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BASIC STRUCTURE DOCTRINE THEORY (Amending Power under Article 368)

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Abstract: India's constitution is one of the world's most intriguing documents. No other country has a constitution as extensive as ours, which is the largest in the world. But despite being so comprehensive, the reason why this document is so interesting and why the fathers of our constitution made it as flexible as it is today is because they wished that the constitution would not only help the country grow, but that it would evolve and grow alongside the nation. Thus, under article 368, Parliament's powers to amend the constitution are unrestricted in terms of the sections of the constitution that they wish to amend. However, the Parliament's unrestricted power to amend the constitution is risky. The current paper is approaching the Basic Structure Doctrine and will have a discussion while allowing a flood of debate on two important articles of the Indian constitution, namely article 13 and Article 368. Article 13 protects fundamental rights, whereas article 368 grants the power to amend the constitution. When we compare article 13 to article 368, we are confronted with some critical questions, such as whether the constitution can be amended by the legislature. Is it possible to change the preamble? Is it possible to change the fundamental rights? The most important question is whether the Amending Power of Parliament exercised under article 368 is absolute or subject to limitations. But, in the end, we'd realize that the entire debate is a power struggle. The question is whether article 13 of the Supreme Court or article 368 of the Parliament is important. So, in the sequence of events outlined below, we will decide what the solution is.

Keywords: Basic Structure Doctrine, Power to amend, Absolute, Power Struggle, Confronted.

Introduction

The Indian constitution is regarded as the 'General Will' of the Indian people. It is a really important document. It is not only the fundamental laws of the land, but the living organic through additional laws are generated according to the needs of time. The nation's life is dynamic, living and organic, and its social, economic and political situations are always changing. As a result, a constitution drafted in one age under one set of circumstances may be considered inadequate in another era under different circumstances. As a result, it becomes vital to have machinery or some mechanism by which the constitution can be amended as needed to meet the nation's current demands. Changes can be made in a variety of ways, including through the formal mechanism of amendment outlined in Article 368 of the constitution. The constitution's Article 368 sets no explicit limitations on the legislature's amending power. A constitutional war has been waged in this regard since the beginning of the constitution, both in the courts and inside the legislature. Parliament appears to be asserting its supremacy in the same way that the British Parliament did, but the Supreme Court has interpreted Parliament as a creature of the constitution, exercising powers within and not beyond it. Despite the fact that the constitution expressly grants Parliament amending powers, it is the Supreme Court that will ultimately interpret the scope of such power and spell out any limitations, if any, on such amending power. This battle between Parliament and the Judiciary gave birth to one of the most important doctrines 'The Doctrine of Basic Structure' which limits Parliament's amending power. The basic structure concept is a judicial invention that states that certain aspects of India's constitution are beyond the scope of the constitution's amending powers. This doctrine was developed in the well-known Case of Keshvananda Bharti vs. State of Kerala A.I.R 1973 SC, also known as the 'Fundamental Rights case' in which the Court held that Article 368 of the Indian constitution did not allow the Parliament to change the 'Basic Structure or Framework.' Despite the fact that Article 368 is genuinely mute on the scope of amending authority, this notion has remained the limits on the Parliament's capacity to change the constitution from then until quite recently. It has taken over two decades to carve an implied limitation on Parliament's amending powers under Article 368. The roots of 'Basic Structure Doctrine' can be traced from the issue of Right to Property and the First Constitutional Amendment Bill 1951 itself. The First Constitutional Amendment Act 1951 was challenged in the Shankari Prasad vs. Union of India case. But the Supreme Court held that the Parliament, under Article 368, has the power to amend any part of the constitution including fundamental rights. Consequently, in Golak Nath vs. State of Punjab case in 1967, the Supreme Court overturned the Shankari Prasad judgment and ruled that Article 368 only lays down the procedure to amend the constitution and does not give absolute powers to the Parliament to amend any part of the constitution. To nullify the Golak Nath Judgment, the Parliament in 1971 passed the 24th Constitution Amendment Act and gave the absolute power to the Parliament to make any changes in the constitution including the fundamental rights. In 1973, in Kesavananda Bharti vs. State of Kerala case, the Supreme Court held that the Parliament has the power to amend any provision of the constitution, but doing so, the basic structure of the constitution is to be maintained. Although the 'Basic Structure Doctrine' evolved



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through a series of constitutional law cases but it was in Indira Nehru Gandhi v. Raj Narain case in which the faith on this doctrine was affirmed and established. Looking at what is included in the basic structure, which have been provided by the constitution has been recognized by the judiciary in various cases till date. The Supreme Court is yet to define clearly as to what basic structure means. Right from Kesavananda Bharti Case till date various elements have been recognized as the 'Basic Structure' of the constitution the list goes as; supremacy of the constitution, republican form of Government, secular character of the constitution, maintenance of separation of powers, federal character of the constitution, limited power of Parliament to amend the constitution, harmony and balance between fundamental rights and directive principles, power of judicial review etc. Doctrine of equality under article 14 came to be recognized as basic element of constitution in the case of M. Nagaraj v. Union of India AIR 2007. In Indira Sawhney vs. Union of India AIR 1992 SC, unamendability of basic structure in itself constitutes the basic structure of constitution.

Statement of the Problem

The problem formulated for commissioning of the present study states that is the amending power of Parliament exercised under article 368 is absolute or is there any restriction on it. Whether the 1st Constitutional Amendment Act, 1951 passed by the Parliament is valid. Whether the word 'law' used under article 32(2) also includes the law of the amendment of the constitution. Whether Amendment is a 'law' under the meaning of article 13(2). Whether fundamental rights can be amended or not. Whether the power to amend the fundamental rights is limited or unlimited. Whether basic features of the constitution can be amended. What is the scope of amendment that Parliament reserves. Whether insertion made under article 31C and article 368 through section 4 and 55 of the 42nd Amendment Act, 1976 does hamper the basic structure. Whether directive principle of the state policy has primacy over fundamental rights. Owing to the stated problems application of laws to be involved are article 13(2) of the constitution of India, article 31A and 31B of the constitution of India, article 368 of the constitution of India, article 132 of the constitution of India, article 226 of the constitution of India, article 13(2) mentions no law can be enacted which abridges the fundamental rights. Article 368 provides for the amending power of the constitution.

Purpose of the Study

The purpose of study is to determine which is supreme; SCs article 13 or the Parliament's article 368. It also serves the purpose by ascertaining whether the Amending Power of Parliament exercised under article 368 is absolute or is there any restriction on it.

Research Questions

- ❖ Can the constitution be amended by the Parliament?
- ❖ Can the preamble be amended?
- ❖ Can the Fundamental Rights be amended?
- ❖ Is the Amending Power of Parliament exercised under article 368 is absolute or is there any restriction on it?

Significance of the Study

The study is significant to determine which is supreme, Supreme Court's article 13 or the Parliament's article 368. It is also significant to ascertain the fact whether the Amending Power of Parliament exercised under article 368 is absolute or is there any restriction on it. The study signifies the extent of tussle for power.

Research Methodology

Research methodology does an important role in the research process. It not merely helps the researcher to formulate the research questions but also plays a paramount role in the research process. It also guides a researcher to answer the questions related to the research problem. It definitely helped me in having a discussion while letting a flood of debate on two important articles of Indian constitution i.e. article 13 and article 368 respectively. The present study is mainly based on secondary sources.

Article 368 in Part XX of the constitution deals with the power of Parliament to amend the constitution and its procedure. It states that the Parliament may, in exercise of its constituent power, amend by way of addition, variation or repeal any provision of the constitution in accordance with the procedure laid down for the purpose. However, Parliament cannot amend those provisions which form the basic structure of the constitution. This was ruled by the Supreme Court in the Kesavananda Bharati case (1973).



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SHANKARI PRASAD Vs UNION OF INDIA

1st CAA: 31 –A: Q: 31 – B: J

After the independence of India, the agrarian land reforms through legislation were enacted in the states of Bihar, Uttar Pradesh and Madhya Pradesh which was known as the Zamindari Abolition Act. The zamindars were upset due to this they were deprived of their respective landholdings. The zamindars to get hold of their properties filled a petition in the High Court of Bihar, Uttar Pradesh and Madhya Pradesh as this law is violative of their Fundamental Rights. The Patna High Court invalidated the Bihar Land Reforms Act 1950, whereas the High Courts at Allahabad and Nagpur upheld the validity of the legislation in Uttar Pradesh and Madhya Pradesh. The Government brought forward a remedy in the form of the constitution (First Amendment) Act, 1951 to put an end of the various litigation regarding the same issue. The zamindars reacted by bringing the petition under article 12 of the constitution and raised the questions whether the constitution (First Amendment) Act, 1951 which was passed by the Parliament and insert article 31 A and article 31 B in the Constitution of India is unconstitutional and void. Following the background, the first discussion in this case is Shankari Prasad vs. Union of India (AIR 1951 SC 458). The 1st CAA was challenged in this case and the 1st CAA among other things is widely known for the Abolition of Zamindari System. So, what happened in this Amendment Act there was certain laws that were brought about which were curtailing the RTP (Right to Property) and in order to protect those laws article 31A and article 31B were inserted in the constitution. People started looking at article 31A and article 31B as an attack on their right to property. So, the question arose. Whether right to property can be absorbed. Whether the parliamentarian amend the fundamental rights. The judgment followed that article 13(2) which is the protector of fundamental rights and the word “Law” in it only means law in ordinary sense i.e. when law is made in exercising a LP (Legislative Power) and not CA (Constituent Authority). Therefore, article 368 includes the power to amend the fundamental rights. In this case the advocates from the petitioner contended that the 1st Amendment Act, 1951 which inserts article 31A and article 31B violates and abridges the fundamental rights conferred through Part III of the constitution with the restrictions of article 13(2). They further contended that the article 31A and article 31B which is inserted through the First Amendment Act, 1951 also seeks to bring changes in Chapter IV of Part V’s of article 132 and 136 and Chapter V of Part VI’s article 226, these requirements for ratification under clause (b) of article 368 has to be followed, and it has not been ratified in here and so they void and unconstitutional. Following the petitioners contending the respondents argued that in the very first instance, it was submitted that according to the fundamental law of our independent India the constitution, it should not be held liable for changes as per the wishes of the party majorities, the framers of the constitution have placed special hardship in the path of amending the constitution by providing three different classes for amendments viz:

- First includes those which are affected by a bare majority for the passing of ordinary law.
- The second includes those which are affected by a special majority under Article 368.
- Third includes those which are in addition to the special majority as required in second class and ratification required by not less than one-half of the States as mentioned in its Part A and Part B.

The third class as mentioned in article 368 seeks for changes in the provision. The Parliament which includes the two Houses of Parliament and the President conferred as the first class of amendment. The respondents also argued that in the context of the word ‘law’ under Article 13 “must be taken to mean rules and regulations made in the exercise of ordinary legislative power and not amendment to the Constitution made in the exercise of constituent power, with the result of which Article 13(2) does not affect amendment made under Article 368.” The judgment was delivered by the Hon’ble Judge M Patanjali Sastri. The Court unanimously held that even if the amendment is considered to be superior to ordinary legislation, it will not be able to strike its validity by article 13(2). The word ‘law’ as given under article 13(2) ordinarily will be inclusive of constitutional amendment but it must be in consideration of ordinary legislative power and therefore the constitutional amendment done by Parliament in its constitutional power is not subjected to article 13(2) and such powers include the power to amend the fundamental rights. In this case the principle of harmonious constitution was used so as to remove the conflict between article 13 and article 368. As per the said principle when any conflict arises between the two articles then one article is restricted in comparison to another. So, finally it was held that the Parliament has power to amend any fundamental right under article 368. This led to the further development in the journey of basic structure. As, the Indian judiciary gave the complete amending power but later this position was changed with a completely different outlook. The question regarding the amenability of the fundamental rights conferred and given in the constitution of India could be revoked or limited by amendment of the question still remains the centre for the conversation. The case which marked and contributed in this judicial discussion which was started in the said case of Shankari Prasad are Sajjan Singh vs. State of Rajasthan, Golak Nath vs. State of Punjab and later all have culminated in Kesavananda Bharti vs. State of Kerala.



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SAJAN SINGH Vs STATE OF RAJASTHAN 17TH CAA: 368: AMENDMENT OF THIS CONSTITUTION

In 1951, several state legislative measures passed for giving effect to a policy of agrarian reform faced a serious challenge in the courts. In order to assist the state legislatures to give effect to the policy, articles 31A and 31B were added to the constitution by the constitution (First Amendment) Act, 1951. Article 31B provided that none of the Acts specified in the Ninth Schedule to the constitution shall be deemed to be void or ever to have become void. In 1955, by constitution (Fourth Amendment) Act, article 31 A was amended. Notwithstanding those amendments some legislative measures adopted by different states for giving effect the policy were effectively challenged. In order to save the validity of those acts as well as of other acts which were likely to be struck down, Parliament enacted the constitution (Seventeenth Amendment) Act, 1964, by which article 31A was again amended and 44 Acts were added to the 9th Schedule. Here in this case the validity of 17th CAA, 1964 was called in question but why? The reason being:

- The impugned Amendment adversely affected the right to property,
- The SC again rejected the argument by a majority of 3 to 2.
- The majority ruled that the ‘Pith and Substance’ of the amendment was only to amend the FR’s but if it affected article 226 in an insignificant manner that was only incidental.
- The petitioners here, argued against 17th CAA.
- The petitioners in the Writ Petitions in the Supreme Court and interveners were the persons affected by one or other of those Acts.
- They contended that none of the act by which they were affected could be saved because the constitution (Seventeenth Amendment) Act was constitutionally valid.

It was further urged that:

- Since the powers prescribed by article 226, which in Chapter V, Part VI of the constitution, were likely to be affected by 17th Amendment, the special procedure laid down in the proviso to article 368, namely requiring the ratification by not less half the number of states, should be followed;
- The 17th AA was a legislative measure in respect of land and since Parliament had no right to make law in respect to land, the Act was invalid and;

The arguments held (by **P.B. Gajendragadkar C.J., Wanchoo Dayal JJ.**) are:

- That the main part of article 368 and its proviso must be on a reasonable construction be harmonized with each other in the sense that the scope and effect of either of them should not be allowed to be unduly reduced or enlarged;
- On the contentions urged there was no justification for reconsidering Shankari Prasad Case. [947 G-H];
- Parliament is enacting the impugned Act was not making any provision of land – legislation but was merely validating land-legislation already passed by the state legislatures in that behalf. [945 C],
- The power conferred by Article 368 on Parliament can be exercised prospectively and retrospectively. It is open to Parliament to validate laws which have been declared invalid by courts. [945 E-F].

Also **Justice M. Hidayatullah and Madholkar** had little difficulty in accepting the view that fundamental rights are nothing fundamental to constitution even they can be amended like other parts of the constitution. They contended:

- Whether the word ‘law’ in article 13(2) of the Constitution excludes an Act of Parliament amending the Constitution;
- Whether it is competent to the Parliament to make any amendment at all to Part III of the constitution;

Finally, in *Sajan Singh v. State of Rajasthan* (AIR 1965 SC 845), it was said that the article 13 is just limited to ordinary law not with the constitutional amendment whereas the scope of article 368 is limited to constitutional law. Among the 5 judge bench, 2 judge given a dissenting judgment - Mudholkar and Hidayatullah. Justice Mudholkar is of opinion that fundamental features of the constitution cannot be changed. According him each and every constitution of the world has certain fundamental features and such features must not be changed. He was of the opinion that fundamental features of the constitution of India cannot be changed. Thus, Justice Hidayatullah was of the opinion about making no alterations in the basic features of the Indian constitution. But according to the majority decision it was said that Parliament can amend fundament rights of the people.

GOLAK NATH Vs STATE OF PUNJAB 17TH CAA: 13 (2) “LAW”.

The family of Henery and William Golknath held 500 acres of farmland in Jalandhar and Punjab. In the face 1953 Punjab Security and Land Tenures Act, the state government held that the brothers could keep only thirty acres each, a few acres would go to



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tenants and the rest was declared surplus. This was challenged by the Golknath family in the courts and the case was referred to the Supreme Court in 1965. The family filed a petition under article 32 challenging the 1953 Punjab Act on the ground that it denied their constitutional rights to acquire and hold property and practice any profession article 19 (f) and (g) and to equality before law and equal protection of law (article 14). They sought to have seventeenth amendment -which had placed the Punjab Act in ninth scheduled and declared ultravires (beyond the powers). Following the background the next here, in Golak Nath Vs State of Punjab (AIR 1967 SC 1643, 1967 (o) GLHEL-SC 15172) again the 17th CAA was challenged. This time the question was whether the power to amend the fundamental rights is unlimited or limited. Now this case was very important because a “Eleven Bench Judge” was constituted. Such a large bench was constituted for the first time. In this case everything was reversed. The Supreme Court said the power to amend the constitution including the fundamental rights is not an unlimited power. It is subject to limitation of judicial review. So, this is important. Until now we had a settled position that 368 had an unlimited power i.e. even article 13 could not stop 368 but this case reversed the position and said what! No 368 is subject to limitation of judicial review. The Supreme Court even went ahead and said that Parliament does not have any power to amend or abridge the fundamental rights in the way of amendment. Further the ambit of article 13 (2) was discussed they said that the word “Law” used under article 13 (2) includes the Amendment and if any Amendment violates the fundamental rights, it would be void. So, you see up till now there has been a tussle for power who is supreme, Supreme Court or Parliament. Whether the Parliament is supreme or the Judiciary is supreme. As in Shankari Prasad case it was settled that the Parliament is supreme. Consequently, in the Sajjan Singh case again it was settled that the Parliament is supreme. But for the first time in the Golak Nath Vs State of Punjab it was said no article 368 is subject to limitation imposed under article 13. So, the judiciary is supreme. The fundamental rights are given a transcendental position in the constitution and are not amenable to the Parliamentary restriction as stated in article 13. A place of permanence is given to the fundamental rights in the constitution. In order to amend fundamental rights a new constituent assembly is necessary. Article 368 provides the procedure to amend the constitution but does not confer power on Parliament to amend the constitution.

After the unprecedented judgement of Golknath vs. State of Punjab the desperate Parliament in order to gain its lost supremacy passed series of amendments to indirectly overrule whatever was decided in Golknath Case. The Indira Gandhi govt. returned in lower house in 1971 elections and then passed 24th Amendment in 1971, 25th Amendment 1972, and 29th Amendment 1972 which is briefed as below:

24TH AA 13: 368 > 13 (4): MARGINAL HEADING: Clause (3)

Similarly, what happened in next. The parliamentarian could not digest what happened in the Golak Nath. So, they came up with 24th AA. There are the following changes in article 13 and article 368:

- First in article 13 they included 13 (4) which said that nothing in article 13 would apply to 368 which means that anything can be done under 368 and it would not attract the attention of judicial review under article 13;
- Then secondly, under Article -368 they changed the Marginal Heading, previously it was-“Procedure for amending the constitution “now it reads the “Power of Parliament to amend the constitution and the procedure there- off” i.e. From-“Procedure for Amending the Constitution “To -“Power of Parliament to Amend the Constitution and the Procedure there off“.
- Lastly, they added clause (3) to 368 which said nothing in Article 13 shall apply to 368. So, the crux of the 24th AA was to exclude the applicability of Article 13 on to Article 368.

Therefore, everything that was held in the Golak Nath case holds no values after 24th AA. As, after the 24th AA, it was clear that the Parliament can dilute the constitution including fundamental rights. After Golak Nath Case the SC held that Parliament cannot amend fundamental rights, whereas after Kesavananda Bharti Case, the SC upheld the validity of the 24th amendment holding amendment to fundamental rights as constitutional but simultaneously putting a caveat of maintaining the basic structure.

25TH AMENDMENT: 1972

The parliamentarian in order to clear their stance that they are not bound to adequately compensate the landowners amended article 31(2) in case their property is acquired by the state. The word ‘amount’ was placed instead of compensation in the provision. Article 19(1) (f) was delinked from article 31(2). Article 31C, a new provision was added to the constitution to remove all difficulties that:

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



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29TH AMENDMENT: 1972

The 29th Amendment passed in the year 1972 had the effect of inserting the Kerala Land Reforms Act into IX Schedule which means it is outside the scope of judicial scrutiny. Since all these central Amendments in one way or the other saved the State Amendments from being challenged in courts of law, along with the impugned provisions of Kerala Land Reforms Act, validity of 24th, 25th & 29th Constitutional Amendments was also challenged.

KESAVANANDA BHARTI Vs STATE OF KERELA

24th AA: SCOPE OF “AMENDMENT”.

OLD: NEW

CONSTITUTION: CONSTITUTION

The story begins with the Golak Nath case, 1967 (AIR 1973 SC 1461, 1973 (o) GLHEL-SC 112885), in which the petitioner challenged the 17th CAA, 1964, under article 32 for violation of his fundamental rights. The Apex Court, “Parliament cannot take away or abridge and amend any of the fundamental rights, even cannot touch because these are sacrosanct in nature.” After this debacle Parliament passed the 24th and 25th Amendment Act, 1971 and overruled the verdict of Golknath case and expressed that, “We, the parliamentarian can amend anything in the constitution, and the judiciary has no power to review.” Between the conflicts Supreme Court got an opportunity to review the Amendment Acts in 1973, when the famous case of Kesavananda Bharti vs. State of Kerala came before the Apex Court, where petitioners challenged these Amendments under article 26 (freedom to manage religious affairs). Here again the 24th AA was challenged. The question arose what is the scope of Amendment that the Parliament reserves. Now this time the Supreme Court gave a very balance judgment. They said that the power to amend the constitution was already implicit in the constitution. The 24th AA merely made it implicit or declaratory. However, they said that the basic features cannot be amended. So, in simple words the crux of kesavananda case is that you can amend the entire constitution to form a new constitution, however it should survive through its basic features which mean that there are certain implied restrictions for amending the constitution and the basic features cannot be amended. Coming to the” Scope of Amendment “under Article 368 the Supreme Court said that it was not the intention of the constitutional makers to use the word “Amendment” in its wider sense. It was their intention and belief that fundamental right along with the fundamental features would always survive through its welfare state. Now, the question comes how far the provision of article 368 can be amended. The Supreme Court said that an increase and decrease in the power of 368, it should be such that it should not lead total destruction of the power and the decrease should be such that it should not mean freeing from all restrictions. So, what they mean was any increase or decrease in the power under Article 368 should not authorize the legislature to destroy the basic features of the constitution (368). Finally in this case the court laid down the power of amendment under Article 368 is unlimited. Parliament can amend any part of the constitution including preamble but the amending power should not affect the basic features of the constitution. Preamble is the integral part of the constitution and is amendable but not justifiable in the administration of justice. You can amend the entire constitution to form a new constitution, however it should survive through its basic features which means that there are certain implied restrictions for amending the constitution and the basic features cannot be amended.

INDRA GANDHI Vs RAJ NARAIN

Addition in BF: Clause (4) and (5) of Article -368

It was a landmark case that created history and led to the imposition of emergency in India from 1975- 77. It is case which questioned the powers of judiciary a showcase of how Parliament expected the judiciary to kneel down before them. Parliament tried to establish its supremacy in the course of this case but in place by the judiciary. The case questioned so many integral aspects of constitution such as its basic structure, power of jurisdiction of courts, separation of three organs of state, right to free and fair election, rule of law, judicial review and lastly political justice. The Indira Gandhi v. Raj Narain case (AIR 1975 SC 2299, 1975(o) GLHEL-SC 11855), made a huge below to the doctrine of basic structure of constitution, which was held that it could not be amended a few years prior in the landmark judgement case of Kesavananda Bharti vs. Union of India. In 1971, when the 5th Lok Sabha Elections were held, Indira Gandhi and her party emerged victorious, securing a total of 352 seats out of 518 seats in the said election. She fought her election from Rae Bareilly Constituency and against her contesting was Raj Narain, the leader of Ram Manohar Lohia’s SSP. Even though he was confident of his triumph against Mrs. Indira Gandhi. Disappointed with the defeat he filed an appeal to nullify the election and accused the Indira Gandhi of using corrupt practices in the election campaign to claim victory. On 24th April, 1971, he challenged the Prime Minister’s Election by filing a petition in the Allahabad High Court and Gandhi of violating the election code in the Representation of the People Act, 1951. He expressed that her election campaign were assisted by many Government officials which was inclusive of armed forces and local police. Apart from this, he alleged that Indira Gandhi has used Govt. vehicles for her election campaign, distributed liquor and blankets to the voters to influence the, to vote for her, exceeding the campaign expenses. The Allahabad High Court declared Indira Gandhi’s election void on the grounds of corrupt practices on 12th



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June, 1975, the court, speaking under Justice Jagmohan Lal Sinha found Indira Gandhi guilty of misusing Government machinery u/s-123(7) of Representative of People's act, 1951. As a result, she was barred from contesting into elections for another six years. Aggrieved by this decision, she appealed in Supreme Court, but SC being in vacation at that point, granted an executional stay. Thereafter, a state of emergency was declared by the then President Fakhrudeen Ali Ahmad stating that the reason for it was internal disturbances but it is clearly evident that the reason that led to emergency was the Judgement of Allahabad High Court in the case of Raj Narain vs. Uttar Pradesh and 10th August 1975, 39th Constitutional Amendment Act, 1971 was passed by inserting article 329A in the constitution which altogether barred the jurisdiction of Supreme Court from entertaining the matter of elections making the elections of President, Prime Minister, Vice- President and the Speaker of Lok Sabha unjustifiable in the Court of law. The Doctrine of Basic Structure says that Parliaments unlimited power to amend the constitution is subject to restriction, which means it should not violate the basic structure of the constitution. This doctrine was laid down in Kesavananda Bharti case. Article 368 of the Constitution gives power to the Parliament to revise the constitution by expansion, variety or annulment of any provision as indicated by the procedure set down in that. It was expressed that Clause (4) of Article 329, needs to be struck down as it violated the standard of free and fair elections which is an integral part of the basic structure of the constitution. When 39th Amendment was passed by the Indira Gandhi Government, most of the members of the Parliament were absent and arrested under preventive detention. It was seen this amendment destroyed separation of powers and judicial review which are an integral part of the basic structure. The petitioners contended that the function of legislature is to legislate and can make or pass laws. However, to decide the constitutional validity of a law lies with the judiciary. Article 14(1) guarantees equality before law and equal protection of law. The president when passed such law placed himself and other people which is not justified. The respondents argued that the rule of law is not the part of basic structure and apart from article 14; our constitution recognizes neither doctrine of equality nor rule of law. This case is very important as it qualifies certain features as basic features. Also, through this case clause (4) and clause (5) were added to article 368. Now what was the important of these two clauses. These two clauses said even if part-III of the constitution was amended, it cannot be questioned in any court. They clearly said that there is no limitation on the power of Parliament to amend the constitution. Now this case put an end into the controversy of who is supreme Supreme Court or the Parliament. They said that the Parliament represents the will of the people and if the people want to amend the constitution they can exercise their power through Parliament. There should be no limitation on that. The Supreme Court in this case also said that the theory of basic structure is very ambiguous way and addition of clause (4) and (5) in article 368 rectify the situation.

MINERVA MILLS Vs UNION OF INDIA

2nd AA: Clause (4) and (5) of Article- 368

Limited Nature of Power to Amend.

Judicial - Review.

A Minerva Mill is a textile mill located near the Bengaluru city. The Central Government considering the substantial fall in the production of Minerva Mills appointed a committee under section 15 of the Industries Development Act, 1951, this was done in year 1970 and the committee submitted its report to the Central Government in October 1971. The Central Govt. authorized the National textile Corporation Limited which was a body to take over the management of Minerva Mills. In 39th Amendment nationalization was included in the ninth schedule which was outside the purview of judicial review. After a huge set back in Indira Gandhi vs. Raj Narain to have supreme power, a 42nd Amendment was passed in the Parliament which amended article 31C through section 4 of the Constitutional amendment Act, 1976. Further section 55 of the 42nd Constitutional Amendment Act, 1976 made amendments in article 368 by inserting Clauses (4) and (5) in it.

The petitioners in this case argued that:

- Due to section 55 of the 42nd CAA, 1976 no court would have the power to review the constitutional amendment passed by Parliament as this would damage the balance between the Judiciary and the Parliament.
- There would be a disbalance that would be created between the fundamental rights and the Directive Principle of the State policy there is a need to create a harmonious construction.

The respondents also argued that:

- Article 31C of the Constitution did not damage the basic structure but instead strengthened it.
- Any harm that is cause to the Fundamental Rights won't amount to violation of the basic structure.

In Minerva Mills v. Union of India case, the validity of 42nd AA as well as the two clauses of 368 was challenged. The Supreme Court said that these two articles were attacking the basic features of the constitution. Therefore, the Supreme Court held it unconstitutional. After this case it was finally settled that the constitution is supreme and Parliament cannot exercise unlimited



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amending power. As *Indira Gandhi vs. Raj Narain* case is very important because it qualifies certain features as basic features. Also, through this case clause (4) and clause (5) were added to article 368 and the important of these clauses was that they said even if Part-III of the constitution was amended, it cannot be questioned in any court of law. They clearly said that there is no limitation on the power of Parliament to amend the constitution. This case put an end to the controversy of supremacy between Parliament and Judiciary. As it said that the Parliament represents the will of the people and if the people want to amend the constitution, they can exercise their power through Parliament. There should be no limitation on that. The Supreme Court in this case also said that the theory of “Basic Structure” is very ambiguous way and the addition of clauses (4) and (5) in article 368 rectify the situation.

Results

The judiciary firmly accepts and strongly recognizes the theory of basic structure. The fact cannot be disputed that doctrine of basic structure has served the Judiciary is that all laws and constitutional amendments are subject to Judicial review and laws that tend to destroy, the basic structure are declared as unconstitutional and thus ultra vires. Thus, finally after a big debate it was said that the Constitution is prestigious heritage and therefore, you cannot destroy its identity.

Conclusion

The conclusions drawn from the above discussion is that in the *Shankari Prasad Vs. Union of India* case the principle of harmonious Constitution was used so as to remove the conflict between article 13 and article 368. As per the said principle when any conflict arises between the two articles then one article is restricted in comparison to another. So, in this case it was finally held that the Parliament has power to amend any fundamental right under article 368. This led to the further development in the journey of basic structure doctrine. In *Sajan Singh v. State of Rajasthan*, it was said that the article 13 is just limited to ordinary law not with the constitutional amendment whereas the scope of article 368 is limited to constitutional law. As in *Shankari Prasad* case it was settled that the Parliament is supreme. Consequently, in the *Sajan Singh* case again it was settled that the Parliament is supreme. But for the first time in the *Golak Nath Vs State of Punjab* case it was said no article 368 is subject to limitation imposed under article 13. So, the judiciary is supreme. The fundamental rights are given a transcendental position in the constitution and are not amenable to the Parliamentary restriction as stated in article 13. A place of permanence is given to the fundamental rights in the constitution. In order to amend fundamental rights a new constituent assembly is necessary. Article 368 provides the procedure to amend the constitution but does not confer power on Parliament to amend the constitution. After the unprecedented judgement of *Golk Nath vs. State of Punjab* the desperate Parliament in order to gain its lost supremacy passed series of Amendments to indirectly overrule whatever was decided in *Golk Nath* case. The *Indira Gandhi* govt. returned in lower house in 1971 elections and then passed 24th Amendment in 1971, 25th Amendment 1972, and 29th Amendment 1972. The crux of the 24th AA was to exclude the applicability of article 13 on to article 368. Therefore, everything that was held in the *Golak Nath* case holds no values after 24th AA. As, after the 24th AA, it was clear that the Parliament can dilute the constitution including fundamental rights. After *Golak Nath* case the SC held that Parliament cannot amend fundamental rights, whereas after *Kesavananda Bharti* Case, the SC upheld the validity of the 24th amendment holding amendment to fundamental rights as constitutional but simultaneously putting a caveat of maintaining the basic structure. The crux of *kesavananda* case is that you can amend the entire constitution to form a new constitution; however, it should survive through its basic features which means that there are certain implied restrictions for amending the constitution and the basic features cannot be amended. The *Indira Gandhi Vs. Raj Narain* case is very significant as it put an end into the controversy of who is Supreme Court or the Parliament. They said that the Parliament represents the will of the people and if the people want to amend the constitution, they can exercise their power through Parliament. There should be no limitation on that. The Supreme Court in this case also said that the theory of basic structure is very ambiguous way and addition of clause (4) and (5) in article 368 rectify the situation. In *Minerva Mills v. Union of India* Case, the validity of 42nd AA as well as the two clauses of 368 was challenged. The Supreme Court said that these two articles were attacking the basic features of the constitution. Therefore, the Supreme Court held it unconstitutional. After this case it was finally settled that the constitution is supreme and Parliament cannot exercise unlimited Amending power.

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