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# Saviour of India's Democracy: The case of Kesavananda Bharati v. The State of Kerala

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## ABSTRACT

*The case of Kesavananda Bharati, popularly known as the Fundamental Rights Case is an important case in the constitutional history of India wherein the Basic Structure Doctrine of the Indian Constitution was defined. This doctrine empowers the Parliament to amend the Constitution provided there is no change in the fundamental rights and other provisions that constitute its basic structure. In this case, the plaintiff Kesavananda Bharati, the chief of Edneer Mutt in Kasargod District of Kerala challenged a land reform legislation that infringed his right to property amongst other rights. This case is, without a doubt, one that will always have fame in the history of our country as the single-handed saviour of India's democracy. Through this article, the writer aims to shed some light on this landmark case by way of a detailed analysis which includes a case background, issues, arguments of either side, judgment, and conclusion.*

## I. INTRODUCTION

The case of Kesavananda Bharati<sup>2</sup> is an important case in the constitutional history of India wherein the Basic Structure Doctrine of the Indian Constitution was defined. This doctrine empowers the Parliament to amend the Constitution provided there is no change in the fundamental rights and other provisions that constitute its basic structure. This case, ranging for 68 days, citing over 100 other cases and using the constitution of over 70 countries, was the longest case in India's history, the judgment of which went on for 703 pages. Additionally, with a bench of 13 Supreme Court judges, it is the case with the largest constituted bench in the history of India. In this case, Kesavananda Bharati, the chief of Edneer Mutt in Kasargod District of Kerala challenged a land reform legislation that infringed his right to property amongst other rights. Aged 79, he succumbed to age-related issues on the 6th of September, 2020 in Idnir Math. The following article aims to shed some light on this landmark case by way of a detailed analysis which includes a case background, issues, arguments of either side, judgment, and conclusion.

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<sup>2</sup> Kesavananda Bharati v. the State of Kerala, (1973) 4 S.C.C 225 (India).

## II. CASE ANALYSIS

### CASE DETAILS

**Name:** *Kesavananda Bharati Sripadagalvaru & Ors. v. State of Kerala & Anr.*

**Year:** 1973.

**Citation:** AIR 1973 SC 1461.

**Petitioner:** *Kesavananda Bharati Sripadagalvaru & Ors.*

**Respondent:** *The State of Kerala.*

**Bench:** *S.M. Sikri, K.S. Hegde, A.K. Mukherjea, J.M. Shelat, A.N. Grover, P. Jaganmohan Reddy, H.R. Khanna, A.N. Ray, K.K. Mathew, M.H. Beg, S.N. Dwivedi, & Y.V. Chandrachud.*

## III. CONTEXT

States in newly Independent India mainly focused on the restoration of social and economic conditions under which they thrived prior to the infamous British rule. The consequent formation of the constitution gave citizens their fundamental rights of which the right to equality was the major highlight. The citizens were made aware of their absolute right to equal opportunity to resources and various means of production. This right drew attention to the rampant problem of income inequality all over the country. To overcome this, all states began to alter the existing laws. In Kerala, the Land Reforms Act of 1963 (later amended in 1969) was introduced as an attempt to rectify the existing problems concerning land ownership like the zamindari system and various problematic tenancy laws. This Act put a restriction on the citizen's rights to ownership of property by limiting the amount of land one could own.

## IV. FACTS OF THE CASE

The roots of this case *Kesavananda Bharati v. the State of Kerala*, popularly known as the Fundamental Rights Case can be traced to when the State government of Kerala acquired the land of Edneer Mutt of Kasargod District too by way of the newly introduced Land Reforms Act. Owing to this government takeover, the income of the Mutt was emptied making the management of the daily work of the mutt unfeasible. Consequently, on 21st March 1970, Shri Kesavananda Bharati, the chief of the Edneer Mutt challenged this land acquisition by way of a writ petition in front of the Supreme Court under Section 32 of the Constitution (the right of every citizen to approach the Supreme Court in case of violation or neglect of their fundamental rights). Certain pieces of land in the sect which were taken over by the Government were in his name. He contended that the provisions of this newly introduced Act deprived him of various

Fundamental Rights he was guaranteed to. This included Article 14 (the right to equality before the law and equal protection of laws within the country), Article 19(f) (the right to acquire, hold and dispose of property), Article 25 (the right to freely profess, practice and propagate religion), Article 26 (the freedom to manage religious affairs) and Article 31 (the right against deprivation of one's private property). Kesavananda Bharati strongly stood by his fundamental right to own land and manage it and was ready to protect it at any cost. He was represented by Nana Bhai Phalkivala in this case.

During the time of this case, there were a lot of cases of a similar nature being dealt with in the Supreme Court. They included cases like the *Rustom Cavasjee Cooper v. Union of India*<sup>3</sup>, *Madhav Rao Scindia v. Union of India*<sup>4</sup>, and *I.C. Golaknath v. the State of Punjab*<sup>5</sup>. In *Rustom Cavasjee Cooper v. Union of India* (1970), popularly known as the Bank Nationalization Case, the constitutional right to adequate compensation in situations wherein property is compulsorily acquired was affirmed by the Supreme Court. In *Madhav Rao Scindia vs Union of India* (1971), also referred to as the Privy Purse Case, a 1970 presidential order which abolished titles, privileges, and privy purses were challenged. Privy Purse was a term used in reference to the compensation and privileges former rulers of princely states received under Article 291 (right of former princely rulers and their successors to a guaranteed fixed, tax-free sum) and Article 362 (the rights and privileges of rulers of Indian State) of the Constitution for acceding to the Union of India during partition. It was seen to be contrary to the idea of equality as stated in the Preamble and Part 3 of the Constitution. Additionally, it was detrimental to the economy. In this case, the Supreme Court rejected the aforementioned presidential order. In the case of *I.C. Golaknath v. the State of Punjab* (1967), the right of the Parliament to amend fundamental rights was questioned. Here, the Supreme Court imposed restrictions on the amending powers of the constitution and held that fundamental rights could not be amended. In retaliation, the Parliament the 24th (Amendment) Act (right of government to amend any provision of the constitution), 25th (Amendment) Act (right of government to curtail, restrict and acquire private land for public use and decide compensation for the same), and 29th Amendment Act (right of government to place land reforms acts under the 9th schedule of the Constitution for immunity and protection from review or scrutiny) by which they could regain their powers. These three constitutional amendments which were passed to overrule the Supreme Court's judgment in the Golaknath Case were consequently challenged in the case of

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<sup>3</sup> *Rustom Cavasjee Cooper v. Union of India*, (1970) S.C.R (3) 530 (India).

<sup>4</sup> *Madhav Rao Scindia v. Union of India*, (1971) S.C.C (1) 85 (India).

<sup>5</sup> *Golaknath v. State of Punjab*, (1967) S.C.R (2) 762 (India).

Kesavananda Bharati. All these aforementioned cases involved a power struggle between the Parliament and the Supreme Court. The disagreement between the two most strong structures of India was due to the conflicting opinion regarding the limit of the power held by the Parliament under Article 368 (the power of the Parliament to amend the Constitution) of the Constitution. The Parliament was of the opinion that their powers in this regard were unlimited whereas the Supreme Court disagreed.

## **V. ISSUES DEALT WITH**

- 1) The extent and limit of the Parliament's power to amend the Constitution. Whether this power is inclusive of Fundamental Rights as well.
- 2) The constitutional validity of the 24th and 25th Constitutional (Amendment) Acts.

## **VI. CONTENTIONS OF BOTH PARTIES**

### **(A) Petitioner**

The Petitioner's arguments were twofold. Firstly, they contended that the power vested in the Parliament to amend the constitution through Article 368 of the Constitution is not absolute power but is limited in its extent and scope. Justice Mudholkar was against the judgment of the 1964 case of *Sajjan Singh v State of Rajasthan*<sup>6</sup> where the Supreme Court upheld the Parliament's right to amend the fundamental rights of the Constitution. While dissenting, he stated that contrary to the Supreme Court's judgment, amending the basic structure of the constitution should not be within the power vested in the Parliament. According to him, if this was the case, then it would mean the Constitution could be re-written as altering the basic structure of the Constitution would be akin to that. Saying so, he questioned whether this full-fledged re-writing of the Constitution fell within the ambit of Article 368. The petitioners reiterated Justice Mudholkar's views in their argument.

Their second contention was that the 24th and 25th Amendment Acts curtail the fundamental rights of citizens provided under Article 19(f) (the right to acquire, hold and dispose of property) which is contrary to the very essence of the Constitution. The fundamental rights were made to protect the freedom of citizens and such amendments directly contradict it.

### **(B) Respondents**

The Respondents were of the opinion that the power of the Parliament to amend the Constitution was unlimited and absolute. According to them, restricting the Parliament's powers in this regard would hinder their ability to improve the social and economic conditions

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<sup>6</sup> *Sajjan Singh v. the State of Rajasthan*, (1965) S.C.R (1) 933 (India).

of every state, which is their primary duty. Saying so, they stressed that it is the right of the Parliament to place restrictions on fundamental rights such as freedom of speech and expression, right to form association, and freedom of religion when required to fulfil their socio-economic obligations.

## **VII. THE VERDICT**

The judgment of this case was pronounced on the 24th of April, 1973. With a 7:6 majority, it was a close call. 7 judges stood by limiting the powers of the Parliament with respect to amending the Constitution whereas 6 judges believed that the Parliament deserved unlimited amending power. The Supreme Court finally held that the Parliament can amend the Constitution as and when required so as to fulfil its social and economic obligations if and only if the said amendment did not alter the Constitution's basic structure in any way.

This judgment paved the way for the Basic Structure Doctrine. It was stated that the term 'amend' under Article 368 of the Constitution was not inclusive of amendments made to the basic structure of the Constitution. So, the Parliament is lawfully empowered to amend the Constitution provided they don't interfere with its basic and essential features. All amendments that may alter the basic structure of the Constitution would have to undergo a mandatory 'basic structure' test. Furthermore, a list was constituted so as to ascertain what qualifies as basic features of the constitution. It included features like rule of law, judicial review, federalism, secularism, independence of the judiciary, sovereign, democratic, republic structure, separation of powers, freedom, and dignity of the individual. It was stated that this list is indicative and not exhaustive. So, it could be altered at any time. This was because the Court decided that the basic features of the Constitution would be ascertained on a case-by-case basis.

With respect to the second issue, the Court upheld the validity of the 24th Constitutional (Amendment) Act which gave the Parliament the right to amend any provision of the Constitution and it was held that parts 1 and 2 of the 25th Constitutional (Amendment) Act would be *intra vires* and *ultra vires* respectively. Furthermore, the Supreme Court stated that if any law that violates basic features of the Constitution has been put under the 9th schedule should be judicially reviewed and challenged in Court.

## **VIII. CONCLUSION AND INFERENCE**

This historic judgment not only laid down the much-needed Basic Structure Doctrine but also preserved the very democratic spirit, essence, and identity of the Indian Constitution. All ambiguities regarding the Constitutional machinery were done away with so as to ensure that

there is absolutely no scope to either infringe the fundamental rights of citizens guaranteed by the Constitution or hinder the Parliament's functioning in any way by curbing their powers. That said, there was a check on any probable malicious actions by the Government at the same time. This case restored the country's faith in the Judiciary by safeguarding India's democracy and restoring constitutional stability.

I am of the opinion that the final verdict on this case is rational given its diverse, unbiased, and logical outlook on the issue at hand. The bench kept the exploitative tendency of the Government in mind while taking a call on restricting their powers. Meanwhile, they didn't completely do away with the powers of the Parliament so it was a win-win situation as the Parliament could still fulfil their obligations to the citizens without being unethical or deceitful. The citizens enjoyed protection in the sense that any consequent amendments to the Constitution by the Parliament would be valid only if the heart and soul of it were retained. So, thanks to this judgment, they would be entitled to the fundamental rights guaranteed under the Constitution regardless of the political situation. Additionally, in laying out the Basic Structure Doctrine, the bench here has also pronounced how any consequent cases of the same nature should be dealt with leaving no room for any ambiguity whatsoever.

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