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IC GOLAKNATH vs. STATE OF PUNJAB

~ *Mimansa Pandey*

Background-

During the 1950s, the government was trying to do land reforms and wanted social-economic development of the country, but Article 19 (1) (f) was an obstacle as it was a property right, which was a fundamental right. At first, it was declared in the 1st amendment that it is not a complete right. Later on in *Sankri Prasad vs UOI*, the court said that the parliament has the right to amend the fundamental rights. The government can acquire land by amending the right to property. So in the present case the validity of the Punjab Security of Land Tenures Act, as amended by Act 14 of 1965, was challenged by the petitioners under Article 32 of the Constitution. Since these Acts were included in the 9th Schedule to the Constitution by the Constitution (Seventeenth) Amendment Act, 1964, the validity of the said Amendment Act was also challenged.

Facts of the case –

The case is about two people who were exercising their right to have their property without any intervention from the government. There were two brothers named Henry and William Golaknath. They had 500 acres of land in their possession in Jalandhar, Punjab. A law was passed in 1953 by the government, which was the Punjab Security and Land Tenure Act. This law declared that a person can own only up to 30 acres of land, which meant that they can only keep up to 60 acres of land with them, and the rest will go with the government.

Now, losing 88% of your land holding is not a piece of cake. They went to the court to declare this law unconstitutional. They filed a writ petition in front of the court using article 32 and said that the act of the Punjab Security and Land Tenure is violating their right to acquire, hold, and dispose of property [Article 19 (1) (f)], Right to practice any profession [Article 19 (1) (g)], Equality before law and equal protection of laws [Article 14].

However, the act was put into the 9th schedule, which meant nobody could challenge it in any court.

This raised two legal issues –

1. Does the new law violate the fundamental rights of the two brothers?
2. Does the parliament have the power to amend the fundamental rights?

Judgment, Judges and their ratio :

Bench:

1. K. Subba Rao
2. K.N. Wanchoo
3. M. Hidayatullah
4. J.C. Shah
5. S.M. Sikri
6. R.S. Bachawat
7. V. Ramaswami
8. J.M. Shelat
9. Vishishtha Bhargava
10. G.K. Mitter
11. C.A. Vaidyalingam.

There were 11 judges. They had a ratio of 6:5.

The judgement was that the parliament cannot amend the fundamental rights, and even if they think that some rights can be amended using article 368, then they can not do this as it will violate article 13, according to the Supreme Court, constitutional amendment is an ordinary law which is included under article 13.

The judgments in the courts were as follows-

The Supreme Court held that parliament could not amend fundamental rights, and this power would be reserved only with a constituent assembly.

The court held that the amendment under article 368 is law with the meaning of article 13 of the constitution, and therefore, if an amendment takes away or abridges a fundamental right conferred by part III, it is void.

Therefore, to save democracy from the autocratic actions of the parliament, the majority held that the parliament cannot amend the fundamental rights enshrined under Part III of the Constitution of India. The majority said that fundamental rights are the same as natural rights. These rights are important for the growth and development of a community and our country.

^{“1} The Judgment of SUBBA RAO, C.J., SHAH, SIKRI, SHELAT and VAIDIALINGAM, JJ. was delivered by SUBBA RAO, C.I. According to this Judgment-(i) the power to amend the Constitution is not to be found in Art. 368 but in Arts. 245, 246 and 248 read with Entry 97 of List 1; (ii) the amending power can. not be used to abridge or take away the fundamental rights guaranteed in Part III of the Constitution; (iii) a law amending the Constitution is "Law" within the meaning of Art. 13(2) and (iv). the First, Fourth and Seventeenth Amendments though they abridged fundamental rights were valid in the past on the basis of earlier decisions of this Court and continue to be valid for the future. On the application of the doctrine of "prospective over-ruling", as enunciated in the judgment, the

¹ Indian Kanoon, <https://indiankanoon.org/doc/120358/> (15 May 2025)

decision will have only prospective operation and Parliament will have no power to abridge or take away Fundamental Rights from the date of the judgment. ”

“ The Judgment of WANCHOO, BHARGAVA and MITTER, JJ. was delivered by WANCHOO, J. According to this Judgment

(i) the power of amending the Constitution resides in Art. 368 and not in Arts. 245, 246 and 248, read with Entry 97 of List 1

(ii) there, are no restrictions on the power if the procedure in Art. 368 is followed and all the Parts of the Constitution including Part III, can be amended

(iii) an amendment of the Constitution is not "law" under Art. 13(2)

(iv) the doctrine of "prospective overruling. "

Reasoning

The Supreme Court said that democracy needs a balance of power. This way, we can save the fundamental rights of our country from the parliament's trap of taking everything under its control. The court also used a law of the US called the Doctrine of Prospective Overruling. This law meant that when the time comes, the court has the duty and power both to introduce new rules if they feel that the previous ones have become redundant and are not going to be of any use in the future. This doctrine can be used only on the amendments happening in the future and not the ones which have already happened.

After the judgment came, the parliament suffered from a state of shock, and they then introduced a new amendment to the constitution in 1971. It was the 24th constitutional amendment adding 13 (4) in article 13. It said that nothing in this article shall apply to any amendment of this constitution under Article 368.

“ After giving his reasons for doubting the correctness of the reasoning given in Sankari Prasad's case (1), the learned Judge concluded thus : "I would require stronger reasons than those given in Sankari Prasad's case (1) to make me accept the view that Fundamental Rights were not really fundamental but were intended to be within the powers of amendment in common with the other parts of the Constitution and without the concurrence of the States. "