

BERUBARI UNION v. UNION OF INDIA¹

A post-1947 territorial dispute between India and Pakistan over the Berubari area in West Bengal gave rise to the Berubari Union Case. The Nehru-Noon Agreement, which resulted from Pakistan's claim to Berubari based on early boundary demarcations divided the region in 1958. This brought up constitutional issues regarding whether such a cession needed legislative action or an amendment under [Article 368](#).

The Supreme Court upheld national sovereignty and respect to legislative procedures for territorial changes when it declared in 1960 that changing India's boundaries required a constitutional amendment.

Facts of the Case

Berubari Union No. 12 became part of West Bengal under the Radcliffe Award of August 12, 1947, and continued to be administered as such after the Constitution came into force on January 26, 1950. Although India and Pakistan had several territorial disputes following the Award, Berubari itself was not raised before the Badge Commission, which both nations had agreed would settle their disagreements; the Commission gave its decision on January 26, 1950. It was only in 1952 that Pakistan, for the first time, claimed that Berubari should have been allocated to East Bengal under the Radcliffe Award. To resolve these complex boundary issues, the Prime Ministers of India and Pakistan signed the Indo-Pakistan Agreement on September 10, 1958.

Afterwards, it became unclear whether the execution of the Berubari accord required any legislative action, either through relevant Parliamentary legislation pertaining to Article 3 or Article 368 of the Indian Constitution. Similar concerns about the swapping of enclaves also surfaced. When doubts arose regarding the constitutional authority to implement these provisions, the President of India sought the Supreme Court's advisory opinion under Article 143(1), resulting in the *Berubari Reference Case*.

Question of Law

The Berubari Union Reference raised three key constitutional questions before the Supreme Court. First, the Court had to determine whether implementing the Indo-Pakistan Agreement concerning the Berubari Union required any legislative action at all. Second, it examined whether Parliament could give effect to this agreement merely through a law enacted under [Article 3](#), which deals with changes to the boundaries of States or whether such action necessarily required an amendment of the Constitution under Article 368, or possibly some other constitutional

¹ AIR 1960 SC 845

mechanism. Third, a similar question arose regarding the proposed exchange of Cooch-Bihar enclaves with Pakistan: whether Parliament's power under Article 3 was sufficient for this purpose, or whether an additional constitutional amendment under Article 368 was indispensable. Together, these issues centered on the scope of Parliament's authority to alter India's territory and boundaries and the constitutional procedure required for ceding or transferring land to a foreign State.

Judgement

The Supreme Court's 1960 advisory opinion in the Berubari Union Case addressed the constitutional validity of the 1958 Indo-Pakistan (Nehru–Noon) Agreement, under which India proposed to transfer part of the Berubari Union to Pakistan and exchange the Cooch-Bihar enclaves. The Court held that the Indian Constitution does not permit the cession of territory through executive action alone, nor can such a transfer be justified merely by invoking Parliament's power under Article 3, which deals with altering state boundaries. Article 3, the Court noted, enables internal redistribution of territory within India, but not the transfer of Indian territory to a foreign state. Since the Berubari agreement involved a clear reduction of India's sovereign territory, the Court ruled that such cession amounts to an amendment of the Constitution itself.

Accordingly, the Supreme Court concluded that a constitutional amendment under Article 368 was mandatory to implement the Nehru–Noon Agreement. This interpretation reinforced the principle of national sovereignty by ensuring that any alienation of Indian territory must undergo the highest level of democratic scrutiny and follow formal constitutional processes. The judgment thus established a foundational precedent that territorial transfers cannot be executed without explicit constitutional authorization, eventually leading to the Ninth Constitutional Amendment (1960) to give effect to the agreement.