

## CASE COMMENTARY- THE BHIKAJI NARAIN DHAKRAS V. THE STATE OF MADHYA PRADESH

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### Abstract

Are the laws before the Constitution invalid because they contradict the fundamental rights of the citizens? Can a law that is inconsistent with fundamental rights become valid through some constitutional amendments?. The Bhikaji Narain Dhakras And Ors. v. The State of Madhya Pradesh is a significant case from where the notion of the eclipse<sup>86</sup> was articulated. In this case, the petitioners challenged the C.P. and Berar Motor Vehicles (Amendment) Act, 1947 (Act III of 1948) which gave the government a monopoly over the motor transport business and excluded all other private operating companies. The petitioners argued that the act violated the Fundamental rights of citizens and should therefore be declared void. The court countered stated that the enforcement of constitutional amendments saves the inquisitive act from all inadequacy. The paper examines the status of pre-Constitution laws after the enactment of the Indian Constitution. The paper addresses an extensive discussion of the use of constitutional amendments in pre-constitutional laws. The effects of these changes are also critically analyzed.

### Keywords

Pre-Constitutional laws, Constitutional Amendments, Fundamental rights, Doctrine of Eclipse, Madhya Pradesh

### Introduction

After independence, when the Constitution was formed, the court did a great job of interpreting

the existing laws in our Constitution. Some laws became invalid because they conferred fundamental rights granted to the citizen. The present case questioned the constitutional validity of the C.P. and Berar Act of 1947<sup>87</sup>. The Act was passed to strengthen the transport network for British officers. The act became unconstitutional with the introduction of fundamental rights. In this case, the petitioner filed a petition stating that a contradictory law cannot be reinforced by some constitutional amendments. The act needs to be re-enacted. The court in response stated that the law had already been amended a month before the petition was filed, dismissing all the petitions, and declaring the law perfectly constitutional.

### I. Case Details

Case Title	Bhikaji Narain Dhakras And Others v. The State of Madhya Pradesh
Case No.	1955 AIR 781, 1955 SCR (2) 589
Date of the order	29 September 1955
Citation	1955 AIR 781, 1955 SCR (2) 589
Jurisdiction	Supreme Court of India
Quorum	Das, Sudhi Ranjan, Bhagwati, Natwarlal H., Aiyar, T.L. Venkatarama, Imam, Syed Jaffer, Aiyar, N. Chandrasekhara

<sup>86</sup> Doctrine Of Eclipse

<sup>87</sup> Amended Motor Vehicle Act of 1939

<b>Author of Judgement</b>	S R Das
<b>Petitioner</b>	Bhikaji Narain Dhakras And Others
<b>Respondent</b>	The State Of Madhya Pradesh
<b>Acts and Sections involved</b>	Fundamental rights, The Constitution (First Amendment) Act, 1951, The Constitution Fourth Amendment Act, 1955, C.P. and Berar Motor Vehicles (Amendment) Act, 1947 (Act III of 1948), The Government of India Act, 1935, Article 13, 19(6), 31(2), section 43, 58 of Motor Vehicle Act, 1939

## II. Background

In the Motor Vehicle Act, 1939<sup>88</sup> the central and the provincial government share similar powers over road transport. The act in question already existed before the Constitution was enforced. It gave the government a monopoly on the transportation business permitting the latter to run the services on some routes approved by the government. This power was given to the government to implement the policy of nationalizing road transportation. The act gave the provincial government authority to fix fare rates<sup>89</sup> for stage carriages and public carriers operative within the province or in a specified area. The amending act was completely valid at the time of its enactment under the provision of the Government of India Act, of 1935<sup>90</sup>. The commencement of the constitution rendered the law inconsistent with Article 13 (1)<sup>91</sup>.

The petitioner argued that the act violated the Fundamental rights of people engaged in the motor transport industry and should therefore be declared void. The challenged Act is subject

<sup>88</sup> Central Act IV of 1939

<sup>89</sup> Under Section 43 of The Motor Vehicle Act, 1939

<sup>90</sup> Introduction of the Federation and Parliamentary system

<sup>91</sup> The Act is inconsistent with fundamental rights, It remains overshadowed but not completely dead.

to the pre-amendment reasonable restriction under Article 19(6)<sup>92</sup>.

## III. Facts

The C.P. Transport service limited and Provincial Transport Company Limited are the two major private companies that dominate the motor transport business in the state of Madhya Pradesh. The petitioners had been carrying on the business under a permit granted to them under section 58 of the Motor Vehicle Act, of 1939. Since the state and union hold 85% of the share capital, the government has a monopoly rule over the Motor Transport Business. Five Writ petitions (Petition Nos. 189 to 193) have been filed under Article 32<sup>93</sup> of the Constitution of India. The petitions filed allege that with the enactment of the C.P. & Berar Act of 1947, the government was given broad powers over the private transport business, excluding all other motor vehicle operators. The monopoly of the state poses a threat to the livelihood of the people engaged in the transport business.

## IV. Issues

- Whether the commencement of the constitution has rendered the pre-constitutional laws completely ineffective.
- Does the Act violate Article 19 (1) (g)<sup>94</sup> and 31<sup>95</sup> of the Constitution?
- Are the Constitutional amendments validating the law reasonably, even if they violate the fundamental rights of citizens?
- Whether the constitutional amendments are retroactive or prospective.

## V. Discursive Arguments By Petitioners

A. The petitioner, in this case, contested that the C.P. and Berar Amendment law is unconstitutional because it violated the fundamental rights of citizens.

<sup>92</sup> Before the Constitutional (First Amendment) Act, 1951

<sup>93</sup> Right for an individual to move to Supreme Court to seek justice

<sup>94</sup> Right to carry on any profession or business

<sup>95</sup> Provides right to property to individuals

B. The petitioners contended that the law is null and void under Article 13(1) and that it is considered dead and cannot be revived by a subsequent constitutional amendment. It would have to be re-enacted.

C. The petitioners argued that the law violated Article 19 (1) (f) and Article 31 of the constitution by not allowing people to commence their vehicles in motor transport.

D. The petitioner, in this case, contested that the C.P. and Berar Amendment law is unconstitutional because it violated the fundamental rights of citizens.

E. The petitioner contended that the First and Fourth Constitutional amendments do not apply retrospectively and therefore cannot be applied in the present case.

F. The petitioner referred to the work of Professor Cooley's on Constitutional Limitations, Volume I, p. 384 Note and the Indian case, of Shagir Ahmed v. State of Uttar Pradesh and others, 1955.

## **VI. Discursive Arguments By Respondent**

A. The respondent argued that although the law initially violated the Indian constitution, the inconsistencies were eliminated by the addition of Article 19(6)<sup>96</sup>.

B. The act became operational again with the passage of the First Amendment Act of 1951<sup>97</sup> and the Fourth Amendment Act of 1955<sup>98</sup>.

C. The constitutional (First Amendment) Act, amending clause (6) of Article 19, restored the suppressed clause to effect.

D. The Constitution (First Amendment) Act of 1951 rejects all objections raised by the petitioners.

E. The act was passed in the interest of the citizens to provide them with various benefits.

F. Since the act does not violate the law, all five Petitions<sup>99</sup> challenging the validity of the C.P. & Berar Act, 1947 should be dismissed.

## **II. Judgement**

### **A. Ratio Decidendi**

The court in the case of Keshavan Madhava Menon v. The State of Bombay<sup>100</sup> stated that the law did not become void completely but only a part of the law became void which is inconsistent with the provisions of Part III of the constitution which grants the fundamental rights on the citizens. The law still governs past transactions and enforces rights and liabilities before the commencement of the constitution. The law granted the government a monopoly over the motor transport industry, which in turn violated the fundamental right to engage in a business or profession. However, with the passage of The Constitutional (First Amendment) Act of 1951, which amended Article 19 (1) (g), the investigative Act became free from any inadequacy.

Clause (6) of Article 19 does not apply to the rights and obligations that arose between the period of 26<sup>th</sup> January 1950 and 18<sup>th</sup> June 1951 since the forced amendment was not retroactive. However, after the amendment, the law became enforceable on citizens.

In response to the claim that the imposed act has affected Article 31 of the Constitution. The court stated that the Constitution (Fourth Amendment) Act, of 1955 saved the law by amending the fundamental right to property. The court noted that the petition was filed on 27<sup>th</sup> May 1955 while the defect was already remedied when The Constitution (Fourth Amendment) Act was passed on 27<sup>th</sup> April 1955.

### **B. Obiter Dicta**

The present case was filed by the petitioner after viewing the Saghir Ahmad v. The State of

<sup>96</sup> After the Constitutional (First Amendment), 1951

<sup>97</sup> Amended the Article 19(1) g of the Indian Constitution

<sup>98</sup> Amended the Article 31 of the Indian Constitution

<sup>99</sup> Petition Nos. (189 to 193) under Article 32 of Indian Constitution.

<sup>100</sup> Keshavan Madhava Menon v. The State Of Bombay, 22 January 1951 (1951 AIR 128, 1951 SCR 228)

U.P. & Others case, which is similar to the C.P. and Berar Act of 1947. Saghir Ahmad's<sup>101</sup> case was filed before the constitutional amendment. In the present case, the writ petition was filed on 27<sup>th</sup> May 1955, exactly a month after the Constitution (Fourth Amendment) Act, 1955 was enforced within the Constitution. Thus, the petitioner cannot challenge the constitutionality of the inquisitive law from 27<sup>th</sup> April 1955, and this protestation cannot prevail.

The court stated that if the petition had been filed before the Constitution (Fourth Amendment) Act, 27 April 1955, all the contentions of the petitioner would have been considered valid. The petitioners relied upon American authorities, which refer only to post-Constitutional laws, while in the case of the Indian government, all the laws passed before and after the Constitution are equally significant.

### **Conclusion**

In this case, the court concludes that the law declaring the state's intention to take over the bus lines to the exclusion of all other motor transport operators was entirely constitutional. The case also underscores the importance of constitutional amendments in making inconsistent acts operative again when needed. The case provides us with a better understanding of the change in the power of parliament before and after the commencement of the Constitution. It was noticed in the present case that fundamental rights are the only criteria to determine the validity of the act. However, the broad powers of the government to enact laws and make amendments were not controlled.

The case helped the court developing the Doctrine Of Eclipse<sup>102</sup>, which states that any law which is inconsistent with fundamental rights is invalid. It is not completely dead but is overshadowed by fundamental rights. It can be re-enacted by constitutional amendments. In

the present case, the petition filed was dismissed because of the delay in filing writ petitions. The writ petitions have to be filed within a certain period to be objective. Therefore, was concluded that the petitioners lost the case because of their delay in filing writ petitions.

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<sup>101</sup> Saghir Ahmad v. The State Of U. P. And Others, 13 October, 1954 (1954 AIR 728, 1955 SCR 707)

<sup>102</sup> It applies only to the Pre-Constitutional laws.