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Minerva Mills Case, 1980

LOKAVYA CHOUDHARY¹

ABSTRACT

The Minerva Mills Vs The Union of India is one of the most remarkable judgements in the Indian History which helped to safeguard one of the powers of the Judiciary that is the power of the Judicial Review which refers to the power of the judiciary to interpret the constitution and to declare any such law or order of the legislature and executive void, if it finds them in conflict the Constitution of India. Along with this the court also struck a balance between the Directive Principles of State Policy and the Fundamental Rights and upheld the Basic Structure Doctrine established in the Kesvananda Bharti Case . The judgment of the case was divided into 4:1. The majority struck down Section 55 & 4 of the 42nd Amendment as it was in violation of basic structure .The court held that the newly introduced Clause 4 & 5 were actually inserted to bar the courts to entertain any challenge on the question of validity of the constitutional amendments. This case holds importance even today as because the Judiciary keeps a check on the laws that are passed by the legislature specially in an assertive and active government like that of the present . Moreover the Constitution of India is the supreme law of the land and the Supreme Court has the responsibility of interpreting and protecting it . Thus the research work in its broadest terms encompasses the importance and role of the case in making the Judiciary more powerful.

Keywords: *Judicial Review, Constitution, Power.*

I. INTRODUCTION

The forthcoming Research Paper tries to examine about how

(A) *Minerva Mills Pvt. Ltd. Vs The State of India contributed to the strengthening of the power of the Judicial Review ?*

¹Judicial Review refers to the power of the judiciary to interpret the constitution and to declare any such law or order of the legislature and executive void, if it finds them in conflict the Constitution of India.¹

One certainty that emerged out of this tussle between Parliament and the judiciary is that all laws and constitutional amendments are now subject to judicial review and laws that transgress

¹ Author is a student at Lady Shri Ram College for Women, University of Delhi, India.

the basic structure are likely to be struck down by the Supreme Court. In essence Parliament's power to amend the Constitution is not absolute and the Supreme Court is the final arbiter over and interpreter of all constitutional amendments.

Along with that the researcher examines about how the case led to strike a balance between the Fundamental Rights and the Directive principles of The State Policy and substantiating the Basic Structure Doctrine

The Research Paper has been divided into three parts :

- The First part explains the case in detail : the arguments of both the sides , the issues raised and the judgement given by the Supreme Court.
- The second part consists of the theoretical foundation in which the Researcher has associated the Cognitive dissonance Theory of Psychology with the case .
- The third part of the research tries to examine the analysis of the case , its implications , importance in today's politics and the way forward .

(A) Methodology

For the purpose of writing this research paper the data has been collected from the secondary sources

II. MAIN BODY

²Minerva Mills was a textile industry in the State of Karnataka engaged in the mass production of silk clothes and provided market to the general public. The Central Govt. was suspicious that company fulfilled the criteria to be classified as a sick industry. Relying on the Committee's report, on October 19, 1971 the Central govt. empowered National Textile Corporation Limited (a body under the 1951 act) to take over the management of Minerva Mills u/s 18A of the 1951 act.²

The Petitioner challenged section 4 and 55 of the 42nd amendment Act

Section 4 of the Constitution (42nd Amendment) Act 1976,

³ It replaced the clause, 'the principles specified in clause (b) or clause (c) of article 39' with 'all or any of the principles laid down in Part IV' and hence this amendment gave parliamentary sanction to any law or regulation passed to fulfil any goal laid in the Directive Principle of State Policy, irrespective of the fact that it violated article 13 read with articles 14 and 19.

Section 55

introduced sub-clauses (4) and (5) to Article 368 of the Constitution, which gave the

parliament unlimited powers to amend the constitution.

Clause 4

deprives the courts of their power to call in question any amendment of the Constitution.

Clause 5

No constituent power can conceivably go higher than the sky-high power conferred by clause (5), for it even empowers the Parliament to “repeal the provisions of this Constitution”.³

III. ISSUES BEFORE THE COURT

1. Whether Sections 4 and 55 of the 42nd Amendment Act, 1986 are constitutional?
2. Whether the Directive Principles of State Police should be given supremacy over the fundamental rights?

IV. ARGUMENTS OF THE PETITIONER

The contention of the petitioners was that there were implied limitations on the power of amendment and therefore Article 368 did not confer power on Parliament to amend the Constitution so as to destroy or emasculate the essential or basic elements of features of the Constitution. The basic structure of the Constitution rests on the foundation that while the directive principles are the mandatory ends of government, those ends can be achieved only through permissible means which are set out in Part III of the Constitution. If Article 31C as amended by the 42nd Amendment is allowed to stand, it will confer an unrestricted license on the legislature and the executive, both at the centre and in the States, to destroy democracy and establish an authoritarian regime.

V. ARGUMENTS OF THE RESPONDENT

Securing the implementation of directive principles by the elimination of obstructive legal procedures cannot ever be said to destroy or damage the basic features of the Constitution. Further, laws made for securing the objectives of Part IV would necessarily be in public interest. A law which fulfils the directive of **Article 38** is incapable of abrogating fundamental freedoms or of damaging the basic structure of the Constitution inasmuch as that structure itself is founded on the principle of justice- social, economic and political.

VI. JUDGEMENT

⁴This landmark Judgment came on July 31, 1980. The judgment was divided into 4:1, The majority struck down Section 55 & 4 of the 42nd Amendment as it was in violation of basic

structure thereby upholding the Basic Structure doctrine laid down by *Kesavananda Bharti*. Bhagwati J. wrote the dissenting opinion in the sense that he agreed with the majority on the point of striking down section 55 however he dissented with the majority on the point of Section 4 of 42nd Amendment.⁴

The court held that the newly introduced Clause 4&5 were actually inserted to bar the courts to entertain any challenge on the question of validity of the constitutional amendments. The court beautifully described the importance of Judicial Review in the following words.....*Our Constitution is founded on a nice balance of power among the three wings of the state namely the Legislature, the Executive & the Judiciary. It is the function of the Judges nay their duty to pronounce upon the validity of laws.* The court held Section 55 of the amendment act 1976 void since it *firstly* made challenge in court impossible & *secondly* it removes all the restrictions on the power of Parliament under Article 368. The court rightly interpreted the true object of these new clauses which was to throw away the limitations imposed by *Kesavananda* on Parliament.

⁵The newly added clause 5 has the effect of even repealing the entire constitution and change it into a totalitarian constitution as per the political exigencies of the ruling political party & still it won't be a ground for a challenge in the court because of the combined reading of Clause 4&5 of 42nd Amendment. Depriving the courts their power of judicial review is making Fundamental Rights a box of rhetoric dreams as they would never be granted and rights without remedies.⁵

Article 368 is not a power to destroy. In the above said decision the court clearly mentioned the scope of amendment under Article 368. The court answered 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.

The court also explained the relationship between the provisions of Part III & Part IV of the Constitution. The court said that the entire Indian Constitution rests upon the foundation of Part III & Part IV. To give absolute primacy to one over another will be shaking the foundation of the Constitution. Striking a harmonious balance between the provisions of Part III & Part IV is where justice lies and making one part subservient to another would only lead to chaos. The provisions of Part IV must be achieved but without abrogation of FR's and anything which shakes this balance violates the essential balance of the Constitution. Therefore, the court in

strict terms laid down that the balance between DPSP's & FR's is Basic Structure of the Constitution.

As regards to Section 4 of the amendment act 1976 which tried to separate Article 14 and 19 from Article 31 C this was held void as it destroyed the basic feature. The articles mentioned under Article 14 and 19 are essential elementary articles in modern democracies. Most of the recent laws are passed to satisfy the obligations of DPSP because of which Art. 14 & 19 have stood withdrawn. These rights are clearly without any doubt universal because of their presence in Universal Declaration of Human Rights.

Therefore, the court by 4:1 majority held sections 4 & 55 of the 42nd Constitutional (Amendment) Act, 1976 unconstitutional.

VII. COGNITIVE DISSONANCE THEORY

The Judiciary, in order to amend, create or state any law as void, has to go back and rely on the interpretation of the Constitution which is the Supreme Power. Hence the researcher has tried to associate the Cognitive Dissonance Theory of Psychology with the Decision Making in this particular case.

⁶According to cognitive dissonance theory, there is a tendency for individuals to seek consistency among their cognitions). When there is an inconsistency between attitudes or behaviors (dissonance), something must change to eliminate the dissonance. In the case of a discrepancy between attitudes and behaviour.⁶

Attitude : The Constitution gives the power of Judicial Review to the Judiciary

Behaviour : Section 55 took away this power hence leading to a state of DISSONANCE. In order to reduce this dissonance the Supreme Court had two options

1. To do away with section 55
2. To accept section 55

The Supreme Court landed on the decision to do away with section 55 because this reduced the state of dissonance as the attitude that was formed could not be merged with the present behavior.

VIII. CONCLUSION

“Any system of government which tends to become passive and static is bad. The parliamentary system of government, with all its failings, has the virtue that it can fit in with the changing pattern of life.”

-Jawaharlal Nehru

But the extent to which these powers can be given to the parliament have to be restricted to maintain the sanctity of the constitution.

The Constitution of India is the supreme law of the land. The Supreme Court of India has the supreme responsibility of interpreting and protecting it. It also acts as the guardian-protector of the Fundamental Rights of the people. For this purpose, the Supreme Court exercises the power of determining the constitutional validity of all laws.

It has the power to reject any law or any of its part which is found to be unconstitutional. This power of the Supreme Court is called the Judicial Review power.

The court was called upon to decide the constitutionality of such draconian law. The court without giving any other vague interpretations or fearing the mighty government upheld the epic *Kesavananda* decision. The court gave a unanimous decision that such amendment which restricts the challenge of amendments in the courts of law and which removes all restriction on the power of parliament are void and violative of Basic structure of the constitution. The court held that Judicial Review is something that they cannot take away even with making law.

The impact of the judgement can be experienced with the present government .

*⁷The Narendra Modi government "is determined to relegate several archaic Acts to history. Laws need to be consonant with the times. 1,200 redundant Acts have been scrapped. 1,824 more have been identified for repeal," said law minister Ravi Shankar Prasad.*⁷

There have been several incidents where extremely serious charge are held against the Modi dispensation that it had compromised the independence of judiciary, a pre-requisite for the survival of India's democracy

In instances like this , the importance of judicial review can be clearly seen about how even after powers like that of Basic Structure Doctrine , these kinds of allegations have been raised

According to the researcher, if this very amendment would not have taken place, the pillars of the Indian Democracy would have gone weak. Not only this but also there would have been a threat to the sacred nature of the constitution as then the Parliament could amend any part of the constitution that it would have wished for .

The researcher would like to put forth the following suggestions

1. Directive Principles of state policy should be taken into account by a separate body elected by the judiciary who maintains a balance between the Directive principles and the Fundamental Rights.

2. Before considering a law to be passed, it should be practiced into action for a stipulated time period and then laid down in the Constitution.
3. A separate Observation Body should be made consisting of eminent Democrats decided by both Judiciary and the Parliament which can help mediate between the two

There will be several other challenges faced by the judiciary but the researcher believes that the farsightedness of the constitution makers help us deal with them in different ways thus guiding our way forward.

The importance of the judgment lies in the way it grants finality to the debate that was going on since 1951. The judgment finally rests the debate on the point of limitation on parliament's power in amending the constitution when it held that the parliament cannot amend basic structure of the constitution.

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