



NATIONAL UNIVERSITY OF STUDY AND RESEARCH IN LAW, RANCHI



Justice S. B. Sinha Memorial Lecture

**Golden Jubilee of Kesavananda Bharati v.
State of Kerala : Doctrine of Basic Structure**

by

**Hon'ble Mr. Justice Bhushan Ramkrishna
Gavai**

**Judge, Supreme Court of India
Chief Guest**

**SUNDAY, 01 SEPTEMBER, 2024, 11:00 A.M.
Plenary Hall, NUSRL**

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Assistant Registrar (I/C)

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Justice S.B. Sinha Memorial Lecture

“Golden Jubilee of Kesavananda Bharati v. State of Kerala : Doctrine of Basic Structure”

**by Hon’ble Mr. Justice Bhushan Ramkrishna Gavai
Judge, Supreme Court of India**

Held on 01.09.2024 at Plenary Hall, NUSRL, Ranchi

A very good morning to all of you.

Hon'ble Justice Rongon Mukhopadhyay and all my esteemed colleagues from the Jharkhand High Court, Dr. Ashok Patil, the Vice-Chancellor of the University, Mr. Pattanaik, Incharge Registrar, Shri Rajiv Ranjan, the Learned Advocate General of State of Jharkhand, Smt. Utpala Sinha, Advocate Abhijit Sinha, Advocate Indrajit Sinha and other family members of Justice S.B. Sinha, the Members of the District Judiciary, the Members of the Bar are present here. The Members of the Faculty, Academicians, the Members of the High Court Registry, and above all, their dear students.

It gives me immense pleasure to be with all of you this morning to commemorate the memory of one of the most celebrated jurists of India – Justice Satyabrata Sinha. One of the faculty members had already introduced, given a formal introduction, and also narrated his contribution and, therefore, I would not like to repeat them again.

As a matter of fact, I had an occasion to personally meet Justice S.B. Sinha on a number of occasions, when I was recently appointed as a Judge of Bombay High Court and was working at Nagpur. Hon'ble Justice Sinha had come to Nagpur University to deliver a lecture on administrative law, and I had an occasion to share the dais with him. Thereafter also on a number of occasions, I had an occasion to meet him at the National Judicial Academy at Bhopal and various regional conferences, and I was very much impressed with him. In so far as his contribution to the development of law in the country is concerned, nobody can doubt that he has contributed immensely to the development of law in India.

And so versatile! If you open the law books, law journals from 2002 to 2009, you will see that all law journals – there must be not a single volume of any Law

Journal which doesn't contain more than four or five judgments of him – a workaholic in the true sense, he contributed to every branch of law, be it constitutional, criminal, arbitration, commercial and so on. He was known to be a workaholic, and after I came to Supreme Court, I have heard some stories about him. I don't know how far they are the truth; only Madam Sinha can vouch for the genuineness of the same. We were told that once he came back from Court and directly went to his chamber to start dictation, and somebody asked Madam, "Where is Sir?" She said that he came back from the Court; he was already in the house dictating a judgment. The story that till midnight he used to have two stenographers, three stenographers at a time, and dictate two, three judgments simultaneously.

I have seen that he was a very frugal eater, used to eat in very small quantities, and I think that he hardly slept. For him, work was worship, and even after his retirement as a Judge of Supreme Court, he contributed his service to the nation as the Chairman of the TDAT. After serving there for 3 years, he entered arbitration, and as told by one of the faculty members, in arbitration also, he contributed immensely in very, very important arbitrations. Wherever he went, be it Patna High Court, be it the Kolkata High Court, the Andhra Pradesh High Court or Delhi High Court from where he was elevated to the Supreme Court – and of course the Supreme Court – he has put his indelible imprint wherever he goes. I happen to have the occasion, I happen to travel to many places after I, particularly, came back, came into the collegium. Before that, my visits were largely restricted to Maharashtra but, for the last one and a half years, whenever I have gone to these three or four places, they always remember Justice Sinha very fondly.

And in spite of his great achievements, he was very polite, humble to the core, very down to earth. He had no airs about his knowledge, his immense contribution and always remained very polite with even Junior Judges like me.

As a matter of fact, I consider it my privilege to address a lecture in commemoration. I always considered him to be my role model. Justice Sinha always considered himself to be a student of law, and he used to say, "Whenever I learn more, I realise that I have much more to learn", and I follow the same principle because every field, and particularly the law field, is such a field that when you arrive at a conclusion that you have understood everything, that's I think is the last day of your career. He has made exemplary contributions to the Indian Jurisprudence, the Constitutional Law. Though by the amendment, Article 31A was removed, but he held that though the right to property was no

more a fundamental right, and still it remained to be a constitutional right and nobody can be deprived of his property without paying adequate compensation.

In commercial matters, he expounded the theory of business efficacy. He was of the view that in such matters, technical interpretation was not the way to deal, and while considering the need to permit businesses fair play, the interpretation has to be with that object. His greatest contribution would be in resolving a conflict between capital punishment and life imprisonment, which earlier meant to be imprisonment for, say, around 14 years. He evolved a middle path which was that there has to be a balance between capital punishment and life punishment, which would mean that a punishment for 14 years and, thereafter, a person [was] entitled to remission. He expounded the law laid down in *Bachan Singh*¹ and held that it's not every case which can be held to be the rarest of the rare cases and, therefore, the penalty should only be the death penalty, but he found out a middle path wherein he said that the punishment somewhere between the life imprisonment of 14 years and the death penalty should be balanced out, and, therefore, we see from various cases like *Santosh Kumar Bariyar*² and *Swami Shradhanand v. State of Karnataka*³ wherein the Court has found out the middle path and, rather than imposing a death penalty, has found that a penalty for life, the entire remainder of life or, in some cases, 30 years, some cases 25 years, some cases 20 years would be an adequate punishment as a replacement for the death penalty.

He laid down various principles taking a cue from *Bachan Singh* that various factors will have to be taken into consideration while finding out the middle path between the death penalty and the life imprisonment of 14 years. One of them was as to whether the possibility of reformation of such a person, if he is not made liable for the death penalty there or not, he also laid down certain guidelines to find out as to what should be the factors of drawing a balance sheet of mitigating circumstances and the aggravating circumstances. In 19 cases, he commuted the death penalty to fixed imprisonment for particular years, out of which two were acquitted, and I am saying with a sense of pride and a sense of gratitude to him that in the last two and a half years that I am presiding over the death reference cases, in almost all the cases, I have relied on Justice S.B. Sinha's judgment in *Swami Shradhanand v. State of Karnataka*, have commuted the death penalty to either 30 years, 25 years, 20 years and also in

¹ (1980) 2 SCC 684

² (2009) 6 SCC 498

³ (2008) 13 SCC 767

two or three matters, we found that the High Courts and the Trial Courts had convicted the accused when there was no evidence and had to acquit them, and, therefore, I consider it a great privilege, a great, proud moment to be with you on this auspicious occasion to commemorate the memory of a great jurist, an erudite author of various judgments, and above all, a great human being like S.B. Sinha.

His legacy is carried forward by his both sons: Abhijit – he has been recently designated as a Senior Advocate of the Supreme Court – and Indrajit, who is a renowned lawyer at Ranchi. I was just joking yesterday when we were travelling together, I introduced Abhijit to my wife and my son and I told them that I have had the occasion to see his returns because when we consider the proposal for designation, the entire data comes before us, and then my impression was fortified by Indrajit when he said that Abhijit doesn't come here because the litigants from Jharkhand can't afford him, so I think that your institution can – I won't divulge anything more because I will be breaching the confidentiality – but, your institute can expect some more donations from him.

I am really privileged to speak on one of the subject topics: Constitutional Law was very dear to the heart of Justice S.B. Sinha. His erudite exposition of Constitutional Law will always be a guiding factor for students of law like us, and, therefore, I thought that last year itself, we have celebrated the golden jubilee of *Kesavananda Bharati*. It is one of the greatest milestones in the constitutional journey of the country and, therefore, it will be befitting his memory that we try to pay our tribute also to the authors of *Kesavananda Bharati*⁴, which law, even after 50 years of the laying down thereof and in the 75 years of the Constitution, is the most important judgment that this country will cherish for.

When I come to that subject, it will be necessary for us to look into the history of framing of the Indian Constitution and certain amendments which were made to the Constitution prior to 1973.

As all of us know, the Constituent Assembly consisted of people from various walks of life – they were Zamindars, they were the representatives of the princely states, there are also people belonging to different ideologies, there were capitalists, there were socialists, there were also communalists – and, therefore, for a country like India which has vast diversities – geographical, social, economical – it was difficult to chart out a Constitution which was

⁴ (1973) 4 SCC 225

suitable for one and all. And by a herculean task, by the deep labours that were put in for a period of more than two and a half years, we adopted our Constitution on 26th November 1949, and it was brought into effect on 26th January 1950.

Immediately after the Constitution was enacted, one of the first cases which required Constitutional Amendment was the *Champakam v. State of Madras*⁵. The Government of Madras had come out with a government order thereby providing reservations for Scheduled Castes, Scheduled Tribes and Backward Classes. The Madras High Court held the amendment to be violative of Article 14 of the Constitution of India, Article 14 and 15 of the Constitution of India. The same was carried out to the Supreme Court, and the Constitution Bench of the Supreme Court held that the amendment was violative of fundamental rights, Article 14 and 15, and, therefore, liable to be struck down. Justice Das, speaking for the Bench, held that the fundamental rights were so sacrosanct that they cannot be even touched. At the same time, from 1947 to 1950, various enactments for social reforms, for agrarian reforms, were enacted by various State Governments, like the Zamindari Evolution Act, the Ceilings Act and all that. The said enactments were enacted in order to give reality to the promise of social and economic justice as was envisaged in the Constitution, in the directive principles. Those enactments were challenged before the various High Courts – the Patna High Court, which is the mother of Jharkhand High Court – has set aside those enactments on the ground that they are violative of fundamental rights of the Constitution because they did not provide for adequate compensation, whereas Allahabad High Court and the then Nagpur High Court, which is now the Madhya Pradesh High Court, upheld the validity of those enactments, holding that those enactments were enacted in order to adhere to the promise of social and economic justice, and, therefore, there was a sort of uncertainty as to what is the position, and, therefore, immediately after the Constitution was enacted, within a year in 1951, the first amendment was made to the Constitution. It added Section 31A, which provided that the acquisition of land should not be declared invalid only on the ground that it violated any of the fundamental rights. In 31B, [it] provided for validation of certain enactments, and 13 Acts were added or were included for the first time in the 9th Schedule. These amendments came to be challenged on the ground that there was also an amendment to Article 15 by insertion of Clause 4, which enabled the State to make special provisions for the Scheduled Castes,

⁵ (1951) SCC 351

Scheduled Tribes and other Backward Classes. So, these amendments came to be challenged on the ground that they were violative of fundamental rights as well as violative of Clause 2 of Article 13 of the Constitution. As all of us know, Clause 2 of Article 13 provides that no law will be valid if it is in contravention of the fundamental rights.

In the Constitution Bench of *Sankari Prasad Singh Deo v. The Union of India*⁶, the challenge was negated. The Supreme Court held that the words used in Clause 2 of Article 13 where the laws and the Constitution was not a law within the meaning of Article 13 too, and, therefore, the Parliament had a power to amend the Constitution, even if it abridged the fundamental rights.

Thereafter in 1954, we saw that various Constitution Bench Judgments came on the ground that the laws which provided for meagre compensation were violative of the fundamental right of the citizens to property. The cases of *State of West Bengal v. Subodh Gopal Bose & Ors*⁷, then *State of West Bengal v. Bela Banerjee & Ors*.⁸, then in the case of Maharashtra, the case of *Dwarkanadas Shrinivas v. Sholapur Spinning and Weaving Co. Ltd. & Ors*.⁹, wherein the spinning mill was acquired by the State Government without paying any compensation by an enactment.

All these cases held that the acquisition of the properties without paying adequate compensation or paying meagre compensation or paying no compensation for validity of the fundamental rights of the citizens, and, therefore, these three Constitution Bench Judgments led to the Fourth Amendment to the Constitution in 1955. Clause 2 of Article 13(1) was amended. It prohibited any challenge on the ground of inadequacy of compensation. 13A was also amended, Clause 1 came to be substituted. It protected any law with regard to acquisitions of estates, etc. on the ground that they were inconsistent with or abridged or took away any of the fundamental rights.

Then in 1964, the 17th Amendment was made to the Constitution. By the said amendment, 44 more acts were included in the 9th Schedule. The same came to be challenged before the Constitution Bench. All these amendments were

⁶ (1951) SCC 966

⁷ (1953) 2 SCC 688

⁸ (1953) 2 SCC 648

⁹ (1953) 2 SCC 791

challenged before the Constitution Bench, and, therefore, they were considered by the Learned Five Judges in the case of *Sajjan Singh v. The State of Rajasthan*¹⁰.

The challenge was negated by a majority of 3 to 2. The 3 Judges held that the Constitution had powers to amend the Constitution even to take away or abridge the fundamental rights; however, the seeds of descent were sown in the two descending judgments in this case. The first one was by Justice Hidayatullah. Justice Hidayatullah observed that, "I would require some stronger reasons than the ones given in *Sankari Prasad Singh Deo* to hold that the Constitution had a power to abridge the fundamental rights". Justice Mudholkar, Justice J.R. Mudholkar, he had held that the power to amend, could the power to amend could also be construed as the power to amend the basic features of the Constitution. He observed that if that argument is accepted, then the power to amend would have to be construed as a power to rewrite the Constitution, and, therefore, held that in his view, such a power was not available with the Parliament.

In the meantime, two more Acts were included in the 9th Schedule, the Mysore and Punjab Land Reforms Acts. They came to be challenged in the famous case of *I.C. Golaknath v. State of Punjab*¹¹, which is popularly known as *Golaknath*. The matter was heard by the Learned 11 Judges, and by a thin majority of 6 to 5, the Supreme Court held that the Parliament does not have the power to amend the Constitution which will take away the basic features of the Constitution. It will take away the fundamental rights of the Constitution. It was held that the amendment to the Constitution was also an amendment to a law as contemplated under 13(2). The Court held that the term 'law' has to be interpreted widely so as to also include the Constitution, and, therefore, the Parliament had no power to amend the Constitution which would take away or abridge the fundamental rights of the citizens. Chief Justice Subba Rao, speaking for the majority, observed that even a unanimous bill of both houses of Parliament, sitting in full strength, could not take away the fundamental rights and that fundamental rights were so sacrosanct that the Parliament had no power to touch it.

At the same time, there were two Constitution Bench Judgments, one in the case of *Rustam Cavasjee Cooper v. Union of India*¹² popularly known as the Bank

¹⁰ (1954) 2 SCC 208

¹¹ (1967) 2 SCJ 486

¹² (1970) 1 SCC 248

Nationalization case, wherein the shares of the Bank were acquired by the Government at a very meagre rate, and then there was another case, *His Highness Maharaj Madhavrao Scindia v. Union of India*¹³ by which the decision of the Government to take away the Privy Council, the privy purses, came to be challenged. Both these judgments held that the action of the Government in acquiring the shares of the Bank at a mere compensation was unconstitutional; so also the privy purses, taking away the privy purses, would amount to a violation of the fundamental rights of the Princes and both these judgments set aside the action of the government. To overcome these judgments, the judgments in the case of *I.C. Golaknath, Bank Nationalization* and the *privy purses case*, the Constitution suffered various amendments within a period of 2–3 years. By the 24th Amendment, Clause 4 was inserted in Article 13, and a corresponding amendment was made in Article 368, which provided that no judicial review would be permissible in so far as the amending powers of the Constitution are concerned. By the 25th Amendment, Article 31C was included, and it provided that if any property was to be acquired, the same was to be done only on, only by a law which provided for acquisition by payment of compensation and also provided as to there shall be principles for compensation. Then, Article 31C provided that no law shall be provided, no law shall be set aside on the ground that it violated fundamental rights if it was made in furtherance of the provisions of Clauses B and C of Article 39. As all of us know, Article 39, B and C, they aim at the distributive justice as envisaged under the Constitution for achieving social and economic justice. It provides that the State shall strive to minimize the inequalities of income and shall also strive to see to it that the resources of the nation shall be used in such a manner that this serves the common good.

Then by the 26th Amendment on 28th December 1971, the recognition granted to the principal states, and the provision for privy purses was withdrawn. By the 29th Amendment, two more acts regarding the Kerala Land Reforms Act came to be inserted in the 9th Schedule.

Challenging this, there were a series of litigations filed before the Supreme Court. The first case was *Kesavananda Bharati v. State of Kerala*, and since it was the first case, it came to be known as *Kesavananda Bharati v. Union of India*.

Kesavananda Bharati was a Priest in a Matth in Kerala. The lands of the Matth were being acquired by the State, and, therefore, he had challenged the same.

¹³ (1971) 1 SCC 85

The 13 Judges Bench heard the matter for a long time, and then the Bench was virtually split. The basic arguments were with regard to the amending powers of the Constitution. 6 Judges under the leadership of Chief Justice Sikri and 5 others held that the Parliament's powers to amend the Constitution were not unlimited; there were inherent limitations in the power of the Parliaments to amend the Constitution. The Parliament had no right to abridge or take away or abrogate any of the fundamental rights by the amendment to the Constitution.

However, Chief Justice Sikri, sorry, Justice A.N. Ray and 5 others took the view that the powers of the Parliament to amend the Constitution were unlimited; there were no limitations on amending the power of the Constitution, and the Parliament also had a power to amend the Constitution which abridged, took away or abrogated the fundamental rights of the citizens.

However, it is the view of Justice H.R. Khanna, which partly supported the view of Justice Chief Justice Sikri and partly supported the view of Justice A.N. Ray and others, which is now the view of *Kesavananda Bharati*. Justice Khanna held that the term 'Amendment' postulated that the Parliament had no power to tinker with the basic structure of the Constitution. It cannot amend the Parliament (sic. Constitution) so that it takes away the basic structure of the Constitution, but, however, he held that the fundamental rights were not part of the basic structure of the Constitution, and the Parliament also had a power to amend the Constitution in a manner that it took away the fundamental rights of the citizens. It was held that the power under Article 368 was not controlled by Clause 2 of Article 13, and it is this view of *Kesavananda Bharati* which still holds good even after the journey of 50 years and 76 years of our Constitution, 75 years of our Constitution. Though, *Kesavananda Bharati* did not specify as to what shall be the basic structure of the Constitution because it will all depend upon the circumstances and facts. It called out various factors or various issues which could be considered to be a part of the basic structure. Some of them are called out in the various judgments of *Kesavananda Bharati* because you [know] that in *Kesavananda Bharati*, there are various judgments authored by various learned Judges. The first one is the supremacy of the Constitution. The Constitution is above everything, and everything else is subordinate to the Constitution, then the secular character of the Constitution, republic and democratic form of government, then separation of three wings of the i.e. the Executive, the Legislature and the Judiciary, the three functionaries which function under the Constitution. They should be separate from each other; there should not be interference by one in the sphere allotted to the another. Then,

maintaining the unity and integrity of the nation, as we have said in the Preamble itself, then while doing so, securing the dignity of the individual, building an equality in society and the parliamentary democracy.

The concept of basic structure has been further followed in various other judgments of the Supreme Court, various Constitution Bench Judgments. I will only take you to some of the important judgments on account of paucity of time. It will not be permissible to refer to all of them. As all of us know, in 1971, when Indira Gandhi was the Prime Minister in the elections, she returned to power by a very high margin of almost two-thirds margin, and Raj Narain had contested the election against her. He challenged the election on the ground that the other candidate, i.e. Indira Gandhi, had misused her office, used the official machinery for getting elected, and the High Court, in the election petition, upheld the challenge and held that the candidate had used official machinery, and, therefore, had set aside the election of Indira Gandhi. Immediately thereafter, the 39th Amendment came to the Constitution, which provided for which inserted Article 329A. 329A provides that no election of certain functionaries like the Prime Minister, the President, the Speaker could be challenged in a court of law. The same was challenged, and the Constitution Bench, in the case of *Indira Gandhi Nehru v. Raj Narain*¹⁴, set aside the said amendment. It held that free and fair elections were also a part of the basic structure of the Constitution, and, therefore, a Parliament had no power to amend it in such a way that it interfered with the provision of free and fair elections. It also held that Article 329A took away the powers of the High Court and the Supreme Court of judicial review and that the power of judicial review was one of the basic structures of the Constitution, and, therefore, the Parliament had no power to amend it in a manner which took away the basic structure, which affected the basic structure of the Constitution.

Then in the case of *Maneka Gandhi v. Union of India*¹⁵, the case pertains to the impounding of the passport of Maneka Gandhi, who by then, Indira Gandhi was in opposition, and she was the daughter-in-law of Indira Gandhi. The Supreme Court held that travelling abroad was also a part of the fundamental right, and, therefore, the right could not be affected if a party wanted to travel abroad without there being any provision of law. The scope of fundamental rights was also expanded in the case of Maneka Gandhi. It was held that not only the rights which are enumerated in Part-III would be fundamental rights, it is not

¹⁴ (1975) Supp. SCC 1

¹⁵ (1978) 1 SCC 248

restrictive, but anything which could be called out from the golden trinity of Articles 14, 19 and 21 can be a fundamental right, and, therefore, we find that by exposition of law, various rights had been construed to be fundamental rights. I will come to them a little later on.

In the case of *Minerva Mills v. Union of India*¹⁶, the 42nd Amendment to the Constitution was challenged, by which Article 31C was amended to expand the scope. It was held that all the laws made in furtherance of all the directive principles will have the protection of Article 31C, and they could not be challenged on the ground of the validity of the fundamental right. The majority, through Justice Chandrachud, set aside the Constitution, Constitutional Amendment and set aside the expanded scope given to Article 31C; however, Justice Bhagwati, speaking for the majority, held that if protection was available to the laws made under Articles 31(2) and 39(2) and (C), then why should the said protection also not be expanded to other articles? He observed that all the directive principles are made in furtherance of the promise of social and economic equality, and, therefore, if the Parliament wanted to enact laws in order to give reality to the promise of social and economic justice, the court should not come in the way.

Later on, in the case of, if I am not wrong, in the case of *Sanjeev Coke Limited*¹⁷, Justice Chinnapa Reddy held the view in *Minerva Mills* to be an erroneous view, and Justice Bhagwati was also a part of that Bench, so we have two Constitution Bench Judgments: one holds that the 42nd Amendment is not valid in law, and one holding that it is still valid, it is valid in law.

In the said, by the 42nd Amendment, again the Parliament had introduced Article 368, Clauses 4 and 5 in 368, so as to restrict the powers of judicial review of the High Court and the Supreme Court; however, the said amendment was set aside again reiterating the position that the power of judicial review of the superior courts in the country was part of the basic structure, and it could not be tinkered with. In *S.R. Bommai v. State of Karnataka*¹⁸, the various State Governments, the President's Rules were imposed, the Legislatures were abolished. The same came to be challenged before the Supreme Court, and the Supreme Court reiterated that such an action without permitting a political party to face the Legislature and abolishing the Legislature without giving them

¹⁶ (1980) 2 SCC 591

¹⁷ (1983) 1 SCC 147

¹⁸ (1994) 3 SCC 1

an opportunity to prove [a] majority was unconstitutional. It was held that federalism was also part of the basic structure of the Constitution. The States as well as the Federal Government, i.e. the Union, were equal partners in, under the Constitution, non-superior, non-inferior.

Then, in the case of *S.P. Gupta v. Union of India*¹⁹, the challenge was made that the appointments of the High Court Judges are made by the President, and, therefore, the Executive, and as such, they interfere with the independence of the judiciary. However, the majority speaking through Justice Venkataramiah held that merely the appointment of a Judge by the Executive would not itself tinker with the independence of the Judiciary. It said that non-interference in the functioning of the Judiciary after the Judges are appointed is what is contemplated under the independence of the Judiciary.

However, in the case of *S.P. Gupta* itself, Justice P.N. Bhagwati, in his minority judgment, mooted out the idea of [a] collegium which we see that is now still in. Then we have the Second Judges case, the Supreme Court on Advocates, *Supreme Court Advocates-on-Record Association and another v. Union of India*²⁰, 1993, it expanded the word 'consultation' in the appointment of Judges to mean that it meant concurrence, and, therefore, by this judgment, the primacy of the appointment of the High Court Judges was transferred to the Chief Justice of India and his collegium. The finding given in *S.P. Gupta*, that the Executive had a power to overrule the recommendation of the Chief Justice of India, was also turned down by the *Second Judges case*, i.e., a *SCORA case*, and it was held that once a collegium gives a recommendation, it will be binding on the Executive – the Union of India. Then the Government, dissatisfied with the judgment in the case of the *Second Judge's case*, made a presidential reference to the Supreme Court, and we have the *Third Judge's case*²¹ in i.e., the 9 Judges case, Special Reference 01 of 1998. The Supreme Court reiterated the view in the Second Judge's case. It, however, made little modifications in so far as the composition of the collegium is concerned; the collegium in so far as Judges to the Supreme Court is concerned, it was expanded from 3 to 5. Thereafter, we also have the case of *Sampath Kumar*²² and *L. Chandra Kumar*²³. The Administrative Tribunals Act was enacted, which took away the power of judicial review of the High

¹⁹ (1981) Supp. SCC 87

²⁰ (1993) 4 SCC 441

²¹ (1998) 7 SCC 739

²² (1987) 1 SCC 124

²³ (1997) 3 SCC 261

Court, and an appeal was provided against the judgment of the Administrative Tribunal directly to the Supreme Court. The said Act was challenged in the case of *Sampath Kumar*; the challenge was negated by *Sampath Kumar*. Subsequently, the same was referred to a larger Judge, larger Bench, and the larger Bench in *Chandra Kumar's* case held that the power of judicial review under Article 226 was a part of the basic structure of the Constitution of India. It held that the independence and immunity which was available to the superior courts i.e., the Constitutional Courts was not available to the Tribunals and the other Courts, and, therefore, any amendment which or any law which takes away the power of judicial review of the Supreme Court was against the constitutional scheme and amounted to interfering with the basic structure, and the said amendment, in so far as it took away the powers of the High Court of judicial review, came to be set aside.

Then we have a series of cases in *Roger Mathews*²⁴, wherein the sleuth of directions has been issued by the Supreme Court, the panel consisted of only one of the Judges of the Supreme Court, and the rest of the members of the panel for recommending the names to the Tribunal under the Finance Act were the bureaucrats. The Court held that the Tribunal also appointed, were also performing judicial functions, and, therefore, it was necessary that their appointment, the primacy in the appointments of the members of the Tribunal should be with the Court, with the Supreme Court. However, that dispute is still going on, while we see that there was a divide, a virtual divide in so far as the amending powers of the Constitution in *Kesavananda Bharati* – six against and six for – and virtually it is the view of Justice H.R. Khanna, which is the view of this court, partly agreeing with Justice Sikri and five others and partly agreeing with Justice Ray and five others.

However, in so far as the directive principles are concerned, *Kesavananda Bharati* has put to rest the conflict between the fundamental rights and the directive principles. We see that prior to 1973, the view of the Supreme Court, right from *Champakam* to various cases, was that whenever there is a dispute between a fundamental right and the directive principles, the directive principles must give way to the fundamental rights. It was held that fundamental rights are superior to the directive principles and that whenever there is a conflict, the fundamental rights shall prevail. However, in *Kesavananda Bharati*, this dispute has been finally resolved, and the Supreme Court in clear words has

²⁴ (2020) 6 SCC 1

held that the fundamental rights and the directive principles together and together are the soul of the Constitution. It held that fundamental rights, though [they] provide the basic human rights to the human being to live [a] life with dignity, the directive principles are [the] vehicle to bring in the social revolution for bringing out economic and social justice in this country. It was held that the fundamental rights and the directive principles are not parallel to each other but they intersect each other at points. In *Minerva Mills*, Justice Chandrachud observed that the directive principles and fundamental rights are like the two wheels of the golden chariot of the Constitution of India. You span one wheel, and the efficacy of the other wheel would automatically come to a standstill, and, therefore, we find that post-1973, the country has made a lot of advancement in so far as social and economic justice is concerned. We find that, relying on the trinity of Articles 14, 19 and 21, the Supreme Court and the various High Courts have evolved various rights which the framers of the Constitution could not have conceptualised at the initiation of the Constitution. The right to life does not mean [the] right to live with dignity. In *Bandhua Mukti Morcha*²⁵, the Supreme Court came to the help of millions of labourers, bonded labourers who were working in inhuman conditions at the mines. The right to life has been held to be [the] right to live with dignity. [The] Right to food, [the] right to potable water. In the series of *M.C. Mehta cases*²⁶, the right to live in a pollution-free atmosphere, the right to breathe in clean air, [the] right to drink clean, potable water. In the *T.N. Godavarman case*²⁷, the right to have an environment, the right to have the right of future generations to have the resources for them. The Court holds that the resources the present generation holds the resources as a trustee for the next generations, and, therefore, when you carry out development, you must carry out the development in such a manner that the resources are not totally wiped out and the future generations are not made to suffer on account of your greed for development, and, therefore, we find that in the last 50 years, *Kesavananda Bharati* has not only been a guiding factor as to what manner the basic structure of the constitution has to be maintained, as to how the Parliament and the Executive should not be permitted to tinker with the basic structure of the Constitution, but

²⁵ (1984) 3 SCC 161

²⁶ *Landmark Cases M. C. Mehta Environmental Foundation*. Available at: <https://mcmef.org/landmark-cases/> (Accessed: 30 September 2024).

²⁷ (2006) 1 SCC 1

Kesavananda Bharati has also paved [the] way toward the social and economic justice that the Constitution promises in its very preamble.

We see that on account of the Constitution, we have had – Dr. Ambedkar used to consider, used to say that – the women in the country are the most backward, they were deprived of education for centuries, and Mahatma Phule and Savitribai Phule had to devote their lives to educating women, but we see that a woman has headed the country as the Prime Minister. We had [the] first lady President, and we have now a lady President, a woman President, who also belongs to the Scheduled Tribe. We also have Presidents who belong to the Scheduled Castes; we have had the Speaker of Lok Sabha, who was a woman, and also a Speaker who was a Scheduled Caste.

In the journey of the last 75 years, we have seen that millions of acres of land have been distributed to the landless after taking [it] from Zamindars. Millions of tenants of the lands, the tillers of the land, have become the owners of the land. After the law laid down in *Indra Sawhney v. The Union*²⁸, a significant stride has been taken in the case of reservation for Scheduled Castes, Scheduled Tribes and OBCs. The earlier view was that the Article, sub-article 4 of 16, was an exception to the equality clause as enshrined in Article 14 and Article 16(1), but after *N.M. Thomas*²⁹, the law has undergone a change. The Supreme Court held that no, it is not an exception but it is an emphatic way of the equality clause already enshrined in Article 14 and Article 16(1). The Court held that Article 14 and 16(1) do not mean equal treatment to unequals. It held that providing unequal treatment to unequals will only bring equality in the true sense. Therefore, in the various states, people of the Scheduled Caste, Scheduled Tribe, and OBC have reached the positions of Chief Secretaries and Director-General of Police.

I read in the newspaper yesterday that, for the first time, the office of the Chairman of the Railway Board or Income Tax Board is being occupied by a person belonging to the Scheduled Caste. While making progress on economic and social justice, we have also seen that our country, in spite of various difficult areas, has remained strong and united. We see what has been happening in neighbouring countries. We have witnessed what has happened in Pakistan on so many occasions. We have seen what has happened in Sri Lanka, what has

²⁸ (1992) Supp. 3 SCC 217

²⁹ (1976) 2 SCC 310

happened in Nepal, and what happened earlier in Bangladesh; and we are seeing again now what is happening in Bangladesh.

Dr. Ambedkar was criticised, saying that the Constitution tilts towards a unitary nature and that less importance is given to the States. While presenting the final draft to the Constituent Assembly in his speech, he stated that the Constitution is both federal and unitary. However, the Constitution is such that it will keep the country united in times of peace and also in times of war. We see how prophetic his words have come true. In spite of so many differences and so many difficulties faced in neighbouring countries, our country has succeeded in remaining united and strong in times of war and peace. Therefore, I feel that *Kesavananda Bharati* has immensely contributed to the twin objectives of the unity of the country and the achievement of social and economic justice.

Pledging adherence to constitutional principles, pledging adherence to maintaining the unity and dignity of the country, and at the same time the dignity of the citizens, pledging adherence to the constitutional scheme of social and economic justice – as true citizens of our country, I think this will be a real tribute to the great jurist in whose memory we are assembling today.

Let us pledge on this occasion that we will be true citizens of India and imbibe the constitutional values in the constitutional scheme so as to pay tribute to *Kesavananda Bharati* and our great jurist S.B. Sinha.

Thank you. Thank you very much.



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