

# Theory of Basic Structure How Developed Under Indian Constitution

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**Abstract:** The word constitution means to bring together or to constitute or to create. The Indian constitution does to create or organise society. And the organisation is not in abstract rather it revolve around certain basic principle and philosophy. It is these principles which are to be called essential identities. The constitution of India is one of the largest Constitution of world and it has been taken care that all possible aspect should be covered by the constitution.<sup>i</sup> Still there are areas in constitution where in a discretion has been given to concerned constitutional functionaries and constitution is silent about these areas. There is no one particular article in constitution of India that talks about basic structure. This is combination of all articles without which constitution has no essence. Essential core of constitution can not be changed. Original constitution has 22 parts, 395 articles, and 8 schedules but by the time through constitutional amendment it has been changed, now number of articles is 448 and 12 schedules.

**Keywords:** Indian Constitution, Basic Structure

## I. INTRODUCTION

Process of judicial revolution of Basic structure theory: when constitution was framed, right to property was fundamental right under article-19(1)(f)<sup>ii</sup> of constitution of India. All lands is in the hands of big Zamindar. A large number of Population have to work under these Zamindar. And for the development of nation land is required. Under article [39(b)-that the ownership and control of the material resources of the community are so distributed as best to subserve the common good; (c)-that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment]<sup>iii</sup> Therefore it is necessary to abolish zamindari system. But article 19(1)(f) give fundamenatal right to property and article 13(2) of constitution of India state is duty bound not to take away any fundamental right.

First historical step was taken as Bihar land reform act 1950, under this zamindari system was abolished. This act also apply in other states. This act violates the fundamental right to property . so case was filled in Patna high court Kamseshwar singh v/s state of Bihar<sup>iv</sup> under this act Bihar land reform act declared unconstitutional. If there is conflict between fundamental rights and directive principle of state policy then fundamental right will prevail. if that time parliament did not take any step then growth of the nation will be stop and for growth of nation property is required. Then parliament made 1<sup>st</sup> amendment act,1951 and add article-31 and 31B read with 9<sup>th</sup> schedule of constitution of India.

Article 31A-clearly says no law will be declared unconstitutional if it conflict with article-14 and 19 of constitution of India because it is for the growth of nation.

Article 31B-any law which is kept in 9<sup>th</sup> schedule that law is beyond the scope of judicial review.

Shankri Prasad v/s union of India<sup>v</sup> under this first amendment was challenged that article-31A and article-31B ITSELF unconstitutional. The word 'Law' under article-13(2) also include law of amendment. Now there is conflict between normal law and amendment law. Parliament said that amendment is superior law. Supreme court held under this case that amendment is superior law and not law for the

purpose of article-13(2). Held art 31A and art31B constitutional and first amendment upheld.

Thereafter under 17<sup>th</sup> Amendment Act,1964 of constitution 44 land reform were made by different-2 states to acquire the property. And parliament put these 44 land reform under 9<sup>th</sup> schedule. After this amendment again big landlord not satisfied and then 17<sup>th</sup> amendment was challenged in the court in Sajjan singh v/s State of Rajasthan<sup>vi</sup> and Supreme court give same judgement as given in shankri Prasad case.<sup>vii</sup> Held 17<sup>th</sup> amendment constitutional.

After Sajjan singh<sup>viii</sup>case 17<sup>th</sup> amendment was again challenged in C.Golak Nath v/s State of Punjab<sup>ix</sup> Eleven judges bench and judgement was given by Subha Rao Chief Justice. This case is opposite to all case decided earlier. This case explore whole constitution to find out which law is superior whether amendment law or normal law. Under this supreme court held procedure is given under article 368 of constitution but where is the power to amend. Supreme court explore whole constitution and held amendment to be implied topic under entry-97 of List-1 of 7<sup>th</sup> schedule read with article-245 of constitution. And art-245 of constitution is subject to article 13(2) of constitution. So amendment power also subject to article- 13(2).So supreme court held all amendment subject to article-13(2). If under this case supreme court declare all previous amendment unconstitutional than all land have to return by the government so that supreme court passed prospective<sup>x</sup> judgement. So all amendment done previously remain vaild. After this judgement there is conflict between Parliament and Judiciary. Parliament then passed 24<sup>th</sup> Amendment Act,1971 and add article-13(4) and article-368(4) in the constitution. So there is no need to go article-245. The word power also add under article-368. After this historic judgement was passed under Keshananda Bharti. Under this case the main issue was whether C.Golak Nath<sup>xi</sup> and whether 24<sup>th</sup> and 29<sup>th</sup> amendment vaild. Under this case supreme court has very neutral kind of attitude. Supreme court only said you are the parliament, you have constitutional power to amend but your constitutional power is not as constitutional Assembly. Held parliament can not abridge or taking away the basic

structure of constitution. Supreme court did not declare amendment unconstitutional, only said cannot amend basic structure.

## II. CONCLUSION

It was great time when the theory of basic structure was passed and work of parliament was also appreciable. Because that time if parliament not amend constitution in the influence of big zamindar then growth of the nation was stop. Because for every development land and resources are required and in

beginning right to property was fundamental right but 44<sup>th</sup> Amendment Act,1978 right to property become only constitutional right under article-300A Of Constitution. Decision of supreme court that parliament cannot encroach upon the basic structure of constitution make constitution strong.

<sup>i</sup> B.R KAPOOR V/S STATE OF TAMI NADU AIR 2001 SC

<sup>ii</sup> Constitution of India; PROF. NARENDER KUMAR

<sup>iii</sup> Constitution of India; Dr. J.N. PANDEY

<sup>iv</sup> AIR 1950 SC

<sup>v</sup> AIR 1951 SC

<sup>vi</sup> AIR 1965 SC

<sup>vii</sup> Shankri Prasad v/s union of india AIR 1951 SC

<sup>viii</sup> Sajjan singh v/s state of Rajasthan AIR 1965 SC

<sup>ix</sup> AIR 1967 SC

<sup>x</sup> PROSPECTIVE JUDGEMENT means the effect of judgement was from the judgement date and not from back date.

<sup>xi</sup> C.Golak Nath v/s State of Punjab AIR 1967 SC