LIMITS OF PARLIAMENTARY POWER AND BASIC STRUCTURE OF CONSTITUTION

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ABSTRACT

My paper examines the doctrine of basic structure in the Indian Constitution through an interesting chronological exploration of historical developments and judicial conflicts that shaped its emergence. Beginning from the history of constitutional background and the series of amendments that triggered debates on parliamentary supremacy over courts, the study traces how landmark cases progressively defined the limits of legislative power. By analysing these vital judgments and the legal controversies they generated, the paper highlights how these decisions influenced the making of laws and ultimately crystallized into the doctrine of basic structure as the Constitution's most enduring safeguard. The research underscores that this doctrine not only arose from judicial evolution but also was a response to political and legal challenges, ensuring the preservation of India's constitutional identity against arbitrary alterations.

INTRODUCTION

A nation's Constitution[1] is the foundation of its self-governance. It empowers the state to function efficiently and smoothly, while being crafted with the needs and aspirations of its people at its core.

Should there be equality among all? Can people choose their representatives? What are the citizens' rights? What gives us right to question? What guarantees our freedom? etc. All of these rights and laws given by the constitution of India to us form the core essence of our constitution and is very essential for a good and healthy democracy.

But what if the core principles like these on which the constitution is standing on could be changed by parliamentary processes? Can parliamentary majority attempt to abolish equality before law, or can our Right of religious Freedom be nulled through government in power? Can democracy be overthrown? could the fundamental rights be changed or removed as per will? raising the question of whether such core principles are amendable.? And if they aren't. what tells us they cannot be changed.

This research seeks to answer these questions by examining the doctrine of Basic Structure and the limits of parliamentary power, that how was the need of the concept felt and then how through a series a acts and amendments led to the introduction of this doctrine

We will take into look the historical background existed and how the constitution fought within its own articles, how Fundamental Rights came in way of Directive Principles of State Policy[2], from redistribution of lands to reservation rights, how land reforms were introduced, with the explanations of the most important cases in the Indian history and why is the constitution stands as the supreme law of land,

IMPORTANT TERMS FOR BETTER UNDERSTANDING

1. DPSP [DIRECTIVE PRINCIPLES OF STATE POLICY] [3]

- Basically, they are guidelines given to the state to promote social equality means it is

[1] India Const. pmbl.
[2] India Const. arts. 36–51.
[3] India Const. arts. 36–51.

expected that the laws of state will be made considering DPSP.

- They are non-justiciable hence not enforceable in courtrooms.

2. **ARTICLE 13[4] [FR]**

- 13[2] Any **law** made with the intention to hurt a fundamental right of citizens shall be void to that extent

-13[3][a] explains the term law according of this "Law" **includes ordinances, orders, bye-laws, rules, regulations, notifications, customs, and usages that have the force of law**…

3. **ARTICLE 368[5]**

-grants parliament the power to amend the constitution any provision **through constitutional amendment acts** [majority in both houses required]

-Article 368 is the engine of constitutional change in India. It ensures flexibility so the Constitution can evolve.

4. **ARTICLE 32[6][FR]**

-Gives power to citizen to directly approach supreme court if their fundamental rights are violated.

5. **ARTICLE 19 (1){F}[7]**

-Used to be a FR which gave right to citizen to hold, dispose, and acquire land later repealed by the 44th amendment [8] making it a legal right.

6. **ARTICLE 31[9][FR]**

- a deleted article which gave the right to property, deleted by 44th amendment in 1978

[4] India Const. art. 13
[5] India Const. art. 368.
[6] India Const. art. 32.
[7] India Const. art. 19(1)(f)
[8] Constitution (Forty-Fourth Amendment) Act, 1978
[9] India Const. art. 31.

- it stated that no person shall be deprived of his property except by the authority of law

- No property shall be compulsorily acquired or requisitioned except:

  1. for a **public purpose**,

  2. by authority of law, and

  3. the law must provide for **compensation** (either a fixed amount or principles for determining it)

7. ARTICLE 39[10][B] AND [C] land reforms

- 39[b] require state to distribute resources to people for common good

-39[c] ask state to prevent concentration of wealth and resources

8. Article 14[11][FR]

- Gives equality before law and equal protection of law that every citizen is equal in the eyes of law and state shall protect citizen in situation equally

9. Article 15[12][FR]

-discrimination against caste race sex religion and birth place

10. Article 46[13] [DPSP]

- directs government to protect and promote educational interest of weaker group

11. **Article 368 and Article 13**

The conflict which is going to be the core argument of many cases will be Article 368 v. Article 13 which is that while Article 368 gives the government power to amend constitution, while the opposers will argue that it cannot be used to amend any

[10] India Const. art. 39.
[11] India Const. art. 14.
[12] India Const. art. 15.
[13] India Const. art. 46.

fundamental rights as Article 13[2] explains that no law which hurt Fundamental Rights should be considered void to that extent…

HISTORICAL BACKGROUND

The historical trajectory began soon after India's independence, when the Constitution came into force on 26 January 1950, marking the birth of the Republic of India

Contradictions soon emerged within the constitutional framework, particularly between the enforceable Fundamental Rights (Part III, Articles 14–35)[14] and the non-justiciable Directive Principles of State Policy (Part IV, Articles 36–51).

In the Indian constitutional framework, Fundamental Rights hold greater enforceability than Directive Principles of State Policy. Consequently, in cases of direct conflict between the two, the judiciary accords primacy to Fundamental Rights, while seeking to harmonize them with Directive Principles wherever possible

Meaning that Fundamental Rights are directly enforceable before the Supreme Court under Article 32, whereas Directive Principles of State Policy are non-justiciable and cannot be challenged in court.

These tensions became evident almost immediately, as early judicial decisions highlighted the friction between enforceable rights and guiding principles. A brief examination of landmark cases illustrates how these contradictions ultimately led to the articulation of the Basic Structure Doctrine.

The contradictions were mainly because the state was continuously trying to shorten the gap between the lower section and higher class of society. the state government continuously tried to introduced policies like **reservation** on education or introduction of concepts like **land reforms** [taking holdings from high section to distributing them to lower section] and concepts like land celling etc which were in support of DPSP for the uplifting of lower section but hence these were not enforceable in court in contradictions with fundamental rights like right to property and educational rights for all these were held down by courts.

[14] India Const. arts. 14–35.

CONTRADICTIONS, CASEs, AMENDMENTS

- **State of Madras v. Champakam Dorairajan, AIR 1951 SC 226**

This was the first major case highlighting the tension between Fundamental Rights and Directive Principles. in **Champakam Dorairajan case**[15], a Brahmin candidate, was denied admission despite merit because of the quota system under madras communal government order which reserved seats in educational institution on caste basis.

He challenged the order under **Article 226** [16][protecting Fundamental Rights and ensuring judicial review] in the Madras High Court, claiming violation of **Article 15(1)** [17](prohibition of discrimination) and **Article 29(2)** [18](no denial of admission based on religion, race, caste, etc.).

Later The Supreme Court upheld high court's order and struck down the communal reservation order enacted to promote social justice (a DPSP goal), holding that it violated Article 29(2), a Fundamental Right. The Court declared that **Fundamental Rights have absolute supremacy over Directive Principles**.

- **The Constitution (First Amendment) Act, 1951**

Seeing the constant conflicts over the articles of FR AND DPSPs on land reforms and educational rights the prime minister of that time mister Jawahar Lal Nehru brought in the first amendment of the Indian constitution in which majorly: -

- In addition to Article 31 new addition in form of Article 31[A][19], it said that **laws relating to acquisition of estates, taking over management of properties, amalgamation of corporations, or extinguishing rights in land** would not be invalid just because they violated Fundamental Rights i.e. it allowed acquisition of land possible by state for the purpose of redistribute land and was a step to abolish zamindari and in direction of land reforms and Article 31[B] [20]which introduced the 9th schedule[21]

[15] State of Madras v. Champakam Dorairajan, AIR 1951 SC 226.
[16] India Const. art. 226.
[17] India Const. art. 15(1).
[18] India Const. art. 29(2).
[19] India Const. art. 31A.
[20] India Const. art. 31B.
[21] India Const. sched. IX.

shielding laws listed under it from judicial reviews of high court and supreme court meaning that the laws under 9th schedule were immune from judicial reviews.

- The First Amendment [22]expanded the scope of restrictions on the Fundamental Right to property under Article 19(1)(f). By allowing the state to impose reasonable limitations in the interest of public welfare and socio-economic reforms, Parliament ensured that agrarian legislation such as zamindari abolition and land ceiling laws could not be invalidated merely on the ground of violating property rights. This marked a decisive shift from absolute property rights toward a constitutional commitment to social justice

- The third main addition in the first amendment was reservation in education which was added to counter cases like Champakam. As we discussed earlier in his case the courts held that caste-based reservation in educational institution is prohibited as it conflicted with the Article 15 of constitution.

To struck this conflict of educational reservation **Article 15[4]**[23] was added to the constitution **Article 15(4)** explicitly empowered the state to make **special provisions for the advancement of socially and educationally backward classes, Scheduled Castes (SCs), and Scheduled Tribes (STs)** making reservation in education legitimate hence it was itself now a **part of fundamental rights.**

- **Shankari Prasad Singh Deo v. Union of India, AIR 1951 SC 458**

as we already know about the conflicts of article 19[1][f] and article 31 i.e. right to property with the policies that government was trying to introduce like land reforms and land celling abolishment of zamindari etc which were in support of article 46 DPSP.

The landowners who were continuously enjoying the protection against land reforms laws through FR was taken away after first amendment of 1951.

Shankari Prasad Singh Deo was a zamindar from Orissa who challenged the First Constitutional Amendment of 1951, arguing that Parliament had no power to amend Fundamental Rights. His issue was that land reform laws, which took away property from

[22] The Constitution (First Amendment) Act, 1951.
[23] India Const. art. 15(4).

zamindars for redistribution, violated his Fundamental Right to property under article 31 and 19[1][f]

He further argued that the additions through the first amendment like 31[b] and 31[c] shall be void under Article 13 as they were against the fundamental rights

Landowner continuously challenged the amendment, arguing that Parliament had no authority to amend **Fundamental Rights**, since Article 13 said any "law" violating Fundamental Rights would be void to the extent.

This gave rise to the main conflict we see in this case which is against Article 13 and 368.

Hence began the historic case of Shankari Prasad v. Union of India (1951) [24],at one side, Shankari prasad argued that the constitution amendment is void under Article 13[2] as it conflicted with fundamental rights. However, the Supreme Court upheld the validity of the First Constitutional Amendment, holding that Parliament possessed the power under **Article 368** to amend any provision of the Constitution**, including Fundamental Rights**. The Court reasoned that a constitutional **amendment was not 'law' within the meaning of Article 13[2]**, this was because constitution is amended through **constitutional amendment acts** under Article 368 and these are not inclusive in the definition of law under 13[3]. Therefore, could not be struck down for violating Fundamental Rights.

This judgment marked the beginning of a long constitutional struggle, as it effectively **granted Parliament unlimited amending power under Article 368.**

- **The Constitution (Seventeenth Amendment) Act, 1964.**

After Shankari prasad case now that the government confirmed the undisputed power, the government of centre and states escalated to work on land reforms acts introducing new laws of land reforms in their respective states for the purpose of land distribution. To protect these new laws from being challenged in court the government brought 17th amendment.[25]

This amendment was bought to strengthen and empower the land reform laws further through adding around more 44 laws [mostly land reforms and agrarian laws] including specific laws

[24] Shankari Prasad Singh Deo v. Union of India, AIR 1951 SC 458.
[25] The Constitution (Seventeenth Amendment) Act, 1964.

of states like Rajasthan, Uttar Pradesh and Bihar, Punjab etc to 9th schedule hence no judicial review was possible, and hence no judicial review, the laws couldn't be challenged in courts.

- **Sajjan Singh v. State of Rajasthan, AIR 1965 SC 845**

A famous case soon after, challenging the 17th amendment was Sajjan Singh v. state of Rajasthan[26]. Where Sajjan Singh argued before court that the 17th amendment was unconstitutional and Shankari prasad case should be reconsidered before courts.

That weather Article 368 holds the right to amend fundamental rights as well? but, the court upheld the Shankari prasad decision affirming that under 368 the parliament holds the power to amend constitution through amendment acts as they did not form laws under 13[3].

But the **Sajjan Singh case**, emphasize that although the Court upheld Shankari Prasad, **Justice Hidayatullah and Justice Mudholkar hinted at limits to Parliament's amending power** — this is the seed of the Basic Structure Doctrine.

- **I.C. Golaknath & Ors. v. State of Punjab, AIR 1967 SC 1643**

While Sajjan Singh case upheld Parliament's amending power, the seeds of doubt planted in Justice Hidayatullah's dissent (i.e. Sajjan Singh case) blossomed in Golak Nath.

In the Golaknath case [27]The Golak Nath family in Punjab owned large agricultural estates. Their land was affected by Punjab's land ceiling laws I.e. [**Punjab Security of Land Tenures Act, 1953** [28]and the **Mysore Land Reforms Act, 1962 (amended 1965)**.], [29]which had been protected under the Ninth Schedule via the 17th Amendment.

The celling laws made that Families were restricted to owning only a permissible area of agricultural land. In Punjab, the ceiling was generally around **7 hectares (irrigated land)** and **11 hectares (unirrigated land)** per family

These laws were a direct attempt to implement Directive Principles (Articles 39(b) & 39(c)),

[26] Sajjan Singh v. State of Rajasthan, AIR 1965 SC 845.
[27] I.C. Golaknath v. State of Punjab, AIR 1967 SC 1643.
[28] Punjab Security of Land Tenures Act, No. 10 of 1953 (India).
[29] Mysore Land Reforms Act, No. 10 of 1962 (India).

ensuring equitable distribution of resources.

They challenged these constitutional amendments[17th], arguing that Parliament had no power to amend Fundamental Rights (like the right to property under Articles 19(1)(f) and 31) same like Shankari and Sajjan. And that parliament holds no power to amend the fundamental rights under Article 368 and the word 'LAW' under 13[3] should include constitutional amendment acts in it.

But this time mood changed for the court, as In a historic decision through bench of 11 judges and a 6:5 majority, the Supreme Court held the landmark decision that **Parliament cannot amend Fundamental Rights**, treating constitutional amendments as 'law' under Article 13[3], hence Article 368 no longer held power for amending the constitution, This judgment froze Fundamental Rights beyond amendment, intensifying the clash between legislature and judiciary and paving the way for the Basic Structure Doctrine in Keshvananda Bharati (1973)[30]."

Importantly, the Court ordered that the decision would **not apply retrospectively i.e. introduced the doctrine of prospective overruling — the decision would not apply retrospectively,** meaning past amendments and land reform laws remained valid.

However, Parliament was bound to follow the ruling for all **future amendments**, this rigidity prompted Parliament to pass the **24th Amendment (1971)**, restoring its amending power, The confrontation ultimately set the stage for Keshvananda Bharati (1973), [31]where the **Basic Structure Doctrine** was born.

- **The 24th Constitutional Amendment [1971]**

The 24th Amendment [32] was Parliament's response to Golak Nath v. State of Punjab (1967), which had restricted its power to amend Fundamental Rights. To reassert its authority, Parliament modified Articles 13 and 368, thereby restoring its constituent power.

Under **Article 13**, a new clause [4] [33] was inserted stating that "Nothing in this article shall apply to any amendment of this Constitution made under Article 368." This ensured that

[30] Kesavananda Bharati v. State of Kerala, AIR 1973 SC 1461; (1973) 4 SCC 225.
[31] Kesavananda Bharati v. State of Kerala, AIR 1973 SC 1461; (1973) 4 SCC 225.
[32] The Constitution (Twenty-Fourth Amendment) Act, 1971.
[33] India Const. art. 13(4).

constitutional amendments were not treated as "law" under Article 13(3) and could therefore override the prohibition in Article 13(2) against abridging Fundamental Rights.

Under **Article 368**, Parliament's constituent power to amend any provision of the Constitution was explicitly declared.

The amendment also made it mandatory for the President to give assent to a Constitutional Amendment Bill once passed by both Houses of Parliament. Further, it clarified that Article 368 contained not only the procedure but also the power of amendment, removing earlier doubts about its scope.

- **The 29th Amendment [1971]**

The 29th Amendment [34]was enacted to protect two Kerala land reform laws — the Kerala Land Reforms Act, 1963 and amending Act of 1969 and by placing them in the **Ninth Schedule** of the Constitution.

At the time, due to the judgement of Golak Nath case now agrarian reforms were facing repeated judicial scrutiny, especially under Articles 19, and 31, which safeguarded equality, property, and freedom rights.

And by inserting these laws into the Ninth Schedule, Parliament ensured that Kerala's land redistribution program could be implemented without fear of being struck down by courts, The amendment thus reinforced the government's commitment to socio-economic justice and redistribution of resources under Directive Principles of State Policy, while also highlighting the growing under skin tension between Fundamental Rights and Directive Principles — a debate that would culminate in the Keshvananda Bharati (1973) case.

- **The 25th Amendment [1971]**

In the series of continuous amendments, one more important for us is the 25th amendment[35], it was introduced to make acquisition of property more affordable for the government, while simultaneously elevating certain Directive Principles above Fundamental Rights."

[34] The Constitution (Twenty-Ninth Amendment) Act, 1971.
[35] The Constitution (Twenty-Fifth Amendment) Act, 1971.

Firstly, this replaced the ter compensation in the clause 2 of article 31 and replaced it with the term amount. This was done to avoid further judicial reviews like in the case of [R.C COOPER][36], as Parliament wanted to avoid judicial interference in deciding whether the compensation was "adequate."

Now, the law only had to specify the "amount" or principles for determining it, and courts could not question adequacy.

Secondly Article 31C [37]was added into the constitution which stated that if a law was made to implement **Directive Principles under Articles 39(b) & 39(c)** (equitable distribution of resources, preventing concentration of wealth), then:

- Such a law could **not be challenged** for violating **Articles 14, 19, or 31**.
- Courts were barred from reviewing whether the law truly implemented those Directive Principles.

➢ THE KESHVANANDA BHARTI CASE [1973]

Swami keshvananda Bharti, who was serving as **Shankaracharya of Edneer Mutt [Kasaragod town in Kerala], The mutt held** large property across state which were taken away by the Kerala land reform laws which were put into the 9th schedule as under 29th amendment.

Swami argued in court against 29th Amendment that the land reforms were in violation of his property rights under Article 31 and 19 and demanded equality before law under Article 14. further adding that Kerala Land Reforms Acts directly affected the property and management rights of his religious institution (Edneer Mutt), He argued that these laws interfered with the mutt's ability to practice and manage its religious affairs, thereby violating his fundamental rights under Articles 25 [freedom of religion] and 26 [freedom to manage religious institution][38]

He argued that even 24th constitutional amendment was unconstitutional and parliament should

[36] Rustom Cavasjee Cooper v. Union of India, AIR 1970 SC 564; (1970) 1 SCC 248
[37] India Const. art. 31C.
[38] India Const. arts. 25–26.

not hold power to amend fundamental rights

Adding that the 25th amendment was also to be considered unconstitutional as the he did not receive a valid compensation from the government and a demand for review and to decide a fair compensation was taken away with this amendment

The case was heard by the largest bench in Indian judicial history—13 judges—and the Court delivered a fractured 7:6 majority judgment.

The Supreme Court upheld Parliament's power to amend the Constitution under Article 368, including Fundamental Rights, but introduced a crucial limitation: Parliament cannot alter or destroy the **Basic Structure of the Constitution**. This doctrine preserved core principles such as democracy, rule of law, judicial review, and Fundamental Rights from legislative overreach.

On the amendments, the Court upheld the 24th Amendment, **partly** upheld the 25th Amendment by allowing the substitution of "compensation" with "amount" but striking down the bar on judicial review, and upheld the 29th Amendment **subject to the Basic Structure test**.

Thus, while Keshvananda lost his individual property dispute case, the case established a historic permanent safeguard against unlimited parliamentary power, ensuring that the Constitution's foundational values remain inviolable.

CONCLUSION

The evolution of India's constitutional jurisprudence demonstrates a profound struggle between legislative ambition and judicial restraint. At its heart lay the conflict between enforceable Fundamental Rights and aspirational Directive Principles of State Policy.

While the parliamentary powers sought to advance social justice and equality through land reforms, reservations, and redistribution of resources, the judiciary was compelled to safeguard individual fundamental rights. This shaped the trajectory of constitutional amendments and case law, culminating in the formation of the Basic Structure doctrine of constitution.

The doctrine did not emerge suddenly out of nowhere but rather was the product of a gradual and contested process of times.

Early cases such as State of Madras v. Champakam Dorairajan, AIR 1951 SC 226 scored the supremacy of Fundamental Rights through safeguarding them over state principles[39], while the First Amendment and subsequent judicial pronouncements in Shankari Prasad case and Sajjan Singh case affirmed Parliament's expansive amending power.

Yet, question began to rise whether such power could remain unchecked. The landmark decision in Golak Nath case of I.C. Golaknath v. State of Punjab, AIR 1967 SC 1643 crystallized these doubts, holding that constitutional amendments were "law" under Article 13 and thus subject to limitations making parliamentary powers feel cripple.

Parliament's response through the 24th, 25th, and 29th Amendments reflected its determination to reclaim authority, but also intensified the constitutional confrontation.

Finally, it was in Keshvananda Bharati case [40] that the Supreme Court finally put an end to these competing claims. By a narrow majority, the Court upheld Parliament's power to amend the Constitution, including Fundamental Rights, but introduced a critical limitation: the Basic Structure of the Constitution.

Under which it said that some core elements of constitution could not be altered or destroyed. This principle safeguarded democracy, judicial review, separation of powers, and the rule of law as inviolable elements of India's constitutional identity. Further stating that more core elements will be told by the courts with times through judgements

In effect, the Court ensured that while the Constitution remained flexible and adaptable, its foundational values were preserved against transient political majorities, in other words ensuring that the elements and principles like democracy on which the constitution stands cannot be harmed by anyone's political motive, it also ensured smooth functioning

The significance of the Basic Structure doctrine lies in its enduring relevance. It has become the cornerstone of Indian constitutionalism, guiding subsequent judicial review of amendments and protecting the integrity of democratic institutions.

By putting substantive limits on parliamentary power, the doctrine affirms that the Constitution is not merely a procedural framework but a living document of the nation. It ensures that social

[39] India Const. arts. 36–51.
[40] Kesavananda Bharati v. State of Kerala, AIR 1973 SC 1461; (1973) 4 SCC 225.

justice initiatives like Directive Principles can proceed, but never at the expense of dismantling the essential guarantees of liberty and equality i.e. Fundamental Rights.

In other terms, the doctrine reflects a balance between continuity and change. It acknowledges that a constitution must evolve to meet the needs of a dynamic society, yet insists that certain principles are beyond compromise and should be preserved for a healthy and stable society.

This balance has fortified India's democracy, ensuring that while governments may legislate boldly, they remain bound by the higher ideals enshrined in the constitutional order. Thus, the Basic Structure doctrine stands as a permanent safeguard against authoritarianism and arbitrariness, preserving the Constitution as the supreme law of the land and the enduring foundation of the Republic, and making the parliamentary powers continuously aware of their limits

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