CHAPTER-3

JUDICIAL REVIEW AND AMENDMENT PROCEDURE OF THE CONSTITUTION OF INDIA

Indian constitution is the lengthiest and written constitution of the world. In every constitution, there is provision for amendment. Without the provision of Amendment. Constitution cannot be a dynamic and it will be static. That is why, there is provision for amendment of the Indian constitution. There is always a debate or tussle between Judiciary and Legislature in context of amending power of legislature because of this tussle, Basic structure theory came into being.

(i) Provision related to Amendment procedure of Indian constitution and power of parliament to amend the constitution.

(ii) Amendment related to Judicial Review of Legislative Action.

(iii) Power of Supreme Court and Basis structure doctrine.

(iv) Fundamental rights and Judicial Review Amending procedure of Indian Constitution.

Amendment Procedure-

Part-XX of the Indian constitution contained one article that is article 368. According to this article parliament may add, amend or repeal any provision of the constitution as per procedure laid down for this purpose.

However in the Keshevanand Bharti case the Supreme Court has ruled that the parliament cannot amend those provisions which constitute the basic structure of the constitution.

- A constitution amendment bill can be introduced in any house of the parliament. A bill of the amendment of the constitution cannot introduce in any state legislature.
- The ordinance making power of the president cannot be used to amend the constitution.
- A constitution amendment bill can be introduced both as a government bill.

- A constitution amendment bill must pass in both the houses separately by absolute and special majority.
- If there is any contradiction among two houses of the parliament, there is no provision of joint sitting to resolve the deadlock.
- If a bill seeks to amend the federal provisions of the constitution it must also be ratified by the legislature and half of states by a simple majority.
- When a constitution bill is passed by both of the houses, the bill is sent to approval. The 24th amend Act of 1971 has made it obligatory for the President to give his assent to a constitutional bill.

Amendments that seek to change Federal Provisions of the Constitution. A constitution Amendment Bill which seeks to make any change in articles relating to:

- The election of the President, or the extent of the execution power of the union and the states, or
- The Supreme court and High Courts***Or***
- Distribution of Legislation powers between the union and states or representation of states in Parliament, or the very procedures for amendment as laid down in article 368 of the constitution.
- Presidential Assent to constitution Amendment Bills :

Constitution Amendment Bills passed by parliament by the prescribed special majority and where necessary, ratified by the essential number of state legislature are presented to the President under Article 368 of the constitution under which the President is bound to give his assent to the bills.

Judicial Review and Important Constitutional Amendments-

Before 1973, Keshavanand Bharti case, the Supreme Court upheld that the amendment acts were ordinary laws and could not be struck down by the application of article 13 (2).

The Judgment of Golak Nath raised acute controversy in the corridors of Parliament, as it was not according to Parliament. The overcome or nullify the judgment effect of the Supreme Court constitutional Twenty Fourth Amendment Act 1971, as enacted to make

the amending power of the Parliament unlimited and created a new subsection (1) of a Article 368, which illustrated that 'notwithstanding in the constitution, Parliament may in exercise of its constituent power amend by way of addition variation, or repeal any provision of the constitution in accordance by the procedure laid down in this article. Thus the 24th amendment restored the amending power of the Parliament and also extended its scope of amending power.

The question of extent of amending power has been in controversy since the beginning of the constitution. Immediately after the commencement of the constitution the Power of Parliament to amend the constitution was questioned in ***Sankari Prasad V/s Union of India***, in which it was alleged that the Parliament has no right to abrogate the fundamental rights. These was the issue of the 1st constitutional amendments.

Before the 24th Constitutional Amendment-

The question whether a Constitutional Amendment is 'law ' under Article 13(3) was for the first time considered by the Supreme Court in ***Shankari Prasad v. Union of India***.[1] The Court held that the word ***'law'*** in Article 13 must be taken to mean ordinary laws and not a Constitutional Amendment made under Article 368. Therefore, Article 13 did not affect the Constitutional Amendments; they cannot be invalidated by the courts on the ground that they violate the fundamental rights of the citizens.

The interpretation of Shankari Prasad's Case was followed by the majority in ***Sajjan Singh v. State of Rajasthan***.[2] However, in Sajjan Singh, ***Justices Mudholkar*** and ***Hidayatullah*** while upholding the impugned Constitution (17th Amendment) Act, 1964 made some noteworthy remarks. Mudholkar expressed his worry about the erosion of ***"basic features"*** of the Constitution by the excessive use of constituent power of the Parliament [3]and Hidayatullah wondered whether ***"fundamental rights could be the playthings of a majority***".[4]

In *Golak Nath v. State of Punjab,*[5] the Supreme Court for the first time interfered with the validity of a Constitutional Amendment made by theParliament. In this case, the Constitutionality of the Constitution (17th Amendment) Act affecting property rights was challenged again, and the Court reversed its two previous decisions in Shankari Prasad and Sajjan Singh. The majority (6 vs. 5) did not accept the thesis that there was any distinction between 'legislative' and 'constituent' process. The majority further asserted

that the amending process in Article 368 was merely ‘legislative ’ and not ‘ constituent ’ in nature. In this manner, the Court held that the word ‘ law ’ in Article 13(3) included every branch of law even the Constitutional Amendments, and hence, if an Amendment to the Constitution took away or abridged fundamental rights of citizens, it would be declared null and void. In the process, ***Chief Justice KokaSubba Rao***, for majority propounded the famous “Doctrine of Prospective Overruling”

The doctrine of prospective overruling enables the Court to overrule an earlier decision and restrict the operation of the new ruling only to the future cases or future transactions. The decision in Golak Nath overruled the decision in Shankari Prasad, however, the Court using the doctrine of prospective overruling held that the decision in Golak Nath ’ s case would be only applicable to the future cases. The Court has laid down the following principles with respect to the application of the doctrine of prospective overruling:[6]

- This doctrine can be invoked only in constitutional cases.
- This doctrine can be applied only by the Supreme Court.[7]
- The scope of the retrospective operation to be given to an overruling decision is left to the discretion of the Court to be molded to the needs of justice.

After the 24th Constitutional Amendment-

In order to remove the difficulty created by the Supreme Court’s decision in *Golak Nath’s* case, the Parliament enacted the Constitution (24th Amendment) Act, 1971. It is specifically declared in Articles 13(4) and 368(3) that aConstitutional Amendment is not a “ law ” for the purpose of Part III of the Constitution and nothing in Article 13 shall apply to any Amendment made under Article 368.

The validity of the 24th Amendment, to the extent that it made changes in Article 13 and 368, was challenged in ***Kesavananda Bharati v. State of Kerala***,[8] known as the Fundamental Rights Case. In this landmark case, 10 out of 13 judges of the Supreme Court declared that the ‘law’ in Article 13(2) refers to the exercise of an ordinary legislative power and does not include a Constitutional Amendment under Article 368. In other words, a Constitutional Amendment is not a ‘law’ for the purpose of fundamental rights. Therefore, the Supreme Court overruled the earlier decision of the Supreme Court in Golak Nath and upheld the validity of the ***24th Constitutional Amendment, 1971*** to the extent that it affected Articles 13 and 368. However, the Court held that the Parliament has the power under Article 368 to amend all the provisions of the

Constitution including the Part III containing the fundamental rights but without affecting or taking away the 'Basic Structure' or 'Basic Features' of the Constitution.

The 38th Amendment Act-

The Constitution (38th Amendment) Act, 1975 sought to expand the power of the Executive to derogate from the citizens' fundamental rights, during times of emergency. The earlier provisions had merely granted the President the power to suspend the right of the citizen to move courts during an emergency for the enforcement of his fundamental rights and to suspend all pending proceedingsfor the period during which the proclamation was in force or for such shorter period as specified in the order. An addition to Article 359 of the Indian Constitution, that pertained to the status of fundamental rights during an emergency, barred the citizen, for all times, from challenging any executive measure taken during an emergency that may have violated his fundamental rights, even his right to life and personal liberty.[9] This provision accordingly assured that there would be no need for the executive to account for even ***mala fide*** violations of the citizens' rights committed during the period that the emergency lasts.

The Presidential 'satisfaction' to issue a proclamation of Emergency, as prescribed in Article 352(1), was also declared to be final, non-justiciable, and conclusive by the 38th Amendment.[10]

In ***PranNath v. Union of India,***[11] the Delhi High Court held the ***38th Constitutional Amendment Act*** valid although it excluded judicial review of the satisfaction of the President to declare emergency under ***Article 352(1).*** The Court argued that judicial review was not a basic feature of the Constitution and that, in specific fields, lack of judicial review might not affect any basic feature of the Constitution.

The 39th Amendment Act-

A day before Indira Gandhi's election appeals case came up for hearing before the Supreme Court, the Constitution (39th Amendment) Act, 1975, was passed. The 39th Amendment excluded all disputes regarding the election of the Prime Minister and the Speaker of Lok Sabha from judicial scrutiny. Clause (4) of Article 29A inserted by the 39th Amendment said that no law made by Parliament before the commencement of this Amendment insofar as it relates to election petitions was to apply or be deemed ever to have applied, to the election of the Prime Minister or the Speaker to Parliament. Such

election wasnot to be deemed to be void, or ever to have become void, on any ground on which such election could be declared to be void, or had before the commencement of the Amendment been declared to be void under any such law. The Clause further said that notwithstanding any order made by any court before such commencement, declaring such election to be void, it was to continue to be valid in all respects. Any such order and any finding on which such order was based was to be deemed always to have been void and of no effect.

That Amendment was obviously passed with a view to preventing scrutiny of Mrs. Gandhi's election to the Lok Sabha by the Court. The hurry with which the bill was passed showed the anxiety that lay beneath its enactment. It was introduced in the Lok Sabha on Aug. 7, 1975 and was passed in that house on the same day; it was passed by the Rajya Sabha on Aug. 8, was ratified by half the State Legislatures on Aug. 9, and obtained the President ' s assent on Aug. 10. The appeal of Indira Gandhi was to come up before the Supreme Court for hearing on Aug. 11.[12]

The validity of the 39th Amendment was challenged in ***Indira Gandhi v. Raj Narain***[13] on the ground that it destroyed the basic structure of the Constitution. The Supreme Court avoiding confrontation with the political establishment dismissed Raj Narain ' s petition on merits and upheld Mrs. Gandhi's election but struck down the impugned Amendment relying on the basic structure doctrine.

The 39th Amendment also amended the Ninth Schedule to bring within its scope 38 Acts (entries 87-124) which by virtue of their inclusion in the Schedule would be extended protection from judicial scrutiny. Of these Acts, the ***Maintenance of Internal Security Act (MISA)*** and the ***Conservation of Foreign Exchange and Prevention of Smuggling Act (COFEPOSA)*** are worth mentioning here due to their obvious violation of the citizens ' fundamental rights.

Following the proclamation of the Emergency MISA was amended and the few safeguards that the define retained under it were all virtually eliminated. The MISA (Amendment) Act of August 5, 1975 provided for a new category of detentions ***"for dealing effectively with the emergency."*** Provided the detaining authority made a declaration that the detention was necessary for this purpose, the define could be held for a maximum of one year without being informed of the grounds for the detention order.[14] Detention may extend even beyond that period, but only after pursuing the normal course

such as supplying him with the grounds for the detention and refer the detention to advisory boards etc.[15] The Amendment also provided that the revocation of a detention order shall not constitute a bar against the issue of another detention order against the same person.[16] Further, no MISA detenu was allowed to be released on bail, bail bond or otherwise;[17] nor could they seek relief under **"rules of natural justice"** nor claim a " right to personal liberty by virtue of natural law or common law."[18] Another major provision authorized the attachment of properties of a person against whom a detention order had been made and who had failed to surrender himself, or had absconded or was in hiding.[19] Because of these Amendments MISA detents were effectively prevented from approaching the courts for relief either because no grounds had been given to them or because the detention order had violated "canons of natural justice" or "natural or common law."

In January 1976, the MISA was again amended. The new provisions further eroded the safeguards against abuse that the original Act had included. The Amendment stipulated that an individual whose detention had been revoked or disallowed earlier may be redetained and that no person against whom an order of detention had been made shall be entitled to the communication of the grounds of detention or be afforded the opportunity to make representation.[20]

It further mandated that the grounds on which an order of detention had been made shall be treated as confidential and shall be deemed to refer to matters of state and that it shall be against public interest to disclose the grounds.[21] Finally, it required the Central Government to obtain details on detentions from the State Governments.[22] The major objective of this Amendment was to eliminate those safeguards that would have offered detenus relief from detentions ordered under the Act.

The MISA underwent a third and final 'Emergency Amendment' in August 1976. This Amendment related to detentions in connection with the Emergency and was made applicable with retrospective effect from June 29, 1975, the date the MISA was first amended during the Emergency. It extended the maximum period all such Emergency detentions from 12 to 24 months.[23] The cumulative effect of the Amendments to MISA was the virtual elimination of all restraints against the abuse of preventive detention powers by the Government particularly as it related to detentions under the new provision 16A of the Act that authorized detentions to deal with the Emergency.

The other preventive detention measure, which was used, was the Conservation of Foreign Exchange and Prevention of Smuggling Act (COFEPOSA) originally passed in December 1975. The COFEPOSA Amendment of August 1975 provided that no person detained under the Act may be released on bail, bail bond or otherwise. [24]It further stated that no detention order under the Act may be held invalid or inoperative merely because some of the grounds of the detention order are vague, nonexistent, not relevant, or invalid for any reason.[25] Moreover, if detention is made for dealing with the Emergency no grounds need be conveyed to the detune and no review of the charges by the Advisory Board may be permitted.[26]

Thirty Ninth Amendment Act, 1975-

On the petition of Raj Narain, the election of Prime Minister Smt. Indira Gandhi to Lok Sabha was declared void by the Allahabad High Court. To nullify by the effect of the decision of Supreme Court, Parliament enacted 39th Amendment Act which introduced change in the method of deciding election disputes relating to high officials – the President, Vice President, Prime Minister and the speaker. In this process Article 329-A was inserted in the constitution of India has withdrawn the jurisdiction of all courts our election matters or disputes, which was challenged in Smt. Indira Gandhi V/s Raj Narain (1975) as destroying the basic structure of the constitution and declared it as unconstitutional and void.

Khanna J. in this case held that clause 14 of Article 329 was constitutionality invalid on the ground that it violated the principles of free and fair elections which is an essential part of basic structure doctrine. For nullifying the decisions of Supreme Court in India in this case and enacted the 42nd Amendment Act 1976) to limit and negate the basic structure limitation on the amending powers as also the constant threat in the form of judicial review powers.

As discussed above, the constitutional courts in India, particularly the Supreme Court have claimed the power to invalidate a constitutional amendment acts. As the Indian Scholar Upendra Baxi, rightly pointed out, the Supreme Court Of India, is probably the only court in the mankind history that has asserted the power of Judicial review over the constitutional Amendments.

Another limitation on the power of Judiciary is the case of amending the constitution of India, from the 1960 to 1980's, there was a running conflict between Parliament and Judiciary over the amending power. There are many incidents which highlight the controversy between Parliament and Judiciary in context of Emergency Provisions, Power of President and Right to Property and Fundamental rights and ninth schedule.

Evolution of Judicial Review and Basic Structure Doctrine Evolved by Supreme Court-

Basic structure doctrine propounded by Supreme Court of India in Keshavanand Bharti case. According to this doctrine, Parliament can amend the constitution, but cannot amend the basic part of the constitution which mentioned in constitution itself.

Justice S.M. Sikri Mentioned Five Basic Features:

1. Supremacy of the Constitution.
2. Republican and democratic form; of government.
3. Secular character of this constitution.
4. Separation of powers between the legislature, the execution and the judiciary.
5. Federal character of the constitution.

According to him, these features are related to the preamble as well as the scheme of the constitution. He observed that these features are the foundation dignity and freedom of the dignity and freedom of the individual which cannot be destroyed the Parliament whether Parliament has the power for amending the Constitution. The Constitutional Bench in Indira Nehru Gandhi V/s Raj Narain held that judicial review in election disputes was not a compulsion as it is not a part of basic structure. P.N. Bhagwati, C.J. relying on Minerva Mills Ltd., declared that it was well settled that judicial review was a basic and essential feature of the constitution. If the power of judicial review was absolutely taken away, the Constitution has no relevance.

Although the important of Judicial Review and basic structure cannot deny, at that same time one cannot also give an absolute power to review and by recognizing judicial review as a part of basic feature of the constitution.

Power of Amendment in the Constitution by the Legislature and Judiciary-

Under art: 368 parliament has the power of Amendment the constitution under the heads which are as follows:-

(1) Amendment by simple Majority

(2) Amendment by special Majority

(3) By special Majority and Ratification by the states.

Art 368 however, does not constitute the complete code. The process of amending the constitution is the legislative process governed by the rules of that process in American and Australian Constitution.

Amendment in Fundamental Rights:

In Shankari Prasad V. Union of India (1951) the first Amendment Act of 1951 was challenged before the Supreme Court on the ground that the said Act abridged the right to property and that it could not be done as there was a restriction on the amendment of Fundamental Rights under Article, 13(2). The court unanimously held, "The terms of Article 368 are perfectly general and empower Parliament to amend the constitution without any exception whatever".

In Sajjan Singh V. State of Rajasthan (1964) the validity of 17th amendment of constitution was challenged before the constitution was challenged before the constitution. The Supreme Court approved the majority judgment given in Shankari Prasad's case and held that the words "amendment of the constitution" means amendment of all the provisions of the constitution. Gajendra Gadkar, C.J. said that if the constitution-makers intended to exclude the fundamental rights from the scope of the amending power they would have made clear provisions in that behalf.

The case of Golak Nath Vs. The State of Punjab (1967) was heard by a special bench of 11 Judges as the validity of three constitutional amendment (1^{st,} 4th and 17th) was challenged. The Supreme Court by a majority of 6 to 5 reversed its earlier decision and

declared that parliament under article 368 has no power to take away or abridge the fundamental rights the court observed:

(1) Article 368 only provides a procedure to be followed regarding amendment of the constitution.

(2) Article 368 does not contain the actual power to amend the constitution.

(3) The power to amend the constitution is derived from article 245, 246 and 248 and entry 97 of the Union List.

(4) The expression law as defined in article 13(3) includes not only the law made by the parliament in exercise of its ordinary legislative power but also an amendment of the constitution mode in exercise of its, constituent.

(5) The amendment of the constitution being a law within the meaning of article 13(3), would be void under Article 13(2) if it takes away or abridges the right conferred by PART-III of the constitution power.

(6) The first amendment Act, 1951, the fourth Amendment Act, 1955 and the Seventeenth Amendment Act, 1964 abridges the scope of fundamental right and, therefore void under article 13(2) of the constitution. On the application of the doctrine of retrospective overruling the decision of the court will have only aforesaid three amendment acts will continue to be valid.

(7) Parliament will have no power the acts of the decision to amend any of the provisions of PART-III of the constitution so as to take away or abridge the fundamental Rights enshrined therein.

The constitutional validity of the Twenty-fourth, Twenty fifth and twenty ninth amendment was challenged in the fundamental rights case (Keshvanand Bharti V. State of Kerala 1973) the court held that:

1. Parliament's amending power is limited, while parliament is entitled to abridge any Fundamental right or amend any provision of the constitution, the amending power does not extend to damaging or destroying any of the essential feature of the constitution. Therefore, while they may be abridgement cannot end to the point of damage or destruction of their core.

2. Article 31(c) is void since it takes away invaluable fundamental rights, even there unconnected with property.

The election appeal of the prime minister was disposed of on Nov. 7,1975 and the relevant portion of the 39th Amendment was held invalid on the basis of Keshvanenda's case.

In Minorva Mills case (1980) the Supreme Court by a Majority decision struck down section 4 of the 42nd Amendment Act, which gave preponderance to the Directive principles over to the article 14, 19 and 31 of PART-III of the constitution.

On the ground that PART-III and PART-IV of the constitution, are equally important and absolute primacy of one over the other is not permissible as that would disturb the harmony of the constitution. The Supreme Court was convinced that anything that destroys the balance between two parts will ipso facto destroy an essential element of the basic structure of the constitution.Between the 1950-1980, parliament passed as many as 1977 Acts (excluding Amendments) and the Supreme Court invalidated laws passed on 22 occasions only.

The Supreme Court has evolved certain maxims and norms-

H.M. Seervai has enumerated following rules-

(1) There is a presumption in favour of constitutionality, and a law will not be declared unconstitutional unless the case is so clear as to be free from doubt, and the onus to prove that it is unconstitutional lies upon the person who challenges it.

(2) Where the validity of a statue is question and there are two interpretations, one of which would make the law valid, and the other void the former must be preferred and the validity of the law upheld.

(3) The court will not decide constitutional questions if a case is capable of being decided on other grounds.

(4) The court will not decide constitutions questions if a case is capable of being decided on another grounds. Than is required by the case before it.

(5) The court will not hear an objection as to the constitutionality of a law by a person whose rights are not affected by it.

(6) Ordinarily, courts should not pronounce on the validity of an Act or part of an Act which has not been brought into force because till then the question of validity would be merely academics.

The 42nd Amendment devalued the Judiciary and Judicial Review-

The following provisions were added through the 42nd Constitutional Amendment-

(1) The jurisdiction of the Supreme Court under Article 31 to invalidate a State law was taken away. A New article, "12 A" was inserted which said "Notwithstanding anything in Article 32, the Supreme Court shall not consider the constitutional validity of any state law in any proceedings under that Article unless the constitutional validity of any central law is also an issue in such proceedings".

(2) **New Articles i.e. 226 A and 131 A** were inserted in the constitution. As a result of these new articles the High Court no longer had the jurisdiction to invalidate any central law. Even in other cases, the jurisdiction of the High Court was reduced. Article 226 was revised. The High Court no longer had to power to examine validity of both state law and central law it refer to the Supreme Court. The expression "any other purpose at the end of clause 1 of 226 was omitted. This reduced the discretion of the High Court substantially. A new article 228 A was inserted by the Forty-Second Amendment. It was provided that "the minimum number of judges who shall sit for the purpose of determining any question as to the constitutions validity of any state law shall be give. Unless the High Court consists of less than five judges when all the judges may sit and determine of less than five judges when all the judges may sit and determine such a question." It was also provided that a state law shall not be declared to be constitutionally invalid by the High Court unless not less than 2/3 of the judges sitting for the purpose of determining the validity of laws, hold it to be constitutionally invalid. It was also provided for that in case the High Court consists of less than five judges, all the judges sitting for the purpose must hold the state law to be institutionally invalid.

Violation of Fundamental Rights and Judicial Review-

Fundamental rights mentioned in PART-3 of the constitution and Preamble as the spirit of constitution talked about the right of freedom expression, speech and also affirmed the rights mentioned in Constitution itself. The process of Judicial Review as an important process for safeguarding the fundamental rights of the citizens.

In protecting, the fundamental rights, Supreme Court of India has played important role via the use of Judicial Review. In article 13 clearly stated that Parliament cannot amend or abridges the fundamental rights which gives directly power of Judicial review to the Supreme Court and High via the use of writ Jurisdiction. Article 13 has been considered in several cases and has been the subject of conflicting decisions which are result of controversy between legislature and Judiciary. Parliament can amend the constitution the provisions of PART- III subject to limitation of basic structure doctrine. Judicial review is also integral part of the constitutional scheme, the essence of the Principles behind Article 14, 19 and 21 are also part of basic structure.

Once article 32 is triggered the legislation must answer a complete test of fundamental right. First the violation of fundamental rights of PART-III is required to be determined, then its impact examined, and if it shows that in effect and substance, it destroys the basic structure doctrine. Thus Judicial Review is a constitutional imperative necessary for checking the arbitrariness of the execution as well as legislation forbearance. ***Dr. Amartya Sen*** says, the justification for protecting fundamental is not on the assumption that they are higher rights, but the protection is the best way to promote a just and tolerant society. ***Lord Steyn*** also said that judiciary is the best institution to protect fundamental rights, given its independent nature and also because it involves interpretation based on the assessment of values besides textual interpretation.

Ninth Schedule under the Indian Constitution-

A good Constitution must have some fundamental restrictions on the powers of government and legislation. The limitations may be direct or indirect, express. A good Constitution must havethe power of judicial review over the Constitutional amendments and legislative Acts. Judicial review tests the unconstitutional legislation and inspects the action engaged by the executive. Any law enacted either by the Parliament or State

legislature must always discuss an opportunity to the judiciary to test the laws, whether such laws are against to the common right and reason.If such laws are not based on any reason and irrational, they shall be declared void. Such being the case, there should not be any scope under Constitution for excluding the power of judicial review even for special laws. Otherwise it affects the principles of Constitutionalism which exist in Constitution of India and there may be chance to abuse the same by so called Parliamentarians. In addition to that the Parliament inhabits the supremacy, which Constitution is having. This happened in the Constitution of India in the Ninth Schedule which included some laws which are irrational, controversial, unscientific, illogical, unreasonable and no way related to land reforms also. (Example Tamil ***Nadu Reservation Act*** provides 69% reservation against to the mandate of ***Indrasawhney's*** case). Thereby this Schedule talks unlimited power to the Parliament to make judiciary quiet to question the constitutional validity of laws listed in the Ninth Schedule by excluding the judicial review. Initially land reforms laws were placed in the Schedule with sole object of abolishing the Zamindari system, though they were violative of right to property which was earlier considered as fundamental right. But thereafter, especially in thirty ninth and forty ninth,Constitutional Amendments during Indira Gandhi's period, Schedule was misused like any thing by putting disparate laws into the Ninth Schedule and it has become Constitutional Dustbin in the hands of legislatures.

References

1 AIR 1951 SC458.

2 AIR 1964 SC 854.

3 Ibid, pp. 864-65.

4 Ibid, p. 862.

5 AIR 1967 SC 1643.

6 Ibid.

7 *In State of H.P. v. Nurpur Private Bus Operators Union,* AIR 1999 SC 3880, the Supreme Court has made it clear that the doctrine of prospective overruling cannot be utilized by the High Court.

8 AIR 1973 SC 1461: (1973) 4 SCC 225.

9 The Constitution *(38th Amendment) Act*, 1975, Cl. 7 (Amendment of Article 359).

10 *The Law Minister justified the measure on the grounds that there were matters which could not be subjected to judicial scrutiny and were for political judgment only. Times of India*, 23 July, 1975.

11 AIR 1977 Del 167.

12 Seervai, H.M.,*Constitutional Law of India*, vol. 2, 2nd ed. Bombai: N.M. Tripathi, 1976, p. 1519.

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14 *Maintenance of Internal Security (Amendment) Act, 1975* (No. 39 of 1975), Cl. 6.

15 Ibid.

16 Ibid, C1. 4.

17 Ibid, C1. 5.

18 Ibid, C1. 7.

19 Ibid. C1. 5.

20 *Maintenance of Internal Security (Amendment) Act, 1976 (*No. 78 of 1976), C1. 3 & 4.

21 Ibid, C1. 4.

22 Ibid,

23 *Maintenance of Internal Security (Second Amendment) Act,* 1976 (No. 78 of 1976).

24 *The Conversation of Foreign Exchange and Prevention of Smuggling Activities (Amendment) Act, 1975* (No. 35 of 1975), Cl. 3.

25 Ibid, C1. 2.

26 Ibid, C1. 4.