Chapter – III

LAND REFORMS AND THE JUDICIARY

1. ZAMINDARI ABOLITION

The dynamism of any parliamentary system has its capacity to respond to growing and changing needs of the society and the success of its operational mechanism is its ability to accomplish the task of socio economic changes. In a pluralistic, diverse and traditional society like India, Parliament after independence was accepted as an agent of socio-economic change, as a legitimization apparatus of various pulls and pressure and a harmonizing mediator among various social, economic, and political forces.

The acceptance of parliamentary democracy in India was in way an accident, it was symbolic of the revival of the traditional way of Indian political life. Jawaharlal Nehru spoke well of the role of Parliament “as an instrument of economic democracy through parliamentary democracy. If it does not, than the political structure tends to weaken and crack up…”

Nehru and Agrarian Change in India

The burden of bringing about a change in the agrarian structure fell on the Congress Party, which was the premier political organization of the country and also a party that had promised and fought for changes in the agrarian structure before independence. Nehru was keenly aware of the importance of the land question and agrarian changes in the predominantly agricultural society. Since the thirties, as his ideas had begun to find a more articulate

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expression, they came in clash with those of Gandhiji. Nehru strongly opposed to the Zamindari and the Taluquadar system, the absentee landlordism which he regarded as exploitative, iniquitous and inefficient mode of production and organization. He noted with distress that Gandhiji’s indifference in this direction was a definite support and defence of the Zamindari system.  

One of the major reforms brought about were the land reforms. The enactment of such measures and their effective implementation called for hard political decisions and effective political support, direction and control. There were a few pressing reasons for the Congress to concentrate on changing the land relations in the country.  

During the later years of independence struggle, the leader had committed themselves to a changed rural structure by radically transforming land relations. This had aroused the expectations of the peasantry. The commitment was also a consequences of the fact that the independence struggle was spearheaded by the urban elite. The rural elite consisted of big Zamindars or landlords who were clearly identified with the British. Therefore, initially the whole attempt at the abolition of intermediaries was aimed at the Zamindari – jagirdari system and the end of the British rule logically, had to be followed by the elimination of its allies. However it was only after 1915 that the Congress began to realize the political importance of mass contact. By mid 20’s Jawahar Lal Nehru made effective contact with the Kisans. The agrarian movements in the 1920 and 30’s were led or encouraged by the Congress so

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3 Mishra, Suresh, op. cit, p. 49.
4 Ibid. p. 49
long as they did not hamper its anti-imperialist national struggle or arouse political consciousness along class-lines.\(^5\)

Jawahar Lal Nehru was the first and foremost leader of the Indian National Congress, who proved himself instrumental in making India embark upon the path of socialism. It was due to his untiring efforts since later 20’s that socialism, Nehru and Congress – the three words became interlinked and dominated the political horizon of India. In 1920’s Nehru visited some of the villages in U.P. This adventure was a revelation to him. Until then he was ignorant of village life and the dump misery of the starving peasants who were hungry and resourceless, such a horrible scene shook his bourgeois political outlook and gradually his perception changed and he moved towards the path of socialism. In 1926, he visited many countries of Europe, while in Europe, he attended the Congress of oppressed Nationalities at Brussels. This widened his outlook and he looked leaving towards socialism. After Brussels conference (1927), Nehru visited U.S.S.R. that greatly impressed him. Nehru recalled: “My outlook was wider, and nationalism by itself seemed to me definitely a narrow and insufficient creed. Political freedom, independence were no doubt essential, but they were steps only in the right direction; without social freedom and a socialistic structure of society and the state, neither the country nor the individual could develop much…. Soviet Russia, despite certain unpleasant aspects, attracted me greatly, and seemed to hold forth a message of hope to the world”.\(^6\)

\(^5\) Ibid. p. 52
To Nehru, socialism was not only a favourite term, but also a “vital creed”. He came to believe that it was through socialism alone that the manifold problem of the world, including those of India, could be solved. He asserted: “I am convinced that the only key to the solution of the world’s problems and of India’s problems lies in socialism, and when I use this word I do so, not in a vague humanitarian way but in the scientific, economic sense.” He further added “Socialism is, however, something even more than an economic doctrine; it is a philosophy of life and as such also it appeals to me. I see no way of ending the poverty, the vast unemployment, the degradation and the subjection of the Indian people except through socialism. That involves vast and revolutionary changes in political and social structure; the ending of vested interest in land, industry, as well as the final and autocratic Indians state system that means the ending of private property, except in a restricted sense, and the replacement of the present profit system by a higher ideal of co-operative service.7

**Post Independence Legislation**

The Congress Party which came to power after Independence recognized the importance of land in the experience of his ‘nationalist movement’. After the Independence the successive governments both at the Central and State level, pronounced several agrarian reforms aiming at avoidance of confrontation between peasant classes; reduction of income disparities as well as reduction of land concentration in the hand of few, and modernizing the agrarian sector to increase the productivity.8

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7  Ibid. p. 77.
8  Rao, Kusumba Seetha Rama; *Agrarian Change from Above and Below*, Om Publications, Faridabad, 2001, p. 7.
Another feature was that over the years the intermediaries (Zamindars) had come to occupy immense social, economic and political influence over the rural life. The idea was to cut the intermediaries to size and reduce their powers paving way for a new class of landowners that would align with the Congress and prepare the ground work for the development of modern commercial agriculture.\(^9\)

Nehru declared that ‘to our misfortune we have Zamindars everywhere and like a blight they have prevented all healthy growth. We must therefore face the problem of landlordism and if we face it, what can we do with it except to abolish it.’\(^10\)

However, reducing socio-economic inequalities and establishing socialist pattern of society, largely depends upon the success of implementation of agrarian reform measures in general and state initiated land reform measures in particular. It is impossible to think of improving the living conditions and vast masses of poor peasantry and agricultural labourers without implementing radical land reform programme which aims at providing land to the tiller’ through effective redistribution of land on egalitarian lines.\(^11\).

The attainment of Independence was not an end itself. It was only the beginning of new struggles, the struggle to live and independent Nation and at the same time to establish a democracy based upon the ideal of justice, liberty equality and fraternity. The need of new Constitution forming the basic law of land for the realization of these ideals was paramount. Therefore one of the important task undertaken was the framing of a new Constitution. The present

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9 Mishra, Suresh, op. cit, p. 73.
10 Ibid. p. 73.
11 Rao, Kusumba, Setha Rama, op. cit pp.7-8.
Constitution of India is the result. It presents the political, economic and social ideals and aspiration of the vast majority of the Indian people.

The Indian Constitution is firmly based on the principles of equality and justice and prohibits discrimination of people on grounds of religion race, caste, sex or place of birth. The fathers’ of Indian Constitution were keen to see that not only economics progress was achieved at a fast rate but also resources of the nation were distributed equally. The new Constitution was inaugurated on 26 January 1950.

One of the basic principles stipulated in the Preamble of the Constitution of India is the concept of social justice. The Preamble states, among others, that the people of India “have solemnly resolved to secure to all its citizens justice, social, economic and political.” This is the firm resolution of the people of this great country.

**View of the Constitution Maker on Social Justice**

Preamble of the Indian Constitution is an abridged version of the “Objective Resolution” moved by Jawahar Lal Nehru in the Constituent Assembly on December 1946 and adapted by the Constituent Assembly on 22 January, 1947 after much deliberation. The preambular concept of social justice have from the relevant part of the Objective Resolution. The views expressed by the Constitution maker on socio economic justice embodied in the Objective Resolution would give an idea about the meaning of social justice. It is, therefore, necessary to refer to the Objective Resolution and the Constituent Assembly debate on it.
“This Constituent Assembly declares it firm and solemn resolves to proclaim India as an Independent Sovereign Republic and to draw up for her future governance a Constitution:

Wherein shall be guaranteed and secured to all people of India justice, social, economic and political; equality of status, of opportunity and before the law; freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality.”

The socio-economic political justice stipulated in the Objective Resolution received enthusiastic support from a large number of members of house. The views expressed by them indicate the connotation of the concept of social justice. Mr. Masani supported this part of the Resolution relating to socio economic justice on two grounds. It rejected the existing social structure promised social security and provided for equality of opportunity. It envisaged far reaching social changes though the mechanism of political democracy and individual liberty.

Alladi Krishnaswami Ayer had observed that the expression “justice-social, economic and political”, while not committing the country and the Assembly to any particular form of polity coming under any specific designation, was intended to emphasize the fundamental aim of every democratic state.

Emphasizing the positive aspect of the Resolution, Mrs. Vijayalakshmi Pandit said that there were two aspects before them – the negative and the positive. The negative aspect is concerned with the ending of imperialist...
domination, but the more important side of the question was the positive side which meant the building up in the country a social democratic state which would enable India to fulfill her destiny and lead the path of lasting peace and progress to the world.¹⁵

However, B.R. Ambedkar expressed his disappointment at the content of the Objective Resolution relating socio-economic justice, for he expected in it clear enunciation of the doctrine of socialism. He said that if the Objective Resolution, which spoke socio-economic political justice, had a reality behind it and sincerity, it should have made specific provisions to the effect that socio-economic justice would be achieved through nationalization of industry and land. Also he said that it would not be possible for any future government to achieve socio-economic justice unless its economic is a socialist economy.¹⁶

Always as he was, Jawahar Lal Nehru, the mover of Objectives Resolution wanted to establish a socialist state and he was also particular to avoid controversies in regard to such matters. Therefore he did not give theoretical words or formula, but rather the content of the thing that country desires.¹⁷ He firmly believed that the adoption of Objective Resolution is necessary because of the achievement of socio-economic justice and welfare of the country. So the Objective Resolution was approved without any change.

**Emergency Use of Social Justice**

The debates in the Constituent Assembly makes it evident that the founding fathers made the social justice a predominant goal to be achieved, according to them, liberation of society from the existing social stratification,

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¹⁵ CAD, Vol. 2, pp. 277-78.
¹⁶ CAD, Vol. 1, p. 100
¹⁷ CAD, Vol. 1, p. 60.
creation of a new and just social order, economic freedom with social equality and, egalitarian society imbued with democratic ideals and wherein all institution are impressed with socio-economic justice. In furtherance of this great ideal of social justice they made ample provision in the Directives Principles of state policy, but the basic principle is reiterated in a significant provision of the Constitution.\textsuperscript{18} It reads:

i) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic, and political, shall inform all the institutions of the national life.

ii) The State shall, in particular strive to minimize the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities not only amongst individuals but also among groups of people residing in different areas or engaged in different vocations.\textsuperscript{19}

Among all the duties imposed on the state, the one imposed by Art 38 is the basic duty, because it is in full and faithful discharge of this basic duty lies the realization of the goal of social justice set by the goal of social justice set by the Preamble to the Constitution. Besides, Art. 38 gives an indication of the lines in which the state should endeavor to reach the goal. It may be noted that clause (1) of the Article envisages a just social order encompassing all the three major fields of human activity, social economic and political and this is sought to be achieved by transforming institutions of the national life to that end.

\textsuperscript{18} Art, 38
\textsuperscript{19} This clause was introduced by constitution (Forty Fourth Amendment) Act, 1978.
The clause (2) which introduced into the Constitution by the Forty-fourth Amendment indicates the lines in which the states has to proceed to reach the goal of just social order. It mentions in this connection, two functions namely (1) minimization of inequalities in income and (2) elimination of social inequalities in status, facilities and opportunities. The second function has greater bearing on social justice. These two lines of approach have to be pursued vigorously to establish equality, economic and social, among individuals, groups of people residing in different areas and groups of people engaged in different vocations evidently Art 38 of the Constitution is a sheet anchor of the concept of social justice and is the reservoir of a host of social welfare legislations that came into force later on other directive principles contained in Art 39\textsuperscript{20}, 39-A\textsuperscript{21}, 41\textsuperscript{22}, 42\textsuperscript{23}, 43\textsuperscript{24}, 43-A\textsuperscript{25}, 45\textsuperscript{26}, 46\textsuperscript{27}.

\begin{itemize}
\item[20] The state shall, in particular direct its policy towards securing-
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\item[a)] that the citizens, men and women equally, have the right to an adequate means of livelihood;
\item[b)] that the ownership and control of the material resources of the community are so distributed as best to sub serve the common good;
\item[c)] that the operations of economic system does not result in the concentration of wealth and means of production to the common detriment;
\item[d)] that there is equal pay for equal work for both men and women;
\item[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;
\item[f)] that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom dignity and that childhood and youngest are protected against exploitation and against moral and material abandonment.
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\item[21] 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.
\item[22] The state shall, within the limits of its economic capacity and development, make provision securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.
\item[23] The state shall make provision for securing just and human conditions of work and for maternity relief.
\item[24] The state shall endeavour to secure, by suitable legislation or economic organization or in any other way, to all workers, agriculture, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life, full enjoyment of leisure and social and cultural opportunities and, in particular, the state shall endeavor to promote cottage industries on an individual or co-operative basis in rural areas.
\item[25] The state shall take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings establishments or other organizations engaged in any industry.
to achieve the goal of the just social order envisioned in Art 38 of the Constitution.

Socialist Trend of Preamble

In 1976, Parliament introduced through Constitution Forty second Amendment Act, 1976, two words, namely “socialist secular”, into the first paragraph of the Preamble. Since then the opening paragraph of the Preamble reads thus: “the people of India, having solemnly resolved to constitute into a sovereign socialist secular democratic republic”. The forty second Amendment virtually spelt out the nature of the state and consequently, what is now contemplated is a socialist democratic republic of India.

One of the objectives of the Forty second Amendment, as explained in the statement of object and reasons appended to the Amendment Act, is to quicken the pace of socio-economic progress of the people. This objective has a great bearing on the newly introduced preambular expression. “Socialist” introduction of the word into the Preamble became necessary because of two important factors, namely, (1) excessive concern shown by Supreme Court to Fundamental Right vis-à-vis the socio-economic legislation, and (2) the new orientation in the juristic techniques of the Supreme Court in interpreting the Constitution on lines of the preambular mandate.

In order to put an end to such uncertainty regarding the validity of socio economic legislation, Parliament enacted the Constitution (First Amendment) Act, 1951 and inserted two new Articles viz, 31A and 31B and a new Schedule

26 The state shall endeavour to provide, within a period of ten years from the commencement of this constitution for free and compulsory education for all children until they complete the age of fourteen years.

27 The state shall promote with special care the educational and economic interest of the weaker sections of the people and in particular of the schedule caste and schedule Tribes, and shall protect them from social injustice and all form of exploitations.
viz, Ninth Schedule. Article 31A has immunized from attack under any of the Fundamental Right in part III of the Constitution all laws providing for the acquisition by the state of any estate or any rights therein or for the extinguishments or modification of any such rights. The scope of the Article is confined to “estate” defined in clauses (2) (a) of the Article.

Article 31B has been inserted to save the specific Acts included in the Ninth Schedule of the Constitution from being declared unconstitutional by the court. Ninth Schedule has been added to the Constitution, wherein a number of legislations have been specified.

A close scrutiny would show that they are intended to immunize socio-economic and agrarian reform laws from challenge under any of the specific Fundamental Rights. The Ninth Schedule served the same purposes, but was introduced as a measure of abundant caution.

The tide of challenge on the ground of violation of the rights of property could not be stopped. Subsequently another grave problem arose under Art. 31(2) regarding the compensation to be paid when property is acquired or

\[28\text{Art. 31A states “(1) Notwithstanding anything in the foregoing provisions of this part, no law providing for the acquisition by the states of any estate or any rights therein or for the extinguishments or modification of any such right shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by any provisions of this part.”}\]

\[29\text{Art. 31A(2) states: “In this Article (a) “The expression ‘estate’ shall in relation to any local area, have the same meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area, and shall also include any jagir, inam or muafii or other similar grant. “(b) The expression ‘rights’ in relation to an estate, shall include any rights vesting on a proprietor, sub-proprietor, tenure holder or other intermediary and any rights or privileges in respect of land revenue.””}\]

\[30\text{Art. 31B states: “Without prejudice to the generality of the provisions contained in Art. 31A none of the Acts and Regulations specified in the ninth schedule nor any one of the provisions thereof shall be deemed to be void, or even to have become void, on the ground that such Act, Regulation or provision is inconsistent with, or takes away or abridges any of the rights conferred by, any provisions of this part, and notwithstanding any judgement, decree or order of any court or tribunal to the contrary, each of the said Acts and Regulations shall, subject to the power of any competent legislatures to repeal or amend it, continue in force.”}\]

\[31\text{Article 31 states: “No person shall be deprived of his property save by authority of law”}\]
requisitioned for public purpose. Art 31(2) authorize the state “to take possession of compensation”. In this Article two important points involved are acquisition of property for “public purpose” and payment of ‘compensation’ in cases of such acquisition.

Jawahar Lal Nehru introduced Art 31 on the 10th September 1949 in the Constituent Assembly by way of Amendment for its incorporation in part III of the Constitution. Explaining the significance of the Article, he said there were two approaches to the right to property embodied therein. One was from the point of view of individual right to property and the other from the point of view, community’s interest in that property right and the Article made an attempt not only to avoid any conflict of interests but also to take into consideration both interest. Then, he said that there was no question of any expropriation without compensation so far as this Constitution was concerned and the law was clear enough regarding acquisition of property for public purpose, compensation to be paid in such cases and method of judging the compensation normally speaking, he said, this principle applied only to, what might be called petty acquisition or acquisition of small bits of property or even relatively large bits of property, for instance, for the improvement of a town. But today the community had to deal with large schemes of social reform and social engineering which could hardly be considered from the point of view of the individual acquisition of a small bit of land or structure. Further he said, if the chosen representatives of the people sitting in the legislature passed such a

“(2) No property, movable or immovable, including any interest in, or in any company owing, any commercial or industrial undertaking shall be taken possession of or acquired for public purposes under any law authorizing the taking of or acquired for public purpose or such acquisition, unless the law provides for compensation for the property taken possession of or acquired and fixes the amount of the compensation, or specifies the principles on which, and the manner in which, the compensation is to be determined and given”.

social reform legislation which affected million of people, It would not be possible to leave such a piece of legislation to widespread and continuous legislation in the court of law without damaging the future of millions of people and the foundation of the state itself.Obviously Jawahar Lal Nehru laid emphasis on the implementation of large schemes of “social reform and social engineering” in which cases question of payment of adequate compensation would not arise. In other words, where measures are taken to give effect to socio-economic justice schemes which will benefit the society as a whole, the state should not be burdened with the obligations of paying huge amount as compensation.

In fact, he dealt with this point very clearly when he said it was left to pertinent to determine various aspects of it and there is no reference in this to any judiciary coming into the picture.

Jawaharlal Nehru had no doubt that judiciary’s role was nill on determining the quantum of compensation. He said that Parliament has fixe either the compensation itself or according to the governing principle. It can be challenged if the same violates the provision of the Constitution. But normally speaking one presumes that any Parliament representing the entire community of Nation will certainly not a fraud on its own Constitution and will be very much concerned with doing justice to the individual as well as to the community..

In this changing concept of property some problems arose, related to the protection of individual right to property and its solution was by no means simple and no legal argument would solve it unless it has taken into

33 Ibid, p. 1194.  
34 CAD, Vol. IX, p. 1195.
consideration the human aspect of the problem as well as the changes that were taking place in the world.\(^{35}\)

In conclusion, he said that the National Congress had laid down year ago that zamindari institution and big estate system in India must be abolished. The judiciary should not stand in judgement over the sovereign will of Parliament. The duty of the judiciary was only to see “in such matters that the representative of people did not go wrong.”\(^{36}\) Therefore, if such a thing occurs, they should draw attention to that fact but within certain limits because no system of judiciary can function as a kind of third house of correction.\(^{37}\) These views convey the idea that the constitutionality of the state act must be judge not from the extent of dent it makes on the right to property alone, but from overall consideration of the Constitution the extent to which it succeeds or fails to implement the socio-economic policies and ideals envisioned in the Constitution.\(^{38}\)

Many members supported the objectives that lay behind the Art. 31(2), holding that the House could not afford to ignore the social and functional character of property, Damoder Swarup Seth said that the property was a social institution and like all other institutions, was subject to regulations and claim of common interest.\(^{39}\) Then speaking on “compensation” he said when the institution of slavery was abolished no compensation was paid to the slave owners although many of them had paid hard cash when they purchased them.\(^{40}\) He said that, ‘it was impossible for state to pay owner of property in all

\(^{35}\) Ibid, p. 1197
\(^{36}\) Ibid, p. 1197
\(^{37}\) Ibid, p. 1198
\(^{39}\) CAD, Vol. IX, p. 1202.
\(^{40}\) Ibid. p. 1236.
cases and at market value and in fact, even partial compensation would have no justification when a general transformation of the economic structure on socialist lines took place. The state, therefore, must be left free to determine compensation according to social will and prevailing social conditions’.\(^\text{41}\)

The concept of compensation in the India’s Constitution has always been an object of controversy between advocates of social justice and protector of individual liberties. This conflict of dogmas was seen reflected even from the debates between founding fathers. According to one argument the word “compensation” by itself carried with it the connotation that it must be equivalent in money values of the property on the date of acquisition. But, the second argument was to the effect that the mere word “compensation” and other phrases in the Article gave much freedom to the legislature in formulating the principle on which and the manner in which the compensation was to be determined. Alladi Krishnaswamy Iyer said that the omission of the word “just” in the Article was significant in that it showed that the language employed was not in *pari materia* with the language employed in corresponding provisions in the U.S. and Australian Constitution which stipulated acquisition of property on payment of “just compensation”. So, he said that the principles of compensation by their very nature could not be the same in every species of acquisition. In this connection he said in formulating the principles, the legislature must necessarily have a regard to the nature of property the history and course of enjoyment the large class of people affected by the legislation and so on.\(^\text{42}\)

\(^{41}\) CAD, Vol. IX, p. 1202

\(^{42}\) CAD, Vol. IX, pp. 1273-74
Law according to Alladi Krishnaswami, must serve as an instrument of social progress. He tried to justify that the institution of property had a role to play in achieving a social purpose and it is not an end itself.  

Thus, the views of the majority in the Constituent Assembly on the right to property and compensation to be paid to persons affected by socio-economic and agrarian reforms were in consonance with their idea on constitutional goal of social justice. They firmly rejected concentration of wealth or consolidation of property in a few hands and looked forward for social justice oriented reforms in the agrarian and economic fields. They felt that in ushering in a new era of new social order with social justice the state should not be burdened with, or its efforts should not be criticize by, the obligation of paying huge compensation.

**Declaration of Administration of Justice**

Despite all emphatic views expressed by eminent members of the Constituent Assembly, the history of the decisions of the courts, in the post independence era shows sheer apathy and total disregard to the social justice content of the provisions relating to rights to property drawn between the claims for inalienable rights to property and the demands of social control over vested interest in property, more often than not courts took a stand on the former and made a conscious (or unconscious) attempt to perpetuate monopolistic interest on private property and insatiable thrust of man for amassing wealth obviously this trend led to a musical chair performance between the legislature enacting amendment and after amendments to over side the impact of judicial decision and trying to usher in an era of welfare and

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43 Ibid., p. 276.
social justice and the judiciary finding out new interpretative techniques with emphasis on the individual right to property apply brakes on states quest for social justice. Constitutional battles have been fought around this question and the Constitution, amended several times to get over some inconvenient judicial rulings. So much bitterness has been caused in relation to property rights, that while, at times on the one hand, demands have been made to abolish the fundamental right to property, on the other hand, it has been asserted that property right has deface and defiled the Constitution.

2. LAND REFORM AND JUDICIARY

After the commencement of the Constitution the States were anxious to usher in a new social order in terms of the constitutional directives to the extent possible. In independent India, no Fundamental Right has caused so much trouble, and has given rise to so much litigation between the government and the citizen, as the right to property. The reason is that the Central and State Governments have enacted massive legislation to regulate property rights. First the government undertook to reconstruct the agrarian economy, by trying to confer rights of property on the tiller, abolition of Zamindari, giving security of tenure to tenants, fixing a ceiling on personal holding of agricultural land and redistributing the surplus land among the landless. These various legislative measures have been undertaken to effectuate some of the Directives Principles of state policy as well as to usher in the accepted goal of establishing a socialist pattern of society in India.

These multifarious measures concerning property have led to the uprooting of vested interest and property rights on a large scale. Consequently, in a large number cases, legislation came to be challenged before the courts.
The most significant controversy in these cases was the question of payment of compensation for the property right acquired.

**Shankari Prasad Singh Deo Vs. Union of India**

The question whether Art. 368 of the Constitution empowers the Parliament to amend the Constitution, especially so as to effect the fundamental rights, was first considered by the Supreme Court in Shankari Prasad Deo and others Vs. The Union Government of India in which the validity of Constitution (1st Amendment) Act, 1951, was challenged. In that case the validity of the Constitution (1st Amendment) Act 1951, which inserted *inter alia* Articles 31A-31B of the Constitution was challenged.\(^{44}\)

What led to that enactment is a matter of common knowledge … certain measures of agrarian reform in Bihar Uttar Pradesh and Madhya Pradesh by enacting legislation which may compendiously be referred to as Zamindari Abolition Acts, certain Zamindars feeling aggrieved, attacked the validity of those Acts in courts of law on the ground that they contravened the Fundamental Rights. At this stage, the Union Government with a view to putting an end to all this litigation and to remedy what they considered to be certain defects brought to light in the working of the Constitution, which after undergoing amendments in various particulars, was passed by the requisite majority as the Constitution (First Amendment) Act 1951.\(^{45}\)

It was argued that, the newly inserted Art. 31A and 31B seek to make changes in Articles 132 and 136 in chapter 4 of part V and Art. 226 in chapter 5 of part VI, they require ratification under cl(b) of the provision to Art. 368 not

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\(^{44}\) AIR, 1951 SC 458

\(^{45}\) Ibid., p. 460
having been so ratified they are void and constitutional. They are also *ultravires* as they relate to matters enumerated in list II, with respect to which the State Legislatures not Parliament have the power to make laws.

Patanjali Shastri rejected this argument and he observed that, The contention that newly inserted Art 31A and 31B sought to make changes in Art 132 and 136 in chapter IV of part V and Art 226, and therefore they require ratification under Cl(b) of proviso to Art. 368 and since they had not received such ratification the amendment was void and unconstitutional was not sustainable since these Articles do not either in terms or in effect seek to make any change in Art. 226 or in Art. 132 and 136. Art. 31A aims at saving laws providing for the compulsory acquisition by the state of a certain kind of property from the operation of Art. 13 read with other relevant Articles in Part III, while Art. 31B purports to validate certain specified Acts. and regulations already passed, which, but for such a provision, would be liable to be impugned under Art 13. It is not correct to say, that the powers of the High Court under Art. 226 to issue writs “for the enforcement of any of the rights conferred in part III” or of the Supreme Court under Art. 132 and 136 to entertain appeals from orders issuing or requiring such writ are in any way effected. They remain just the same as they were before. Only a certain class of cases have been excluded from the purview of part III and the writs would no longer interfere, not because their powers were curtailed in any manner or to any extent, but because there would be no occasion hereafter for the exercise of their powers in such cases.46

46 Ibid. p. 463.
The other objection that it was beyond the power of Parliament to enact the new Article is equally untenable. It was said that they related to land which was covered by item 18 of list II of Seventh Schedule and that the State legislatures alone had the power to legislate with respect to that matter. The answer is that Art 31A and 31B really seek to save a certain class of laws and certain specified laws already passed from the combined operation of Art.13 read with other relevant Article of part III. The new Articles thus being essentially amendments of the Constitution, Parliament alone had the power of enacting them. That the laws thus saved relate to matters covered by list II does not in any way effect the position. It was said that Parliament could not validate a law which it had no power to enact. The proposition holds good where the validity of impugned provision turns on whether the subject matter falls within or outside the jurisdiction of the legislature which passed it. But to make a law which contravenes the Constitution constitutionally valid is a matter of constitutional amendments, and as such it falls within the exclusive power of Parliament, with the result that fundamental rights were not outside the scope of amending power.\textsuperscript{47}

\textit{Saijan Singh Vs. State of Rajasthan}

In 1965, fourteen years after the decision of the Supreme Court in \textit{Shankari Prasad’s case}, the Constitution (17\textsuperscript{th} Amendment) Act which protected a large number of agrarian statues from challenge on ground of encroaching the Fundamental rights was challenged in \textit{Saijan Singh Vs. State of Rajasthan}.\textsuperscript{48} The Act amended the Ninth Schedule to the Constitution adding thereby several Acts to the list in that Schedule. The Acts so added to the list in

\textsuperscript{47} Ibid. p. 464.
\textsuperscript{48} SCR, 1965, SC 933
the Ninth Schedule were consequently rendered immune from attack before the courts on the ground that they violated fundamental rights. The main argument of the petitioners was that the impugned amending Acts disabled the High Court from reviewing the protected Acts under Art. 226 of the Constitution and was therefore, in effect, an amendment of Art. 226 itself. Consequently the Amendment Act fell under the proviso to Art. 368 of the Constitution and ought to have been passed with the consent of no less than half of the states as required by the said proviso and since no such consent was obtained the Amendment Act must be declared as invalid. The Court by a 3:2 majority held that the points urged by the petitioners are really conducted by the decision of this court in Shankari Prasad’s case.

Gajendragadkar C.J. speaking for himself and Wanchoo and Raghubar Dayal J.J. held that the plea for reconsidering the Shankari Prasad “is wholly unjustified and must be rejected.”

Gajendragadkar held that it became necessary to add these two provisions (Article 31A and 31B) in the Constitution, because it was realized that legislative measures adopted by certain states for giving effect to the policy of agrarian reform which was accepted by the party in power had to face a serious challenge in the courts of law on the ground that they contravened the fundamental rights guaranteed to the citizens by part III”. These measures had been passed in Bihar, Uttar Pradesh and Madhya Pradesh, and their validity was impeached in the High Courts in the said three states. The High Courts at Allahabad and Nagpur upheld the validity of the corresponding legislative measures passed in Uttar Pradesh and Madhya Pradesh respectively and the

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49 SCR, 1965 SC p. 948
50 Ibid, p. 944
The High Court of Patna held that the relevant Bihar legislation was unconstitutional. The aggrieved parties had filed special leave before the Supreme Court. At this stage Parliament thought it is necessary to avoid the delay which it is involved in the final decision of Supreme Court and introduced the relevant amendments in the Constitution by adding Article 31A & 31B. That was the first step taken by Parliament to assist the process of legislation to bring about agrarian reform by introducing Articles 31A and 31B.\textsuperscript{51}

The second step in the same direction was taken by Parliament in 1955 by amending Art. 31A by the Constitution (Fourth Amendment) Act, 1955. “The object of this amendment was to widen the scope of agrarian reform and to confer on the legislative measures adopted in that behalf immunity from a possible attack that they contravened the fundamental rights of citizen”.\textsuperscript{52} In other words, this amendment protected the legislative measures in respect of certain other items of agrarian and social welfare legislation, which affected the proprietary rights of certain citizens.

“The genesis of the amendment made by Parliament in 1951 by adding Articles 31A and 31B to the Constitution is to assist the State legislatures in this country to give effect to the economic policy in which the party in power passionately believes to bring about much needed agrarian reform. Parliament desires that agrarian reform in a broad sense must be introduced in the interests of a very large section of Indian citizens who live in villages and whose financial prospect are connected with agrarian policy and not change the High

\textsuperscript{51} Ibid. p. 942
\textsuperscript{52} Ibid., pp. 942-943
Court’s jurisdiction to issue writs under Article 226 and therefore it can not be said to have that effect directly or in any appreciable manner.\(^\text{53}\)

It was assumed that Parliament can make changes in different Articles of part III, such as Articles 14 and 19, and if such a course had been adopted, the impugned Act would have been constitutionally valid but it purport to amend only 31A and 31B and seek to add several Acts to the Ninth Schedule, it does not amend any of the provisions in part III, but in making are independent provision, that, it is said must take the case within the scope of proviso.\(^\text{54}\)

It is legitimate to assume that the Constitution makers know that, Parliament should be competent to make amendments to these rights so as to meet the socio economic progress and development of the country. Therefore, it would not be reasonable to proceed on the basis that the Fundamental Rights enshrined in part III were intended to be finally and immutably settled and determined once for all and were beyond the reach of any amendment.

Justice Hidayatullah expressed his dissenting judgement of the earlier holding of the courts in Shankari Prasad case: “I would require stronger reasons than those given in Shankari Prasad case… to make me accept the view that fundamental rights were not really fundamental but were intended to be within the powers of amendment in common with the other parts of the Constitution and without concurrence of the state,”\(^\text{55}\) Article 19 by clauses 2 to 6 allows curtailment of right in the public interest. This shows that Part III is not static make changes and also preserves individual rights even the agrarian reforms

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53 Ibid. p. 944
54 Ibid., p. 946
55 Ibid., p. 961
could have been partly carried out without Articles 31A and 31B but they would have cost more to the public exchequer.

Mdholkar, J has also given the dissenting judgement he held that Parliament can amend part III of the Constitution and was, therefore, competent to enact therein Art. 31A and 31B also to amend the definition of ‘estate’. “I take it that only that legislature has power to validate a law which has a power to enact that law. Since the agrarian laws included in the Ninth Schedule and sought to be protected by Art. 31B could not have been enacted by Parliament. If Parliament could amend part III it could, indeed, remove the impediment in the way of the State legislatures by enacting Art.31A and amending the definition of estate. This however, does not appear to have been considered in Shankari Prasad’s case nor was such an argument advanced before us in this case. “I base my decision on the narrow ground that upon the arguments advanced before us no case has been made out for striking down the Seventeen Amendment.”

It is submitted that the fundamental rights can not be said to be too rigid and inviolable. So long as Parliament by an amendment under Art. 368 could restrict them keeping in view the Preamble of the Constitution. The 17th Amendment Act was needed to implement the governmental policy of agrarian reforms in public interest it would therefore, be wrong to say that the amendment debilitated the Fundamental Rights altogether. However, Mudholkar, J., observed that Parliament in such cases, should take help from the directive principles of state policy instead of resorting to constitutional amendment.

56 Ibid., p. 969
Golakh Nath Vs. State of Punjab\textsuperscript{57},

The validity of Punjab security of land Tenures Act, 1953 and of the Mysore land Reforms Act as amended by Act 14 of 1965 was challenged by the petitioners under Art. 32 of the Constitution. Writ petition No. 153 of 1966, is filed by the petitioners therein against the State of Punjab and the Financial Commissioner Punjab. The petitioner are the son, daughter and grand daughters of Henry Golakh Nath, who died on July 30, 1953. The Financial Commissioner, in revision against the order made by the Additional Commissioner, Jalandhar Division, held by an order dated January 22, 1962 that an area of 418 standard acres and 9 ¼ units was surplus in the hands of the Petitioners under the provisions of the Punjab Security of land Tenure Act X of 1953, read with S. 10-B thereof. The Petitioners, alleging that the relevant provisions of the said Act where under the said area was declared surplus were void on the grand that they infringed their rights under Cls(f) and (g) of Art.19 and Art. 14 of the Constitution, filed a writ in this court under Art. 32 of the Constitution for a direction that the Constitution (First Amendment) Act, 1951 Constitution (Forth Amendment) Act, 1955, Constitution (seventeen Amendment) Act, 1964, insofar as they affected their fundamental rights were unconstitutional and inoperative and for a direction that S.10-B of the said Act X of 1953 was void as violative of Arts 14 and 19(1) (f) and (g) of the Constitution. Since these Acts were included in the Ninth Schedule to the Constitution by the Constitution (Seventeenth) Amendment Act, 1964. In this connection it was urged that Sankari Prasad’s case in which the validity of the Constitution (First) Amendment Act, 1951 had been upheld and Sajjan Singh’s case in which the validity of the Constitution (Seventeenth) Amendment Act,

\textsuperscript{57} S.C.R. 1967 SC, p. 762.
1964, had been wrongly decided. It was contended that Parliament had no power to amend fundamental rights in Part III of the Constitution.

The special Bench of 11 judges presided by the Chief Justice of India Justice K. Subba Rao heard the case and by 6:5 the court overruled its earlier view and held that the Parliament could not amend or abridged the Fundamental Rights and reversed its earlier decisions in Shankari Prasad and Sajjan Singh. The majority judgement was rendered by Chief justice Subba Rao, for himself, Shah, Sikri, Shelat and Vaidy alisgam, J.J. and Hidayatullah, J. rendered a separate judgement concurring with majority. The dissenting judges were: Wanchoo, Bhargwa, Bachawat, Ramaswamy, JJ, wrote separate judgements.

The reasoning and conclusion of the majority judgement delivered by Chief Justice Subba Rao can be summarized thus: (i) the power to amend the Constitution is not to be found in Art. 368 but in Art. 245, 246 and 248 read with entry of list 1; (ii) the amending power cannot be used to abridge or take away the Fundamental Rights guaranteed in Part III of the Constitution; (iii) a law amending the Constitution is “law” within the meaning of Art. 13(2) and (iv) the First, Fourth and Seventeenth Amendments though they abridge Fundamental Rights were valid in the past on the basis of earlier decisions of this court and continue to be valid for the future. On the application of the doctrine of “prospective over – ruling”, as enunciated in the judgement, the decision will have only prospective operation and Parliament will have no power to abridge or take away Fundamental Rights from the date of the judgment.  

58 SCR 1967 p. 779.
Hidayat Ullah, J. was of the view that Parliament is a constituted body under the contributed and the amendment law is also ‘law’ under Article 13(2): ‘(1) that Fundamental Rights are outside the amendatory process if amendment seeks to abridge or take away any of the rights.’

Hidayat Ullah, J. however, regarded the First, Fourth and Seventeenth Amendments as “being part of the Constitution by acquiescence for a long time, cannot now be challenged… that this court having now laid down that the Fundamental Rights cannot be abridged or taken away by the exercise of amendatory process in Art 368 any further in road into these rights as they exist today will be illegal and unconstitutional unless it complies with part III in general and Art 13(2) in particular.”

The petitioner’s challenge was based mainly on the following contentions:

(i) The power of constitutional amendment is only a legislative power, traceable to the residual power, under the Constitution, for Art. 368 by itself does not confer any power of amendment, but only provides for the procedure for amendment and that the power to amend is a legislative power conferred by Arts. 245, 246 and 248;

(ii) Amendment under Art. 368 is also “law” under Art. 13(2) and therefore subject to limitations therein contained;

(iii) Art 368 confers only power of amendment. It cannot be exercised to destroy the framework of the Constitution;

59 Ibid. p. 780
60 Ibid. p. 780
The limits on the power of amendment are implied in Art. 368, for the word “amend” has limited meaning;

Fundamental Rights are part of Basic structure of the Constitution and hence cannot be destroyed; and

The impugned amendment disabled the High Courts from reviewing under Art. 226, and an entrenched provision thus was in effect an amendment of Art. 226 itself and therefore resolutions by one-half of the states ratifying the amendment are required. Since no such ratification had been obtained the amendment is void.61

The contentions urged by respondents state in favour of the validity of the amendments were as follows:

The constitutional amendments are effected in exercise of constituent power, while ordinary law is made in exercise of legislature power;

The provision of Art. 368 are clear and unequivocal. There is no scope for invoking implied limitation;

There are no basic features of the Constitution and that the Constitution itself is basic and hence can be amended for the progress of the country;

The Constituent Assembly Debates cannot be relied on for nothing in the debates to show that Fundamental Rights are non amendable;

In order to fulfill and achieve the Directive Principles of State Policy, the Constitution has been amended from time to time and

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61 Ibid. pp. 781-82.
any reversal or interference of previous decisions would introduce
economic chaos; and

(vi) Art. 31A or Ninth Schedule do not effect the power of High Court
under Art.226.\(^62\)

In the Ninth Schedule to the Constitution the Mysore Land Reforms
Act 1961, (Mysore Act 10 of 1962) is included as item 51 and the Punjab
Security of Land Tenures Act, 1953 (Punjab Act 10 of 1953) is included as
item 54. The definition of “estate” was awarded and the Ninth Schedule was
amended by including therein the said two Acts by the Constitution
(Seventeenth Amendment) Act, 1964.\(^63\)

The result of the said amendments is that both the said Acts dealing
with estates within their wide definition introduced by the Constitution
(Seventeenth Amendment) Act, 1964, having been included in the Ninth
Schedule, are placed beyond any attack on the ground that their provisions are
inconsistent with or take away or abridge any of the rights conferred by Part III
of the Constitution.

The result is that the Constitution (seventeenth Amendment) Act,
1964, in as much as it lakes away or abridges the fundamental rights is void
under Art. 13(2) of the Constitution. During the period between 1950 and 1967
i.e., 17 years, as many as 20 amendments were made in the Constitution. The
Constitution came into force on January 26, 1950. The Constitution (First
Amendment) Act, 1951, amended Art. 15 and 19, and Arts. 31-A and 31-B
were inserted with retrospective effect. The object of the amendment was said

\(^{62}\) Ibid. pp. 782-783
\(^{63}\) Ibid. p. 784
to be validated the acquisition of Zamindaries or the abolition of permanent settlement without interference from court. The occasion for the amendment was that the High Court of Patna in *Kameshwar Singh V. State of Bihar* held that the Bihar land Reforms Act (30 of 1950) passed by the State of Bihar was unconstitutional, while the High Courts of Allahabad and Nagpur upheld the validity of corresponding legislation in Uttar Pradesh and Madhya Pradesh respectively. It may be noticed that the said amendment was not made on the basis of the power to amend fundamental rights recognized by this court, but only in their conflicting decisions of High Courts and without waiting for the final decision from this court. Art. 31-A was again amended by the Constitution (Forth Amendment) Act, 1955 under that amendment Cl. (2) of Art. 31 was amended and Cl.(2-A) was inserted therein. While in the original Article 31-A the general expression “any provisions of his part” was found, in the amended Article the scope was restricted only to the violation of Arts. 14, 19 and 31 and 4 other clauses were included, namely, clauses providing for (a) taking over the management of any property by the state for a limited period; (b) extinguishment or modification of rights accruing under any agreement, lease or licence relating to minerals, and the definition of “estate” was in large in order to include the interests of raiyat and under-raiyat. The expressed object of the amendment was to carry out important social welfare legislation on the desired lines, to improve the national economy of the state and to avoid serious difficulties raised by courts in that regard. Art. 31A has further been amended by the Constitution (Forth Amendment) Act, 1955. By the said amendment in the Ninth Schedule to the Constitution entries 14 to 20 were added. The main objects of this amending Act was to distinguish the power of compulsory

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64 Ibid. pp. 805-806
acquisition or requisitioning of private property and the deprivation of property and to extend the scope of Art., 31-A to cover different categories of social welfare legislation and to enable monopolies in particular trade or business to be created in favour of the state Amended Art. 31(2) makes the adequacy of compensation not justifiable. It may be said that the Constitution (Forth Amendment) Act, 1955 was made by Parliament as this court recognized the power of Parliament to amend Part III of the Constitution. The Seventeenth Amendment Act was made on 20 June, 1964. The occasion for this amendment was the decision of this court in Karimbil Kunhikoman V. State of Kerala, which struck down the Kerala Agrarian Relations Act IV of 1961 relating to ryotwari lands. Under that amendment the definition of the expression “estate” was enlarged so as to take in any land held under ryotwari settlement and any held or let for purposes of agriculture or for purposes ancillary thereto, including waste land, forest land, land for pasture or sites of buildings and other structures occupied by cultivators of lands, agricultures occupied by cultivators of lands, agricultural labourers and village artisans. In the Ninth Schedule the amendment include items 21 to 65. In the objects and reasons it was stated that the definition “estate” was not wide enough, that the courts had struck down many land reform Acts and that therefore, in order to give them protection the amendment was made. The validity of the Seventeenth Amendment Act was questioned in this court and was held to be valid in Sajjan Singh’s case. From the history of these amendments two things appear namely, unconstitutional laws were made and they were protected by the Amendment of the Constitution or the amendments were made in order to protect the future laws which would be void. But the fact remains that this court held as early as in 1951 that Parliament had power to amend the fundamental rights. It may,
therefore, be said that the Constitution (Forth Amendment) Act, 1955 and the Constitution (Seventeenth Amendment) Act, 1964, were based upon the scope of the power to amend recognize by this court. Further the Seventeenth Amendment Act was also approved by this court.\footnote{Ibid, pp. 806-807}

Between 1950 and 1967 the legislature of various states made laws bringing about an agrarian revolution in the country. Zamindaries, imams and other intermediary estates were abolished, wasted rights were created in tenants, consolidation of holdings of villages was made, ceilings were fixed and the surplus lands transferred to tenants. All these were done on the basis of the correctness of the decisions in \textit{Shankari Prasad’s case} and \textit{Sajjan Singh case}, namely, that Parliament had the power to amend the fundament rights and that Acts in regard estates were outside judicial scrutiny on the ground they infringed the said rights. The agrarian structure of the country has been revolutionized on the basis of the said laws.\footnote{Ibid. p. 807.}

In order to estimate the extent of Subba Rao J’s contribution to the constitutional protection of the right to property one must realize that when he came to the court, several constitutional principles were taken to be settled. It was settled that the government had a police power which was not subject to any reasonable restrictions in the public interests.

It was accepted that as regards the doctrine of eminent domain, the adequacy of principles of compensation would not be questioned in any court of law. It was taken for granted that as regards the main statute on land acquisition in India, the certificate of government was conclusive evidence that the land was acquired for a public purpose. If a statute fell under the agrarian
reform amendments it would be protected even though it may not have been connected with agrarian reform. Most important of all, it had been held that the power of amendment was unlimited and the court could not restrict it. The aforesaid discussion leads to the following result.

1. The power of the Parliament to amend the Constitution and not from Art. 368 thereof which only deals with procedure. Amendment is a legislative process.

2. Amendment is ‘law’ within the meaning of Art. 13 of the Constitution and, therefore, if it takes away or abridges the rights conferred by Part III thereof, it is void.

3. The Constitution (First Amendment) Act, 1951, Constitution (Forth Amendment) Act, 1955, and the Constitution (Seventeenth Amendment) Act, 1964, abridge the scope of the fundamental rights. But, on the basis of earlier decisions of this court, they were valid.

4. On the application of the doctrine of ‘prospective over-ruling’, the said amendments will continue to be valid.

5. The Parliament will have no power from the date of this decision to amend any of the provisions of Part III of the Constitution so as to take away or abridge the fundamental rights enshrined therein.

6. As the Constitution (Seventeenth Amendment) Act holds the field, the validity of the two impugned Act, namely, the Punjab Security of Land Tenures Act X of 1962, as amended by Act XIV of 1965, cannot be questioned on the ground that they offend Art. 13, 14 or 31 of the Constitution.67

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67 Ibid. p. 815
If the provisions of the Constitution could not be amended it would lead to revolution. The provision of the Constitution cannot amended but they can not be amended so as to take away or abridge the fundamental rights. All the agrarian reforms which the Parliament in power wants to effectuate can not be brought about without amending the fundamental rights. It was to prevent this attitude and to project the rights of the people that the fundamental rights were inserted in the Constitution. If it is the duty of the Parliament to enforce the directive principles, its equally its duty to enforce them without infringing the fundamental right.

Hidayatullah, J, delivered a separate judgment he held (i) that the fundamental rights are outside the amendatory power if the amendments seeks to abridge or takes away any of the rights; (ii) Shankari Prasad’s case and Sajjan Singh’s case which followed it which conceded the power of amendment over Part III of the Constitution, are erroneous and overruled; (iii) The first, fourth and seventeenth Amendments of the Constitution, by acquiescence for a long time cannot be challenged; (iv) This Court having now laid down that fundamental rights cannot be abridged or taken away by the exercise of amendatory power in Art. 368, any further in roads into these rights as they exist today will be illegal and unconstitutional; (v) For abridging or taking away fundamental rights, constituent body will have to be convoked, and (vi) The two impugned Acts, namely, the Punjab Security of land Tenures Act. 1953, as amended by Act of 1965, are valid under the Constitution not because they are included in Schedule IX of the Constitution, but because they are protected by Art. 31A and the President’s assent.68 These conclusions and

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68 Ibid. p. 902.
the reasoning’s therefore led the majority of the court to overrule its decisions in *Shankari Prasad Vs Union of India* and *Sajjan Singh Vs State of Rajasthan*.

Ramaswami and Bachawat, JJ. Delivered separate judgements agreeing with the conclusions reached by the main minority led by justice wanchoo. Bachawat said: “The constitutionality of the Constitution First Forth and Seventeenth Amendment Acts is challenged on the ground that the fundamental rights conferred by part III are inviolable and immune from amendment. The Acts are attacked also on the ground that they made changes in Art. 226 and 245 and such changes could not be made without complying with the proviso to Art. 368, Art 31-B is subjected to attack on several other grounds.”

He was of the opinions that “If Parliament cannot amend Part III of the Constitution even by recourse to Art. 368, no other power can do so. There is no provision in the Constitution for calling a convention for its revision or for submission of any proposal for amendment to the referendum. Even if power to call a convention or submit a proposal to the referendum be taken by amendment of Art. 368, Part III would still remain unamendable on the assumption that constitutional amendment is a law.”

Bachawat C.J. therefore reached to the conclusion that First, Fourth Sixteenth and Seventeenth Amendments are constitutional and are not void.

The First, Fourth and Seventeenth Amendment Acts are subjected to bitter attacks because they strike at the entrenched property rights. But the

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69 Ibid, p. 903.  
70 Ibid, p. 918
abolition of the Zamindari was a necessary reform. It is the first Constitution Amendments Act that made this reform possible.

Ramaswami was agree with Wanchoo J. that writ petition must be dismissed. Ramaswami, J. observed: It was suggested for the petitions that an alteration of fundamental rights could be made by convening a new Constituent Assembly outside the framework of the present Constitution, but it is doubtful if the proceeding of new Constituent Assembly will have any legal validity for the reason that the Constitution provides for its own method of amendment and any other method of amendment of the Constitution will be unconstitutional and void.

The majority view in Golak Nath’s case was not based on correct appreciation. At the outset, its not a healthy practice to upset earlier unanimous decisions of the earlier bench by this majority decision in a later larger bench. It was rightly urged on behalf of the Union of India that on the basis of certain decisions of this court that the unanimous decision in Shankari Prasad’s case which has practically stood unchallenged for about 15 years should not be overruled unless it is found to be patently incorrect by a large majority of the judges constituting the special Bench. It was further urged that if the present Bench is more or less evenly divided then it should not overrule the unanimous decision in Shankari Prasad, by a majority of one.

In view of the above the Golak Nath’s case has created a statement and the Fundamental Rights (including right to property) have become immune from any future amendment. It appears that there is no legal method to abridge or take away any of the fundamental rights even of the whole of India or vast majority of Indian population wants it to be done in the Interest of society.
In Keshavananda Bharti case, the petitioner challenged the validity of the Kerala Land Reforms Amendment Acts 1969 and 1971 for the reason that some of the provisions therefore Violated Articles 14, 19(1) (f), 25, 26 and 31 of the Constitution. During the pendency of the writ petitions, the Parliament enacted three constitutional amendments, namely, the Constitution twenty fourth, twenty fifth and twenty nine Amendments Acts.

However, Twenty fifth Amendment Act 1972 inserted Art. 31C which sought to give effect to the Directive Principles under Art. 39(b) and (c) inconsistent with any of the rights conferred in Articles 14, 19 and 31 provided that no law giving effect to such Directive Principles should be called in question in any court on the ground that it does not give effect to such policy. The majority of the Supreme Court upheld the first part of Art 31C and declared its second part as unconstitutional.\(^71\)

The special Bench consisting of 13 Judges gave seven to six verdicts based on shared arguments of eleven judgements. Chief Justice S.M. Sikri; J.M. Shelat; K.S. Hegde; A.N.Grover; P. Jaganmohan Reddy; D.G. Palikar; M.R. Khanna; A.K. mukherjee; Y.V. Chandrachud, JJ (the judges who signed the judgement) and A.N.Roy; M.H. Beg; S.N. Dwivedi and Mathew, JJ (the judges who did not sign the judgment). The case on behalf of petitioner was chiefly argued by N.A. Palkhivala and for the state of Kerala by H.M. Seervai and for union of India by the Attorney General Niren De.

The full court, consisting of 13 judges, dealt with the constitutional importance of the Fundamental Rights and Directive Principles elaborately and

\(^71\) A.I.R. 1973 SC 1461.
exhaustively it is, therefore, pertinent to quote the relevant portions of the judgements. S.M. Sikri said: “It is impossible to quote the Directive Principles with Fundamental Rights though it cannot be denied that they are very important. But to say that the Directive Principles give a directive to take away Fundamental Rights in order to achieve what is directed by the Directive Principles seems to be a contradiction in terms”.

The petitioner challenged the power of Parliament to change these basic features as the Parliament itself happens to be a constituted authority.

On the other hand, the respondents claimed on unlimited power for the amending body and contended that: (1) the power to amend under Article 368 of the Constitution was unlimited, provided the conditions laid down in Art. 368 were satisfied; (ii) the power extended to abrogating or taking away the rights of freedom guaranteed in Part III of the Constitution; (iii) Article 32 of the Constitution could be repealed and abrogated; (iv) Directive Principles in Part IV could be altered drastically or even abrogated

Palkhivala argued that Art. 31C which permits exclusion of Art. 14, 19 and 31 in a much simpler way compared with the amending procedure under Art. 368 was detrimental to the Constitution. The Article was meant to promote the cause of directive principles and assert the supremacy of the Parliament at the expense of the Constitution.

The Bench unanimously upheld the validity of the amending power in the Twenty fourth Amendment Act but not all judges agreed on the scope of these powers, those who supported the inherent limitations, held that the amending power could not be used to emasculate basic structure of the Constitution and the Fundamental Rights, included S.M. Sikri, Shelat, Grover,
In contrast, M.H. Beg, D.G. Palekar, A.N. Roy, K.KI. Mathew and Y.V. Chandrachud, J.J., held that amending power under Act. 368 was unrestricted and could be used to amend any basic feature including Fundamental Rights.\(^{72}\)

Khanna, J., felt that the amending power should not be used to alter the basic structure of the Constitution. He further declared that the fundamental rights including the right to property were not basic features and thus could be amended. This judgement of Khanna, J., was decisive and the court by a majority of 7 to 6 held that the fundamental rights could be amended but not the basic features of the Constitution.

Chief justice Sikri was impressed by the theory of implied limitations and felt that the word “amendment” was not intended to be carried out in the widest sense and also that the fundamental rights along with the fundamental features of the Constitution, namely, secularism, democracy and freedom of individual should always subsist in a welfare state. He observed that the Constitution had noble and grand vision and that the Art. 368 should be interpreted in the background of India’s aspirations. According to Sikri the basic structure of the Constitution consists the following features – Supremacy of the Constitution; Republican and democratic form of Government, Secular character of the State; Separation of the powers of the legislature, executive and judiciary, and federal character of the Constitution.

He stressed that it would be wrong to hold that what was not susceptible to exact definition was imperceptible and did not exist.\(^{73}\) He upheld the twenty fourth Amendment as, in his view, it did not enable the Parliament to take

\(^{72}\) Ibid., p. 1461.

\(^{73}\) Ibid., p. 1535.
Fundamental Rights or to completely change the fundamental features of the Constitution and destroy its identity. He felt that it was impossible to equate directive principles with the fundamental rights.

The Attorney General of India on behalf of the respondents argued that the Twenty fourth Amendment explicitly gave the power to Parliament to deconstitute or reconstitute the Constitution or any part of it. Unexpressed or implied limitation would defeat the purpose of amending power which was to keep the Constitution responsive to the needs of the changing times. Thus, he observed, the amendment reached every provision of the Constitution including the Preamble.\(^\text{74}\)

The petitioners basically contended that the word “amendment” could not be so interpreted as to confer a power on the amending body to take away any of the fundamental and basic characteristics.

The Advocate General of Maharashtra, pointed out that unless the power of amendment is coextensive with the judicial power of invalidating laws made under the Constitution, the judiciary would be supreme. Therefore the power of amendment should be coextensive with the judicial power.\(^\text{75}\)

Shelat and Grover, J.J. upheld Twenty fifth Amendment, except its section 3 which introduced the new Article 31C. They felt that section 3 of the amendment could not be sustained was unconstitutional; Art., 31C was found invalid for two reasons: (i) It enabled the abrogation of basic elements of the Constitution in as much as the fundamental rights in Article 14, 19 and 31 could be completely taken away; and (ii) the power of amendment in Art. 368

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\(^{74}\) Ibid., p. 1576.  
\(^{75}\) Ibid., p. 1601.
was exclusively conferred on Parliament and could not be delegated to any other Legislature in the country.

The learned judges observed that the word “amendment” did not have a precise connotation. Apprehending damages and dangers to the Constitution due to unlimited amending power, they concluded that the personality of the Constitution must remain unchanged which were so essential that they could not be changed or destroyed; in other words, the substance of the original Constitution must remain, it could not be done away with.76

They concluded that the Parliament had no power to abrogate or emasculate fundamental features of the Constitution. The judges, however, agreed that except these limitations the amending power was a wide one and reached every Article and every point of the Constitution to fulfill the obligations imposed on the State. That the Article 368 carried with it certain limitations and the amending power under Article 368 despite being very wide, was nevertheless subject to certain implied limitations as contended by Palkhiwali was upheld by the two judges. Regarding the newly inserted Article 31C, they observed that it had destroyed the right to property because:

1. The fixation of “amount” under that Article should have reasonable relationship with the value of the property acquired or requisitioned;

2. The principles laid down must be relevant for the purpose of arriving at the “amount” payable in respect of the property acquired or requisitioned;

3. The “amount” fixed should not be illusory; and

76. Ibid., p. 1628.
(4) The same should not be fixed arbitrarily.\footnote{Ibid., pp. 1937-1940.}

Similarly, they held clause (3) of the Twenty fifth Amendment Act, which had introduced into the Constitution Art. 31C, invalid on two grounds: (i) It was beyond the amending power of Parliament insofar as the amendment in question permitted the destruction of several basic elements of the Constitution; and (ii) It empowered the Parliament and the State Legislatures to \textit{pro tanto} amend certain human freedoms guaranteed to citizens, by the exercise of their ordinary legislative power.\footnote{Ibid., pp. 1648-49.}

Justice Reddy, said that the Parliament could amend Art. 368 and Art. 13 and if necessary the fundamental rights also; but then it could not totally abrogate any of the fundamental rights or the essential elements of the Basic structure of the Constitution or its identity. The Parliament could not use Art. 368 so as to confer on itself such powers. Since the amending power existed right from the beginning, justice Reddy opined that the Twenty ninth Amendment did not change the nature and scope of the amending power and hence is very much valid.\footnote{Ibid., p. 1756.}

Justice Reddy, further observed that if the compensation in lieu of the expropriated property of a citizen was illusory, arbitrary or no reasonable relation to the property acquired, the Court could go into it; it could also investigate the principles on which compensation was given. But, once the Court is satisfied that the principles for compensation and the manner of its payments were neither arbitrary nor illusory it could not go into the adequacy of the amount fixed on the basis of such principles.\footnote{Ibid., p. 1757.}
Justice Reddy observed that on one hand section 3 of the Twenty fifth Amendment was designed to give effect to Art. 39(b) and (c) of directive principles of state policy in the larger interest of the community whereas, on the other hand, the basic assumption underlying it was that this could not be done without taking away or abridging the rights conferred by Arts. 14, 19 and 31. He held that the words “Art. 14”, and the declaration portion 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”, were severable from Art. 31C. Justice Reddy upheld the validity of Twenty ninth Amendment.

Justice Khanna upheld validity of the Twenty fourth Amendment /Act and opposed the majority view in Golaknath case that the Parliament did not have the power to amend any of the provisions of Part III of the Constitution so as to take away or abridge the fundamental rights.

Khanna, J., acknowledged the fact that the Twenty fifth Amendment was enacted to overcome the effect of the decision in R.C. cooper case which had become necessary. He felt that the amendment in Art. 31(2) substituted the word “amount” for the word “compensation”, was necessarily intended to get over the difficulty caused by the use of the word “compensation which was construed to mean equivalent or full compensation. If the legislature so choose “the amount” need not be just equivalent but can be plainly inadequate and the payment may be made in a form other than cash.

While upholding the validity of the Art. 31C on the principle of stare decisis, Khanna, quashed the second part of Art. 31C on the following grounds:

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81. Ibid., pp. 1771-1775.
(i) It gave a *Carte Blanche* to the Legislature to make any law violative of Art. 14, 19 and 31 and made itself immune to attack by inserting the requisite declaration; besides, the second part of Art. 31C gave power to the legislature, including a State Legislature, to amend the Constitution in important respects.

(ii) The legislature was made the final authority to decide that the law made by it was for the object mentioned in Art. 31C. Consequently, the vice of the of the second part of Art. 31C lay in the fact that even if the law enacted was not for the object mentioned in Art. 31C, the declaration made by the legislature prevented a party from showing that the law was not for that object as well as a court from going into the question whether or not the law enacted was really for that object. The exclusion of Judicial Review by the Legislature in that case struck off the basic structure of the Constitution.

Therefore, the second part of Art. 31C went beyond the permissible limit of what constituted an amendment under Art. 368. Hence, justice Khanna served the second part of Article 31C from the remaining part of 31C and struck down the following words in Article 31C “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.”

Justice Ray found nothing wrong with the substitution of the neutral expression “amount” for “compensation” in Article 31(2), which made the amount and of the mode of payment in respect of the property acquired, nonjusticiable. He appreciated that the amendment was the consequence of the

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82 Ibid., pp. 1875-76.
Supreme Court’s decision in Bank Nationalization case to the effect that the law must provide for the payment of compensation equivalent to the market value of the property acquired. According to him, there was nothing sacrosanct about the principle of payment equal in value of the property acquired, and the legislature could fix on the principle of social justice while determining the amount of compensation.

Regarding second part of 31C, the learned judge observed that the laws which received protection under Art. 31C were laws for securing the Directive Principles under Article 39(b) and (c), and that the nexus or connection between these laws and the objectives set out in Art., 39(b) and (c) were a condition precedent for the applicability of Article 31C. He added that “in order to decide whether a statute is within Art. 31C the court may examine the nature and the character of the legislation and the matter dealt with as to whether there is any nexus of the laws to the principles mentioned in Art. 39(b) and (c).” If there was no such nexus, the judge felt that the legislation would not be within the “protective umbrella” and the court could tear the veil to decide the real nature of the statute. Ray, J., saw a parallel between Article 31C and 31A. According to him, the reason for excepting Articles 14, 19 & 31C substantially operated in the same manner in the industrial sphere as Article 31A operated in the agrarian sphere. The conditional method adopted to solve the problems of the two spheres was similar. Justice Rays’ considered opinion was that Art 31C did not delegate or confer any power on the state legislature to amend the Constitution; it only removed the restrictions of Part III on a legislation giving effect to the Directives Principles under Art 39(b) and (c).  

83. Ibid., p. 1712.
Palekar, J, upheld the validity of the Twenty fourth Amendment, saying that the amendment only made explicit what was implicit in Article 368 and made no change in the essence of that Article. He did not find anything wrong with the new Article 31C. He believed that the Article was based on social philosophy and was in tune with the spirit of the Constitution which looked on concentration of wealth and means of production as a social evil because such concentration led to the concentration of political and economic power in the hands of a few individuals and denial of equality and freedom to the many. Such a development threatened the goals of equality and freedom to the many such a development threatened the goals of equality and social, economic and political justice, which the Constitution had put before itself and posited the need for such provisions as those of Article 31C. Similarly, he did not feel the necessity of striking down even the second part of Article 31 C, as it was conceded on behalf of the Union of India, that, for the purpose of Art. 31C, the court would be competent to examine the true nature, design, object and scope of legislation. The judge observed that if the court came to the conclusion that the object of legislation was merely a pretence and the real object was discrimination or something other than the object specified in Article 31C, the validity of the statute would have to be tested independently of Article 31C.84

With respect to the second part of Article 31C, Mathew, J; held that whenever a question was raised that the Parliament or the State legislature had abused their power and had inserted a declaration in law to secure the Directive Principles, the Court must necessarily go into that question and decide it. In such a case, the declaration in the Act that it has been passed to give effect to Directive principles, could never oust the jurisdiction of the Court to see

84. Ibid., pp. 1827-28.
whether or not it was so, as the jurisdiction of the legislatures to incorporate
the declaration was founded on the law being one to give effect to the policy
of the state forwards securing Directive Principles. Thus, with this reservation,
he held Art 31C as valid.\textsuperscript{85}

Similarly, Dwivedi, J declared the Twenty fifth Amendment also valid
in its entirety, saying that the amount fixed by law or determined in accordance
with the principles specified by law might be paid partly in cash and partly in
kind, or over a long period of time. In the earlier situation, the court could
ensure that the principles of compensation were relevant to “compensation”
that is to the “just equivalent” of the property acquired. But that phrase no
more existed in Art 31(2) and the notion of “the relevancy of principles to
compensation” was jettisoned by Section 2. The judges argued that where the
law fixed the amount it could not be questioned in any court on the ground that
it was not adequate or equal to the value of the property acquired or
requisitioned.

About Art. 31C, Dwivedi J., held that it removed the bar of Art. 13(2)
against law making with respect to the principles specified in Art. 39(b) and
(c). However, the bar was not removed in respect of all the fundamental rights
but only in respect of the rights in Art. 14, 19 and 31 remained operative with
respect to all matters other than the principles specified in Art. 39(b) and (c)
and were in partial eclipse as regards the laws having relevance to the
principles specified in Art. 39(b) and (c). The judge opined that the true nature
and character of Art. 31C should be understood in terms of what it really did
and not from what it seemed or its semantic grab webs.\textsuperscript{86}

\textsuperscript{85} Ibid., pp. 1965-67.
\textsuperscript{86} Ibid., p. 2019.
However, justice Dwivedi held the last para of 31C does not oust the jurisdiction of courts to examine whether impugned law has relevance to the distribution of the ownership and control of the material resources of the community or to the operation of the economic system and the concentration of wealth and means of production.

Justice Chandrachud’s views were similar to those of Ray and Palekar J.J. but he choose to write a separate judgement. Chandrachud, J., upheld the validity of the Twenty fifth Amendment also. He agreed that a change in Article 31C was necessitated by a chain of decisions. On the construction of Art. 31C which has introduced uncertainty in the law and held defeated to a large extent the clearly expressed intention of the Article that “a law providing for compensation shall not be called in question in any court on the ground that the compensation provided by it was not adequate”. He agreed that Art. 31C could be misused but averted that it could not be declared unconstitutional on the basis of the well known judicial test. Therefore, according to the judge apart from the declaration contained in the later part of Art. 31C, the nexus between a law passed under Art. 31C the objective set out in 39(b) and (c) was a condition for the applicability of Art. 31C. In other words, the declaration could not be utilized as a clock to protect laws bearing no relationship with the objectives mentioned in the two clauses of Art. 39.

This judgement has fixed the criteria “the basic structure or framework of the Constitution” as being the touchstone to test the validity of the constitutional amendments. The test’ created is an illusive and difficult test as the court has not given the meaning of phrase.
Eleven separate judgements have added to the difficulty of finding what has actually been upheld by the court and what has been rejected. Due to this multiplicity of judgements there is obvious and patent repetition of the same view expressed by different judges.

The decision in the Keshavananda Bharti case has opened a ‘Pandora’s box’ and endless litigation may follow as now every ‘amendment to the Constitution’ can be challenged on the simple ground that it violates the ‘basic structure’.

The purpose of this special Bench was to remove the stalemate created by Golakh Nath’s case, which was overruled herein but another problem was created by the new ‘criterion of basic structure or framework of the Constitution’. None of the amendments of the Constitution affects the freedoms of the individual, and affect only the Right to Property yet it was made to look as everything is to meet its ‘doomsday’, under the camouflage created dexterously by using high sounding and emotive sentiments of ‘freedom’, ‘democracy’, ‘people sovereignty’, human rights’, etc.

The present judgement has also found fault with the amended Article 31C on the score that it tends to totally exclude Judicial Review in relation to whether there is an infringement of Art. 14 & 19, If the law is for giving effect to the policy of the state towards securing any of the principle of Part IV of the Constitution.

If by this finding, the court intends to convey that the amended Art. 31C destroyed the power of Judicial Review in so far as the court felt it prevented a judicial scrutiny of the nexus between the law and the concerned Directive Principles.
In that case the court struck down that part of the unamended Art. 31C which excluded Judicial Review by making conclusive, the states’ declaration as to whether the law gives effect to the specified Directive Principles.

**MINERVA MILLS LTD V. UNION OF INDIA,**

In Minerva Mills\(^87\) case the constitutionality of S.4 of the Constitution (42\(^{nd}\) Amendment Act, 1979) was challenged by a group of writ petitions. The impugned section 4 of the Amendment Act 1976 sought to insert the words “all or any of the principles laid down in part IV” into Article 31C and made it immune from any attack being inconsistent with any of the rights conferred by Articles 14 and 19. The main controversy centres round the question whether the Directive Principles of state policy contained in part IV can have primacy over the Fundamental Rights conferred by part III of the Constitution.

In this case the majority view is taken by Chandrachud C.J. and Gupta, Untawalia and Kailasam, J.J. and Minority view by Bhagwati J.

S. 55 of the Constitution (Forty Second Amendment) Act, 1976, inserted sub section (4) & (5) in Art. 368. This section was held to be beyond power of the Parliament and void since it sought to remove all limitations on the power of Parliament to amend the Constitution so as to damage or destroy its basic or essential features or its basic structures. The true object of these clauses was to remove the limitations imposed on Parliaments power to amend the Constitution through the Kasavananda case. The newly introduced clause 4 in Art. 368 sought to deprive the courts of their power to call in question any amendment of the Constitution. The Court stated in this connection:

\(^87\) AIR, 1980 SC 1789
Indian Constitution is founded on a nice balance of power among the three wings of the namely, the Executive the Legislature and the Judiciary. It is the function of the judges, may their duty, to pronounce upon the validity of laws.\(^88\)

Mr. Chandrachud C.J. has clearly stated his views regarding the Fundamental Rights and Directives Principle. He observed:

“To destroy the guarantees given by Part III in order purportedly to achieve the goals of part IV is plainly to subvert the Constitution by destroying its basic structures.”\(^89\)

The learned chief justice goes on to emphasize the importance of Fundamental Rights in the following words:

“Fundamental Rights occupy a unique place in the lives of civilized societies and have been variously described in our judgements as “transcendental”, “in alienable” and “primordial”. For us, it has been said in Kasavananda Bharti\(^90\), they constitute the ark of the Constitution.”\(^91\)

In other words, the rock of the balance is between parts III and IV. To give absolute primacy to one over the other is to disturb the harmony of the Constitution. This harmony and balance between Fundamental Rights and Directives Principles is an essential feature of the basic structure of the Constitution.\(^92\)

Constitution maker therefore put Part III in the Constitution conferring those rights on the people. Those rights are not an end itself but are the means to an end. The end is specified in Part IV. Therefore, the rights conferred by

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\(^{88}\) Ibid., p. 1789
\(^{89}\) Ibid, p. 1796
\(^{90}\) AIR, 1973, SC, p. 1461
\(^{91}\) AIR, 1980, p. 1796
\(^{92}\) Ibid, p. 1796
Part III are subject to reasonable restrictions and the Constitution provides that enforcement of some of them may, in stated uncommon circumstances, be suspended. But just as the rights conferred by Part III would be without a radar and a compass if they were not geared to an ideal, in the same manner the attainment of the ideals set out in Part IV would become a pretence or tyranny if the price to be paid for achieving that ideal is human freedom. The goals set out in part IV have therefore, to be achieved without the abrogation of the means provided for by part III. It is in this sense that parts III and IV together constitute the core of the Constitution and combine to form its conscience. Anything that destroys the balance between the two parts will ipso facto destroy an essential element of the basic structure of Constitution.

Emphasizing the cherished value of rights contained in Articles 14 & 19 and the sweeping impact of Article 31C on these individual freedoms the Chief Justice Mr. Chandrachud observed:

“Articles 14 and 19 do not confer any fanciful rights. They confer rights which are elementary for the proper and effective functioning of a democracy. They are universally so regarded, as is evident from the Universal Declaration of Human Rights. Many countries in the civilized world have parted with their sovereignty in the hope and belief that citizens will enjoy human freedoms. If Articles 14 and 19 are put out of operation in regard to the bulk of laws which the legislatures are empowered to pass, Article 32 will be drained of its life blood., Article 32 (4) provides that the right guaranteed by Article 32 shall not be suspended except as otherwise provided for by the Constitution section 4 of the 42nd Amendment found an easy way to circumvent Article 32(4) by

93 Ibid. p. 1797.
withdrawing totally the protection of Article 14 and 19 in respect of a large category of laws, so that there will be no violation to complaint of in regard to which redress can be sought under Art.32. The power to take away the protection of Art. 14 is the power to discriminate without a valid basis for classification….The principles enunciated in part IV are not the proclaimed monopoly of democracies alone. They are common to all policies, democratic or authoritarian. Every state is goal oriented and claims to strive for securing the welfare of its people. The destruction between the different forms of Government consists in that a real Democracy will endeavour to achieve its objectives through the discipline of fundamental freedom like those conferred by Articles 14 and 19. These are the most elementary freedoms without which a free democracy is impossible and which must therefore be preserved at all costs.94

The chief Justice Mr. Chandrachud expressed his wish to have an egalitarian era through the discipline of Fundamental Rights and said that right to equality and liberty alone can preserve the dignity of the individual.

Article 31A had the effect of abrogating Articles 14 and 19 in reference to legislation falling within the categories specified in the various clauses of that Article because Fundamental Rights enshrined in Articles 14 and 19 were part of the basic structure of the Constitution and any constitutional amendment which had the effect of abrogating or damaging these Fundamental Rights was outside the amendatory power of Parliament.

P.N. Bhagwati C. has given dissenting judgement he has of the opinion that where any law is enacted for giving effect to a Directive Principles with a

94 Ibid. p. 1798
view to furthering the constitutional goal of social and economic justice, there would be no violation of the basic structure, even if it infringes formal equality before the law under Art. 14 or any Fundamental Right under Article 19. “Clause (a) of Art. 31A protects a law of agrarian reform which is clearly, in the context of the Socio-economic conditions prevailing in India, a basic requirement of social and economic justice and is covered by the Directive principles set out in clauses (b) and (c) of Article 39 and it is difficult to see how it can possibly be regarded as violating the basic structure of the Constitution on the contrary, agrarian reform leading to social and economic justice to the rural population is an objective which strengthens the basic structure of the Constitution clause(a) of Article 31A must therefore be held to be constitutionally valid even on the application of the basic structure test”.

But apart from this reasoning on principle which clearly sustains the constitutional validity of Cl.(a) of Art. 31A. The doctrine of *stare decisis* Article 31A must be upheld as constitutionally valid. The constitutional validity of Art 31A first came up for consideration before this court in *Shankari Prasad Vs. Union of India*. There was a direct challenge leveled against the constitutionality of Art. 31A in this case on various grounds and this challenge was rejected by a Constitution Bench of this court.

In Keshavananda Bharti case, the constitutional validity of Article 31A was not assailed on the ground of infraction of the basic feature since that was a doctrine which came to be evolved only in *Kesavananda Bharti’s case*, but

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95 Ibid., p. 1827
96 Ibid. p. 1827
the fact remains that whatever be the arguments advanced or omitted to be advanced, Article 31A was held to be constitutionally valid by this court.\footnote{Ibid, p. 1827}

A strong plea was made in \emph{Sajjan Singh V. state of Rajasthan} that \emph{Shankari Prasad’s} case should be reconsidered, but after a detailed discussion of the various arguments involved in the case, the Constitution Bench of this court expressed concurrence with the view expressed in Shankari Prasad’s case and in the result, upheld the constitutional validity of Article 31A.\footnote{Ibid, pp. 1827-28}

The \emph{Golaknath case} also accepted the constitutional validity of Article 31A. The Constitutional validity of Art 31A was not put in issue in \emph{Kesavananda Bharti’s case} and the learned judges who decided that case were not called upon to pronounce on it and it cannot therefore be said that this court upheld the \emph{vires} of Article 31A in that case.\footnote{Ibid, p 1828}

Since the decision in \emph{Shankari Prasad’s} case Art. 31A has been recognized as valid and on this view, laws of several states relating to agrarian reform have been held to be valid and as pointed out by Khanna, J. in \emph{Kesavananda Bharti case} “millions of acres of land have changed hands and millions of new titles in agricultural lands have been created.” If the question of validity of Art. 31A were reopened and the earlier decisions upholding its validity were reconsidered in the light of the basic structure doctrine, these various agrarian reforms laws which have brought about a near socio-economic revolution in the agrarian sector might be exposed to jeopardy and that might put the clock back by setting at naught all changes that have been brought about in agrarian relationship during these years and create chaos in the lives
of millions of people who have benefited by these laws. It is no doubt true that this court has power to review its earlier decisions or even depart from them and the doctrine of *stare decisis* can not be permitted to perpetuate erroneous decisions of this court to the detriment of the general welfare of the public.\textsuperscript{100}

Here the view that Article 31A is Constitutionally valid has been taken in atleast three decisions of this court, namely, *Shankari Prasad’s case*, *Sajjan Singh case* and *Golakhnath’s case* and it has held the field for over 28 years and on the faith of its correctness. Millions of acres of agriculture land have passed to another owners and new agrarian relations have come into being, transforming the entire economy. These decisions have given a quietus to the constitutional challenge against the validity of Article. 31A and this quietus should not now be allowed to be disturbed.\textsuperscript{101}

Mr. Bhagwati C.J. in dissenting opinion further held that Art 31B was introduced in the Constitution along with Article 31A by the Constitution (First Amendment) Act, 1951 as part of the same design adopted to give protection to legislation providing for acquisition of an estate or extinguishment or modification of any rights in an estate. Subsequent to this amendment several other statutes dealing with agrarian reform were included in the Ninth schedule by the Constitution (Seventeen Amendment) Act, 1964 and no complaint can be made in regard to such addition.\textsuperscript{102}

Article 31C was introduced in the Constitution by the Constitution (Twenty fifth Amendment) Act, 1971. Now the question is whether Article 31C is of such nature of deserved to be declared destructive of the basic

\textsuperscript{100} Ibid, p. 1827.
\textsuperscript{101} Ibid. pp. 1829-1830
\textsuperscript{102} Ibid, p. 1830
structure of the Constitution. In the earlier *Kesavananda Bharti case* Supreme Court had “upheld the Constitutional validity of the first part of Article 31C which had been inserted by the Twenty fifth Amendment. The material part of Art. 31C which had been so upheld read as follows: “Notwithstanding anything contained in Art 13 no law giving effect to the policy of the state towards securing the principles specified in clause (B) or clause (C) of Article 39 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 Art 14, Arty 19 or Article 31…”103

The later part of Art. 31C which had made a declaration in such law conducive and final as to the question of whether it does give effect to such policy was annulled by the Supreme Court in *Kesavanada Bharti case*. The only change effected by the 42nd Amendment to the 31C was to replace the word “ the principles specified in clause (B) or clause (C) of Article 39” with the words “ all or any of the principles laid down in part IV”. In short, therefore, the 42nd Amendment tried to extend to all Directives principles, mentioned in Article to all Directives Principles, mentioned in Articles 39(b) and (c) even if the law which gives effect thereto violates certain Fundamental Rights guaranteed in Articles 14 and 19.

Striking down Article 31C appear to be that the equation or balance between Fundamental Rights and Directive Principles, which supposedly involved primary of the former over the latter, is important element in the basic structure of the Constitution, and so far as the amendment disturbs this equation the amendment alters or destroy the basic structure.

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103 Ibid, p. 1830
Thus, the Supreme Court judgement, delivered by Mr. Justice Chandrachud, appears to be unconvening, whereas Mr. Justice Bhagwati’s dissenting opinion appears to be more convening sound, cogent and reasonable, suited to the socio economic spirit of the Constitution.

3. NINTH SCHEDULE

The Philosophy underlying the Indian Constitution goes back to the Objective Resolution of Pandit Jawahar Lal Nehru, adopted by the Constituent Assembly on 22 Jan, 1947. This resolution inspired the shaping of the constitution through its subsequent stages. The Preamble of Constitution guarantees social, economic, political justice; equality of status and opportunity, freedom of thought, expression belief, faith and worship. After Forty second Amendment Act it embodies secular and socialist pattern which may be described in the words of Late Prime Minister Indira Gandhi “we have our own brand of socialism, we will nationalize the sectors, where we feel the necessity just Nationalization is not our type of socialism”104.

The Constitution of India guaranteed several rights of which the right to property is very important at its inception it had three fold provision for safeguarding the right of property –

1. Art 31(1) provided that no person shall be deprived of his property saved by the authority of law.

2. Art. 19(1)(f) guaranteed to every citizen the right to acquire any property by any lawful means such as inheritance, personal earnings or otherwise and to hold it was his own and to dispose it freely, limited to such

reasonable restrictions, which may not be in excess of the requirement of the interest of the general public.

3. Art. 31(2) provided that if state went to acquire private property, it could do so by acquisition but only by payment to the owner.

At the time of formation of the Constitution Pandit Nehru possessed a very important position. He was chief architect of Constituent Assembly and people adored him by heart as their representative hero.\(^{105}\)

He was a socialist and his thoughts were powerfully implemented to give the nation a socialist outlook and infrastructure. The development of the Nehruvian socialist order was not possible without vast acquisition of land and for reorganization of agricultural economy and agricultural holdings. The right to property was a serious threat to this pattern of society. In this connection a number of states passed agricultural reform enactments. They were challenged on the ground of violation of the right to property. And a number of High Courts held these laws as unconstitutional for example, in *Kameshwar Vs. State of Bihar*\(^{106}\) the Patna High Court has held the Bihar land reforms Act as *ultra vires*. On the other hand, Allahabad and Nagpur High Courts upheld their land reform Acts, appeals against which were still pending in the Supreme Court.

The problems were to be resolved to develop the new socialist order. The Constitution (First amendment) Act, 1951 was laid before the provisional government on May 29, 1951 this amendment introduced Ninth Schedule in the constitution. The then Prime Minister Pandit Jawahar Lal Nehru said “It is not with any great satisfaction or pleasure that we have produced this long schedule


\(^{106}\) A.I.R. 1962 SC 1166
we do not wish to add to it for two reasons. One is that the schedule consist of a particular type of legislation, generally speaking, and another type should not come, secondly, every single measures included in this schedule was carefully considered by our president and certified by him…"107 In all 13 Acts were included which were majority concerned with matters relating to agrarian reforms.

Two new Article were incorporated in the Constitution by the First Amendment Act, 1951. Art. 31A was also included which deals with saving of laws providing for the acquisition of estate, apart from this it also provide (Now) for the taking over of the management of any property by state, the amalgamation of two or more corporation either in the public interest or in order to secure its property management, the extinguishment or modification any rights of managing agents etc. These laws have been saved by Art. 31A, against the challenge on the ground of alleged infringement of Art. 14 or 19.

Art. 31B runs as “without prejudice to the generality of the provisions contained in Art. 31A, none of the Acts and Regulations specified in the Ninth Schedule not any of the provision thereof shall be deemed to be void, or ever to have become void, on the ground that such Acts, regulation or provisions is inconsistent with or takes away or abridges any of the rights conferred by any provisions of this part, and notwithstanding any judgement 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.”

Thus Art. 31B, validated certain Acts and regulations if they were put under Ninth Schedule, and that the provisions there of shall not be deemed to be void on the ground that they were inconsistent with and take away or abridges any of the rights conferred by part III of the Constitution. More importantly, Art. 31B is retrospective in nature when a statute declared unconstitutional by a court is later included in the Ninth Schedule, it is to be considered as having been in that Schedule from its inception. The Act cannot then be deemed to be void, or ever to have been came void, on the ground of its inconsistency with any fundamental right. In short, the judicial decision is nullified when the statute is included in the Schedule. It is noticeable that Art. 31B contain a device for saving laws from challenge on the ground of violation of Fundamental Rights.\(^{108}\) There is fundamental difference in the area of operation between Art. 31A & Art 31B. “The scope of Art. 31A in so far as any law included in the Ninth Schedule is immunized from all fundamental rights whether or not the law falls under any of the categories in Art. 31A. 31B is thus not controlled by Art. 31A.\(^{109}\)

Since 1951, the Ninth Schedule has been expanded constantly so much so that today 188 Acts are included therein. From the context of Art. 31B it is put under the heading right to property immediately after Art. 31 and 31A, and its opening words are “without prejudice to the generality of the provisions contained in Art. 31A. It could be assumed that Art. 31B was meant to protect legislation dealing with property rights and not any other type of legislation. But in practice, Art. 31B has been used to invoke protection for many laws not


\(^{109}\) Ibid. p. 1289
concerned with property rights at all Art. 31B is thus being used beyond the socio-economic purpose which was its only justification.

The statement of reasons (SOR) relating to the First Amendment said: “challenges to agrarian laws or laws relating to land reform was pending in courts and were holding up large schemes of land legislation through dilatory and wasteful litigation”.

The debates in Parliament prior to the enactment of the First Amendment shows the factors that led to the creation of Ninth Schedule, several High Courts had declared Zamindari abolition Acts beyond the powers of the Constitution, and there was all round concern that the country’s judges had strayed beyond their jurisdiction. Pandit Nehru made his statement: “somehow we have found that this magnificent Constitution we have framed, was late Kidnapped and purloined by lawyers.”

Art 31C was added by Twenty fifth Amendment. On the First Amendment Act a Select Committee was appointed to look into the effects of the amendment. It submitted its report on May 29, 1951. The committee gave green signal to the amendment. There was a selection of parliamentarians also who opposed this Prof. K.T. Shah “appealed against it in order to ‘uphold the sanctity of the Supreme Court’ and urged the government to validate the laws to be placed under the Ninth Schedule after the Supreme Court considered them on a reference by the President.

Brief introspection into Parliamentary debates concerning the First Amendment led by the Prime Minister Nehru reveals that the basic intention of

111 Ibid., p. 12.
112 Ibid. p. 12.
the amendment was to prevent judicial intervention with Acts intended to promote social change towards a more equal justice, and the constitutional goal of egalitarianism.

....we thought it best to propose Articles 31A and B and in addition to that there is a Schedule attached of a number of Acts ... some of which have been and/or might be challenged... save them from long delays so that this process of change (land reforms)... should go ahead.\textsuperscript{113}

The Ninth Schedule was, thus, introduced in order to bring in reforms to rationalize the agrarian structure, and thus changed the economic base of the political power. For a variety of reasons, the Nehruvian Policy of agrarian reforms was among the priority item of planned development. 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.\textsuperscript{114}

**The Ninth Schedule Laws and I.R. Coelho Vs. State of Tamil Nadu**

The fundamental question discussed by the Supreme Court in I.R. Coelho\textsuperscript{115} is whether on and after 24\textsuperscript{th} April, 1973 when basic structure doctrine was propounded, it is permissible for Parliament under Art. 31B to immunize legislations from fundamental rights by inserting them into the Ninth Schedule and what is the effect on the power of Judicial Review of the court.

According to the Petitioners, the consequence of the evolution of the principles of basic structure is that the Ninth Schedule laws cannot be conferred with constitutional immunity of the kind created by Article 31B.

\textsuperscript{113} Quoted from Waman Rao V. Union of India AIR 1981 SC 271.  
\textsuperscript{115} A.I.R. 2007 SC 861.
The respondents urged that the validity of Ninth Schedule legislations could only be tested on the touchstone of basic structure doctrine as evolved by the majority in Keshavananda Bharti, which also “upheld the Constitution Twenty ninth Amendment unconditionally and thus there can be no question of Judicial Review of such legislations on the ground of violation of Fundamental Rights.

The Court after examining various opinions in Keshavananda came to the conclusion that the constitutional validity of Article 31B read with the Ninth Schedule was not under challenge in that case. The Twenty fourth, twenty fifth and Twenty ninth Amendments to the Constitution under challenge in that case were examined assuming the constitutional validity of Article 31B. The Court in this case also proceeded on the assumption that Article 31B was valid and was not in challenge before it. The Constitution Twenty ninth Amendment Act, 1971 as entries number 65 and 66 in the Ninth Schedule to the Constitution. The court upheld the validity of the Twenty ninth Amendment Act. The view of seven judges was that Article 31B was a Constitutional device to place the specified statutes in the Schedule beyond any attack on the ground that these infringes part III of the Constitution, 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. However, Khanna J. in Indira Nehru Gandhi made it clear that he never opined in Kesavananda Bharti that the fundamental rights were outside the purview of the basic structure.
According to him, what has been laid down in that judgement is that no Article of the Constitution is immune 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 Bharti* so as to exclude fundamental rights from the purview of the basic structure. As Khanna, J. was not of the opinion that all fundamental rights were part of the basic structure, the inevitable consequence is that the Twenty ninth 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 Bharti, 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 assert it on the concept of enlarged Judicial Review. The legislature cannot grant fictional immunities and exclude the examining 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.

Thus, the court made it clear that ultimately, the basic structure is supreme. Equality, rule of law, Judicial Review and separation of powers form part of basic structure of the Constitution. All these would be redundant if the legislative, the executive and the judicial, powers are vested in one organ. Therefore, it is the duty of judiciary to decide whether the limits have been transgressed.

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 years of independence to promote social change.

Indian Constitution meticulously defines the functions of various organs and that they have to function within 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 sum, the sole purpose of the Ninth Schedule was to deprive the courts of the power to examine the validity of the Act passed by the legislature. However, the laws included in the Ninth Schedule would not receive the protection of Art. 31B. Each law has to be examined individually for determining whether the constitutional amendment by which it has been put in the Ninth Schedule damages or destroys the basic structure of the Constitution in any manner. Therefore, the Ninth Schedule has now become redundant, with respect to the original purpose of its inclusion.