



drishti

Basic Structure Doctrine: Kesavananda Bharati Case

 drishtias.com/printpdf/basic-structure-doctrine-kesavananda-bharati-case

Why in News

Main petitioner, **Kesavananda Bharati**, of *Kesavananda Bharati Sripadagalvaru and Ors v State of Kerala Case*, 1973 (known for the **basic structure doctrine of the Supreme Court**), passed away.

Key Points

- **Kesavananda Bharati:**
 - He **challenged the Kerala land reforms legislation in 1970**, which imposed restrictions on the management of religious property.
 - The case was **challenged under Article 26**, concerning the right to manage religiously owned property without government interference.
 - A **13-judge Bench** was set up by the Supreme Court, the biggest so far, to hear the case.
 - **Question underlying the case also included:** Was the power of Parliament to amend the Constitution unlimited? In other words, could Parliament alter, amend, abrogate any part of the Constitution even to the extent of taking away all fundamental rights?

- **Background:**

- The Supreme Court conceded absolute power to Parliament in amending the Constitution, as was seen in the verdicts in ***Shankari Prasad case (1951)*** and ***Sajjan Singh case (1965)***.
 - In **both the cases** the court had ruled that the term “**law**” in **Article 13** must be taken to mean rules or regulations made in exercise of ordinary legislative power and not amendments to the Constitution made in exercise of constituent power under **Article 368**.
 - This means **Parliament had the power to amend any part of the Constitution** including Fundamental rights.

But **Article 13(2)** reads - "The State shall not make any law which takes away or abridges the right conferred by this Part (i.e. Part-III) and any law made in contravention of this clause shall, to the extent of contravention, be void."
- However, in the ***Golaknath case (1967)***, the Supreme Court held that **Parliament could not amend Fundamental Rights**, and power to amend the Constitution would be only with a Constituent Assembly.

The Court held that an **amendment under Article 368 is "law" within the meaning of Article 13** of the Constitution and therefore, if an amendment "takes away or abridges" a Fundamental Right conferred by Part III, it is void.
- To dis-effect the judgments of the Supreme Court in the *Golaknath case (1967)*, *RC Cooper case (1970)*, and *Madhavrao Scindia case (1970)*, the then government enacted major amendments to the Constitution. Most notably:
 - **24th Constitutional (Amendment) Act, 1971**- Parliament had also given itself the power to amend any part of the Constitution.
 - **25th Constitutional (Amendment) Act, 1972**- The right to property had been removed as a fundamental right.

- **Verdict in the Kesavananda Bharati Case:**

- The landmark judgement was delivered on 24th April 1973 by a **thin majority of 7:6** wherein the majority held that **any provision of the Indian Constitution can be amended by the Parliament** in order to fulfil its socio-economic obligations that were guaranteed to the citizens as given in the Preamble, provided that such amendment **did not change the Constitution's basic structure.**
- The minority, however, in their dissenting opinion, were wary of giving the Parliament unlimited amending power.
- The court held that the **24th Constitutional Amendment was entirely valid.** But it found the **second part of the 25th Constitutional Amendment to be ultra vires.**

The Supreme Court declared the **Article 31C** as unconstitutional and invalid on the ground that judicial review is basic structure and hence cannot be taken away.

- Despite the ruling that Parliament cannot breach fundamental rights, the court upheld the amendment that removed the fundamental right to property.
The court ruled that in spirit, the amendment would not violate the “basic structure” of the Constitution.

- **Doctrine of the Basic Structure:**

- The **origins of the basic structure doctrine** are found in the **German Constitution** which, **after the Nazi regime**, was amended to protect some basic laws.
- Learning from that experience, the new German Constitution introduced substantive limits on Parliament's powers to amend certain parts of the Constitution which it considered 'basic law'.
- **In India**, the basic structure doctrine has formed the **bedrock of judicial review** of all laws passed by Parliament.
- No law can impinge on the basic structure. What the basic structure is, however, has been a continuing deliberation.
- **Parliamentary democracy, fundamental rights, judicial review, secularism-** are all held by courts as basic structure, the list is not exhaustive.
- It is the Judiciary that is responsible to decide what constitutes the basic structure.

- **Implications of the Judgement:**

- Politically, as a result of the verdict, the judiciary faced its biggest litmus test against the executive. The government ignored the opinion and superseded three judges.
- Within less than two years of the restoration of Parliament's amending powers to near absolute terms, the **Forty-second amendment** was challenged before the Supreme Court by the owners of Minerva Mills (Bangalore) a sick industrial firm which was nationalised by the government in 1974. Basic structure doctrine was **reaffirmed in the *Minerva Mills*** and later in the ***Waman Rao case, 1981***.

Source IE