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The Doctrine of Basic Structure: A Safeguard to the Constitutional Spirit

MUSKAN SHARMA¹ AND PUSHKAR BHANDARKAR²

ABSTRACT

The Founding Fathers of the Indian Constitution gave the power to amend the Constitution to the Parliament under Article 368 in order to meet the exigencies and necessities in future. A Constitution is a living document which must be changed according to the needs of the society otherwise it will act as an obstacle in the progress and development of the nation. However, Article 368 does not provide any expressed limitation on the amending powers of the Parliament. Taking the undue advantage of the same, the Parliament abused the powers to have absolute control and supremacy on the Constitution. The Constitution is a general will of the people whose ultimate control cannot be given to anyone who use it as a sword against the public interest. The Parliament used amending power arbitrarily and introduced many undesirable changes which were against the public interest, aggrieved by such amendments the people started challenging them in the Court of Law.

The Indian Judiciary examined the situation thoroughly and took the most appropriate decision of limiting the amending powers of the Parliament by evolving the 'Doctrine of Basic Structure'. This Doctrine was evolved by the Hon'ble Supreme Court in the landmark case of 'Keshavananda Bharati v. State of Kerala (1973)' in which it was held that Article 368 does not empower the Parliament to amend the Basic Structure of the Constitution.

Over the years the Doctrine of Basic Structure has proved to be a safeguard against all the arbitrary, capricious and unreasonable amendments that harmed the spirit, identity and foundation of the Constitution. This Doctrine acted as a medium for achieving the objective as mentioned in the Preamble like providing Justice, promoting Equality and preserving the Dignity of the Individuals.

This paper deals with the scope and development of the Doctrine of Basic Structure and how it has been acting as a safeguard to the spirit and identity of the Constitution over the past decades.

Keyword: *Constitution, Amendment, Basic Structure, Keshavananda Bharati.*

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I. INTRODUCTION

The Constitution of India is the heritage of various rights, responsibilities and duties of the Government and Citizens. It has not evolved from vacuum and is a continuous process of recreation and reformation of the existing system of governance by experts, parliament and the judiciary. No Constitution can remain static, it needs to grow and develop with the growing and developing needs of the society. The framers of the Constitution realized that the Constitution of India must be of such a nature that it could respond to the new challenges and unanticipated events which were not within the minds of the framers at that time, for this very purpose the founding fathers gave the power to the parliament to amend the Constitution by making it neither too flexible nor too rigid. The Parliament was given the power to amend under Article 368 of the Constitution of India, this provision was made with a view to overcome the difficulties which can arise in future while working according to the Constitution. No generation has control of wisdom or any right to put restraints on upcoming generations to mould the mechanism of government according to their necessities. In order to prevent people from having recourse to extra constitutional method it was necessary to make provisions for the amendment of the Constitution.

The Constitution of Indian is an ever-emerging thing and it grows continuously as it is the spirit of the nation. It should serve the demanding purpose at present, must be improved by the past influences and must be prepared for the future uncertainties.

Lt. Prime Minister Pandit Jawaharlal Nehru who was the member of the constituent assembly was of the opinion that the amending powers must not be very rigid because such rigidity will stop the Nation's growth as the circumstances, conditions and requirements of the people which is today may not be the same tomorrow. Also, the framers of the Indian Constitution were well aware of the fact that if the amending powers are made very flexible it will lead to the playing of whims and caprices of the party in rule. So, they decided to avoid flexibility of the extreme kind and adopted a middle course. Hence it is neither too rigid to admit necessary amendments nor too flexible to admit undesirable and arbitrary changes. The major purpose for providing the provision for amendment in the Indian Constitution was to make the fundamental law to correspond with social changes.

Now the question arises, whether the Constituent assembly provided any limitation on amending powers of the Parliament under Article 368 of the Indian Constitution? The answer is the constituent assembly did not expressly provide any such restriction as they expected that the Parliament will use such power for legitimate purposes. Sadly the Parliament in the absence

of any expressed restriction on the amending power started using it arbitrarily which were going against the interest of the people who were the ultimate sovereign rulers.

Also there was no predetermined extent to which the Parliament was allowed to exercise the amending power which raises a question whether such power may extend to amending the very object, foundation and ideas on which the law of the land was framed? The answer was given by the Hon'ble Judiciary in the case of **Keshavananda Bharati Sripadagalvaru v. State of Kerala**³, in which the “*Doctrine of Basic Structure*” was evolved that limited the unlimited amending powers of the Parliament. This Doctrine has proved to be a safeguard of the Soul of the Constitution and acted as a shield whenever the Parliament tried to harm the spirit of the Constitution.

This Doctrine was conceived in the case of **Sajjan Singh v. State of Rajasthan**⁴ and took real birth in the case of *Keshavananda Bharti*. The Doctrine is the outcome of prolong struggle between the Parliament & the Judiciary. It changed the history of the Constitution to a great extent and denied the assertion that the Parliament is supreme when it comes to amending the Constitution.

This paper will deal with the amending powers of the Parliament given under Article 368 of the Constitution, how the Doctrine of Basic Structure is evolved by the Judiciary and the cases post *Keshavananda Bharti's case* in which this Doctrine was affirmed by the Judiciary.

II. THE THEORY OF BASIC STRUCTURE: A RESTRICTION ON AMENDING POWER

The Constitution of India is organic in nature and is a dynamic document that needs to meet the exigencies of time. In order to prevent the Constitution to become redundant, necessary amendments are of utmost importance. Part XX of the Constitution of India under Article 368⁵ gives power to the Parliament to amend the Constitution.

Articles of the Constitution are divided into three categories for the purpose of amendment⁶:-

- 1) **Amendment by Simple Majority**- Articles which the Parliament can amend by simple majority as that required for passing of any ordinary law. The amendments regarding Article 5, 169 and 239-A, simple majority must be made. These mentioned Articles are excluded specifically from the purview of the procedure provided under Article 368.

³ Keshavananda Bharati Sripadagalvaru v. State of Kerala, A.I.R. 1973 S.C. 1461; (1973) 4 SCC 225.

⁴ Sajjan Singh v. State of Rajasthan, A.I.R. 1965 S.C. 845.

⁵ INDIA CONST. art. 368.

⁶ J.N.PANDEY, CONSTITUTIONAL LAW OF INDIA 804 (Central Law Agency, 55th Edn. 2018).

- 2) **Amendment by Special Majority**- Articles of the Constitution that Parliament can amend by the special majority as provided under Article 368. All constitutional amendments, except those mentioned above in the first category, are covered within this category and must be affected by a majority of the total membership of each House and by majority of at least 2/3 of the members present and voting.
- 3) **By special Majority and Ratification by States**- The above-mentioned Articles, in addition to the special majority also requires ratification by at least 1/2 of the State Legislatures. The states are given an important say in the amendment of these matters. These are essential matters where important power are given to the States under the Constitution and any one-sided amendment by Parliament may critically affect the fundamental basis of the structure built up by the Constitution.

The provisions mentioned below require such ratification by the states:

- 1) President's Election - Article 54 and Article 55
- 2) Extent of the Executive powers of the Union and States – Article 73 and 162, Article 241 or 279A
- 3) Articles dealing with judiciary, Supreme Court, High Court in the states and Union territories - Articles 124-147, 214 to 231, 241
- 4) Distribution of legislative powers between the Centre and the state - Article 245-255
- 5) Goods and services Tax Council -Article 279A
- 6) Any of the Lists of the 7th schedule
- 7) Representation of states in Parliament 4th schedule
- 8) Article 368 itself.

Procedure for Amendment- To amend the Constitution a Bill may be introduced in any House of Parliament. The Bill must be passed by each House by majority of the total members of the House and by a majority of at least 2/3 of the members present and voting. After a Bill is passed by both Houses it shall be presented to the President for his assent. When the President gives his assent to the Bill, finally the Constitution stand amended. When a Bill seeks to amend the provisions provided under Articles 368, it requires in addition to the special majority mentioned above, the ratification by the ½ of the States.

The Parliament by using the amending powers given under the Article 368 made every possible effort to keep itself out from the purview of the Indian Judiciary which is the custodian of the

Indian Constitution. The Judiciary despite of all the possible efforts of the parliament succeeded in limiting the amending powers of the Parliament in order to protect the spirit of the Constitution.

In the landmark Case of Kesvananda Bharti the “*Doctrine of Basic Structure*” was evolved which acted as a limitation or restriction on the amending powers the Parliament against all such amendments which were arbitrary, unreasonable and which adversely affected the foundation of the Constitution. This Doctrine is an evolution of the Indian Judiciary but it’s genesis goes to **Prof. Dietrich Conrad** who was the head in the Department of law, South Asia Institute in the University of Heidelberg.⁷ He delivered a lecture in the year 1965 at Banaras Hindu University on “*Implied Limitation of the Amending Power*”. **M.K.Nambyar** was inspired by the Professor and he discussed the issue of implied limitation on the amendment of the Constitution in the case of **I. C. Golakh Nath v. State of Punjab**⁸, but the Court did not pronounced this Doctrine, later **Nani Palkhivala** in the Case of **Keshavananda Bharati v. State of Kerala**⁹, Popularly Known as the “*Fundamental Rights case*” propounded this Doctrine. Here the Judiciary held that the amending powers of the Parliament was impliedly restricted by this doctrine and also held that the power to amend under Article 368 does not include the power to destroy, damage, alter, abrogate the basic framework of the Indian Constitution.

The Court did not clearly define or gave an exhaustive list as to what constituted the Basic Structure. The question has been dealt by the Court from time to time and many such features have been identified. If the Judiciary would have provided an exhaustive list, definitely the Parliament would have made several efforts to attack the identity of the Constitution by amending the provisions not mentioned in the list and in this way the sole purpose of the Doctrine would never have been achieved.

The Basic Structure comes out of the realization that the only way to protect the Constitution from destructive temporary majority in the Parliament is to discard the amendment that attacks the identity of the Constitution. The question as to whether the amendment results in damaging the Basic Structure of the Constitution in any case does not depend on the Article of the Constitution in issue but depends upon whether such amendment robs the total identity of the Constitution.

⁷ A.G.Noorani, *Behind the basic structure doctrine*, Frontline India’s National Magazine (May 07, 2020, 10:00AM), <https://frontline.thehindu.com/other/article30159673.ece>.

⁸ I. C. Golakh Nath v. State of Punjab, A.I.R. 1967 S.C. 1643.

⁹ Keshavananda Bharati Sripadagalvaru v. State of Kerala, A.I.R. 1973 S.C. 1461; (1973) 4 S.C.C. 225.

The Judiciary in various cases identified the basic features like in the case of **Waman Rao v. Union of India**¹⁰, the “*Rule of Law*” was held as a basic feature, in **Minerva Mills v. Union of India**¹¹, harmony between the Fundamental Rights and the Directive Principles was held as an essential feature of a Basic Structure. Furthermore in the case of **Kohito Hollohan v. Zachillu**¹², it was held that “*Democracy is a basic feature of the Constitution*”, in the case of **P. Sambamurthy v. State of A.P**¹³, it was held that the “*Judicial Review*” is a part of Basic Structure. Secularism was also held to be a basic feature of the Indian Constitution.¹⁴

Now the next Chapter will deal with the Judicial Journey of the “Evolution of the Doctrine of Basic Structure”.

III. EVOLUTION OF THE DOCTRINE OF BASIC STRUCTURE BY THE JUDICIARY

When the Constitution of India came into force several amendments were made and their validity was challenged mainly on the issue of Right to Property. India is an agrarian country, several people are involved in the cultivation of land to earn their livelihood. The State legislatures in Bihar, Uttar Pradesh, & Madhya Pradesh enacted some legislation to carry out agrarian reform.

➤ In the very first case of **Kameshwar Singh v. State of Bihar**¹⁵, The Patna High Court declared the Bihar Land Reforms Act, 1950 as unconstitutional as it attacked the Fundamental Right to Property under Article 19 (1) (f)¹⁶ which Guaranteed to the citizens Right to acquire, hold & dispose of Property. [it is no more a fundamental right and was repealed by the 44th amendment but still holds a space in the Constitution under Article 300A], the originally enacted Constitution also provided for the protection of Right to Property under Article 31¹⁷. The Judgement was related to the Land Reform being subject to Article 13 (2)¹⁸ which provided that the State shall not make any law which takes away the Fundamental Right and if any law is made in contravention of this clause, it shall to the extent of the contravention be void.

Now the different High Courts had different interpretation as to such Land Reform Acts, the Patna High Court held the Act unconstitutional in Bihar while Allahabad High Court and Nagpur High Court upheld the validity of such Acts in UP & MP respectively. These

¹⁰ Waman Rao v. Union of India, (1981) 2 S.C.C. 362.

¹¹ Minerva Mills v. Union of India, (1980) 3 S.C.C. 625.

¹² Kohitoh Hollohan v. Zachillu, A.I.R. 1993 S.C. 412.

¹³ P. Sambamurthy v. State of A.P, (1987) 1 S.C.C. 124.

¹⁴ State of Bihar v. Bal Mukund Sah, A.I.R. 2000 S.C. 1296.

¹⁵ Kameshwar Singh v. State of Bihar, AIR 1951 Pat. 91.

¹⁶ INDIA CONST. art. 19, cl 1 (f).

¹⁷ *Id.* art. 31.

¹⁸ *Id.* art. 13, cl 2.

conflicting views of Courts made the parliament to bring the **Constitution (First Amendment) Act, 1951**. This amendment added new Articles in the Constitution i.e. Article 31-A¹⁹ and 31-B²⁰. Article 31-A provided that any law made for compulsory acquisition of property for development of the State will not be held as unconstitutional on the ground that it is in conflict with Article 14 and Article 19, whereas Article 31-B lead to the introduction of a new schedule in the Constitution i.e. Ninth Schedule which provided that any law or enactment included in this Schedule would be immune or out of the purview of the Judicial Review by any Court i.e. can't be challenged in any Court.

➤ In **Shankari Prasad v. Union of India**²¹, the validity of the First Constitutional Amendment was challenged. The amendments were challenged on the ground that they are in conflict with the Fundamental Rights and that the word 'Law' given under Article 13 (2) also includes those laws which are passed or introduced by way of amendment in the Constitution. The Court in this case held that only the laws made in the exercise of ordinary legislative power will be hit by Article 13 (2) and the amendments made in the exercise of the constituent power of the Parliament are not hit by Article 13 (2).

So in this case the Apex Court upheld the validity of First Amendment and held that law of amendment is beyond the scope of Article 13 (2) i.e. Article 368 gives power to the Parliament to amend the Constitution without an exception that the Fundamental Rights cannot be amended. Therefore, a Constitutional Amendment will be valid even if it takes away the Fundamental Right.

➤ Later on, several other amendments were made in the Constitution which were related to Part III, out of which **The Constitution (Seventeenth Amendment) Act, 1964** was challenged in the case of **Sajjan Singh v. State of Rajasthan**²². The 17th Amendment added several legislations under the Ninth Schedule making them immune from the Judicial Review and from being challenged on the ground that they abridge the Fundamental Rights. Out of the five Judges, three Judges namely- (*Gajendragadkar CJ, Wanchoo & Dayal JJ*) approved the Shankari Prasad case and affirmed that under Article 368, the Parliament can amend any provision of the Constitution even the Fundamental Rights. In this regard *Gajendragadkar CJ* said that- "*if the framers of the Constitution intended to exclude the Fundamental Rights from being amended, they would have made clear provision in that regard*". Remaining two of them

¹⁹ *Id.* art. 31-A.

²⁰ *Id.* art. 31-B.

²¹ *Shankari Prasad v. Union of India*, A.I.R. 1951 S.C. 2193.

²² *Sajjan Singh v. State of Rajasthan*, A.I.R. 1965 S.C. 845.

namely- (*Hidayatullah & Mudholkar JJ*) dissented from the majority view and in their separate but concurring view doubted whether the Fundamental Rights created no restriction on the amending power. *Hidayatullah J.* expressed his dissenting opinion as- “*it is hard to hold that the Fundamental Right which is the most solemn part of our Constitution stand on the equal footing with the other part; and Part III through which the Constitution gives many assurances to the people is a plaything in the hands of special majority*”.

Also *Mudholkar J.* articulated his opinion by saying that “*it must be given due considerations whether making changes in such a crucial and basic feature of the Constitution can be regarded just as an amendment or in effect it would be like rewriting the Constitution and if the latter, would it be still covered under Article 368?*”

By a majority of 3:2 the Court in this case held that the amendments are constitutionally valid.

➤ The Constitutional validity of the 17th amendment by which certain State Acts were added in Ninth Schedule was challenged in case of **I.C. Golakh Nath v. State of Punjab**²³, CJ Subba Rao Constituted a bench of 11 Judges to reconsider the validity of the amendment in question. In this case there was a family of William Golakh Nath who had around 500 Acres of property in Punjab, the State Legislature passed an Act named **Punjab Security of Land Tenures Act, 1953** which was added in the Ninth Schedule by the 17th amendment, under this Act the State Government directed the Petitioner that he can only possess 30 Acres of property and the remaining will be treated as surplus. Aggrieved by such direction the Petitioner filed a writ petition under Article 32 of the Constitution on the ground of violation of Fundamental Right to Property.

The Hon’ble Supreme Court by a majority of 6:5 overruled Shankari Prasad and Sajjan Singh’s case and held that Fundamental Rights were outside the amending process and there is no distinction between legislative and constituent power and therefore constitutional amendment is a law under Article 13 (2) and any amendment that abridges the Fundamental Right will be void. The court was of the opinion that if absolute powers are given to the Parliament, then there may come a time when there will be no fundamental rights in India and this may lead India towards totalitarian regime.

The majority judgement was given by *CJ Subba Rao* and by four other justices (*J.C. Shah, S.M. Sikri, J.M. Shelat, C.A. Vaidiyalingam*) also *Justice Hidayatullah* agreed with CJ and wrote the separate opinion.

²³ I.C. Golakh Nath v. State of Punjab, A.I.R. 1967 S.C. 1643.

Chief Justice Subba Rao supported his judgement by stating following reasons:-

- 1) He rejected the argument that power to amend the Constitution was a sovereign power and it was supreme to legislative power and that it did not permit any implied limitation.
- 2) The power of Parliament to amend the Constitution is derived from Article 245 read with Entry 97 of List 1 of the Constitution and not from Article 368 as it only lays down the procedure of amendment and do not give the power to amend.
- 3) An amendment is a 'law' within the meaning of Article 13(2) and if any amendment takes away the Fundamental Rights it will be declared void.

The chief Justice said that the Fundamental Rights are given transcendental place under our Constitution and hence they are kept beyond the reach of the Parliament. In this case the Court applied the Doctrine of “*Prospective Overruling*” and held that the decision will not have any retrospective effect and therefore the 1st, 4th and 17th Amendment will continue to be valid.

While some Judges who gave the minority Judgement like *Justice K.N. Wanchoo* articulated his opinion that no restriction should be implied on the Parliament’s amending power under Article 368. *Justice V. Ramaswami* expressed his view that the Framers of the Constitution had not expressly provided any restriction on the amending power of the Parliament and therefore no inviolability is attached to the Fundamental Right with respect to amending process. Also the minority held that the word ‘Law’ in Article 13 (2) only refers to ordinary law and not the Constitutional Amendments; hence *Shankari Prasad’s & Sajjan Singh’s* cases were rightly decided.

In order to remove the difficulties created by the decision of Hon’ble Supreme Court in *I.C. Golakh Nath’s* case, the Parliament enacted **The Constitution (Twenty-fourth Amendment) Act** and **the Constitution (Twenty-fifth Amendment) Act**, the 24th amendment added-

- A. The new clause (4) to Article 13 which provided that nothing in this Article shall apply to any amendments made under Article 368.
- B. It substituted new marginal heading to Article 368, the old heading ‘*Procedure for Amendment of the Constitution*’ was changed to ‘*Power of the Parliament to amend the Constitution and Procedure therefor*’.
- C. It also added a new clause (3) to Article 368, which provided that nothing in Article 13 shall apply to any amendment made under this Article.

- D. It also extended the scope of Article 368 by adding the word ‘To amend by way addition, variation or repeal any provision of this Constitution according to the procedure under this Article’.

The 25th amendment introduced Article 31C, which provided that any law made to give effect to the Directive Principles of the State Policy (DPSP) given under Part IV will be valid even if they are conflicting with the Fundamental Rights.

➤ The landmark case that changed the history of the Constitution of India and which brought a turning point in ongoing tussle between the Parliament and the Judiciary is the case of **Keshavananda Bharati Sripadagalvaru v. State of Kerala**²⁴, in this case the validity of Kerala Land Reforms Act, 1963 was challenged by the Petitioner. This Act was amended in the year 1971 and also it was added in Ninth Schedule by the 29th Amendment. The Petitioners were allowed to challenge the validity of 24th, 25th & 29th Amendment of the Constitution. The issue was related to the extent to which the Parliament can amend the Constitution under Article 368 of the Constitution. This matter was heard and decided by the largest constituted bench of 13 Judges, this bench reviewed the decision given by the Court in Golak Nath’s case. By a majority of 7:6 on 24th April, 1973 the Court in this case held that the Basic Structure of the Constitution cannot be amended. As regards the scope of amending power under Article 368, majority Judges (*Sikri CJ, Shelat, Grover, Hegde, Reddy, & Mukherjee JJ.*) held that there are inherent or implied limitation on the Parliament’s amending power and Article 368 does not give the power to the Parliament to abrogate or destroy the basic features of the Constitution. *Khanna J.* held that though Article 368 does not have any implied limitation on the amending power but the power to amend does not include the power to damage the foundation of the Constitution. He said that the word ‘amendment’, postulated that the old Constitution must survive without loss of indemnity and it must be retained through the amended form, therefore the power does not include the power to destroy the basic structure or the framework of the Constitution.

The Court also held that the amendments must be made in such a manner that it does not destroy the essence or spirit of the Constitution. The Court further held that the constituent power of the Parliament cannot be equated to the constituent power of the Constituent Assembly as the Parliament has not created the Constitution rather it is the creation of the Constitution therefore the Parliament cannot raise itself above the Constitution. While reviewing the decision in Golak Nath’s case the Court held that the Fundamental Rights can be amended but the Basic Structure

²⁴ Keshavananda Bharati Sripadagalvaru v. State of Kerala, A.I.R. 1973 S.C. 1461; (1973) 4 S.C.C. 225.

cannot be amended.

The remaining six Judges (*A.N. Ray, Chandrachud, Beg, Mathew, Dwivedi, & Palekar JJ.*) held that there are no limitations, express or implied on the amending power.

Thus the Court by majority held that the Parliament has wide powers of amending the Constitution and it extends to all the Articles but the power is not unlimited and does not include the power to damage or alter the framework or basic feature of the Constitution. There are implied limitations on power of amendment under the Article 368. The Parliament can amend every Article of the Constitution provided it is within the limit of the Doctrine of Basic Structure. A question arose whether the Doctrine of Basic Structure is vague and unsatisfactory? The *Sikri CJ*, stated that any amendment within the boundaries of the Preamble and of the Constitution cannot be considered as a vague and unsatisfactory idea which cannot be understood by the Parliament and the public. He also said, the argument that if something cannot be defined, weighed or measured it ceases to exist is misleading. There are many concepts of law which are not capable of exact definition but it does not mean that they do not exist. It was argued that every provision in the Constitution is essential otherwise it would not have been put in the Constitution. The Chief Justice further said, but this does not place every provision of the Constitution in the same position. The accurate position is that every provision under the Constitution can be amended provided that such should not result in any change in the basic foundation and structure of the Constitution.

So, what is Basic Structure can be explained by testing that, any provision of the Constitution which if taken away from it would result into loss of its identity, object and unity & integrity of the Country and dignity of the people would be considered as a part of the Basic Structure of the Constitution.

In this case the Judges enumerated certain essentials of Basic Structure as follows-

➤ *Chief Justice Sikri:*

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

➤ *Shelat J. and Grover J.:*

- i) Unity and integrity of the nation
- ii) Sovereignty of the country.

➤ *Hegde, J. and Mukherjea, J.:*

- i) Democratic character of the polity
- ii) Unity of the country
- iii) Essential features of the individual freedoms secured to the citizens
- iv) Mandate to build a welfare state
- v) Unity and integrity of the nation

➤ *Jaganmohan Reddy, J.:*

- i) Equality of status and the opportunity
- ii) Sovereign democratic republic
- iii) Justice - social, economic and Political
- iv) Liberty of thought, expression,
- v) belief, faith and worship

Hence in this historic case the Doctrine of Basic Structure was evolved which acted as an implied limitation on the unlimited amending powers of the Parliament. Though no exhaustive list of what constituted the Basic Structure was given by the Court but all the majority Judges commonly said that the Judicial Review is a part of the Basic Structure.

IV. DECISIONS AFFIRMING THE BASIC STRUCTURE DOCTRINE

Even after the decision in *Keshavananda Bharti's case* the Parliament introduced some amendments which were in violation to the Doctrine of Basic Structure. The Judiciary didn't let the Parliament destroy or damage the spirit, soul and heart of the Constitution. There are many cases in which the Court affirmed the Doctrine of Basic Structure and made it clear that the Constitution was, is and will be supreme in India.

1. Indira Nehru Gandhi v. Raj Narain²⁵

This case is also known as '*Election Case*', it gave an opportunity to the Supreme Court to examine and apply *Keshavananda Bharti's* verdict. The appellant in this case filed an appeal against the decision of the Allahabad High Court invalidating her election on the ground of

²⁵ Indira Nehru Gandhi v. Raj Narain, A.I.R. 1975 S.C. 2299.

corrupt practices. Pending the appeal, Parliament enacted the 39th Amendment Act in the year 1971 and inserted Article 329-A to overcome the effect of the High Court judgement by withdrawing the jurisdiction of all the courts over election disputes involving the Prime Minister. Following the case of *Keshavananda Bharti*, it was argued that amendment affected the free and fair elections and judicial review which are the parts of the basic structure of the Constitution; and therefore, held the amendment unconstitutional.

2. Minerva Mills Ltd v. Union of India²⁶

In this case, the Petitioners challenged the validity of sections 4 & 55 of the Constitution (42nd Amendment) Act, 1976 on the ground of violation of the basic structure of the Constitution. Articles 31-C and Article 368 were amended respectively by these sections. In Article 31-C all laws which were made to implement any directive principle were exempted from being challenged on the ground that it violated Articles 14, 19 and 31 and Article 368 clause (4) and (5) made all the invalidated and existing amendments valid and removed all restrictions on any future amendments. Hence Hon'ble Supreme Court by 4:1 majority struck down such amendments on the ground that it violated the Basic Structure of the Constitution as limited amending power is a part of Basic Structure of the Constitution.

3. Waman Rao v. Union of India²⁷

In this case the Supreme Court held that all the amendments to the Constitution which were made before 24th April, 1973 (the date on which the judgement of *Keshavananda Bharti* was delivered) including those by which the Ninth Schedule to the Constitution was amended from time to time were valid and constitutional amendments made on or after the date by which Ninth Schedule was amended were left open to be challenged on the ground that they were beyond the constituent power of Parliament because they damaged the basic structure of the Constitution.

4. L. Chandra Kumar v. Union of India²⁸

In this case a seven members bench of the Hon'ble Supreme Court declared clause 2 (d) of Article 323A and clause 3 (d) of Article 323-B as Unconstitutional because these clauses barred the Jurisdiction of the High Court & the Supreme Court under Article 226 and Article 32 respectively. The Court held that these provisions damage the power of Judicial Review which is an essential part of the Basic Structure of the Constitution.

²⁶ *Minerva Mills Ltd v. Union of India*, A.I.R. 1980 S.C. 1789.

²⁷ *Waman Rao v. Union of India*, A.I.R. 1981 S.C. 271.

²⁸ *L. Chandra Kumar v. Union of India*, A.I.R. 1997 S.C. 1125.

5. I. R Coehlo v. State of Tamil Nadu²⁹

In this case the validity of many Central and State laws which were added in the Ninth Schedule was challenged. A nine judge Bench of the Supreme Court in decision held that any law added in the Ninth Schedule post *Keshavananda Bharti's* judgement would not be barred from being challenged in the Court. Though a law is added in the Ninth Schedule by an amendment, provisions of that law/act would be open to challenge if they damage or destroy the basic feature or if the Fundamental Rights are taken away or abrogated pertaining to the basic feature of the Constitution.

6. Supreme Court Advocates On Record Association v. Union Of India³⁰

In this case the 99th Constitutional Amendment Act also known as NJAC Act was challenged as through this amendment the existing system of appointment of judges (collegium) was changed and the primary control in the appointment and selection of judges was given in the hands of Executives. The court by a majority of 4:1 held that such amendment destroys the basic structure of the constitution as it destroys the rule of law, separation of powers and the independence of judiciary.

V. CONCLUSION

A Constitution is a living document which needs to adopt necessary changes to endure the tides of times. The moment it stops growing it loses its essence for which it was created. In order to keep it's strength alive the framers of the Constitution provided the power to amend the Constitution to the Parliament. The purpose behind providing such power was to prevent the Constitution from becoming dormant.

Willis in his book on the Constitutional Law of the United States says: "*If no provisions for amendment were provided, there would be the danger of revolution*". So to avoid any revolution to change the Constitution it was necessary to provide the provision to amend the Constitution.³¹

The Parliament drifted away from the right path and started abusing the amending power given to it. The Constitution of India is a priceless gift given to "*We the People*" but the Parliament used it to fulfil its desires and discarded the desires of the people. By the virtue of the amending powers given under Article 368 the Parliament introduced several undesirable amendments, the very first amendment the Parliament introduced a new schedule (Ninth Schedule) which

²⁹ I. R Coehlo v. State of Tamil Nadu, A.I.R. 2007 S.C. 8617.

³⁰ Supreme Court Advocates On Record Association v. Union of India, (2016) 5 S.C.C. 1.

³¹ *Supra* note 5.

provided that the laws which will be added in this schedule will be immune from being challenged in the Court of law and after this amendment the Parliament added many Land Reforms Act in this schedule which aimed at compulsory land acquisition. The intention of the Parliament behind this amendment was to deliberately exclude the power of Judicial Review in order to exercise the supremacy on the amendment of the Constitution.

In the dark phase of Constitutional history where the rights guaranteed to the people were violated because of the dirty games of the Parliament, the Indian Judiciary acted as a saviour and protected the sanctity of the Constitution. The Hon'ble Supreme Court in the case of **Keshavananda Bharti Sripadagalvaru v. State of Kerala**³², introduced an antidote to the unlimited amending powers of the Parliament in the form of the '*Doctrine of Basic Structure*'. This doctrine worked as an implied limitation on the amending powers of the Parliament, thereby preventing the Parliament to work as per its whims and fancies. This doctrine provides that the Parliament can amend anything and everything but not the Basic Structure of the Constitution. The Parliament is the creation of the Constitution and not the master so the Parliament cannot alter the object, identity, values and foundation on which the whole Constitution rests. The Judiciary did not only evolved the doctrine but also affirmed and applied the same in many cases and secured the spirit of the Constitution from being harmed despite of the countless efforts made by the Parliament.

The Author is of the view that evolution of the doctrine of Basic Structure was the need of an hour as the Parliament was taking undue advantage of no expressed limitation under Article 368, quoting **B. R. Ambedkar**-

“However good a Constitution may be, if those who are implementing it are not good, it will prove to be bad. However bad a Constitution may be, if those implementing it are good, it will prove to be good.”

A Constitution and its success depends upon how well it is implemented, even a good Constitution turns bad when it is implemented badly. So was the situation with our Constitution when the Parliament tried to attack the identity of the Constitution. The people in India can't thank our Judiciary enough which controlled the Parliament then and now from destroying and destructing the basic foundation of our Constitution. If no step would have been taken by the Judiciary the Parliament would have taken away all the Fundamental Rights and would have raised itself above the Constitution; the present India that breathes for its citizens and fights for protecting their Rights would have remained only as an imagination of the framers and would

³² Keshavananda Bharti Sripadagalvaru v. State of Kerala, A.I.R. 1973 S.C. 1461; (1973) 4 S.C.C. 225.

have never been achieved in the practicality.

Lastly I would like to say that the doctrine of Basic Structure ensures that the spirit of the Constitution remains untouched and the supremacy of the Constitution prevails over everyone and everything.
