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KESAVANANDA BHARTI VS UNION OF INDIA

Introduction

Kesvananda Bharati is a landmark case and the decision taken by the Supreme Court outlined the basic structure doctrine of the Constitution. The decision which was given by the bench in Kesavananda Bharati's case was very unique and thoughtful. The judgment was of **700 pages** which included a solution for both Parliament's right to amend laws and citizen's right to protect their Fundamental Rights.

The Bench came up with Doctrine of Basic Structure in order to protect the interests of both citizens of India and the Parliament. The Bench through this solution solved the questions which were left unanswered in **Golaknath's case**. This case overruled the decision given in the case of **Golaknath vs state of Punjab** case by putting a restriction on the Parliament's right to amend the Constitution. The Doctrine of Basic Structure was introduced to ensure that the amendments do not take away the rights of the citizens which were guaranteed to them by the Fundamental Rights.

What is Shankari Prasad Vs union of India ?

MATTER

Power of Parliament to Amend Constitution in order to abolish the **Zamindari system** widely prevalent in India, some State Govts enacted the Zamindari Abolition Act to acquire huge holding of land that lay with **rich** zamindars, and redistribute them among the tenants. But the same was challenged as being **unconstitutional** and violative of the Right to Property that was included in the Fundamental Rights. The Act was held unconstitutional by the HC of Patna but was upheld by the HCs of Allahabad and Nagpur whereby eventually the matter was put before the Supreme Court. In the mid of this, the Union Govt brought forward the **First Amendment to the Constitution**, validating the Zamindari Abolition laws and limiting the Fundamental Right to Property. **New Articles 31 A and B were included in the Constitution to validate the impugned measures**. The Zamindars challenged the first Amendment in the Supreme Court, stating that it was unconstitutional and invalid.

Decision of the Court

*The Court held that even if the amendment is considered to be superior to ordinary legislation, it will not be able to strike its validity by **Article 13(2)**. The word 'law' as given under Article 13(2) ordinarily will be inclusive of Constitutional amendment but it must be in consideration of ordinary legislative power and therefore the constitutional amendment done by the Parliament in its constitutional power is **not subjected to Article 13(2)** and such powers include the power to amend the Fundamental Rights. The Court observed that **"We are of the opinion that in the context of Article 13 law must be taken to mean rules and regulations made in the exercise of ordinary legislative power and not amendments to the Constitution made in the exercise of constituent power with the result that Article 13(2) does not affect amendments made under Article 368."** The Court upheld the validity of the First Amendment Act, 1951 by using the literal interpretation. It also held that Article 368 entitle the Parliament to amend the Constitution with treating the Fundamental Rights with any exceptions unlike they are treated under Article 368. The Court diverged with the view that the Fundamental Rights can be here inviolable. The Supreme Court narrowed the view if Article 13(2) and adopted the progress of the independent nation through the acquisition of property.*

What is I.C Golaknath Vs State of Punjab Case?

PETITIONER: **I.C GOLAKNATH & ORS**

RESPONDENT: STATE OF PUNJAB

DATE OF JUDGEMENT: **27/02/1967**

Golaknath v State of Punjab is one of the landmark cases in the Indian legal history. A number of questions were raised in this case. But the most important issue was whether the parliament has the **power to amend the fundamental rights** enshrined under Part III of the Constitution of India or not. The petitioners contended that the parliament has no power to amend the fundamental rights whereas the respondents contended that the constitution-makers never wanted our constitution as rigid and Non-flexible one. The court held that the parliament cannot amend the fundamental rights. This ruling overturned in **Kesavananda Bharati vs Union of India 1973**. In this, the court held that the parliament can amend the constitution including fundamental rights but the parliament cannot change the **basic structure of the constitution**. This case is important because it was later overruled in Kesvananda Bharti Case.

What was the Kesvananda Bharti case ?

Kesvananda Bharti challenged the constitution { 29th amendment act,1972} questioning the Kerala govt's attempt, under two-state land reforms acts, to impose restriction on the management of its {mutt} property. Bharti also challenged three constitution amendments **24th,25th,and 26th** Introduced by the Indra Gandhi govt.

The principal question that was raised in the case was about the power of the parliament to amend the constitution in totality especially with respect to fundamental rights.

Senior lawyer Nani Palkhivala, Fali Nariman and Soli Sorabjee fought the case for Kesvananda Bharti.

A **13 Judge bench** formed to preside over the case, Heard over **68 days**. In which **11 Judgement** were delivered in what is said to be a **7:6 majority**.

Then Supreme court then ruled that the '**Basic Structure**' of the constitution was inviolable, and could not be amended by the Parliament.

24th Amendment

The twenty fourth Amendment of the constitution of India, officially know as the constitution [twenty fourth Amendment] Act, 1971, enables parliament to dilute fundamental rights through Amendments of the constitution, it also amended **Article 368** to provide expressly that parliament has power to amend any provision of the constitution.

25th Amendment

The Twenty-fifth Amendment of the constitution of India, officially known as The Constitution (Twenty-fifth Amendment) Act, 1971, curtailed the right to property, and permitted the acquisition of private property by the government for public use, on the payment of compensation which would be determined by the Parliament and not the courts. The amendment also exempted any law giving effect to the article 39(b) and (c) of Directive Principles of State Policy from judicial review, even if it violated the Fundamental Rights.

29th Amendment

The 29th Amendment was passed in the year 1972. It inserted the Kerala Land Reforms Act into the 9th Schedule. It meant that the matters related to the Kerala Land Reforms Act will be outside the scope of the judiciary to try. All the amendments which were made by the Central Government in some or other way protected the amendments made by State Government from being tried in the court of law. Provisions of the Kerala Land Reforms Act along with 24th 25th and 29th Amendments were challenged in the court of law.

ARGUMENTS FROM PETITIONER'S SIDE

The petitioner in the landmark case, mainly contended that the Parliament's power to amend the Constitution is limited and restricted. This argument of restrictive competence with the Parliament was based on the Basic Structure theory propounded by Justice Mudholkar in *Sajjan Singh*. The petitioner through his counsel pleaded before the historic **13 judge bench** to protect his Fundamental Right to Property {then article 19(1)(f)} violated by the enactment of 24th & 25th Constitutional Amendment. The petitioners also submitted that it was the Constitution of India which granted the citizens freedom from tyranny which they have suffered at the hands of Colonialism. The various features of this freedom will gradually wither away if not protected from the Parliament's recent course.

ARGUMENTS FROM RESPONDENT'S SIDE

The respondent the State contended the same arguments which it has been contending since *Shankari Prasa* i.e. the power of parliament with respect to amending the Constitution is absolute, unlimited and unfettered. This argument of state was based on the basic principle of Indian Legal System i.e. Supremacy of Parliament. Further, the state pleaded that in order to fulfill its socio-economic obligations guaranteed to the citizens by the union in **Preamble**, it is of immense importance that there is no limitation upon the authority of the Parliament. The essence of State's arguments was that if what *Golaknath* & petitioner is contending becomes the law then all the social and egalitarian obligations bestowed on the Parliament by the highest law i.e. Constitution will come in direct serious conflict with the rights under Part III. The Respondents submitted before the courts that even **democracy can be turned into one party rule**, if need be, by the Parliament.

What is Preamble to the constitution ?

The Preamble to is Constitution of India is a brief introductory statement that sets out guidelines, which guide is people of the nation, and to present the principles of the Constitution, and to indicate the source from which the document derives its authority, and meaning. It reflects the hopes and aspirations of the people. The preamble can be referred to as the preface which highlights the entire Constitution. It was adopted on **26 November 1949** by the Constituent Assembly and came into effect on **26 January 1950**, celebrated as the **Republic day** in India. Preamble was made in 1947 but adopted in 1949.

Judgement

The court by a majority of **7:6** held that parliament can amend any and every provision of the constitution subject to condition that such amendment **does not violate basic structure of the constitution.**

The majority decision was delivered by -:

S.M Sikri Chief Justice India { CJI}, K.S Hedge, B.K Mukherjea, J.M Shelat, A.N Grover, Jagmohan Reddy J, and Khanna J.

Whereas the majority opinion were written by-:

A.N Ray, D.G Palekar, K.K Mathew, M.H Beg, S.N Dwivedi. And Y.V Chandrachud J. Bench gave their landmark decision on **24TH April,1973 [on the day when CJI S.M Sikri was to retire]**

The court adopting Social engineering and balancing the interest of both litigants held that neither the parliament posses the power to emasculate **Basic structure of the constitution** non it can be revoke.

The court found the answer to the question left unanswered in Golaknath Case. the extent of amending power with the Parliament. The answer which the court deduced was DOCTRINE OF BASIC STRUCTURE. This doctrine implies that though Parliament has the prerogative to amend the entire Constitution but subject to the condition that they **cannot in any manner** interfere with the features so fundamental to this Constitution that without them it would be spiritless.

Hegde & Mukherjeajj words

In their opinion they have very beautifully explained this Doctrine. In their opinion Indian Constitution is not a mere political document rather it is a social document based on a social philosophy. Every philosophy like religion contains features that are basic and circumstantial. While the former cannot be altered the latter can have changes just like the core values of a religion cannot change but the practices associated with it may change as per needs & requirements. The list of what constitutes basic structure is not exhaustive & the majority bench has left it to the courts to determine these fundamental elements. It is upon the courts to see that a particular amendment violates Basic structure or not. This question has to be considered in each case in the context of a concrete problem.

Critical Analysis

The more often faceoff between the legislature and the judiciary is one of the quintessential features in the 1950-1980s. However, it did help the Constitution took shape. The liberty that we enjoy today and rarely think about it is not a one day result. In fact, most people doesn't even know that we have something called Constitution, and that the Supreme Court is in one way the watchdog of it, long stands form the 1950s to till now. The decision of the *Kesavananda Bharati* case was a thought-provoking judgment. The bench in this decision after putting a lot of thought into it had came up with a very unique. The decision running

into more than 700 pages has devised a solution applying which neither Parliament's obligations are hindered & nor is there any possibility of violation of citizens' Fundamental Right.

The case that saved the constitution of India.

The Supreme Court recognized BASIC STRUCTURE concept for the first time in the historic Kesavananda Bharati case in 1973. Ever since the Supreme Court has been the interpreter of the Constitution and the arbiter of all amendments made by parliament. In this case validity of the 25th Amendment act was challenged along with the Twenty-fourth and Twenty-ninth Amendment.

Constitutional Amendments

The twenty-fourth and twenty-fifth Amendment bill was introduced in the parliament on July 22, 1971. The twenty-fourth Amendment bill made just two amendments to the constitution- to Article 13 and Article 368-both had impact.

Conclusion

Kesavananda Bharati Case, Nani Palkhiwala and the seven judges at majority bench were of the opinion that through this judgment they have saved Indian democracy which our respected ancestors fought so hard for. India after over 150 years of struggle got Independence from colonial rule of Great Britain. The most important product of this independence was Democracy which gave common people power and rights. If, the bench had ruled otherwise, these rights and power for which our respected freedom fighters fought so hard would have withered away. Therefore, this precious judgment had restored the faith of common people in Judiciary as well as in Democracy.