

Event leading to keshavanada baharti case

Law



**ASSIGN
BUSTER**

In 1967, in *Golak Nath vs. The State of Punjab*, a bench of eleven judges (constituted for the first time) of the Supreme Court deliberated as to whether any part of the Fundamental Rights provisions of the constitution could be revoked or limited by amendment of the constitution. This question had previously been considered in *Shankari Prasad v. Union of India* and *Sajjan Singh v. State of Rajasthan*. In both cases, the power to amend the rights had been upheld on the basis of Article 368. Chief Justice Subba Rao writing for the majority (five judges dissenting) held that:

* A law to amend the constitution is a law for the purposes of Article 13. * Article 13 prevents the passing of laws which "take away or abridge" the Fundamental Rights provisions. * Article 368 does not contain a power to amend the constitution but only a procedure. * The power to amend comes from the normal legislative power of Parliament. * Therefore, amendments which "take away or abridge" the Fundamental Rights provisions cannot be passed.

The Kesavananda case (1973)

Six years later in 1973, thirteen judges of the Supreme Court, including then Chief Justice Sikri, heard arguments in *Kesavananda Bharati v. The State of Kerala* and thus considered the validity of the 24th, 25th and 29th amendments, and more basically the correctness of the decision in the *Golak Nath* case. This time, the court held, by the thinnest of margins of 7-6, that although no part of the constitution, including fundamental rights, was beyond the amending power of Parliament (thus overruling the 1967 case), the "basic structure of the Constitution could not be abrogated even by a constitutional amendment".