CHAPTER I
INTRODUCTION

After independence, the first task which confronted the leaders of India was to provide such a set up to the people of India where there was no social, economic disparity and where the Sovereignty, Integrity of the country was secure. The object therefore was clear in the minds of the members of the Constituent Assembly and they ultimately made people the source of power. As in the words of Sarvepalli Radha Krishan: “[India must have] a socio-economic revolution [to achieve] the real satisfaction of the fundamental needs of the common man... [and] a fundamental change in the structure of Indian society”.1 Dr. B.R Ambedkar. One of the main architects in framing of the Constitution of India laid down his views: “The Constitution... [could be] both unitary as well as federal according to the requirements of time and circumstances. . . ”.2

The framers as a body favoured to keep long Constitution in order to make Parliamentary Democracy more responsible. They believed that three strands of Constitution namely: Protecting and Enhancing National Unity and Integrity; Establishing the Institutions and Spirit of Democracy; and Fostering a Social Revolution to better the lot of the mass of Indians.3

India as a country has been declared as a ‘Sovereign Democratic Republic”4 therefore to break the traditional set up of

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3 Views of Vallabhai Patel, Rajindra Prasad and Abdul Kalam Azad under the leadership of Pandit Jawahar Lal Nehru, *Id.* at 6.
4 Stated in the Preamble of the Constitution of India.
society Adult Suffrage\textsuperscript{5} was adopted. Common man therefore was the source of power in responsible Parliamentary System.

The spirit of Democracy is evident from the ‘Parliamentary System’\textsuperscript{6} ‘Independent Judiciary’\textsuperscript{7} and in ‘Fundamental Rights’\textsuperscript{8} and the ‘Directive Principles of the State Policy’.\textsuperscript{9}

Founding fathers took great pains and farsightedness in framing the Constitution but those who are working the Constitution have found it inadequate to some needs and have amended it ninety four times till date. This has resulted into a tussle between the three organs of the State in our Constitution and raised the question as to how the country should live up to the ideals of Constitution.\textsuperscript{10}

The Indian Constitution is settling pace with the society which is changing so fast. It has travelled so far from the day it was enacted\textsuperscript{11} till today daily raising and solving many questions for public good and the questions maximum of political vendetta. As in the words of Mathew Arnold- "A beautiful and ineffective Angel, beating in the void his luminous wings in vain."\textsuperscript{12}

The Constitution is about politics. And the real problem about politics in India is its unpredictability. In politics one has to wait 64 years to see how it all comes out and we have waited-64 years, and it is still not certain how it will all come out. But one thing is certain “Our Constitution has survived” and that is a plus point. It took two years 11 months and 17 days to finalist the draft of the Constitution of India 1950. Sir Ivor Jennings (Constitutional historian of the

\begin{itemize}
\item Article 326, Id.
\item Article 79, Id.
\item Article 13, Id.
\item Part III, Id.
\item Part IV, Id.
\item Supra note 1 at 8.
\item Enacted on 26\textsuperscript{th} November 1949, the Constitution of India.
\end{itemize}
Commonwealth) critical of our Constitution has characterized it as in one cynical sentence-“too long, too prolix”. And to add insult to injury, he said that the dominance of the Constituent Assembly by lawyer-politicians had contributed to the Constitution complexity! Jennings who was so critical of India’s Constitution had taken great pain to draft Sri Lanka’s first Constitution and it lasted only seven years! Which only shows that the success of a written Constitution is measured by one criteria alone-i.e, whether it works? Our Constitution did work and worked well for first 19 years after independence. What happened after that? The answer lies in this that it ceased to work well the moment politics in this country become immoral and unprincipled.14

Politicians of all sorts have used the Democratic System to run it for their own convenience and not for the people. If any organ of the State chooses to block their way, they try to bend it to their will by means fair and foul.15

Fali S. Nariman16 pointed that there is the failure of Constitutional functionaries to function as is expected of them, especially when times are bad. In India, politics begets power, but the men and women in power assume that they owe no responsibility to the people who elected them till election time comes around once again.

Framers of the Constitution made a conscious effort to build a harmonious relationship between the three organs i.e. the Judiciary, the Executive and the Legislature by construing the feature of

14 Ibid.
16 Senior Advocate, Supreme Court and Eminent Jurist.
Separation of Powers. In addition, with Separation of Powers certain limitations were also imposed upon them to check their effective working. Keeping this in view of the power of Judicial Review was vested to the Judiciary to strengthen Independence of Judiciary and to check Arbitrariness of the Legislature and the Executive. As the Constitution is the Supreme law of the land therefore the Judiciary is regarded as the guardian of the Constitution of India and therefore any Executive or Legislative action which destroys the basic structure of the Constitution of India is ultra vires the Constitution and therefore can be declared void by the court. With this eventually the debate over the assumption of Supremacy of Judiciary started raising question on the power of Judicial Review of the Judiciary.

Vice-President Mohammad Hamid Ansari has attributed the over-activism of the Judiciary mainly to the ‘downward spiral of Rule of Law and malfunctioning of the institutions of the State, particularly the Executive. He expresses his views on whether the country is really governed as per the Rule of Law and whether the three wings of the State i.e the Legislature, the Executive and the Judiciary are discharging their obligations fully as the Constitution provides.

1.1. Doctrine of Separation of Powers

The Indian Democracy is based on the British model of the Parliamentary form of Government which represents the will of the people. The political structure is based on the principle of Separation

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17 Principle laid down by Montesquieu in his ‘Spirit of Laws’.
18 Article 13 of the Constitution of India.
19 Article 124-151 of the Constitution of India.
20 Article 79-123 of the Constitution of India.
21 Article 52-78 of the Constitution of India.
22 Remarks while addressing the function of the Indian Law Institute, the apex body of legal education and research in the country this week, The Tribune, November 8, 2007.
of Powers between three organs of the Government i.e. the Executive, the Legislature and the Judiciary.24

The origin of this principle goes back to the period of Plato and Aristotle. It was Aristotle who for the first time classified the functions of the Government into three categories i.e, deliberative, magisterial and judicial. In view of Montesquieu: “when the Legislative and Executive powers are united with the same person, or in the same body of magistrates, there can be no liberty, because apprehension may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in tyrannical manner. Again, there is no liberty, if the judicial power is not separated from the legislative and Executive. Where it is joined with the legislative, the life and Liberty of the subject would be exposed to arbitrary control; for the judge would be then the legislator. Where it is joined to the Executive power, the judge might behave with violence and oppression. There would be end of everything where the same man or the same body, whether of the nobles or of the people exercise those three powers, that of enacting laws, that of executing the public resolutions and of trying the causes of individuals”.25

Montesquieu’s “separation” took the form, not of impassable barriers and unalterable frontiers, but of mutual restraints or of what afterwards came to be known as “checks and balances”.26

In India the doctrine of Separation of Powers has no place in strict sense in Indian Constitution, but the functions of different organs of the Government have been sufficiently differentiated, so

24 Id. at 292.
26 Id. at 164.
that one organ of the Government could not usurp the functions of another.27

In *Kartar Singh v. State of Punjab*,28 K Ramaswami, J. stated that it is the basic postulate under the Indian Constitution that the legal Sovereign power has been distributed between the Legislature to make the law within the limits set down by the Constitution.

In *Indira Nehru Gandhi v. Raj Narain*,29 held that the doctrine of Separation of Powers has been accepted in the Constitution of India and is part of the basic structure of the Constitution.

But the doctrine of Separation of Powers is not acceptable fully in the Constitution of India as in case of *Ram Jawaya v. State of Punjab*,30 it stated that the Indian Constitution has not indeed recognized the doctrine of Separation of Powers in its absolute rigidity but the functions of the different parts or branches of the Government have been sufficiently differentiated and consequently it can very well be said that our Constitution does not contemplate assumption, by one organ or part of the State, of functions that essentially belong to another.

1.2. **Rule of Law**

One of the basic principles of the English Constitution is the Rule of Law. This doctrine is accepted in the Constitution of U.S.A and also in the Constitution of India. Dicey developed this theory of Coke in his classic book “The Law and the Constitution” published in the year 1885. According to Dicey’s Rule of Law forms a

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28 (1994) 3 SCC 569 at 736.
29 AIR 1975 SC 2299.
30 AIR 1955 SC 549.
fundamental principle of the Constitution, has three meanings or may be regarded from three different points of views.\textsuperscript{31}

It means, in the first place, the absolute supremacy of regular law as opposed to the influence of arbitrary power, and excludes the existence of arbitrariness, of prerogative, or even of wide discretionary authority on the part of the Government. It means, again, equality before the law, or the equal subjection of all classes to the ordinary law court; excludes the idea of any exemption of officials or others from the duty of obedience to the law which governs other citizens or from the jurisdiction of ordinary tribunals.\textsuperscript{32}

The Rule of Law, lastly may be used as a formula for expressing the fact that with us the law of the Constitution, the rules which in foreign countries naturally form part of a Constitutional Code (predominance of legal spirit), are not the source but the consequence of the rights of individuals, as defined and enforced by the court. Dicey's Rule of Law has been adopted and incorporated in the Constitution of India. The Preamble itself enunciates the ideals of justice, liberty and equality, these concepts are enshrined as Fundamental Rights\textsuperscript{33} and made enforceable. The principle of Judicial Review\textsuperscript{34} is embodied in the Constitution and subjects can approach the High Court and the Supreme Court for the enforcement of Fundamental Rights guaranteed under the Constitution of India. The Constitution is supreme and all the three organs of the Government, i.e. the Legislature, the Executive and the Judiciary are subordinate to and have to act in accordance with it. No person shall be deprived of his life and personal liberty except according to the procedure

\textsuperscript{32} Id. at 203.
\textsuperscript{33} Part III of the Constitution of India.
\textsuperscript{34} Article 13 of the Constitution of India.
established by law\textsuperscript{15} or of his property save by authority of law.\textsuperscript{36}

There is equality before the law and equal protection of laws.\textsuperscript{37}

In \textit{Chief Settlement Commissioner, Punjab v. Om Prakash},\textsuperscript{38} the Supreme Court observed: ‘In our Constitutional system, the central and most characteristic feature is the concept of the Rule of Law which means, in the present context, the authority of law court to test all administrative action by the standard of legality. The Administrative or Executive action that does not meet the standard will be set aside if the aggrieved person brings the appropriate action in the competent court’.

The Supreme Court in the case of \textit{A.D.M. Jabalpur v. Shivkant Shukla},\textsuperscript{39} observed that the Constitution is the mandate. The Constitution is the Rule of Law. There cannot be any Rule of Law other than the Constitutional Rule of Law.

1.3. Judicial Review

Another integral feature of our Constitution which goes together with Separation of Powers principle is that of Judicial Review. The makers of the Indian Constitution reposed great trust and confidence in the Judiciary by conferring on it such powers as have made it one of the most powerful Judiciary in the world.

From time to time, our Judiciary has exercised effective checks against both Legislature and Executive whenever these two have abdicated their Constitutional duties. By guaranteeing the Independence of Judiciary, with a power of Judicial Review, the

\textsuperscript{15} Article 21 of the Constitution of India.

\textsuperscript{36} Article 300A of the Constitution of India.

\textsuperscript{37} Article 14 of the Constitution of India.

\textsuperscript{38} AIR 1969 SC 33: (1968) 3 SCR 655.

\textsuperscript{39} AIR 1976 SC 1207: (1976) 2 SCC521.
The doctrine of Judicial Review was born in 1803 in the historic American case of *Marbury v. Madison*, where enunciating this doctrine Chief Justice Marshall established the superiority of the Supreme Court over the two organs by stating that if one act of Legislature or on Executive order contravened the provision of the Constitution the Judges had to declare it ultra-vires and void. The term 'Judicial Review', according to acclaimed American Constitutional Law scholar, Henry J. Abraham is the "Power of any court to hold unconstitutional and whence unenforceable any law, any official action based upon a law or any other action by a public official that it deems to be in conflict with the basic law, in the United States, its Constitution."  

The device of Judicial Review has been enacted in our Constitution as; "The State shall not make any law which fakes or takes away or abridges the rights conferred by this part and any law made in contravention of this Clause shall be to the extent of contravention void".  

It also renders all Pre-Constiution laws which are inconsistent with the Fundamental Rights void.  

The power of Judicial Reviews is exercised through the issuance of various writs under the Constitution.  

The Supreme Court has been expressly endowed with the power of Judicial Review. "A statute to be valid", observed Justice

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40 Supra note 23 at 294.  
41 *Marbury v. Madison*, 1 (cranch) 137-176 (1803).  
42 Supra note 23 at 295.  
43 Article 13 (2) of the Constitution of India.  
44 Article 13(1) of the Constitution of India.  
45 Article 32 and 226 of the Constitution of India.
Mukherjee”, Must in all cases, be in conformity with the Constitutional requirements and it is for the Judiciary to decide whether any enactment is unconstitutional or not.46

Judicial Review comprises of three aspects namely:

(i) Judicial Review of legislative action.

(ii) Judicial Review of administrative action.

(iii) Judicial Review of judicial decisions.

1.3.1. Judicial Review of legislative action

The Indian Constitution is basically a federal Constitution and is marked by the traditional characteristics of a federal system, namely, Supremacy of the Constitution, division of powers between the Union and the States, existence of an Independent Judiciary and a rigid procedure for amendment of the Constitution. The Indian Constitution has conferred various powers and duties upon the three wings of the State i.e. the Legislative, the Executive and the Judiciary, based upon the principle of Separation of Powers.47

The Judicial Powers are exercised by the court with the Apex court being the highest court in the hierarchy followed by the High Court and the subordinate court and one of the distinction feature of our Constitution is that while the Legislature and the Executive cannot supervise or review the decisions of the court, the High Court can review the decision of the Executive and test the legality and Constitutional validity of the laws passed by the Legislature, in exercise of their power of Judicial Review. The court have been conferred with the power as well as a duty to uphold the Constitution

and to ensure that the other organs of the State functions within limits prescribed for them under the Constitution.48

The power to ensure that a law passed by the Legislature is in accordance with the provisions of the Constitution, is vested only with the High Court and the Supreme Court and for this reason the Judicial Review of legislations becomes very relevant and it is further relevant so for conformity of the legislations with the provisions contained in Part (III) of the Constitution is concerned. The power of Judicial Review over the legislative action vested in the High Court under Article 226 and Article 32 in the Supreme Court is an integral and essential feature of the Constitution constituting part of its ‘basic structure’.49

1.3.2. Judicial Review of Constitutional Amendments

Judicial Review of Constitutional amendments would be no different from that of ordinary laws with reference to questions of legislation competence or Fundamental Rights. If an amendment is struck down as going beyond the limits of the power, the court would be merely upholding the supremacy and sanctity of the Constitution, exactly as it does when an ordinary law is struck down as being unconstitutional. Such Judicial Review does not make the Judiciary superior to the Legislature; it only postulates that the Sovereignty of the people is superior to both. Where the will of the Parliament declared in an amendment, stands in opposition to that of the people, declared in the Constitution, the will of the people must prevail.50

The Constitution is a political instrument. Many Constitutional problems are often not so such legal as political, social or economic,

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48 Ibid.
49 Id at 108.
yet they must be solved by a court of law. It is in vain to invoke to the voice of the Parliament.51

In the case of *L. Chandra Kumar v. Union of India*,52 the Supreme Court stated that the Judicial Review is a great weapon in the hands of the Judges. It comprises the power of a court to hold unconstitutional and unenforceable any law or order based upon such law or any other action by a public authority which the basic law the land does not provide.

As observed by the Supreme Court in *Minerva Mills Ltd. v. Union of India*,53 the Constitution has created an Independent Judiciary which is vested with the power of Judicial Review to determine the legality of administrative action and the validity of legislation. It is the solemn duty of the Judiciary under the Constitution to keep the different organs of the State within the limits of the power conferred upon them by the Constitution by exercising power of Judicial Review as sentinel on the *qui vive*. Thus, the power of Judicial Review aims to protect citizens from abuse or misuse of power by any branch of the State.

In *S.R Bommai v. Union of India*,54 the Supreme Court said that it is the cardinal principle of our Constitution that no one howsoever highly placed and no authority lofty can claim to be the sole judge of its power under the Constitution. The Rule of Law requires that the exercise of power by the Legislature or by the Judiciary or by the Government or by any other authority must be conditioned by the Constitution. Judicial Review is thus the touchstone and repository of the supreme law of the land. It is a vital principle of our Constitution

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51 Id. at 138.
52 AIR 1997 SC 1125.
53 AIR 1980 SC 1789.
54 (1994) 3 SCC 1.
which cannot be abrogated without affecting the basic structure of the Constitution.

In *B.R. Kapoor v. State of Tamil Nadu*, it is stated that the Constitution contains the basic or the fundamental law according to which the validity of the laws enacted by Legislature cannot violate any provision of the Constitution, it is like the British Parliament. Supremacy in India lies with the Constitution which is *suprema lex*, the paramount law of the land and there is no department or branch of Government above or beyond it.

1.4. **Provisions for amendment of the Constitution**

A country’s Constitution is its fundamental law. It provides the framework of the Government determines the powers and the functions of its organs and defines the rights and duties of citizens as well as their relationship to the Government. This naturally makes the Constitution a document of fundamental importance. This ought not to be tampered with lightly and frequently, as that would undermine the people’s confidence in it as a document of abiding significance. Constitutions therefore generally provide against easy and frequent amendments.

As the time changes, all the Constitutions need to meet the changes from time to time. A Constitution has to work not only in the environment in which it was formed but also decades later; it must be capable of adaptation to new conditions as they arise. In other words, it must be flexible enough to be amended when required. Now rigidity and flexibility are matters of degree and there is no easy answer as to just how rigid and flexible a Constitution should be for e.g. if we see the British Constitution, it is so flexible that it can be amended by the same ordinary procedure by which legislation is

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55 AIR 2001 SC 3435.
enacted. On the other hand we have examples of the Constitutions of the United States and Australia which have provided for a special and difficult amending procedure and therefore rank among the most rigid Constitutions in the world.  

Whereas India’s Constitution in the light of the foregoing considerations we find that it has so far proved itself to be adaptive. Constituent Assembly members wanted to avoid excessive rigidity. Pt. Jawahar Lal Nehru gave apt expression to the Assembly’s feeling on the subject by declaring “If you make anything rigid and permanent, you stop the nation’s growth, the growth of a living, vital, organic people.... When the world is in turmoil and we are passing through a very swift period of transition, what we may do today may not be wholly applicable tomorrow”.

Under the Constitution, Article 368 provides procedure for amendment but is silent about the parameters of the amending power. The proviso enumerates the Constitutional provisions the amendment of which requires the concurrence of at least half of the States. But even the proviso does not indicate whether the institutions covered by it, e.g. the State Legislatures and the High Court, can be abolished by the Parliament in the exercise of its amending power with the concurrence of the half of the States.

Although there are no express words of limitation in Article 368, it must be held that the amending power is not plenary but is limited in its scope. It does not comprise the power to alter or destroy any of the essential features, basic elements or fundamental principles of the Constitution.

57 Id. at 181.
58 Ibid.
59 Supra note 46 at 113.
60 Ibid.
From the survey of the amending provisions of the Constitution, it is evident that in accordance with the letter of the law, all or any of the provisions of the Constitution can be amended provided the specific procedure for the amendment of the Constitution is followed. Political scientists and most jurists agree that the Indian Constitution is a controlled Constitution. A controlled Constitution is one which is supreme, and all organs of the Government as well as other institutions of the governance are its creative. In respect of those provisions which need special majority vote, it is a controlled Constitution.

The most vital question then is: Is the amending power under the Indian Constitution limitless within the limits? Under the controlled Constitution, it is customary to divide the Parliament’s legislative power under the following two heads: 61

1.4.1. Ordinary legislative Power

Under this power Parliament exacts laws within its legislative competence, such as, on subjects of the Union list and the concurrent list.

1.4.2. Constituent Power

Under this power Parliament makes amendments to the Constitution. 62 N.A. Palkhivala emphatically asserted that there are inherent and implied limitations on Parliaments power of amending the Constitution. According to him “A power given by the Constitution cannot be construed as authorizing the destruction of other powers conferred by the same instrument. If there is no limit to the amending power, it can be used to destroy the Judicial power, the

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62 *Id.* at 9.
Executive power and even the ordinary Legislative power of Parliament and State Legislatures.\textsuperscript{63}

1.5. Reasons for construing Parliaments amending power to be limited

The scope of Parliament’s amending power under Article 368 must be determined on its own terms and in the setting of our Constitutional scheme and historical background.\textsuperscript{64}

On first principles – Even apart from judicial authority it is impossible to come to the conclusion that the Parliament’s amending power is absolute. There are irrefragable reasons to justify the view that the word “amendment” in our Constitution has a restricted meaning and that in any event the amending power is subject to inherent and implied limitations which do not permit Parliament to alter or destroy any of the essential features of the Constitution, although Parliament may amend the provisions relating to the basic features, without altering or destroying those features.

The restriction on Parliament’s amending power stems from three basic elements present implicit in our Constitution which is a controlled Constitution.\textsuperscript{65}

(i) The Constitution had been given by the people into themselves; and the ultimate legal Sovereignty resides in the people.

(ii) Parliament is only a creature of the Constitution. Periodically, the Lok Sabha is dissolved and members of the Rajya Sabha retire, while the Constitution continues to reign supreme.

\textsuperscript{63} Id at 10.  
\textsuperscript{64} Id at 122.  
\textsuperscript{65} Ibid.
(iii) The power to alter or destroy the basic feature of the Constitution is an attribute of ultimate legal Sovereignty.

1.6. The Social Revolution and the First Amendment

Beginning from the first Amendment of the Constitution, several amendments have been necessitated because of the interpretation given by the Judiciary which were inconvenient to Legislature. The much talked about measures like Zamindari abolition, Bank Nationalisation, Reservation of seats for educationally and socially backward classes of persons in educational institutions and in public services were thwarted wholly or partially by the Supreme Court as impermissible under the then scheme and provisions of the Constitution of India.66

The main plank for the Congress victory in the first general election was the declaration that Zamindari would be abolished and that quota shall be fixed for socially and educationally backward class of citizens. As soon as the Governments were formed in the States, laws relating to Zamindari abolition and other agrarian reforms were passed by the different States. But, these laws were challenged before various High Court on the ground of violation of Fundamental Right to property which was guaranteed under Article 19(1)(g) and 31 of the Constitution. Article 19(1)(g) had prohibited the State from making any law which might affect the citizens right to acquire, hold and dispose of property while Article 31 provided that no person shall be deprived of his property save by authority of law. Both these Articles were included in Part III of the Constitution and the Parliament and was as per Article 13, restrained to enact any law which right away take or abridge the rights conferred by Part III

of the Constitution and any law made in contravention of this Clause was, to that extent void.67

The Zamindar of Darbhanga estate in Bihar, Maharaja Kameshwar Singh, in a writ before Patna High Court,68 challenged the Constitutionality of the Zamindari Abolition and land reforms legislation primarily on the ground of inadequacy of compensation provided for by the impugned Act. Side by side, the Union Parliament had taken over the control of a sick textile Mill by passing the Sholapur Spinning and Weaving Mills (Takeover) Act, 1950, the Act made no provision for any compensation to its shareholders, and vested the administration of the Company in the hands of Government officials. The Constitutional validity of this Act too was challenged on the ground that no compensation, whatsoever, was paid to the shareholders who were against the canons of eminent domain.69

In yet another significant case, a Government order was issued by the then Madras State Government fixing the proportion of students of each community that could be admitted to the State Medical College. The Government order overtly intended to help the backward classes but in practice fixed seats in Medical College on the basis of different castes according to their proportion in the State population. This Government order was struck down by the Supreme Court being violative of equality before equality before law. Although the Directive of State Policy embodied in Article 46 of the Constitution enjoins that the State should promote the educational and economic interest of the weaker sections of the people and protect them from social injustices, the court held that the Directive

67 Ibid.
68 AIR 1951 Pat 91 (SB).
69 Supra note 46 at 278.
Principle of State Policy cannot override that Fundamental Right secured to the citizens by Part III of the Constitution.

To counter and avoid away challenge in future Article 31A and 31B along with Ninth Schedule were inserted by the First Amendment Act to shield agrarian and other nationalization schemes on the ground of inadequacy of compensation. Similarly Clause (4) was added to Article 15 enabling the State to make special provisions for the educational, economic, on social advancement of socially and educationally backward classes of citizens or for the Scheduled castes and Scheduled tribes. This amendment which empowered the States to reserve seats in State medical colleges for any socially and educationally backward classes of citizens or for S.Cs/STs laid the foundation of reservation in services and admission in educational institutions.\(^{70}\)

By the time the *Darbhanga case*\(^{71}\) came up before the Supreme Court, Articles 31-A and 31-B had already been inserted into the Constitution.

However, the Majority of the court held that though Article 31-A and 31-B precluded an attack on the ground of adequacy of compensation, it did not bar a challenge on the ground of adequacy of compensation, it did not bar a challenge on the ground that the compensation provided by the Legislature was to so inadequate that it was illusory or amounted the payment of no-compensation at all as the State is under obligation vide Entry 42 of list III of VII Schedule to pay some “compensation”: Besides, a new Ninth Schedule was added in the Constitution and certain Acts and Regulations were placed there in to make them immune from judicial scrutiny on the ground that such Acts, Regulations or provision though in consistent

\(^{70}\) *Ibid.*

\(^{71}\) AIR 1952 SC 252.
with the rights conferred by Part III of the Constitution shall be valid against any judgement, decree or order of any court or tribunal.

1.7. Enactment of Ninth Schedule Conflict between the Judiciary and the Legislature

Now that the dust and din raised by the Supreme Court judgment in *I.R Coelho’s case* on the Ninth Schedule of the Constitution have somewhat subsided, it may be time for a careful study and a dispassionate assessment of the verdict. This research work focuses on it. The media was quick to harness and flag knee-jerk reactions from political pundits and jurists even before they had time to read and digest the judgment in the *I.R. Coelho Case v. State of Tamil Nadu.* The theory that came handy and was immediately projected all over was that of the threat of an imminent confrontation between the Legislature and the Judiciary.

Our Constitution works on the basis of institutional checks and balances. The respective role and jurisdictions of the Executive, the Legislature and the Executive are clearly defined and delimited by the Constitution, the Legislature represents the people, controls the Government and makes laws and no one can interfere with its freedom and authority to do so.

The court have to adjudicate disputes, interpret the Constitution, “declare the law and pass the necessary orders for doing complete justice”. The Supreme Court is the final authority for interpreting and pronounces on the vires of a law. Any law which is violative of Constitutional provisions is invalidated. The power of Judicial Review has always been there with the Supreme Court and cannot be taken away by any subterfuge like the inclusion of a law in the Ninth Schedule or by providing that certain categories of laws

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72 AIR 2007 SC 861.
not be “called in question in any court”. The Ninth Schedule of the Constitution, added by First Amendment Act 1951 initially contained 13 entries only which have now swelled to 284. This Schedule was primarily meant to save land reforms and agrarian laws from judicial scrutiny, but in due course of time this practice became prevalent to override undeserved and inconvenient decisions of the higher court, a practice which became more prominent after the proclamation of emergency on 25-6-1975.

After the election of Mrs. Indira Gandhi as M.P it was declared invalid by the Allahabad High Court in the year 1975, Parliamentary power was unsparingly used to nullify the judgments in election matters. The Thirty Ninth Amendment Act, 1975 added a new Article 329A and barred the interference of court in the matters of election of any Member of Parliament, who was subsequently chosen as P.M, Speaker. Not only this, it was also provided that if any election petition was pending in any court, the same shall abate. Incidental changes were also made in the Representation of the People Act and the same was placed in the Ninth Schedule of the Constitution to give it added security. The Amendment had its adverse effect and election appeal of Mrs. Gandhi was allowed by the Apex court. It was only in 1979 when Article 329A was deleted by the Forty Fourth Amendment Act, that the court power of Judicial Review was restored in this regard.

1.8. Amending the Right to property Article

Pt. Jawahar Lal Nehru may or may not believe that Article 31 would stand the test of time, that it was adopted to India’s social need as he saw them. The First Amendment Act (1951) was aimed

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74 Ibid.
75 Supra note 50 at 281.
76 Ibid.
primarily at Zamindars rent farmers, although it also extended the State’s police power. The Act added Articles 31A, 31B and the Ninth Schedule to the Constitution. Article 31A allowed the States, despite any inconsistency with Article 14, or Article 31, to legislate for the acquisition of estates, the taking over of property by the State for a limited period in the public interest, and the extinction or modification of the rights of directors of stockholders or corporation. The first part of the Article as Dr. B.R Ambedkar speaking as law Minister, explained it, was intended: “to permit a State to acquire what are called estates - (It) not only removes the operation of the provision relating to compensation, but also removes the Article relating to discrimination. It does not apply to the acquisition of estates in land, which is very different thing”. The second part of the Article allowed the State to take over for short periods, without actually expropriating then, such property as businesses whose financial or other condition was harmful to public interest.

Article 31B gave protection to various land reform acts passed by State Legislatures. There was however, no unanimity on what the ‘basic features’ were, but it is clear that the Fundamental Right to property is not one of them. The abrogation of Article 19(1)(f) and Article 31 from the Constitution is therefore valid.

After the Constitution (Forty Fourth Amendment) Act 1978, omitted the property Clauses from the Fundamental Rights, there was justification left for the Ninth Schedule. But instead of repealing the

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78 Article 31 A: Saving of laws providing for acquisition of estates, etc.
79 Article 14 guarantees ‘Equality before Law.
80 Article 15 guarantees freedom of speech, assembly, association, movement, property and choice and occupation, trade or business.
81 Supra note 15 at 100.
82 Article 31B protected the various land reforms enacted by both the center and the States, by stating that none of these laws, which were to be listed in the Ninth Schedule can become void on the ground that they violated any Fundamental Rights.
Ninth Schedule, the powers that be started putting it to political use. The Schedule soon became a safe heaven or a dumping ground for all controversial laws of doubtful Constitutional veracity which the Government wanted to keep away from judicial scrutiny. The unholy lawless laws were turned into holy cause. All the attempts to legalize the illegal to protect the unconstitutional and evade or escape judicial scrutiny needed to strongly deprecated.84

In the Keshavanand Bharti Case in 1973,85 the Supreme Court, as part of its exercise in creative jurisprudence, propounded the unique doctrine of basic structure or features of the Constitution. Despite inclusion in the Ninth Schedule, a law could be challenged on the ground of being violative of the basic features of the Constitution, and the power of Judicial Review to question whether a law was in pursuance of the Directive Principles could not be taken away.

1.9. Judicial Response in Chronological Order

In Shankari Prasad Singh Deo v. State of Bihar,86 Kochunni v. State of Madras,87 and Sajjan Singh v. State of Rajasthan,88 the Supreme Court upheld the First Amendment and further held that the law, which seeks to deprive a person of his property must be a valid law, enacted by competent Legislature and not inconsistent with any of the Fundamental Rights guaranteed by Part III of the Constitution. In R.C. Cooper v. Union of India,89 (the Bank Nationalisation case) the Supreme Court held that the word ‘compensation’ implied full monetary equivalent of the property taken away from the owner i.e. market value on the date of acquisition.

84 Supra note 73 at 10.
85 AIR 1973 SC 1461.
86 AIR 1951 SC 458.
87 AIR 1960 SC 1080.
88 AIR 1965 SC 845.
89 AIR 1970 SC 564.
In *I.C. Golak Nath and Others v. State of Punjab*, a majority of 6-5 overruled Shankar Prasad and Sajjan Singh case holding that Constitutional amendment is law within the meaning of Article 30 and if it takes away or abridges any rights conferred by Part III it is void. The judgment was made prospective with effect from the date of decision (27th Feb, 1967).

*L.C. Golak Nath and Ors case* resulted into:

**Twenty Fourth Amendment 1971:** adding Article 13(4), that the Article shall not apply to any amendment of the Constitution under Article 368 and also amended Article 368 (1) by adding the word “in exercise of its constituent powers”

**Twenty Fifth Amendment (171):** amending Article-31 by which the amount fixed for acquisition could not be challenged on the ground of adequacy in court and inserted Article 31 (c) declaring that law securing any of the Principles in Part IV shall not be deemed to be void if it takes away the rights by Article 14 and Article 19 and no law containing such declaration will be questioned in court.

**26th Amendment (1971):** omitting Article 291, (Privy purses) and Article 362 (right and privileges of the rulers of the Indian States) and inserted. Article 363-A ceasing the recognition of rulers and obolishing privy purses; and Twenty Ninth(1972) : adding to Kerala Amendment Act in Ninth Schedule. The Twenty Fourth Amendment (1971) made an attempt to supersede *Golaknath Nath case* putting the validity of Constitutional amendment on the ground that it takes away or affect Fundamental Right beyond the pail of judicial scrutiny. This Twenty Fourth Amendment was challenged in *Keshavanand Bharti Case* before 13 Judges. The majority by 7:6 overruled the Twenty Fourth Amendment. The validity of laws 4 of

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90 AIR 1967 SC 1643.
91 Supra note 85.
Article 13 was upheld. In the result the Fundamental Rights could be amended under Article 368 and the validity cannot be questioned on the ground that the act invades or encroaches Fundamental Rights. The Supreme Court, however by a judicial innovation structured a 'Basic structure Doctrine' and gave itself power to review whether such an amendment would be *ultra vires* as it violates very structure of the Constitution. The Supreme Court without foreclosing the list of basic structure found following to be life and blood of the Constitution:

(a) Supremacy of the Constitution.

(b) Rule of Law.

(c) Separation of Powers.

(d) Preamble.

(e) Judicial Review.

(f) Federalism.

(g) Secularism.

(h) The Sovereign, Democratic, Republicion

(i) Freedom and Dignity of the Individual.

(j) Principles of Equality.

(k) Unity and Integrity of the Nation.

(l) Part III

(m) Social and Economic Justice.

(n) Balance between Fundamental Rights and Directive Principles.
(o) Parliamentary System.

(p) Limitation upon the Amending Power conferred by Article-368.

(q) Independence of Judiciary.

(r) Effective Access to Justice.

(s) Supreme court Power, Articles 32, 136, 141, 142

(t) Legislation seeking to nullify the awards made in exercise of the judicial power of the State by Arbitration Tribunals constituted under an Act.

The decision of Keshvanand Bharti case held that Judicial Review is one of the essential features of the Indian Constitution, which cannot be taken away by amendment under Article 368 and further held that the immunity to any particular law to implement the directive in Article 39 (C) is unconstitutional.

The majority of 13 Judges in Keshavanand Bharti case upheld Twenty Fourth Amendment; declared Twenty Fifth Amendment to the extent that it took away the power of Judicial Review, left 26th Amendment to the determined by Constitution bench of five and upheld Twenty Ninth Amendment.

The doctrine of basic structure or framework was firmly established and that majority did not accept the unlimited power of the Parliament to amend the Constitution and held that Article 368 has implied limitation. In Minerva Mills case,92 the Supreme Court struck down Clauses 4 and 5 of Article 368 as violative of basic structure of the Constitution and then came Waman Rao and Bhim Singh ji case challenging the validity of Urban land (Ceiling and

92 Supra note 53.
Regulation) Act, 1976, which inserted in Ninth Schedule. The Constitution Bench unanimously held Section 27(1) prohibiting disposal of property as violative of Article 14 and Article 19 (1) (f) which was latter omitted in 1978.

In June 1975, important development took place, when the Allahabad High Court set aside the election of the then Prime Minister Mrs. Indira Gandhi to the fifth Lok Sabha on the ground of alleged corrupt practices. During the pending appeal against the High Court judgement before the Supreme Court, the Constitution (Thirty Ninth Amendment) Act, 1975 was passed. In *Smt. Indira Gandhi v. Raj Narain*, the aforesaid amendment act was struck down by holding them to be violative of the basic structure of the Constitution.

In *Waman Rao and others v. Union of India*, and others, the amendment to the Constitution made on or after Twenty Fourth April 1973 by which the Ninth Schedule was amended from time to time by inclusion of various acts, regulations there under were 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 feature of the Constitution or its basic structure.

In *L. Chandra Kumar v. Union of India*, and others, it was held that power of Judicial Review is an integral and essential feature of the Constitution constituting basic part, the jurisdiction conferred on the High Court and the Supreme Court a part of inviolable basic structure of the Constitution of India.

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93 *Supra* note 29.
94 AIR 1981 SC 271.
95 (1997) 2 SCC 261.
Earlier in *S.R. Bommai and Others v. Union of India*, and others, it was held that Judicial Review is a basic feature of the Constitution and the power of Judicial Review is a constituent power that cannot be abrogated by judicial process of interpretation. It is a cardinal principle of our Constitution that no one can claim to be the sole judge of the power given under the Constitution and that its actions are within the confines of the powers given by the Constitution. It is the duty of this court to uphold the Constitutional values and enforce Constitutional limitations as that ultimate interpreter of the Constitution.

The Ninth Schedule contains 284 Acts adopted by 11 Constitutional amendments from 1951 to 1995 and omission of these Acts. Now, the nine-judge Constitution Bench has unanimously ruled that “all amendments to the Constitution made or after 24 April 1973 by which the Ninth Schedule is amended by inclusion of various laws there in shall have to be tested on the touchstone of the basic or essential features of the Constitution reflected in Article 21 read with Article 14, Article 19 and the principles underlying them. Even though an Act is put in the Ninth Schedule by a Constitutional Amendment its provisions would be open to attack on the ground that they destroy or damage right or rights taken away or abrogated pertains or pertain to the basic structure”.

The judgment in *I.R Coelho's case* has been called historic and path breaking. It would, however be seen that it is very largely a reiteration of the existing law as declared by the Supreme Court in earlier cases. The Supreme Court speaks of its own innovative basic
structure doctrine having become an axiom but still fails to conclusively define, delimit and the list the basic features.

1.1.10 The Contentions in I.R Coelho's Case

F.S. Narmian submitted that it is impermissible to immunise the Ninth Schedule from Judicial Review as it is violative of basic structure. The basic structure test will include Judicial Review of Ninth Schedule on the touchstone of Fundamental Rights. The Constitutional validity has to be judged on the direct impact and effect test, which means the impact not the form of amendment is relevant.

1.11 Respondents Submission

Respondents Submitted that the validity of Ninth Schedule can only be tested on touchstone of basic structure doctrine and there was no question of Judicial Review of such legislations on the ground of violations of Fundamental Rights which stand excluded by protective umbrella of Article 31-B and therefore, the challenge can be based only on the ground of basic structure doctrine and in addition (i) lack of legislation competence and (ii) violation of other Constitutional provisions.

1.12 Reasoning

The Acts put in Ninth Schedule do not become part of the Constitution by such inclusion as no State Legislature has power to repeal or amend the Constitution.

The amending power inserting laws into Ninth Schedule does not entail complete removal of Fundamental Right chapter. The Ninth Schedule is not controlled by any designed criteria or standards by which the exercise of power may be evaluated. There is no Constitutional control on such nullification. If the doctrine of
basic structure provides touchstone to test the amending power or its exercise, there can be no doubt and it has to be accepted Part III of Constitution has main role to play in the application of the doctrine.

The Supreme Court held: “A law that abrogates or abridges rights guaranteed by Part III of the Constitution may violate the basic structure doctrine or it may not. If former is the consequence of law, whether by amendment of any Article of Part III or by an insertion in the Ninth Schedule, such law will have to be invalidated is exercise of Judicial Review power of the court. The validity or invalidity would be tested on the principles laid down in this judgment.

The Majority judgment in Keshavanand Bharti's case read with Indira Gandhi's case, requires the validity of each new Constitutional amendment to be judged on its own merits. The actual effect and impact of the law on the Fundamental Rights guaranteed under Part III has to be taken account for determining whether or not it destroys basic structure. The impact test would determine the validity of the challenge. All the amendments to the Constitution made on or after 24th April, 1973 by which the Ninth Schedule is amended by inclusion of various laws there in shall have to be tested on the touchstone of the basic on essential features of the Constitution as reflected in Article 21 read with Article 14, Article 19, and the principles underlying them. To put it differently even though an Act is put in the Ninth Schedule by a Constitutional amendment, its provisions would be open to attack on the ground that they destroy or damage the basic structure if the Fundamental Right on rights taken away or abrogated pertains or pertain to the basic structure. 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 extent of infraction of a
Fundamental Right by a State, sought to be Constitutionally 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 “right test” and the “essence of the right test” taking the synoptic view of the Articles in Part III as held in *Indira Gandhi case*. Applying the above tests to the Ninth Schedule laws, if the infraction affects the basic structure then such a laws will not get the protection of the Ninth Schedule”.

The Supreme Court held that if the validity of any Ninth Schedule law has already been upheld by this court, it would not be open to challenge such law again on the principles declared by this judgment. However even, if a law is held to be violative of any rights in Part III is subsequently incorporated in the Ninth Schedule after 24th April, 1973 such a violation/infractions shall be open to challenged on the ground that it destroys on damages the basic structure as indicated in Article 21 with Article 14 Article 19 and principles under lying there under.

The Supreme Court further held that the actions taken and transaction finalized as a result of the impugned Acts shall not be open to challenge and directed that the petition /appeals be placed for hearing before a three Judges Bench.

1.13 Recent Developments

The Supreme Court cautions court against ‘overactivism’. Judiciary has been under attack from the Executive and the Legislature for ‘encroaching’ upon their spheres and Parliament in just concluded session debated the issue in detail, the Supreme Court in a path breaking introspective verdict today 98 disapproved of over activism by the Apex court itself and High Court, saying they ‘cannot

arrogate to themselves the functions of the other two organs of the Government.

Disapproving the Supreme Court’s 1998 intervention in Uttar Pradesh assembly trust vote by ordering a composite floor test between B.J.P leader Kalyan Singh and Congress – backed Jagdambika Pal and the 2005 order for an identical floor test in Jarkhand between U.P.A leader Shibhu Soren of the J.M.M and B.J.P Arjun Munda, a bench of Justices A.K.Mathur and Markandey katju said,‘the two cases were the ‘glaring examples’ of the Supreme Court ‘deviation’ from the clearly provided Constitutional scheme of ‘Separation of Powers’. The Interim order of this court (in the two cases),as is widely accepted, upsets the delicate Constitutional balance among the Judiciary, Legislature and the Executive, the bench in a hard – hitting judgement said, citing at least 15 cases of the Delhi High Court, which, it had encroached upon such sphere that wee purely Executive jobs in recent times. The all important judgement on the Separation of Powers between the three organs of the Government, as laid in the Constitution, came against a verdict of the Punjab & Haryana High Court, which was also lambasted for overstepping its jurisdiction in ordering the Haryana Tourism Corporation to create the posts of tractor drivers, which did not exist, to accommodate some daily wage gardeners, who were asked to do tractors drivers job after they were regularized: “The court cannot direct the creation of posts. The creation and sanction of posts is a prerogative of the Executive or the Legislative authorities and the court cannot arrogate to itself this purely Executive or legislative functions”, the Apex court said setting aside the High Court ruling. It further said the court could not justify orders on such encroachments of the domain of the other two wings merely on the ground that they were not doing their jobs properly. ‘.... The same allegation can then
be made against the Judiciary too because there are cases pending in the court for half a century'.

Pointing out that the issue of ‘inactive’ Executive and Legislature should only be left to the people to decide when they elect a Government in Democracy, the bench said if the Judiciary didn’t exercise restraint and over stretched its limits, there was bound to be a reaction from the political class, and it would pose a threat to Judiciary’s own independence as they might step in to curtail its powers. It said, ‘the Judiciary as the protector of the Constitution of course has the power to intervene but in exceptional circumstances when the situation forcefully demands it in the interest of the nation.’

Constitutional expert Rajeev Dhavan criticized the above observation and said: Justice M.Katju cannot reverse entire jurisprudence spread over years and criticized observation that in many cases court are crossing limits of power and encroaching upon domains of Executive and Legislature.99

According to former Justice Kuldip Singh, over the years PIL has done great service to the people of this country. It is a potent weapon in the hands of the poor the oppressed and the downtrodden for the vindication of the rights.100

According to Rajinder Sachar, the criticism of judicial activism as such is untenable, court have since long been judicially active in giving relief in social action litigation to labour, to victims of custodial violence to the excesses committed by the Executive.101

According to K.N. Bhatt, there are limits to activism. In the process of correcting Executive error or removing legislative

99 The Tribune, dated December 11.
100 The Tribune, dated December 25, p. 10.
101 The Tribune, dated December 20, p.10.
omission the court can so easily find itself involved in the policy making of a quality and to a degree characteristic of political authority, and indeed mistaken it for one. An excessively political role identifiable with political governance betrays the court into functions alien to its fundamental character, and tends to destroy the delicate balance envisaged in our Constitutional system its three basic institutions.  

According to Fali.S.Nariman, it is the misuse that requires correction, not by abolishing PILs, but by laying down norms and framing strict guidelines for ensuring that such PILs are not improperly motivated. When elected bodies and Governments perform these strictly governmental functions there can be no reason and no occasion arises for the court to act.  

According to P.P. Rao, by arising their personal views, the learned Judges have set in motion a Judicial Review of the earlier decisions, some of which have crossed the Lakshman Rekha. Article 142 of the Constitution of India empowers the Supreme Court in the exercise of its jurisdiction to pass any order for doing complete justice in a case. The apprehension that the Judiciary's independence can be curtailed by politicians is unfortunate.  

1.14 Objective of Study  

The Constitution as it came out of the Constituent Assembly contained the right to property as a judicially enforceable Fundamental Right in Articles 19 (1) (f) and 31. The property Clauses came in the way of Zamindari Abolition and land reforms. To save the Zamindari abolition laws in general and certain specified Acts in particular, the Constitution (First Amendment) Act, 1951,
inserted new Articles-31A and 31B and Schedule Nine. Article 31B provided that Acts and Regulations specified in the Ninth Schedule could not be invalidated by any court orders. Only 13 land reform laws were then included in the Ninth Schedule.

After the Constitution (Forty Fourth Amendment) Act, 1978, omitted the property Clauses from the Fundamental Rights, then there was no justification left for the Ninth Schedule. But instead of repealing the Ninth Schedule, the power that be started putting it to political use. The Schedule soon became a safe heaven or a dumping ground for all controversial laws of doubtful Constitutional veracity which the Government wanted to keep away from judicial scrutiny. To unholy lawless laws were turning into holy cows. All attempt to legalise to illegal, to protect the unconstitutional and to evade or escape judicial scrutiny need to be strongly deprecated.

To Coelho’s case\textsuperscript{105} it has been ruled that “all amendments to the Constitution made on or after 24\textsuperscript{th} April 1973 by which the Ninth Schedule is amended by inclusion of various laws therein shall have to be tested on the touchstone of the basic or essential features of the Constitution reflected in Article 21 read with Article 14, Article 19 and the principles underlying them . . . Even though an Act is put in the Ninth Schedule by a Constitution Amendment, its provisions would be open to attack on the ground that they destroy or damage the basic structure if the Fundamental Right or rights taken away or abrogated pertains or pertain to the basic structure”. This judgment has been called historic and path breaking. It would, however, be seen that it is vary largely a reiteration of the existing law as declared by the Supreme Court in earlier cases. The Supreme Court speaks of its own innovative basic structure doctrine having become an axiom but still fails to conclusively define delimit and list the

\textsuperscript{105} Supra note 85.
basic features. The Constitution is supposed to be the basic law of the land. The judgment is most interesting in the light the Tamil Nadu law that provides 69 percent quota and remained shielded from judicial scrutiny under Ninth Schedule. Some other laws like COFEPOSA, FERA etc also. This landmarks judgment may open the pandora box, given that there are 284 laws, which they thought beyond Judicial Review. At the same time the debate on the ‘basic structure’ of the Constitution, lying somnolent in the archives of India’s Constitutional history during the last decade of the 20th century, will reappear in the public realm. So this study is motivated by a desire to enquire into the significance, fallout and the basic Constitutional questions raised by this judgment.

1.15 Research Hypothesis

The Separation of Powers between Legislature, Executive and Judiciary constitutes basic structure. The judgments have reiterated that the Separation of Powers is one of the basic features of the Constitution. For preservation of liberty and prevention of tyranny it is absolutely essential to vest separate powers in three different organs. The importance of the Independence of Judiciary is to preserve the Separation of Powers and the rights of the people. The complete independence of court of justice is peculiarly essential. Limitations can be preserved in practice in no other way than through the medium of court of justice, whose duty is to declare all acts contrary to the basic structure of the Constitution void. Without this, all the reservations of particular rights or privileges would amount to nothing.

Article 13, provides for the Judicial Review of all laws, whether past or future. The court can declare a law unconstitutional

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106 The Tamil Nadu Backward Classes, Scheduled Castes and Scheduled Tribes (Reservation of seats in Educational Institutions and of Appointments or Posts in Services under the State) Act, 1993 (Tamil Nadu Act 45 of 1994).
if it is inconsistent with the rights conferred by Part III of the Constitution.

The power of Judicial Review over the Legislative action has been declared to be the integral part or the essential feature, constituting part of the basic structure of the Constitution. The court duty is to preserve the spirit of the Constitution. The inclusion of Ninth Schedule in the Constitution was made for the purpose of enacting agrarian reforms i.e. laws for the abolition of Zamindari system. It provides for immunity to those laws incorporated in Ninth Schedule from Judicial Review even if they abrogated the part III of the Constitution.

The people through the Constitution have vested the power to make laws in their representatives through Parliament in the same manner in which they have entrusted the responsibility to adjudge, interpret and construe law and the Constitution including its limitation in the Judiciary. Therefore mere possibility of abuse of Ninth Schedule is not a relevant test to determine the validity of a provision but it is the spirit of the Constitution which should prevail. The final consideration should be that the basic structure of the Constitution should not be assaulted and supreme law of the land should be protected and maintained as it is.

1.16 Research Methodology

The present research work is a doctrinal research work with special emphasis on the power of Judicial Review under the Constitution referring to the Ninth Schedule of the Constitution. The data to execute the research is collected from both primary and secondary sources, involving the study of the Constitution, analysis of case laws. Due to the nature of study, the library method of research is done to scan the available literature in the form of books, reported case laws, reports and further other related data is also
collected from the published material in the form of Articles, research journals, magazines, reports, encyclopedia, internet websites and relevant Articles from newspapers for the up to date information on the topic, which is concerned with the subject matter.

1.17 Plan of study

The research work has been presented systematically by dividing it in seven chapters detailed as under:

Introduction: Chapter 1 gives the introduction of the topic, object of study, research hypothesis, and research methodology and chapter scheme.

Chapter II explores the background of Ninth Schedule starting from the First amendment till the last amendment of the Ninth Schedule. Article 31A, 31B, 31C are discussed in detail. It shows the conflict of Fundamental Rights with the Directive Principles of State Policy.

Chapter III explores the power of Judicial Review under Article 13 and also discusses Article 12 of the Constitution of India. It includes the background of the concept and discusses the essential features like Rule of Law, Separation of Powers and the importance of Fundamental Rights. This chapter highlights the importance of the power of Judicial Review for the protection of the rights of the people and for the protection of the spirit of the Constitution.

Chapter IV explores the objectives of various Constitutional amendments of the Ninth Schedule. It looks into the scope of these amendments. All the 284 Acts are categorized on the basis of their nature. It shows the development and changes made in the Ninth Schedule.
Chapter V explores those Constitutional amendments which were challenged in the court and included in the Ninth Schedule. Some of the most controversial amendments are discussed in detail. The First, Seventeenth, Twenty-Fourth, Twenty-Fifth, Twenty-Ninth, Thirty-Ninth amendments are discussed which were challenged. It shows the change in the objective of the Ninth Schedule apart from land reforms.

Chapter VI explores the various landmarks judgments which involved the question of Constitutional validity when they added laws in the Ninth Schedule. The Kesavanand Bharti case, Waman Rao case, Minerva Mills case and I.RCoelho's case are discussed in detail. It discusses the application of doctrine of ‘basic structure’ to the laws included in Ninth Schedule and the power of amendment of the Constitution.

Chapter VII explores the issue of supremacy between the three organs of the State and discusses the role of judicial activism. It includes the latest developments and issues at present faced by the country. It discusses the spirit of Constitutionalism in this context and role of people of India.

Chapter VIII explores the conclusion of the study and provides some suggestions on the basis of the study done.