

Landmark Judgments

- “..... When histories of nations are written and critiqued, there are judicial decisions at the forefront of liberty. Yet others have to be consigned to the archives, reflective of what was, but should never have been.”

D.Y Chandrachud J.

In Justice K.S. Puttaswamy (retd.) Vs. Union of India and ors. , (2017) 10 SCC 1

1. Personal Liberty: Procedure Established by Law:

- **A.K.Gopalan VS. State of Madras ,[1950] SCR 88**
- The petitioner, detained under the Preventive Detention Act challenged the legality of detention under Art. 32 of the Constitution on the ground that the said Act contravened Arts. 13, 19, 21 and 22 of the Constitution and was, therefore, ultra vires.
- The S.C. held- that Article 22 was a self-contained Code and if personal liberty is taken away by the State in accordance with the procedure established by law i.e. ***if the detention was as per the procedure established by law***, then it cannot be said that the law was violative of provisions contained in Articles 14 ,19 and 21 of the Constitution.

Personal Liberty: Procedure Established by Law: Fair, Just and Reasonable

Maneka Gandhi v. Union of India (AIR 1978 SC 597) (1978).

- The view expressed in **A. K. Gopalan's case** was revisited in this case after about 28 years.
- The main issues were whether the right to go abroad is a part of the right to personal liberty under Article 21 and whether the Passport Act prescribes a 'procedure' as required by Article 21 of the Constitution.
- The SC held that the right to go abroad is a part of the right to personal liberty under Article 21.
- The SC also ruled that the mere existence of an enabling law was not enough to restrain personal liberty. "The procedure prescribed by law has to be **fair, just and reasonable, not fanciful, oppressive or arbitrary.**"

LIFE AND LIBERTY: ADM Jabalpur v. Shivakant Shukla, (1976) 2 SCC 521

- A Constitution Bench by a majority of 4:1, ruled that while a **proclamation of emergency is in operation**, the right to move High Courts under Article 226 for Habeas Corpus challenging illegal detention by State will stand suspended. The apex Court said “.If extraordinary powers are given, they are given because the Emergency is extraordinary, and are limited to the period of the Emergency.”
- The judgment is more recognised for the dissenting opinion of Justice **HR Khanna** in which he said - *"detention without trial is an anathema to all those who love personal liberty... A dissent is an appeal to the brooding spirit of the law, to the intelligence of a future day, when a later decision may possibly correct the error into which the dissenting Judge believes the court to have been betrayed".*

LIFE AND LIBERTY: ADM Jabalpur v. Shivakant Shukla- OVERRULED

- In Justice K.S. Puttaswamy (retd.) Vs. Union of India and ors. , (2017) 10 SCC 1 para 121 (Nine Judges), the apex Court overruling the majority view expressed in **ADM Jabalpur v. Shivkant Shukla** (1976) 2 SCC 521, held-
- “The **view taken by Justice Khanna must be accepted, and accepted in reverence for the strength of its thoughts and the courage of its convictions...**”
- Sanjay Kishan Kaul, J. in his concurring judgment said: “...the ADM Jabalpur case which was an aberration in the constitutional jurisprudence of our country and the desirability of burying the majority opinion ten fathom deep, with no chance of resurrection.”

2. Amendability of Fundamental Rights

Shankari Prasad v. Union of India , [1952] SCR 89 (1951): This case dealt with the amendability of Fundamental Rights (the First Amendment's validity was challenged).

- The SC Court held that the power conferred on Parliament by Art. 368 to amend is a very wide power and includes the power to take away the fundamental rights guaranteed by Part III. , and
- that in the context of Art. 13 (2), "law" must be taken to mean rules or regulations made in exercise of ordinary legislative power and not amendments to the constitution made in the exercise of constituent power with the result that Art. 13(2) does not affect amendments made under Art. 368.
- This view was reiterated in **Sajjan Singh vs State Of Rajasthan, AIR 1965 SC 845**

Amendability of Fundamental Rights

The issues regarding power of the Parliament to amend Part III of the Constitution was re-examined in **I. C. Golak Nath v. State of Punjab, AIR 1967 SC 1643**

- The questions in this case were whether amendment is a law within the meaning of Art.13(2) of the Constitution of India, and
- whether Fundamental Rights can be amended by the Parliament?
- Overruling *Sajjan Singh* by a majority of six to five the Supreme Court held that amendment under Article 368 is “law” within the meaning of Article 13(2);
- It further ruled that Legislature does not enjoy the power to amend Part III of the Constitution to take away or abridge fundamental rights .

3. The Doctrine of Basic Structure

His Holiness Kesavananda Bharati Sripadagalavaru v. State of Kerala, AIR 1973 SC 1461 (decided by a Bench of 13 Judges)

- The most celebrated case in the history of Indian Constitutional law in which the apex Court dealt with the issue - **whether the Parliament can amend any part of the Constitution and what was the limit to that power?**
- The Bench by a majority of 7-6 **Overruled** the proposition of law propounded in **I. C. Golak Nath v. State of Punjab, AIR 1967 SC 1643** and held that Constitutional amendment is not “law” within the meaning of Article 13 and that although no part of the Constitution, including Part III comprising of fundamental rights, was beyond the Parliament’s amending power, the **“basic structure of the Constitution”** could not be abrogated even by a constitutional amendment.”
- As regards the basic structure, the Court held that **it would be decided from case to case** .

The Doctrine of Basic Structure-Application

Indira Nehru Gandhi v. Raj Narain 1975 SC 2299

- The validity of **39th Constitution amendment** enacted in 1975 which (Article 39-A) sought to place the election of the President, the Vice President, the Prime Minister and the Speaker of the Lok Sabha beyond the scrutiny of the constitutional courts was challenged in this case. The S.C. resorting to the theory of basic structure of the Constitution struck down Clause (4) of Article 329-A on the grounds that it was beyond the Parliament's amending power as it destroyed the basic structure of the Constitution.

The Doctrine of Basic Structure- Minerva Mills case, (1980) AIR 1980 SC 1789

Validity of Constitution (42nd Amendment) Act, 1976 ,which inter alia provided for exclusion of judicial review of constitutional amendments and expressly conferred unlimited amendment power to the Parliament, was challenged on the ground that they are **violative of the ‘basic structure’** of the Constitution.

- The Court by a majority of 4 to 1 struck down clauses (4) and (5) of article 368 holding that they violated the basic structure of the Constitution.
- The Court ruled that Parliament's power to make Constitutional amendments is limited which **itself is a basic feature of the Constitution**. The judgement makes it clear that the **Constitution, and not the Parliament is supreme**.

The Doctrine of Basic Structure: IR Coelho's Case (2007) 2 SCC 1 (Known as 9th Schedule Case) (Nine Judge Bench)

- **Basic Structure** : A landmark judgment on the interpretation of the doctrine of basic structure of the constitution.
- The **supremacy of the Constitution** mandates all constitutional bodies to comply with the provisions of the Constitution.
- **Judicial Review** : A mechanism for testing the validity of legislative acts through an independent organ, viz. the judiciary is part of basic structure.
- The Court held that any law inserted in the Ninth Schedule on or after **April 24, 1973** (date on which *Keshavananda* was pronounced) can be subject to judicial review and will be struck down if it violates the basic structure doctrine.