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Expanding Horizons of Basic Structures of Constitutionalism: A Study of Evolving Trends

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Abstract

This paper highlights that in the India' s constitutional framework, the judiciary stands as a bastion of constitutional supremacy, wielding the power to scrutinize and invalidate legislative and executive actions that contravene the sacred tenets enshrined within the Constitution. Inspired by the American Constitution and articulated by Chief Justice Marshall in the watershed Marbury v. Madison case of 1803, the concept of judicial review underlines the inviolable nature of constitutional principles, proclaiming legislative transgressions as null and void. This paper highlights what is central to this discourse is to maintain the delicate balance among the legislature (L), Executive (E), and the Judiciary (J). Each of this wing of the government is envisioned as equal and coordinated entities tasked with upholding the principles of separation of powers and checks and balances. Herein lies the crux of the perennial question: to what extent can the judiciary scrutinize the validity of laws enacted by the parliament and state legislatures without encroaching upon their domains? This tension often manifests as a confrontation between the Supreme Court of India and the executive and parliamentary branches, accentuating the judiciary's pivotal role in safeguarding constitutional integrity. This paper stress the preambular mandate of the Indian Constitution, which heralds India as a Sovereign Socialist Secular Democratic Republic, where post Maneka Gandhi case of 1978, the judiciary assumes the role of championing socialist ideals, particularly the eradication of poverty and the elevation of the working class. This necessitates legislative initiatives such as land reforms aimed at redistributing excess land to the landless, abolishing feudal structures like the zamindari system, and nationalizing the bank… etc. However, the executive's reluctance to fully implement these reforms brings out a fundamental tension between constitutional aspirations and political expediency. Judiciary in Golak Nath case pointed out that Article 368

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consists only 'procedure' to amend the constitution and the 'power' to amend to bring substantive changes is absent. Judiciary pointed out that the main object of Article 13 is to secure the paramountcy of the Constitution in regard to the fundamental rights. This paper also emphasised how the Judiciary exhibited foresightedness and creativity by employing the doctrine of prospective overruling. Consequently, Parliament responded with the 24th amendment, altering Article 368 to replace 'Procedure' with 'Power' concerning Parliament's ability to amend the Constitution. Additionally, parliament also amended Article 13 to shield it from judicial review, thus seemingly curtailing the Judiciary's authority. However, the Judiciary remained steadfast in its stance. In contrast, the Keshavananda Nanda Bharti case marked a pivotal moment where a 13-judge bench articulated the concept of the basic structure of the Constitution. This doctrine asserts the immutability of certain foundational principles, empowering the judiciary to nullify any amendment threatening this basic structure. Despite attempts to curtail its authority, the judiciary remains resilient in upholding constitutional principles, ensuring that the Constitution remains adaptable while preserving its essential framework. While this doctrine may not find universal acceptance, particularly in other countries, the Indian judiciary's expansion of judicial review reinforces the Constitution as a living document responsive to the evolving needs of society.

Keywords: Judicial Review, Power, Procedure, Validity, Art 368, Parliament, Article 13, 24th Amendment

1. Introduction

Judiciary is considered as the watchdog of the Constitution. 'But who watches the watchman?' Who will guard the guards? The saying has since been used by many people to ponder the insoluble question of where ultimate power should reside. In a democratic country, where the people make the laws through their legislature. It is not the function of the court to supervise or to correct the laws passed by the legislature as an overriding authority. The way in which modern democracies attempt to solve this problem is in the separation of powers. The idea is to never give ultimate power to any one group, but to let the interests of each (the executive, legislative or judicial) compete and conflict with one another. Since 1951, questions have been raised about the scope of the

Constitutional amending process contained in Article 368. The basic question raised has been whether the fundamental rights were amendable so as to dilute or take away any fundamental right through a constitutional amendment? Since 1951, a number of amendments have been effectuated in the fundamental rights. The cumulative effect of these amendments has been to curtail, to some extent, the scope of some of these rights. The worst affected Fundamental Right has been the right to property contained in Article 31 which has been amended several times. The basic trend of these amendments has been to immunize to some extent, state interference with property rights from challenge under Articles 14, 19 and 31 as well as to seek to exclude the question of compensation for acquisition or requisitioning of property by the state from judicial purview.[1] Four concepts were involved in Article 31(2). They are 1) Property, 2) Compulsory Acquisition and Requisitioning by the State, 3) Amount and 4) Public Purpose. The ostensible purpose of repealing Article 31, especially Article 31(2) is

[1] Article 31(1) laid down:

"no person could be deprived of his property without the authority of law."

Article 31(2) as it stood before its abrogation in 1978:

"No property…shall be taken possession of or acquired for public purposes under any law authorising the taking of such possession or such acquisition, unless the law provides for compensation for the property taken possession of or acquired and either fixes the amount of compensation, or specifies the principles on which, and the manner in which, the compensation is to be determined and given".

The amended version of Article 31(2) by XXV Amendment of the Constitution in 1971:

"No property…shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provides for acquisition or requisitioning of the property for an amount which may be fixed by such law or which may be determined in accordance with such principles and given in such manner as may be specified in such law, and no such law shall be called in question in any court on the ground that the amount so fixed or determined is not adequate or that the whole or any part of such amount is to be given otherwise than in cash".

to free the legislature from the restraint of paying compensation for property acquired.[2] The 44th Amendment of the Constitution in 1978 transformed the right to property from the category of Fundamental Rights by repealing Article 31, and converted it into an ordinary constitutional right by enacting Article 300A instead.[3]

The constitutional validity of these amendments has been challenged a number of times before the Supreme Court. The constitutional right to property under Article 300A is not a basic feature or structure of the Constitution. It is only a constitutional right.[4] Article 300A ensures that a person cannot be deprived of his property merely by an executive fiat. The rights in property can be curtailed, abridged or modified by the state only by exercising its legislative power. An executive order depriving a person of his property, without being backed by law, is not constitutionally valid.[5]

2. Background and Origin of the Basic Feature:

The mythology of the basic features of the Constitution can be traced back to the amendment clause of the Constitution.[6] Under Article 368, which is the specific provision dealing with amendment of the Constitution, Parliament is the repository of the constituent power. An amendment of the Constitution can be initiated only by the introduction of a Bill in either House of Parliament so that the initiative in the matter of constitutional amendment has been exclusively reserved for Parliament. The President cannot do it by an ordinance nor can the Supreme Court do it by a judicial diktat.[7] Until the 1967 judgement in the *Golak Nath* case, the Supreme Court had *inter alia* held that there was no limitation on the

[2] Jain, M. P. (2003). *MP Jain Indian Constitutional Law*. Wadhwa and Company Nagpur, pp.1301.

[3] Article 300 A merely says:

"No person shall be deprived of his property save by authority of law."

[4] *Ibid.*

[5] *Ibid.* Also see, *Bishamber Dayal Chandra Mohan* v *State of Uttar Pradesh.*

[6] Article 368 of the Constitution of India, 1950.

[7] Kashyap, S. C. (2010), *Indian constitution: conflicts and controversies*, pp. 241-242.

amending power, every provision of the Constitution including the fundamental rights could be amended. In the *Golak Nath* case, by a 6:5 majority it reversed the earlier decisions[8] and held that the fundamental rights enshrined in the Constitution were transcendental and immutable, that article 368 of the Constitution laid down only the procedure for amendment and did not give to Parliament any substantive power to amend the Constitution, that a Constitution Amendment Act was also law within the meaning of Article 13 and as such Parliament could not take away or abridge the fundamental rights even through a Constitution Amendment Act passed under Article 368. [9] Finally in 1973, in *Kesavananda Bharti v. State of Kerala*[10] the Supreme Court reviewed the decision in the *Golak Nath* case. Ten of the 13 judges held that Article 368 itself contained the power to amend the Constitution and the 'law' in Article 13 (2) did not take in a constitutional amendment under article 368. The law declared in *Golak Nath* case was accordingly over-ruled.[11]

3. What constitutes the Basic Structure?

On the question whether the amending power under Article 368 is absolute and unlimited, seven judges, constituting a majority, held that the amending power under Article 368 was subject to an implied limitation; a limitation which arose by necessary implication from its being a power to 'amend the Constitution'. By a majority of 7:6 the Court ruled that 'Article 368 does not enable Parliament to alter the 'basic structure' or 'framework of the Constitution'. Three different terms 'basic elements', 'basic features' and 'basic structure' were used. 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 donee of a limited power cannot

[8] *Shankari Prasad v. Union of India & Sajjan Singh v. Union of India*.
[9] *Supra,* note 6, pp. 242.
[10] (AIR 1973 SC 1461).
[11] *Ibid.*

by the exercise of that power convert the limited power into an unlimited one. But what constituted the 'basic elements', 'features' or 'structure' was, however, not clearly made out by the majority and remained an open question.

In the *Kesavananda Bharti v. Union of India*[12] Justice Sikri had tried to tabulate the basic features of the Constitution as:

a) Supremacy of the Constitution,
b) Republican and Democratic form of Government
c) Secular character of the Constitution
d) Separation of Powers
e) Federal Character of the Constitution

4. Key Supreme Court decisions illustrating the application of the Basic Structure Doctrine

In the same case,[13] Justice Hegde and Justice Mukherjee included the sovereignty and unity of India, the democratic character of our policy and individual freedom in the elements of the basic structure of the Constitution. They believed that Parliament had no power to revoke the mandate to build a welfare state and an egalitarian society.[14] Justice Khanna also said that Parliament could not change our democratic government into a dictatorship or hereditary monarchy nor would it be permissible to abolish the Lok Sabha. The secular character of the State could not, likewise, be done away with.[15]

In *Indira Nehru Gandhi* v *Raj Narain*[16] Justice Chandrachud found the following to be the fundamental elements of the basic structure of the Constitution. They are,

a) India as a sovereign democratic republic
b) Equality of status and opportunity
c) Secularism and the Freedom of Conscience

[12]Para 302
[13]*Kesavananda Bharti v Union of India*.
[14] Para 682.
[15]Para 1437.
[16]AIR 1975 SC 2299,para 55 & 213.

d) Rule of Law

The same Judge in the *Minerva Mill v. Union of India*[17] added the 'amending powers of parliament', 'Judicial Review' and balance between the Fundamental Rights and Directive Principles' to the list of elements basic to the Constitution. The concept of basic structure was further developed by the Supreme Court and the position that the basic features cannot be altered even by Constitutional Amendments was further confirmed and more essential features of the basic structure were added in *Waman Rao v. Union of India*,[18] *Bhim Singh v. Jammu & Kashmir*[19] *SP Gupta v. Union of India*[20] *; Sampath Kumar v Union of India*[21] *and Kihoto Hollohan v Zachilhu;*[22] *L Chandakumar v. Union of India.*[23]

In the *S.R. Bommai* v *Union of India*[24] regarding the dismissal of BJP Governments in Madhya Pradesh, Himachal Pradesh and Rajasthan, Justice Jeevan Reddy and Justice Ramaswamy reiterated that federalism, *inter alia,* was a basic feature of the Constitution. Justice Ramaswamy held that a democratic form of Government, federal structure, unity and integrity of the nation, secularism, socialism, social justice and judicial review were among the basic features of the Constitution.[25]

5. Legal Reasoning of the Kesavananda Case

Kesavananda answered the question which was left unanswered in *Golak Nath*, namely, can Parliament, under Article 368, rewrite the entire Constitution and bring in a new Constitution? The answer to the question is that Parliament can only do that which does not modify the basic features of the Constitution and not go beyond

[17] AIR 1980 SC 1789.
[18]AIR 1981 SC 271.
[19]AIR 1981 SC 234.
[20]1st Transfer of Judges case, AIR 1982 SC 149.
[21]AIR 1987 SC 663.
[22]AIR 1993 SC 412.
[23]AIR 1997 SC 1125.
[24] ([1994] 2 SCR 644 : AIR 1994 SC 1918 : (1994)3 SCC1).
[25]*Supra* note P. 245.

that. *Kesavananda* illustrated judicial creativity and the policy-making role of the Supreme Court of a very high order.[26] The majority judges sought to protect and preserve the basic features of the Constitution against the onslaught of transient majorities in Parliament. An unqualified amending power could mean that a political party with a two-thirds majority in Parliament, for a few years, could make any changes in the Constitution, even to the extent of establishing a totalitarian state to suit its own political exigencies. [27]

It was a conscious 'policy' decision on the part of the Supreme Court to read implied limitations on the amending power in order to preserve basic, core, constitutional values against the onslaught of a transient majority in parliament. In *Kesavananda*, several judges felt convinced that certain values and ideals embedded in the Constitution should be preserved and not destroyed by any process of constitutional amendment. The Constitution deriving its strength and sanction from the national consensus, and enacted in the name of the 'people of India'[28] should not be amendable merely by a 2/3rd vote in Parliament when the truth is that 2/3rd of the Lok Sabha does not represent a very broad national consensus, as only nearly 40% of the registered voters cast their votes in the general election, and these votes are divided among several political parties contesting the general election to the Lok Sabha and Rajya Sabha has no popular mandate as, in effect, it consists of the nominees of the various political parties elected by the various state legislatures.[29]

The basic philosophy underlying the doctrine of non-amendability of the basic features of the Constitution, evolved by the majority in *Kesavananda* has been explained by HEDGE and MUKHERJEE, JJ., as:

> "Our Constitution is not a mere political document. It is essentially a social document. It is based on a social philosophy and every social philosophy like

[26]*Supra* note 3, p. 1631.
[27] N. A. (1974). *Our Constitution Defaced and Defiled*, p.147.
[28]Preamble to the Constitution of India.
[29]*Supra*, note 24, p. 1631.

> 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."

Thus, the *Kesavananda Bharti case* was the culmination of a struggle for supremacy over the power to amend the Constitution between Parliament and Government of the day on the one hand and the Supreme Court of India on the other.

6. The Struggle for Supremacy: The Internal Emergency

Indira Gandhi was not pleased with the Supreme Court's attempt in the *Kesavananda case* to insulate the Constitution from root and branch transformation. Over the next few years, her response was threefold: first, to punish the judges who curtailed government power; second, to attempt judicial reversal of the judgement in the *Kesavananda case*; and third, to attempt legislative reversal. The punishment was forfeiture of the office of chief-justice, as Justice Shelat, Hegde and Grover (all of whom held against the government in the *Kesavananda* case) were overlooked for the position. The judicial reversal was attempted during the Emergency, when another panel of thirteen judges was assembled to reconsider the decision. The reconsideration was 'suddenly and inexplicably abandoned' on the third day into the hearing.[30]

The attempted legislative reversal also took place during the Emergency. The 42nd Amendment to the Constitution, enacted in 1976, was less an amendment and more an effort to radically transform the nature of the Constitution. It added two clauses to Article 368 of the Constitution with a view to overturning the

[30]Andhyarujina, T. R., (2011) *The Kesavananda Bharati Case: The Untold Story of Struggle for Supremacy by Supreme Court and Parliament,* Universal Law Publishing, p.88.

Kesavananda judgement and making clear 'beyond doubt'[31] that Parliament had the power to amend any part of the Constitution. The first clause stated that no amendment of the Constitution, regardless of when it was enacted, would be 'called in question in any court on any ground.'[32] The second clause clarified that there would be 'no limitation whatever'[33] on Parliament's power to amend the Constitution.

7. Basic Structure Enlarged by the Supreme Court

In the *Minerva Mills* v. *Union of India,*[34] the Supreme Court provided key clarifications on the interpretation of the basic structure doctrine. The court noted that both the amendments (the amendments to Article 368 and 31C) were beyond the amending power of Parliament and this violated the basic structure of the Constitution. In addition, the limited amending power was itself a basic feature of the Constitution, post *Kesavananda case*. In addition, by stating that no court would have the power to pronounce upon the validity of a constitutional amendment, the amendment damaged the balance of power between the judiciary and Parliament. [35]

Three months after the decision in *Minerva Mills* (1980); in *Waman Rao v. Union of India,*[36] the Supreme Court reduced the value of Article 31 B of the Constitution. In *Waman Rao's* case, the court while holding that Article 31B was a valid constitutional amendment drew a line at 24.04.1973 for upholding laws in the Ninth Schedule which were protected by Article 31B. The court held:

"In so far as the validity of the Article 31B read with the Ninth Schedule is concerned, we hold that all Acts and Regulations included in the Ninth Schedule prior to April 24, 1973 will receive

[31]The Constitutiob (42nd Amendment) Act, 1976, Statement of Objects and Reasons.

[32]*Ibid.* sec 55.

[33]*Ibid.*

[34] AIR 1980 SC 1789

[35]Chandrachud, C. (2019). The cases that India forgot, p.31.

[36] (1981)2SCC362.

the full protection of Article 31B. Those laws and regulations will not be open to challenge on the ground that they are inconsistent with or take away or abridge any of the rights conferred by any of the provisions of Part III of the Constitution, Acts and Regulations, which are or will be included in the Ninth Schedule on or after April 24, 1973 will not receive the protection of Article 31B for the plain reason that in the face of the judgement in *Kesavananda Bharti*, there was no justification for making additions to the Ninth Schedule with a view to conferring a blanket protection on laws included therein. The various constitutional amendments, by which additions were made to the Ninth Schedule on or after April 24, 1973, will be valid only if they do not damage or destroy the basic structure of the Constitution."

Waman Rao's case created further problems of inconsistencies. As late as 14 September, 1999, a Constitutional bench in *I.R. Coelho v State of Tamil Nadu*[37] referred the problems arising from *Waman Rao's* case to a larger bench of nine judges. It observed:

> "The judgement in *Waman Rao* needs to be considered by a larger bench so that the apparent inconsistencies therein are reconciled and it is made clear whether an Act or regulation which, or a part of which, is or has been found by this Court to be violative of one or more of the fundamental rights conferred by Articles 14, 19 and 31 can be included in the Ninth Schedule or whether it is only a constitutional amendment amending the Ninth Schedule that damages or destroys the basic structure of the Constitution that can be struck down."

In the meantime, in *M.Nagaraj*v. *Union of India,*[38]the Supreme Court evolved another architectural concept of 'overarching principles' in the Constitution which would be criterion for the basic structure of the Constitution. The Court held that Article 14 by itself

[37](1997) 7 SCC 580: 1995 AIR SCW 1658.
[38](2006) 8 SCC 212: AIR 2007 SC 71: 2006 AIR SCW 5842.

was not a basic feature of the Constitution. It was only a principle of formal equality. It was the principle of egalitarian equality' in the Constitution which was an overarching principle' of the Constitution like democracy, secularism, rule of law….etc.

Again, in *I.R. Coelho v. State of Tamil Nadu*,[39] nine judges of the Court had to consider whether a state law which had been struck down by the Court as violative of a fundamental right prior to the *Kesavananda case* (24-04-1973) but was thereafter put in the 9th Schedule was protected from the challenge to fundamental right. In the light of the *Waman Rao's* case the Court on review of the case-law after the *Kesavananda case* held:

> "All amendments to the Constitution made on or after 24-04-1973 by which the Ninth Schedule is amended by inclusion of various laws therein shall have to be tested on the touchstone of the basic or essential features of the Constitution as reflected in Article 21 read with Article 14, Article 19, and the principles underlying them. To put it differently even though an Act is put in the Ninth Schedule by a Constitutional Amendment, its provisions would be open to attack on the ground that they destroy or damage the basic structure if the fundamental right or rights taken away or abrogated pertains or pertain to the basic structure."

Again in *Ashok Kumar Thakur v Union of India*[40] the majority of the Court held that the 93rd Amendment to the Constitution which introduced Article 15(5) to provide for reservations for SC, ST & OBC in aided educational institutions did not violate any basic structure of the Constitution. The Amendment did not take away the basic principles of equality. The Court held that equality was a 'multi-coloured concept' incapable of a single definition. The 'larger principles of equality' as stated in Articles 14, 15 & 16 may be understood as an element of the basic structure. Likewise, a

[39](2007) 2 SCC 1: AIR 2007 SC 861: 2007 AIR SCW 611.
[40](2008) 6 SCC1 (483): 2008 AIR SCW 2899.

constitutional amendment which 'moderately abridges' or alters the equality principle or principles under Article 19(1)(g) does not violate the basic structure.

The application of the principles in *I.R. Coelho's case* for validity of the Gudalur Janmam Estates (Abolition and Conversion into Ryotwari) Act, 1969 which was put in the 9th Schedule after 24-4-1973 was considered by a subsequent bench of three judges in *Glanrock Estate Private Limited v. State of Tamil Nadu.*[41] The Court held that the validity of a law put in the 9th Schedule could not be tested by a mere violation of a fundamental right like an ordinary law but such a law would be invalidated only if it breached some 'overarching principles' like secularism, democracy, separation of powers, power of judicial review, rule of law and 'egalitarian equality.'[42]

8. Acceptability of the Basic Structure Doctrine with similar doctrines in other countries:

The concept of certain unamendable basic features in a Constitution has had a mixed reception outside India. The Bangladesh Supreme Court in *Anwar Chowdhary v. Bangladesh*[43] appears to be the only Supreme Court which has found support from the *Kesavananda* case to invalidate Constitutional Amendments.

The application of any limitation on the amending power by the Pakistan Supreme Court is confusing. The judgement in *Mahmood Khan Achakzai v. Federation of Pakistan*,[44] stated that there was no basic structure in the Constitution of 1973 and Parliament has the full freedom to make any amendments in the Constitution as long as salient features and basic characteristics of the Constitution providing for federalism, Parliamentary democracy and Islamic provisions are allowed to remain intact as they are. Again the majority view in *Wukala Muhaz's* case was that the basic structure

[41](2010) 10 SC 96.
[42] *Supra,* note 28, P. 121.
[43]1989, 18 CLC (AD).
[44]PLD 1997 SC 426.

theory was not available in Pakistan to test the validity of a Constitutional amendment. In a later case in 2005 of *Pakistan Lawyers Forum v. Federation of Pakistan*,[45] a five judge bench rejected the limitation of the basic structure as propounded by the Supreme Court of India in the *Kesavananda case* and the courts power to strike down any amendment. The basic structure theory has been rejected by the Sri Lankan Supreme Court because of the wide definition of amendment in the Sri Lankan Constitution.[46] The Supreme Court of Malaysia has also not accepted it.[47]

9. Conclusion

Palkhivala characterizes *Kesavananda* as 'one of the milestones in the history of jurisprudence.' It would be worth to point out the observation of Gajendragadkar, C.J., on behalf of six judges in the *Reference case*[48] to show the various elements involved in the Supremacy of a written constitution. a) that the written Constitution is a higher or superior instrument, from which all the organs of the state draw their respective powers and are limited thereby; b) It is not possible, therefore, for the Legislatures to claim absolute or unlimited power as the British Parliament can; c) The Supremacy of the Constitution is protected by the authority of an independent judicial body to act as the interpreter and arbiter of the scheme of distribution of powers made by the Constitution (which function is popularly known as that of acting as the ' guardian of the Constitution; d) All functionaries under the Constitution take oath to uphold the Constitution; e) Whenever any organ of the state is found to transgress the limitations imposed upon its power by the Constitution, in a properly framed litigation before it, it would be the duty of the court to invalidate such offending act, including a law made by the Legislature, because the Constitution constitutes

[45]PLD 2005 SC 719. See, also Judicial Review of Public Actions by Justice R. Fazal Karim, Pakistan Law house, p. 1249-1265.

[46]In re Thirteenth Amendment to the Constitution & Provincial Council Bill 1990 LRC (Const) 1.

[47]*Phang Chin Hock v. Public Prosecutor, 1980 MLJ 70*.

[48] Ref. Under Art 143, AIR 1965 SC 745 (paras 39-41).

the 'higher law' which has to be interpreted and applied by the court of law. It is, therefore, relieving to find that, whatever be the merits of the theory of ' basic features', some of the Judges in *Kesavananda*,[49] mentioned ' supremacy of the Constitution' as one of the basic features of the Indian Constitution. This explains the intrinsic nature of a written constitution. We should not forget how the Government retaliated immediately on the judgements being pronounced on 24 August 1973 by superseding three senior most judges who had decided against Parliament and appointing Justice A. N. Ray as the next Chief Justice. Should we also forget how Chief Justice A. N. Ray to review the *Kesavananda Bharti case* by another bench of 13 judges for two days in 1975? How the Government attempted to nullify the majority view in the *Kesavananda Bharti* case by the Constitution (42nd Amendment) Act, 1976, but the Supreme Court later struck it down in the *Minerva Mills case* in 1980.With limitless amending power, the rule of Law will itself disappear in the foreseeable future. Basic Structure Doctrine postulates a free democracy and the unity and integrity of the country. There is/are no amendments that has prevented the government by the basic feature theory to amend the constitution in the public interest. So far as the 'basic features' doctrine is concerned, it remains the most potent illustration of judicial creativity so far.

[49] Para. 302, Sikri, CJ., Para 599 (Shelat & Grover, JJ.): Para 1291 (Palekar, J.); See also Ref, under Art 143, AIR 1965 SC 745 (762-63), Gajendragadkar, C.J., for 6 Judges; *Indira Gandhi v. Raj Narain*, AIR 1975 SC 2299 (Paras 571-75, Beg, J.).