

Supreme Court as the Saviour of Indian Democracy: Reflections on the Kesavananda Bharati Judgment

Brijesh Yadav

Abstract:

The Indian Supreme Court being the sentinel of the Constitution also assumes the role of conscience keeper in a deepening democracy. Entrusted with the responsibility to protect fundamental rights and freedoms of citizens while ensuring constitutional governance, the Supreme Court also has to shield the soul and spirit of the Constitution from the onslaught of legislative majority by thwarting authoritarianism and autocracy. In post independence period, the apex Court has its own share of glory and controversies at various moments in performance of its above role through exercise of its power of judicial review. This paper argues that the Supreme Court judgment in Kesavananda Bharati case was instrumental in saving of Indian democracy from dangerous onslaught on skeleton of the constitution by a dominant executive and pliant legislature. The milestone judgment in the case resulted in restoration of public faith and trust in an independent judiciary as a strong pillar of democracy, which holds important lessons and inspiration for an institution, which is facing crisis of credibility in recent times.

Keywords: *Supreme Court, Democracy, Constitution, Parliament, Amendment, Rights, Freedom.*

Introduction:

India is the largest democracy in the world with evident signs of a sanguine outlook towards its further deepening in the coming decades. A strong and independent judiciary is an important necessity and constituent in the process of deepening of democracy in a post-colonial polity like India with lack of fertile and germane condition for functioning of representative democracy. Independent Judicial behavior by apex Court and its judges in their functioning imparts a vibrant character to Indian democracy by upholding rule of law and securing the basic rights guaranteed in the Constitution. Not only this, the creative judicial interpretation of the Constitution leads to expansion of the basic freedoms and rights inscribed in the constitution, which has been of critical

importance in onward march of Indian democracy from a credible procedural democracy towards achievement of its substantive goals.

Kesavananda case judgment by the apex court marks a moment of immense significance in the constitutional history of India. Popularly known as the Fundamental Rights case, its outcome affected the country's democratic process in an eventful decade in its polity. The twin pillars of Indian democracy i.e. Parliament and Judiciary differed in their wavelengths in the working of the democratic process after the landmark verdict in Golaknath case (AIR 1967 SC 1643), which marked a breakdown of the institutional consensus visible in the earlier decades after independence. In the Kesavananda judgment (AIR 1973 SC 1461), the enunciation of the "basic structure" principle by the apex court as a curb on amending power of legislature has proved as a bulwark for the Indian democracy against any blitz by majoritarian regime. The courage and judicial craft exhibited by the apex court in the Kesavananda judgment has proved to be an emulative example for the Supreme Court, which is currently facing accusation and criticism for putting fate of Indian democracy in peril by surrendering the constitution to a majoritarian government and a yielding legislature with absence of effective numerical opposition.

Judicial Supremacy vs. Parliamentary Sovereignty: Contest for Control over the Constitution

The key issue raised in the Kesavananda case was about the nature and amplitude of amendment power granted to legislature under Article 368. The Court and the executive adopted a mutually opposed stance on question that whether such exercise of power can extend to provisos of Part three of the Constitution and amount to their abrogation. The above proposition appeared settled before Golaknath judgment, with judicial approval to legislative authority to amend the Fundamental rights in order to achieve and further the socio-economic objectives of the Constitution (Shankari Prasad vs. Union of India AIR 1951SC 458; Sajjan Singh vs. State of Rajasthan AIR 1965 SC 845). However, the Supreme Court altered this position by its decision in Golaknath case, citing legislative power of amendment as a limited power and not extending to fundamental rights provisions, which it declared as sacrosanct and immune to abrogative amendment in its opinion. Such a judicial overture made Parliament to take recourse to Constitutional amendments (24th, 25th and 29th constitutional amendments) in order to restore the status quo and clear the controversy regarding the scope of its amending power with respect to fundamental rights provisions.ⁱThe above-mentioned constitutional amendments inspired challenge in the Kesavananda case and made it a flash point of struggle between the two constitutional organs of the Indian state.

The scholarship on Indian constitutional law has perceived the key issues in Kesavananda case differently. Granville Austin states that Kesavananda case embodied two issues of substantive and institutional character, which hold vital importance in a Parliamentary democracy. *Firstly*, in substantive terms, the contention of unrestricted amending power to legislature under the constitutional scheme was confronted with the assertion of Supreme Court led Judiciary as the final interpreter of the Constitution. *Secondly*, in institutional terms, the case was an instance of row between the apex court and the legislature (Austin 1999:259). Rajeev Dhavan attributes the

controversy to dispute between “right based approach” and “goal oriented approach” in the constitutional scheme, which was left unresolved by the Constituent Assembly (Dhavan 1976: 243). N. R. Madhava Menon and T R Andhyarujina term it as conflict between judicial supremacy based on constitutional principles and parliamentary sovereignty hinging on popular democratic credentials (Andhyarujina 2013; Menon 2006). Upendra Baxi highlights the significance of this case in constitutional and political development in India by citing it as an instance of judicial activism with an assertive apex court assuming role of a political institution (Baxi 1983). S. P. Sathe also echoes a similar sentiment perceiving this as court’s attempt to carve out a creative jurisprudence for itself by shedding the black letter tradition in its constitutional interpretation (Sathe 2002:3).

Political Climate and Constitutional Storm: 1970s, A Tumultuous and Testing Decade

The decision in Golaknath case did not augur well with the political establishment drawing criticism against the Judiciary for being pro-rich, conservative, as well as insensitive to the needs of time and acting against democratic spirit of the Constitution. The instant legislative response to the judgment came in form of Nath Pai bill, a private member bill, which sought to restore the supremacy of Parliament over the constitution through an amendment to the Constitution (Austin 1999:236). The Joint Parliamentary Committee report in 1968 was a revelation with opposition views making an impact in Parliament shorn of Congress dominance, since committee members not only opposed Nath Pai’s position but also wished to give the Fundamental Rights fresh protections without being as rigid as the judicial declaration of entrenchment of rights in Golaknath case. The bill failed to draw support from the ruling party, which was in a mood of a full-fledged assault on judicial assertion of custody over Constitution through unfettered Parliamentary power of amendment. The ruling Congress Party was waiting for the opportune moment with hope to garner substantive strength in form of electoral majority in the Parliament before such a combat.

Parliament’s authority and singular exclusive control over constitution was challenged more sharply by the Court in two other subsequent case judgments pertaining to Bank nationalisation and Privy purses, which involved right to property at the heart of the legal dispute (R. C. Cooper vs. Union of India AIR 1970 SC 564; M. R. Scindhia vs. Union of India AIR 1971 SC 530).ⁱⁱ Supreme Court’s decision received welcome by certain conservative sections in the Parliament both within the ruling party and in the opposition. Prime Minister, Mrs. Indira Gandhi, who was facing challenge to her leadership from all political quarters, found an opportunity in attacking not only the Supreme Court as an obstacle to the socio-economic revolution but also opposition led by Swatantra Party and Jan Sangh, as well as rival faction within her Party led by old guards like Morarji Desai and K.Kamraj. Mrs Gandhi attacked these political elements and groups as an advocate of vested feudal interests and blamed them for obstructing the socio-economic revolution intended by the Congress for universal equality and removal of poverty among populace (Austin 1999: 236). The 1970, was an eventful decade in Indian constitutional and political history particularly, developments in the year 1971 in both domestic politics and international arena (Baxi 1983:68). The signing of the 1971 Indo –Soviet mutual Friendship treaty and the East Pakistan crisis leading to Second Indo-Pak war and creation of Bangladesh heavily influenced the trajectory of domestic politics too. The signs of

huge factionalism in the political system within the Congress and in the opposition ranks, which suggested emergence of coalition government at the Union as well at the federal level, in the 1971 elections, proved erroneous after the results. The diplomatic and regional developments greatly increased the political prestige of the country in the international realm as well as elevated stature of Indira Gandhi in domestic politics, which resulted in an emboldened and assertive executive leading to a standoff with the Supreme Court in Kesavananda Bharati case.

Kesavananda Bharati vs. State of Kerala: The Precipitation of the Crisis

The case comprised of six different writ petitions, which advocated right to property as basic, inviolable and sacrosanct under the constitution. The leading petitioner in the case, Swami Kesavananda pleaded for enforcement of his fundamental rights sanctioned under Article 32. Kesavananda challenged constitutionality of twin Kerala land reforms Acts, which imposed restrictions on the management of property by his religious institution and was declared as immune from judicial scrutiny being placed in Ninth Schedule to the Constitution.ⁱⁱⁱ The evolution of legal proceedings in the case witnessed the gradual emergence of issue of nature and extent of legislative amendment power with spotlight on right to property. On the behalf of the petitioners, Nani Palkhivala argued that Parliament could not abridge or annihilate basic human rights and fundamental freedoms guaranteed by the Constitution. Petitioners posed Right to Property as a key element of the constitution and termed it as essential for the meaningful exercise of other Fundamental Rights. Palkhivala pointed out that if Parliament is granted power to amend the Constitution at its own will, it would lead to loss of liberty and establishment of an authoritarian government. Palkhivala argued that the legislative power to alter the constitution did not lend constitutional sanction to measures resulting in abrogation or condensation of Fundamental Rights.^{iv}

The Twenty- fifth amendment Act was the focal point of attack by the advocates of the petitioners and accused of granting unbridled powers to the Parliament without placing any check on its misuse. Palkhivala while targeting Article 31C, which barred judicial review of any legislation giving effect to Directive Principles, described it as a “blank charter” to legislative bodies to flout and destroy the supremacy of the constitution.^v C.K. Daphatry added fear of endangering of minority rights and providing ruling party with power to curb the Constitution twenty as additional concerns resultant from unbridled powers granted to the Parliament by the 24th and 25th constitutional amendments.^{vi} Soli Sorabjee, who assisted Palkhivala in the case also deplored Article 31 C for usurpation of authority of judicial review and termed it as inconsistent with the principle of limited democratic government. The arguments echoed the “argument of fear” expressed in the Golaknath case judgment, which regarded it as misconceived to trust the representatives of People to not act irresponsibly against the liberty and rights of the people in wake of availability of unbridled powers to curb the rights and liberty.^{vii}

H. M. Seervai appearing for the government considered fear of abuse of unlimited legislative power as irreverent and rejected that assumption of an unrestricted legislative authority to alter the Constitution amounts to an abuse of power. Seervai made the argument that the Fundamental rights

inscribed in the Constitution were not “human rights and only social rights” and was not available to the Indians before the enforcement of the Constitution.^{viii} Seervai conceded to the basic feature argument of the petitioners, but contended that the Constituent Assembly had not meant them to be permanent and a self-governing government possessed unlimited constituent power, which empowered it to alter or abrogate these basic features.^{ix} The Attorney General, Niren De, representing the government in the court, argued that inherent limits on the amendment power in a written Constitution are implausible. Mr. De denied existence of constitutional precincts on the power to modify the constitution entrusted to the legislature and argued that it will result in defeat of the very rationale, if it did not extend to the fundamental features of the Constitution. The Attorney General conferred the word “amendment” a wide meaning within ambit of constitution extending it to repeal, addition, variation, and substitution of all the provisions, including basic rights.^x

The Judgment: An Act of Judicial Courage and Craftsmanship

A bench of thirteen judges, which delivered eleven judgments with decision made by a thin majority with a ratio of seven against six in the case exemplifies the complexity of the issues and reveals the judicial cognisance of larger implications of the judgment.^{xi} The thin majority on the bench in arriving at the decision and diverse interpretations leading to confusion in the fragile political scenario propelled Chief Justice Sikri led Supreme Court to manufacture a “view of majority” signed by nine judges of the bench.^{xii} The apex courts sustained the constitutional validity of the 24th constitutional amendment, which restored to the Parliament the authority to alter any part of the constitution inclusive of the provisions on fundamental rights. On the other hand, the bench partially upheld the constitutionality of the 25th constitutional amendment by striking down sub section of Article 31 C, which barred judicial review of a policy certified by legislature purported to give effect to Directive principles. This paper for the purpose of study would consider opinion by nine judges who signed the declaratory paper titled as “view of the majority” as the main opinion in the case.

The majority opinion judges employed different reasoning to reach the above conclusions and diverged on the scope and extent of amending power of Parliament, theory of implied limitations on amendment power as well as the “argument of fear” regarding granting unfettered powers to legislature. CJI Sikri held that constitution must be interpreted in the light of the preamble, which does not show any intention to configure the word ‘amendment’ in its widest sense of meaning.^{xiii} CJI stated that the amendment powers of the Parliament were under implied limitations and any demand of absolute amending powers in name of democratic principles is misplaced. CJI emphatically rejected the contention and instead argued that the acceptance of such a proposition would result in disappearance of democratic principles and give rise to over looming threat of a revolution. CJI Sikri emphasized the sacrosanct nature of fundamental rights as well as other features and observed:

“It was the common understanding that fundamental rights would remain in substance as they are and they would not be amended out of existence. It seems also to have been a common

understanding that the fundamental features of the Constitution, namely, secularism, democracy and the freedom of the individual would always subsist in the welfare state.”^{xiv}

In the same vein, Justice Mukherjee and Hegde argued that the Parliament’s authority to alter the Constitution was not a super power and extent of its exercise-needed configuration in context of the constitutional scheme. They pointed that unbridled amending power to legislature was not intended in the constitution, as it would result in destruction of constitutional ideals. They expressed that Constitution resembled religion in the sense that “the core of a religion always remains constant but the practices associated with it may change. Likewise, a Constitution like ours contains certain features, which are so essential that they cannot be changed or destroyed.”^{xv} They rejected the argument that every amendment carried out by the Parliament is an attempt to adapt the constitution in accordance with the need of people as false proposition. Instead, they argued that such a notion of unlimited power creates a potential danger of its usage against people themselves or in preservation of the interest of ruling dispensation. Justice Mukherjee and Hegde expressed such a fear being particularly conscious of India as a Parliamentary democracy with the prevalent operation of party system and cabinet form of government providing the masses virtually “little control in the matter of detailed law-making.”^{xvi}

Justice Shelat and Grover configured that the expression amendment in the text of the Constitution can be attributed a wide range of meanings depending on perspective and approach towards constitutional law. Interestingly Justice Shelat and Grover accepted the argument regarding potential fear of abuse of unlimited amending power and ruled that it was not unfounded with occurrence of several such illustrations in various democratic nations. They were of the opinion that court cannot ignore the consequential impact of such a wide power to legislature with existence of prominent fear of its misuse, which can wipe out the preamble and may result in India ceasing “to be a Sovereign Democratic Republic and can have a polity denuded of sovereignty, democracy, and Republican character.”^{xvii} Justice Shelat and Grover pointed that constituent power was distinct from legislative power and stated that only a Constituent Assembly can repeal and abrogate the Constitution and exercise unlimited power, not a amending body like Parliament. They borrowed from the dictum expressed by Justice Das in the Kerala Education Bill case judgment that any infringement of key features of the Constitution would strip the constitution of its identity. They discerned the basic constitutional structure in light of the Preamble and scheme of Constitution and stated that its contains features namely, “the supremacy of the Constitution, Republican and Democratic form of Government, sovereignty, secular and federal character of the Constitution, separation of powers, individual dignity and unity and integrity of the nation.”^{xviii}

Justice Jagmohan Reddy agreed to the contentions of the petitioners that there were implied limitations on the legislative authority to alter the constitution. Justice Reddy argued that “with the recognition of the truism that power corrupts and absolute power corrupts absolutely has been the wisdom that made practical men of experience in not only drawing up a written Constitution limiting powers of the legislative organs but in securing to all citizens certain basic rights against the State .”^{xix} Justice Reddy drew upon the ideals in the Preamble to enumerate the essential features of the Constitution as “sovereign, democratic and republic state, equality, liberty of

thought, expression, belief, faith, and worship along with justice in social, political, and economic spheres of national life.”^{xx} Justice Reddy stated the significance of basic features as pillars of the constitutional edifice and warned that any abrogation or removal of the key features will result in collapse of entire constitutional structure.

However, three judges on the bench who form part of the majority opinion (Khanna. J, Chandrachud J. and Palekar J) did not accept the theory of implied limitations in their separate judgments. Justice H. R. Khanna’s ruling was most significant, since it broke the deadlock in the equally divided bench by siding with majority opinion and he was the one who used the term ‘basic structure’ in his judgment leading to it being the focal point of agreement among the eleven judges who signed the document “view of the majority”. Justice Khanna differed from the other six judges of the majority opinion in following aspects – *Firstly*, he rejected the argument that unbridled amending power to legislature will result in its potential abuse as a misplaced fear. Justice Khanna expressed that, “The fact that a prescribed majority of the people’s representatives is required for bringing about the amendment is normally itself a guarantee that the power would not be abused. The best safeguard against the abuse or extravagant use of power is public opinion and not a letter on the right of people’s representatives to change the Constitution by following the procedure laid down in the Constitution itself.”^{xxi} Justice Khanna was optimistic about the potency of public opinion in a democracy like the framers of the constitution. He dispelled the fear of misuse of unlimited amending power by Parliament by expressing that the “legislature as the ultimate guardians of the liberties and welfare of the people in quite as great a degree as the courts.”^{xxii} *Secondly*, Justice Khanna, making a distinction between “vesting of a power, the exercise of the power and the manner of its exercise,” affirmed that Article 368 vested power of amendment to the constitution in legislature, which permitted alienation or abridgment of the fundamental rights.^{xxiii} Justice Khanna orchestrated a different scope of amending power granted to Parliament under Article 368 by stating that amendment to the Constitution means change in the old constitution and retention and survival of it without loss of its identity. Justice Khanna interpreted “retention of the old Constitution” as “retention of the basic structure or framework of the old Constitution.”^{xxiv} Justice Khanna called for exercise of judicial caution and expressed that courts should restrict itself only to examining legality of the amendments on the yardstick of basic structure with substantial judgment regarding amendment being a improvement to the constitution or not left to the legislative majority in each of the two houses. However, Justice Khanna also imposed structural constraints upon exercise of amendment power by legislature and observed:

“It would not be competent under the garb of amendment, for instance, to change the democratic government into dictatorship or hereditary monarchy nor would it be permissible to abolish the Lok Sabha and the Rajya Sabha. The secular character of the state according to which the state shall not discriminate against any citizen on the ground of religion only cannot likewise be done away with.”^{xxv}

Justice Y.V. Chandrachud and Justice D. J. Palekar who were not part of the majority judgment but signed the paper, which was circulated as “views of majority” also conceived the power of amendment granted to the Parliament as wide, unfettered and inclusive of power to amend the

fundamental rights. Justice Chandrachud rejected the arguments that legislative enactments can be struck down merely on the ground of it being in conflict with “spirit of the Constitution.” Justice Chandrachud influenced by views of legal luminaries such as Dieter Conrad, William Marbury, and George Skinner ruled that an absolute amendment power granted to the legislature could not include the powers to change the basic pillars supporting constitutional authority or the power to “damage or destroy the essential features or the fundamental principles of the Constitution.”^{xxvi} Justice Palekar was of the opinion that the court should not examine a constitutional amendment based on fear regarding consequences of abuse of unbridled powers. However, he reemphasized like other majority judges that power of amendment of the Constitution was for “orderly change in accordance with the Constitution” and not for repeal of the Constitution itself.^{xxvii}

Emergence of the Supreme Court as the Saviour of democracy

The apex court during emergency phase faced significant criticism from civil society and rights groups in India for its jurisprudence and discharge of its constitutional responsibility as a caretaker of Indian democracy. The SC led judiciary faced attacks for its failure to check the contravention of rights and liberties by the executive orders, detentions, and policies. The Court drew accusations of being solely concerned about its own institutional interests and survival in adopting a reticent and pliant behavior, which further led to questioning of its independence as well as invited aspersions for abdication of its constitutional responsibility as vanguard of rights and liberties in a constitutional democracy. The rise in executive dominance with lack of any legislative control as well as erosion of inner party democracy in ruling regime combined with decline in ethical and moral values in general in Indian polity drew attention of the court. It led to a realisation in the judicial circles that democratic institutions and constitution were in danger, if not checked by invoking constitutional limitations on powers of legislature. The Kesavananda case provided such an opportune moment for the court intervention to stamp its authority as an arbitrator as well as conscience keeper of Indian democracy.

The Supreme Court in its judgment overruled the Golaknath verdict, which interpreted the amending powers of the Parliament as limited powers under the Constitution and making fundamental rights immune to constitutional amendment. The majority judges accepted that amendment power under the Article 368 was of wide amplitude for making changes to the Constitution including the provisos dealing with fundamental rights but did not sanction destruction of the cardinal features or the “basic structure” of the Constitution. A. R. Blackshield remarks that the judgment removed the doctrinal inadequacies of the Golaknath judgment and settled the issue on sound legal principles, which averted any institutional tussle outside the legal domain (Blackshield 1968). The Court elevated the argument in Golaknath case regarding existence of certain basic features to an established law through its ruling in the case and at same time introduced flexibility in its stand through judicial creativity by accepting sovereignty of legislature to modify the constitution. The Court ensured that any future amendments to the Constitution would require a broad national consensus certifying the change as being in national interest and not dictated by a single party or majoritarian interest. The Court through its ruling ensured survival of constitution rooted in democracy with all its heart and soul in future decades of Indian polity.

The SC Judgment in Kesavananda restored the constitutional balance between the parliamentary sovereignty and judicial supremacy, which was disturbed due to its earlier pronouncements in Golaknath judgment creating acrimonious relationship between the two institutions. The future progress of Indian democracy hinged upon the Supreme Court judgment in the case, which got huge attention owing to the political scenario in the country and institutional disharmony. Upendra Baxi praises the Court for not surrendering power of judicial review over amendment of Constitution and ensuring a check and balance mechanism despite giving a freedom to Parliament to bring changes to the Constitution (Baxi 1974). An institutional harmony among various democratic institutions is a necessity in smooth working of democracy in a developing country with daunting task of socio-economic upliftment of the multitude, which suffered for two hundred years of colonial rule.

The basic structure doctrine enunciated in the case has served as an effective bulwark against challenges of majoritarianism and authoritarianism in a democratic society by preventing attempts to distort the structure and spirit of the constitution as evident in various instances in post emergency period. The judgment with its enumeration of rule of law, fundamental rights, judicial review, federalism, secularism, parliamentary democracy, separation of powers and multiple other features as part of basic structure in its subsequent pronouncements has provided a shield to the constitution against any attack on character of Indian democracy. The judgment also has secured the powers and autonomy of the judiciary as a vital organ of Indian democracy. The SC, emboldened with the basic structure doctrine, was able to thwart assault on its jurisdiction and independence at various instances with most recent being the National Judicial Appointment Commission bill case.^{xxviii} The judicial verdicts involving claims of individual rights and freedoms such as right to life (inclusive of right to food and health), right to privacy, as well as right to information have led to broadening of rights and liberties of citizens, which has enriched and strengthened the procedural and substantive aspects of democracy.^{xxix} The lack of judicial redressal of such demands and concerns against state intervention both in negative and positive sense would not have been possible in absence of entrenchment of fundamental rights and judicial review as part of “basic structure” of the constitution.

Neil Roberts has pointed out that law has a paradoxical function in a democratic society and it must achieve a balance between responsibility to maintain a stable social order and mechanism for achieving socio-economic change and progress (Roberts 1972). The judgment accepted Constitution as a living document and did not dispute the necessity of changes in the Constitutional document in an orderly manner for meeting the needs and aspiration of masses in a Parliamentary democracy. Supreme Court expressed that it was not the duty of Judiciary to sit over the wisdom of legislative policy and amendments but only to ensure that the due constitutional procedure of amendment was observed in entirety, both in its letter and spirit. The Supreme Court ensured a balance between change, progress, and stability by pronouncing that legislative obligations for realizing goals of socio-economic revolution necessitated incremental change in the Constitution while preserving its key features and identity. The above delicate balance invoked in Kesavananda case and its observance in democratic governance has secured stability of Indian democracy amidst

decline and upheavals in adjoining region and world. The apex Court was also able to absolve itself from the criticism for being a conservative institution resisting progress and change for welfare of masses and from being blamed as vanguard of propertied interests in the country. In fact, after this episode, the Supreme Court led judiciary was able to carve out an image of messiah of poor and weaker sections of society for itself in 1980s by its social action litigations pronouncements and strengthen the belief of people in Indian democracy and constitutional ideals. The later phase of emergent judicial activism has been a largely a story of positive implications for a developing country like India in broad basing of democracy by ensuring equity, justice, and dignity to its masses in political, economic and social spheres of life.

Conclusion:

Democracy necessitates protection and nurturing in its evolutionary and deepening phase with a degree of more caution and care in a developing country like India. The role of judiciary acquires preeminence in endurance of stable political climate, smooth political transition, and shaping of development model by principles of equity, justice, and human dignity. The apex court is also endowed with responsibility to secure rights and freedom in accordance with rule of law, which is strongly entrenched in a progressive constitutional document, both in theory and practice. In a diverse and heterogeneous society like India, with widening social divide and rise in disputes, the protection and promotion of rights and liberties of marginalized and minority groups based on religion is an arduous task with growing role of religion in political mobilization and rise of majoritarianism, which is a worldwide phenomenon in recent times. A democratic constitution, with an independent and assertive judiciary, as its custodian, inspires faith in minorities as a shield against majoritarian sentiments. The SC verdict in the Kesavananda case can serve as a lighthouse for judiciary in India to ensure democratic governance in accordance to constitutional letter and spirit without acting as a retarding force in ensuring positive incremental change grounded in needs and popular aspirations of masses. The Supreme Court in the Kesavananda case was able to achieve the same in an adverse political scenario with tremendous pressure on it as an institution, which deservedly merits recognition for its courage and craftsmanship and augurs well for Indian democracy being in safe hands during social and political upheavals in future.

End Notes

ⁱ The Constitution (Twenty-Fourth Amendment) Act, 1971, the Constitution (Twenty-Fifth Amendment) Act, 1971, the Constitution (Twenty-Ninth Amendment) Act, 1972.

ⁱⁱ R. C. Cooper vs. Union of India AIR 1970 SC 564; Madhava Rao Scindhia and others vs. Union of India AIR 1971 SC 530.

ⁱⁱⁱ Kerala Land Reforms Act, 1969, Kerala Land Reforms (Amendment) Act 1971.

^{iv} Kesavananda Bharati vs. State of Kerala AIR 1973 SC 1461, para 650.

— <http://indiankanoon.org/doc/257876> (accessed on 13 July 2019)

^v Ibid; para 1070.

^{vi} Ibid; para 190-193.

^{vii} Ibid; para 1470.

^{viii} Ibid; para 973-975.

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- ix Ibid; para 1007.
x Ibid; para 621.
xi Ibid; Chief Justice S. M. Sikri, J. M. Shelat, A.N. Grover, B. Jaganmohan Reddy, H R Khanna, A.K. Mukherjee.
xii Ibid; Chief Justice S. M. Sikri, J. M. Shelat, K.S. Hegde, A.N. Grover, B. Jaganmohan Reddy, D.G. Palekar, H R Khanna, A.K. Mukherjee and Y.V. Chandrachud.
xiii Ibid; para 306.
xiv Ibid; para 307.
xv Ibid; para 690.
xvi Ibid; para 702.
xvii Ibid; para 555.
xviii Ibid; para 621.
xix Ibid; para 1190.
xx Ibid; para 1206.
xxi Ibid; para 1473.
xxii Ibid; para 1474.
xxiii Ibid; para 1476.
xxiv Ibid; para 1480.
xxv Ibid; para 1480.
xxvi Ibid; para 2245-2247.
xxvii Ibid; para 1314.
xxviii Supreme Court Advocate on record vs. Union of India, WP (C) No- 13, 2015(Popularly known as NJAC Case).
xxix Bandhua Mukti Morcha vs. Union Of India, AIR 802 1984(Right to health case); People Union of Civil Liberties vs. Union of India, WP(C) No - 196,2001(Right to food case);Justice K Puttaswamy vs. Union of India, WP (C) No - 494,2012(Right to Privacy case).

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Bio- Profile of the Author:

Assistant Professor
Department of Political Science
National Defence Academy
Khadakwasla, Pune. Maharashtra.
Email: brijacademics@gmail.com