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From Gopalan to Golaknath: An Era of Amendments

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ABSTRACT

Black Law Dictionary defines Amendment as, "A formal revision or addition proposed or made to a statute, Constitution, pleading, order, or another instrument". As per Parliamentary law, it means "a motion that changes another motion wording by striking out text, inserting or adding text, or substituting text". The researcher in this research paper will mainly focus on A K Gopalan v. the State of Madras and I C Golaknath v. State of Punjab cases in reference to the changes it brought up in matters relating to amendments.

Keywords: Amendment, A K Gopalan case, Golaknath case

I. INTRODUCTION

The institution under which we live is being changed continually by the Parliament because we are never satisfied with them. Sometimes they are scrapped for the new ones; sometimes they are altered; sometimes they are done away with as nuisances. The new ones have to be stretched in the law courts to make them fit or to prevent them fitting too well if the judges happen to dislike them.

- Intelligent Woman's Guide to Socialism

As per the literal meaning, amending the provisions in Constitution means to make an amend or change certain provisions to the nation's fundamental law or supreme law. The procedure of the same is laid down under article 368, Part XX of the Indian Constitution. Since there is a need to amend Constitution as and when overtime period to adjust provisions that are inadequate, in response to new needs, along with covering the aspect of supplementing rights, etc., or else, Constitution will not be able to reflect the social realities and political needs but also at the same time, it is a mandate to protect it from short-sighted amendments. Thus, the question lies in what can be amended and what not.

A K Gopalan case presented an opportunity to the Indian Judiciary to interpret the Fundamental Rights of the Constitution extensively. After the judgement, courts began approaching

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Fundamental rights in a wider and more comprehensive manner, and not constructing them in a restrictive manner. The Court affirmed that the ‘procedure established under the law’ is different from ‘due process of law’ of the US Constitution. The word ‘law’ as interpreted by the US Constitution doesn’t allow the same interpretation of the ‘law’ under Article 21. It is cleared from the drafting committee of India in respect to Article 21, wherein Constituent Assembly formerly used ‘due process of law’ but later dropped it in favour of ‘procedure established by law’ which means procedure prescribed by the law of the State. In simple words, it was contended that the preamble to our Constitution which seeks to give India a ‘democratic’ Constitution should be the guiding start in its interpretation and hence any law made under Article 21 should be held as void if it offends the principles of natural justice, for otherwise, the so-called “fundamental” rights to life and personal liberty would have no protection. The majority on the bench of the Supreme Court rejected this contention holding that ‘law’ in Article 21 refers to positive or state made law and not natural justice and that this meaning of the language of Article 21 could not be modified with reference to the preamble

Whereas the Golaknath case is one of the historic or landmark cases in history wherein among a number of issues, one was, whether the parliament has the power to amend the fundamental rights enshrined in part III of the Indian Constitution or not. Although the petitioner contended that there is no power in the hand of parliamentarians in respect to amending fundamental rights whereas respondent contested that the maker of the Indian Constitution never wanted the Constitution as rigid or non-flexible. The Supreme Court held that parliament cannot amend the Constitution including Fundamental rights. In simple words, the fundamental rights cannot be curtailed by the law made by parliament. Although this decision was overruled in the case of Kesavananda Bharti v. the State of Kerala, wherein it was held that, the parliament can amend Fundamental rights but cannot change the basic structure of the Constitution.

In the A K Gopalan case, the Court’s judgment was based on loopholes whereas in the Golaknath case, a person’s fundamental rights were given more importance.

II. FACTS AND ANALYSIS

In A K Gopalan v. the State of Madras², the petitioner challenged the validity of his detention under the preventive detention act, 1950 through filing a writ of Habeas Corpus under section 32 of the Indian Constitution, on the ground that, it violated his right to freedom of movement enshrined under Article 19(1)(d) i.e., “all citizen shall have the right to move freely throughout

² A.K. Gopalan v. State of Madras, AIR 1950 SC 27

the territory of India”³ and personal liberty enshrined under article 21. The court was of opinion that the word ‘liberty’ is qualified with the word ‘personal’, thus, narrowing the concept of liberty and hence, it will not include all that is implied in the term ‘liberty’ i.e., all the freedoms. Therefore, ‘personal liberty’ means ‘liberty relating to or concerning the person or body of individual’ i.e., freedom to physically restrain and coercion which is not authorized by law. Whereas, “Article 19 of Indian Constitution provides protection from unreasonable detention can be enjoyed by a citizen only when he is a freeman and not his personal liberty is deprived under a valid law”⁴.

In *Golaknath v. State of Punjab*⁵, Henry and William Golaknath's family were in the possession of 500 acres of farmland in Jalandhar, Punjab. As per the Punjab security and Land Tenures Act⁶, the government held that the brothers can only keep thirty acres each, a few acres will go to tenants and the rest was declared surplus. Golaknath's family challenged this action in court. Further, the case was referred to Supreme Court in the year 1965. They filed a writ of certiorari under Article 32 of the Indian Constitution challenging the 1953 Punjab Act on the grounds that it denied them their Constitutional right under Article 19(1)(f) and (g) and Article 14 of the Indian Constitution, all the citizen shall have right to acquire and hold property and to practice any profession, or carry on any occupation, trade or business and Equality before law respectively. The Punjab act was added through the seventeenth amendment which placed it in the ninth schedule, i.e., declared ultra vires (beyond the powers). Through this case, the court developed the jurisprudence around what should be known as the doctrine of basic structure⁷. The court in 1967 ruled that parliament cannot curtail or amend or change any of the fundamental rights enshrined under the Constitution of India. Although the word basic structure itself cannot be found in the Constitution in the *Kesavananda Bharti* case, the court for the first time recognized the concept of ‘basic structure’.

III. CONCLUSION

In *A K Gopalan* case, the court interpreted article 21 extremely literally narrowing the scope of the fundamental right and affirmed that the expression ‘procedure established by the law’ means any procedure which has been laid in the statute by a competent legislature can deprive a person of his life or personal liberty.

³ INDIA CONST. art.1, cl.19, sub cl d

⁴ MEGHNA REDDY, CASE SUMMARY: *A K GOPALAN V STATE OF MADRAS*, 1950 (JUNE 3, 2021)

⁵ *Golak Nath v. State of Punjab*, AIR 1967 SC 1643

⁶ Punjab Act No. 10 of 1953, THE PUNJAB SECURITY OF LAND TENURES ACT, 1953

⁷ *GURKARAN BABRAH, GOLAKNATH, I.C V. STATE OF PUNJAB* (1967), (DECEMBER 6, 2019)

Whereas in the Golaknath case, the judgement was focused on protecting the fundamental provisions which hold the same importance as to the fundamental or natural right of mankind thus, no government can violate the same. This judgment was overruled since it granted rigidity to the Constitution.
