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THE BULWARK OF FUNDAMENTAL RIGHTS: AN INSIGHT INTO THE JOURNEY OF SHIELD CALLED ‘BASIC STRUCTURE OF THE CONSTITUTION’

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ABSTRACT

There are certain essential parts of the Constitution which cannot be altered, at least not with the usual procedures of amendment. There was a time in the history of India when this specific issue was hotly debated, like the era from 1970s to 1980s.

The framers of the constitution wanted the constitution to be a vibrant document rather than a rigid framework, which could be personalized according to the people of the country. However, it resulted in a raging war about the sovereignty of the Parliament vis-a-vis the power of the courts to interpret and uphold the constitution. The lack of inner integrity laid more emphasis on the trees rather than the woods.

With more than a 100 Amendments nowadays India has come to understand that the framers of the Constitution did not lay down some set of hard core rules to follow. Or they did not declare any higher body to rule. Instead those set of rational architects left the Indians with a framework which is as vigorous as the air we breathe. It can take any shape it wants but it upholds its core value......its basic structure.

The expression 'basic structure' itself cannot be found in the Constitution. The Supreme Court accepted this concept for the first time in the historic Kesavananda Bharati case in 1973. since the Supreme Court has been the interpreter of the Constitution and the arbitrator of all amendments made by Parliament.

While the idea that there is such a thing as a basic structure to the Constitution is well recognized its contents cannot be wholly determined with any measure of conclusiveness until a judgement of the Supreme Court spells it out. Nonetheless the autonomous, democratic and secular character of the Indian polity, rule of law, independence of the judiciary, etc. are some of the important features of the Constitution that have appeared time and again in the Supreme court's verdicts.

Keywords: Basic Structure, Judiciary, Parliament, Sovereignty, Supreme Court.

GENESIS OF BASIC STRUCTURE AS BRAKES ON THE LEGISLATIVE ENTHUSIASM: AN INTRODUCTION

The argument on the 'basic structure' of the Constitution, lying torpid in the archives of India's constitutional history during the last decade of the 20th century, has re-emerged in the
public realm. While setting up the National Commission to Review the Working of the Constitution (the Commission), the National Democratic Alliance government (formed by an alliance of 24 national and regional level parties) stated that the basic structure of the Constitution would not be interfered with. Justice M.N. Venkatachalaiah, Chairman of the Commission, has stressed on several occasions that an inquiry into the basic structure of the Constitution lay outside the scope of the Commission's work.

Some political parties -- particularly the Congress (I) and the two Communist parties which are in the opposition -- have made it clear that the review exercise was the government's ploy to pursue legitimacy for its design to accept radical constitutional alterations thus destroying the basic structure of the document.

Much of the public discussion has been a victim of limited amnesia as even literate circles of urban India are unsure of the complications of this concept, which was fervently debated during the 1970s and 1980s. The following discussion is an attempt to chart the waters of that period rendered stormy by the power struggle between the legislative and the judicial supports of the State.

According to the Constitution, Parliament and the state legislatures in India have the power to make acts within their respective jurisdictions. This power is not unqualified in nature. The Constitution vests in the judiciary, the power to decide upon the constitutional validity of all laws. If an Act made by Parliament or the state legislatures violates any provision of the Constitution, the Supreme Court has the power to declare such an act illegal or ultra vires.\(^{162}\)

This check nonetheless, the founding fathers wanted the Constitution to be a flexible document rather than a stiff framework for governance. Hence Parliament was devoted with the power to amend the Constitution. Article 368\(^ {163}\) of the Constitution gives the imprint that Parliament's amending powers are unqualified and include all parts of the document\(^ {164}\). But the Supreme Court has acted as a brake to the legislative eagerness of Parliament ever since independence. With the intention of preserving the original ideals intended by the constitution-makers, the apex court pronounced that Parliament could not alter, damage or amend the basic features of the Constitution under the ruse of amending it. The expression 'basic structure' itself cannot be found in the Constitution. The Supreme Court accepted this

\(^{162}\) As per Article 13 of the Indian Constitution.

\(^{163}\) Power of Parliament to amend the Constitution and procedure thereof.

\(^{164}\) The best example is of former Prime Minister of India, Mrs. Indira Gandhi when she imposed emergency and during that time various amendments were introduced in the Constitution by Forty-Second Constitutional (Amendment) Act, 1976 which was an attempt to change the Constitution. Even Nani Palkhivala made this point while arguing in the Keshavananda Case, which later on proved true.
concept for the first time in the historic Kesavananda Bharati case\textsuperscript{165} in 1973. Since the Supreme Court has been the interpreter of the Constitution and the arbitrator of all amendments made by Parliament.

**PARLIAMENT HAVING THE UPPER HAND: PRE-KESAVANANDA SCENARIO**

Parliament's power to amend the Constitution, mainly the chapter on the fundamental rights of citizens, was tested as early as in 1951. After independence, several laws were passed in the states with the aim of improving land ownership and tenancy arrangements. This was in keeping with the ruling Congress party's electoral promise of executing the socialistic goals of the Constitution [confined in Article 39 (b) and (c) of the Directive Principles of State Policy]\textsuperscript{166} that required reasonable distribution of resources of production among all citizens and prevention of absorption of wealth in the hands of a few. Property owners -- badly affected by these laws -- petitioned the courts. The courts struck down the land reforms laws saying that they contravened the fundamental right to property guaranteed by the Constitution. Annoyed by the unfavorable judgements, Parliament placed these acts in the Ninth Schedule of the Constitution through the First and Fourth amendment's (1951 and 1952 respectively), thereby efficiently removing them from the scope of judicial review.

Parliament added the Ninth Schedule\textsuperscript{167} to the Constitution through the very first amendment in 1951 as a means of protecting certain laws against judicial review. In the provisions of Article 31, which themselves were altered several times later, laws positioned in the Ninth Schedule -- relating to acquisition of private property and compensation payable for such acquisition -- cannot be defied in a court of law on the ground that they violated the fundamental rights of citizens. This protective umbrella shelters more than 250 laws passed by state legislatures with the aim of regulating the size of land assets and eradicating various...
tenancy systems. The Ninth Schedule\textsuperscript{168} was shaped with the primary objective of preventing the judiciary - which upheld the citizens' right to property on numerous occasions - from disrupting the Congress party led government's agenda for a social revolution.

Property holders again challenged the constitutional amendments which located land reforms laws in the Ninth Schedule before the Supreme Court, saying that they violated Article 13 (2) of the Indian Constitution\textsuperscript{169}.

Article 13 (2) provides for the fortification of the fundamental rights of the citizen. Parliament and the state legislatures are clearly forbidden from making laws that may take away or curtail the fundamental rights guaranteed to the citizen. They argued that any amendment to the Constitution had the eminence of a law as understood by Article 13 (2). In 1952 (Sankari Prasad v. Union of India\textsuperscript{170}) and 1955 (Sajjan Singh v. Rajasthan\textsuperscript{171}), the Supreme Court overruled both arguments and upheld the power of Parliament to alter any part of the Constitution containing that which affects the fundamental rights of citizens. Knowingly though, two dissenting judges in Sajjan Singh v. Rajasthan\textsuperscript{172} case upraised doubts whether the fundamental rights of citizens could become a bauble of the majority party in Parliament.

**JUDICIARY MAKING ITS PRESENCE KNOWN: THE GOLAKNATH JUDGMENT\textsuperscript{173}\textsuperscript{174}**

In 1967 an eleven-judge bench of the Apex Court reversed its position. Providing its 6:5 majority judgement in the Golaknath v. State of Punjab\textsuperscript{174} case, Chief Justice Subba Rao put forward the inquisitive position that Article 368\textsuperscript{175}, that contained provisions linked to the amendment of the Constitution, only laid down the amending procedure. Article 368 did not confer upon Parliament the power to alter the Constitution. The amending power (constituent power) of Parliament arose from other provisions confined in the Constitution (Articles

\textsuperscript{168} Added by first Constitutional Amendment Act, 1951.
\textsuperscript{169} Article 13. Laws inconsistent with or in derogation of the fundamental rights.
\textsuperscript{170} AIR 1951 SC 455.
\textsuperscript{171} 1964 AIR 464.
\textsuperscript{172} Ibid.
\textsuperscript{173} 1967 AIR 1643 : 1967 SCR (2) 762.
\textsuperscript{174} 1967 AIR 1643 : 1967 SCR (2) 762.
\textsuperscript{175} Power of Parliament to amend the Constitution and procedure thereof.
which offered it the power to make laws (plenary legislative power). Thus, the apex court held that the amending power and legislative powers of Parliament were basically the same. Therefore, any amendment of the Constitution must be supposed law as understood in Article 13 (2).

The majority judgement raised the concept of implied limitations on Parliament's power to amend the Constitution. This view held that the Constitution gives a place of perpetuity to the fundamental freedoms of the citizen. In giving the Constitution to themselves, the people had kept the fundamental rights for themselves. Article 13, according to the majority opinion, expressed this restriction on the powers of Parliament. Parliament could not change, restrict or damage fundamental freedoms due to this very scheme of the Constitution and the nature of the freedoms approved under it. The judges stated that the fundamental rights were so sacrosanct and transcendental in prominence that they could not be restricted even if such a move were to receive undisputed approval of both houses of Parliament. They perceived that a Constituent Assembly might be summoned by Parliament for the purpose of amending the fundamental rights if necessary.

**In other words, the Supreme court held that some features of the Constitution lay at its fundamental and required much more than the normal procedures to change them.**

The phrase 'basic structure' was presented for the first time by M.K. Nambiar and other counsels while arguing for the petitioners in the Golaknath case, but it was only in 1973 that the concept raised in the text of the apex court's verdict.

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176 Extent of laws made by Parliament and by the Legislatures of States

(1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State.

(2) No law made by Parliament shall be deemed to be invalid on the ground that it would have extra territorial operation.

177 Subject matter of laws made by Parliament and by the Legislatures of States

(1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the Union List).

(2) Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the Concurrent List).

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included (in a State) notwithstanding that such matter is a matter enumerated in the State List.

178 Power of Parliament to provide for the establishment of certain additional courts Notwithstanding anything in this Chapter, Parliament may by law provide for the establishment of any additional courts for the better administration of laws made by Parliament or of any existing laws with respect to a matter enumerated in the Union List.

179 In the judgement of Golaknath v. State of Punjab.
TUSSEL OF POWER BETWEEN PARLIAMENT AND JUDICIARY: DIRECTIVE PRINCIPLES V. FUNDAMENTAL RIGHTS

Within a few weeks of the Golaknath judgment the Congress party agonized heavy losses in the parliamentary elections and lost power in several states. Though a private member’s bill - listed by Barrister Nath Pai - seeking to restore the sovereignty of Parliament’s power to amend the Constitution was introduced and debated both on the floor of the house and in the Select Committee, it could not be approved due to political compulsions of the time. But the opportunity to test parliamentary sovereignty presented itself once again when Parliament presented laws to provide greater access to bank credit for the agricultural sector and confirm equitable distribution of wealth and resources of creation and by:

a) nationalising banks and

b) de-recognising former princes in a bid to take away their Privy purses, which were assured in perpetuity - as a bribe to accede to the Union - at the time of India’s independence.

Parliament reasoned that it was applying the Directive Principles of State Policy but the Supreme Court struck down both changes. By now, it was clear that the Supreme Court and Parliament were at loggerheads over the comparative position of the fundamental rights vis-à-vis the Directive Principles of State Policy. At one level, the battle was about the sovereignty of Parliament vis-à-vis the power of the courts to interpret and defend the Constitution.

At another level, the argument was over the sanctity of property as a fundamental right jealously protected by an affluent class much smaller than that of the large penurious masses for whose benefit the Congress government demanded to implement its socialist development programme.

Less than two weeks after the Supreme Court hit down the President’s order de-recognising the princes, in a quick move to protect the mandate of the people and to strengthen her own stature Prime Minister Indira Gandhi dissolved the Lok Sabha and called a sudden poll.

For the first time, the Constitution itself became the democratic issue in India. Eight of the ten manifestos in the 1971 elections called for changes in the Constitution in order to re-establish the sovereignty of Parliament. A.K. Gopalan of the Communist Party of India (Marxist) went to the amount of saying that the Constitution be done away with lock stock and cask and be replaced with one that preserved the real sovereignty of the people. The Congress party resumed to power with a two-thirds majority. The electorate had allowed the
Congress party's socialist agenda, which among other things spoke of making basic deviations to the Constitution in order to restore Parliament's sovereignty.

Through a rash of amendments made between July 1971 and June 1972 Parliament sought to recover lost ground. It re-established for itself the absolute power to alter any part of the Constitution including Part III, dealing with fundamental rights. Even the President was made duty bound to provide his assent to any amendment bill approved by both houses of Parliament. Several verges on the right property were passed into law. The right to equality before the law and equal protection of the laws (Article 14) and the fundamental freedoms guaranteed under Article 19 were made secondary to Article 39 (b) & (c) in the D.P.S.P. Privy purses of former princes were eliminated and an entire category of legislation dealing with land improvements was placed in the Ninth Schedule beyond the scope of judicial review.

BASIC STRUCTURES OF THE CONSTITUTION ACCORDING TO THE KESAVANANDA BHARATI CAS, 1973:

Every judge laid out separately, what he supposed were the basic or essential features of the Constitution. There was no harmony of opinion within the majority view either.

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

• sovereignty of the Constitution
• secular character of the Constitution
• republican and democratic form of government
• federal character of the Constitution

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

• the command to build a welfare state contained in the Directive Principles of State Policy
• unity and integrity of the country.

Hegde, J. and Mukherjea, J. identified a isolated and smaller list of basic features:

• Supremacy of India

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180 As per Article 368 of the Constitution of India.
181 Article 14 states that The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.
182 1973) 4 SCC 225.
Democratic character of the Indian polity.

Important features of the individual freedoms available to the citizens

Fiat to build a welfare state

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

• Sovereign, Democratic, Republican nature of Indian state

• Parliamentary democracy.

He said that the Constitution would not be itself without the essential freedoms and the directive principles183.

Only six judges on the bench (therefore a minority view) settled that the fundamental rights of the citizen fitted to the basic structure and Parliament could not alter it.

(a) The dissenting opinion:

The minority view provided by Justice A.N. Ray (whose appointment to the position of Chief Justice over and beyond the heads of three senior judges, soon after the pronunciation of the Kesavananda judgement, was broadly considered to be politically motivated), Justice M.H. Beg, Justice K.K. Mathew and Justice S.N. Dwivedi also decided that Golaknath had been decided wrongly. They upheld the rationality of all three amendments challenged before the court. Ray, J. held that all parts of the Constitution were vital and no difference could be made between its crucial and non-essential parts. All of them agreed that Parliament could make fundamental alterations in the Constitution by exercising its power under Article 368184.

In summary, the majority judgment in Kesavananda Bharati renowned the power of Parliament to alter any or all provisions of the Constitution provided such an act did not abolish its basic structure. But there was no harmony of opinion about what appoints to that basic structure. Though the Supreme Court very closely returned to the position of Sankari Prasad185 (1952) by re-establishing the sovereignty of Parliament's amending power, in effect it fortified the power of judicial review much more.

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183 In the judgment of Keshavananda Bharti v. State of Kerala.
184 Power of Parliament to amend the Constitution and procedure thereof.
185 1951 AIR 458, 1952 SCR 89.
THE INDIRA GANDHI ELECTION’S CASE\textsuperscript{186}: BASIC STRUCTURE DOCTRINE WIDENING ITS REACH

In 1975, The Supreme Court again had the chance to pronounce on the basic structure of the Constitution. A challenge to Prime Minister Indira Gandhi's election conquest was upheld by the Allahabad High Court on grounds of electoral misconduct in 1975. Pending appeal, the vacation judge- Justice Krishna Iyer, approved a stay that allowed Smt. Indira Gandhi to function as Prime Minister on the situation that she should not lure a salary and speak or vote in Parliament till the case was decided. Meanwhile, Parliament approved the Thirty-ninth amendment to the Constitution which detached the authority of the Supreme Court to arbitrate petitions regarding elections of the President, Vice President, Prime Minister and Speaker of the Lok Sabha. In its place, a body established by Parliament would be vested with the power to decide such election disputes. Section 4 of the Amendment Bill efficiently thwarted any attempt to challenge the election of an incumbent, inhabiting any of the above offices in a court of law. This was clearly a pre-emptive action intended to benefit Smt. Indira Gandhi whose election was the object of the ongoing clash.

Amendments were also done to the Representation of Peoples Acts of 1951 and 1974 and put in the Ninth Schedule along with the Election Laws Amendment Act, 1975 in order to save the Prime Minister from embarrassment if the Supreme court brought an unfavourable judgment. The mala fide purpose of the government was verified by the haste in which the Thirty-ninth amendment was passed. The bill was introduced on August 7, 1975 and approved by the Lok Sabha the same day. The Rajya Sabha (Upper House or House of Elders) approved it the next day and the President gave his approval two days later. The amendment was approved by the state legislatures in special Saturday hearings. It was gazetted on August 10. When the Supreme Court unlocked the case for hearing the next day, the Attorney General asked the Court to rug out the case in the light of the new amendment

Counsel for Raj Narain who was the opponent challenging Mrs. Gandhi's election contended that the amendment was against the basic structure of the Constitution as it pretentious the conduct of free and fair elections and the power of judicial review. Counsel also contended that Parliament was not capable to use its constituent power for validating an election that was stated void by the High Court.

\textsuperscript{186} Indira Nehru Gandhi v. Shri Raj Narain & Anr. Appeal (civil) 887 of 1975.
Four out of five judges on the bench sustained the Thirty-ninth amendment\(^ {187}\), but only after striking down that part which sought to check the power of the judiciary to adjudicate in the current election clash. One judge, Beg, J. upheld the amendment in its totality. Mrs. Gandhi's election was declared lawful on the basis of the amended election laws. The judges reluctantly accepted Parliament's power to pass laws that have a retrospective effect.

(a) Basic Features of the Constitution according to the Election case verdict\(^ {188}\):

Again, every judge stated views about what amounts to the basic structure of the Constitution:

According to Justice H.R. Khanna, democracy is a basic feature of the Constitution and contains free and fair elections.

Justice K.K. Thomas held that the power of judicial review is an important feature.

Justice Y.V. Chandrachud listed four basic features which he measured unamendable:

- Equality of status and opportunity of an individual person.
- Secularism and freedom of conscience, profess, practise and propagate any religion
- 'rule of laws and not of men'

According to Chief Justice A.N. Ray, the integral power of Parliament was above the Constitution itself and so not bound by the principle of separation of powers. Parliament could therefore eliminate laws relating election disputes from judicial review. He opined, bizarrely, that democracy was an elementary feature but not free and fair elections. Ray, C.J. held that ordinary statute was not within the scope of basic features.

Justice K.K. Mathew agreed with Ray, C.J. that ordinary laws did not fall in the purview of basic structure. But he held that democracy was a necessary feature and that election clashes must be decided on the basis of law and realities by the judiciary.

Justice M.H. Beg differed with Ray, C.J. on the grounds that it would be redundant to have a Constitution if Parliament's constituent power were supposed to be above it. Judicial powers were conferred in the Supreme Court and the High Courts and Parliament could not accomplish them. He contended that sovereignty of the Constitution and separation of powers

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\(^{187}\) The Thirty-ninth Amendment of the Constitution of India, enacted on 10 August 1975, placed the election of the President, the Vice President, the Prime Minister and the Speaker of the Lok Sabha beyond the scrutiny of the Indian courts. It was passed during the Emergency of 1975–1977. It was moved by the Congress government headed by Indira Gandhi to preempt a hearing by Supreme Court of India concerning the setting aside of Gandhi's election by the Allahabad High Court on the grounds of corrupt electoral practices.

were elementary features as understood by the majority in the Kesavananda Bharati case. Beg, J. emphasised that the doctrine of basic structure comprised within its scope ordinary legislation also.

**Despite the disparity between the judges on what constituted the basic structure of the Constitution, the idea that the Constitution had a essential content which was sacrosanct was upheld by the majority view.**

**(b) The Kesavananda Bharati Review Bench:**

Within three days of the verdict on the Election Case Ray, C.J. assembled a thirteen-judge bench to review the Kesavanada judgment on the pretext of hearing a number of petitions connecting to land ceiling laws which had been weakening in high courts. The petitions contended that the submission of land ceiling laws violated the basic structure of the Constitution. In result, the Review bench was to resolve whether or not the basic structure doctrine restricted Parliament's power to amend the Constitution. The verdict in the Bank Nationalisation case was also up for review.

*Temporarily Prime Minister Indira Gandhi, in a speech in Parliament, declined to accept the dogma of basic structure.*

It must be recalled that no specific petition seeking a review of the Kesavananda judgment filed before the apex court- a fact noted with much humiliation by several members of the bench. N.A. Palkhivala performing on behalf of a coal mining company expressively argued against the move to review the Kesavananda decision. Ultimately, Ray, C.J. dissolved the bench after two days of trials. Many people have alleged the government's indirect involvement in this episode seeking to undo an adverse judicial precedent set by the Kesavananda pronouncement. However, no concerted efforts were made to chase the case.

The declaration of a National Emergency in June 1975 and the resultant suspension of fundamental freedoms, including the right to move courts in contradiction of preventive detention, distracted the attention of the country from this issue.

**THE MINERVA MILLS** AND WAMAN RAO CASES: CEMENTING THE WALL OF BASIC STRUCTURE

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190 Rustom Cavasjee Cooper v. Union of India.
191 Minerva Mills Ltd. and Ors. v. Union Of India and Ors., AIR 1980 SC 1789.
Within less than two years of the refurbishment of Parliament's altering powers to near absolute terms, the Forty-second amendment was challenged before the Supreme Court by the titleholders of Minerva Mills (Bangalore) a sick industrial firm which was state-owned by the government in 1974.

Mr. N.A. Palkhivala, famous constitutional lawyer and counsel for the petitioners, chose not to encounter the government's action merely in terms of an infringement of the fundamental right to property. In its place, he framed the challenge in terms of Parliament's power to alter the Constitution.

Mr. Palkhivala argued that Section 55 of the amendment had placed limitless amending power in the hands of Parliament. The attempt to inoculate constitutional amendments against judicial review violated the doctrine of basic structure which had been accepted by the Supreme Court in the Kesavananda Bharati and Indira Gandhi Election Cases. He further contended that the amended Article 31C was constitutionally corrupt as it violated the Preamble of the Constitution and the fundamental rights of citizens. It also took away the rule of judicial review.

Chief Justice Y.V. Chandrachud, providing the majority judgement (4:1), upheld both contentions. The majority opinion upheld the power of judicial review of constitutional amendments. They maintained that clauses (4) and (5) of Article 368 conferred limitless power on Parliament to amend the Constitution. They said that this deprived court of the capacity to question the amendment even if it damaged or demolished the Constitution's basic structure.

*The judges, who agreed with Chandrachud, C.J. ruled that a limited altering power itself is a basic feature of the Constitution.*

Bhagwati, J. the dissenting judge also decided with this view stating that no authority howsoever arrogant, could claim to be the sole judge of its power and activities under the Constitution.

The majority held the alteration to Article 31C unconstitutional as it demolished the harmony and balance between fundamental rights and directive principles which is a vital or

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193 Saving of laws giving effect to certain directive principles Notwithstanding anything contained in Article 13, no law giving effect to the policy of the State towards securing all or any of the principles laid down in Part IV shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Article 14 or Article 19 and no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy: Provided
basic feature of the Constitution. The amendment to Article 31C remnants a dead letter as it has not been rescinded or deleted by Parliament. Nonetheless cases under it are decided as it occurred prior to the Forty-second amendment.

In another case relating to a similar dispute comprising agricultural property the Supreme Court, held that all constitutional amendments made after the date of the Kesavananda Bharati verdict were open to judicial review. All laws placed in the Ninth Schedule after the date of the Kesavananda Bharati verdict¹⁹⁴ were also open to review in the courts. They can be challenged on the ground that they are outside Parliament's constituent power or that they have spoiled the basic structure of the Constitution. In spirit, the Supreme Court struck a balance between its ability to interpret the Constitution and Parliament's power to alter it.

CONCLUSION: NO FIXED DEFINITION OF BASIC STRUCTURE AND ITS FLEXIBILITY AND POWER

It may be said that the last word on the issue of the basic structure of the Constitution has not been marked by the Supreme Court- a situation that is improbable to change in the near future. While the idea that there is such a thing as a basic structure to the Constitution is well recognized its contents cannot be wholly determined with any measure of conclusiveness until a judgement of the Supreme Court spells it out. Nonetheless the autonomous, democratic and secular character of the Indian polity, rule of law, independence of the judiciary, etc. are some of the important features of the Constitution that have appeared time and again in the Supreme Court's verdicts. One inevitability that emerged out of this struggle between Parliament and the judiciary is that all laws and constitutional amendments are currently subject to judicial review and laws that contravene the basic structure are likely to be struck down by the Supreme Court. In spirit Parliament's power to amend the Constitution is not unqualified and the Supreme Court is the final arbitrator and interpreter of all constitutional amendments.

¹⁹⁴ (1973) 4 SCC 225.
Thanking Note

The Editorial Board, Student Coordinators and the Advisory Members of the Indian Constitutional Law Review seek to express their gratitude to all members and contributors who have made immensely valuable contributions to the growth and evolution of the Constitutional law landscape of India. We express our heartfelt gratitude to all Advisory Members who have provided their valuable insights in the framing of this edition. The Student Editors have also played a crucial role in the development and outcome of this publication.

AMIT SINGHAL
Editor-in-Chief

On behalf of the esteemed members of the Editorial Board, Honourable Members of the Advisory Council & the members of the Publishing Unit