

**Case Study : Smt. Indira Nehru Gandhi vs Shri Raj Narain And
Anr. on 7 November, 1975**

**Submitted by:
Divyanshu Priyadarshi**

**Division-C, Roll No. -2, Class 2011-2016 of
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Symbiosis International University, Pune.**

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**Under the guidance of
Prof. Ashmita Bisarya
Professor, Constitutional Law
Symbiosis Law School, NOIDA.**

CERTIFICATE

The project entitled “**Case Study: Smt. Indira Nehru Gandhi vs Shri Raj Narain And Anr. on 7 November, 1975**” submitted to the Symbiosis Law School, NOIDA for Constitutional Law as part of Internal Assessment is based on my original work carried out under the guidance of Prof. Ashmita Biarya from June to August . The Research work has not been submitted elsewhere for award of any degree.

The material borrowed from other sources and incorporated in the thesis has been duly acknowledged.

I understand that I myself could be held responsible and accountable for plagiarism, if any, detected later on.

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Date:

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FACTS

Brief Background:

India held general election to the 5th lok sabha in 1971, from March 1-March 10, wherein Indira Gandhi campaigned heavily during the election campaigning period, for herself and her party and steered the congress to a landslide victory by securing 352 seats out of 518 seats, which were contested for, in the said elections.

Raj Narain, the irrepressible leader of Ram Manohar Lohia's SSP was contesting against Indira Gandhi in the constituency of Rae Bareili in the state of U.P. Raj Narain was very confident of victory in the election, he went so far as to take out a victory rally before the results were declared. But to his disappointment and disbelief, he lost the elections with a huge margin. Raj Narain did not accept the defeat and decided to appeal to nullify the election due to rigging and corrupt practices used by Indira Gandhi during her election campaigning, and consequently On 24 April, 1971, he challenged the Prime Minister's election by a petition in Allahabad High Court. The petition alleged that the campaign process had violated the election code enshrined in the Representation of the People Act of 1951 as the campaign was assisted by a gazetted government official, the armed forces and local police. It also alleged that she had used government vehicles, distributed liquor and blankets amongst the voters and had also exceeded the campaign expenses prescribed.

Below are Facts admitted and confirmed in and by the Honourable High Court of Allahabad and the Honourable Supreme court.

- 1) That Smt. Indira Gandhi had contested for a seat to the lok sabha in the general elections of 1971.
- 2) That it was Smt. Indira Gandhi's availed assistance from Government officers, and that she had distributed blankets etc to the people during her election campaign
- 3) That she used the services of a then employed Gazetted Officer namely Yashpal Kapoor during the election campaign.
- 4) That she filed the nomination papers to be a candidate for election in the rae bareili constituency on 1st February, 1971.

PROCEDURAL HISTORY

After facing defeat in the 1971 General elections, Raj Narain filed an election petition in the Allahabad High Court, alleging that Smt Indira Gandhi had used unfair means during the election campaigning. The Procedural History of the case is given below:

- 1) On 24th April 1971, Raj Narain filed an election petition thereby challenging the Prime Minister's election.
- 2) The case was admitted by the High Court and hearing began on 15 July, 1971 before Justice BN Lokur.
- 3) In August, 1971, Raj Narain applied under Order XI Rule 1 and Order XI Rule 12 of the Civil Procedure Code for leave to deliver interrogatories in writing for the examination of Indira Gandhi and for a direction to her to make discovery on oath of the documents which are or have been in her possession or power relating to the questions arising in the petition. He also asked to be allowed to make amendments in his original pleading, so as to put forward certain charges of corrupt practices on Indira Gandhi .
- 4) A Single Bench Judgement was passed by Justice W Broome on 14th September, 1971, regarding the above matter, he allowed the leave to deliver interrogatories in writing for the examination of Indira Gandhi, subject to a few questions only, but he disallowed the amendments sought on the sole ground that if those amendments are allowed, it will amount to amending the statement of material facts.
- 5) In 1972 Raj Narain appealed in the Supreme Court against the above judgement of the High Court. A bench of 5 Judges of The Supreme Court in its order dated 24th June, 1972, allowed some of the interrogatory questions put forward by Raj Narain and disallowed the rest. The Supreme Court also allowed the amendments sought by Raj Narain in his original pleadings. which meant that new evidence could be produced, that is, whether the gazetted officer in question, Yahpal Kapoor, was a government official or a private citizen when he assisted Indira Gandhi's election campaign in Rae Bareli.
- 6) The case went on through 1973 and 1974 and on 5 April, 1974, the Supreme Court granted leave for the third appeal during the hearings. This time, it was the claim of Indira Gandhi's privilege of not to produce the blue book (Rules and Instructions for the Protection of the PM when on tour or travel) to the court.

- 7) On 24 January, 1975, the Supreme Court quashed the High Court's verdict to produce the blue book before the court. However, it directed the third judge, Justice Jagmohan Lal Sinha, to secure an official affidavit about the disclosures in the blue book, so that he could decide whether or not to admit parts of it as evidence.
- 8) Meanwhile, a verdict in another election case affected Indira Gandhi's case. On 3 October, 1974, a Supreme Court bench ruled that an election expense incurred by any one with the consent of the candidate is an authorised expenditure and had to be included in the candidate's report on election expenses.
- 9) Raj Narain moved a writ petition challenging the 1974 Act amending the Representation of the People Act and Justice Sinha admitted it as it was connected with the case. On 18 March, 1975, history was made when Indira Gandhi became the first Prime Minister to appear in person before the court.
- 10) Arguments ended on 23 May.
- 11) The High Court, by its judgment and order dated 12.6.1975, allowed the election petition and declared the election of Smt. Indira Nehru Gandhi as void. The High Court held that Smt. Gandhi had procured assistance of Shri Yashpal Kapoor, a Gazetted Officer of the Government of India, the District Magistrate and Superintendent of Police, Rae Bareilly, the Executive Engineer, PWD, and the Engineer, Hydel Department, for her election campaign and had thus committed corrupt practices under Section 123 (7) of the Representation of the People Act, 1951. However, it rejected Raj Narain's plea on the constitutionality of the 1974 Act.
- 12) Immediately after the verdict, Indira Gandhi's counsel moved for a stay and Justice Sinha gave an unconditional stay for 20 days.
- 13) Indira Gandhi appealed to the Supreme Court challenging the 'unseating' verdict against her by the High Court. She, has also sought 'absolute stay' of the judgment and order under appeal.
- 14) The vacation judge of the Supreme Court VR Krishna Iyer on 24th June 1975 granted a conditional stay which meant that electoral disqualification stood eclipsed during the stay. However, it was also stipulated that Indira Gandhi could address Parliament but was debarred from participating and voting in the Lok Sabha debates and could not draw remuneration as member.

ISSUES

There were three main issues to be decided by the Supreme Court in the present case, and they are:

Issue 1: Whether or not Clause 4 of Article 329 A of the Constitution of India, was constitutionally valid.

Contested on the grounds that:

- Clause 4 of Article 329 A destroys basic structure.
- The constitution of the House which passed the Constitution(Thirty-ninth Amendment)Act is illegal.

Issue 2: Whether or not, Representation of the People (Amendment) Act, 1974 and the Election Laws (Amendment) Act, 1975, was constitutionally valid.

Contested on the grounds that:

- These Acts destroy or damage basic structure or basic features.

Issue 3: Whether or not, the election of Indira Gandhi was void.

Contested on the grounds that:

- She obtained the assistance of Gazetted Officers of the Uttar Pradesh government, namely, the District Magistrate, the Superintendent of Police, the Executive Engineer, Public Works, and Engineer, Hydrel, for the construction of rostrums and arrangement of supply of power for loudspeakers in the meetings addressed by her during her election campaign.
- She spent more than the prescribed amount of money, during her election campaigns.

RULES

The following rules were applied while passing the judgment:

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

APPLICATION

- **With regard to Issue 1 Contention 1: Whether or not Clause 4 of Article 329 A of the Constitution of India, was constitutionally valid as they violate the destroys basic structure.**

The Honourable Supreme Court applied the basic structure doctrine laid down in the Kesavananda_Bharati v. State of Kerala .

It stated that Clause (4) of Article 329-A is liable to be struck down on the ground that it violates the principle of free and fair elections which is a part of the basic structure of the Constitution. It abolishes the forum without providing for another forum for going into the dispute relating to the validity of the election of the appellant and further prescribes that the said dispute shall not be governed by any election law and that the validity of the said election shall be absolute and not consequently be liable to be assailed, and it extinguishes both the right and the remedy to challenge the validity of the aforesaid election.

As per Article 329 (b) election disputes are to be presented to such an authority as the legislature may by law provide. The nature of the dispute raised in an election petition is such that it can only be resolved by a judicial process. Clause 4 of Article 329 A takes away these rights and should therefore be struck down.

- **With regard to issue 1 contention 2: Whether or not Clause 4 of Article 329 A of the Constitution of India, was constitutionally valid The constitution of the House which passed the Constitution(Thirty-ninth Amendment)Act is illegal.**

It was alleged by Raj Narain that many political leader of the opposition were illegally detained and therefore could not attend the Parliamentary Proceedings during the time when the Thirty-ninth Amendment Act was passed and therefore the Act should be struck down as illegal.

The court observed that The contention that the sittings of the two Houses of Parliament in which the impugned Acts were passed were not valid essentially relates to the validity of the proceedings of the two Houses of Parliament. These were matters which are not justiciable and pertain to the internal domain of the two Houses. The court cannot, go into the question as to whether the sittings of the Houses of Parliament were not constitutionally valid because some members of those Houses were prevented from attending and participating in the discussions in those Houses.

The court also said that The President, in performing his constitutional function under Articles 352, 359 did not authorised the illegal detention of any person let alone any member of Parliament or unconstitutionally prevented the release from custody of any member. He has only discharged his constitutional functions.

- **With regard to issue 2 contention 1: Whether or not, Representation of the People (Amendment) Act, 1974 and the Election Laws (Amendment) Act, 1975, was constitutionally valid as they destroy or damage the basic structure.**

The court held that The constitutional validity of a statute depends entirely on the existence of the legislative power, and apart from the limitation laid down in Article 13 there is no other prohibition on the Legislature. According to Article 368 It is within the powers of Parliament to frame laws with regard to elections.

Parliament has power to enumerate and define election expenses. Parliament has power to lay down limits on election expenses. Parliament has power to state whether certain expenses can be included or may be excluded from election expenses. Parliament has power to adopt conclusive proof with regard to matters of appointment, resignation or termination of service. Parliament has power to state what can be considered to be office of profit. Parliament has power to state as to what will and what will not constitute corrupt practice. Parliament has power to enact what will be the ground for disqualification. Parliament has power to define "candidate." These are all legislative policies, and legislative policies do not come under basic structure. Similarly, given retrospective effect to legislative amendment is accepted to be valid exercise of legislative power. Retrospective operation of any law would cause hardship to some persons or other. This inevitable; but that is no reason to deny to the legislature the power to enact retrospective law. In the case of a law which has retrospective effect, the theory is that the law was actually in operation in the past and if the provision of the Acts and general in their operation, there can be no challenge to them on the ground of discrimination or unfairness merely because of their retrospective effect.

➤ **With regard to issue 3 contention 1: Whether or not, the election of Indira Gandhi was void, on the grounds that she obtained the assistance of Government officers.**

The Supreme Court held that the word "candidate" in Section 123(7) of The People's Representative (Amendment) Act, 1975, was defined as a person who filed the nomination papers. It was then held that Indira Gandhi filed her nomination papers on 1st February 1971 and therefore any help that she took from Government officers before that date could not be held to be a corrupt practice.

The Court also held that Yashpal Kapoor had given his resignation letter to the President on 13-1-1971, which was accepted by the President on 25-1-1971, with effect from 14-1-1971. By means of a notification published on 6-2-1971, Indira Gandhi appointed Yashpal Kapoor as her election agent on 1-2-1971, Kapoor after 13-1-1971 was no longer a Gazetted Officer so his help to Indira Gandhi after that day was not a corrupt practice. Raj Narain alleged that Kapoor had made several speeches during 7-1-1971 to 25-1-1971 supporting Indira Gandhi's

candidature, but the court found no evidence to support that he made those speeches with the approval or on the request of Indira Gandhi.

➤ **With regard to issue 3 contention 1: Whether or not, the election of Indira Gandhi was void, on the grounds that she exceeded the limit of authorized expenditure during election campaigning.**

As per Section 83(1)(b) and 123(6) of The People's Representative Act, 1951, Voluntary expenditure by friends, relations, or sympathisers and expenditure incurred by a candidate's party without any request or authorisation by the candidate has never been deemed to be expenditure by the candidate himself. The Court also held that as per Section 77 of The People's Representative Act, 1951, Expenditure incurred by a political party in connection with the election of the candidates of the party is not a part of the election expenses of the candidate. Similarly participation in the programme of activity organised by a political party will not fall within the election expenses of the candidate of the party.

CONCLUSION

The Supreme Court passed its order in its judgement on 7th November, 1975. The five judge bench of the Supreme Court gave its orders regarding the above mentioned issues, in accordance with the reasons mentioned above in the Application Section.

- It was held that clause '4' and '5' of Article 329 A was unconstitutional as being violative of the basic structure of the Indian Constitution.
- Representation of People's (Amendment) Act, 1974 & Election Laws (Amendment) Act, 1975 were considered to be legal, perfectly constitutional and free from all infirmities.
- Election of Indira Gandhi, from her constituency Rae Bareilly, was considered to be valid.

The Supreme Court set aside the judgement given by the Allahabad High Court, it removed all corrupt charges levied against Indira Gandhi and acquitted her, thereby making her election valid.

CRITICAL ANALYSIS

After thorough examination of the rationale given by the Judges in this particular case, and after going through the background history of this case, I personally feel that the Judgement although was academically and theoretically correct, but in practicality and on the grounds of Justice, Equity and Good Conscience it was a failed judgement.

Indira Gandhi had taken assistance by Government Officers in her election campaign, she also availed services from the army and the airforce, during her election campaigns. The Allahabad High Court, very righteously found her guilty of corrupt practices as mentioned in Section 123(7) of The People's Representative Act, 1951, and hence made her election void, it also barred her from contesting any elections for the next 6 years.

Indira Gandhi took an unconditional stay order from Justice Jagmohan Lal Sinha, and then appealed to the Supreme Court, meanwhile she very artfully imposed emergency on the nation and then got many of her opposition members arrested under preventive detention, by doing this she was able to pass the Thirty-ninth Amendment Act of the Constitution with little difficulty. She also passed the People's Representative (Amendment) Act, 1974 and the Election Laws (Amendment) Act 1975, (will now be referred to as Amendment Acts 1974, 1975).

These three major amendments were clearly made to remove all grounds on which she was found guilty in the Allahabad High Court. The Supreme Court in its judgement held that Amendment Acts 1974, 1975, were constitutionally valid as they were legislative rules and the parliament had powers to amend them, but the Judges should have noticed that these amendments were made for the sole purpose of removal of all kinds of charges from Indira Gandhi's head.

Also at the time of passing of these amendments most of the opposition members were under preventive detention, without any cause, this prevented them from giving their opinions and votes for or against that legislation. The Supreme Court very ignorantly said that, that was a matter of the Parliament and the Supreme Court could not do anything about it. The duty of the Supreme Court is to uphold the constitution, it is considered as the guardian, the watchdog of the constitution, and here the constitution was being tampered with in an illegal manner, and all that we heard from the Supreme Court Judges was that it was out of their jurisdiction and hence they would not go into that matter.

It was by reason of these Amendment Acts, that Indira Gandhi was allowed to go scot free. Had she been any ordinary person, she would have never been able to make these amendments, she misused the power given to her as the Prime Minister, for her own benefits. Every charge that was made on her by the Allahabad High Court was well taken care of in these Amendment Acts. She changed the definition of “candidate” The definition of "candidate" in Section 79(b) of the 1951 Act until the amendment thereof by the Election Laws (Amendment) Act, 1975 was as follows:

'Candidate' means a person who has been or claims to have been duly nominated as a candidate at any election and any such person shall be deemed to have been a candidate as from the time when, with the election in prospect, he began to hold himself out as a prospective candidate.

This definition was substituted by Section 7 of the Amendment Act, 1975, as follows:

'Candidate' means a person who has been or claims to have been duly nominated as a candidate at any election.

She also made sure that Yashpal Kapoor's resignation was held valid from an earlier date, by Section 8(b) of the Amendment Act, 1975, by introducing Explanation 3 at the end of Section 123(7) of People's Representative Act.

These two changes helped her to show that she did not take any help from Yashpal Kapoor while he was a Gazetted officer. Thus she removed all grounds of guilty charge on herself.

I therefore feel that the Supreme Court acted in a very ignorant manner. Its duty was to do justice. Here Indira Gandhi had committed an offence but she used her power to amend the very laws that charged of being guilty and the Supreme Court all this while was sleeping, and when Raj Narain pleaded for Justice , all that Supreme Court could him were long unnecessary and unwanted reasons or rationale of how the issue was out of their jurisdiction.

The only time in this judgement where the Supreme Court did uphold the constitution was when it struck down clause '4' & '5' of Article 329 A as being violative of Basic Structure.

Over all I personally feel that the Supreme court acted in a bird-brained manner, the reason why it only struck down clause '4' & '5' of Article 329 A was because it saw these clauses as a threat to itself. It knew that the other issues did not hurt the Supreme court in any manner and therefore it acted dormant in matters of those issues.

BIBLIOGRAPHY

The Project has been made by going through various Books, Judgements, WebPages, and Journals, and are therefore mentioned below for reference purposes.

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