
JUDICIAL REVIEW, NINTH SCHEDULE, AND THE BASIC STRUCTURE DOCTRINE: A CRITICAL STUDY OF I.R. COELHO V. STATE OF TAMIL NADU

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ABSTRACT

The judgment of the Supreme Court of India in *I.R. Coelho (Dead) by LRs v. State of Tamil Nadu* (2007) stands as a constitutional watershed in delineating the boundaries between parliamentary supremacy and constitutional supremacy. Delivered by a nine-judge bench, the ruling directly addressed the contentious question of whether laws inserted in the Ninth Schedule after the landmark decision in *Kesavananda Bharati v. State of Kerala* (1973) could be immunized from judicial review under Article 31B. The Court unanimously held that while Parliament possesses significant amending power, this power is not absolute: legislation placed in the Ninth Schedule after 24 April 1973 is subject to scrutiny under the doctrine of basic structure.

This paper, authored in the course of my LL.M. specialization in Constitutional Law at IIULER, Goa, examines the genesis, evolution, and implications of this judgment. The abstract traces the creation of the Ninth Schedule through the First Amendment of 1951, originally aimed at protecting agrarian reforms, and highlights its gradual misuse as a constitutional shield for contentious statutes far removed from its founding purpose. By situating *Coelho* within the larger arc of constitutional jurisprudence—from *Shankari Prasad* and *Golak Nath* to *Kesavananda Bharati*, *Minerva Mills*, and *Waman Rao*—this work underscores the reaffirmation of judicial review as an essential feature of the Constitution's basic structure.

At a normative level, the paper argues that *Coelho* rebalances the relationship between Parts III and IV of the Constitution, ensuring that social justice initiatives under the Directive Principles cannot obliterate the guarantees of liberty and equality under fundamental rights. While criticisms of judicial subjectivity in applying the basic structure doctrine persist, the judgment ultimately preserves constitutional supremacy over transient legislative majorities. In doing so, *I.R. Coelho* consolidates India's identity as a

constitutional democracy committed to the rule of law, ensuring that the Constitution remains a living document responsive to both liberty and social justice.

The Supreme Court of India's judgment in *I.R. Coelho (Dead) by LRs v. State of Tamil Nadu & Ors.*¹, delivered on 11 January 2007 by a nine-judge bench headed by Chief Justice Y.K. Sabharwal, marks a landmark in Indian constitutional law. The case completely addressed itself to the tension between parliamentary supremacy and constitutional supremacy by examining the extent to which laws listed in the Ninth Schedule could be exempted from scrutiny by the courts. The only matter looked into by the Court was whether, after 1973, when Parliament had delivered its judgment in *Kesavananda Bharati v. State of Kerala*², Parliament could still use Article 31B³ and the Ninth Schedule to exclude legislation from being subject to Part III fundamental rights. The Court held unanimously that although there is a significant role for Parliament in amending the Constitution, there exists no absolute authority; legislation listed in the Ninth Schedule after 24 April 1973 would have to be tested against the doctrine of basic structure. This judgment reiterated that processes of judicial review and protecting fundamental rights are a cornerstone of the Constitution's indestructible core.

Ninth Schedule was created by the First Amendment in 1951⁴, primarily to safeguard agrarian reform laws, particularly the abolition of zamindari estates, against constitutional challenge as in Part III. Article 31B provided a safeguard by providing that laws enshrined in the Ninth Schedule would remain in force, irrespective of their incompatibility with fundamental rights. The Ninth Schedule originally consisted of only 13 laws, but it swelled over time immensely, covering a vast range of legislation, most of which had no relevance to agrarian reforms. By 2007, in sync with the judgment in *I.R. Coelho*, the Schedule contained 284 statutes. The broad application of the Ninth Schedule as a "constitutional vault" to protect contentious laws sparked concerns about the balance between legislative will and constitutional safeguards.

The prior judicial history leading to the *Coelho* case is necessary in order to understand its significance. The Supreme Court in cases of *Shankari Prasad Singh Deo v. Union of India* (1951)⁵ and *Sajjan Singh v. State of Rajasthan* (1965)⁶ upheld Parliament's right to amend

¹ *I.R. Coelho (Dead) by LRs v. State of T.N.*, (2007) 2 S.C.C. 1 (India).

² *Kesavananda Bharati v. State of Kerala*, (1973) 4 S.C.C. 225 (India).

³ INDIA CONST. art. 31B.

⁴ The Constitution (First Amendment) Act, 1951 (India).

⁵ *Shankari Prasad Singh Deo v. Union of India*, A.I.R. 1951 S.C. 458 (India).

⁶ *Sajjan Singh v. State of Rajasthan*, A.I.R. 1965 S.C. 845 (India).

fundamental rights, contending that such amendments were an exercise of constituent power and, as such, exempted from Article 13. Nevertheless, in *Golak Nath v. State of Punjab* (1967)⁷, an eleven-judge bench overruled such a view, holding that Parliament was not empowered to amend fundamental rights. This response led to a series of constitutional amendments, the eventual culmination of which was in the landmark judgment of *Kesavananda Bharati v. State of Kerala* (1973). In *Kesavananda*, a thirteen-judge bench upheld Parliament's amending power pursuant to Article 368 but enunciated a principle of basic structure: whereas Parliament could amend any article, it may not modify fundamental characteristics/patterns of the Constitution. Subsequent judgments, including *Indira Nehru Gandhi v. Raj Narain* (1975)⁸, *Minerva Mills Ltd. v. Union of India* (1980)⁹, and *Waman Rao v. Union of India* (1981)¹⁰, refined this principle by enacting that such structure as is involved in judicial review and fundamental rights forms a constituent element of a basic structure. However, doubt remained as to how far protective clauses of Article 31B could supplant such a doctrine.

The *I.R. Coelho* case arose out of incorporation of the Gudalur Janmam Estates (Abolition and Conversion into Ryotwari) Act of 1969 and the West Bengal Land Holding Revenue Act of 1979 into the Ninth Schedule. Both acts had been previously struck down by judicial review—the former by the Supreme Court in *Balmadies Plantations Ltd. v. State of Tamil Nadu* (1972)¹¹ and the latter by a Bench of the Calcutta High Court. These abrogated laws, however, were inserted back into the Ninth Schedule through constitutional amendments. The petitioners contended that it was a legislative resurrection of invalid laws and threatened to vitiate the supremacy of fundamental rights. The matter was referred to a nine-judge bench by a bench of five judges to settle inconsistencies in *Waman Rao* and finally decide the scope of immunity under Article 31B.

The petitioners had urged that after the *Kesavananda* judgment, the right to amend the Constitution is subject to limitations adjectorum; laws that destroy or undermine fundamental rights as a component of the basic structure cannot escape review. They emphasized that the right of judicial review, as provided in Articles 32 and 226,¹² forms an essential feature of the Constitution, and excluding laws therefrom would, in effect, render nugatory such authority.

⁷ *Golak Nath v. State of Punjab*, A.I.R. 1967 S.C. 1643 (India).

⁸ *Indira Nehru Gandhi v. Raj Narain*, 1975 Supp. S.C.C. 1 (India).

⁹ *Minerva Mills Ltd. v. Union of India*, (1980) 3 S.C.C. 625 (India).

¹⁰ *Waman Rao v. Union of India*, (1981) 2 S.C.C. 362 (India).

¹¹ *Balmadies Plantations Ltd. v. State of T.N.*, (1972) 2 S.C.C. 133 (India).

¹² INDIA CONST. arts. 32, 226.

Moreover, they emphasized that if laws are used to immunize from the mandates of Articles 14, 19, and 21, then its fundamental premises of rule of law and freedom of individuals would be lost permanently. The respondents, however, contended that Article 31B is a legitimate constitutional provision for the retrospective validation of laws, claiming that constituent power of Parliament includes its ability to place laws in the Ninth Schedule. They claimed that there was no absolute ousting of judicial review, as such laws could always be challenged based upon a violation of legislative competence or violation of other constitutional fundamentals.

The Court, after a thorough analysis of the constitutional evolution, held unanimously that laws enshrined in the Ninth Schedule after 24 April 1973 are, in fact, subject to judicial review. These laws could be tested against the core principles of the doctrine of basic structure. The Court explained that fundamental rights such as equality under Article 14, freedoms guaranteed under Article 19, and right to life and liberty under Article 21 form the very core of the basic structure; hence, any law that impairs such rights cannot have its invalidity justified by its very location in the Ninth Schedule alone. Additionally, judicial review was reiterated to be a fundamental component of the basic structure, such that any move to exclude this power would result in trivializing the Constitution. The Court also categorized as an evolutionary trend of rights jurisprudence from *Maneka Gandhi v. Union of India* (1978)¹³, whereunder Articles 14, 19, and 21 have been held collectively to provide a strong bulwark against arbitrary behavior of the state. For this purpose, exclusion of laws from enforcement of these provisions would bring fundamental rights closer to a "parchment in a glass case."

From an analytical perspective, the ruling reaffirmed the preeminence of the Constitution in relation to parliamentary authority. It expanded upon the reasoning established in *Kesavananda* by applying it to standard legislation included in the Ninth Schedule, thus inhibiting Parliament from utilizing Article 31B as a clandestine means to invalidate fundamental rights. Furthermore, it fortified the intricate equilibrium between Parts III and IV of the Constitution. Although the Directive Principles of State Policy in Part IV offer a framework for social and economic reforms, the Court emphasized that the pursuit of these aims must occur without infringing upon the protections afforded by Part III. This rationale resonated with the *Minerva Mills* case, wherein the Court invalidated provisions that diminished fundamental rights in favor of Directive Principles. By asserting that both Parts III and IV embody the essence of the

¹³**Maneka Gandhi v. Union of India**, (1978) 1 S.C.C. 248 (India).

Constitution, the Court guaranteed that objectives aimed at social justice could not serve as a rationale for undermining liberty and equality.

The judgment had great practical consequences. The judgment restrained the tendency of governments to indiscriminate use of the Ninth Schedule as a haven for controversial legislation. For instance, the Tamil Nadu law, which legislated for a 69% reservation in employment and education and was added to the Ninth Schedule by means of the 76th Amendment, fell under the ambit of constitutional scrutiny. Even though it continues to remain in force, it is always vulnerable to scrutiny in light of the doctrine of basic structure. Further, the judgment strengthened the jurisdiction of the judiciary by once again establishing itself as the guardian of the Constitution. The judgment sent a clear signal that constitutional amendments are as well open to review by courts in case such amendments violate core tenets of the document.

Simultaneously, the judgment has been subject to criticism. Some scholars argue that in extending the review of the basic structure to normal statutes, the Court has enhanced its jurisdiction beyond its original intent in *Kesavananda*. Some point out a potential risk that, being inherently abstract in nature, without a definite textual exposition, the basic structure doctrine opens itself to judicial subjectivity, thereby causing confusion in constitutional interpretation. What is also of concern is a fear that continuous legal challenges in regard to statutes enshrined in the Ninth Schedule would act against legislative efforts aimed at advancing social justice and affirmative action. These opinions, however, need to be weighed against the risks involved in vesting Parliament with absolute jurisdiction to exempt laws from fundamental rights.

Finally, *I.R. Coelho* represents a triumph of constitutional supremacy over parliamentary majoritarianism. The case once again upheld that the Constitution is not a pliable document to serve as a tool for fleeting political majorities rather than a constitutional charter reflecting abiding principles. While protecting judicial review and essential rights, the Court ensured India remained a constitutional democracy of rule of law. The judgment seeks a thin balance between individual freedom and social justice so that the former is not sacrificed in favor of, nor at the expense of, the latter. In that context, the Court ensured the substance of the Constitution and its continued relevance as a living legal document.