

# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi Disciplinary  
Peer Reviewed

[www.ijlra.com](http://www.ijlra.com)

## DISCLAIMER

No part of this publication may be reproduced, stored, transmitted, or distributed in any form or by any means, whether electronic, mechanical, photocopying, recording, or otherwise, without prior written permission of the Managing Editor of the *International Journal for Legal Research & Analysis (IJLRA)*.

The views, opinions, interpretations, and conclusions expressed in the articles published in this journal are solely those of the respective authors. They do not necessarily reflect the views of the Editorial Board, Editors, Reviewers, Advisors, or the Publisher of IJLRA.

Although every reasonable effort has been made to ensure the accuracy, authenticity, and proper citation of the content published in this journal, neither the Editorial Board nor IJLRA shall be held liable or responsible, in any manner whatsoever, for any loss, damage, or consequence arising from the use, reliance upon, or interpretation of the information contained in this publication.

The content published herein is intended solely for academic and informational purposes and shall not be construed as legal advice or professional opinion.

**Copyright © International Journal for Legal Research & Analysis.  
All rights reserved.**

## ABOUT US

The *International Journal for Legal Research & Analysis (IJLRA)* (ISSN: 2582-6433) is a peer-reviewed, academic, online journal published on a monthly basis. The journal aims to provide a comprehensive and interactive platform for the publication of original and high-quality legal research.

IJLRA publishes Short Articles, Long Articles, Research Papers, Case Comments, Book Reviews, Essays, and interdisciplinary studies in the field of law and allied disciplines. The journal seeks to promote critical analysis and informed discourse on contemporary legal, social, and policy issues.

The primary objective of IJLRA is to enhance academic engagement and scholarly dialogue among law students, researchers, academicians, legal professionals, and members of the Bar and Bench. The journal endeavours to establish itself as a credible and widely cited academic publication through the publication of original, well-researched, and analytically sound contributions.

IJLRA welcomes submissions from all branches of law, provided the work is original, unpublished, and submitted in accordance with the prescribed submission guidelines. All manuscripts are subject to a rigorous peer-review process to ensure academic quality, originality, and relevance.

Through its publications, the *International Journal for Legal Research & Analysis* aspires to contribute meaningfully to legal scholarship and the development of law as an instrument of justice and social progress.

## ***PUBLICATION ETHICS, COPYRIGHT & AUTHOR RESPONSIBILITY STATEMENT***

The *International Journal for Legal Research and Analysis (IJLRA)* is committed to upholding the highest standards of publication ethics and academic integrity. All manuscripts submitted to the journal must be original, unpublished, and free from plagiarism, data fabrication, falsification, or any form of unethical research or publication practice. Authors are solely responsible for the accuracy, originality, legality, and ethical compliance of their work and must ensure that all sources are properly cited and that necessary permissions for any third-party copyrighted material have been duly obtained prior to submission. Copyright in all published articles vests with IJLRA, unless otherwise expressly stated, and authors grant the journal the irrevocable right to publish, reproduce, distribute, and archive their work in print and electronic formats. The views and opinions expressed in the articles are those of the authors alone and do not reflect the views of the Editors, Editorial Board, Reviewers, or Publisher. IJLRA shall not be liable for any loss, damage, claim, or legal consequence arising from the use, reliance upon, or interpretation of the content published. By submitting a manuscript, the author(s) agree to fully indemnify and hold harmless the journal, its Editor-in-Chief, Editors, Editorial Board, Reviewers, Advisors, Publisher, and Management against any claims, liabilities, or legal proceedings arising out of plagiarism, copyright infringement, defamation, breach of confidentiality, or violation of third-party rights. The journal reserves the absolute right to reject, withdraw, retract, or remove any manuscript or published article in case of ethical or legal violations, without incurring any liability.

# **KESAVANANDA BAHARTHI CASE AND THE EMERGENCE OF THE DOCTRINE**

AUTHORED BY – QUEEN SHEELA J R

Student, LL.B

School of Law, VISTAS.

CO- AUTHOR – NAGESWARI R

Assistant Professor

School of Law, VISTAS.

## **Introduction**

The supreme court's ruling in Kesavananda Bharati v. state of Kerala (1973) marked a sea change in India's constitutional history. It is considered by many to be among the most significant constitutional rulings that the Indian judiciary has ever rendered. By establishing the idea that parliament's authority to amend the constitution is restricted, the case significantly changed the relationship between the judiciary and the parliament.<sup>1</sup>

In order to execute socio-economic reforms, especially land redistribution and agrarian reforms, parliament passed a number of constitutional amendments over the two decades. These changes resulted in frequent conflicts with fundamental rights.

In response to the Golaknath ruling, parliament made a number of reforms in the early 1970s in an attempt to regain its constitutional authority.<sup>2</sup> These changes were seen as attempts to establish parliamentary sovereignty and supersede judicial power. As a result, the legislature and the judiciary engaged in a significant constitutional dispute that raised important issues regarding the boundaries of article 368's modification authority.<sup>3</sup>

This constitutional dispute gave rise to the Kesavananda Bharati case. The supreme court was asked to decide whether parliament had unrestricted authority to change the constitution or if some essential ideas were outside of its purview. In addition to resolving this dispute, the court's landmark decision established the basic structure doctrine, which has subsequently grown to be a pillar of Indian constitutional law.

---

<sup>1</sup> Kesavananda Bharati v. State of Kerala, AIR 1973 SC 1461.

<sup>2</sup> I.C. Golaknath v. State of Punjab, AIR 1967 SC 1643.

<sup>3</sup> Constitution of India, Article 368.

## Background of the Kesavananda Bharati Case (1970-1973)

The Kesavananda Bharati lawsuit began as a disagreement over religious freedom and property rights. The head of the Hindu religious organization edneer mutt in Kerala, swami Kesavananda Bharati, contested the Kerala land reforms act of 1963's constitutionality. This law sought to disperse surplus land among tenants and agricultural workers while placing limitations on the ownership and management of property owned by religious organizations.

In a petition submitted to the supreme court under article 32, swami Kesavananda Bharati claimed that the Kerala land reforms act infringed upon a number of fundamental rights, including the right to property (Article 31), the right to freedom of religion (article 25), and the right to manage religious affairs (article 26).

In an effort to get around the restrictions imposed by the Golak Nath ruling (1967), parliament passed a number of constitutional amendments while the matter was pending before the supreme court. These changes were seen as attempts to give parliament back control over constitutional issues.

- ***The 24<sup>th</sup> constitutional amendment act,1971***

Parliament's power to change any element of the constitution was expressly upheld by the 24<sup>th</sup> amendment.<sup>4</sup> In order to make it clear that constitutional revisions would not be regarded as "law" under article 13 and could not be contested for infringing fundamental rights, it revised both article 13 and article 368.

Additionally, the change made it essential for the president to ratify laws passed by parliament that amend the constitution.

- ***The 25<sup>th</sup> constitutional amendment act,1971***

The right to property was further restricted by the 25<sup>th</sup> amendment, which added article 31c and changed article 31<sup>5</sup>. according to this clause, laws passed to carry out specific directive principles of state policy –specifically, articles 39(b) and 39(c)—could not be contested on the grounds that they violated fundamental rights like article 14, 19, and 31.

By restricting the courts' ability to determine whether such laws actually met the goals of directive principles, the amendment also intended to limit the authority of judicial review.

---

<sup>4</sup> Constitution (Twenty-fourth Amendment) Act, 1971.

<sup>5</sup> Constitution (Twenty-fifth Amendment) Act, 1971.

- ***The 29<sup>th</sup> constitutional amendment act,1972***

In an effort to shield the Kerala land reforms act from judicial review, the 29<sup>th</sup> amendment added it to the constitution's ninth schedule.<sup>6</sup>

Acknowledging the extensive constitutional ramifications of these revisions, the supreme court assembled the largest bench in Indian judicial history, consisting of 13 judges, to review the Golaknath ruling and assess the legitimacy of the amendments.<sup>7</sup>

### **Issued Raised Before the Supreme Court**

The Kesavananda Bharati case brought up a number of important constitutional issues that needed to be carefully interpreted by judges.

- ***Scope of the amending power***

The first significant question was the extent of article 368's amending authority for parliament. The court had to decide whether this authority was subject to some inherent restrictions or, as the administration claimed, was total and unrestricted.

Theoretically, parliament could change or even repeal any aspect of the constitution, including its democratic structure and fundamental rights, if it had unrestricted power.

- ***Validity of constitutional amendments***

the 24<sup>th</sup>, 25<sup>th</sup>, and 29<sup>th</sup> constitutional amendments' constitutionality had to be investigated by the supreme court. The court had to decide if these additions went beyond the allowable bounds of amendment power or if they went against the core tenets of the constitution.

- ***Meaning of the term "amendment"***

The definition of the term "amendment" in article 368 was a significant additional concern<sup>8</sup>. the court had to decide whether the amendment power encompassed the ability to totally alter or obliterate the constitution.

To put it another way, the court looked at whether amendment meant changing already-existing clauses or if it meant replacing the fundamental framework entirely.

---

<sup>6</sup> Constitution (Twenty-ninth Amendment) Act, 1972.

<sup>7</sup> Kesavananda Bharati v. State of Kerala, AIR 1973 SC 1461.

<sup>8</sup> Constitution of India, Article 368.

- ***Relation between fundamental rights and directive principles***

The court also considered the tension between directive principles of state policy (part IV) and fundamental rights (part III).

The government contended that when putting welfare policies into practice, directive principles—which seek to achieve social and economic justice—should take precedence over fundamental rights.<sup>9</sup> however, the petitioners argued that fundamental rights are necessary safeguards that cannot be compromised in order to achieve governmental goals.

Therefore, the court had to decide whether the state may prioritize directive principles to the point where fundamental rights were substantially restricted or eliminated.<sup>10</sup>

### **Majority and Minority Opinions**

On April 24, 1973, the ruling in *Kesavananda Bharati v. state of Kerala* was given. With a 7 -6 majority, the ruling was incredibly close, indicating strong disagreement among the justices over the scope of parliament's amending authority.

- ***Majority opinion***

Chief justice S.M. Sikri led the majority decision, which was backed by six other judges and maintained that parliament has the authority to change any provision of the constitution, including the fundamental rights. by doing this, the court substantially overturned the *Golaknath* ruling.

The majority did, however, also maintain that parliament's ability to modify laws is restricted. The court decided that the constitution's basic structure cannot be changed or destroyed by parliament.

A significant constitutional principle was established by this interpretation: even though the constitution may change through amendments, its fundamental characteristics must not change.

- ***Justice H.R. Khanna's decisive opinion***

Justice H.R. Khanna's ruling turned out to be the pivotal viewpoint that determined the case's ultimate result.

According to justice Khanna, the ability to change the constitution means that current laws can be improved or modified, but it does not permit the essential framework of the document to be

---

<sup>9</sup> Constitution (Twenty-fifth Amendment) Act, 1971.

<sup>10</sup> Constitution of India, Part III and Part IV.

destroyed or abrogated.<sup>11</sup>

He contends that an amendment must maintain the constitution's integrity and continuity. An amendment cannot be deemed legitimate if it eliminates this identity.

- **Minority opinion**

The six judges who dissented held a different opinion. They contended that article 368 of the constitution does not expressly restrict parliament's ability to alter.

The minority believes that the elected parliament should have unrestricted power to change the constitution since it represents the will of the people. They felt that this authority should not be impliedly limited by the judiciary.

### **Conceptualization of "Basic Structure"**

The adoption of the idea known as the basic structure doctrine was one of the Kesavananda Bharati ruling's greatest contributions.

The court failed to offer a clear and comprehensive explanation of the basic structure. Rather, it defined the concept as an implicit restriction on the ability of parliament to alter.

the concept can be thought of as the constitution's core identity or constitutional DNA.<sup>12</sup> changing the core structure of the constitution would destroy its identity, just as changing an organism's genetic makeup fundamentally alters its essence. Illustrative basic features identified in 1973

Several characteristics of the basic structure were noted by the judges, including:

- The constitution's primacy
- Democratic and republican systems of governance
- The constitution's secular nature
- The legislative, executive, and judicial branches' separation of powers
- The constitution's federal nature
- The rule of law
- Judicial review

This list is not all-inclusive, the Court stressed. Based on changing constitutional ideas, more aspects might eventually be acknowledged as part of the Basic Structure.

The philosophy may adjust to shifting social and political circumstances thanks to its adaptable

---

<sup>11</sup> H. R. Khanna, opinion in Kesavananda Bharati v. State of Kerala

<sup>12</sup> A.V. Dicey, Introduction to the Study of the Law of the Constitution, 1885.

methodology.

## **Fundamental Rights as Part of the Basic Structure**

The Kesavananda Bharati ruling had a significant impact on the Basic Structure Doctrine's treatment of fundamental rights.

The Court made it clear that not every fundamental right is inherently included in the Basic Structure. Parliament has the authority to change some rights as long as it doesn't undermine the fundamental principles of the Constitution.

For instance, the Basic Structure did not include the Right to Property under Article 31.

Through the 44th Constitutional Amendment Act of 1978, Parliament was able to eliminate the Right to Property as a Fundamental Right and make it a constitutional legal right under Article 300A because to this interpretation.<sup>13</sup>

Nonetheless, the Court acknowledged that the fundamental tenets of constitutional democracy are a few fundamental rights. Among them are<sup>14</sup>:

- Article 14: The Right to Equality
- Article 21: Right to Freedom and Liberty
- Article 32: Right to Constitutional Remedies
- Judicial Review

These rights are thought to be necessary to preserve a free and democratic society.

### **• The Essence Test**

The Court created a crucial constitutional standard called the "Essence of the Right Test". This concept states that while Parliament may change the provisions of Fundamental Rights, it cannot eliminate the fundamental ideas or content of these rights.

The Court may rule that an amendment is unconstitutional if it compromises the fundamental nature of a right that is important to democratic governance.

### **• Judicial Review as a Basic Feature**

The Court also looked at Article 31C, which was added by the 25th Amendment. This provision's second section made an effort to stop judges from examining legislation passed in order to put Directive Principles into practice.

---

<sup>13</sup> Constitution (Forty-fourth Amendment) Act, 1978.

<sup>14</sup> Constitution of India, Articles 14, 21, and 32.

The Supreme Court invalidated this section of Article 31C, ruling that Judicial Review is an essential component of the Constitution and cannot be eliminated through a constitutional amendment.<sup>15</sup>

This decision solidified the judiciary's position as the Constitution's defender.



---

<sup>15</sup> Judicial Review, Constitution of India (Articles 13, 32, 226).