**National Law University and Judicial Academy, Assam**

**CALL FOR PAPERS**

**FOR EDITED BOOK**

**With ISBN Number**

**BASIC STRUCTURE OF CONSTITUTION OF INDIA**

**(COMMEMORATING 50 YEARS OF KESAVANANDA BHARATI VERDICT)**

**Submission Deadline:**

**31st May, 2023**

# CONCEPT NOTE

Chief Justice Sikri in the Kesavananda Bharati case declared that “Parliament’s constituent power was subject to inherent limitations. Parliament could not use its amending powers under Article 368 to ‘damage’, ‘emasculate’, ‘destroy’, ‘abrogate’, ‘change’ or ‘alter’ the ‘basic structure’ or framework of the Constitution.” After Fifty years of this observation of the Supreme Court controversy is still persisting over Parliament’s power to amend the Constitution is limited or unlimited.

When the Constitution was being drafted the doctrine of separation of powers was incorporated as it was felt that the parliamentary system may inevitably choke the robust operation of separation of powers and there may be sporadic and concerted confrontations between the executive and judiciary. After independence, we witnessed power contestation between the Parliament and judiciary on several occasions and on several subjects, because of variegated interpretations of the power of Parliament to amend the Constitution under Article 368. The collision became quite evident with the judgement of the Supreme Court in the Golaknath case where in the Court declared that Parliament does not have the right to amend fundamental rights, in part or in whole.

The tussle between the Parliament and judiciary reached its zenith in the landmark case of *Kesavananda Bharati v. State of Kerala*. The State through Kerala Land Reforms Act 1963, wanted to improve the social and economic conditions of the State. It was contended before the Supreme Court that the instant Act violates the fundamental rights. The Supreme Court held that the Parliament which is the creation of Constitution itself could not claim the power to go against the basic constitutional parameters under Article 368, and therefore, cannot interfere with the basic features of the Constitution. This has paved the way for new doctrine popularly known as the ‘Basic Structure Doctrine’. The Supreme Court further laid down that any law added in the 9th Schedule if violates the Constitution’s basic features, then such law can go for judicial review. **Following may be considered as a part of basic structure:**

Supremacy of the Constitution, Unity, integrity and sovereignty of India, Democratic and republican forms of government, Federal character of the Constitution, Secular character of the Constitution, Separation of powers between the legislature, executive and the judiciary; the mandate to build a welfare state contained in the Directive Principles of State Policy; essential features of the individual freedoms secured to the citizens; parliamentary democracy; free and fair elections; the power of judicial review; freedom of conscience and religion; and the rule of law etc.

The Supreme Court has used its creativity and by evolving ‘Basic Structure Doctrine’ gave powers to the Parliament to amend the Constitution for attainment of social and economic goals, without interfering with the Constitution’s basic features. Thus the Supreme Court increased the ambit of protection of the Constitution and limitation on powers of Parliament. It is said that if this decision had not have come, any political party with 2/3rd of the majority in the Parliament could have brought any amendment hampering the basic structure of the Constitution including abolition of judiciary.

This case also paved the way for Parliament to fulfil its obligations to create a welfare state and an egalitarian society but keeping in mind the ‘Basic Structure’ of the Constitution. The Supreme Court also asserted that limitation on the powers of Parliament to amend the Constitution is inherent and implied by reading Articles 13 with Article 368.

**The Kesavananda Bharati Verdict put forth new Constitutional dimensions:**

**Firstly,** Constitution already has Express Limitation under Article 13 implying every provision of it and other law is amenable to the extent the amendment otherwise affects the provisions of Part III (fundamental rights).  **Secondly,** when there is an express limitation, which in the present case prompted the Court to develop the Basic Structure Doctrine? Do the newly proposed doctrines limit or expand the authority of the Court? The verdict creates a dilemma with regards to social and economic justice which cannot be covered under fundamental rights? The other dilemma, whether all the components of basic structure fall within the ambit of Social and economic justice or not?

These are the dimensions which prompt serious scholars to undertake drive for jurisprudential examinations of these speculations. This academic endeavour will be undertaken in the form of edited book. For this research papers, essays, articles, and scholarly comments on the case re-examining the nuances and significance of the historical judgement in the case of *Kesavananda Bharati v. State of Kerala* on the following themes:

* Jurisprudential Examination of 24th Constitutional Amendment with its aftereffects.
* Jurisprudential Examination of Part First of the 25th Constitutional Amendment and it’s after effects.
* Jurisprudential Examination of the Second part of the 25th Constitutional Amendment and it’s after effects.
* Constitutional Jurisprudence developed as a result of the Verdict of the Kesavananda Bharati case.
* Judicial behaviour of the Constitutional Bench of the Supreme Court immediately before and after the pleadings of Advocate Palkhiwala that “If the whole Constitution can be amended than Judiciary can also be abolished through a Constitutional Amendment?”
* Jurisprudence of Constitutional Amendment throughout the World,
* Does the situation calls for introduction of Constitutional System which is in existence under Continental School of Laws.
* Jurisprudential Examination of the ‘Preamble’ for the purpose of the Social and Economic Obligations and other than Social and Economic Obligations provided under the Preamble:
* Does the Doctrine of Inherent and Implied Limitation and Basic Structure not apply in case of other Obligations incorporated in the Preamble of the Indian Constitution for the purpose of amendment?
* Jurisprudential   examination of judicial behaviour and political obligations of the state after the law laid down in case of *Kesavananda Bharati v. State of Kerala*.
* Justifications of the formulation of Basic Structure under Indian Constitution in presence of the provision of Judicial Review under Article 13: A Necessity to fill the gaps for justice or mere addition.
* Judicial Overreach and Constitutional Democracy in India
* Constitutional Supremacy and Parliamentary Sovereignty
* Does the Judgement of Kesavananda Bharati Case Save Indian Democracy?
* Does the Judgement of Kesavananda Bharati Case Save Indian Constitution?
* Uneasy Standoff between Judiciary and Executive—Case of Judicial Activism

Any other theme within the parameters of Kesvananda Bharati Case.

# GUIDELINES FOR CONTRIBUTORS:

1. The themes are broadly suggestive. Author may write on any topic relevant to the theme of the book.
2. All the contributions should be the original work of the contributors. All submissions will undergo the plagiarism test.
3. The contributions should be ideally above 3000 words.
4. All articles, notes and comments should provide a brief abstract of 250-300 words.
5. The text shall be in font style Times New Roman, font size 12, spacing 1.5.
6. The foot notes shall be in font style Times New Roman, font size 10, spacing 1.
7. Kindly use footnotes instead of endnotes. Footnotes should conform to the Bluebook (20th Edition) Style of Footnoting.
8. **All submissions are to be made through the following email address: book50ykbj@nluassam.ac.in**
9. Submission Deadline **31st May,2023**

The book will be published by National Law University and Judicial Academy Assam with ISBN.

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