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FROM SHANKARI PRASAD TO KESAVANANDA BHARTI: TRACING THE EVOLUTION OF BASIC STRUCTURE DOCTRINE

~ Tushar Shahi

ABSTRACT

This paper traces the judicial development and evolution of the Basic Structure Doctrine in India. The paper observes the judgements of the landmark cases such as Shankari Parasad v Union of India, Sajjan Singh v State of Rajasthan, Golaknath and concludes with the case of Keshvananda Bharti v State of Kerala. The paper does a case analysis of all these cases providing a brief and summarised description of what the court held in which judgement and how the laws were interpreted.

INTRODUCTION

The basic structure doctrine today is a settled part of Indian constitutional law. The key test for the doctrine came when Indira Gandhi was about to establish an authoritarian form of government in India. The recently elected Prime Minister was disqualified for public office and taking part in future election by a State court due to her corrupt electoral practises. The parliament, thereupon, adopted a package Amendment Act to retrospectively legalise and immunise such practises against judicial control. In the so called election case Indira Gandhi v Raj Narain, The Supreme Court held as free and fair election are essential part of democracy which itself is the basic feature of the constitution that even amending power must respect. Since then the basic structure doctrine has attracted much attention nationally and internationally and has become a controversial issue of first ranks in the constitutional discourse in India.

On April 24, 1973, a special bench comprising thirteen judges of Supreme Court of India ruled by a majority of 7-6 that the Article 368 of the Constitution does not enable the parliament to alter the basic structure or framework of the Constitution.

Any part of the constitution may be amended by the procedure prescribed in article 368 but no part may be so amended as to alter the basic structure. It was unamendable.

This paper goes on to trace the development of the basic structure doctrine from the case of Shankari Prasad vs Union India to the case of Keshavananda Bharti v State of Kerala and establishes how in the case of Keshavananda Bharti v State of Kerala, the Supreme Court struck a balance between the judicial scrutiny done by the Supreme Court and the amendment power of the parliament bestowed upon it by the constitution.

SHANKARI PRASAD v UNION OF INDIA

FACTS:

The petition was filed to challenge the constitutional validity of Constitution (First Amendment) Act, 1951¹ through which Articles 31A² and 31B³ had been inserted in the Constitution of India. The Act was enacted to carry out certain measures of agrarian reform in Bihar, Uttar Pradesh and Madhya Pradesh by enacting Zamindari Abolition Act⁴. Certain Zamindars, feeling aggrieved challenged the very validity of those Acts on the ground that they transgressed the fundamental rights conferred on them by Part III of the Constitution. The High Court of Patna held that the Act passed in Bihar was unconstitutional while the High Courts of Allahabad and Nagpur upheld the validity of the corresponding legislation in Uttar Pradesh and Madhya Pradesh respectively. Appeals from those decisions are pending before the Supreme Court. Thus, with a view to put an end to all this litigation, the Union Government brought forward a bill to amend the Constitution, which was passed by the requisite majority as the Constitution (First Amendment) Act, 1951⁵. To challenge this move of the Government, the zamindars filed a writ petition under Article 32⁶ of the Constitution contending that the Amendment Act itself was unconstitutional and void.

ISSUE:

(i) Whether the Constitution (First Amendment) Act, 1951, which has inserted Articles 31A and 31B in the Constitution of India is ultra vires and unconstitutional?

¹ Constitution (First Amendment) Act, 1951 (India).

² INDIA CONST. art. 31A.

³ INDIA CONST. art. 31B.

⁴ Uttar Pradesh Zamindari Abolition and Land Reforms Act, No. 1 of 1951 (India).

⁵ Constitution (First Amendment) Act, 1951 (India).

⁶ INDIA CONST. art. 32.

PETITIONERS ARGUMENTS:

- The power of amending the Constitution provided for under Article 368 of Constitution⁷ was conferred not on Parliament but on the two Houses of Parliament as a designated body and, therefore, the provisional Parliament was not competent to exercise that power under Article 379 of Constitution⁸.
- In any case Article 368 of Constitution is a complete code in itself and does not provide for any amendment being made in the bill after it has been introduced in the House. The bill in the present case has been amended several times. Thus, the Amendment Act cannot be said to have been passed in conformity with the procedure prescribed in Article 368 of Constitution.
- The Amendment Act, in so far as it purports to take away or abridge the rights conferred by Part III of the Constitution, falls within the prohibition of Article 13(2) of Constitution⁹.
- As the newly inserted Articles 31A¹⁰ and 31B¹¹ of Constitution seek to make changes in Articles 132¹² and 136¹³ in Chapter IV of Part V and Article 226¹⁴ in Chapter V of Part VI of Constitution, they require ratification under clause (b) of the proviso to Article 368 of Constitution, and not having been so ratified, they are void and unconstitutional. They are also ultra vires as they relate to matters enumerated in List II, with respect to which the State legislatures and not Parliament have the power to make laws.

ANALYSIS:

The laws discussed in this petition were:

- **Constitution of India - Article 13(2)** - The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.

⁷ INDIA CONST. art. 368.

⁸ INDIA CONST. art. 379.

⁹ INDIA CONST. art. 13(2).

¹⁰ INDIA CONST. art. 31A.

¹¹ INDIA CONST. art. 31B.

¹² INDIA CONST. art. 132.

¹³ INDIA CONST. art. 136.

¹⁴ INDIA CONST. art. 226.

- **Constitution of India - Article 31A** - Saving of laws providing for acquisition of estates, etc.
- **Constitution of India - Article 31B** - Validation of certain Acts and Regulations.
- **Constitution of India - Article 368** - Power of Parliament to amend the Constitution and procedure therefore.

The Court unanimously held that even if the amendment is considered to be superior to ordinary legislation, it will not be able to strike its validity by Article 13(2)¹⁵. The word 'law' as given under Article 13(2) ordinarily includes constitutional amendment but it must be in compliance of ordinary legislative power and therefore the constitutional amendment done by Parliament in its constitutional power is not subjected to Article 13(2). Thus, such powers include the power to amend the fundamental rights¹⁶.

In this case the principle of harmonious construction¹⁷ was used so as to remove the conflict between Article 13 and Article 368. It was held that the Parliament has the power to amend any fundamental right under article 368. This contributed to the further development in the journey of basic structure.

The Indian judiciary gave the Parliament absolute amending power. However, this position was changed with a completely different outlook later. The question whether the fundamental rights conferred and given in the constitution of India could be revoked or limited by amendment of the question still remains the centre for the conversation.

The judicial discussion which started in the said case of Shankari Prasad vs. Sajjan Singh vs. State of Rajasthan, continued in Golak Nath vs. State of Punjab.

CONCLUSION:

Constitution (First Amendment) Act, 1951 is not ultra vires and unconstitutional.

SAJJAN SINGH v STATE OF RAJASTHAN

FACTS:

Parliament passed the Constitution (Seventeenth Amendment) Act 1964, by which Article 31A was amended. 44 Acts were added to the Ninth Schedule of the Constitution¹⁸, in order

¹⁵ INDIA CONST. art. 13(2).

¹⁶ INDIA CONST. arts. 12–35.

¹⁷ Sri Venkataramana Devaru v. State of Mysore, AIR 1958 SC 255.

¹⁸ INDIA CONST. sched. IX.

to preserve the legality of those Acts as well as of other Acts that were likely to be struck down.

People impacted by one or other of those Acts filed a Writ Petition¹⁹ before the Supreme Court.

ISSUES:

(i) What would be the requirement about making an amendment in a constitutional provision contained in Part III, if as a result of the said amendment, the powers conferred on the High Courts under Article 226 of the Constitution are likely to be affected?

(ii) Whether the word 'law' in Article 13(2) of the Constitution excludes an Act of Parliament amending the Constitution?

(iii) Whether Parliament is competent to make any amendment at all to Part III of the Constitution?

PETITIONERS' ARGUMENTS:

(i) Powers prescribed by Article 226 of the Constitution are likely to be affected by the 17th Amendment of the provisions contained in Part III. Specific procedure outlined in the proviso to Article 368, which calls for the ratification by at least half the States, should be followed.

(ii) It was argued that it was important to re-examine the ruling in *Sankari Prasad Singh Deo v. Union of India and State of Bihar*, which rejected this argument in relation to the First Amendment.

(iii) Furthermore, the bill introduced for the purpose of making such an amendment, must attract the proviso, and as the impugned Act has admittedly not gone through the procedure prescribed by the proviso, it is invalid.

(iv) The true purpose and object of the said Act is to legislate in respect of land. However, legislation in respect of land falls within the jurisdiction of the State Legislatures under Entry 18 of List II. Since the State Legislatures alone can make laws in respect of land, Parliament had no right to pass the impugned Act.

(v) Lastly, the power to amend, which is conferred by Article 368 of the Constitution, does not include the power to take away the fundamental rights guaranteed by Part III.

¹⁹ INDIA CONST. arts. 32.

ANALYSIS:

The laws discussed in this case were:

- **Constitution - Article 31B** - None of the Acts included in the Constitution's Ninth Schedule will be regarded to be void or to have ever been void.
- **Constitution - Article 368** - It describes the methods by which Parliament may amend the provisions of the Constitution.
- **Constitution - Article 226** - It gives the High Courts the authority to issue directives, orders, or writs, including writs of habeas corpus, mandamus, prohibition, quo warranto, certiorari, or any of them, to any person or authority, including the government (in proper instances).
- **Constitution - Article 13(2)** - The State shall not make any law which takes away or abridges the rights conferred by Part III of the Constitution and any law made in contravention of this clause shall, to the extent of the contravention, be void.

The Apex Court also relied upon its previous judgements having precedential value. The cases relied upon were:

- Sankari Prasad Singh Deo v. Union of India and State of Bihar.²⁰
- Karimbil Kunhikoman v. State of Kerala.²¹
- P. Krishnaswami Naidu, etc. v. The State of Madras.²²
- K. Gopalan v. The State of Madras.²³

Regarding the question of the effect of Amendment on Power of High Courts under Article 226 of the Constitution, the Court observed the following:

- i. The majority opinion was that the main part of Article 368 of the Constitution and its proviso must, under a fair interpretation, be consistent with one another.
- ii. Furthermore, such an interpretation mandates that it would be required to evaluate whether the proviso to Article 368 of the Constitution would apply in such a circumstance if amending fundamental rights was to significantly restrict the High Court's authority of judicial review under Article 226 of the Constitution.

²⁰ Shankari Prasad Singh Deo v. Union of India, AIR 1951 SC 458.

²¹ Karimbil Kunhikoman v. State of Kerala, AIR 1962 SC 723.

²² P. Krishnaswami Naidu v. State of Madras, AIR 1953 SC 404.

²³ A.K. Gopalan v. State of Madras, AIR 1950 SC 27.

- iii. However, the caveat might not apply if the effect is indirect, incidental, or otherwise of a minor order. The standard to be used when addressing such a matter is finding the essence and content of the contested Act.
- iv. If the pith and substance test is applied to the amendment made by the said Act, it is evident that the Constitution (Seventeenth Amendment) Act²⁴ only modifies fundamental rights in order to remove constraints on the implementation of socioeconomic policy.
- v. Finally, it has a minor, accidental impact on Article 226 of the Constitution.
- vi. Consequently, the impugned Act is covered by the substantive portion of Article 368 and is exempt from the proviso.

Regarding the question of the power of parliament to amend constitution it was held that:

- i. The phrase 'amendment of the Constitution' clearly and unmistakably refers to changing all of its provisions. The proviso's language makes it clear that the substantive part of the Article applies to all of the Constitution's provisions.
- ii. Parliament in enacting the impugned Act was not making any provision of land-Legislation. Per majority opinion, the Parliament was just approving land-Legislation that had previously been enacted in that regard by the State Legislatures.
- iii. Parliament may validate laws which have been declared invalid by courts. Authority granted to Parliament by Article 368 may be used both in the present and in the past. Parliament has the authority to uphold legislation that have been ruled unconstitutional by the courts.

Regarding the meaning of 'law' within Article 13(2) of constitution, it was held that a legislation approved by Parliament with its inherent authority to amend the Constitution is not a law as defined by Article 13(2) of the Constitution.

Furthermore, the Court gave the following observations on the power to amend:

- i. The idea that the fundamental rights in Part III were meant to be fixed and established once and for all, without the possibility of further amendment, would not be a realistic one on to continue.
- ii. It is reasonable to assume that the Constitution-makers were aware that Parliament should have the authority to amend those rights in order to address the challenges presented by potential issues. Therefore, the fundamental rights protected by Part III

²⁴ Constitution (Seventeenth Amendment) Act, 1964 (India).

could not have been meant to be everlasting, inviolate, and beyond the grasp of Article 368 of the Constitution.

- iii. Constitution (Seventeenth Amendment) Act²⁵ does not amend the provisions of Part III but makes an independent provision.
- iv. If Parliament decided that adding Articles 31A and 31B would be more suitable than following the laborious procedure of altering each pertinent Article in Part III, then what Parliament did in 1951 has provided a legitimate foundation for additional amendments in 1955 and in 1964.

GOLAKNATH v STATE OF PUNJAB

FACTS:

The family of Henery and William Golknath held 500 acres of farmland in Jalandhar and Punjab. Through the Punjab Security and Land Tenures Act²⁶, the state government held that the brothers could keep only thirty acres each, a few acres would go to tenants and the rest was declared surplus. This was challenged by the Golaknath family in the courts and the case was referred to the Supreme Court in 1965. The family filed a petition under Article 32 challenging the Act on the ground that:

- i. it denied their constitutional rights to acquire and hold property,
- ii. practice any profession article 19 (f) and (g), and
- iii. to equality before law and equal protection of law (article 14).

They sought to have seventeenth amendment -which had placed the Punjab Act in ninth scheduled and declared ultravires (beyond the powers).

ISSUE:

Whether the power to amend the fundamental rights is unlimited or limited.

ANALYSIS:

An “Eleven Bench Judge” was constituted. Such a large bench was constituted for the first time. In this case everything was reversed. The Supreme Court said the power to amend the constitution including the fundamental rights is not an unlimited power. It is subject to limitation of judicial review.

The Supreme Court even went ahead and said that Parliament does not have any power to amend or abridge the fundamental rights in the way of amendment. Further, the ambit of Article

²⁵ Constitution (Seventeenth Amendment) Act, 1964 (India).

²⁶ Punjab Security of Land Tenures Act, 1953

13(2) was discussed they said that the word “Law” used under Article 13(2) includes the Amendment and if any Amendment violates the fundamental rights, it would be void.

Question of the amendability of the fundamental rights had been considered by Supreme Court earlier in two decisions —Sri Sankari Prasad Singh Deo v. Union of India and State of Bihar²⁷, and in Sajjan Singh v. State of Rajasthan²⁸.

In the former the validity of the Constitution (First Amendment) Act, 1951, was questioned. That amendment was made under Article 368 of the Constitution by the Provisional Parliament. It was held that Parliament had power to amend Part III of the Constitution.

This conclusion was reached mainly on two grounds. Firstly, the word 'law' in Article 13(2) was one made in exercise of legislative power and not constitutional law. Secondly, there were two articles — Articles 13(2) and 368 — each of which was widely phrased and, therefore, required harmonious construction. The whole decision turned upon an assumption that the expression 'law' in Article 13(2) does not include constitutional law and on that assumption an attempt was made to harmonise Article 13(2) and 368 of the Constitution.

Similarly, the decision in Sajjan Singh's case was given in the context of the question of the validity of the Constitution (Seventeenth Amendment) Act²⁹.

The majority, agreed with the reasons given in Sankari Prasad's³⁰ case, and held that if it was the intention of the Constitution-makers to save, fundamental rights from the amending process they should have taken the precaution of making a clear provision in that regard.

Furthermore, the Court discussing the doctrine of necessary implication observed that:

- i. Power to amend cannot be implied either from Article 368 or from the nature of the articles sought to be amended, the doctrine of necessary implication cannot be invoked if there is an express provision.
- ii. Parliament has the plenary power to make any law including the law to amend the Constitution subject to the limitations laid down therein.
- iii. Power of Parliament to amend the Constitution is derived from Articles 245, 246 and 248.

Regarding the question whether fundamental rights can be abridged, the observations of the Court were:

²⁷ Shankari Prasad Singh Deo v. Union of India, AIR 1951 SC 458.

²⁸ Sajjan Singh v. State of Rajasthan, AIR 1965 SC 845.

²⁹ Constitution (Seventeenth Amendment) Act, 1964 (India).

³⁰ Shankari Prasad Singh Deo v. Union of India, AIR 1951 SC 458.

- i. Fundamental Rights cannot be abridged or taken away by the amending procedure in Article 368 of the Constitution. An amendment to the Constitution is 'law' within the meaning of Article 13(2) and is therefore subject to Part III of the Constitution.
- ii. The fundamental rights are given a transcendental position under our Constitution and are kept beyond the reach of Parliament.
- iii. While recognising the immutability of the fundamental rights, subject to social control, the Constitution itself provides for the suspension or the modification of fundamental rights under specific circumstances, as in Articles 33³¹, 34³² and 35³³ of Constitution.
- iv. Even during grave emergencies Article 358³⁴ only suspends Article 19³⁵ and all other rights are untouched except those specifically suspended by the President under Article 359³⁶.
- v. The Constitution has given a place of permanence to the fundamental freedoms. In giving to themselves the Constitution the people have reserved the fundamental freedoms to themselves.
- vi. The importance attached to the fundamental freedoms is so transcendental that a bill enacted by a unanimous vote of all the members of both Houses is ineffective to derogate from its guaranteed exercise.

CONCURRING OPINION OF M. HIDAYATULLAH, J.

- i. Fundamental Rights are outside the amendatory process if the amendment seeks to abridge or take away any of the rights.
- ii. Sankari Prasad's³⁷ case conceded the power of amendment over Part III of the Constitution on an erroneous view of Articles 13(2) and 368 of Constitution.
- iii. For abridging or taking away Fundamental Rights, a Constituent body will have to be convoked.

³¹ INDIA CONST. art. 33.

³² INDIA CONST. art. 34.

³³ INDIA CONST. art. 35.

³⁴ INDIA CONST. art. 358.

³⁵ INDIA CONST. art. 19.

³⁶ INDIA CONST. art. 359.

³⁷ Shankari Prasad Singh Deo v. Union of India, AIR 1951 SC 458.

DISSENTING OPINIONS OF K.N. WANCHOO, VASHISHTHA BHARGAVA AND G.K. MITTER, JJ.

- i. There is no express limitation on power of amendment in Article 368 and no limitation can or should be implied therein. If the Constitution makers intended certain basic provisions in the Constitution, and Part III in particular, to be not amendable there is no reason why it was not so stated in Article 368.
- ii. The Constitution provides a separate part headed 'Amendment of the Constitution' and Article 368 is the only article in that Part, which must contain the power to amend the Constitution. If there was any doubt in the matter it is resolved by the words, namely, "the Constitution shall stand amended in accordance with the terms of the bill". These words can only mean that the power is there to amend the Constitution after the procedure has been followed.

DISSENTING OPINION OF R.S. BACHAWAT, J.

The words 'fundamental' used in regard to rights in Part III and the word guaranteed in Article 32 do not mean that the said rights cannot be amended. The constitution is never at rest it changes with the progress of time. The scale of values in Parts III and IV is not immortal and these Parts being parts of the Constitution are not immune from amendment under Article 368.

DISSENTING OPINION OF VAIDYNATHIER RAMASWAMI, J.

The language of Article 368 is perfectly general and empowers Parliament to amend the Constitution without any exception whatsoever. If the Constitution makers wanted certain basic features to be unamendable, they would have said so.

AFTERMATH:

After the unprecedented judgement of Golaknath vs. State of Punjab the desperate Parliament in order to gain its lost supremacy passed series of amendments to indirectly overrule whatever was decided in Golaknath Case. The Indira Gandhi govt. returned in lower house in 1971 elections and then passed 24th Amendment in 1971³⁸, 25th Amendment 1972³⁹, and 29th Amendment 1972⁴⁰.

24th Amendment Act 1971

The following changes were done in the 24th Amendment Act 1971:

³⁸ Constitution (Twenty-Fourth Amendment) Act, 1971 (India).

³⁹ Constitution (Twenty-Fifth Amendment) Act, 1971 (India).

⁴⁰ Constitution (Twenty-Ninth Amendment) Act, 1972 (India).

- i. First in article 13 they included 13(4) which said that nothing in Article 13 would apply to Article 368 which meant that anything can be done under Article 368 and it would not attract the attention of judicial review under article 13.
- ii. Under Article 368 they changed the Marginal Heading, previously it was, “Procedure for amending the constitution”, now it read the “Power of Parliament to amend the constitution and the procedure thereof”, i.e., from “Procedure for Amending the Constitution” to “Power of Parliament to Amend the Constitution and the Procedure there off”.
- iii. They added clause (3) to Article 368 which said nothing in Article 13 shall apply to 368. So, the crux of the 24th Amendment Act was to exclude the applicability of Article 13 on to Article 368. Therefore, everything that was held in the Golak Nath case holds no values after 24th Amendment Act.

25th Amendment 1972

Article 19(1) (f)⁴¹ was delinked from article 31(2)⁴². Article 31C⁴³, a new provision was added to the constitution to remove all difficulties that:

- i. Articles 14, 19 and 31 are not to be applied to any law enacted under the fulfilment of objectives laid down under Articles 39(b) & 39(c).
- ii. Any law to give effect to Article 39(b) & 39(c) will be immunized from courts intervention.

29th Amendment: 1972

The 29th Amendment passed in the year 1972 had the effect of inserting the Kerala Land Reforms Act into IX Schedule which meant it was outside the scope of judicial scrutiny.

KESAVANANDA BHARTI vs STATE OF KERELA

FACTS:

Sripad Galvaru Kesavananda Bharati, the lead petitioner in this case, was the leader of the Edneer Mutt, a religious sect in Kerala’s Kasaragod district. Kesavananda Bharti had some plots of land in the sect that he owned in his name.

⁴¹ INDIA CONST. art. 19(f).

⁴² INDIA CONST. art. 31(2).

⁴³ INDIA CONST. art. 31C.

The Kerala State government enacted the Land Reforms Amendment Act in 1969, which conferred upon the government the right to acquire some of the land owned by Edneer Mutt, of which Keshav Nand Bharti was the leader.

On March 21, 1970, Kesavananda Bharti filed a writ petition in the Supreme Court under Article 32 of the Indian Constitution to enforce his rights guaranteed by Article 25, Article 26, Article 14, Article 19(1)(f), and Article 31.

While the petition was still being heard by the court, the Kerala government passed another act, i.e., the Kerala Land Reforms Amendment Act 1971.

ISSUES:

- i. Whether the 24th Constitutional Amendment Act 1971 is constitutionally valid?
- ii. Whether the 25th Constitutional Amendment Act 1972 is constitutionally valid?
- iii. What is the extent to which the Parliament can exercise its power to amend the Constitution?

CONTENTIONS:

Kesavananda Bharati's Contentions (Petitioner) –

The petitioner argued that because Parliament has limited power to amend the Constitution, it cannot do so in an arbitrary and unrestrained way.

The petitioner referred to the statement given by Justice Mudholkar in the case of *Sajjan Singh v State of Rajasthan (1964)*⁴⁴ wherein it was said that the Parliament cannot exercise its power to amend the constitution by modifying its basic structure.

The petitioner sought protection and rights of his property under Article 19(1)(f) of the Indian Constitution⁴⁵. It was contended by the petitioner that the 24th and 25th Constitutional Amendments⁴⁶ violated the fundamental right guaranteed by Article 19(1)(f) of the Indian Constitution⁴⁷.

State of Kerala's Contentions (Respondent) –

The State of Kerala contended that the parliament's power to amend the Constitution is absolute and unlimited, and unfettered. This argument was based on a fundamental principle of the Indian legal system, namely the supremacy of Parliament.

⁴⁴ *Sajjan Singh v. State of Rajasthan*, AIR 1965 SC 845.

⁴⁵ INDIA CONST. art. 19(1)(f).

⁴⁶ Constitution (Twenty-Fifth Amendment) Act, 1971 (India).

⁴⁷ INDIA CONST. art. 19(1)(f).

Re Berubari⁴⁸ was also on this point.

Furthermore, the state argued that in order to fulfil the socio-economic obligations guaranteed to people by the union in the Preamble, it is essential that the Parliament's authority be unrestricted.

ANALYSIS:

Seven of the thirteen judges in the Kesavananda Bharti case, including Chief Justice Sikri who signed the summary statement, declared that Parliament's constituent power was subject to inherent 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.

Each judge laid out separately what he thought were the basic or essential features of the Indian Constitution. There was no unanimity of opinion within the majority view either.

Sikri, C.J. explained that the concept of basic structure included:

- Supremacy of the Constitution
- Republican and democratic form of government
- Secular character of the Constitution
- Separation of powers between the legislature, executive and the judiciary
- Federal character of the Constitution.

Shelat, J. and Grover, J. added two more basic features to this list:

- The mandate to build a welfare state contained in the Directive Principles of State Policy
- Unity and integrity of the nation.

Hegde, J. and Mukherjea, J. identified a separate and shorter list of basic features:

- Sovereignty of India
- Democratic character of the polity
- Unity of the country
- Essential features of the individual freedoms secured to the citizens
- Mandate to build a welfare state.

Jaganmohan Reddy, J. stated that elements of the basic features were to be found in the Preamble of the Constitution and the provisions into which they translated such as:

- Sovereign democratic republic

⁴⁸ In re Berubari Union, AIR 1960 SC 845.

- Parliamentary democracy
- Three organs of the State.

He said that the Constitution would not be itself without the fundamental freedoms and the directive principles. Only six judges on the bench (therefore a minority view) agreed that the fundamental rights of the citizen belonged to the basic structure and Parliament could not amend it.

The minority view delivered by Justice A.N. Ray, Justice M.H. Beg, Justice K.K. Mathew and Justice S.N. Dwivedi also agreed that Golaknath had been decided wrongly. They upheld the validity of all three amendments challenged before the court.

Ray, J. held that all parts of the Constitution were essential and no distinction could be made between its essential and non-essential parts.

CONCLUSION

The development of the basic structure doctrine marks the most significant development in the contemporary Indian Jurisprudence. The evolution of this doctrine is the result of a cumulative prolonged dialogue regarding the supremacy of the judiciary's power of judicial review and the Parliament's amendment making power. What started in the case of *Shankari Prasad*, finally culminated in the evolution of an entirely novel doctrine in *Keshvananda Bharti*. The basic structure doctrine remains the core of the Indian Jurisprudence when it comes to Amendments. The Supreme Court remains the sole interpreter of the laws whilst the Parliament retains its inherent power to amend any and all this except the basic structure.

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