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Kesavananda Bharati, a saviour of the Constitution

His plea helped preserve the Basic Structure of the statute

KRISHNADAS RAJAGOPAL
NEW DELHI

Kesavananda Bharati Swamiji, who passed away on Sunday, was the sole unwitting petitioner in the historic Fundamental Rights case which prevented the nation from slipping into a totalitarian regime.

Though the judgment is a landmark case, he did not win any relief in the case. The amendments in the Kerala land reforms law, which he had challenged, were upheld by the Supreme Court in 1973.

It was senior advocate Nani Palkhivala, representing Swamiji, who extended the ambit of the case. Mr. Palkhivala saw an opportunity through Swamiji's case to challenge a series of constitutional amendments introduced by the Indira Gandhi government, granting unlimited power to Parliament to alter the Constitution.

"Courtroom Genius", a biography of Mr. Palkhivala co-authored by senior advocates Soli Sorabjee and Arvind Datar, said the seer never met or spoke with the great lawyer. In fact, the book said, Swamiji was quite surprised at the time to see his name in the newspapers



Kesavananda Bharati

every day and wondered why his case, challenging only certain land reforms in Kerala, was taking so long.

Unique case

By sheer statistics, leave alone the law it laid down, the "Kesavananda Bharati versus State of Kerala" case is unique. The case was heard by a Bench of 13 judges – the largest formed in the Supreme Court. It was heard over 68 working days from October 1972 to March 1973. The judgment was a mammoth 703 pages.

The Kesavananda Bharati judgment innovated the Basic Structure doctrine which limited Parliament's power to make drastic amendments that may affect the core values enshrined in the Constitution, like secularism

and federalism.

The verdict upheld the power of the Supreme Court to judicially review laws of Parliament. It evolved the concept of separation of powers among the three branches of governance – legislative, executive and the judiciary.

But democracy won that day on a wafer-thin 7:6 majority. The judges were split down the middle until the 13th judge, Justice H.R. Khanna, supported the view that constitutional amendments should not alter the "basic structure" of the Constitution.

The aftermath of the judgment also saw the supersession of three judges of the Supreme Court – J.M. Shelat, A.N. Grover and K.S. Hegde – for Chief Justiceship. All three were part of the majority verdict on the Bench. They resigned in protest amid public furor.

The Emergency was proclaimed shortly after the judgment was delivered on April 24, 1973.

The Kesavananda Bharati judgment proved timely and thwarted many an attempt on democracy and dignity of individual during those dark years.