

# Kesavananda Bharti Vs. State of Kerela

PETITIONER: KesavanandaBharti & Ors.

RESPONDENT: State of Kerela

CITATION: AIR 1973 SC 1461

DATE OF JUDGEMENT: 24/04/1973

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

CASES REFERRED: I.C. Golaknath& Ors Vs. State of Punjab.

## BRIEF FACTS:

1. The Petitioner, Kesavananda Bharti, was the chief of a Religious sect named Edneer Mutt in Kasaragod district of Kerela.

2. Petitioner's sect in its name owned certain pieces of Land in Kerala .

3. The State Govt. In Kerala introduced certain land Reforms( Amendment) Acts in 1969. These Acts forced limitations and obstructions on the Administration of Property by the sect without Govt. Intervention .

4. Under these Acts certain portion of the sect's land was to be transferred to the state Government and thus their right under Art.26 was violated to Religiously oversee their property.

5. In 1970, During the rule of Indira Gandhi Government, there was already existing tussle between the judiciary and parliament, with parliament showing its supremacy.

6. The 24<sup>th</sup><sup>1</sup>, 25<sup>th</sup><sup>2</sup>, 26<sup>th</sup><sup>3</sup> and 29<sup>th</sup><sup>4</sup> Constitution(Amendment) Acts were passed to struck down Bank Nationalisation Case ruling, aboilation of Privy purses and nullified the Golak Nath case.

7. The Petitioner Aggrieved by the Kerala Land Reforms Act filed a petition in the supreme Court of India under Art.32<sup>5</sup> for the violation of his fundamental Rights under Art. 25( Right to practice and propagate Religion), Art.26( Right to

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<sup>1</sup> The 24<sup>th</sup> Amendment Act,1971 , Acts of Parliament, 1971(India).

<sup>2</sup> The 25<sup>th</sup> Amendment Act,1971, Acts of Parliament, 1971(India).

<sup>3</sup> The 26<sup>th</sup> Amendment Act, 1971, Acts of Parliament, 1971(India).

<sup>4</sup> The 29<sup>th</sup> Amendment Act, 1971, Acts of Parliament, 1971(India).

<sup>5</sup> INDIA CONST. art.32.

manage Religious Affairs), Art. 14( Right to Equality), Art.19(1)(f)( Freedom to Acquire Property), Art.31( Compulsory Acquisition Of Property).

8. Thus , 13 Judges bench was appointed to look into the constitutionality of kerela Land Reforms Act and 24<sup>th</sup>, 25<sup>th</sup>, 26<sup>th</sup> and 29<sup>th</sup> Constitution( Amendment) Acts.

### ISSUES BEFORE THE COURT:

1. Whether 24<sup>th</sup> Constitutional Amendment Act, 1971 constitutionally valid?
2. Whether 25<sup>th</sup> Constitutional Amendment Act, 1972 constitutionally valid?
3. Whether parliament is empowered to amend the constitution?

### PETITIONER'S ARGUMENTS:

1. Petitioners mainly contended that Parliament's Power to amend the constitution was limited and restricted , this theory of restrictive competence of Parliament was propounded by Justice Mudholkar in Sajjan Singh Case<sup>6</sup>.
2. The Petitioner Pleaded before the Historic 13 Judge bench to protect his Fundamental Right guaranteed under Art.26 and Art.19(1)(f) of the constitution violated by the 24<sup>th</sup> , 25<sup>th</sup> Constitutional Amendments.

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<sup>6</sup> Sajjan Singh V. State of Rajasthan, 1965 AIR 845, 1965 SCR (1) 933.

3. The petitioner submitted that their freedom from tyranny will wither away if not protected.

## RESPONDENT'S ARGUMENTS:

1. The Respondent reiterated their previous arguments as contended in *Shankari Prasad*<sup>7</sup> i.e. the Parliament has unlimited and unrestricted powers to amend the constitution thus, they contended of Parliamentary supremacy to amend the constitution.

2. The respondents even contended that democracy can be turned into one party Rule , if need be , by the Parliament<sup>8</sup>

## JUDGMENT :

1. Majority of the judges held that “ Verdict of *GOLAKNATH* Case was not correct and Government can Amend the Fundamental Rights by the Virtue of Art.13(4) and Art.368(3) and the Constitution by Art.368, but without changing the basic structure and Nature of Constitution”<sup>9</sup>.

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<sup>7</sup> *Shankari Prasad Vs. Union of India*, AIR 1951 SC 455.

<sup>8</sup> Para 11, *Kesavananda Bharti v. State of Kerala*, A.I.R 1973 S.C. 1461

<sup>9</sup> *Kesavananda Bharti Vs .State of Kerala*, [www.lawtimesjournal.in](http://www.lawtimesjournal.in), August 13, 2018.

2. The Court held that “Section 2(a), 2(b) and first part of sec 3 of the 25<sup>th</sup> Constitutional Amendment Act, 1971 is valid but second part of Section 3 is unconstitutional , which prevents judiciary from Judicial Review”<sup>10</sup>.

3. The Court further Held that “ Preamble is the Integral Part of the Constitution and it is Amendable but not Justifiable in the administration of Justice”<sup>11</sup>. Supreme Court adopted view that Basic structure of Constitution can be derived from Preamble, Fundamental Rights and Directive Principles.

4. The Court after hearing both the sides came to the conclusion that in reality there is no as such difference between an ordinary law and an amendment<sup>12</sup>

5. SC also upheld validity of clause(4) of Article 13 and corresponding provision of Art.368(3) which reads as follows “ Nothing in this article (13) shall apply to any amendment made under Art.368”.

6. Thus it was held by the apex Court by the Majority of 7:6 on 24<sup>th</sup> April , 1973 that Parliament can amend any provision of the Constitution to the extent that it does not change the BASIC STRUCTURE of the Constitution. Court adopted the view that Parliament has “wide” powers, but it did not have

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<sup>10</sup> Kesavananda Bharti Vs .State of Kerela, [www.lawtimesjournal.in](http://www.lawtimesjournal.in), August 13, 2018.

<sup>11</sup> <https://indiankannon.org>

<sup>12</sup> Kesavananda Bharti Vs .State of Kerela, [www.lawtimesjournal.in](http://www.lawtimesjournal.in), August 13, 2018.

the power to destroy or emasculate the basic elements or fundamental Features of the Constitution.

6.

## CONCLUSION :

The Decision of the Apex court in this case directly or indirectly saved the very institution of Democracy by keeping a curb on the unrestricted exercise of Power by the parliament.

Not only this , kesavananda Bharti's judgment had a wider scope as compared to the previous rulings as it extended to whole of the constitution and put a limitation of the parliament's power to amend the constitution by not violating the basic Structure Doctrine.

This was truly a landmark and a thought provoking Judgment as neither curbed the parliament's obligations nor the rights of the citizens were under threat by keeping an implied limitations on the power of Parliament.