



BASIC STRUCTURE DOCTRINE REAFFIRMED – THE MINERVA MILLS CASE.

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Abstract

The *Minerva Mills Ltd. v. Union of India* (1980) case is a pivotal precedent in Indian constitutional law, especially regarding the Basic Structure Doctrine. The case emerged after the Forty-second Amendment (1976), which sought to curtail the judiciary's authority by rendering certain constitutional articles unamendable and diminishing judicial scrutiny. The dispute centred on the interpretation of Article 368, which regulates the amendment process, and whether Parliament has the ability to modify any section of the Constitution without limitation. The Supreme Court, led by Chief Justice Y.V. Chandrachud, confirmed the *Kesavananda Bharati* (1973) decision, which established the Basic Structure Doctrine. The idea asserts that while Parliament has extensive authority to change the Constitution, it is prohibited from modifying its basic structure, which encompasses critical elements such as the rule of law, democracy, judicial scrutiny, and the safeguarding of fundamental rights.

The Supreme Court invalidated provisions of the Forty-second Amendment that aimed to modify the connection between Directive Principles of State Policy (DPSP) and Fundamental Rights, emphasising the disproportionate supremacy of DPSPs over Fundamental Rights. This ruling affirmed the legal perspective that any modification impacting the fundamental aspects of the Constitution is susceptible to judicial scrutiny, regardless of its passage by a supermajority in Parliament. The case confirmed the judiciary's position as the protector of the Constitution, guaranteeing that Parliament cannot compromise its fundamental ideals.

Keywords: Constitution of India, *Minerva Mills Case*, *Keshvananda Bharati Judgement*, Basic Structure of Constitution.

1. Introduction

According to constitution of India have power to make and amend laws on concurrent and union list. The provision appears as if the parliament has absolute right to amend any law. However, judicial review power has helped in keeping check on the absolute power of parliament to amend the laws. The constitution under Art. 13(2) empowers judiciary to held any law ultra vires or void if it is inconsistent with the provisions of constitution.¹ It starts Shankari Prasad v. Union of India when 1st Amendment Act was challenged in 1951 followed by judicial review of 17th amendment Act in Sajjan Singh v. State of Rajasthan.² In Shankari Prasad v. Union of India, it was held that Law under Art. 13(3) did not include amendments under article 368.³ Thus parliament could amend fundamental rights. Later in Golaknath v. State of Punjab, the Supreme Court reversed its earlier rulings in Shankari Prasad and Sajjan Singh and held that the parliament could not take away or abridge fundamental rights even by constitutional amendments.⁴ Further By 24th amendment act 1971 Clause 4 was added to Article. 13 and it was expressly laid down that nothing in this article shall apply to amendments under article 368.⁵ After this in Keshavananda Bharti v. State of Kerala, the Supreme court upheld the constitutional validity of 24th amendment Act and propounded basic structure doctrine.⁶ It was held that some provisions of the constitution of India forms its basic structure which are not amendable by the parliament by exercise of its constituent power under Art. 368. The decision under Golaknath was overruled by 13 judges' bench in Keshvananda.⁷ According to Keshvanada ruling the basic structure comprises of the following:⁸

1. Supremacy of the Constitution.
2. Republican and Democratic Forms of the Government.
3. Secular Character of the Constitution.
4. Separation of Powers between legislature, executive and judiciary.

1 Network, L.F.L.N. (2021) Explained: The doctrine of ultra vires, LexForti. LexForti Legal News Network <https://i0.wp.com/lexforti.com/legal-news/wp-content/uploads/2021/01/159134300345793876.png?fit=96%2C96&ssl=1>. Available at: <https://lexforti.com/legal-news/the-doctrine-of-ultra-vires/> (Accessed: March 23, 2023).

2 Manupatra (no date) Manupatra, Articles. Available at: <https://articles.manupatra.com/article-details/AMENDMENT-OF-THE-CONSTITUTION-AND-THE-BIRTH-OF-BASIC-STRUCTURE-DOCTRINE> (Accessed: March 23, 2023).

3 Ibid.

4 R.G. et al. (2022) Golaknath, I.C v State of Punjab (1967) : Overview and analysis, iPleaders. Available at: <https://blog.iplayers.in/golaknath-c-v-state-punjab-1967-overview-analysis/> (Accessed: March 23, 2023).

5 Constitution of India (no date) CAD. Available at: https://www.constitutionofindia.net/blogs/desk_brief_the_24th_amendment (Accessed: March 23, 2023).

6 Faraz Alam Sagar, C.A.M.D.T. (2022) Kesavananda Bharati v. state of Kerala and the basic structure doctrine, India Corporate Law. Available at: <https://corporate.cyrilamarchandblogs.com/2017/09/kesavananda-bharati-v-state-kerala-basic-structure-doctrine/> (Accessed: March 23, 2023).

7 Ibid.

8 Ibid Note 6.

5. Federal Character of the Constitution.

According to Justice K.S. Hegde, our constitution is built on some basic foundations i.e. dignity and freedom of the individual and such basic tenets of constitution are not amendable as it consists basic structure of constitution.⁹ Further in 1976, by 42nd Amendment act clause 4 & 5 was added to Art. 368 which was held violative of basic structure doctrine in one of the most landmark cases *Minerva Mills v. Union of India*. It was held that the judicial review power is the basic structure of the constitution.¹⁰ It was also held that the power of amendment of parliament is limited. The present research is to study the *Minerva Mills* case as how it reaffirmed the basic structure doctrine.¹¹ The sub headings of the present study deal with Pre-Keshvananda Position, Golaknath Nath, Bank nationalization case and Privy Purses, provision of amendment under Indian Constitution and case analysis of *Minerva Mills* along with its jurisprudential analysis.

2. Situation before *Keshvananda Bharti v. State of Kerala*

After gaining independence there were enacted various laws in India with an aim to reform land ownership. It actually referred to promise of distribution of ownership of land resources by the then ruling party in the country. Property owners adversely affected by these Acts filed plea in the courts and thereby court struck down these laws saying they transgressed the fundamental right to property of the citizens. As a result, parliament placed these in the ninth schedule through First and Fourth Amendment Acts respectively. Property owners again challenged the land laws for being violative of Art. 13(2) of the constitution. The parliament's authority to amend the constitution was challenged in 1951 in *Shankari Prasad v. Union of India* for the first time, in which it was held that, "Law" in Article. 13(3) did not include amendments under article 368.¹² It was held that Parliament can amend laws. The ruling was reiterated in *Sajjan Singh v. State of Rajasthan* however it has to go through with the dissenting opinions of two judges as how majority party is playing with by amending the basic rights of the people enshrined under constitution i.e., right to property.¹³

9 The basic structure of the Indian Constitution, ConstitutionNet. Available at: <https://constitutionnet.org/vl/item/basic-structure-indian-constitution> (Accessed: March 23, 2023).

10 Amendability of Indian Constitution with reference to fundamental rights (no date) Legal Service India. Available at: <https://www.legalserviceindia.com/article/119-Amendability-Of-Indian-Constitution.html> (Accessed: March 23, 2023).

11 Ibid.

12 Manupatra (no date) Manupatra, Articles. Available at: <https://articles.manupatra.com/article-details/A-Case-Analysis-Shankari-Prasad-v-Union-of-India-Supreme-Court> (Accessed: March 23, 2023).

13 The doctrine of basic structure of the Indian Constitution: A Critique (no date) Legal Service India - Law, Lawyers and Legal Resources. Available at: <https://www.legalserviceindia.com/legal/article-254-the-doctrine-of-basic-structure-of-the-indian-constitution-a-critique.html> (Accessed: March 23, 2023).

3. Decision of Supreme Court in Golaknath v. State of Punjab

In 1967 in Golaknath v. State of Punjab, the honorable Supreme Court reversed its earlier ruling in Sajjan Singh v. State of Rajasthan.¹⁴ The judgement ratio decidendi was that the fundamental rights are unamendable. About six judges decided in the favour of this view out of 11 judges' bench. Chief Justice Subba Rao said that "Article 368, that contained provisions related to the amendment of the Constitution, merely laid down the amending procedure and did not confer upon Parliament the power to amend the Constitution".¹⁵ The verdict given placed a sense of permanence with fundamental rights. It expressed that the parliamentary power is limited as far as amendment is concerned. The phrase 'basic structure' was introduced for the first time by M.K. Nambiar and other counsels while arguing for the petitioners in the Golaknath case, but it was only in 1973 that the concept surfaced in the text of the apex court's verdict.¹⁶

4. Bank's Nationalization Case and Abolition of Privy Purses

As a result of Golaknath Verdict, the ruling party lost elections. Consequently, the bill was tabled in the parliament to recognize the supremacy of the parliament in amending the laws. In an effort of the then ruling government, the bill was tabled to nationalize banks and derecognizing past rulers in an offer to remove their Privy satchels. However, it was struck down by the judiciary in bank's nationalization case.

5. Provision of Amendment under Indian Constitution

- Article 368 in Part XX of the Constitution deals with the power of parliament to amend the constitution.¹⁷
- It provides for two types of amendments, that is
 1. special majority of Parliament and
 2. special majority of parliament along with the ratification of half of the states' legislatures by a simple majority.
 3. Amendment of certain provisions of the Constitution requires amendment by a simple majority of each house present and voting. These amendments are not deemed to be amendments under Article 368.

¹⁴ Ibid note 4.

¹⁵ Ibid note 13.

¹⁶ Ibid note 9

¹⁷ The Constitution of India (1950).

▪ **Article 368 states the following-**

“(1) Notwithstanding anything in this Constitution, Parliament may in exercise of its constituent power amend by way of addition, variation or repeal any provision of this Constitution in accordance with the procedure laid down in this article.¹⁸

(2) An amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting, it shall be presented to the President who shall give his assent to the Bill and thereupon] the Constitution shall stand amended in accordance with the terms of the Bill:¹⁹

Provided that if such amendment seeks to make any change in —

- (a) article 54, article 55, article 73, article 162 or article 241, or
- (b) Chapter IV of Part V, Chapter V of Part VI, or Chapter I of Part XI, or
- (c) any of the Lists in the Seventh Schedule, or
- (d) the representation of States in Parliament, or
- (e) the provisions of this article,

the amendment shall also require to be ratified by the Legislatures of not less than one-half of the States by resolutions to that effect passed by those Legislatures before the Bill making provision for such amendment is presented to the President for assent.

(3) Nothing in article 13 shall apply to any amendment made under this article.²⁰

(4) No amendment of this Constitution (including the provisions of Part III) made or purporting to have been made under this article [whether before or after the commencement of section 55 of the Constitution (Forty second Amendment) Act, 1976] shall be called in question in any court on any ground.²¹

(5) For the removal of doubts, it is hereby declared that there shall be no limitation whatever on the constituent power of Parliament to amend by way of addition, variation or repeal the provisions of this Constitution under this article.²²”

¹⁸ Ibid note 17.

¹⁹ Ibid note 17.

²⁰ Ibid Note 17.

²¹ Ibid note 17.

²² Ibid note 17.

6. Keshvananda Bharti and Doctrine of Basic Structure

The plaintiff, Swami Kesavananda Bharati was the leader of Edneer Matt, a Hindu monastic institution which is located in Kerala.²³ He challenged the two-state Land Reform Act, imposed by the Kerala government which sought to restrict the way his property was managed.²⁴ He stated that his fundamental rights under Articles 25 (Freedom of conscience and free profession, practice, and propagation of religion), Article 26 (Freedom to manage religious affairs), Article 14 (Equality before law), Article 19(1)(f) (Right to property which has been omitted) and Article 31 (the right of private ownership without restrictions) had been violated.²⁵ The case was handled by a 13 Judge Bench.²⁶ In this case constitutional validity of 24th Amendment Act, 25th Amendment Act and 29th Amendment Act was challenged. It was discussed that what is the extent of the powers of parliament to amend the constitution.²⁷ The apex court upheld the 24th amendment act. However, at the same time held the 2nd part of 25th amendment act as ultra vires. It was interpreted that there should be a balance between parliament's duty to follow the constitution and its duty to perform socio-economic duties. In order to give primacy to this thought the doctrine of basic structure was formulated. Hedge. J and Mukherjee. J in their opinions stated that "the Indian constitution was more of a social document based on social philosophy than a political document".²⁸ The present decision overruled Golaknath v. State of Punjab by stating that parliamentary power of amendment is applicable to all the constitutional provisions. However, it is not applicable to amend basic structure of the constitution.²⁹ It was held that there are limitations to the power of amendment of parliament. It was held that parliament under Art. 368 cannot amend basic structure of the constitution.³⁰ According to Keshvanada ruling the basic structure comprises of the following:³¹

1. Supremacy of the Constitution.
2. Republican and Democratic Forms of the Government.
3. Secular Character of the Constitution.
4. Separation of Powers between legislature, executive and judiciary.
5. Federal Character of the Constitution.

²³ Roychoudhury, S. (2022) A detailed analysis of Kesavananda Bharati Case, Law Corner. Available at: <https://lawcorner.in/a-detailed-analysis-of-kesavananda-bharati-case/> (Accessed: March 23, 2023).

²⁴ Ibid.

²⁵ Ibid Note 27.

²⁶ Ibid Note 27.

²⁷ Ibid note 27.

²⁸ R.G. et al. (2022) The amendment of the Constitution: Article 368 under Indian Constitution, iLeaders. Available at: <https://blog.ipleaders.in/the-amendment-of-the-constitution-article-368/> (Accessed: March 23, 2023).

²⁹ Ibid.

³⁰ Ibid note 32.

³¹ Ibid note 32.

7. Minerva Mills v. Union of India: Reaffirmation of Basic Structure Doctrine

Minerva Mills was a textile mill located in Bangalore. In 1970 because of decrease in the industrial production Minerva Mills was decided to be taken over by the other entity.³² The basis of takeover was report of the central committee established in accordance with Section 15 of Industrial Development Act, 1951. Previously, through the 39th Constitutional (Amendment) Legislation, 1975, the Parliament added Nationalization Act, 1974 to the Ninth Schedule, making any challenge to the act in question ineligible for judicial review.³³ After the 42nd Amendment was ratified, the petitioner was unable to challenge this portion of the 39th Amendment because this remedy was restricted by the Constitution.³⁴ Because of the massive defeat in the case of *Indira Nehru Gandhi v. Shri Raj Narain*, the Parliament passed the 42nd amendment in order to establish itself as powerful.³⁵ This amendment barred any challenge to constitutional amendments in the judiciary. The petitioners challenged the court because of the order given by the Central Government to nationalize their Mills.³⁶

Issues:

- To what extent does the addition of Article 31C and Article 368 into the Constitution by Sections 4 as well as 55 of the 42nd Amendment Act of 1976 impair the fundamental structure doctrine?³⁷
- Is it true that the Directive Principle of state policy takes precedence over the Fundamental Right guaranteed by the Indian Constitution?³⁸

Majority View:

The majority view was given by Chandrachud. J., Gupta. J., Untwalia. J. and Kailasam. J.³⁹ It was held by the majority opinion that parliamentary power to amend constitution extends to every provision of constitution but it cannot amend the basic structure of the constitution reaffirming the *Keshavananda Bharti v. State of Kerala*. It was held that theory of unlimited power of parliament to amend the constitution will create authoritative state. Thus, the powers of parliament are limited and keeping basic structure of constitution guarded is an attempt to save the spirit of the original text of our constitutional law.⁴⁰ It was held that clause 5 is unconstitutional because it interferes with the basic structure of the constitution.⁴¹ Art. 31 C was observed as harming spirit of the

³² Mitra, A. (2022) *Minerva Mills v Union of India (minerva mills case) – case analysis*, Law Corner. Available at: <https://lawcorner.in/minerva-mills-v-union-of-india-minerva-mills-case-1980-3-scc-625/> (Accessed: March 23, 2023).

³³ Ibid.

³⁴ Ibid note 36.

³⁵ Ibid note 36.

³⁶ Ibid note 36.

³⁷ Ibid note 36.

³⁸ Ibid note 36.

³⁹ *Minerva Mills Ltd. & Ors vs Union of India & Ors*, 1980 AIR 1789, 1981 SCR (1) 206

⁴⁰ Ibid.

⁴¹ Ibid note 43.

constitutional law. Thus, the power of judicial review of the Apex Court was upheld.⁴² It was held that part IV of the constitution should not interfere with the functioning of Part III of the constitution. The objective under Part IV needs to be achieved without interfering with the soul of Part III.⁴³

Minority View:

The minority view was presented by Justice P.N. Bhagwati where he said that Article 31 C did not harm the spirit of the constitution as it didn't affect the basic structure of the constitution but strengthened it.⁴⁴ He didn't agree with the judicial interpretation of Part IV of the constitution interfered with the functioning of the Part III. He said that Part IV is equally important as Part III and go along with it.⁴⁵ The faith of crores of people of India resides in government because of state fulfills objectives given under Part IV for good governance.⁴⁶

Decision

Declaration of Cl. 5 and Sec. 55 of 42nd amendment Act as unconstitutional raised great concern for the ruling party at that time. It was a huge setback for the ruling party after Indira Gandhi v. Raj Narain's case verdict. In the given case, the supreme court added the following in the basic structure of the constitution:⁴⁷

1. Judicial Review
2. Rule of Law
3. Democracy which implies free and fair elections.

Further, in *Minerva Mills v. Union of India*, it was held that Sec. 31 C is unconstitutional as it interfered with the basic structure of the constitution.⁴⁸ Clauses 4 & 5 of Article 368 were struck down by the Supreme court. Both the clauses were held violative of basic structure of constitution which consists of judicial review power of judiciary.⁴⁹ It was held that the parliamentary power of amendment is not unlimited. Also, the harmonious construction between Part III i.e. Fundamental Rights and Part IV i.e. Directive Principles of State Policy was upheld.⁵⁰ However, Part IV should not hinder the importance of Part III was also held in the given case. Power of Judicial review was held to be constituting the basic structure of the constitutional law.⁴² 42nd Amendment Sec. 55 was held unconstitutional by the court.

⁴² Ibid note 43.

⁴³ Ibid Note 43.

⁴⁴ Ibid Note 43.

⁴⁵ Ibid Note 43.

⁴⁶ Ibid Note 43.

⁴⁷ Ibid Note 43.

⁴⁸ Ibid Note 43.

⁴⁹ Ibid Note 43.

⁵⁰ Ibid Note 43.

Analysis:

Minerva Mills is one of the most important cases which reaffirmed the constitutional doctrine of basic structure. It substantiated and provided a broad interpretation to the basic structure doctrine. The apex court is shown as trying to protect the bedrock of the constitution i.e., judicial review and upheld the democratic credential of free and fair elections by upholding *India Gandhi v. Raj Narain*.⁵¹ It was held that though parliamentary power touches each and every provision of the constitution but it cannot be an unlimited power. The amendment power of parliament is restricted as it cannot amend the basic structure of the constitution. The conflict between the executive and judiciary was resolved by upholding that the power of judicial review constitutes the basic structure of the constitution and is essential to keep check and balances alive in the governmental set up under constitution. It was held that there must be balance among the functioning of executive and judiciary to achieve the ends of justice. Harmonious construction of the fundamental rights and directive principles of state policy were relied upon. It was held that Part III should function without any hindrance posed by Part IV of the constitution i.e., Directive Principles of State Policy. However, the minority view of Justice Bhagwati was very impressive and cannot be neglected which said that upholding Part IV along with Part III does not violate the constitutional spirit in lieu it reaffirms it as Part IV deals with faith of people on ruling government.⁵²

8. Conclusion

Minerva Mills was the remarkable judgement among all which addressed the amendability of the constitution. It upheld the judicial review as basic structure of the constitution. It upheld the harmonious construction of the fundamental rights and directive principles of state policy. This case is important as it paved the path for the judiciary for becoming what it is today. No doubt *Keshvananda Bharti* was the landmark case in affirming the basic structure doctrine. But after *Keshvananda*, *Minerva Mills* can be undoubtedly said as the case which reaffirmed the doctrine of basic structure and saved the constitutional spirit by upholding power of judicial review which is a cornerstone of our Indian democracy.

⁵¹ R.G. et al. (2022) The amendment of the Constitution: Article 368 under Indian Constitution, iPleaders. Available at: <https://blog.iplayers.in/the-amendment-of-the-constitution-article-368/> (Accessed: March 23, 2023).

⁵² Ibid.