

## Short Notes on Article 13

### Foundation Batch – Jatin Gupta

#### Background

One of the main agendas of the Indian leaders after independence was s **to introduce land reforms** to address the various inequalities that existed w.r.t the distribution of agricultural land in the county. As a result, various land reform laws were introduced by different states which were challenged by the Zamindars and the landowners in courts as they contended that these laws are **violative of Art 14, 19, and 31** of the Constitution. Most of the courts ruled in the favor of the Zamindars and the landowners as they agreed that these laws are violative of the FRs and therefore liable to be struck down under the powers of art 13.

To overcome this obstacle posed by the FRs, the Parliament of India passed the **1st CAA that added art 31A and 31B** among other changes. The objective behind **1st CAA was to introduce exceptions to Right to Property and Right to Equality** in order to avoid the scrutiny of courts and to ensure the success of the land reform laws introduced by various states.

#### Shankari Prasad Vs UoI, 1951

In this case, the petitioners (Zamindars) argued that the 1st CAA is invalid as it is inconsistent with the FRs and weakens them. They further argued that **CAA falls under the meaning of the law as provided in art 13(2)**. The State on the other hand, responded that **CAAs do not come under the definition of law as provided in art 13(2) and therefore are not subject to the power of judicial review**.

It was argued that CAAs can abrogate, amend, and weaken the FRs and the Parliament of India enjoy unfettered powers to do so.

#### Court's verdict

The court held that Parliament has been provided 2 kinds of legislative powers by the Constitution: the first set of power allows the Parliament to legislate ordinary laws; the second type of power allows the Parliament to amend the Constitution u/a 368. The court held that only the ordinary legislative power of Parliament is subject to judicial review and not constituent legislative powers under which the Parliament enjoys unlimited powers to amend the Constitution, including the Fundamental Rights. In other words, Art 13 is not applicable to laws made u/a 368, i.e, CAAs are not subject to judicial review. As a result, the Supreme Court gave the decision in favor of the govt and upheld the validity of the 1st CAA.

#### Sajjan Singh Vs State of Rajasthan, 1965

The SC reiterated its position that CAAs are not a law u/a 13(2) and therefore, not subject to judicial review. The 5 judge bench of the court gave a 3:2 decision where the dissenting opinion provided by Justice Hidayatullah and Justice Mudholkar paved the way for future judgments of the Supreme Court.

#### I.C. Golaknath Vs State of Punjab, 1967

11 judge bench heard the case where 17th CAA was challenged for violating FRs. SC (in 6:5 judgment) held that **CAAs are also subject to Judicial Review** and Parliament does not enjoy unlimited powers to amend the FRs. The court further held that **FRs are sacrosanct in nature** and cannot be amended in any manner by the Parliament. The court also gave the **doctrine of Prospective Overruling** that means the judgment of the court will be applicable from the date of the judgment so as to avoid chaos and confusion.

### **Response of the Parliament**

In response to the Golaknath judgment, the Parliament introduced the 24th CAA and the 25th CAA that effectively overruled the judgement of the court.

**24th CAA** added to article **13(4)** in the constitution. It mentioned that CAAs under article 368 will not attract the attention of Article 13 i.e. CAA cannot be challenged in court for violating FRs. Thus, article 13 will not be applicable to CAA made under article 368. Thus, CAA are not subject to JR. Also, It added **clause 3 to article 368** stating that nothing in article 13 shall apply to any amendment made under article 368

**25th CAA** added Article 31 C: Any amendment to FRs for enforcement of DPSP under articles 39(b) and 39(c) cannot be challenged for violating articles 14, 19 and 31. The validity of the 24th and 25th CAA was challenged in **Kesavananda Bharti Vs the State of Kerala**.

### **Kesavananda Bharti Vs State of Kerala, 1973**

A 13-judge bench of the SC pronounced a 7:6 verdict upholding the validity of the 24th and 25th CAA. It was in this case that the SC laid down the doctrine of the basic structure of the Constitution.

Court held that parliament can amend the FRs, subject to the **basic structure** of the Constitution. This includes Rule of Law, Equality, Federalism, Secularism, Parliamentary Democracy among others. The constitution cannot be amended fully by the Parliament. There exists an implied limitation on the powers of the Parliament to amend the Constitution. Some parts of the Constitution cannot be changed as they form the basic structure of the Constitution.

### **Response of the Govt**

42nd CAA 1976 that added articles 368 (4) and 368 (5) which enabled the Parliament to amend the constitution in an unlimited manner.

### **Minerva mills vs UOI (1980)**

The Congress government had secured amendments to Article 368 of the Constitution to give Parliament unfettered powers to amend the Constitution and also to take away the jurisdiction of the courts to review such amendments. Therefore, the first issue for the court's consideration in the Minerva Mills case was whether the amendments to the Constitution adding two new clauses to Article 368 (with a view to nullifying the Kesavananda judgement) were valid.

SC held that the amendment is taking away powers of judicial review and since JR is a part of the basic structure of the constitution the court struck down clauses 4 and 5 of article 368.