

DOCTRINE OF BASIC STRUCTURE¹

ABSTRACT

Fundamental Structure as an idea developed from rights law adjusted to normal law hypothesis. Indian legal got this idea to stem official overextend. Notwithstanding, purposely or not, the idea was constantly kept dubious. Judiciary had once in a while endeavored to get control over the idea of essential structure which was to be the last defense against an over possessive assembly. This article endeavors to discover a connection between the ideas of normal law and fundamental structure-both unchanging and sacred. The author would additionally break down the patterns of Indian Supreme Court and endeavor to devise a working test for fundamental structure.

INTRODUCTION

Indian Constitution charges the Parliament with capacity to make laws inside its locale. This power incorporates the ability to change existing laws. In any case, this power isn't total in nature. The Constitution gives the intensity of Judicial review to the Indian Judiciary whereby it has the ability to settle the protected legitimacy of all laws enforceable inside the Union. In the event that the Union Parliament or the State Legislature disregards any arrangement of the Constitution the Supreme Court has the ability to announce such laws as either invalid or ultra vires. The Constituent Assembly needed the Constitution to be a dynamic, natural archive, staying aware of the occasions. In order to facilitate this, the Parliament was granted the power to amend the Constitution under Article 368.² Upon a plain perusing of Art 368 recommends that the intensity of the Parliament is supreme and cover all parts of the Constitution. In any case, being provoked by official exceed, the Supreme Court attempted to put a brake on the administrative and official exuberance. About three decades prior in April 1973 in the acclaimed instance of Kesavananda Bharti Sripadagalvaru v. Province of Kerala³ the Supreme Court showing extraordinary creativeness and valor on its part thought of the most well known development in the Indian protected law history. For this situation the Supreme Court propounded the renowned 'Basic structure and system of Indian Constitution' or 'Doctrine of basic structure' subsequently ending the lawmaking body's consistently broadening arm. With the goal to safeguard the first standards of the Constitution, the Supreme Court articulated that the Parliament couldn't contort, deform and mangle the fundamental highlights of the Constitution which are holy to the beliefs of the Indian culture. This move successfully put a brake on the forces of the Parliament to mutilate the Constitution under the affection of changing it. The basic structure doctrine⁴ as articulated by the legal endeavors to stem such corrections, which would change the crucial structure of the Indian constitution. The Indian Judiciary has reliably taken a high area in characterizing the soul of amendment,⁵ it has opined that "the concept of amendment within the contours of the Preamble and the Constitution cannot be said to be a vague and unsatisfactory idea which parliamentarians and the public would not be able to understand."⁶

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² Constitution of India, 1950

³ AIR 1973 SC 1461; (1973) 4 SCC 225.

⁴ The 'basic structure doctrine' is a judicial innovation whereby certain features of the Constitution of India are beyond the limit of the powers of amendment of the Parliament of India. The doctrine which was first expressed in Kesavananda Bharati v. The State of Kerala (AIR 1973 SC 1461) and reflects judicial concern at the perceived threat to the liberal constitutional order. The Basic Structure doctrine applies only to the constitutionality of amendments and not to ordinary Acts of Parliament, which must conform to the entirety of the constitution and not just its basic structure.

⁵ As per Conrad, the Indian judiciary has consistently taken a balanced view of amendability of Indian Constitution, while in the formative years they gave total amending power to Indian Parliament (Sajjan Singh and Shankari Prasad cases) in the later stages the judiciary completely changed its position in Golaknath and finally brought out the famous 'basic structure theory' in the Keshavananda case, with this judgment and later cases like Election case, Minerva Mills, Waman Rao, Indian courts have demonstrated that the judiciary is also evolving with the evolving nation. In the first years of independence the judiciary allowed the legislature to make laws which may be necessary for implementation of greater social good but with changing times and progress the courts decided to implement the inherent limitations of the amending provisions of the Constitution. For further details please refer to Dieter Conrad's Zwischen Den Traditionen.

⁶ Supra note 2

RIGHTS

In India human rights were decidedly translated in Part III of the Constitution. Anyway just certain human rights were ensured as Fundamental Rights. A concise examination with UDHR and Part III of Indian constitution would breathe life into out that Right and freedom under Article 3 of UDHR have been changed into Article 21 of Indian Constitution, so to appropriate to reasonable preliminary under Article 10 of UDHR moved toward becoming Article 22 of Part III, appropriate to property which is Article 17 of UDHR was before Article 31 of Constitution later was revoked and set as a protected directly under Article 300, Right to opportunity of articulation under Article 19 of UDHR is Article 19 in Constitution of India. Anyway there are numerous other human rights like the privilege to work (Article 23 UDHR), Right to take an interest in administration of one's nation (Article 21 UDHR), Right to Education (Article 26 UDHR), Right to sufficient ways of life (Article 25 UDHR) which finds say in Indian constitution as Directive Principles of State Policy in Part IV a to some degree free rules given to the administration to pursue. In this manner the second connection of the rights chain to be specific that Fundamental Rights are a subset of more extensive human rights is likewise settled.

Presently we go to the topic of basic structure as a further subset of Key Rights yet including other characteristic law principles which are outside the Fundamental Rights space. As talked about in the advancement of Basic structure section we may infer that fundamental structure was a result of Judiciary's endeavor to discover something predominant in the sacred system whereby an all expecting official could be halted. Basic structure as expressed by the Judiciary in Kesavananda Bharti Protected the supremacy of the Constitution, a republican and democratic form of government; the secular character of the Constitution; maintenance of the separation of powers and the federal character of the Constitution. Judges Shelat furthermore, Grover added three highlights to the Chief Justice's rundown:

- ✓ The mandate to build a welfare state contained in the Directive Principles of State Policy;
- ✓ Maintenance of the unity and integrity of India;
- ✓ The sovereignty of the country.

Justices Hegde and Mukherjea instead provided, in their opinion, a separate and shorter list:

- ✓ The sovereignty of India;
- ✓ The democratic character of the polity;
- ✓ The unity of the country;
- ✓ Essential features of individual freedoms;
- ✓ The mandate to build a welfare state.

Justice Jaganmohan Reddy preferred to look at the Preamble; stating that the basic features of the Constitution were laid out by that part of the document, and thus could be represented by:

- ✓ A sovereign democratic republic;
- ✓ The provision of social, economic and political justice;
- ✓ Liberty of thought, expression, belief, faith and worship;
- ✓ Equality of status and opportunity.

Later different highlights were incorporated inside the ambit of fundamental structure like free and fair elections⁷, the principle of equality⁸, Rule of law⁹, powers of the supreme Court under Articles 32, 136, 141 and 142.¹⁰ In *Minerva* matchless quality of fundamental Rights and judicial review was ensured as basic structure.

In this manner we find that a large group of Fundamental Rights was secured in basic structure yet Part III all in all was never concurred assurance, as said in *Minerva* that harmony between Part III and Part IV is the character of the constitution. Fundamental structure contains substantially more than Fundamental Rights; it contains the essential substance of natural law as majority rule foundation, rule of law, and so on.

DEVELOPMENT OF BASIC STRUCTURE

- **PRE KESAVANANDA ERA**

Since freedom questions have been brought up in the lawful scholarly community about the extent of the Parliament's forces to alter Part III of the Constitution which established the Fundamental Rights. In spite of the fact that there was no uncertainty with respect to the intensity of the Parliament to alter the Fundamental Rights yet questions were communicated with respect to whether the Parliament can really take away or weaken a fundamental right. There is almost certainly that Article 31 has endured the most in the hands of the Parliament. The essential motivation behind the Parliament was to insusceptible those laws which took away property from the general population from difficulties under Articles 14, 19, and 31 and to guarantee that the Judiciary does not come in the way. Various challenges were made in the Supreme Court with respect to one side to property.

- **SHANKARI PRASAD CASE**

On account of *Shankari Prasad Singh v. Association of India*¹¹, the petitioner tested the intensity of the Parliament to change the Fundamental Rights. Here, the legitimacy of the First Amendment Act which abridged Article 31 was tested as being violative of Article 13 of the Constitution. ¹² The petitioners brought up a conceivable clash between Article 13 and Article 368. Utilizing the strict elucidation the Supreme Court settled the contention and maintained the legitimacy of the First amendment. The Court diminished the extent of Article 13 altogether when it held that "law" did exclude inside its extension an established correction gone under Article 368.

On this point the Court saw that, "We are of the opinion that in the context of Article 13 law must be taken to mean rules and regulations made in the exercise of ordinary legislative power and not amendments to the Constitution made in the exercise of constituent power with the result that Article 13(2) does not affect amendments made under Article 368."

The Court held that Article 368 enables the Parliament to amend the Constitution with no exception and that the Fundamental Rights are most certainly not avoided from the extent of Article 368. Along these lines, the Court couldn't help contradicting the see that Fundamental Rights are sacred and held that despite the fact that the Parliament can't damage Part III utilizing their conventional authoritative power yet they unquestionably will have the capacity to abbreviate or confine Fundamental Rights utilizing their constituent power.

⁷ *Kihoto Hollohon v. Zachilu*, AIR 1993 SC 412; 1992 Supp (2) SCC 651.

⁸ *Raghunathrao v. Union Of India*, AIR 1993 SC 631.

⁹ *Indira Sawhney v. Union of India*, (1992) Supp (3) SCC 217.

¹⁰ *Delhi Juridical Service Association v. State of Gujarat*, AIR 1991 SC 2176.

¹¹ AIR 1951 SC 458.

¹² Article 13, Constitution of India 1950.

- **SAJJAN SINGH CASE**

The following critical case raising this issue would be the situation of *Sajjan Singh v. State of Rajasthan*¹³ when the legitimacy of the Constitution (Seventeenth Amendment) Act was addressed before the apex Court. By this alteration a number of statutes influencing property rights were put in the Ninth Schedule of the Constitution along these lines putting them out of Judicial review. Contentions were made by the petitioner that the scope of judicial review was being diminished to a great extent by this amendment and along these lines this must be made utilizing the arrangements of Article 368¹⁴ ought to be struck down. Following the comparable strides as in *Shankari Prasad* the court dismissed the contention in the proportion of 3:2. In its dominant part supposition the Court held that the "pith and substance" of the amendment was to revise the Fundamental Rights and not to limit the extent of Article 226 in any capacity. Repeating the situation in *Shankari Prasad* the Court drew a qualification between legislative power and constituent power. The greater part decline to recognize that Fundamental Rights were past the extent of Article 368. Be that as it may, the minority communicated solid reservation with respect to this.

Justice Hidayatullah saw that, "I would require more stronger reasons than those given in *Shankari Prasad* to make me accept the view that Fundamental Rights were not really fundamental but were intended to be within the powers of amendment in common with the other parts of the constitution and without concurrence of the states".

Similarly Justice Mudholkar expressed reluctance in accepting that the word "law" in Article 13 excluded within its scope the constitutional amendments. His general argument was that every constitution has certain basic features which could not be changed.

- **GOLAK NATH CASE**

On account of *Golak Nath v. Province of Punjab*¹⁵ the Constitution (Seventeenth Amendment) Act was again tested. The constitution bench were not inside the extent of Article 368. The court apprehension ascended from the reality that there were various assaults on Fundamental Rights since 1950. The court was stressed that if Parliament somehow happened to be given supreme powers in such manner a time may come when there will be no Fundamental Rights and India will gradually move towards an authoritarian administration. The accompanying four noteworthy recommendations can be drawn from the greater part supposition in *Golak Nath*:¹⁶

1. The substantive capacity to amend isn't to be found in Art. 368, this Article
2. Just contains the system to alter the Constitution
3. A law made under Article 368 would be liable to Art 13(2) like some other
4. law
5. The word 'amend' visualized just minor changes in the current arrangements yet no real modifications in that;
6. To amend the Fundamental Rights, a Constituent Assembly should be met by Parliament.

- **KESAVANANDA BHARATI CASE**¹⁷

¹³ AIR 1965 SC 845.

¹⁴ Constitution of India, 1950.

¹⁵ AIR 1967 SC 1643.

¹⁶ See M.P. JAIN, INDIAN CONSTITUTIONAL LAW 1623 (2006).

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

The petitioner for this situation had tested the constitutional validity of the Constitution (Twenty-fourth Amendment) and Constitution (Twenty-fifth amendment) Acts by method for an Article 32 writ appeal. The issue was heard by a constitutional bench of 13 judges with the goal that they could survey the choice of the court in the Golak Nath Case.

Justice Hedge and Mukherjea declined to accept that the constitutional assembly would conceal the ability to revise the Constitution in its residuary power. On this point the situation in Shankari Prasad and Sajjan Singh was observed to be right and the opposite view communicated in GolakNath was overruled. Further, the judges found that the Constitution makes a qualification between the expression "Constitution" and the expression "law" in Article 13. It was along these lines held that the articulation "law" in Article 13 of the Constitution does exclude "constitutional law". In any case, it ought to be remembered that the court did not concede unlimited powers to the council. The altering power will now be subject to another principle, the regulation of fundamental structure. In this way, the council can't utilize the altering power in such a way to pulverize or castrate the essential features of the Constitution.

A portion of the highlights viewed by the Court as fundamental and in this way non- manageable are:

- i) Supremacy of the Constitution
- ii) Republican and democratic form of government
- iii) Secular character of the Constitution
- iv) Separation of forces between legislative, executive, judiciary.
- v) Federal character of the Constitution.

As indicated by the court for this situation "amend" appreciates an exceptionally prohibitive connotation and the court can investigate the legitimacy on the off chance that it debilitates to invalidate or devastate any major component of the Constitution. Kesavananda moreover addressed a critical inquiry which was left open by GolakNath, with respect to whether Parliament has the ability to revamp the whole Constitution and get another constitution. The court addressed this by saying that Parliament can just do that which does not change the fundamental highlights of the Constitution.

CONCLUSION

Subsequently we find that basic structure as an idea has developed over years since its origin in 1970s, with each passing year there has been to an ever increasing extent rights being incorporated into the basic structure of the Constitution. Basic structure as we see today is consequently a finish of long periods of legal supervision of fundamental Rights and related constitutional structure. Through the 'rights chain' we have substantiated that basic structure is a summit of judicial decision to pick the simple best in the rights buffet and secure them despite seemingly insurmountable opposition. In this way, essential structure is the distillate of center natural rights, human rights and Fundamental Directly under Indian situation. Be that as it may, as we have seen the judiciary never gave a solid test to discover what basic structure is leaving the definition so dubious that legal have abundant moving space. Be that as it may, from dubious words like constitutional identity', 'basic value of constitution', we have discovered that dependent on the rights chain fundamental structure would be restricted to natural rights and to those zones of lawful structure that straightforwardly influences those.