



SUPREME COURT ON CONSTITUTIONAL AMENDMENT

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ABSTRACT:

Indian constitution makers adopted the British model of parliamentary government, because independent India is the product of the largest independence movement. So it can be a mass democracy based on universal adult suffrage. However, they did not make it a sovereign law-making body like its English counterparts. They put supremacy in the hands of the legislator, but had to be banned because unlike Great Britain, India has a long written constitution, federal distribution of power and the list of fundamental rights. So to be valid, parliamentary law must be ratified in all respects of the Constitution.

KEYWORDS: Judiciary on Amendments made in Constitution, Constitution, Amendments

INTRODUCITON:

The Indian Constitution has taken a middle path with the British concept of Parliament's sovereignty and its authority for legal judicial review between the apex of the judiciary in America. They also recognized that if excessive force was fixed in any organ, it would undermine democracy. They adopted the concept of checks and balances to determine the functioning of every organ of government. The two important pillars of the Constitution for the harmonious coexistence and mutual respect between them and the division of power and scrutiny and balance.

Like all modern democratic constitutions, the Indian Constitution presents judicial review as the supreme principle of public law, and it is ultimately the Supreme Court that is the ultimate arbiter of the issue of constitutional interpretation.

There was a period in the 1950s to 1960s and 70s that significantly changed the system of judicial behavior - such as Jamindari Abolition and Land Reform in 1950-52 and Shankari Prasad Vs. Sajjan Singh v. State of Rajasthan, 1965. The amendments applied to override judicial decision also restrict the power to protect the property of the courts. But I.R. Coelho Vs. State of Tamil Nadu Supreme Court

LANDMARK CASE LAWS:

1. Shankri Prasad vs. Union of India A.I.R 1951:

-Shastri M.Patanjali bench

-Question clauses 31A and 31B

31A-Save laws to obtain inheritance, etc.

31B - Confirmation of certain laws and regulations

parameter:-

- In this case, the question of whether the fundamental rights can be amended under Article 368 is first proposed for consideration by the Supreme Court. In this case, the validity of the first constitutional amendment to articles 31-A and 31-B of the Constitution was questioned. Some people think that although it is possible to openly amend the provisions

on basic rights to the parliament, these amendments must be tested in accordance with the provisions of Article 13(2) of the Constitution.

- In this case, the amendments to articles 31 A and 31 B of the Constitution were challenged on the grounds that they deprived citizens of their basic rights and therefore article 13 did not allow this. Some people think that the "state" includes the parliament and the parliament. "Law" includes constitutional amendments.

- Article 13(2):-

"The State shall not enact any law that deprives or deprives the rights conferred by this Part. Any law that violates this Article shall be null and void within the scope of the violation."

- **Judgment:-**

- The Supreme Court rejected this argument, arguing that Article 368 gives Parliament the power to amend the Constitution, including basic rights. The term "law" in Article 13 refers only to the common law enacted under the legislative power.

2. Sajjansingh vs. State of Rajasthan A.I.R 1965:-

- questioning the validity of the Seventeenth Amendment [to ensure the constitutional validity of inheritance, and Schedule 9 of the Constitution provides for land acquisition law]

- **17th Amendment:** -1) Amendment to Section 31A

2) Modify schedule 9

parameter:-

- In this case, the validity of the Seventeenth Amendment was questioned. The main argument of the five judges of the Supreme Court is that the Seventeenth Amendment limits the jurisdiction of the High Court, and therefore, under Article 368, half of the countries are required to ratify the court.

- The Supreme Court ruled that the amendment to the Constitution is an amendment to all the provisions of the Constitution.

3) Golakhnath vs. State of Punjab, A.I.R 1971:-



- **Challenged** First Amendment
- Seventeenth Amendment &
- Fourth Amendment [Amendment of Sections 31, 35, 305]
- [Restrictions on property rights and related bills are included in the Constitutional Schedule 9]

Background: -

- - The families of Henry and William Golak Nath have 500 acres of farmland in Jalanda, Punjab.
- - In the face of the Punjab Security and Land Tenure Act of 1953, the state government believes that each of the brothers can only retain 30 acres, a few acres for the tenants, and the rest are declared "remaining."
- - The Golak Nath family questioned this in court and the case was handed over to the Supreme Court in 1965.
- - The family objected to the 1953 Punjab Act under article 32 on the grounds that the family deprived them of their constitutional rights to acquire and hold property and to engage in any occupation (article 19 (f) and (g)) And legal protection of rights before equality and before equality (Article 14). They also sought to enact a seventeenth amendment that included the Punjab Act in the ninth schedule and declared it a super virus.
- -11 judges
- - Most 6:5
- Expected overthrow principle:
- - Therefore, it adopted an anticipation principle of overturning, according to which the three constitutional amendments concerned will continue to be valid, and the decision that the Parliament has no power to amend the provisions of Part III will only be valid in the future.

Judging:

- The Supreme Court overturned the previous judgment and held that since the day of the judgment, the Parliament has no power to amend the third part of the Constitution to deprive it of any fundamental rights. It considered that the “amendment” was the law referred to in article 13 and was therefore subject to article 13, paragraph 2.

4) Keshavanand Bharati vs. State of Kerala, A.I.R 1973:



Challenged 24th

24 Amend articles 5 November Enable parliament to dilute fundamental rights
13 and 368. 1971 through amendments to the constitution

25thAmendment

25 Amend 20 April Restrict property rights and compensation in case the state
article 31. 1972 takes over private property
Insert article
31C

29th amendments.

29 Amend 9 June Place land reform acts and amendments to these act under
schedule 9. 1972 Schedule 9 of the constitution

- **Background:-**

- The case began in February 1970, when the head of the senior pope (Swami HH Sri Kesavananda Bharati), the senior pope and "Edneer Mutt" (HindMutt, Edneer, a village in the Kasaragod district of Kerala) In the two state land reforms, the Kerala government's attempts were questioned. Behavior, impose restrictions on the management of its property. Although the state invoked its powers under Article 31, a famous Indian jurist, Nanabhoy Palkhivala, persuaded Swami to fight his petition under Article 26 (instead of Article 29), which involved uninterrupted government intervention. The right to manage religious property in the case.

- Although the hearing will take five months, the results will have a profound impact on the democratic process in India.

- The Supreme Court reviewed the ruling in the Golaknath v. Punjab case and considered the validity of Amendments Nos. 24, 25 and 29. The case was heard by the Constitutional Court, the largest 13 judges in history. The benchmark judge made 11

judgments, which reached consensus on some points of view, while others differed. With the assistance of Fali Nariman, Nani Palkhivala filed a lawsuit against the government in two cases.

- 13 judges. The judgment was made with a majority of 7:6 and is one of the most important judgments in the history of independent India.

- The longest hearing: - This hearing lasted 69 days and was the longest hearing in the history of the Supreme Court. In the end, the verdict was made on April 23. There are a total of 11 judgments representing the opinions of 13 members.

- In order to overcome the Supreme Court's ruling in the Goraknath case, the Twenty-fourth Amendment to the Constitution was passed in 1971.

- Articles 14 and 368 have been amended in the Twenty-fourth Amendment:

- (i) Article 13 adds a new clause: "(4) This section does not apply to any amendment to this Constitution under section 368."

- (ii) Amendment to Article 368:

Judging:

- In this case, SC again overturns its judgment and considers that "law" in Article 13 refers only to the common law with legislative power. The 24th amendment is only to clarify the position and is therefore valid.

However, it further believes that the "amendment" means that after the amendment, the original spirit of the Constitution must remain the same. Therefore, the basic structure or features of the construction cannot be changed. According to C J Sikri, the basic structure of the Constitution includes - judicial supremacy, democratic republics, secularism, the separation of powers between the judiciary, the legislative and executive branches, and the federal nature of the constitution.

5. Indira Nehru Gandhi vs. Raj Narayan

- In this case the concept of the basic structure is reiterated. The Supreme Court applied the basic structural theory and abolished Article 329-A, Article Cl(4), which was inserted in the 1971 Amendment of 39, on the grounds that it exceeded the legislative amendments because it destroyed the constitution of the basic characteristics. The amendment has amended the jurisdiction of all courts, including the Prime Minister of India, concerning election disputes related to the Indian Prime Minister.

- Basic characteristics of the Constitution based on the judgment of the election. Again, each judge expressed his opinion on the constitution that constitutes the basic structure of the Constitution: Justice Y.V. Chandrachud lists four basic functions that he believes are not modifiable:

- a) The status of a sovereign democratic republic.
- b) Individual status and opportunities are equal.
- c) Secularism and freedom of conscience and religion.
- d) "The rule of law, not the rule of man", the rule of law.

- Second Amendment: After the Supreme Court made a decision in the case of Keshvanand Bharti and Indira Nehru Gandhi, the 1976 Constitution (42nd Amendment) was passed, and two new clauses were added to Article 368, namely (4) and (5) the Constitution. It declares that there is no restriction on the parliamentary powers of parliament to amend, change or abolish the provisions of the Constitution in this article.

- This amendment will terminate any disputes in the Supreme Court or Congress. Paragraph (4) argues that the parliament is supreme.

- Some people are urged to represent the will of the people. If the people want to amend the constitution through parliament, there is no restriction on the exercise of this power. This amendment removes the restrictions imposed by the Supreme Court on the power of parliamentary amendments in the case of Keshvanand Bharti.

- It is said that the "basic structure" theory put forward by the Supreme Court is ambiguous and will bring difficulties to people. The amendment is intended to correct this situation.

6) Minerva Mills Ltd vs. The Union of India A.I.R 1980

- **Challenged 42nd** Amendment [Article 42 (4) and (5) of Article 42C of the 42nd Amendment and Amendment]
- - The Supreme Court rejected the 368th paragraphs (4) and (5) inserted in the 42nd Amendment by a 4-1 majority vote on the grounds that they undermined the basic



features of the constitutional basic structure. The court ruled that the limited right of amendment is itself a fundamental feature of the Constitution. Historical judgments indicate:

- - The amendment to Article 31C of the 42nd Amendment is invalid because it undermines the basic features of the Constitution. Articles (4) and (5) are invalid on the grounds that they violate the two basic characteristics of the Constitution. The nature of the amendment and judicial review power is limited. The judicial review power of the court cannot be denied. The procedure specified in paragraph (2) is mandatory.
- - If the modification does not comply with the program passed, it is invalid. Therefore, the Supreme Court's decision clearly stated that the Constitution is the Supreme Court, not the Parliament. Parliament cannot have unlimited rights to modify to destroy or destroy its proper constitution and gain its power.

CONCLUSION:

Judicial Review upholds the constitution's supremacy, sets the constitution in a new state, and develops a sense of right and curiosity to seek redress against individual rights violations, depending on the needs of the time when people have social and economic benefits.

In India, because it is a parliamentary form of government, it is based on close coordination between the MLA and the business wing and coordination of Ga. The functional dimensions of each branch vary overtime, with one or two branches gaining more ground or glitter than others at different times.

There are at least two reasons why the conflict between the two wings of the government .It happened. In the first place, the supremacy of the Parliament over the judiciary sought to be established through reform. Second, the issue of compensation payments, centered around the nature and extent of fundamental rights, especially property rights issues.



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