CASE STUDY
ON
KESHAVANAND BHARTI VS. STATE OF KERELA (AIR 1973 SC 1461)

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FACTS OF THE CASE

- In this writ petition was filed by the petitioner on March 21, 1970 under Art 32 of the Constitution for enforcement of his fundamental right under Art 25,26,14,19(1)f and 31 of the Constitution.

- He prayed that the provisions of the Kerala Land Reforms Act, 1963 as amended by the Kerala Land Reforms (Amendment) Act, 1969 to be declared unconstitutional. Ultra Virus and void, on the ground that some of its provisions violated his fundamental rights.

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- The Constitution (Twenty-fourth Amendment) Act amended Art. 368. It enacted that Parliament may, in exercise of its constituent power, amend by way of addition, variation or repeal any provision of the constitution in accordance with the procedure laid down in that article. The other part of the amendment is that nothing in Arts. 13 shall apply to any amendment under Art. 368.

- This case was started by the senior plaintiff and head of Edneer Mutt Swami HH Kesavananda Bharati Sripadaga in February 1970. Edneer Mutt is a Hindu Matha situated in Edneer, a village in Kasaragod District of Kerala challenged the Kerala Government's attempt under two state law reforms Act in order to put restriction on the management of its property.

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- Although the state invoked its authority under Article 21, a noted Indian jurist, Nanabhoy Palkhivala, convinced the Swami into filing his petition under Article 26, concerning the right to manage religiously owned property without government interference. Even though the hearings consumed five months, the outcome would profoundly affect India's democratic processes

- During the pendency of the writ petitions, Parliament passed the three constitutional amendments, namely, the Constitution (24th, 25th and 29th Amendments). As the petitioner apprehended that he would not succeed in view of the above amendment he also challenged the validity of these amendments.

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- The constitution (Twenty-ninth) Amendment Act included the Kerala Land Reforms Acts in the Ninth Schedule to the Constitution making them immune from attack on the ground of violation of the fundamental rights. The petitioner challenged the validity of the three Constitution Amendment Acts.

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ISSUES BEFORE S.C

- Whether land laws challenged by way of writ petition are in consonance with Article 31-C of the constitution?

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CONTENTIONS OF THE PETITIONER

- Firstly, the counsel for the petitioner urged that though the power is wide but it is not unlimited. Power to amend under Art. 368 does not empower the parliament to destroy the basic features of the Constitution or abrogation of the Constitution.

- Secondly, the power of amending the Constitution provided for under Article 368 was conferred not on Parliament but on the two Houses of Parliament as designated body and, therefore, the provisional Parliament was not competent to exercise that power under Article 379.

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- Thirdly, in any case Article 368 is a 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 prescribed in Article 368.

- Fourthly, the 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 Article 13(2).

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- Fifthly, On the side of the petitioners it is urged that the power of Parliament is much more limited. The petitioners say that the Constitution gave the Indian citizen freedoms which were to subsist for ever and the Constitution was drafted to free the nation from any future tyranny of the representatives of the people. It is this freedom from tyranny which, according to the petitioners, has been taken away by the impugned Article31C which has been inserted by the Twenty-fifth Amendment. If Article 31C is valid, they say, hereafter Parliament and State Legislatures and not the Constitution, will determine how much freedom is good for the citizens.

CONTENTIONS ON BEHALF OF THE RESPONDENTS

- On behalf of the Union and the States, it was contended that the power to amend is wide and unlimited. It is not fettered with any kind of the implied or inherent limitation.

- The respondents further claim that Parliament can abrogate fundamental rights such as freedom of speech and expression, freedom to form associations or unions, and freedom of religion. They claim that democracy can even be replaced and one-party rule established. Indeed, short of repeal of the Constitution, any form of Government with no freedom to the citizens can be set up by Parliament by exercising its powers under Article 368.

FINDINGS OF THE S.C.

- Learned Judge of the S.C. held that, the provisional Parliament is competent to exercise the power of amending the Constitution under Article 368. The fact that the said article refers to the two Houses of the Parliament and the President separately and not to the Parliament, does not lead to the inference that the body which is invested with the power to amend is not the Parliament but a different body consisting of the two Houses.

- The Court further said that, the words "all the powers conferred by the provisions of this Constitution on Parliament" in Article 379 are not confined to such powers as could be exercised by the provisional Parliament consisting of a single chamber, but are wide enough to include the power to amend the Constitution conferred by Article 368.

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- The Court further held “The view that Article 368 is a complete code in itself in respect of the procedure provided by it and does not contemplate any amendment of a Bill for amendment of the Constitution after it has been introduced, and that if the Bill is amended during its passage through the House, the Amendment Act cannot be said to have been passed in conformity with the procedure prescribed by Article 368 and would be invalid, is erroneous.”

- Although "law" must ordinarily include Constitutional law there is a clear demarcation between ordinary law which is made in the exercise of legislative power and Constitutional law, which is made in the exercise of constituent power. In the context of Article 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 the exercise of constituent power with the result that Article 13(2) does not affect amendments made under Article 368.

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- In this case the learned Chief Justice thought that the power to amend in the context was a very wide power and it could not be controlled' by the literal dictionary meaning of the word "amend". He expressed his agreement with the reasoning of Patanjali Sastri, J. regarding the applicability of Article 13(2) to Constitution Amendment Acts passed under Article 368. He further held that when Article 368 confers on Parliament the right to amend the Constitution, it can be exercised over all the provisions of the Constitution. He thought that "if the Constitution-makers had intended that any future amendment of the provisions in regard to fundamental rights should be subject to Article 13(2), they would have taken the precaution of making a clear provision in that behalf.

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- He further observed: The meaning of Article 13 thus depends on the sense in which the word "law" in Article 13(2) is to be understood. If an amendment can be said to fall within the term "law", the Fundamental Rights become "eternal and inviolate" to borrow the language of the Japanese Constitution. Article 13 is then on par with Article 5 of the American Federal Constitution in its immutable prohibition as long as it stands.
- Finally, in the judgment of this case, it was ruled that the Constitution had a *basic structure* that could not be violated or modified under any circumstance. For instance, your Fundamental Rights cannot be taken away by modifying the constitution

CONTINUED...

- THE CONSTITUTIONALITY OF KERALA LAND REFORMS ACT IS UPHELD.