

## **APPENDIX A**

### **RELEVANT PROVISION OF THE CONSTITUTION OF INDIA REFERRED IN THE RESEARCH WORK**

#### **THE CONSTITUTION OF INDIA**

##### **Preamble**

WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a <sup>1</sup>[SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC] and to secure to all its citizens:

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity; and to promote among them all

FRATERNITY assuring the dignity of the individual and the <sup>2</sup>[unity and integrity of the Nation];

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

##### **Article 12- Definition**

In this Part, unless the context otherwise requires, “the State” includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.

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Subs. by the Constitution (Forty-second Amendment) Act, 1976, s. 2, for “SOVEREIGN DEMOCRATIC REPUBLIC” (w.e.f. 3-1-1977).

Subs. by s. 2, Ibid., for “unity of the Nation” (w.e.f. 3-1-1977).

### **Article 13- Laws inconsistent with or in derogation of the fundamental rights**

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All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.

The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.

In this article, unless the context otherwise requires,—

“law” includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law;

“laws in force” includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.

<sup>3</sup>[(4) Nothing in this article shall apply to any amendment of this Constitution made under article 368.]

### **Article 14-Equality before law-**

The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

### **Article 15- Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth. Equality**

The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

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Ins. by the Constitution (Twenty-fourth Amendment) Act, 1971, s. 2.

No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to—

access to shops, public restaurants, hotels and places of public entertainment;  
or

the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

Nothing in this article shall prevent the State from making any special provision for women and children.

<sup>4</sup>[(4) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.]

<sup>5</sup>[(5) Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30.]

#### **Article 16- Equality of opportunity in matters of public employment-**

There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

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Added by the Constitution (First Amendment) Act, 1951, s. 2.

Ins. by the Constitution (Ninety-third Amendment) Act, 2005, s. 2 (w.e.f. 20-1-2006).

No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office <sup>6</sup> [under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory] prior to such employment or appointment.

Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

<sup>7</sup>[(4A) Nothing in this article shall prevent the State from making any provision for reservation <sup>8</sup>[in matters of promotion, with consequential seniority, to any class] or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.]

<sup>9</sup>[(4B) Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent. reservation on total number of vacancies of that year.]

### **Article 19 - Protection of certain rights regarding freedom of speech, etc.**

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Subs. by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch., for “under any State specified in the First Schedule or any local or other authority within its territory, any requirement as to residence within that State”.

Ins. by the Constitution (Seventy-seventh Amendment) Act, 1995, s. 2.

Subs. by the Constitution (Eighty-fifth Amendment) Act, 2001, s. 2, for certain words (w.e.f. 17-6-1995).

Ins. by the Constitution (Eighty-first Amendment) Act, 2000, s. 2 (w.e.f. 9-6-2000).

All citizens shall have the right— (a) to freedom of speech and expression; to assemble peaceably and without arms; (c) to form associations or unions; to move freely throughout the territory of India; (e) to reside and settle in any part of the territory of India; <sup>10</sup>[and] (g) to practise any profession, or to carry on any occupation, trade or business.

[(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of 4 [the sovereignty and integrity of India,] the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.]

**Article 20- Protection in respect of conviction for offences.**

No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the Act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

No person shall be prosecuted and punished for the same offence more than once.

No person accused of any offence shall be compelled to be a witness against himself.

**Article 21- Protection of life and personal liberty-**

No person shall be deprived of his life or personal liberty except according to procedure established by law.

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Ins. by the Constitution (Forty-fourth Amendment) Act, 1978, s. 2 (w.e.f. 20-6-1979).  
Subs. by the Constitution (First Amendment) Act, 1951, s. 3, for cl. (2) (with retrospective effect).

### **Article 21-A- Right to education-**

<sup>12</sup>[21A. The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.]

### **Article 22- Protection against arrest and detention in certain cases**

No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.

Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

Nothing in clauses (1) and (2) shall apply— (a) to any person who for the time being is an enemy alien; or (b) to any person who is arrested or detained under any law providing for preventive detention.

### **Article-23-Prohibition of traffic in human beings and forced labour-**

Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.

**Article-24-Prohibition of employment of children in factories, etc.-** No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

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Ins by the Constitution (Eighty-sixth Amendment) Act, 2002, s. 2 (which is not yet in force, date to be notified later on).

### <sup>13</sup>[Saving of Certain Laws]

#### **Article 31A - Saving of laws providing for acquisition of estates, etc.-**

<sup>14</sup>[31A. <sup>15</sup>[(1) Notwithstanding anything contained in article 13, no law providing for— (a) the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights, or (b) the taking over of the management of any property by the State for a limited period either in the public interest or in order to secure the proper management of the property, or the amalgamation of two or more corporations either in the public interest or in order to secure the proper management of any of the corporations, or (d) the extinguishment or modification of any rights of managing agents, secretaries and treasurers, managing directors, directors or managers of corporations, or of any voting rights of shareholders thereof, or (e) the extinguishment or modification of any rights accruing by virtue of any agreement, lease or licence for the purpose of searching for, or winning, any mineral or mineral oil, or the premature termination or cancellation of any such agreement, lease or licence, shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by <sup>16</sup>[article 14 or article 19]:

Provided that where such law is a law made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent:]

<sup>17</sup>[Provided further that where any law makes any provision for the acquisition by the State of any estate and where any land comprised therein is held by a person under his personal cultivation, it shall not be lawful for the State to acquire any portion of such land as is within the ceiling limit applicable to him under any law

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Ins. by the Constitution (Forty-second Amendment) Act, 1976, s. 3 (w.e.f. 3-1-1977).

Ins. by the Constitution (First Amendment) Act, 1951, s. 4 (with retrospective effect).

Subs. by the Constitution (Fourth Amendment) Act, 1955, s. 3, for cl. (1) (with retrospective effect).

Subs. by the Constitution (Forty-fourth Amendment) Act, 1978, s. 7, for “article 14, article 19 or article 31” (w.e.f. 20-6-1979).

Ins. by the Constitution (Seventeenth Amendment) Act, 1964, s. 2.

for the time being in force or any building or structure standing thereon or appurtenant thereto, unless the law relating to the acquisition of such land, building or structure, provides for payment of compensation at a rate which shall not be less than the market value thereof.]

### **Article 13B- Validation of certain Acts and Regulations-**

<sup>18</sup>[**31B.** Without prejudice to the generality of the provisions contained in article 31A, none of the Acts and Regulations specified in the Ninth Schedule nor any of the provisions thereof shall be deemed to be void, or ever to have become void, on the ground that such Act, Regulation or provision is inconsistent with, or takes away or abridges any of the rights conferred by, any provisions of this Part, and notwithstanding any judgment, decree or order of any court or Tribunal to the contrary, each of the said Acts and Regulations shall, subject to the power of any competent Legislature to repeal or amend it, continue in force.]

### **Article 31C - Saving of laws giving effect to certain directive principles-**

<sup>19</sup>[**31C.** Notwithstanding anything contained in article 13, no law giving effect to the policy of the State towards securing <sup>20</sup>[all or any of the principles laid down in Part IV] shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by <sup>21</sup>[article 14 or article 19]; and no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy:

Provided that where such law is made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent.

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Ins. by the Constitution (First Amendment) Act, 1951, s. 5.

Ins. by the Constitution (Twenty-fifth Amendment) Act, 1971, s. 3 (w.e.f. 20-4-1972).

Subs. by the Constitution (Forty-second Amendment) Act, 1976, s. 4, for "the principles specified in clause (b) or clause (c) of article 39" (w.e.f. 3-1-1977).

Subs. by the Constitution (Forty-fourth Amendment) Act, 1978, s. 8, for "article 14, article 19 or article 31" (w.e.f. 20-6-1979).

**Article 32- Remedies for enforcement of rights conferred by this Part-**

The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.

The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, *prohibition*, *quo warranto* and *certiorari*, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.

Without prejudice to the powers conferred on the Supreme Court by clauses and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).

The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.

**Article 37- Application of the principles contained in this Part-**

The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.

**Article 39- Certain principles of policy to be followed by the State-**

The State shall, in particular, direct its policy towards securing—

(a) that the citizens, men and women equally, have the right to an adequate means of livelihood;

(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;

(d) that there is equal pay for equal work for both men and women;

(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

<sup>22</sup>[(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.]

#### **Article 39A- Equal justice and free legal aid-**

<sup>23</sup>[**39A.** The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.]

<sup>24</sup>[**Article 45- Provision for early childhood care and education to children below the age of six years.**—The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years.]

#### **Article 50-Separation of judiciary from executive-**

The State shall take steps to separate the judiciary from the executive in the public services of the State.

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Subs. by the Constitution (Forty-second Amendment) Act, 1976, s. 7, for cl. (f) (w.e.f. 3-1-1977).

<sup>23</sup>Ins. by s. 8, *Ibid.* (w.e.f. 3-1-1977).

Ins. by the Constitution (Eighty-sixth Amendment) Act, 2002.

### **Article 53- Executive Power of the Union.**

The executive power of the Union shall be vested in the President and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution.

Without prejudice to the generality of the foregoing provision, the supreme command of the Defence Forces of the Union shall be vested in the President and the exercise thereof shall be regulated by law.

Nothing in this article shall—

(a) be deemed to transfer to the President any functions conferred by any existing law on the Government of any State or other authority; or

(b) prevent Parliament from conferring by law functions on authorities other than the President .

### **Article 73-Extent of executive power of the Union-**

Subject to the provisions of this Constitution, the executive power of the Union shall extend—

(a) to the matters with respect to which Parliament has power to make laws; and

(b) to the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or agreement:

Provided that the executive power referred to in sub clause (a) shall not, save as expressly provided in this Constitution or in any law made by Parliament, extend in any State to matters with respect to which the Legislature of the State has also power to make laws.

Until otherwise provided by Parliament, a State and any officer or authority of a State may, notwithstanding anything in this article, continue to exercise in matters with respect to which Parliament has power to make laws for that State such executive power or functions as the State or officer or authority thereof could exercise immediately before the commencement of this Constitution.

### **Article -74- Council of Ministers to aid and advise President-**

[(1) There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall, in the exercise of his functions, act in accordance with such advice:]

<sup>26</sup>[Provided that the President may require the Council of Ministers to reconsider such advice, either generally or otherwise, and the President shall act in accordance with the advice tendered after such reconsideration.]

The question whether any, and if so what, advice was tendered by Ministers to the President shall not be inquired into in any court.

### **Article 102- Disqualifications for membership-**

A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament—

(a) if he holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder;

(b) if he is of unsound mind and stands so declared by a competent court;

(c) if he is an undischarged insolvent;

(d) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgment of allegiance or adherence to a foreign State;

(e) if he is so disqualified by or under any law made by Parliament.

<sup>27</sup>[*Explanation.*—For the purposes of this clause] a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State by reason only that he is a Minister either for the Union or for such State.

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Subs. by the Constitution (Forty-second Amendment) Act, 1976, s. 13, for cl. (1) (w.e.f. 3-1-1977).  
Ins. by the Constitution (Forty-fourth Amendment) Act, 1978, s. 11 (w.e.f. 20-6-1979).

Subs. by the Constitution (Fifty-second Amendment) Act, 1985, s. 3, for “(2) For the purposes of this article” (w.e.f. - 3-1985)

<sup>28</sup>[<sup>28</sup>(2) A person shall be disqualified for being a member of either House of Parliament if he is so disqualified under the Tenth Schedule.]

**Article 103- Decision on questions as to disqualifications of members-**

<sup>29</sup>[<sup>29</sup>**103.** (1) If any question arises as to whether a member of either House of Parliament has become subject to any of the disqualifications mentioned in clause of article 102, the question shall be referred for the decision of the President and his decision shall be final.

Before giving any decision on any such question, the President shall obtain the opinion of the Election Commission and shall act according to such opinion.]

**Article 105- Powers, privileges, etc., of the Houses of Parliament and of the members and committees thereof-**

Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament.

No Member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings.

In other respects, the powers, privileges and immunities of each House of Parliament, and of the members and the committees of each House, shall be such as may from time to time be defined by Parliament by law, and, until so defined,

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Ins. by s. 3, *ibid.* (w.e.f. 1-3-1985).

Art. 103 has been successively subs. by the Constitution (Forty-second Amendment) Act, 1976, s. 20 (w.e.f. 3-1-1977) and the Constitution (Forty-fourth Amendment) Act, 1978, s. 14 to read as above (w.e.f. 20-6-1979).

<sup>30</sup>[shall be those of that House and of its members and committees immediately before the coming into force of section 15 of the Constitution (Forty-fourth Amendment) Act, 1978.]

The provisions of clauses (1), (2) and (3) shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise to Penalty for sitting and voting before making oath or affirmation under article 99 or when not qualified or when disqualified. Powers, privileges, etc., of the Houses of Parliament and of the members and committees thereof take part in the proceedings of, a House of Parliament or any committee thereof as they apply in relation to members of Parliament. 106. Members of either House of Parliament shall be entitled to receive such salaries and allowances as may from time to time be determined by Parliament by law and, until provision in that respect is so made, allowances at such rates and upon such conditions as were immediately before the commencement of this Constitution applicable in the case of members of the Constituent Assembly of the Dominion of India.

**Article 121-Restriction on discussion in Parliament-**

No discussion shall take place in Parliament with respect to the conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties except upon a motion for presenting an address to the President praying for the removal of the Judge as hereinafter provided.

**Article 122- Courts not to inquire into proceedings of Parliament-**

The validity of any proceedings in Parliament shall not be called in question on the ground of any alleged irregularity of procedure.

No officer or Member of Parliament in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order, in Parliament shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.

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Subs. by the Constitution (Forty-fourth Amendment) Act, 1978, s. 15, for certain words (w.e.f. 20-6-1979).

Subject to the provisions of this Constitution, the Supreme Court shall, to the exclusion of any other court, have original jurisdiction in any dispute—

(a) between the Government of India and one or more States; or

(b) between the Government of India and any State or States on one side and one or more other States on the other; or

(c) between two or more States, if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends:

<sup>31</sup>[Provided that the said jurisdiction shall not extend to a dispute arising out of any treaty, agreement, covenant, engagement, *sanad* or other similar instrument which, having been entered into or executed before the commencement of this Constitution, continues in operation after such commencement, or which provides that the said jurisdiction shall not extend to such a dispute.]

### **Article 132- Appellate jurisdiction of Supreme Court in appeals from High Courts in certain cases-**

An appeal shall lie to the Supreme Court from any judgment, decree or final order of a High Court in the territory of India, whether in a civil, criminal or other proceeding, <sup>32</sup>[if the High Court certifies under article 134A] that the case involves a substantial question of law as to the interpretation of this Constitution.

<sup>33</sup>(2) \* \* \* \*

Where such a certificate is given, any party in the case may appeal to the Supreme Court on the ground that any such question as aforesaid has been wrongly decided .

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<sup>31</sup>Subs. by the Constitution (Seventh Amendment) Act, 1956, s. 5, for the proviso.

Subs. by the Constitution (Forty-fourth Amendment) Act, 1978, s. 17, for “if the High Court certifies” (w.e.f. 1-8-1979).

Cl. (2) omitted by s. 17, *ibid.* (w.e.f. 1-8-1979).

*Explanation.*—For the purposes of this article, the expression “final order” includes an order deciding an issue which, if decided in favour of the appellant, would be sufficient for the final disposal of the case.

**Article 133- Appellate jurisdiction of Supreme Court in appeals from High Courts in regard to civil matters.**

<sup>34</sup>[(1) An appeal shall lie to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court in the territory of India <sup>35</sup>[if the High Court certifies under article 134A—]

- (a) that the case involves a substantial question of law of general importance; and
- (b) that in the opinion of the High Court the said question needs to be decided by the Supreme Court.]

Notwithstanding anything in article 132, any party appealing to the Supreme Court under clause (1) may urge as one of the grounds in such appeal that a substantial question of law as to the interpretation of this Constitution has been wrongly decided.

Notwithstanding anything in this article, no appeal shall, unless Parliament by law otherwise provides, lie to the Supreme Court from the judgment, decree or final order of one Judge of a High Court.

**Article 136- Special leave to appeal by the Supreme Court-**

Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India.

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Subs. by the Constitution (Thirtieth Amendment) Act, 1972, s. 2, for cl. (1) (w.e.f. 27-2-1973).

Subs. by the Constitution (Forty-fourth Amendment) Act, 1978, s. 18, for “if the High Court certifies—” (w.e.f. 1-8-1979).

Nothing in clause (1) shall apply to any judgment, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces.

**Article 134- Appellate jurisdiction of Supreme Court in regard to criminal matters-**

An appeal shall lie to the Supreme Court from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India if the High Court—

(a) has on appeal reversed an order of acquittal of an accused person and sentenced him to death; or

(b) has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to death; or

(c) <sup>36</sup>[certifies under article 134A] that the case is a fit one for appeal to the Supreme Court:

Provided that an appeal under sub-clause (c) shall lie subject to such provisions as may be made in that behalf under clause (1) of article 145 and to such conditions as the High Court may establish or require.

Parliament may by law confer on the Supreme Court any further powers to entertain and hear appeals from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India subject to such conditions and limitations as may be specified in such law.

**Article 141- Law declared by Supreme Court to be binding on all courts-**

The law declared by the Supreme Court shall be binding on all courts within the territory of India.

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<sup>36</sup>Subs. by the Constitution (Forty-fourth Amendment) Act, 1978, s. 19, for “certifies” (w.e.f. 1-8-1979).

**Article 142- Enforcement of decrees and orders of Supreme Court and orders as to discovery, etc.-**

The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order<sup>1</sup> prescribe.

Subject to the provisions of any law made in this behalf by Parliament, the Supreme Court shall, as respects the whole of the territory of India, have all and every power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of itself.

**Article 143- Power of President to consult Supreme Court-**

If at any time it appears to the President that a question of law or fact has arisen, or is likely to arise, which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court upon it, he may refer the question to that Court for consideration and the Court may, after such hearing as it thinks fit, report to the President its opinion thereon.

The President may, notwithstanding anything in the proviso to article 131, refer a dispute of the kind mentioned in the <sup>37</sup>[said proviso] to the Supreme Court for opinion and the Supreme Court shall, after such hearing as it thinks fit, report to the President its opinion thereon.

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Subs. by s. 29 and Sch., *ibid.*, for "said clause.

**Article 144- Civil and judicial authorities to act in aid of the Supreme Court-**

All authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court.

**Article 212- Courts not to inquire into proceedings of the Legislature-**

The validity of any proceedings in the Legislature of a State shall not be called in question on the ground of any alleged irregularity of procedure.

No officer or member of the Legislature of a State in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order, in the Legislature shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.

**[Article 226- Power of High Courts to issue certain writs-**

(1) Notwithstanding anything in article every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions orders or writs, including <sup>39</sup>[writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.]

The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court

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Subs. by the Constitution (Forty-second Amendment) Act, 1976, s. 38, for art. 226 (w.e.f. 1-2-1977).

Subs. by the Constitution (Forty-fourth Amendment) Act, 1978, s. 30, for the portion beginning with the words “writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quowarranto* and *certiorari*, or any of them” and ending with the words “such illegality has resulted in substantial failure of justice” (w.e.f. 1-8-1979).

exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

<sup>40</sup>[(3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without—

(a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and

(b) giving such party an opportunity of being heard, makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next day, stand vacated.]

<sup>41</sup>[(4) The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme Court by clause (2) of article 32.]

### **Article 227- Power of superintendence over all courts by the High Court.**

<sup>42</sup>[(1) Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction.]

Without prejudice to the generality of the foregoing provision, the High Court may—

(a) call for returns from such courts;

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Subs. by s. 30, *ibid.*, for cls. (3), (4), (5) and (6) (w.e.f. 1-8-1979).

Cl. (7) renumbered as cl. (4) by the Constitution (Forty-fourth Amendment) Act, 1978, s. 30 (w.e.f. 1-8-1979).

Cl. (1) has been successively subs. by the Constitution (Forty-second Amendment) Act, 1976, s. 40 (w.e.f. 1-2-1977) and the Constitution (Forty-fourth Amendment) Act, 1978, s. 31, to read as above (w.e.f. 20-6-1979).

(b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and

(c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts.

The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practising therein:

Provided that any rules made, forms prescribed or tables settled under clause (2) or clause (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor. (4) Nothing in this article shall be deemed to confer on a High Court powers of superintendence over any court or tribunal constituted by or under any law relating to the Armed Forces.

#### **Article 245- Extent of laws made by Parliament and by the Legislatures of States-**

Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State.

No law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation.

#### **Article 246- Subject-matter of laws made by Parliament and by the Legislatures of States-**

Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the “Union List”).

Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of

the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the “Concurrent List”).

Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as

Parliament has power to make laws with respect to any matter for any part of the territory of India not included <sup>43</sup>[in a State] notwithstanding that such matter is a matter enumerated in the State List.

**Article 247- Power of Parliament to provide for the establishment of certain additional courts-**

Notwithstanding anything in this Chapter, Parliament may by law provide for the establishment of any additional courts for the better administration of laws made by Parliament or of any existing laws with respect to a matter enumerated in the Union List.

**Article 248- Residuary powers of legislation-**

Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List.

Such power shall include the power of making any law imposing a tax not mentioned in either of those Lists.

**Article 249- Power of Parliament to legislate with respect to a matter in the State List in the national interest-**

Notwithstanding anything in the foregoing provisions of this Chapter, if the Council of States has declared by resolution supported by not less than two thirds of the members present and voting that it is necessary or expedient in the national interest that Parliament should make laws with respect to any matter.

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Subs. by s. 29 and Sch., *ibid.*, for “ in Part A or Part B of the First Schedule

enumerated in the State List specified in the resolution, it shall be lawful for Parliament to make laws for the whole or any part of the territory of India with respect to that matter while the resolution remains in force.

A resolution passed under clause (1) shall remain in force for such period not exceeding one year as may be specified therein:

Provided that, if and so often as a resolution approving the continuance in force of any such resolution is passed in the manner provided in clause (1), such resolution shall continue in force for a further period of one year from the date on which under this clause it would otherwise have ceased to be in force.

A law made by Parliament which Parliament would not but for the passing of a resolution under clause (1) have been competent to make shall, to the extent of the incompetency, cease to have effect on the expiration of a period of six months after the resolution has ceased to be in force, except as respects things done or omitted to be done before the expiration of the said period.

**Article 250- Power of Parliament to legislate with respect to any matter in the State List if a Proclamation of Emergency is in operation-**

Notwithstanding anything in this Chapter, Parliament shall, while a Proclamation of Emergency is in operation, have power to make laws for the whole or any part of the territory of India with respect to any of the matters enumerated in the State List.

A law made by Parliament which Parliament would not but for the issue of a Proclamation of Emergency have been competent to make shall, to the extent of the incompetency, cease to have effect on the expiration of a period of six months after the Proclamation has ceased to operate, except as respects things done or omitted to be done before the expiration of the said period.

**Article 251- Inconsistency between laws made by Parliament under articles 249 and 250 and laws made by the Legislatures of States-**

Nothing in articles 249 and 250 shall restrict the power of the Legislature of a State to make any law which under this Constitution it has power to make, but if any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament has under either of the

said articles power to make, the law made by Parliament, whether passed before or after the law made by the Legislature of the State, shall prevail, and the law made by the Legislature of the State shall to the extent of the repugnancy, but so long only as the law made by Parliament continues to have effect, be inoperative.

**Article 252- Power of Parliament to legislate for two or more States by consent and adoption of such legislation by any other State-**

If it appears to the Legislatures of two or more States to be desirable that any of the matters with respect to which Parliament has no power to make laws for the States except as provided in articles 249 and 250 should be regulated in such States by Parliament by law, and if resolutions to that effect are passed by all the Houses of the Legislatures of those States, it shall be lawful for Parliament to pass an Act for regulating that matter accordingly, and any Act so passed shall apply to such States and to any other State by which it is adopted afterwards by resolution passed in that behalf by the House or, where there are two Houses, by each of the Houses of the Legislature of that State.

Any Act so passed by Parliament may be amended or repealed by an Act of Parliament passed or adopted in like manner but shall not, as respects any State to which it applies, be amended or repealed by an Act of the Legislature of that State.

**Article 253- Legislation for giving effect to international agreements**

Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.

**Article 254- Inconsistency between laws made by Parliament and laws made by the Legislatures of States.**

If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State Legislation for giving effect to international agreements.

### **Article 323A- Administrative Tribunals-**

Parliament may, by law, provide for the adjudication or trial by administrative tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation owned or controlled by the Government.

A law made under clause (1) may—

(a) provide for the establishment of an administrative tribunal for the Union and a separate administrative tribunal for each State or for two or more States;

- (b) specify the jurisdiction, powers (including the power to punish for contempt) and authority which may be exercised by each of the said tribunals;
- (c) provide for the procedure (including provisions as to limitation and rules of evidence) to be followed by the said tribunals;
- (d) exclude the jurisdiction of all courts, except the jurisdiction of the Supreme Court under article 136, with respect to the disputes or complaints referred to in clause (1);
- (e) provide for the transfer to each such administrative tribunal of any cases pending before any court or other authority immediately before the establishment of such tribunal as would have been within the jurisdiction of such tribunal if the causes of action on which such suits or proceedings are based had arisen after such establishment;
- (f) repeal or amend any order made by the President under clause (3) of article 371D;
- (g) contain such supplemental, incidental and consequential provisions (including provisions as to fees) as Parliament may deem necessary for the effective functioning of, and for the speedy disposal of cases by, and the enforcement of the orders of, such tribunals.

The provisions of this article shall have effect notwithstanding anything in any other provision of this Constitution or in any other law for the time being in force.

**Article 323B- Tribunals for other matters -**

The appropriate Legislature may, by law, provide for the adjudication or trial by tribunals of any disputes, complaints, or offences with respect to all or any of the matters specified in clause (2) with respect to which such Legislature has power to make laws.

The matters referred to in clause (1) are the following, namely:—

- (a) levy, assessment, collection and enforcement of any tax;
- (b) foreign exchange, import and export across customs frontiers;
- (c) industrial and labour disputes;
- (d) land reforms by way of acquisition by the State of any estate as defined in article 31A or of any rights therein or the extinguishment or modification of any such rights or by way of ceiling on agricultural land or in any other way;

- (e) ceiling on urban property;
- (f) elections to either House of Parliament or the House or either House of the Legislature of a State, but excluding the matters referred to in article 329 and article 329A;
- (g) production, procurement, supply and distribution of food-stuffs (including edible oilseeds and oils) and such other goods as the President may, by public notification, declare to be essential goods for the purpose of this article and control of prices of such goods;
- <sup>44</sup>[(h) rent, its regulation and control and tenancy issues including the right, title and interest of landlords and tenants;]
- <sup>45</sup>[(i)] offences against laws with respect to any of the matters specified in sub-clauses (a) to <sup>46</sup>[(h)] and fees in respect of any of those matters;
- <sup>47</sup>[(j)] any matter incidental to any of the matters specified in sub-clauses (a) to <sup>48</sup>[(i)].
- (3) A law made under clause (1) may—
- (a) provide for the establishment of a hierarchy of tribunals;
- (b) specify the jurisdiction, powers (including the power to punish for contempt) and authority which may be exercised by each of the said tribunals;
- (c) provide for the procedure (including provisions as to limitation and rules of evidence) to be followed by the said tribunals;
- (d) exclude the jurisdiction of all courts, except the jurisdiction of the Supreme Court under article 136, with respect to all or any of the matters falling within the jurisdiction of the said tribunals;
- (e) provide for the transfer to each such tribunal of any cases pending before any court or any other authority immediately before the establishment of such tribunal as would have been within the jurisdiction of such tribunal if the causes of action on which such suits or proceedings are based had arisen after such establishment;

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Ins. by the Constitution (Seventy-fifth Amendment) Act, 1993, s. 2 (w.e.f. 15-5-1994).  
 Sub-clauses (h) and (i) re-lettered as sub-clauses (i) and (j) by s. 2, *ibid.* (w.e.f. 15-5-1994).  
 Subs. by s. 2, *ibid.*, for “(g)” (w.e.f. 15-5-1994).  
*Supra* n.34.  
 Subs. by s. 2, *ibid.*, for “(h)” (w.e.f. 15-5-1994).

The provisions of this article shall have effect notwithstanding anything in any other provision of this Constitution or in any other law for the time being in force.

*Explanation.*—In this article, “appropriate Legislature”, in relation to any matter, means Parliament or, as the case may be, a State Legislature competent to make laws with respect to such matter in accordance.

**Article 368-<sup>49</sup>[Power of Parliament to amend the Constitution and procedure therefor]**

<sup>50</sup>[(1) Notwithstanding anything in this Constitution, Parliament may in exercise of its constituent power amend by way of addition, variation or repeal any provision of this Constitution in accordance with the procedure laid down in this article.]

<sup>51</sup>[(2)] An amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed

in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting, <sup>52</sup>[it shall be presented to the President who shall give his assent to the Bill and thereupon] the Constitution shall stand amended in accordance with the terms of the Bill:

Provided that if such amendment seeks to make any change in—

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Subs. by the Constitution (Twenty-fourth Amendment) Act, 1971, s. 3, for “Procedure for the amendment of the Constitution”.

Ins. by s. 3, *Ibid.*

Art. 368 renumbered as cl. (2) thereof by s. 3, *ibid*

Subs. by s. 3, *ibid.*, for “it shall be presented to the President for his assent and upon such assent being given to the Bill,”.

- (a) article 54, article 55, article 73, article 162 or article 241, or  
(b) Chapter IV of Part V, Chapter V of Part VI, or Chapter I of Part XI, or  
(c) any of the Lists in the Seventh Schedule, or (d) the representation of States in Parliament, or  
(e) the provisions of this article, the amendment shall also require to be ratified by the Legislatures of not less than one-half of the States by resolutions to that effect passed by those Legislatures before the Bill making provision for such amendment is presented to the President for assent.

<sup>53</sup>[(3) Nothing in article 13 shall apply to any amendment made under this article.]

<sup>54</sup>[(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.

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.]

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Ins. by the Constitution (Twenty-fourth Amendment) Act, 1971, s. 3.

Cls. (4) and (5) were ins. in article 368 by s. 55 of the Constitution (Forty-second Amendment) Act, 1976. This section has been declared invalid by the Supreme Court in *Minerva Mills Ltd. and Others Vs. Union of India and Others* (1980) 2 SCC 591

## APPENDIX B

# 5

### SCOPE OF THE JUDICIAL REVIEW OF LAWS IN THE NINTH SCHEDULE OF THE CONSTITUTION: RECENT APPROACH OF THE SUPREME COURT

Sangeeta Mandal\*

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#### INTRODUCTION

The Ninth Schedule was included in the Indian Constitution by the Constitution (First Amendment) Act, 1951, along with Article 31B. It provides that none of the Acts and Regulations included in the Ninth Schedule to the Constitution shall be deemed to be void on the ground that they are inconsistent with any of the rights conferred by Part III of the Constitution. In effect, the sole purpose of the Ninth Schedule read with Article 31B is to save the Acts passed by the legislature from the power of judicial review of the courts. Recently, on 11-1-2007 in I.R.Coelho (Dead) by LRs v. State of Tamil Nadu, the Nine-Judge bench headed by Justice Y.K. Sabharwal, C.J.I., after a reference being made to it by a five-judge bench has unanimously pronounced upon the constitutional validity of the Ninth-Schedule laws that, in the post-1973 era, they are open to attack for causing the infraction which affects the basic structure of the Constitution. Such laws will not get the protection of the Ninth Schedule for escaping the judicial scrutiny and are open to challenge in the courts of law. It is an unanimous judgment of the nine judge bench of the Supreme Court of India, wherein the court is confronted with a very important yet not very easy task of determining the nature and character of the protection provided by Article 31B of the Constitution of India to the laws added to the Ninth Schedule by amendments made after 24th April 1973, the date on which the judgment was pronounced in the famous Kesavananda Bharti's case propounding the doctrine of Basic structure of the Constitution to test the validity of constitutional amendments. The judgment in this case put an end to the politico-legal controversy by holding the Parliament's amending power subject to Judicial Review in line with Kesavananda Bharti's decision that the violation of Doctrine of Basic Structure will never be tolerated. The judgment upholds the right of the judicial review and the supremacy of judiciary in interpreting laws.

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The purpose of this paper is to discuss the scope of power of judicial review of the courts in relation to the laws included in the Ninth Schedule and analysis the development of law made in this by the judiciary.

## HISTORICAL BACKGROUND OF THE NINTH SCHEDULE

Judicial review of constitutional amendments had its genesis in cases arising out of property rights. In the Constitution of India the right to property was recognized in Part III as a fundamental right under Article 19 (f) and no property could be acquired except for a public purpose and on payment of compensation<sup>1</sup>.

Soon after the commencement of the Constitution in 1950, some state governments initiated proposals for incorporation of laws relating to agrarian reforms. These laws contained provisions for the abolition of zamindari system, as well for the compulsory acquisition of property for public purpose. One such measure was the Bihar Land Reforms Act, 1950, enacted by the Bihar Legislature. The Bihar Land Reforms Act, 1950 provided for the acquisition by the state of the estates and tenures of the three leading 'zamindars' of the Bihar province. The Act was challenged in Kameshwar

Singh v. State of Bihar<sup>2</sup> before the Patna High Court. The High Court struck down the Bihar Land Reforms Act, 1950 as unconstitutional and void as it contravened the provisions of Article 14 and Article 19(1)(f) of the Constitution. The Central Government felt that such judicial pronouncements would endanger the whole zamindari abolition programme. To overcome the difficulty, a new provision, Article 31A was added by the Constitution (1st Amendment) Act, 1951. Article 31A provides that no law providing for acquisition of any 'estate' or any right therein, extinguishment or modification of any such right shall be deemed to be void on the ground that it is inconsistent with or takes away or abridges any of the rights conferred by Articles 14 or 19 of the Constitution. Article 31A was introduced into the Constitution with retrospective effect from the date of commencement of the Constitution, i.e., January 26, 1950.

Besides Article 31A, the Constitution (1st Amendment) Act, 1951 also added a new provision, Article 31B, along with the Ninth Schedule to the Constitution. Article 31B immunizes the laws included in the Ninth Schedule, from attack on the ground of their inconsistency with any of the fundamental rights. The Ninth Schedule and Articles 31A and 31B are a novel, innovative and drastic technique of constitutional amendment. Article 31B gives blanket protection to all items in the Ninth Schedule and is receptive in nature. Even If a statute has already been declared unconstitutional, if included within the schedule, it is deemed to be constitutional from the date of its inception.

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Article 31 of the Constitution of India, 1950.

2. AIR 1951 Pat. 91.

The Ninth Schedule was, thus, introduced in order to bring in reforms to rationalize the agrarian structure, and thus change the economic base of the political power. Articles 31A, 31B and 31C made agrarian reforms a task to be implemented by the states under the Constitution. However, the objectives and effectiveness of the Ninth Schedule came under a scanner from the very beginning.<sup>3</sup>

In *Shankari Prasad v. Union of India*<sup>4</sup>, the Supreme Court upheld the constitutional validity of the Ninth Schedule. The question before the Supreme Court was whether an amendment of the Constitution made under Article 368 was included in term "law" in Article 13? The Court, upholding the constitutionality of the 1st Amendment, observed that "law" in Article 13 did not include an amendment enacted under Article 368. The Supreme Court distinguished between the ordinary legislative power and the constitutional power. In the context of Article 13, "law" must be taken to mean rules or regulations made in the exercise of ordinary legislative power and not amendments to the Constitution made in the exercise of constituent power. The Supreme Court, thus, laid down that Article 368 conferred constituent power on Parliament, in the exercise of which it could amend every provision of the Constitution, including the fundamental rights. Article 31A was again amended with retrospective effect by the Constitution (4th Amendment) Act, 1955, which further extended the scope of the word 'estate' which now includes any 'jagir', 'inam', or 'maufi' or other similar grant and in the State of "Madras and Kerala janman right. It inserted certain state Acts in the Ninth Schedule. The amendment remained unchallenged because of decision in *Shankari Prasad* case.

The Constitutional validity of the Acts added to the Ninth Schedule by the Constitution (Seventeenth Amendment) Act, 1964 was challenged in petitions filed under Article 32 of the Constitution. Upholding the constitutional amendment and repelling the challenge in *Sajjan Singh v. State of*

*Rajasthan*<sup>5</sup> the law declared in *Sankari Prasad* was reiterated. It was noted that Articles 31A and 31B were added to the Constitution realizing that State legislative measures adopted by certain States for giving effect to the policy of agrarian reforms have to face serious challenge in the courts of law on the ground that they contravene the fundamental rights guaranteed to the citizen by Part III. The Court observed that if pith and substance test is to apply to the amendment made, it would be clear that the Parliament is seeking to amend fundamental right solely with the object of removing any possible obstacle in the fulfillment of the socio-economic policy. The Court

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Kaur, Sarbjit. Judicial Review and Ninth Schedule of the Constitution, *Journal of Constitutional and Parliamentary Studies*, 2006, vol. 40, pg. 315- 342.

AIR 1951 SC 458.

AIR 1965 SC 845.

further noted that the impugned act does not purport to change the provisions of Article 226.

Then came the celebrated judicial pronouncement in I C. Golak Nath v.

State of Punjab<sup>6</sup>. In this case, the constitutional validity of the Constitution-1st Amendment, 1951, 4th Amendment, 1955 and 17th, Amendment, 1964 was again examined by the Supreme Court. The Supreme Court by a majority of 6:5 overruled its earlier decisions in Shankari Prasad and Sajjan Singh and held that Parliament had no power to amend the fundamental rights, It was observed by the Court that Article 368, as its marginal note showed, in terms, only prescribed the various procedural steps in the matter of amendment of the Constitution, but did not confer power on Parliament either expressly or impliedly to amend the Constitution. The Court held that an amendment was a legislative process and an amendment of the Constitution was made only by the legislative process with ordinary majority or with special majority, as the case may be, and that an amendment could be nothing but "law" within the meaning of Article 13.

The Supreme Court further declared that Parliament would have no power in future, i.e., from the date of Golak Nath decision on February 27, 1967, to amend any provision of Part III of the Constitution so as to take away or abridge the fundamental rights enshrined therein.

## EVOLUTION OF DOCTRINE OF BASIC STRUCTURE

The doctrine of basic structures of the Constitution is a relatively recent innovation in India .It is a judicial invention and a product of what is termed 'creative jurisprudence'.

To nullify the effect of Golak Nath and to provide unlimited power to Parliament to amend any part of the Constitution including fundamental rights, the Constitution (24th Amendment) Act, 1971 was enacted<sup>7</sup>. In the same year the Parliament passed 25th and 26th Constitutional Amendment Acts. The Constitution (29th Amendment) Act, 1972 amended the Ninth Schedule to the Constitution inserting therein two Kerala Amendment Acts in furtherance of land reforms.

The validity of all these Amendments were challenged in Kesavananda Bharati v. State of Kerala.<sup>8</sup> The main question involved was the extent of amending power of Parliament under Article 368 of the Constitution. A special Bench of 13 judges was constituted to hear the case. The Court by a majority

AIR 1967 SC 1643.

By Constitution (24th Amendment) Act, 1971, Article 13 was amended and after clause (3), the following clause was inserted as Article 13(4): "13(4) Nothing in this article shall apply to any amendment of this Constitution made under article 368."

AIR 1973 SC 1461.

upheld the Constitutional validity of the 24th Amendment and the 29th Amendment and overruled Golak Nath which denied Parliament the power to amend fundamental rights. The Court observed that the 24th Amendment merely made explicit which was implicit in the unamended Article 368. However, the judges differed along themselves as to the extent or the scope of the power of amendment of Parliament. Seven of the thirteen judges observed that the power of amendment of Parliament under Article 368 was subject to certain implied and inherent limitation and that in the exercise of its amending power, Parliament could not amend the basic structure or framework of the Constitution. While the other six judges (Ray, Palekar, Mathew, Beg, Dwivedi, and Chandrachud, JJ) were of the opinion that there was no limitation on the power of Parliament to amend the Constitution.

Khanna, J. appears to have reconciled the two divergent views and took a middle path and thus tilted the balance in forming the majority decision with Sikri, C.J., Shelat, Hegde, Grover, Jaganmohan Reddy, Mukheriea, JJ. Khanna, J. held that Parliament had wide power of amending the Constitution under Article 368, it extended to all the provisions of the Constitution, including those relating to fundamental rights, but the amending power is not unlimited and it did not include the power to destroy or abrogate the basic structure or framework of the Constitution. The majority Supreme Court thus evoked the theory of basic structure. However, the seven majority judges did not say it with precision as to what constituted the basic structure, which was beyond the amending power of Parliament under Article 368. According to them the basic foundation of the basic features could be easily discernible from the preamble, as well as, from the whole scheme of the Constitution.

The Supreme Court had an occasion to refer to the doctrine or basic structure in *Indira Nehru Gandhi v Raj Narain*<sup>9</sup>, popularly known as Election Case, wherein for the first time the Challenge to the constitutional amendment was not in respect of right to property or social welfare, the challenge was with respect to electoral Laws. In this case, the appellant, Mrs. Indira Nehru Gandhi, the then Prime Minister filed an appeal before the Supreme Court against the judgment of the Allahabad High Court, in which the High Court had invalidated the election of the appellant to Lok Sabha, on the ground of having committed corrupt practice under the Representation of the People's Act, 1951. During the pendency of the appeal before the Supreme Court, Parliament enacted the Constitution (39th Amendment) Act, 1975. The 39th Amendment, inter- alia, inserted a new Article 329A in the Constitution, to nullify the effect of the High Court judgment and also withdrawing the jurisdiction of all courts, including the Supreme Court, over disputes relating to the elections involving the Speaker and the Prime Minister including the present appeal pending before the Supreme Court. Clause (4) of the new

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AIR 1975 SC 2299.

Article 329A, which is directly concerned with this appeal, stated that no law made prior to the commencement of 39th Amendment, in so far as it related to election petitions would apply or should be deemed to have applied to election of the Prime Minister to either House of Parliament. It further provided that such election would not be deemed to be void or even to have become void and that notwithstanding any decision of any court before 39th Amendment, declaring such election to be void. Though all five judges delivered concurring judgments to strike down clause (4) of Article 329A and declared judicial review, free and fair election, rule of law and right to equality as constituting the basic feature of Constitution, their views on the issue of judicial review are replete with variations. Beg, J. clearly expressed his view that judicial review was a part of basic structure of the Constitution.

Article 368 was amended by the Constitution (42nd Amendment) Act, 1976. It inserted in Article 368, clauses (4) and (5). Article 368 Clauses (4) and (5) provides that amendment under this article shall not be called in question in any court on any ground and it declares that there shall be no limitation on the power of Parliament to amend the Constitution.

In *Minerva Mills v. Union of India*<sup>10</sup>, the Court struck down clauses (4) and (5) and Article 368 finding that they violated the basic structure of the Constitution. Bhagwati, J. in this case observed that clause (4) of Article 368 would result in enlarging the amending power of the Parliament contrary to dictum in *Kesavananda Bharti's* case. The learned judge said: "So long as clause (4) stands, an amendment of the Constitution though unconstitutional and void as transgressing the limitation on the amending power of Parliament as laid down in *Kesavananda Bharti's* case would be unchallengeable in a court of law. The consequence of this exclusion of the power of judicial review would be that, in effect and substance, the limitation on the amending power of Parliament would, from a practical point of view, become non-existent. This would undoubtedly damage the basic structure of the Constitution, because there are two essential features of the basic structure which would be violated, namely, the limited amending power of Parliament and the power of judicial review.

These decisions illustrate that the theory of basic structure helps to protect the core of the Constitution from the onslaughts of legislatures.

### **NINTH SCHEDULE LAWS - SCOPE AND EXTENT OF IMMUNITY FROM JUDICIAL REVIEW**

Article 31B read with the Ninth Schedule provides what is generally described as a protective umbrella to all Acts which are included in the Schedule, no matter of what character, kind or category they may be. However, question arises whether the Acts which are included in the Ninth

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10. AIR 1980 SC 1789.

Schedule on or after 24<sup>th</sup> April, 1973, on which date the judgment in Kesavananda Bharati<sup>11</sup> was rendered, would also enjoy that protection under Article 31B. This question was answered by the Supreme Court in Waman Rao v. Union of India<sup>12</sup>. According to which, amendment to the Constitution made on or after April 24, 1973, by which the Ninth Schedule has been amended from time to time by the inclusion of various Acts and Regulations therein, are open to challenge on the ground that they or anyone or more of them, are beyond the constituent power of Parliament since they damage the basic or essential features of the Constitution. In this case the constitutional validity of the Maharashtra Land (Ceilings on Holdings) Reform Act, 1961 was challenged on the ground that it violated Articles 14, 19 and 31 of the Constitution. The Court upheld the constitutional validity of the Act as its provisions could not be deemed to be void on the ground that they were inconsistent with or abridged any of the rights conferred by Article 14, 19 or 31.

The Constitution Bench of the Supreme Court that had decided Waman Rao had also decided Maharao Sahib Sri Bhim Ji v. Union of India<sup>13</sup>, wherein the validity of the Urban Land (Ceiling and Regulation) Act, 1976, added to the Ninth Schedule by the constitution (40th Amendment) Act, 1976 was 111 question on the ground of its inconsistency with the fundamental rights contained in Articles 14, 19, and 31 of the Constitution. The majority held section 27(1) of the impugned Act, insofar as, it imposed a restriction on the transfer of any urban or unbanishable property as violative of Articles 14 and 19 (1)(f) respectively. When the said Act was enforced in February 1976, Article 19(1)(f) was part of fundamental rights chapter and it was omitted therefrom only in 1978 by 44th Constitutional Amendment Act and made instead only a legal right under Article 300A.

### **WHETHER THE NINTH SCHEDULE HAS BEEN MISUSED?**

Ever since the First Amendment, the Ninth Schedule has been relied upon to amend the constitution multiple times over. The 4th amendment inserted six acts to the 9th schedule. The 17th amendment added 44 more acts. The 29th amendment brought in two acts from Kerala. In 1975 Indira Gandhi's infamous abuse of executive power leading upto emergency saw the 39th amendment adding certain central enactments.

Originally, sixty-four laws were added to the Ninth Schedule. It was again amended by the 4th and 17th Constitution, (Amendment) Acts 1955 and 1964 respectively by which certain more Acts were added to the Ninth Schedule. The Constitution (29th Amendment) Act, 1972, added Kerala

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Supra note 8.

AIR 1981 SC 274.

AIR 1981 SC 234.

Land Reforms Acts, 1969 and the Kerala Land Reforms Act, 1971, to the Ninth Schedule. The validity of this amendment was upheld by the Supreme Court in *Kesavananda Bharati*<sup>14</sup>. The Constitution (34th Amendment) Act, 1974, amended the Ninth Schedule for the fourth time and added 17 land reform laws.

On the basis of progressive legislation any laws can be included in the Ninth Schedule and thus the very purpose of judicial review as provided in Article 13 for the protection of fundamental rights would be frustrated. The Constitution (42nd Amendment) Act, 1976, further added 64 central and state land reform laws to the Ninth Schedule.

The Constitution (66th Amendment) Act, 1990 again amended the Ninth Schedule and inserted 55 Land Reform Acts into the Schedule. After this amendment, the total number of Acts included in the Schedule had, increased to

The Constitution (75th Amendment) Act, 1994 has been passed by Parliament to bring Tamil Nadu Act providing for 69 percent reservation for backward classes under the Ninth Schedule to the Constitution and thus to take the legislation out of the ambit of judicial review. This is not justified as the object of the Ninth Schedule is to protect only the land reform Acts from being challenged in the court of law and not a law for reservation of backward classes. This is clear misuse of Ninth Schedule of the Constitution for political purpose. However, the constitutional validity of Tamil Nadu Reservation Act was challenged before the Supreme Court in *I.R. Coelho*<sup>15</sup>.

What takes the cake however is the 78th amendment, which was about not just immunity to laws in 9th schedule, which was suspect, but amendments to those laws and making those amendments immune.<sup>16</sup> After this amendment the total number of Acts included in the Schedule has risen to 284.

## THE NINTH SCHEDULE LAWS NOW OPEN TO JUDICIAL REVIEW

The fundamental question discussed by the Supreme Court in *I.R.Coelho*<sup>17</sup> is whether on and after 24th April, 1973 when basic structure doctrine was propounded, it is permissible for parliament under Article 31B to immunize legislations from fundamental rights by inserting them into the Ninth Schedule and if so, what is its effect on the power of judicial review of the Court? The order of reference was made by a Constitution Bench of Five Judges is reported in *I.R.*

*Cohelo (Dead) by LRs v. State of Tamil Nadu*<sup>18</sup>. The Gudalur

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*Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461.  
(1999) 7 SCC 580.

Yossarin, Asian News, Ninth Schedule of India Constitution now open to judicial review- Why did it take this long?,[www.bloggernews.net/13766](http://www.bloggernews.net/13766).

*I. R. Cohelo (Dead) LRs v. State of T. N.*, AIR 2007 SC 861.  
Supra note 17.

Janman Estates (Abolition and Conversion into Ryotwari), Act, 1969 (the Janman Act), in so far as it vested forest lands in the Janman estates in the State of Tamil Nadu, was struck down by this Court in *Balmadies Plantations Ltd. v. State of*

Tamil Nadu<sup>19</sup> because this was not found to be a measure of agrarian reform protected by Article 31-A of the Constitution. Section 2(c) of the West Bengal Land Holding Revenue Act, 1979 was struck down by the Calcutta High Court as being arbitrary and, therefore, unconstitutional and the special leave petition filed against the judgment by the State of West Bengal was dismissed. By the Constitution (Thirty-Fourth Amendment) Act, the Janman Act, in its entirety was inserted in the Ninth Schedule. By the Constitution (Sixty - Sixth Amendment) Act, the West Bengal Land Holding Revenue, Act. 1979, in its entirety, was inserted in the Ninth Schedule. These insertions were the subject matter of challenge before a Five Judges Bench. It rests on two counts (1) Judicial review is a basic feature of the Constitution; to insert in the Ninth Schedule an Act which, or part of which, has been struck down as unconstitutional in exercise of the power of judicial review, is to destroy or damage the basic structure of the Constitution. (2) To insert in the Ninth Schedule after 24.4.1973, an Act which, or part of which, has been struck down as being violative of the fundamental rights conferred by Part III of the Constitution is to destroy or damage its basic structure. These insertions were the subject matter of challenge before a Five Judge Bench. The contention urged before the Constitution Bench was that the statutes, inclusive of the portions thereof which had been struck down, could not have been validly inserted in the Ninth Schedule. The five-Judge Constitution

Bench observed that, according to *Waman Rao v. Union of India*<sup>20</sup> amendments to the Constitution made on or after 24th April, 1973 by which the Ninth Schedule was amended from time to time by inclusion of various Acts, regulations therein were open to challenge on the ground that they, or any one or more of them, are beyond the Constituent Power of Parliament since they damage the basic or essential features of the Constitution or its basic structure. The decision in

*Minerva Mills*<sup>21</sup> and *Maharao Sahib Shri Bhim Singhji*<sup>22</sup> were also noted and it was observed that the judgment in *Waman Rao*<sup>23</sup> needs to be reconsidered by a larger Bench so that the apparent inconsistencies therein are reconciled and it is made clear whether an Act or regulation which or a part of which, is or has been found by Supreme Court to be violative of one or more of the fundamental rights conferred by Articles 14, 19 and 31 can be included in the Ninth Schedule or whether it is only

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AIR 1972 SC 2240.

Supra note 12.

Supra note 10.

Supra note 13.

Supra note 12.

constitutional amendment amending the Ninth Schedule which damages or destroys the basic structure of the Constitution that can be struck down. While referring these matters for decision to a larger Bench, it was observed that preferably the matters be placed before a Bench of nine judges. This is how the matters have been placed before Supreme Court's nine judge bench.

The main thrust of the argument of the petitioners is that post-1973, it is impermissible to immunize Ninth Schedule laws from judicial review by making Part III inapplicable to such laws. Such a course, it is contended, is incompatible with the doctrine of basic structure. The existence of power to confer absolute immunity is not compatible with the implied limitation upon the power of amendment in Article 368, is the thrust of the contention. The contention proceeds that since fundamental rights form a part of basic structure and thus laws inserted into Ninth Schedule when tested on the ground of basic structures shall have to be examined on the fundamental rights test.<sup>24</sup>

The key question however is whether the basic structure test would include judicial review of Ninth Schedule laws on the touchstone of fundamental rights. According to the petitioners, the consequence of the evolution of the principles of basic structure is that, Ninth Schedule laws cannot be conferred with constitutional immunity of the kind created by Article 31B. Assuming that such immunity can be conferred, its constitutional validity would have to be adjudged by applying the direct impact and effect test which means the form of an amendment is not relevant, its consequence would be determinative factor.<sup>25</sup>

On the other hand, the contention urged on behalf of the respondents is that the validity of Ninth Schedule legislations can only be tested on the touch-stone of basic structure doctrine as decided by majority in Kesavananda Bharti's case which also upheld the Constitution 29th Amendment unconditionally and thus there can be no question of judicial review of such legislations on the ground of violation of fundamental rights chapter. The fundamental rights chapter, it is contended, stands excluded as a result of protective umbrella provided by Article 31B, and, therefore, the challenge can only be based on the ground of basic structure doctrine.<sup>26</sup> . Legislation can further be tested for (i) lack of legislative competence and (ii) violation of other constitutional provisions. This would also show, that there is no exclusion of judicial review and consequently, there is no violation of the basic structure doctrine. The contention is that there is no judicial review in absolute terms and Article 31B only restricts that judicial review power. It is contended that after the doctrine of basic structure which came to be

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Supra note 18 at 877.

Ibid.

Ibid.

established in Kesavananda Bharti's case, it is only that kind of judicial review whose elimination would destroy or damage the basic structure of the Constitution that is beyond the constituent power. Giving immunity of Part III to the Ninth Schedule laws from judicial review, does not abrogate judicial review from the Constitution. Judicial review remains with the court but with its exclusion over Ninth Schedule laws to which Part III ceases to apply. The contention is that the majority in Kesavananda Bharti's case held that there is no embargo with regard to amending any of the fundamental rights in Part III subject to basic structure theory and therefore the petitioners are not right in the contention that in the said case the majority held that the fundamental rights form part of the basic structure and cannot be amended. The further contention is that if Fundamental Rights can be amended, which is the effect of Kesvananda Bharti's case overruling Golak Nath's case, then fundamentals rights cannot be said to be the part of the basic structure, unless the nature of the amendment is such which destroys the nature and character of the Constitution. It is contended that the test for judicially reviewing the Ninth Schedule Laws cannot be on the basis of mere infringement of the rights guaranteed under Part III of the Constitution. The correct test is whether such laws damage or destroy that part of fundamental rights which form part of the basic structure. Thus, it is contended that judicial review of Ninth Schedule laws is not completely barred. The only area where such laws get immunity is from the infraction of rights guaranteed under Part III of the Constitution.

To answer this question the court first examined the judgement in Keavananda Bharati, particularly with reference to 29th Amendment. Khanna, J. was of the view that 29th Amendment Act did not suffer from any infirmity and as such was valid. Thus, while upholding the 29th Amendment Act, there was no mention of the test that is to be applied to the legislations inserted in the Ninth Schedule. The implications that the respondents seek to draw from the above was that this amounts to an unconditional upholding of the legislations in the Ninth Schedule. However, Khanna, J. in Indira Nehru Gandhi made it clear that he never opined Kesavananda Bharati that the fundamental rights were outside the purview of the basic structure According to him, what has been laid down in that judgment is that no article of the Constitution is immune in from amendmentary process because of the fact that it relates to a fundamental right and is contained in the Part III of the Constitution. Thus, after this clarification, it is not possible to read the decision of Khanna, J. in Kesavananda Bharati so as to exclude fundamental rights from the purview of the basic structure, the inevitable consequence is that the 29th Amendment even if treated as unconditionally valid is of no consequence on the point in issue before the court. The problem was solved in Minerva Mills by the Supreme Court by holding that Acts inserted in the Ninth Schedule were not unconditionally valid but would have to stand the test of fundamental rights.

The Court in I.R. Coelho, after discussing the above cases, was of the opinion that rights and freedom created by the fundamental rights chapter could be taken away or destroyed by amendment of relevant article, but subject to limitation of basic structure doctrine. It may reduce the efficacy of Article 31B but that is inevitable in view of the progress the laws have made post - Kesavananda Bharati, which has limited the power of Parliament to amend the Constitution under Article 368 of the Constitution by making it subject to the doctrine of basic structure. Part III is amendable subject to basic structure doctrine. It is permissible for the legislature to, amend the Ninth Schedule and grant a law the protection in terms of Article 31B but subject to the right of citizen to assail it on the concept of enlarged judicial review. The legislature cannot grant fictional immunities and exclude the examination of Ninth Schedule law by the Court after the enunciation of the basic structure doctrine. The constitutional amendments are subject to limitations and if the question of limitations is to be decided by Parliament itself which enacts the impugned amendments and gives that law a complete immunity, it would disturb the checks and balances in the Constitution. The authority to enact law and decide the legality of the limitation cannot vest in one organ. The validity to the limitation on the rights in Part III can only be examined by another independent organ, namely, the judiciary. The doctrine of basic structure as a principle has now become an axiom. The power to amend the Constitution is subject to the aforesaid axiom.

After the judgment of Supreme Court in this case it is now well settled principle that any law placed under Ninth Schedule after April 24, 1973, are subject to scrutiny of Court's if they violated fundamental rights and thus put the check on the misuse of the provision of the Ninth Schedule by the legislative.

## CONCLUSION

The principle of constitutionalism is now a legal principle which requires control over the exercise of Governmental power to ensure that it does not destroy the democratic principles upon which it is based. These democratic principles include the protection of fundamental rights. Articles 14, 19, 21 represent the foundational values which form the basis of the rule of law. These are the principle of constitutionality which form the basis of judicial review apart from the rule of law and separation of powers.<sup>27</sup>

The original purpose of the Ninth Schedule read with Article 31B of the Constitution was to shield the land reform laws from judicial scrutiny in earlier year of independence to promote social change. Whereas scope of Article 31A is limited to property related laws only, the scope and ambit of Article 31B is not clearly defined thereby giving wide discretion to Parliament

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27. Supra note 18 at para 44.

to include any law in the Ninth Schedule as it considers fit and proper. Therefore Article 31B has a far greater possibility of its misuse. The rationale for Article 31-B and the Ninth Schedule was to protect legislation dealing with property rights and not any other type of legislation. But, in practice, Article 31-B has been used to invoke protection for many laws not concerned with property rights in anyway. Article 31-B is thus being used beyond the socio-economic purpose for which it was enacted.

Justification for conferring protection, not blanket protection, on the laws included in the Ninth Schedule by Constitutional Amendments shall be a matter of Constitutional adjudication by examining the nature and the extent of infraction of a Fundamental Right by a statute, sought to be Constitutional protected, and on the touchstone of the basic structure doctrine as reflected in Article 21 read with Article 14 and Article 19 by application of the 'rights test' and the 'essence of the right' test. Applying the above tests to the Ninth Schedule laws, if the infraction affects the basic structure then such a law(s) will not get the protection of the Ninth Schedule.

From 1970 onwards, the courts realized the scope of the misuse of power of amendment by Parliament and thus evolved the 'basic structure' doctrine in *Kesavananda Bharati*, which put irrevocable limits on the powers of the legislature. The object behind Article 31B is to remove difficulties and not to obliterate Part III in its entirety or to exclude judicial review. The doctrine of basic structure is propounded to save basic features.

Our Constitution meticulously defines the functions of various organs and that they have to function within their demarcated spheres. No organ can usurp the functions assigned to another. Legislature and executive, the two facets of people's will, have all the powers of formulation of policies as well as implementing them. Judiciary has power to ensure that the two organs of the state function within the constitutional limits. Judicial review, thus, is a powerful weapon to restrain unconstitutional exercise of power by the legislature and the executive. The Ninth Schedule acts as a striking counterpart to the theory of separation of powers intended to act as a system of checks and balances between the three organs of the state.

In *I.R. Coelho*, the Supreme Court once again discussed the scope of the immunity provided by the Ninth Schedule and held that any amendment which is relatable to Article 31B, i.e., any amendment to the Ninth Schedule, must not violate the basic structure. To examine whether the basic structure has been violated or not can be examined, only by exercising the power of judicial review. Therefore, the power of judicial review cannot be avoided. When elections are near, efforts are generally made by the politicians to woo the electorate by whatever means possible including frequent use of the Ninth Schedule to drop all trained laws in it. That is why judicial scrutiny is necessary for the sake of transparency and extensive circumspection of the law makers' motive behind putting certain enactments under this privileged constitutional clause.

In sum, all laws included in the Ninth Schedule are now open to judicial review of the courts on the ground of violation of basic structure of the Constitution and the erstwhile protection provided by the Ninth Schedule is no longer available. Moreover, after 44th amendment act right to property ceased to be fundamental right and it became only legal right. Thus the purpose for which the Ninth Schedule was enacted has more or less been met today. In such a situation the judgment of Supreme Court in I.R. Coelho case is laudable and such an interpretation will give a strong basis to the power of judicial review of the apex courts as a basic structure of the Constitution and thereby provide an effective means to prevent the misuse of the Ninth Schedule.



## Urkund Analysis Result

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