"Fundamental rights are immune from amendment"

[Case Brief] Sankari Prasad Singh Deo v. Union of India & Others

Case name: Sankari Prasad Singh Deo v. Union of India & Others

Case number: Writ Petition No. 166, 287, 317, 31, 371, 372, 374, 381 To 384, 388, 389, 393, 396, 418, 481, 488 Of 1951
Sankari Prasad Singh Deo v. Union of India & Others;
Citation: (1952) 1 SCR 89 AIR 1951 SC 458 1951 (II) MLJ 683 (SC) 1951 SCJ 775 1952 SCR 89 (1951) 64 LW 1005
Sankari Prasad Singh Deo v. Union of India & Others

Court: Supreme Court of India
Original Jurisdiction

Bench: HON'BLE CHIEF JUSTICE MR. H.J. KANIA, HON'BLE MR. JUSTICE M. PATANJALI SASTRI, HON'BLE MR. JUSTICE B.K. MUKHERJEA, HON'BLE MR. JUSTICE S.R. DAS, HON'BLE MR. JUSTICE N. CHANDRASEKHARA AIYAR

Decided on: October 5th, 1951

Relevant Act/Sections: Art. 368, 379 and 392 of Indian Constitution

➢ BRIEF FACTS AND PROCEDURAL HISTORY:

1. The then government carried out certain measures of agrarian reform in Bihar, Uttar Pradesh and Madhya Pradesh by enacting legislation which may compendiously be referred to as Zemindary Abolition Acts. Certain zemindars, feeling themselves aggrieved, attacked the validity of those Acts in Courts of law on the ground that they contravened the fundamental rights conferred on them by Part III of the Constitution.
2. The High Court at Patna held that the Act passed in Bihar was unconstitutional while the High Courts at Allahabad and Nagpur upheld the validity of the corresponding legislation in Uttar Pradesh and Madhya Pradesh respectively. The Union Government, with a view to put an end to all this litigation and to remedy what they considered to be certain defeats brought to light in the working of the Constitution, brought forward a bill to amend the Constitution, which, after undergoing amendments in various particulars, was passed by the requisite majority as the Constitution (First Amendment) Act, 1951, (hereinafter referred to as the Amendment Act).
3. Reacting to this move of the Government, the zemindars brought the present petitions under Art. 32 of the Constitution impugning the Amendment Act itself as unconstitutional and void. Writ Petition No. 166, 287, 317, 31, 371, 372, 374, 381 To 384, 388, 389, 393, 396, 418, 481, 488 Of 1951 up for hearing before the Supreme Court in common matter.

➢ ISSUE BEFORE THE COURT:

Whether the Constitution (First Amendment) Act, 1951 which was recently, passed by the present provisional Parliament and purports to insert, inter alia, Arts.31A and 31B in the Constitution of India is ultra vires and unconstitutional?

➢ RATIO OF THE COURT

1. The petitioner argued the following points: The power of amending the Constitution provided for under Art. 368 were conferred not on Parliament but on the two Houses of Parliament as a designated body and, therefore, the provisional Parliament was not competent to exercise that power under Art 379. All the powers conferred by the provisions of this Constitution on Parliament" could refer only to such powers as are capable of being exercised by the provisional Parliament consisting of a single chamber.
2. The power conferred by Art. 368 calls for the co-operative action of two Houses of Parliament and could be appropriately exercised only by the Parliament to be duly

constituted under ch. 2 of Part v. Thirdly, the Constitution (Removal of Difficulties) Order No. 2 made by the President on 26-1- 1950, purported to adapt Art. 368 by omitting "either House of" and "in each House" and substituting "Parliament" for "that House", is beyond the powers conferred on him by Art. 392, as "any difficulties" sought to be removed by adaptation under that article must be difficulties in the actual working of the Constitution during the transitional period whose removal is necessary for carrying on the Government.

3. In any case Art. 368 complete code in itself and does not provide for any amendment being made in the bill after it has been introduced in the House. The bill in the present case having been admittedly amended in several particulars during its passage through the House, the Amendment Act cannot be said to have been passed in conformity with the procedure present in Art. 368. Also, Amendment Act, in so far as it purports to take away or abridge the rights conferred by Part. III of the Constitution falls within the prohibition of Art. 13 (2).
4. Lastly, as the newly inserted Arts. 31A and 31B seek to make changes in Arts 132 and 136 in Ch. 4 of Part. V and Art. 226 in Ch. 5 of Part VI, they require ratification under cl. (b) of the proviso to Art. 368, and not having been so ratified, they are void and unconstitutional and also relating to matters enumerated in List II, with respect to which the State legislatures and not Parliament have the power to make laws.
5. **The Hon'ble Court** perused Arts.4, 169 and 240, 368 and 79 to examine the classes of amendments and their procedure. The court held that Art. 368 is a "complete code" in respect of the procedure provided by it and that there were gaps in the procedure as to how and after what notice a bill is to be introduced, how it to be passed by each House and how the President's assent is to he obtained. The rules made by each House under Art. 118, for regulating its procedure and the conduct of its business were intended, so far as may be, to be applicable.
6. The petitioner argued that the "legislative procedure" prescribed in Art. 107, which specifically provides for a bill being passed with amendments, was not applicable to a bill for amending the Constitution under Art. 368 and that if amendment of such a bill were permissible, it must be open to either House to propose and pass amendments, and in case the two Houses failed to agree, the whole machinery of Art. 368, would be thrown out of gear, for the joint sitting of both Houses passing the bill by a simple majority provided for in Art. 108 in the case of ordinary bills would be inapplicable in view of the special majority required in Art. 368.

7. The court disagreed and held that assuming that amendment of the Constitution is not legislation even where it is carried out by the ordinary legislature by passing a bill introduced for the purpose and that Art. 107 to 111 cannot in terms apply when Parliament is dealing with a bill under Art. 368, there is no obvious reason why Parliament should not adopt, on such occasions, its own normal procedure, so far as that procedure can be followed consistently with statutory requirements
8. The court relied upon ***Local Government Board v. Arlidge (1915) A. C. 120*** wherein it was held: "Its (the Board's) character is that of an organisation with executive functions. In this it resembles other great departments of the State. When, therefore, Parliament entrusts it with judicial duties, Parliament must be taken, in the absence of any declaration to the contrary, to have intended to follow the procedure which is its own find is necessary if it is to be capable of doing its work efficiently."
9. The court observed that the provisions under Art.379 envisage a Parliament of two Houses functioning under the Constitution framed as they have been on that basis. But the court opined that the framers were well aware that such a Parliament could not be constituted till after the first elections were held under the Constitution. It thus became necessary to make provision for the carrying on, in the meantime, of the work entrusted to Parliament under the Constitution. Accordingly, it was provided in Art. 379 that the Constituent Assembly should function as the provisional Parliament during the transitional period and exercise all the powers and perform all the duties conferred by the Constitution on Parliament. Art. 379 should be viewed and interpreted in the wider perspective of this scheme and not in its isolated relation to Art. 368 alone.
10. The court further held in relation to Art.392 that it is essential that a problem must exist before its removal but the problem may also exist before an occasion arrives for its removal. that the President should wait, before adapting a particular article, till an occasion actually arose for the provisional Parliament to exercise the power conferred by that article. Nor is there any question here of the President removing by his adaptation any of the difficulties which the Constitution has deliberately placed in the way of its amendment. The adaptation leaves the requirement of a special majority untouched. The passing of an amendment bill by both Houses is no more a special requirement of such a bill than it is of any ordinary law made by Parliament. Therefore, the adaptation of Art. 368 by the President were well within the powers conferred on him by Art. 392 and is valid and constitutional.

11. The court further held that the terms of Art. 368 are perfectly general and empower Parliament to amend the Constitution, without any exception whatever. Had it been intended to save the fundamental rights from the operation of that provision, it would have been perfectly easy to make that intention clear by adding a provision to that effect. Harmonious construction requires that one should be read as controlled and qualified by the other. The court was of the opinion that in the context of Art.13 "law" must be taken to mean rules or regulations made in exercise of ordinary legislative power and not amendments to the Constitution made in exercise of constituent power, with the result that Art. 13 (2) does not affect amendments made under Art. 368.
12. At last, the court held that Arts. 31A and 31B really seek to save a certain class of laws and certain specified laws already passed from the combined operation of Art.13 read with other relevant articles of Part III. The new articles being thus essentially amendments of the Constitution, Parliament alone had the power of enacting them. That the laws thus saved relate to matters covered by List II does not in any way affect the position. Disagreeing with the argument that Parliament could not validate a law which it had no power to enact, the court held that the proposition holds good where the validity of the impugned provision turns on whether the subject-matter falls within or without the jurisdiction of the legislature which passed it.
13. To make a law which contravenes the constitution constitutionally valid is a matter of constitutional amendment, and as such it falls within the exclusive power of Parliament. The question whether the latter part of Art. 31B is too widely expressed was not argued before us and we express no opinion upon it. The petitions were found without merit.

- **DECISION HELD BY COURT:**

Petitions dismissed.