

Minerva Mills

v.

Union of India



AIR 1980 SC 1789

# Introduction



- ❧ In the aftermath of the enunciation of the doctrine of basic structure of the Constitution by the Supreme Court in the case of *Keshavananda Bharti v. State of Kerala*.
- ❧ This case involved challenge to the constitutionality of Section 4 of the Constitution (42nd Amendment) Act, 1976, which amended Article 31C of the Constitution by substituting the words and figures "all or any of the principles laid down in Part IV" for the words and figures "the principles specified in Clause (b) or Clause (c) of Article 39".
- ❧ A second challenge was mounted on Section 55 of the Constitution (42nd Amendment) Act, 1976, which inserted Sub-sections (4) and (5) of Article 368.

# Article 31C



- ❧ 31C. Notwithstanding anything contained in Article 31. no law giving effect to the policy of the State towards securing all or any of the principles laid down in Part IV shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Article 14, Article 19 or Article 31, and no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy:
- ❧ Provided that where such law is made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent.

# Sub section (4), (5) of Article 368



- ❧ (4) No amendment of this Constitution (including the provisions of Part III; made for purporting to have been made under this article (whether before or after the commencement of Section 55 of the Constitution (Forty-second Amendment) Act, 1976) shall be called in question in any court on any ground.
- ❧ (5) For the removal of doubts, it is hereby declared that there shall be no limitation whatever on the constituent power of Parliament to amend by way of addition, variation or repeal the provisions of this Constitution under this article.



# Basic Question raised before the Court



- ❧ Whether the amendments introduced by Sections 4 and 55 of the Constitution (42nd Amendment) Act, 1976 damage the basic structure of the Constitution by destroying any of its basic features or essential elements?

# Majority Opinion



## ☞ Validity of Amendments to Article 368

The majority held that the limited amending power of the Parliament was itself a basic feature of the Constitution and could not be used to remove the limitations on this power by means of such amendments.

Clause (5) was declared as unconstitutional on the ground of damaging the basic features of the Constitution

Clause (4) which barred judicial review in cases of constitutional amendments was held unconstitutional as it sought to make the entire Part III unenforceable and thus, enlarge the power of the Parliament limited by Article 13.

# Validity of Amendments to Article 31C



- ❧ The amendment made to Article 31C vastly extended its scope from protection of laws made for the purposes of Article 39 (b) and (c) to all the Articles under Part IV from challenge on the ground of Article 14 and 19.
- ❧ The majority set on the enquiry whether Article 14 and 19 could be said to be part of the basic structure of the Constitution so that no constitutional amendment may be made to abrogate them. The majority then undertook the task of weighing Directive Principles of State Policy against the Fundamental Rights.

# Validity of Amendments to Article 31C



- ☞ Hence, the majority declared the amendment to be beyond the powers of Parliament as violative of the essential features of the Constitution while emphasizing that:
- ☞ Three Articles of our Constitution, and only three, stand between the heaven of freedom into which Tagore wanted his country to awake and the abyss of unrestrained power. They are Articles 14, 19 and 21. Article 31C has removed two sides of that golden triangle which affords to the people of this country an assurance that the promise held forth by the Preamble will be performed by ushering an egalitarian era through the discipline of fundamental rights, that is, without emasculation of the rights to liberty and equality which alone can help preserve the dignity of the individual.



# Minority Opinion



- ❧ Validity of Amendments to Article 368
- ❧ Justice Bhagwati opined that clause (4) which barred judicial review of a constitutional amendment was invalid as it damaged two basic features of the Constitution viz. limited amending power of the Parliament and judicial review over the transgression of limitations on Parliament's power.<sup>13</sup> It sought to arrogate the Parliament from the status of 'creature of the Constitution' to an authority 'above the Constitution'
- ❧ Furthermore, in view of the limited amending power of the Parliament as declared by the Court in *Keshavananda Bharati's* case it could not have declared its power to be unlimited under clause (5) and thus, clause (5) is unconstitutional and void.

# Validity of Amendments to Article 31C



- ✧ Examining the inter-relationship between Part III and Part IV, Justice Bhagwati opined that from a human rights perspective, there was no essential differentiation in the nature of civil and political rights enshrined under Part III and socio-economic rights under Part IV.



- ❧ No law which is really and genuinely for giving effect to a Directive Principle could be inconsistent with the egalitarian principle and therefore, the protection granted to it under the amended Article 31C against violation of Article 14 cannot have the effect of damaging the basic structure.
- ❧ It has been specified in the judgment that every law enacted under Article 31C is required to satisfy the test of 'real and substantial connection' and judicial review will be open in this limited arena.
- ❧ Article 31 C will only protect the provisions which are basically and essentially necessary for giving effect to the Directive Principles and not those of incidental and subsidiary character.
- ❧ Hence, no carte blanche immunity being granted to all laws, the amendment to Article 31 C was not unconstitutional.