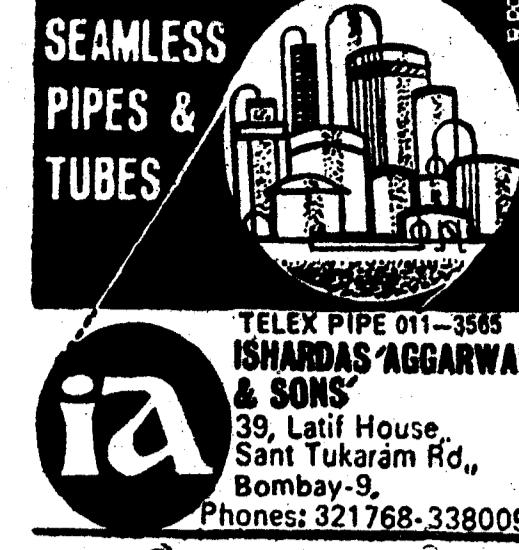
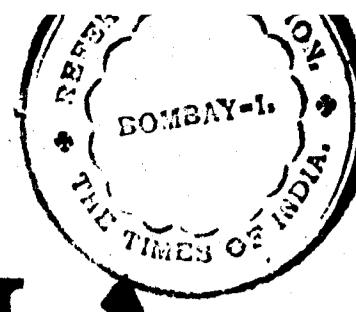




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25 PAISE

THE TIMES OF INDIA

COURT UPHOLDS PARLIAMENT'S POWER

Fundamental rights can be amended

"The Times of India" News Service

NEW DELHI, April 24.

THE majority judgment handed down by the Supreme Court today upholds the power of Parliament to amend any part of the Constitution provided the amendment does not alter the basic structure or framework of the Constitution.

Although the precise implication of this caveat is not yet clear—the 11 judgments representing the views of the 13-man bench run to several hundred pages—the court has upheld the validity of the 24th constitutional amendment under which Parliament, acting in its constituent power, may amend, "by way of addition, variation or repeal," any provision of the Constitution.

Likewise, the 25th amendment qualifying the right to property has been upheld in substance. The court accepts that it is not now open to it to decide whether an "amount" paid for property taken over is adequate.

But the majority of the bench has taken the view that the court may still examine whether the amount offered bears a "reasonable relationship" to the property acquired or requisitioned. It will also be within the competence of courts to inquire whether the amount has been arbitrarily determined or whether it offers only an "illusory" return.

In pronouncing on this amendment, the majority has held one section of it invalid under which courts were disallowed from inquiring whether a law, claiming to give effect to the directive principles of state policy specified in two clauses of article 39, did in fact do so.

COMMON GOOD

(The specified principles require the state to secure the distribution of material resources to subserve the common good and to prevent the concentration of wealth and the means of production to the detriment of society.)

In other words, a law enacted in furtherance of these principles will be subjected to the scrutiny of courts to establish whether it really does serve these aims.

The court has upheld the 29th amendment which sought to ensure that Kerala's land reform legislation of 1969 and 1971 was not struck down for infringing the right to property. But the legislation itself may be reviewed by the constitution bench of the court to decide, as the chief justice put it, whether it abrogates fundamental rights or only abridges them in a "reasonable" manner.

The court has also left it to the constitution bench to adjudicate on the validity of the amendment abolishing the privy purses. Other pending writ petitions, raising issues of the same nature, will be similarly dealt with.

ONLY 9 SIGNATURES

It is interesting that the one-page summary of the court's judgment issued this afternoon bears the signatures of only nine of the 13 judges. Competent legal experts described this as "unusual." They suggested that the other four judges may have withheld their signatures because of reservations about the summary.

It is too soon tonight, for any consideration of the judgment. But

LIC's 'own your flat' scheme for city

By VIDYADHAR DATE

A "own your apartment" scheme is being introduced by the Life Insurance Corporation for its policy-holders in Bombay from Tuesday.

Its significance lies in the fact that for the first time an individual can get a loan from a public agency for buying a flat in the city.

The sole lending agency at present is the Maharashtra State Co-operative Finance Society (MSCFS), but it makes no individual loans.

When the LIC introduced the "own your home" scheme it had excluded Bombay because a flat, though owned, was not in itself heritable property.

Now, with the passing of the Maharashtra Apartment Ownership Act, 1970, it would be possible for the LIC to advance loans to individual policy-holders.

The MAO Act provides for the ownership of an individual flat or apartment in a building, making it heritable, transferable and mortgageable property.

Flats in existing buildings, already occupied, or in those owned by co-

MAXIMUM LOAN

The maximum amount of loan available would be two-thirds of the value of the house subject to a minimum of Rs. 10,000 and a maximum of Rs. 1 lakh.

The rate of interest will be 10 per cent. per year. A rebate of 2.5 per cent. would be allowed if the borrower satisfied the corporation that the entire house was occupied for his use alone. Additional interest of 2.5 per cent. will be charged for defaults.

Mr. M. V. Udani, administrative officer in the legal and mortgage department, said the loan could be repaid within a selected term of years. The repayment will be by quarterly equated instalments or policy proceeds, the term being 20 years or the age of superannuation or 65 years of age, whichever is less.

Incidental expenses such as stamp duty, registration charges, lawyer's fees will have to be borne by the applicant.

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legislature have dispelled, firmly and decisively, by the Supreme Court.

The judges have made it clear that they are not setting themselves up as a third chamber. They defend, however, their right to challenge a law if it seems to them to be in conflict with the criteria of equity and justice laid down by the legislature itself.

As the Chief Justice said, Parliament has not power to abrogate

Ministers hail judgment

NEW DELHI, April 24: The law minister, Mr. H. R. Gokhale, and the minister of steel and mines, Mr. Mohan Kumarangamal, tonight welcomed the Supreme Court judgment which, they said, taken as a whole, upheld the validity of the "major part" of the 24th, 25th and 29th constitutional amendments.

Interviewed by PTI, Mr. Gokhale said it was difficult to make any detailed comment on the Supreme Court's decision on vital constitutional matters without studying the judgment. However, from a reading of the summary it would appear that the major objectives sought to be achieved by these amendments had been upheld.

Mr. Gokhale said it was "unfortunate" that the latter part of article 31 (c) in the 25th amendment which, in essence, "the most crucial part giving supremacy to the directive principles had been found invalid only by a slender majority."

Mr. Kumarangamal, who was intimately associated with the law minister in the piloting of the constitutional amendments in Parliament, said that it was a matter of satisfaction that the Golaknath case ruling had been "decisively rejected" and the major part of the constitutional amendments held valid.

These amendments were designed to restore to Parliament its "undoubted sovereign power to amend the Constitution which was questioned and effect taken away by the Golaknath case."

One of the objections pressed by the majority against the 25th amendment

ment is that article 31(C) enacted under its authority delegates powers to state legislatures which belong exclusively to Parliament.

It is Parliament alone that can abridge fundamental rights through an appropriate constitutional amendment, but the effect of 31(C)—as the Chief Justice put it—is to give the state legislatures the power to abrogate the right to property in certain directions.

But whether article 31(C) does in fact delegate authority in this manner is an issue on which the judges disagree. As one counsel said, the decision finally went against it because of objections on other counts.

PTI adds: The court, in the words of Mr. Justice S. N. Dwivedi has shifted to its original position in the Gopalan case of 1950, that Parliament is "omnipotent."

The court's position in the Golaknath case of 1967 was that the Supreme Court is "omnipotent."

The Supreme Court's stand was summed up by the youngest judge on the bench, Mr. Justice Y. V. Chandrachud: "Let us give to Parliament the freedom, within the framework of the Constitution, to ensure that the blessings of liberty will be shared by all."

The fundamental rights case was heard by the largest bench of 13 judges and the 69 days of arguments made hearing the longest ever in the history of the Supreme Court.

Counsel for the petitioners, Mr. N. A. Palkhivala, argued for 33 days, counsel for the Kerala government, Mr. H. M. Seervai, for 22 days, the attorney-general, Mr. Niren De, for ten days, and the solicitor-general, Mr. Lal Narain Singh, for a day and half.

Details on Pages 10 & 11

RIGHT TO PROPERTY

On the highly controversial issue of compensation for property taken over, the court prohibits arbitrary or illusory payments by reference to the relevant articles in the fundamental rights chapter which debar expropriation. In other words, the prohibition remains as long as these articles stand.

It is open to Parliament, in terms of the 24th amendment, to decide as it may wish in this regard in future. But it remains to be seen whether the judges will in that case regard a change as affecting the basic structure and framework of the Constitution.

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According to some legal experts who analysed the judgment on Parliament's power to amend the Constitution, it specifically overruled the Golaknath case.

Mr. Swaran Singh said that the power to amend did not carry any limitations.

Six others, while upholding the validity of the 24th amendment, held that Parliament cannot by amendment abrogate or emasculate the basic elements or essential features of the Constitution. They expressly or by implication said that fundamental rights were one of the essential features.

Mr. Justice Khanna, who held that Parliament's power to amend did not include the power to abrogate or alter the basic structure or framework of the Constitution, however, held that no part of the fundamental rights chapter, including property rights, was immune from the amending power.

If this principle were accepted by

Pakistan he was quite certain that the position could be cleared and the repatriation of the POWs and civilian internees of Pakistan as also the stranded civilians of Bangladesh in Pakistan could begin.

Mr. Swaran Singh added: "We do not take a completely negative attitude in this matter. Despite some of the unsatisfactory features in the statement of the government of Pakistan (of April 21), cannot help expressing the hope that Pakistan will still review its position and recognise that the humanitarian issues have to be settled and separated from political considerations."

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