

I.C. GOLAKNATH V. STATE OF PUNJAB AND ANRS**1967 AIR 1643, 1967 SCR (2) 762**

By Bharti Dhurwey

from Indore Institute of Law

BENCH - RAO, K. SUBBA (CJ) WANCHOO, K.N. HIDAYATULLAH, M. SHAH, J.C. SIKRI, S.M. BACHAWAT, R.S. RAMASWAMI, V. SHELAT, J.M. BHARGAVA, VISHISHTHA MITTER, G.K. VAIDYIALINGAM, C.A.

INTRODUCTION

This case is an important for the India Judicial system that demonstration the use of “doctrine of prospective overruling”. This landmark case also withheld the powers of the parliament could not curtail the fundamental rights as mentioned in the constitution by using doctrine of prospective- overruling.

Golaknath case related to the amendment case this is the landmark cases which are related with the right to property and many amendment implies and the article were also included. In this case many laws, rules, doctrine and the amendment implement in the state or the union law.

This case was also a landmark judgment case according to this case they introduce the Doctrine of perspective overrule which was adopted by the chief justice koka subba rao from the American judicial system. Eleven benches of judges will finalize the case of Golaknath. It overruled the judgment of Shankari Prasad and Sajjan Singh case. Parliament also argued of this judgment which given by the judge and also criticized by the parliament they said that we have also right over the constitution to amend the laws and also the fundamental right of the constitution.

Facts of the case:

The petitioner Golaknath family held 500 acres of farmland in Jalandhar Punjab in which the government held they could keep only a 30 acers each member, few acers will go to tenant and rest was declared surplus according to the Punjab security and land tenures act, 1953. The Golaknath family filed a petitioner

under article 32 of the Indian Constitution on the grounds that their Fundamental Right to acquire property and practice any profession under article 19(f) (g) was denied and that the amendment placing the Punjab Act in the schedule was Ultra Virus and article 14 equality before law. The 17th Constitution (Amendment) Act was also challenged as unconstitutional, as it enabled the inclusion of the impugned Acts in the 9th Schedule of the Constitution. Beginning with its ruling in Golaknath the Court developed jurisprudence around what was known as the “basic structure doctrine.

Issues of the case:

1) Whether Amendment is a “law” under the meaning of Article 13(2)?

The word ‘law’ in Art.13 must be taken to refer to rules and regulations made in exercise of ordinary legislative power, and not to constitutional amendments made in the exercise of the constituent power under Art. 368 with the result that Art.13(2) do not affect amendments made under Art. 368. The amending power of the parliament enacted from the provision of articles 245, 246 and 248 which give it the power to make laws. Every amendment is a law and is supposed to pass the test of validity contained in article 13(2) of the constitution.

2) Whether Fundamental Rights can be amended or not?

It is therefore, impossible to make a constitution which can satisfy the needs of the people for all times to come. Changing circumstances will require modification of constitutional provisions.

Judgment:

The Court held that Fundamental Rights cannot be abridged by the Parliament under the procedure given in Art.368. The Court also clarified that an Amendment to the Constitution is 'law' within the meaning of Art. 13(2) and is therefore subject to Part III of the Constitution. The fundamental rights are the primordial rights necessary for the development of human personality. We have stated earlier, the only limitation on the freedom enshrined in article 19 the constitution is that imposed by a valid law operation as a reasonable restriction in the interest of the public it well, therefore be seen that fundamental right are given a transcendental position under our constitution and are kept beyond the reach of parliament.

Chief justice Subba Rao had first invoked the doctrine of **PROSPECTIVE OVERRULING** adopted from American jurist George F. Canfield, Robert Hill Freeman considered this doctrine to be an effective judicial tool. Justice Subba Rao used this tool to preserve the constitutional validity of the constitutional (seventeenth amendment act) legality of which had been challenged.

Case Analysis:

- In the case *I. C. Golaknath V. State of Punjab*, the SC earlier decision which had upheld parliament power to amend all parts of the constitution including part III related to fundamental rights. There were two groups, the majority holding the constitutional amendment u/A 368 an ordinary law within the meaning of Article 13(2) and they didn't believe that there was any difference ordinary legislative power of the parliament and the inherent constituent power of parliament to amend the constitution.
- The Supreme Court gave the perspective overruled its decision in *Shankari Prasad and Sajjan Singh* case and gave its decision that the parliament has no right to amend part 3 of the constitution the fundamental right. Court also said that amendment is a law under article 13(2) of the constitution if it violates any law of fundamental right, it declared void.
- Then article 368 of the constitution was added by the Supreme Court that, procedure of purpose of amendment. In this article parliament fought against the judgment of the Supreme Court they filed a case on the 24th amendment 1971, parliament said that parliament has a power to amend any part of the constitution also include fundamental rights.

Conclusion:

In the *Golaknath* case related to property case in which the fundamental rights included and the article 13(2) law will describe in detail way. Many doctrines were added in this case, doctrine of prospective overruling, doctrine of basic structure etc. parliament also has a power to amend the fundamental rights part 3 of the constitution. Many laws, amendments, rules were changed in this case for the better ruling of law and benefit for the citizens. In this case they followed the Mysore act and Punjab act. The history of the doctrine of perspective overruled it was adopted by the chief justice Koka Subba Rao from the American judicial system. From this case they added the article 368 which the procedure of purpose of amendment. The parliament has power to amend the laws but not the fundamental right from this judgment the parliament files under 24th amendment 1971.