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# Case Analysis of Kesavananda Bharathi Vs. State of Kerala

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## ABSTRACT

*Keshvananda Bharati is a landmark case, and the Supreme Court's ruling clarified the Constitution's fundamental framework doctrine. The bench's verdict in the case of Kesavananda Bharati was very unusual and reflective. The 700-page decision provided a compromise for both Parliament's freedom to change legislation and citizens' right to safeguard their Fundamental Rights.*

*The Basic Structure Doctrine was established by the Bench in order to defend the rights of both Indian people and the Parliament. The Bench addressed the questions that remained unanswered in Golaknath's case with this approach. This case overturned the ruling in Golaknath v State of Punjab, limiting Parliament's ability to change the Constitution. The Basic Structure Doctrine was developed to ensure that amendments should not deprive people of their privileges as provided by the Fundamental Rights.*

## I. INTRODUCTION

The Kesavananda Bharati Case, also known as the Fundamental Rights Case, is one of the Supreme Court of India's most significant landmark decisions. The case is regarded as a landmark of India's legal history. In this case, six separate writ petitions were combined and heard as “His **Holiness Kesavananda Bharati Sripadagalvaru and others v. State of Kerala.**” The case was heard by a 13-judge constitution court, the highest to date, and the decision was made in a 7:6 ratio, with 11 separate decisions. The decision is 703 pages long and includes the opinions of 93 distinguished legal luminaries, including then-Supreme Court Chief Justice S.M Sikri and lawyers including N.A Palkhiwala. A 68-day hearing that resulted in the preservation of democracy's ideal. And it's grand and ostentatious because of both of these characteristics. The case led to the creation of the "Basic Structure Doctrine," a concept that believed in the nature of those basic concepts that are part of every constitution's basic framework and are meant to be held sacrosanct and cannot be broken or modified.

The Basic Structure Doctrine was established by the Bench in order to defend the rights of

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both Indian people and the Parliament. The Bench addressed the questions that remained unanswered in Golaknath's case with this approach. This case overruled the ruling in Golaknath v State of Punjab, limiting Parliament's ability to change the Constitution. The Basic Structure Doctrine was developed to ensure that amendments should not deprive people of their rights as provided by the Fundamental Rights.

**Equivalent Citation:** – AIR 1973 SC 1461

**Petitioner:** Kesavananda Bharati Sripadagalvaru and Ors

**Respondent:** State of Kerala and Anr

**Date of Judgement:** 24/04/1973

**Bench:**

Sikri, S.M. (Cj) Shelat, J.M., Hegde, K.S. & Grover, A.N., Ray, A.N. & Reddy, P.J. & Palekar, D.G., Khanna, Hans Raj Mathew, K.K. & Beg, M.H., Dwivedi, S.N. Mukherjea, B.K. Chandrachud, Y.V.

**Majority:** CJI Sikri and Justice Hegde and Mukherjea, Shelat and Grover, Jaganmohan Reddy and Khanna

**Dissent:** Justice Ray, Palekar, Mathew, Beg, Dwivedi and Chandrachud.

**Referred Cases:**

- Sri Sankari Prasad Singh Deo vs. Union Of India And State Of Bihar<sup>2</sup> (AIR. 1951 SC 458),
- Sajjan Singh vs. State Of Rajasthan<sup>3</sup> (1965 AIR 845),
- C. Golaknath & Ors vs. State Of Punjab & Anrs.<sup>4</sup> (1967 AIR 1643),
- Rustom Cavasjee Cooper vs. Union Of India<sup>5</sup> (1970 AIR 564),
- Madhav Rao Scindia vs. Union of India<sup>6</sup> (1971 AIR 530),
- Indira Nehru Gandhi vs. Raj Narain<sup>7</sup> (AIR 1975 SC 2299),
- Minerva Mills Ltd. & Ors vs. Union Of India & Ors.<sup>8</sup> (1980 AIR 1789)

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<sup>2</sup> AIR. 1951 SC 458

<sup>3</sup> 1965 AIR 845

<sup>4</sup> 1967 AIR 1643

<sup>5</sup> 1970 AIR 564

<sup>6</sup> 1971 AIR 530

<sup>7</sup> AIR 1975 SC 2299

<sup>8</sup> 1980 AIR 1789

## II. BACKGROUND OF THE CASE

The background of this case was not created in a single day, week, or month, but rather as a result of long-running conflicts between the legislature and the judiciary in the system. This all began with the Supreme Court's decision in the Golaknath Case and subsequent cases in which the Court attempted to uphold the sanctity of the Fundamental Rights by declaring them unamendable.

The government was enraged by the Supreme Court's actions, which were democratic and intended to uphold the Constitution. In order to give parliament greater control in amending and dealing with matters surrounding Fundamental Rights, four amendments were passed, which limited the Supreme Court's power of Judicial Review thus giving Parliament full power.

At this period of strife, a petition was lodged in the Supreme Court opposing the Kerala government's Land Reforms Act. Swami Keshavananda Bharati Sripad, the head of a religious sect in Kerala, filed the petition. This sect had a lot of property that they had bought. Any of this was obtained by the state government under the authority of the Kerala Land Reforms Act, 2019, in order to achieve social and economic goals. On March 21, 1970, the petitioner went to the supreme court .

**“Article 13<sup>9</sup> talks about all the laws which are in derogation or are inconsistent with the Fundamental Rights of the citizens are to that extent void. Article 368 talks about the amendment procedure and powers of the constitution of India.”**

### **Shankari Prasad vs. Union of India<sup>10</sup> (1951):**

The 1st Constitutional Amendment Act, 1951, was contested in this case on the grounds that it violated the 'Fundamental Rights' enshrined in Part III of the Indian Constitution and, as a result, it was invalidated. The Supreme Court affirmed the Constitutional Amendment Act's legality, ruling that "the legislature's ability to modify every part of the Constitution under Article 368 also requires the power to amend the 'Fundamental Rights' enshrined in Part III of the Constitution." As a result, the Supreme Court held in this case that Part III has no special standing in relation to the other sections of the Constitution, and that the laws included in it are subject to legislative amendment under Article 368 much like every other ordinary part of the Constitution.

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<sup>9</sup> Ar13 of Indian Constitution

<sup>10</sup> 1951 AIR 458

**Sajjan Singh V. State of Rajasthan<sup>11</sup> (1965):**

The constitutional validity of the 17th Amendment Act of 1964 (which expanded the concept of "Estate" in Article 31A of the Constitution to include ryotwari Settlement lands as well as other lands for which Land Reform Enactments are usually made). The Amendment further attached 44 additional State Enactments relating to land reforms to the Constitution's Ninth Schedule in order to ensure their constitutional validity and preclude them from being contested in court on the grounds that they are incompatible with any of Part III's Fundamental Rights provisions. This was contested on the grounds that one of the acts inserted by the amendment in the 9th Schedule influenced the applicant, and therefore the amendment came under Article 368's purview.

The Supreme Court upheld the decision in the Shankari Prasad case, ruling that the case was correctly resolved under Article 13 (2). The term "amendment" refers to any change to the Constitution's provisions.

**Golaknath v. State Of Punjab<sup>12</sup> (1967 AIR 1643):**

As we read that the precedent for Kesavananda was laid down after the judgement of Golaknath and then numerous subsequent judgements and amendments played a great role behind the logic of this case. So let's start with a timeline to explain them all and then analyse Golaknath's decision.

In Golaknath, the Apex court bench of 11 judges issued a verdict stating that the Parliament does not have the authority to amend constitutional rights. The decision was made in a 6:5 ratio. Golaknath's majority opinion expressed deep frustration and scepticism against the Parliament's actions, which it had been taking for a decade by invoking Article 368. Parliament has passed many judgments concerning the very meaning of the constitution and breaching the Fundamental Rights by referencing this very clause. In 1964, when Sajjan Singh was in power, the Supreme Court declared Parliament's right to change the Constitution's Fundamental Rights. In Golaknath the Supreme Court resided to overrule this judgement.

**The reasoning which Supreme Court asserted was:**

1. "According to the majority, the impugned Article 368 through which the parliament was drawing power to amend the Constitution in fact merely laid down the procedure

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<sup>11</sup> 1965 AIR 845

<sup>12</sup> 1967 AIR 1643

of amending the constitution. The majority relied on the Marginal note of the earlier Article 368 to arrive at this conclusion.”

2. “The majority located the power to amend the constitution in Article 248 of the Constitution which provides for the Residuary power of Parliament. Since the product of Article 248 is law, therefore, in the majority’s opinion Amendment of Constitution is law for the purposes of article 13(2) of the Constitution.”
3. The absence of the word “amendment” in the definition of “law” was answered by the majority in the form that the definition under Article 13(3)(a) is not exhaustive, rather it is inclusive.

The delivered judgement declared that the authority to amend the constitution comes from statutes such as Articles 245, 246 and 248 (which give parliament the power to make laws) rather than Article 368. (which only specifies the procedure). As a result, the statutory and amending forces are declared to be the same. As a result, under Article 13, statutory powers are restricted, and these restrictions apply to revisions that add modifications to the law as well.

This judgement was passed primarily to instil terror in the minds of the government and to make them realise that the judiciary as an apex body exists here in the system to serve as the defender and guardian of fundamental rights, but it also had some shortcomings. These are the following:

The Golaknath decision marked the start of a schism between Parliament and the judiciary. Two other significant Supreme Court judgments occurred during this time period, adding to the dissent between the government and the Supreme Court. These are the two critical judgments:

1. Bank Nationalization case
2. Privy Purses Case

**Rustom Cavasjee Cooper v. Union Of India, (Bank Nationalisation case)<sup>13</sup>:**

The Supreme Court ruled in this case that the constitution requires the government to pay reasonable compensation equal to the value of the property it acquires, and that any legislation aimed at acquiring property for public purposes must comply with Article 19(1). (f). The Banking Companies (Acquisition and Transfer of Undertaking) Act was ruled unconstitutional, and the standards for determining compensation set out in the act were

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<sup>13</sup> 1970 AIR 564

found to be obsolete and in violation of article 31(2).

### **H. H. Maharajadhiraja Madhav Rao vs Union Of India (Privy Purse case):**

A privy purse was a payment given by the government to the royal and ruling families of princely states who decided to integrate with India in 1947 and then merged their states with India in 1949, losing all of their ruling privileges. The Supreme Court ruled that the President's order to de-legitimize the princes and rulers and strip them of their privileges was a violation of their Fundamental Rights under Articles 19, 21, and 31. As a result, the Supreme Court declared the President's order unconstitutional under Article 32 and granted a Writ of Mandamus. So far, we've learned that after the Supreme Court's awakening in the Golaknath case, the Supreme Court issued a slew of other rulings protecting Fundamental Rights, and everything that violated them was deemed to be contrary to fundamental values and ruled unconstitutional. The government of Indira Gandhi was enraged by the Supreme Court's exercise of authority. The government saw this as a roadblock and a challenge to its socialist and economic growth policies. As a result, President V V Giri dissolved the Lok Sabha on Mrs. Indira Gandhi's orders, and re-elections were held in March 1971, with the power of parliament to amend being a key elector issue.

Indira Gandhi was re-elected to the Lok Sabha with a landslide majority of 352 seats. The government agreed to pass four crucial amendments as soon as she returned, namely the **24th, 25th, 26th, and 29th amendment acts, to reassert parliament's authority and nullify the effects of the Supreme Court's progressive rulings.**

### **III. IMPORTANT AMENDMENTS RELEVANT TO THE CASE**

#### **24th Constitutional Amendment Act, 1971**

To get over with the Supreme Court's judgement in Golaknath, this amendment was passed. The amendment made changes in article 13 and article 368 of the constitution.

1. The parliamentary power to amend every aspect of the constitution, including Fundamental Rights, was restored by this article.
2. Article 13(4) and article 368(3) were inserted . Article 13(4) states that “*Nothing in this article shall apply to any amendment of this Constitution made under Article 368.* And article 368(3) states that “ *Nothing in article 13 shall apply to any amendment made under this article*”.

3. Marginal heading of Article 368 was amended and changed to “power of parliament to amend the constitution and procedure thereof” from “ procedure for amendment to the constitution”.
4. Also it was made compulsory for the president to give his assent to any such bill.

### **25th Amendment**

- “Under Article 31(2) of the Constitution, the Parliament wished to make it clear that they are not required to properly reimburse landlords if their property is claimed by the State Government. To do so, the word compensation was replaced with the word amount.”
- 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 fulfill the objectives laid down under Article 39(b) and 39(c), it was decided that Articles 14, 19 & 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**

In 1972, “the 29th Amendment was ratified. The Kerala Land Reforms Act was added to the 9th Schedule. It meant that any cases involving the Kerala Land Reforms Act would be tried outside of the courts. All of the amendments introduced by the Central Government covered the amendments made by the State Government in any way from being tried in a court of law. The Kerala Land Reforms Act, as well as the 24th, 25th, and 29th Amendments, were challenged in court.”

## **IV. BRIEF FACTS**

Keshvananda Bharati was the head of the Edneer Mutt, a religious sect in Kerala's Kasaragod district. In the sect, Keshvananda Bharti had a few plots of land that he owned in his name. Kerala's state government passed the Land Reforms Amendment Act in 1969. The government had the right under the act to take over some of the sect's territory, of which Keshvananda Bharti was the head.

On March 21, 1970, Keshvananda Bharti filed a petition with the Supreme Court under Article 32 of the Indian Constitution, seeking the protection of his rights guaranteed by Articles 25 (Right to practise and propagate religion), 26 (Right to manage religious affairs), 14 (Right to equality), 19(1)(f) (freedom to acquire property), and 31 (Right to manage

religious affairs) (Compulsory Acquisition of Property). The Kerala Government passed another act, the Kerala Land Reforms (Amendment) Act, 1971, when the petition was still being considered by the court.

Following the landmark case of *Golaknath v. State of Punjab*, Parliament enacted a series of amendments to overturn the *Golaknath* decision. The 24th Amendment was ratified in 1971, followed by the 25th and 29th Amendments in 1972. Following *Golaknath's* case, which was challenged in this case, the following changes were made.

## V. ISSUES BEFORE THE COURT

- Whether the 24th Constitutional (Amendment), Act 1971 is Constitutionally valid or not?
- Whether the 25th Constitutional (Amendment), Act 1972 is Constitutionally valid or not?
- The extent to which the Parliament can exercise its power to amend the Constitution.

## VI. CONTENTIONS

### Petitioner's contentions

The petitioner argued that the Parliament can't change the Constitution in the way they want because they only have limited power to do so. **As Justice Mudhokar stated in the case of *Sajjan Singh v State of Rajasthan*, Parliament cannot change the constitution by modifying its basic structure.** Under Article 19(1)(f) of the Indian Constitution, the petitioner pleaded for the protection of his assets.

“He claimed that the 24th and 25th Constitutional Amendments infringed on Article 19(1)(f) of the Indian Constitution, which guarantees fundamental rights. Fundamental Rights are rights that people of India have to ensure their freedom, and if a constitutional amendment violates such a right, the freedom that the Constitution guarantees to its citizens is considered to be stripped away from them.”

### Respondent's contentions

The State was the respondent. The State argued that since the Supremacy of Parliament is a fundamental concept of the Indian legal system, Parliament has unlimited power to amend the Constitution. The state also argued that in order to meet its socio-economic responsibilities, which are guaranteed to Indian people under the Preamble, Parliament must exercise its power to amend the constitution without restriction.

## VII. JUDGMENT

The Supreme Court ruled by a 7:6 majority that Parliament can amend any clause of the Constitution to fulfil its socio-economic responsibilities to people guaranteed by the Preamble, as long as the amendment does not alter the basic structure of the Indian Constitution.

S.M. Sikri, CJI, K.S. Hegde, B.K. Mukherjea, J.M. Shelat, A.N. Grover, P. Jagmohan Reddy JJ., and Khanna J. delivered the majority decision. A.N. Ray, D.G. Palekar, K.K. Mathew, M.H. Beg, S.N. Dwivedi, and Y.V. Chandrachudjj wrote the minority views. Even though the minority bench wrote separate views, it was still hesitant to allow Parliament unrestricted power. On April 24, 1973, a landmark case was settled.

“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 provisions of the Constitution.”

### **The Doctrine of Basic Structure:**

According to the theory, Parliament has unrestricted power to amend the Constitution, with the exception that certain changes do not alter the Constitution's basic structure. The Parliament should not intervene in any way with the Constitution's fundamental features, without which our Constitution would become spiritless and lose its very meaning. The bench made no mention of the Constitution's basic structure, leaving it up to the courts to interpret. The courts must determine whether or not a specific amendment violates the fundamental structure of our Indian Constitution.

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Indian Constitution.

The court determined that the word "amend" used in Article 368 does not apply to changes that would alter the constitution's basic structure. If Parliament wishes to change a specific clause of the Constitution, it must first pass the basic structure test.

It was also agreed that, since Parliament has unrestricted power to amend the Constitution according to the basic structure, Parliament should amend Fundamental Rights to the extent that they are not contained in the basic structure. The 24th Amendment was upheld by the Court, but the second section of the 25th Amendment was struck down. The validity of the 25th Amendment was dependent on two conditions:

- “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.”
- “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.”

### **VIII. CRITICAL ANALYSIS OF THE JUDGEMENT**

The majority of the Bench wished to uphold the Indian Constitution by safeguarding its fundamental features. The decision was reached after careful consideration of all factors and was based on sound logic. The Bench was concerned that if Parliament were given unrestricted power to amend the Indian Constitution, the power would be abused and the government's will and desires would be modified. If the government has unrestricted power to amend the Constitution, the basic features and spirit of the constitution may be altered. There was a need for a doctrine to safeguard both Parliament's and citizens' rights, so the Bench devised the doctrine of Basic Structure as a compromise to protect both of their rights.

Approximately 30 amendments to our Indian Constitution had already been made before it went into effect. Around 150 amendments have been passed since the Indian Constitution was enacted in 1951, while only 27 amendments have been passed in the United States in 230 years. Over the numerous changes, the essence and ideas of the Indian Constitution's framers have remained unchanged. The Indian Constitution did not lose its identity or essence as a result of the Bench's decision in this case.

The Keshavananda Bharti case was a watershed moment for the Constitution. Despite the fact that the plaintiff lost his case in part, the Bench's decision in this case proved to be a saviour

of Indian democracy and saved the Constitution's spirit from being lost.

## IX. CONCLUSION

It goes without saying that the Kesavananda Bharati Case is the most critical case in the history of Independent India because it protected the country's "Democracy," and Senior Advocate and legendary jurist Nani Palkhivala was the main protagonist in this landmark case.

Former Attorney General of India and eminent jurist Soli J. Sorabjee wrote in an article titled "Palkhivala and the Constitution of India," that "Palkhivala maintained that a Constitution is meant not just to compensate for the exigencies of the moment but to last over the centuries." He urged us to adopt a broad perspective of the great document because "the Constitution was intended to impart such a momentum to the living spirit of the rule of law that democracy and civil liberties may endure in India beyond our own times and in the days when our place will no longer know us."

"He pointed out that our original Constitution provided for stability without stagnation and growth without destruction of human values. He lamented that the recent amendments had only achieved stagnation without stability and destruction of human values without growth. Palkhivala did not at all believe that a Constitution is unamendable or cannot be changed." He shared the thinking of Thomas Jefferson who said: "Some men look at constitutions with sanctimonious reverence and deem them like the Ark of the Covenant too sacred to be touched. They ascribe to the men of the preceding age a wisdom more than human and suppose what they did to be beyond amendment.... I am certainly not an advocate for frequent and untried changes in laws and Constitution ... but I know that the laws and institutions must go hand in hand with the progress of human mind.... As new discoveries are made, new truths discovered and manners and opinions change, with the change of circumstances, institutions must advance also and keep pace with the times."

By this case, the Supreme Court firmly established that in a nation like India where the 'Constitutional Democracy' prevails, only the Constitution of India must be inducted into the most sacred '*Pedestal of Deity*' immortalizing its '*Fundamental Frameworks*'. Even though the petitioner His Holiness Kesavananda Bharati lost this case as the Supreme Court upheld the validity of two Land Reforms Acts which were challenged, this '*Historic Fundamental Right's Case*' impelled the Supreme Court to evolve the '*Basic Structure Doctrine*' safeguarding the sacrosanct features of the Indian Constitution and it protected the nation from slipping into the totalitarian regime.

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