



KESAVANANDA BHARATI'S QUIET DOMINANCE: WHY DO GENERATIONS OF STUDENTS KEEP RETURNING TO THE CASE?

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ABSTRACT

The seminal Supreme Court decision in Kesavananda Bharati v. State of Kerala (1973)¹ remains at the very centre of Indian constitutional law teaching and scholarship, over half a century since its delivery. This case comment examines the sustained significance of the case in classrooms and literature, and poses the question: Why do so many generations of students come back repeatedly to this case? The piece places the decision in its stormy historical and political background, in which the struggle between Parliament's ambitions for radical change and the judiciary's devotion to constitutional supremacy was at its most intense.² It analyses the doctrinal essence of the ruling of the basic structure doctrine by which flexibility in the constitution was weighed against upholding its essential identity, and draws attention to the case's doctrinal, theoretical, and symbolic importance.³

The comment argues that the pedagogical interest of the case resides in its rich political drama narrative, the richness of judicial reasoning, and how it deals with eternal questions of constitutional law regarding democracy, sovereignty, and judicial review. The article similarly critically addresses criticisms of the doctrine, such as complaints regarding its indeterminacy, legitimacy, and differential treatment. Based on comparative and contemporary insights, the article considers whether the persistence of the focus on Kesavananda Bharati enriches or limits constitutional imagination. Finally, the article establishes that even as it is necessary to expand the field of Indian constitutionalism beyond this singular instance, Kesavananda Bharati is an irreplaceable reference point for grasping India's constitutional culture. Its

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¹ Kesavananda Bharati v State of Kerala (1973) 4 SCC 225

² Granville Austin, The Indian Constitution: Cornerstone of a Nation (Oxford University Press 1966) 50–75

³ M P Jain, Indian Constitutional Law (7th edn, LexisNexis 2014) 1532–1535

abiding relevance lies in the fact that it so masterfully captures the contradiction between continuity and change, authority and freedom, law and politics.

Keywords: Basic Structure Doctrine, Constitutional Supremacy, Judicial Review, Legal Education in India.

INTRODUCTION

Few Indian judicial rulings have intrigued students and academics as vividly as the Supreme Court ruling in *Kesavananda Bharati v. State of Kerala*. Ruled upon in April 1973 by a landmark 13-judge bench, the case dealt with the extent of Parliament's constituent power to amend the Constitution, resulting in the basic structure doctrine. This doctrine has gone on to define the shape of constitutional law in India.

In classrooms all over India, generations of students have read, discussed, and debated the case with unabated passion. Why has there been this wonderful resilience? Why does the case, out of the thousands of judgments passed by the Supreme Court, continue to exert a special pedagogical and intellectual grip on students? This essay addresses these questions by placing the case in its legal and historical context, looking at the core logic of the decision and the doctrine of basic structure, exploring its pedagogical salience, and considering its relevance today.

THE HISTORICAL AND POLITICAL CONTEXT

In order to grasp the role of *Kesavananda Bharati*, one has to begin by understanding the political context in which it emerged. During the decades since independence, the Indian state embarked upon a revolutionary agenda of land reforms, nationalisation, and welfare statutes. Such initiatives frequently confronted vested property interests and resulted in challenges under the provisions of the Constitution relating to fundamental rights.

Before *Kesavananda Bharati*, the Supreme Court had already established a jurisprudence on the extent of Parliament's amending power. In *Shankari Prasad v. Union of India*, 1951⁴ and *Sajjan Singh v. State of Rajasthan*, 1965, the Court had asserted Parliament's unlimited power to amend any aspect of the Constitution, even fundamental rights. But in *Golak Nath v. State*

⁴ *Shankari Prasad Singh Deo v Union of India* [1951] SCR 89; *Sajjan Singh v State of Rajasthan* [1965] 1 SCR 933

of Punjab 1967,⁵ a slim majority ruled that Parliament was not competent to amend fundamental rights, restricting its power in effect.

Parliament, in turn, responded by enacting the 24th, 25th, and 29th Amendments,⁶ which attempted to reassert parliamentary supremacy by reintroducing its ability to amend and by excluding certain laws from judicial scrutiny. It was within this context that Swami Kesavananda Bharati, the leader of a religious mutt in Kerala, objected to the constitutional validity of these amendments, paving the way for a historic clash between constitutional supremacy and parliamentary sovereignty.

THE JUDGMENT AND BASIC STRUCTURE DOCTRINE

The judgment in Kesavananda Bharati is infamous for its length, complexity, and vagueness. The judgment is more than 700 pages long, and the opinions of the thirteen judges are not unanimous, so it is a difficult but engrossing read for students.

Most judges held (by a narrow 7–6 majority) that although Parliament has extensive powers to modify the Constitution under Article 368, it cannot change its "basic structure" or fundamental features. Although the Court did not fully elaborate on what constitutes the basic structure, it recognised elements like supremacy of the Constitution, republican and democratic form of government, secularism, separation of powers, and federalism as immutable. This doctrine struck a balance between the need for flexibility of the Constitution and maintaining its fundamental principles. In the process, it precluded Parliament from reinterpreting the Constitution to the point of undermining its identity.

DOCTRINAL SIGNIFICANCE

The basic structure doctrine has since evolved to become a pillar of Indian constitutional law. It has been used in landmark cases to invalidate constitutional amendments and uphold constitutional morality. For instance, in *Indira Nehru Gandhi v. Raj Narain* (1975),⁷ the Court struck down provisions intended to protect the Prime Minister from electoral challenge, relying on the basic structure doctrine.

⁵ *I C Golak Nath v State of Punjab* [1967] 2 SCR 762

⁶ Constitution (Twenty-fourth Amendment) Act 1971; Constitution (Twenty-fifth Amendment) Act 1971; Constitution (Twenty-ninth Amendment) Act 1972

⁷ *Indira Nehru Gandhi v Raj Narain* [1975] Supp SCC 1

The significance of the doctrine is the tacit but potent affirmation of the view that the Constitution is more than a legal instrument, but a political and moral charter that reflects abiding values. For students, the doctrine is an intriguing analysis of how courts can enforce substantive restraints upon formal democratic processes to uphold democracy itself, a paradox that even today continues to provoke animated controversies.

THE PEDAGOGICAL APPEAL OF THE CASE

Why is *Keshavananda Bharati* still so firmly embedded in Indian law education? There are several reasons why it is pedagogically so attractive:

Drama and Storytelling: The case presents a rich narrative with high political drama, ideological conflict, and judicial imagination. The intrigue about the 7–6 division, the position of Chief Justice S.M. Sikri⁸ (who had retired the day following the ruling), and the supersession of judges by the Indira Gandhi regime all provide interesting classroom fodder. Students tend to be attracted to the actors in the drama and the implications for judicial independence.

Constitutional Theory: The case presents the perfect prism by which to approach timeless questions in constitutional theory: Is the Constitution a self-enforcing democratic tool, or does it need judicial stewardship? How far must one go in constitutional flexibility versus conservatism? What is the proper role of the judiciary in a democracy? These are perennial questions that strike a chord with students' generation after generation.

Doctrinal Breadth: The judgment cuts across several constitutional provisions, such as basic rights, directive principles, amending power, and judicial review, and gives students a holistic vision of the Constitution's architecture. The doctrinal intricacy presents a challenge to students to think rigorously and reflect deeply on constitutional thinking.

Symbolism: For students of law, *Kesavananda Bharati* stands for the victory of constitutionalism against authoritarianism.⁹ In a nation where constitutional ideals are regularly pushed to their limits, the ruling is a reminder of the role of the judiciary in upholding democratic values.

⁸ George H Gadbois Jr, *Judges of the Supreme Court of India: 1950–1989* (OUP 2011) 274

⁹ S P Sathe, *Judicial Activism in India* (OUP 2002) 123–126

CRITICISM AND CONTROVERSY

Even with its status as an icon, the case has not been free from criticism.

Indeterminacy: Criticisms contend that the doctrine's ambiguity invites judicial excess. As the Court did not exhaustively enumerate what constitutes the basic structure, later benches have a significant degree of choice in deciding what is inviolable.

Democratic Legitimacy: There are concerns raised about whether an unelected judiciary should be able to restrain the will of a democratically elected Parliament. They claim that the doctrine compromises the rule of popular sovereignty.

Practical Application: In practice, the Court has invoked the basic structure doctrine sparingly and patchily. Although it has declared certain amendments and legislation invalid, it has affirmed others that arguably infringe on basic values, leaving the doctrine's coherence in doubt.

Yet these criticisms do not diminish the doctrine's pedagogical value. On the contrary, they deepen its appeal, as they compel students to confront challenging questions about constitutional limits, the balance of power, and the role of the judiciary. The very fact that the doctrine remains contested even after decades highlights its resilience and continued relevance at the heart of Indian constitutional law.

THE CASE IN CONTEMPORARY PERSPECTIVE

Half a century later, the basic structure doctrine continues to be the cornerstone of Indian constitutional law. The Supreme Court continues to cite it in federalism, secularism, and judicial independence cases. For example, the National Judicial Appointments Commission (NJAC) Case, 2015,¹⁰ struck down a constitutional amendment which changed the mechanism of judicial appointments based on the doctrine. In today's age of increasing majoritarianism and threats to institutional autonomy, the basic structure doctrine is a constitutional bulwark against authoritarianism. For students, this continued relevance underscores the significance of *Kesavananda Bharati*.

¹⁰ Supreme Court Advocates-on-Record Association v Union of India (NJAC case) (2016) 5 SCC 1

COMPARATIVE PERSPECTIVES

The interest in Keshavananda Bharati also draws on its comparative rarity. Few courts have specifically adopted a basic structure doctrine. While the German Constitutional Court acknowledges unamendable principles under Article 79(3) of the Basic Law,¹¹ and the Colombian¹² and Pakistani courts¹³ have established similar doctrines, India's Supreme Court created its judicial doctrine without express constitutional text. This comparative aspect enhances class discussions, allowing students to place Indian constitutionalism within a wider international context.

SHOULD WE KEEP GOING BACK TO KESAVANANDA BHARATI?

While the case's continued popularity is unquestionable, it may also be asked whether the near-obsession of the legal academy with Kesavananda Bharati confines students to studying other equally significant yet less heralded facets of Indian constitutionalism, such as socio-economic rights, gender justice, or the experiences of marginalised communities. However, the predominance of the case might be justified since it sums up so many themes, such as constitutional identity, judicial review, democracy, and the conflict between change and continuity that continue to be at the heart of Indian constitutional development.

CONCLUSION

Kesavananda Bharati holds a special position in Indian constitutional thought. Its blend of historical theatre, doctrinal creativity, and symbolic power accounts for why successive generations of students have found it engaging. The basic structure doctrine, unpopular as it may be, is an essential bulwark against constitutional dictatorship, and its relevance persists in current debates. As an educational device, the case forces students to consider critically the implications of constitutionalism, the boundaries of state power, and the place of the judiciary. Though it is necessary to expand the study of the constitution beyond this single case, this obsession with Kesavananda Bharati will probably continue as both a benchmark and launching pad for further investigation into India's constitutional culture.

¹¹ Basic Law for the Federal Republic of Germany (Grundgesetz), art 79(3)

¹² Decision C-551/03, Constitutional Court of Colombia

¹³ State v Ziaur Rahman PLD 1973 SC 49