

GOLAKHNATH V STATE OF PUNJAB

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INTRODUCTION

"The Idea of 'Basic Structure' Was Advocated for the First Time in India in Golaknath Case by Barrister M.K. Nambiar': Chief Justice UU Lalit"¹

Let's discuss one of the most crucial landmark judgments in the history of the Indian legal system. This case involves a situation that is no less than the tug of war between individual rights and government control. In the 1960s, many changes were happening all over the country, and the decision of this case became a significant topic of concern as it would make a massive impact on the future of the Indian legal system. It will decide how the government and our rights will work together.

In this case, the main question is whether Parliament can change the fundamental rights given to the individual or not. This case revolved around the property rights and extent of Parliament to change the rights mentioned in the Constitution. The petitioner who filed this case, Mr. Golaknath, who brought this issue to light, believes that rights like property are essential and must be protected from unnecessary changes. Fundamental rights are human rights that are very crucial for human development, and our Constitution has given them such importance, which keeps them away from the reach of Parliament.² Here in this article, we will get into the pool of knowledge about this case and discuss its background, amendments, and judgments before and present the significance of the decision held in this case.

BACKGROUND

Ist amendment act

Indian Constitution is a mixture of rigid and flexible nature. Its rigidity is evident because it has a very long and complex procedure for amendment. But that doesn't mean that the Indian Constitution is not amendable. Article 368 is incorporated into the Indian Constitution to amend certain provisions by a specific procedure. The Parliament of India introduced the First

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¹ Awastika das, 'THE IDEA OF 'BASIC STRUCTURE' WAS ADVOCATED FOR THE FIRST TIME IN INDIA IN GOLAKHNATH CASE BY BARRISTER M.K. NAMBIAR': CHIEF JUSTICE UU LALIT' (live law) <<https://www.livelaw.in/top-stories/cji-uu-lalit-second-mk-nambyar-memorial-lecture-sastra-deemed-to-be-university-212397?infinitescroll=1>> accessed 24 August 2023

² *I. C. Golaknath & Ors v State of Punjab & Anrs (1967) 2 SCR 762*

Amendment Act just after the enforcement of the Indian Constitution in 1951. This amendment has made various changes in fundamental rights, so people challenged it.³⁴ The question that arises here is why the people challenged this amendment. This question can be well answered by discussing some prior landmark judgements.

SHANKARI PRASAD V UNION OF INDIA 1951

Following are some major issues raised in this case:

The First is about the legality of the First Amendment Act.

Second is whether the term 'law' under Article 13(2) includes modifications to fundamental rights.

Third is whether Article 368 has the power to amend fundamental rights.

The Supreme Court held that the power to make amendments under section 368 of the Constitution also included the authority to amend and modify fundamental rights.⁵⁶

SAJJAN SINGH VS. STATE OF RAJASTHAN.

In this case, petitioners challenged the Seventeenth Amendment Act. Based on the following grounds, petitioners challenged the Seventeenth Amendment Act. Ninth schedule. The ninth schedule is a bag in which every provision or act will get immunity from being reviewed. Hence, this amendment added forty-four more provisions and acts, like the Punjab Security of Land Tenure Act and the Mysore Land Act, to this schedule. According to this, acts and provisions are valid even if they infringe on an individual's fundamental rights. The decision favoured amendments in this case, and the Seventeenth Amendment Act was held valid in the third case.⁷

FACTS OF THE CASE

This case revolves around two brothers, Mr. Henry Golaknath and Mr. William Golaknath. Both own 500 acres of land in Jalandhar, Punjab; at that time, their children and grandchildren held that property. This petitioner challenged the Punjab Security and Land Tenures Act 1953

³ *ibid*

⁴ Gurukaran Babrah, 'GOLAKHNATH V STATE OF PUNJAB 1967: CASE ANALYSIS' (*ipleaders*, 11 oct 2022) < [Golaknath, I.C v State of Punjab \(1967\) : Overview and Analysis \(ipleaders.in\)](#) > accessed 24 August 2023

⁵ *Sri Sankari Prasad Singh Deo v Union of India and State of Bihar* (1951) SC 458

⁶ *Constitution of India 1950, art 13 cl 2*

⁷ *Sajjan Singh v State of Rajasthan* (1965)1 SC 845

and filed a writ petition under section 32 of the Indian Constitution.⁸This act is for the security of land tenure and to resolve other problems of farmers and tenants. This act has defined that if a person owns less than 30 acres of land, he will be considered a small landowner, and if a person has land of any other person and is also paying rent, he will be the tenant of that property. This act defined a limit to hold the property. According to this act, small landowners can reserve up to 15 acres for cultivation and give the remaining land to the state. The state will use that surplus land for other tenants or landless. As per this act, the Golaknath and his brother will keep only 30 acres of land and surplus land will be transferred to the state. As a result of this legislation, petitioners challenged this act. According to petitioners, this act violates their fundamental rights, and Parliament is not empowered to violate the fundamental rights under section 13(2). According to them, they have a right to practice any occupation under section 19(f) and they don't have the power to take their property rights. Petitioners also challenged the validity of the Seventeenth Amendment Act on the violation of their rights under Articles 19(1)(f)[2], 19(1)(g)[3][4].⁹¹⁰

CONTENTIONS OF PARTIES

PETITIONER'S CONTENTIONS

Permanent in nature: After so many discussions, the Indian Constitution was well-drafted by amazing minds within two years, eleven months and seventeen days.

According to the petitioners, it is permanent, and nobody can make unnecessary changes.

Article 368(5) and Article 13: Petitioners argued that Article 368 deals with the procedure of making amendments rather than giving the power to make amendments. Interpretation of the term 'Law': According to petitioners, the term law mentioned under Article 13 is not limited to any specific kind of law; it has extensive scope.¹¹

Basic structure: They also argued that if Parliament amends any of its provisions, it must be conformity to the basic structure.

⁸ Constitution of India art 32

⁹ Constitution of India art 19

¹⁰ Rishabh Jain 'Case Analysis of L.C. Golak Nath and Others v. State of Punjab and Anrs' (2020) legal services India E law journal < [Case Analysis of L.C. Golak Nath and Others v. State of Punjab and another \(legalserviceindia.com\)](#) > accessed 24 august 2023

¹¹ Constitution of India art 368,13

Respondent's Contentions

Flexible Constitution: Respondents argued in favour of the flexible Constitution. They argued that the Constitution must not be rigid. The Constitution must be flexible enough to change as per the needs of a dynamic society.

Structure differentiation: According to the respondent, our framers of this Constitution doesn't divide the Constitution into basic and non-basic structure. All provisions are equally important.

ISSUE

- (a) Whether the amending power of the Constitution permits change or destroys the essential structure of the Constitution.
- (b) Whether Article 368 has the power to amend fundamental rights.
- (c) What is the extent of amending the provisions of the Constitution?
- (d) How far can the provision of the Constitution be amended without taking away fundamental rights?¹²

JUDGEMENT

Golaknath v. State of Punjab judgement gives a visionary decision for saving the essence of the Indian Constitution from unnecessary changes in fundamental rights. In this case, the decision protects the people from fear of sudden authoritarian amendments to their fundamental rights. This judgement by the bench of eleven judges and decision came in the ratio of 6:5. In favour of the petitioners' opinion, there are six judges, including Justice Vaithialingam, Shelat, Shah Sikri and Subba Rao. Justice Subba Rao delivered this judgement, and Chief Justice Hidayatullah supported their contentions.

JUDGEMENT OF MAJORITY

According to them, the amending power does not include the amendment of fundamental rights. Parliament is not empowered to make amendments to part iii of the Constitution. Part iii includes justiciable fundamental rights. If Parliament makes any law violative of fundamental rights, it will be declared void. Parliament must enforce directive principles of state policy. They also need to implement them without making any infringement of fundamental rights. It was held that this judgment would have a prospective effect, which

¹² *I. C. Golaknath & Ors v State of Punjab & Anrs (1967) 2 SCR 762*

means this will not affect the decisions before this judgment. Even though a law infringes fundamental rights, it will be valid in the future if its decision was before this judgment.¹³

Justice Wanchoo, Bhargava. And Mitter

According to their judgement, Article 368 includes the amendment procedure and is empowered to make amendments. Secondly, a prospective decision is unsuitable for Indian society, and that term law has every law under Article 13 (2) is also held in this case. Lastly, the court held that articles 245 and 248 are not empowered to make Amendments. (Justice Hidayatullah supported this contention. Justice Bachawat and Justice Ramaswami gave the minority judgement. Chief Justice Hidayatullah heard majority and minority judgements and concluded the final decision.

HELD

Parliament power: The Court held that Parliament is not empowered to amend fundamental rights. The court held that Parliament is not authorised to amend, modify or remove the Constitution's fundamental rights. The basic structure is the soul of the Constitution, and if Parliament attempts to make a law inconsistent with fundamental rights, it will be void.

Basic structure: This is the first case that introduced the term 'basic structure' and held that every provision must be according to the basic structure.

Absolute power of 368: By this judgement, it was evident that Article 368 does not have unlimited ability to make amendments. The court finally overruled the previous judgements such as Shankari Prasad v. Union of India and Sajjan Singh v. State of Rajasthan.¹⁴

CRITICAL ANALYSIS AND CONCLUSION

The Golakhnath v. State of Punjab case has answered several questions arising on the amendment power of Article 368 of the Constitution. This judgement is proof of the superiority of fundamental rights over ordinary provisions of the Constitution. Fundamental rights are the rights that give every citizen or non-citizen identity. It guarantees reasonable rights to every person without any discrimination in India. If fundamental rights become easy to amend, then one day, justice and accountability to people will be tough to find.

Even our framers indicated the importance of fundamental rights. The court also considered the Opinions of Jawaharlal Nehru and Dr. Ambedkar to understand the character of

¹³ Ibid

¹⁴ ibid

fundamental rights that our framers want to show. One major drawback of this judgment is that it started a conflict between legislation and the judiciary. For the first time in Indian legal history, legislature and judiciary are poles apart.

As a result, Parliament seemed less powerful, so they introduced the 24th Amendment Act to maintain the superiority of the legislature, whose object was to overrule the decision of the Golaknath case. Again, Article 368 got the power to amend any of the provisions of the Constitution. Again, in *Keshav Nanda Bharti v Union of India*, the power of amendment of fundamental rights is challenged in *Keshav Nanda Bharti vs. Union of India*.¹⁵¹⁶



¹⁵ Rishabh Jain 'Case Analysis of L.C. Golak Nath and Others v. State of Punjab and Anrs' (2020) legal services India E law journal < [Case Analysis of L.C. Golak Nath and Others v. State of Punjab and another \(legalserviceindia.com\)](#) > accessed 24 august 2023

¹⁶ *Keshav Nanda Bharti v union of India* (1973)4 SCC 225