
Minerva Mills Ltd. & ors Vs Union of India & ors

Writ Petition No"s. 356-361 of 1977

Court: Supreme Court of India

Date of Decision: July 31, 1980

Acts Referred:

Constitution (Forty-Second Amendment) Act, 1976 & Section 4#Constitution of India, 1950
& Article 13, 14, 19, 31, 31C, 31A, 39

Citation: AIR 1980 SC 1789 : (1980) 3 SCC 625 : (1980) 2 SCC 591 : (1981) 1 SCR 206 :
(1980) 12 UJ 727

Hon'ble Judges: Y. V. Chandrachud, C.J; P. S. Kailasam, J; P. N. Bhagwati, J; N. L. Untwalia,
J; A. C. Gupta, J

Bench: Full Bench

Advocate: T.V.S. Narasimhachari, M. S. Ganesh, Kailash Vasudeva

Final Decision: Disposed Of

Judgement

Y.V. Chandrachud, C.J., A.C. Gupta, N.L. Untwalia and P.S. Kailasam, JJ.
Section 4 of the Constitution (Forty-second Amendment)

Act, 1976, which came into force with effect from January 8, 1977 amended Article 31C of the Constitution by substituting the words and figures

all or any of the principles laid down in Part IV for the words and figures ""the principles specified in Clause (b) or Clause (c) of Article 39"". Article

31C, as amended reads thus:

31C. Notwithstanding anything contained in Article 31. no law giving effect to the policy of the State towards securing all or any of the principles

laid down in Part IV shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by

Article 14, Article 19 or Article 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 this article shall not apply thereto unless such law, having

been reserved for the consideration of the President, has received his assent.

Section 4 of the Constitution 42nd Amendment Act is beyond the amending power of the Parliament and is void since it damages the basic or

essential features of the Constitution and destroys its basic structure by a total exclusion of challenge to any law on the ground that it is inconsistent

with, or takes away or abridges any of the rights conferred by Article 14 or Article 19 of the Constitution, if the law is for giving effect to the policy

of the State towards securing all or any of the principles laid down in Part IV of the Constitution.

(2) Section 55 of the Constitution (Forty-second Amendment) Act, 1976, which came into force with effect from January 8, 1977 inserted Sub-

sections (4) and (5) of Article 368 which read thus:

(4) No amendment of this Constitution (including the provisions of Part III; made for 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 (hat 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.

Section 55 of the Constitution 42nd Amendment Act is beyond the amending power of the Parliament and is void since it removed all limitations

on the power, of the Parliament to amend the Constitution and confers power upon it to amend the Constitution so as to damage or destroy its

basic or essential features or its basic structure.

2-4. Fuller reasons for the decisions will follow later whereupon, the Writ Petitions will be set down for hearing for consideration of the other

points involved therein.

P.N. Bhagwati, J.

5. The question which arises for determination in these writ petitions is as to whether Section 4 of the Constitution (42nd Amendment) Act of 1976

amending Article 31C of the Constitution is constitutionally valid. I cannot persuade myself to pass an order pronouncing upon this question

without a reasoned judgment, since the question is one of grave and momentous consequence involving, as it does, the validity of a constitutional

amendment. I would, therefore, prefer to pass a final order in (his i-asf when I deliver my reasoned judgment on the reopening of the court after the

Summer vacation.

Y.V. Chandrachud, C.J. dated 1st July, 1960 (For himself and A.C. Gupta, N.L. Untwalia and P.S. Kailasam, JJ.)

6. In Keshavananda Bharati this Court held by a majority that though by Article 368 Parliament is given the power to amend the Constitution, that

power cannot be exercised so as to damage the basic features of the Constitution or so as to destroy its basic structure. The question for

consideration in this group of petitions under Article 38 is whether Sections 4 and 55 of the Constitution (42nd Amendment) Act, 1976 transgress

that limitation on the amending power.

7. Petitioner No 1 which is a limited company owned a textile undertaking called Minerva Mills situated in the State of Karnataka. This

undertaking was nationalised and taken over by the Central Government under the provisions of the Sick Textile Undertakings (Nationalisation)

Act, 1974, Petitioners 2 to 6 are shareholders of Petitioner No. 1, some of whom are also unsecured creditors and some secured creditOrs.

8. Respondent 1 is the Union of India. Respondent 2 is the National Textile Corporation Limited in which the textile undertaking of Minerva Mills

comes to be vested u/s 3(2) of the Nationalisation Act of 1974. Respondent 3 is a subsidiary of the 2nd respondent.

9. On August 20, 1970, the Central Government appointed a Committee u/s 15 of the Industries (Development and Regulation) Act, 1951 to

make a full and complete investigation of the affairs of the Minerva Mills Ltd., as it was of the opinion that there had been or was likely to be

substantial fall in the volume of production. The said Committee submitted its report to the Central Government in January 1971, on the basis of

which the Central Government passed an order dated October 19, 1971 u/s 18A of the Act of 1951, authorising Respondent 2 to take over the

management of the Minerva Mills Ltd. on the ground that its affairs were being managed in a manner highly detrimental to public interest.

10. By these petitions, the petitioners challenge the constitutional validity of certain provisions of the Sick Textile Undertakings (Nationalisation)

Act and of the order dated October 19, 1971. We are not concerned with the merits of that challenge at this stage. The petitioners further

challenge the constitutionality of the Constitution (39th Amendment) Act which inserted the impugned Nationalisation Act as Entry 105 in the 9th

Schedule to the Constitution. That raises a question regarding the validity of Article 31B of the Constitution with which we propose to deal in

another batch of petitions. Finally, the petitioners challenge the constitutionality of Sections 4 and 55 of the Constitution (42nd Amendment) Act,

1976 and it is this contention alone with which we propose to deal in these petitions.

11. The challenge to the validity of Sections 4 and 55 of the 42nd Amendment rests on the ratio of the majority judgment in Kesavananda Bharati.

The several opinions rendered in that case have been discussed and analysed threadbare in texts and judgments too numerous to mention. All the

same, we cannot avoid making a brief resume" of the majority judgments since the petitioners must stand or fall by them. Those judgments, on the

point now in issue, were delivered by Sikri, C. J., Shelat and Grover, JJ., Hegde and Mukherjea, JJ., Jaganmohan Reddy, J. and Khanna, J.

12. Sikri C. J., held that the fundamental importance of the freedom of the individual has to be preserved for all times to come and that it could not

be amended out of existence. According to the learned Chief Justice, fundamental rights conferred by Part III of the Constitution cannot be

abrogated, though a reasonable abridgement of those rights could be effected in public interest. 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 Article 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.

13. Shelat and Grover, JJ. held that 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 Article 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.

14. Hegde and Mukherjea, JJ. held that 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. Applying these tests, the learned Judges invalidated Article 31C even in its un-amended form.

15. Jaganmohan Reddy, J., held that 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 Article 31C, 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 Article 39, altogether abrogated the right

given by Article 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.

16. 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.

17. The summary of the various judgments in Kesavananda Bharati was signed by nine out of the thirteen Judges. Paragraph 2 of the summary

reads to say that according to the majority. ""Article 368 does not enable Parliament to alter the basic structure or framework of the Constitution;".

Whether or not the summary is a legitimate part of the judgment, or is per incuriam for the scholarly reasons cited by authors, it is undeniable that it

correctly reflects the majority view.

18. The question which we have to determine on the basis of the majority view in Kesavananda Bharati is whether the amendments introduced by

Sections 4 and 55 of the Constitution (42nd Amendment) Act, 1976 damage the basic structure of the Constitution by destroying any of its basic

features or essential elements.

19. Section 4 of the 42nd Amendment, which was brought into force with effect from January 3, 1977 amended Article 31C of the Constitution by

substituting the words and figures ""all or any of the principles laid down in Part IV"" for the words and figures ""the principles specified in Clause (b)

or Clause (c) of Article 39"". Article 31C, as amended by the 42nd Amendment Act reads thus:

31C, Notwithstanding anything contained in Article 13, no law giving effect to the policy of the State towards securing all or any of the principles

laid down in Part IV shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by

Article 14. Article 19 of Article 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 this article shall not apply thereto unless such law, having been

reserved for the consideration of the President, has received his assent.

20. Section 55 of the Constitution (Forty-second Amendment) Act, 1976, which was also brought into force with effect from January 3, 1977

inserted subsections (4) and (5) in Article 368 which read thus:

(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.

21. We will first take up for consideration the comparatively easier question as regards the validity of the amendments made by Section 55 of the

42nd Amendment. It introduces two new Clauses in Article 368, namely, Clauses (4) and (5). Clause (5) speaks for itself and is self-explanatory.

Its avowed purpose is the "removal of doubts" but after the decision of this Court in Kesavananda Bharati (Supra) there could be no doubt as

regards the existence of limitations on the Parliament's power to amend the Constitution. In the context of the constitutional history of Article 368,

the true object of the declaration contained in Article 368 is the removal of those limitations. Clause (5) confers upon the Parliament a vast and

undefined power to amend the Constitution, even so as to distort it out of recognition. The theme song of the majority decision in Kesavananda

Bharati is:

Amend as you may even the solemn document which the founding fathers have committed to your care, for you know best the needs of your

generation. But, the Constitution is a precious heritage; therefore, you cannot destroy its identity.

The majority conceded to the Parliament the right to make alterations in the Constitution so long as they are within its basic framework. And what

fears can that judgment raise or misgivings generate if it only means this and no more. The Preamble assures to the people of India a polity whose

basic structure is described therein as a Sovereign Democratic Republic; Parliament may make any amendments to the Constitution as it deems

expedient so long as they do not damage or destroy India's sovereignty and its democratic, republican character. Democracy is not an empty

dream. It is a meaningful concept whose essential attributes are recited in the preamble itself: Justice, social, economic and political; Liberty of

thought, expression, belief, faith and worship; and Equality of status and opportunity. Its aim, again as set out in the preamble, is to promote among

the people an abiding sense of "Fraternity assuring the dignity of the individual and the unity of the Nation". The newly introduced Clause (5) of

Article 368 demolishes the very pillars on which the preamble rests by empowering the Parliament to exercise its constituent power without any

limitation whatever". No constituent power can conceivably go higher than the sky-high power conferred by Clause (5), for it even empowers the

Parliament to "repeal the provisions of this Constitution", that is to say, to abrogate the democracy and substitute for it a totally antithetical form of

Government. That can most effectively be achieved, without calling a democracy by any other name, by a total denial of social, economic and

political Justice to the people, by emasculating liberty of thought, expression, belief, faith and worship and by abjuring commitment to the

magnificent ideal of a society of equals. The power to destroy is not a power to amend.

22. Since the Constitution had conferred a limited amending power on the Parliament, the Parliament cannot under the exercise of that limited

power enlarge that very power into an absolute power. Indeed, a limited amending power is one of the basic features of our Constitution and

therefore, the limitations on that power cannot be destroyed. In other words, Parliament cannot, under Article 368, expand its amending power so

as to acquire for itself the right to repeal or abrogate the Constitution or to destroy its basic and essential features. The donee of a limited power

cannot by the exercise of that power convert the limited power into an unlimited one,

23. The very 42nd Amendment which introduced Clauses (4) and (5) in Article 368 made amendments to the preamble to which no exception can

be taken. Those amendments are not only within the framework of the Constitution but they give vitality to its philosophy; they afford strength and

succor to its foundations. By the aforesaid amendments, what was originally described as a "Sovereign Democratic Republic" became a

Sovereign Socialist Secular Democratic Republic" and the resolution to promote the "unity of the Nation" was elevated into a promise to promote

the "unity and integrity of the Nation". These amendments furnish the most eloquent example of how the amending power can be exercised

consistently with the creed of the Constitution. They offer promise of more, they do not scuttle a precious heritage.

24. In *Smt. Indira Nehru Gandhi v. Raj Narain, Khanna, J.* struck down Clause 4 of Article 329A of the Constitution which abolished the forum

for adjudicating upon a dispute relating to the validity in an election, on the ground that the particular Article which was introduced by a

constitutional amendment violated the principle of free and fair elections which is an essential postulate of democracy and which, in its turn, is a part

of the basic structure of the Constitution. Mathew, J. also struck down the Article on the ground that it damaged the essential feature of democracy,

One of us, Chandrachud, J. reached the same conclusion by holding that the provisions of the Article were an outright negation of the right of

equality conferred by Article 14, a right which, more than any other, is a basic postulate of the Constitution. Thus, whereas amendments made to

the preamble by the 42nd Amendment itself afford an illustration of the scope of the amending power, the case last referred to afford an illustration

of the limitations on the amending power.

25. Since, for the reasons above mentioned, Clause (5) of Article 368 transgresses the limitations on the amending power, it must be held to be

unconstitutional.

26. The newly introduced Clause (4) of Article 368 must suffer the same fate as Clause (5) because the two Clauses are inter-linked. Clause (5)

purports to remove all limitations on the amending power while Clause (4) deprives the courts of, their power to call in question any amendment of

the Constitution. Our Constitution is founded on a nice balance of power among the three wings of the State, namely, the Executive, the Legislature

and the Judiciary. It is the function of the Judges, nay their duty, to pronounce upon the validity of laws. If courts are totally deprived of that power

the fundamental rights conferred upon the people (will become a mere adornment because rights without remedies are as writ in water. A

controlled Constitution will then become uncontrolled. Clause (4) of Article 368 totally deprives the citizens of one of the most valuable modes of

redress which is guaranteed by Article 32. The conferment of the right to destroy the identity of the Constitution coupled with the provision that no

court or law shall pronounce upon the validity of such destruction seems to us a transparent case of transgression of the limitations on the amending

power.

27. If a constitutional amendment cannot be pronounced to be invalid even if it destroys the basic structure of the Constitution, a law passed in

pursuance of such an amendment will be beyond the pale of judicial review because it will receive the protection of the constitutional amendment

which the courts" will be powerless to strike down. Article 13 of the Constitution will then become a dead letter because even ordinary laws will

escape the scrutiny of the courts on the ground that they are passed on the strength of a constitutional amendment which is not open to challenge.

28. Clause (4) of Article 368 is in one sense an appendage of Clause (5), though we do not like to describe it as a logical consequence of Clause

(5). If it be true, as stated in Clause (5), that the Parliament has unlimited power to amend the Constitution, courts can have no jurisdiction to strike

down any constitutional amendment as unconstitutional. Clause (4), therefore, says nothing more or less than what Clause (5) postulates. If Clause

(5) is beyond the amending power of the Parliament, Clause (4) must be equally beyond that power and must be struck down as such.

29. The next question which we have to consider is whether the amendment made by Section 4 of the 42nd Amendment to Article 31C of the

Constitution is valid. Mr. Palkhivala did not challenge the validity of the unamended Article 31C and indeed that could not be done. The

unamended Article 31C forms the subject-matter of a separate proceeding and we have indicated therein that it is constitutionally valid to the

extent to which it was upheld in *Keshvananda Bharati* (Supra).

30. By the amendment introduced by Section 4 of the 42nd Amendment, provision is made in Article 31C saying that no law giving effect to the

policy of the State towards securing "all or any of the principles laid down in Part IV" shall be deemed to be void on the ground that it is

inconsistent with or takes away or abridges any of the rights conferred by Article 14, Article 19 or Article 31. It is manifest that the scope of laws

which fall within Article 31C has been expanded vastly by the amendment. Whereas under the original Article 31C, the challenge was excluded

only in respect of laws giving effect to the policy of the State towards securing "the principles specified in Clause (b) or Clause (c) of Article 39

under the amendment, all laws giving effect to the policy of the State towards securing "all or any of the principles laid down in Part IV" are saved

from a constitutional challenge under Arts- 14 and 19. (The reference to Article 31 was deleted by the 44th Amendment as a consequence of the

abolition of the right to property as a fundamental right) The question for consideration in the light of this position is whether Section 4 of the 42nd

Amendment has brought about a result which is basically and fundamentally different from the one arising under the unamended article. If the

amendment does not bring about any such result its validity shall have to be upheld for the same reasons for which the validity of the unamended

article was upheld.

31. The argument of Mr. Palkhivala, who appears on behalf of the petitioners, runs thus: The amendment introduced by Section 4 of the 42nd

Amendment destroys the harmony between Parts III and IV of the Constitution by making the fundamental rights conferred by Part III subservient

to the directive principles of State Policy set out in Part IV of the Constitution. The Constitution makers did not contemplate a disharmony or

imbalance between the fundamental rights and the directive principles and indeed they were both meant to supplement each other. The basic

structure of the Constitution rests on the foundation that while the directive principles are the mandatory ends of government, those ends can be

achieved only through permissible means which are set out in Part III of the Constitution. In other words, the mandatory ends set out in Part IV

can be achieved not through totalitarian methods but only through those which are consistent with the fundamental rights conferred by Part III. If

Article 31C as amended by the 42nd Amendment is allowed to stand, it will confer an unrestricted licence on the legislature and the executive,

both at the center and in the States, to destroy democracy and establish an authoritarian regime. All legislative action and every governmental

action purports to be related, directly or indirectly, to some directive principle of State policy. The protection of the amended article will therefore

be available to every legislative action under the sun. Article 31C abrogates the right to equality guaranteed by Article 14, which is the very

foundation of a republican form of government and is by itself a basic feature of the Constitution.

32. The learned Counsel further argues that it is impossible to envisage that a destruction of the fundamental freedoms guaranteed by Part III is

necessary for achieving the object of some of the directive principles like equal justice and free legal aid. organising village pauchayats, providing

living wages for workers and just and humane conditions of , work, free and compulsory education for children, organisation of agriculture and

animal husbandry, .and protection or environment and wild life. What the Constituent Assembly had rejected by creating a harmonious balance

between parts III and IV is brought back by the 42nd Amendment,

33. Finally it is urged that the Constitution had made provision for the suspension of the right to enforce fundamental rights when an emergency is

proclaimed by the President. Under the basic scheme of the Constitution, fundamental rights were to lose their supremacy only during the period

that the proclamation of emergency is in operation. Section 4 of the 42nd Amendment has robbed the fundamental rights of their supremacy and

made them subordinate to the directive principles of State policy as if there were a permanent emergency in operation. While Article 359 suspends

the enforcement of fundamental rights during the Emergency, Article 31C virtually abrogates them in normal times. Thus, apart from destroying one

of the basic features of the Constitution, namely, the harmony between Parts III and IV, Section 4 of the 42nd Amendment denies to the people

the blessings of a free democracy and lays the foundation for the creation of an authoritarian State.

34. These contentions were stoutly resisted by the learned Attorney General thus: Securing the implementation of directive principles by the

elimination of obstructive legal procedures cannot ever be said to destroy or damage the basic features of the Constitution. Further, laws made for

securing the " objectives of Part IV would necessarily be in public interest and will fall within Article 19(5) of the Constitution, in so far as Clauses

(d) and (e) of Article 19(1) are concerned. They would therefore be saved in any case. The history of the Constitution, particularly the

incorporation of Articles 31(4) and 31(6) and the various amendments made by Articles 31A, 31B and the amended Article 31C, which were all

upheld by this Court, establish the width of the amending power under Article 368. The impugned amendment therefore manifestly falls within the

sweep of the amending power.

35. The learned Attorney General further argues A law which fulfils the directive of Article 38 is incapable of abrogating fundamental freedoms or

of damaging the basic structure of the Constitution inasmuch as that structure itself is founded on the principle of justice --social, economic and

political. Article 38, which contains a directive principle, provides that the State shall strive to promote the welfare of the people by securing and

protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life. A

law which complies with Article 38 cannot conceivably abrogate the fundamental freedoms except certain economic rights and that too, for the

purpose of minimising inequalities. A law which will abrogate fundamental freedoms will either bring about social injustice or economic injustice or

political injustice. It. will thereby contravene Article 38 rather than falling within it and will for that reason be outside the protection of Article 31C.

In any event, each and every violation of Article 14 or Article 19 does not damage the basic structure of the Constitution.

36. The learned Additional Solicitor General has submitted a carefully prepared Chart of 11 decisions of this Court ranging from Anwar Ali Sarkar

to Haji Kader Kutty in order to show the possible impact of amended Article 31C on cases where this Court had held provisions of certain

statutes to be violative of Article 14. He urged on the basis of his tabulated analysis that there can be many cases which are not relatable to

directive principles and will not therefore be saved by the amended article. Those cases are reported in Anwar Ali Sarkar; Lachmandas Ahuja;

Habib Muhammad, Moopil Nair, Jialal, Hazi Abdul Shakur, Devi Das, Osmania University, New Manek Chowk, Anandji Haridas and Haji

Kader Kutty. He has also submitted a chart of 18 cases involving laws relatable to directive principles in which the fundamental rights were

abridged but not abrogated. Since abridgement of fundamental rights in public interest is permissible as it does not damage the basic structure, laws

similar to those involved in the 13 cases will not have to seek the protection of the amended article. These illustrative cases are: Ram Prasad Sahi;

Rao Manohar Singhji; Kunhikaman; Orissa Cement, Krishnaswami Naidu, Mukanchand, Nallaraja Reddy, Jallan Trading Co., Kamrup, Mizo

District Council, Balammal, Rashbehari Pande and R. C. Cooper.

37. The argument of the learned Additional Solicitor General proceeds thus: For extracting the ratio of Keshvananda Bharati (Supra) one must

proceed on the basis that there were a t many cases as there were declarations sought for by the petitioners therein. The majority in regard to

Article 368 is different from the majority in regard to the decision in respect of Article 31C. The binding ratio in regard to Article 368 as well as the

ratio resulting in upholding the validity of the first part of Article 31C will both sustain the validity of Section 4 of the 42nd Amendment. In regard to

fundamental rights, the ratio of the judgments of 12 out of 13 Judges, i. e., all excepting Jaganmohan Reddy J. will empower amendment of each

one of the articles in Part III, so long as there is no total abrogation of the fundamental rights which constitute essential features of the basic structure

of the Constitution. Abrogation of fundamental rights which do not constitute essential features of the basic structure or abridgement of fundamental

rights which constitute such essential features is within the permissible limits of amendment. The unamended Article 31C having been upheld by the

majority in *Kesavananda Bharati* both on the ground of stare decisis and on the ground of contemporaneous practical exposition", the amended

Article 31C must be held to be valid, especially since it has not brought about a qualitative change in comparison with the provisions of the

unamended article. A harmonious and orderly development of constitutional law would require that the phrases "inconsistent with" or "take away"

which occur in Articles 31A, 31B and 31C should be read down to mean "restrict or "abridge" and not "abrogate". If two constructions of those

expressions were reasonably possible, the Court should accept that construction which would render the constitutional amendment valid.

38. The learned Counsel further argues: The directive principles, including the one contained in Article 38, do not cover the exercise of each and

every legislative power relatable to the Seventh Schedule of the Constitution. Besides, the directive principles being themselves fundamental in the

governance of the country, no amendment of the Constitution to achieve the ends specified in the directive principles can ever alter the basic

structure of the Constitution. of the unamended Article 31C is valid -in reference to laws relatable to Article 39(b) and (c) no dichotomy can be

made between laws relatable to these provisions on the one hand and laws relatable to other directive principles. A value Judgment is not

permissible to the Court in this area.

39. It is finally urged by the learned Additional Solicitor General that judicial review is not totally excluded by the amended Article 31C because it

will still be open to the Court to consider:

(i) whether the impugned law has "direct and reasonable nexus" with any of the directive principles;

(ii) whether the provisions encroaching on fundamental rights are integrally connected with and essential for effectuating the directive principles or

are at least ancillary thereto;

(iii) whether the fundamental right encroached upon is an essential feature of the basic structure of the Constitution; and

(iv) if so, whether the encroachment, in effect, abrogates that fundamental right.

40. Besides these contentions Mr. R. K. Garg has filed a written brief on behalf of the Indian Federation of Working Journalists, opposing the

contentions of Mr. Palkhivala. So have the learned Advocates-General of the State of Karnataka and Uttar Pradesh, Mr. Aruneshwar Gupta has

filed a brief on behalf of the State of Rajasthan supporting the submissions of Mr. Palkhivala. So has the State of Rajasthan. The Advocates-

General of Maharashtra, Kerala, West Bengal and Orissa appeared through their respective advocates.

41. Both the Attorney General and the Additional Solicitor General have raised a preliminary objection to the consideration of the question raised

by the petitioners as regards the validity of Sections 4 and 55 of the 42nd Amendment. It is contended by them that the issue formulated for

consideration of the court; "whether the provisions of the Forty-second Amendment of the Constitution which deprived the Fundamental Rights of

their Supremacy and, inter alia, made them subordinate to the directive principles of State Policy are ultra vires the amending power of

Parliament?" is too wide and academic. It is urged that since it is the settled practice of the court not to decide academic questions and since

property rights claimed by the petitioners under Articles 19(1)(f) and 31 do not survive after the 44th Amendment, the court should not entertain

any argument on the points raised by the petitioners.

42. In support of this submission reliance is placed by the learned Counsel on the decisions of the American Supreme Court in Commonwealth of

Massachusetts v. Andrew W. Mellon (1922) 87 L ed 1078 George Ashwander v. Tennessee Valley Authority (1935) 80 L ed 688 and on

Weavers Constitutional Law, 1946 Ed pp.68 and American Jurisprudence, 2nd. Vol. 16, pp. 299-301. Reliance is also placed on certain

decisions of this Court to which it is unnecessary to refer because the Attorney-General and the Additional Solicitor General are right that it is the

settled practice of this Court not to decide academic questions, The American authorities on which the learned Counsel rely take the view that the

constitutionality of a statute will not be considered and determined by the courts as a hypothetical question, because constitutional questions are not

to be dealt with abstractly or in the manner of an academic discussion. In other words, the courts do not anticipate constitutional issues so as to

assume in advance that a certain law may be passed in pursuance of a certain constitutional amendment which may of tend against the provisions of

the Constitution. Similarly, our court has consistently taken the view that we will not formulate a rule of constitutional law broader than is required

by the precise facts to which it is to be applied. It is only when the rights of persons are directly involved that relief is granted by this Court.

43. But, we find it difficult to uphold the preliminary objection because, the question raised by the petitioners as regards the constitutionality of

Sections 4 and 55 of the 42nd Amendment is not an academic or a hypothetical question. The 42nd Amendment is there for any one to see and by

its Sections 4 and 55 Amendments have been made to Articles 31C and 368 of the Constitution. An order has been passed against the petitioners

u/s 18A of the Industries (Development and He-Rotation) Act, 1951. by which the petitioners are aggrieved,

44. Besides there are two other relevant considerations which must be taken into account while dealing with the preliminary objection. There is no

constitutional or statutory inhibition against the decision of questions before they actually arise for consideration. In view of the importance of the

question raised and in view of the fact that the question has been raised in many a petition, it is expedient in the interest of Justice to settle the true

position. Secondly, what we are dealing with is not an ordinary law which may or may not be passed so that it could be said that our jurisdiction is

being invoked on the hypothetical consideration that a law may be passed in future which will injure the rights of the petitioners. We are dealing

with a constitutional amendment which has been brought into operation and which, of its own force, permits the violation of certain freedoms

through laws passed for certain purposes. We therefore, overrule the preliminary objection and proceed to determine the point raised by the

petitioners.

45. The main controversy in these petitions centers round the question whether the directive principles of State policy contained in Part IV can

have primacy over the fundamental rights conferred by Part III of the Constitution. That is the heart of the matter. Every other consideration and

all other contentions are in the nature of by-products of that central theme of the case. The competing claims of parts III and IV constitute the

pivotal point of the case because. Article 31C as amended by Section 4 of the 42nd Amendment provides in terms that a law giving effect to any

directive principle cannot be challenged as void on the ground that it violates the rights conferred by Article II or Article 19. The 42nd Amendment

by its Section 4 thus subordinates the fundamental rights conferred by Articles 14 and 19 to the directive principles,

46. The question of questions is whether in view of the majority decision in *Keshvananda Bharati* (Supra) it is permissible to the Parliament to so

amend the Constitution as to give a position of precedence to directive principles over the fundamental rights. The answer to this question must

necessarily depend upon whether Articles 14 and 19, which must now give way to laws passed in order to effectuate the policy of the State

towards securing all or any of the principles of Directive Policy, are essential features of the basic structure of the Constitution, it is only if the rights

conferred by these two articles are not a part of the basic structure of the Constitution that they can be allowed to be abrogated by a constitutional

amendment. If they are a part of the basic structure, they cannot be obliterated out of existence in relation to the category of laws described in

Article 310 or, for the matter of that, in relation to laws of any description whatsoever, passed in order to achieve any object or policy whatsoever.

This will serve to bring out the point that a total emasculating of the essential features of the Constitution is, by the ratio in *Kesavananda Bharati*,

not permissible to the Parliament.

47. There is no doubt that though the courts have always attached very great importance to the preservation of human liberties, no less importance

has been attached to some of the Directive Principles of State Policy enunciated in Part IV. In the words of Granville Austin, (The Indian

Constitution: Corner Stone of a Nation, p. 50) the Indian Constitution is first and foremost -a social document and the majority of its provisions are

aimed at furthering the goals of social revolution by establishing the conditions necessary for its achievement. therefore, the importance of Directive

Principles in the scheme of our Constitution cannot ever be over-emphasized. Those principles project the high ideal which the Constitution aims to

achieve. In fact Directive principles of State policy are fundamental in the governance of the country and the Attorney General is right that there is

no sphere of public life where delay can defeat justice with more telling effect than the one in which the common man seeks the realisation of his

aspirations. The promise of a better tomorrow must be fulfilled to-day, day after tomorrow it runs the risk of being conveniently forgotten. Indeed,

so many tomorrows have come and gone without a leaf turning that today there is a lurking danger that people will work out their destiny through

the Compelled cult of their own ""dirty hands"". Words bandied about in marbled halls say much but fail to achieve as much.

48. But there is another competing constitutional interest which occupies an equally important place in that scheme. That interest is reflected in the

provisions of Part III which confer fundamental rights, some on citizens as Articles 15, 16 and 19 do and some on all persons alike as Articles 14,

20, 21 and 22 do. As Granville Austin says:

The core of the commitment to the social revolution lies in Parts III and IV.. These are the conscience of the Constitution.

49. It is needless to cite decisions which have extolled and upheld the personal freedoms -- their majesty, and in certain circumstances, their

inviolability. It may however be profitable to see how the American Supreme Court, dealing with a broadly comparable Constitution, has

approached the claim for those freedoms.

50. In *Barbara Elfbrandt v. Imogene Russell* (1966) 16 L ed 2d 321 the U, S. Supreme Court was considering the constitutionality of an Arizona

Statute requiring State employees to take a loyalty oath. Justice Douglas, speaking for the majority, observed while striking down the provision

that:

Legitimate legislative goals "cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly

achieved".... "The objectionable quality of ... over-breadth"" depends upon the existence of a statute ""susceptible of sweeping and improper

application.... These freedoms are delicate and vulnerable, as well as supremely precious in our society. The threat of sanctions may deter their

exercise almost as potently as the actual application of sanctions.

51. In *United States v. Harbet Guest* (1966) 16 L ed 2d 239 though the right to travel freely throughout the territory of the United States of

America does not find an explicit mention in the American Constitution, it was held that the right to travel from one State to another occupied a

position fundamental to the concept of the Federal Union and the reason why the right was not expressly mentioned in the American Constitution,

though it was mentioned in the Articles of Confederation, was that ""a right so elementary was conceived from the beginning to be a necessary

concomitant of the stronger Union the Constitution created"".

52. This position was reiterated in *Winfield Dunn v. James F. Blnmstrin* (1972) 31 L ed 2d 274 It was held therein that freedom to travel

throughout the United States was a basic right under the Constitution and that the right was an unconditional personal right whose exercise may not

be conditioned. therefore, any classification which serves to penalize the exercise of that right, unless shown to be necessary to promote a

compelling governmental interest, was unconstitutional.

53. In *New York Times Co. v. United States* (1971) 29 L ed 2d 822 the United States Government sought an injunction against the publication,

by the New York Times, of the classified study entitled ""History of U. S. Decision-Making Process on Viet Nam Policy"". It was held by a majority

of six Judges that any system of prior restraints of expression comes to the United States Supreme Court bearing a heavy presumption against its

constitutional validity, and a party who seeks to have such a restraint upheld thus carries a heavy burden of showing justification for the imposition

of such a restraint.

54. In *National Association for the Advancement of Colored People v. State of Alabama* (1958) 2 L ed 2d 1488 a unanimous court while dealing

with an attempt to oust the National Association of Coloured People from the State of Alabama held:

In the domain of these indispensable liberties, whether of -speech, press, or association, the decisions of this Court recognize that abridgement of

such rights, even though unintended, may inevitably follow from varied forms of governmental action.

55. In *Frank Palko v. State of Connecticut* (1937) 82 L ed 288 Justice Cardozo delivering the opinion of the Court in regard to the right to

freedom of thought and speech observed:

Of that freedom one may say that it is the matrix, the indispensable condition, of nearly every other form of freedom.

56. In *Jesse Cantwell v. State of Connecticut* (1939) 84 L ed 1213 Justice Roberts who delivered the opinion of the Court observed:

In the realm of religious faith, and in that of political belief, sharp differences arise. In both fields the tenets of one man may seem the rankest error

to his neighbor. To persuade others to his own point of view, the pleader, as we know, at times, resorts to exaggeration, to vilification of men who

have been, or are, prominent in church or state, and even to false statement. But the people of this nation have ordained in the light of history, that,

in spite of the probability of excesses and abuses, these liberties are, in the long view, essential to enlightened opinion and right conduct on the part

of the citizens of a democracy. The essential characteristic of these liberties is, that under their shield many types of life, character, opinion and

belief can develop unmolested and unobstructed. Nowhere is this shield more necessary than in our own country for a people composed of many

racess and of many creeds. There are limits to the exercise of these liberties. The danger in these times from the coercive activities of those who in

the delusion of racial or religious conceit would incite violence and breaches of the peace in order to deprive others of their equal right to the

exercise of their liberties, is emphasized by events familiar to all. These and other transgressions of those limits the states appropriately may punish.

57. In *Arthur Terminiello v. City of Chicago* (1949) 93 L ed 1131 Justice Douglas delivering the majority opinion of the Court, while dealing with

the importance of the right to free speech, observed:

The vitality of civil and political institutions in our society depends on free discussion. as Chief Justice Hughes wrote in *De Jonge v. Oregon* (1936)

299 US 35381 L ed 27857 S Ct 255 it is only through free debate and free exchange of ideas that government remains responsive to the will of

the people and peaceful change is effected. The right to speak freely and to promote diversity of ideas and programmes is therefore one of the

chief distinctions that sets us apart from totalitarian regimes.

Accordingly a function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it

induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. Speech is of ten provocative and

challenging, It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea. That is why

freedom of speech, though not absolute (*Chaplinsky v. New Hampshire* (1941) 315 US 56885 L ed 103462 S Ct 766 is nevertheless protected

against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public

inconvenience, annoyance, or unrest. See *Bridges v. California* (1941) 314 US 25286 L ed 192 62 S Ct 190 159 ALR 1346 *Craig v. Harney*

(1946) 331 US 367 91 L ed 1546 67 S Ct 1249 There is no room under our Constitution for a more restrictive view. For the alternative would

lead to standardization of ideas either by legislatures, courts, or dominant political or community groups.

58. The history of India's struggle for independence and the debates of the Constituent Assembly show how deeply our people value their

personal liberties and how those liberties are regarded as an indispensable and integral part of our Constitution. It is significant that though Parts III

and IV appear in the Constitution as two distinct fasciculus of articles, the leaders of our independence movement drew no distinction between the

two kinds of State's obligations -- negative and positive.

Both types of rights had developed as a common demand, products of the national and social revolutions, of their almost inseparable intertwining,

and of the character of Indian politics itself. The Indian Constitution: Cornerstone of a Nation by Granville Austin, p. 52." The demand for

inalienable rights traces its origin in India to the 19th Century and flowered into the formation of the Indian National Congress in 1885. Indians

demand equality with their British rulers on the theory that the rights of the subjects cannot in a democracy be inferior to those of the rulers. Out

of that demand grew the plants of equality and free speech. Those and other basic rights found their expression in Article 16 of the Constitution of

India Bill, 1895. A series of Congress resolutions reiterated that demand between 1917 and 1919. The emergence of Mahatma Gandhi on the

political scene gave to the freedom movement a new dimension: it ceased to be merely anti-British; it became a movement for the acquisition of

rights of liberty for the Indian Community. Mrs. Besant's Commonwealth of India Bill, 1925 and the Madras Congress resolution of 1928

provided a striking continuity for that movement. The Motilal Nehru Committee appointed by the Madras Congress resolution said at pp. 89-90:

It is obvious that our first care should be to have our Fundamental Rights guaranteed in a manner which will not permit their withdrawal under any

circumstances Another reason why great importance attaches to a Declaration of Rights is the unfortunate existence of communal differences in

the country. Certain safeguards are necessary to create and establish a sense of security among those who look upon each other with distrust and

suspicion. We could not better secure the full enjoyment of religious and communal rights to all communities than by including them among the

basic principles of the Constitution.

India represents a mosaic of humanity consisting of diverse religious, linguistic and caste groups. The rationale behind the insistence on fundamental

rights has not yet lost its relevance, alas or not. The Congress Session of Karachi adopted in 1931 the Resolution on Fundamental Rights as well

as on Economic and Social change. The Sapru Report of 1945 said that the fundamental rights should serve as a "standing warning" to all

concerned that:

What the Constitution demands and expects is perfect equality between one section of the community and another in the matter of political and

civic rights, equality of liberty and security in the enjoyment of the freedom of religion, worship, and the pursuit of the ordinary applications of life.

59. The Indian nation marched to freedom in this background. The Constituent Assembly resolved to enshrine the fundamental rights in the written

text of the Constitution. The interlinked goals of personal liberty and economic freedom then came to be incorporated in two separate parts,

nevertheless parts of an integral, indivisible scheme which was carefully and thoughtfully nursed over half a century. The seeds sown in the 19th

Century saw their fruition in 1950 under the leadership of Jawaharlal Nehru and Dr. Ambedkar. To destroy the guarantees given by Part III in

order purportedly to achieve the goals of Part IV is plainly to subvert the Constitution by destroying[^] its basic structure.

60. Fundamental rights occupy a unique place in the lives of civilized societies and have been variously described in our Judgments as

transcendental^{""}, "inalienable and "primordial.^{""} For us, it has been said in *Kesavananda Bharati* (1973) Supp SCR 1 (p. 991) AIR 1978 SC 1461

they constitute the ark of the Constitution.

61. The significance of the perception that Parts III and IV together constitute the core of commitment to social revolution and they, together, are

the conscience of the Constitution is to be traced to a deep understanding of the scheme of the Indian Constitution. Granville Austin's observation

brings out the true position that Parts III and IV are like two wheels of a chariot, one no less important than the other. You snap one and the other

will lose its efficacy. They are like a twin formula for achieving the social revolution, which is the ideal which the visionary founders of the

Constitution set before themselves. In other words, the Indian Constitution is founded on the bedrock of the balance between Parts III and IV. To

give absolute primacy to one over the other is to disturb the harmony of the Constitution. This harmony and balance between fundamental rights

and directive principles is an essential feature of the basic structure of the Constitution.

62. This is not mere semantics. The edifice of our Constitution is built upon the concepts crystallised in the Preamble. We resolved to constitute

ourselves into a Socialist State which carried with it the obligation to secure to our people justice--social, economic and political. We, therefore,

put part IV into our Constitution containing directive principles of State policy which specify the socialistic goal to be achieved. We promised to

our people a democratic polity which carries with it the obligation of securing to the people liberty of thought expression, belief, faith and worship;

equality of status and of opportunity and the assurance that the dignity of the individual will at all costs be preserved. We, therefore, put Part III in

our Constitution conferring those rights on the people. Those rights are not an end in themselves but are the means to an end, The end is specified

in Part IV. therefore, the rights conferred by Part III are subject to reasonable restrictions and the Constitution provides that enforcement of some

of them may, in .stated uncommon circumstances, be suspended. But just as the rights conferred by Part III would be without a radar and a

compass if they were not geared to an ideal, in the same manner the attainment of the ideals set out in Part IV would become a pretence or tyranny

if the price to be paid for achieving that ideal is human freedoms. One of the faiths of our founding fathers was the purity of means. Indeed, under

our law. even a dacoit who has committed a murder cannot be put to death in the exercise of right of self-defence after he has made good his

escape. So great is the insistence of civilised laws on the purity of means. The goals set out in Part IV have, therefore, to be achieved without the

abrogation of the means provided for by Part III. It is in this sense that Parts III and IV together constitute the core of our Constitution and combine

to form its conscience. Anything that destroys the balance between the two parts will ipso facto destroy an essential element of the basic structure

of our Constitution.

63. It is in this light that the validity of the amended Article 31C has to be examined. Article 13(2) says that the State shall not make any law which

takes away or abridges the rights conferred by Part III and any law made in contravention of that Clause shall to the extent of the contravention be

void. Article 31C begins with a non obstante Clause by putting Article 13 out of harm's way. It provides for a certain consequence notwithstanding

anything contained in Article 13. It then denudes Articles 14 and 19 of their functional utility by providing that the rights conferred by these Articles

will be no barrier against passing laws for giving effect to the principles laid down in Part IV. On any reasonable interpretation, there can be no

doubt that by the amendment introduced by Section 4 of the 42nd Amendment, Articles 14 and 19 stand abrogated at least in regard to the

category of laws described in Article 31C. The startling consequence which the amendment has produced is that even if a law in total defiance of

the mandate of Article 13 read with Articles 14 and 19, its validity will not be open to question so long as its object is to secure a directive

principle of State Policy. We are disposed to accept the submission of the learned Solicitor General, considering the two charts of cases submitted

by him, that it is possible to conceive of laws which will not attract Article 31C since they may not bear direct and reasonable nexus with the

provisions of Part IV. But, that, in our opinion, is beside the point. A large majority of laws, the bulk of them, can at any rate be easily justified as

having been passed for the purpose of giving effect to the policy of the State towards securing some principle or the other laid down in Part IV. In

respect of all such laws, which will cover an extensive gamut of the relevant legislative activity, the protection of Articles 14 and 19 will stand

wholly withdrawn. It is then no answer to say, while determining whether the basic structure of the Constitution is altered, that at least some laws

will fall outside the scope of Article 31C.

64. We have to decide the matter before us not by metaphysical subtlety, nor as a matter of semantics, but by a broad and liberal approach. We

must not miss the wood for the trees. A total deprivation of fundamental rights, even in a limited area, can amount to abrogation of a fundamental

right just as partial deprivation in every area can. An author, who writes exclusively on foreign matters, shall have been totally deprived of the right

of free speech and expression if he is prohibited from writing on foreign matters. The fact therefore that some laws may fall outside the scope of

Article 31C is no answer to the contention that the withdrawal of protection of Articles 14 and 19 from a large number of laws destroys the basic

structure of the Constitution.

65. It was repeatedly impressed upon us, especially by the Attorney General, that Article 38 of the Constitution is the king-pin of the directive

principles and no law passed in order to give effect to the principle contained therein can ever damage or destroy the basic structure of the

Constitution, That Article provides that the State shall strive to promote the welfare of the people by securing and protecting as effectively as it may

a social order in which justice, social, economic and political, shall inform all the institutions of the national life. We are unable to agree that all the

Directive Principles of State Policy contained in Part IV eventually verge upon Article 38. Article 38 undoubtedly contains a broad guideline, but

the other directive principles are not mere illustrations of the principle contained in Article 38. Secondly, if it be true that no law passed for the

purpose of giving effect to the directive principle contained in Article 38 can damage or destroy the basic structure of the Constitution, what was

the necessity, and more so the justification, for providing by a constitutional amendment that no law which is passed for giving effect to the policy of

the State towards securing any principle laid down in Part IV shall be deemed to be void on the ground that it is inconsistent with or takes away or

bridges the rights conferred by Articles 14 and 19 ? The object and purpose of the amendment of Article 31C is really to save laws which cannot

be saved under Article 19(2) to (6). Laws which fall under those provisions are in the nature of reasonable restrictions on the fundamental rights in

public interest and therefore they abridge but do not abrogate the fundamental rights. It was in order to deal with laws which do not get the

protection of Article 19(2) to (6) that Article 31C was amended to say that the provisions of Article 19, inter alia, cannot be invoked for voiding

the laws of the description mentioned in Article 31C.

66. Articles 14 and 19 do not confer any fanciful rights. They confer rights which are elementary for the proper and effective functioning of a

democracy. They are universally so regarded, as is evident from the Universal Declaration of Human Rights. Many countries in the civilised world

have parted with their sovereignty in the hope and belief that their citizens will enjoy human freedoms. And they preferred to be bound by the

decisions and decrees of foreign tribunals on matters concerning human freedoms. If Articles 14 and 19 are put out of operation in regard to the

bulk of laws which the legislatures are empowered to pass, Article 32 will be drained of its life-blood. Article 32(4) provides that the right

guaranteed by Article 32 shall not be suspended except as otherwise provided for by the Constitution. Section 4 of the 42nd Amendment found an

easy way to circumvent Article 32(4) by withdrawing totally the protection of Articles 14 and 19 in respect of a large category of laws, so that

there will be no violation to complain of in regard to which redress can be sought under Article 32. The power to take away the protection of

Article 14 is the power to discriminate without a valid basis for classification. By a long series of decisions this Court has held that Article 14

forbids class legislation but it does not forbid classification. The purpose of withdrawing the protection of Article 14, therefore, can only be to

acquire the power to enact class legislation. Then again, regional chauvinism will have a field day if Article 19(1)(d) is not available to the citizens.

Already, there are disturbing trends on a part of the Indian horizon. Those trends will receive strength and encouragement if laws can be passed

with immunity, preventing the citizens from exercising their right to move freely throughout the territory of India. The nature and quality of the

amendment introduced by Section 4 of the 42nd Amendment is therefore such that it virtually tears away the heart of basic fundamental freedoms.

67. Article 31C speaks of laws giving effect to the policy of the "State". Article 12 which governs the interpretation of Article 31C provides that

the word "State" in Part III includes the Government and Parliament of India and the Government and the Legislature of each of the States and all

local or other authorities within the territory of India or under the control of the Government of India. Wide as the language of Article 31C is, the

definition of the word "State" in Article 12 gives to Article 31C an operation of the widest amplitude. Even if a State Legislature passes a law for

the purpose of giving effect to the policy by a local authority towards securing a directive principle, the law will enjoy immunity from the provisions

of Articles 14 and 19. The State Legislatures are thus given an almost unfettered discretion to deprive the people of their civil liberties.

68. The learned Attorney General argues that the State is under an obligation to take steps for promoting the welfare of the people by bringing

about a social order in which social, economic and political justice shall inform all the institutions of the national life. He says that the deprivation of

some or the fundamental rights for the purpose of achieving this goal cannot possibly amount to a destruction of the basic structure of the

Constitution. We are unable to accept this contention. The principles enunciated in Part IV are not the proclaimed monopoly of democracies alone.

They are common to all polities, democratic or authoritarian. Every State is goal-oriented and claims to strive for securing the welfare of its people.

The distinction between the different forms of Government consists in that a real democracy will endeavour to achieve its objectives through the

discipline of fundamental freedoms like those conferred by Articles 14 and 19. Those are the most elementary freedoms without which a free

democracy is impossible and which must therefore be preserved at all costs. Besides, as observed by Brandies, J., the need to protect liberty is the

greatest when Government's purposes are beneficent. If the discipline of Article 14 is withdrawn and if immunity from the operation of that article

is conferred, not only on laws passed by the Parliament but on laws passed by the State Legislatures also, the political pressures exercised by

numerically large groups can tear the country asunder by leaving it to the legislature to pick and choose favoured areas and favourite classes for

preferential treatment.

69. The learned Attorney General and the learned Solicitor General strongly impressed upon us that Article 31C should be read down so as to

save it from the challenge of unconstitutionality. It was urged that it would be legitimate to read into that Article the intendment that only such laws

would be immunised from the challenge under Articles 14 and 19 as do not damage or destroy the basic structure of the Constitution. The principle

of reading down the provisions of a law for the purpose of saving it from a constitutional challenge is well-known. But we find it impossible to

accept the contention of the learned Counsel in this behalf because, to do so will involve a gross distortion of the principle of reading down,

depriving that doctrine of its only or true rationale when words of width are used inadvertently. The device of reading down is not to be resorted to

in order to save the susceptibilities of the law makers, nor indeed to imagine a law of one's liking to have been passed. One must at least take the

Parliament at its word when, especially, it undertakes a constitutional amendment.

70. Mr. Palkhivala read out to us an extract from the speech of the then Law Minister who, while speaking on the amendment to Article 31C, said

that the amendment was being introduced because the government did not want the let and hindrance"" of the fundamental rights. If the Parliament

has manifested a clear intention to exercise an unlimited power, it is impermissible to read down the amplitude of that power so as to make it

limited. The principle of reading down cannot be invoked or applied in opposition to the clear intention of the legislature. We suppose that in the

history of the constitutional law, no constitutional amendment has ever been read down to mean the exact opposite of what it says and intends. In

fact, to accept the argument that we should read down Article 31C, so as to make it conform to the ratio of the majority decision in Kesavananda

Bharati AIR 1978 SC 1461 is to destroy the avowed purpose of Article 31C as indicated by the very heading ""Saving of certain laws under which

Articles 31A, 31B and 31C are grouped. Since the amendment to Article 31C was unquestionably made with a view to empowering the

legislatures to pass laws of a particular description even if those laws violate the discipline of Articles 14 and 19, it seems to us impossible to hold

that we should still save Article 31C from the challenge of unconstitutionality by reading into that Article words which destroy the rationale of that

Article and an intendment which is plainly contrary to its proclaimed purpose.

71. A part of the same argument was pressed upon us by the learned Additional Solicitor General who contended that it would still be open to the

Courts under Article 31C to decide four questions: i) Does the law secure any or the directive principles of the State policy? (ii) Is it necessary to

encroach upon fundamental rights in order to secure the object of the directive principles? (iii) What is the extent of such encroachment, if any? and

(iv) Does that encroachment violate the basic structure of the Constitution?

72. This argument is open to the same criticism to which the argument of the learned Attorney General is open and which we have just disposed of

, Reading the existence of an extensive judicial review into Article 31C is really to permit the distortion of the very purpose of that article. It

provides expressly that no law of a particular description shall be deemed to be void on the ground that it violates Article 14 or Article 19. It

would be sheer adventurism of a most extraordinary nature to undertake the kind of judicial enquiry which, according to the learned Additional

Solicitor General, the courts are free to undertake.

73. We must also mention, what is perhaps not fully realised, that Article 31C speaks of laws giving effect to the ""Policy of the State"", ""towards

securing all or any of the principles laid down in Part IV."" In the very nature of things it is difficult for a court to determine whether a particular law

gives effect to a particular policy. Whether a law is adequate enough to give effect to the policy of the State towards securing a directive principle

is always a debatable question and the courts cannot set aside the law as invalid merely because, in their opinion, the law is not adequate enough to

give effect to a certain policy. In fact, though the clear intent of Article 31C is to shut out all Judicial review, the argument of the learned

Additional Solicitor General calls for a doubly or trebly extensive judicial review than is even normally permissible to the courts. Be it be

remembered that the power to enquire into the question whether there is a direct and reasonable nexus between the provisions of a law and a

directive principle cannot confer upon the courts the power to sit in judgment over the policy itself of the State. At the highest, courts can, under

Article 31C, satisfy themselves as to the identity of the law in the sense whether it bears direct and reasonable nexus with a directive principle. If

the court is satisfied as to the existence of such nexus, the inevitable consequence provided for by Article 31C must follow. Indeed, if there is one

topic on which all the 13 Judges in Keshvananda Bharati (Supra) were agreed, it is this: that the only question open to judicial review under the un-

amended Article 31C was whether there is a direct and reasonable nexus between the impugned law and the provisions of Article 38(b) and (c).

Reasonableness is evidently regarding the nexus and not regarding the law. It is therefore impossible to accept the contention that it is open to the

courts to undertake the kind of enquiry suggested by the Additional Solicitor General. The attempt therefore to drape Article 31C into a

democratic outfit under which an extensive judicial review would be permissible must fail.

74. We should have mentioned that a similar argument was advanced in regard to the amendment effected by Section 56 of the 42nd Amendment

to Article 368, by the addition of Clauses (4) and (5) therein. It was urged that we should so construe the word "amendment" in Clause (4) and the

word "amend" in Clause (5) as to comprehend only such amendments as do not destroy the basic structure of the Constitution. That argument

provides a striking illustration of the limitations of the doctrine of reading down. The avowed purpose of Clauses (4) and (5) of Article 368 is to

confer power upon the Parliament to amend the Constitution without any "limitation whatever". Provisions of this nature cannot be saved by

reading into them words and intendment of a diametrically opposite meaning and content.

75. The learned Attorney General then contends that Article 31C should be upheld for the same reasons for which Article 31A(1) was upheld.

Article 31A(1) was considered as a contemporaneous practical exposition of the Constitution since it was inserted by the very First Amendment

which was passed in 1951 by the same body of persons who were members of the Constituent Assembly. We can understand that Article 31A

can be looked upon as a contemporaneous practical exposition of the intendment of the Constitution, but the same cannot be said of Article 31C.

Besides, there is a significant qualitative difference between the two Articles. Article 31A, the validity of which has been recognised over the years,

excludes the challenge under Articles 14 and 10 in regard to a specified category of laws. If by a constitutional amendment, the application of

Articles 14 and 19 is withdrawn from a defined field of legislative activity, which is reasonably in public interest, the basic framework of the

Constitution may remain unimpaired. But if the protection of those articles is withdrawn in respect of a nuncatalogued variety of laws, fundamental

freedoms will become a "parchment in a glass case" to be viewed as a matter of historical curiosity.

76. An attempt was made to equate the provisions of Article 31C with those of Article 31A in order to lend plausibility to the contention that since

Article 31A was also upheld on the ground of stare decisis, Article 31C can be upheld on the same ground. We see no merit in this contention. In

the first place, as we have indicated above, the five matters which are specified in Article 31A are of such quality, nature, content and character

that at least a debate can reasonably arise whether abrogation of fundamental rights in respect of those matters will damage or destroy the basic

structure of the Constitution. Article 31C does not deal with specific subjects. The directive principles are couched in broad and general terms for

the simple reason that they specify the goals to be achieved. Secondly, the principle of stare decisis cannot be treated as a fruitful source of

perpetuating curtailment of human freedoms. No court has upheld the validity of Article 31A on the ground that it does not violate the basic

structure of the Constitution". There is no decision on the validity of Article 31A which can be looked upon as a measuring rod of the extent of the

amending power. To hark back to Article 31A every time that a new constitutional amendment is challenged is the surest means of ensuring a

drastic erosion of the fundamental rights conferred by Part III. Such a process will insidiously undermine the efficacy of the ratio of the majority

judgment in *Keshvananda Bharati* (Supra) regarding the inviolability of the basic structure. That ratio requires that the validity of each new

constitutional amendment must be judged on its own merits.

77. Nor indeed are we impressed by a limb of the same argument that when Article 31A was upheld on the ground of stare decisis, what was

upheld was a constitutional device by which a class of subject-oriented laws was considered to be valid. The simple ground on which Article 31A

was upheld, apart from the ground of contemporaneous practical exposition, was that its validity was accepted and recognised over the years and,

therefore, it was not permissible to challenge its constitutionality. The principle of stare decisis does not imply the approval of the device or

mechanism which employed for the purpose of framing a legal or constitutional provision.

78. It was finally urged by the learned Attorney General that if we uphold the challenge to the validity of Article 31C, the validity of Clauses (2) to

(8) of Article 19 will be gravely imperilled because those Clauses will also then be liable to be struck down as abrogating the rights conferred by

Article 19(1) which are an essential feature of the Constitution. We are unable to accept this contention. Under Clauses (2) to (6) of Article 19,

restrictions can be imposed only if they are reasonable and then again, they can be imposed in the interest of a stated class of subjects only. It is for

the courts to decide whether restrictions are reasonable and whether they are in the interest of the particular subject, Apart from other basic

dissimilarities, Article 31C takes away the power of judicial review to an extent which destroys even the semblance of a comparison between its

provisions and those of Clauses (2) to (6) of Article 19. Human ingenuity, limitless though it may be, has yet not devised a system by which the

liberty of the people can be protected except through the intervention of courts of law.

79. Three Articles of our Constitution, and only three, stand between the heaven of freedom into which Tagore wanted his country to awake and

the abyss of unrestrained power. They are Articles 14, 19 and 21. Article 31C has removed two sides of that golden triangle which affords to the

people of this country an assurance that the promise held forth by the Preamble will be performed by ushering an egalitarian era through the

discipline of fundamental rights, that is, without emasculating the rights to liberty and equality which alone can help preserve the dignity of the

individual,

80. These then are our reasons for the order which we passed on May 9, 1980 to the following effect:

Section 4 of the Constitution 42nd Amendment Act is beyond the amending power of the Parliament and is void since it damages the basic or

essential features of the Constitution and destroys its basic structure by a total exclusion of challenge to any law on the ground that it is inconsistent

with, or takes away or abridges any of the rights conferred by Article 14 or Article 19 of the Constitution, if the law is for giving effect to the policy

of the State towards securing all or any of the principles laid down in Part IV of the Constitution.

Section 55 of the Constitution 42nd Amendment Act is beyond the amending power of the Parliament and is void since it removes all limitations on

the power of the Parliament to amend the Constitution and confers power upon it to amend the Constitution, so as to damage or destroy its basic

or essential features or its basic structure.

81. There will be no order as to costs.

P.N. Bhagwati, J.

82. The petitioners in Writ Petitions Nos. 656 and 600 (?) of 1977, *Wamanrao v. The Union of India* (hereinafter referred to as *Wamanrao's*

case) and other allied petitions have challenged the constitutional validity of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act 1961

(hereinafter "referred to as the principal Act) as amended by the Maharashtra Agricultural Lands (Lowering of Ceiling on Holdings) and

(Amendment) Act 1972 (hereinafter referred to as Act 21 of 1975) and the Maharashtra Agricultural Lands (Lowering of Ceiling on Holdings)

and (Amendment) Act 1975 (hereinafter referred to as Act 47 of 1975) and the Maharashtra Agricultural Lands (Ceiling on Holdings)

Amendment Act 1975 (hereinafter referred to as Act 2 of 1976) on the ground that the amended provisions of the Act are violative of Articles 14,

19(1)(f), 31 and 31A of the Constitution. We shall hereafter for the sake of convenience refer to the Principal Act as duly amended by the

subsequent Acts 21 of 1975, 47 of 1975 and 2 of 1976 as the impugned "legislation". It is not necessary for the purpose of this opinion to set out

the relevant provisions of the impugned legislation but it is sufficient to state that it imposed a maximum ceiling on the holding of agricultural land in

the State of Maharashtra and provided for acquisition of land held in excess of the ceiling and for the distribution of such excess land to landless

and other persons with a view to securing the distribution of agricultural land in a manner which would best subserve the common good of the

people. The impugned legislation recognised two units for the purpose of ceiling on holding of agricultural land. One was "person" which by its

definition in Section 2, Sub-section (2) included a family and "family" by virtue of Section 2 Sub-section (11) included a Hindu Undivided Family

and in the case of other persons, a group or unit the members of which by custom or usage, are joint in a estate or possession or residence and the

other was "family unit which according to its definition in Section 2(11A) read with Section 2, meant a person and his spouse and their minor sons

and minor unmarried daughters. The impugned legislation created an artificial concept of a "family unit" for the purpose of applicability of the ceiling

and provided that all lands held by each member of the family unit whether jointly or separately shall be aggregated together and by a fiction of law

deemed to be held by the family unit. There were also certain provisions in the impugned legislation which prohibited transfers and acquisitions of

agricultural land with a view to effectuating the social policy and economic mission of the law. The impugned legislation also contained provisions

prescribing the machinery for implementation of its substantive provisions, Now plainly and unquestionably this was a piece of legislation relating to

agrarian reform and was immunised against challenge under Articles 14-19 and 31 by the protective cloak of Article 31A but even so, by way of

abundant caution, it was given additional protection of Article 31B by including the Principal Act and the subsequent amending Acts in the 9th

Schedule: vide the Constitution (Seventeenth Amendment) Act 1964 and the Constitution (fortieth Amendment) Act, 1976. The drastic effect of

the impugned legislation was to deprive many land-holders of large areas of agricultural lands held by them. Some of them, therefore, preferred

writ petitions in the High Court of Bombay at Nagpur challenging the constitutional validity of the impugned legislation and on the challenge being

negatived by the High Court, they preferred appeals in this Court. The only contention advanced on behalf of the land-holders in support of the

appeals was that the impugned legislation in so far as it introduced an artificial concept of a "family unit" and fixed ceiling on holding of land by such

family unit was violative of the second proviso to Clause (1) of Article 31A and was not saved from invalidation by the protective armour of Article

31B. This contention was negatived by the Constitution Bench and it was held that the impugned legislation did not, by creating an artificial concept

of a family unit and fixing ceiling on holding of land by such family unit, conflict with the second proviso to Clause (1) of Article 31A and even if it

did contravene that proviso, it was protected by Article 31B since the principal Act as well as the subsequent amending Acts were included in the

9th Schedule vide *Dattatraya Govind Mahajan v. State of Maharashtra*. Now at the time when this batch of cases was argued before the Court,

the emergency was in operation and hence it was not possible for the landholders to raise many of the contentions which they could otherwise have

raised and, therefore, as soon as the emergency was revoked, the landholders filed review petitions in this Court against the decision in *Dattatraya*

Govind Median's case and also preferred direct writ petitions in this Court challenging once again the constitutional validity of the impugned

legislation. Now concededly, Article 31A provided complete immunity to the impugned legislation against violation of Articles 14, 19 and 31 and

Article 31B read with the 9th Schedule protected the impugned legislation not only against violation of Articles 14, 19 and 31 but also against

infraction of the second proviso to Clause (1) of Article 31A. Moreover, the impugned legislation being manifestly one for giving effect to the

Directive Principles contained in Article 39 Clause (b) and (c), it was also protected against invalidation by Article 31C. The petitioners could not

therefore successfully assail the constitutional validity of the impugned legislation unless they first pierced the protective armour of Articles 31A,

31B and 31C. The petitioners sought to get Articles 31A, 31B and 31C out of the way by contending that they of fended against the basic

structure of the Constitution and were, therefore, outside the constituent power of Parliament under Article 368 and hence unconstitutional and

void. The argument of the petitioners was that these constitutional amendments in the shape of Articles 31A, 31B and 31C being invalid, the

impugned legislation was required to meet the challenge of Articles 14, 19(1)(f), 31 and 31A and tested on the touchstone of these constitutional

guarantees, the impugned legislation was null and void. The first and principal question which, therefore, arose for consideration in these cases was

whether Articles 31A, 31B and 31C are ultra vires and void as damaging or destroying the basic structure of the Constitution. We may point out

here that we were concerned in these cases with the constitutional validity of Article 31C as it stood prior to its amendment by the Constitution

(Forty-Second Amendment) Act, 1976, because it was the unamended Article 31C which was in force at the dates when the amending Acts were

passed by the legislature amending the principal Act, These cases were heard at great length with arguments ranging over large areas, and lasting

for over five weeks and we reserved judgment on 8th March 1979. Unfortunately, we could not be ready with our judgment and hence on 9th

May 1980 being the last working day of the Court before the summer vacation we made an order expressing our conclusion but stating that we

would give our reasons later. By this order we held that Article 31A does not damage any of the basic or essential features of the Constitution or

its basic structure and is therefore valid and constitutional and so is Article 31C as it stood prior to its amendment by the Constitution (Forty-

Second Amendment) Act, 1978 valid to the extent its constitutionality was upheld in Kesavananda Bharati's case. So far as Article 31B is

concerned, we said that Article 31B as originally introduced was valid and so also are all subsequent amendments including various Acts and

Regulations in the 9th Schedule from time to time up to 24th April 1973 when Kesavananda Bharati's case was decided. We did not express any

final opinion on the constitutional validity of the amendments made in the 9th Schedule on or after 24th April 1973 but we made it clear that these

amendments would be open to challenge on the ground that they or any one or more of them damage the basic or essential features of the

Constitution or its basic structure, and are therefore, outside the constituent power of Parliament. This was the Order made by us on 9th May,

1980 and for reasons which I shall mention presently, I propose to set out in this judgment my reasons for subscribing to this Order.

83. So far as Minerva Mills" Case is concerned, the challenge of the petitioners was directed primarily against an order dated 19th October, 1971

by which the Government of India, in exercise of the power conferred u/s 18A of the Industries (Development and Regulation) Act, 1951,

authorised the taking over of the management of the industrial undertaking of the petitioners by the National Textile Corporation and the Sick

Textile Undertakings (Nationalisation) Act 1974 (hereinafter referred to as the Nationalisation Act) by which the entire Industrial undertaking and

the right, title and interest of the petitioners in it stood transferred to and vested in the Central Government on the appointed date. We are not

concerned for the purpose of the present opinion with the challenge against the validity of the Order dated 19th October, 1971, for the question

which has been argued before us arises only out of the attack against the constitutionality of the Nationalisation Act. The petitioners challenged the

constitutional validity of the Nationalisation Act inter alia on the ground of infraction of Articles 14, 19(1)(f) and (g) and 31 Clause (2), but since

the Nationalisation Act has been included in the 9th Schedule by the Constitution (Thirty-ninth Amendment) Act, 1975, the petitioners also

attacked the constitutionality of the Constitution (Thirty-ninth Amendment) Act, 1975, for it is only if they could get the Nationalisation Act out

from the protective wing of Article 31B by persuading the Court to strike down the Constitution (Thirty-ninth Amendment) Act, 1975, that they

could proceed with their challenge against the constitutional validity of the Nationalisation Act. Now Clauses (4) and (5) which were introduced in

Article 368 by Section 55 of the Constitution (Forty-second Amendment) Act, 1976 and which were in force at the date of the filing of the writ

petitions provided that no amendment of the Constitution made or purported to have been made whether Before or after the commencement of

that section shall be called in question in any Court on any ground and barred judicial review of the validity of a constitutional amendment.

Obviously, if these two Clauses were validly included in Article 338, they would stand in the way of the petitioners challenging the constitutional

validity of the Constitution (Thirty-ninth Amendment) Act, 1975. The petitioners were, therefore, compelled to go further and impugn the

constitutional validity of Section 55 of the Constitution (Forty-second Amendment) Act, 1976. This much challenge, as I shall presently point out,

would have been sufficient to clear the path for the petitioners in assailing the constitutional validity of the Nationalisation Act, but the petitioners,

not resting content with what was strictly necessary, proceeded also to challenge Section 4 of the Constitution (Forty-second Amendment) Act,

1976 which amended Article 31C. There were several grounds on which the constitutional validity of the Constitution (Forty-second Amendment)

Act, 1976 was impugned in the writ petitions and I shall refer to them when I deal with the arguments advanced on behalf of the parties. Suffice it

to state for the present, and this is extremely important to point out, that when the writ petitions reached hearing before us, Mr. Palkhiwala, learned

Counsel appearing on behalf of the petitioners requested the Court to examine only one question, namely, whether the amendments made in Article

31C and Article 368 by Sections 4 and 55 of the Constitution (Forty-second Amendment) Act, 1976 were constitutional and valid and submitted

that if these constitutional amendments were held invalid, then the other contentions might be examined by the Court at a later date. He conceded

before us, in the course of the arguments, that he was accepting the constitutional validity of Articles 31A, 31B and the unamended Article 31C

and his only contention vis-a-vis Article 31C was that it was the amendment made in Article 31C which had the effect of damaging or destroying

the basic structure of the Constitution and that amendment was, therefore, beyond the constituent power of Parliament. The learned Attorney

General on behalf of the Union of India opposed this plea of Mr. Palkhiwala and urged by way of preliminary objection that though the question of

constitutional validity of Clause (4) and (5) of Article 368 introduced by way of amendment by Section 55 of the Constitution (Forty-second

Amendment) Act, 1976 undoubtedly arose before the Court and it was necessary for the Court to pronounce upon it, the other question in regard

to the constitutional validity of the amendment made in Article 31C did not arise on the writ petitions and the counter-affidavits and it was wholly

academic and superfluous to decide it. This preliminary objection raised by the learned Attorney General was in my opinion well founded and

deserved to be sustained. Once Mr. Palkhiwala conceded that he was not challenging the constitutionality of Article 31C, Article 31B and the

unamended Article 31C and was prepared to accept them as constitutionally valid, it became wholly unnecessary to rely on the amended Article

31C in support of the validity of the Nationalisation Act, because Article 31B would, in any event, save it from invalidation on the ground of

infringement of any of the Fundamental Rights. In fact, if we look at the counter-affidavit filed by Mr. T. S. Sahani, Deputy Secretary, Government of

India in reply to the writ petitions, we find that no reliance has been placed on behalf of the Government on the amended Article 31C. The case of

the Union of India is and that is supported by the legislative declaration contained in Section 39 of the Nationalisation Act, that this Act was

enacted for giving effect to the policy of the State towards securing the principles specified in Clause (b) of Article 39 of the Constitution. Neither

the Union of India in its counter-affidavit nor the learned Attorney General in the course of his arguments relied on any other Directive Principle

except that contained in Article 39 Clause (b). Mr. Palkhiwala also did not make any attempt to relate the Nationalisation Act to any other

Directive Principle of State Policy. Now either the Nationalisation Act was really and truly a law for giving effect to the Directive Principle set out

in Article 39 CLAUSE (b) as declared in Section 39 or it was not such a law and the legislative declaration contained in Section 39 was a

colourable device. If it was the former, then the unamended Article 31C would be sufficient to protect the Nationalisation Act from attack on the

ground of violation of Articles 14, 19 and 31 and it would be unnecessary to invoke the amended Article 31C and if it was the latter, then neither

the unamended nor the amended Article 31C would have any application. Thus, in either event, the amended Article 31C would have no relevance

at all in adjudicating upon the constitutional validity of the Nationalisation Act. It is difficult to see how, in these circumstances, the Court could be

called upon to examine the constitutionality of the amendment made in Article 31C that question just did not arise for consideration and it was

wholly unnecessary to decide it. Mr. Palkhiwala could reach the battle front for challenging the constitutional validity of the Nationalisation Act as

soon as he cleared the road blocks created by the un-amended Article 31C and the Constitution (Thirty-ninth Amendment) Act 1975 bringing the

Nationalisation Act within the protective wing of Article 31B and it was not necessary for him to put the amendment in Article 31C out of the way

as it did not block his challenge against the validity of the Nationalisation Act. I am, therefore, of the view that the entire argument of Mr. Palkhiwala

raising the question of constitutionality of the amendment in Article 31C was academic and the Court could have very well declined to be drawn

into it, but since the Court did, at the invitation of Mr. Palkhiwala, embark upon this academic exercise and spent considerable time over it, and the

issues raised are also of the gravest significance to the future of the nation, I think, I will be failing in my duty if I do not proceed to examine this

question on merits,

84. I may point out at this stage that the arguments on this question were spread over a period of about three weeks and considerable learning

and scholarship were brought to bear on this question on both sides. The hearing of the arguments commenced on 22nd October 1979 and it

ended on 16th November 1979. I hoped that after the completion of the argument on questions of such momentous significance, there would be a

"free and frank exchange of thoughts" in a judicial conference either before or after the draft judgment was circulated by my Lord the Chief Justice

and I would either be able to share the views of my colleagues or if that was not possible, at least try to persuade them to agree with my point of

view. But, I find myself in the same predicament in which the learned Chief Justice found himself in *Keshavananda Bharti v. State of Kerala*. The

learned Chief Justice started his judgment in that case by observing.

I wanted to avoid writing a separate judgment of my own but such a choice seems no longer open. We sat in full strength of 13 to hear the case

and I hoped that after a free and frank exchange of thoughts, I would be able to share the views of some one or the other of my esteemed

brothers, but we were over-taken by adventitious circumstances," namely, so much time was taken up by counsel to explain their respective points

of view that very little time was left to the Judges "after the conclusion of the arguments, for exchange of draft judgments . Here also, I am

compelled by similar circumstances, though not adventitious, to hand down a separate opinion without having had an opportunity to discuss with

my colleagues the reasons which weighed with them in striking down the impugned constitutional amendments. Somehow or other, perhaps owing

to extraordinary pressure of work with which this Court is overburdened, no judicial conference or discussion was held nor was "any draft

judgment circulated which could form the basis of discussion, though, as pointed out above, the hearing of the arguments concluded as far back as

16th November, 1979. It was only on 7th May, 1980, just two days before the closing of the Court for summer vacation, that I was informed by

the learned Chief Justice that he and the other three learned Judges, who had heard this case alone with me, had decided, to pass an Order

declaring the impugned constitutional amendments ultra vires and void on the ground that they violated the basic features of the Constitution and

that the reasons for this Order would be given by them later. I found it difficult to persuade myself to adopt this procedure, because there had been

no judicial conference or discussion amongst the Judges where there could be free and frank exchange of views nor was any draft judgment

circulated and hence I did not have the benefit of knowing the reasons why the learned Chief Justice and the other three learned judges were

inclined to strike down the constitutional amendments. If there had been a judicial conference or discussion or the draft judgment setting out the

reasons for holding the impugned constitutional amendments ultra vires and void had been circulated, it would have been possible for me as a result

of full and frank discussion or after considering the reasons given in the draft judgment, either to agree with the view taken by my Lord the Chief

Justice and the other three learned judges or if I was not inclined so to agree, then persuade them to change their view and agree with mine. That is

the essence of judicial collectivism. It is, to my mind, essential that a judgment of a Court should be the result of collective deliberation of the judges

composing the Court and it would, in my humble opinion, not be in consonance with collective decision making, if one or more of the judges con-

stituting the Bench proceed to say that they will express their individual opinion, ignoring their colleagues and without discussing the reasons with

them and even without circulating their draft judgement so that the colleagues have no opportunity of participating in the collective decision making

process. This would introduce a chaotic situation in the judicial process and it would be an unhealthy precedent which this Court as the highest

Court in the land--as a model judicial institution which is expected to set the tone for the entire judiciary in the country -- should not encourage.

Moreover, I felt that it was not right to pronounce an Order striking down a constitutional amendment without giving a reasoned judgment.

Ordinarily, a case can be disposed of only by a reasoned judgment and the Order must follow upon the judgment. It is true that sometimes where

the case involves the liberty of the citizen or the execution of a death sentence or where the time taken in preparing a reasoned judgment might

prejudicially affect the winning party, this Court, does, in the larger interests of justice pronounce an order and give reasons later, but these are

exceptional cases where the requirements of justice induce the Court to depart from the legally sanctioned course. But, there (sic-here?) the court

had in fact waited for about 5 1/2 months after the conclusion of the arguments and there was clearly no urgency which required that an order

should be made though reasons were not ready; the delay of about 2% months in making the order was not going to injure the interests of any

party, since the order was not going to dispose of the writ petition and many issues would still remain to be decided which could be dealt only after

the summer vacation. Thus there would have been no prejudice to the interests of justice if the order had been made on the re-opening of the

Court after the summer vacation supported by a reasoned judgment. These were the reasons which compelled me to make my Order dated 9th

May, 1980 declining to pass an unreasoned order pronouncing on the validity of the impugned constitutional amendments and stating that I would

prefer to pass a final order in this case when I deliver my reasoned judgment"". This order unfortunately led to considerable misunderstanding of

my position and that is the reason why I have thought it necessary to explain briefly why I acted in the manner I did.

85. There is also one other predicament from which I suffer in the preparation of this opinion. It is obvious that the decision of the questions arising

in Wamanrao's case is closely and integrally connected with the decision of the questions in Minerva Mills" case and therefore, logically as also

from the point of view of aesthetics and practical pragmatics, there should be one opinion dealing with the questions in both the cases. But the

Minerva Mills" case was heard by a Bench of five Judges different from the Bench which heard Wamanrao's case- Wamanrao's case was heard

by a Bench consisting of the learned Chief Justice, myself, Krishna Iyer, J., Tulzapurkar, J. and A. P. Sen, J. while Krishna Iyer J., Tulzapurkar, J.

and A P Sen, T were not members of the Bench which heard the Minerva Mills" case. Since two different Benches heard these cases, there would

ordinarily have to be two opinions, one in each case. I however, propose to write a single opinion dealing with the questions arising in both cases,

since that is the only way in which I think I can present an integrated argument in support of my view, without becoming unduly and unnecessarily

repetitive.

86. The principal question that arises for consideration in these two cases is whether Article 31A, Article 31B read with the 9th Schedule as

amended from time to time and particularly by the Constitution (Seventeenth Amendment) Act, 1964 and the Constitution (Fortieth Amendment)

Act, 1976, Article 31C as it stood prior to its amendment by the Constitution (Forty-second Amendment) Act, 1976 and the amended Article

31C are constitutionally valid; do they fall within the scope of the amending power of Parliament under Article 368. The determination of this

question depends on the answer to the larger question as to whether there are any limits on the amending power of Parliament under Article 368

and if so, what are the limits. This question came up for consideration before a Bench of 13 Judges of this Court the largest Bench that ever sat --

and after a hearing which lasted for 68 days--the longest hearing that ever took place--eleven judgments were delivered which are reported in

Keshavananda Bharti v. State of Kerala (supra). The earlier decision of this Court in I.C. Golaknath & Ors. v. State of Punjab where by a majority

of six against five the fundamental rights were held to be unamendable by Parliament under Article 368, was overruled as a result of the decision in

Kesavananda Bharati's case. But, six out of the thirteen learned Judges (Sikri, C. J. Shelat, Grover, Hegde, Reday and Mukherjea, JJ.) accepted

the contention of the petitioners that though Article 368 conferred power to amend the Constitution, there were inherent or implied limitations on

the power of amendment and therefore Article 368 did not confer power on Parliament to amend the Constitution so as to destroy or emasculate

the essential or basic elements of features of the Constitution. The fundamental rights according to the view taken by these six learned Judges,

constituted basic or essential features of the Constitution and they could not be, therefore, abrogated or emasculated in the exercise of the

amending power conferred by Article 368. though a reasonable abridgment of those rights could be effected in the public interest. Khanna, J.

found it difficult in the face of the clear words of Article. 368 to exclude from their operation Articles relating to fundamental rights and he held that.

The word "amendment" in Article 368 must carry the same meaning whether the amendment relates to taking away or abridging fundamental rights

in Part III of the Constitution or whether it pertains to some other provision outside Part III of the Constitution.

But proceeding to consider the meaning of the word "amendment", the learned Judge held that the power to amend does not include the power to

abrogate the Constitution, that the word "amendment" postulates that the existing Constitution must survive without loss of identity, that it must be

retained though in an amended form, and therefore, the power of amendment does not include the power to destroy or abrogate the basic structure

or framework of the Constitution. 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 limitation that the entire Constitution could not be abrogated, leaving behind a state without a

Constitution. Now some scholars have expressed the view that from the welter of confusion created by eleven judgments minning over a thousand

pages, it is not possible to extract any ratio decidendi which could be said to be the law declared by the Supreme Court. It is no doubt true that the

six Judges led by Sikri, C. J., have read a limitation on the amending power of Parliament under Article 368 and so has Khanna, J., but according

to these scholars, the six Judges led by Sikri, C. J. have employed the formulations "basic features" and "essential elements" while Khanna, J. has

employed the formulation "basic structure and framework" to indicate what in each view is immune from the amendatory process and it is argued

that "basic features" and "essential elements" cannot be regarded as synonymous with "basic structure and framework". These scholars have sought

to draw support for their view from the following observation of Khanna, J. at p. 706 of the Report:

It is then argued on behalf of the petitioners that essential features of the Constitution cannot be changed as a result of amendment. So far as the

expression "essential features" means the basic structure or framework of the Constitution, I have already dealt with the question as to whether the

power to amend the Constitution would include within itself the power to change the basic structure or framework of the Constitution. Apart from

that, all provisions of the Constitution are subject to amendatory process and cannot claim exemption from that process by being described

essential features.

Whatever be the justification for this view on merits, I do not think that this observation can be read as meaning that in the opinion of Khanna, J.

basic structure or framework" as contemplated by him was different from "basic features" or "essential elements" spoken of by the other six

learned Judges. It was in the context of an argument urged on behalf of the petitioners that the "essential features" of the Constitution cannot be

changed that this observation was made by Khanna, J. clarifying that if the "essential features" meant the "basic structure or framework" of the

Constitution, the argument of the petitioners would be acceptable, but if the "essential features" did not form part of the "basic structure or

framework" and went beyond it, then they would not be immune from the amendatory process. But it does appear from this observation that the

six Judges led by Sikri, C. J. on the one hand and Khanna, J. on the other were not completely ad idem as regards the precise scope of the

limitation on the amendatory power of Parliament. This might have raised a serious argument as to whether there, any ratio decidendi at all can be

culled out from the judgments in this case in so far as the scope and ambit of the amendatory power of Parliament is concerned. A debatable

question would have arisen whether "basic and essential features" can be equated with "basic structure or framework" of the Constitution and if

they cannot be, then can the narrower of these two formulations be taken to represent the common ratio. But it is not necessary to examine this

rather difficult and troublesome question, because, I find that in Smt. Indira Gandhi vs. Raj Narain a Bench of five Judges of "this Court accepted

the majority view in Kesavananda Bharati's case to be that the amending power conferred under Article 368, though wide in its sweep and

reaching every provision of the Constitution, does not enable Parliament to alter the basic structure or framework of the Constitution; Since this is

how the judgments in Kesavananda Bharati's case have been read and a common ratio extracted by a Bench of five Judges of this Court, it is

binding upon me and hence I must proceed to decide the questions arising in these cases in the light of the principle emerging from the majority

decision that Article 368 does not confer power on Parliament to alter the basic structure or framework of the Constitution. I may mention in the

passing that the summary of the judgments given by nine out of the thirteen Judges after the delivery of the judgments also states the majority view

to be that "Article 368 does not enable Parliament to alter the basic structure or framework of the Constitution." of course, in my view this

summary signed by nine Judges has no legal effect at all and cannot be regarded as law declared by the Supreme Court under Article 141. It is

difficult to appreciate what jurisdiction or power these nine Judges had to give a summary setting out the legal effect of the eleven judgments

delivered in the case. Once the judgments were delivered these nine Judges as also the remaining four became *in dictu officio* and thereafter they

had no authority to cull out the ratio of the judgments or to state what, on a proper analysis of the judgments, was the view of the majority. What

was the law laid down was to be found in the judgments and that task would have to be performed by the Court before whom the question would

arise as to what is the law laid down in Kesavananda Bharati's case. The Court would then hear the arguments and dissect the judgments as was

done in Smt. Indira Gandhi's case (*supra*) and then decide as to what is the true ratio emerging from the judgments which is binding upon the

Court as law laid down under Article 141. But here it seems that the nine Judges set out in the summary what according to them was the majority

view without hearing any arguments. This was a rather unusual exercise, though well-intentioned. But quite apart from the validity of this exercise

embarked upon by the nine Judges, it is a little difficult to understand how a proper and accurate summary could be prepared by these judges

when there was not enough time, after the conclusion of the arguments, for an exchange of draft judgments amongst the Judges and many of them

did not even have the benefit of knowing fully the views of others. I may, therefore, make it clear that I am not relying on the statement of the

majority view contained in the summary given at the end of the judgments in Kesavananda Bharati's case, but I am proceeding on the basis of the

view taken in Smt. Indira Gandhi's case as regards the ratio of the majority decision in Kesavananda Bharati's case.

87. I may also at this stage refer to an argument advanced before us on the basis of certain observations in the judgment of Khanna, J. that he

regarded fundamental rights as not forming part of the basic structure, of the Constitution and therefore, according to him, they could be

abrogated or taken away by Parliament by an amendment made under Article 368. If this argument were correct, the majority holding in

Keshavanda Bharti's case would have to be taken to be that the fundamental right could be abrogated or destroyed in exercise of the power

of amendment, because Ray, J. Palekar, J., Mathew, J., Beg, L., Dwivedi, I. and Chandrachud, J. took the view that the power of amendment

being unlimited, it was competent to Parliament in exercise of this power to abrogate or emasculate the Fundamental Rights and adding the view of

Khanna, J., there would be 7 Judges as against 6 in holding that the Fundamental Rights could be abrogated or taken away by Parliament by a

constitutional amendment. But we do not think that this submission urged on behalf of the respondents is well founded. It is undoubtedly true that

there are certain observations in the Judgment of Khanna, J. at the bottom of page 688 of the Report which seem to suggest that according to the

learned Judge, the fundamental rights could be abridged or taken away by an amendment under Article 368. For example, he says:

No serious objection is taken to repeal, addition or alteration of provisions of the Constitution other than those in Part III under the power of

amendment conferred by Article 368. The same approach in my opinion should hold good when we deal with amendment relating to Fundamental

Rights contained in Part III of the Constitution. It would be impermissible to differentiate between the scope and width of the power of amendment

when it deals with Fundamental Rights and the scope and width of that power when it deals with provisions not concerned with Fundamental

Rights.

Then again at page 707 of the Report, the learned judge rejects the argument that the core and essence of a Fundamental Right is immune from the

amendatory process. These observations might at first blush appear to support the view that, according to Khanna, J., the amendatory power

under Article 368 was sufficiently wide to comprehend not only addition or alteration but also repeal of a Fundamental Right resulting in its total

abrogation. But if we look at the judgment of Khanna, J. as a whole, we do not think this argument can be sustained. It is clear that these

observations were made by the learned Judge with a view to explaining the scope and width of the power of amendment under Article 38. The

learned Judge held that the amendatory power of Parliament was wide enough to reach every provision of the Constitution including the

Fundamental Rights in Part III of the Constitution, but while so holding, he proceeded to make it clear that despite all this width, the amendatory

power was subject to an overriding limitation, namely, that it could not be exercised so as to alter the basic structure or framework of the

Constitution. The learned Judge stated in so many words at page 688 of the Report that though "the power of amendment is plenary and would

include within itself, the power to add, alter or repeal the various articles including those "relating to fundamental rights", it is "subject to the

retention of the basic structure or framework of the Constitution." The same reservation was repeated by the learned Judge in Clause (vii) of the

summary of his conclusions given at the end of his judgment. It will, therefore, be seen that according to Khanna, J. the power of amendment can

be exercised by Parliament so as even to abrogate or take away a fundamental right, so long as it does not alter the basic structure or framework

of the Constitution. But if the effect of abrogating or taking away such fundamental right is to alter or affect the basic structure or framework of the

Constitution, the amendment would be void as being outside the amending power of Parliament. It is precisely for this reason that the learned

Judge proceeded to consider whether the right to property could be said to appertain to the basic structure or framework of the Constitution. If the

view of Khanna, J., were that no fundamental right forms part of the basic structure or framework of the Constitution and it can therefore be

abrogated or taken away in exercise of the amendatory power under Article 368, it was totally unnecessary for the learned Judge to consider

whether the right to property could be said to appertain to the basic structure or framework of the Constitution. The very fact that Khanna, J.

proceeded to consider this question shows beyond doubt that he did not hold that fundamental rights were not a part of the basic structure. The

only limited conclusion reached by him was that the right to property did not form part of the basic structure, but so far as the other fundamental

rights were concerned, he left the question open. therefore, it was that he took pains to clarify in his judgment in *Indira Gandhi's case* (supra)

that what he laid down in *Keshavanda Bharti's case* was "that no Article of the Constitution is immune from the amendatory process because

of the fact that it relates to fundamental right and is contained in Part III of the Constitution," and that he did not hold in that case that "fundamental

rights are not a part of the basic structure of the Constitution". Now if this be so, it is difficult to understand how he could hold the Constitution

(Twenty-ninth Amendment) Act, 1972 unconditionally valid. Consistently with his view, he should have held that the Constitution (Twenty-ninth

Amendment) Act, 1972 would be valid only if the protection afforded by it to the Kerala Acts included in the 9th Schedule was not violative of the

basic structure or framework of the Constitution, But merely because the learned Judge wrongly held the Constitution (Twenty-ninth Amendment)

Act, 1972 to be unconditionally valid and did not uphold its validity subject to the scrutiny of the Kerala Acts added in the 9th Schedule, it cannot

follow that he regarded the fundamental rights as not forming part of the basic structure of the Constitution, If the law was correctly laid down by

him, it did not become incorrect by being wrongly applied. It is not customary to quote from the writing of a living author, but departing from that

practice which, I believe, is no longer strictly adhered to or followed, I may point out that what I have said above finds support from the comment

made by Mr. Seervai in the 3rd Volume of his book on Constitutional Law, where the learned author says:

The conflict between Khanna, J.'s views on the amending power and on the unconditional validity of the Twenty-ninth Amendment is resolved by

saying that he laid down the scope of the amending power correctly, but misapplied that law in holding Article 31B and Schedule 9 unconditionally

valid.

I entirely agree with this perceptive remark of the learned author.

88. The true ratio emerging from the majority decision in Kesavananda Bharati's case being that the Parliament cannot in the exercise of its

amendatory power under Article 368 alter the basic structure or framework of the Constitution, I must proceed to consider whether Article 31A,

Article 31B read with 9th Schedule, Article 31C as it stood prior to its amendment and the amended Article 31C are violative of the basic

structure or framework of the Constitution, for if they are, they would be unconstitutional and void. Now what are the features or elements which

constitute the basic structure or framework of the Constitution or which, if damaged or destroyed, would rob the Constitution of its identity so that

it would cease to be the existing Constitution but would become a different Constitution. The majority decision in Kesavananda Bharati's case no

doubt evolved the doctrine of basic structure or framework but it did not lay down that any particular named features of the Constitution formed

part of its basic structure or framework. Sikri, C. J. mentioned supremacy of the Constitution, republican and democratic form of Government,

secular character of the Constitution, separation of powers among the legislators, executive and judiciary, federalism and dignity and freedom of

the individual as essential features of the Constitution, Shelat and Grover, JJ. added to the list two other features; justice --social, economic and

political and unity and integrity of the Nation. Hegde and Mukherjea, JJ. added sovereignty of India as a basic feature of the Constitution. Reddy,

J, thought that sovereign democratic republic, parliamentary form of democracy and the three organs of the State formed the basic structure of the

Constitution. Khanna, J. held that basic structure indicated the broad contours and outlines of the Constitution and since the right to property was a

matter of detail, it was not a part of that structure. But he appeared to be of the view that the democratic form of government, the secular character

of the State and judicial review formed part of the basic structure. It is obvious that these were merely illustrations of what each of the six learned

Judges led by Sikri, C. J. thought to be the essential features of the Constitution and they were not intended to be exhaustive. Shelat and Grover,

JJ. Hedge and Mukherjea, JJ. and Reddy, J. in fact said in their judgments that their list of essential features which form the basic structure of the

Constitution was illustrative or incomplete. This enumeration of the essential features by the six learned Judges had obviously no binding authority;

first, because the Judges were not required to decide as to what features or elements constituted the basic structure or framework of the

Constitution and what each of them said in this connection was in the nature of obiter and could have only persuasive value; secondly, because the

enumeration was merely by way of illustration and thirdly, because the opinion of six Judges that certain specified features formed part of the ,

basic structure of the Constitution did not represent the majority opinion and hence could not be regarded as law declared by this Court under

Article 141. therefore, in every case where the question arises as to whether a particular feature of the Constitution is a part of its basic structure, it

would have to be determined on a consideration of various factors such as the place of the particular feature in the scheme of the Constitution, its

object and purpose and the consequence of its denial on the integrity of the Constitution as a fundamental instrument of country's governance.

Vide the observations of Chandrachud, T. (as he then was) in Smt. Indira Gandhi's case at p. 658 of the Report.

89. This exercise of determining whether certain particular features formed part of the basic structure of the Constitution had to be undertaken by

this Court in Smt. Indira Gandhi's case (supra) which came up for consideration within a short period of four years after the delivery of the

judgments in Keshvananda Bharti's case. The constitutional amendment which was challenged in that case was the Constitution (Thirty-ninth

Amendment) Act, 1975, which introduced Article 329A and the argument was that Clause (4) of this newly added article was constitutionally

invalid on the ground that it violated the basic structure or framework of the Constitution. This challenge was unanimously upheld by a Constitution

Bench which consisted of the Chief Justice and four seniormost Judges of this Court. It is not necessary for our purpose to analyse the judgments

given by the five Judges in this case as they deal with various matters which are not relevant to the questions which arise before us. But it may be

pointed out that two of the learned Judges, namely, Khanna and Mathew, JJ. held that democracy was an essential feature forming part of the

basic structure and struck down Clause (4) of Article 329A on the ground that it damaged the democratic structure of the Constitution.

Chandrachud, J. (as he then was) emphatically asserted that, in his opinion, there were four unamendable features which formed part of the basic

structure, namely, "(i) India is a sovereign democratic republic; (ii) Equality of status and opportunity shall be secured to all its citizens; (iii) The

State shall have no religion of its own and all persons shall be equally entitled to freedom of conscience and the right freely to profess, practise

and propagate religion and (iv) The nation shall be governed by a government of laws, not of men." These, according to him, were "the pillars of

our constitutional philosophy, the pillars, therefore, of the basic structure of the Constitution." He then proceeded to hold that Clause (4) of Article

329A was "an Outright negation of the right of equality conferred by Article 14, a right which more than any other is a basic postulate of our

Constitution" and on that account declared it to be unconstitutional and void. Mathew, J. however, expressed his dissent from the view taken by

Chandrachud, J. as regards the right of equality conferred by Article 14 being an essential feature of the Constitution and stated inter alia the

following reason:

The majority in *Bharati*'s case did not hold that Article 14 pertains to the basic structure of the Constitution. The majority upheld the validity of the

first part of Article 31C; this would show that a constitutional amendment which takes away or abridges the right to challenge the validity of an

ordinary law for violating the fundamental right under that Article would not destroy or damage the basic structure. The only logical basis for

supporting the validity of Articles 31A, 31B and the first part of 31C is that Article 14 is not a basic structure.

I shall have occasion to discuss later the concept of equality under the Constitution and whether it forms part of the basic structure. But, one

position of a basic and fundamental nature I may make clear at this stage, and there I agree with Mathew, J., that whether a particular feature

forms part of the basic structure has necessarily to be determined on the basis of the specific provisions of the Constitution. To quote the words of

Mathew, J. in *Smt. Indira Gandhi*'s case (*supra*) ""To be a basic structure it must be a terrestrial concept having its habitat within the four corners of

the Constitution."" What constitutes basic structure is not like ""a twinkling star up above the Constitution."" It does not consist of any abstract ideals

to be found outside the provisions of the Constitution. The Preamble no doubt enumerates great concepts embodying the ideological aspirations of

the people but these concepts are particularised and their essential features delineated in the various provisions of the Constitution. It is these

specific provisions in the body of the Constitution which determine the type of democracy which the founders of that instrument established; the

quality and nature of justice, political, social and economic which they aimed to realise, the content of liberty of thought and expression which they

entrenched in that document and the scope of equality of status and of opportunity which they enshrined in it. These specific provisions enacted in

the Constitution alone can determine the basic structure of the Constitution. These specific provisions, either separately or in combination,

determine the content of the great concepts set out in the Preamble. It is impossible to spin out any concrete concept of basic structure out of the

gossamer concepts set out in the Preamble. The specific provisions of the Constitution are the stuff from which the basic structure has to be woven.

90. Now, in *Wamanrao*'s case the broad argument of Mr. Phadke on behalf of the petitioners founded on the doctrine of basic structure was, and

this argument was supported by a large number of other counsel appearing in the allied petitions, that the fundamental rights, enshrined in Articles

14 and 19 form part of the basic structure of the Constitution and therefore Article 31A, Article 31B, read with 9th Schedule and the unamend-ed

Article 31C in so far as they exclude the applicability of Articles 14 and 19 to certain kinds of legislation emasculate those fundamental rights and

thereby damage the basic structure of the Constitution and they must accordingly be held to be outside the amending power of Parliament and

hence unconstitutional and void. I have not made any reference here to Article 31 and treated the argument of Mr. Phadke as confined only to

Articles 14 and 19, because, though Article 31 was very much in the Constitution when the arguments in Wamanrao's case were heard, it has

subsequently been deleted by the Constitution (Forty-Fourth Amendment) Act 1978 and reference to it has also been omitted in Articles 31A, 31B

and 31C and we are therefore concerned with the constitutional validity of these Articles only in so far as they grant immunity against challenge on

the ground of infraction of Articles 14 and 19. Mr. Phadke on behalf of the petitioners also challenged the constitutional validity of the Constitution

(Fortieth Amendment) Act, 1976 which included the amending Acts 21 of 1975, 41 of 1975 and 2 of 1976 in the 9th Schedule, on the ground

that the Lok Sabha was not in existence at the date when it was enacted. But obviously, in view of Clauses (4) and (5) introduced in Article 368

by Section 55 of the Constitution (Forty-second Amendment) Act, 1976, it was not possible for Mr. Phadke on behalf of the petitioners to assail

the constitutional validity of Article 31A, Article 31B read with the 9th Schedule as amended by the Constitution (Fortieth Amendment) Act, 1976

and the unamended Article 31C, since these two Clauses of Article 368 barred challenge to the validity of a constitutional amendment on any

ground whatsoever and declared that there shall be no limitation whatever on the constituent power of Parliament to amend by way of addition,

variation or repeal, any provision of the Constitution. He therefore, as a preliminary step in his argument challenged the constitutional validity of

Clause (4) and (5) of Article 368 on the ground that these Clauses damaged the basic structure of the Constitution and were outside the amending

power of Parliament. The argument of Mr. Palkhiwala on behalf of the petitioners in the Minerva Mills" case was a little different. He too attacked

the vires of Clause (4) and (5) of Article 368 since they barred at the threshold any challenge against the constitutional validity of the amendment

made in Article 31C, but so far as Article 31A, Article 31B and the unamended Article 31C were concerned, he did not dispute their validity and,

as pointed out by us earlier, he conceded and in fact gave cogent reasons showing that they were constitutionally valid. His only attack was against

the validity of the amendment made in Article 31C by Section 4 of the Constitution (Forty-second Amendment) Act, 1976 and he contended that

this amendment, by making the Directive Principles supreme over the fundamental rights, damaged or destroyed the basic structure of the

Constitution. He urged that the basic structure of the Constitution rests on the foundation that while the Directive Principles are the mandatory ends

of government, those ends have to be achieved only through the permissible means set out in the Chapter on fundamental rights and this balance

and harmony between the fundamental rights and the Directive Principles was destroyed by the amendment in Article 31C by making the

fundamental rights subservient to the Directive Principles and in consequence, the basic structure of the Constitution was emasculated. A

passionate plea was made by Mr. Palkhiwala with deep emotion and feeling that if Article 31C as amended was allowed to stand, it would be on

open licence to the legislature and the executive both at the center and in the States, to destroy democracy and establish an authoritarian or

totalitarian regime, since almost every legislation could be related, directly or indirectly, to some Directive Principle and would thus" be able to earn

immunity from the challenge of Articles 14 and 19 and the fundamental rights enshrined in these two Articles would be rendered meaningless and

futile and would become mere rope of sand. Mr. Palkhiwala vehemently urged that Justice, liberty and equality were the three pillars of the

Constitution and they were embodied in Articles 14 and 19 and therefore if the supremacy of the fundamental rights enshrined in these Articles was

destroyed and they were made subservient to the Directive Principles, it would result in the personality of the Constitution being changed beyond

recognition and such a change in the personality would be outside the amending power of Parliament. Mr. Palkhiwala likened the situation to a

permanent state of emergency and pointed out by way of contract that whereas under an emergency the people x-ray be precluded from enforcing

their fundamental rights under Articles 14 and 19 for the duration of the emergency, here the people were prevented from moving the court for

enforcement of these fundamental rights for all time to come even without any emergency where a law was passed purporting to give effect to any

of the Directive Principles, The amendment in Article 31C was thus, according to Mr. Palkhiwala, outside the amending power of Parliament and

was liable to be struck down as unconstitutional and void.

91. Logically I must first consider the challenge against the constitutional validity of Clause (4) and (5) of Article 368, because it is only if they can

be put out of the way that Mr. Phadke and Mr. Palkhiwala can proceed further with their respective challenges against the validity of the other

constitutional provisions impugned by them. Both these Clauses were inserted in Article 368 by Section 55 of the Constitution (Forty-second

Amendment) Act, 1976 with a view to overcoming the effect of the majority decision in *Keshavananda Bharati* case. Clause (4) enacted that

no amendment of the Constitution ""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"" while Clause (5), which

begins with the words ""For the removal of doubts", 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."" The question is whether these two Clauses

transgress the limitations on the amending power of Parliament and are therefore void. I will first take up for consideration Clause (4) which seeks

to throw a cloak of protection on an amendment made or purporting to have been made in the Constitution and makes it unchallengeable on any

ground. It is rather curious in its wording and betrays lack of proper care and attention in drafting. It protects every amendment made or purporting

to have been made "whether before or after the commencement of Section 5 of the Constitution (Forty-second Amendment) Act, 1976." But

would an amendment made by any other section of the Constitution (Forty-second Amendment) Act, 1976 such as Section 4, which would be

neither before nor after the commencement of Section 55, but simultaneous with it, be covered by this protective provision? This is purely a

problem of verbal semantics which arises because of slovenliness in drafting that is becoming rather common these days and I need not dwell on it,

for there are more important questions which arise out of the challenge to the constitutional validity of Clause (4) and they require serious

consideration. I will proceed on the basis that the protection sought to be given by Clause (4) extends to every amendment whatsoever and that

the parenthetical words "whether before or after the commencement of Section 55 of the Constitution (Forty-second Amendment) Act, 1976

were introduced merely by way of abundant caution with a view to indicating that this protection was intended to cover even amendments made or

purporting to have been made before the enactment of the Constitution (Forty-second Amendment) Act, 1976. Now even a cursory look at the

language of Clause (4) is sufficient to demonstrate that this is a case of zeal over-running discretion. Clause (4) provides that no amendment to the

Constitution made or purporting to have been made under Article 368 shall be called in question in any court on any ground. The words "on any

ground are of the widest amplitude and they would obviously cover even a ground that the procedure prescribed in Clause (2) and its proviso has

not been followed. The result is that even if an amendment is purported to have been made without complying with the procedure prescribed in

Sub-Clause (2) including its proviso, and is therefore unconstitutional, it would still be immune from challenge. It was undisputed common ground

both at the bar and on the Bench, in Kesavananda Bharati's case that any amendment of the Constitution which did not conform to the procedure

prescribed by Sub-Clause (2) and its proviso was no amendment at all and a court would declare it invalid. Thus if an amendment were passed by

a simple majority in the House of the People and the Council of States and the President assented to the amendment, it would in law be no

amendment at all because the requirement of Clause (2) is that it should be passed by a majority of each of the two Houses separately and by not

less than two-thirds of the members present and voting. But if Clause (4) were valid, it would become difficult to challenge the validity of such an

amendment and it would prevail though made in defiance of a mandatory constitutional requirement. Clause (2) including its proviso would be

rendered completely superfluous and meaningless and its prescription would become merely a paper requirement. Moreover, apart from nullifying

the requirement of Clause (2) and its proviso, Clause (4) has also the effect of rendering an amendment immune from challenge even if it damages

or destroys the basic structure of the Constitution and is therefore outside the amending power of Parliament. So long as Clause (4) stands, an

amendment of the Constitution though unconstitutional and void as transgressing the limitation on the amending power of Parliament as laid down in

Kesavananda Bharati's case, would be unchallengeable in a court of law. The consequence of this exclusion of the power of judicial review would

be that, in effect and substance, the limitation on the amending power of Parliament would, from a practical point of view, become non-existent and

it would not be incorrect to say that, covertly and indirectly, by the exclusion of judicial review, the amending power of Parliament would stand

enlarged, contrary to the decision of this Court in Kesavananda Bharati's case. This would undoubtedly damage the basic structure of the

Constitution, because there are two essential features of the basic structure which would be violated, namely, the limited amending power of

Parliament and the power of judicial review with a view to examining whether any authority under the Constitution has exceeded the limits of its

powers, I shall immediately proceed to state the reasons why I think that these two features form part of the basic structure of the Constitution.

92. It is clear from the majority decision in Keshavananda Bharati's case that our Constitution is a controlled Constitution which confers

powers on the various authorities created and recognised by it and defines the limits of those powers. The Constitution is supreme law, the

paramount law of the land and there is no authority, no department or branch of the State, which is above or beyond the Constitution or has

powers unfettered and unrestricted by the Constitution. The Constitution has devised a structure of power relationship with checks and balances

and limits are placed on the powers of every authority or instrumentality under the Constitution. Every organ of the State, be it the executive or the

legislature or the judiciary, derives its authority from the Constitution and it has to act within the limits of such authority. Parliament too, is a creature

of the Constitution and it can only have such powers as are given to it under the Constitution. It has no inherent power of amendment of the

Constitution and being an authority created by the Constitution, it cannot have such inherent power, but the power of amendment is conferred upon

it by the Constitution and it is a limited power which is so conferred. Parliament cannot in exercise of this power so amend the Constitution as to

alter its basic structure or to change its identity. Now, if by constitutional amendment, Parliament were granted unlimited power of amendment, it

would cease to be an authority under the Constitution, but would become supreme over it, because it would have power to alter the entire

Constitution including its basic structure and even to put an end to it by totally changing its identity. It will therefore be seen that the limited

amending power of Parliament is itself an essential feature of the Constitution, a part of its basic structure, for if the limited power of amendment

were enlarged into an unlimited power, the entire character of the Constitution would be changed. It must follow as a necessary corollary that any

amendment of the Constitution which seeks, directly or indirectly, to enlarge the amending power of Parliament by freeing it from the limitation of

unamendability of the basic structure would be violative of the basic structure and hence outside the amendatory power of Parliament.

93. It is a fundamental principle of our constitutional scheme, and I have pointed this out in the preceding paragraph, that every organ of the State,

every authority under the Constitution, derives its power from the Constitution and has to act within the limits of such power. But then the question

arises as to which authority must decide what are the limits on the power conferred upon each organ or instrumentality of the State and whether

such limits are transgressed or exceeded. Now there are three main departments of the State amongst which the powers of Government are

divided; the Executive, the legislature and the Judiciary. Under our Constitution we have no rigid separation of powers as in the United States of

America, but there is a broad demarcation, though, having regard to the complex nature of governmental functions, certain degree of overlapping is

inevitable. The reason for this broad separation of powers is that "the concentration of powers in any one organ may" to quote the words of

Chandrachud, J. (as he then was) in *Smt. Indira Gandhi v. Shree Krishna Das* (supra) "by upsetting that fine balance between the three organs, destroy the

fundamental premises of a democratic Government to which we are pledged." Take for example, a case where the executive which is in charge of

administration acts to the prejudice of a citizen and a question arises as to what are the powers of the executive and whether the executive has

acted within the scope of its powers. Such a question obviously cannot be left to the executive to decide and for two very good reasons. First, the

decision of the question would depend upon the interpretation of the Constitution and the laws and this would pre-eminently be a matter fit to be

decided by the judiciary, because it is the judiciary which alone would be possessed of expertise in this field and secondly, the constitutional and

legal protection afforded to the citizen would become illusory, if it were left to the executive to determine the legality of its own action. So also if the

legislature makes a law and a dispute arises whether in making the law the legislature has acted outside the area of its legislative competence or the

law is violative of the fundamental rights or of any other provisions of the Constitution, its resolution cannot, for the same reasons, be left to the

determination of the legislature. The Constitution has, therefore, created an independent machinery for resolving these disputes and this

independent machinery is the judiciary which is vested with the power of judicial review to determine the legality of executive action and the validity

of legislation passed by the legislature. It is the solemn duty of the judiciary under the Constitution to keep the different organs of the State such as

the executive and the legislature within the limits of the power conferred upon them by the Constitution. This power of judicial review is conferred

on the judiciary by Articles 32 and 226 of the Constitution. Speaking about draft Article 25, corresponding to present Article 32 of the

Constitution, Dr. Ambedkar, the principal architect of our Constitution, said in the Constituent Assembly on 9th December, 1948:

If I was asked to name any particular article in this Constitution as the most important--an article without which this Constitution would be a

nullity--I could not refer to any other article except this one. It is the very soul of the Constitution and the very heart of it and I am glad that the

House has realised its importance." (C. A. debates, Vol. VII, p. 953) It is a cardinal principle of our Constitution that no one howsoever highly

placed and no authority however T of ty can claim to be the sole judge of its power under the Constitution or whether its action is within the

confines of such power laid down by the Constitution. The judiciary is the interpreter of the Constitution and to the judiciary is assigned the delicate

task to determine what is the power conferred on each branch of Government, whether It is limited, and if so, what are the limits and whether any

action of that branch transgresses such limits. It is for the judiciary to uphold the constitutional values and to enforce the constitutional limitations.

That is the essence of the rule of law, which inter alia requires that "the exercise of powers by the Government whether it be the legislature or the

executive or any other authority, be conditioned by the Constitution and the law." The power of judicial review is an integral part of our

constitutional system and without it, there will be no Government of laws and the rule of law would become a teasing illusion and a promise of

unreality. I am of the view that if there is one feature of our Constitution which, more than any other, is basic and fundamental to the maintenance of

democracy and the rule of law, it is the power of judicial review and it is unquestionably, to my mind, part of the basic structure of the Constitution.

of course, when I say this I should not be taken to suggest that effective alternative institutional mechanisms or arrangements for judicial review

cannot be made by Parliament. But what I wish to emphasise is that judicial review is a vital principle of our Constitution and it cannot be

abrogated without affecting the basic structure of the Constitution. If by a constitutional amendment, the power of judicial review is taken away and

it is provided that the validity of any law made by Legislature shall not be liable to be called in question on any ground, even if it is outside the

legislative competence of the legislature or is violative of any fundamental rights, it would be nothing short of subversion of the Constitution, for it

would make a mockery of the distribution of legislative powers between the Union and the States and render the fundamental rights meaningless

and futile. So also if a constitutional amendment is made which has the effect of taking away the power of judicial review and providing that no

amendment made in the Constitution shall be liable to be questioned on any ground, even if such amendment is violative of the basic structure and,

therefore, outside the amendatory power of Parliament, it would be making Parliament sole Judge of the constitutional validity of what it has done

and that would, in effect and substance, nullify the limitation on the amending power of Parliament and affect the basic structure of the Constitution.

The conclusion must therefore inevitably follow that Clause (4) of Article 368 is unconstitutional ;and void as damaging the basic structure I of the

Constitution.

94. That takes us to Clause (5) of Article 368. This Clause opens with the words ""For the removal of doubts"" and proceeds to declare that there

shall be no limitation whatever on the amending power of Parliament under Article 368, It is difficult to appreciate the meaning of the opening

words ""For the removal of doubts"" because the majority decision in Keshavananda Bharati's case clearly laid down and left no doubt that the

basic structure of the Constitution was outside the competence of the amendatory power of Parliament and in Smt. Indira Gandhi's case all the

Judges unanimously accepted theory of the basic structure as a theory by which the validity of the amendment impugned before them, namely,

Article 329A(4) was to be judged. therefore, after the decisions in Kesavananda Bharati's case and Smt. Indira Gandhi's case, there was no

doubt at all that the amendatory power of Parliament was limited and it was not competent to Parliament to alter the basic structure of the

Constitution and Clause (5) could not remove the doubt which did not exist. What Clause (5), really sought to do was to remove the limitation on

the amending power of Parliament and convert it from a limited power into an unlimited one- This was clearly and indubitably a futile exercise on

the part of Parliament. I fail to see how Parliament which has only a limited power of amendment and which cannot alter the basic structure of the

Constitution can expand its power of amendment so as to confer upon itself the power of repeal or abrogate the Constitution or to damage or

destroy its basis structure. That would clearly be in excess of the limited amending power possessed by Parliament. The Constitution has conferred

only a limited amending power on Parliament so that it cannot damage or destroy the basic structure of the Constitution and Parliament cannot by

exercise of that limited amending power convert that very power into an absolute and unlimited power. If it were permissible to Parliament to

enlarge the limited amending power conferred upon it into an absolute power of amendment, then it was meaningless to place a limitation on the

original power of amendment. It is difficult to appreciate how Parliament having a limited power of amendment can get rid of the limitation by

exercising that very power and convert it into an absolute power. Clause (5) of Article 368 which sought to remove the limitation on the

amending power of Parliament by making it absolute must therefore be held to be outside the amending power of Parliament. There is also an

other ground on which the validity of this Clause can be successfully assailed. This Clause seeks to convert a controlled Constitution into an

uncontrolled one by removing the limitation on the amending power of Parliament which, as pointed out above, is itself an essential feature of the

Constitution and it is therefore violative of the basic structure. I would in the circumstances hold Clause (5) of Article 368, to be unconstitutional

and void.

95. With Clauses (4) and (5) of Article 368 out of the way. I must now proceed to examine the challenge against the constitutional validity of

Article 31A. Article 31B read with the 9th Schedule and the unamended Article 31C, So far as Article 31A is concerned, Mr. Phadke appearing

on behalf of the petitioners contended that, tested by the doctrine of basic structure, Article 31A was unconstitutional and void, since it had the

effect of abrogating Articles 14 and 19 in reference to legislation falling within the categories specified in the various Clauses of that Article, He

argued that the Fundamental Rights enshrined in Articles 14 and 19 were part of the basic structure of the Constitution and any constitutional

amendment which had the effect of abrogating or damaging these Fundamental Rights was outside the amendatory power of Parliament. While

considering this argument, I may make it clear that I am concerned here only with constitutional validity of Clause (a) of Article 31A since the

protection of Article 31A has been claimed in respect of Maharashtra Land Ceiling Acts only under Clause (a) of that Article and I need not enter

upon a discussion of the constitutional validity of Clauses (b) to (e) of Article 31A. I do not think that the argument of Mr. Phadke challenging the

constitutional validity of Clause (a) of Article 31A is well-founded. I shall have occasion to point out in a later part of this judgment that where any

law is enacted for giving effect to a Directive Principle with a view to furthering the constitutional goal of social and economic justice, there would

be no violation of the basic structure, even if it infringes formal equality before the law under Article 14 or any Fundamental Right under Article 19.

Here Clause (a) of Article 31A protects a law of agrarian reform which is clearly, in the context of the socio-economic conditions prevailing in

India, a "basic requirement of social and economic justice and is covered by the Directive Principles set out in Clauses (b) and (c) of Article 39

and it is difficult to see how it can possibly be regarded as violating the basic structure of the Constitution, on the contrary, agrarian reform leading

to social and economic justice to the rural "population is an objective which strengthens the basic structure of the Constitution. Clause (a) of

Article 31A must therefore be held to be constitutionally, valid even on the application of the basic structure test.

96. But, apart from this reasoning on principle which in our opinion clearly sustains the constitutional validity of Clause (a) of Article 31A, we think

that even on the basis of the doctrine of stare decisis Article 31A, must be upheld as constitutionally valid. The question as to the constitutional

validity of Article 31A first came up for consideration before this Court in Shankari Prasad v. Union of India. There was a direct challenge leveled

against the constitutionality of Article 31A in this case on various grounds and this challenge was rejected by a Constitution Bench of this Court.

The principal ground on which the challenge was based was that if a constitutional amendment takes away or abridges any of the Fundamental

Rights conferred by Part III of the Constitution, it would fall within the prohibition of Article 13(2) and would therefore be void. Patanjali Shastri,

J., speaking on behalf of the Court, did not accept this contention and taking the view that in the context of Article 13, "law" must be taken to

mean rules or regulations made in exercise of ordinary legislative power and not amendments to the Constitution made in exercise of constituent

power he held that Article 13(2) does not affect constitutional amendments. This view in regard to the interpretation of the word "law" in Article

13(2) has now been affirmed by this Court sitting as a full Court of 13 Judges in Kesavananda Bharati's case and it is no longer possible to argue

the contrary proposition. It is true that in this case, the constitutional validity of Article 31A was not assailed on the ground of infraction of the basic

feature since that was a doctrine which came to be evolved only in Kesavananda Bharati's case, but the fact remains that whatever be the

arguments advanced or omitted to be advanced, Article 31A was held to be constitutionally valid by this Court. Nearly 13 years after this decision

was given in Shankari Prasad's case, a strong plea was made before this Court in Sajjan Singh v. State of Rajasthan that Shankari Prasad's case

should be reconsidered, but after a detailed discussion of the various arguments involved in the case, the Constitution Bench of this Court

expressed concurrence with the view expressed in Shankari Prasad's case and in the result, upheld the constitutional validity of Article 31A,

though the question which arose for consideration was a little different and did not directly involve the constitutional validity of Article 31A.

Thereafter, came the famous decision of this Court in Golak Nath's case where a full Court of 11 Judges, while holding that the Constitution

(First Amendment) Act exceeded the constituent power of Parliament, still categorically declared on the basis of the doctrine prospective

overruling that the said amendment, and a few other like amendments subsequently made, should not be disturbed and must be held to be valid.

The result was that even the decision in Golak Nath's case accepted the constitutional validity of Article 31A. The view taken in Golak Nath's

case as regards the amending power of Parliament was reversed in Kesavananda Bharati's case where the entire question as to the nature and

extent of the constituent power of Parliament to amend the Constitution was discussed in all its dimensions and aspects uninhibited by any previous

decisions, but the only constitutional amendments which were directly challenged in that case were the Twenty fourth, Twenty fifth and Twenty-

ninth Amendments. The constitutional validity of Article 31A was not put in issue in Kesavananda Bharati's case and the learned Judges who

decided that case were not called upon to pronounce on it and it cannot therefore be said that this Court upheld the vires of Article 31A in that

case. It is no doubt true that Khanna, J. held Article 31A to be valid on the principle of stare decisis, but that was only for the purpose of

upholding the validity of Article 31C, because he took the view that Article 31C was merely an extension of the principle accepted in Article 31A

and "the ground which sustained the validity of Clause (1) of Article 31A, would equally sustain the validity of the first part of Article 31C".

So far as the other learned Judges were concerned, they did not express any view specifically on the constitutional validity of Article 31A, since

that was not in issue before them. Ray, J. Palekar, J. Mathew, J., Bee, J. Dwivedi, J. and Chandrachud, J., held Article 31C to be valid and if that

view be correct, Article 31A must a fortiori be held to be valid. But it must be said that there is no decision of the Court in Kesavananda

Bharati's case holding Article 31A as constitutionally valid, and logically, therefore, it should be open to the petitioners in the present case to

contend that, tested by the basic structure doctrine, Article 31A is unconstitutional. We have already pointed out that on merits this argument has

no substance and even on an application of the basic structure doctrine, Article 31A cannot be condemned as invalid. But in any event, I do not

think that it would be proper to reopen the question of constitutional validity of Article 31A which has already been decided and silenced by the

decisions of this Court in Shankari Prasad's case, Sajjan Singh's case and Golak Nath's case. Now for over 28 years, since the decision in

Shankari Prasad's case Article 31A has been recognised as valid and on this view, laws of several States relating to agrarian reform have been

held to be valid and as pointed out by Khanna, in Kesavananda Bharati's case "millions of acres of land have changed hands and millions of new

titles in agricultural lands have been created." If the question of validity of Article 31A were reopened and the earlier decisions upholding its validity

were reconsidered in the light of the basic structure doctrine, these various agrarian reform laws which have brought about a near socio-economic

revolution in the agrarian sector might be exposed to jeopardy and that might put the clock back by setting at naught all changes that have been

brought about in agrarian relationships during these years and create chaos in the lives of millions of people who have benefited by these laws. It is

no doubt true that this Court has power to review its earlier decisions or even depart from them and the doctrine of stare decisis cannot be

permitted to perpetuate erroneous decisions of this Court to the detriment of the general welfare of the public-There is indeed a school of thought

which believes with Cardozo that ""the precedents have turned upon us and they are engulfing and annihilating us, engulfing and annihilating the very

devotees that worshipped at their shrine"" and that the Court should not be troubled unduly if it has to break away from precedents in order to

modify old rules and if need be to fashion new ones to meet the challenges and problems thrown upon by a dynamic society. But at the same time,

it must be borne in mind that certainty and continuity are essential ingredients of rule of law. Certainty in applicability of law would be considerably

eroded and suffer a serious set-back if the highest court in the land were readily to overrule the view expressed by it in earlier decisions even

though that view has held the field for a number of years. It is obvious that when constitutional problems are brought before this Court for its

decision, complex and difficult questions are bound to arise and since the decision on many of such questions may depend upon choice between

competing values, two views may be possible depending upon the value judgment or the choice of values made by the individual Judge. therefore,

if one view has been taken by the Court after mature deliberation, the fact that another Bench is inclined to take another view would not justify the

Court in reconsidering the earlier decision and overruling it. The law laid down by this Court is binding on ;d! Courts in the country and numerous

cases all over the country are decided in accordance with the view taken by this Court. Many people arrange their affairs and large number of

transactions also take place on the faith of the correctness of the decision given by this Court. It would create uncertainty, instability and confusion

if the law propounded by this Court on the faith of which numerous cases have been decided and many transactions have taken place is held to be

not the correct law after a number of years. The doctrine of stare decisis has evolved from the maxim ""stare decisis et non movere quietam"" meaning

adhere to the decision and do not unsettle things which are established,"" and it is a useful doctrine intended to bring about certainty and uniformity

in the law But when I say this, let me make it clear that I do not regard the ""doctrine of stare decisis as a rigid and inevitable doctrine which must

be applied at the cost of justice. There may be cases where it may be necessary to rid the doctrine of its petrifying rigidity. ""Stare decisis"" as

pointed out by Brandeis ""is always a desideratum, even in these constitutional cases, but in them, it is never a command"". The Court may in an

appropriate case overrule a previous decision taken by it, but that should be done only for substantial and compelling reasons. The power of

review must be exercised with due care and caution and only for advancing the public well-being and not merely because it may appear that the

previous decision was based on an erroneous view of the law. It is only where the perpetuation of the earlier decision would be productive of

mischievous or inconvenience or would have the effect of deflecting the nation from the course which has been set by the Constitution makers or to use

the words of Krishna Iyer, J. in *Ambika Prasad Misra v. State of U.P.* WP Nos. 1543 etc. of 1977 (Reported in : [1980]3SCR1159).
"where

national crisis of great moment to the life, liberty and safety of this country and its millions are at stake or the basic direction of the nation itself is in

peril of a shake-up" that the Court would be justified in reconsidering its earlier decision and departing from it. It is fundamental that the nation's

Constitution should not be kept in constant uncertainty by judicial review every now and then, because otherwise it would paralyse by perennial

suspense all legislative and administrative action on vital issues. The Court should not indulge in judicial destabilisation of State action and a view

which has been accepted for a long period of time in a series of decisions and on the faith of which millions of people have acted and a large

number of transactions have been effected, should not be disturbed. Let us not forget the words of Justice Roberts of the United States Supreme

Court--words which are equally applicable to the decision making process in this Court:

The reason for my concern is that the instant decision overruling" that announced about nine years ago, tends to bring adjudications of this tribunal

into the same class as a restricted rail road ticket good for this day and train only. It is regrettable that in an era marked by doubt and

confusion, an era whose greatest need is steadfastness of thought and purpose, this Court which has been looked to as" exhibiting consistency in

adjudication, and a steadiness which would hold the balance even in the face of temporary ebbs and flows of opinion, should now itself become

the breeder of fresh doubt and confusion in the public mind as to the stability of our institutions.

Here the view that Article 31A is constitutionally valid has been taken in at least three decisions of this Court, namely, *Shankari Prasad's case* AIR

1951 SC 458 *Sajjan Singh's case* and *Golak Nath's case* and it has held the field for over 28 years and on the faith of its correctness,

millions of acres of agricultural land have changed hands and new agrarian relations have come into being, transforming the entire rural economy.

Even though the constitutional validity of Article 31A was not tested in these decisions by reference to the basic structure doctrine, I do not think

the Court would be justified in allowing the earlier decisions to be reconsidered and the question of constitutional validity of Article 31A re-

opened. These decisions have given a quietus to the constitutional challenge against the validity of Article 31A and "this quietus should not now be

allowed to be disturbed. I may point out that this view which I am taking is supported by the decision of this Court in *Ambika Prasad Misra v.*

State of U. P. (supra).

97. I may now turn to consider the constitutional challenge against the validity of Article 31B read with the 9th Schedule. This Article was

introduced in the Constitution along with Article 31A by the Constitution (First Amendment) Act, 1951. Article 31A as originally introduced was

confined only to legislation for acquisition of an estate or extinguishment or modification of any rights in an estate and it saved such legislation from

attack under Articles 14, 19 and 31. Now once legislation falling within this category was protected by Article 31A, it was not necessary to enact

another saving provision in regard to the same kind of legislation. But, presumably, having regard to the fact that the constitutional law was still in

the stage of evolution and it was not clear whether a law, invalid when enacted, could be revived without being re-enacted, Parliament thought that

Article 31A, even if retrospectively enacted, may not be sufficient to ensure the validity of a legislation which was already declared void by the

courts as in *Kameshwar Singh*'s case, and therefore considered it advisable to have a further provision in Article 31B to specifically by-pass

judgments striking down such legislation. That seems to be the reason why Article 31B was enacted and statutes falling within Article 31A were

included in the 9th Schedule. Article 31B was conceived together with Article 31A as part of the same design adopted to give protection to

legislation providing for acquisition of an estate or extinguishment or modification of any rights in an estate. The 9th Schedule of Article 31B was

not intended to include laws other than those covered by Article 31A. That becomes clear from the speeches of the Law Minister and the Prime

Minister during the discussion on the Constitution (First Amendment) Act, 1961. Dr. Ambedkar admitted of the 9th Schedule that prima facie it

is an unusual procedure but he went on to add that "all the laws that have been saved by this Schedule are laws that fall under Article 31A".

Jawahar-lal Nehru also told Parliament.

It is not with any great satisfaction or pleasure that we have produced this long Schedule. We do not wish to add to it for two reasons. One is that

the Schedule consists of a particular type of legislation, generally speaking, and another type should not come" (emphasis supplied). Articles

31A and Clause 31B were thus intended to serve the same purpose of protecting legislation falling within a certain category. It was a double

barrelled protection which was intended to be provided to this category of legislation, since it was designed to carry out agrarian reform which was

so essential for bringing about a revolution in the socio-economic structure of the country. This was followed by the Constitution (Fourth

Amendment) Act, 1955 by which the categories of legislation covered by Article 31A were sought to be expanded by adding certain new Clauses

after Clause (a). Originally, in the draft bill in addition to these Clauses, there was one more Clause, namely, Clause (d) which sought to give

protection to a law providing for the acquisition or requisitioning of any immovable property for the rehabilitation of displaced persons and, as a

corollary to the proposed amendment of Article 31A it was proposed in Clause (5) of the Bill to add in the 9th Schedule two more State Acts and

four Central Acts which fell within the scope of Clause (d) and (f) of the revised Article 31A. Vide Clause (4) of the Statement " of Objects and

Reasons. The two State Acts which were proposed to be included in the 9th Schedule were the Bihar Displaced Persons Rehabilitation

(Acquisition of Land) Act, 1950 and the United Provinces Land Acquisition (Rehabilitation of Refugees) Act, 1948 the West Bengal Land

Development and Planning Act, 1948, which was struck down by this Court in State of West Bengal v. Bela Banerjee and the invalidity of which

really started the entire exercise of the Constitution (Fourth Amendment) Act, 1955, was however, left-out of the 9th Schedule in the draft Bill

because it included certain purposes of acquisition which fell outside the proposed Clause (d) of Article 31A. But while the Constitution (Fourth

Amendment) Act, 1955 was being debated, an Ordinance was issued by the Governor of West Bengal omitting with retrospective effect all the

items in the definition of "public purpose" except the settlement of displaced persons who had migrated into the State of West Bengal, with the

result that the West Bengal Act as amended by the Ordinance came within the category of legislation specified in the proposed Clause (d) of

Article 31A, In view of this amendment, the West Bengal Act was included to the 9th Schedule by way of amendment of the draft Bill. It is

significant to note that a similar Orissa Statute which provided for acquisition of land for purposes going beyond the proposed Clause, (d) of

Article 31A and which was not amended in the same manner as the West Bengal Act, was not included in the 9th Schedule. A Central Act,

namely, the Resettlement of Displaced Persons (Land Acquisition) Act, 1948 fell within the proposed Clause (d) of Article 31A and it was

therefore included in the 9th Schedule in the draft Bill. The link between Articles 31A and 31B was thus maintained in the draft Bill, but when the

draft Bill went before the Joint Committee, the proposed Clause (d) of Article 31A was deleted and the Bihar, U. P. and West Bengal Acts as

also the above-mentioned Central Act which were originally intended to be within the scope and ambit of Article 31A, became unrelated to that

Article. Even so, barring these four Acts, all the other statutes included in the 9th Schedule fell within one or the other Clause of the amended

Article 31A. Subsequent to this amendment, several other statutes dealing with agrarian reform were included in the 9th Schedule by the

Constitution (Seventeenth Amendment) Act, 1964 and no complaint can be made in regard to such addition, because all these statutes partook of

the character of agrarian reform legislation and were covered by Clause (a) of Article 31A in view of the extended definition of "estate" substituted

by the same amending Act The validity of the Constitution (Seventeenth Amendment) Act, 1964 was challenged before this Court in Golak

Nath's case (supra) and though the Court by a majority of six against five took the view that Parliament has no power to amend any

fundamental right, it held that this decision would not affect the validity of the Constitution (Seventeenth Amendment) Act, 1964 and other earlier

amendments to the Constitution and thus recognised the validity of the various constitutional amendments which included statutes in the 9th

Schedule from time to time up to that date. Then came the Constitution (Twenty-ninth Amendment) Act 1972 by which two Kerala agrarian

reform statutes were included in the 9th Schedule. The validity of the Twenty-ninth Amendment Act was challenged in Kesavananda

Bharati's case but by a majority consisting of Khanna, J. and the six learned Judges led by Ray, C. J., it was held to be valid. Since all the

earlier constitutional amendments were held valid on the basis of unlimited amending power of Parliament recognised in Shankari Prasad's case

and Sajjan Singh's case and were accepted as valid in Golak Nath's case and the Twenty Ninth Amendment Act was also held valid in

Kesavananda Bharati's case, though not on the application of the basic structure test, and these constitutional amendments have been recognised

as valid over a number of years and moreover, the statutes intended to be protected by them are all falling within Article 31A 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's 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. It may be pointed out that quite a large number of statutes have been included in the 9th Schedule by the

subsequent constitutional amendments and strangely enough, we find for the first time that statutes have been included which have no connection at

all with Article 31A or 31C and this device of Article 31B which was originally adopted only as a means of giving a more definite and assured

protection to legislation already protected under Article 31A, has been utilised for the totally different purpose of excluding the applicability of

Fundamental Rights to all kinds of statutes which have nothing to do with agrarian reform or Directive Principles. This is rather a disturbing

phenomenon. Now out of the statutes which are or may in future be included in the 9th Schedule by subsequent constitutional amendments, if there

are any which fall within a category covered by Article 31A or 31C they would be protected from challenge under Articles 14 and 19 and it would

not be necessary to consider whether their inclusion in the 9th Schedule is constitutionally valid, except in those rare cases where protection may

be claimed for them against violation of any other fundamental rights. This question would primarily arise only in regard to statutes not covered by

Article 31A or 31C and in case of such statutes, the Court would have to consider whether the constitutional amendments including such statutes in

the 9th Schedule violate the basic structure of the Constitution in granting them immunity from challenge of the fundamental rights. It is possible that

in a given case, even an abridgement of a fundamental right may involve violation of the basic structure. It would all depend on the nature of the

fundamental right, the extent and depth of the infringement, the purpose for which the infringement is made and its impact on the basic value of the

Constitution. Take for example, right to life and personal liberty enshrined in Article 21. This stands on an altogether different footing from other

fundamental rights. I do not wish to express any definite opinion, but I may point out that if this fundamental right is violated by any legislation, it

may be difficult to sustain a constitutional amendment which seeks to protect such legislation against challenge under Article 21. So also where a

legislation which has nothing to do with agrarian reform or any Directive Principles infringes the equality Clause contained in Article 14 and such

legislation is sought to be protected by a constitutional amendment by including it in the 9th Schedule, it may be possible to contend that such

constitutional amendment is violative of the egalitarian principle which forms part of the basic structure. But these are only examples which I am

giving by way of illustration, for other situations may arise where infringement of a fundamental right by a statute, if sought to be constitutionally

protected, might affect the basic structure of the Constitution. In every case, therefore, where a constitutional amendment includes a statute or

statutes in the 9th Schedule, its constitutional validity would have to be considered by reference to the basic structure doctrine and such

constitutional amendment would be liable to be declared invalid to the extent to which it damages or destroys the basic structure of the Constitution

by according protection against violation of any particular fundamental right.

98. I will now turn to consider the challenge against the constitutional validity of the unamended Article 31C. This article was introduced in the

Constitution by the Constitution (Twenty-fifth Amendment) Act, 1971 and it provided in its first part that "Notwithstanding anything contained in

Article 13, no law giving effect to the policy of the State towards securing the principles specified in Clause (b) or (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, Article 19 or Article. 31" It

is not necessary to reproduce here the second part of the unamended Article 31C because that was declared unconstitutional by the majority

decision in *Keshavananda Bharati* case and must consequently be treated as nonest. The argument of Mr. Phadke against the constitutional

validity of the unamended Article 31C was the same as in case of Article 31A, namely, that it emasculated the fundamental rights in Articles 14 and

19 and was, then-fore, destructive of the basic structure of the Constitution. I shall presently examine this arguments on merits and demonstrate

that it is unsustainable, but before I do so, I may point out at the outset that it is wholly unnecessary to embark upon a discussion of the merits of

this argument, because the first part of the unamended Article 31C was held to be constitutionally valid by the majority decision in Kesavananda

Bharati's case and that decision being binding upon us, it is not open to Mr. Phadke to reargue this question. Out of the thirteen Judges who sat

on the Bench in Kesavananda Bharati's case, Ray, J., as he then was, Pringle, J., Dwivedi, J., Khanna, J., Mathew, J., Beg J. and Chandrachud,

J., as he then was, took the view that the first part of the unamended Article 31C was constitutionally valid, because the amending power of

Parliament was absolute and unlimited. Khanna, J. did not subscribe to the theory that Parliament had an absolute and unlimited right to amend the

Constitution and his view was that the power of amendment conferred on Parliament was a limited power restricting Parliament from so amending

the Constitution as to alter its basic structure, but even on the basis of this limited power, he upheld the constitutional validity of the first part of the

unamended Article 31C. There were thus seven out of thirteen judges who held that the first part of the unamended Article 31C was

constitutionally valid, though the reasons which prevailed with Khanna, J. for taking this view were different from those which prevailed with the

other five learned Judges. "The issue as regards the constitutional validity of the first part of the unamended Article 31C which directly arose for

consideration before the Court was accordingly answered in favour of the Government and the law laid down by the majority decision was that the

first part of the unamended Article 31C was constitutional and valid and this declaration of the law must be regarded as binding. On the court in the

present writ petitions. Mr. Phadke, however, disputed the correctness of this proposition and contended that what was binding on the court was

merely the ratio decidendi of Kesavananda Bharati's case and not the conclusion that the first part of the unamended Article 31C was valid. The

ratio decidendi of Kesavananda Bharati's case, according to Mr. Phadke, was that the amending power of Parliament is limited and it

cannot be exercised so as to alter the basic structure of the Constitution and it was this ratio decidendi which was binding upon us and which we

must apply for the purpose of determining whether the first part of the unamended Article 31C was constitutionally valid. It is no doubt true,

conceded Mr. Phadke, that the six learned Judges headed by Ray, J. (as he then was) held the first part of the unamended Article 31C to be

constitutionally valid but that was on the basis that Parliament had absolute and unrestricted power to amend the Constitution, which basis was,

according to the majority decision, incorrect. It was impossible to say, argued Mr. Phadke, what would have been the decision of the six learned

Judges headed by Ray, J. (as he then was) if they had applied the correct test and examined the constitutional validity of the first part of the

unamended Article 31C by reference to the yardstick of the limited power of amendment, and their conclusion upholding the validity of the first

part of the unamended Article 31C by applying the wrong test could not therefore be said to be binding on the Court in the present writ petitions.

This argument of Mr. Phadke is, in my opinion, not well founded and cannot be accepted. I agree with Mr. Phadke that the ratio decidendi of

Kesavananda Bharati's case was that the amending power of Parliament is limited and Parliament cannot in exercise of the power of amendment

alter the basic structure of the Constitution and the validity of every constitutional amendment has therefore to be judged by applying the test

whether or not it alters the basic structure of the Constitution toad this test was not applied by the six learned Judges headed by Ray, J. (as he then

was), But there my agreement ends and I cannot accept the further argument of Mr. Phadke that for this reason, the conclusion reached by the six

learned Judges and Khanna, J., as regards the constitutionality of the first part of the unamended Article 31C has no validity. The issue before the

court in Kesavananda Bharati's case was whether the first part of the unamended Article 31C was constitutionally valid and this issue was

answered in favour of the Government by a majority of seven against six. It is not material as to what were the reasons which weighed with each

one of the Judges who upheld the validity of the first part of the unamended Article 31C. The reasons for reaching this conclusion would certainly

have a bearing on the determination of the ratio decidendi of the case and the ratio decidendi would certainly be important for the decision of future

cases where the validity of some other constitutional amendment may come to be challenged, but so far as the question of validity of the first part of

the unamended Article 31C is concerned, it was in so many terms determined by the majority decision in Kesavananda Bharati's case and that

decision must be held binding upon us. Mr. Phadke cannot therefore be allowed to reopen this question and I must refuse to entertain the challenge

against the constitutional validity of the unamended Article 31C preferred by Mr. Phadke.

99. But even if it were open to Mr. Phadke to dispute the decision in Keshavananda Bharti's case and to raise a challenge, against the

constitutional validity of the first part of the unamended Article 31C, I do not think the challenge can succeed. What the first part of the

.unamended Article 31C does is merely to abridge the Fundamental Rights in Articles 14 and 19 by excluding their applicability to legislation giving

effect to the policy towards securing the principles specified in Clauses (b) and (c) of Article 39. The first part of the unamended Article 31C is

basically of the same genre as Article 31A with only this difference that whereas Article 31A protects laws relating to certain subjects, the first part

of the unamended Article 31C deals with laws having certain objectives. There is no qualitative difference between Article 31A and the first part of

the unamended Article 31C in so far, as the exclusion of article 14 and 19 is concerned. The fact that the provisions of the first part of the

unamended Article 31C are more comprehensive and have greater width compared to those of Article 31A does not make any difference in

principle. If Article 31A is constitutionally valid, it is indeed difficult to see how the first part of the unamended Article 31C can be held to be

unconstitutional. It may be pointed out that the first part of the unamended Article 31C in fact stands on a more secure footing because it accords

protection against infraction of Articles 14 and 19 to legislation enacted for giving effect to the Directive Principles set out in Clauses (b) and (c) of

Article 39. The legislature in enacting such legislation acts upon the constitutional mandate contained in Article 37 according to which the Directive

Principles are fundamental in the governance of the country and it is the duty of the State to apply those principles in making laws. It is for the

purpose of giving effect to the Directive Principles set out in Clauses (b) and (c) of Article 39 in discharge of the constitutional obligation laid upon

the State under Article 37 that Fundamental Rights in Articles 14 and 19 are allowed to be abridged and I fail to see how a constitutional

amendment making such a provision can be condemned as violative of the basic structure of the Constitution. therefore even on first principle, I

would be inclined to hold that the first part of the unamended Article 31C is constitutionally valid,

100. That takes us to the next ground of challenge against the constitutional validity of the Constitution (Fortieth Amendment) Act, 1976 in so far

as it included the amending Acts 21 of 1975, 41 of 1975 and 2 of 1976 in the 9th Schedule and the Constitution (Forty-second Amendment) Act,

1976 in so far as it introduced Clause s. (4) and (5) in Article 368. The petitioners contended under this head of challenge that the Constitution

(Fortieth Amendment) Act, 1976 was passed by the Lok Sabha on 2nd April, 1976 and the Constitution (Forty-second Amendment) Act, 1976

sometime in November, 1976, but on these dates the Lok Sabha was not validly in existence because it automatically dissolved on 18th March,

1976 on the expiration of its term of 5 years. It is no doubt true that the House of People (Extension of Duration) Act, 1976 was enacted by

Parliament under the Proviso to Article 83(2) extending the duration of the Lok Sabha for a period of one year but the argument of the petitioners

was that this Act was ultra vires and void, because the duration of the Lok Sabha could be extended under the proviso to Article 83(2) only during

the operation of a Proclamation of an Emergency and, in the submission of the petitioners, there was no Proclamation of Emergency in operation at

the time when the House of People (Extension of Duration) Act, 1976 was passed. It may be conceded straightway that, strictly speaking, it is

superfluous and unnecessary to consider this argument because, even if the Constitution (Fortieth Amendment) Act, 1976 is unconstitutional and

void and the Amending Acts 21 of 1975, 41 of 1975 and 2 of 1976 have not been validly included in the 9th Schedule so as to earn the protection

of Article 31B, they are still, as pointed out earlier, saved from invalidation by Article 31A and so far as the Constitution (Forty-second

Amendment) Act 1976 is concerned, we have already held that it is outside the constituent power of Parliament in so far as it seeks to include

Clauses (4) and (5) in Article 368. But since a long argument was addressed to us seriously pressing this ground of challenge, I do not think I

would be unjustified in dealing briefly with it

101. It is dear on a plain natural construction of its language that under the Proviso to Article 83(2), the duration of the Lok Sabha could be

extended only during the operation of a Proclamation of Emergency and if, therefore, no Proclamation of Emergency was in operation at the

relevant time, the House of People (Extension of Duration) Act, 1976 would be outside the competence of Parliament under the Proviso to Article

83(2). The question which thus requires to be considered is whether there was a Proclamation of Emergency in operation at the date when the

House of People (Extension of Duration) Act, 1976 was enacted. The learned Solicitor General appearing on behalf of the Union of India

contended that not one but two Proclamations of Emergency were in operation at the material date; one Proclamation issued by the President on

3rd December, 1971 and the other Proclamation issued on 25th June, 1976. By the first Proclamation, the President exercised the powers

conferred under d. (1) of Article 352 declared that a grave emergency existed whereby the security of India was threatened by external

aggression. This Proclamation was approved by Resolutions of both the Houses of Parliament on 4th December, 1971 as contemplated under

Clause 2 (o) of Article 352 and it continued in operation until 21st March, 1977 when it was revoked by a Proclamation issued by the President

under Clause 2 (a) of Article 352. The first Proclamation of Emergency was thus in operation at the date when the House of People (Extension of

Duration) Act, 1976 was enacted by Parliament. The second Proclamation of Emergency was issued by the President under Article 352, Clause

(1) and by this Proclamation, the President declared that a grave emergency existed whereby the security of India was threatened by internal

disturbance. This Proclamation was also in operation at the date of enactment of the House of People (Extension of Duration) Act, 1976 since it

was not revoked by another Proclamation issued under Clause 2 (a) of Article 352 until 21st Mar., 1977. The argument of the petitioners

however, was that, though the first Proclamation of Emergency was validly issued by the President on account of external aggression committed by

Pakistan against India, the circumstances changed soon thereafter and the emergency which justified the issue of the Proclamation ceased to exist

and consequently the continuance of the Proclamation was mala fide and colourable and hence the Proclamation, though not revoked until 21st

March, 1977, ceased in law to continue in force and could not be said to be in operation at the material date, namely, 16th February, 1976. So far

as the second Proclamation of Emergency is concerned, the petitioners contended that it was illegal and void on three grounds, namely; (1) whilst

the first Proclamation of Emergency was in operation, it was not competent to the President under Article 352 Clause (1) to tame another

Proclamation of Emergency; (2) the second Proclamation of Emergency was issued by the President on the advice of the Prime Minister and since

this advice was given by the Prime Minister without consulting the Council of Ministers, which alone was competent under the Government of India

(Transaction of Business) Rules, 1961 to deal with the question of issue of a Proclamation of Emergency, the second Proclamation of Emergency

could not be said to have been validly issued by the President; and (3) there was no threat to the security of India on account of internal

disturbance, which could justify the issue of a Proclamation of Emergency and the second Proclamation was issued, not for a legitimate purpose

sanctioned by Clause (1) of Article 352 but with a view to perpetuating the Prime Minister in power and it was clearly mala fide and for collateral

purpose and hence outside the power of the President under Article 352 Clause (1). The petitioners had to attack the validity of both the

Proclamations of Emergency, the continuance of one and the issuance of another, because even if one Proclamation of Emergency was in

operation at the relevant time, it would be sufficient to invest Parliament with power to enact the House of People (Extension of Duration) Act,

1976. Obviously, therefore, if the first Proclamation of Emergency was found to continue in operation at the date of enactment of the House of

People (Extension of Duration) Act, 1976, it would be unnecessary to consider whether the second Proclamation of Emergency was validly issued

by the President, I will accordingly first proceed to examine whether the first Proclamation of Emergency which was validly issued by the President

ceased to be in force by reason of the alleged change in circumstances and was not operative at the relevant time. It is only if this question is

answered in favour of the petitioners then it would become necessary to consider the question of validity of the second Proclamation of

Emergency.

102. I think it is necessary to emphasise even at the cost of repetition that it was not the case of the petitioners that the first Proclamation of

Emergency when issued, was invalid. It is a historical fact which cannot be disputed that Pakistan committed aggression against India on 3rd

December, 1971 and a grave threat to the security of India arose on account of this external aggression. The President was, therefore, clearly

justified in issuing the first Proclamation of Emergency under Clause (1) of Article 352. The petitioners, however, contended that the circumstances

which warranted the issue of the first Proclamation of Emergency ceased to exist and put forward various facts such as the termination of hostilities

with Pakistan on 16th December, 1971, the signing of the Simla Pact on 2nd June, 1972, the resumption of postal and telecommunication links on

4th November, 1974 and the conclusion of trade agreement between India and Pakistan on 24th November, 1974 as also several statements

made by the Prime Minister and other Ministers from time to time to show that the threat to the security of India on account of external aggression

ceased long before 1975 and there was absolutely no justification whatsoever to continue the Proclamation and hence the continuance of the

Proclamation was mala fide and in colourable exercise of power and it was liable to be declared as unconstitutional and void. I do not think this

contention of the petitioners can be sustained on a proper interpretation of the provisions of Article 352. This Article originally consisted of three

Clause s, but by Section 5 of the Constitution (Thirty-eighth Amendment) Act, 1975, Clauses (4) and (5) were added in this Article and thereafter,

by a further amendment made by Section 48 of the Constitution (Forty-second Amendment) Act, 1976, another Clause (2A) was introduced after

Clause (2). The whole of this Article is not relevant for our purpose but I shall set out only the material provisions there of which have a bearing on

the controversy between the parties;

352 (1). If the President is satisfied that a grave emergency exists whereby the security of India or of any part of the territory thereof is threatened,

whether by war or external aggression or internal disturbance, he may, by Proclamation, make a declaration to that effect (in respect of the whole

of India or of such part of the territory thereof as may be specified in the Proclamation).

(2) A Proclamation issued under Clause (1)--

(a) may be revoked (or varied) by a subsequent Proclamation;

(b) shall be laid before each House of Parliament;

(c) shall cease to operate at the expiration of two months unless before the expiration of that period it has been approved by resolutions of both

Houses of Parliament.

(2A) ...

(3) A Proclamation of Emergency declaring that the security of India or of any part of the territory thereof is threatened by war or by external

aggression or by internal disturbance may be made before the actual occurrence of war or of any such aggression or disturbance if the President is

satisfied that there is imminent danger thereof.

(4) The power conferred on the President by this article shall include the power to issue different Proclamations on different grounds, being war or

external aggression or internal disturbance or imminent danger of war or external aggression or internal disturbance, whether or not there is a

Proclamation already issued by the President under Clause (1) and such Proclamation is in operation.

(5) Notwithstanding anything in this Constitution:

(a) the satisfaction of the President mentioned in Clause (1) and (3) shall be final and conclusive and shall not be questioned in any Court on any

ground;

(b) subject to the provisions of Clause (2), neither the Supreme Court nor any other court shall have jurisdiction to entertain any question, on any

ground, regarding the validity of --

(i) a declaration made by Proclamation by the President to the effect stated in Clause (1); or

(ii) the continued operation of such Proclamation.

Now it is obvious on a plain natural construction of the language of Clause (1) of Article 352 that the President can take action under this Clause

only if he is satisfied that a grave emergency exists whereby the security of India or any part of the territory thereof is threatened, whether by war

or external aggression or internal disturbance. The satisfaction of the President "that a grave emergency exists whereby the security of India, ...is

threatened whether by war or external aggression or internal disturbance" is a condition precedent which must be fulfilled before the President can

issue a Proclamation under Article 352 Clause (1). When this condition precedent is satisfied, the President may exercise the power under Clause

(1) of Article 352 and issue a Proclamation of Emergency. The constitutional implications of a declaration of emergency under Article 352 Clause

(1) are vast and they are provided in Articles 83(2), 250, 353, 354, 358 and 359. The emergency being an exceptional situation arising out of a

national crisis certain wide and sweeping powers have been conferred on the Central Government and Parliament with a view to combat the

situation and restore normal conditions. One such power is that given by Article 83(2), which provides that while a Proclamation of Emergency is

in operation, Parliament may by law extend its duration for a period not exceeding one year at a time. Then another power conferred is that under

Article 250 which says that, while a Proclamation of Emergency is in operation, Parliament shall have the power to make laws for the whole or any

part of the territory of India with respect to any of the matters enumerated in the State List. The effect of this provision is that the federal structure

based on separation of powers is put out of action for the time being. Another power of a similar kind is given by Article 353 which provides that

during the time when a Proclamation of Emergency is in force, the executive powers of the Union shall extend to the giving of directions to any

State as to the manner in which the executive power thereof is to be exercised. This provision also derogates from the federal principle which

forms the basis of the Constitution. Then we come to Article 354 which confers power on the President, during the operation of a Proclamation of

Emergency, to direct that the provisions relating to distribution of revenues under Articles 268 to 270 shall have effect subject to such modifications

or exceptions as he thinks fit. Another drastic consequence of the Proclamation of Emergency is that provided in Article 358 which suspends the

operation of the Fundamental Rights guaranteed under Article 19 while a Proclamation of Emergency is in operation. Article 359 Clause (1)

empowers the President during the operation of a Proclamation of Emergency to make an Order suspending the enforcement of any of the

Fundamental Rights conferred by Part III and CLAUSE (1A) introduced by the Constitution (Thirty Eight Amendment) Act, 1975 suspends the

operation of those Fundamental Rights of which the enforcement has been suspended by the President by an Order made under Clause (1). These

are the drastic consequences which ensue upon the making of a declaration of emergency. The issue of a Proclamation of Emergency makes

serious inroads into the principle of federalism and emasculates the operation and efficacy of the Fundamental Rights. The power of declaring an

emergency is therefore a power fraught with grave consequences and it has the effect of disturbing the entire power structure under the

Constitution. But it is a necessary power given to the Central Government with a view to arming it adequately to meet an exceptional situation

arising out of threat to the security of the country on account of war or external aggression or internal disturbance or imminent danger of any such

calamity. It is therefore a power which has to be exercised with the greatest care and caution and utmost responsibility.

103. It will be convenient at this stage to consider the question as to whether and if so to what extent, the Court can review the constitutionality of

a Proclamation of Emergency issued under Article 352 Clause (1). There were two objections put forward on behalf of the respondents against

the competence of the Court to examine the question of validity of a Proclamation of Emergency. One objection was that the question whether a

grave emergency exists whereby the security of India or any part thereof is threatened by war or external aggression or internal disturbance is

essentially a political question entrusted by the Constitution to the Union Executive and on that account, it is not justiciable before the court. It was

urged that having regard to the political nature of the problem, it was not amenable to judicial determination and hence the court must refrain from

inquiring into it. The other objection was that in any event by reason of Clause (4) and (5) of Article 352, the Court had no jurisdiction to question

the satisfaction of the President leading to the issue of a Proclamation of Emergency or to entertain any question regarding the validity of the

Proclamation of Emergency or its continued operation. Both these objections are in my view unfounded and they do not bar judicial review of the

validity of the Proclamation of Emergency issued by the President under Article 352 Clause (1). My reasons for saying so are as follows.

104. It is axiomatic that if a question brought before the court is purely a political question not involving determination of any legal or constitutional

right or obligation, the court would not entertain it, since the court is concerned only with adjudication of legal rights and liabilities. But merely

because a question has a political complexion, that by itself is no ground why the court should shrink from performing its duty under the

Constitution, if it raises an issue of constitutional determination. There are a large number of decisions in the United States where Supreme Court

has entertained actions having a political complexion because they raised constitutional issues. Vide *Comillon v. Lightfoot* (1960) 364 US 339 and

Baker v. Carr (1961) 369 US 186 The controversy before the court may be political in character, but so long as it involves determination of a

constitutional question, the court cannot decline to entertain it. This is also the view taken by Cupta. J. and myself in State of Rajasthan v. Union of

India. I pointed out in my judgment in that case and I still stand by it, that merely because a question has a political colour, the court cannot fold its

hands in despair and declare ""Judicial hands of f"". So long as the question is whether an authority under the Constitution has acted within the limits

of its power or exceeded it, it can certainly be decided by the court. Indeed it would be its constitutional obligation to do so. I have said before, I

repeat again, that the Constitution is *suprema lex*, the paramount, law of the land, and there is no department or branch of government above or

beyond it. Every organ of government, be it the executive or the legislature or the judiciary, derives its authority from the Constitution and it has to

act within the limits of its authority and whether it has done so or not is for the Court to decide. The Court is the ultimate interpreter of the

Constitution and when there is manifestly unauthorised exercise of power under the Constitution, it is the duty of the Court to intervene. Let it not

be forgotten, that to this Court as much as to other branches of government, is committed the conservation and further-mice of constitutional

values. The Court's task is to identify those values in the constitutional plan and to work them into life in the cases that reach the court. ""Tact and

wise restraint ought to temper any power but courage and the acceptance of responsibility have their place too."" The Court cannot and should not

shirk this responsibility, because it has sworn the oath of allegiance to the Constitution and is also accountable to the people of this country. It

would not therefore, be right for the Court to decline to examine whether in a given case there is any constitutional violation involved in the

President issuing a Proclamation of Emergency under Clause (1) of Article 352.

105. But when I say this, I must make it clear that the constitutional jurisdiction of this Court does not extend further than saying whether the limits

on the power conferred by the Constitution on the President have been observed or there is transgression of such limits. Here the only limit on the

power of the President under Article 352 Clause (1) is that the President should be satisfied that a grave emergency exists whereby the security of

India or any part thereof is threatened whether by war or external aggression or internal disturbance. The satisfaction of the President is a

subjective one and cannot be decided by reference to any objective tests. It is deliberately and advisedly subjective because the matter in respect

to which he is to be satisfied is of such a nature that its decision must necessarily be left to the Executive branch of Government. There may be a

wide range of situations which may arise and their political implications and consequences may have to be evaluated in order to decide whether

there is a situation of grave emergency by reason of the security of the country being threatened by war or external aggression or internal

disturbance. It is not a decision which can be based on what the Supreme Court of the United States has" described as ""judicially discoverable and

manageable standards"". It would largely be a political judgment based on assessment of diverse and varied factors, fast-changing situations,

potential consequences and a host of other imponderables. It cannot therefore, by its very nature, be a fit subject matter for adjudication by judicial

methods and materials and hence it is left to the subjective satisfaction of the Central Government which is best in a position to decide it. The court

cannot go into the question of correctness or adequacy of the facts and circumstances on which the satisfaction of the Central Government is

based. That would be a dangerous exercise for the Court, both because it is not a fit instrument for determining a question of this kind and also

because the court would thereby usurp the function of the executive and in doing so, enter the ""political thicket"" which it must avoid, if it is to retain

its legitimacy with the people. But one thing is certain that if the satisfaction is mala fide or is based on wholly extraneous and irrelevant grounds,

the court would have jurisdiction to examine it, because in that case there would be no satisfaction of the President in regard to the matter on which

he is required to be satisfied. The satisfaction of the President is a condition precedent to the exercise of power under Article 352 Clause (1) and if

it can be shown that there is no satisfaction of the President at all, the exercise of the power would be constitutionally invalid. It is true that by

reason of Clause (5) (a) of Article 352, the satisfaction of the President is made final and conclusive, and cannot be assailed on any ground, but as

I shall presently point out, the power of judicial review is a part of the basic structure of the Constitution and hence this provision debarring judicial

review would be open to attack on the ground that it is unconstitutional and void as damaging or destroying the basic structure. This attack against

constitutionality can, however, be averted by reading the provision to mean--and that is how I think it must be read--that the immunity from

challenge granted by it does not apply where the challenge is not that the satisfaction is improper or unjustified but that there is no satisfaction at all.

In such a case, it is not the satisfaction arrived at by the President which is challenged but the existence of the satisfaction itself. Where therefore

the satisfaction is absurd or perverse or mala fide or based on a wholly extraneous and irrelevant ground, it would be no satisfaction at all and it

would be liable to be challenged before a Court, notwithstanding Clause (5) (a) of Article 352. It must of course, be conceded that in most cases it

would be difficult if not impossible, to challenge the exercise of power under Article 352 Clause (1) even on this limited ground, because the facts

and circumstances on which the satisfaction is based would not be known, but where it is possible, the existence of the satisfaction can always be

challenged on the ground that it is mala fide or based on a wholly extraneous or irrelevant ground.

106. It is true that so far there is no decision of this Court taking the view that the validity of a Proclamation of Emergency can be examined by the

court though within these narrow limits. But merely because there has been no occasion for this Court to pronounce on the question of justifiability

of a Proclamation of Emergency no inference can be drawn that a Proclamation of Emergency is immune from judicial scrutiny. The question

whether or not a Proclamation of Emergency can be judicially reviewed on the ground that it is mala fide or an abuse of power of the President did

arise before this Court in *Gulam Sarwai v. Union of India*, but the court declined to express any opinion on this question since no material was

placed before the Court making out a case of mala fides or abuse of power. Undoubtedly, in the subsequent decision of this Court in *Bhuthath*

Mato v. State of West Bengal there are one or two observations which might seem to suggest at first blush that a Proclamation of Emergency being

a political matter is "dehors our ken", but if one looks closely at the judgment of Krishna Iyer, J. in that case, it will be apparent that he does not lay

down that a Proclamation of Emergency cannot be reviewed by the judiciary even on a limited ground and leaves that question open and rejects

the contention of the petitioner challenging the continuance of Emergency only on the ground that : "the onus of establishing the continuation of

Emergency and absence of any ground whatever for the subjective satisfaction of the President, heavy as it is, has hardly been discharged," and

consequently it would be an academic exercise in constitutional law to" pronounce on the question of judicial reviewability of a Proclamation of

Emergency. There is thus no decision of this Court holding that a Proclamation of Emergency is beyond the judicial ken and I am not fettered by

any such decision compelling me to take a view different from the one which I have expounded in the preceding paragraph of this opinion. In fact,

the judgment of Gupta, J. and Myself in *State of Rajasthan v. Union of India* (supra) completely support me in the view I am taking. A

Proclamation of Emergency is undoubtedly amenable to judicial review though on the limited ground that no satisfaction as required by Article 352

was arrived at by the President in law or that the satisfaction was absurd or perverse or mala fide or based on an extraneous or irrelevant ground.

107. Now the question arises whether the continuance of a Proclamation of Emergency valid when issued can be challenged before the court on

the ground that the circumstances which necessitated or justified its issuance have ceased to exist. Can the court be asked to declare that the

Proclamation of Emergency has ceased to exist and is no longer in force or does the Proclamation continue to be in force until it is revoked by

another Proclamation under Clause (2) (a) of Article 352. The answer to this question depends on the interpretation of Clause (2) of Article 352.

That Clause says in Sub-Clause (a) that a Proclamation of Emergency issued under Clause (1) may i.e. revoked by a subsequent Proclamation.

Sub-Clause (b) of that Clause requires that a Proclamation issued under Clause (1) shall be laid before each House of Parliament and under Sub-

Clause (c) such a Proclamation ceases to operate at the expiration of two months, unless it has been approved by both Houses of Parliament

before the expiration of two months. It is clear from this provision that a Proclamation of Emergency validly issued under Clause (1) would

continue to operate at least for a period of two months and if before the expiration of that period, it has been approved by resolutions of both

Houses of Parliament, it would continue to operate further even beyond the period of two months, and the only way in which it can be brought to

an end is by revoking it by another Proclamation issued under Clause (2) (a). There is no other way in which it can cease to operate. Neither

Article 352 nor any other Article of the Constitution contains any provision saying that a Proclamation of Emergency validly issued under Clause

(1) shall cease to operate as soon as, the circumstances warranting its issuance have ceased to exist. It is, therefore, clear on a plain natural

interpretation of the language of Sub- Clauses (a) to (c) of Clause (2) that so long as the Proclamation of Emergency is not revoked by another

Proclamation under Sub-Clause (2) (a), it would continue to be in operation irrespective of change of circumstances. It may be pointed out that it

is interpretation of the provision of Clause (2) of Article 352 is supported by the decision of this Court in *Lakhan Pal v. Union of India* where

dealing with a similar contention urged on behalf of the petitioner that the continuance of the emergency which was declared on 26th October 1962

was a fraud on the Constitution, this Court speaking through Sarkar, C. J. pointed out that "the only way a Proclamation ceases to have effect is by

one of the events mentioned in this: Clause "" and since neither had happened, the Proclamation must be held to have continued in operation. The

petitioner urged in that case that armed aggression which justified the issue of the Proclamation of Emergency had come to an end and the

continuance of the Proclamation was therefore unjustified. But this contention was negated on the ground that the Proclamation having been

approved by the two Houses of Parliament within a period of two months of its issuance, it could cease to have effect only if revoked by another

Proclamation and that not having happened, the Proclamation continued to be in force. It is true that the power to revoke a Proclamation of

Emergency is vested only in the Central Government and it is possible that the Central Government may abuse this power by refuse to revoke a

Proclamation of Emergency even though the circumstances justifying the issue of Proclamation have ceased to exist and thus prolong baselessly

the state of emergency obliterating the Fundamental Rights and this may encourage a totalitarian trend. But the primary and real safeguard of the

citizen against such abuse of power lies in "the good sense of the people and in the system of representative and responsible Government" which is

provided in the Constitution, Additionally, it may be possible for the citizen in a given case to move the court for issuing a writ of mandamus for

revoking the Proclamation of Emergency if he is able to show by placing clear and cogent material before the court that there is no justification at

all for the continuance of the Proclamation of Emergency. But this would be a very heavy onus because it would be entirely for the executive

Government to be satisfied whether a situation has arisen where the Proclamation of Emergency can be revoked. There would be so many facts

and circumstances and such diverse considerations to be taken into account by the executive Government before it can be satisfied that there is no

longer any grave emergency whereby the security of India is threatened by war or external aggression or internal disturbance. This is not a matter

which is a fit subject matter for judicial determination and the court would not interfere with the satisfaction of the executive Government in this

regard unless it is clear on the material on record that there is absolutely no justification for the continuance of the Proclamation of Emergency and

the Proclamation is being continued mala fide or for a collateral purpose. The court may in such a case, if satisfied beyond doubt, grant a writ of

mandamus directing the Central Government to revoke the Proclamation of Emergency. But until that is done, the Proclamation of Emergency

would continue in operation and it cannot be said that, though not revoked by another Proclamation, it has still ceased to be in force. Here, in the

present case it was common ground that the first Proclamation of Emergency issued on 3rd December 1971 was not revoked by another

Proclamation under Clause (2) (a) of Article 352 until 21st March 1977 and hence at the material time when the House of People (Extension of

Duration) Act, 1976 was passed, the first Proclamation of Emergency was in operation.

108. Now if the first Proclamation of Emergency was in operation at the relevant time, it would be sufficient compliance with the requirement of the

proviso to Clause (2) of Article 83 and it would be unnecessary to consider whether the second Proclamation of Emergency was validly issued by

the President. But, contended the petitioners, the House of People (Extension of Duration) Act, 1976 on a proper interpretation of Section 2

postulated the operational existence of both the Proclamations of Emergency and if either of them was not in existence at the material date, the Act

would be inoperative and would not have the effect of extending the duration of the Lok Sabha. It was therefore not enough for the respondents to

establish that the first Proclamation of Emergency was in operation at the relevant date, but it was further necessary to show that the second

Proclamation of Emergency was also in operation and hence it was necessary to consider whether the second Proclamation of emergency was

validly issued by the President. The respondents sought to answer this contention of the petitioners by saying that on a proper construction of the

language of Section 2, it was not a condition precedent to the operation of the House of People (Extension of Duration) Act, 1976 that both the

Proclamations of Emergency should be in operation at the date when the Act was enacted. The House of People (Extension of Duration) Act,

1976 no doubt referred to both the Proclamations of Emergency being in operation but that was merely, said the respondents, by way of recital

and it was immaterial whether this recital was correct or incorrect, because so long as it could be objectively established that one Proclamation of

Emergency at least was in operation, the requirement of the proviso to Article 83 Clause (2) would be satisfied and the Act would be within the

competence of Parliament to enact. These rival contentions raised a question of construction of Section 2 of the House of People (Extension of

Duration) Act, 1976, It is a simple question which does not admit of much doubt or debate and a plain grammatical reading of Section 2 is

sufficient to answer it. It would be convenient to reproduce Section 2 which coincidentally happens to be the only operative section of the Act:

Section 2: The period of five years (being the period for which the House of the People may, under Clause (2) of Article 83 of the Constitution,

continue from the date appointed for its first meeting) in relation to the present House of the People shall, while the Proclamations of Emergency

issued on the 3rd day of December, 1971 and on the 25th day of June, 1975, are both in operation, be extended for a period of one year:

Provided that if both or either of the said Proclamations cease or ceases to operate before the expiration of the said period of one year, the present

House of the People shall, unless previously dissolved under Clause (2) of Article 83 of the Constitution, continue until six months after the cesser

of operation of the said Proclamations or Proclamation but not beyond the said period of one year.

While interpreting the language of this section, it is necessary to bear in mind that the House of People (Extension of Duration) Act, 1976 was

enacted under the proviso to Clause (2) of Article 83 for the purpose of extending the duration of the Lok Sabha and it was a condition precedent

to the exercise of this power by Parliament that there should be a Proclamation of Emergency in operation at the date when the Act was enacted.

Now according to Parliament there were two Proclamations of Emergency which were in operation at the material date, one issued on 3rd

December 1971 and the other on 25th June 1975 and the condition precedent for the exercise of the power under the proviso to Clause (2) of

Article 83 to enact the House of People (Extension of Duration) Act, 1976 was satisfied. It was, from the point of view of legislative drafting, not

necessary to recite the fulfilment of this condition precedent, but the draftsman of the Act, it seems, thought it advisable to insert a recital that this

condition precedent was satisfied and he, therefore, introduced the words ""while the Proclamations of Emergency issued on the 3rd day of

December, 1971 and on the 25th day of June, 1975 are both in operation"" before the operative part in Section 2 of the Act. These words were

introduced merely by way of recital of the satisfaction of the condition precedent for justifying the exercise of the power under the proviso to

Clause (2) of Article 83 and they were not intended to lay down a condition for the operation of Section 2 of the Act. Section 2 clearly and in so

many terms extended the duration of the Lok Sabha for a period of one year and this extension was not made dependent on both the

Proclamations of Emergency being in operation at the date of the enactment of the Act. It was for a definite period of one year that the extension

was effected and it was not co-extensive with the operation of both the Proclamations of Emergency. The extension for a period of one year was

made once and for all by the enactment of Section 2 and the reference to both the Proclamations of Emergency being in operation was merely for

the purpose of indicating that both the Proclamations of Emergency being in operation, Parliament had competence to make the extension. It was

therefore not at all necessary for the efficacy of the extension that both the Proclamations of Emergency should be in operation at the date of

enactment of the Act. Even if one Proclamation of Emergency was in operation at the material date, it would be sufficient to attract the power of

Parliament under the proviso to Article 83 Clause (2) to enact the Act extending the duration of the Lok Sabha. of course, it must be conceded

that Parliament proceeded on the assumption that both the Proclamations of Emergency were in force at the relevant date and they invested

Parliament with power to enact the Act, but even if this legislative assumption were unfounded, it would not make any difference to the validity of

the exercise of the power, so long as there was one Proclamation of Emergency in operation which authorised Parliament to extend the duration of

the Lok Sabha under the proviso to Clause (2) of Article 83. It is true that the proviso to Section 2 enacted that if both or either of the

Proclamations of Emergency cease or ceases to operate before" the expiration of the extended period of one year, the Lok Sabha shall continue

until six months after the cesser of operation of the said Proclamations or Proclamation, not going beyond the period of one year, but the opening

part of this proviso can have application only in relation to a Proclamation of Emergency which was in operation at the date of enactment of the

Act. If such a Proclamation of Emergency which was in operation at the material date ceased to operate before the expiration of the extended

period of one year, then the term of the Lok Sabha would not immediately come to an end. but it would continue for a further period of six months

but not so as to exceed the extended period of one year. This provision obviously could have no application in relation to the second Proclamation

of Emergency if it was void when issued. In such a case, the second Proclamation not being valid at all at the date of issue would not be in

operation at all and it could not cease to operate after the date of enactment of the Act. The proviso would in that event have to be read as relating

only to the first Proclamation" of Emergency, and since that Proclamation of Emergency continued until it was revoked on 21st March, 1977, the

duration of the Lok Sabha was validly extended for a period of one year from 18th March, 1976 and hence there was a validly constituted Lok

Sabha" on the dates when the Constitution (Fortieth Amendment) Act, 1976 and the Constitution (Forty-second Amendment) Act, 1976 were

passed by Parliament. On this view it is not at all necessary to consider whether the second Proclamation of Emergency was validly issued by the

President. It is the settled practice of this Court not to say more than is necessary to get a safe resting place for the decision and I do not think that

any useful purpose will be served by examining the various grounds of challenge urged against the validity of the second Proclamation of

Emergency, particularly since Clause (3) has been introduced in Article 332 by the Constitution (Forty-fourth Amendment) Act, 1978 requiring

that a Proclamation of Emergency shall not be issued by the President unless the decision of the Union Cabinet recommending the issue of such

Proclamation has been communicated to him in writing and Clause (9) of Article 352 introduced by the Constitution (Thirty-eighth Amendment)

Act, 1975 and renumbered by the Constitution (Forty-fourth Amendment) Act, 1978 empowered the President to issue different Proclamations on

different grounds. I would, therefore, reject the challenge against the validity of the Constitution (Fortieth Amendment) Act, 1976" and the

Constitution (Forty-second Amendment) Act, 1976 based on the ground that on the dates when these Constitutional Amending Acts were

enacted, the Lok Sabha was not validly in existence.

109. That takes me to the challenge against the "constitutional validity of the amendment made in Article 31C by Section 4 of the Constitution

(Forty-second Amendment) Act, 1976. This amendment substitutes the words "all or any of the principles laid down in Part IV" for the words the

principles specified in Clause (b) or Clause (c) of Article 39" and so amended, Article 31C provides that "Notwithstanding anything contained in

Article 13, no law giving effect to the policy of the State towards securing all or any of the principles laid down in Part IV shall be deemed to be

void on the ground that it is inconsistent with or takes away or abridges any of the rights conferred by Article 14 or Article 19". The amended

Article 31C gives primacy to Directive Principles over Fundamental Rights in case of conflict between them and the question is whether this

amendment is in any way destructive of the basic structure of the Constitution. To answer this question satisfactorily, it is necessary to appreciate

the inter-relationship between Fundamental Rights and Directive Principles and for this purpose it would be useful to trace briefly the history of

their enactment in the Constitution. The genesis of Fundamental Rights and Directive Principles is to be found in the freedom struggle which the

people of India waged against the British rule under the aegis of the Indian National Congress led by Mahatma Gandhi, Jawaharlal Nehru and

other national leaders. These great leaders realised the supreme importance of the political and civil rights of the individual, because they knew

from their experience of the repression under the British rule as also from the recent events of history including the two World Wars that these

rights are absolutely essential for the dignity of man and development of his full personality. But, at the same time, they were painfully conscious that

in the socio-economic conditions that prevailed in the country, only an infinitesimal fraction of the people would be able to enjoy these civil and

political rights. There were millions of people in the country who were steeped in poverty and destitution and for them, these civil and political

rights had no meaning. It was realised that to the large majority of people who are living an almost subhuman existence in conditions of abject

poverty and for whom life is one long unbroken story of want and destitution, notions of individual freedom and liberty, though representing some

of the most cherished values of free society, would sound as empty words bandied about only in the drawing rooms of the rich and well-to-do and

the only solution for making these rights meaningful to them was to re-make the material conditions and usher in a new social order where socio-

economic justice will inform all institutions of public life so that the pre-conditions of fundamental liberties for all may be secured. It was necessary

to create socio-economic conditions in which every citizen of the country would be able to exercise civil and political rights and they will not remain

the preserve of only a fortunate few. The national leaders, therefore, laid the greatest stress on the necessity of bringing about socio-economic

regeneration and ensuring social and economic justice. Mahatma Gandhi, the father of the nation, said in his inimitable style in words, full of

poignancy:

Economic equality is the master key to non-violent independence. A non-violent system of Government is an impossibility so long as the wide gulf

between the rich and the hungry millions persists. The contrast between the palaces of New Delhi and the miserable hovels of the poor labouring

class cannot last one day in a free India in which the poor will enjoy the same power as the rich in the land. A violent and bloody revolution is a

certainty one day, unless there is voluntary abdication of riches and the power that riches give and sharing them for common good.?

Jawaharlal Nehru also said in the course of his presidential address to the Lahore Congress Session of 1929:

The philosophy of socialism has gradually permeated the entire structure of the society, the world over and almost the only point in dispute is the

phase and methods of advance to its full realisation. India will have to go that way too if she seeks to end huge poverty and inequality, though she

may evolve her own methods and may adapt the ideal to the genius of her race.

Then again, emphasising the intimate and inseparable connection between political independence and social and economic freedom, he, said:

If an indigenous Government took the place of the foreign Government and kept all the vested interests intact, this would not be even the shadow

of freedom.... India's immediate goal can only be considered in terms of the ending of the exploitation of her people. Politically, it must mean

independence and cession of the British connection; economically and socially, it must mean the ending of all special class privilege and vested

interests.

The Congress Resolution of 1929 also emphasised the same theme of socio-economic reconstruction when it declared:

The great poverty and misery of the Indian people are due, not only to foreign exploitation in India, but also to the economic structure of society,

which the alien rulers support so that their exploitation may continue. In order therefore to remove this poverty and misery and to ameliorate the

condition of the Indian masses, it is essential to make revolutionary changes in the present economic and social structure of society and to remove

the gross inequalities.

110. The Resolution passed by the Congress in 1931 proceeded to declare that in order to end the exploitation of masses, political freedom must

include social and economic freedom of the starving millions. The Congress Election Manifesto of 1945 also reiterated the same thesis when it said

that "the most vital and urgent of India's problems is how to remove the curse of poverty and raise the standard of masses" and for that purpose it

is necessary...to prevent the concentration of wealth and power in the hands of individuals and groups and to prevent vested interests inimical to

society from "growing". This was the socio-economic philosophy which inspired the framers of the Constitution to believe that the guarantee of

individual freedom was no doubt necessary to be included in the Constitution, but it was also essential to make provisions for re-structuring the

socio-economic order and ensuring social and economic justice to the people. This was emphasized by Jawaharlal Nehru when, speaking on the

resolution regarding the aims and objectives before the Constituent Assembly, he said:

The first task of this Assembly is to free India through a new Constitution, to feed the starving people and clothe the naked masses and give every

Indian fullest opportunity to develop himself according to his capacity.

In fact, as pointed out by K. Santhanam, a prominent southern member of the Constituent Assembly, there were three revolutions running parallel in

India since the end of the first World War. The political revolution came to an end on 15th August, 1947 when India became independent but

clearly political freedom cannot be an end in itself it can only be a means to an end, "that end being" as eloquently expressed by Jawaharlal Nehru

the raising of the people... to higher levels and hence the general advancement of humanity." It was therefore necessary to carry forward and

accomplish the social and economic revolutions The social revolution was meant to get India "out of the medievalism based on birth, religion,

custom and community and reconstruct her social structure on modern foundations of law, individual merit and secular education," while the

economic revolution was intended to bring about "transition from primitive rural economy to scientific and planned agriculture and industry," Dr.

Radhakrishnan who was a member of the Constituent Assembly and who later became the President of India also emphasized that India must have

a socio-economic revolution designed not only to bring about the real satisfaction of the fundamental needs of the common man but to go much

deeper and bring about "a fundamental change in the structure of Indian society." It was clearly realised by the framers of the Constitution that on

the achievement of this great social and economic change depended the survival of India. "If we cannot solve this problem soon", Jawaharlal Nehru

warned the Constituent Assembly "all our paper Constitutions will become useless and purposeless." The Objectives Resolution which set out the

Aims and Objectives before the Constituent Assembly in framing the Constitution and which was passed by the Constituent Assembly in January

1947 before embarking upon the actual task of Constitution making, therefore, expressed the resolve of the Constituent Assembly to frame a

Constitution wherein shall be guaranteed and secured to all the people of India justice, social, economic and political, equality of status and of

opportunity before the law; freedom of thought, expression, belief, faith, worship, vocation, association and action subject to law and public

morality and wherein adequate safeguards shall be provided for minority, backward and tribal areas and depressed and other backward classes.

These objectives were incorporated by the Constitution makers in the Preamble of the Constitution and they were sought to be secured by

enacting Fundamental Rights in Part III and Directive Principles in Part IV.

111. It is not possible to fit Fundamental Rights and Directive Principles in two distinct and strictly defined categories, but it may be stated broadly

that Fundamental Rights represent civil and political rights while Directive Principles embody social and economic rights. Both are clearly part of

the broad spectrum of human rights. If we look at the Universal Declaration of Human Rights adopted by the General Assembly of the United

Nations on 18th December, 1948, we find that it contains not only rights protecting individual freedom (See Articles 1 to 21) but also social and

economic rights intended to ensure socio-economic justice to every one (See Articles 22 to 29). There are also two International Covenants

adopted by the General Assembly for securing human rights, one is the International Covenant on civil and Political Rights and the other is the

International Covenant on Economic, Social and Cultural Rights. Both are international instruments relating to human rights. It is therefore not

correct to say that Fundamental Rights alone are based on human rights while Directive Principles fall in some category other than human rights.

The socio-economic rights embodied in the Directive Principles are as much a part of human rights as the Fundamental Rights. Hegde and

Mukherjea, JJ. were, to my mind, right in saying in Keshavananda Bharati's case of the Report that "the Directive Principles and the

Fundamental Rights mainly proceed on the basis of human rights." Together, they are intended to carry out the objective set out in the Preamble of

the Constitution and to establish an egalitarian social order informed with political, social and economic justice and ensuring dignity of the individual

not only to a few privileged persons but to the entire people of the country including the have-nots and the handicapped, the lowliest and the lost.

112. Now it is interesting to note that although Fundamental Rights and Directive Principles appear in the Constitution as distinct entities, there was

no such demarcation made between them during the period prior to the framing of the Constitution. If we may quote the words of Granville Austin

in his book; ""both types of rights had developed as a common demand, products of the national and social revolutions, of their almost inseparable

intertwining, and of the character of Indian politics itself"". They were both placed on the same pedestal and treated as falling within the same

category compendiously described as ""Fundamental Rights"". The Sapru Committee in its Constitutional Proposals made in 1945, recommended

that the declaration of Fundamental Rights in its wider sense was absolutely necessary and envisaged these rights as falling in two classes; one

justiciable and the other non-justiciable -- the former being enforceable in Courts of law and the latter, not. The Committee however, felt difficulty

in dividing the Fundamental Rights onto these two classes and, left the whole issue to be settled by the Constitution making body with the

observation that though the task was difficult, it was by no means impossible. This suggestion of the Sapru Committee perhaps drew its inspiration

from the Irish Constitution of 1937, which made a distinction between justiciable and non-justiciable rights and designated the former as

Fundamental Rights and the latter as Directive Principles of Social Policy. Dr. Lauterpacht also made a similar distinction between justiciable and

non-justiciable rights in his ""International Bill of the Rights of Men"". The substantial provisions of this Bill were in two parts; Part I dealt with

personal or individual rights enforceable in Courts of Law while Part II set out social and economic rights incapable of or unsuitable for such

enforcement. Sir B.N. Rau, who was the Constitutional Adviser to the Government of India, was considerably impressed by these ideas and he

suggested that the best way of giving effect to the objectives set out in the Objectives Resolution was to split-up the objectives into Fundamental

Rights and Fundamental Principles of State Policy, the former relating to personal and political rights enforceable in Courts of Law and the latter

relating to social and economic rights and other matters, not so enforceable and proposed that the Chapter on Fundamental Rights may be split-up

into two parts; Part A dealing with the latter kind of rights under the heading ""Fundamental Principles of Social Policy"" and Part B dealing with the

former under the heading ""Fundamental Rights"". The Fundamental Rights Sub-Committee also recommended that ""the list of fundamental rights

should be prepared in two parts, the first part consisting of rights enforceable by appropriate legal process and the second consisting of Directive

Principles of Social Policy." A week later, while moving for consideration, the Interim Report on Fundamental Rights, Sardar Vallabhbhai Patel

said:

This is a preliminary report or an interim report because the Committee when it sat down to consider the question of fixing the fundamental rights

and its incorporation into the Constitution, came to the conclusion that the Fundamental Rights should be divided into two parts--the first part

justiciable and the other non-justiciable.

This position was reiterated by Sardar Vallabhbhai Patel when he said while presenting the Supplementary Report:

There were two parts of the Report; one contained Fundamental Rights which were justiciable and the other part of the Report referred to

Fundamental Rights which were not justiciable but were directives....

It will, therefore, be seen that from the point of view of importance and significance, no distinction was drawn between justiciable and non-

justiciable rights and both were treated as forming part of the rubric of Fundamental Rights, the only difference being that whereas the former were

to be enforceable in Courts of Law, the latter were not to be so enforceable. This proposal of dividing the fundamental rights into two parts, one

part justiciable and the other non-justiciable, was however not easy of adoption because it was a difficult task to decide in which category a

particular fundamental right should be included. The difficulty may be illustrated by pointing out that at one time the right to primary education was

included in the draft list of Fundamental Rights, while the equality clause figured in the draft part of Fundamental Principles of Social Policy. But

ultimately a division of the Fundamental Rights into justiciable and non-justiciable rights was agreed upon by the Constituent Assembly and the

former were designated as "Fundamental Rights" and the latter as "Directive Principles of State Policy". It has sometimes been said that the

Fundamental Rights deal with negative obligations of the State not to encroach on individual freedom, while the Directive Principles impose positive

obligations on the State to take certain kind of action. But, I find it difficult to subscribe to this proposition because, though the latter part may be

true that the Directive Principles require positive action to be taken by the State, it is not wholly correct to say that the Fundamental Rights impose

only negative obligations on the State. There are a few fundamental rights which have also a positive content and that has been, to some extent,

unfolded by the recent decisions of this Court in *Hussainara Khatton v. State of Bihar*, *Madhav Hayawadanrao Hoskot v. State of Maharashtra*

and *Sunil Batra etc. v. Delhi Administration & Ors. etc.*. There are new dimensions of the Fundamental Rights which are being opened up by this

Court and the entire jurisprudence of Fundamental Rights is in a state of resurgent evolution. Moreover, there are three articles, namely, Article

15(2), Article 17 and Article 23 within the category of Fundamental Rights which are designed to protect the individual against the action of other

private citizens and seem to impose positive obligations on the State to ensure this protection to the individual. I would not, therefore, limit the

potential of the Fundamental Rights by subscribing to the theory that they are merely iterative obligations requiring the State to abstain as distinct

from taking positive action. The only distinguishing feature, to my mind, between Fundamental Rights and Directive Principles is that whereas the

former are enforceable in a Court of Law, the latter, are not. And the reason for this is obvious. It has been expressed succinctly by the Planning

Commission in the following words:

The non-justiciability clause only provides that the infant State shall not be immediately called upon to account for not fulfilling the new obligations

laid upon it. A State just awakened to freedom with its many pre-occupations might be crushed under the burden unless it was free to decide the

order, the time, the place and the mode of fulfilling them.

The social and economic rights and other matters dealt with in the Directive Principles are by their very nature incapable of judicial enforcement

and moreover, the implementation of many of those rights would depend on the state of economic development in the country, the availability of

necessary finances and the Government's assessment of priority of objectives and values and that is why they are made non-justiciable. But merely

because the Directive Principles are non-justiciable, it does not follow that they are in any way subservient or inferior to the Fundamental Rights.

113. The Indian Constitution is first and foremost a social document. The majority of its provisions are either directly aimed at furthering the goals

of the socio-economic revolution or attempt to foster this revolution by establishing the conditions necessary for its achievement. Yet despite the

permeation of the entire Constitution by the aim of national renaissance, says Granville Austin, "the core of the commitment to the social revolution

lies...in the Fundamental Rights and the Directive Principles of State Policy." (Granville Austin; "The Indian Constitution, Cornerstone of a Nation,

p. 50). These are the conscience of the Constitution and, according to Granville Austin, they are designed to be the Chief instruments in bringing

about the great reforms of the socio-economic revolution and realising the constitutional goals of social, economic and political justice for all. The

Fundamental Rights undoubtedly provide for political justice by conferring various freedoms on the individual, and also make a significant

contribution to the fostering of the social revolution by aiming at a society which will be egalitarian in texture and where the rights of minority groups

will be protected? But it is in the Directive Principles that we find the clearest statement of the socio-economic revolution. The Directive Principles

aim at making the Indian masses free in the positive sense, free from the passivity engendered by centuries of coercion by society and by nature,

free from the abject physical conditions that had prevented them from fulfilling their best selves (Granville Austin; "The Indian Constitution,

Cornerstone of a Nation, page 51). The Fundamental Rights are no doubt important and valuable in a democracy, but there can be no real

democracy without social and economic justice to the common man and to create socio-economic conditions in which there can be social and

economic Justice to every one, is the theme of the Directive Principles. It is the Directive Principles which nourish the roots of our democracy,

provide strength and vigour, to it and attempt to make it a real participatory democracy which does not remain merely a political democracy but

also becomes social and economic democracy with Fundamental Rights available to all irrespective of their power, position or wealth. The

dynamic provisions of the Directive Principles fertilise the static provisions of the Fundamental Rights. The object of the Fundamental Rights is to

protect individual liberty, but can individual liberty be considered in isolation from the socio-economic structure in which it is to operate! There is a

real connection between individual liberty and the shape and form of the social and economic structure of the society. Can there be any individual

liberty at all for the large masses of people who are suffering from want and privation and who are cheated out of their individual rights by the

exploitative economic system? Would their individual liberty not come in conflict with the liberty of the socially and economically more powerful

class and in the process, get mutilated or destroyed? It is axiomatic that the real controversies in the present day society are not between power

and freedom but between one form of liberty and another. Under the present socio-economic system, it is the liberty of the few which is in conflict

with the liberty of the many. The Directive Principles therefore, impose an obligation on the State to take positive action for creating socio-

economic conditions in which there will be an egalitarian social order with social and economic justice to all, so that individual liberty will become a

cherished value and the dignity of the individual a living reality, not only for a few privileged persons but for the entire people of the country. It will

thus be seen that the Directive Principles enjoy a very high place in the constitutional scheme and it is only in the framework of the socio-economic

structure envisaged in the Directive Principles that the Fundamental Rights are intended to operate, for it is only then they can become meaningful

and significant for the millions of our poor and deprived people who do not have even the bare necessities of life and who are living below the

poverty level.

114. The Directive Principles are set out in Part IV of the Constitution and this Part starts with Article 37 which, to my mind, is an Article of crucial

importance: It says: ""The provisions contained in this Part shall not be enforceable in any court but the principles therein laid down are nevertheless

fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws."" It is necessary, in order

to appreciate the full implications of this Article, to compare it with the corresponding provision in the Irish Constitution which, as pointed out

above, provided to some extent the inspiration for introducing Directive Principles in the Constitution. Article 45 of the Irish Constitution provides:

The principles of social policy set forth in this Article are intended for the general guidance of the Dirchtas. The application of those principles in

the making of laws shall be the care of the Dirchtas exclusively and shall not be cognizable for any court under any of the provisions of this

Constitution.

It is interesting to note that our Article 37 makes three significant departures from the language of Article 45; first whereas Article 45 provides that

the application of the principles of social policy shall not be cognizable by any court, Article 37 says that the Directive Principles shall not be

enforceable by any court; secondly whereas Article 45 provides that the principles of social policy are intended for the general guidance of the

Dirchtas, Article 37 makes the Directive Principles fundamental in the governance of the country and lastly, whereas Article 45 declares that the

application of principles of social policy in the making of laws shall be the care of the Dirchtas exclusively, Article 37 enacts that it shall be the

duty of the State to apply the Directive Principles in making laws. The changes made by the framers of the Constitution are vital and they have the

effect of bringing about a total transformation or metamorphosis of this provision, fundamentally altering its significance and efficacy.

115. It will be noticed that the Directive Principles are not excluded from the cognizance of the court, as under the Irish Constitution; they are

merely made non-enforceable by a court of law for reasons already discussed. But merely because they are not enforceable by the judicial process

does not mean that they are of subordinate importance to any other part of the Constitution. I have already said this before, but I am emphasizing it

again, even at the cost of repetition, because at one time a view was taken by this Court in *State of Madras v. Champkan Dorairajan* that because

Fundamental Rights are made enforceable in a court of law and Directive Principles are not, ""the Directive Principles have to conform to and run as

subsidiary to the Chapter on Fundamental rights."" This view was patently wrong and within a few years, an opportunity was found by this Court

Kerala Education Bill, 1959 SCR 995 to introduce a qualification by stating that: ""Nevertheless in determining the scope and ambit of the

fundamental Rights relied on by or on behalf of any person or body, the court may not entirely ignore these Directive Principles of State Policy laid

down in Part IV of the Constitution but should adopt the principle of harmonious construction and should attempt to give effect to both as much as

possible."" But even this observation seemed to give greater importance to Fundamental Rights as against Directive Principles and that was primarily

because the Fundamental Rights are enforceable by the Judicial process while the Directive Principles are expressly made non-enforceable. I am

however, of the opinion, and on this point I agree entirely with the observation of Hegde, J. in his highly illuminating Lectures on the ""Directive

Principles of State Policy"" that:

Whether or not a particular mandate of the Constitution is enforceable by court, has no bearing on the importance of that mandate. The

Constitution contains many important mandates which may not be enforceable by the courts of law. That does not mean that those Articles must

render subsidiary to the Chapter on Fundamental Rights... it would be wrong to say that those positive mandates""", that is the positive mandates

contained in the Directive Principles, ""are of lesser significance than the mandates under Part III

Hegde, J. in fact pointed out at another place in his Lectures that:

Unfortunately an impression has gained ground in the organs of the State not excluding judiciary that because the Directive Principles set out in Part

IV are expressly made by Article 37 non-enforceable by courts, these directives are mere pious hopes not deserving immediate attention. I

emphasize again that no part of the Constitution is more important than Part IV.... To ignore. Part IV is to ignore the sustenance provided for in the

Constitution, the hopes held out to the nation and the very ideals on which our Constitution is built up.

(Emphasis supplied)

I wholly endorse this view set forth by Hegde, J. and express my full concurrence with it.

116. I may also point out that simply because the Directive Principles do not create rights enforceable in a court of law, it does not follow that they

do not create any obligations on the State. We are so much obsessed by the Hohfeldian Classification that we tend to think of rights, liberties,

powers and privileges as being invariably linked with the corresponding concept of duty, no right, liability and immunity. We find it difficult to

conceive of obligations or duties which do not create corresponding rights in others. But the Hohfeldian concept does not provide a satisfactory

analysis in all kinds of jural relationships and breaks down in some cases where it is not possible to say that the duty in one creates an enforceable

right in another. There may be a rule which imposes an obligation on an individual or authority and yet it may not be enforceable in a court of law

and therefore not give rise to a corresponding enforceable right in another person. But it would still be a legal rule because it prescribes a norm of

conduct to be followed by such individual or authority. The law may provide a mechanism for enforcement of this obligation, but the existence of

the obligation does not depend upon the creation of such mechanism. The obligation exists prior to and independent of the mechanism of

enforcement. A rule imposing an obligation or duty would not therefore cease to be a rule of law because there is no regular judicial or quasi-

judicial machinery to enforce its command. Such a rule would exist despite of any problem relating to its enforcement. Otherwise the conventions

of the Constitution and even rules of International law would no longer be liable to be regarded as rules of law. This view is clearly supported by

the opinion of Professor A.L. Goodhart who, while commenting upon this point, says:

I have always argued that if a principle is recognised as binding on the legislature, then it can be correctly described as a legal rule even if there is

no court that can enforce it. Thus most of Dicey's book on the British Constitution is concerned with certain general principles which Parliament

recognises as binding on it.

It is therefore, to my mind, dear beyond doubt that merely because the Directive Principles are not enforceable in a court of law, it does not mean

that they cannot create obligations or duties binding on the State. The crucial test which has to be applied is whether the Directive Principles

impose any obligations or duties on the State; if they do, the State would be bound by a constitutional mandate to carry out such obligations or

duties, even though no corresponding right is created in any one which can be enforced in a court of law.

117. Now on this question Article 37 is emphatic and makes the point in no uncertain terms. It says that the Directive Principles are ""nevertheless

fundamental in the governance of the country and it shall be the duty of the State to apply those principles in making laws."" There could not have

been more explicit language used by the Constitution makers to make the Directive Principles binding on the State and there can be no doubt that

the State is under a constitutional obligation to carry out this mandate contained in Article 37. In fact, non-compliance with the Directive Principles

would be unconstitutional on the part of the State and it would not only constitute a breach of faith with the people who imposed this constitutional

obligation on the State but it would also render a vital part of the Constitution meaningless and futile. Now it is significant to note that for the

purpose of the Directive Principles, the ""State"" has the same meaning as given to it under Article 13 for the purpose of the Fundamental Rights.

This would mean that the same State which is enjoined from taking any action in infringement of the fundamental Rights is told in no uncertain terms

that it must regard the Directive Principles as fundamental in the governance of the country and is positively mandated to apply them in making

laws. This gives rise to a paradoxical situation and its implications are far-reaching. The State is on the one hand, prohibited by the constitutional

injunction in Article 13 from making any law or taking any executive action which would infringe any Fundamental Right and at the same time it is

directed by the constitutional mandate in Article 37 to apply the Directive Principles in the governance of the country and to make laws for giving

effect to the Directive Principles. Both are constitutional obligations of the State and the question is, as to which must prevail when there is a

conflict between the two. When the State makes a law for giving effect to a Directive Principle, it is carrying out a constitutional obligation under

Article 37 and if it were to be said that the State cannot make such law because it comes into conflict with a fundamental Right, it can only be on

the basis that fundamental Rights stand on a higher pedestal and have precedence over Directive Principles. But, as we have pointed out above, it

is not correct to say that under our constitutional scheme, fundamental Rights are superior to Directive Principles or that Directive Principles must

yield to Fundamental Rights. Both are in fact equally fundamental and the courts have therefore in recent times, tried to harmonise them by

importing the Directive Principles in the construction of the Fundamental Rights. It has been laid down in recent decisions of this Court that for the

purpose of determining the reasonableness of the restriction imposed on Fundamental Rights, the Court may legitimately take into account the

Directive Principles and where executive action is taken or legislation enacted for the purpose of giving effect to a Directive Principle, the restriction

imposed by it on a Fundamental Right may be presumed to be reasonable. I do not propose to burden this opinion with reference to all the

decided cases where this principle has been followed by the Court, but I may refer only to one decision which, I believe, is the latest on the point,

namely, *Pathumma v. State of Kerala*, where Fazal Ali, J. summarised the law in the following words:

One of the tests laid down by the Court is that in judging the reasonableness of the restrictions imposed by Clause (5) of Article 19, the Court has

to bear in mind the Directive Principles of State Policy." So also in the *State of Bihar v. Kameshwar Singh*, this Court relied upon the Directive

Principle contained in Article 39 in arriving at its decision that the purpose for which the Bihar Zamindari Abolition legislation had been passed was

a public purpose. The principle accepted by this Court was that if a purpose is one falling within the Directive Principles, it would definitely be a

public purpose. It may also be pointed out that in a recent decision given by this Court in *Kasturi Lal Lakshmi Reddy v. State of Jammu and*

Kashmir (W. P. Nos. 481-482 of 1979, judgment delivered on 9th May, 1980), it has been held that every executive action of the Government,

whether in pursuance of law or otherwise, must be reasonable and informed with public interest and the yardstick for determining both

reasonableness and public interest is to be found in the Directive Principles and therefore, if any executive action is taken by the Government for

giving effect to a Directive Principle, it would prima facie be reasonable and in public interest. It will, therefore, be seen that if a law is enacted for

the purpose of giving effect to a Directive Principle and it imposes a restriction on a fundamental Right, it would be difficult to condemn such

restriction as unreasonable or not in public interest. So also where a law is enacted for giving effect to a Directive Principle in furtherance of the

constitutional goal of social and economic justice it may conflict with a formalistic and doctrinaire view of equality before the law, but it would

almost always conform to the principle of equality before the law in its total magnitude and dimension, because the equality clause in the

Constitution does not speak of mere formal equality before the law but embodies the concept of real and substantive equality which strikes at

inequalities arising on account of vast social and economic differentials and is consequently an essential ingredient of social and economic Justice.

The dynamic principle of egalitarianism fertilises the concept of social and economic justice, it is one of its essential elements and there can be no

real social and economic justice where there is a breach of the egalitarian principle. If, therefore, there is a law enacted by the legislature which is

really and genuinely for giving effect to a Directive Principle with a view to promoting social and economic justice, it would be difficult to say that

such law violates the principle of egalitarianism and is not in accord with the principle of equality before the law as understood not in its strict and

formalistic sense, but in its dynamic and activist magnitude. In the circumstances, the Court would not be unjustified in making the presumption that

a law enacted really and genuinely for giving effect to a Directive Principle in furtherance of the cause of social and economic justice, would not

infringe any Fundamental Right under Articles 14 and 19. Mr. C.H. Alexandrowick, an eminent jurist, in fact, says: ""Legislation implementing Part

IV must be regarded as permitted restrictions on Part III"". Dr. Ambedkar, one of the chief architects of the Constitution, also made it clear while

intervening during the discussion on the Constitution (First Amendment) Bill in the Lok Sabha on 18th May 1951 that in his view ""So far as the

doctrine of implied powers is concerned, there is ample authority in the Constitution itself, namely, in the Directive Principles ""to permit Parliament

to make legislation, although it will not be specifically covered by the provisions contained in the part on Fundamental Rights."" If this be the correct

interpretation of the constitutional provisions, as I think it is, the amended Article 31C does no more than codify the existing position under the

constitutional scheme by providing immunity to a law enacted really and genuinely for giving effect to a Directive Principle, so that needlessly futile

and time-consuming controversy whether such law contravenes Article 14 or 19 is eliminated. The amended Article 31C cannot in the

circumstances be regarded as violative of the basic structure of the Constitution.

118. But I may in the alternative, for the purpose of argument, assume that there may be a few oases where it may be found by the court, perhaps

on a narrow and doctrinaire view of the scope and applicability of a Fundamental Right as in *Karimbil Kunhikoman v. State of Kerala*, where a

law awarding compensation at a lower rate to holders of larger blocks of land and at higher rate to holders of smaller blocks of land was struck

down by this Court as violative of the equality clause, that a law enacted really and genuinely for giving effect to a Directive Principle is violative of

a Fundamental Right under Article 14 or 19. Would such a law enacted in discharge of the constitutional obligation laid upon the State under

Article 37 be invalid, because it infringes a Fundamental Right? If the court takes the view that it is invalid, would it not be placing Fundamental

Rights above Directive Principles, a position not supported at all by the history of their enactment as also by the constitutional scheme already

discussed by me? The two constitutional obligations, one in regard to Fundamental Rights and the other in regard to Directive Principles, are of

equal strength and merit and were is no reason why, in case of conflict, the former should be given precedence over the latter. I have already

pointed out that whether or not a particular mandate of the Constitution is justiciable has no bearing at all on its importance and significance and

justiciability by itself can never be a ground for placing one constitutional mandate on a higher pedestal than the other. The effect of giving greater

weightage to the constitutional mandate in regard to Fundamental Rights would be to relegate the Directive Principles to a secondary position and

emasculate the constitutional command that the Directive Principles shall be fundamental in the governance of the country and it shall be the duty of

the State to apply them in making laws. It would amount to refusal to give effect to the words ""fundamental in the governance of the country"" and a

constitutional command which has been declared by the Constitution to be fundamental would be rendered non-fundamental. The result would be

that a positive mandate of the Constitution commanding the State to make a law would be defeated by a negative constitutional obligation not to

encroach upon a Fundamental Right and the law made by the legislature pursuant to a positive constitutional command would be delegitimised and

declared unconstitutional. This plainly would be contrary to the constitutional scheme because, as already pointed out by me, the Constitution does

not accord a higher place to the constitutional obligation in regard to Fundamental Rights over the constitutional obligation in regard to Directive

Principles and does not say that the implementation of the Directive Principles shall only be within the permissible limits laid down in the Chapter on

Fundamental Rights. The main thrust of the argument of Mr. Pal-khiwala was that by reason of the amendment of Article 31C, the harmony and

balance between Fundamental Rights and Directive Principles are disturbed, because Fundamental Rights which had, prior to the amendment,

precedence over Directive Principles are now, as a result of the amendment, made subservient to Directive Principles. Mr. Palkhiwala

picturesquely described the position emerging as a result of the amendment by saying that the Constitution is now made to stand on its head instead

of its legs. But in my view the entire premises on which this argument of Mr. Palkhiwala is based is fallacious because it is not correct to say, and I

have in the preceding portions of this opinion, given cogent reasons for this view, that prior to the amendments Fundamental Rights had a superior

or higher position in the constitutional scheme than Directive Principles and there is accordingly no question at all of any subversion of the

constitutional structure by the amendment. There can be no doubt that the intention of the Constitution makers was that the Fundamental Rights

should operate within the socio-economic structure or a wider continuum envisaged by the Directive Principles, for then only would the

Fundamental Rights become exercisable by all and a proper balance and harmony between Fundamental Rights and Directive Principles secured.

The Constitution makers therefore never contemplated that a conflict would arise between the constitutional obligation in regard to Fundamental

Rights and the constitutional mandate in regard to Directive Principles. But if a conflict does arise between these two constitutional mandates of

equal fundamental character, how is the conflict to be resolved? The Constitution did not provide any answer because such a situation was not

anticipated by the Constitution makers and this problem had therefore to be solved by Parliament and some modus operandi had to be evolved in

order to eliminate the possibility of conflict howsoever remote it might be. The way was shown in no uncertain terms by Jawaharlal Nehru when he

said in the Lok Sabha in the course of discussion on the Constitution (First Amendment) Bill:

The Directive Principles of State Policy represent a dynamic move towards a certain objective. The Fundamental Rights represent something static,

to preserve certain rights which exist. Both again are right. But somehow and sometime it might so happen that that dynamic movement and that

static standstill do not quite fit into each other.

The dynamic movement towards a certain objective necessarily means certain changes taking place: that is the essence of movement. Now it may

be that in the process of dynamic movement certain existing relationships are altered, varied or affected. In fact, they are meant to affect those

settled relationships and yet if you come back to the Fundamental Rights they are meant to preserve, not indirectly, certain settled relationships.

There is a certain conflict in the two approaches, not inherently, because that was not meant, I am quite sure. But there is that slight difficulty and

naturally when the courts of the land have to consider these matters they have to lay stress more on the Fundamental Rights than on Directive

Principles. The result is that the whole purpose behind the Constitution, which was meant to be a dynamic Constitution leading to a certain goal

step by step, is somewhat hampered and hindered by the static element being emphasized a little more than the dynamic element.... If in the

protection of individual liberty you protect also individual or group inequality, then you come into conflict with that Directive Principle which wants,

according to your own Constitution, a gradual advance, or let us put it in another way, not so gradual but more rapid advance, whenever possible

to a State where there is less and less inequality and more and more equality. If any kind of an appeal to individual liberty and freedom is construed

to mean as an appeal to the continuation of the existing inequality, then you get into difficulties. Then you become static, unprogressive and cannot

change and you cannot realize the ideal of an egalitarian society which I hope most of us aim at.

Parliament took the view that the constitutional obligation in regard to Directive Principles should have precedence over the constitutional obligation

in regard to the Fundamental Rights in Articles 14 and 19, because Fundamental Rights though precious and valuable for maintaining the

democratic way of life, have absolutely no meaning for the poor, down trodden and economically backward classes of people who unfortunately

constitute the bulk of the people of India and the only way in which Fundamental Rights can be made meaningful for them is by implementing the

Directive Principles, for the Directive Principles are intended to bring about a socio-economic revolution and to create a new socio-economic

order where there will be social and economic justice for all and every one, not only a fortunate few but the teeming millions of India, would be

able to participate in the fruits of freedom and development and exercise the Fundamental Rights. Parliament therefore amended Article 31C with a

view to providing that in cases of conflict Directive Principles shall have precedence over the Fundamental Rights in Articles 14 and 19 and the

latter shall yield place to the former. The positive constitutional command to make laws for giving effect to the Directive Principles shall prevail over

the negative constitutional obligation not to encroach on the Fundamental Rights embodied in Articles 14 and 19. Parliament in making this

amendment was moved by the noble philosophy eloquently expressed in highly inspiring and evocative words, full of passion and feeling, by

Chandrachud, J. (as he then was) in his judgment in *Keshavananda Bharati & Ors v. State of Madras* (1973) 4 SCC 1. I may quote here what Chandrachud J. (as

he then was) said on that occasion, for it sets out admirably the philosophy which inspired Parliament in enacting the amendment in Article 31C.

The learned Judge said:

I have stated in the earlier part of my judgment that the Constitution accords a place of pride to Fundamental Rights and a place of permanence to

the Directive Principles. I stand by what I have said. The Preamble of our Constitution recites that the aim of the Constitution is to constitute India

into a Sovereign Democratic Republic and to secure to "all its citizens", Justice--Social, economic and political -- liberty and equality. Fundamental

Rights which are conferred and guaranteed by Part III of the Constitution undoubtedly constitute the ark of the Constitution and without them a

man's reach will not exceed his grasp. But it cannot be overstressed that, the Directive Principles of State Policy are fundamental in the governance

of the country. What is fundamental in the governance of the country cannot surely be less significant than what is fundamental in the life of an

individual. That one is justiciable and the other not may show the intrinsic difficulties in making the latter enforceable through legal processes but

that distinction does not bear on their relative importance. An equal right of men and women to an adequate means of livelihood, the right to obtain

humane conditions of work ensuring a decent standard of life and full enjoyment of leisure, and raising the level of health and nutrition are not

matters for compliance with the Writ of a Court. As I look at the provisions of parts III and IV, I feel no doubt that the basic object of conferring

freedoms on individuals is the ultimate achievement of the ideals set out in Part IV. A circumspect use of the freedoms guaranteed by Part III is

bound to subserve the common good but voluntary submission to restraints is a philosopher's dream. therefore, Article 37 enjoins the State to

apply the Directive Principles in making laws. The freedom of a few have then to be abridged in order to ensure the freedom of all. It is in this

sense that Parts III and IV, as said by Granville Austin¹, together constitute ""the conscience of the Constitution"". The Nation stands today at the

cross-roads of history and exchanging the time honoured place of the phrase, may I say that the Directive Principles of State of Policy should not

be permitted to become ""a mere rope of sand."" If the State fails to create conditions in which the Fundamental freedoms could be enjoyed by all,

the freedom of the few will be at the mercy of the many and then all freedoms will vanish. In order, therefore, to preserve their freedom, the

privileged few must part with a portion of it.

This is precisely what Parliament achieved by amending Article 31C. Parliament made the amendment in Article 31C because it realised that ""if the

State fails to create conditions in which the fundamental freedoms could be enjoyed by all, the freedom of the few will be at the mercy of the many

and then all freedoms will vanish"" and ""in order, therefore, to pre-serve their freedom, the privileged few must part with a portion of it."" I find it

difficult to understand how it can at all be said that the basic structure of the Constitution is affected when for evolving a modus vivandi for

resolving a possible remote conflict between two constitutional mandates of equally fundamental character, Parliament decides by way of

amendment of Article 31C that in case of such conflict the constitutional mandate in regard to Directive Principles shall prevail over the

constitutional mandate in regard to the Fundamental Rights under Articles 14 and 19. The amendment in Article 31C far from damaging the basic

structure of the Constitution strengthens and re-enforces it by giving fund-mental importance to the rights of the members of the community as

against the rights of a few individuals and furthering the objective of the Constitution to build an egalitarian social order where there will be social

and economic justice for all and every one including the low visibility areas of humanity in the country will be able to exercise Fundamental Rights

and the dignity of the individual and the worth of the human person which are cherished values will not remain merely the exclusive privileges of a

few but become a living reality for the many. Additionally, this question may also be looked at from another point of view so far as the protection

against violation of Article 14 is concerned. The principle of egalitarianism, as I said before, is an essential element of social and economic justice

and, therefore, where a law is enacted for giving effect to a Directive Principle with a view to promoting social and economic-justice, it would not

run counter to the egalitarian principle and would not therefore be violative of the basic structure, even if it infringes equality before the law in its

narrow and formalistic sense. No law which is really and genuinely for giving effect to a Directive Principle can be inconsistent with the egalitarian

principle and therefore the protection granted to it under the amended Article 31C against violation of Article 14 cannot have the effect of

damaging the basic structure. I do not therefore see how any violation of the basic structure is involved in the amendment of Article 31C. In fact,

once we accept the proposition laid down by the majority decision in Kesavananda Bharati's case AIR 1978 SC 1461 that the unamended Article

31C was constitutionally valid, it could only be on the basis that it did not damage or destroy the basic structure of the Constitution and moreover

in the order made in Waman Rao's case on 9th May 1980 this Court expressly held that the unamended Article 31C ""does not damage any of the

basic or essential features of the Constitution or its basic structure, and if that be so, it is difficult to appreciate how the amended Article 31C can

be said to be violative of the basic structure. If the exclusion of the Fundamental Rights embodied in Articles 14 and 19 could be legitimately made

for giving effect to the Directive Principles set out in Clauses (b) and (c) of Article 39 without affecting the basic structure. I fail to see why these

Fundamental Rights cannot be excluded for giving effect to the other Directive Principles. If the constitutional obligation in regard to the Directive

Principles set out in Clauses (b) and (c) of Article 39 could be given precedence over the constitutional obligation in regard to the Fundamental

Rights under Articles 14 and 19, there is no reason in principles why such precedence cannot be given to the constitutional obligation in regard to

the other Directive Principles which stand on the same footing. It would, to my mind, be incongruous to hold the amended Article 31C invalid

when the unamended Article 31C has been held to be valid by the majority decision in Kesavananda Bharati's case and by the Order made on 9th

May, 1980 in Waman Rao's case.

119. Mr. Palkhiwala on behalf of the petitioners however contended that there was a vital difference between Article 31C as it stood prior to its

amendment and the amended Article 31C, inasmuch as under the unamended Article 31C only certain categories of laws, namely, those enacted

for the purpose of giving effect to the Directive Principles set out in Clauses (b) and (c) of Article 39 were protected against challenge under

Articles 14 and 19, while the position under the amended Article 31C was that practically every law would be immune from such challenge

because it would be referable to one Directive Principle or the other and the result would be that the Fundamental Rights in Articles 14 and 19

would become meaningless and futile and would, for all practical purposes, be dead letter in the Constitution. The effect of giving immunity to laws

enacted for the purpose of giving effect to any one or more of the Directive Principles would, according to Mr. Palkhiwala, be in reality and

substance to wipe out Articles 14 and 19 from the Constitution and that would affect the basic structure of the Constitution. Mr. Palkhiwala also

urged that the laws which were protected by the amended Article 31C were laws for giving effect to the policy of the State towards securing any

one or more of the Directive Principles and every law would be comprehended within this description since it would not be competent to the court

to enter into questions of policy and determine whether the policy adopted in a particular law is calculated to secure any Directive Principle as

claimed by the State. The use of the words "law giving effect to the policy of the State", said Mr. Palkhiwala, introduced considerable uncertainty

in the yardstick with which to decide whether a particular law falls within the description in the amended Article 31C and widened the scope and

applicability of the amended Article so as to include almost every law claimed by the State to fall within such description. This argument was

presented by Mr. Palkhiwala with great force and persuasiveness but it does not appeal to me and I cannot accept it. It is dear from the language

of the amended Article 31C that the law which is protected from challenge under Articles 14 and 19 is law giving effect to the policy of the State

towards securing all or any of the Directive Principles. Whenever, therefore, any protection is claimed for a law under the amended Article 31C, it

is necessary for the court to examine whether the law has been enacted for giving effect to the policy of the State towards securing any one or

more of the Directive Principles and it is only if the court is so satisfied as a result of judicial scrutiny, that the court would accord the protection of

the amended Article 31C to such law. Now it is undoubtedly true that the words used in the amended Article are law giving effect to the policy of

the State", but the policy of the State which is contemplated there is the policy towards securing one or more of the Directive Principles. It is the

constitutional obligation of the State to secure the Directive Principles and that is the policy which the State is required to adopt and when a law is

enacted in pursuance of this policy of implementing the Directive Principles and it seeks to give effect to a Directive Principle, it would, both from

the point of view of grammar and language, be correct to say that it is made for giving effect to the policy of the State towards securing such

Directive Principle. The words "law giving effect to the policy of the State are not so wide as Mr. Palkhiwala would have it, but in the context and

collocation in which they occur, they are intended to refer only to a law enacted for the purpose of implementing or giving effect to one or more of

the Directive Principles. The Court before which protection for a particular law is claimed under the amended Article 31C would therefore have to

examine whether such law is enacted for giving effect to a Directive Principle, for then only it would have the protection of the amended Article

31C. Now the question is what should be the test for determining whether a law is enacted for giving effect to a Directive Principle. One thing is

clear that a claim to that effect put forward by the State would have no meaning or value; it is the court which would have to determine the

question. Again it is not enough that there may be some connection between a provision of the law and a Directive Principle. The connection has to

be between the law and the Directive Principle and it must be a real and substantial connection. To determine whether a law satisfies this test, the

court would have to examine the pith and substance, the true nature and character of the law as also its design and the subject matter dealt by it

together with its objects and scope. If on such examination, the court finds that the dominant object of the law is to give effect to the Directive

Principle, it would accord protection to the law under the amended Article 31C. But if the court finds that the law though passed seemingly for

giving effect to a Directive Principle, is, in pith and substance, one for accomplishing an unauthorised purpose -- unauthorised in the sense of not

being covered by any Directive Principle such law would not have the protection of the amended Article 31C. To take the illustration given by

Khanna, J. in *Keshavananda Bharati & others case* at page 745 of the Report,

a law might be made that as the old residents in the State are economically backward and those who have not resided in the State for more than

three generations have an affluent business in the State or have acquired property in the State, they shall be deprived of their business and property

with a view to vest the same in the old residents of the State.

It may be possible, after performing what I may call an archaeological operation, to discover some remote and tenuous connection between such

law and some Directive Principle, but the dominant object of such law would be, as pointed out by Mr. H.M. Seervai at page 1559 of the second

Volume of his book on "Constitutional Law of India," to implement "the policy of the State to discriminate against citizens who hail from another

State, and in a practical sense, to drive them out of it", and such law would not be protected by the amended Article 31C. Many such examples

can be given but I do not wish to unnecessarily burden this opinion, The point I wish to emphasize is that the amended Article 31C does not give

protection to a law which has merely some remote or tenuous connection with a Directive Principle. What is necessary is that there must be a real

and substantial connection and the dominant object of the law must be to give effect to the Directive Principle, and that is a the matter which the

court would have to decide before any claim for protection under the amended Article 31C can be allowed.

120. There is also one other aspect which requires to be considered before protection can be given to a law under the amended Article 31C. Even

where the dominant object of a law is to give effect to a Directive Principle, it is not every provision of the law which is entitled to claim protection.

The words used in the amended Article 31C are: "Law giving effect to the policy of the State towards securing all or any of the principles laid

down in Part IV" and these words, on a plain natural construction, do not include all the provisions of the law but only those which give effect to

the Directive Principle. But the question is how to identify these provisions giving effect to the Directive Principle in order to accord to them the

protection of the amended Article 31C. The answer to this question is analogically provided by the decision of this Court in *Akadasi Padhan v.*

State of Orissa. There the question was as to what was the precise connotation of the expression a law relating to a State monopoly which occurs

in Article 19(6). This Court held that a law relating to a State monopoly cannot include all the provisions contained in such law but it must be

construed to mean, the law relating to the monopoly in its absolutely essential features and it is only those provisions of the law which are

basically and essentially necessary for creating the State monopoly which are protected by Article 19(6). This view was reiterated in several

subsequent decisions of this Court which include *inter alia* *Rashbihari Pande etc. v. State of Orissa*, *Vrajla Manilal & Co. & ors v. State of*

Madhya Pradesh & Ors and *R. C. Cooper v. Union of India*. I would adopt the same approach in the construction of Article 31C and hold that it

is not every provision of statute, which has been enacted with the dominant object of giving effect to a Directive Principle, that is entitled to

protection, but only those provisions of the statute which are basically and essentially necessary for giving effect to the Directive Principle are

protected under the amended Article 31C. If there are any other provisions in the statute which do not fall within this category, they would not be

entitled to protection and their validity would have to be judged by reference to Articles 14 and 19. Where, therefore, protection is claimed in

respect of a statute under the amended Article 31C, the court would have first to determine whether there is real and substantial connection

between the law and a Directive Principle and the predominant object of the law is to give effect to such Directive Principle and if the answer to

this question is in the affirmative, the court would then have to consider which are the provisions of the law basically and essentially necessary for

giving effect to the Directive Principles and give protection of the amended Article 31C only to those provisions. The question whether any

particular provision of the law is basically and essentially necessary for giving effect to the Directive Principle, would depend to a large extent, on

how closely and integrally such provision is connected with the implementation of the Directive Principle. If the court finds that a particular

provision is subsidiary or incidental or not essentially and integrally connected with the implementation of the Directive Principle or is of such a

nature that though seemingly a part of the general design of the main provisions of the statute, its dominant object is to achieve an unauthorised

purpose, it would not enjoy the protection of the amended Article 31C and would be liable to be struck down as invalid if it violates Article 14 or

19.

121. These considerations which I have discussed above completely answer some of the difficulties raised by Mr. Palkhiwala. He said that if the

amended Article 31C were held to be valid, even provisions like Sections 23(a) and 24(1)(a) of the Bombay Prohibition Act, 1949 which were

struck down in *State of Bombay v. F. N. Balsari* as violating freedom of speech guaranteed under Article 19(1)(a), would have to be held to be

valid. I do not think that freedom and democracy in this country would be imperilled if such provisions were held valid. In fact, after the

amendment of Article 19(2) by the Constitution (First Amendment) Act, 1951, it is highly arguable that such provisions would fall within the

protection of Article 19(2) and would be valid. And even otherwise, it is difficult to see how any violation of the basic structure is involved if a

provision of a law prohibiting a person from commencing any intoxicant, the consumption or use of which is forbidden by the law (except under a

licence issued by the State Government) is protected against infraction of Article 19(1)(a). The position would perhaps be different if a provision is

introduced in the Prohibition Act saying that no one shall speak against the prohibition policy or propagate for the repeal of the Prohibition Act or

plead for removal of Article 47 from the Directive Principles. Such a provision may not and perhaps would not be entitled to the protection of the

amended Article 31C, even though it finds a place in the Prohibition Act, because its dominant object would not be to give effect to the Directive

Principle in Article 47 but to stifle freedom of speech in respect of a particular matter and it may run the risk of being struck down as violative of

Article 19(1)(a). If the Court finds that even in a statute enacted for giving effect to a Directive Principle, there is a provision which is not essentially

and integrally connected with the implementation of the Directive Principle or the dominant object of which is to achieve an unauthorised purpose,

it would be outside the protection of the amended Article 31C and would have to meet the challenge of Articles 14 and 19.

122. Lastly, I must consider the argument of Mr. Palkhiwala that almost any and every law would be within the protection of the amended Article

31C because it would be referable to some Directive Principle or the other. I think this is an argument of despair. Articles 39 to 51 contain

Directive Principles referring to certain specific objectives and in order that a law should be for giving effect to one of those Directive Principles,

there would have to be a real and substantial connection between the law and the specific objective set out in such Directive Principle. Obviously,

the objectives set out in these Directive Principles being specific and limited, every law made by a legislature in the country cannot possibly have a

real and substantial connection with one or the other of these specific objectives. It is only a limited number of laws which would have a real and

substantial connection with one or the other of the specific objectives contained in these Directive Principles and any and every law would not

come within this category. Mr. Palkhiwala then contended that in any event, the Directive Principle contained in Article 38 was very wide and it

would cover almost any law enacted by a legislature. This contention is also not well founded. Article 38 is a general article which stresses the

obligation of the State to establish a social order in which justice -- social, economic and political -- shall inform all the institutions of national life. It,

no doubt, talks of the duty of the State to promote the welfare of the people and there can be no doubt that standing by itself this might cover a

fairly wide area but it may be noted that the objective set out in the Article is not merely promotion of the welfare of the people, but there is a

further requirement that the welfare of the people is to be promoted by the State, not in any manner it likes, not according to its whim and fancy,

but for securing and protecting a particular type of social order and that social order should be such as would ensure social, economic and political

justice for all. Social, economic and political justice is the objective set out in the Directive Principle in Article 38 and it is this objective which is

made fundamental in the governance of the country and which the State is laid under an obligation to realise. This Directive Principle forms the base

on which the entire structure of the Directive Principles is reared and social, economic and political justice is the signature tune of the other

Directive Principles, The Directive Principles set out in the subsequent Articles following upon Article 38 merely particularise and set out facets and

aspects of the idea of social, economic and political justice articulated in Article 38. Mr. Palkhiwala's complaint was not directed against the use

of the words "political justice" in Article 38 but his contention was that the concept of social and economic justice referred to in that Article was so

wide that almost any legislation could come within it. I do not agree. The concept of social and economic justice may not be . very easy of

definition but its broad contours are to be found in some of the provisions of the Fundamental Rights and in the Directive Principles and whenever a

question arises whether a legislation is for giving effect to social and economic justice, it is with reference to these provisions that the question

would have to be determined. There is nothing so vague Or indefinite about the concept of social or economic justice that almost any kind of

legislation could be Justified under it. Moreover, where a claim for protection is made in respect of a legislation on the ground that it is enacted for

giving effect to a Directive Principle, the Directive Principle to which it is claimed to be related would not ordinarily be the general Directive

Principle set out in Article 38, but would be one of the specific Directive Principles set out in the succeeding Articles, because as I said before,

these latter particularise the concept of social and economic justice referred to in Article 38. I cannot therefore subscribe to the proposition that if

the amendment in Article 31C were held valid, it would have the effect of protecting every possible legislation under the sun and that would in

effect and substance wipe out Articles 14 and 19 from the Constitution. This is a tall and extreme argument for which I find no justification in the

provisions of the Constitution.

123. I would therefore declare Section 55 of the Constitution (Forty-second Amendment) Act, 1976 which inserted Sub-sections (4) and (5) in

Article 368 as unconstitutional and void on the ground that it damages the basic structure of the Constitution and goes beyond the amending power

of Parliament. But so far as Section 4 of the Constitution (Forty-second Amendment) Act, 1976 is concerned, I hold that, on the interpretation

placed on the amended Article 31C by me, it does not damage or destroy the basic structure of the Constitution and is within the amending power

of Parliament and I would therefore declare the amended Article 31C to be constitutional and valid.

124. I have also given my reasons in this judgment for subscribing to the Order dated 9th May, 1980 made in Waman Rao's case and this

judgment in so far as it sets out those reasons will be formally pronounced by me when Waman Rao's case is set down on board for judgment.

1. The Indian Constitution -- Cornerstone of a Nation. Edn. 1966.