

Keshavananda Bharati, the unwitting saviour of the Constitution

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Kesavananda Bharati judgment is a landmark judgement in the history of the Supreme court. It has in many dark times saved democracy and dignity of individuals. In this context it is necessary to study the importance of judgement from main point of view.

In news: Kesavananda Bharati Swamiji, the sole unwitting petitioner in the historic Fundamental Rights case expired recently.

Placing it in syllabus: Indian polity

Dimensions

1. Kesavananda Bharati Case
2. Background
3. Judgement
4. Importance

Content:

Kesavananda Bharati Case:

Background:

- The case had its roots in **Golaknath vs State of Punjab**, in which the Supreme Court in an 11-member bench, ruled that **Parliament could not curtail any fundamental right guaranteed under the Constitution.**
- To nullify the Golaknath verdict, Parliament enacted the **24th Amendment** to the Constitution, laying down that its **powers to amend the Constitution were unrestricted and unlimited.**

- Two years after Golaknath, the government nationalised a big portion of the banking system but the compensation to existing shareholders was minimal.
- In the **Rustom Cooper vs Union of India (Bank Nationalisation case)** the Supreme Court struck down the compensation offered, while upholding the government's right to nationalisation.
- The **25th Amendment** made many changes in **Article 31** (dealing with compulsory acquisition of property) following the Bank Nationalisation case.
- The **26th Amendment** terminated the privileges and privy purses of the ex-rulers of the former princely states, which was aimed at getting over the Supreme Court's ruling in the privy purses case.
- Meanwhile, Kesavananda Bharati had moved the top court on 21 March 1970 against the **land reforms law passed by the Kerala government** with an objective to distribute land among landless farmers.
- He had contended that the land reforms law by the government was an **attempt to impose restrictions on the management of the mutt's property**, which was the only source of income for his ashram.
- The then **Senior advocate Nani Palkhivala, representing Swamiji** extended the ambit of the case and **challenged the series of constitutional amendments** introduced.

The law came to be known as the **"Kesavananda Bharati versus State of Kerala" case**. The case was **unique** in the sense that it was heard by a **bench of 13 judges** – the **largest formed in the Supreme Court** and was heard from October 1972 to March 1973. The judgment was a mammoth 703 pages and the case was won by **7:6 majority**.

Judgment:

- The judgment introduced the **"Basic Structure" doctrine** which limited Parliament's power to make drastic amendments that may affect the **core values enshrined in**

- the Constitution** like secularism and federalism.
- It upheld that the **constitutional amendments should not alter the “basic structure” of the Constitution.**
 - The verdict upheld the power of the **Supreme Court to judicially review laws of Parliament.**
 - It evolved the **concept of separation of powers** among the three branches of governance – **legislative, executive and the judiciary.**
 - The judgment also **refused to consider the right to property as a fundamental right** that was covered by the ‘basic structure’ doctrine.
 - The aftermath of the judgment also saw the **supersession of three judges** of the Supreme Court – **J.M. Shelat, A.N. Grover and K.S. Hegde** for Chief Justiceship who were part of the majority verdict on the Bench.
 - They resigned in protest amidst public furore.
 - The **Emergency was proclaimed shortly after the judgment** was delivered on **April 24, 1973.**

Importance:

- The case is significant for its ruling that the Constitution can be amended but not the basic structure.
- The case resulted in the judiciary taking over the vacuum that has resulted from a divided dysfunctional Parliament and an executive that is often in office but not in power.
- The idea that **Parliament was a creature of the Constitution** and draws its powers from it is now well-established.
- The basic structure doctrine was further clarified in **Minerva Mills v. Union of India.** In July 1980, the Supreme Court declared **sections 4 and 55 of the 42nd amendment as unconstitutional.** It further endorsed and evolved the basic structure doctrine of the Constitution.

However, **critics** of the **doctrine have called it undemocratic,**

since unelected judges can strike down a constitutional amendment.

Mould your thought:

1. Explain the importance of Kesavananda Bharati Case in upholding the constitutional values.