



THE TUSSLE OF FUNDAMENTAL RIGHTS AND CONSTITUTIONAL AMENDMENTS IN THE LIGHT OF VARIOUS LANDMARK CASES AND THE BASIC STRUCTURE DOCTRINE

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ABSTRACT

Basic structure doctrine is used in the pronouncement of various judgments of Indian courts, but the actual definition of this doctrine is still a question before us. However, in an ordinary sense, we understand basic structure doctrine as something that preserves the spirit of our Constitution. Since our Constitution has undergone several amendments and various amendments have been made to ensure the efficacy of its provisions in complex situations, the doctrine has achieved core importance. The landmark case, i.e., Kesavananda Bharati Sripadagalvaru & Ors v State of Kerala & Anr¹ Applied the basic structure doctrine to preserve the spirit of the Constitution. The cases before this judgement put forth the question before the judiciary to answer whether, by constitutional amendments, fundamental rights can be abridged or taken away by the Parliament. Another question that the judiciary had to answer is the extent to which the Parliament can amend the Constitution. Now, we have understood what basic structure doctrine actually refers to, but, as arguments supported by cases and laws are always preferred, similarly, various case laws help in understanding the basic structure doctrine. Now, let's delve into more information regarding basic structure doctrine with the help of various landmark judgments. This can depict the efforts of the judiciary in resolving the tussle between fundamental rights and constitutional amendments.

Keywords: Basic Structure Doctrine, Fundamental Right, Constitutional Amendments.

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¹ Kesavananda Bharati Sripadagalvaru & Ors v State of Kerala and Anr (1973) 4 SCC 225

INTRODUCTION

The golden origin of the basic structure doctrine can be traced from the judgment of *Kesavananda Bharati Sripadagalvaru & Ors v State of Kerala & Anr* on April 24, 1973. Since the doctrine of separation of powers is a crucial part of the basic structure doctrine of the Indian Constitution. Separation of powers is done to avoid conflicts between various organs of the State, i.e., legislative, executive, and judiciary. Legislature or Parliament is empowered with the power to amend the Constitution under Article 386 of the Indian Constitution. But, the extent of power which the legislature has to amend the Constitution is limited or unlimited is a question which arose before the Court in the above case and in the previous cases in which the same question arose before the judiciary. This question put the judiciary in confusion about whether the government holds absolute power to amend the Constitution. Thus, in order to avoid this confusion, a new doctrine was put forth which paved the path for various upcoming cases before the Indian Judiciary, and this doctrine is popularly known as ‘The Basic Structure Doctrine’.

Shankari Prasad v Union of India, 1951:² The question of whether the legislature can amend fundamental rights came before the Hon’ble Supreme Court in this case. It can be seen that within a year of the commencement of the Indian Constitution, this case emerged and found a place amongst the landmark judgements of the Supreme Court. Now, let’s delve into the facts and ruling of this case.

The persisting zamindari system before a newly independent country tensed the government in such a way that various State Legislatures passed their own Zamindari Abolition Act. The unjust consequences of the zamindari system compelled the government to take this step. Then, the Act received aggression from zamindars, after coming into force, as they thought that their property right, which were their fundamental right guaranteed under Article 19(1)(f)³ of the Indian Constitution, got violated. To handle this situation, the government came up with the First Constitutional (Amendment) Act of 1951.⁴ This Amendment Act validated the zamindari laws passed by the States, and under this amendment, two new provisions, i.e., Article 31A⁵

² *Shankari Prasad v Union of India* (1951) SCC 966

³ Constitution of India, art 19(1)(f)

⁴ The Constitution (First Amendment) Act, 1951 | National Portal of India. Available at: <https://www.india.gov.in/my-government/constitution-india/amendments/constitution-india-first-amendment-act-1951> (Accessed: 13 July 2025)

⁵ Constitution of India 1950, art 31A

and Article 31B,⁶ were added to the Constitution. Due to this, another issue that arose before the Supreme Court was whether the term ‘law’ used under Article 13⁷ of the Indian Constitution includes the constitutional amendment acts or not. And, the power to amend the Constitution, which is given to Parliament, i.e., the Indian Legislature under Article 368,⁸ includes the power to amend the Fundamental right or not was also put forth in question. In response to petition, filed by the zamindars, under Article 32 of the Constitution, the Apex Court ruled that since, First Constitutional Amendment Act of 1951 does not fall under the ambit of term ‘law’ used in Article 13 of the Indian Constitution, hence, Parliament’s power to amend the Constitution includes power to amend the Fundamental rights and hence, the Amendment Act of 1951 was upheld by the Court.

Sajjan Singh v State of Rajasthan, 1965:⁹ Another constitutional amendment, which raised the same issue, i.e., whether fundamental rights can be amended, came before the court in the face of this case. The Seventeenth Constitutional Amendment Act of 1964,¹⁰ in which modifications were made under Article 31A, and around forty-four Acts were added in the Ninth Schedule¹¹ to prevent the intervention of the Courts. Due to this amendment, Sajjan Singh, ruler of Ratlam (a Princely State), faced challenges in his right to hold land. After that, Sajjan Singh approached the court under Article 226.¹² Now, the question arose whether such a petition can be entertained or not. Moreover, in this case, the constitutional validity of the Seventeenth Constitutional Amendment Act was also put in question. In the landmark judgment of Shankari Prasad v Union of India¹³ and A.K. Gopalan v State of Madras,¹⁴ it was taken into consideration by the Court. After putting due consideration on various constitutional provisions and these landmark cases, the Apex Court ruled that the Seventeenth Constitutional Amendment Act is valid and Parliament, under Article 368, also has the power to amend fundamental rights.

⁶ Constitution of India 1950, art 31B

⁷ Constitution of India 1950, art 13

⁸ Constitution of India 1950, art 368

⁹ Sajjan Singh v State of Rajasthan (1964) 4 SCR 630

¹⁰ The constitution (first amendment) act, 1951| National Portal of India. Available at:

<https://www.india.gov.in/my-government/constitution-india/amendments/constitution-india-first-amendment-act-1951> (Accessed: 13 July 2025)

¹¹ Constitution of India 1950, sch 9

¹² Constitution of India 1950, art 226

¹³ Shankari Prasad v Union of India (1952) SCR 89

¹⁴ A.K. Gopalan v State of Madras (1950) 228 (SCC)

IC Golaknath v State of Punjab, 1967:¹⁵ In the renowned judgement of IC Golaknath v State of Punjab, a change came in the Indian legal system, which later led to the coming of the basic structure doctrine. In this case, the facts were that – the petitioner owned 500 acres of land at a place, and after the commencement of the Seventeenth Constitutional Amendment Act and the Punjab Security of Land Tenures Act, 1953,¹⁶ Golaknath's family could own up to 30 acres of land and not more than that. Since, as per the Punjab Security of Land Tenures Act, an individual can own up to 30 acres of land, Golaknath felt that his property rights had been infringed, and so, he approached the Court to seek justice. The Court faced the same issue of whether fundamental rights are amenable or not. And, the constitutional validity of the Seventeenth Constitutional Amendment Act was in question.

The court in this case reversed its earlier stand. The insertion of various State Acts in the Ninth Schedule of the Constitution was challenged. Hon'ble Supreme Court in this case ruled that Parliament cannot abridge any of the Fundamental Rights as fundamental rights are given a 'transcendental and immutable' position in the Indian Constitution. In this case, the constitutional amendment acts were held as law within the meaning of Article 13; hence, a law that violates such fundamental rights was held as void.

Kesavananda Bharati Sripadagalvaru & Ors v State of Kerala & Anr, 1973:¹⁷ The landmark judgement of this case, which came on 24th April 1973, is receiving great importance in the present time. This case gave us our most renowned, basic structure doctrine. And, hence, the emergence of this doctrine can be traced from this case.

The facts were that- Petitioner was the head of a monistic religious institution, and he had some land in that monistic religious institution, which he owned. The Kerala Land Reforms (Amendment) Act of 1969¹⁸ was passed by the Kerala government and the Twenty-fourth Constitutional Amendment Act¹⁹ Was also passed by the legislature hence, these two Acts were challenged by the petitioner as these amendments, in his view, violated his fundamental rights,

¹⁵ IC Golaknath v State of Punjab 1967 SCR (2) 762

¹⁶ The Punjab Security of Land Tenures act, 1953. Available at:

<https://plrs.org.in/pdfs/Punjab%20Security%20Of%20Land%20Tenures%20Act.pdf> (Accessed: 13 July 2025)

¹⁷ Kesavananda Bharati Sripadagalvaru & Ors v State of Kerala & Anr (1973) 4 SCC 225

¹⁸ Kerala Land Reforms (Amendment) Act, 1969 (no date) Court Kutchehry. Available at:

https://www.courtktutchehry.com/Judgement/Search/AdvancedV2?s_acts=Kerala+Land+Reforms+%28Amendment%29+Act%2C+1969 (Accessed: 13 July 2025)

¹⁹ The Constitution (twenty-fourth amendment) act, 1971| National Portal of India. Available at:

<https://www.india.gov.in/my-government/constitution-india/amendments/constitution-india-twenty-fourth-amendment-act-1971> (Accessed: 13 July 2025)

which are enshrined in Article 25,²⁰ Article 26,²¹ Article 14,²² Article 19(1)(f)²³ and Article 31²⁴ Of the Indian Constitution. Thus, the Apex Court has to answer whether the Twenty-Fourth Constitutional Amendment Act is valid or invalid. Moreover, the power of Parliament to amend Fundamental Rights was also put in question. The Apex Court resolved this issue and put forth the 'basic structure doctrine'.

Thus, on 24th April 1973, the Apex Court ruled that Parliament cannot take away any Fundamental Right of the individuals which forms the part of the 'basic structure' of the Indian Constitution. And, thereafter, this judgement received great importance in the pronouncement of various judgements.

Indira Nehru Gandhi v Raj Narain, 1976:²⁵ In this case, a complaint was filed against Prime Minister Indira Nehru Gandhi as the respondents felt that unfair means had been adopted in the election. The respondents alleged that unfair means were used in the electoral process. Hon'ble Allahabad High Court found the petitioner guilty under Section 123(7) of the Representation of the People's Act.²⁶ And, the election, which was conducted by the use of unfair means, was declared void. Then, the petitioner appealed to the Supreme Court. During the pendency of the above-mentioned case, an emergency was issued to Indira Gandhi. During this emergency, the government passed the Thirty-ninth Constitutional Amendment Act.²⁷ As per this, the elections of the Prime Minister can never be challenged in any court. Therefore, this amendment brought a change in Article 329A.²⁸ The amendment was then challenged in the Supreme Court. The Court ruled that the right to free and fair elections is an integral part of our basic structure and hence, the amendments brought by the Thirty-ninth Constitutional Amendment Act were beyond the powers of the legislature.

Minerva Mills v Union of India:²⁹ The Forty-Second Constitutional Amendment Act was put forth by the government, which amended Article 368, and as per which, amendments brought by the Legislature can never be challenged by anyone in any court of law, even if such an

²⁰ Constitution of India 1950, art 25

²¹ Constitution of India 1950, art 26

²² Constitution of India 1950, art 14

²³ Constitution of India 1950, art 19(1)(f)

²⁴ Constitution of India 1950, art 31

²⁵ Indira Nehru Gandhi (Smt.) v. Raj Narain & Anr 1975 SCC (2) 159

²⁶ The Representation of the People Act 1951, s 123(7)

²⁷ The Constitution (Thirty-ninth Amendment) Act 1975

²⁸ Constitution of India 1950, art 329A

²⁹ Minerva Mills v. Union of India AIR 1980 SC 1789

amendment abridges or takes away any fundamental right of individuals. In this case, the facts are such that, due to the substantial fall in the production of Minerva Mills, the Central Government appointed a committee under the Industries Development Act, 1951,³⁰ to submit its report in October 1971. Then, the Central Government authorised National Textile Corporation Limited to take over the management of Minerva Mills. Since, under the Forty-second Constitutional Amendment Act, nationalisation was incorporated under the Ninth Schedule of the Constitution. As we know, the Ninth Schedule cannot be challenged in the courts, and nationalisation falls outside the purview of judicial review. Sections 4 and 55 of the Forty-Second Constitutional (Amendment) Act³¹ were challenged by the petitioners in this case. The Supreme Court, with a majority of 4:1, held these sections as unconstitutional. Hence, the Court ruled that the limited amendment power of the Parliament is a part of our basic structure doctrine. Moreover, judicial review and balance between fundamental rights and Directive Principles of State Policy got added to the list of basic structure features.

Waman Rao v Union of India, 1981:³² Another case in which the Supreme Court dealt with the basic structure concept is the Waman Rao case. During the emergency period, the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961³³ was challenged before the Bombay High Court. However, the court in this case ruled that the provisions of the Maharashtra Agricultural Lands (Ceilings on Holdings) Act are not open to challenge as the aforementioned Act falls in Schedule Nine of the Constitution. Moreover, since it was the time of emergency, Article 14 and Article 19 of the Constitution could not be enforced. The High Court held the aforementioned Act valid. After the revocation of the emergency, the petition asking for review of the judgment came to be decided in the Waman Rao case. In this case, the validity of Article 31A, Article 313B, as well as Article 31C³⁴ was put in question. The Supreme Court held the First Constitutional Amendment Act of 1951 as valid and also held that the Amendment Act doesn't affect the basic structure of the Indian Constitution. Supreme

³⁰ The industries (development and regulation) act, 1951 (... Available at: https://www.indiacode.nic.in/bitstream/123456789/6826/1/a-1_-_industries_act1951.pdf (Accessed: 13 July 2025))

³¹ The constitution (Forty-Second Amendment) act, 1976| National Portal of India. Available at: <https://www.india.gov.in/my-government/constitution-india/amendments/constitution-india-forty-second-amendment-act-1976> (Accessed: 13 July 2025)

³² Waman Rao And Ors vs Union of India (1981) 2 SCC 362

³³ India code: Home. Available at: <https://www.indiacode.nic.in/> (Accessed: 13 July 2025)

³⁴ Constitution of India 1950, art 31C

Court further clarified in this case that the basic structure doctrine would apply to constitutional amendments commenced or enacted after April 24, 1973.

After these cases, various other cases arose in which the basic structure doctrine applied, leading to expand the list of the basic structure of India. In *Bhim Singhji v Union of India*,³⁵ in 1981, the welfare state was added to the list of the basic structure doctrine. Moreover, in the case of *Indra Sawhney v Union of India*,³⁶ i.e., the Mandal case, the rule of law was also included in the list of the basic structure doctrine of the Indian Constitution. In *Kumar Padma Prasad v Union of India*, 1992,³⁷ the independence of the judiciary was added to the list. In *Kihoto Hollohon v Zachilhu*, 1992³⁸ (popularly called the Defection case), free and fair elections, sovereignty, and democracy were incorporated into the list of basic structure doctrine of the Indian Constitution. In *Raghunathrao v. Union of India*, 1993,³⁹ the principle of equality, unity, and integrity got added tin the list of basic tenets of the basic structure doctrine. Moreover, in the renowned case of *S.R. Bommai v Union of India*, 1994,⁴⁰ terms like Federalism, Secularism, Democracy, Unity and Integrity, Social Justice, and Judicial Review found a place in the list of the basic structure doctrine. Then, in *I.R. Coelho v State of Tamil Nadu*, 2007⁴¹ (popularly known as the Ninth Schedule Case), terms like rule of law, separation of power, principles underlying fundamental rights, judicial review, along with principles of equality, were added to the list of the basic structure doctrine of India. *Ram Jethmalani v Union of India*, 2011,⁴² the power of the Supreme Court given to it under Article 32⁴³ i.e. power of judicial review, was added to the list of the basic structure doctrine. Therefore, various cases led to an expansion of the scope of the basic structure doctrine, which was put forth by the Indian judiciary.

CONCLUSION

The Basic Structure doctrine is the doctrine which ensures protection of the spirit of the Indian Constitution, and its scope is expanding day by day. This doctrine emerged with the judgment pronounced by the court in the case of *Kesavananda Bharati Sripadagalvaru & Ors v State of*

³⁵ *Bhim Singhji v Union of India* 1981 AIR 234

³⁶ *Indra Sawhney v Union of India* AIR 1993 SC 477

³⁷ *Kumar Padma Prasad v Union of India* 1992 AIR 1213

³⁸ *Kihoto Hollohan v Zachillhu* 1992 SCR (1) 686

³⁹ *Raghunathrao v Union of India* AIR 1993 SC 1267

⁴⁰ *S.R. Bommai v Union of India* 1994 AIR 1918

⁴¹ *I.R. Coelho v State of Tamil Nadu* (2007) 2 SCC 1

⁴² *Ram Jethmalani v Union of India* (2011) 8 SCR 725

⁴³ Constitution of India 1950, art 32

Kerala & Anr. Moreover, before it is required to mention here that before this case, various cases such as the Sajjan Singh v State of Rajasthan and the Golaknath v State of Punjab contributed to the development of this doctrine. These cases showed the existence of a tussle between the fundamental rights of individuals and constitutional amendments of Parliament, and then, the judiciary resolved this tussle by introducing our basic structure doctrine. The shift in the judiciary's viewpoint after the Golaknath case led to the introduction of this doctrine in the Kesavananda Bharati Sripadagalvaru & Ors v State of Kerala & Anr, and ultimately, its scope continues to expand. Although we do not have a precise definition of this doctrine, its concept and essence can be understood in light of these cases. Hence, the bridge that harmonised fundamental rights of individuals and constitutional amendments of Parliament was the basic structure doctrine, introduced in 1973.