

English

Kesavananda Bharati vs. State of Kerala

MANU/SC/0445/1973



FACTS

Swami Sri HH Sri Kesavananda Bharati, head of the “Edneer Mutt” challenged the attempts of the Kerala government under two State Land Reform Acts to add restrictions to the management of its property. A petition was filed under Article 26, concerning the right to manage religiously owned property without Government interference.

The Constitution was amended in 1971-72 which resulted in the following Acts being inserted into the Ninth Schedule:-

- The Kerala Land Reforms (Amendment) Act, 1969 (Kerala Act 35 of 1969).
- The Kerala Land Reforms (Amendment) Act, 1971 (Kerala Act 25 of 1971).

The petitioner then urged additional grounds and the amendment of the writ petition in order to challenge the Constitutional amendments.



QUESTIONS OF LAW

What is the extent of the amending power conferred by Article 368 of the Constitution, apart from Article 13(2) (puts restrictions upon the State from making any laws that abridge fundamental rights), on Parliament?

HELD

The Supreme Court reviewed the decision in *Golaknath v. State of Punjab*, and considered the validity of the 24th, 25th, 26th and 29th amendments. The case was heard by a Constitutional bench of 13 judges. In a sharply divided verdict, by a margin of 7-6, the Court held that while the Parliament has "wide" powers, it did not have the power to destroy or emasculate the basic elements or fundamental features of the Constitution.

● *Golaknath v. State of Punjab*, AIR 1967 SC 1643 (which had held that fundamental rights were beyond the amending powers of Parliament) was overruled.

● The Constitution (Twenty-fourth Amendment) Act, 1971 (giving power to Parliament to amend any part of the Constitution) was held to be valid.

● Article 368, as amended, was valid but it did not confer power on the Parliament to alter the basic structure or framework of the Constitution. The Court, however, did not spell out in any exhaustive manner as to what the basic structure was except that some judges gave a few examples. The amendment of Article 31C was held invalid.



H.R KHANNA, J:



"Constitution is not a gate but a road. Beneath the drafting of a Constitution is the awareness that things do not stand still but move on, that life of a progressive nation, as of an individual, is not static and stagnant but dynamic and dashful. A Constitution must therefore contain ample provision for experiment and trial in the task of administration. A Constitution, it needs to be emphasised, is not a document for fastidious dialectics but the means of ordering the life of a people."

S.M. SIKRI C.J:

"Every provision of the Constitution can be amended provided in the result the basic foundation and structure of the Constitution remains the same. The Basic Structure may be said to consist of the following features:

- Supremacy of the Constitution;
- Republican and Democratic forms of Government;
- Secular character of the Constitution;
- Separation of powers between the legislature, the executive and the judiciary;
- Federal character of the Constitution. The above structure is built on the basic foundation, i. e. the dignity and freedom of the individual. This is of supreme importance. This cannot by any form of amendment be destroyed."

