**CASE ANALYSIS OF INDIRA NEHRU GANDHI V. RAJ NARAIN**

BY

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**26th APRIL, 2020**

**Title of the Case:** Indira Gandhi v. Raj Narain and Anr.  
**Citation:** 1975 AIR 865, 1975 SCR (3) 333.  
**Court:** Allahabad High Court and Supreme Court of India.  
**Bench:** Justice Jagmohanlal Sinha (HC) and Justice Mathews, Chief Justice Ray, Justice Beg, Justice Khanna and Justice Chandrachud.

**INTRODUCTION**

In the history of Indian Legal system, Indira Gandhi v. Raj Narain was a landmark judgement. In the history of Independent India, It was the first time when elections of the President were set aside. It was also the first time when the Kesavananda Bharti case was applied to struck down the constitutional amendment. Indian legal system also faced the situation where election laws were amended to legitimize the nullified elections of the Prime Minister.

**BACKGROUND OF THE CASE**

In 1971, 5TH Lok Sabha General Elections were held in India. Raj Narain and Indira Gandhi were the two contenders with a tough combat against each other for Rae Bareilly constituency. When the Results were proclaimed, It was observed that Indira Gandhi won the Elections by securing 352 seats out of 518 seats. The Result was distasteful for the Raj Narain as he was very optimistic about winning the Elections with a huge margin. A Night before the Declaration of results, Raj Narain even held a thrashing rally in the Constituency.

The Raj Narain, The Leader of Ram Manohar Lohias SSP striked out to raise voice against the Indira Gandhi to nullify the Elections by filing a petition before High Court of Allahabad on 24TH April,1971. He professed that Indira Gandhi performed Election malpractices. He also put allegation on Indira Gandhi that she has violated the election code which is mentioned in Representation of People Act 1951. In his petition, He even purported that Indira Gandhi has used government resources for election purposes and distributed blanket and liquor to the Voters for influencing them.

On 12th June 1975, Justice Jagmohan Lal Sinha of High Court of Allahabad found Indira Gandhi guilty of misusing government resources under sec 123(7) of Representation of people act,1951. The High Court of Allahabad held that Indira Gandhi can not hold the Office of Prime Minister, Furthe, she can not contest elections for another six years. The Indira Gandhi filed an appeal against the decision. The Supreme Court during that time was on vacation so she was granted a conditional stay.

Thereafter, The President Fakhrudeen Ali Ahmed declared an emergency due to internal disturbances but the real decision took place because of the judgment of Raj Narain vs Uttar Pradesh[[1]](#footnote-2).

On 11 August, 1975, The Supreme Court ordered both the Parties to appear before the Court but on 10Th August 1975, The President passed the 39th constitutional amendment, which introduced Article 392 A to The Constitution of India. Article 392 A States that, election of Speaker and Prime Minister can not be questioned in any court of law, It can only be confronted before a committee formed by Parliament itself. Thus, This put a bar on Supreme Court for deciding Indira Gandhi case. Therefore, The Constitutional authenticity of 39th amendment was challenged in Indira Gandhi V. Raj Narain[[2]](#footnote-3).

**HEARING AT ALLAHABAD HIGH COURT**

On 15th July 1971 hearing commenced in the Court of Justice B.N.Lokur. Raj Narain requested the court to call of the Prime Minister before the court to despose and also to provide the govt. documents so that court can take cognizance of them but his this request was rejected. Raj Narain then turned to the Supreme Court where a 3 judge bench heard his appeal. The Case continued in Allahabad High Court until 1974 when Indira Gandhi filed in the Supreme Court that she requires a privilege to not to produce blue book as evidence in court.

The Bench of five judges of Supreme court granted her appeal by setasiding the order of High Court to not to produce blue book as an evidence. They also directed that this particular case shall be heard by single judge, Justice J.L. Sinha.

On 12th june 1975, A final verdict was given by the court charging Indira Gndhi to be guilty of corrupt practices. The Court also stated that government facilities and officers were involved in her campaign and she tried to influence the voters. The Judge that she will no more be a member of Lok Sabha. Justice Sinha also granted the respondents stay for 20 days on the verdict.

**FACTS IN ISSUES**

* This put a question on validity of clause 4 of Article 329 of The Constitution of India.
* This threw light on constitutional validity of Representation of People (Amendment) Act, 1974
* This also raised a question whether the Election of Indira Gandhi was void or not?
* The Symbols of cow and calf which were used by Indira Gandhi was an appeal to hurt the sentiments of people and has committed a corrupt practice under section123(3) of Representation of People Act.
* It was also seen that quilts, blankets, dhotis which were distributed by the agent and officers were distributed to induce the voters.

**ARTICLE 392 A CLAUSE (4) AND ITS CONSTITUTIONAL VALIDITY**

* DOCTRINE OF BASIC STRUCTURE

Kesavananda Bharti Case is a landmark case where the Honble Supreme Court has laid down Doctrine of the Basic structure. It held that “basic structure of the Constitution could not be abrogated even by a constitutional amendment”.

The Judgement listed some basic structures of the constitution as:

1. Supremacy of the Constitution
2. Unity and sovereignty of India
3. Democratic and republican form of government
4. Federal character of the Constitution
5. Secular character of the Constitution
6. Separation of power
7. Individual freedom

Article 368 of the Constitution has given the power to the Parliament to amend the Constitution by the ways of variation, repeal or addition of provision by procedure which is laid down and which is different from the Ordinary legislation.

In this, The Honble Supreme Court applied the Doctrine of Basic structure laid down in the Case Kesavananda Bharti Case[[3]](#footnote-4). The Supreme Court said that Article329 A Clause (4) need to be struck down because It states that validity of election will not be debated and the Dispute will not be governed by any election law. It also abolishes the Privilege and remedy to test validity of elections. The Elections will be considered valid. So, This was affecting the Basic structure of The Constitution.

**STATUTES**

1. Section 123(7) in The Representation of The People Act, 1951.
2. Article 329 (b) in The Constitution of India,1949
3. Article 368 in The Constitution of India,1949
4. Election Laws (Amendment) Act, 1975.
5. Representation of The People (Amendment) Act,1974

**Constitutional validity of Reprsentation of People (Amendment) Act 1975**

Through the fact, it was seen that the 39th amendment was passed at time when many of members of parliament were not present as they were arrested under the preventive detention. The Judicial review and the separation of powers are part of basic structure which were destroyed during the amendment. This amendment affected the notion of equality as there should be no disparity between people who are elected to the parliament or people holding the office.

Raj Narain was the one who opposed this and claimed that at the time when the 39th amendment was passed, many opposition parties were not present to give their views or oppose therefore the act is necessarily required to be struck down. The Court was of the opinion that this matter is related to both the house of parliament and the court can not interfere.

In the matters questioning constitutional validity the statue depends entirely on the existence of the legislative powers and the limitation laid down by Article 13, there is no other prohibition and the Parliament had acted within the powers of Article 368 when it framed the election laws. In addition to this, the Parliament has the powers to restrict the limits on election expenses along with stating which expenses can fall under the purview of the same and which cannot. It can likewise choose what is meant by the office of profit, what comes under corruption and the status of the members. If there has been a retrospective effect to the legislative amendment, it is accepted as a normal exercise which is tough to implement but is inevitable. In such cases, wherein the law has a retrospective effect and if the law was operational in the past, there can be no discrimination or unfairness on this ground of being retrospective in nature.[[4]](#footnote-5)

**Was the election of Indira Gandhi valid?**

The Supreme Court after observing the facts of this case referred that the section 123(7) of the Peoples Representative (Amendment) Act, 1975 has the term *Candidate,* as the person who files the nomination paper. The Supreme Court held that on 1st Feb, 1971, the nomination was filed by Indira Gandhi. So, before this date, if any help or assistance is taken from the armed forces or govt. officials will not be considered as corrupt practices.

The Supreme Court also asserted in facts of Yashpal Kapoor where it was clear that on 13th Jan, 1971 resignation letter was given by the President and it was acknowledged on 25th Jan, 1971. The Yashpal Kapoor begin working under Indira Gandhi from 1st Feb, 1971. So, the assistance provided by him to Indira Gandhi was not a corrupt practice.

Raj Narain Also purported that Yashpal kapoor has given many speeches from 7th Jan, 1971 to 25th Jan, 1971 to hold up Indira Gandhi. There were no sufficient sources which could tell about Yashpal Kapoors intention to validate Indira Gandhi. The Courst also held by referring section 77 of the Peoples Reprsentative (Amendment) Act, 1951 that the expenses which are used for the elections doesn’t comes under the election expenses of the candidate. Also, participating the functions of activities organized by political party doesn’t comes under the election expenses of the candidate.

**PROCEEDINGS**

Mrs. Indira Gandhi was the First Prime Minister in the History of India who attended court proceedings where the Allegations were made by her political opponent on the basis of corrupt practices.

The Lawyer of Raj Narain was the Shanti Bhushan, Senior Counsel whereas S.C Khare, a senior lawyer of Allahabad High Court and member of Congress Party was the Lawyer of Mrs. Gandhi.

Both Lawyers used their best advocacy skills and many unveiled secrets were revealed. Here, Mrs. Gandhi was exposed about the story which she potrayed. The Tactics which were used by Mrs. Gandhi were –

1. Using unpronounced funds.
2. Applying govt. machinery.
3. Pursuing the Services of govt. officials.
4. Influencing voters by providing them with objects.
5. Violating laws and concealing facts.
6. Executing amendments to the Election law with contemplative effect to legitimize ill practices during the Elections.

The Time when both the parties were heard, the verdict was passed on the very next day i.e. 25th June, 1975. The Court didn’t granted the stay but stated that Indira Gandhi can stay as a Prime Minister but she can not have the voting right in respect of house nor she can participate in the session of house. On the very next day, emergency was imposed on the ground of internal disturbance.

**CONTENTIONS**

INDIRA GANDHI **(PETITIONER)**

The Learned Attorney General

* That in many countries, The Constitution leaves in the hands of legislature to provide judgment on election dispute.
* That it is not the Matter of the Court to decide to what degree elections must be negotiated by the Constitution and by the Legislation.
* That if the Composing body believes that offices of Prime Miniter are considerable enough to be handled by the Parliament then it can not be considered as pointless.
* That the Majority decisions given in Kesavananda Bharti case can not be a domination in this case if elections would be free and fair beyond Judicial review.
* That The Case referred i.e. Kesavananda Bharti Case and Shankari Prasad both didn’t cover the Spheres of electoral dispute and mainly focused on the term AMENDMENT. Thereupon, Constituent powers must be held absolute.
* There are many articles in the Constitution which states that The Judicial review can be excluded in an appropriate cases as a matter of policy.
* The Article 14 which is founded on a sound public policy perceived by all states. If The Judicial review is excluded than it is doesn’t undo the Equality. It is clear from article 31 B, that denied equality on cross of it, but it comparatively brought economic progress and justice to the Country.
* That Except under Article 14, Our constitution doesn’t recognize Doctrine of Equality or Rule of Law. So Rule of Law is not a part of basic structure.
* That Judicial Review can be excluded permissibly where constitution doesn’t observe Judicial Review.

RAJ NARAIN **(RESPONDENT)**

* The Respondent clearly relied on decision of Kesavananda Bharti case given by 7 judges bench and argued that the Amendment made is violative of basic features of constitution.
* Since, The Assertion is valid or not is a legal exemption under Article 329 and 136 separately, The Contravened amendment impel to take away the Democratic structure of nation.
* The Respondent relying from the Kesavananda Bharti Case contended that under the Article 368 is only competent to lay down general principles administrating the organs of the State.
* He also contended that when this amendment was passed a no. of opposition were spitefully detained under Detention Act.
* He relied on the Article 14 of constitution and stated that it is violative because the 39th Amendment is unreasonable and doesn’t pass the Test of classification as to why the Members must be classified holding higher/lower post.
* This amendment endagers the Rule of Law and Separation of Powers.

**JUDGMENT**

The amendment destroyed the election and the law relating to it; it took away a remedy from the defeated party in the election and was as many call it a legislative judgment to the Indira Election case and a direction to the Supreme Court to allow the appeal. Raj Narain filed a cross appeal and challenged both the amendment to Representation of people Act and also the Thirty Ninth Constitutional Amendment Act, 1975. The appeal was argued by both sides on the basis that the case was governed by the majority in Keshavananda case i.e. the amendment power of the government did not extend to the altering the Basic Structure of the constitution. The grounds on which the challenge was based are as follows:

It is well known that Art. 329-A was added to the Constitution by 29th Amendment which made the election of a person holding office of the Prime Minister to the Lok Sabha beyond the authority of a law court including the Supreme Court and thereby aimed at providing protection to Mrs. Indira Gandhi, the then Prime Minister whose election had been set-aside by Allahabad High Court on a finding of prohibited corrupt practice committed by her.

The amendment was passed when several members of the Parliament were absent due to their arrest under preventive detention. The amendment destroys Judicial Review, and also Separation of Powers both of which form a part of the basic structure of the Constitution. Art.368 does not give the parliament the power to decide a private dispute through an amendment. Clause (4) of Art.324A is said to be in the exclusive domain of the Judiciary and which is not included in the constituent power under Art.368. The amendment demolished the notion of equality; there is no rational differentiation between persons holding high office and persons elected to the Parliament. The ground of the constitution amendment being passed without the presence of a lot of opposition members was not accepted by any of the judges.

The court through a majority i.e. Justice Khanna, Mathew, and Chandrachud held that Article 324(4) struck the Basic Structure and hence is liable to be struck down; the reasons on which the judges reached this conclusion are varied. The court through majority also held the amendment in election laws to be valid, and allowed the appeal of Mrs. Gandhi. Justice Chandrachud in his judgment intensified on the theory of Separation of Powers being a part of the Basic Structure of the Constitution, he held that the amending power under Art.368 does not include legislative executive and judicial powers. Justice Mathew held that without a judicial remedy elections would become a ridiculed. It would be difficult to decide as to who has been legitimately elected and who has seized power. For the latter could then trample upon the privileges and liberties of people. Justice Khanna held that free and fair elections are an integral part of the Basic Structure of the Constitution and Art.324 (A) goes against the Basic Structure, furthermore as Article 324(A) is not severable from the main Article the whole article is to be struck down. Justice Beg and Chief Justice Ray did not categorically hold Art. 324(A) to be violative of the basic structure, but they disagreed with the amendment in spirit. They held that free and fair elections did not form a part of the Basic Structure and that constituent power given to the Parliament by Art.368 included legislative, executive and judicial power. The case has the distinction of being the first case which is said to have been decided using the newly propounded doctrine of Basic Structure. The case is also credited to have broken new ground and had its effect on Keshavananda case.

**CRITICAL ANALYSIS**

This Case is a landmark case because the Supreme Court reminded the Parliament that the Law will always uphold the Constitution. The Decision reminded the Parliament that constitution is above all and Judiciary is there to save democracy from harmful actions of Parliament. The Court in this landmark case sustained the principle of Separation of Powers which shape check and balance between the Pillars so as to avoid encroachment and violation. The Case upheld that Indira Gandhi , just to save herself from Allahabad High Court decision, she passed the 39th Amendment and imposed the Emergency. However, Judiciary resolved this crisis by withdrawing the Amendment passed and helding the Elections valid.

The Court in this case highlighted the Essence of Democracy i.e. Free and Fair elections. The Supreme Court held that the country where the Citizens cant elect their representatives through free and fair election is not an essence of democracy. The Court proved that Parliament is by law and law is not by parliament. The Court however focused on parliament or Indira Gandhis vicious amendment and made Rule of Law dominant.

According to the Facts found in this case, Prime Minister misused her power when she was found guilty violating election laws. In this situation she should have resigned with the left dignity but she imposed emergency to save herself. However, Judiciary handled the situation and pulled back the 39th Constitutional Amendment which is violative of basic structure.

The 42nd Amendment Act, 1976 played an effective role which made the Challenge of Amendments in court of law impossible (However this Amendment was struck down in Minerva Mills[[5]](#footnote-6)). The Parliament in its agony passed a law on Judiciary where the Court lost the power to question and amendment of Constitution.

**Consequences after Indira Gandhis equities**

The Time when the parliament took situation in its control, the severe losses were occurred by the judiciary. This made parliament so enraged that it decided to make a law in which no court will have the jurisdiction or interference to hold challenge of constitutional amendment. Pursuing the above objective, Parliament amended the constitution by enforcing 42nd constitutional amendment act, 1976, also known as Mini constitution.

This amendment was made to uplift the two elements that are Supremacy of Parliament and Criticism of Basic Structure.

The Counsellors of the amendment asserted that there is no limitation whatsoever in the competence of parliament with respect to its amendment powers. All the arguments were based on the landmark rulings of the Supreme Court in Golaknath[[6]](#footnote-7) and kesavananda case.

To achieve the above objection clause 4 and 5 were added in Article 368 mentioned below.

1. Clause 4- No amendment of this Constitution (including the provisions of Part III) made or purporting to have been made under this article whether before or after the commencement of Section 55 of the Constitution (Forty second Amendment) Act, 1976 shall be called in question in any court on any ground.[[7]](#footnote-8)
2. Clause 5- For the removal of doubts, it is hereby declared that there shall be no limitation whatever on the constituent power of Parliament to amend by way of addition, variation or repeal the provisions of this Constitution under this article PART XXI TEMPORARY, TRANSITIONAL AND SPECIAL PROVISIONS[[8]](#footnote-9)

**KNOW MORE ABOUT THIS CASE**

To get the inside details of this case a book has been published titled *The Cas*e *that shook India* written by Prashant Bhushan who is the son of Shanti Bhushan, the lawyer arguing from Raj Narains side. He has discussed the Nuisance created in a detailed manner.

**SUGGESTIONS**

Indira Gandhi was assisted by the government officers and has profiled the administration from the military and the aviation based armed forces and amid her election battles. The Allahabad High Court uprightly charged her under section 123(7) of the Peoples Representative Act, 1951.

Indira Gandhi took an unconditional stay order from justice Jagmohan Lal Sinha, and made an appeal to the Supreme Court in the mean time she imposed emergency due to which she easily got rid of the opposition members, censors, the press and suspended some fundamental rights in the name of national security.

It was evident that the three amendments were made to expel all grounds on which Indira Gandhi was found guilty in its judgment held that Amendment act, 1974 and 1975, were constutionally real as they were administrative standards and the parliament had forced to rationalize them, yet the Supreme Court failed to notice that these amendments were made for the sole motive of removing the changes against the Indira Gandhi.

The Supreme Court was disregarded on its part to say that it was the matter of the parliament and the Supreme Court couldn’t deal with such issue.

I realized that the Supreme Court was unmindful in managing this issue. The Indira Gandhi has misused the powers in accordance to adjust the very law that changed her of being corrupt but the Supreme court stayed silent and when the defendant claimed for equity, all that the Supreme court could do was to give him long superfluous reasoning of how the issue was out of its words.

It is clearly seen that the Honible Supreme court was well aware of the fact that the Indira Gandhi had made the amendments to satisfy her political stratigies and had unconventionally imposed emergency to save herself from being guilty. Yet, the Supreme court upheld the constitution in some ways as it struck down 4 and 5 of article 329 being violative of the basic structure.

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* *Kesavananda Bharti v. State of Kerala A.I.R. (1971) SC 1461*
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1. *Raj Narain v. Uttar Pradesh (1975) A.I.R. 865* [↑](#footnote-ref-2)
2. *Indira Gandhi v. Raj Narain A.I.R.( 1975) S.C. 2299* [↑](#footnote-ref-3)
3. *Kesavananda Bharti v. State of Kerala A.I.R.(.1973) S.C. 1461* [↑](#footnote-ref-4)
4. *Indira Gandhi v. Raj Narain, ,* [*https://blog.ipleaders.in/emergency-indira-gandhi-v-raj-narain/*](https://blog.ipleaders.in/emergency-indira-gandhi-v-raj-narain/) *(last accessed May 03,2020)* [↑](#footnote-ref-5)
5. *Minerva Mills Ltd. & Ors v. Union of India A.I.R.(1980) S.C. (1789)* [↑](#footnote-ref-6)
6. *Golaknath v. State of Punjab, A.I.R. (1643), (1967) S.C.R. (2) 762* [↑](#footnote-ref-7)
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