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Case Comment: Keshavan Madhava Menon v State of Bombay

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INTRODUCTION

There were many laws in British India which are made to curb the protest against them like the people could not publish anything without their permission. Because of this, many people went to jail and many are facing proceedings against them but in 1950, when the Constitution came into force, these laws of British are inconsistent with fundamental rights like Article 19(1)(a)¹ which talks about freedom of speech and expression, so they became void. Article 19 (1) (a) became most popular at that time as many acts violated this article only because the British curb the right of people to express themselves so that they could curb the protest and people would not be able to ignite the feeling of revolution in people.

Now the question arises about the people who went to jail and faced proceedings against them, whether they would get relief or not. So to know the condition of these people and to know the situation of these laws whether it is void ab initio or not or if these are void whether they are wiped out from statute completely or not, the case Keshavan Madhava Menon v State of Bombay

¹ Constitution of India 1950, art 19(1)

came in which SC dealt with all these problems which mainly includes to properly define the definition of Article 13(1)² and its nature whether it is prospective or retrospective.

LEGAL PROVISIONS USED IN THIS CASE

Article 13(1) states that *“All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.”*³

Article 19(1)(a) talks about the *“right to freedom” specifically “freedom of speech and expression” which means every citizen has the right to express himself.*⁴

Article 132(1) states that *“An appeal shall lie to the Supreme Court from any judgment, decree or final order of a High Court in a State, whether in civil, criminal or other proceedings if the High Court certifies that the case involves a substantial question of law as to the interpretation of this Constitution.”*⁵

FACTS OF THE CASE

In September 1949, Keshavan Madhava Menon (the petitioner) published a pamphlet without the consent of a relevant authority. As a result, he was charged under Section 15(1) of the Indian Press (Emergency Powers) Act, 1931. While the case was pending, the Constitution went into effect. To challenge the legality of Sections 15(1) and 18(1) of the Act because they violated his fundamental rights under Article 19(1)(a), which deals with freedom of speech and expression, he turned to the High Court under Article 228. This provision states that every citizen has the right to express themselves, just as the petitioner did by publishing his pamphlet. But the High Court did not give a verdict in favor of Petitioner because they said that, “the word ‘void’ was used in article 13(1)⁶ in the sense of ‘repealed’ and that consequently it attracted section 6 of the General Clauses Act, which Act by article 367⁷ was made applicable for the interpretation of the

² Constitution of India 1950, art 13(1)

³ *Ibid*

⁴ Constitution of India 1950, art 19(1)

⁵ Constitution of India 1950, art 132(1)

⁶ Constitution of India 1950, art 13(1)

⁷ Constitution of India 1950, art 367

Constitution.” Thus they said proceedings would not be affected even if it violates fundamental rights. The petitioner filed an appeal before the Supreme Court on the strength of a certificate granted by the High Court under Article 132 (1) of the Constitution⁸.

LEGAL ISSUES

1. Can a prosecution that was started before the Constitution's enactment be continued now that the Act in question is invalid due to a violation of Articles 19(1)(a) and 19(2) of the Constitution?

1.1 Does Article 13(1) have a prospective or retrospective nature?

1.2 Do these pre-constitutional laws become null and void from the beginning?

1.3 Was such contradictory laws removed or erased from the statute book?

OBSERVATION MADE BY SC

The appellant argues that the law that prohibits people from publishing without the permission of the concerned authority violates fundamental rights i.e. Article 19(1)(a) which talks about freedom of speech and expression as publishing a pamphlet is including in the word ‘expression’, so the law became void after the Constitution came under Article 13(1), thus proceedings which are initiated because of the act which became void now, should not be continued. But the court said that if it is against the spirit of the Constitution to continue the prosecution under such a law which violates fundamental rights, then it is also objectionable to those persons who were convicted under this void law before the Constitution came and still living in jail only. So, the court needs to clear the language of Article 13(1) and find out the true meaning uninfluenced by the spirit of the Constitution.

DECISION BY SC

Justice Fazl Ali and Justice B.K. Mukherjea provided dissenting opinions, and Mehr Chand Mahajan provided a separate but concurrent opinion. Thus the decision was reached in a 5:2

⁸ Constitution of India 1950, art 13(1)

ratio. The SC said, "*Every statute is prima-facie prospective unless it is expressly or by necessary implication made to have a retrospective operation, and this rule of interpretation is equally applicable to the Constitution. The language of Article 13(1), is far from indicating any intention to give it retrospective operation.*"⁹ Therefore, because the article is prospective in nature, the issue of conflict with fundamental rights would arise as of the date those rights were established. The court also said that 'Article 13(1) cannot be read as obliterating the entire operation of the inconsistent laws, or to wipe them out altogether from the statute book, for to do so will be to give them retrospective effect which, we have said, they do not possess'.

There is no fundamental right under which the Court can defend a person who is prosecuted and punished for an act committed before the Constitution came into being that has now become void as it is inconsistent with the fundamental rights, so it was decided that Article 13(1) does not make the law void ab initio for all purposes. Instead, it only became void to the extent of their inconsistency.

DISSENTING OPINION

Justice Faiz Ali said that we all know that the nature of Article 13(1) is prospective, not retrospective but he said that" about inchoate matters which were still not determined when the Constitution came into force, and as regards proceedings whether not yet begun, or pending at the time of the enforcement of the Constitution and not yet prosecuted to a final judgment, the very serious question arises as to whether a law which has been declared by the Constitution to be completely ineffectual can yet be applied. On principle and good authority, the answer to this question would appear to me to be that the law, having ceased to be effectual can no longer be applied if an act becomes void; it means it is dead for all the transactions so how the proceedings can be continued if all the transactions of the act become dead¹⁰." Thus, he said the proceedings would not continue, and Justice Mukherjee agreed with him.

⁹ Constitution of India 1950, art 19(1)

¹⁰ Constitution of India 1950, art 13(1)

ANALYSIS AND CONCLUSION

This case, *Keshavan Madhava Menon v State of Bombay*¹¹, is a landmark judgment in which the court clears out the definition of Article 13(1) and whether the nature of this article is prospective or retrospective. The court came with a 5:2 judgment in which Justice Fazl Ali gave a dissenting opinion and Justice Mukherjee agreed with it. They said that the proceeding should not be continued when the law is treated as dead at that time. But we agree with the majority judgment as if the proceedings would not continue what about the person who was convicted and is now living in jail, as till now they have been punished for that law which is void, and if the proceedings would stop, then it will be an injustice to those people who are now in jail because of the offenses committed under that act.

In a nutshell, this case helps us very much because at the time when Constitution came in 1950, many people were facing proceedings, but after the Constitution, those laws became void as they violated fundamental rights. All this caused hustle in people as many people went to court for relief and this created pressure on the court which was not able to handle their earlier cases but this case came as a landmark judgment and became a precedent for other cases which help to solve these issues in less time and reduce the burden of court which are dealing with the same issue.

¹¹ *Keshava Madhav Menon v State of Bombay* AIR (1951) SC 128