
DUAL GUARDIANS OF LIBERTY: THE ROLE OF THE UNION AND STATES IN PROTECTING FUNDAMENTAL RIGHTS

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ABSTRACT

A key component of constitutional democracies is the safeguarding of basic rights, which guarantees that people's freedoms and liberties are not violated. Within federal systems, the interaction between the Union (the central authority) and the states creates a complicated but essential structure. Using the Indian Constitution as a case study, this abstract examines the duties and obligations of both branches of government in defending these fundamental rights. The Indian Constitution requires the Union and state governments to uphold and advance these rights through its comprehensive listing of Fundamental Rights in Part III. The Union is essential in establishing national norms and guaranteeing consistency in the implementation of these rights throughout the nation because of its legislative authority and the judiciary. Important mechanisms include the Supreme Court's adjudication of infractions, the capacity to legislate on subjects of national interest, and the authority to interfere in state affairs when basic rights are in jeopardy. State-level implementation and enforcement of these rights, however, are largely the responsibility of the state. Their responsibility is to make sure that their laws and policies don't violate anyone's basic rights and adhere to constitutional demands. In this sense, state high courts are essential because they offer a local forum for resolving disputes and interpreting rights in light of area particulars. In disputed matters, the balance of power between the Union and the states is frequently at stake. In these cases, the judiciary—especially the Supreme Court—serves as an adjudicator to settle disputes and defend individual rights. Prominent legal cases like *Maneka Gandhi v. Union of India* and *Kesavananda Bharati v. State of Kerala* highlight the judiciary's role in interpreting the constitution and broadening the definition of basic rights. In summary, under a federal system such as India's, the Union and state governments work together to safeguard basic rights, with the watchful judiciary acting as a mediator. By adjusting to the many and changing requirements of society while preserving the integrity of the Constitution, this interaction guarantees the preservation of individual rights, which is the fundamental component of democracy.

Keywords: Fundamental rights, responsibility, protection, Democracy, Freedom

“If things go wrong in the new Constitution, the reason will not be that we had a bad Constitution, what we will have to say that Man was vile”. **Dr B R Ambedkar**

Introduction

The chapter on Fundamental Rights, contained in Part III of the Indian Constitution, was not incorporated as a popular concession to international sentiment prevalent after the conclusion of the Second World War. It was the ardent desire and persistent demand of our freedom fighters and Founding Fathers that a future Constitution of India should contain a guarantee of fundamental entitlements for the people of India. The demand was made as far back as in 1895, in the Constitution of India Bill, popularly known as the Swaraj Bill, which was inspired by Lokmanya Tilak¹ The Indian National Congress in its Madras Session in 1927 declared that the basis of a future Constitution must contain a declaration of fundamental rights. Again in 1928, the Motilal Nehru Committee in its report strongly recommended the adoption of fundamental rights as a part of the future Constitution of India. It is remarkable that the report, in the chapter on Fundamental Rights, stated that,

*“Every citizen shall have the right to a writ of habeas corpus. Such right may be suspended in case of war or rebellion by an Act of the central legislature or, if the legislature is not in session, by the Governor-General in Council, and in such case he shall report the suspension to the legislature at the earliest possible opportunity for such action as it may deem fit.”*²

Motilal Nehru would have been shocked that our Supreme Court in its judgment in ADM, Jabalpur v. Shivakant Shukla³ delivered on April 28, 1976 by a majority, ruled that habeas corpus was virtually not available even in respect of proven mala fide orders of detention. This judgment was rendered at a time when there was neither war nor rebellion.

On January 26, 1950 India became a Sovereign Democratic Republic as contemplated by the Constitution of India, which was adopted by the Constituent Assembly on November 26, 1949.

¹ See generally, Terence C. Halliday, Lucien Karpik, Malcolm M. Feeley, Fates of Political Liberalism in the British Post-Colony: The Politics of the Legal Complex 115 (2012).

² La Trobe University, All Parties Conference (India Report of the Committee), 1928, available at <http://arrow.latrobe.edu.au/store/3/4/2/9/3/public/B11598426pp89-back.pdf> (Last visited on August 19, 2024).

³ (1976) 2 SCC 521

Part III of the Constitution of India – the most debated and castigated part – guaranteed a wide array of fundamental rights. Importantly, they were also made judicially enforceable against the State and its instrumentalities, as well as private parties in certain instances.

Article 12 State

The Indian people are granted the essential rights outlined in the Indian Constitution. It is not possible to assert these rights against private entities, only the State and its agents. Therefore, the Constitution was amended to include a clause defining the term "State." The term "State" is defined inclusively under Article 12 of the Indian Constitution. In order to assign blame for the violation of fundamental rights, it is critical to ascertain which entities are included in the meaning of the term "State." The criteria to determine whether an entity, other than the authorities already listed, qualifies as an agency or instrumentality of the State came up for consideration in court. The Honorable Supreme Court ruled in *Sukhdev v. Bhagatram*⁴ that an organization may be considered a "authority" for the purposes of Article 12 if it acts as a government agency or instrumentality. Whether it is a government-run business, statutory corporation, or even a registered society is irrelevant.

Fundamental rights and Indian Constitution

The Indian Constitution's provision of fundamental rights generally fits under a few different categories. Articles 14 through 16 forbid discrimination based only on religion, race, caste, sex, or place of birth and grant the right to equality in all of its forms. The idea of equal protection under the law states that everyone should be treated similarly under the law. That is, justice ought to be meted out to equals. It simply implies that everyone in comparable situations ought to be treated the same way, with the same rights granted and obligations placed on them. Both citizens and non-citizens, as well as natural and legal persons, are covered by this protection. Article 14 of the Constitution of India contains a provision referred to as "non-discrimination." Nevertheless, it is not a phrase that can exist by itself. When thinking about this topic, in particular, Article 21 of the Constitution needs to be considered and taken into account. Article 21 ensures the "right to life" and embraces numerous facets of life. It incorporates "opportunity". Articles 21 and 14 comprise the heart of chapter III of our Indian Constitution. They address innumerable facets of living.⁵ The Honorable Supreme Court ruled in *Chiranjit*

⁴ AIR1975SC1331, [1975(30)FLR283]

⁵ *Reliance Energy Ltd. V. Maharashtra State Road Development Corpn. Ltd.*, MANU/SC/3810/2007

Lal Chowdhuri v. Union of India⁶ that the protection of equal laws is a necessary condition of the promise of equal protection of the laws. It prohibits class legislation, but it does not prohibit classification on the basis of justifiable differences. Basic freedoms are guaranteed by Article 19 and include the freedom to practice and profess one's religion, engage in any profession, trade, or business, organize associations or unions, travel freely, live anywhere in India, and form associations or unions. The Constitution (Forty-fourth) Amendment Act, 1978 eliminated Articles 19(1)(f) and 31, which protected property rights, effective June 20, 1979. Constitutional protections against retroactive criminal statutes are found in Article 20. Article 20 of the Constitution offers protections against self-incrimination, double jeopardy, and retroactive criminal statutes. No one may be deprived of their life or personal freedom other than in accordance with a legally established procedure, according to Article 21. Articles 23 and 24 offer protection from forms of exploitation, including forced labor and human trafficking. Freedom of conscience and freedom of religion are covered in Articles 25 through 28. Articles 29 and 30 protect minorities' rights to maintain their language, script, and culture as well as their ability to create and run the educational institutions of their choice.

Amendability of fundamental rights

The Hon'ble Supreme Court ruled in *Minerva Mills v. Union of India*⁷ that the fundamental framework of the Indian Constitution is unchangeable and cannot be changed in a way that would compromise its essential elements. It was reaffirmed that the following ideas are part of the basic structure doctrine: the protection of fundamental rights, democracy, the supremacy of the Constitution, and the rule of law.

Freedom of the press

In a celebrated decision, *Bennett Coleman & Co. v. Union of India*⁸, the Supreme Court came to the rescue of the press. It held that the Freedom of the Press entitles newspapers to decide the volume of circulation, and freedom lies both in circulation and in content. The Court further ruled that a newsprint policy under the garb of distribution of newsprint cannot control the growth and circulation of newspapers. Additionally, a restraint on advertisements would infringe the fundamental right of the freedom of the press. The Supreme Court's solicitude for

⁶ 1951 AIR 41, 1950 SCR 869

⁷ 1980 AIR 1789, 1981 SCR (1) 206

⁸ (1972) 2 SCC 78

press freedom reached its zenith in its decision in 1986, in the case of *Indian Express Newspapers v. Union of India*.⁹ In that case, a steep levy of customs duty on newsprint was challenged. The Court observed that whilst newspapers did not enjoy any immunity from payment of taxes and other fiscal burdens, the imposition of a tax such as customs duty on newsprint is an imposition on knowledge.

Rights under article 21

In *Anita Kushwaha v. Pushap Sudan*¹⁰, the Hon'ble Supreme Court of India ruled that the right to justice is a component of the right promised under Articles 14 and 21 of the Indian Constitution. Right to travel abroad and return to one's country is regarded as an invaluable human right. Our Constitution does not expressly guarantee this right. The Supreme Court in its landmark judgment in *Satwant Singh Sawhney v. D. Ramarathnam*¹¹ spelt out this right from the expression "personal liberty" enshrined in Article 21 of the Constitution. The Court accepted the view of the Bombay High Court that the expression 'personal liberty' occurring in Article 21 included the right to travel abroad and to return to India. Although there is no specific provision in the Constitution prohibiting cruel, inhuman and degrading punishment or treatment, the Court has evolved this right by reference to the Preamble and by its expansive interpretation of Article 21 in conjunction with Article 14, which prohibits discrimination and arbitrary action. In another landmark judgment the Court has ruled that the right to education until the age of fourteen is a fundamental right emanating from the reservoir, Article 21.¹²

Economic Empowerment a basic human right

In *Murlidhar Dayandeo Kesekar vs Vishwanath Pandu Barde & Anr*¹³ held that Economic empowerment to the poor, Dalits and Tribes, is an integral constitutional scheme of socio-economic democracy and a way of life of political democracy. Economic empowerment is, therefore, a basic human right and a fundamental right as part of right to live, equality and of status and dignity to the poor, weaker sections, Dalits and Tribes. The State has evolved, by its

⁹ (1985) 1 SCC 641

¹⁰ MANU/SC/0797/ 2016

¹¹ AIR 1967 SC 1836 : (1967) 3 SCR 525.

¹² *Mohini Jain v. State of Karnataka*, (1992) 3 SCC 666 (The Right of Children to Free and Compulsory Education Act or Right to Education Act was enacted on August 4, 2009. It emphasises on the importance of free and compulsory education for children between 6 and 14 in India under Art. 21-A of the Indian Constitution).

¹³ 1995 SCC, SUPL (2)

legislative and executive action, the policy to allot lands to the Dalits and tribes and other weaker sections for their economic empowerment. The government evolved two pronged economic policies to render economic justice to the poor. The Planning Commission evolved policies like DRDL for economic empowerment of the weaker sections of the society; the Dalits and tribes in particular. There should be short term policy for immediate sustenance and long term policy for stable and permanent economic empowerment. All the State governments also evolved assignment of its lands or the lands acquired under the ceiling laws to them. Appropriate legislative enactments are brought on statute books to prevent alienation of the assigned lands or the property had under the planned schemes, and imposed prohibition thereunder of alienation, declaring any conveyance in contravention thereof as void or illegal and inoperative not to bind the State or the assignee. In case the assignee was disqualified or not available, on resumption of such land, the authorities are enjoined to resume the property and assign to heir or other eligible among the Dalits and tribes or weaker sections in terms of the policy. The prohibition is to effectuate the constitutional policy of economic empowerment under Articles 14, 21, 38, 39 and 46 read with the Preamble of the Constitution.

In the case of *Mackinnon Mackenzie & Company*,¹⁴ lady stenographers of a private company were being paid lower emoluments than their male counterparts. The Supreme Court held it to be a violation of constitutional principles of equal pay for equal work. Again relying on the Convention concerning equal remuneration for man and woman workers for work of equal value adopted in the Conference of International Organisation, to which India was a party and applying the extensive meaning of Article 21, the Court held it to be discriminatory and directed the State to ensure that the right of equal pay for equal work is made available to the lady stenographers of the aforesaid Company.

Supreme Court has deduced privacy as a fundamental right from Article 21 of the Constitution in its decision in *R. Rajagopal v. State of Tamil Nadu*.¹⁵ This is based on the premise that certain unarticulated rights are implicit in the express enumerated guarantees. There is no central legislation in India providing for legal aid. The Supreme Court in its judgment in 1978 in the case of *M.H. Hoskot v. State of Maharashtra*¹⁶ held that free legal services to the poor and needy is an essential element of any 'reasonable, fair and just' procedure in Article 21. The

¹⁴ *Mackinnon Mackenzie & Company*, (1987) 2 S.C.C. 469

¹⁵ (1994) 6 SCC 632.

¹⁶ (1978) 3 SCC 544.

Court ruled that,

“where the prisoner is disabled from engaging a lawyer, on reasonable grounds such as indigence or incommunicado situation, the court shall, if the circumstances of the case, the gravity of the sentence, and the ends of justice so require, assign competent counsel for the prisoner’s defence, provided the party does not object to that lawyer, the State which prosecuted the prisoner and set in motion the process which deprived him of his liberty shall pay to assigned counsel such sum as the court may equitably fix”.¹⁷

The Hon’ble Supreme Court reaffirmed its stand in *Hussainara Khatoon V/s. Home Secretary*¹⁸ to include right to free legal aid in Article 21. The right to free legal service is clearly an essential ingredient of ‘just, fair and reasonable’ procedure which can take away the life and liberty of a person accused of an offence. This is a constitutional right of every accused person who is unable to engage a lawyer and secure legal services on account of reasons such as poverty. The state is under a mandate to provide a lawyer to an accused person if the circumstances of the case and the need of justice so require. Provided the accused person does not object to the provision of such lawyer.

Doctrine of Rights Balancing

As an example of the conflict between two fundamental rights and how they can be balanced, he used the euthanasia case, which he heard with four other Supreme Court judges. Courts resolve disputes over fundamental rights by applying the doctrine of "rights balancing *Kaushal Kishor v. State of Uttar Pradesh*,¹⁹ The protection of the interests of the vast majority of people, sometimes known as the common good, is the ultimate objective of any attempt to strike a balance between different basic rights. In the present instance, a procedure consisting of three stages has been devised, the initial stage of which involves an investigation of the facts and the circumstances that surround both of the claimed infractions. A third attempt to interpret the breaches in a creative manner involves striking a balance such that none of the competing interests are completely sidelined. *Ad hoc* balancing refers to resolving the conflict by weighing the interests of the parties involved in each case on an individual basis, and it takes into account both the essence and core of the fundamental right as well as the specific facts of

¹⁷ M.H. Hoskot v. State of Maharashtra (1978) 3 SCC 544.

¹⁸ (1980) 1 SCC 98

¹⁹ MANU/SCOR/42534/ 2018

the case.

Interpretation of constitution

It is well to remember the dicta of our Supreme Court that “a Constitution is not an ephemeral legal document embodying a set of legal rules for the passing hour. It sets out principles for an expanding future and is intended to endure for ages to come and consequently has to be adapted to the various crises of human affairs.”²⁰ Therefore, according to our Supreme Court: “a constitutional provision must be construed, not in a narrow and constricted sense, but in a wide and liberal manner so as to anticipate and take account of changing conditions and purposes so that the constitutional provision does not get atrophied or fossilized but remains flexible enough to meet the newly emerging problems and challenges”.²¹ Courts should place a “generous interpretation avoiding what has been called the austerity of tabulated legalism”²² remembering that the letter killeth, but the spirit giveth life.

Broadening the horizons of life

The expression “life” in Article 21 of the Constitution has received an expansive interpretation. The Court has ruled that “life” does not connote merely physical existence but embraces something more, namely “the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter”²³ 2 Based on this interpretation, the Supreme Court has ruled that the right to live with human dignity encompasses within its ambit, the protection and preservation of an environment free from pollution of air and water.²⁴ Court has issued numerous directions regarding polluting industries, vehicular traffic and related matters. Health and sanitation have been held to be an essential facet of the right to life. Consequently the Court has intervened and provided relief to inmates of asylums and so-called ‘care homes’ who were living in sub-human conditions.²⁵ . It was after three decades that the Supreme Court overturned its previous decision in Gopalan and held in Maneka Gandhi v. Union of India²⁶ that “procedure contemplated by Article 21 must answer the test of reasonableness. It must be ‘right just and fair’, and not arbitrary, fanciful

²⁰ M. Nagaraj v. Union of India, (2006) 8 SCC 212

²¹ 5 Francis Coralie Mullin v. Union Territory of Delhi, (1981) 1 SCC 608.

²² Minister of Home Affairs v. Fisher, 1980 AC 319 : (1979) 2 WLR 889 : (1979) 3 All ER 21

²³ Francis Coralie Mullin v. Union Territory of Delhi, (1981) 1 SCC 608

²⁴ Virender Gaur v. State of Haryana, (1995) 2 SCC 577.

²⁵ Sunil Batra v. Delhi Admn., (1978) 4 SCC 494; Sheela Barse v. State of Maharashtra, (1983) 2 SCC 96.

²⁶ (1978) 1 SCC 248.

or oppressive; otherwise, it would be no procedure at all and the requirements of Article 21 would not be satisfied".²⁷

In a petition by Consumer Education & Research Centre and others,²⁸ Justice K.Ramaswamy speaking for the Court interpreting Article 21 of the Constitution, held that the right to life with human dignity encompasses within its fold, some of finer facets of human civilization which makes life worth living. The expanded connotation of life would mean the tradition and cultural heritage of the persons concerned. In this petition, the plight of the workmen working in Asbestos Industry was brought to the notice of the Court. The Court held that the right to life and health, medical aid and to protect the health and vigour to a worker while in service or post retirement is a fundamental right under Article 21 read with Articles 39 (e), 41, 43, 48A and fundamental human right to make the life of workmen meaningful and purposeful with dignity of persons. The Factories were directed to compulsorily ensure health coverage of every worker, review of exposer to permissible limits and so on.

Rule of Locus Standi & Access to Justice

In our country people because of poverty, illiteracy or ignorance are not in a position to apply for enforcement of their fundamental rights, so Constitutional remedies not only provides for enforcement of fundamental rights but also facilitate the enforcement of rights through Public Interest Litigation. According to the traditional rule of locus standi, only the aggrieved person can file a case for the enforcement of his right, so this rule of locus standi, was liberalised to allow public spirited persons or organizations to file cases for redressal of grievances of poor and illiterate persons. This concept of social action litigation in India was initiated by Krishna Iyer J. in *Mumbai Kamgar Sabha V. Abdullabhai*²⁹

Public Interest Litigations

The most notable achievement in the protection and promotion of fundamental rights has been the development of Public Interest Litigation ('PIL') in India. PIL is a form of legal proceeding in which redress is sought in respect of injury to the public in general and for the enforcement of the rights of a determinate class or group of people injured by the act or omission complained

²⁷ *ibid*

²⁸ *Consumer Education & Research Centre and others vs. Union of India and others*, JT 1995 (1) S.C. 637.

²⁹ AIR 1976 SC 1455

of but who are unable to approach the court on account of indigence, illiteracy or social or economic disabilities. For example, these persons may be prisoners, landless labourers or inmates of care centres or mental homes. In view of these harsh realities, the Supreme Court has departed from the traditional requirement of locus standi and, in its landmark judgment in *S.P. Gupta v. Union of India*³⁰ declared that where judicial redress is sought for legal injury to disadvantaged persons, any member of the public acting bona fide and not for oblique considerations, can maintain an action on their behalf. The Court has forged new tools, devised new methods and adopted new strategies. For example, in the case of *Bandhua Mukti Morcha v. Union of India*³¹, it has appointed commissions for the purpose of gathering facts and data. It has sometimes appointed a district magistrate, or a district judge, sometimes a professor of law and at times a practicing advocate for the purpose of carrying out an inquiry and making a report to the court.

Conflict of Right to Justice with Duties

Right to Justice is considered to be served above all the duties. It is always said that the Fundamental Rights must not be read in isolation but along with Fundamental duties.³² But their going along creates a problem on what to choose and what to leave. For instance, in the latest Hijab Ban case from the State of Karnataka, the Muslim girls were owing their religious duty to wear a Hijab but that became an enemy of Article 14 of the Constitution of India that guarantees the Right to Equality to every citizen in India. These girls seek their Right to Justice from the Hon'ble High Court on the ground that they have a Fundamental Right to practice their religion. But their duty to wear Hijab was in contravention of the Fundamental Right provided under Article 14. Hence, the Right to Justice came to prevail over their duty.

A PIL may be utilised to impose "public obligations" in situations in which an action or inaction has the potential to cause harm to the general public. The decision in the case of *SP Gupta v. Union of India*³³ made this outcome conceivable. Therefore, in any situation in which the interests of the general public are in jeopardy, citizens of India or any consumer groups or social justice groups can now move to India's Supreme Court to seek legal remedy and enforce

³⁰ 1981 Supp SCC 87.

³¹ (1984) 3 SCC 161

³² *Javed v. State of Haryana*, MANU/SC/0523/2003

³³ MANU/SC/0080/1981

their legal duty. This includes situations in which the interests of the general public are threatened and their Right to Justice is either infringed or is on the verge of infringement.

In the case of *Anil Yadav v. the State of Bihar*³⁴, a PIL was filed to expose the brutalities of the police and hence the petitioner followed his Fundamental Duty to practice the spirit of brotherhood and to preserve the composite culture. The eyeballs of 33 suspected inmates at the Bhagalpur Jail were burned after the officers at the jail allegedly splashed acid into their eyes and subsequently torched their eyeballs. The Supreme Court was quite harsh in its criticism of the police for their cruel behaviour and ordered the government of Bihar to comply with its decision by transporting the blinded victims to Delhi for medical care at the expense of the state. According to the decisions of the Supreme Court, a person has the right to free legal representation as part of their right to life and liberty. The United States Supreme Court has protected the human rights of innumerable other people, including those who were victims of torture, victims of police brutality, patients in mental health facilities, bonded and child labourers, victims of sexual harassment, victims of earthquakes, and many more.

In the case of *Nilabati Behera v. the State of Orissa*³⁵, the Hon'ble Supreme Court of India directed to protect the Right to Justice of even the prison inmates and mentioned that prisoners and detainees are not deprived of their Fundamental Rights guaranteed under Article 21. It is the duty of the jail workers to take care of the same and encourage that restrictions permitted by law could only be imposed on the enjoyment of the Fundamental Rights of the prisoners and the detainees.

Basic Structure

Without discussing the groundbreaking theory established by the Supreme Court in *Kesavananda Bharati v. State of Kerala*³⁶ (also known as "Kesavananda Bharati"), it would be inappropriate to end the lecture. It was decided that while the ability to change the Constitution is unlimited under Article 368, it is not unrestricted and cannot be used in a way that would undermine its fundamental elements and jeopardize the "basic structure" of the document. As a result, even when Parliament exercises its constitutional right to alter, it is not supreme, and

³⁴ MANU/SC/0029/ 1982

³⁵ MANU/SC/0307/ 1993

³⁶ (1973) 4 SCC 225.

the Supreme Court has the final say.

A nine Judge Bench of the Supreme Court in the case of *I.R. Coelho v. State of T.N.*³⁷ considered the doctrine of basic structure at length. The Court *inter alia* held that depending on the nature of the fundamental right and the extent of its invasion in a given case, it could be said that basic structure of the Constitution was damaged. The fundamental rights which the Court thought embodied the core values of the Constitution are Article 14, Article 15, Article 19 and Article 21. Thus, these fundamental rights have been accorded supremacy and the basic structure doctrine has been expanded. The basic structure doctrine presents some problems, especially in identifying the essential or basic features of the Constitution. At present, judicial consensus seems to be that democracy, secularism, federalism, rule of law and an independent judiciary with power of judicial review can be regarded as basic features.³⁸

Amendment is not a law

In *Shankari Prasad v. Union of India*³⁹ The constitutionality of the First Constitutional (Amendment) Act, 1951 and the addition of Articles 31-A and 31-B were contested in this case. The Hon'ble Supreme Court was asked to rule on whether or not a "constitutional amendment" falls under the definition of "law" as stated in Article 13(2) of the Indian Constitution. The Honorable Court ruled that a constitutional change passed by the Parliament pursuant to Article 368 was not considered a "law" under Article 13(2). Article 13(2) was untouched by any constitutional change, and the phrase "law" must be interpreted to encompass rules or regulations enacted in the exercise of ordinary legislative powers rather than constitutional modifications made in the exercise of constituent powers.

Again in *Golak Nath v. State of Punjab*⁴⁰ In this case, the Hon'ble Supreme Court was asked to rule on whether the Parliament could violate any of the Fundamental Rights in the course of exercising its authority under Article 368. Once more, there was opposition to the Seventeenth Constitutional (Amendment) Act of 1964. The *Shankari Prasad* and *Sajjan Singh* ruling was overturned by the majority of the eleven-judge bench. It was decided that the Fundamental Rights could not be changed by a constitutional amendment under Article 368 of Part III of the Indian Constitution. In this instance, the majority of justices determined that fundamental rights

³⁷ (2007) 2 SCC 1.

³⁸ *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225.

³⁹ AIR 1951 SC 458

⁴⁰ 1967 AIR 1643, 1967 SCR (2) 762

occupy a "transcendental" position. The significance of fundamental rights is acknowledged so that no body operating under the Constitution, including the Parliament, can use that authority to modify the Constitution at that time.

Article 35 of the Indian Constitution

As stated in Article 35, the Parliament has the authority to enact legislation that attempt to implement specific fundamental rights. Only the state legislatures and the Parliament are authorized to use this authority. The Seventh Schedule of the Indian Constitution gives the Parliament the authority to enact laws on some subjects, including those that are the purview of the state legislatures. The following topics are covered by laws that the Parliament may pass:

- Provide residence as a prerequisite for a certain type of employment or appointments in a State, Union Territory, local or any other authority.
- Except the Supreme Court and High Courts, allow all the courts to issue directions, orders and writs for the enforcement of fundamental rights.
- Members belonging to the armed forces, police forces, etc., limit or nullify their applicability of Fundamental Rights.
- At the time of operation of martial law in India, provide immunity to government officials or any other individual for actions undertaken;
- Authorise the Indian Parliament to legislate punishment for offences such as untouchability, human trafficking, and forced labour.

Conclusion

The Indian Constitution is not complete without the Fundamental Rights. As long as the Indian Constitution is in effect, it assures India's citizens of these essential rights. In addition, these rights guarantee that citizens are shielded against capricious State actions and that they have the right to petition the courts for remedy in the event that their fundamental rights are violated. According to the Indian Constitution, fundamental rights are considered necessary for each person to be able to achieve their full intellectual, moral, and spiritual potential. India must always maintain a balance between the competing interests of society and the individual as a

welfare state. In order to reconcile the divergent interests of individuals and society, fundamental rights are established under the Indian Constitution. To ensure the legitimate use of these rights, reasonable restrictions are imposed upon individual liberties in the interest of society.