
THE CRUCIAL DECADES FOR FUNDAMENTAL RIGHTS AND THEIR INTEGRITY

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ABSTRACT

This research paper sheds light upon one of the most crucial decades for fundamental rights and The Constitution of India's integrity and aim. The decade of 1964 - 1973, which faced a lot of controversies and court cases to come up to the decision if the current lawmakers reside the power of amending The Constitution of India with focus upon the most necessary rights of an individual, the Fundamental Rights. The paper talks about the importance of fundamental rights, a bit of the history and the realization that the Constitution makers had in regards to the need of fundamental rights in the Constitution, the doctrine of basic structure, the arguments that are pro and against the amendment powers of the Parliament in specific reference to the Part III of the Constitution of India, opinions of famous people and my own personal opinion on should Part III of The Constitution of India be amendable, while discussing the landmark cases throughout along with other relevant references and cases.

RESEARCH PAPER:

As Desmond Tutu, the anti-apartheid and iconic human rights activist once said, “Fundamental rights belong to the human being, just because you are a human being.”¹ This quote by him was self-explanatory in itself about how important fundamental rights are just to give meaning to an individual’s existence.

Back in early 20th century, around 1930s, the idea of having fundamental rights was initially rejected by the Simon Commission and the Joint Parliamentary Committee stating that, abstract declarations are useless, unless there exist the will and the means to make them effective. Regardless of which the makers of our constitution then included the Part III of The Indian Constitution consisting of fundamental rights so as to protect the liberty of an individual, as they had a string belief that without the fundamental rights, a democracy is nothing but useless and it is even said that when combined with the Part IV of The Indian Constitution, consisting of the Directive Principles of State Policy, they provide with social, economic and political justice for every member of the society. These rights are said and believed to be of upmost importance as they are the savior of an individual even from the society and the state, committing towards the wholistic development and providing with the right to get justice directly from the Supreme Court of India.² The fundamental rights are the of utmost importance and so is their application, and in case of any injustice and violation of the fundamental rights, the Article 32 of the Indian Constitution comes to the rescue, “Right to Constitutional Remedies”, ensuring no deprivation of fundamental rights faces by any Indian citizen, and is also called the heart and soul of the Indian Constitution, by Dr. B.R. Ambedkar.³ The Constitution of India wouldn’t have been this strong and reliable today of it weren’t for the lawmakers who understood the gravity of the matter and decided to include upon the fundamental rights, for which a committee on Fundamental Rights headed by Sardar Patel was formed for enumeration of fundamental rights for Indian citizens.⁴

¹ Tutu D, “Quotes about Fundamental Rights” (Quotes about Fundamental Rights (52 quotes) <<https://www.quotemaster.org/Fundamental+Rights>> accessed October 7, 2021

² Unoreads, “Fundamental Rights and Their Significance” (Unoreads2021) <<https://www.unoreads.com/article/fundamental-rights-and-their-significance>> accessed October 7, 2021

³ Bhatodkar K, “Article 32: Heart and Soul of the Constitution; by - Khyati Bhatodkar, Legal Asst., Prime Legal” (Prime Legal January 24, 2021) <<https://primelegal.in/2021/01/24/article-32-heart-and-soul-of-the-constitution-by-khyati-bhatodkar-legal-asst-prime-legal/>> accessed October 7, 2021

⁴ Dalal RS, “FUNDAMENTAL RIGHTS ENSHRINED IN INDIAN CONSTITUTION Provisions and Practices” (2009) 70 The Indian Journal of Political Science 779

Throughout the decades since the implementation of the Indian Constitution, there have been various controversies, amendments, and decisions made resulting in changes in The Constitution of India, out of which a few have affected the power, integrity and flexibility of fundamental rights, and are one of the landmarks. The decade of 1964 - 1973 was such a challenging decade for the fundamental rights and there have been three landmark cases namely, *Sajjan Singh vs State of Rajasthan*, 1964⁵, *I.C. Golaknath vs. State of Punjab & Haryana*, 1967⁶ and *Kesavananda Bharati v. State of Kerala*, 1973⁷ dealing with the doctrine of basic structure and power of parliament over amendments of Constitution of India.

The doctrine of basic structure is a doctrine which was made and then propounded by the Judiciary of India in the year of 1973 in the case of *Kesavananda Bharati v. State of Kerala*, 1973⁸ to limit the powers of the Parliament of amending of the Constitution of India, and to protect the basic structure of the basic law of land by preventing its amendment under the course of constituent power under the Indian Constitution.⁹ Even though this doctrine was formally formed and given proper light in the year of 1973, it has been partially brought up and discussed in different terms throughout a lot of cases.

The journey of questioning of the doctrine of basic structure began in 1951, and was first time faced in the case of *Sri Sankari Prasad Singh Deo vs Union of India*, 1951¹⁰, where the first constitutional amendment relating to the curtailing of right to property was challenged in the court as arguing that if as per the Article 13 of the Constitution of India, no law can infringe or abrogate fundamental rights, then how can the constitutional amendments violate them? To which it was made clear under the principle of Harmonious Constitution that the scope of Article 13 of The Constitution of India is limited to ordinary law and the Article 368 of The Constitution of India covers the portion of constitutional amendments made by the Parliament, and that the Article 13 cannot overpower Article 368. Hence, the Parliament has the right to amend any fundamental right under the Article 368.¹¹

With proper understanding of the very first case relating to the doctrine of basic structure, one thing has become very clear that the scope of Article 13 is restricted, and as per

⁵ 1965 AIR 845, 1965 SCR (1) 933

⁶ 1967 AIR 1643; 1967 SCR (2) 762

⁷ (1973) 4 SCC 225; AIR 1973 SC 1461

⁸ (1973) 4 SCC 225; AIR 1973 SC 1461

⁹ Raza A, "The Doctrine of 'Basic Structure' of the Indian Constitution: A Critique" [2015] SSRN Electronic Journal 1

¹⁰ A.I.R. 1951 S.C. 2193

¹¹ A.I.R. 1951 S.C. 2193

the law of that decade the decision of the Court seems reasonable, and the flexibility remains unharmed, but in my personal opinion the question raised in the particular question needed more attention as it makes sense and if Article 13 got no control over the fundamental rights, the entire aim of the constitution of fundamental rights will drown, and that the lawmakers could easily violate them and exploit the citizens of India. The decision sufficient in terms of the issue, could have been a bit more defined, as the vague judgement can easily be exploited, and it was in the next few years resulting in the Fourth Amendment of the year 1955, dealing with amending of a few Articles in the Part III of The Constitution of India, without any restriction.

Then in the next decade, in the case of *Sajjan Singh vs State of Rajasthan*, 1964¹², where the constitutionality of the Seventeenth Amendment from the year 1964, putting numerous new laws in the Ninth Schedule were challenged, and the decision by the 5 judge bench was made under the same lines of the case of *Sri Sankari Prasad Singh Deo vs Union of India*, 1951¹³, with 3:2, and the differing opinions were of Justice Mudholkar and Justice Hidayatullah according to whom, there are certain basic fundamental features of the Constitution of India which should not be changed.¹⁴

The only thing lacking even in this particular case is that of proper definition and detailed discussion over the extent of changes to be made to the Fundamental Rights. On one hand, if it is important for the lawmakers to maintain and follow the basic aim to never harm the flexibility of the Constitution of India, it is equally important to maintain the aim of keeping intact the basic structure of the Indian Constitution. Just like the case of *Sri Sankari Prasad Singh Deo vs Union of India*, 1951¹⁵, if the doctrine could have had some light and the extent would have been discussed, the issue of complexities, rules and thinking needed to be kept in mind while the amendment of the Constitution of India would have been resolved way earlier, avoiding the unconstitutional amendments made in the latter half of the decade of 1960 - 1970.

Finally in the case of *I.C. Golaknath vs. State of Punjab & Haryana*, 1967¹⁶ when the Seventeenth Constitutional Amendment, 1963 was challenged again, but the issue that was raised was different and talked about the amendment powers of the Constitution of India, and

¹² 1965 AIR 845, 1965 SCR (1) 933

¹³ A.I.R. 1951 S.C. 2193

¹⁴ 1965 AIR 845, 1965 SCR (1) 933

¹⁵ A.I.R. 1951 S.C. 2193

¹⁶ 1967 AIR 1643; 1967 SCR (2) 762

their scope if it was limited or unlimited. In this case of 11-judge bench, the Supreme Court pointed out that the Parliament resides no power to amend or abridge the fundamental rights, and that the Article 13 (2) of the Constitution of India does include the field of amendments and in case of violation of any fundamental right by any amendment, the amendment would be void. The decision was made in the ratio of 6:5, overruling both the judgments namely, *Sri Sankari Prasad Singh Deo vs Union of India, 1951*¹⁷, and *Sajjan Singh vs State of Rajasthan, 1964*¹⁸, wherein the argument was brought in that if the Parliament gets the power to amend the fundamental rights, a time would come when there would be no fundamental rights at all. Justice Hidayatullah expressed that the Article 13 covers both the legislative amendments as well as the constitutional amendments. It was held that the fundamental rights are the basic needs of the citizen of India and hence cannot be amended but are needed to be protected completely.¹⁹

This case was successful in protecting the basic fundamental rights of the citizens from the lawmakers and any exploitation that could have happened, but the judgement was extremely rigid and resulted in harming the “flexibility” feature of the Constitution of India. Just imagine if something is done for once and all, like a permanent decision for the rest of your life which cannot be changed ever. Imagine having dal chawal for the rest of your life, that was the issue in this case. The fundamental rights were strictly made out of scope of amendments, but what if at some point in an imaginary world it is needed to be amended otherwise the democracy would fall, what would happen then? No choice left, isn't it? Throughout the three cases the issue was under the same ambit but one could never find the particular answer that was needed, the judgement which could protect the basic structure as well as remain flexible enough was missing, and came in the year of 1973, later on.

Later on, in the case of *Kesavananda Bharati v. State of Kerala, 1973*²⁰, the Court put up a limitation of keeping the basic structure of the Constitution of India while the process of its amendment. This was held when the 13-judge bench, gave a decision by a majority of 7:6 to fulfill the socio-economic obligations guaranteed to the citizen without changing the basic structure of the Indian Constitution, and upheld the Twenty-Fourth Amendment which was

¹⁷ A.I.R. 1951 S.C. 2193

¹⁸ 1965 AIR 845, 1965 SCR (1) 933

¹⁹ 1967 AIR 1643; 1967 SCR (2) 762

²⁰ (1973) 4 SCC 225; AIR 1973 SC 1461

seeking that nothing in the Article 13 shall affect the power of amendment of the Article 368.²¹

After detailed and relevant information required to understand the proceedings that happened in reference to the Constitutional Amendments, one can know that the Fundamental Rights can be amended with maintaining the basic structure, and that in all the cases the ratio was extremely narrow, so we cannot exactly say that if the decisions were right or wrong. Every individual might have a different opinion, but when the cases are seen with the perspective of law v. lawmakers, the case of *I.C. Golaknath vs. State of Punjab & Haryana, 1967*²² was a win for law, as the case resulted in ultimate superiority of the law and reinforced the belief and faith of the citizens of India in the law once again.

In my personal opinion, the fundamental rights give the liberty to an individual to live their life as per their choice and in case of violation provides with remedy, and that there is no right status of the amendment powers, as the amendments made are the ones that need attention, which are hugely affected by politics, too, as the lawmakers are what constitutes politics, it is not impossible to imagine that for the political benefits of the party, changes might be made to the Constitution resulting in horrible long-term losses and disrupting of one's life's peace disguised under the curtain of happy little short term benefits. It might even be said that the changes which are not directly made to the Fundamental Rights, might indirectly affect those in name of different policies, like the famous quota controversy, where everyone has a different opinion, many being in favor as they are benefitted and many being against as they are facing difficulties. Another such cases of easy process of amendment are that of the Modi government's new reservation policy providing a quota of 10% to 96% economically weaker section, and just representing the upper-caste, and the other case of famous emergency in the years of 1970s by Indira Gandhi, when everything happened overnight all because of the plan of the government and flexibility provided by the Constitution of India in regards to the amendments.²³ The main thing to observe through such incidents is that if the lawmakers can take unfair advantage, sometimes even overnight it is extremely scary to even imagine what can be done with the fundamental rights, and to some extent I think they should be totally protected thinking of such incidents, but on the same hand, just like one cannot imagine what the lawmakers might do to the fundamental rights one day, one cannot imagine what the

²¹ (1973) 4 SCC 225; AIR 1973 SC 1461

²² 1967 AIR 1643; 1967 SCR (2) 762

²³ Rajagopalan S, "Opinion: Why Amending an Inconvenient Constitution Is a Political Move" (*Mint* January 21, 2019) <<https://www.livemint.com/opinion/online-views/opinion-why-amending-an-inconvenient-constitution-is-a-political-move-1548087321056.html>>; accessed October 7, 2021

situation might be one day and that fundamental rights even though fulfill all the basic needs right now, might become limited that time. The doctrine of basic structure helps in preventing such situations.

Cases like *Minerva Mills v. Union of India, 1980*²⁴, Chief Justice Chandrachud stated that, “the Indian Constitution is founded on the bedrock of the balance between Parts III and IV. To give absolute primacy to one to one over the other is to disturb the harmony of the Constitution. This harmony and balance between fundamental rights and directive principles is an essential feature of the basic structure of the Constitution.”, proving yet again the importance of the Fundamental Rights, and showing the positivity of the doctrine of basic structure. Personally, I am satisfied with the doctrine of basic structure, and think that the structure provides right amount of flexibility and protection to the essence of the Constitution of India. Where the thoughts like, that of Subhash C. Kashyap’s, a political scientist, who said, “if the sovereign people through their representatives cannot bring about their desired change, who will?”²⁵ makes me question my satisfaction with the existence and implementation of the doctrine of the basic structure.

Even though there are a million opinions demanding the stability, and protection of fundamental rights, there are opinions demanding flexibility of those rights, too. The doctrine of basic structure helps in a practical and helpful way for the fundamental rights to exist and be amended, what I think after going through the above cases and reading upon different situations, I am of a belief that the Part III of the Constitution of India should be under the ambit of being amended when needed while not harming the doctrine of basic structure along with which the procedure should be made more of a mixture of the Judiciary and Legislature, and not leaving the entire control in the hands of the Parliament. The Part III of the Constitution of India is like the most important part everyone deserves to enjoy and hence, should be kept that way along with the changes made to it as per the development of the country and time, and the needs of the country and the citizens residing, as the fundamental rights are something which cannot be kept totally rigid or totally flexible and a balance is extremely necessary. As I believe, “The key to happy life is living freely while maintaining of a balance.”.

²⁴ (1980) 3 SCC 625

²⁵ Kashyap, Subhash C.- Our Constitution, Edition 2011, Reprint 2014, p. 340