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The Constitution of India Basic Structure Doctrine

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ABSTRACT

This research paper presents the doctrine of the “basic structure” of the Indian constitution. This paper seeks your attention towards the political history of India and provides a deep knowledge of the basic structure doctrine. The term “basic structure” evolved after the judgment of the “Kesavananda Bharati Case”. The principle of the basic structure of doctrine was included in the constitution by the Supreme Court in 1973 in the Kesavananda Bharati Case, and the bench of thirteen judges sat to introduce a historical judgment of 680 pages though the ratio was 7:6. Mainly, the basic structure of doctrine came into force to protect the fundamental rights though, first amendment act abridged fundamental right, right to property but later on it was deleted by 44th amendment act of 1978 and made a legal right under Article 300A. This paper throws light on the pre-doctrine situation and post-doctrine situations. It also spread light on the current scenario and the critics of the doctrine.

Keywords: Basic structure, Kesavananda Bharati Case, pre doctrine, post doctrine, First amendment act, fundamental rights, 44th Constitutional Amendment Act, Article 300A, Right to property.

I. INTRODUCTION

The basic structure doctrine is a legal doctrine that cannot be removed by legislation. The doctrine was launched by the Supreme Court in the judgment of the Kesavananda Bharati V/S State of Kerala case in 1973. The emergency was to invoke the doctrine to sort out the ongoing contention between Judiciary and Parliament. Although, after the 1950s, there was great chaos in society, the parliament tried to manage chaos by introducing the first constitutional amendment act 1951, where the fundamental rights of individuals get violated, and this was the major reason for the birth of the basic structure of doctrine. The bench of thirteen judges sat to introduce a landmark judgment in the Bharati case. In the Kesavananda Bharati case, Justice H.R Khanna introduced the word “basic structure of doctrine” and he propounded that basic features cannot be altered by the legislature. The list of the basic structure of doctrine is neither clear cut nor descriptive as during the development of the basic structure of doctrine list; the

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hon'ble Supreme Court made it clear that the list was not clear cut and the elements can be added by further judgment.

The constitution fathers or makers gave power to the parliament in 1950 by making the constitution legal. Under the constitutional provisions of the constitution, parliament has the power to amend the constitution. The parliament under Article 368 amended every part of the constitution and even Art 368 itself. So then the question arises, Does parliament have unlimited power to amend every part of the constitution? Will there be no limitation on the amending powers of the parliament? If the answer is yes, then the Parliament has no limitation; it can amend any part on its own. And if the answer is no, so what will be the extent of these powers? This paper seeks to answer these questions and throw light on the critics and flaws.

The constitution is the supreme, and it plays an important role in the functioning of the country. According to *Caroline Fredrickson*, “The constitution exists to protect rights, not undermine them”. Since 1951 just after the commencement of the constitution in 1950, there was a tussle between Article 368² and Article 13³. Since independence, the impoverished ones have faced prevalent systems, i.e zamindari system,⁴ and the ryotwari system. The system was introduced by *Lord Cornwallis* and *Sir Thomas Munro*, respectively. At that time, the bossism of the system was at its peak. The impoverished ones were compelled because they had no solid ground (no land) as the superior class i.e, zamindars and ryotwari, ceased the land of the impoverished ones when they were unable to pay land revenue. After independence, the government of India abolished the zamindari and ryotwari systems in 1951 and 1948, respectively. The land ceiling legislation was launched in the 1950s (the law put limitations on the superior class/rich farmers that they didn't hold land more than 10-18 acres for the best land). The government of India rests lands distributed to the landless people to maintain social equality. The commencement of the *1st Constitutional Amendment Act 1951* made the Right to property a fundamental right and added *Articles 31A⁵, 31B⁶* and *19(1) (f)*⁷ into the constitution.

What does the actual meaning of the term basic structure doctrine? The doctrine was being made mainly to protect fundamental rights as after the independence, there was great chaos in India, and parliament wanted to establish supremacy towards the judiciary, so the list of basic

² INDIA CONST. art. 368.

³ INDIA CONST. art. 13.

⁴ The system of holding lands and collecting revenue by zamindars. Zamindars administer the land.

⁵ INDIA CONST. art. 31A.

⁶ INDIA CONST. art. 31B

⁷ INDIA CONST. art. 19(I), (f).

structure doctrine came into force in 1973 and impose certain restrictions to amending powers of the parliament and claimed that parliament cannot amend basic structure of doctrine"

II. THE JUDICIAL JOURNEY OF THE BASIC STRUCTURE OF DOCTRINE

(A) Shankari Prasad vs Union of India, 1951

"As a safety valve to preserve Indian democracy, the basic structure doctrine should live on."

- Zia Mody

With the addition of the right to property as a fundamental right. The individuals were moved to court as the government acquired the property for social welfare, but the people's right to property was violated. The first Constitutional Amendment Act of 1951, which diminished the right to property, was challenged. The enactment of the 1st Constitutional Amendment Act made the Right to property a fundamental right. The constitution originally provided that property-related provision under 19 (1)(f) and further under article 31. *The Bihar land reform act 1950⁸* was unconstitutional by the Patna high court under *Kameshvar Prasad v/s State of Bihar⁹* as being discriminating to providing for payment as compensation, and it's being violated article 13 clause 2¹⁰ included in the constitution. Different elucidations were made by other high courts, such as *Allahabad high court and Nagpur high court*, providing validation of the corresponding legislation in *Uttar Pradesh* and *Madhya Pradesh*. With the commencement of such conflicting viewpoints of high courts, then the 1st constitutional amendment was challenged in the supreme court as *"Shankari Prasad Deo V/S Union of India"* which challenged the right to property on the grounds of Article 13 clause.

The Supreme court ruled that the parliament has the power to amend the constitution under article 368 and also includes the power to amend Fundamental rights as well. According to the judgment of the Supreme Court at that time, the parliament can amend each and every part of the constitution. The Supreme Court ruled by Chief Justice Patanjali Sastri delivered the judgment that the word law in Article 13 is applicable only to ordinary laws, not constitutional amendments. Therefore, parliament can abridge any fundamental rights by the enactment of a constitutional amendment, and it shall not be invalid on the ground of Article 13. The Supreme court claimed all the changes made in the 1st constitutional amendment are valid through constitutional amendment fundamental rights can be amended. In this case, made article 368 superior. Later on, the judgment was challenged in the Sajjan Singh Case.

⁸ Bihar Land Reform Act 1950, Act No. 30 of 1950, Acts of Parliament. (India)

⁹ Kameshvar Prasad vs State of Bihar, 1962 AIR 1166

¹⁰ INDIA CONST. art. 13, cl. 2.

(B) The Sajjan Singh vs State of Rajasthan, 1965

In 1964, Rajasthan Government introduced some land reform act in Rajasthan, later on, the parliament introduced the Seventeenth amendment act in which the term given in the article 31A “state” expanded its meaning, and the entries from 21 to 64 of land reform act put under 9th schedule. This made the state more powerful as states can put any law in the 9th schedule, which cannot be challenged in courts. Some landlords file petitions against the Seventeenth constitutional amendment under Article 32 as their fundamental right got violated, “Right to Property”. The Sajjan Singh case is one of the landmark cases in which the Supreme Court gave the judgment that parliament has unlimited power to amend the constitution even if fundamental rights are violated. Sajjan Singh vs State of Rajasthan case was even criticized today for its judgment which held that Articles 13 would only apply to ordinary laws, not to constitutional amendment.

After the Shankari Prasad Case, the constitution amended the *Fourth Constitutional Amendment act 1955¹¹* into the constitution. The constitution inserted the *Seventeenth constitutional amendment act of 1964*, which introduced major changes in the ninth schedule though added some laws into it so that they get immune from further inspection by courts as 9th schedule cannot be challenged in courts and was immune to judicial review.

Some questions arose in the court by petitioners:

- Can parliament amend fundamental rights under Article 368?
- Will a constitutional amendment come under the meaning of 'Law' given in Article 13(2)?
- Can parliament bring a Constitutional amendment Act eroding fundamental rights using Article 368?

The bench was constituted of five judges, which consisted of *Chief Justice Gajendragadkar, Justice Wancho, Justice Raghobar Dayal, Justice Hidayatullah, and Justice Mudholkar.*

The logic given in the Sajjan Singh case is similar to the Shankari Prasad Case. It was also considered that the judgment in the Shankari Prasad Case was rightly decided that the parliament under article 368 can amend any provision or part of the constitution, even fundamental rights. Once again, it was said that Article 13 would only apply to ordinary laws, not to the constitutional amendments, and made valid the Seventeenth constitutional amendment by rejecting the arguments of petitioners and providing validation of the land reform

¹¹ The Constitution (Fourth Amendment) Act, 1955 (India).

act.

The ratio of the judgment was 3:2, Dissent judges such as Justice Hidayatullah and Justice Mudholkar were against the judgment and states:

- *Justice Hidayatullah*: “Fundamental rights cannot be amended by Constitutional Amendment as they are basic necessity for humans and parliamentary cannot play with them”
- *Justice Mudholkar*: “Every Constitution has some basic elements which cannot be amended. ”

The case was later on challenged in the Golaknath case.

(C)I. C Golaknath vs State of Punjab, 1967

The *Henry and William Golaknath* a family who lived in Punjab; the government of punjab put some restrictions on the holding of land i.e., the government introduced the *Punjab security and land tenures act, 1953*¹²

According to the land ceiling act, their fundamental right got violated, and they moved to court. The Golaknath case overruled both cases, that is (The Shankari Prasad Case and Sajjan Singh Case). A large bench of eleven judges raised a question against the First, Fourth, and Seventeenth Constitutional Amendments and considered the doubts expressed by *Justice Mudholkar*. With a majority of 6:5, it overruled both cases. Although saw controversy between legislative and judiciary as judiciary refused to consider such laws those who violated the fundamental rights

Petitioners argued that the Constitution of India was drafted by the constituent assembly and it is of permanent nature and cannot be changed and argued that if there is need to change the Constitution, there is a mandatory to sit the constituent assembly for discussion. The petitioner contended that Article 368 only deals with the procedure to amend constitution rather than using any word power and claim that fundamental rights are essential and integral part of the constitution without fundamental rights constitution is like a body without a soul, though claims that fundamental rights are necessary as natural Rights.

Chief Justice K. Subba Rao gave judgment and put them forward in court.

The key points of the judgments were:

¹² According to the act, a person can only hold a land which is of 30 standard acres which means 60 acres ordinary so the family had to own only 30 acres and the rest 30 acres had to give tenants. Then, the family moved to court as their right to property was violated.

- *The parliament cannot amend Fundamental rights.*
- *Article 13 will apply on constitutional amendments rather it's only on ordinary laws.*

The Chief Justice K. Subba Rao put some limitations on parliament by judgment. According to *CJ Subba Rao* parliament cannot amend Fundamental rights

The parliament cannot abridge the rights of an individual, and courts impose the power of judicial review if they do so. The majority of judges did not consider Article 368 that it emphasized the procedure to amend only though instead, the judges believed that Art 368 emphasized more on the procedure to amend the constitution. The judgment declared as Article 13 clause 2 will apply to ordinary laws as well as on constitutional amendments. Then, the question arose “how to deal with previous amendments” i. e First, Seventeenth and fourth as they could not be nullified completely as they dealt with some land reforms.

The judgment declared as Article 13 clause 2 will apply on ordinary laws as well as on constitutional amendments. Then, the question arose, “how to deal with previous amendments,” i. e, First, Seventeenth, and fourth, as they couldn't be nullified completely as they dealt with some land reforms. The judiciary tried to maintain a balance between those amendments so that they could not violate the fundamental rights/ rights of an individual. While some dissent judges such as *Justice Wancho, Vishistha Bhargava, R. S Bachawat, and G. K Mitter*, expressed their views that there should be no limitation on parliament amending powers under article 368. In the case of *Golaknath* there was no absolute clearing of what chapters or topics of the constitution could or could not be amended. The parliament reacted to the judgment. The parliament introduced some more amendments, that is, 24th,¹³ 25th,¹⁴ 26th,¹⁵ and 29th,¹⁶ into the constitution.

(D) The Kesavananda Bharati V/S State of Kerala, 1973

The controversy between the judiciary and legislative was continued in the case of “*Kesavananda Bharati*”¹⁷. The supreme court overruled the judgment of the *Golaknath* case. The 24th, 25th and 29th CAA were challenged before the court in *Kesavananda* case as *Kesavananda* article 14 and 19(1)(f) were violated. Though, the government of Kerala to improve the condition introduced land reform act of Kerala, 1963.¹⁸ Those land reforms impose

¹³ The Constitution (Twenty Fourth Amendment) Act, 1971 (India).

¹⁴ The Constitution (Twenty-Fifth Amendment) Act, 1971 (India).

¹⁵ The Constitution (Twenty-Sixth Amendment) Act, 1971 (India).

¹⁶ The Constitution (Twenty-Ninth Amendment) Act, 1972 (India).

¹⁷ *Kesavananda Bharati* was owner of *Edneer Mutt* in Kerala, the government of Kerala acquired his property for general welfare though his right to property got violated and he filed a petition.

¹⁸ Land reforms act of Kerala 1963 – impose certain restrictions on the holding of land, Kerala government made provision to fixation of ceiling lands, abolished the tenancy system

some restrictions on the ownership of land by an individual. Basically the reforms restricted the right to property (Art 31). By implementing such reforms in Kerala acquired the property of Kesavananda Bharati who was the head of Edneer Mutt in Kerala he faced a heavy loss. Kesavananda Bharati filed a petition in supreme court under Article 32 representing the case by Nanabhoy Palkivala. The longest bench of thirteen judges was upheld in the case and the judgment ratio was 7:6 although the judgment was of 680 pages.

Some questions raised in the supreme court:

- 1) The fundamental rights in Part III of the constitution can be amended by parliament under article 368 or not?
- 2) What will be the extent of the powers of the parliament under article 368?
- 3) The 25th, 24th and 29th CAA are constitutionally valid or not?
- 4) What is the actual meaning of the word “amend”?

Judges sitting: C. J Sikri, HR Khanna, K. K Mathew, S. N Diwedi, A. N Ray, Jagmohan Reddy, M. H Beg, A. N Grover, J. M Shelby, H. R Khanna, Y. V Chandrachud. Some judges who had not signed the judgment: K. K Mathew, S. N Diwedi, M. H Beg and A. N Ray

Petitioners point of view (Bharati and Nanabhai Palkivala)

1. Petitioners considered that the article 368 provides only limited power not absolute power to amend the constitution.
2. Fundamental rights are provided to protect the citizens, with the commencement of such articles to impose restrictions or curtailed the fundamental rights of individuals.

Respondents point of view (State of Kerala)

1. Parliament has unlimited and absolute power to amend the constitution.
2. Respondents gave logic that every state has to maintain societal and economic conditions so it's mandate to not to impose such restrictions on parliament as it works for people.
3. 3. Parliament has the right to put restrictions on Fundamental rights.

Petitioners filed a petition to the Supreme court under Article 32. The judgment was the landmark judgment. The bench was constituted of 13 judges.¹⁹ The judgment of Golaknath and the state of Punjab was overruled. The 24th Constitutional Amendment that was challenged before the court was valid. Parliament has absolute power to amend every part of the

¹⁹ It was the largest bench of judges till now and it is also known as the landmark judgment of India and historical judgment too.

constitution, and it can amend any provision of the constitution.

Although parliament has the power to amend the constitution, parliament cannot interfere with “basic structure” of the constitution.

The supreme court provided validation to the 25th and 29th constitutional amendment and claims that any law inserted by the parliament under 9th schedule can be challenged and the supreme court has power to judicial review if they violate any basic features / basic structure of Indian constitution

So, on the 24th April 1973 “*The Basic Structure of Doctrine*” was introduced. Since the constitution had decided to put limitations on the amending power of the parliament, The parliament cannot exercise that absolute power. Though, the limited power of the parliament to amend the constitution is one of the features of the basic structure of doctrine. In short, parliament cannot, under article 368 expand its amending power absolutely.

Justice H. R Khanna: His judgment was one of the most important as he introduced the word “basic structure” in judgment, and he propounded certain basic features that cannot be removed by the legislature.

J. N Shelat and *A. N Grover* observed: The limitation on the amending power of the constitution implies some basic elements. They include some features such as secular character of the constitution, federal character of the constitution, federal character of the constitution, democratic, sovereign and republican character in the list.

Justice Ray observed: “there is no limitation on the amending power of the parliament”.

Justice Jagmohan Reddy: States that the basic features of the constitution were also found in the preamble that is sovereign, socialist, secular, democratic and republic.

Chief justice Sikri: Supremacy of the constitution, Federal Character, separation of powers between legislative, executive and judiciary, Republican form of government.

After the Kesavananda case, 24th April 1973²⁰ “The Basic Structure of Doctrine” would apply to all judgments further.

Indira Nehru Gandhi Case also known as Election Case. In 1975, The supreme court had an opportunity to prove the theory of basic structure of doctrine of Indian constitution. This was the first case since the implementation of the basic structure of doctrine. The victory of Indira Gandhi (PM) in the general election of 1971, Raj Narain (who belonged to the opposition party)

²⁰ Kesavananda bharati case V/S State of Kerala, 24th April 1973, AIR

claimed that the Prime minister used electoral malpractice. Allahabad High Court on 12th June 1975 held Indira Gandhi guilty for electoral malpractices. Indira Gandhi appealed in Supreme Court, The Supreme Court held stay on the judgment of Allahabad High court whereas appeal was pending in court (SC) on 26th June 1975, Indira Gandhi impose national emergency. The emergency was declared and 39th amendment²¹ act was passed to prove invalid Allahabad High court judgment. The clause (4) of Article 329A was inserted by the 39th Constitutional Amendment. The 39th Amendment was passed by the parliament during emergency period. The judgment given by the Supreme Court, Justice Krishna Ayer overruled and invalidate clause (4) of the Art 329A²² which violates the basic structure of doctrine and some more elements added into basic structure of doctrine that is Rule of law, Judicial review and free and fair election.

(E) The Minerva Mills vs Union Of India, 1980

As earlier, parliament tried to establish supremacy over the judiciary then in 1976 parliament tried again to establish superiority by introducing 42nd Amendment Act, 1976. The 42nd Constitutional Amendment changed 2/3rd part of the constitution and it was also known as mini constitution.

The 42nd Constitutional amendment, Section (55) tried to contradict the power of the basic structure of doctrine by adding clauses (4)²³ and (5)²⁴ in Article 368. Section 4 of the 42nd CAA add some new features in Article 31C of the Indian constitution (To implementing the Directive principles of state policy, Article 14²⁵ and 19 can be infringed). The statements were challenged in The Minerva Mills Case. The Minerva Mills, Bangalore was on it's huge loss, so The Indian government under Sick Textile Undertaking Act, 1974 made it nationalized. By opposing the act, section 4th and 55 of 42nd CAA 1976²⁶, challenged in supreme court.

The major questions were arose in the court:

1. Are section 4 and 55 against “The basic structure of doctrine”?

²¹ The 39th Constitutional Amendment states that The Supreme Court doesn't have power to trail electoral disputes of The President, The Prime Minister, The Vice President and The Speaker of the Lok Sabha.

²² Article 329A Stated that Election disputes of The Prime Minister and The Speaker cannot be challenged in any court, it can only be challenged before a committee made by the parliament.

²³ Clause (4): No power has any court to judicial review

²⁴ Clause (5): Provide unlimited power to parliament to amend the constitution

²⁵ Article 14: Right to Equality.

²⁶ The 42nd Amendment changed India's description from sovereign, democratic and republic to sovereign, socialist, secular and republic. It changed the word " unity of the nation" to " unity and integrity of the nation". This Amendment act also known as ' Mini Constitution' because it made enormous changes in the Indian constitution by the Indira Nehru Gandhi Government. By the 42nd CAA Parliament tried to curtail the power of the judiciary.

2. Are the Directive principles of state policy supreme than the fundamental rights?

Through the judgment, the supreme court emphasized that the limited power of the parliament is one of the features of basic structure doctrine that is why parliament does not have unlimited power to amend. Clause 4 and 5 of Article 368 and Article 31C declared unconstitutional. After the judgment some more elements were added in the list of basic structure of doctrine: Limited power of the parliament, judicial review and harmony and balance between Fundamental rights and Directive Principles.

In the judgment on section 55, Chief Justice Yeshwant Vishnu Chandrachud states:

"Since the Constitution had conferred a limited amending power on the Parliament, the Parliament cannot under the exercise of that limited power enlarge that very power into an absolute power. Indeed, a limited amending power is one of the basic features of our Constitution and therefore, the limitations on that power can not be destroyed. In other words, Parliament can not, under Article 368, expand its amending power so as to acquire for itself the right to repeal or abrogate the Constitution or to destroy its basic and essential features. The donee of a limited power cannot by the exercise of that power convert the limited power into an unlimited one. "

In the judgment on Section 4, Chandrachud states:

"Three Articles of our Constitution, and only three, stand between the heaven of freedom into which Tagore wanted his country to awake and the abyss of unrestrained power. They are Articles 14, 19 and 21. Article 31C has removed two sides of that golden triangle which affords to the people of this country an assurance that the promise held forth by the preamble will be performed by ushering an egalitarian era through the discipline of fundamental rights, that is, without emasculating of the rights to liberty and equality which alone can help preserve the dignity of the individual. "

III. SCRUTINY OF BASIC STRUCTURE OF DOCTRINE

The recent position in the parliament under Article 368 can amend any part of the constitution including fundamental rights without altering the Basic Structure Doctrine. The doctrine of basic structure was applied just after the judgment of the Kesavananda Bharati case. The first attempt was made to test the basic structure of doctrine in the Minerva Mills, 1980.

The supreme court claimed that there is no clear cut list of basic structure doctrine and it will be added by further judgment. The government was putting violating laws in the 9th schedule

as it got immune to challenges in court. In *The Waman Rao Case, 1981*²⁷ raised the question that judicial review will be done when any laws are put in the 9th schedule? The judgment claimed that the law put in the 9th schedule will be able for judicial review and can be questioned. Later on *I. R Coelho Case, 2007*²⁸ also known as 9th schedule.

Some questions arose before the court:

-A) *The 9th schedule gets immune from the judicial review.*

B) *Is Judicial review involved in basic structure tests?*

C) *Laws under 9th schedule can be tested on the basis of Fundamental rights?*

The judgment was given on 11th January 2007 and made it clear that any law put in the 9th schedule by the amendment can be challenged and the court has power to judicial review. The bench of 9 judges claimed the laws put in the 9th schedule can be challenged in court if it violates basic structure of doctrine.

. The list of basic structure doctrine is given below:

1. Supremacy of the constitution
2. Secular character of the Constitution
3. Sovereign, Democratic and Republican character
4. Federal character of the constitution
5. Separation of powers between legislative, executive and judiciary
6. Judicial review
7. Rule of law
8. Free and fair Elections
9. Independence of judiciary
10. Limited power of parliament to amend Constitution
11. Effective access to justice
12. Welfare State
13. Parliamentary System
14. Harmony and balance between Fundamental rights and Directive Principles of State Policy.
15. Principles of Equality

²⁷ The Waman Rao Case 1981 AIR, In which the supreme court provides validation of Article 31A and 31B with respect to Basic Structure doctrine.

²⁸ The I. R Coelho Case 2007 AIR, upholds the power of Judiciary to review any law which can violate the basic structure of doctrine.

16. Freedom and dignity of an individual
17. Powers of the Supreme Court under Article 32, 136²⁹, 141³⁰ and 142³¹
18. Powers of High Court under Article 226³² and 227³³
19. Principles of underlying Fundamental rights
20. Unity and integrity of the nation.

The main question is why does it need basic structure doctrine? Since India was a British colony people were struggled continuously for their rights as they abridged Indians from their rights and after the independence we saw several attacks on Fundamental rights and the courts were worried if parliament would be given definite power to amend every part of the constitution even fundamental rights so it would be difficult for people to live in such a dictator country and since independence parliament tried to establish supremacy on judiciary though judiciary and legislative are different. In the Golaknath case petitioners pointed out that fundamental rights and natural Rights are the two sides of coins and asserted that fundamental rights are equally important as natural Rights. Petitioners argued in Golaknath case that Article 368 is only deal with procedure of amending constitution whereas there is no mention of word " power" in the article 368. Gradually, by adding the ninth schedule this makes state government and parliament make their position superior as it gets immune from challenging in the Courts. It seemed like the Constitution was in the hands of the ninth schedule as for some time the legislature put the crown on the head of the ninth schedule. As a result of the Keshvananda Bharati case judgment legalized "Basic Structure doctrine" and put the crown worn by the ninth schedule dashed into the ground. Now, if any law would be added in the ninth schedule can be challenged in courts and judiciary have power to judicial review.

Therefore, After the commencement of basic structure doctrine we conclude that it was a huge step taken by the judiciary to put limitations on parliament. Basic structure worked as a savior of the Judiciary in the Keshvananda's case. It was the longest tussle between judiciary and legislative. Even after the commencement of basic structure doctrine there were also attempts to make several attacks on it. In 1975, the supreme court had an opportunity to pronounce basic structure doctrine. It was the challenge to Indira Gandhi as Indira Gandhi's victory in the general election of 1975 was upheld by Allahabad high court as she was involved in corrupt malpractices. The pending appeal, the judge *Justice Krishna Iyer* granted stay and allowed the

²⁹ The Indian constitution grants discretionary powers to the supreme court of India to allow special leave petitions.

³⁰ law declared by the supreme court binding to all courts.

³¹ Enforcement of decrees and orders of Supreme court and orders as to discovery, etc

³² Power of high court to issue certain writs: Habeas Corpus, Mandamus, Certiorari, Quo Warranto and Prohibition

³³ Power of superintendence over all courts by high court.

prime minister to perform function but on the condition that she could not draw a salary and no speak and no vote in the parliament until the case was decided. However, the 39th Constitutional amendment was passed by parliament which removed the power of the supreme court to decide the election disputes of prime minister, president and vice president. The judgment given by the Supreme Court, Justice Krishna Ayer overruled and invalidate clause (4) of the Art 329A²⁴ which violates the basic structure of doctrine and some more elements added into basic structure of doctrine that is Rule of law, Judicial review and free and fair election

NINTH SCHEDULE OF THE INDIAN CONSTITUTION

The ninth schedule worked as the blanket power since 1951, It had made numerous changes in the country gradually and it had been expanded constantly; the point is that it contains 284 acts. By the first constitutional amendment act of 1951, 13 laws were added in the ninth schedule, then amended by the fourth Constitutional act and six more acts were added. The Seventeenth constitutional amendment act added 44 laws and 29th Amendment act 1972 added 20 laws. In 1975, by the 39th amendment act added 38 more laws then again in 1976, by the 42nd amendment act further added 64 laws in the ninth schedule. The 42nd Constitutional amendment act further added many laws and the numbers of laws rose to 202 in the ninth schedule. Again, in 1990 66th Constitutional amendment was added and by which 55 land reforms added into it. The 76th Constitutional amendment 1994 has been passed by the Parliament to accommodate Tamil Nadu Government's Legislation in the Ninth Schedule. The 78th Constitutional Amendment Act 1995 again amended the Ninth Schedule and added 27 Land Reforms Laws, now the ninth schedule contains 284 laws, though the judiciary has power to judicial review on the laws that are put in the ninth schedule. The bench of 9 judges of supreme court on 11 January 2007. However, if any law is found to be violating Part III of the constitution that is related to Fundamental rights so it can be challenged in courts. The bench of judges states that:

"If constituent power under Article 368, the other name of amending power cannot be made unlimited; it follows that Article 31B cannot be used so as to confer unlimited power. Article 31B cannot go beyond the limited amending power contained in Article 368. The power to amend the Ninth Schedule flows from Article 368. This power of amendment has to be compatible with limits on the power of the amendment. The limit came with the Kesavananda Bharati case. Therefore, Article 31B after April 24, 1973, despite its wide language, cannot confer unregulated or unlimited immunity. "

IV. CONCLUSION

Everything comes with its goods and bads; Everything has its own criticism and significance. The study reveals the struggle or controversy between the legislative and the judiciary was at its peak during the 1960s and 1970s. As a result, the basic structure of doctrine came into Force and tried to establish control over the supremacy of the parliament. The judiciary claimed that there is no clear-cut list of basic structure doctrine, and the judiciary will clarify or add the items by further judgments. So, the question arises why the judiciary hadn't given a clear-cut list of basic structures.

The study concludes that some elements of basic structure doctrine still violate:

- The Honorable Supreme Court claimed that there would be no clear-cut list of the basic structure doctrine. They will clarify the list by further judgments but this thing appears to be time-consuming. First of all, the judiciary will determine if the case violates the basic structure of doctrine, then the judiciary will check which laws or elements should be added to the list of the basic structure of doctrine or not and which laws or elements are violated or not. Maybe, this can be one of the reasons for the unresolvement of the cases in bulk quantity in India.

- Since the constitution was enacted in 1950, There was no such written or unwritten provision in the constitution for the basic structure of doctrine. The constitution makers did not mention any provision for adding the basic structure of doctrine and there was no discussion regarding the basic structure of doctrine in the constituent assembly when the Constitution was made in 1950.

- One of the elements of basic structure doctrine is the federal character of the constitution, but the word 'federal' has not been used in the constitution of India. Still, India is considered a federal state though India does not have double citizenship and a double constitution; the characteristics of a federal government India only has a single constitution and single citizenship, so how can it be considered India as a federal state even if it's not written in the constitution as well?. So, we can say India is neither Federal nor Unitary by its means.

- The Narendra Modi Government passed the 99th CAA in 2014, which introduced NJAC. The government claimed that the appointment of the judges of the Supreme court and high court would be done by the National Judicial appointment commission. The government wanted to make NJAC a constitutional body) but The Supreme Court declared it null and void and claimed 99th CAA abridged the independence of the judiciary, one of the elements of the doctrine it's righteous it abridged the independence of the judiciary so, the Supreme Court declared null and void, but question is there is no such provision related to collegium system

(Collegium system is a system by which the Courts appoint their judges by itself.) in the constitution.

- The judiciary, by the judgment, has now become the third decisive chamber of the parliament. Even if LokSabha or RajyaSabha passes an amendment, then it is the supreme court that takes the final decision.
