



**I. C. Golaknath & Ors. Vs.
State Of Punjab & Anr (With
connected Petitions)**

1967 AIR 1643 SCR (2) 762

**Bench: Rao, K. Subba Wanchoo, K.N.,
Hidayatullah, M. & Shah, J.C., Sikri, S.M. &
Bachawat, R.S., Ramaswami, V. & Shelat,
J.M., Bhargava, Vishishtha & Mitter, G.K. &
Vaidyalingam, C.A.**

Case Facts

- The family of Henry and William Golak Nath held over 500 acres of farmland in Jalandar, Punjab.
- In the face of the 1953 Punjab Security and Land Tenures Act, the state government held that the brothers could keep only thirty acres each, a few acres would go to tenants and the rest was declared 'surplus'.
- This was challenged by the Golak Nath family in the courts and the case was referred to the Supreme Court in 1965.


- The family filed a petition under Article 32 challenging the 1953 Punjab Act on the ground that it denied them their constitutional rights to acquire and hold property and practice any profession (Articles 19(f) and (g)) and to equality before and equal protection of the law (Article 14).
- They also sought to have the Seventeenth Amendment – which had placed the Punjab Act in the Ninth Schedule – declared ultra vires.

Issues Involved In This Case

- Whether Amendment is a “law” under the meaning of Article 13(2)?
- Whether Fundamental Rights can be amended or not?

Judgment

- In judgment on feb27,1967,which overruled the rulings in Sankari Prasad and Sajjan Singh cases, the Supreme court by a majority of six to five ruled that Parliament had no power to take away or abridge by the process of constitutional amendment any of the fundamental rights guaranteed by the Constitution.
- “These rights are given a transcendental position and kept beyond the reach of parliamentary legislation”, the judgment said.

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- The Chief Justice, Justice K. Subba Rao, delivering the judgment for himself and four other judges of the Supreme Court, dismissed the petitions by Golak Nath and others against the State of Punjab.

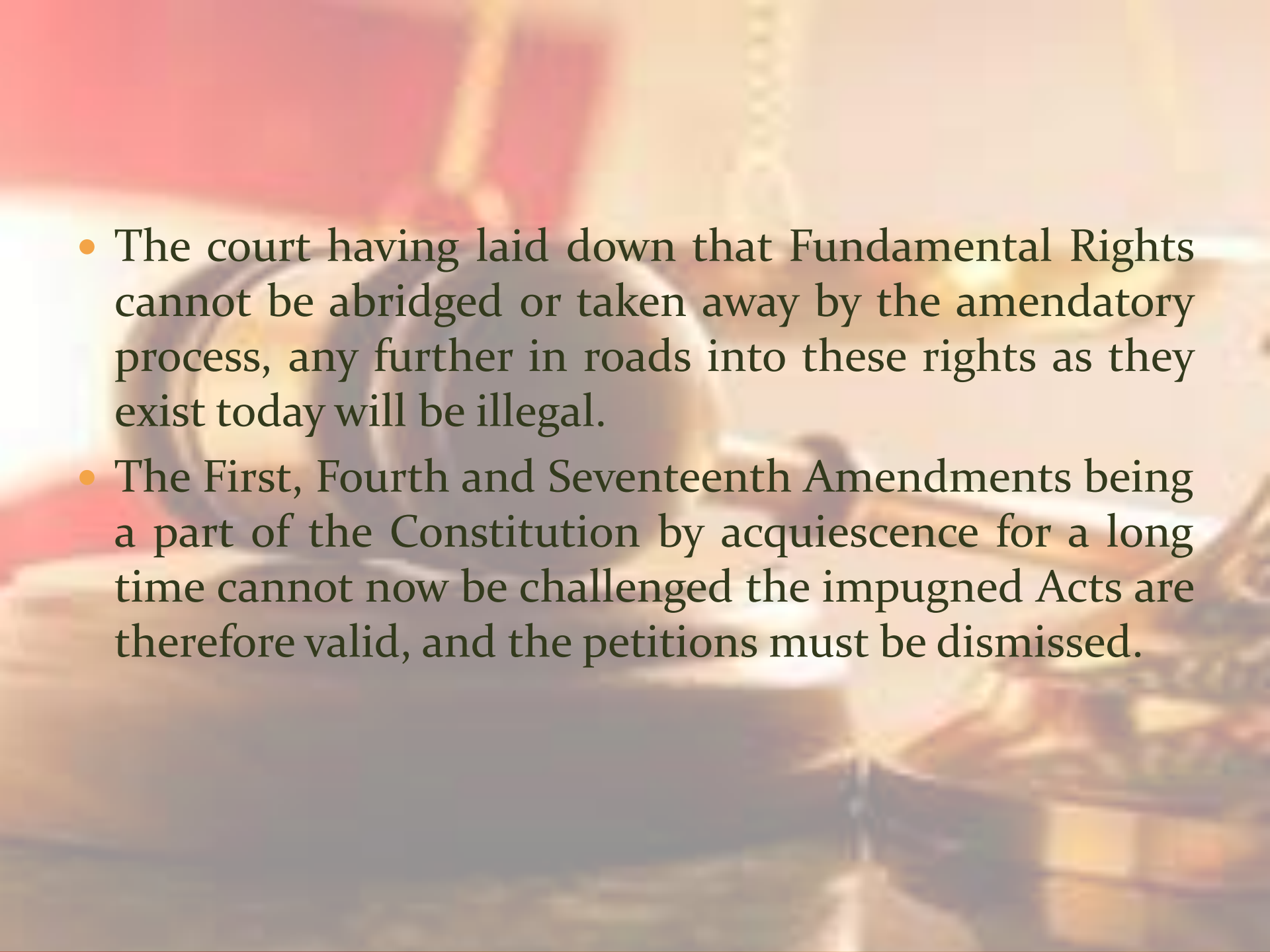
- The constitution (First Amendment) Act, 1951, the constitution (Fourth Amendment) Act, 1951, and the constitution (Seventeenth Amendment) Act, 1964, a bridge the scope of Fundamental Rights. But on the basis of earlier decisions of this court, they were valid.
- On the application of the doctrine of prospective overruling this decision will have prospective operation only therefore the said amendments will continue as valid.

- The power of Parliament to amend the Constitution is derived from the articles 254, 246 and 248 of the constitution and not from the article 368, which only deals with procedure. Amendment is a legislative process.
- Amendment is “law” within the meaning of article 13 of the constitution and, therefore, if it takes away or abridges the rights conferred by part III governing Fundamental Rights, it is void.

- Parliament will have no power from the date of this decision to amend any of these provisions of part III of the constitution so as to take away or abridge the fundamental rights enshrined therein
- As the constitution (seventeenth amendment) act holds the field, the validity of the Punjab Security of Land Tenures Act 1953 and the Mysore Land Reforms Act 1962 challenged in these proceedings cannot be questioned on the ground that they offend articles 13, 14 and 31 of the constitution.

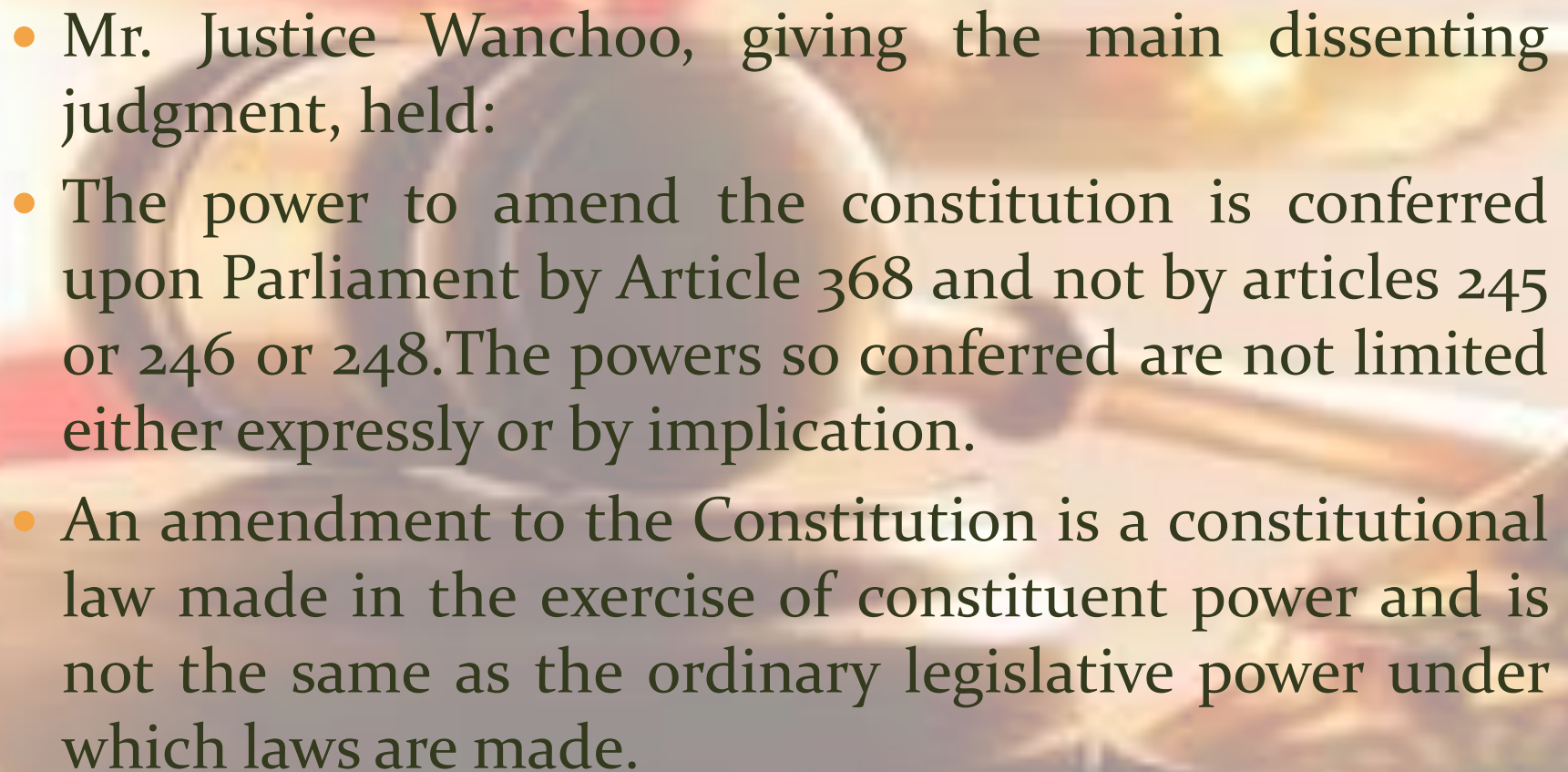
Justice Hidayatullah agreed with the chief justice, stated his conclusions in a separate judgment as follows:

- The Fundamental rights are outside the amending process if the amendment seeks to abridge or take away any of the rights.
- The judgment of the Supreme Court in the cases of *Sanskari Prasad* and *Sajjan Singh* the power of amendment to Fundamental Rights were based on an erroneous view.
- For abridging or taking away Fundamental Rights a Constituent Assembly will have to be called.

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- The court having laid down that Fundamental Rights cannot be abridged or taken away by the amendatory process, any further inroads into these rights as they exist today will be illegal.
 - The First, Fourth and Seventeenth Amendments being a part of the Constitution by acquiescence for a long time cannot now be challenged the impugned Acts are therefore valid, and the petitions must be dismissed.

Minority Judgments

- Justice Wanchoo, Justice Bhargava, Justice Mitter, Justice Bachawat and Justice Ramaswami gave judgments dismissing the petitions but differing on the principal question before the court.
- They held that the power of amendment conferred on the Parliament included the power to amend Fundamental Rights so as to take them away or abridge them.

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- Mr. Justice Wanchoo, giving the main dissenting judgment, held:
 - The power to amend the constitution is conferred upon Parliament by Article 368 and not by articles 245 or 246 or 248. The powers so conferred are not limited either expressly or by implication.
 - An amendment to the Constitution is a constitutional law made in the exercise of constituent power and is not the same as the ordinary legislative power under which laws are made.

- The cases of Sanskari Prasad and Sajjan Singh were decided correctly and while Article 13(2) prohibits a law abridging or taking away the Fundamental Rights, it does not restrict the constituent power given by article 368 to amend any part of the Constitution including the Fundamental Rights. The word 'law' does not apply amendments.
- The power to amend the constitution means that any part of it can be changed to such an extent as the sovereign body deems fit.
- The impugned constitutional amendments are valid and the Punjab and Mysore Acts dealing with the acquisition of the estates of the petitioners are good law.

A close-up, slightly blurred image of a wooden gavel resting on a stack of books. The gavel is positioned diagonally across the frame. A hand is visible on the right side, holding the handle of the gavel. The background is a warm, golden-brown color, suggesting a courtroom or library setting.

**The Judgment in this case was overruled
by the Supreme Court in Kesavananda
Bharati ... vs State Of Kerala And Anr on
24 April, 1973.**

References

- Wikipedia
- Indiankanoon.com
- Subverting the Constitution, By G. G. Mirchandani.
- Legal service India