

## SHANKARI PRASAD VS. UNION OF INDIA<sup>1</sup>

Shankari Prasad versus Union of India is a 1951 case that challenged the scope of the powers of Parliament to make amendments. This is significant because it was the first time that the amending power of the Parliament was challenged in the judiciary, something which will continue to happen in the next decades. The case was directly related to the First Constitution Amendment Act, 1951, which changed the property rights enshrined in Article 31, as well as brought some changes to Articles 15 and 19.

After 1 year of promulgation of the Constitution, the Parliament introduced the First Amendment Act due to some difficulties arising in the implementation of the policies. Most crucial of these was Article 31, which made the right to Property a fundamental right. This article was hindering the course of land reform programmes and the Zamindari Abolition Act of the Indian Government. The First Amendment was thus made to clear such obstruction. The amendment added Articles 31A and 31 B, which prohibited laws relating to land and estates from being challenged under fundamental rights and introduced a 9th schedule, which protected certain acts and regulations from judicial review.

Petitioner Shankari Prasad challenged the validity of the Constitution (First Amendment) Act, 1951. Citing clause 2 of Article 13, he argued that the Parliament cannot make any law that violates or abridges rights enshrined in Part III of the Constitution. Thus, the amendment made by invoking Article 368, he argued, is void.

### **Question of Law**

The major question of law in front of the court was regarding the scope of Article 368 and the interpretation of Article 13. Article 368 allows the Parliament to make amendments, while Clause 2 of Article 13 safeguards all the Fundamental Rights from any abridgement or change by any law. Right to Property at that time was a Fundamental Right enshrined in Article 31 of Part III of the Constitution. Thus, contentions were regarding the First Amendment, whether it is unconstitutional and thus should be nullified or not.

### **Judgment**

The court, in its judgment, held the constitutional validity of the First Amendment. Regarding Article 13, the court held that the “law” mentioned in the article should be interpreted as the Rules and Regulations which come under the ordinary legislative power of the legislature. However, since the First Amendment is a constitutional amendment, it does not come under the ambit of Article 13(2). The court held that the Parliament is enshrined by the Constitution itself through Article

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<sup>1</sup> AIR 1951 SUPREME COURT 458

368 to make amendments, and this is applicable for Part III as well. Changes cannot be made through ordinary legislative power. Thus, the court validated the First Amendment and provided an interpretation that made Parliament powerful enough to change the Basic Structure as well. Shankari Das versus the Union of India is a landmark case not only because it was the first one that dealt with the Basic Structure of the Constitution, but it also made possible the implementation of the Zamindari Abolition Act by giving supremacy to Parliament over Fundamental Rights. The Basic Structure Doctrine debate would continue till the next two decades, till the Kesavanand Bharti Case of 1973, which firmly established that the Basic Doctrine of the Constitution, like the fundamental rights, cannot be changed.