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Case Comment: Sajjan Singh v State of Rajasthan

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INTRODUCTION

The Indian constitution was from its beginning and remains the fundamental law of the country and is a paramount institution for its national identity.[1] It should come as no surprise that the war for superiority in India was mostly waged on the constitutional battlefields, where the legislature and the judicial system were vying for hegemony, as we shall analyze specifically later on while reviewing the pertinent scenario. A constitution must contain safeguards against misuse of power or it loses integrity and the word "hegemony" takes on all of its pejorative. Since Article 13(2) does in fact impose a restriction, there has been controversy regarding the scope of the legislature's authority to alter the constitution since the outset, especially with respect to the "fundamental rights" outlined in Part III of the Constitution.

FACTS

The Inspector General of the Jaipur Police designated Sajjan Singh as a Sub-Inspector of Police on February 10th, 1948. In September 1951, Rajasthan's Inspector General of Police corroborated

[1] MP Singh, *V.N. Shukla's Constitution of India* (11th edn., Eastern Book Company 2008)

this. On August 11, 1953, a discharge order for the petitioner was issued in response to a number of allegations following an investigation. Sajjan Singh submitted a plea to the High court in line with article 226 of the Indian Constitution Act. Considering that he hadn't been given enough opportunity to respond to his conduct and that he had, regardless, having been designated by the IG of the Police of Rajasthan, the DIG, Jaipur Range, was not authorized to eject him. Pleas against termination were repeatedly denied, on June 26, 1954, and January 9, 1956. In conjunction with his request for permission to appeal the judgment the of High Court rejecting the applicant's writ suit challenging the Rajasthan Land Reforms and Resumption of Jagirs Act (No. VI) of 1952, Thakur Sajjan Singh has filed this motion for stay (to be known as the Act from now on). The Act's legality was contested by the petitioner in a writ petition submitted to this court. The 23rd of August 1954 saw this Court reject the writ petition. The applicant then requested authorization from this court to appeal to the Supreme Court. The State was notified of this request, which was submitted after that. The applicant requests (1) that this Court may be happy to give a stay order prohibiting the State from intervening in any way with the petitioner's custody over his jagir or from taking any actions under the Act until the application for permission to appeal is decided, and (2) that, In the case that the application for permission to appeal is dismissed by this Court, the applicant may be given a stay order with the same conditions pending the outcome of his appeal for exceptional leave to appeal to the Supreme Court. The stay application allegedly was submitted in accordance with Order 45, Rule 13 of the Code of Civil Procedure and Section 151 of the latter.

ISSUES

1. Whether a modification to a fundamental right within article 368 qualify as a "law" per article 13 (2)?
2. Can a fundamental right in part III of the Constitution be amended by Parliament in any way within article 368?
3. Does an adjustment to a fundamental right within article 368 limit the High Courts' authority under article 226?

4. Does Article 368 provide Parliament a particular ability to modify the Constitution in addition to outlining the process for doing so?
5. Is it preferable that the Court address a matter that hasn't been brought up before it?

OBSERVATION OF SUPREME COURT

In this instance, the constitutionality of the 17th Amendment was contested. The majority opinion of the Supreme Court's five judges was that because the Seventeenth Amendment curtailed the High Courts' authority, it needed to be ratified by at least half of the States in accordance with article 368. Because the term "amendment of this constitution" in article 368 manifestly and irrefutably indicates a revision of all the Constitution's regulations, it would be irrational to assert that the term "law" in article 13(2) took in Constitution Alteration Acts made under that provision. The Supreme Court observed that the preamble to the Constitution was sombre and dignified and that it seemed to summarize its fundamental principles. Can it not be claimed that they indicate the Constituent Assembly's determination to permanently enshrine the fundamental provisions of the Constitution? Writ petitions hinge on determining the exact scope and impact of Art. 368? The rulings in Sajjan Singh's case laid forth the general principles of the process that would eventually—and is still—be used to modify the Indian Constitution.

DECISION OF THE SUPREME COURT

It has been observed that the technical definition of the term "amend" does not have any restriction over the ability to amend, which is a very broad power.[2] The phrase "amendment of the Constitution" clearly and indisputably refers to changing all of the Constitution's clauses. The phrase "law" in Article 13(2) does not refer to a measure voted by Parliament within the authority granted to it by the Constitution to modify the Constitution. The Constitution's authors would have taken the care of drafting an explicit provision in that regard if they had intended for any future revision to be subject to Art. 13(2). It is reasonable to presume that those who drafted the Constitution were aware that Parliament should have the authority to alter such rights in order to address issues that may arise throughout the nation's socioeconomic

[2] *Sajjan Singh v State of Rajasthan* [1965] AIR 845

advancement and development. Furthermore, while certain Part III articles could be legitimately outlined as the very core and lynchpin of the majoritarian approach to life introduced by the Constitution in this country, it could not be claimed that the people's fundamental rights were perpetual and invincible in the sense that they could never be rescinded or modified. Hidayatullah, J., who presented a separate ruling, concurred with the Chief Justice that the 17th Amendment was reasonable, but he conveyed his disagreement with Shankari Prasad's[3] specific justification in a highly succinct way:

"There is indeed no complete definition of the word "law"' in the article but, significantly, the definition does not seek to exclude Constitutional amendments which it would have been easy to indicate."[4] This is very intriguing because it demonstrates how Sajjan Singh's majority judgment and Shankari Prasad's assertions are both laying on thin ice. And he further observed that how one interprets the word "law" in Article 13(2) will determine what Article 13 means. In the words of the Japanese Constitution, Fundamental Rights become "eternal and inviolate" if an amendment may be deemed to be a "law." In terms of its unchangeable restriction as long as it is in effect, Article 13 is therefore comparable to Article 5 of the American Federal Constitution.

"I would require stronger reason than those given in Shankari Prasad's case to make me accept the view that Fundamental Rights were not fundamental but were intended to be within the powers of amendment in common with the other parts of the Constitution and without the concurrence of the States."[5] According to Justice Mudholkar, the Constitution's core principles cannot be altered. He claimed that every single constitution in the world has some basic elements. Such characteristics must not be altered. He believed that the Indian Constitution's core principles could not be altered. Justice Hidayatullah believed that the fundamental elements of the Indian Constitution should not be changed. However, the majority judgment stated that the legislature could amend a person's fundamental rights.

[3] *Shankari Prasad Singh Deo v Union of India* [1951] SCR 89
[4] *Sajjan Singh v State of Rajasthan* [1965] AIR 845
[5] *Shankari Prasad Singh Deo v Union of India* [1951] SCR 89

ANALYSIS AND CONCLUSION

The view of Article 13(2) provided by Sastri, J., in Shankari Prasad and now endorsed by the majority in Sajjan Singh is a reasonable one and is consistent with the principles of our Constitution, it becomes clear from a consideration of the issue in the context of other constitutional provisions. The process for passing a Bill differs from the process for modifying the Constitution, hence the function of the Parliament is altogether different when getting an amendment Act passed. And, if it is so, an Act passed by Parliament as a result of its authority under article 368 cannot be "law" to the extent that of Article 13(2). In such cases of overlapping harmonious construction has to be given to the conflicting provisions for the stability of constitutional democracy.

The issue of whether Parliament can modify a basic right in part III of the Constitution in any way under article 368, is only a sequel of the previous difficulty. It would be erroneous to believe that Parliament lacks such authority. Part XX of the Constitution starts with the heading "Amend meant of the Constitution" which expressly means that Parliament under article 368 can modify any of the provisions of the Constitution subject to certain riders for which it has to follow a different procedure. The majority opinion holds that the Constitution's framers could not have ever imagined enshrining basic rights indestructibly not subject even to an amendment. Certain restrictions placed on article 19 under clauses (2) to (6) make it abundantly clear that fundamental rights can be regulated in the community's interest to meet the socio-economic problems of a fast-developing society like ours, notwithstanding their paramount importance. If at all the purpose was for the rights protected by part III to be entirely exempted from article 568, a specific provision could have been added excluding the applicability of article 368 to certain amendments. Since the purpose was to make these rights flexible, there appears to be no reason why they could not be amended like the other provisions of the Constitution.

"The rule of "pith and substance" is generally applied in cases of jurisdictional conflict. In determining the subject matter, purpose, or object of legislature, the first question to be considered is: What is the legal effect of the law?" The legislative intention of the centre or the states has to be examined with reference to the facts, if possible, to determine under which set

of powers it falls in substance and reality, which always serve as good fillers for academic lawyers to work upon and provide a forum for legal thinking and development. The argumentation leads to the conclusion that only Parliament has the authority to change any Constitutional clause. Article 368 amendments do not qualify as "law" for the purposes of Article 13(2) since they must go through a distinct process, which requires Parliament to follow certain rules. The Seventeenth Amendment Act of 1964 was passed to amend Article 31A of the Constitution to implement the government's plan to implement agricultural reforms in the nation.

It would be unthinkable to accept that the numerous guarantees in Part III of the Constitution were the whims of a specific majority. If this were true, it would effectively mean that our Constitution's most important clauses are supported equally by all of its other clauses and even on a weaker basis than the parts mentioned in the caution. Although the minority judges recognized the issue's critical importance, they refrained from offering their final opinions on whether article 13(2)'s definition of "law" excluded a Parliamentary act modifying the Constitution and whether Parliament was authorized to make any amendments to part III of the Constitution. In such a situation of ambiguity, one must wait for the Supreme Court to make a final, conclusive ruling. We can say that this is one of the foundation cases which led to the Kesavananda Bharti[6] case, a revolutionary decision in the history of India, where these decisions were overruled and the opinion of Justice Hidayatullah and Justice Mudholkar were taken and decisions were made in reference with the opinions of them.

[6] *Kesavananda Bharati v State of Kerala* [1972] SCC 364