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Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmanagarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

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Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He

participated in several workshops on research methodology and teaching and learning.

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ANALYSIS OF KESAVANANDA BHARATI CASE

Authored by - Laxmi

INTRODUCTION

Kesavananda Bharati is a landmark case and the decision taken by the supreme court outline 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 700pg which includes a solution for the both parliament's rights to amend law 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 question which were left unanswered in Golaknath's case. This case overruled the decision given the case of **Golaknath V/s State of Punjab** case 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 citizen which were guaranteed to them by the Fundamental Rights.

BRIFE FACTS OF THE CASE

Kesavananda Bharati was the chief of the Edneer Mutt which is a religious sect in the Kasaragod districts of Kerala. Kesavananda Bharati had certain pieces of land in the sect which were owned by him in his name. The state of government of Kerala introduced the LAND REFORMS AMENDMENT ACT, 1969. According to the Act, the government was entitled to acquire some of the sect's land of which kesavananda Bharati was a chief.

On 21st March 1970, kesavananda Bharati moved to supreme court under **Article 32** of the Indian Constitution for enforcement of his rights which guaranteed under **Article 25- Right to Practice and Propagate Religion, Article 26- Right to Manage Religious affairs, Article 14- Right to Equality, Article 19(1)(f)- Freedom to Acquire Property, Article 31- Compulsory Acquisition of Property**. When the petition was still under consideration by

the court the Kerala Government another Act that is *KERALA LAND REFORM ACT, 1971*. (Amendment). After the landmark case **Golaknath V/s State of Punjab**, the Parliament passed a series of Amendments in order to overrule the judgment of the golaknath case.

In 1971, the 24th Amendment was passed

In 1972, 25th Amendment and 29th Amendment were passed.

The following amendment were made after the Golaknath case which was challenged in the present case are;

24th Amendment:-

- In the case of Golaknath, it was laid down in the judgment that every Amendment which is made under **Article 368**, will be taken as an exception under **Article 13**. Therefore, in order to neutralize this effect, the Parliament through an Amendment in Article 13 of the Constitution annexed clause 4 so that no Amendment have an effect under Article 13.
- The Parliament in order to remove any kind of ambiguity added clause 3 to Article 368 which reads as follows, Nothing in Article 13 shall apply to any amendment made under this Article.
- In the case of golaknath , the majority decided that Article 368 earlier contained the provision in which the procedure of Amendment was given and not the power so, in order to include the word power in the Article 368 was amended and the word power was added in the marginal note.
- The Parliament tried to draw a distinction between the procedure in an amendment and an ordinary law through an amendment in Article 368(2). Earlier the president could exercise his power to refuse or withhold a bill for the amendment. After the 24th Amendment the President did not have a choice to refuse or withhold a bill. This was done by the Parliament in order to protect the amendment from the exception that is mentioned under Article 13 of the Indian Constitution.

25th Amendment:-

- Through this Amendment the Parliament wanted to make it clear that they are not bounded to adequately compensate the landlords in case their property is take by the State Government and in order to do so the word ‘compensation’ was replaced with the word amount under Article 31(2) of the Constitution.

- The link between Article 19(1)(f) and Article 31(2) was removed.
- Under Article 31(c) of the constitution a new provision was added in order to remove all difficulties and to fulfil the objectives laid down under Article 39(b) and 39(c) it was decided that Article 14, 19 and 31 will not be applied to any law. In order to make article 39(b) and 39(c) effective the court was immunized from intervening in any law made by the Parliament.

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.

ISSUES BEFORE THE COURT

1. Whether the 24th Constitutional (Amendment), Act 1971 is Constitutionally valid or not?
2. Whether the 25th Constitutional (Amendment), Act 1972 is Constitutionally valid or not?
3. The extent to which the Parliament can exercise its power to amend the Constitution.
4. The question underlying the case also included was the power of Parliament to amend the Constitution unlimited? In other word could Parliament alter, amend, abrogate any part of the constitution even to the extent of taking away all fundamental rights?

CONTENTION OF THE PETITIONERS

- It was contended by the petitioner that the Parliament cannot amend the Constitution in a way they want to as they have a limited power to do so. The Parliament cannot exercise its power to amend the constitution by changing its basic structure as the same was propounded by Justice Mudhokar in the case of [Sajjan Singh v State of Rajasthan](#). The petitioner pleaded for the protection of his property under Article 19(1)(f) of the Indian Constitution.

- It was argued by him that the 24th and 25th Constitutional Amendments violated the Fundamental Right which was provided under Article 19(1)(f) of the Indian Constitution. Fundamental Rights are rights available to citizens of India to ensure freedom and if any Constitutional amendment takes away such right then the freedom which is ensured under the Constitution to its citizens will be deemed to be taken away from them.

CONTENTION OF THE RESPONDENTS

The respondent was the State. The State contended that Supremacy of Parliament is the basic principle of the Indian Legal System and so the Parliament has the power to amend the Constitution unlimitedly. State also contended that in order to fulfill its socio-economic obligations which have been guaranteed to the citizens of India under the Preamble, it is important that the Parliament exercises its power to amend the constitution without any limitations.

JUDGEMENT OF THE CASE

It was held by the apex court by a Majority of 7:6 that Parliament can amend any provision of the constitution to fulfil its socio-economic obligations guaranteed to the citizen under the Preamble subject to the condition that such amendment won't change the basic structure of the Indian Constitution.

The majority decision was delivered by *S.M. Sikri CJI, K.S. Hegde, B.K. Mukherjea, J.M. Shelat, A.N. Grover, P. Jagmohan Reddy JJ, and Khanna J.* whereas, the minority opinions were written by A.N Ray, D.G. Palekar, K.K. Mathew, M.H. Beg, S.N. Dwivedi and Y.V. Chandrachudjj. The minority bench wrote different opinions but was still reluctant to give unfettered authority to the Parliament. The landmark case was decided on 24th April 1973.

The court upheld the 24th constitutional Amendment entirely but the 1st and 2nd part of the 25th constitutional Amendment Act was found to be **intra vires and ultra vires** respectively. It was observed by the court in relation to the Powers of the Parliament to amend the Constitution that it was a question that was left unanswered in the case of Golaknath.

The answer to the question was found in the present case and it was deduced by the court that the Parliament has the Power to amend the constitution to the extent that such amendment does not change the basic structure of the Indian Constitution. It was laid down by the court that the Doctrine of Basic Structure is to be followed by the Parliament while amending the provision of the Constitution.

DOCTRINE OF BASIC STRUCTURE

According to the doctrine, the Parliament has an unlimited power to amend the constitution subject to the sole condition that such amendment must not change the basic structure of the constitution. The Parliament should not in any manner interfere with basic feature of the Constitution without which our constitution will be left spiritless and lose its very essence. The basic structure of the constitution was not mentioned by the bench and was left to the interpretation of the courts. The courts need to see and interpret if a particular amendment violates the basic structure of the our Indian Constitution or not.

The court found that as contended by the respondents actually there is a difference between ordinary law and an amendment. Kesavananda Bharati's case to some extent overruled Golaknath's case. The court in this case answered the question which was left unanswered in Golaknath's case in relation to the power of Parliament to amend provision of the Constitution. The court found that the word 'amend' which was included in Article 368 does not refer to amendments that can change to basic structure of the constitution then such amendment would need to go through the test of basic structure.

It was also decided that since the parliament has an unlimited power to amend the constitution subject to the basic structure the parliament can also amend Fundamental Rights as far as they are not included in the basic structure of the constitution. 24th amendment was upheld by the bench whereas the 25th amendment 2nd part was struck down. The 25th amendments validation was subjected two conditions:

1. The court agreed that the word amount and compensation is not equivalent to each other but still the amount which is provided by the Government to the landlords should not be unreasonable. The amount need not be equal to the market value but should be reasonable and closely related to the present market value.

2. The 1st part of the 25th Amendment was upheld but it was subject to the provision that the prohibition of judiciary's reach will be struck down.

CRITICAL ANALYSIS OF THE JUDGEMENT

The majority of the bench wanted to preserve the Indian Constitution by protecting the basic feature of the constitution. The judgement was given after analyzing the various aspects and based on sound reasoning. The bench feared that if the Parliament would be provided with unlimited power to amend our Indian Constitution then the power will be misused and would be changed by the Government according to its own will and preference. The basic feature and the very spirit of the constitution of the constitution can be altered powers to make amendments. There was a need for a doctrine to preserve the rights of the both parliament and citizens, therefore , the bench came up with a midway to protect both to their rights through the doctrine of basic structure.

Even before our Indian Constitution came into force, approximately 30 amendments were already made to it. After the commencement of the Indian Constitution in 1951, around 150 amendments have been passed, whereas, in the United States, only 27 amendments have been passed in 230 years. Despite the huge number of amendments, the spirit, and ideas of the framers of the Indian Constitution have remained intact. Indian Constitution did not lose its identity and spirit because of the decision taken by the Bench in this case.

The landmark case kesavananda Bharati provided stability to the constitution. Through the petitioner lost his case partially yet the judgement that was given by the bench in this case worked out to be a saviour of Indian democracy and saved the Constitution from losing its spirits.