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Case Analysis: Shankari Prasad Singh Deo v. Union of India

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The case of Shankari Prasad v. Union of India ruled on whether the Parliament had the power to amend Fundamental Rights under Article 368 of the Constitution. Read more about it here!

Facts of the Case

The case of Shankari Prasad v. Union of India arose immediately after the enactment of the Constitution (First Amendment) Act, 1951. This First Amendment was crucial as it sought to address certain practical difficulties encountered in implementing the Constitution soon after its commencement.

Key changes introduced by the First Amendment included:

- Article 15(3) and 15(4): Adding clauses to Article 15 to explicitly permit the state to make special provisions for the advancement of socially and educationally backward classes (Scheduled Castes and Scheduled Tribes). This addressed challenges faced in implementing land reforms and reservations.
- Article 19(2): Amending Article 19(2) to broaden the permissible restrictions on freedom of speech and expression, adding grounds like “public order,” “friendly relations with foreign States,” and “incitement to an offence.”
- Article 31A and 31B: Inserting new Articles 31A and 31B. Article 31A aimed to save laws relating to acquisition of estates etc. from being challenged under Articles 14, 19 and 31. Article 31B introduced the Ninth Schedule to the Constitution and validated certain Acts and Regulations placed within it, protecting them from judicial review on the ground of contravention of Fundamental Rights. This was primarily to secure land reform legislations enacted by various states.

The petitioners in *Shankari Prasad* challenged the constitutional validity of the First Amendment Act, particularly Articles 31A and 31B and their inclusion of certain land reform laws in the Ninth Schedule.

The core contention was that the Parliament, by enacting the First Amendment Act, had abridged the Fundamental Rights guaranteed under Part III of the Constitution, which was beyond its legislative competence.

Issue Before the Court

The central question before the Supreme Court was:

Does Article 368, which lays down the procedure for amendment of the Constitution, also empower Parliament to amend Fundamental Rights enshrined in Part III of the Constitution? Put simply, can Parliament amend Fundamental Rights?

Arguments of the Petitioners

The petitioners argued that the First Amendment Act was unconstitutional and *ultra vires* because it infringed upon Fundamental Rights. Their primary argument hinged on the interpretation of **Article 13(2)** of the Constitution, which states:

“The State shall not make any law which takes away or abridges the rights conferred by this Part [Part III – Fundamental Rights] and any law made in contravention of this clause shall, to the extent of the contravention, be void.”

Contention of Petitioners

- The term “law” in Article 13(2) should be interpreted in a broad sense to include any law passed by the Parliament, including constitutional amendment acts passed under Article 368.
- Therefore, if a constitutional amendment act, even if passed following the procedure in Article 368, abridges or takes away Fundamental Rights, it would be void under Article 13(2).
- The First Amendment Act, by inserting Articles 31A and 31B and the Ninth Schedule, directly impacted property rights (Article 31, though Article 31 was later omitted, it was relevant at the time) and other Fundamental Rights, and was thus in violation of Article 13(2).

Arguments of the Respondent

The Union of India, represented by the Attorney General, defended the validity of the First Amendment Act. They argued:

- The power to amend the Constitution under Article 368 is a constituent power, which is distinct and of a higher nature than the legislative power of the Parliament to make ordinary laws under Articles 245-248 read with List I and List III of the Seventh Schedule.
- The term “law” in Article 13(2) should be interpreted in a restricted sense to refer only to ordinary laws made by the legislature in its legislative capacity, and not to constitutional amendments passed by Parliament in its constituent capacity under Article 368.
- Article 368 provides the procedure for amendment and is a comprehensive provision conferring power to amend all provisions of the Constitution, including Fundamental Rights. There is no express or implied limitation on this amending power concerning Fundamental Rights.
- The power to amend the Constitution is essential for adapting it to changing social, economic, and political conditions. Restricting this power concerning Fundamental Rights would make the Constitution rigid and hinder its effective functioning.

Judgement Given in Shankari Prasad Case

The Supreme Court, in a unanimous decision, upheld the constitutional validity of the First Amendment Act. It ruled in favour of the Union of India, holding that Parliament has the power to amend Fundamental Rights under Article 368.

The Court’s rationale was primarily based on the distinction between constituent power and legislative power and the interpretation of “law” in Article 13(2):

1. “Law” in Article 13(2) means Rules or Regulations: The Court held that the term “law” in Article 13(2) must be understood in the context of Article 13 as a whole and in Part III of the Constitution dealing with Fundamental Rights. In this context, “law” refers to rules or regulations made in exercise of ordinary legislative power, not to amendments to the Constitution made in exercise of constituent power under Article 368.

2. **Amendment under Article 368 is Constituent Power:** The Court emphasized that the power of Parliament to amend the Constitution under Article 368 is a constituent power, not legislative power. When Parliament exercises its power under Article 368, it is not acting as an ordinary legislature but in its capacity as a body empowered to alter the fundamental framework of the Constitution.
3. **Article 368 is the Procedure and Power:** The Court interpreted Article 368 as not only laying down the procedure for amendment but also conferring the substantive power to amend all provisions of the Constitution, including Fundamental Rights. The procedure described in Article 368 is the method by which this constituent power is exercised.
4. **No Implied Limitation on Amendment Power:** The Court found no basis in the Constitution to imply any limitation on the amending power conferred by Article 368, especially concerning Fundamental Rights. If the framers intended to exclude Fundamental Rights from the scope of amendment, they would have expressly stated so.
5. **Doctrine of Harmonious Construction:** The Court applied the principle of harmonious construction to interpret Article 13(2) and Article 368 in a way that gives effect to both. By restricting the scope of “law” in Article 13(2) to ordinary legislation, the Court harmonized it with the plenary amending power under Article 368.

Conclusion

Shankari Prasad v. Union of India was the first major case to address the scope of Parliament’s amending power. The Supreme Court upheld the constitutional validity of the First Amendment and ruled that Parliament had the power to amend any part of the Constitution, including Fundamental Rights. Though it initially upheld Parliament’s supremacy in amending the Constitution, later judgments, particularly Kesavananda Bharati (1973), placed limitations on this power.

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