

# **THE BASIC STRUCTURE DOCTRINE IN INDIAN JUDICIAL PRINCIPLE: AN ANALYSIS ON THE BASIC FOUNDATION OF THE CONSTITUTION**

Written by **Dr. Banamali Barik**

Asst. Professor in Mayurbhanj Law College, North Orissa University, Baripada

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## **ABSTRACT**

The doctrine of basic structure, as propounded in Kesavananda Bharati and the contents thereof as expounded in various landmark judgments of Supreme Court from Shankri Prasad to I.R. Coelho, have been the guiding principles in interpretation of the Amendment Acts under Article 368 of the Constitution. The rationale for the doctrine is that in the Constitution, there exists a basic structure, the fundamental tenets, upon which the entire gamut of provisions is based. It includes supremacy of the Constitution, republican and democratic form of government, secular character of the Constitution, separation of powers between three organs, federal character of the Constitution, etc. Provisions of the Constitution can be amended provided the basic foundation and structure of the Constitution remains the same. It is a reminder of the words of Benjamin N. Cardozo who commented that, "A Constitution has an organic life in such a sense, and to such a degree, that changes here and there do not sever its identity". The present paper examines the scope, extent and limitation of basic structure doctrine in Indian judicial principle and how far it is an armor of Constitutionalism and balancing parameter of three organs of government.

**Key-words:** Amendments, Basic Structure, Constitutionalism, Feature, Unconstitutional etc.

## **INTRODUCTION**

The doctrine of basic structure has essentially emanated from the German Constitution. Therefore, we may have a look at common Constitutional provisions under German law which deal with rights, such as freedom of press or religion which are not mere values, but are

justifiable and capable of interpretation. The values impose a positive duty on the state to ensure their attainment as far as practicable. The rights, liberties and freedoms of the individual are not only to be protected against the state; they should be facilitated by it. These rights and values are the principle of human dignity under the German basic law. Similarly, secularism is the overarching principle of several rights and values under the Indian Constitution. Therefore, axioms like secularism, democracy, reasonableness, social justice, etc. are overarching principles which provide linking factor of fundamental rights like Articles 14, 19 and 21.<sup>1</sup>

These principles are beyond the amending power of the parliament. Parliament cannot increase the amending power by amendment of Article 368 to confer on itself unlimited power of amendment and destroy and damage the fundamentals of the Constitution, nor can it use Article 31-B, to achieve the same purpose.<sup>2</sup>

The “basic features” principles was first expounded in 1964, by justice J.R. Mudholkar in his view, the case of *Sajjan Singh v. State of Rajasthan*,<sup>3</sup> He wrote,

It is also a matter for consideration whether making a change in a basic feature of the Constitution can be regarded merely as an amendment or would it be, in effect, rewriting a part of the Constitution; and if the latter, would it be within the purview of Article 368?

A Constitution may be either written or unwritten. A written Constitution born at one instance and therefore, it is not born but grows by amendment which themselves become part of it by incorporation.<sup>4</sup> The amending provision in written Constitution assumes great importance because it gives chance to successive generation to grow it as per their needs. In fact the essence of a written Constitution lies in its mode of amendment. The amendment process is an opportunity to express democratic conceptions of basic constitutional values without derogating from the derogating from the fundamental constitutional principles.<sup>5</sup>

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1. ADISH C. AGGARWALA, CONSTITUTION OF INDIA 652-53 (4<sup>th</sup> ed. Amish Publication 2014).

2. I. R. Coelho v. State of Tamil Nadu & Ors. A.I.R. 2007 S.C. 861.

3. A.I.R. 1965 S.C. 845 (India).

4. CHATURVEDI, Amendment to the Constitution 29 (1985).

5. SUDHIR KRISHNASWAMY’S, Democracy and Constitutionalism in India 3 (Oxford University Press 2011).

Till 1965, no one felt the need to question the extent of Parliament's power to amend the Constitution. In *Shankari Prasad v. Union of India*,<sup>6</sup> it was held that parliament's power was indeed unlimited, the only requirement was to follow the procedure prescribed by Article 368. But in *Sajjan Singh v. State of Rajasthan*,<sup>7</sup> *Hidayatullah and Mudholkar JJ.*, asked the key question, whether there were basic features of our Constitution that were to endure for all time or whether they were no more enduring than the implemental and subordinate provisions of the Constitution?

Significantly, Mudholkar J., relied on a decision of Cornelius CJ., of the Supreme Court of Pakistan,<sup>8</sup> who, relying on Cooley's Constitutional Limitation, held that the power conferred on the President by the Pakistani Constitution to remove difficulties did not extend to making an alteration to the fundamental features of the Constitution.

*Golak Nath v. State of Punjab*,<sup>9</sup> went one step beyond, perhaps too far and held that no part of Part-III could be amended at all. This decision was rightly overruled later.

The essential proposition of law laid down in *Kesavananda Bharati* was that Article 368 did not enable parliament to alter the basic structure of the Constitution. This decision was rendered on 24 April 1973 and declared that all the amendments made prior to that date were valid and constitutional. This meant that all the amendments made to the Constitution prior to this decision, even if they weakened the core of the Constitution, could not be called into question in the courts.<sup>10</sup>

The Supreme Court on 6<sup>th</sup> August, 2018 said that a three-judge bench would decide whether the pleas challenging Article 35A, which provides special rights and privileges to the natives of Jammu and Kashmir, should be referred to a five –judge Constitution bench for examining the larger issue of alleged violation of the doctrine of basic structure of the Constitution.

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6. A.I.R. 1951 S.C. 458 (India).

7. A.I.R. 1965 S.C. 845; (1965) 1 S.C.R. 933 (India).

8. *Fazlul Quader Chowdhry v. Mohd Abdul Haque*, 1963 P.L.D. 486 (Pakistan).

9. (1967) 2 S.C.R. 762 (India).

10. ARVIND P. DATAR, *THE BASIC STRUCTURE DOCTRINE-A 37- YEAR JOURNEY in "et al" BASIC STRUCTURE CONSTITUTIONALISM-REVISITING KESAVANANDA BHARATI* 161 (1<sup>st</sup> ed., Eastern Book Company 2011).

NGO's plea was that (1) we the citizens, which challenges the validity of both Article 35A and 370. It argues that four reprehensive from Kashmir were part of Constituent Assembly involved in the drafting of the Constitution and the State of J & K was never accord and special status in the Constitution. (2) Article 370 was only a 'temporary provision' to help bring normality to J &K and strengthen democracy in that State. The Constitution makers did not intend Article 370 to be a tool to bring permanent amendments, like Article 35A, in the Constitution. (3) The petition said 35A, was against the "very spirit of oneness of India" as it created a "class within a class of Indian citizens". Restricting citizens from other State from getting employment or buying property within J & K was a violation of fundamental rights under 14, 19 and 21 of the Constitution. The Supreme Court also held in Woman Rao, an amendment made prior to the decision in Kesavananda cannot be susceptible to a basic structure challenge. To hold otherwise would have consequences far more devastating than might immediately be apparent.<sup>11</sup>

The paper analysis the verdictial core issues of the basic structure doctrine expounded by the apex court, in cases from Sajjan Singh to Kesavananda Bharati and later in I.R. Coelho and others.

## **DEFINING THE BASIC FEATURES OF THE CONSTITUTION**

The basic features of the Constitution have not been explicitly defined by the judiciary. However, Supremacy of the Constitution; Rule of law; The principle of separation of powers; The objectives specified in the Preamble to the Constitution; Judicial Review; Article 32 and 226; Federalism; Secularism; The Sovereign; Democratic; Republican structure; Freedom and dignity of the individual; Unity and Integrity of the Nation; The principle of equality (not every feature of equality but the quintessence of equal justice); The essence of other Fundamental Rights in Part-III; The concept of social and economic justice-to build a welfare State in Part-IV; The balance between Fundamental Rights and Directive Principles; The Parliamentary system of

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11. (Mar. 05, 2019 10:10 PM) <https://www.thehindu.com/news/national/will-examine-if-article-35a-affects-basic-structure-of-constitution>.

government; The principle of free and fair elections; Limitations upon the amending power conferred by Article 368; Independence of the Judiciary; Effective access to justice; Power of the State by Arbitration Tribunals constituted under an act. etc., are termed as some of basic features of the Constitution.<sup>12</sup>

The theory of basic structure of the Constitution was reaffirmed and applied by the Supreme Court in *Smt. Indira Nehru Gandhi v. Raj Narain case*,<sup>13</sup> where certain amendments to the Constitution were held void. Subsequently, upholding the concept of “basic structure” as propounded by the Court in *Kesavananda Bharati*, the Supreme Court in *Minerva Mills Ltd. V. Union of India*,<sup>14</sup> declared Section 55 of the Constitution (forty-second Amendment) Act, 1976 as unconstitutional and void. It held: Since the Constitution had conferred a limited amending power on the Parliament; the Parliament cannot under the exercise of that limited power enlarge that very power into an absolute power. Indeed, a limited amending power is one of the basic features of our Constitution and therefore, the limitations on that power cannot be destroyed. In other words, Parliament cannot, under Article 368, expand its amending power so as to acquire for itself the right to repeal or abrogate the Constitution or to destroy its basic and essential features. The drone of a limited power cannot by the exercise of that power convert the limited power into an unlimited one.

The concept of basic structure has since been expanded by the Supreme Court in a number of subsequent cases, such as *Waman Rao case*,<sup>15</sup> *Bhim Singhji case*,<sup>16</sup> *Transfer of Judges case*,<sup>17</sup> *S.P. Sampath Kumar case*,<sup>18</sup> *P. Sambamurthy case*,<sup>19</sup> *Kihota case*,<sup>20</sup> *L. Chandra Kumar case*,<sup>21</sup>

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12. Dipakshi Joshi Bisht, *Basic Structure Theory- Boon or Bane*, Vol. XL (3), *Indian Bar Review* 112 (2013).

13. A.I.R. 1975 S.C. 2299 (India).

14. A.I.R. 1980 S.C. 1789 (India).

15. *Waman Rao v. Union Of India*, A.I.R. 1981 S.C. 271 (India).

16. *Bhim Singhji v. Union of India*, A.I.R. 1981 S.C. 234 (India).

17. *S.P. Gupta v. President of India*, A.I.R. 1982 S.C. 149 (India).

18. *S.P. Sampath Kumar v. Union of India*, A.I.R. 1987 S.C. 386 (India).

19. *P. Sambamurthy v. State of A.P.*, A.I.R. 1987 S.C. 663 (India).

20. *Kihota Hollohon v. Zachilhu and Others*, (1992) 1 S.C.C. 309 (India).

21. *L. Chandra Kumar v. Union of India and Others*, A.I.R. 1997 S.C. 1125 (India).

P. V. Narsimha Rao case,<sup>22</sup> I. R. Coelho case,<sup>23</sup> and Cash for Query case.<sup>24</sup> The basic features of the Constitution are not finite. So far about 20 features described basic or essential in numerous cases, have been incorporated in the list of basic structure. In Smt. Indira Nehru Gandhi v. Raj Narayan popularly known as Election case,<sup>25</sup> and also in Minerva Mills,<sup>26</sup> it has been observed that the claim of any particular feature of the Constitution to be a 'basic' feature would be determined by the Court in each case that comes before it.

### **SCOPE AND EXTENT OF "BASIC STRUCTURE DOCTRINE"**

The scope and extent of the application of the doctrine of basic structure again came up for examination in Minerva Mills Ltd. v. Union of India.<sup>27</sup> In this case the petitioners challenged the validity of Section 4 and 55 of the Constitution (Forty-second Amendment Act, 1976) on the ground of violation of the basic structure of the Constitution as laid down in Kesavananda Bharati. These sections amended respectively Articles 31-c and 368. In Article 31-C laws implementing any Directive Principle were exempted from challenge on the ground of violation of Article 14, 19 and 31 and Article 368 clauses (4) and (5) validated all invalidated and existing amendments and removed all limitation on future amendments. While the court unanimously invalidated the amendment of Article 368, it invalidated the amendment of Article 31-C by 4:1. Applying the basic structure doctrine with respect to Article 368 it held that:

“Since the Constitution had conferred a limited amending power on the Parliament, the Parliament cannot under the exercise of that limited power enlarge that very power into an absolute power. Indeed, a limited amending power is one of the basic features of our Constitution and therefore, limitations on that power cannot be destroyed”.

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22. P.V. Narsimha Rao v. State (CBI/SPE), A.I.R. 1998 S.C. 2120 (India).

23. I.R. Coelho v. State of Tamil Nadu and Others, (2007) 2 S.C.C. 1 (India).

24. Raja Ram Pal v. The Hon'ble Speaker, Lok Sabha and Others, JT 2007 (2) S.C. 1 (India).

25. A.I.R. 1975 S.C. 2299 (India).

26. A.I.R. 1980 S.C. 1789 (India).

27. (1980) 3 S.C.C.: A.I.R. 1980 S.C. 1789 (India).

In respect of Article 31-C the Court held that “harmony and balance between fundamental rights and directive principles is an essential feature of the basic structure of the Constitution.... Anything that destroys the balance between the two parts will *ipso facto* destroy an essential element of the basic structure of our Constitution”.<sup>28</sup> As the amended Article 31-C gave primary to all Directive Principles over the core Fundamental Rights, it violated the harmony between the two and accordingly destroyed the basic structure of the Constitution.<sup>29</sup>

### **THE “BASIC STRUCTURE DOCTRINE” AND KESAVANANDA BHARATI**

Ironically the word “basic structure” is nowhere used in the Constitution and not a single judge in *Kesavananda Bharati v. State of Kerala*,<sup>30</sup> has referred to any particular article or group of articles that would constitute the basic structure. If one carefully analyses the judgments, the basic structure doctrine represents the essential or core principles that form the bedrock of our Constitution. Take away any of the principles constituting the basic structure, and India will cease to be a true republican democracy.

In his arguments, Mr. Palkhivala had set out the twelve principles that according to him, constituted the basic structure. These 12 principles given below are set out in the judgement of A. N. Ray J.: (1) Supremacy of the Constitution; (2) Sovereignty of India; (3) Integrity of the country; (4) Democratic way of life; (5) Republican form of the government; (6) Guarantee of basic human rights elaborated in Part-III of the Constitution; (7) Secular State; (8) Free and independent judiciary; (9) Dual structure of the Union and the State; (10) Balance between the legislature, the executive and judiciary; (11) Parliamentary form of the government as from the presidential form of the government; and (12) Article 368 can be amended but cannot be amended to empower parliament to alter or destroy any of the essential features of the Constitution.

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28. A.I.R. 1981 S.C. 522 (India).

29. V. N. SHUKLA’S, CONSTITUTION OF INDIA 1008 (11<sup>th</sup> ed. Eastern Book Company 2008).

30. (1973) 4 S.C.C. 225 (India).

According to Sikri CJ., (a) Supremacy of the Constitution; (b) Republican and democratic form of the government; (c) Secular character of the Constitution; (d) Separation of powers between the legislature, the executive and the judiciary; and (e) Federal character of the Constitution.

According to Shelat and Grover JJ., (a) Supremacy of the Constitution; (b) Republican and democratic form of the government and sovereignty of the country; (c) Secular and federal character of the Constitution; (d) Demarcation of power between the legislature, the executive and the judiciary; (e) Dignity of the individual secured by the various freedoms and basic rights in Part-III and the mandate to build a welfare State contained in Part-IV; and (f) Unity and the integrity of the nation.

According to Hegde and Mukherjea JJ., (a) Sovereignty of India; (b) Democratic of our policy; (c) Unity of the country; (d) Essential features of the individual freedoms secured to the citizens; (e) Welfare state and egalitarian society.

According to Jaganmohan Reddy J., (a) Sovereign, democratic and Republic; (b) Justice, social, economic and political; (c) Liberty of thought, expression, belief, faith and worship; and (d) Equality of status and opportunity.

The above views were thus, no unanimity amongst the judges in Kesavananda Bharati as to what constituted the basic structure. What does one mean by “essential features of the individual freedoms secured to the citizens” as mentioned by Hegde and Mukherjea JJ.? The components of basic structure as given by Reddy J., are nothing but extracts from the preamble to the Constitution.<sup>31</sup>

## **THE “BASIC STRUCTURE DOCTRINE” AND I.R. COELHO**

The task in I.R. Coelho<sup>32</sup> in providing concrete basis of the basic structure principle was not easy. It was shrouded with two major difficulties.

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31. Datar, supra note 10, at 160-62.

32. (2007) 2 S.C.C. 1(India).

The first major difficulty was in the nature of the very 'fragile' existence of the basic structure principle at the very time of its birth in Kesavananda Bharati, which seriously affected its future growth and development. This was owing to the fact that the 13 judge constitutional court was deeply divided on the issue, whether or not there really exists the basic structure of the Constitution apart from the Constitution itself. Six judges led by Sikri C.J.I., (Shelat, Grover, Hegde, Mukherjea and Reddy JJ.) in four different opinions- reached substantially the same conclusion: they propounded the principle of basic structure of the Constitution by reading an implied limitation on the power of the Parliament to amend the Constitution. On the other hand, the other group of six judges led by Ray J., (Phalekar, Mathew, Beg, Dwivedi, and Chandrachud JJ.) did not subscribe to any such principle in the name of the basic structure of the Constitution. The 13<sup>th</sup> judge, namely Khanna J., tilted the balance by eventually joining the group led by Sikri C.J.I., subscribing to the basic structure principle. This is how the principle of basic structure of the Constitution came to be evolved in Kesavananda Bharati by a slender majority of 7:6. (Virendra Kumar, Basic Structure of the Indian Constitution: Doctrine of Constitutionally Controlled Governance, Vol. 49:3, Journal of the Indian Law Institute 367 (2007).)

However, that was not the 'fragile' existence of the principle of basic structure. Further weakening was caused to this principle again in Kesavananda Bharati itself, when the issue of constitutional validity of the 29<sup>th</sup> amendment of the constitution came to be considered. (The 29<sup>th</sup> amendment sought to introduce two land reform laws into the ninth schedule of the Constitution by inserting entries 65 and 66.) The group led by Sikri C.J.I., upheld the constitutionality of the 29<sup>th</sup> amendment but only 'conditionally' by stating that it was valid only if the legislation added to the ninth schedule did not violate the basic structure of the Constitution. On the other hand, the group of six judges led by Ray J., upheld the constitutionality of the same amendment 'unconditionally' and Khanna J., joined them. This created a position of ambivalence, which was bound to generate confusion in subsequent cases while expounding the basic structure principle.

The second major difficulty presented before the nine-judge bench in streamlining the basic principle of basic structure of the Constitution was in respect of article 31-B read with the ninth schedule of the Constitution. Simply abstracted, article 31-B provides a 'protective umbrella' by granting 'fictional immunity' of fundamental rights enumerated in part- III of the Constitution to all those laws that are included in the ninth schedule. The constitutional validity

of the first amendment had already been upheld by the Supreme Court in Sankari Prasad<sup>33</sup> and Sajjan Sing<sup>34</sup> cases. This meant that Parliament had unlimited power to amend the Constitution.

The unlimited amending power of Parliament, however, came to be curtailed by the Supreme Court in Golak Nath.<sup>35</sup> In this case, a constitutional bench of eleven judges considered the correctness of the view earlier taken in Sankari Prasad and Sajjan Singh. By a majority of six to five, the court overruled its earlier view, and held that constitutional amendment through the amending act is a 'law' within the meaning of article 13 of the Constitution and therefore, if it takes away or abridges the rights conferred by Part-III, therefore, it is void.

In this respect the specific issue that came up for adjudication before the five judge constitutional bench in 1999 in I.R. Coelho v. State of Tamil Nadu<sup>36</sup> was, whether the basic structure principle applied only to constitutional amendments to a limited extent of examining, such as the competency of the legislature; or whether it would also apply to the laws that are added to the ninth schedule on the touchstone of fundamental rights- the rights against which the immunity is provided under that very schedule. For an authoritative resolution, such an issue about the limits of the basic structure principle was, however, desired to be decided by a larger constitutional bench. It is that issue, which has been taken up recently by the decision of the nine judge constitutional bench of the Supreme Court, which puts the principle of basic structure of the Constitution on firmer footing. What was initially propounded as a principle in Kesavananda Bharati has now become, as a result of successive juristic development culminating into the nine judge bench decision in Coelho, an axiom or a defined doctrine with a reasonably clear resonance.

### **LIMITATIONS OF “BASIC STRUCTURE DOCTRINE”**

The validity of an ordinary legislation can be tested on two grounds, namely, legislative competence and whether or not it attracts the bar of articles 13 (1) and 13(2) of the Constitution.

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33. A.I.R. 1951 S.C. 458 (India).

34. A.I.R. 1965 S.C. 845 (India).

35. A.I.R. 1967 S.C. 1643 (India).

36. (1999) 7 S.C.C. 580 (India).

It was also held by Y.V. Chandrachud J., in paragraph 691 of his separate judgment in Kesavananda Bharati case. The question here arises that can the validity of an ordinary legislation be tested on the anvil of the basic structure doctrine? Meaning thereby that, can an ordinary legislation be invalidated by the Union Judiciary on the ground that, can an ordinary legislation be invalidated by the Union Judiciary on the ground that it is violative of the basic structure doctrine, in addition to the already two existing aforesaid grounds?

The Apex Court accordingly in *Bhim Singhji v. Union of India*,<sup>37</sup> unequivocally stated that the basic structure doctrine cannot be widened so as to include right to property as..... The whole adventure of the Constitution is to remove poverty and in that process remove concentration of property.

In *Indira Nehru Gandhi v. Raj Narain*,<sup>38</sup> and *Kuldip Nayar v. Union of India*,<sup>39</sup> the Apex court categorically held that the basic structure doctrine is inapplicable to ordinary legislations passed by Parliament, thereby limiting the application of the said doctrine only to Constitutional amendments'. The court herein elucidated that an ordinary law or legislation can be invalidated on two grounds: (1) contravention of fundamental rights as encapsulated under the Constitution; (2) Legislative incompetence. Till date, there is no clear explanation why the basic structure doctrine will not apply to strike down an ordinary law.

Indeed, not using the doctrine in such a scenario can cause greater harm to the Constitution as this makes evolved by Parliament not amenable to judicial scrutiny. Rendering this doctrine nugatory would create a totalitarian regime, as held in *Ashoka Kumar v. Union of India*,<sup>40</sup> "When judicial review is barred, democracy evaporates".

Also, it is difficult to comprehend why the Supreme Court has sought to use this doctrine only when constitutional amendments were involved and not ordinary laws because the latter could cause as much harm to the Constitution.

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37. (1981) 1 S.C.C. 166 (India).

38. (A.I.R. 1975 S.C. 2299 (India).

39. (2006) 7 S.C.C. 1: A.I.R. 2006 S.C. 3127 (India).

40. (2008) 6 S.C.C. 1 (India).

It is important to note that the underlying motive of the basic structure doctrine is to ensure that certain limitations on Parliament in its exercise of law making powers. If, however, Parliament is allowed to pass laws without regard for the basic feature doctrine, it would lead to an absurd situation—a constitutional amendment will be subject to a more rigorous test than an ordinary law.

It is pertinent to note what Hegde and Mukherjea JJ., had stated in *Kesavananda* to explain the *raison d'être* for this doctrine:

Our Constitution is not a mere political document. It is essentially a social document. It is based on social philosophy and every social philosophy like every religion has two main features, namely, basic and circumstantial. The former remains constant but the latter is subject to change. The core of a religion always remains constant but the practices associated with it may change. Likewise, a constitution like ours contains certain features which are so essential that they cannot be changed or destroyed.<sup>41</sup>

In *Madras Bar Association v. Union of India*,<sup>42</sup> (hereinafter referred to as the *NTT* case) the constitutional validity of the National Tax Tribunal Act, 2005, (*NTT Act*) was challenged along with calling into question the constitutional validity of the Forty-Second Amendment, 1976, on the ground that it violates the basic structure of the Constitution by impinging the power of judicial review of high courts. Khehar J., writing for the majority, concluded that the Parliament had the power to enact legislation and to vest adjudicatory functions, earlier vested in the high courts with an alternative court/tribunal. Exercise of this power would not per se violate the basic structure of the Constitution. The basic structure of the Constitution would stand violated if while enacting such a legislation, the Parliament does not ensure that the newly constituted court or tribunal conforms to the standards and salient characteristics of the court sought to be substituted. This would also be violative of Constitutional conventions pertaining to Constitution styled on the Westminster model. On these parameters, certain essential provisions of the *NTT Act* were struck down as being unconstitutional and since these provisions were critical to the act, consequently, the *NTT Act* itself was declared unconstitutional.<sup>43</sup>

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41. A.I.R. 1973 S.C. 1461 (India).

42. (2014) 10 S.C.C. 1 (India).

43. Id. at 226.

In *State of West Bengal v. Committee for Protection of Democratic Rights*,<sup>44</sup> a Constitution Bench of the Supreme Court held that the power of judicial review conferred to the Supreme Court and high courts is an integral part of the basic structure of the Constitution and no Act of Parliament can exclude or curtail this power of the constitutional courts.

In the landmark judgment of Supreme Court Advocates on Record Association v. Union of India,<sup>45</sup> (NJAC judgment), it was observed by Khehar J., that for examining the constitutional validity of an ordinary legislative enactment, all the constitutional provisions on the basis of which the concerned “basic features” are available and even the breach of a single provision is sufficient to render the legislation as unconstitutional.

The above limitations of the basic features, therefore, it is importance that the higher courts while considering the validity of a particular law in the light of the basic structure doctrine should only resolve to maintain the fixed or basic structure of the Constitution and not every ancillary part of the Constitution.

## **CONCLUSION**

To conclude we submit that if the ratio of the judgment in *Keshavananda Bharati*, is read as suggested by Sikri CJ., Hegde, Mukherjea, Jaganmohan Reddy and Khanna JJ., the inescapable conclusion is that the notion of basic structure is a review mechanism to regulate the exercise of overall amending power inclusive of constituent power. Sikri CJ., also explained the concept of basic structure by way of giving illustrations such as (i) supremacy of the constitution (ii) republican and democratic form of government (iii) secular character of the Constitution (iv) separation of powers between the legislature, the executive and judiciary and (v) federal character of the Constitution. This structure, as pointed out by him, is built on the basic foundation, i.e., the dignity and freedom of the individual and this cannot by any form of amendment be destroyed.

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44. (2010) 3 S.C.C. 571 (India).

45. (2016) 5 S.C.C. 1 (India).

Jurisprudentially, the Constitution of a country represents the ground norm, the basic norm, and comprising of fundamental principles, which lay down the foundation of constitutional documents as well as the foundation of a civil society at large. It is important that the apex court while considering the validity of a particular law in relating to basic foundation of Constitution with applying the basic structure doctrine should follow up the “twin-test” and “width test”.<sup>46</sup>

H.M. Seevai’s (Jurist) views on the basic structure doctrine are:<sup>47</sup> We can now answer the question; does the doctrine of the basic structure provide a correct interpretation of Article 368? It is clear from our discussion that it appears to be the only doctrine which supplies an answer to the question. Coming to the second answer, our discussion has shown that the consequences of rejecting the doctrine of the basic structure would be so grave and so opposed to the objectives of the Constitution, that the consequence of uncertainty would be insignificant by comparison. This is all the more so because the Kesavananda doctrine has neither prevented an amendment of the Constitution in the public interest nor the enactment of socio-economic laws...<sup>48</sup> In this context, the Constitution will not have been treated as an ordinary law to be changed at the will of the Party power.

P. N. Bhagwati J., in his minority judgment in *Minerva Mills* case observed: “It is for the judiciary to uphold the Constitutional values and to enforce the Constitutional limitations, that is the essence the Rule of law, which inter alia requires that the exercise of powers by the Government whether it be the legislative or the executive or any other authority be conditioned by the Constitution and the law”. The rule of law pervades the Constitution as its basic feature and cannot be taken away even by the amendment of the Constitution.

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46. *M.Nagaraj v. Union of India*, (2006) 8 S.C.C. 212 (India).

47. SEERVAI, *CONSTITUTIONAL LAW OF INDIA* 2686-2692 (3<sup>rd</sup> ed. Vol. II.) ((1975) (Supp) S.C.C. 1 60 (India).

48. *Supra* note 47 at 3077.