AMENDING POWER OF THE PARLIAMENT UNDER
ARTICLE 368 AND NINTH SCHEDULE

6.1 Introduction

No Written Constitution is complete without amending provisions, in some respects, the amending provision is the most important part of the Constitution.1 “An unamendable Constitution is the worst tyranny of time or rather the very tyranny of time”2 A Constitution is a system of fundamental laws or principles for the governance of a nation. This Constitution usually states the general principles and framework of the law and government3. A Constitution may be either written or unwritten. A written Constitution born at one instance and therefore it is not born but grows by amendment which themselves become part of it by incorporation.4 The amending provision in written Constitution assumes great importance because it gives chance to successive generation to grow it as per their needs. In fact the essence of a written Constitution lies in its mode of amendment. The amendment process is an opportunity to express democratic conceptions of basic constitutional values with out derogating from the fundamental constitutional principles.5

Framers of a Constitution cannot anticipate conditions which may subsequently arise in the progress of a nation or establish all laws which may be necessary from time to time to do justice to the changing conditions of a community. It is not practicable for a written Constitution to specify, in detail, all its objects and purposes or the means by which they are to be carried into effect;

1 James Wilford Garner, ‘Political science and Government’ p.528
2 Mulford, the nation p.155 quoted by Dr.Ashok Dhamija’s ‘ Need to Amend a Constitution ‘(2007),p 12
3 American Jurisprudence Page 602-603
4 Chaturvedi, ‘Amendment to the Constitution ’(1985) p29
nor is such an exercise considered necessary or desirable.\textsuperscript{6} Constitution Framers were fully aware that, an unamendable Constitution has no value, in Written Constitutions, the amending provisions having great importance and these provisions ensure smooth and flexible on version. The amending provisions were formulated by the Constituent Assembly after a marathon debate and detailed investigation of amending provisions of several Countries Constitution viz., United States of America, Australia, France, Switzerland, South Africa, Canada etc. In order to avoid the problems which existed in rigid and flexibility provisions in amendment, Framers shaped Art.368 as fine blend of rigidity and flexibility. That means the amendment of Indian Constitution is not rigid and at the same time it is also not flexible. The flexibility and rigidity depends upon the nature and importance of the provisions of the Constitution.

While referring to the need to amend the Constitution to the changing socio economic and political conditions, Pandit Jawaharlal Nehru said,\textsuperscript{7}

“It is the one of the utmost importance that the people should realize that this great Constitution of ours, over which we labored so long, is not a final and rigid thing. A Constitution which is responsive to the people’s will, which is responsive to their idea, in that it can be varied here and there, they will respect it all the more and they will not fight against, when we want to change it”.

Dr. B.R.Ambedkar said,\textsuperscript{8} “It is the right and privilege of the highest Court of the land to interpret the Constitutional law, however, at the same time; it is also the duty of the Parliament to see that objects aimed at in the Constitution are fulfilled or not by the judgement based on such interpretation. If the object is not achieved because judgement comes in the way, it is the provisions of the Constitution here and there.”

\textsuperscript{6} See, Sundar Raman’s ‘Constitutional Amendment in India 1950-1989’, published in 1989 by Eastern Law House, p.1
\textsuperscript{7} Parliamentary debates, vols.XII-XIII,partII,1951,pp9616-17
Amendment of the Constitution is made with a view to overcome the difficulties which may encounter in future in the working of the Constitution. The Constitution of India is a result of socio economic and political factors which existed at the time of its formation these factors are dynamic and not static, the socio economic problems are more complex today than in the mid century. The changes in the economic philosophy of a State may necessitate amendment to the Constitution. For example, the State Legislations relating to land reforms are also a factor for amending the Constitution.

In order to implement the agrarian reforms in the country, Parliament brought First Amendment⁹ to the Constitution in the very next year from the date of commencement of the Constitution and thereby it also excludes judicial review from questioning the laws placed in the Ninth Schedule. This kind of action by the Parliament might be against to the constitutional spirit, yet it was done in the best interest of justice and equity. The exclusion of judicial review by the Parliament leads to the fact that the supremacy of the Constitution is affected, because, since judicial review is considered as a part and parcel of the principle of Constitutionalism and protector of the Fundamental Rights. This principle limits the powers of three organs of the government. No organ of the government is above the Constitution. It is the Constitution which declares certain principles to govern the operation of those organs. In spite of this, Constitution has permitted Parliament to bring an amendment to the Fundamental Rights in order to uphold the social justice. When Parliament made First Amendment to the Constitution, initially the object was good, because the laws inserted to the Ninth Schedule were exclusively relating to agrarian reforms. This action of the Parliament was really justifiable one, though it was violating some of the Fundamental Rights of the Constitution. But later the Ninth Schedule became Constitutional dustbin in the

⁹ Articles 31-A and 31-B read with Ninth Schedule added in First Amendment, 1951.
hands of the Parliament. Thereby, they made Controlled Constitution into uncontrolled by incorporating the controversial laws into the Ninth Schedule.

It is in this context, the researcher has made an attempt in this chapter to discuss some key issues, such as, the justifiability of amendment to the Constitution by Parliament to validate the laws placed in the Ninth Schedule. To know, to what extent Parliament can exercise its amending power to insert even non-land reform laws into the Schedule? And whether the amending power under the Constitution of India is a plenary constituent power or subject to certain implied limitations as suggested by some of the majority judges who decided *Golakanath*\(^{10}\) and *Keshavananda*\(^{11}\) cases.

Further, some other issues have also been discussed, such as, whether Constitution imposes any express or implied limitations upon the power of sovereign Parliament under Art.368 of the Constitution? Does Art.31-B confer unlimited power to the Parliament to exercise its amending power? How to assess or determine whether or not the basic structure of the Constitution is affected by the exercise of amending power, in pursuance of Art.31-B given under Art.368? Can courts review the validity of constitutional amendments? Before addressing the above mentioned issues, it is appropriate to deal with primary issues like, growth and development of amendment in brief, meaning, nature, scope and procedure of amendment.

### 6.2 Genesis and Growth

Right at the beginning of the Constitution making exercise, there was serious concern in the Constituent Assembly about determining whether amending procedure should have some rigidity and, if so, to what extent\(^{12}\). The process of

\(^{10}\) AIR, 1967 SC 1643

\(^{11}\) AIR 1973, SC 1463

\(^{12}\) Dr. Subash C. Kashayap’s, ‘*Constitution of India*’, Vol.2, Universal Law Publishing Co., 2008 edition, p 2294
formulating draft Constitution began with a questionnaire and draft proposal for amendment prepared by B.N. Rau and circulated to the members on March 17, 1947.\(^\text{13}\) To this questionnaire Prof K.T. Shah gave detailed suggestions demanding a rigid and complicated procedure for amendment and also favoured referendum.\(^\text{14}\) K M Munshi also supported and justified Rau’s proposals.\(^\text{15}\)

Rau’s draft was modified by the Drafting Committee at its meeting on Feb 10, 1948. It was introduced in Art.304 of draft Constitution.\(^\text{16}\) Draft Art.304 came for deliberations before Constituent Assembly on Sep 17, 1949, events and developments had made some modifications necessary. Dr. B.R. Ambedkar moved an amendment proposing a substitute draft article. The new draft article was criticised for suggesting a rigid amending procedure. A member strongly advocated referendum to resolve deadlocks. Replying to the debate, Dr. B.R. Ambedkar \textit{inter alia} said, “The Constitution is a fundamental document. It is a document which defines the position and power of the three organs of the State – the executive, the judiciary and the legislature. It also defines the powers of the executive and the powers of the legislature as against the citizens, as we have done in our chapter dealing with Fundamental Rights. In fact, the purpose of a Constitution is not merely to create the organs of the State but to limit their authority, because, if no impediment was imposed upon the authority of the organs, there will be complete tyranny and complete oppression. The legislature may be free to frame any law: the executive may be free to take any decision; and

\(^{13}\) M.K. Bandari, \textit{Basic Structure of Indian Constitution}’1993, p.29  
\(^{14}\) Sha K.T. draft Constitution  
\(^{15}\) Constituent Assembly debates Vol I-IV p546  
\(^{16}\) \textit{Art 304}; “An amendment of the Constitution might be initiated by the introduction of a Bill in either house and by a majority of not less than two third of the members present and voting it would be presented to the president for his assent and upon such assent being given to the Bill, the Constitution would stand amended in accordance with the terms of the Bill.” Provided if such amendment sought to make any change in- I  
\ a) Any of the lists in the VII Schedule.  
\ b) The representation of States in the Parliament.  
\ c) The powers of Supreme Court, the amendment would also require to be ratified \textit{inter alia}, by the legislature of not less than one half of the States.  

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the Supreme Court may be free to give any interpretation of the law and it would result in utter chaos”.17

Scope of amendment under draft Art.304 was clarified by B.R. Ambedkar that all article could be amended but in some cases an additional requirement of ratification by State legislature is required18 Dr. Ambedkar while speaking on draft Art.304 said we divided articles of the Constitution under three categories.19

1) The first category is one which consists of Articles which can be amended by Parliament by bare majority.

2) The second set of articles which require two third majorities.

3) If in future, the Parliament wishes to amend any particular article which is not mentioned in part III or Art.304 all that is necessary to have two third majority to amend it.

The Constituent Assembly after analyzing the amending process of several countries, selected and borrowed the amending provisions from South Africa, though they did not incorporated as it is they made certain changes in such a way that they are suitable to the Indian scenario and formulated the Art.304 later it was renumbered as Art.368. Presently this article provides for power and procedure for amendment of Indian Constitution. This is how discussion took place in the Constituent Assembly and finally they inserted amendment provision under Art.368 of the Constitution.

17 C.A.D.Vol.IX, P.1659-63
18 Ibid Vol VII p43
19 Constituent Assembly debates Vol IX p1661
6.3 Definition of Amendment

The term ‘amendment’ derives from the Latin word ‘amendere.’ The term ‘amend’ means to make right, to make correction or to rectify. In common parlance “amendment” conveys the sense of slight change.

According to the Webster’s new dictionary and Funk and Wagnall’s standard dictionary the word ‘amendment’ when used in relation to a Constitution, carries all meaning such as alterations, revision, repeal, addition, variation or deletion of any provision of the Constitution.20

Oxford dictionary of law says21 “Amendment means changes made to legislation, for the purpose of adding to, correcting or modifying the operation of the legislation.”

Black’s Law Dictionary defines,22 ‘Amendment’ as “A formal revision or addition proposed or made to a statute, Constitution, pleading, order, or other instrument; a change made by addition, deletion or correction specially an alteration of wording”. And “In Parliamentary law, it means a ‘motion that changes another motion’s wording by striking out text, inserting or adding text, or substituting text.”

Legally speaking amendment denotes adjustment, amelioration, betterment, change, elaboration, emanation, enhancement, improvement, notification and refinement etc.23 Generally the Constitution provides machinery whereby any of its provision may be altered following the procedure prescribed therein. The framers of the Indian Constitution were anxious to have a document which could grow with the growing nation and enable the Parliament to give effect to the popular will which sometimes tend the people to adopt extra constitutional method like revolution to change the Constitution. The procedure of amendment under Art.368

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21 Oxford law dictionary p45
23 Burton, William C, Legal Thesaurus..... Complete and Unabridged, Macmillan, New York,198,p-23
of the Constitution shows the awareness of the framers about the danger of two extremes i.e. extreme flexibility and extreme rigidity. However, in spite of its own importance, Art.368 is not free from ambiguity and imperfection. Since 1951 questions have been raised about the true scope and nature of amending process provided under Art.368 of the Constitution. A survey of the Indian constitutional amendments till this date reveals that there are very few provisions that remain untouched. Presently, starting with the preamble of the Constitution and ending with Art.394-A majority of the provisions have been touched upon by taking the recourse of amendments for more than ninety times.

The meaning of the word amendment was for the first time sought to be explained in case of Sajjan Singh v. State of Rajastan. The court held “the amendment provision of Constitution may include the deletion of any one or more of its provisions and substitution in their place of new provisions.”

The meaning given in above case was restricted in Golaknath case the majority of judges in this case held that “In amendment only major changes or improvements can be made and not includes total repeal of the provisions already existing in this Constitution.”

But Keshavananda Bharati v. State of Kerela provided the best explanation as to the scope and definition of the word ‘Amendment’. It proposed that “A broad definition of the word ‘Amendment’ will include any alteration or change. The word ‘amendment’ when used in connection with the Constitution may refer to the addition of a provision on a new and independent subject, complete in itself and wholly disconnected from other provisions, or to some

24 A.I.R.1965 S C 845
25 Sathe, S.P. ‘Limitations on Constitutional Amendment, Basic Structure Re-examined in Indian constitution: trends and issues’ (1978)
26 A.I.R.1967 S C 1643
27 (1973)4 SCC 225 p.318
particular article or clause, and is then used to indicate an addition to, the striking out, or some change in that particular article or clause."

According to Mr. Palkhivala there can be three possible meanings of amendment: (i) to improve or better; to remove an error, the question of improvement being considered from the standpoint of the basic philosophy underlying the Constitution but subject to its essential features;

(ii) to make changes which may not fall within (i) but which do not alter or destroy any of the basic features, essential elements or fundamental principles of the Constitution;

(iii) to make any change whatsoever including changes falling outside (ii). He claims that the preferable meaning is that which is contained in (i) but what is stated in (ii) is also a possible-- construction. Category (iii) should be ruled out altogether. Category (i) and (ii) have a common factor, namely that the essential features cannot be damaged or destroyed.

6.4 Need and Importance of Amending Provisions in the Constitution

The Constitution was designed to be a means to achieve the welfare of the common man and must respond to the popular needs. In order to fulfill the aspirations of the people, we need changes in the Constitution whenever necessary. In a democracy neither the Constitution nor the government is supreme: it is the people who are supreme and they have the right to change the Constitution partially or completely. Unamendability of a Constitution is the worst tyranny that can be imposed on any generation and a democratic Constitution without a provision to amend it would be a contradiction in terms. Therefore, in accordance with liberal-democratic tradition, the power to amend the Constitution of India has been vested in the Parliament.28 When this power is conferred to the Parliament,

28 Supra 7. p.35.
the very next questions comes in our mind is that, what, if certain provisions were faulty, unreasonable or inadequate? What, if the future requirements of a State were not reasonably foreseen by the makers of the Constitution? What, if the future generations require some readjustments in the working of the Constitution or want to make some changes? Is it possible to amend a Constitution if there be a need to do so?

The need of an amendment to the Constitution comes into the picture when there is a change in the society. This happened with in a year from the date of commencement of the Constitution. In 1951, when Bihar Government passed a law Called Bihar Land Reforms Act, 1950, the same was challenged in the Patna High Court and declared unconstitutional, since it was violating some of the Fundamental Rights of the Constitution. But the Allahabad High Court upheld the relevant agrarian legislations passed in Uttar Pradesh. The persons aggrieved by these decisions filed appeals in the Supreme Court. At this point, the Union Government, anxious to put an end to such litigation and for facilitating the implementation of agrarian laws, Prime Minister Nehru introduced the Constitution (First Amendment) Bill in the Loka Sabha (Provisional Parliament) and was passed and received the assent of the President on 18th June 1951 by which Arts.31-A and 31-B were introduced and Ninth Schedule was also inserted in the Constitution reducing the power of the Court in the matter of judicial review of legislative Acts. The Ninth Schedule was born with the purpose of providing super protection to agrarian and economic reform legislation. The main object was to insert provisions fully securing the Constitutional validity of Zamindari Abolition Laws in general and specified Act in particular. This was done to establish an egalitarian society in a country. Because of bringing these land

29 Kameshwar Singh v State of Bihar, AIR, 1951, Pat.91, SB.
30 Surya Prakash v UP Government, AIR, 1951, All.674, FB.
33 Statement of Objects and Reasons, 1951, Gez. Of India, 1951, Sec.2.p.357.
reforms laws, lands were distributed to the landless people and oppressed class equally to attain and secure economic justice. Imagine without this amendment provision under Constitution of India, Parliament would not have helped the needy. There by Parliament in exercise of its amending power, facilitated the farmers to achieve the economic goal. So this is the best illustration to say, how the provision of amendment under Constitution is very important and needful to bring some changes which people like.

The importance of the amending clause is explained by John W. Burgess in the following words,

“A complete Constitution may be said to consist of three fundamental parts. The first is the organization of the State for the accomplishment of future changes in the Constitution. This is usually called the amending clause, and the power which it describes and regulated is called the amending power. This is the most important part of the Constitution. Upon its existence and truthfulness, i.e., its correspondence with real and natural conditions, depend the question as to whether the State shall develop with peaceful continuity or shall suffer alterations of stagnation, retrogression and revolution. A Constitution, which may be imperfect and erroneous in its other parts, can be easily supplemented and corrected, if only the State organized in the Constitution, but if this be not accomplished, error will accumulate until nothing short of revolution can save the life of State. I don’t consider, therefore, that I exaggerate the importance of this topic by devoting an entire book, in my arrangement, to its consideration.34"

W. Brooke also observed and stated the importance of the amending clause in a Constitution.

“The fourth essential of a State Constitution is a workable method of piecemeal amendment. This item is, in fact so important that a separate section of this chapter is devoted to its consideration. The amending processes of many

Constitutions furnish striking and indisputable evidence of the fact that unworkable amending provisions constitute a barrier to the progress of the State. Government is changing, growing, developing, and dynamic institution, in need of continuous adaptation to changed social and economic conditions. A Constitution whose amending provisions make it impossible to make necessary modifications in governmental institutions comes to be a sort of constitutional straitjacket. We cannot prevent governmental changes by falling to make adequate constitutional provision for them. The alternative method is likely to be revolutionary upheaval caused by the accumulation of grievances and social and economic maladjustments. This alternative is not pleasing to society whose governmental tradition is based upon the orderly processes, characteristics of Anglo-Saxon institutions”.35

James Wilford Garner makes similar observations about the importance of the amending clauses. He said, “No written Constitution is complete without such a provision…” Garner goes on to further state that, “In some respects the amending provision is the most important part of the Constitution”.36

The object of amending clause in a Constitution is to ensure that the Constitution is preserved. A State cannot be static. It is dynamic and it changes with the passage of time. The political, social and economic conditions in a State keep changing with time. Scientific and technological advancements change the life of a State. The social values and ideals also change with time giving rise to new problems and new opportunities. Future generations may require change in the provisions of the Constitution in a proper and peaceful manner to make it suitable to its requirements. A properly drafted amending clause enables the future generations to adapt the Constitution in accordance with the contemporary needs and philosophy of a state in a peaceful manner. In the absence of a suitable amending clause in a Constitution, the only alternative left open for the future

generations would be to either resort to a revolution to change or even overthrow the unamendable Constitution or to stagnate with such unamendable Constitution. Both these situations are not desirable. The amending clause in Constitution, which can help in avoiding both these situations, is thus of great significance.\(^\text{37}\)

President Wilson aptly observes that a Constitution must of necessity be a \textit{Vehicle of Life}. He further observes that its substance is the thought and habit of the nation and as such it must grow and develop as the life of the nation changes. “Living political Constitutions must be Darwinian in structure and in practice”.\(^\text{38}\)

Sir Jennings observes that “the ideas upon which Constitution is based in one generation may be spurned as old –fashioned in the next”.\(^\text{39}\)

If we examine the above observations made by the political thinkers about need and importance of the amendment, we can say amending clause in the Constitution enables the future generations to exercise their sovereign power of having a Constitution of their choice and of their changing needs. It is in the light of this importance that the amending clause in a Constitution needs to be considered with utmost respect and seriousness that is so properly deserves.\(^\text{40}\)

\section*{6.5 Procedure for Amendment}

The modes adopting the Constitution from time to time to new circumstances may either be informal or formal methods.

\subsection*{6.5.1 Informal Method}

Informal method of amendment is one in which the Constitutional text does not change,\(^\text{41}\) but its interpretation under goes change. The words in the

\begin{flushright}
\textsuperscript{38} ‘Constitutional Government in the United States’, (1921), pp.22, 57.
\textsuperscript{39} Sir Ivor Jennings, ‘Some Characteristics of Indian Constitution’, (1953), p.15.
\textsuperscript{40} Supra 38
\textsuperscript{41} ‘Constitution Interpretation’. Ch. XL Whears, Modern Constitutions 1974 P.146-147(1964)
\end{flushright}
Constitution having one meaning in one context may be given some what different meaning in another context. “while the language of the Constitution does not change the changing circumstances of a progressive society for which it was designed yield new and further import to its meaning”. Following are Informal methods. They are;

1. Judicial Interpretation

2. Constitutional Conventions and Usages.

6.5.1.1 Judicial Interpretation

Judicial interpretation is a process of interpreting the Constitutional principles by judiciary. In this process the courts play a dominant role. By judicial interpretation, an existing provision in the Constitution may get a new meaning without there being any formal amendment to the Constitution, thereby making the Constitution stand amended indirectly to that extent. In some cases, the Constitution may be formally amended by the competent body to overcome the effect of an inconvenient judicial decision. Though the process of judicial interpretation goes on in every Constitution to greater or lesser extent yet it assumes a crucial importance in a country in which the formal method of amendment is very difficult.

The best example where this process has been used effectively for adoption of the Constitution is the U.S. to a limited extent in Canada and Australia also the Judiciary adopted the Constitution to the Construction of changing circumstances.

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42 M P Jain, Constitution of India. para 4
43 Supreme Court in. I.R.Coeilho v. State of Tamilnadu, AIR.2007 (1), SC.137, declared that Ninth Schedule laws are subjected to the Judicial Review, if they are violative of fundamental rights which form parts as a basic structure of the Constitution.
44 Example, see 24th amendment of the Constitution made by the Parliament to overcome from the decision given by the Supreme Court in I.C. Golaknath v. State of Punjab AIR, 1967 SC 1643.
45 M.V. Pylee, ‘Select World Constitution’. 
6.5.1.2 Constitutional Conventions and Usages

The Constitutional Conventions and Usages though operating within the framework of the Constitution nevertheless do modify their content and effect convention not made but evolved out of practices followed over a period of time.\(^{46}\) The Indian Constitution is very detailed and comprehensive and some of the conventions of the British Constitution have been expressly incorporated in the text of the Constitution\(^{47}\), such as Council of Ministers, Prime Minister, President, Cabinet, Lok Sabha, State Legislative Assemblies, Governor, etc..

In this Convention, it may also be noted that Judicial Decisions and Constitution too bring changes in the Constitution but they are no amendments because they do not change the text. The essence of an amendment of the Constitution lies in the fact that it alters the text of the Constitution. But 24\(^{th}\) Amendment Act, 1971 is a glaring example\(^{48}\) which reveals that by adopting amendment techniques the amending body can do away the informal amendments made by judicial verdict.

6.5.2 Formal method

Practically every Constitution has some formal method of Constitutional amendment. This consists of changing the language of Constitutional provision so as to adopt it to the changed context of social needs. In some countries the process may be easier is said to be flexible and in some countries it may be rigid. The formal amending process is most significant way of adopting the Constitution to changing circumstance.

The formal method of an amendment is described in Part- XX of the Constitution which consists of Art.368 only. The title of the said part XX is

\(^{46}\) M P Jain, ‘Constitution of India’. Para 2
\(^{47}\) Ibid, Para 7
\(^{48}\) M.K. Bandari, ‘Basic Structure of Indian Constitution’ 1993 p.54

6.6 Power to Amend the Constitution

Article 368, as originally stood was titled as “Procedure for amendment of the Constitution”\(^{49}\); it conferred power on the Union Parliament to amend the Constitution. The Constitution (24\(^{th}\) Amendment) Act, 1971 substituted the original Art.368. The title is replaced by new title, “power to amend the Constitution and procedure therefore”;

The Constitution (42\(^{nd}\) Amendment) Act, 1976 further amended Art.368 to the effect declaring “the constituent power of Parliament as unlimited and absolute” and excluding interference by the courts in exercise of the power, on any ground.

Art.368 of the Constitution of India discusses Power of Parliament to amend the Constitution and Procedure therefor.

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

\(^{49}\)Article 368 Procedure for amendment of the Constitution : An amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of that House and by a majority of not less than the two thirds of the members of that house present and voting, it shall be presented to the President for his assent and upon such assent being given to the Bill, the Constitution shall stand amended in accordance with the terms of the Bill: Provided that if such amendment seeks to make any change in

(a) Article 54, Article 55, Article 73, Article 162 or Article 241, or
(b) Chapter IV of Part V, Chapter V of Part VI, or Chapter I of Part XI, or
(c) Any of the Lists in the Seventh Schedule, or
(d) The representation of States in Parliament, or
(e) the provisions of this article,
the amendment shall also required to be ratified by the Legislatures of not less than one half of the States specified in Parts A and B of the First Schedule by resolutions to that effect passed by those Legislatures before the Bill making provision for such amendment is presented to the President for assent.
(2) An amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of that House by a majority of not less than two thirds of the members of that house present and voting, it shall be presented to the President who shall give his assent to the Bill and thereupon the Constitution shall stand amended in accordance with the terms of the Bill: Provided that if such amendment seeks to make any change in-

(a) Article 54, Article 55, Article 73, Article 162 or Article 241, or
(b) Chapter IV of Part V, Chapter V of Part VI, or Chapter I of Part XI, or
(c) Any of the Lists in the Seventh Schedule, or
(d) The representation of States in Parliament, or
(e) The provisions of this Article,

the amendment shall also required to be ratified by the Legislature of not less than one half of the States by resolutions to that effect passed by those Legislatures before the Bill making provision for such amendment is presented to the President for assent.

(3) Nothing in Article 13 shall apply to any amendment made under this article.50

(4) No amendment of this Constitution (including the provisions of Part III) made or purporting to have been made under this article whether before or after the commencement of Section 55 of the Constitution (Forty second Amendment) Act, 1976 shall be called in question in any court on any ground

(5) For the removal of doubts, it is hereby declared that there shall be no limitation whatever on the constituent power of Parliament to amend by way of addition, variation or repeal the provisions of this Constitution under this Article.51

50 24th Amendment of the Constitution made by the Parliament to overcome from the decision given by the Supreme Court in I.C. Golaknath v. State of Punjab AIR, 1967 SC 1643.

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6.7 Effects of Amendments

The net effects of these successive amendments on the 1949 provision may be graphically explained as follows:

<table>
<thead>
<tr>
<th>No.</th>
<th>Art. 368 as it stood in 1949</th>
<th>Art.368 as it stands after1976</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>It was not obligatory for the President to give his assent to a Bill for amendment, presented to him, after being passed by both houses of Parliament.</td>
<td>It has been made obligatory for the President to give his assent to a Bill passed under Art.368 (the new clause (2) as amended by The Constitution (24th Amendment) Act, 1971), though his power to veto other Bills remains intact, subject, of course, to ministerial advice under Art. 74(1), as amended by the 42nd Amendment Act.</td>
</tr>
<tr>
<td>2</td>
<td>What is meant by ‘amendment’ was not explained.</td>
<td>The new clause (1) of Art.368, The Constitution (24th Amendment) Act, 1971 has made it clear that amendment would include ‘addition, variation or repeal of any provision of the Constitution’.</td>
</tr>
<tr>
<td>3</td>
<td>Relying on the word ‘Bill’, it was held in Golak Nath’s case that a Constitution Amendment Act, though passes in exercise of the power conferred by Art.368, was a ‘law’ subject to Art.13(2).</td>
<td>The 24th Amendment Act, 1971 repelled this theory by inserting Cl.(4) in Art.13 and Cl.(3) in Art.368.</td>
</tr>
</tbody>
</table>

51 Text, ‘Constitution of India’ (New Delhi, 1977) p.160. Clauses (4) and (5) in Article 368 were included vide section 55 of the Constitution (Forty-Second Amendment) Act, 1976. The two clause have been struck down by the Supreme Court in the Minerva Mills Case AIR1980SC 1789 for being in violation of the basic features of the Constitution.
4 Thought the amendment power conferred by Art.368 was not subject to any express limitations, it was held in Keshavananda\textsuperscript{54} and Rajnarian\textsuperscript{55} cases that it was subject to the procedural conditions imposed by Art.368, and to the implied limitation that the power to amend could not alter ‘the basic features of the Constitution or to make a new Constitution altogether. The 42\textsuperscript{nd} Amendment Act repelled this theory by inserting Cl.(5) to say that there are no limitations what ever to the power conferred by Art.368, and Cl.(4) to say that a Constitution Amendment Act shall be immune from judicial review altogether, whether on substantive or procedural grounds. But this amendment has been annulled by the Supreme Court.\textsuperscript{56}

6.8 Three Kinds of Amendment of the Constitution

The Constitution of India provides for the amendment through Amendment Acts in a formal manner. For the purpose of amendment, the various Articles of the Constitution are divided into three categories. The first category is out of the purview of Art.368 whereas the other two are a part and parcel of the said Article. It enables Indian Parliament to amend any provisions of Constitution without disturbing its Basic Structure. The amendments described in Art.368 are of three types\textsuperscript{57}

1) Amendment by simple majority vote of the Parliament

2) Amendment by special majority vote of the Parliament

3) Amendment by special majority vote with half number of States' legislative Assemblies ratification.

\textsuperscript{55} Indira Nehru Gandhi v. Raj Narain, AIR 1975 SC, 2299 (1975) 3 SCC 34
\textsuperscript{56} Supra 51
\textsuperscript{57} D.J. De, ‘Constitution of India’ 3rd Edn. in 3 Vols. 3\textsuperscript{rd} edition, 2008
The various categories of amendment to the Constitution can be summarized as follows:

6.8.1 Amendment by simple majority vote of the Parliament

As the name suggests, an Article can be amended in the same way by the Parliament as an ordinary law is passed which requires simple majority. Such amendment may be moved

i) At the instance of Union Government

ii) At the instance of a State Government

6.8.1.1 At the instance of Union Government:

The following Constitutional provisions can be amended by a simple majority of the Parliament at the instance of Union Government.

a) Admission of new State under Art.2 along with Schedule I and Schedule IV

b) Provisions relating to citizenship of India\(^{58}\)

c) Provisions relating to exercise of executive power by a State of its officers in respect of matters over which Parliament has power to make laws\(^{59}\)

d) Provisions relating to salaries and allowances of Ministers\(^{60}\)

e) Provisions relating to salaries and allowances of Speaker and Deputy Speaker, Chairman and Deputy Chairman\(^{61}\)

f) Provisions relating to salaries and allowances of members of Parliament\(^{62}\)

g) Provisions relating to number of Judges in the Supreme Court\(^{63}\)

h) Provisions relating to privileges, rights and allowances of Supreme Court\(^{64}\)

i) Provisions relating to appeal to Supreme Court\(^{65}\)

j) Provisions relating to review the judgment of the Supreme Court\(^{66}\)

\(^{58}\) Article 11

\(^{59}\) Article 73(2)

\(^{60}\) Article 75(6)

\(^{61}\) Article 97

\(^{62}\) Article 106

\(^{63}\) Article 124(1)

\(^{64}\) Article 124(2)

\(^{65}\) Article 133(3)
k) Provisions relating to salaries and allowances of Comptroller and Auditor General\(^{67}\)
l) Provisions relating to composition of the Legislative Councils in States\(^{68}\)
m) Provisions relating to salaries and allowances of Judges of High Court\(^{69}\)
n) Provisions relating to continuance of English language\(^{70}\)
o) Provisions relating to language to be used in Supreme and High Court\(^{71}\)
p) Provisions relating to creation of Legislative and Council of Ministers for Union Territories\(^{72}\)
q) Provisions relating to administration and control of the Schedule areas and Schedule Tribes\(^{73}\)
r) Provisions relating to administration and control of tribal areas\(^{74}\)

6.8.1.2 At the instance Government of a State

This can be considered under the two categories:

a) Some of the provisions of Constitution can be amended at the instance of a State. Provisions relating to upper house in the States\(^{75}\) fell under this category.

b) Some of the provisions of the Constitution can be amended with the consultation of States. Provisions relating to formulation of a new State and alterations of areas, boundaries or names of any State fall under this category.\(^{76}\) These Articles are specifically excluded from the purview of the procedure prescribed under Article 368.

\(^{66}\) Article 137  
\(^{67}\) Article 148(3)  
\(^{68}\) Article 172(2)  
\(^{69}\) Article 221(2)  
\(^{70}\) Article 343(3)  
\(^{71}\) Article 348(1)  
\(^{72}\) Article 239A  
\(^{73}\) Para 7 of Schedule V  
\(^{74}\) Para 7 of Schedule VI  
\(^{75}\) Article 169  
\(^{76}\) Article 3 and 4
6.8.2 Amendment by special majority vote of the Parliament

Articles which can be amended by special majority are laid down in Art.368. All amendments, except those referred to above come within this category and must be affected by a majority of total membership of each House of the Parliament as well as 2/3rd of the members present and voting.

6.8.3 Amendment by Special Majority Vote with half number of States Legislative Assemblies Ratification

Amendment to certain Articles requires special majority as well as ratification by States. Proviso to Art.368 lays down the said rule. Ratification by States means that there has to be a resolution to that effect by one-half of the State legislatures. These articles include.

a) Mode and manner of the election of the President of India
b) Extent of executive power of the Union
c) Extent of executive power of the States
d) Constitution of High courts for a Union Territory
e) Provisions relating to Union Judiciary
f) Provisions relating to High Courts

g) Provisions relating to distribution of legislative powers between Center and States and Provisions relating to Amendment
h) Provisions relating to three lists in the VII Schedule
i) Provisions relating to representation of States in Parliament

77 Article 54 and 55
78 Article 73
79 Article 162
80 Article 241
81 Article 124-147
82 Article 214-23
83 Article 245-255
84 Article 368 and Schedule IV
85 Article 80 and Schedule IV
6.9 Limitations on Amending Power of the Parliament

Constitution of India did not expressly provide any limitation on the power of amendment under Art.368. The Constitution makers did not think it necessary to provide for any alternative procedure such as referendum or a new Constituent Assembly for amending the provisions of the Constitution. Another noteworthy feature of the Constitution of India is that, unlike some Constitutions which prohibit an amendment of certain provisions in them in express and unmistakable terms, it mentions no limit on the amending power other than the procedural one and enables the amending body to reach its each and every part. Therefore, under the Constitution of India, a Constitutional amendment should be considered valid provided the prescribed procedure is followed. So in order to determine the questions whether the power of amendment is absolute and unrestricted, it is pertinent to discuss the different kinds of limitations on the power of amendment. There are two kinds of limitation imposed against amendment power.

A. Express limitations

B. Implied Limitations

6.9.1 Express limitations

Express limitations are those limitations which are expressly mentioned in the provisions of the Constitution. The Constitutions of various countries place certain express limitations on the amending powers in their Constitutions, many countries Constitutions treat certain provisions therein as sacred provisions and put absolute restrictions on the amendment of such provisions, these provisions thus place express limitations on the amending powers; such limitations may or may not be absolute. These limitations are grouped under three main headings

1. Absolute Express limitations
2. Not absolute limitations
3. Temporary limitations
6.9.1.1 Absolute Express Limitations

Some countries Constitution consist of the express limitations on the amendment of the Constitution. For example, The Constitution of Algeria\(^{86}\) places the following express limitations on the amending power i.e. a Constitutional amendment cannot infringe on the following subjects.

1) The Republican Nature of the State
2) The Democratic Order based on Multi Party System
3) Islam as the Religions of the State
4) Arabic as the National and Official Language
5) Fundamental Liberties and Citizen’s Rights
6) Integrity of National Territory

The Constitution of Brazil\(^{87}\) places restrictions on an amendment proposal which tends to abolish

1) The Federative form of the State
2) The Direct, Secret, Universal and Periodic Vote
3) The Separation of the Government Branches
4) Individual Rights and Guarantees.

The Constitution of France\(^{88}\) lays down the following restrictions on the power of amendment

1) No amendment shall Jeopardize the Integrity of the Territory
2) The Republican form of Government shall not be the object of an Amendment

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\(^{86}\) Article 178 of *The Constitution of the Peoples Democratic of Algeria* 1996

\(^{87}\) Clause (4) of Article 60 of *The Constitution of Brazil* 1988 (As Amended Upto1993)

\(^{88}\) Article 89 of *the Constitution of France* 1958 (as amended upto1999)
The Constitution of Thailand\(^{89}\) lays down that the following subjects cannot be amended:

1) Democratic regime of Government with the King as head of the State
2) Form of the State

### 6.9.1.2 Express Limitations which are not Absolute

The Constitution of United States of America\(^{90}\) lays down the following express limitations on the amendment:

1) No amendment which may be made prior to the year 1808 shall in any manner affect the first and fourth clauses in the Ninth Section of the First Article
2) No State without its consent shall be deprived of its equal suffrage in the State

The Constitution of Australia\(^{91}\) lays down the following express limitations on its amendment, though these limitations are absolute ‘No amendment of the Constitution,’

1) Diminishing the proportionate representation of any State in either house of representatives
2) The minimum number of representatives of a State in the House of Representatives
3) Increasing, diminishing or otherwise altering the limits of the State or in any manner affecting the provisions of the provisions of the Constitution in relations there to, shall be valid unless the majority of the electors voting in that State approve such proposed amendment

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\(^{89}\) Clause (1) if section 313 of Constitution of the Kingdom of Thailand\(^1\)997

\(^{90}\) Article V of Constitution of U.S.A.1789 (as amended up to amendment XXVII)

\(^{91}\) Clause (5) of sec 128 of The Constitution of Australia 1900
6.9.1.3 Temporary Limitations

Some Countries impose certain express limitations on their amendment during a particular time period. These are called temporary limitations. ‘Albania, Angola, Portugal, Romania, Belarus, Cambodia, Estonia, Georgia, and Lithuania’ lay down that no amendment of the Constitution can be made during State of siege or State emergency.92’

If we examine the Indian Constitution we find that there are no express limitations, except that of procedural compliance of Art.368 which must be followed while making amendment. To pass an amendment into the Constitution validity, the Parliament must observe the majority rule required by Art.368 and in case of important Articles, the ratifications of at least half of the State Legislatures must be obtained.

It is noteworthy that the issue of putting express limitations on amending power pertinently figured in Constituent Assembly. The draft Art.305 regarding reservations of seats for certain classes was proposed to be made unamendable.93 The fact that the said Article which proposed to lay down express limitation was dropped by the Constituent Assembly when the Constitution was finally adopted. Thus the Art.368 became free from any express limitation. On the other hand, the Constitutions of some other countries viz., United States of America, France, Germany, Switzerland, Japan, and Brazil have laid down express limitations on the power of amendment.

In India, though original Constitution did not speak about to impose either express or implied limitations upon the constitutional amendments, in Golakanth’s...
Supreme Court observed that, “since the amendment is treated as law with in the meaning of Art.13 of the Constitution, no doubt, Constitutional amendments will have express limitations, because there is a express limitation upon the law making power of the Parliament under Art.245 of the Constitution.95 Thereby they said, Constitution makes no distinction between the process of legislation and constitutional amendment. But the verdict of the Supreme Court was annulled in 24th Amendment of the Constitution.96 Thereby Parliament removed the obstacle of express limitation which was imposed through judicial verdict in the Golaknath’s case.

6.9.2 Implied Limitations

Implied limitations have been described as of two types (1) Inherent limitations and (2) Implied limitations. The first type of limitations are those which inhere in any authority from its very nature, character and composition, where as the second type of limitations are those which are not expressed but implicit in the scheme of the Constitution. The concept of implied and inherent limitations on amending power has been evolved on the following basis.

1) Supremacy of Constitution is touch stone in controlled and rigid Constitution to determine the criteria and extent of amending power.

2) The Parliament is the creature of the Constitution, no doubt Parliament can amend the Constitution under Art.368 but that does not mean that Parliament could so amend Art.368 so as to change its own constituent power beyond recognition.

94AIR 1967 SC 1643.
95 Art.245 (Extent of laws made by Parliament and by the Legislatures of States) (1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the state. (2) No law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation.
96 Article 13(4) and 368(3) were inserted through 24th Amendment. [13 (4) Nothing in this article shall apply to any amendment of this Constitution made under article 368.]
3) The Constitution had conferred a limited amending power on the Parliament. The Parliament under the exercise of that limited power enlarges the very power into absolute power.

4) The very meaning of the word ‘amendment’ suggests that there are certain inherent and implied limitations because in the process of amendment the whole Constitution cannot be repealed or abrogated.

5) The Parliament, a functionary created under the Constitution has no competence to amend the Constitution in such a way as to make it subservient to it.

6.10 Basic Structure Theory

Basic Structure theory is a direct manifestation of inherent and implied limitations on the power of amendment. The question of determining Inherent and Implied limitations on the amending power arises particularly when there are no express limitations and the power is otherwise unlimited. Art.368 of Indian Constitution provides plenary power of amendment but this plenary power can be turned into limited power under compelling logical, sociological, economic or historical reasons. Even court can consider these extrinsic aids while making Constitutional interpretation.

S.P. Sathe made very important observation that, “The only limitation upon the power of Parliament to amend the Constitution is that such amendment cannot seek to destroy the enduring values such as liberty, justice and equality enshrined in the Constitution, this limitation is however, a rule of political morality its sanction lies not in the judicial process but in the vigilance of public opinion and the working of political process.”

97 Rajeev Dhavan, ‘The Supreme Court and Parliamentary Sovereignty’ (1976),P458
98 H.M.Seervai, ‘The Fundamental Rights Case at the Cross Roads’ In 75 Bom L R P.47 At 85
99 Iyer Subramaniam, ‘Express and Implied Limitations on the Amending Power under Article 368 of the Constitution’ S.C.J. Vol. 18
From *Keshavananda Bharathi*\(^{100}\) case to *I.R.Coelho*\(^{101}\) case, Supreme Court repeatedly said that, Parliament has no power to bring an amendment to the basic structure of the Constitution. Thereby it imposes implied limitations upon the power of Parliament. But Parliament in 42\(^{nd}\) Amendment, inserted clause (4) and (5) of Art.368 to wash those limitations imposed upon amending power of the Constitution by the judiciary. But this amendment has been declared null and void by the Supreme Court.\(^{102}\)

### 6.11 Amendment and Ninth Schedule

Ours is the longest Constitution of the world. Originally, it consisted only 395 Articles divided into 22 parts and 8 Schedules. But after the 94 Constitutional amendments, Indian Constitution now consists of 444 articles divided into 24 parts and 12 Schedules. Since 1950 to 2006, Parliament brought 94 amendments. Out of which, 11 amendments were relating to land reforms laws which were inserted to the Ninth Schedule such as 1\(^{st}\), 4\(^{th}\), 17\(^{th}\), 29\(^{th}\), 34\(^{th}\), 39\(^{th}\), 40\(^{th}\), 47\(^{th}\), 66\(^{th}\), 68\(^{th}\) and 78\(^{th}\). Through these amendments, the Parliament has curtailed some of Fundamental Rights guaranteed to the citizen at the cost of agrarian reforms. In this regard, the researcher raises some issues like, to what extent the Parliament in exercise of its amendment power can curtail fundamental rights and does Parliament amend the Ninth Schedule by inserting even non-land reform laws under Art.368 of the Constitution? Before resolving the above issue, it is pertinent to discuss the factors responsible for changes in the Constitution with respect to agrarian reforms.

After independence, leaders had started to take some measures to bring some economic and social changes in the country, in which, it is quite clear that the economic policy of State may also act as a primary force for the purpose of

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\(^{100}\) AIR 1973 SC1461.

\(^{101}\) *I.R.Coelho v. State of Tamilnadu*, AIR.2007 (1), SC.137

\(^{102}\) *Supra 51*
influencing changes to a Constitution. In a State which is predominantly rural, such as India, in accordance with the philosophy of welfare, it is felt necessary to uplift the economic status of the rural populace. In a typical rural economy, the main source of income to the masses is agriculture. Therefore, in a country like India, where the land was concentrated in the hands of a few landlords, the government found it is necessary to carry out agrarian reforms to ensure equitable distribution of land with a view to put an end to the land tenancies in the agrarian sector. After independence, various State legislations relating to land reforms were enacted for this purpose in India. However, such legislations were challenged before many High Courts. This led to a series of amendments to the Constitution of India to give blanket protections to the State legislations relating to the agrarian reforms.

In order to overcome the verdict given in the case of *Kameshwar Singh*\(^{103}\) and to carry out the agrarian reforms in a country, Parliament in the first instance brought First amendment by which they added Arts.31-A and 31-B read with Ninth Schedule to reduce the power of judiciary to question the constitutional validity of the land reforms legislations. Thereby Art.31-B\(^{104}\) and Ninth Schedule made controlled Constitution into uncontrolled.

It is in this context, the researcher submits that, the original intention of Art.31-B is only restricted for the purpose of placing land reform laws. But it is not expressly mentioned in the Art.31-B. in fact in the same amendment they added 13 land reforms laws into the Schedule. This is why, Court in *Shankari Prasad case*\(^{105}\) held that first amendment and those thirteen laws are

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\(^{103}\) *Kameshwar Singh v State of Bihar*, AIR, 1951, Pat.91, SB.

\(^{104}\) “Art.31B. Validation of Certain Acts and Regulation: Without prejudice to the generality of the provisions contained in Article 31A, none of the Acts and Regulations specified in the Ninth Schedule nor any of the provisions thereof shall be deemed to be void, or even to have become void, on the ground that such Act, regulation as 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 legislature to repeal or amend it, continue in force.”

\(^{105}\) *Shankari Prasad v. Union of India* A.I.R. 1951 S.C. 458.
constitutionally valid since those laws are protecting the interest of general public by way of land reforms otherwise judiciary might have declared those laws are unconstitutional. In this connection, the researcher made an attempt to make complete examination on only 11 amendments exclusively relating to land reforms and their constitutional validity.

6.11.1 First Amendment

As mentioned above, in order to abolish the zamindari system by enacting land reform laws, Parliament brought first amendment. Thirteen State Acts named in the Ninth Schedule were put beyond any challenge in courts for contravention of Fundamental Rights. These steps were felt necessary to carry out land reforms in accordance with the economic philosophy of the State to distribute the land among the land workers, after taking away such land from the landlords. Validity of the very first constitutional amendment was challenged in Shankari Prasad case\textsuperscript{106} mainly because it had inserted the Ninth Schedule to insulate agrarian laws from being tested in Courts. The issue facing the Supreme Court was to determine the extent to which Parliament could go while exercising its amending power under Art.368. The argument against the validity of the First amendment was that Art.13 prohibits enactment of a law infringing or abrogating the fundamental rights that the word ‘law’ in Art.13 would include any law, a law amending the Constitution and, therefore the validity of such law could be judged and scrutinised with reference to the Fundamental Rights which it could not infringe.

Here in this case there was a conflict between Arts.13 and 368. Adopting the literal meaning of the Constitution, the Supreme Court upheld the validity of the 1\textsuperscript{st} Amendment. The Court rejected the contention and limited the scope of Art.13 by ruling that the word ‘Law’ in Art.13 would not include within its compass a Constitution amending law passed under Art.368. The Court stated on this point: “we are of the opinion that is the context of Art.13 laws must be taken

\textsuperscript{106} Ibid.
to mean rules and regulations made in the exercise of ordinary legislative power and not amendments to the Constitution made in the exercise of constituent power with the result that Art.13(2) do not affect amendments made under Art.368.”

The Court held that the terms of Art.368 are perfectly general and empower Parliament to amend the Constitution without any exception. The Fundamental Rights are not excluded or immunized from the process of constitutional amendment under Art.368. These rights could not be invaded by legislative organs by means of laws and rules made in exercise of legislative powers, but they could certainly be curtailed, abridged or even nullified by alterations in the Constitution itself in exercise of the constituent power.

There is a clear demarcation between ordinary law, which is made in exercise of legislative power, and Constitutional law, which is made in exercise of constituent power. Both Arts.13 and 368 are widely phrased and conflict in operation with each other. To avoid the conflict, the principle of Harmonious construction should be applied. Accordingly, one of these Articles ought to be read as being controlled and qualified by the other. In the context of Art.13, it must be read subject to Art.368. Therefore, the word ‘law’ in Art. 13 must be taken to refer to rules and regulations made in exercise of ordinary legislative power, and not to constitutional amendments made in the exercise of the constituent power under Art.368 with the result that Art.13(2) do not affect amendments made under Art.368. The Court, thus, disagreed with the view that the fundamental rights are inviolable and beyond the reach of the process of constitutional amendment. The Court, thus, ruled that Art.13 refers to a “legislative” law that is an ordinary law made by a legislature, but not to a constituent law that is a law made to amend the Constitution. The Court thus held that Parliament could by following the ‘procedure’ laid down in Art.368 amend any Fundamental Right.
6.11.2 Fourth Amendment

In State of West Bengal v. Bela Banerjee\textsuperscript{107} the Supreme Court held that the compensation payable for property compulsorily acquired under Art.31(2) is the just equivalent of what the owner has been deprived of at or about the time of acquisition of property and that the issue regarding payable compensation is justiciable.\textsuperscript{108} Though the article does not mention “just” or “adequate” or “full” compensation,\textsuperscript{109} the Court took view that ‘compensation’ meant ‘just compensation.’ If the compensation for property acquired were to be paid to its owner on the basis of its just equivalent or market value as held by the Supreme Court, it would have seriously affected the economy and obstructed the fulfillment of the objective of land reforms. Further, some of the judicial decisions interpreting Arts.14, 19 and 31 made it difficult for Government to implement other important social welfare legislationS. This led to the enactment of the Constitution (Fourth Amendment) Act, 1955.\textsuperscript{110}

Art.31-A was again amended with retrospective effect by the Constitution (4\textsuperscript{th} Amendment) Act, 1955, which further extended the scope of the word ‘estate’ which now includes any ‘jagir’, ‘inam’ or ‘maufi’ or other similar grant and in the State of Madras and Kerala janman right. It inserted certain State Acts in the Ninth Schedule. The amendment remained unchallenged because of decision in Shankari Prasad case.

6.11.3 Seventeenth Amendment

The Kerala Agrarian Relation Act, 1961 was struck down by the Supreme Court in its application to ryotwari lands transferred from the State of Madras to Kerala. The Supreme Court reiterating its earlier view confining the operation of

\textsuperscript{107} (1954) S.C.R.558.
\textsuperscript{108} Id. at 564-65
\textsuperscript{109} Id. at 564.
\textsuperscript{110} Article on ‘Amendment of Fundamental Rights’ by R.S.Gae, published in Journal of the Indian law Institute, Vol.9, October- December 1967, p483-84.
Art.31-A(2)(a) to “agrarian reform” held that such ryotwari lands were not “estate” within the meaning of that Article and hence, the Act was not protected under Art.31(A) (1) from attack under Arts.14, 19 and 31 of the Constitution. The attribution by the Supreme Court of a restricted meaning to the expression “estate” in its application to ryotwari lands, resulted in the Constitution (Seventeenth Amendment) Act, 1964, which enlarged the definition of ‘estate’ as contained in Art. 31(A)(2)(a) so as to cover any land held under ryotwari settlement as well as other lands in respect of which provisions are normally made in land reform enactments. The Amendment Act further inserted Forty-Four more Acts relating to land reform in the Ninth Schedule to the Constitution in order to remove any uncertainty or doubt that might arise in this regard to their validity.

The validity of Constitution (Seventeenth Amendment) Act 1964 was called in question in 1964 in Sajjan Singh’s case. This amendment again adversely affected the right to property. By this amendment, a number of statutes affecting property rights were placed in the Ninth Schedule and were immunized from Court’s review.

It was noted that Arts.31-A and 31-B were added to the Constitution realizing that State legislative measures adopted by certain States for giving effect to the policy of agrarian reforms have to face serious challenge in the Courts of law on the ground that they contravene the Fundamental Rights guaranteed to the citizen by Part III. The Court observed that the genesis of the amendment made by adding Arts.31-A and 31-B is to assist the State Legislatures to give effect to the economic policy to bring about much needed agrarian reforms.

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113 AIR, 1965 SC 845
Supreme Court in Sajjan Singh’s case ruled by majority of 3:2 that the “pith and substance” of the amendment was only to amend the fundamental right so as to help the State Legislatures in effectuating the policy of the agrarian reform. The conclusion of the Supreme Court in Shankari Prasad’s case as regards the relation between Arts.13 and 368 was reiterated by the majority. It felt no hesitation in holding that the power of amending the Constitution conferred on Parliament under Art.368 could be exercised over each and every provision of the Constitution. The Court refused to accept the argument that fundamental rights were ‘eternal, inviolate, and beyond the reach of Art.368.”

Further Court observed that no earthly wisdom can foresee every possible situation which may have to be faced in future. Nothing may remain static in the world. Nature demands change. A political society undergoes changes with the passage of time. To face new problems and challenges changes and modifications are called for in all aspects of national life. It is therefore, impossible to make a Constitution which can satisfy the needs of the people for all times to come. Changing circumstances will require modification of constitutional provisions. A Constitution that denies the right to amend it is likely to be destroyed and replaced by the succeeding generations. It is therefore wise to provide for a mechanism to change the Constitution in the Constitution itself. That is why every modern Constitution provides for a machinery or process to amend its provisions. The framers of the Indian Constitution provided for a process which is neither too rigid nor too flexible. Art.368 specially deals with amendments but some other Articles in the Constitution provide for amendments by ordinary legislative process.

Justice Hidayattullah, and Justice J.R. Mudholkar, concurred with the opinion of Chief Justice Gajendragadkar upholding the amendment but, at the same time, expressed reservations about the effect of possible future amendments on Fundamental Rights and basic structure of the Constitution. Justice Mudholkar questioned that "It is also a matter for consideration whether making a change in a
basic feature of the Constitution can be regarded merely as an amendment or would it be, in effect, rewriting a part of the Constitution; and if the latter, would it be within the purview of the Art.368?

### 6.11.3.1 Validity of First, Fourth and Seventeenth Amendments

In *I.C. Golak Nath & Ors. v. State of Punjab & Anr*[^114] the constitutional validity of amendments related to property namely, 1st Amendment, 1951, 4th Amendment, 1955 and 17th Amendment, 1964 were again challenged and Supreme Court was asked to reconsider its earlier decision in Shankari Prasad and Sajjan Singh cases. The validity of the Punjab Security of Land Tenures Act, 1953[^115] and of the Mysore Land Reforms Act[^116] as amended by Act 14 of 1965 was challenged by the petitioners under Art.32 of the Constitution. Since these Acts were included in the Ninth Schedule to the Constitution by the Constitution (Seventeenth) Amendment Act, 1964, the validity of the said Amendment Act was also challenged. 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, 1964, had been upheld by this Court, had been wrongly decided. It was contended that Parliament had no power to amend Fundamental Rights in Part III of the Constitution. Eleven judges participated in the decision and they divided into 6:5. The majority now overruled the earlier two cases and held that the Fundamental Rights were non-amendable through the Constitutional amending process under Art.368. The minority though remained struck to the earlier two decisions.[^117]

The following principles emerged from the majority judgement given by six Judges of the Supreme Court, namely,

[^114]: ([1967] 2 SCR 762)
[^115]: (Act 10 of 1953)
[^116]: (Act 10 of 1962)
a) Art.368 only provides for the procedure to be followed regarding amendment of the Constitution.

b) Art.368 does not contain the actual power to amend the Constitution.

c) The power to amend the Constitution is derived from Arts.245, 246 and 248 and entry 97 of the Union List.

d) The expression ‘law’ as defined in Art.13 (3) includes not only the law made by the Parliament in exercise of its ordinary legislative power but also an amendment of the Constitution made in exercise of its constituent power.

e) An amendment of the Constitution, being a law with in the meaning of Art.13 (3), would be void under Art.13 (2) if it takes away or abridges the rights conferred by the part III of the Constitution.


g) The Parliament will have no power from the date of the 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.

h) On the application of the doctrine of ‘prospective overruling’ the decision of the Court will have only prospective operation and hence the aforesaid three Amendment Acts will continue to be valid. (Mr. Justice Hidayatullah would invoke ‘acquiescence’ to validate these amendments).118

In effect of the majority judgement given by six judges overruled the unanimous decision of five Judges in Shankari Prasad and the majority judgement of three Judges in Sajjan Singh.

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118 Supra 115, See Id.at.1658,1669(Mr. Chief Justice Subba Rao); and 1718(Mr. Justice Hidayatullah)
The following principles emerged from the minority judgement given by five Judges of the Supreme Court, namely,

a) Art.368 contains not only the procedure for amendment of the Constitution but also the power to amend the Constitution.

b) The power to amend the Constitution is derived from Art.368 and not from Arts.245, 246 and 248 and entry 97 of the Union List.

c) The power to amend the Constitution under Art.368 includes the power to amend any part of the Constitution including Part III.

d) ‘Law’ as defined in Art.13 (3) means only the law made in exercise of the ordinary legislative power and not an amendment to the Constitution made in exercise of the constituent power.

e) Art.13 (2) of the Constitution does not affect the constituent power given by Art.368 to amend any part of the Constitution including Part III.

f) Amendment of the Constitution made under Art.368 can take away or abridge any of the rights conferred by Part III.

gh) The aforesaid three amendments Act are not ultra vires the Constitution.

h) The doctrine of ‘prospective overruling’ cannot apply to unconstitutional statutes in view of Art.13 (2) of the Constitution.119

In order to nullify and supersede the judgment in Golak Nath and to provide unlimited power to Parliament to amend any part of the Constitution including Fundamental Rights, the Constitution (24th Amendment), Act 1971, was enacted. Along with these amendments, The Constitution (25th Amendment) Act, 1971, and the Constitution (29th Amendment) Act, 1972 were also passed.

The 24th Amendment expressly empowers the Parliament to amend any provisions of the Constitution including those relating to Fundamental rights and

119 See Id.at.1675,1676, 1681, 1683 and 1684 (per Wanchoo, J)
further, makes Art.19 of the Constitution inapplicable to an amendment of the Constitution under Art.368.

The Twenty-fourth Amendment made the following changes in Arts.13 and 368:

1) A new clause was added to Art.13: "(4) Nothing in this article shall apply to any amendment of this Constitution made under Art.368."

2) Amendments were made to Art.368.

   a) The article was given a new marginal note: "Power of Parliament to amend the Constitution and procedure therefor."

   b) A new clause was added as clause (I): "(I) Notwithstanding anything in this Constitution, Parliament may in exercise of its constituent power amend by way of addition, variation or repeal any provision of this Constitution in accordance with the procedure laid down in this Article.

   c) Another clause was added as clause (3): "(3) Nothing in article 13 shall apply to any amendment under this article."

   Another amendment to the old Art.368 (now Art.368 (2)) made it obligatory rather than discretionary for the President to give his assent to any Bill duly passed under the article.

   The Constitution (25th Amendment) Act, 1971 amended the provision of Art.31 dealing with compensation for acquiring or acquisition of properties for public purposes so that only the amount fixed by law need to be given and this amount could not be challenged in court on the ground that it was not adequate or in cash. Further, after Art.31-B of the Constitution, Art.31-C was inserted. Art.31-C provides for saving of laws giving effect to certain directive principles in Part IV against Arts.14 and 19.
6.11.4 Twenty-Ninth Amendment

The Constitution (29\textsuperscript{th} Amendment) Act, 1972 amended the Ninth Schedule to insert therein two Kerala Amendment Acts in furtherance of land reforms after Entry 64, namely, Entry 65 Kerala Land Reforms Amendment Act, 1969 \textsuperscript{120} and Entry 66 Kerala Land Reforms Amendment Act, 1971\textsuperscript{121}. The validity of 24\textsuperscript{th}, 25\textsuperscript{th} and 29\textsuperscript{th}, amendments were challenged in Kesavananda Bharathi's case.\textsuperscript{122} The main question involved was the extent of amending power of the Parliament under Art.368 of the Constitution. This case popularly known as the ‘Fundamental Right’ case. In this case the petitioners had challenged the validity of the Kerala Land Reforms Act, 1963. But during the pendency of the petition, the Kerala Act was amended in 1971 and same was placed in the Ninth Schedule by the 29\textsuperscript{th} Amendment Act. The petitioners were permitted to challenge the validity of 29\textsuperscript{th} Amendment to the Constitution.

This case dealt with some of the most seminal questions ever raised in the annals of Indian Constitutional law.\textsuperscript{123} They include:

1) Whether the Parliament can abrogate fundamental rights enshrined in Part III by exercising amending powers under Art.368?

2) Whether exercise of amending power for abrogation of Fundamental Rights under Part III would lead to chaotic consequences?

3) Whether granting immunity to Part III of the Constitution from the amending power would make the Constitution more ideal?

4) Whether abrogation of Fundamental Rights would result in violation or denial of principle of basic dignity?

\textsuperscript{120} (Kerala Act 35 of 1969);
\textsuperscript{121} (Kerala Act 35 of 1971)
\textsuperscript{122} Kesavananda Bharati v. State of Kerala, AIR 1973 SC 1461
\textsuperscript{123} ibid
5) Whether power to abrogation of Fundamental Rights has to be exercised subject to basic structure of the Constitution?

6) Whether there is distinction between the core/essence and the periphery of fundamental rights and whether the former is immune from the sphere of the amending process?

7) Whether amendment under Art.368 is law under Art.13?

8) Whether the unamended Art.368 contained both the power and procedure to amend and whether the magnitude of the said power was unrestricted so as to qualitatively transform Art.368 itself?

9) What is the width and the scope of amending power under Art.368 post the 24th Amendment and whether the same is to be exercised subject to basic structure of the Constitution?

10) Whether there is a distinction between constituent and amending powers?

11) Whether amending bodies and Parliament have authority under existing constitutional framework to hold a referendum or to convoke the special constituent assembly to adapt a brand new Constitution by replacing the present one?

12) Whether amending bodies can amend Art.368 so as to create a parallel amending authority? or can it delegate amending powers on State Legislatures by amending Art.368?

13) Whether the functions of amending body and Constituent assembly are qualitatively different and whether the same is reflected in Art.368?

14) Whether the amending power is subjected to judicial review or is it co-equal with later? How the concept of Basic Structure is evolved and what are the features of the basic structure of the Constitution?
15) Whether there is analytical distinction between basic structure and parameters of judicial review?

16) Whether Court laid down any evaluative criteria to elevate a constitutional principle/provision as a feature of basic structure of the Constitution?

17) Whether said power is subjected to any other implied limitations?

18) Is it appropriate to describe the relationship between people and amending bodies by invoking the principle of social contract?

19) Whether Arts.31-A and 31-B are mutually exclusive?

These are the questions raised in *Keshavananda Bharathi* case to examine and evaluate the amendment power of the Parliament relating to Art.31-B read with Ninth Schedule under Constitution of India. But Supreme Court in *Keshavananda case* did not decide and clear following issues. They are:

1) It did not lay down any evaluative criteria to identify what features would constitute as basic structure of the Constitution?

2) It did not precisely articulate the distinction between amending power and constituent power?

3) It did not say anything on the critical question, whether basic structure review is applicable beyond the exercise of amending powers?

4) There is nothing in the judgement indicating, whether the High Courts can also invoke basic structure review?

5) Last but not the least, there is no indication in the judgement, whether it is to be applicable prospectively or retrospectively?

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Supreme Court was silent in making above observation in its decision. But Constitutional Bench comprising of 13 Judges unanimously upheld the constitutional validity of the Constitution 24th Amendment Act, 1971 and in doing so, overruled the prior decision of the Supreme Court in *Golak Nath’s* case and cleared the way for upholding the validity of the other Constitution Amendment Acts which were questioned before the Special Bench in the writ petitions.

Further the Supreme Court observed that the Power to amend the Constitution cannot reasonably be located in Entry 97 of List I of Schedule VII read with Art.248 of the Constitution. The idea of a provision for amending the Constitution was indisputably present in the minds of the Constitution-makers. If they had considered that the power to amend the Constitution was in its nature legislative, they would have surely included in express words this power in a specific entry in List I. Art.248 and Entry 97 of List I confer residuary power on Parliament. Art.246 and List I confer certain specific powers on Parliament. Residuary power is intended to comprehend matters which could not be foreseen by the Constitution-makers at the time of the framing of the Constitution. As the topic of amending the Constitution was foreseen by them, it could not have been put in the residuary power.

Art.245 (1) confers power on Parliament "subject to the provisions of this Constitution". Arts.246 and 248 are subject to Art.245. Accordingly, a law made under Art.248 and Entry 97 of List I cannot be inconsistent with any provision of the Constitution. But a law made under Entry 97 for amending any provision of the Constitution would be inconsistent with that provision. Accordingly it would be invalid. But on following the prescribed procedure in Art.368 there ensures a valid amendment of the Constitution. So Art.248 and Entry 97 cannot include the power to amend the Constitution.

The history of residuary power in our country also indicates that the power to amend the Constitution cannot be subsumed in the residuary power.
Government of India Act, 1935 provided for residuary power. The Governor-General could by public notification empower either the federal legislature or a provincial legislature to enact a law with respect to any matter not enumerated in any of the Lists in Schedule VII. Acting under Section 104, the Governor-General could not empower either legislature to make a law for amending the government of India Act. The power to amend the said Act vested exclusively in the British Parliament. While the Constitution was on the anvil, residuary power was proposed to be vested in the States. If that power had been vested in the States, it could not have been possible to argue that the Constitution could be amended by resort to residuary power because the amending bill is to be initiated in Parliament and not in the States. It was only at a later stage that the residuary power was included in List I. The foregoing considerations show that the amending power does not reside in Art.248 and Entry 97 of List. Through this instance, Supreme Court said that the attempt made by Parliament in the 24th Amendment insisting amendment is not a law is the right observation and held this amendment constitutionally valid.

The following summary of the view of the majority of the Special Bench was issued, after the judgments had been delivered.

The view by the majority in these writ petitions is as follows:

- *Golak Nath's case is overruled.*
- Art.368 does not enable Parliament to alter the basic structure or framework of the Constitution;
- The Constitution (Twenty-fourth Amendment) Act, 1971, is valid;
- Section 2(a) and 2(b) of the Constitution (Twenty-fifth Amendment) Act, 1971 is valid;
- The first part of Section 3 of the Constitution (Twenty-fifth Amendment) Act, 1971, is valid. The second part, namely, "and no law containing a

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125 Section 104 of the Government of India Act, 1935
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" is invalid;

- The Constitution (Twenty-ninth Amendment) Act, 1971 is valid.

The majority decided to adopt the position that amending power of Parliament is distinct from legislative power and has a wide reach to cover every provision of the Constitution; however, it qualified the above proposition by laying down that the basic structure of the Constitution was unamendable. While formulating the notion of the basic structure, however, it was clarified that what features would become the part of the basic structure would be an open question and its answer would be contingent upon the particular circumstances of the actual cases. On the other hand, the minority, by and large approved the views of minority in Golak Nath’s case. Of course, it also categorically held that the amending body does not have the authority to effect complete abrogation of the Constitution in one stroke.126

6.11.4.1 Different views

If one goes through the opinions of Hegde, Ray, Jaganmohan Reddy, Palekar, Khanna, Mathew, Beg, Dwivedi, Mukherjea and Chandrachud, JJ., cannot fail to realise that they base their decision on the proposition that the word "law" in Art.13 (2) does not include amendments to the Constitution.

A proposition enunciated, by a majority consisting of Sikri, C.J., and Shelat, Hegde, Grover, Jaganmohan Reddy, Khanna, and Mukherjea, JJ., is that the power to amend does not include the power to alter the basic structure or framework of the Constitution to the extent of changing its identity. It is this

proposition that will be applied in testing the validity of a constitutional amendment in the future.

Khanna, J. appears to have reconciled the two divergent views and took a middle path and thus tilted the balance in forming the majority decision with Sikri, C.J., and Shelat, Hegde, Grover, Jaganmohan Reddy, Mukherjea, JJ.and Khanna, held that the Parliament had wide power of amending the Constitution under Art.368, it extended to all the provisions of the Constitution, including those relating to Fundamental Rights, but the amending power is not unlimited and it did not include the power to destroy or abrogate the basic structure or framework of the Constitution. The majority of the Supreme Court thus, evolved the theory of basic structure. However, the seven majority judges did not say it with the precision as to what constituted the basic structure, which was beyond the amending power of the Parliament under Art.368.

**S.M. Sikri C.J. has observed:**

It seems to be that the preamble of our Constitution is of extreme importance and the Constitution should be read and interpreted in the light of the grand and noble vision expressed in the preamble. There is a limitation on the power of amendment by necessary implication which was apparent from a reading of the preamble and therefore, according to the learned Chief Justice, the expression "amendment of this Constitution", in Art.368 means any addition or change in any of the provisions of the Constitution within the broad contours of the preamble, made in order to carry out the basic objectives of the Constitution. Accordingly, every provision of the Constitution was open to amendment, provided the basic foundation or structure of the Constitution was not damaged or destroyed.
**Shelat and Grover, JJ have opined:**

The preamble to the Constitution contains the clue to the fundamentals of the Constitution. According to the learned Judges, Parts III and IV of the Constitution which respectively embody the fundamental rights and the directive principles have to be balanced and harmonised. This balance and harmony between two integral parts of the Constitution forms a basic element of the Constitution which cannot be altered. The word 'amendment' occurring in Art.368 must therefore be construed in such a manner as to preserve the power of the Parliament to amend the Constitution, but not so as to result in damaging or destroying the structure and identity of the Constitution. There was thus an implied limitation on the amending power which precluded Parliament from abrogating or changing the identity of the Constitution or any of its basic features.

**Hegde and Mukherjea, JJ have observed:**

The Constitution of India which is essentially a social rather than a political document, is founded on a social philosophy and as such has two main features basic and circumstantial. The basic constituent remained constant, the circumstantial was subject to change. According to the learned Judges, the broad contours of the basic elements and the fundamental features of the Constitution are delineated in the preamble and the Parliament has no power to abrogate or emasculate those basic elements of fundamental features. The building of a welfare State, the learned Judges said, the ultimate goal of every government but that does not mean that in order to build a welfare State, human freedoms have to suffer a total destruction.

**Jaganmohan Reddy, J opined:**

The word 'amendment' was used in the sense of permitting a change, in contradistinction to destruction, which the repeal or abrogation brings about. Therefore, the width of the power of amendment could not be enlarged by
amending the amending power itself. The learned Judge held that the essential elements of the basic structure of the Constitution are reflected in its preamble and that some of the important features of the Constitution are justice, freedom of expression and equality of status and opportunity. The word 'amendment' could not possibly embrace the right to abrogate the pivotal features and the fundamental freedoms and therefore, that part of the basic structure could not be damaged or destroyed. According to the learned Judge, the provisions of Art.31-C, as they stood then, conferring power on Parliament and the State Legislatures to enact laws for giving effect to the principles specified in Clauses (b) and (c) of Art.39, altogether abrogated the right given by Art.14 and were for that reason unconstitutional. In conclusion, the learned Judge held that though the power of amendment was wide, it did not comprehend the power to totally abrogate or emasculate or damage any of the Fundamental Rights or the essential elements of the basic structure of the Constitution or to destroy the identity of the Constitution. Subject to these limitations, Parliament had the right to amend any and every provision of the Constitution.

H R Khanna J.

Broadly agreed with the aforesaid views of the six learned Judges and held that the word 'amendment' postulated that the Constitution must survive without loss of its identity, which meant that the basic structure or framework of the Constitution must survive any amendment of the Constitution. According to the learned Judge, although it was permissible to the Parliament, in exercise of its amending power, to effect changes so as to meet the requirements of changing conditions, it was not permissible to touch the foundation or to alter the basic institutional pattern. Therefore, the words "amendment of the Constitution" in spite of the width of their sweep and in spite of their amplitude, could not have the effect of empowering the Parliament to destroy or abrogate the basic structure or framework of the Constitution.
Palekar, Beg, Dwivedi and Chandrachud, JJ.,

Expressed the view that the power of amendment under Art.368 is plenary with no implied or inherent limitations and that it includes the power to add, alter or repeal the various Articles of the Constitution not excluding those relating to fundamental rights. Khanna, J., while agreeing with this view has stated that the power, however, does not extend to altering the basic structure or framework of the Constitution.

Ray and Mathew, JJ., also subscribed to the view of plenary powers, but they think that there cannot be a total abrogation of the Constitution which will result in a constitutional void. Any amendment, according to them, should leave behind a mechanism of government for the making, interpretation and implementation of laws.

According to them the basic foundation of the basic features could be easily discernible from the preamble, as well as, from the whole scheme of the Constitution. For example,

- Supremacy of the Constitution
- Republican and democratic form of the government
- Sovereignty of the country
- Secular character of the Constitution,
- Separations of powers between the legislature, the executive and the judiciary
- Federal character of the Constitution
- The dignity of the individual secured by the various freedoms and basic rights in Part III and the mandate to build welfare state contained in Part IV
- The unity and integrity of the Nation constitute parts of the basic structure of the Constitution
Khanna, J. by way of instance, further held that the democratic government could not be changed into dictatorship or hereditary monarchy, nor the Lok Sabha and Rajya Sabha be abolished. Likewise, the secular character of the State could not be done away with. Khanna, J. however, categorically said that right to property was not the basic structure of the Constitution; therefore, it could be amended.

From the above description, it would not be easy to identify with certainty, the basic structure or the provisions of the Constitution which constitute the basic structure or framework. It is, therefore, for the Supreme Court, to determine finally, as to what constituted the basic structure or what features and the essential features constituted the framework of the Constitution. It may be stated that by laying down the concept of basic structure, the Supreme Court has assumed to itself the constituent power.\textsuperscript{127}

Khanna J. upheld the 29\textsuperscript{th} Amendment in the following terms:

"We may now deal with the Constitution (Twenty ninth Amendment) Act. This Act, as mentioned earlier, inserted the Kerala Act 35 of 1969 and the Kerala Act 25 of 1971 as entries No. 65 and 66 in the Ninth Schedule to the Constitution. I have been able to find no infirmity in the Constitution (Twenty ninth Amendment) Act."

Thus, while upholding the Twenty-ninth amendment, there was no mention of the test that is to be applied to the legislations inserted in the Ninth Schedule. The implication that the Respondents seek to draw from the above is that this amounts to an unconditional upholding of the legislations in the Ninth Schedule. They have also relied on observations by Ray CJ., as quoted below, in \textit{Indira Gandhi's case}. In that case, Ray CJ. Observed: This Court in "\textit{Kesavananda Bharati's} case.. unanimously upheld the validity of the 29\textsuperscript{th} Amendment Act. The view of seven Judges in \textit{Kesavananda Bharati}’s case is that Article 31-B is a

\textsuperscript{127} Prof. Narendra Kumar, ‘\textit{Constitutional Law of India}’ (4\textsuperscript{th} Edition, 2004) at 814.
constitutional device to place the specified statutes in the Schedule beyond any attack that these infringe Part III of the Constitution. The 29th Amendment is affirmed in Kesavananda Bharati's case by majority of seven against six Judges.

Second, the majority view in Kesavananda Bharati's case is that the 29th Amendment which put the two statutes in the Ninth Schedule and Article 31-B is not open to challenge on the ground of either damage to or destruction of basic features, basic structure or basic framework or on the ground of violation of Fundamental Rights.” The respondents have particularly relied on aforesaid highlighted portions. On the issue of how 29th Amendment in Kesavananda Bharati case was decided, in Minerva Mills case, Bhagwati, J. has said that,

"The validity of the Twenty-ninth Amendment Act was challenged in Kesavananda Bharati case but by a majority consisting of Khanna, J. and the six learned Judges led by Ray, J. (as he then was) it was held to be valid. Since all the earlier constitutional amendments were held valid on the basis of unlimited amending power of Parliament recognized in Sankari Prasad case and Sajian Singh's case and were accepted as valid in Golak Nath case and the Twenty Ninth Amendment Act was also held valid in Kesavananda Bharati case, though not on the application of the basic structure test, and these constitutional amendments have been recognized as valid over a number of years and moreover, the statutes intended to be protected by them are all falling within Art.31-A with the possible exception of only four Acts referred to above, I do not think, we would be justified in re-opening the question of validity of these constitutional amendments and hence we hold them to be valid. But, all constitutional amendments made after the decision in Kesavananda Bharati case would have to be tested by reference to the basic structure doctrine, for Parliament would then have no excuse for saying that it did not know the limitation on its amending power."

To us, it seems that the position is correctly reflected in the aforesaid observations of Bhagwati, J. and with respect we feel that Ray CJ. is not correct in
the conclusion that 29th Amendment was unanimously upheld. Since the majority which propounded the basic structure doctrine did not unconditionally uphold the validity of 29th Amendment and six learned judges forming majority left that to be decided by a smaller Bench and upheld its validity subject to it passing basic structure doctrine, the factum of validity of 29th Amendment in Kesavananda Bharati case is not conclusive of matters under consideration before us.

In order to understand the view of Khanna J. in Kesavananda Bharati, it is important to take into account his later clarification. In Indira Gandhi case, Khanna J. made it clear that he never opined that Fundamental Rights were outside the purview of basic structure and observed as follows:

"There was a controversy during the course of arguments on the point as to whether I have laid down in my judgment in Kesavananda Bharati's case that Fundamental Rights are not a part of the basic structure of the Constitution. As this controversy cropped up a number of times, it seems apposite that before I conclude I should deal with the contention advanced by learned Solicitor General that according to my judgment in that case no Fundamental Right is part of the basic structure of the Constitution. I find it difficult to read anything in that judgment to justify such a conclusion. What has been laid down in that judgment is that no article of the Constitution is immune from the amendatory process because of the fact that it relates to a Fundamental Right and is contained in Part III of the Constitution. This observation clearly militates against the contention that according to my judgement Fundamental Rights are not a part of the basic structure of the Constitution. I also dealt with the matter at length to show that the right to property was not a part of the basic structure of the Constitution. This would have been wholly unnecessary if none of the Fundamental Rights was a part of the basic structure of the Constitution".

Thus, after his aforesaid clarification, it is not possible to read the decision of Khanna J. in Kesavananda Bharati so as to exclude Fundamental Rights from
the purview of the basic structure. The import of this observation is significant in
the light of the amendment that he earlier upheld. It is true that if the Fundamental
Rights were never a part of the basic structure, it would be consistent with an
unconditional upholding of the Twenty-ninth Amendment, since its impact on the
fundamental rights guarantee would be rendered irrelevant. However, having held
that some of the Fundamental Rights are part of the basic structure, any
amendment having an impact on Fundamental Rights would necessarily have to be
examined in that light. Thus, the fact that Khanna J. held that some of the
fundamental rights were a part of the basic structure has a significant impact on his
decision regarding the Twenty-ninth amendment and the validity of the Twenty-
ninth amendment must necessarily be viewed in that light. His clarification
demonstrates that he was not of the opinion that all the fundamental rights were
not part of the basic structure and the inevitable conclusion is that the Twenty-
ninth amendment even if treated as unconditionally valid is of no consequence on
the point in issue in view of peculiar position as to majority above noted. Such an
analysis is supported by H.M Seervai.128

In other words, the validity of the 25th and 29th Amendments raised the
question of applying the law laid down as to the scope of the amending power
when determining the validity of the 24th Amendment. If that law was correctly
laid down, it did not become incorrect by being wrongly applied. Therefore the
conflict between Khanna J.'s views on the amending power and on the
unconditional validity of the 29th Amendment is resolved by saying that he laid
down the scope of the amending power correctly but misapplied that law in
holding Art.31-B and Ninth Schedule unconditionally valid. Consistently with his

128 In his book Constitutional Law of India (4th edition, Volume III), as follows:" Although in his judgment
in the Election Case, Khanna J. clarified his judgment in Kesavananda's Case, that clarification raised a
serious problem of its own. The problem was: in view of the clarification was Khanna J. right in holding
that Article 31-B and Sch. IX were unconditionally valid? Could he do so after he had held that the basic
structure of the Constitution could not be amended? As we have seen, that problem was solved in Minerva
Mills Case by holding that Acts inserted in Sch. IX after 25 April, 1973 were not unconditionally valid, but
would have to stand the test of fundamental rights. (Para 30.48, page3138)
view that some Fundamental Rights are part of the basic structure, he ought to have joined the six other judges in holding that the 29th Amendment was valid, but Acts included in Ninth Schedule would have to be scrutinized by the Constitution bench to see whether they destroyed or damaged any part of the basic structure of the Constitution, and if they did, such laws would not be protected.\textsuperscript{129}

The decision in \textit{Kesavananda Bharati} regarding the Twenty-ninth amendment is restricted to that particular amendment and no principle flows there from. We are unable to accept the contention urged on behalf of the respondents that in \textit{Waman Rao's} case Justice Chandrachud and in \textit{Minerva Mills} case, Justice Bhagwati have not considered the binding effect of majority judgments in \textit{Kesavananda Bharati's} case. In these decisions, the development of law post-\textit{Kesavananda Bharati's} case has been considered. The conclusion has rightly been reached, also having regard to the decision in \textit{Indira Gandhi's} case that post-\textit{Kesavananda Bharati's} case or after 24\textsuperscript{th} April, 1973, the Ninth Schedule laws will not have the full protection. The doctrine of basic structure was involved in \textit{Kesavananda Bharati's} case but its effect, impact and working was examined in \textit{Indira Gandhi's} case, \textit{Waman Rao's} case and \textit{Minerva Mills} case. To say that these judgements have not considered the binding effect of the majority judgment in \textit{Kesavananda Bharati's} case is not based on a correct reading of \textit{Kesavananda Bharati}. On the issue of equality, we do not find any contradiction or inconsistency in the views expressed by Justice Chandrachud in \textit{Indira Gandhi's} case, by Justice Krishna Iyer in \textit{Bhim Singh's} case and Justice Bhagwati in \textit{MinervaMills} case. All these judgements show that violation in individual case has to be examined to find out whether violation of equality amounts to destruction of the basic structure of the Constitution.

To decide the correctness of the rival submissions, the first aspect to be borne in mind is that each exercise of the amending power inserting laws into

\textsuperscript{129} \textit{Ibid}
Ninth Schedule entails complete removal of the Fundamental Rights chapter vis-à-vis the laws that are added in the Ninth Schedule. Secondly, insertion in Ninth Schedule is not controlled by any defined criteria or standards by which the exercise of power may be evaluated. Finally, Supreme Court upheld the constitutional validity of 24th and 29th Amendments of Constitution.

6.11.5 Thirty Fourth Amendment

Constitution (34th Amendment) Act, 1974 provided constitutional protection to 20 Land Reforms Acts passed by various States, by including them in the Ninth Schedule to the Constitution. The Gudalur Janman Estates (Abolition and Conversion into Ryotwari), Act, 1969,[^130] in so far as it vested forest lands in the Janman estates in the State of Tamil Nadu, was struck down by the Court in *Balmadies Plantations Ltd and Anr. v. State of Tamil Nadu*[^131] because this was not found to be a measure of agrarian reform protected by Art.31-A of the Constitution. Consequently, by the Constitution (Thirty-Fourth Amendment) Act, it was inserted in the Ninth Schedule. This insertion was the subject matter of challenge before a Five Judges Bench.[^132] By an order passed on 14.9.1999. A Constitution Bench of Supreme Court referred the matter to the larger bench of nine judges observing that after 24th April, 1973 (the date when *Kesavananda Bharathi* judgement was delivered) the inclusion of the Acts, which were struck down by the Courts as violative of Part III of the Constitution of India in Ninth Schedule is beyond the constituent power of the Parliament since they damage the basic or essential features of the Constitution or its basic structure. The judgment in *Waman Rao* (1981) in view of *Minerva Mills* (1980) and *Maha Rao Sahib Sri Bhim Singh Ji* (1981) was required to be reconsidered by the larger Bench.

The Supreme Court framed the broader question to be decided by nine judges:-“The fundamental question is whether on and after 24th April 1973 when

[^130]: (Tamil Nadu Act 24 of 1969).
[^131]: (1972) 2 SCC 133.
basic structure doctrine was propounded, it is permissible for the Parliament under Art.31-B to immunise legislations from fundamental rights by inserting them to the Ninth Schedule,

The Constitution Bench observed that, according to *Waman Rao and Ors. v. Union of India and Ors.* Amendments to the Constitution made on or after 24th April, 1973, inclusion of various Acts, regulations therein are open to challenge on the ground that they, or any one or more of them, are beyond the Constituent Power of Parliament since they damage the basic or essential features of the Constitution or its basic structure. But, subsequently in the decisions of *Minerva Mills Ltd. & Ors. v. Union of India & Ors.* and *Maharao Sahib Shri Bhim Singhji v. Union of India & Ors.* it was observed that the judgment in *Waman Rao* needs to be reconsidered by a larger Bench, and that if any Act, rules or regulations inserted in the Ninth Schedule is found to be violative of Articles 14, 19 and 31 can be included in the Ninth Schedule or whether it is only constitutional amendment amending the Ninth Schedule which damages or destroys the basic structure of the Constitution that can be struck down.

Finally in *I R Coelho (Dead) by LRs v. State of Tamil Nadu and Others*\(^{133}\) Nine Judge Constitutional Bench of the Supreme Court held that all amendments to the Constitution made on or after 24th April 1973 by which the Ninth Schedule is amended by inclusion of various laws therein shall have to be tested on the touchstone of the basic or essential features of the Constitution as reflected in Art.21 read with Arts.14, 19, and the principle underlying them. To put it differently even though an Act is put in the Ninth Schedule by a Constitutional Amendment, its provision would be open to attack on the ground that they destroy or damage the basic structure if the fundamental right or rights is/are taken away or abrogated pertains or pertain to the basic structure. The Supreme Court further stated that if the validity of any Ninth Schedule law has already been upheld by

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\(^{133}\) AIR 2007 SC 861
this Court, it would not be open to challenge such law again on the principles declared by this judgment. However, if a law held to be violative of any rights in Part III of the Constitution is subsequently incorporated in the Ninth Schedule after 24th April 1973, such a violation / infraction shall be open to challenge on the ground that it destroys or damages the basic structure as indicated in Art.21 read with Arts.14, and19 of the Constitution.

6.11.6 Thirty Ninth Amendment

All the above amendments other than 39th Amendment made to Ninth Schedule were somehow related to laws pertaining to land. But in Thirty Ninth Amendment Parliament misused this Schedule by incorporating some non-land laws which were controversial and against to the Constitutional spirit. There, the Parliament showed its supremacy by incorporating 38 Acts in the Ninth Schedule through this amendment. Those laws are unrelated to agrarian reforms. The important Central Acts included in this Schedule by this amendment were the

- The Representation of the People Act,
- Laws relating to Industry,
- The Mines and Minerals Act,
- MRTP, MISA, FERA, COFEPOSA
- The General Insurance Business Act etc.

During the discussion on the Bill in Parliament, some members criticized the inclusion of the above Act in the Ninth Schedule. The Law Minister, however, justified that the inclusion of these laws in the Ninth Schedule. He said that Art.31-B provided protection not only to laws of agrarian reforms but also to those legislation which were progressive and required in the public interest.

It is submitted that that various enactments relating to nationalization, land reforms, ceiling laws could have been referred to select committee. However
Mrs. *Indra Gnadhi* was primarily concerned with nullifying the decisions of the Allahabad High Court which had invalidated her election. Therefore, there was an amendment to the Representation of People Act, 1951 which made election to the post of President, Vice President, Prime Minister and Speaker immune from any challenge in any Court of law. Article 329-A was also inserted to ensure this result. (This provision fortunately struck down later\(^{134}\)) The total lack of respect for any parliamentary norms or conventions on the part of *Mrs. Gandhi* is clearly manifested by the following dates which have been pointed out by H..M.Seervai in his classic work on the Indian Constitution.\(^{135}\) The 39\(^{th}\) Amendment Bill was introduced and passed in Lok Sabha on 7\(^{th}\) August, 1975, passed by Rajya Sabha on 8\(^{th}\), ratified by the required number of States on 9\(^{th}\), and received the President’s assent on 10\(^{th}\). Thus, in a span of four days, 38 Acts were placed in the Ninth Schedule making them totally immune from any attack on the ground that they violated fundamental rights.

It is further submitted that, these laws were not laws bringing agrarian reforms and therefore their inclusion could not be said to be desirable or justified. On the basis of progressive legislation any law can be included in the Ninth Schedule and thus the very purpose of judicial review as provided in Art.13 for the protection of fundamental rights would be frustrated and Ninth Schedule and Art.31-B “is no longer a mere exception” limited to land reforms only. If this indiscriminate use of Art.31-B were allowed, it would surely result in destroying the basic principle of constitutionalism. Instead of constitutional supremacy, we would have “Parliamentary Hegemony”. The absence of constitutional criteria under Art.31-B for the regulation of the amending power even on the basis of

\(^{134}\) *Indira Nehru Gandhi v.Raj Narain*, AIR 1975 SC 2299. (Article 329-A was also omitted by the 44\(^{th}\) amendment)

\(^{135}\) Constitutional Law of India, 4ht edition, pp.1980-81
basic structure principle, therefore, prompted the Supreme Court to discover the concrete basis for the application of the Basic Structure Doctrine\textsuperscript{136}.

The 44\textsuperscript{th} Amendment Act, 1978 again amended the Ninth Schedule and omitted Entry 87, The Representation of the People Act, 1951 (Central Act 43 of 1951), the Representation of the People (Amendment) Act, 1974 (Central Act 58 of 1974) and the Election Laws (Amendment) Act, 1975 (Central Act 40 of 1975), Entry 92, The Maintenance of Internal Security Act, 1971 (Central Act 26 of 1971) and Entry 130, The Prevention of Publication of Objectionable Matter Act, 1976 (Central Act 27 of 1976) from the Schedule. In 44\textsuperscript{th} amendment, provisions relating to right to property were deleted form the part of fundamental right list. In fact, because of this right to property, only, Ninth Schedule was created.

**6.11.7 Fortieth Amendment**

This Amendment had some objectives such as (1) It places beyond challenge in courts some major Central laws; (2) It gives similar protection to several State enactments, mostly relating to land legislation, by including them in the Ninth Schedule of the Constitution; and 64 laws were included in the Ninth Schedule through this amendment.

Certain Central laws like the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976, the Urban Land (Ceiling and Regulation) Act, 1976, the Essential Commodities Act, 1955 and certain provisions of the Motor Vehicles Act, 1939 require protection of Art.31-B. If these legislations are allowed to be challenged in courts of law thereby delaying the implementation of these laws, the very purpose of enacting these laws would be frustrated and the national economy may be severely affected. Keeping this

\textsuperscript{136} Article on *Basic Structure of the Indian Constitution : Doctrine of Constitutionally Controlled Governance (From Keshavanand Bharti to I.R.Cohelio)* by Virendra Kumar published in Journal of India Law Institute 2007, Vol-49, Jan –March, p.381
reason, Parliament thought to incorporate these laws into the Schedule through this amendment.

The misleading statement in the Objects and Reasons of this amendment after reference to economic reform legislations that “these and other important and special enactments which it is considered necessary should have the constitutional protection are proposed to be included in the Ninth Schedule” had a fraudulent intention of protecting non-economic and undemocratic laws. These laws were included in the Schedule through 39th and 40th Amendments during the time of internal emergency. Soon after lifting of the emergency, by the Constitution (Forty-third Amendment) Act, 1977, the above mentioned laws in the Schedule were repealed. This is an important development and demonstrates that the polity’s commitment to constitutional republicanism does not tolerate erosion of democratic values by an abuse of Ninth Schedule protecting non-economic and liberticidal laws.

6.11.8 Forty Seventh Amendment

The Constitution (47th Amendment) Act, 1984, again amended the Ninth Schedule of the Constitution and included 14 land reforms Acts from different States into the Schedule. Recourse was had in the past to the Ninth Schedule whenever it was found that progressive legislation conceived in the interest of the public was imperiled by litigation. Several State enactments relating to land reforms and ceiling on agricultural land holdings have already been included in the Ninth Schedule. The Sixth Five Year Plan (1980-85) contains an assurance that "necessary action would be taken to bring before Parliament land reform Acts not yet included in the Ninth Schedule to the Constitution for immediate inclusion in the said Schedule" and that the same "would be done in the case of future Acts without delay so that these laws are protected from challenge in courts". The State Governments of Assam, Bihar, Haryana, Tamil Nadu, Uttar Pradesh and West

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Bengal and the Administration of the Union territory of Goa, Daman and Diu have suggested the inclusion of some of their Acts relating to land reforms in the Ninth Schedule. Some of the Acts suggested for inclusion are by way of amendments to Acts already included in the Ninth Schedule. The various Acts which have been suggested for inclusion have been examined and it is proposed to include in the Ninth Schedule such of these Acts as have either been challenged or are likely to be challenged and thereby ensure that the implementation of these Acts is not adversely affected by litigation. This was the object of this amendment. After this amendment the total number of Acts included in the Ninth Schedule had risen to 202. It is submitted that, this amendment comparatively, serves the objects of agrarian reforms by enacting land reforms laws and including the same in the Schedule.

6.11.9 Sixty Sixth and Seventy Sixth Amendments

The Constitution (Sixty – Sixth Amendment) Act, 1990, Sec. 2 added Fifty Four Land Reforms Acts which lifts the score to 257. The Act protects 55 State Acts relating to land reforms and ceiling on agricultural land holdings enacted by States of Andhra Pradesh, Bihar, Gujarat, Himachal Pradesh, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Orissa, Rajasthan,Tamil Nadu, Uttar Pradesh, West Bengal and administration of the Union Territory of Pondicherry, from challenge in courts, by including them in the Ninth Schedule to the Constitution.

Entry 257-A was inserted by the Constitution (Seventy Sixth Amendment) Act, 1994 relating to the Tamil Nadu Backward Classes, Scheduled Castes and Scheduled Tribes (Reservation of seats in educational institutions and of appointments or posts in the services under the State) Act, 1993, placed in the Ninth Schedule against the original objective of Art.31-B and Ninth Schedule of confining it to land reforms legislations. The Act, which provides for 69 per cent
reservation, runs counter to the Supreme Court ruling in the *Mandal case*\(^\text{138}\) that reservation should not exceed 50 per cent. There was an intensive debate over the constitutionality of inserting this significant non-land reform law in the Ninth Schedule and keeping it beyond judicial review.

The Government of India has already supported the provision of the State legislation by giving the President's assent to the Tamil Nadu Bill. As a corollary to this decision, it is now necessary that the Tamil Nadu Act 45 of 1994 is brought within the purview of the Ninth Schedule to the Constitution so that it gets protection under Art.31-B of the Constitution in regard to the judicial review.

This clearly purports to surpass the well–thought judgment rendered by the special bench of the Supreme Court in *Indira Sawhney’s Case*. The Karnataka statute of similar nature is at the threshold of the Ninth Schedule awaiting an entry. This action of the Parliament by way of this amendment is really fraud committed on Constitution. This is also best example to say how Ninth Schedule was misused and abused for the political purpose.

**6.11.10 Seventy Eighth Amendment**

The Constitution (78\(^{\text{th}}\) Amendment) Act, 1995 again amended the Ninth Schedule of the Constitution and added 27 land reform laws passed by various states to the Ninth Schedule. After this amendment the total number of Acts included in the Schedule has risen to 284. In this Amendment, Parliament inserted only agrarian laws by exercising its amending power under Art.368 of the Constitution.

6.12 Conclusion

The framers of the Constitution were keen to bring about socio-economic revolution in free India through constitutional means, and Constitution was to serve as a vehicle for social change. To provide security for the tiller of soil and assure equality of status and opportunity to all sections of the rural population, host of the laws passed in different States in the matter of land reforms have led to a lot of litigation. Firstly, the Constitutional validity of the abolition of intermediaries has been questioned. Subsequently, the issue of compensation, its quantum and its justiciability, has been tested on the constitutional anvil. A good deal of litigation has also arisen out of laws which authorised States to take over property either as a part of land – reforms measures or in other situations, laws amending existing land tenures, law relating to the security of tenants, consolidation of land holdings and fixation of ceilings on individual holdings. As a result, in order to overcome form the above problems, Parliament passed First Amendment in 1951, whereby Arts.31-A and 31-B were inserted to avoid the multiplicity of petitions filed by the Zamindars and to supersede the judicial decisions. This action of Parliament by bringing above mentioned Articles along with Ninth Schedule is really justiciable and commendable. In respect of compensation concerned, Art.31 was amended substantially by the Fourth Amendment Act in 1955 and the Twenty Fifth Amendment Act in 1972. These amendments were necessary because of the judgments of the Supreme Court\(^{139}\).

Likewise Parliament in its constituent power brought many amendments to the Constitution in respect of the subject matters of right to property as well as agrarian reform. During 1950-1972, the question of amedability of Fundamental Rights came up before Supreme Court in three different cases, namely, Shankari

Prasad v Union of India, Sajjain Singh v. State of Rajasthan, Golak Nath v. State of Punjab. Until Golak Nath case, the law was as follows:

a) Constitution Amendment Acts are not ordinary law and are passed by Parliament in exercise of constituent powers.

b) There is no limitation imposed upon the amending power of Parliament

c) Fundamental Rights guaranteed under Part III of the Constitution are subject to Parliament’s power to Amendment.

But in the Golaknath v. State of Punjab case, by a 6 to 5 majority judgement, the Supreme Court held that fundamental rights cannot be abridged or taken away by the amending procedure in Art.368 of the Constitution. An amendment to the Constitution is “law” within the meaning of Art. 13(2) and is therefore subject to Part III of the Constitution. But In Kesavananda Bharati v. State of Kerala case the Supreme Court reversed its own previous decision in Golaknath, in declaring that the decision of the majority in Golakhnath that the word “law” in Art.13(2) included amendments to the Constitution and the article operated as a limitation upon the power to amend the Constitution in Art.368 is erroneous and is overruled. Further, Court in this case gave a threat to the power of the Parliament by introducing the doctrine of basic structure theory. According to this doctrine, the Parliament under Art.368 is not enabled to alter the basic structure or framework of the Constitution. As a result, Parliament through 42nd Amendment committed another mistake by inserting Clauses (4) and (5) in Art.368 of the Constitution. Under these clauses Parliament declares its unlimited power and made clear Constitution Amendment Act would not be subject to judicial review on any ground. But Supreme Court in Minerva Mills case declaring

140 AIR 1967 SC 1643,
141 Supreme Court of India, in Kesavananda Bharati v. State of Kerala, held that “the power to amend does not include the power to alter the basic structure, or framework of the Constitution so as to change its identity” (Kesavananda Bharati v. State of Kerala (1973) 4 SCC 225; AIR 1973 SC 1461.)
clauses (4) and (5) of Art.368 as unconstitutional, judiciary rectified the mistake committed by Parliament in 42\textsuperscript{nd} Amendment. Further, Court held that, indeed, a limited amending power is also one of the basic features of the Constitution, therefore, the limitation on that power cannot be destroyed. The concept of basic structure was further developed by the Supreme Court in \textit{Waman Rao case}, \textit{Bhim Singhji case}, \textit{S.P.Gupta case}, \textit{Samapth Kumar case}, \textit{Kihota Hollahan’s case} and \textit{L.Chanrakumar’s case} etc. Finally, In \textit{I.R Coelho’s} case, the Supreme Court has rightly concluded that the Parliament’s power of amendment is subject to judicial review of courts. The court emphasised on the doctrine of Basic structure theory propounded by it in the famous \textit{Kesavananda Bharti’s} judgement while adjudging the validity of amendments. This is how, the ups and downs of the power of Parliament have been questioned in many cases and finally this was resolved in \textit{I.R.Coelho’s} case.

As a final point, the researcher submits that, the power of Parliament bringing many amendments to the Constitution with respect to Ninth Schedule was justiciable except in 4\textsuperscript{th}, 39\textsuperscript{th} 40\textsuperscript{th} 42\textsuperscript{nd} and 76\textsuperscript{th} amendments where the Parliament placed some controversial laws (Non-Agrarian Laws) in to the Schedule and tried to misuse and abuse its power in order to show its supremacy by making the Constitution text very feeble one.