

EVOLUTION OF DOCTRINE OF BASIC STRUCTURE UNDER INDIAN CONSTITUTION

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INTRODUCTION

The basic structure doctrine was incorporated in the famous fundamental right case *Kesavananda Bharti v. State of Kerala*². The doctrine of basic structure is nothing but a judicial innovation to uphold the basic pillars of the constitution. It ensures that Parliament does not misuse the amending power provided in Article 368 and the idea behind it is that the basic features of the constitution should not be altered to an extent that the constitution loses its original identity. The dispute basically arose between two articles of the constitution namely article 13 and article 368. The question in conflict was that whether Parliament can amend fundamental rights using article 368 or not and will article 13 will apply to CAA (Constitutional Amendment Act) or not. According to article 13 any law in conflict with the fundamental rights will be null and void. Whether the term law defined under Article 13 cover Constitutional Amendment Act or not. Now I will be discussing various cases which dissolved the dispute between these two articles and led to the evolution of the basic structure doctrine.

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²AiR 1973 SC 1461

1st Constitutional Amendment Act(1951)

In this amendment act Article 31A, 31B was inserted in Article 31(Right to property) which was then a fundamental right. As per Article 31A ,the acquisition by the State of any estate shall not be deemed to be violative of Article 14,Article 19 and Article 31 of the Constitution and was said that the State can take over the management of any property in the public interest or in order to secure proper management of the property and according to Article 31B it was said that none of the Acts placed in the 9th Schedule shall become void on the ground that they violate rights under part 3 and no judicial review is possible and also Article 19(1)(g) was inserted. The Constitution (Ninety-seventh Amendment) Act, 2011, was partially overturned in 2021 by a three judge bench of the court, although on procedural, not structural, grounds.

The court determined that cooperative societies within a state, as opposed to interstate cooperative societies, would fall under the State List, which means that a constitutional amendment relating to it must be ratified by half the states as required by the Constitution. This changed the legal framework for cooperative societies.

(Rajendra N. Shah v. Union of India, 2021).

These changes affected the fundamental rights and was thus challenged in the court in Shankari Prasad v. UOI case.

SHANKARI PRASAD v. UOI³

In this case Supreme court held that Parliament can amend fundamental rights and 1st Constitutional Amendment Act is valid. To solve the dispute, SC court said that article 13 is applicable on ordinary laws and not on CAA.

17th Constitutional Amendment

Laws enacted under 9th Schedule were made immune to challenge in the court even if they go against fundamental rights and since these laws affected the fundamental rights and was thus challenged in court in Sajjan Singh v. State of Rajasthan.

SAJJAN SINGH v. STATE OF RAJASTHAN⁴

17TH Constitutional amendment act was challenged in this case. 5 judge bench decided the case and the decision came in the ratio of 3:2. In this case the court held that Parliament can use article 368 to amend fundamental rights and confirmed Shankari Prasad case.

Since two judges Justice Hidaytullah and Justice Mudholkar were not fully satisfied by the Judgement so the case was referred to a bigger bench in Golaknath v. State of Punjab case.

³ AIR 1951 SC 458

⁴ AIR 1965 SC 845

GOLAKNATH v. STATE OF PUNJAB⁵

11 Judge bench decided the case. In this case it was held that Parliament do not have absolute power to amend under article 368 and is subject to limitation and judicial review. Parliament cannot amend fundamental rights and Article 13 will also apply to constitutional amendment act as well.

24th Constitutional Amendment Act

To reverse the judgement of Golaknath case Parliament brought 24th constitutional amendment act in which clause(4) was added to Article 13 and clause(3) was added to Article 368. By adding clause (3) to Article 368 it was said that Parliament can amend any part of Constitution including fundamental rights and by adding clause (4) to Article 13 it was said that even if Parliament brought any changes by Article 368 it will not be covered under Article 13. Subsequently 25th, 26th and 29th constitutional amendment act were also passed. 25th CAA was related to insertion of Article 31C to the Constitution , 26th CAA was related to abolition of privy purse and 29th CAA was related to enlargement of 9th Schedule by placing some of the Kerala land reforms under it. All these amendments were challenged in Kesavananda Bharti v. State of Kerala.

⁵ 1967 SCR (2) 762

KESAVANANDA BHARTI v. STATE OF KERALA⁶

This case is also known as fundamental right case. Kesavananda Bharti was a young head of a muth in Kasarkore district in Kerala. He filed a case challenging Kerala land reforms Act (29th CAA) as it violated fundamental rights. Madhav Rai Sindhia challenged abolition of privy purse. All the petitions raised one question whether power of the Parliament is so supreme that it can amend any part of the Constitution including fundamental rights. All these cases were clubbed together and since Kesavananda Bharati was the first to file the case, it was thus named as Kesavananda Bharati v. State of Kerala. This case was heard by 13 judge bench and is the longest running case. In this case the court held that 24th constitutional amendment act is valid and Parliament can amend including the fundamental right but SC used a different approach of Doctrine of Basic Structure in which the SC said that the Parliament by using its amending power under article 368 cannot amend the basic structure of the constitution. The judgement listed some basic structure of the constitution as:

- Supremacy of the Constitution
- Unity and Sovereignty of India
- Democratic and republican form of government
- Federal character of the Constitution
- Secular character of the Constitution

⁶ AIR 1973 SC 1461

- Separation of power
- Individual freedom

Over time many other features have also been added to this list of basic structure features.

- Rule of law
- Judicial review
- Parliamentary system
- Rule of equity
- Harmony and balance between the fundamental rights and DPSP.
- Free and fair elections.
- Limited power of the parliament to amend the constitution.
- Power of SC under Article 32,136,142 &147.
- Power of the high court under Article 226&227.

The doctrine of basic structure was first mentioned by Justice Mudholkar 8 years before Kesavananda Bharti Judgement where Justice Mudholkar was referring to 1963 Judgement of Pakistan high court.

Indira Nehru Gandhi v. Raj Narain⁷

On 12th June 1975 Allahabad High court passed a historic Judgement in which it disbarred Indira Gandhi from holding any elective office for 6 years due to electoral malpractices. Indira Gandhi then filed an appeal in the Supreme court

⁷ 1976 (2) SCR 347

and imposed the National Emergency. The day before the hearing 39th Amendment Act was passed by the Parliament in which a new article 329A was inserted and the existing article 71 was removed. In this new article 329A it was propounded that SC cannot try electoral dispute of President, Vice-President, Prime Minister and Speaker of Lok Sabha as opposed to the earlier provision under article 71 which said that Supreme Court cannot try the electoral dispute of only President and Vice President.

After the election, Morarji Desai became the PM and removed all the changes made during National Emergency and removed 39th Amendment Act and article 71 was restored.

42nd CONSTITUTIONAL AMENDMENT ACT(1976)

In this amendment sec(4) was added to article 31C and clause (4),(5) was added to article 368. By these changes Parliament promulgated that if they do any changes in DPSP and even if it is in violation with the Fundamental Rights, it will be valid and will not be subjected to Judicial Review. And as per clause(4) Parliament can bring any changes in Fundamental Rights and as per clause(5) Parliament has no limitation on its amending power.

All these changes were challenged in Minerva Mills case.

Minerva Mills v. UOI & others⁸

⁸ AIR 1980 SC 1789

In this case the petitions were the owners of famous Minerva Mills of Bombay where the Supreme Court struck down the two changes made to the Constitution by 42nd amendment act and gave three new basic features.

- Judicial Review
- Limited amending power of the parliament
- Harmony between Fundamental Rights and DPSP of the Constitution.

Waman Rao v. UOI⁹

After basic structure doctrine all the previous constitutional amendment act were challenged and in this case the Supreme Court drew the line of demarcation as 24th April, 1973, the date of KesavanandaBharati Judgement and held that basic structure doctrine will apply prospectively and not retrospectively.

50 years of Keshavanda Bharti case

Recently on 24th April, 2023 basic structure doctrine has completed 50 years since it's inception in the Keshavanda Bharti v. State of Kerala case. The Constitution has been altered more than 60 times since 1973, the year of the Kesavananda Bharati ruling. In at least 16 judgements over the course of over five decades, the Supreme Court has tested constitutional modifications against the basic structure doctrine. The Supreme Court has affirmed constitutional amendments that had been contested on the basis that they violated the basic structure conc

⁹(1981) 2 SCC 362

cept in nine of these 16 decisions. Six of these cases include reservations, including those for promotions and the quota for the Other Backward Classes (OBC) and Economically Weaker Section (EWS). The Supreme Court has struck down a constitutional amendment entirely just once — The Constitution (Ninety-ninth Amendment) Act, 2014, which established the National Judicial Appointments Commission (NJAC), the body that would have been responsible for the appointment and transfer of judges, replacing the current Collegium system. The amendment was struck down by a five-judge Constitution Bench in 2015 on the grounds that it threatened “judicial independence”, which the court ruled was a basic feature of the Constitution. Since 1973, the Supreme Court has "partially struck down" a constitutional amendment six times, including in the Kesavananda decision itself. The clause that was invalidated in each of these cases dealt with the denial of judicial review. Thus there have been certain significance as well some criticism regarding this doctrine over the period of 50 years.

Significance of the judgement and the doctrine

- 1.) This doctrine forms the basis for the Judiciary to review amendments made by the Parliament.
- 2.) This doctrine has given clarification on the word 'procedure' mentioned in Article 368 which was interpreted by the Parliament as the 'power' to amend the Constitution of India.
- 3.) It strengthened the system of checks and balances to prevent the misuse of power.

Criticism

- 1.) The doctrine has been criticised for undermining the concept of separation of power and diluting the sovereignty of the Parliament.
- 2.) The doctrine has ambiguous nature .

COCLUSION

Therefore it can be concluded that the basic structure provides fine balance between rigidity and flexibility in regards to amending powers of the Constitution and resolves the dispute between article 13 and 368 of the Constitution. Absence of this doctrine of Basic Structure would have enabled an authoritative government which would have diluted the provisions of the Constitution and the Constitution would have lost its identity in the process. But since the doctrine

does not have any textual basis, the judiciary should lay down set of criteria which needs to be fulfilled in order to fall under the list of basic features of the Constitution of India. In many cases basic structure is criticized for being used by the Judiciary for the sake of judicial overreach. There is a need to clarify upon doctrine of basic structure, since it does not have any textual basis in our Indian Constitution in order to become more trustworthy in the eyes of the people as well for the members of the Parliament. Thus basic structure doctrine require certain reforms in order to achieve the goal for which this doctrine was innovated by the Judiciary.