



## JUDICIAL REVIEW: NINTH SCHEDULE AND ITS STATUS

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### Abstract

*After independence, zamindari abolition and land reforms laws were passed as a move towards more egalitarian society, but the government efforts of social engineering faced several problems, the land legislations were challenged in the courts. To ensure that agrarian reform legislation did not run into heavy weather, the legislature amended the Constitution in the year 1951 which inserted Ninth Schedule. Article 31B of the Constitution of India ensured that any law in the Ninth Schedule could not be challenged in courts. The rationale for Article 31B and the Ninth Schedule was to protect legislation dealing with property rights and not any other type of legislation. But, in practice, Article 31B has been used to invoke protection for many laws not concerned with property rights in anyway. Article 31B is thus being used beyond the socioeconomic purpose for which it was enacted.*

*The sole purpose of the Ninth Schedule was to prevent the courts from examining the validity of Acts passed by the parliament. However in light of the Supreme Court judgements, such law would not receive the protection of Article 31B. Each law can now be challenged in the court to determine whether the constitutional amendment by which it has been included in the Ninth Schedule damages or destroys the basic structure of the Constitution in any manner. Hence court on 11 Jan, 2007, held that the laws included in the Ninth Schedule of the Constitution after April 24, 1973, were now open to judicial review of the courts on the ground of violation of basic structure of the Constitution.*

**Key Words:** Agrarian Reform Legislations, Constitutional Amendment, Ninth Schedule, Judicial Review, Supreme Court.

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## I. INTRODUCTION

After independence, zamindari abolition and land reforms laws were passed as a move towards more egalitarian society, but the government efforts of social engineering faced several problems, the land legislations were challenged in the courts. The first case challenging the land law was *Kameshwar Singh v. State of Bihar*.<sup>2</sup> In this case the *Bihar Land Reforms Act, 1950* was challenged on the ground that the classification of zamindars made for the purpose for giving compensation was discriminatory and denied equal protection of laws guaranteed to the citizen under Article 14 of the Constitution. The Patna High Court held this piece of legislation as violative of Article 14 as it classified the zamindars for the purpose of payments of compensation in a discriminatory manner.

As a result of these judicial pronouncements, the government got apprehensive that the whole agrarian reform programmes would be endangered. To ensure that agrarian reform legislation did not run into heavy weather, the legislature amended the Constitution in the year 1951 which inserted Ninth Schedule. At the time of commencement of the Constitution there were Eight Schedules in Indian Constitution. The Constitution First Amendment Act, 1951 included the Ninth Schedule in the Constitution, along with Article 31B. Article 31B states that without prejudice to the generality of the provisions contained in Article 31A, none of the Acts and Regulations specified in the Ninth Schedule nor any of the

provisions thereof shall be deemed to be void, or ever to have become void, on the ground that such Act, Regulation or provisions is inconsistent with, or takes away or abridges any of the rights conferred by, any provisions of this part, and notwithstanding any judgment, decree or order of any court or tribunal to the contrary, each of the said Acts and Regulations shall, subject to the power of any competent legislature to repeal or amend it, continue in force.<sup>3</sup>

Thus Article 31B of the Constitution of India ensured that any law in the Ninth Schedule could not be challenged in courts and Government can rationalize its programme of social engineering by reforming land and agrarian laws. In other words laws under Ninth Schedule are beyond the purview of judicial review even though they violate fundamental rights enshrined under Part III of the Constitution. On the one hand considerable power was given to legislature under Article 31B and on the other hand the power of judiciary was curtailed, this is the starting point of tussle between legislature and judiciary.

The other feature of Article 31B is that it is retrospective in nature that is when a statute is declared unconstitutional by a court and later it is included in the Ninth Schedule, it is to be considered as having been in that Schedule from its commencement. Thus, it provides blanket protection to all laws under the Schedule. In case of *N.B. Jeejeebhoy v. Asst. Collector, Thane*,<sup>4</sup> the Supreme Court held

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<sup>2</sup>AIR 1954 Pat. 91.

<sup>3</sup>Article 31B of the Constitution of India, inserted by the First Constitutional Amendment Act 1951.

<sup>4</sup>AIR 1965 SC 1096.

that Article 31B represents novel, innovative and drastic technique of amendment. Legislative enactments are incorporated into the Constitution and immunized against all attacks on the grounds of breach of any of the fundamental rights.

The provision of judicial review has been adopted in the Indian Constitution from the Constitution of the United States of America. In the Indian Constitution, judicial review is dealt with, under Article 13. Judicial review implies that the Constitution is the supreme power of the nation and all laws are under its supremacy. Article 13 states as under:

13(1) All the post constitutional laws, after the coming into force of Constitution, if differ from it in all or some of its provisions then the provisions of Constitution will prevail & the provisions of that post constitutional law will hide till any amendment in Constitution relating to the same matter. In such situation, the provision of that law will again come into force (The Theory of Eclipse).

13(2) In a similar manner, laws made after adoption of the Constitution by the Constituent Assembly must be compatible with the Constitution; otherwise, the laws and amendments will be deemed void-ab-initio. In such situations, the Supreme Court or High Court interprets the laws as if they are in conformity with the Constitution.<sup>5</sup>

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<sup>5</sup>Article 13 of the Constitution of India.

## II. AN ANALYSIS THROUGH SUPREME COURT JUDGEMENTS

The amending power of parliament is provided under Article 368 of the Constitution. The scope of the amending power of parliament came before the Supreme Court for the first time in *Shankari Prasad v. Union of India*.<sup>6</sup> In that case the validity of the Constitution First Amendment Act, 1951, which inserted, *inter alia*, Article 31A and 31B of the Constitution was challenged. The Amendment was challenged on the ground that it purported to take away or abridge the rights conferred by Part III which fell with the prohibition of Article 13 (2) and hence void.

In this case, the Supreme Court upheld the constitutional validity of the Ninth Schedule. The Supreme Court observed that “law” in Article 13 did not include an amendment enacted under Article 368. The Supreme Court distinguished between the ordinary legislative power and the constitutional power. In the context of Article 13, “law” must be taken to mean rules or regulations made in the exercise of ordinary legislative power and not amendments to the Constitution made in the exercise of constituent power. The Supreme Court laid down that Article 368 conferred constituent power on parliament. In the exercise of constituent power, it could amend every provision of the Constitution, including the fundamental rights.

Article 31A was again amended with retrospective effect by the Constitution Fourth Amendment Act, 1955. The

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<sup>6</sup>AIR1951 SC 458.

amendment broadened the scope of Article 31A, and included more statutes in the Ninth Schedule. It also amended Article 305 and empowered the state to nationalize any trade.

The Constitution Seventeenth Amendment Act, 1964 extended the scope of Article 31A and Ninth Schedule to protect certain agrarian reforms enacted by the Kerala and the Madras states. The word “States” in Article 31A now includes any jagir or inam, muafi or any other grant. It also added 44 new Acts in the Ninth Schedule. The validity of the Seventeenth Amendment was questioned in *Sajjan Singh v. State of Rajasthan*.<sup>7</sup> The challenge was not against the power of parliament to amend the fundamental rights, but on procedural non-compliance. It was contended that Seventeenth Amendment was likely to affect the power of judicial review of High Courts under Article 226 of the Constitution. As the High Courts were excluded from looking into the constitutionality of these 44 Acts included in the Ninth Schedule as a result of Article 31B.

Then there came the celebrated judicial pronouncement in *L.C. GolakNath v. State of Punjab*.<sup>8</sup> The constitutional validity of the Constitution was again examined by the Supreme Court. It was held that constitutional amendment is “law” within the meaning of Article 13 of the Constitution and, therefore, if it takes away the rights conferred by Part III thereof, it is void. It was declared that the parliament would have no power from the date of decision on February 27, 1967, to amend

any of the provision of Part III so as to take away or abridge the fundamental rights.

Till the time when Supreme Court decided *Shankari Prasad and Sajjan Singh case*, the Hon’ble Court’s view was in conformity and similar with that of the Legislature. The Supreme Court viewed that there was no threat from the enhanced power of the legislature and that the radical agrarian reform was necessary to curb down the menace of poverty and change the system unequal distribution of land holdings in the countryside. However, the co-ordination between the judiciary and the legislature doesn’t last for long and with the coming of Indira Gandhi in the government the power granted under Article 31B was being widely misused by the legislature to achieve their political ends. This provoked judiciary to control the enhanced legislative power of the legislature.

In case of *L.C. GolakNath v. State of Punjab*,<sup>9</sup> the Apex Court took stricter view and held that if an amendment abridged or took away fundamental rights guaranteed by Part III of the Constitution, the amending act itself was void and ultra-vires. In other words, parliament has no power to amend or take away the fundamental rights enshrined under Part III of the Constitution.

Subsequently in *KesvanandaBharti v. State of Kerala*,<sup>10</sup> the Supreme Court for the first time held that all the provisions of the Constitution can be amended, but the provision affecting the fundamental

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<sup>7</sup>AIR 1965 SC 845.

<sup>8</sup>AIR 1967 SC 1643.

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<sup>9</sup>*Ibid.*

<sup>10</sup>AIR 1973 SC 1461.

rights/basic structure of the Constitution could not be amended; and if any constitutional amendment, which alters the basic structure of the Constitution could be struck down by the court.

This judgment virtually made the judiciary the arbiter of what is the basic structure of the Constitution, as the Constitution has no such listing. It gave the judiciary enormous powers to write or rewrite the Constitution through interpretation.

Again in case of *WamanRao v. Union of India*,<sup>11</sup> the Supreme Court held that the amendment to the Constitution which was made before April 24 1973, and by which the Ninth Schedule to the Constitution was amended from time to time by addition of various Acts and Regulations are valid and constitutional. The Amendments of Ninth Schedule after April 24, 1973 are open to challenge on the ground that they are beyond the constituent power of the parliament since they damage the basic structure of the Constitution. In other words the amendments made to Acts which are already placed in the Ninth Schedule are not automatically immunized from the legal challenged even after their inclusion in the Ninth Schedule. The protection of Article 31B is only to those Acts which are included before April 24 1973.

In *I.R. Coelho v. State of Tamil Nadu*,<sup>12</sup> the Constitution Bench of 5 judges referred the case to higher bench to decide two questions which were not taken up by the Apex Court in *WamanRao's case*.

These questions which the 5 Judge Constitutional Bench referred to higher bench to decide were as follows:

- (i) Whether an Act or Regulation which, or a part of which, is or has been found by the Supreme Court to be violative of any of the Articles 14, 19 and 31 can be included in the Ninth Schedule?
- (ii) Whether it is only a constitutional amendment amending the Ninth Schedule that damages or destroys the basic structure of the Constitution that can be struck down?

A nine-judge Bench of the Supreme Court on 11 January 2007, held that there could not be any blanket immunity from judicial review of laws inserted in the Ninth Schedule of the Constitution.

As once a law is enacted and included in the Ninth Schedule, it gets protection under Article 31B (validation of certain Acts and Regulations) and is not subject to judicial scrutiny. As to the First, Fourth and Seventeenth Amendments of the Constitution the majority held that these amendments abridged the scope of fundamental rights. But, they took recourse to the doctrine of prospective overruling and upheld the validity of these amendments.

Soon after the Constitution Twenty Fourth Amendment Act, 1971 was passed, the

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<sup>11</sup> AIR 1981 SC 271.

<sup>12</sup> AIR 2007 SC 861.

amendment made the following changes:-

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1. It added a new clause (4) to Article 13, which provided that nothing in this Article shall apply to any amendment of the Constitution made under Article 368.
2. The marginal heading to Article 368 which ran as "Procedure for Amendment of the Constitution" was substituted by a new heading which runs as "Power of Parliament to Amend the Constitution and Procedure therefore."
3. A new clause (1) was added to Article 368, to confer on parliament, constituent power to amend by way of addition, variation or repeal any provision of the Constitution including fundamental rights.
4. It provided that President would give his consent to the amending bill having passed by the Houses of Parliament.<sup>14</sup>

The Constitution Twenty Fifth Amendment Act, 1971, amended the provision of Article 31 dealing with compensation for acquiring properties for public purposes. So that only the amount

<sup>13</sup>SarbjitKaur, *op.cit.*, pp. 320-321.

<sup>14</sup>Constitution Twenty Fourth Amendment Act, 1971.

fixed by law needed to be given and this amount could not be challenged in court on the ground that it was not adequate. After Article 31B of the Constitution, the following Article 31C was inserted, namely:

"Notwithstanding anything contained in Article 13, no law giving effect to the state towards securing the principles specified in clause (b) and clause (c) of Article 39 shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Article 14, 19 or 31, and no law containing a declaration that it is for giving effect to such policy shall be called in question in any Court on the ground that it does not give effect to such policy. Provided that where such law is made by the legislature of a state, the provisions of the Article shall not apply thereto unless such laws having been reserved for the consideration of the President have received his assent."<sup>15</sup>

The Constitution Twenty Ninth Amendment Act, 1972 amended the Ninth Schedule to the Constitution inserting two Kerala Acts in furtherance of land reforms. By this Amendment Act, the Kerala Land Reforms Amendment Act, 1969 (Kerala Act 35 of 1969) and Kerala Land Reforms Amendment Act, 1971 (Kerala Act 25 of 1971) were added as items 65 and 66 in the Ninth Schedule of the Constitution.<sup>16</sup>

The validity of the Twenty Fourth and Twenty Ninth Amendments were

<sup>15</sup>Article 31C of the Constitution of India. S.N. Ray, *op.cit.*, pp. 322-323.

<sup>16</sup> Kumar, Nalin (2005). *Judiciary on Goals of Governance*. Anamika Publishers & Distributors (P) Ltd., New Delhi. pp. 87-88.

challenged in *Kesavananda Bharti's case*.<sup>17</sup> In this case the main question involved was the extent of amending power of parliament under Article 368 of the Constitution. On behalf of Union of India it was claimed that amending power was unlimited and short of repeal of the Constitution, any change could be effected. On the other hand, the petitioner contended that the amending power was wide but not unlimited. Under Article 368 parliament cannot destroy the basic structure of the Constitution.

As a result of the decision in the *Kesavananda's case*, the court by majority overruled the *Golaknath's case* which denied parliament the power to amend fundamental rights of citizen. The majority held that Article 368 even before the Twenty Fourth Amendment contained the power as well as the procedure of amendment. The Twenty Fourth Amendment merely made explicit what was implicit in the unamended Article 368-A. The Twenty Fourth does not enlarge the amending power of the parliament. The Twenty Fourth Amendment is declaratory in nature. It only declares the true legal position, as it was before that amendment hence it is valid.<sup>18</sup>

As regards the scope of amending power contained in Article 368, six learned judges out of the thirteen (Sikri, C.J. and Shelat, Grover, Hedge, Reddy and Mukerjee, J.J.) accepted the contention of the petitioner that though Article 368 conferred the power to amend the

Constitution, there were inherent or implied limitations on the power of amendment and, therefore, Article 368 did not confer power to amend the Constitution so as to destroy the essential elements or basic features of the Constitution.

Justice Khanna, rejected the theory of inherent an implied limitation, but he held that "amendment" did not cover an alteration of the basic structure or framework of the Constitution. All the seven judges gave illustrations of what they considered to be basic structure or framework but Khanna, J. expressly held that property was not a part of the basic structure or framework. The remaining six judges took the view that there were no limitations of any kind on the power of amendment, though three of them seemed willing to foresee the limitations that the entire Constitution could not be abrogated leaving behind a state without a Constitution. Thus the Court by majority of 7 to 6 held that the parliament has wide powers of amending power is not unlimited and does not include the power to destroy or abrogate the 'basic feature' or 'framework' of the Constitution.

The Supreme Court had an occasion to refer to the doctrine of basic structure in *Indira Gandhiv.Raj Narain*,<sup>19</sup> popularly known as "*Election Case*". In this case, appellant (Indira Gandhi), the then Prime Minister filed an appeal before the Supreme Court against the judgment of the Allahabad High Court. The High Court had invalidated the election of the Indira Gandhi to Lok Sabha, on the ground of corrupt practice. During the pendency of

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<sup>17</sup>*Supra*, note 10.

<sup>18</sup>Pandey, J.N. (1997). *Constitutional Law of India*. Central Law Agency, Allahabad.p. 591.

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<sup>19</sup>AIR1975 SC 2461.

the appeal before the Supreme Court, the Constitution Thirty Ninth Amendment Act, 1975 was passed. Clause (4) of the new Article 329 (A), which is directly concerned with the appeal, stated that no law made prior to the commencement of Thirty Ninth Amendment, in so far as it related to election petitions would apply or should be deemed to have applied to election of the Prime Minister to either House of Parliament. It further provided that such election would not be deemed to be void and that notwithstanding any decision of any court before Thirty Ninth Amendment, declaring such election to be void, Though all five judges delivered concurring judgments to strike down clause (4) of Article 329 (A) and declared judicial review, free and fair election, rule of law and right to equality as constituting the basic feature of the Constitution.

In *Minerva Mills v. Union of India*,<sup>20</sup> the Supreme Court had considered the validity of certain provisions of the Constitution. Forty Second Amendment Act, 1976 which excluded judicial review, the majority judgment held the impugned provisions to be unconstitutional. It may be noted that the majority in this case did not hold that the concept of judicial review was, by itself, part of the basic structure of the Constitution. In this case, Bhagwati, J. held that the power of judicial review was an integral part of our constitutional system, the power of judicial review was unquestionably a part of basic structure of the Constitution.

In *L. Chandra Kumar v. Union of India*,<sup>21</sup> the Supreme Court held that the power of

judicial review is an integral and essential feature of the Constitution constituting the basic feature. The jurisdiction so conferred on the High Courts and the Supreme Court is also a part of that basic structure.

In 1999 an earlier five judge bench decision that “all Constitution Amendments by which additions were made to the Ninth Schedule on or after April 24, 1973 (when judgement in *KesavanandaBharti case* was delivered) will be valid only if they do not damage or destroy the basic structure of the Constitution.”<sup>22</sup>

In January 11, 2007, a nine judge Bench that examined the scope of Ninth Schedule of the Constitution held that there could not be any blanket immunity from judicial review could not be taken away by putting a law under the Ninth Schedule. Chief Justice Y.K. Sabharwal mentions an important aspect, the parliament has power to amend the provisions of Part III so as to abridge or take away fundamental rights, but that power is subject to the limitation of basic structure doctrine. Whether the impact of such amendment results in violation of basic structure; has to be examined with reference to each individual case.

Take the example of freedom of press which, though not separately and specifically guaranteed, has been read as part of Article 19(1)(a). If Article 19(1)(a) is sought to be amended so as to abrogate such right (which we hope will never be done), the acceptance of respondents contention would mean that such

<sup>20</sup>AIR 1980 SC 1789.

<sup>21</sup>AIR 1997 SC 1125.

<sup>22</sup><http://www.hindu.com/2006/10/19/stories/2006/03/51500.htm>

amendment would fall outside the judicial scrutiny when the law curtailing these rights is placed in the Ninth Schedule as a result of immunity granted by Article 31B. The impact of such an amendment shall have to be tested on the touch stone of rights and freedoms guaranteed by Part III of the Constitution.<sup>23</sup>The majority judgement held that, all laws inserted under the Ninth Schedule after April 24, 1973 can now be challenged by anyone for perceived violation of the fundamental rights that might affect the basic structure of the Constitution as interpreted by the judiciary.<sup>24</sup>

### III. MISUSE OF NINTH SCHEDULE

The amending procedure was made partly flexible so as to make it easy for the legislature to adapt the Constitution according to the changing needs of the society. But parliament started making amendments which were destroying the basic structure of the Constitution. But after the landmark decisions in *KesavanandaBharti*, *Minerva Mills* and *WamanRao case*, the Supreme Court by its power of judicial review has curtailed the amending power of parliament. The Amendments made by parliament can no more effect the basic structure of the Constitution.

Originally, sixty-four laws were added to the Ninth Schedule. It was again amended by the Fourth Amendment inserted six Acts to the Ninth Schedule and Seventeenth Amendment added forty-four more Acts. The Twenty Ninth Amendment

Act, 1972, brought in two Acts from Kerala. The Constitution Thirty Fourth Amendment, 1974, amended the Ninth Schedule for the fourth time and added twenty more land tenure and land reforms laws enacted by the states.<sup>25</sup>

It was again amended by the Constitution Thirty Ninth Amendment Act, 1975, which added thirty-eight Acts to the Ninth Schedule. The important central Acts included in the Schedule by this amendment were The Representation of People's Act, 1951; The Representation of People's Amendment Act, 1974; The Election Laws Amendment Act, 1975 and The Maintenance of Internal Security Act, 1971. During the discussion on the Bill in Parliament, some members criticized the inclusion of the above Acts in the Ninth Schedule. The Law Minister, however, justified the inclusion of these laws in the Ninth Schedule. He said that Article 31B provided protection not only to laws of agrarian reforms but also to those legislations which were progressive and required in the public interest.<sup>26</sup>

During the internal emergency, the Constitution Forty Amendment Act, 1976, was passed by the parliament. By clause (3) of the said amendment, in the Ninth Schedule, Entries 124 to 188 were inserted; many were unrelated to land reforms.<sup>27</sup>

The Constitution Forty Second Amendment, 1976 again added sixty-four central and state land reforms laws to the Ninth Schedule. The Forty Fourth

<sup>23</sup>Dainik Tribune, Chandigarh, 12 January, 2007.

<sup>24</sup>Amar Ujala, New Delhi, 12 January, 2007.

<sup>25</sup> J.N. Pandey, *op.cit.*, pp. 285-286.

<sup>26</sup>*Ibid*, p. 286.

<sup>27</sup> A.G. NooFrani, *op.cit.*, p. 733.

Amendment Act, 1978, amended the Ninth Schedule and omitted Entry 87 (The Representation of People's Act, 1951; The Representation of People's Amendment Act, 1974 and Election Laws Amendment Act, 1975), Entry 92 (Maintenance of Internal Security Act, 1971) and Entry 130 (Prevention of Publication of Objectionable Matters Act, 1976) from the Schedule.<sup>28</sup>

The Constitution Forty Seventh Amendment Act, 1984, again amended the Ninth Schedule of the Constitution and fourteen land reform Acts from different states were added into the Schedule. After this amendment the total number of Acts included in the Ninth Schedule had risen to 202. The Constitution Sixty Sixth Amendment Act, 1990 again amended the Ninth Schedule and inserted fifty-five land reform Acts into the Schedule. After this Amendment, the total number of Acts included in the Schedule had increased to 257.<sup>29</sup>

The Constitution Seventy Fifth Amendment Act, 1994 has been passed by parliament to bring Tamil Nadu Act providing for 69 percent reservation for backward classes (for SC/ST and OBCs) under the Ninth Schedule to the Constitution and thus to take the legislation out of the ambit of judicial review. This is not justified as the object of Ninth Schedule is to protect only the land reform Acts from being challenged in the court of law and not a law for reservation of backward classes. This is a clear misuse of Ninth Schedule of the Constitution for political purpose. However, the

constitutional validity of Tamil Nadu Reservation Act challenged before the Supreme Court in *I.R. Coelho case*. A nine judge Constitution bench again discussed the scope and extent of immunity provided to the laws included in the Ninth Schedule.<sup>30</sup>

What takes the cake, however, is the Seventy Eighth Amendment Act, 1995, again amended the Ninth Schedule of the Constitution and added twenty-seven land reform Acts passed by various states to the Ninth Schedule, which was about not just immunity to laws in Ninth Schedule, which was suspect, but amendments to those laws and making those amendments immune. Since then there were absurd laws from sugarcane supporting price to the New Delhi Urban Zoning Laws all clamouring for an exalted spot in the much abused Ninth Schedule. After this Amendment the total number of Acts included in the schedule has risen to 284.<sup>31</sup>

#### IV. CONCLUSION

Since the First Amendment, the Ninth Schedule has been relied upon to amend the Constitution multiple times over. The parliament should not have at that time passed an amendment which subverted the constitutional provisions. But perhaps now, the balance of powers has tilted in favour of the judiciary. Our system mandates a mechanism for testing the validity of legislative acts through an independent organ, viz., the judiciary. The Supreme Court is one of the most powerful

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<sup>28</sup> J.N. Pandey, *op.cit.*, p. 286.

<sup>29</sup> *Ibid.*

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<sup>30</sup> Sarbjit Kaur, *op.cit.*, p. 334.

<sup>31</sup> Sastry, R. Gangadhara (Sep. 2007). *Legislature v. Judiciary: Need for Cooperation. Third Concept: An International Journal of Ideas*. vol. 21, no. 247.p. 27.

courts in the world. The court now has the power to embrace any economic policy it chooses to interpret as an infringement of fundamental rights. It retains the power to strike down any legislation enacted by parliament pursuant to the political aspirations of the nation, on the ground that it violates the basic features of the Constitution.

The function of the Supreme Court now becomes quite clearly setting and unsettling political agendas, through its power to decide what the basic features of the Constitution are and what policy considerations it will take into account for interpreting fundamental rights. The power to grant absolute immunity is not compatible with the basic structure of the Constitution. Expressing its strong resolve to protect the constitutional guarantees accorded to the citizen, the bench remarked,

*“Law put in the Ninth Schedule has to be tested on the touchstone of the basic structure as even a minor change can destroy the basic structure.”*