

THE FORGOTTEN CASE OF I.R. COELHO - A CRITICAL ANALYSIS

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ABSTRACT

Everyone associates our constitution,' Doctrine of Basic Structure' with the famed case of Kesavananda Bharati Sripadagalvaru and Ors vs. State of Kerala, 1973. Here, the landmark judgement made any provision of the Indian Constitution amendable by the Parliament to fulfil the socio-economic obligations guaranteed to the citizens as per the Preamble, provided that such amendment did not change the Constitution's 'basic structure. This Basic Structure consists of a plethora of different sections of our Constitution, including but not limited to - the sovereign, democratic and republic nature of India, the unity and integrity of this nation, and the well-defined, clearly demarcated wall of separation between the esteemed Legislature, Executive and Judiciary. This is one of the most critical cases in independent India's constitutional history. The Kesavananda case has carved out a lasting legacy, illuminating the serious constitutional threats that bodies can impose on our judicial system. However, in all these cases, there is one that needs to be addressed. Decades later, the I.R Coelho vs. State of Tamil Nadu (2007) was passed. This case is just as crucial as the Kesavananda case. It upheld and reinstated the importance of the Basic Structure Doctrine, and further looked into the double-edged sword we call the Ninth Schedule of the Indian Constitution. This manuscript aims not only to understand this case but also to look into the trifecta of the Ninth Schedule, the Basic Structure and the Separation of Powers. This manuscript also aims to understand the relationship between these three elements which are the pillars of ours.

THE CASE IN BRIEF

Presided by a 9-judge bench led by Chief Justice Sabharwal, this case is often referred to as the ninth schedule case. The two chief issues framed in this case were -

The fundamental question was whether, after the Kesavananda Bharati judgement, laws in the Ninth Schedule be exempted from judicial review, considering it to be violative of the basic structure.

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Introducing the Ninth Schedule in the Constitution aimed to bring legislative reforms in the agricultural sector. With the advent of time, the Legislature used it to bypass the judicial review process. Then, to what extent does the Ninth Schedule provide immunity to the laws?

The Ninth Schedule tied the hands of the Judiciary. Even if a law violated fundamental rights, it could be protected from being declared void by the Judiciary by simply placing it in the Ninth Schedule. Schedule 9 of the Indian Constitution contains the list of central and State laws which cannot be challenged in Court.

THE RULING

The Court unanimously held that it was not acceptable for the Legislature to avoid evading the scrutiny of the Basic Structure doctrine by finding crafty ways to counter it. The fundamental structure doctrine is intrinsic to the Constitution, and any piece of law that violates its significance cannot persist in this bold manner. If any laws in the Ninth Schedule were inconsistent with Part III, they are liable to be struck down by the Court. Any alterations made to these parts that bypass the restrictions in place cannot be allowed to continue to the detriment of well-established principles. These developments in the Ninth Schedule are an attempt to invade the domain of fundamental rights. This must be dealt with so as to preserve the sanctity of our rights.

The fundamental rights chapter was added to the Constitution to keep a check on the powers of the State. It was also to ensure that the State does not fiddle with individual rights contrary to the basic setup of fundamental rights. The power of judicial review bestowed upon the Courts is a check on the attempts of the State to chip away at the fundamental rights in the Constitution. Any new amendment or alteration in the Constitution must be tested on its own merits to determine whether such a change is violative of its basic features.

With every judgement comes its criticisms. Further solidifying the concept of basic structure, which has no textual basis in the Constitution, was a systematic critique. Many believed that such judgements chip away at the Legislature's power to enact laws to further their legitimate policies. The basic structure's non-exhaustive list is hampering the Legislature and paving the way for new litigation, which only adds to the vagueness and confusion that has always surrounded the fundamental structure doctrine. To date, the Judiciary has neither given any exhaustive definition of the basic structure nor an exhaustive list of what constitutes the basic structure of the Indian Constitution.

PRINCIPLES AT HAND

1. Separation of Powers

India's carefully drafted Constitution enshrined the existence of this separation. During the Constituent Assembly Debates, many members argued in favour of this separation, including K.T.Shah, when he stated, "If you maintain the complete Independence of all three... This, in my view, is of the highest importance in maintaining the liberty of the subject, the Civil Liberties and the rule of law. Suppose there was contact between the Judiciary and the Legislature. In that case, I am afraid, the Legislature in a democratic assembly is bound to be influenced by Party reasons rather than by reasons of principle...."

Separation of Powers has also been reasonably derived from specific constitutional articles. This includes -

Article 50: The state must separate the Judiciary from the Executive (This, however, is non-enforceable, for it is a Directive Principle of State Policy)

Articles 121 and 211: The Legislature cannot discuss the conduct of High Court/ Supreme Court judges except during impeachment proceedings.

Articles 122 and 212: Validity of Parliamentary/ State Legislative proceedings cannot be challenged in Court.

Further, there are checks and balances in the Constitution in terms of -

Judiciary: Articles 124 (2) and 217(1) allow the Executive to appoint judges of the Supreme Court and State High Courts. The Legislature can impeach judges through Articles 124(4) and Proviso 217 (1).

Legislature: Using the privileges of Articles 32, 136, 226, and 227, The Supreme Court or State High Courts can perform a judicial review of legislation. Through delegated legislation, the Executive can regulate their conduct of business.

Executive: Through Article 75, without the support of the Legislature, it is reasonable to assume that the Executive cannot function. Also, using the privileges of Articles 32, 136, 226 and 227, The Supreme Court or State High Courts can perform a judicial review of executive action.

Case laws have also created a robust framework through which separation has remained relevant yet dynamic -

Ram Jawaya Kapoor v. State of Punjab (1955)

Here, the Constitution does not recognize a rigid separation of powers, but the different branches of Government have been sufficiently differentiated; the Constitution does not permit one branch to assume the functions or powers of another.

Kesavananda Bharati v. State of Kerala (1973)

This mentioned that the separation of powers is a part of the Constitution's basic structure.

P. Kannadasan v. State of Tamil Nadu (1996)

If the courts invalidate an Act, the Legislature cannot overrule or annul the judgment by enacting a new Act to declare that the Court's judgment will not operate. This will violate the system of checks and balances.

2. BASIC STRUCTURE DOCTRINE

The Constitution of India allows the State legislatures and Parliament, the capacity to enforce legislation within their respective domains. This power isn't absolute. The Supreme Court has the power to declare a statute to be ultra vires or null and void if it breaches any provision of the Constitution.

Parliament's authority to modify the Constitution, primarily the section on the fundamental rights of citizens, was contested as early as 1951. Troubled by the unfavourable judgements, Parliament placed these laws in the Ninth Schedule of the Constitution through the First and Fourth Amendments, thereby essentially removing them from the purview of judicial review.

In 1967 an eleven-judge bench of the Supreme Court delivered its 6:5 majority judgement in the Golaknath v. State of Punjab case. The majority judgement emphasized the concept of implied limitations on Parliament's power to modify the Constitution. This perspective held that the Constitution gives a place of codified relevance to the fundamental freedoms of the citizen. The judges remarked that the fundamental rights were so sacrosanct and transcendental in significance that they could not be restricted even if such a move received unanimous approval from both houses of Parliament. The phrase 'basic structure' was introduced by M.K.

Nambiar and other counsels while arguing for the petitioners in the Golaknath case. However, it was only in 1973 that the notion was resurrected in the text of the apex court's verdict.

Chief Justice Sikri, who signed the summary statement, announced that Parliament's constituent power was subject to intrinsic limitations. Parliament could not use its amending powers under Article 368 to 'damage', 'emasculate', 'destroy', 'abrogate', 'change' or 'alter' the basic structure or framework of the Constitution.

The majority verdict in Kesavananda Bharati identified the power of the Parliament to amend any or all provisions of the Constitution, provided such an act did not deconstruct its basic structure. However, there was no unanimity of opinion about what appoints that basic structure. The minority view stated that all parts of the Constitution were vital and no differentiation could be made between its essential and non-essential parts.

The ultimate word on the issue of the basic structure of the Constitution has not been charted by the Supreme Court. While the idea that there is such a basic structure to the Constitution is well known, its contents cannot be determined entirely with any measure of legitimacy until a judgement of the Supreme Court spells it out.

3. NINTH SCHEDULE

Zamindari abolition and land reform laws were implemented after Independence to create a more equitable society. However, the Government's efforts at social engineering ran into several issues, and the land laws were contested in Court. The Bihar Land Reforms Act of 1950 was first challenged in the case *Kameshwar Singh v. State of Bihar* because the classification of zamindars used to determine compensation was discriminatory and denied the citizen the equal protection of the law guaranteed by Article 14 of the Constitution. The Patna High Court ruled that this law violated Article 14 because it discriminatorily categorised zamindars for compensatory payments.

As a result of these judicial pronouncements, the Government became apprehensive that the whole agrarian reform programme would be at risk. To ensure it did not run into heavy weather, the Legislature amended the Constitution in 1951, which inserted the Ninth Schedule.

The other feature of Article 31-B is that it is retrospective in nature. When a statute is deemed unconstitutional by a court and then included in the Ninth Schedule, it is considered to have

been in that Schedule from its commencement. Thus it provides blanket protection to all laws under the Schedule. The Supreme Court held that Article 31-B represents a novel, innovative and drastic technique of amendment. Legislative enactments are incorporated into the Constitution and immunised against all attacks on the grounds of breach of any of the Fundamental Rights. Since 1951, the Ninth Schedule has been constantly expanded so much that 284 Acts are included today.

As a result, Article 31-B of the Indian Constitution provided that no law included in the Ninth Schedule may be contested in Court and that the Government might rationalise its social engineering agenda by amending the land and agricultural laws. In other words, even when they violate fundamental rights guaranteed by section III of the Constitution, laws included under the Ninth Schedule are exempt from judicial scrutiny.

The conflict between the Legislature and the Judiciary began when Article 31-B granted the Legislature significant power while also restricting the Judiciary's authority.

However, it is now well-established as a result of subsequent decisions that, even though such laws are constitutionally valid and the Government has the power to include any law in the Ninth Schedule, they are also subject to judicial review if they do not adhere to the "basic structure doctrine" established in the seminal *Keshavananda Bharati* decision.

OBJECTIVES OF THE 9TH SCHEDULE WERE

- To carry out various land reforms after Independence.
- The Zamindari system must be abolished to end feudalism and pave the way for socialism to take its place.
- Immunise specific laws that are stumbling blocks to reform and potentially infringe on fundamental rights.
- To protect the interests of society's weakest members by bringing them up to speed with the rest of the population.
- To achieve the constitutional goal of developing an equal society by sharing land among farmers and reducing the concentration of land in a few hands.

CRITICAL ANALYSIS

Every Constitution must have in it the safeguard to amend it. Only a constitution that can be amended to adapt to the needs of an evolving nation will be progressive, valuable and effective. When we adopted the Constitution in 1950, the then-prevailing social, economic, political and cultural scenarios were embodied in the pillars of governance that our constitutional fathers conceived and enacted. However, we would need a tool to introspect and evolve with the changing times. Hence the power to amend the Constitution is germane to growth.

However, the separation of powers, also textualized in the Constitution, created a conflict. Whereas the Judiciary's primary role was to interpret the Constitution, the Legislature's role was to introduce and implement newer legislations that often seemed contradictory to what existed until then. This created a see-saw tussle for supremacy between the Judiciary and the Legislature. Whenever the Legislature introduced a new law, such as land reforms or caste reservation, that seemed to violate an individual's fundamental rights; the Courts would strike it down as ultra-vires to the Constitution and declare it invalid.

The initial amendments were aimed at land reforms to provide a more equitable distribution of land and property in our nation. For example, doing away with the Zamindari system may be seen as violating the landowners' right to property and freedom. However, unless it was done away with, we would not have seen the progress in land reforms and growth that India witnessed in the first two to three decades after Independence.

Article 13 states that no law can violate Fundamental Rights, whereas Article 368 allows Parliament to amend 'any' part of the Constitution. This contradiction was challenged during the 1st, 17th, 24th, 39th and 42nd constitutional amendments, and every single landmark case has redefined our legal system. This tussle saw a long and arduous journey through many landmark cases between the 1950s and 1970s. While there was no clear winner, it would be essential to note that the nation progressed, and the pillars of democracy kept each other on tenterhooks.

The Supreme Court accepted that the Parliament could amend even the fundamental rights in the Constitution but not the 'basic structure'. This doctrine was not new but was textualized in this case. The then Chief Justice of the Supreme Court, Justice Sikri, noted that when there would be a doubt on whether a new feature could be added to the 'basic structure', we must

look not only at its context but also decide if it upheld the 'principle' our constitution framers would have conceived.

'Judicial review' was thus added as part of the basic structure, and the Court set the date of April 24th, 1973, as its watershed. Any amendment after this date that seemingly violated the basic structure of the Constitution could be challenged, and not those prior.

To circumvent this, the Legislature would amend the Constitution to create a new normal. The birth of the ninth Schedule introduced in the first amendment was a 'weapon' of the Legislature to circumvent this judicial review.

The 9th Schedule provided the proverbial 'bunker' that the Legislature would resort to protect its amendment from the 'onslaught' of judicial review. With ambiguity came more conflict. Can the 9th Schedule undo the separation of powers? Will future Governments misuse this Schedule to 'escape' scrutiny?

These were unanswered questions until the IR Coelho Case judgement. In my opinion, this case has finally laid to rest the limitations of the Legislature's power, upheld the basic structure of our Constitution and strengthened the pillars of our democracy. It is one of the most critical judgments of our times.

As taken from the conclusion of the official judgement -

"A law that abrogates or abridges rights guaranteed by Part III of the Constitution may violate the basic structure doctrine, or it may not. If the former is the consequence of the law, whether by amendment of any Article of Part III or by an insertion in the Ninth Schedule, such law will have to be invalidated in the exercise of judicial review power of the Court. The validity or invalidity would be tested on the principles laid down in this judgement."

While the basic structure was given a more substantial basis in 1973, the 2007 Coelho case strengthened it to a significantly larger extent. It not only helped make guidelines to ensure the separation of powers was respected, but it further proved to be a safeguard against the legislative abuse of the Ninth Schedule. The dynamic nature of our Constitution must be appreciated. However, its relatively flexible amenability must be used with caution.

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