

**DE JURE NEXUS LAW JOURNAL**

Author:

Diya Chhabra

Symbiosis Law School, Noida

1<sup>st</sup> Year, BBA LL.B.

**MINERVA MILLS V. UNION OF INDIA**

**Court:** Supreme Court of India

**Citation:** AIR 1980 SC 1789 (India)

**Coram:** Honorable Justice the Chief Justice Chandrachud Honorable Justice Mr. Justice A.C. Gupta Honorable Justice Mr. Justice N.L. Untwalia Honorable Justice Mr. Justice P.S. Kailasam

**Theme:** Limited power of Parliament to amend and Judicial Review ; Balance between Fundamental rights and DPSPs.

**Subject:** Constitutional law

**Judgement:** India

**Brief Facts of the case:**

A textile mill, namely Minerva Mills was located on the outskirts of Bangalore. However, in 1970, there was a substantial fall in the production of the mill so, the Central Government, under section 15 of Industries Development Act<sup>1</sup>, 1951, formed a committee. In October, 1971, the committee presented its report/findings to the government. The National textile Corporation

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<sup>1</sup> Industries Development Act, 1951, No. 65, Acts of Parliament, 1951 (India).

Limited, a body which was established under the Industries Development Act<sup>2</sup>,1951 was given authorization to take control over the Minerva Mills.

Nationalization was enshrined in the ninth schedule of the 39th amendment, which was exempt from judicial review. A 42nd amendment to the Constitution was ratified by the legislature, amending Article 31C through section 4 of the 42<sup>nd</sup> Constitutional Amendment Act<sup>3</sup>, 1976 and Article 368 through section 55 of the 42<sup>nd</sup> Constitutional Amendment Act<sup>4</sup>, 1976.

### Issues of the case:

The article 31C (amended) read as:



*“No law giving effect to the policy of the State towards securing (all or any principles laid down in Part (IV) shall be deemed to void on the ground that it is inconsistent or abridges any right which is conferred under Article 14 or Article 19; no law containing the declaration that it giving effect to such policy shall be called in the question in the in any court on the ground that it does not give effect to such policy.”<sup>5</sup>*

This amended law meant that no laws that gave impact to the directive principles of the state policy could become void on account of violation of right to freedom of speech or right to equality.

Also, the amended article 368 of the Indian Constitution read as:

*“(4) No amendment of this Constitution including the provisions of part III made or purporting have been made under this article whether before or after Section 55 of the Constitution shall be called in question in any court on any ground.*

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<sup>2</sup> Industries Development Act, 1951, No. 65, Acts of Parliament, 1951 (India).

<sup>3</sup> India Const. Art.31C amended by The Constitution, (Forty-second Amendment) Act, 1976.


<sup>4</sup> India Const. Art.368 amended by The Constitution, (Forty-second Amendment) Act, 1976.

<sup>5</sup> India Const. Art.31C amended by The Constitution, (Forty-second Amendment) Act, 1976.

(5) For removal of doubts, it is hereby declared that there shall be no limitation whatever on the constituent power of parliament to amend by addition variation or repeal the provision of the Constitution under this article.”<sup>6</sup>

So, the first issue that arose here whether DPSP has primacy over fundamental right to the Indian Constitution. The above amendments gave rise to another issue is to whether such amendments are hampering the basic structure of doctrine.

The petitioner in this case, Nani Palkhivala argued on behalf of Minerva Mills stating the following facts:

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- As Article 368 gave the Parliament unlimited powers to make amendments in the Constitution even if it hampers the basic structure of doctrine. It was contended that Parliament is a creature and not a creator of Constitution and it is trying to master the Constitution that gave it all the powers.
  - It is the duty of the State to pass DPSP but it should be permitting the Parliament to overrule the fundamental rights provided because Article 13 talks about protection of fundamental rights. Immunising the DPSP wipes out Article 14 and Article 19.
  - This is creating DPSP being in more elevated position than Fundamental rights.
  - The amendments made nullifies the decision taken in *Kesavananda Bharati v. State of Kerala*<sup>7</sup>, 1973.
  - Amendment in section 55 of Article 368 under which no court could have the power of judicial review of the amendments passed by the Parliament creates an imbalance of power between the Parliament and Judiciary.

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<sup>6</sup> India Const. Art. 368 amended by The Constitution, (Forty-second Amendment) Act, 1976.

<sup>7</sup> *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461 (India).

**Judgement:****Majority Opinion-**

A five-judge bench of Supreme Court pronounced the decision with a majority of 4:1 where Justice Bhagwati dissented the opinion.

The judgement firstly clarified it that Constitution is supreme of Parliament and of all. The judges ruled that there is a limited power to amend the constitution. The powers will be amended within a given framework only without hampering the basic apparatus of doctrine.

- The court added a **judicial review** as the Constitution features that it should be a limited power of the Parliament to amend Constitution.

The court believed that the amended Article 368 which was giving the thesis of unlimited authority to amend the Constitution would set apart democracy and would create a dictatorial state. Thus, court decided to nullify both the clause inserted i.e. (4) and (5) of Article 368. By this, court meant that Judicial review is a basic structure of the Constitution of India.

Also, the court said that amended Article 31C gave DPSPs the supreme power over fundamental rights. So, the court elaborated that both DPSPs and Fundamental Rights are equal and integral part of the Constitution. Both play an important role and if not provided, the State may not operate evenly. Additionally, it finds some harmony in the working of the Constitution. The makers of the Constitution gave significance to both the pieces of the Constitution.

The court, also, further said that fundamental rights provide liberty, freedom to individuals which cannot be taken back from them. These fundamental rights cannot be intentionally destructed or dismantled in any way. Article 31C tries to give what is going on where it gave power to law that directive principles cannot be proclaimed void on the privileges under Article 14 and 19.

The court believes in harmony and provides for a balance between DPSPs and Fundamental Rights of the Constitution. The law given under Article 31C that accommodates DPSPs to work in such a way to accomplish its objects without annihilating any of the Fundamental Rights

provided under the Indian Constitution. As, a result, the law given under Article 31C cannot function without disregarding Article 14 and 19 of the Constitution. Thus section 4 of Article 31C became illegal. It got unconstitutional.

### **Minority Opinion (Given by Justice P.N. Bhagwati)-**

Here, Justice P.N. Bhagwati opined that court is considering both, DPSPs and Fundamental Rights equal but if it is seen considering human rights, it is indicating towards the Fundamental Rights having supreme power which cannot be violated at all. The Constitution does not distinguish between Fundamental Rights and DPSPs. These should be considered alone as there is no comparison drawn between civil and political rights. Though he too believes that both Fundamental Rights and DPSPs form an important part of the Constitution but they should be considered alone, i.e., not together.

Justice P.N. Bhagwati was in favour of wiping out the section 55 of 42<sup>nd</sup> amendment.

The final decision of the Supreme Court struck down section 4 of Article 31C and section 55 of Article 368 of the Indian Constitution.

### **Brief analysis:**

## LAW JOURNAL

In this case, amended Article 368 and Article 31C is challenged as per validity of their clauses. Article 368 gave the Parliament unlimited powers to amend the Constitution which was limited in *Kesavanada Bharati v. State of Kerela*<sup>8</sup>. There was no one to for judicial review. The courts were not given jurisdiction to review the amendments made by the Parliament in the Constitution. And this was challenging the decision in one of the most historic judgments in Kesavananda Bharati case.

The Supreme Court however struck down Article 368 giving the Parliament only limited access to make amendments in the Constitution also holding this as a basic characteristic of the Constitution along with judicial review which followed the judgement of Kesavananda Bharati case again and should not be altered or changed by any chance.

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<sup>8</sup> *Kesavanada Bharati v. State of Kerala*, AIR 1973 SC 1461 (India).

**Conclusion:**

By the above decision of the Supreme Court, it can be concluded that Parliament has only limited powers to amend the Constitution of India. The Parliament cannot make changes in the Constitution going beyond its limited access. Justice P.N. Bhagwati showed a fair criticism of his views over the amendments though. It was made sure by the Supreme Court if there is any law which attempts to go past over the basic structure doctrine will be illegal in nature. The court additionally guaranteed that force of judicial review cannot be removed.

This case was one of the most famous instances where there was some sort of misbalance among the three organs of the Constitution i.e., legislative, executive and judiciary. But the court made sure whenever such cases have arrived, to protect the rights and interests of people. This judgement was an ideal tribute to the basic structure doctrine, which keeps on saving our majority rules system from potential Parliamentary invasions.

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