

ARTICLE 31C OF THE INDIAN CONSTITUTION AND THE BASIC STRUCTURE DOCTRINE- A LEGAL COEQUALITY

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Abstract

The basic structure doctrine is probably the most important safety valve in Indian Constitutional law, as far as the protection of rights and liberties of the masses of this land is concerned. The tussle between the judiciary on one hand and the legislature and executive on the other was mostly connected with the Part-III of the Indian Constitution, which mostly contain political and legal rights, specifically in the contrast of the Part- IV of the Indian Constitution which speaks for the social and economic ends which the republic of India shall strive to achieve. However, as Part-IV of the Indian Constitution is not enforceable, the legislature, time and again, tries to dilute the sacrosanct nature of Part-III of the Indian Constitution through amendments. Article 31C is the result of one of such attempts, and in order to dilute the rigour of the basic structure doctrine as propounded in the Keshavanand Bharati case, Article 31C was again amended by the 42nd amendment, whereas it was added only a few years back by the 25th amendment. The Minerva Mills Ltd verdict tested the validity of the amended article 31C, but the unamended article 31C was never tested in the context of the basic structure doctrine, as it came into challenge only in the Kesavananda Bharati v. State of Kerala judgement itself.

Keywords:- 1. Fundamental Rights; 2. Directive Principles of State Policy; 3. Political, economic and social rights; 4. Basic Structure Doctrine; 5. Interpretation of Indian Constitution.

I) INTRODUCTION

According to Niklas Luhmann, the autopoiesis of legal rules, is normatively closed but cognitively open,¹ which points out, both the rigidity of legal norms in contrast with other social norms and the docility of the same, in order to maintain social coherence, especially in a globalised society where the social and economic structure is changing at an unprecedented speed.

But this approach is not only confusing but also diminishes the transcendental value of legal discourse, specifically in those nations that have a written constitution like India.

Again it is also true that the Indian Constitution is amenable to amendments also, but the conjoint reading of Art. 368² with that of the Kesavananda Bharati verdict³ clearly points out that some features of the Indian Constitution is not amenable to amendment, so as to speak that, notwithstanding the constituent power of the parliament (as it stands under Art.368,⁴ after the 24th Amendment, 1971 of the Indian Constitution) some provisions shall remain intact even after any amendment of the Indian Constitution, and those provisions are not subject to amendment even by using the constituent power as provided under Art.368⁵ of the Indian Constitution.

¹ DENNIS LLOYD, LLOYD'S INTRODUCTION TO JURISPRUDENCE 743 (9th ed., M. D. A. FREEMAN ed., South Asian edition, SWEET AND MAXWELL, Reprinted in India by THOMSON REUTERS 2021). See also RWM DIAS, JURISPRUDENCE 359 (5th ed., LexisNexis 2017).

² INDIA CONST. art. 368.

³ Kesavananda Bharati v. State of Kerala, AIR 1973 SC 1461.

⁴ INDIA CONST. art. 368.

⁵ INDIA CONST. art. 368.

The Constitution of India speaks about both political and legal justice in the shape of Part-III of the Indian Constitution⁶ and social and economic justice in the shape of Part- IV⁷, though it must be remembered that this division is not necessary in the manner of a water-tight chamber. The interpretation of the Indian Constitution by the judiciary is always a difficult task so far as attempt has to be made to reconcile social and economic needs of the country on one hand and the political freedom on the other⁸ and the spectrum is difficult to traverse, because Art.367 (1) of the Indian Constitution⁹ clearly envisage that the Constitution of India must be interpreted in the light of the General Clauses Act, 1897¹⁰ which clearly points out the statutory nature of the Indian Constitution.

Again the perception that constitutional morality shall be interpreted in an extended manner and it is the constitution which can contain the clamour of populism, (in the sense of mob rule) which poses a typical idiosyncrasy as to the normative nature of the constitution, may not be a that effective safety valve, which vividly came into the surface while interpreting Part- III¹¹ and Part- IV¹² of the Indian Constitution in the most harmonious manner.¹³

But the presence of a system of election in a democratic fabric (which is indeed a sine-qua-non) may have the germ which can provoke the executive (i.e. legislature in different garb) to provide social and economic benefits to the masses, (at least apparently) even at the cost of

⁶ INDIA CONST. Part III.

⁷ INDIA CONST. Part IV.

⁸ See the observations of Honourable Justice Krishna Iyer (as he then was) in the celebrated case of *ABSK Sangh (Railway) v. Union of India*, AIR 1981 SC 298.

⁹ INDIA CONST. art. 367, cl. 1.

¹⁰ The General Clauses Act, 1897, NO.10, 1897 (India).

¹¹ INDIA CONST. Part III.

¹² INDIA CONST. Part IV.

¹³ See *State (NCT of Delhi) v. Union of India*, (2018) 8 SCC 501; *KS Puttaswamy v. Union of India*, (2017) 10 SCC 1; *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.

legal and political rights, which is evident from the 24th¹⁴ and the 25th Amendment of the Indian Constitution,¹⁵ notwithstanding the fact that even India was not a socialist state at that point of time.¹⁶

In this arena, through judicial intervention, courts can play an important role in maintaining the equilibrium, in a positive sense. In any such conflict, the judiciary can play a pivotal role in maintaining the welfare of the laity, not by succumbing to populist demand, so as to say, not by following a charlatan attitude.¹⁷

II) ART. 31C OF THE INDIAN CONSTITUTION- A CHEQUERED PROVISION

It is an admitted fact in the modern constitutional law that the court is not anymore in a position to remain oblivious towards the social need and it is vividly clear from the verdict of a court in the United States of America (USA) in *Oppenheim v. Kridel*,¹⁸ where the court, while discussing legal philosophy, upheld the need for equity, even in the realm of precedent.

The most prominent bastion from any possible encroachment on the political rights, as enshrined in the constitution, is Art.13,¹⁹ by using which any enactment which violates any or all provisions of Part- III of the Indian Constitution²⁰ can be declared void by the judiciary.

¹⁴ 24th Amendment of the Indian Constitution, 1971.

¹⁵ 25th Amendment of the Indian Constitution, 1971.

¹⁶ NANI A. PALKHIVALA, WE, THE NATION:THE LOST DECADES 5-8 (UBS Publishers' Distributors Ltd. 1999). See also GRANVILLE AUSTIN, WORKING OF A DEMOCRATIC CONSTITUTION 244-245 (OXFORD UNIVERSITY PRESS, 2019).

¹⁷ BENJAMIN N. CARDOZO, THE GROWTH OF THE LAW 79 (LAW & JUSTICE PUBLISHING CO. 2025).

¹⁸ 236 N.Y. 156.

¹⁹ INDIA CONST. art. 13.

²⁰ INDIA CONST. Part III.

As observed by H.M. Seervai,²¹ the timely death of the ‘Doctrine of Eclipse’ in the judicial interpretation, especially in the cases of Mahendra Lal Jaini²² protected the Bill of Rights of the Indian Constitution. But the 24th Amendment, 1971²³ which added article 13 (4),²⁴ is required to be taken into cognizance, read with the presence of the 9th schedule of the Constitution.²⁵

But both Sankari Prasad²⁶ and Sajjan Singh²⁷ verdicts of the apex court diluted the dike in the path of populist attitude of the parliament and the concomitant executive, as both of these judgments upheld the presence of the 9th schedule²⁸ as it was added by following strictly the procedure mentioned in Art. 368.²⁹ But at that point in time, Art. 31C³⁰ was not enacted.

The 25th Amendment 1971,³¹ which added Article 31C,³² is the most difficult provision to digest, and it can be humbly submitted that the combination of this provision with that of the 9th schedule³³ is a notorious one.

²¹ 2 H.M. SEERVAI, CONSTITUTIONAL LAW OF INDIA xcvi (4th ed., LAW & JUSTICE PUBLISHING Co. 2023).

²² Mahendra Lal Jaini v. State of Uttar Pradesh, (1963) Supp. 1 S.C.R. 912. See also State of Gujarat v. Shri. Ambica Mills, Ltd., (1974) 3 S.C.R. 760.

²³ 24th Amendment of the Indian Constitution, 1971.

²⁴ INDIA CONST. art. 13, cl. 4.

²⁵ INDIA CONST. Schedule 9.

²⁶ Sri Sankari Prasad Singh Deo v. Union of India, AIR 1951 SC 458.

²⁷ Sajjan Singh v. State of Rajasthan, AIR 1965 SC 845.

²⁸ INDIA CONST. Schedule 9.

²⁹ INDIA CONST. art. 368.

³⁰ INDIA CONST. art. 31C.

³¹ 25th Amendment of the Indian Constitution, 1971.

³² INDIA CONST. art. 31C.

³³ INDIA CONST. Schedule 9.

Now Art. 31C³⁴ came into the periphery of challenge, as originally enacted, in the case of Kesavananda Bharati v. State of Kerala.³⁵

It is intriguing to note that out of 7 majority judges in the Kesavananda Bharati,³⁶ except Honourable Justice Jaganmohan Reddy (as he then was), all of them held that the entire Article 31C is invalid and ultra vires. But the 6 minority judges unanimously held that Article 31C is intra vires. It is only Honourable Justice Reddy who held that the part of Article 31C which excludes the option of judicial review is invalid and the remaining part is intra vires.

But surprisingly, the summary given at the end of this judgement (though highly controversial) upheld the aforementioned view of Honourable Justice Reddy and did not strike down the entire article 31C.³⁷ So in effect, Kesavananda Bharati judgement declared the last part of article 31C as ultra vires and the remaining part, which specifically cast more light on the Directive Principles of State Policy as enshrined in the Indian Constitution under the Part-IV³⁸. But again, surprisingly, if the minority opinion(s) in this case is being considered, it looks like that entire Art.31C³⁹ shall remain in the Constitution. But the above-mentioned summary appended in the verdict of this case only upheld the first part of Art.31C,⁴⁰ and the Supreme Court, in effect, struck down the latter part of Art.31C,⁴¹ as it was originally enacted.

³⁴ INDIA CONST. art. 31C.

³⁵ AIR 1973 SC 1461.

³⁶ Kesavananda Bharati v. State of Kerala, AIR 1973 SC 1461.

³⁷ SOLI J SORABJEE & ARVIND P DATAR, NANI PALKHIVALA: THE COURTROOM GENIUS 128 (1st ed., LexisNexis 2020).

³⁸ INDIA CONST. Part IV.

³⁹ INDIA CONST. art. 31C.

⁴⁰ INDIA CONST. art. 31C.

⁴¹ INDIA CONST. art. 31C.

The amendment in Art.31C via the 42nd amendment of the Indian Constitution was struck down in the *Minerva Mills Ltd. v. Union of India*⁴² verdict, but that is only the amended version, and so the unamended version of Art.31C (excluding the last part) remains in the book.

III) CONCLUSION

It can be humbly submitted that Art. 31C⁴³ even in its unamended avatar (as the amended version was declared ultra vires in the *Minerva Mills Ltd*⁴⁴ judgement) disrupted the entire balance as provided in the Indian Constitution and make Part- III subservient to that of Part-IV, whereas Part-III was envisaged as a cantankerous provision, as the Indian Constitution expressly make Part-III enforceable⁴⁵ and Part-IV not enforceable.

The validity of the 9th schedule came into question before the apex court, in the cases of *Waman Rao v. Union of India*⁴⁶ and *IR Coelho v. State of Tamil Nadu*⁴⁷, but somehow it passed the test of vires, and as again noted by H.M. Seervai, the addition of any law in the 9th schedule, if such law is protected under Art.31C, inter alia with any other provisions, then any such challenge before a court of law about such inclusion will be meaningless.⁴⁸

It will not be out of context to remember the observations of Lord Wright in the celebrated case of *James v. Commonwealth*,⁴⁹ as mentioned with approval by H.M. Seervai⁵⁰ (this view was

⁴² AIR 1980 SC 1789.

⁴³ INDIA CONST. art. 31C.

⁴⁴ *Minerva Mills Ltd. v. Union of India*, AIR 1980 SC 1789.

⁴⁵ INDIA CONST. art. 13.

⁴⁶ AIR 1981 SC 271.

⁴⁷ AIR 2007 SC 861.

⁴⁸ 2 H.M. SEERVAI, CONSTITUTIONAL LAW OF INDIA 1447 (4th ed., LAW & JUSTICE PUBLISHING Co. 2023).

⁴⁹ (1936) A.C. 578.

⁵⁰ 1 H.M. SEERVAI, CONSTITUTIONAL LAW OF INDIA 172 (4th ed., LAW & JUSTICE PUBLISHING Co. 2023).

also noted with approval in the case of *Re the C.P. and Berar Act, 1938*⁵¹) that the interpretation of a constitution must be made in a wide manner.

But it can be humbly submitted that such a wide interpretation must not be extended while interpreting any provision that tries to curtail the provision of a constitution dealing with rights. Thus, it can be stated that Art.31C,⁵² as stood unemended, was never challenged in the touchstone of the basic structure doctrine, as in the *Kesavananda Bharati*⁵³ itself, the basic structure doctrine was in the process of birth⁵⁴ and in the same case, Art.31C was also challenged. So, in effect, it is impossible to fathom that Art.31C passed the litmus test of basic structure doctrine in the *Kesavananda Bharati*⁵⁵ itself, where the doctrine was formulated. Keeping in mind the positive role of the Indian judiciary in the path of protection of equity and right,⁵⁶ Indian legal history missed the train to declare Art.31C in its entirety and the 9th schedule as ultra vires. As Art.31C is not tested on the touchstone of basic structure doctrine, the vires of this article can be challenged, notwithstanding the fear of Amartya Sen and Jean Dreze about the orthodox and regressive nature (though seldom) of the Indian judicial system.⁵⁷

⁵¹ (1939) F.C.R. 18.

⁵² INDIA CONST. art. 31C.

⁵³ *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461.

⁵⁴ ROHINTON NARIMAN, *THE BASIC STRUCTURE DOCTRINE: PROTECTOR OF CONSTITUTIONAL INTEGRITY* 184-185 (1st ed., LexisNexis 2025).

⁵⁵ *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461.

⁵⁶ JEAN DREZE & AMARTYA SEN, *AN UNCERTAIN GLORY: INDIA AND ITS CONTRADICTIONS* 253 (2nd ed., Penguin Random House UK 2020).

⁵⁷ *Id.* at 254.