

# Supreme Court Upholds 24th Amendment but Says Parliament Cannot Alter Constn.'s Basic Structure

**From Our Legal Correspondent**

**NEW DELHI, April 24.**

A special 13-Judge Bench of the Supreme Court today unanimously upheld the constitutional validity of the Constitution (24th Amendment) Act, 1971—passed by Parliament as a result of the well-known Supreme Court judgment delivered in the Golaknath case in 1967—seeking to restore to Parliament the power to abridge or take away fundamental rights by means of a Constitution amendment under Article 368 (dealing with amendment of the Constitution).

However, nine of the Judges of the Special Bench, namely, the Chief Justice, Mr. Justice Sikri, Mr. Justice Shelat, Mr. Justice Hegde, Mr. Justice Grover, Mr. Justice Jaganmohan Reddy, Mr. Justice Palekar, Mr. Justice Khanna, Mr. Justice Mukherjee and Mr. Justice Chandrachud held that "Article 368 does not enable Parliament to alter the basic structure or framework of the Constitution".

It may be mentioned that as to what exactly constitutes "the basic structure or framework of the Constitution" has been left open. The Special Bench, by a majority of 9 to 4, has overruled the majority decision of the Supreme Court in the Golaknath case (which held that Parliament was not competent to abridge or take away fundamental rights by means of a constitutional amendment under Article 368).

The Special Bench also unanimously upheld the constitutional validity of Section 2 (A) and 2 (B) of the Constitution 25th Amendment Act, 1971.

Section 2 (A) of the Constitution 25th Amendment Act deals with the replacement of the word "compensation" by the word "amount" in Article 31 (2). According to this, it is not obligatory on the part of the State to make provision for payment of "compensation" just equivalent and full indemnification to a person deprived of his property in a law dealing with acquisition of private property by the State for "public purpose".

It may be mentioned that this amendment through Section 2(A) was made in Article 31 (2) of the Constitution subsequent to the Supreme Court's judgment in the well-known Bank Nationalisation case.

The Special Bench also unanimously upheld the Constitutional validity of Section 2(B) of the Constitution 25th Amendment Act, 1971.

According to Section 2(B) introduced in Article 31 (2) of the Constitution by the Constitution 25th Amendment Act, nothing in sub-clause "F" of Article 19 (1) of the Constitution—dealing with fundamental rights to hold and dispose of property—shall affect any law dealing with acquisition of private property by the State for public purpose under Article 31 (2).

That means a law dealing with acquisition of property by the State for the public purpose under Article 31 (2) was not liable to be tested for its validity on the ground whether or not such law imposed "reasonable restrictions" and "in the interests of general public" in respect of fundamental rights of the concerned affected person under Article 19 (1) (F), whose property was acquired under the said law.

It may be stated that this Section 2 (B) was introduced in Article 31 (2) of the Constitution by the Supreme Court judgment in the bank nationalisation case which judgment, among others, overruling the Supreme Court decision in the well-known A. K. Gopalan case decided in 1950, held that a law made under Article 31 dealing with compulsory acquisition of property by the State should also satisfy the requirement of "reasonable restrictions" and "in the interests of general public" under Article 19 (1) (F)—dealing with right to hold or dispose of property.

The Special Bench while unanimously upholding the first part of Section 3 of the Constitution 25th Amendment Act, has, however, by a majority of 9 to 4 declared the second part of Section 3 as "invalid". It may be mentioned that Section 3 of the Constitution (25th Amendment) Act introduced the new Article namely 31 (C) in the Constitution.

According to the first part of this new Article, which is upheld by all the judges of the Special Bench, no law giving effect to the Directive principle dealing with the distribution of controls and ownership of material resources of the community to subserve the common good and also dealing with the prevention of concentration of wealth and means of production, etc.—free from challenge in courts on grounds of violation of specified fundamental rights—was also upheld. Another significant success in their favour, according to these sources, is that the majority judgment in the Golaknath Case stands reversed.

According to some of the petitioners, it was significant that the court left the scope open for limited judicial review in respect of laws made under the first part of the new Article 31-C, namely, whether or not a given law, in substance, was meant to give effect to the specified Directive Principles under Article 39 (B) or (C) dealing with the distribution of control and ownership of material resources of the community and also prevention of concentration of wealth etc.

According to these petitioners, the other significance of today's judgment in their favour was that the amount (or principles to be fixed in a given law dealing with acquisition of private property for public purpose) must bear a reasonable relationship, to the value of the property acquired.

The Special Bench, after pronouncing the validity of the Constitution 24th, 25th and 29th Amendment Acts, remitted the writ petitions challenging the validity of the Constitution 24th Amendment Act dealing with the abolition of privy purses and privileges, etc., and also the validity of the Coking Coal Mines Nationalisation Act to the Constitution Bench for disposal in accordance with the law.

**Determination of 'Amount'**

In rendering the above decisions, the Special Bench has in all delivered 11 judgments. The Chief Justice, Mr. Sikri, delivered his judgment while Mr. Justice Shelat delivered his own and Mr. Justice Hegde delivered his judgment and that of Mr. Justice Mukherjee. Mr. Justice Ray, Mr. Justice Jaganmohan Reddy, Mr. Justice Palekar, Mr. Justice Khanna, Mr. Justice Mathew, Mr. Justice Beg, Mr. Justice Dwivedi and Mr. Justice Chandrachud delivered their respective separate judgments.

A perusal of various judgments reveal that the majority of judgments (8 to 5) has interpreted the word "amount" in amended Article 31 (2) to mean that this expression (amount) should bear a reasonable relation to the value of property acquired under a given law dealing with acquisition of private property by the State for public purpose.

This is said to be a significant one in that, according to legal circles, this interpretation would prevent a "major obstacle" in the fixation of amount in a law dealing with compulsory acquisition of private property for public purpose.

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In holding that Article 368 did not enable Parliament to alter the basic structure or framework of the Constitution, gave by way of illustrations (not meant to be an exhaustive list) of what would constitute the "basic structure or framework of the Constitution." For example, parliamentary democracy, federal structure and separation of powers, the character of the Sovereign Democratic Republic and the doctrine of equality, among others, might form the basic structure or framework.

According to some sources close to the Government circles, today's judgment upheld the power of Parliament to amend or take away fundamental rights through an amendment of the Constitution. It was also claimed by these sources that the first part of Article 31-C empowering Parliament to bring about socioeconomic reforms in furtherance of the Directive Principles aimed at distribution of and ownership of material resources and prevention of concentration of wealth and means of production, etc.—free from challenge in courts on grounds of violation of specified fundamental rights—was also upheld. Another significant success in their favour, according to these sources, is that the majority judgment in the Golaknath Case stands reversed.

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**Large Powers to Parliament to Fulfil Social Objectives'**

**NEW DELHI, April 24.**

The Supreme Court today, in the words of Mr. Justice S. N. Dwivedi, one of the 13 judges of the Constitution Bench, shifted back to its original position in the Gopalan Case of 1950, that Parliament is "omnipotent".

The court's position in the Golaknath case of 1967 was that the Supreme Court is "omnipotent". Mr. Dwivedi said in his review of the history of the court's decision on fundamental rights.

The Supreme Court's stand was summed up by the young judge on the bench. Mr. Justice Y. V. Chandrachud: "Let us...give to Parliament the freedom within the framework of the Constitution, to ensure that the blessings of liberty will be shared by all."

Declaring that "unless the State fails to create conditions in which the fundamental freedoms could be enjoyed by all, the freedom of the few will be at the mercy of the many and then all freedoms will vanish", Mr. Chandrachud sounded a note of caution to Parliament: "If despite the large powers now conceded to Parliament, the social objectives are going to be a dustbin of sentiment, then we betide those in whom the country has placed such massive faith."

Justice Chandrachud said in his judgment that "adventitious circumstances" were responsible for this unprecedented action of the bench. "This is the first time in the history of the court that a number of judgments had been handed down in a single case."

He said the counsel allround consumed so much time to explain their points of view that very little time was left to the judges to elucidate their own points of view. And, the impending retirement of the Chief Justice set a deadline for the judgment. The Judges did not have time even to exchange draft judgments.

The Constitution Bench, which heard the present case included two members of the majority in the 11-member Constitution Bench of 1967—Mr. S. M. Sikri, now Chief Justice, and Mr. Justice J. M. Shelat.

The Chief Justice, Mr. Sikri, ruled that Parliament can amend but not abrogate fundamental rights and upheld the 24th Constitutional Amendment along with his 12 colleagues on the bench saving the amendment met the test.

Mr. Justice Shelat, in the judgment he wrote with Mr. Justice A. N. Grover, said the Golaknath ruling had now become "academic" and that the 24th Amendment is valid because, in his view, it does not add to the power originally conferred by the Constitution on Parliament.

**BEG QUOTES MANU AND PARASARA**

Mr. Justice M. H. Beg held all the three Constitution amendments to be valid. He read lengthy excerpts from his judgment.

Quoting Manu and Parasara, Mr. Justice Beg said the laws of each age were distinct and no generation had the right to tie down future generations even on fundamental rights.

As it was, a 20-minute rule enforced by the Chief Justice made it possible for all the judgments to be delivered within a day. The Judges could not have possibly read out all the 1,240 typed foolscap pages they had dictated between them. So they read out excerpts and conclusions only.

When Judges took more time than they had agreed upon, the Chief Justice sent up to them reminder slips. The Judges were particularly concerned about Justice M. H. Beg, who had a delicate heart condition but he ignored the pleas of his brother judges and took his full 20 minutes to read out excerpts and conclusions.—PTI

**The Court's Order**

**NEW DELHI, April 24.**

The Supreme Court's final order in the fundamental rights case did not set out any views as to what the court has decided in the case.

Nine Judges summed up the "majority view" of the Court thus:

1. The Golaknath case judgment is overruled.
2. Article 368 does not enable Parliament to alter the basic structure or framework of the Constitution.
3. The Constitution 24th Amendment Act, 1971, is valid.
4. Section 2(A) and 2(B) of the Constitution 25th Amendment Act, 1971 is valid.
5. The first part of Section 3 of the Constitution 25th Amendment Act, 1971, is valid. The second part, namely, "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" is invalid.
6. The Constitution 29th Amendment Act, 1971, is valid.

The signatories to the above—what was called the "view of the majority" were Mr. Justice S. M. Sikri, Mr. Justice J. M. Shelat, Mr. Justice K. S. Hegde, Mr. Justice A. N. Grover, Mr. Justice B. Jaganmohan Reddy, Mr. Justice D. G. Palekar, Mr. Justice H. R. Khanna, Mr. Justice A. K. Mukherjee and Mr. Justice Y. V. Chandrachud.

Four of the 13 Judges Mr. Justice A. N. Ray, Mr. Justice K. S. Mathew, Mr. Justice M. H. Beg and Mr. Justice S. N. Dwivedi, were not signatories to the above.

However, all the 13 Judges signed the "order of the Court" which merely stated: "The constitution Bench will determine the validity of the Constitution 26th Amendment Act, 1971 in accordance with law."

The cases are remitted to the Constitution Bench for disposal in accordance with law. There will be no order as to costs incurred upto this stage".—PTI

**Madras Weather**

**NUNGAMBAKKAM on April 24:** Max. 29.8°C (85.6°F); Min. 27.4°C (81.3°F); Humidity at 5:30 p.m.: 77 per cent.

**MEENAMBAKKAM on April 24:** Max. 35.2°C (95.4°F); Min. 27.1°C (80.7°F); Humidity at 8:30 p.m.: 78 per cent.

Forecast (valid until Thursday morning): Partly cloudy. No significant change in day temperature.

## India Having Talks with Bangla on Joint Approach to Pak.

**From G. K. Reddy**

**NEW DELHI, April 24.**

The External Affairs Minister, Mr. Swaran Singh, told Parliament today that India was consulting Bangladesh for formulating a "joint and common" approach to the Pakistan statement on the Indo-Bangla declaration proposing simultaneous repatriation of the POWs, the Bengalis in Pakistan and the non-Bengalis in Bangladesh who still owed their allegiance to Pakistan.

The Pakistan Government, he said, had sent a formal communication spelling out its reactions to the Indo-Bangladesh declaration and a reply would be sent in the light of the consultations now going on between India and Bangladesh on the subject.

Replying to the Lok Sabha debate on the External Affairs Ministry's demands for grants, Mr. Swaran Singh made it quite clear that though it had no intention of taking a "negative attitude" to this human problem despite Pakistan's "disappointing response" to the idea of simultaneous repatriation, India was in no particular hurry to respond to Pakistan's call for talks on the implications of the Indo-Bangla joint declaration. If Pakistan accepted the principle of separating the humanitarian issues from political questions, it should be possible to work out a "fair and practical solution" to this whole problem of POW and civilian repatriation.

Turning to Sino-Indian relations, the External Affairs Minister pointed out that there were "some significant marks of improvement" in the Chinese attitude. He thought that Peking was now taking a more realistic view of the developments in the sub-continent. China had not only slowed down its anti-Indian propaganda but also suspended the loud-speaker campaign on the Sikkim border.

The Chinese diplomats were more "congenial and relaxed" in their social contacts with their Indian counterparts. And it was India's hope that China would realise the importance of better relations between the United States and the Soviet Union, China and the other countries of the region. He maintained that there could be no normalcy in the sub-continent unless Pakistan recognised Bangladesh and removed this "major obstacle" to the restoration of peace and stability in the region.

The Indo-U.S. relations, Mr. Swaran Singh said, had shown some improvement in recent months after the sharp differences that had arisen during the Bangladesh conflict. But the principal obstacle to the restoration of friendly and mutually beneficial relations was the continued supply of American arms to Pakistan. It was India's contention that the resumption of U.S. arms supplies to Pakistan would seriously impede the normalisation of Indo-American relations. This position was expressed to the U.S. Deputy Secretary of State, Mr. Kenneth Rush, during his visit to Delhi last week in the hope that the United States would take note of this Indian concern.

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The promises were contained in Dr. Kissinger's statement that the U.S. would not sacrifice its allies' interests while the U.S. engages in superpower diplomacy with the Soviet Union and China, that the U.S. was committed to the defence of Europe and would not unilaterally withdraw its troops from there, that the U.S. would continue to support Europe's move towards economic integration (even while it was concerned by some aspects of it) and that it would co-operate with Europe and Japan in solving common problems like the energy crisis, instead of working at cross purposes with them. Also included was a special promise to Japan that

**PRG—Saigon Accord on Release of Civilians**

**SAIGON, April 24.**

The South Vietnamese Government and the Provisional Revolutionary Government (PRG) agreed today to release several hundred civilian prisoners each this week in the first break of their deadlock over political prisoners.

Neither side admits to holding any political prisoners. Each claims the opposite side has detained thousands.

To-day South Vietnam agreed to release 750 of the 5,081 convicted terrorists it says it holds. The PRG agreed to release all 637 civilian detainees it admits to holding.

The break to-day came just four days before the 90-day deadline for the release of all civilian prisoners, as set by the Paris ceasefire agreement which went into effect on January 28.

The accord was reached at the regular twice-meeting of delegation chiefs of the two-party Joint Military Commission (JMC). Military sources said the releases could begin as early as Wednesday.—UPI

**ILLEGAL MOVEMENT OF MEN AND TANKS**

The U.S. accused North Vietnam today of violations of the peace agreements, including illegal movement of 30,000 men and 400 tanks into South Vietnam.

Hanoi was also accused formally of conducting a campaign of terror, assassination and political obstruction.

The U.S. charges were contained in a lengthy diplomatic note dated April 20. It was dispatched last weekend to the International Conference on Vietnam.

The U.S. rejected as "utterly groundless" North Vietnamese allegations in mid-April of American violations and said that Hanoi's attitude was justification for the U.S. to suspend its observance of the peace agreements in whole or in part.—PTI

**Threat to Princes**

**COPENHAGEN, April 24.**

The Danish intelligence service has been mobilised to thwart an alleged Arab guerrilla plan to kidnap the young Danish prince, Frederik and Joachim, the Copenhagen newspaper Ekstra-Bladet reported yesterday.



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## U.S. Plan for New Atlantic Charter

**From Easwar Sagar**

**WASHINGTON, April 24.**

The U.S. President, Mr. Nixon's special adviser, Dr. Henry Kissinger's call for a "Atlantic Charter" which would govern relationships among the three economic superpowers of the non-communist world—the U.S., the European Economic Community and Japan—has become a major bid by the U.S. to heal the rifts and rivalries that have become evident in its dealings with the other major industrial nations.

Dr. Kissinger's policy statement which dealt exclusively with this phenomenon will form the basis of the high level negotiations that the U.S. will conduct this year with its erstwhile political allies who have now emerged as its economic rivals.

President Nixon is scheduled to meet the heads of Government of several EEC countries this summer and will follow it up with a visit to European capitals later this year which the Nixon Administration has billed as the year of Europe.

The American fear apparently is that even as its detente with China and the Soviet Union is gathering momentum, it is drifting apart from its Atlantic moorings—though the differences in approach between the U.S. and Europe and the U.S. and Japan are now confined to trade and monetary matters, there have been some indications lately that this might spill over into their political relationships. On Middle East for instance a divergence of approach has already begun to become evident as Europe and Japan, more than the U.S. realise, that continued supplies of vital energy fuels depend on better relations with the Arabs who control this life blood of industry.

The Kissinger speech, given to an audience of editors in New York was unusual in that it dispensed with the over-polite language of diplomacy that is normally employed in public statements, and got down to some very frank specifics. Besides appealing for a co-operative rather than a competitive relationship, it contained American pledges as well as American warnings to its old allies.

The promises were contained in Dr. Kissinger's statement that the U.S. would not sacrifice its allies' interests while the U.S. engages in superpower diplomacy with the Soviet Union and China, that the U.S. was committed to the defence of Europe and would not unilaterally withdraw its troops from there, that the U.S. would continue to support Europe's move towards economic integration (even while it was concerned by some aspects of it) and that it would co-operate with Europe and Japan in solving common problems like the energy crisis, instead of working at cross purposes with them. Also included was a special promise to Japan that

the U.S. for its part would see that these were not excluded from what has until now been an exclusive Atlantic club.

The warning was contained in the Kissinger declaration that if the EEC continued to view itself as a regional entity interested only in advancing its sectarian interests, then similar isolationist and nationalistic sentiments would come to dominate the U.S.'s approach—and this boded trouble for everybody, particularly in the trade and monetary fields.

The forthcoming negotiations in these areas, Dr. Kissinger was saying, should be conducted not to secure advantages at the expense of others but in a manner calculated to serve their common as well as diverse interests. In fact Dr. Kissinger appeared to be calling for a limited surrender of sovereignty when he said that what was required was an "understanding" of what should be done jointly and of the limits that should impose on the scope of our autonomy.