

ಇಲಾಖೆ / ವಿಷಯ : DEPARTMENT / SUBJECT:

Obituary

ಪತ್ರಿಕೆಯ ಹೆಸರು : NAME OF THE NEWS PAPER:

Deccan Herald

ದಿನಾಂಕ : DATE : 07/09/2020

LASTING LEGACY

Kesavananda Bharati: The seer who helped shape the Constitution

ASHISH TRIPATHI
NEW DELHI, DHNS

Kesavananda Bharati, the seer who passed away on Sunday, left a lasting impact through a case that shaped the future of the country as a democratic republic governed by the rule of law.

Bharati had moved the Supreme Court challenging the Kerala government's decision to restrict the management of properties of his Edaneer mutt through the Kerala Land Reforms Act. Known as the Kesavananda Bharati case (1973), it established that Parliament cannot alter the basic structure of the Constitution.

The 13-judge Constitution bench (maximum strength) of the Supreme Court by a majority judgement of 7:6 laid down this concept, in a departure from its previous

view that Parliament can amend any part of the Constitution, including fundamental rights guaranteed in Part III as per requirement under Article 368 of the Constitution.

The landmark ruling gave the Supreme Court the power to examine or review any constitutional amendment at the threshold of basic structure doctrine. So, any law passed by Parliament has to pass this test.

It also marked a 'Lakshman Rekha' for Parliament. Consequently, Parliament as a representative body could not enjoy untrammelled power to redraft the Constitution.

The case saw all the thirteen judges of the Supreme Court assemble for the longest time of 68 days for almost five months to decide what came to be known as the defining moment for constitutionalism and democratic power of the country.

► Kesavananda, Page 4



Kesavananda Bharati

Subject:
Newspaper

Obituary
Deewan Hinald

Date 07/09/2020

Kesavananda Bharati: The seer who helped shape the Constitution

A-27
7/9/20

Kesavananda, from
Page 1

Though as many as 11 separate opinions were made, the majority view held that Parliament had power to amend any part but it could not destroy and deface the basic structure or very framework of the Constitution.

The majority view was given by then CJI S M Sikri, Justices K S Hegde, A K Mukherjea, J M Shelat, A N Grover, P Jaganmohan Reddy and H R Khanna. Justices A N Ray, D G Palekar, K K Mathews, M H Beg, S N Dwivedi and Y V Chandrachud, however, had differed.

The basic structure was defined as indestructible and immune from amendments. It came to be described as supremacy of the Constitution, republican and democratic form of government, parliamentary democracy, secular character, separations of powers between the legislature, executive and judiciary, federal character, individual freedoms, welfare state and unity and integrity of the nation. The list was illustrative not exhaustive.

The government had tried to name the successor of then Chief Justice of India S M Sikri by following the long-standing practice of giving the post to the senior-most judge. In an unprecedented decision, the government

named Justice A N Ray, who had then ruled in its favour, as the CJI, forcing three judges senior to him to resign in protest.

The government's run-in with the judiciary started with the case and finally led to the imposition of Emergency on June 25, 1975, which continued for 21 months.

During the Emergency period, an unsuccessful attempt was made to review the judgement by setting up the 13-judge bench by the then CJI. However, the bench was dissolved after two days of hearing.

By the Constitution (42 Amendment) Act, 1976, sweeping changes, including power of Parliament to amend the Constitution, were made. However, in the case of *Minerva Mills Vs Union of India*, the Supreme Court struck down the efforts to establish parliamentary supremacy over the Constitution.

The impact of Kesavananda case can be felt in subsequent days and years in numerous judgements. Notably, when the BJP governments in Uttar Pradesh, Madhya Pradesh and Rajasthan were dismissed after the Babri Masjid demolition on December 6, 1992, the top court upheld the decision of the P V Narasimha Rao government, saying it was necessary to uphold the principle of secularism.