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**HARMONIZING CONFLICT: EXPLORING RELATIONSHIP
BETWEEN ARTICLE 13 & 368: A JUDICIAL PERSPECTIVE**- Rishab Aggarwal¹**Abstract**

Within constitutional law, reconciling opposing legal provisions is an ongoing difficulty. This is especially true when it comes to the complex relationship among Article 13 and Article 368 of the Constitution of India. Article 13, which is frequently praised for serving as the protector of fundamental rights, defines the judicial review theory and emphasizes the Constitution's supremacy. On the other hand, Article 368 outlines the process by which the Constitution can be changed, granting Parliament the authority to change any portion of it, including the basic rights. The Indian Supreme Court adopted two different positions for judicial review of constitutional amendments between 1951 and 1973: primary, that the amendments are subject to clear constraints under Article 13's judicial review process; and secondary, that the alterations are subject to an implied set of limits under the fundamental structure review process. This paper assesses these two grounds for judicial review of constitutional amendments critically and argues that there may be implied limitations on the scope of the courts' ability to consider whether a given amendment preserves or modifies the fundamental elements of the document. In addition, this study seeks to outline the developing body of legal precedent about the relationship between Article 13 and Article 368, exploring seminal instances like *Kesavananda Bharti*, which established the fundamental structure theory. It also looks at the substantive restrictions on the amending authority and how the Supreme Court applied the fundamental structure theory to judicial scrutiny of constitutional changes in the *Kesavananda Bharati* case. This research aims to offer insights into how the court strikes a difficult balance between legislative sovereignty and the protection of basic rights through an analysis of these instances and relevant studies.

Introduction

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The Indian Constitution Grants Parliament the power to enact laws within its designated jurisdiction, including the ability to change already-existing laws. This authority is limited, though. The Indian court is empowered by the Constitution to conduct judicial reviews, which allow it to examine the legality of any legislation that are in effect within the Union. In the event that the Union Parliament or State Legislature violates constitutional requirements, the legislation in question may be declared illegal or extra vires by the Supreme Court. The Constitution's founders intended for it to be a living, flexible text that might change to meet the demands of the times. Under Article 368, Parliament was granted the authority to alter the Constitution in order to support this flexibility. Although a strict reading of Article 368 would imply unrestricted legislative control over every facet of the Constitution, worries about possible presidential overreach led the Supreme Court to step in.

In the landmark decision of *Kesavananda Bharti v. State of Kerala*², decided in April 1973, over thirty years ago, the Supreme Court of India showed great tenacity and inventiveness by developing a notion that became a cornerstone of Indian constitutional law. The Court limited the legislature's seemingly unrestricted power in this historic decision by elaborating on the now-famous "doctrine of basic structure" or "basic structure and framework of the Indian Constitution."

The Supreme Court ruled that Parliament cannot change, alter, or destroy the core values of the Constitution, which are essential to India's social fabric, in order to uphold the document's core values. The judicial intervention served as a deterrent to Parliament's inclination to modify the Constitution under false pretenses. The judiciary's definition of the basic structure doctrine attempts to prevent revisions that would significantly change the Indian constitutional framework. This theory emerged out of the Indian judiciary's struggle against executive overreach, which frequently infringed upon judicial independence and jeopardized citizens' rights. The desire for consistency in the Constitution gave rise to this idea. The Indian judiciary has often demonstrated its authority in interpreting the fundamentals of amendment, highlighting that the idea of amendment as it exists within the confines of the Preamble and the Constitution is not vague nor incomprehensible to lawmakers or the general

²AIR 1973 SC 1461: (1973) 4 SCC 225.

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public.³Instead, it serves as a crucial safeguard to guarantee the Constitution's continued applicability and effectiveness in light of changing social demands and goals.

In confronting the specter of executive overreach, the Indian judiciary has adopted a principled stance to uphold the sanctity of the Constitution and safeguard the rights of the people. Through significant pronouncements such as *Kesavananda Bharti*, the judiciary has demonstrated its unwavering commitment to preserving the foundational principles of the Indian Constitution and safeguarding the democratic fabric of the nation. The judiciary's role in delineating the bounds of parliamentary authority underscores its pivotal role in maintaining the delicate equilibrium of power within the Indian polity. By asserting its authority to review and, if necessary, nullify unconstitutional legislation, the judiciary acts as a bulwark against potential abuses of power and ensures that the constitutional order remains inviolate. The evolution of the basic structure doctrine represents a paradigm shift in Indian constitutional history, signaling the judiciary's proactive role in safeguarding the Constitution from potential encroachments by the legislative and executive branches of government. Through its principled interventions, the judiciary has fortified the foundational principles of the Constitution and reaffirmed its commitment to upholding the rule of law in the face of evolving political and social dynamics.

Deciphering the Provisions

The Constitution's ability to adapt to changing societal, economic, and political dynamics requires periodic amendments. However, granting Parliament unlimited amending powers risks arbitrary alterations that serve the government's interests. Such unchecked authority could lead to human rights violations and undermine democratic principles. To address the needs of the times and evolving social, economic, and political conditions, constitutional amendments are necessary. Nevertheless, Parliament's unrestricted amending powers empower the government to alter the supreme law of the land to its advantage. This potential for arbitrary exercise of power poses a risk of human rights violations and undermines democratic values. Before delving into a detailed analysis, it is crucial to comprehend the

³Kesavananda, ¶ 315.

foundational provisions governing constitutional amendments, namely Article 13 and Article 368.

Article 13

According to Article 13(1)⁴, prior to the constitution's adoption, there were numerous laws in the nation. However, when the constitution was enacted, fundamental rights were also established. As a result, laws that existed before the constitution's adoption had to demonstrate that they were compatible with the fundamental rights in order to be recognized as legitimate; otherwise, they would be deemed null and void. Article 13(2)⁵ discusses post-constitutional laws, meaning that once the constitution is drafted and put into force, no state may pass legislation that restricts or eliminates a person's fundamental rights; if this is the case, the law will be unconstitutional to the extent of the violation⁶. Article 13(3)⁷ defines what constitutes a law, meaning that any laws, notifications, rules, regulations, customs, usage, etc. that affect citizens' legal rights fall under this definition and are therefore deemed laws under article 13. Two caveats exist to this rule, though: first, executive and administrative orders fall under article 13 only if they are intended to serve as guidelines or instructions; otherwise, they do not. Article 13 does not apply to personal laws, which is the second exemption. According to article 13 clause (4)⁸, no change made to article 368 of the Indian constitution may be contested under article 13. Furthermore, an alteration that violates a basic right cannot be challenged under article 13. The Basic Structure Doctrine of our constitution was established by Article 13(4), which also forbids the parliament from passing legislation or amending existing laws in a way that contradicts the basic rights.

⁴ All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.

⁵ 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.

⁶ Rachit Garg, An analysis of Article 13 Vis a VIS Article 368 of the Indian Constitution iPleaders (2023), https://blog.ipleaders.in/an-analysis-of-article-13-vis-a-vis-article-368-of-the-indian-constitution/#Article_13_of_the_Indian_Constitution (last visited Apr 19, 2024).

⁷ In this article, unless the context otherwise requires,— (a) “law” includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law; (b) “laws in force” includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.

⁸ Nothing in this article shall apply to any amendment of this Constitution made under article 368

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Judicial Review under Article 13

Judicial review is the process by which courts assess whether government legislative and executive actions that fall within their normal jurisdiction are constitutional. Its foundations are found in the ideas of two laws—a common law and a supreme law, or the Constitution—and limited government. Judicial review is a crucial tool for defending people's rights when the Legislature, Executive Branch, and Judicial Branch have violated fundamental principles and denied Indian citizens' rights guaranteed by the Indian Constitution.

The United States Supreme Court initially introduced the Doctrine of Judicial Review in the leading case of *Marbury v. Madison*⁹, Chief Justice Marshall noted that the constitution is either supreme and unalterable or vulnerable to legislative modification. Any legislative action that conflicts with written constitutions is regarded as invalid. Written constitutions are considered basic law. He highlights that the judiciary's responsibility is to interpret and preserve the supremacy of the constitution.¹⁰

Given that Article 13 is so broad in its application and breadth, it allows judges to evaluate all laws, past and present, giving them the authority to examine laws both prospectively and retroactively. The Supreme Court of India and High courts have the authority to declare a statute unconstitutional if it violates any part of Part III of the Constitution. Thus, under Article 13(2), the courts may exercise their power of judicial review to declare legislation that restrict or deny basic rights ultra-vires or invalid. CJ Kania in *A.K. Gopalan v. State of Madras*¹¹, noted that the exact restrictions in Article 13 were only included by the founders of our Constitution out of a great deal of care. In India, the Constitution is the ultimate law, and all statutory

⁹ (1803) U.S. LEXIS 352

¹⁰“*constitution is either superior paramount law, unchangeable by ordinary means or it is on a level with ordinary legislative acts and like other acts is alterable when the legislature shall please to alter it..... Certainly all those who framed written constitutions contemplate them as forming the fundamental and paramount law of the nation and consequently the theory of every such government must be that an act of the legislature repugnant to the constitution is void... It is emphatically the duty of the judicial department to say what the law is*”

¹¹AIR 1950 SC 27

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laws must abide by its provisions. The judiciary has the authority to determine whether an enactment is constitutional or not.

In the matter of *A.K. Gopalan v. Union of India*¹², the Supreme Court held that articles 13(1) and 13(2) in the Constitution seem redundant as the Court retains power to invalidate legislative enactments infringing fundamental rights. Their presence does not affect the determination of fundamental rights or their permissible limitations by the Constitution.¹³ In the case of *Kesavananda Bharati v. State of Kerala*¹⁴ and *Minerva Mills Ltd. & Ors. v. Union of India & Ors.*¹⁵, the Supreme Court noted that one of the fundamental elements of the Constitution is the power of judicial review.

In the case of *L. Chandra Kumar v. Union of India*¹⁶, the Supreme Court articulated these aspects of judicial review, noting that judges of higher courts must interpret laws so as to preserve the principles enshrined in the Constitution. In order to do this, the judges must remember that the legislation was enacted by the legislature and that it is in accordance with the Indian Constitution. The Supreme Court of India and the High Courts have the authority to analyze laws in order to make judicial assessments. Through the formation of the Constitution, the judiciary evaluates legislation in conformism¹⁷.

Therefore, the Doctrine of Judicial Review serves as a judicial check on the government's legislative, executive, and judicial operations. It has taken on a permanent form as a result of several judgments made starting in 1973. Any attempt to undermine the authority of Judicial Review would be tantamount to overthrowing the Indian Constitution as it is vested in the 'Basic Structure Doctrine' of the Indian Constitution.

¹²AIR 1950 SC 27

¹³ Inclusion of Article 13(1) and 13(2) in the Constitution appears to be a matter of abundant caution. Even in their absence, if any of the fundamental rights was infringed by any legislative enactment, the Court has always the power to declare the enactment to the extent it transgresses the limits, invalid. The existence of Article 13(1) and Article 13(2) in the Constitution, therefore, is not material for the decision of the question of what fundamental right is given and to what extent it is permitted to be abridged by the Constitution itself.

¹⁴ AIR 1973

¹⁵ 1980 AIR 1789

¹⁶ AIR 1997 SC 1125

¹⁷ Jasbir Singh Bajaj, 2, 1 in *Constitutional and Administrative Law* (1 ed. 2023).

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Article 368

Article 368 of the Indian Constitution gives Parliament the power to amend, add, or remove any section of the document by following a set of guidelines. A special majority and subsequent confirmation are required for this process. According to Article 368(2), amendments may be made in either House of Parliament and must be approved by at least two-thirds of that House's members as well as the majority of all present and voting members. Within the framework of Article 368, Parliament holds the power to amend the Indian Constitution and its operational mechanisms. However, this process is not easily maneuvered, as it necessitates adherence to additional regulatory measures.

While Parliament enjoys the right to enact amendments, it must ensure the preservation of the Constitution's essential structure. Article 368 outlines various types of amendments: those requiring a special parliamentary majority, those needing support from a special majority plus 50% of the state's population, and those requiring a simple majority in both the Lok Sabha and the Rajya Sabha. The dynamism of time underscores the necessity for periodic revisions to the Constitution. As societal, cultural, and political landscapes evolve, the need for adaptation becomes apparent. Failure to implement timely amendments could impede progress and hinder the nation's ability to address emerging challenges. The strength of the Constitution, as envisioned by our forefathers, lies in its capacity to accommodate the nation's growth and development. Thus, Parliament, as per Article 368, possesses unbounded authority to amend any segment of the Constitution deemed necessary. Article 368 serves as a cornerstone in the constitutional framework, providing Parliament with the means to ensure the Constitution remains relevant and effective in an ever-changing world. Through meticulous adherence to the prescribed procedure, Parliament can uphold the integrity and adaptability of the Indian Constitution, thereby safeguarding the rights and interests of its citizens.

Intricacy of Article 13 and 368

The evolving socio-economic and political dynamics demand periodic updates to the Constitution to align with current needs and aspirations. However, the boundless amending

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authority of Parliament poses a risk of arbitrary manipulation of the supreme law, potentially undermining democratic principles and human rights. The discerning judiciary, however, has consistently foreseen potential adverse consequences of such amendments, serving as a check on parliamentary overreach. Through landmark judgments and pivotal interventions, the Supreme Court has reiterated the primacy of the Constitution, reminding Parliament that it serves as the cornerstone of all legislative authority. Below is an overview of significant Supreme Court decisions and doctrinal shifts that have solidified the foundational principle of the "basic structure doctrine".

Shankari Prasad v. Union of India (1951)

The apex court of India heard a challenge to the constitutionality of the Constitution First Amendment Act, 1951 in the case of *Shankari Prasad v. UOI*¹⁸. The supreme court heard a challenge to the limitation of the right to property under Article 31 in this case. The argument put up was that Article 13 of the Indian Constitution defined "law" to encompass any type of legislation, including laws that change the constitution, and that as a result, the constitutional rights granted by the document can be used to assess the legitimacy of any given law. "All laws in force in the territory of India immediately before the commencement of this Constitution, insofar as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void," reads Article 13 of the Indian Constitution. It also stops the state from passing any legislation of such kind.

Using the literary rule of interpretation, the Court determined that a Constitutional Amendment Act is not an ordinary law, but rather only rules, regulations, or other laws issued in the exercise of regular legislative power. As a result, the supreme court maintained the constitutionality of the Constitution First Amendment Act, 1951 and declared that modifications made in accordance with Article 368 of the Indian Constitution are not impacted by Article 13(2). According to the court, Article 13's provisions are rather comprehensive and grant our parliament the authority to modify the constitution using Article 368's powers.

Sajjan Singh v. State of Rajasthan (1964)

¹⁸ AIR 1951 SC 458

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The next significant case involving this topic is *Sajjan Singh v. State of Rajasthan*¹⁹ in which the supreme court considered whether the Constitution (Seventeenth Amendment) Act was lawful. This amendment eliminated judicial review of some property rights-related acts by placing them in the Constitution's Ninth Schedule. The petitioner argued that because this change significantly narrowed the scope of judicial review, it should be overturned and that only Article 368's provisions could support this claim. In a manner akin to that of *Shankari Prasad*, the court dismissed the argument 3 to 2. The Court ruled in its majority decision that the amendment's "pith and substance" was to revise the Fundamental Rights rather than in any way limit the application of Article 226. The Court reiterated its stance in *Shankari Prasad*, drawing a difference between constituent authority and ordinary legislative power. The majority rejects the idea that Article 368 did not cover Fundamental Rights. The minority, however, had serious reservations about this. As Justice Hidayatullah noted, "I would require 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". In a similar vein, Justice Mudholkar indicated hesitation to acknowledge that the constitutional modifications were not included within the meaning of the word "law" in Article 13. His main contention was that certain fundamental elements of any constitution are unchangeable.

LC Golak Nath v. State of Punjab (1967)

One of the most important cases in Indian legal history is *Golaknath v. State of Punjab*²⁰. In this scenario, various concerns were raised, with the foremost being whether the Indian Parliament possesses the authority to alter the fundamental freedoms outlined in Part III of the constitution. While some argued that the framers of our Constitution did not envision it as inflexible and immutable, others contended that Parliament lacked the jurisdiction to amend basic rights. The Court's stance remains steadfast: Parliament is devoid of the power to modify fundamental rights.

¹⁹AIR 1965 SC 845.

²⁰ AIR 1967 SC 1643.

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Following to the majority, Article 368 of the Indian Constitution forbids any authority, including the parliament, from changing the basic rights since they have a "transcendental" status. The decision was in favor of the basic rights. This was a ruling that supported the nation's fundamental rights. The court could have reasoned that our nation would eventually turn into a totalitarian regime if these liberties are completely violated. After that, Chief Justice Subba Rao referred to these as "the primordial rights necessary for the development of human personality" and made a contrast between natural and basic rights.

Kesavananda Bharati v. State of Kerala (1973)²¹

The validity of the Constitution (Twenty-fourth Amendment) and Constitution (Twenty-fifth Amendment) Acts got challenged through an Article 32 writ petition. To review the court's decision in the Golak Nath matter, a thirteen-judge constitutional bench heard the matter. Judges Hedge and Mukherjee declined to acknowledge that the constitutional assembly would hide its authority to amend the text by using its remaining power. On this issue, Golak Nath's opposing viewpoint was rejected in favor of Shankari Prasad and Sajjan Singh's perspective, which was determined to be right. The justices also discovered that Article 13 of the Constitution distinguishes between the terms "Constitution" and "law." Therefore, it was decided that "constitutional law" was not included in the definition of "law" in Article 13 of the Constitution. It is important to remember that the legislature was not given unrestricted authority by the court. The fundamental structural concept will be the new rule that governs the modifying authority. As a result, the legislature is not permitted to utilize its amending authority in a way that would undermine or weaken the fundamental elements of the Constitution.

The Court considers the following characteristics to be fundamental and so non-amenable:

- The Constitution is supreme;
- Government is divided into Republican and Democratic branches;
- The Constitution is secular;
- The legislative, executive, and judicial branches have their powers divided; and
- The Constitution is federal in nature.

²¹ His Holiness Kesavananda Bharati Sripadagalvaru and Ors. v. State of Kerala and Anr. (1973) 4 SCC 225
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The court in this decision stated that the term "amend" has a very narrow meaning and that it is subject to scrutiny if it threatens to invalidate or destroy any essential aspect of the Constitution. Kesavananda also addressed a crucial issue that Golak Nath had not addressed: does Parliament have the authority to amend the whole Constitution and adopt a new one? In response, the court stated that Parliament can only take actions that do not alter the fundamental provisions of the Constitution.

With the exception of the characteristics stated by different judges²², the test of "basic structure" as it was developed in Kesavananda Bharati was very ambiguous and contradictory. H.M. Seervai, a renowned jurist, has expressed regret that "[a] precise formulation of the basic features would be a task of greatest difficulty and would add to the uncertainty of interpreting the scope of Art 368²³." The Minerva Mills²⁴ case is the first decision in which a deliberate effort was made to establish the tests of basic structure.

Indira Nehru Gandhi v. Raj Narain (1975)

The Allahabad High Court heard the matter of Indira Nehru Gandhi v. Raj Narain²⁵. The lawsuit was brought by Indira Gandhi's political rival Raj Narain, who claimed that the then-prime minister of India had utilized official funds for her election campaign. Gandhi lost her parliamentary seat when the court declared her guilty of election fraud. She was also prohibited from running for office for a further six years by the ruling. The ruling sparked intense political unrest, which eventually resulted in India declaring emergency laws in 1975. During the 21-month emergency, there were numerous abuses of human rights and repression of political dissent. The Supreme Court later reversed the decision in 1978.

A protest about anomalies in the voting process directed against Indira Gandhi, the prime minister at the time, served as the foundation for this legal action. The respondent ran against the appellant in the 1971 Lok Sabha elections for the Rae Bareilly constituency. After Raj

²² In *Minerva Mills v. Union of India*, AIR 1980 SC 1789 the majority judgment concisely discussed the ratio of Kesavananda and jotted down the Basic features regarding the limited amendability of constitution and the balance between Part III and Part IV as pointed out by Sikri, C.J., Shelat and Grover, JJ, Hegde and Mukherjea, JJ, Jagannathan Reddy J and Khanna, J. For a detailed analysis of various features of constitution categorized as 'Basic structure' in Kesavananda one can refer to V.N. Shukla, Constitution of India at 887-889

²³ HM SEERVAI, CONSTITUTIONAL LAW OF INDIA, 3161-3162 (2001)

²⁴ *Minerva Mills Ltd. and Ors. vs. Union of India (UOI) and Ors.*, AIR 1980 SC 1789.

²⁵ AIR 1975 SC 2299.

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Narain, the responder, presented a convoluted case, the election results revealed an unexpected outcome: Indira Gandhi was re-elected, and the Congress was re-established with a sizable majority. To carry out this, respondent was required to sue the appellant in the Allahabad High Court, charging her with various forms of electoral fraud, including as bribery, using government funds and equipment for a personal campaign, and distributing alcohol, etc.

The Allahabad High Court ruled that the appellant had violated Section 123(7)²⁶ by abusing her power, leading to the removal of Indira Gandhi from her role as prime minister and a six-year ban on her candidacy. Dissatisfied with the ruling, the 39th Constitution Amendment Act was passed in 1975 in response to the declaration of emergency. This legislation limited the court of laws' jurisdiction to resolve election-related issues involving the President, PM, Vice President, and Speaker of the Lok Sabha by transferring the authority to a committee led by Parliament.

The main issues in this case concerned the validity of the 39th Amendment to the Constitution and whether the 1951 Representation of the People Act violated the Constitution's basic structure. The majority of the Honorable Court decided that the Amendment Acts of 1951 and 1974 should be repealed because they restrict the courts' power to exercise their legal authority and compromise the judicial review concept. These rulings are in violation of the fundamental foundations of the Indian Constitution.

Clause (4) of Article 329-A of the 39th Amendment Act was also ruled unconstitutional because it deviates from the core framework of the Indian Constitution and is not subject to parliamentary amendment. The court decided that the basis of the Constitution is "free and fair elections," which are essential to our democracy. The judiciary should intervene to protect justice if shady tactics are being used to rig elections. The Supreme Court declared that Article 329 A Clause 4 is invalid, citing the Allahabad High Court's decision and the Kesavananda Bharati verdict in favor of the respondent's position.

Because the 39th Amendment disregarded the idea of the separation of powers and did not provide judges the only authority to consider and decide legislative matters pertaining to the

²⁶Representation of Peoples Act, 1951

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core values of the Constitution, it was abolished. In the end, the court determined that the amendment violated Article 14 of the Constitution because it gave one individual an unjustified function while leaving others out. In this instance, it was decided that democracy is a fundamental aspect of the constitution. According to Article 368 of the Constitution, no modifying body has the authority to enact a regular legislation that will legitimize the election retroactively. Another important finding from the views expressed in this particular instance was that constitutional modifications fall under the definition of "basic features," not ordinary legislation.

Minerva Mills v. Union of India & Ors (1980)²⁷

The case addresses the constitutionality of Article 368 Clauses 4 and 5, and Sections 4 and 55 of the Constitution 42nd Amendment Act, aiming to expand Parliament's authority while limiting judicial oversight. The Amendment Act sought to nullify the rulings in *Kesavananda Bharati v. State of Kerala* and *Indira Nehru Gandhi v. Raj Narain*. Specifically, it targeted restrictions imposed on constitutional amendments by *Kesavananda Bharati*. Additionally, it questioned the legality of the Sick Textiles Undertakings (Nationalisation) Act of 1974, which aimed to nationalize underperforming textile companies like Minerva Mills Ltd., raising concerns about government overreach in taking control of private entities.

The Supreme Court holds that Parliament can change the Constitution without jeopardizing its fundamental structural elements. Parliament may alter fundamental rights as long as they follow the fundamental structure (basic structure) principle. The judge invalidated the provision limiting judicial review. If the courts lose their ability to conduct judicial review, the Fundamental Rights will be reduced to a "mere adornment" and become unenforceable rights. A "controlled" constitution would become "uncontrolled" if such revisions were to be upheld; the ruling party's parliamentary majority, rather than a wide agreement to preserve the interests of the country, was responsible for these amendments.

Conclusion

The link between parliamentary sovereignty and the preservation of basic rights has been significantly shaped by the evolution and interpretation of Articles 13 and 368 of the Indian

²⁷ AIR 1980 SC 1789

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Constitution. Article 368 gives Parliament extensive legislative authority by granting it the power to modify the Constitution without specific restrictions. On the other hand, Article 13(2) restricts the power of Parliament to modify basic rights by stating that no legislation may restrict the rights granted under Part III of the Constitution. The ratification of the 24th Amendment to the Constitution in the early 1970s brought to light the conflict between the protection of basic rights and the broad modifying authority of Parliament. By allowing Parliament unrestricted powers of modification, including the authority to change fundamental rights provisions, this amendment, which was passed in 1971, intended to circumvent the restrictions imposed by Article 13(2).

But the 1973 Supreme Court decision in *Kesavananda Bharathi v. State of Kerala* significantly changed the Indian constitutional law environment. In this decision, the Supreme Court established the concept of the Constitution's fundamental structure, which places restrictions on Parliament's ability to change the document. According to the basic structure philosophy, some fundamental elements of the Constitution—like federalism, democracy, and secularism—are untouchable and cannot be changed by Parliament through the amendment process. This landmark ruling created a framework for judicial examination of constitutional changes that violate the fundamental framework and signaled a dramatic change in the way that amendments were understood.

In addition, the Supreme Court has maintained that judicial review is an essential component of the Constitution, meaning that changes that compromise either judicial review or basic rights will be void. A crucial tool for maintaining the primacy of the Constitution and guaranteeing respect to its tenets is judicial review. By means of judicial review, the judiciary functions as a restraint on the legislative branch's authority, guaranteeing that legislative measures align with constitutional principles and avoid violating basic rights.

The evolution of the basic structure concept has been a gradual process, with the judiciary refining and expanding its scope over time. Initially conceived in the 1970s, the basic structure doctrine has evolved to encompass a broader range of rights and principles. Through years of judicial supervision and interpretation, the basic structure has come to include not only fundamental rights but also core natural and human rights. While the judiciary has not

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provided a concrete test for determining the basic structure, it encompasses a wide range of principles and values that are deemed essential to the functioning of the Constitution.

Moreover, the evolution of constitutional principles, judicial precedent, and sociological shifts have all had an impact on the development of the fundamental structure doctrine. The preservation of basic rights and the comprehension of constitutional ideas have developed alongside Indian society. The court has been essential in interpreting and putting these ideas into practice, ensuring that the Constitution is a living instrument that may change to reflect evolving circumstances.

Thus, the interaction between Articles 13 and 368 of the Indian Constitution illustrates how parliamentary autonomy and the defense of basic rights must be balanced. Although Parliament has extensive authority to change laws, this authority is not unqualified and is subject to judicial scrutiny. The concept of the Constitution's fundamental structure places restrictions on Parliament's ability to change the document, guaranteeing the preservation of certain of its most important tenets and characteristics. The fundamental framework has developed over many years of judicial oversight and interpretation to include a wider spectrum of rights and ideals, protecting the Constitution against arbitrary changes and maintaining its integrity.

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