

Case Summary

Background Facts

Sripad Galvaru Kesavananda Bharati was chief of a religious sect in Kerala. The sect had certain lands acquired under its name. Some of these lands by virtue of Kerala Land Reforms Act, 1963 which was further amended by Kerala Land Reforms (Amendment) Act, 1969 were to be acquired by the state government to fulfill their socio-economic obligations. Therefore, on 21st March 1970 the petitioner moved to Apex Court u/a 32 for the enforcement of rights under Articles 25 (Right to practice and propagate religion), 26(Right to manage religious affairs), 14(Right to Equality), 19(1)(f) (Freedom to acquire property), 31(Compulsory Acquisition of Property). Meanwhile, when the petition was under consideration by the Court the State Government of Kerala passed Kerala Land Reforms (Amendment) Act, 1971.

After the unprecedented judgment of *Golaknath v. State of Punjab*^[1] the desperate Parliament in order to gain its lost supremacy & autonomy passed series of Amendments to indirectly overrule whatever was decided in *Golaknath*{[as discussed in Golaknath summary](#)}. The Indira Gandhi govt. returned in lower house with huge majority in 1971 elections and then passed 24th Amendment in 1971, 25th Amendment in 1972 & 29th Amendment in 1972.

24th Amendment

1. The Golaknath judgment laid down that every amendment made under Article 368 will be hit by the exception laid down in Article 13, therefore to neutralize this the parliament through an amendment in Article 13 annexed clause 4 by which any amendment do not had any effect under Article 13.[2]
2. To remove all or any difficulty or ambiguity the Parliament also added clause 3 to the Article 368 which reads as follows... *“Nothing in article 13 shall apply to any amendment made under this article.”*[3]
3. In Golaknath the majority relied upon the Marginal note of the earlier Article 368 to decide that the provision only contained the procedure of Amendment and not power, therefore, the Marginal Note of Article 368 was amended and word Power was added in the Marginal Note.
4. Through an amendment in Article 368(2) the parliament tried to make a difference between the procedure in an amendment and an ordinary law. Earlier the president had the choice to refuse or withhold the bill for the amendment but after 24th Amendment he has no such choice to refuse or withhold the amendment. This way the parliament tried to make an amendment and an ordinary law different so as to protect the amendment from the exception mentioned under a combined reading of Article 13(1) & 13(3)(a).

25th Amendment

1. The parliament in order to clarify their stance that they are not bound to adequately compensate the landowners amended Article 31(2) in case there property is acquired by the state. The word *“amount”* was placed instead of compensation in the provision.
2. Article 19(1)(f) was delinked from Article 31(2).
3. Article 31 C, a new provision was added to the Constitution to remove all difficulties that

I. Articles 14, 19 & 31 are not to be applied to any law enacted under the fulfillment of objectives laid down under Article 39(b) & 39(c).

II. Any law to give effect to Article 39(b) & 39(c) will be immunized from court's intervention.

29th Amendment

The 29th Amendment passed in the year 1972 had the effect of inserting The Kerala Land Reforms Act into IX Schedule which means it is outside the scope of judicial scrutiny.

Since all these central amendments in one way or another saved the State amendments from being challenged in courts of law, along with the impugned provisions of Kerala Land Reforms Act, validity of 24th, 25th, & 29th Constitutional Amendments was also challenged.

Issue

1. Constitutional Validity of 24th Constitutional (Amendment), Act 1971
2. Constitutional Validity of 25th Constitutional (Amendment), Act 1972
3. Extent of Parliament's power to amend the Constitution

ARGUMENTS FROM PETITIONER'S SIDE

The petitioner in the landmark case, *inter alia*, 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*[4]. 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 i.e. the State contended the same arguments which it has been contending since *Shankari Prasad*[5] 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.[6]

Judgment

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 CJI, K.S. Hegde, B.K. Mukherjea, J.M. Shelat, A.N. Grover, P. Jagmohan Reddy jj. & Khanna J. concurring with the majority. Whereas the minority opinions were written by A.N. Ray, D.G. Palekar, K.K. Mathew, M.H.

Beg, S.N. Dwivedi & Y.V. Chandrachudjj. The minority bench though writing separate opinions, didn't conceded to the fact that there are some provisions which are fundamental. They were reluctant to grant complete and unfettered authority to Parliament with respect to power of amendment.

The 13 judges bench gave this landmark decision on 24 April, 1973 (on the day when the then CJI S.M. Sikri was to retire). The court upheld entire 24th Constitutional (Amendment) Act, 1971 whereas it found 1st part of 25th Constitutional (Amendment) Act, 1972 *intra vires* & 2nd part of the act *ultra vires*. The court adopting social engineering & balancing the interests of both litigants held that neither the Parliament possesses power to emasculate Basic Structure of Constitution nor it can revoke the mandate to build welfare state and an egalitarian society. The court found the answer to the question left unanswered in *Golaknath* viz. 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. To understand the essence of this doctrine it is of importance to understand Hegde & Mukherjeajj. who in their opinion 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.

The major findings of the court are as follows:

1. The court upon a great discussion and analyzing the matter at length found the power of Amendment as contended by the respondent in the impugned Article 368. After this judgment the court made explicit what was implicit pre-Golaknath.
2. The court after hearing both sides came to the conclusion that in reality there do lie a difference between an ordinary law and an amendment.

The *Kesavananda Bharati* case, to the extent of above two findings, overruled the *Golaknath* case.

3. The judgment though overruling *Golaknath* didn't concede absolute or unfettered power to parliament with respect to Amendment in the Constitution. They held that though parliament can amend any & every provision of the Constitution subject to non-interference and non-violation of Basic Structure {Theory of Basic Structure}.
4. The bench also answered the question left unanswered by *Golaknath* about the extent of the word "Amendment". The court found that the word "amend" in the provision of Article 368 stands for a restrictive connotation and could not ascribe to a fundamental change. To understand it simply; the parliament in order to pass a constitutionally valid amendment, the particular amendment is subject to the application of Basic Structure test and has to pass it.
5. Since the majority ruled that Parliament can amend any & every provision of Constitution subject to Basic Structure test, it also had the

- effect of allowing Parliament to amend even FR's as long as they are in consonance with the Basic Structure theory.
6. The court suggested few basic structures that they could locate such as Free & Fair Elections, Supremacy of Constitution, Independent judiciary, Secularism, Federal Character of Nation, Separation of Power, Republic & Democratic form of Government etc. However, the list they prepared is not exhaustive and future courts on interpretation can add features they find as Basic Structures.
 7. The majority bench upheld the entire 24th Amendment Act valid whereas regarding 25th Amendment; it upheld 25th Amendment's 1st limb and struck down the 2nd. However, this validation of 25th Amendment was subject to two conditions i.e.
 - I. Although the court accepted that the literal meaning of the word "amount" is not equivalent to compensation and though courts can't go on deciding on adequacy of amount but it cannot be unreasonable and arbitrary. Neither the amount has to be the market value but it should be reasonably related to the market value.
 - II. The 1st part of the Amendment was though upheld {delinking of Article 19(1)(f) from Article 31} but 2nd part which barred judicial reach was struck down. Khanna J. on this point opined that no law can bar the litigant to reach the courts for the enforcement of their rights.
 8. The court thereby upholding the 1st limb of 25th Amendment gave the required prerogative to Parliament to fulfill their socio-economic legislation guaranteed under Preamble as well as in certain provisions of Constitution and at the same time saved the citizens from Parliamentary Totalitarianism by striking down 2nd limb of the said amendment since it barred the fundamental, legal and constitutional right of *legal remedy*.
 9. The judgment of *Kesavananda* was an improvement over *Golaknath* in two terms;

I. The decision in *Golaknath* was restricted only to the protection of Fundamental Rights from the autonomy of Parliament; however, *Kesavananda* broadened its cover over all the provisions that are fundamental to the Constitution. In this way the court in *Kesavananda* increased the ambit of protection of Constitution and limitation on Parliament's power.

II. The majority bench of *Golaknath* was of the opinion that the Parliament has no authority to amend the Fundamental Rights and also they were of the opinion that to have an amendment, it has to come from the Constituent Assembly. This made Amendment too rigid formulation and unknowingly made the Constitution too slow to change. Fortunately, *Kesavananda* overruled *Golaknath* to this extent and granted the sufficient necessary flexibility to the Constitution.

Critical Analysis

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 come 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. *Kesavananda* is a classic example of judicial policy where due to inherent conflict and ambiguity the Constitutional Machinery was failing. This inherent conflict and ambiguity was resolved when the majority bench came up with *Doctrine of Basic Structure*. This 13 judge bench decision corrected wrong precedents (*Shankari Prasad, Sajjan Singh, Golaknath*) made in the past and presented the Indian Democracy where all the institutions borne through Constitution can perform their respective obligations harmoniously. After the application of this decision Judiciary, as given by the Constitution, has become final arbiter to check violation of constitutional provisions. Since *Kesavananda Bharati case* overruled *Golaknath case* it cleared

the Parliament's way to fulfill their obligations to create a welfare state and an egalitarian society. Along with this it has also put a cap of restriction on the Parliament to keep its autocracy in check and to ascertain that there is no further violation of Fundamental rights.

Kesavananda Bharati Case reflects judicial creativity of very high order. The majority bench's decision to protect the fundamental features of the Constitution was based on sound & rational reasoning. The bench was fearful that if the Parliament is given unrestricted amending power then a political party with a two-third majority in Parliament, for a few years, could make any change in the Constitution even to the extent of repealing it to suit its own preferences. However, the bench was also conscious of the poverty and social backwardness lurking in the nation & to eradicate this state of poverty and social backwardness the Parliament would need some sort of tool. Therefore, keeping both extreme contentions in its mind, the court propounded Basic Structure theory through which a honest Parliament can bring all the required changes needed and at the same time check a malicious & power greedy conglomerate of politicians.

CONCLUSION

The Supreme Court reading implied limitation on Parliament's amending power was a very bold & brave move. The Constitution of India deriving strength from national consensus and enacted in the name of "People of India" cannot be amended by a mere 2/3rd majority when in reality 2/3rd majority does not represent the entire populous of nation, further it should be also kept in mind that not entire population cast their respective votes in General Election. The procedure of Amendment requires the bill to pass from both the houses and Rajya Sabha does not represent people of India i.e. it is not a popular house therefore, it is not

entirely correct to say that an Amendment passed by the houses actually represent “People of India”.

Eminent Jurist, legendary advocate and co-counsel in *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 (who were the most oppressed) 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.