed by Part III of the Indian Constitution. Whereas the respondents argued that our constitution's framers never intended it to be inflexible and unchangeable, the petitioners argued that the parliament lacked the authority to alter basic rights.

Fact

The Golaknath family, who owned over 500 acres of farmland in Jalandhar, Punjab, challenged the Punjab security and Land Tenures Act, which allowed them to keep only thirty acres each. They filed a petition challenging the 1953 Punjab Act, arguing it denied them constitutional rights to property, profession, and equality. The Supreme Court referred the case to the Supreme Court in 1965,

where the family sought to declare the seventeenth amendment ultra vires. This landmark case developed jurisprudence around the doctrine of basic structure, stating that Parliament cannot curtail any of India's fundamental rights.

Issue Raised

1. Whether the parliament has the ultimate authority to change the basic rights guaranteed by the constitution?

- The Supreme Court held that parliament cannot amend the constitution under article 368 of the constitution. This power is only given to the constituent assembly. It was also stated that the term "amendment" denotes a modification in conformity with the fundamental framework, not an entirely new concept.

- The parliament cannot remove the fundamental rights under part III of the constitution, as they are essential and integral to the constitution, like a soul.

- A constitutional amendment that violates the Fundamental Rights would be declared invalid. The state cannot enact laws restricting the rights outlined in Part 3 of the Constitution.

- It has also been stated under article 368 it is contested the article defines the procedure given to the parliament to amend the constitution, and it doesn't give parliament the power to amend the constitution

Quintessence

After 2 cases the Supreme Court by a majority of 6:5 reversed its earlier decisions of the Sajjan Singh and ruled that Parliament cannot amend the Fundamental rights enshrined in the Part-III of the Constitution. The Court also ruled that Article 368 of the Constitution laid down only the procedure for amendment and did not give the Parliament power to amend the Constitution is also a legislative power conferred by Article 245 of the Constitution, so that a Constitution.

Keshvananda Bharati vs. State of Kerala, (1973) 4 SCC 225



The fundamental structure theory of the Constitution was developed in the famous Indian case of *Keshvananda Bharati*. In almost 700 pages, the ruling included the rights of citizens to safeguard their fundamental rights and the Parliament's authority to change laws. "The *Golaknath v. State of Punjab* case was overturned when the Doctrine of Basic Structure was implemented to safeguard the rights of both citizens and Parliament."²⁵³ The goal of the lawsuit was to make sure that the rights that citizens were entitled to under their Fundamental Rights were not violated by modifications.

Fact

Keshvananda Bharati, the chief of the Edneer Mutt religious sect in Kasaragod district of Kerala, owned certain land in his name. Under the Land Reforms Amendment Act, 1969, the state government of Kerala was able to purchase a portion of the land owned by the sect. In 1970, *Keshvananda Bharati* petitioned the Supreme Court under Article 32 of the Indian Constitution, requesting that his rights under Articles 25 (the freedom to practice and propagate religion), 26 (the right to manage religious affairs), 14 (the right to equality), 19(1)(f) (the right to acquire property freely), and 31 (the right to acquisition of property forcefully) be upheld.

Issue Raised

1. Which of the following is permissible under the constitution?

The 24th Amendment to the Constitution Act of 1971

The 25th Amendment to the Constitution Act of 1972

- In the previous judgment of the Supreme Court, it was held that the parliament does not have the authority to abolish or limit constitutional privileges, and there is a reduction in the power of the legislature and an overpowering of the Supreme Court, so the parliament brought an amendment that states

that the parliament has the full and free power to amend the fundamental rights of the constitution in a free and fair manner and no one should look into it.

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- 2. The scope of the Parliament's ability to make constitutional amendments.

Quintessence

It was heard by the one of the largest constitutional bench till date which was made up of thirteen judges. The judgment was passed by the 7:6 ratio bench. The bench felt that if the parliament were given unrestricted authority to alter our Indian constitution, the power would be abused, and the government would alter it to suit its own whims and desires. If the government is given the ability to revise the constitution, it can change both its fundamental elements and its entire spirit. A fundamental structural theory was developed by the bench as a means of safeguarding the rights of parliament and the people.

Minerva Mills Ltd. & Ors vs. Union of India & Ors 1980 AIR 1789, 1981 SCR(1) 206

The *Minerva Mills vs Union of India* is a landmark decision in constitutional history because the supreme court stated that the amending power of the parliament is limited by evolving and re-affirming the basic structure doctrine. The verdict of the case makes clear that it is the constitution which is supreme; not the parliament. It disturbed the balance between Parliamentary Sovereignty and Judicial Review and tilted towards the Parliament.

Fact

In 1974, Parliament approved the Sick Textiles Undertakings (Nationalization) Act. It was founded in order to accomplish a widely shared public interest, which was the restoration of the textile company's subpar assets and the creation of a workable solution. Its objective was to guarantee the availability of commodities at fair prices to prevent harm to the broader public. A limited liability company, *Minerva Mills*

²⁵³ *Kesavananda Bharati v State of Kerala* [1973] AIR 1461



Ltd. was a textile company. It was in the business of making silk apparel.

In 1970, the Central Government established a committee to look into the operations of Minerva Mills Ltd. in accordance with Section 15 of the Industries (Development Regulation) Act, 1951. In addition to contesting the 39th Amendment Act's constitutionality—which introduced the Sick Textile Undertaking (Nationalization) Act under Entry 105 of the 9th Schedule—it also contested Article 31 B of the Constitution. The central government's order to seize management and control of Minerva Mills Ltd. was also challenged.

Issue Raised

1. Is Article 368's clauses 4 and 5 constitutionally valid?

The parliament has the power to amend the constitution, but the amendment that would be brought should not pass the basic structure doctrine of the constitution. There should be the ultimate power for the Parliament to bring amendments while keeping in mind the basic structure.

Clauses 4 and 5 of Article 368 state that clause 4 is unconstitutional because it violates the basic structure of the Constitution, and clause 5 violates the judicial review of the amendment. There should be judicial review at every step to determine whether the amendment violates the basic structure.

Quintessence

The decision was pronounced by a five-judge bench of the Supreme Court with a majority of 4:1. Which gives the judiciary the power to review the amendment, and in this, the judiciary also states that they are the basic structure of the constitution. "The judges acknowledged that they were not given the opportunity to evaluate each other's decisions after Justice Bhagwati's Supreme Court ruling drew a good deal of criticism. A review petition was filed by the government to reverse the important ruling in order to increase the modifying authority of

Parliament."²⁵⁴ The court disapproved of this. Some of the wording that was deemed unlawful remains in effect even after forty years since the ruling. This was only one instance in a long line of instances when the Parliament's manipulation of the Constitution was an example of its conceit.

Critical Analysis:

Though basic structure doctrine have resolved multiple constitutional and judicial issues, its criticism is persistent among various thinkers as it raises a number of concerns about what it holds legitimately. It has been criticised for being too vague and conventional in nature, and it can be considered as the criticism of constitution makers as they didn't add this element to the ultimate source of law, critics argue that it should be clearly mentioned in the constitution. Moreover, it increases the judiciary's power to a higher extent which could ultimately lead to judicial overreach making judiciary the ideogram of absolute power." Tyranny of the unelected" as it a lot of times avoids and undermines the democratic principles of those elected on behalf of citizens. With all these, a major area of criticism relies on the National Judicial Appointments Commission (NJAC) act.

CONCLUSION

India's constitutional journey has been paved with pivotal moments, and the "basic structure doctrine" stands as a towering landmark. Its genesis lies in the 1973 Kesavananda Bharati case, a 7-6 nail-biter where the Supreme Court declared Parliament's amendatory powers finite. While acknowledging Parliament's right to revise the Constitution, the Court carved out certain inviolable principles - the "basic structure." This bedrock includes the rule of law, ensuring everyone's equal subjection to justice, the separation of powers, preventing any branch from becoming an unchecked Leviathan, and the fundamental rights, individual freedoms shielded from state overreach.

²⁵⁴ Minerva Mills Ltd v Union of India [1980] AIR SC 1513



This doctrine wasn't born uncontested. Parliament, stung by the Kesavananda verdict, attempted to clip the judiciary's wings through the 42nd Amendment. It declared unfettered constituent power under Article 368, aiming to immunize amendments from judicial scrutiny. This audacious power grab was met with the Court's resounding counterpunch. In a landmark ruling, it invalidated the amendment's relevant clause, asserting that Parliament couldn't dismantle the "judicial review" power, the very lifeblood of the basic structure doctrine. This decision served as a stark reminder that even Parliament must bend to the Constitution's core principles.

The Kesavananda case and its aftermath represent a critical juncture in India's legal history. It showcased the delicate balance between the legislature and the judiciary, both vital for a thriving democracy. By establishing the basic structure doctrine and reaffirming the judiciary's role as its vigilant guardian, the Court secured the Constitution's spirit for generations to come. This legacy will continue to guide India's constitutional journey, ensuring that the core principles of justice, freedom, and equality remain forever etched in the nation's bedrock.

REFERENCES

1. <https://blog.ipleaders.in/kbharatikerala/>
2. https://lawbhoomi.com/shankari-prasad-case-shankari-prasad-vs-union-of-india/#Facts_of_Shankari_Prasad_Case
3. <https://lawbhoomi.com/sajjan-singh-vs-state-of-rajasthan/>
4. <https://byjus.com/free-ias-prep/landmark-cases-relating-basic-structure-constitution/#:~:text=The%20idea%20that%20the%20Parliament,over%20time%20and%20many%20cases.&text=This%20doctrine%20helps%20to%20protect,brought%20this%20doctrine%20into%20limelight>
5. <https://testbook.com/ias-preparation/kesavananda-bharati-case-1973-sc-judgements>
6. <https://www.insightsonindia.com/polity/indian-constitution/basic-structure-doctrine/>