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The Shifting Power Game Theory between Supreme Court & Parliament of India from 1950s to 1990s

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ABSTRACT

This paper tries to analyze the pertaining situation existing between the Supreme Court and Parliament of Indian from 1950s to 1990s with the help of various case laws. Parliament, Executive and Judiciary are the three major indispensable branches of the state, with their own well-defined authority and spheres. Parliament of nation represents the branch of law formulation, the Executive is answerable for imposition of laws, and the Judiciary is decisive for the interpretation of the laws and statues as well as working as a mechanism for dispute resolution. Each of these branches acts as a check and balances over the powers of others. The drafted words of the Constitution is a valuable printed document for the whole nation, no doubt there may be some diverse in opinion which can also be regarded. For example, many human may consider Quran, Geeta, Bible as a valuable script, but while looking over the entirety of the nation in which we live that assures Rule of Law, moreover which is the regarded as the source of every citizens basic rights and if any human who believes in Rule of Law has to believe that the most important printed document for any nation is the Constitution. In this paper we will we examine about, how the relationship between Parliament and Judiciary have evolved from beginning in relation to Constitutional enactment and its interpretation by the Courts with relation to such written words along with we will also look upon the judgment of Keshvananda Bharati's Case and will discuss about it's future influence abovethe Constitution of India.

Keywords: *Supreme Court, Parliament, Rule of Law, Constitution, Relationship, Check and Balance, Keshvananda Bharati Case.*

I. INTRODUCTION

Constitution is supreme as under which all laws are enacted with conformity, under which all human being works, under which the organs of any state (Legislature, Executive, Judiciary) do work, Parliament and state Legislature do work, President, Prime Minister, Chief Minister, works under it; which also give rights to every individual of the nation that how they can live their basic, independent and profound life. There is no debate about the most important book

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of nation with regard to the Constitution.

When we look back to the history of Constitution, we will get to know that it has been in many danger from very past, and many of its danger which came to end on 24th April 1973.[2]There is a long back valuable history of 24th April which matters most importantly for the People, so what has happened on 24th April 1973 which has made it as a remarkable day. On this same date in year 1992 the Parliament has brought about 73rd Amendment[3] under Constitution of India for the first time notified Panchayti Raj as an institution under DPSP which is also included in List II of Seventh Schedule. This is why we celebrate 24th April as Panchayti Raj Day also. If the same question is asked about a legal person, they will speak to you the most important event which took place on this day is the pronouncement of Judgment of Keshvananda Bharati Case by Supreme Court of India, and the above judgment proved that in India there will only be rule of the Constitution over rule of any political party.

There are many stories scattered in the dim light of the Constitution for its development and the above judgment is one of the same among these scattered stories. To understand the constitution and its development we have to look upon the stories behind any articles, sections, amendments, conflicts and struggles existing at that time. The above judgment is linked various important issues like Land Reforms under Indian Economy, India's Post independence development, the issue of Social Justice and is also liked with state polity to International Relations as there is a small angle of Soviet Union which is also discussed.

In this story of Keshvananda Bharati case[4] there are various angles, at one side we have Indira Gandhi and their government and on its adverse we have K. Kamaraj and Morarji Desai at their opposition. Then at another angle we have Supreme Court and their judges which are also divided into two ideas and on adverse of these Judges we have Advocate NanabhoyPalkhivala who is determined not to let Judiciary work for the Government. In this whole conflict we have to look at the background of the case which led its roots to dilemmas.

Under the Constitution of India we have total XXII parts, and in this present case story we

[2] On April 24, 1973, Chief Justice Sikri and 12 judges of the Supreme Court assembled to deliver the most important judgment of Kesavananda Bharati v. State of Kerala had been heard for 68 days, the arguments commencing on October 31, 1972, and ending on March 23, 1973. . For more details please refer to http://lawtimesjournal.in/kesavananda-bharti-vs-state-of-kerala-case-summary/.

[3] The 73rd Amendment 1992 added a new Part IX to the constitution titled "The Panchayats" covering provisions from Article 243 to 243(O); and a new Eleventh Schedule covering 29 subjects within the functions of the Panchayats. For more details please refer to https://www.india.gov.in/my-government/constitution-india/amendments/constitution-india-seventy-third-amendment-act-1992.

[4]Kesavananda Bharati Sripadagalvaru v. State of Kerala, AIR 1973 SC 1461; MANU / SC / 0445 / 1973; (1973) 4 SCC 225; [1973]Supp SCR 1. Full judgment can be accessed at https://documentcloud.adobe.com/link/review?uri=urn:aaid:scds:US:c2860857-6a94-4e80-ada2-75932378d373

have to look upon interlinked relation of Part III,[5] Part IV[6] and Part XX[7] of the Constitution of India. Part III (dealing with Articles 12 – 35) that talks about the Fundamental Rights, which are considered basic rights to every citizen and to some extent Non-Citizens also. Part IV (dealing with Articles 36 – 51) which talks about Directive Principles of State Policy and in layman language which mean the principles which are fundamental to the governance of the country and also it shall be the duty of the State to apply these principles in making laws.Part XX (relating to Article 368) which talks about the Power of Parliament to bring about an amendment of Constitution.

Looking back to History, when constitution was being drafted, the Constitutional Debate Committee[8] (CDC) includes various people ideology among which some of them were firm believer of Socialism (which advocates that the means of production, distribution, and exchange should be owned or regulated by the community as a whole) some of them were firm believer of Liberalism (which advocated for protecting and enhancing the freedom of the individual as to be the central problem of politics) moreover some also belongs to Gandhian philosophy. Heartlessly there was conflict among all these ideologies in drafting of Constitution and in result to that there were many contradictions which settled down inside the Constitution itself. For example, in relation to Article 13 and 32 which are imposed with a duty to protect the Fundamental Rights of the peoples, whereby they can either directly go to the High Courts of respective states or to the Supreme Court directly.

II. ARRAY OF IMPERATIVE CONFLICTS

Under the constitution there are various inherent contradictions as for example the rights guaranteed to the Indian citizens as a right to acquire, hold and dispose of property under Art. 19(1) (f) and Article 31 (Currently unenforceable into the Court of Justice as Fundamental Right, revoked by 44th Amendment 1978) has now converted as a legal right, and on the other side of contradiction Article 39B and 39C of Part IV which talks about that, it is the duty of state to make effort as much as possible to promote class equality and to promote such equality the state may make such efforts by enacting various laws. Now, while looking over

[5] Part III of the Constitution of India dealing with the provisions of Fundamental Rights from Article 12 to 35; and can also be accessed at https://www.mea.gov.in/Images/pdf1/Part3.pdf

[6] Part IV of the Constitution of India dealing with the provisions of Directive Principles of State Policy from Article 36 to 51; and can also be accessed at https://www.mea.gov.in/Images/pdf1/Part4.pdf

[7] Part XX of the Constitution of India dealing with the provisions of Amendment of the Constitution under Article 368; and can also be accessed at http://legislative.gov.in/sites/default/files/COI-updated.pdf

[8] The Assembly met for a total number of 165 days between 1946 and 1950. 46 days were spent on preliminary discussion in the Assembly and 101 days were spent on the clause by clause discussion of the draft Constitution. Approximately 36 lakh words were spoken during Assembly debates. Full details can be accessed at https://rajyasabha.nic.in/rsnew/official_sites/constituent.asp

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all these articles at one side where it is stated that Right to hold property is a Fundamental Rights which means that the property acquire by landlords and rich people having capital stocking are having their fundamental rights and on other side we are duty bound to promote class equality so, until and unless the states are unable to take property and wealth from these classes how can both the articles come to existence simultaneously.

Second contradiction which comes into picture of the constitution was in relation to, Article 14 (Equality before law) and Article 15 (Prohibition of discrimination) through M.R. Balaji case,[9]with relation to Article 46 (that the State shall promote with special care the educational and economic interests of the weaker sections of the society and in particular, of the Scheduled Castes and Scheduled Tribes and shall protect them from social injustice and all forms of exploitation) of the Constitution. Now if the state starts providing facilitation under Article 46 it will directly come into conflict with Article 14 and 15.

Another Contradiction which comes into picture is through Shah Banu Case,[10] in relation to Freedom of religion sought ought from Article 25 to 28. On the other side as according toSariyatAplication Law, 1937 also regarded as Muslim Personal Law commonly gives freedom to Islamic persons to marry with four different ladies at the same time. Now if the persons are provided by this right as this is duty of state under Article 25 to 28 to give freedom to every religion as according to religious laws and the state is duty bound not to interfere in it, and the state abide to do so it will certainly manifest injustice to all Muslim women, and will also contradict Article 14 in comparison of rights granted to Muslim women with regard to other Hindu women or Christian women.

The aspect which is sought by these above examples is that there are contradictions inherent between Fundamental Rights and Directive Principles of State Policy and as the Constitution started to administer these contradictions started to come into pictures. Forthwith, the biggest contradiction comes with the term "Land Reforms",[11] as India was an agricultural dominated country back to very past. The law makers of India took a step that that post-independence we will make land reforms which includes various objects as abolition of intermediaries,

[9]M.R. Balaji and Ors.v. State of Mysore, AIR 1963 SC 649; MANU/ SC/ 0080/ 1962; [1963] Supp 1 SCR 439. Copy of complete Judgment can be accessed at:
https://documentcloud.adobe.com/link/review?uri=urn:aaid:scds:US:42053fcb-84e1-4424-97f1-9448cc7962fe
[10]Mohd.Ahmed Khan v. Shah Bano Begum and Ors. AIR 1985 SC 945; 1985 (11) AWC 557; 1985 (1) Crimes 975 (SC); MANU / SC / 0194 / 1985; 1985 ACR 327; 1985 JLJ 489 (SC); 1985 CriLJ 875; (1985) 2 SCC 556; 1985 (1) SCALE 767; [1985] 3 SCR 844; 1985 (2)RCR (Criminal) 136; 1985 (87) BOMLR 4. Copy of complete Judgment can be referred here:
https://documentcloud.adobe.com/link/review?uri=urn:aaid:scds:US:2091e272-e2f2-401f-941d-ca9d842330de.
[11]For more details about Land Reforms of each states of India, please refer to the link below: https://niti.gov.in/planningcommission.gov.in/docs/reports/publications/pub1966land.pdf

Tenancy regulation, ceiling on landholdings, an attempts to consolidate disparate landholdings, encouragement of cooperative joint farming, encouragement of cooperative joint farming etc. but the core which is understood by the term as "the statutory division of agricultural land and its reallocation to landless people". The process of land reform started just after the enforcement of Constitution and the conflict started from this very beginning. Many states which started land reform acts were dragged into the court by Landlords as in violation to Article 19 (1)(f) which is basic Fundamental Right and enforceable by the Courts, and the Courts also ascertained that we are helpless as we are duty bound by the Constitution that whenever there is a conflict between the Fundamental Rights and Directive Principles of State Policy (DPSP) we have to choose the protection of Fundamental Rights.

After the statement of the Court now the pressure was on Government to resolve the conflict moreover it was also their duty to work for the welfare of weaker section of the society, as for these weaker sections as like farmers the meaning of independence was only to get independence from landlords, for some other it was independence from forced slavery and many other.

III. 1ST CONSTITUTIONAL AMENDMENT AS CONFLICT RESOLUTION

At that point of time due to pressure on various states government and most of them belonging to National Congress Party, the Prime Minister at the time Jawaharlal Nehru also responded to it. Since, Nehru was a firm believer of Socialist, he brought up with 1st Constitutional Amendment in 1951 with major reforms as:

1. It inserted articles 31A (Saving of laws providing for acquisition of estates) and 31B (Provides that the provisions mentioned in Article 31A are immune from the Indian judiciary and cannot be nulled on the basis that they might violate the fundamental rights mentioned in Articles 14, 19 and 31 of the Indian Constitution).
2. Ninth Schedule was added to the constitution to make a complete end to the controversies which are presented at regular intervals before the Supreme Court which grants a power of immunity for all those laws which are inserted into it by Parliament or State Legislature from the ambit of Judicial Review. The reason behind adding the ninth schedule to the Constitution at that point of time was stated by various States and Union Governments as needed to implement policy of Zamindari abolition and other land reforms.

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3. An additional clause was added to Article 15 in answer to Right to equality presented before the Supreme Court by Champakam Durai Rajan Case[12] stating that if there is any special privilege that is granted by the States Legislatures by a means of Constitutional Amendments to certain classes of society that is well defined in the ambit of Article 14 and no individual or a group can challenge all those on the ground of violation of Fundamental Rights before the Courts.

By the amendments with an intention to make a complete end with the complete ends of the conflict was never realized as soon after this amendments and looking in view of 9th the Landlords challenged the complete 1st Amendment as unconstitutional by a means of a case Shankari Prasad v. Union of India,[13] and created a conflict between Article 13 and Article 368 of the Constitution of India.

Under Article 13(2) it was mentioned that "the State shall not make any law which takes away or abridges the rights conferred by Part III and if any law made in contravention of this clause shall, to the extent of the contravention, be void" and under Article 13(3) it was clearly mentioned that "law includes any Ordinance, order, bye law, rule, regulation, notification, custom or usages having in the territory of India the force of law". On the other side Article 368 which mean about "Power of Parliament to amend the Constitution and procedure."

The debate which arose in theShankari Prasad Case[14] was that the Article 13 makes void to each and every law till that extent which contravenes or abridges Fundamental Rights, and 1st Constitutional amendment made Article 368 is also an Act, and Act mean under Article 13 is a law, moreover if we look over the Amendment through the prism of Law we can make the amendment as void as it abridges the Fundamental Rights through this Act. The major question arose before the Court now that whether Constitutional Amendment can also be included in the ambit of Article 13 which talks about the law and the limitation also apply to that. On the very other side the government contended that Constitutional Amendment cannot be dragged into the ambit of Article 13 as the power granted under Article 368 can also amend Article 13, then how can it be included into the ambit of narrower spheres. The powers granted under Article 13 are not enough to control the powers of Article 368.

[12] State of Madras v. ChampakamDorairajan and Ors., AIR 1951 SC 226; 1951 (87) C LJ 379; (1951) 1 MLJ 621; [1951] 2 SCR 525. Full judgment can be accessed at: https://documentcloud.adobe.com/link/review?uri=urn:aaid:scds:US:e3b091eb-7fbf-4c32-9845-4d6dce737883

[13]Sankari Prasad Singh Deo v. Union of India (UOI) and State of Bihar, AIR 1951 SC 458; 1951 - 64 - LW 1005; MANU / SC / 0013 / 1951; (1951) II MLJ 683 (SC); 1951 (88) CLJ 281; [1952] 1 SCR 89. Full Judgment can be accessed at: https://documentcloud.adobe.com/link/review?uri=urn:aaid:scds:US:e231bb95-d9aa-41c0-b0f3-7207c373b5b5.

[14] Id.

The Supreme Court by persuaded description of the Government and by applying Judicial minds held that the meaning of Law included under Article 13 doesn't include amendments, if it does so it has been clearly expressed within the words scripted and both the Articles 13 and 368 are different from each other and works parallel to each other, with this the Honorable Supreme Court at that time contended that the 1st Constitutional Amendment is not unconstitutional. The Court additionally also contended that it is the legitimate power of Legislature or parliament to amend or enact the law and the court cannot restrict those power and the government head at that time Jawaharlal Nehru also assured that he will not make abuse of any constitutional provisions and will always use the powers of constitution for the betterment of Public Welfare.

IV. Upsurge Of Second Conflict Owing In Respect To Changes Made Under 17TH constitutional Amendment

In 1964 before the death of Jawaharlal Nehru in the month of May[15], he has already started the process of 17th Constitutional Amendment as because in various state acts the Legislature was unable to make acquisition of land of big landlords and Capitalists with an intention to distribute the land to the landless laborers classes to promote class equality. Under 17thConstitutional Amendment,[16] various Land reforms Act of different states including Rajasthan, Punjab were admitted under 9th Schedule to promote Land Acquisition without any limitation and control by the judicial aspects. Another case was brought up before the Supreme Court again challenging the 17th Constitution Amendment and regarding the disputes of Article 13 and 368 by a means of Sajjan Singh Case.[17]

In 1965, the Honorable Supreme Court in this case again upheld the judgment of Shankari Prasad case[18] by stating that, Article 13 and Article 368 are not inter-related or inter-twined with each other and both these articles are parallel to each other and we cannot pronounce such a judgment to limit the Constitutional spirit by restricting legislators from such an autonomy of amendment as provided by the virtue of Constitution of India.Suddenly in 1967, an onslaught came into statutory history of India before the Supreme Court in form of

[15]Died on May 27, 1964, New Delhi due to Cardiac Arrest. For more details please refer to: https://www.britannica.com/biography/Jawaharlal-Nehru.

[16] Under 17th Constitutional Amendment, Article 31A of the Constitution provides that a law in respect of the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights shall not 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 also proposed to amend the Ninth Schedule. For complete details please refer to http://legislative.gov.in/amendment-acts.

[17]Sajjan Singh v. State of Rajasthan, AIR 1965 SC 845; 1965 (1) AnWR 57; MANU / SC / 0052 / 1964; [1965] 1 SCR 933. For complete Judgment please refer to https://documentcloud.adobe.com/link/review?uri=urn:aaid:scds:US:fe85276f-d571-4f75-adfe-acee51bbea95

[18] ibid

Golaknath Case[19] that has changed the whole Constitutional history and the most notable speck in this case was that it also came against the 17th Constitutional Amendment as like Sajjan Singh Case. The background of this case was that:

In this case the two brothers naming Henry and William Golaknath own over 500 acres of farmland in Jalandhar, Punjab. In the phase of the 1953 Punjab Security and Land Tenures Act, the state government held that the brothers could keep only thirty acres each, a few acres would go to tenants and the rest was declared 'surplus'. Punjab State legislature by the help of 17th schedule placedits "Punjab Security and Land Tenures Act" within the box 9th Schedule to save the legislature being adjudicated unconstitutional. After the act of the State Government both brothers came before Supreme Court in charges against the state for the violation of Fundamental Rights protected under Article 19(1)(f) of the constitution. The issue thathas raised before the Court in this case was also same as like previous cases that "whether Amendment is a 'law' under the meaning of article 13(2), and whether fundamental rights can be amended or not."

The Contention from the parties were same that as in previous cases that the Constitutional Amendment Law is also a law within the meaning of Article 13 and the individuals must to be protected from these amendment laws as Fundamental Rights are intangible in nature and it cannot be snatched upon. But this time in this Case the Board of the Supreme Court was Changed and the highest number of Constitutional Bench at that time sat in this case,[20] the bench was constituted of 11 Judges. The Supreme Court constitutional bench, by a majority of 6:5, held that a constitutional amendment under Article 368 of the Constitution is also within the meaning of ordinary 'law' under Article 13(3) of the Constitution, means in layman language that from now the Parliament can't restrict, snatch or modify any Fundamental Rights mentioned under Part III of the Constitution and these rights are transcendental in nature.

By this thin majority judgment a danger was also clinched within the mind of Judges that by this Judgment may it happens that there may arise a situation for re-appeal of all those previous decided judgments since from 1950s. So with a view as to tackle out such future situations that may arise the Chief Justice at that time Koka Subba Rao[21] had first invoked the doctrine of prospective overruling in simple meaning that this present judgment will not

[19]I.C. GolakNath and Ors.v State of Punjab and Ors., AIR 1967 SC 1643; MANU / SC / 0029 / 1967; 1967 (15) BLJR 818; [1967] 2 SCR 762. For complete details of the case please refer to: https://documentcloud.adobe.com/link/review?uri=urn:aaid:scds:US:c827da1d-495c-4980-beb9-94c92a5b5e7e.

[20] id

[21]KokaSubbaRao was the 9th Chief Justice of India serving from 1966 to 1967. For more details please refer to: https://en.wikipedia.org/wiki/Koka_Subba_Rao.

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apply to all those past judgments, policies, laws etc. but this judgment can give effect to future judgments.

From the Judgment in above case the situations changed altogether but the problem which arose before the Parliament and State Legislature that if they cannot control the Fundamental Rights how they can assure Social Justice and Economic Justice, how they can uproot the Zamindari system, how they can maintain the stability of wealth distribution and how can they give special benefits to various backward classes to study in schools, colleges and Universities. The above judgment indirectly conveyed the legislators that whatever the fundamental rights which have been written under Part III of the Constitution in 1950s can never be changed or altered.

Since after the Judgment of Golaknath, the poor class of society was very disturbed as for their dream of economic equality and social equality for which their ancestors fought against the Britishers for Independence. Now the Prime Minister at that time Indira Gandhi was known to the very facts that until and unless she would work for the poor's and will not speak in their favor she will be unable to win in democratic form of Government, and this became the base of the slogan of election "Gareebi Hatao"[22]and she started to announce her 10 point programme and she directly started against the Communists. Further in her General speeches of election she advocated for mass banking instead of class banking by a process of nationalization of banking. In addition to all these Indira Gandhi started to advocate for urban Land celling which in starting of Land reforms was limited to Rural Land Celling.

V. BANK NATIONALIZATION CASE

In 1969 Indira Gandhi took a biggest step by promoting an ordinance "Banking Companies (Acquisition and Transfer of Undertakings) Ordinance, 1969"[23] under the ambit of Article 13(1) to nationalize the 14 banks at that time having a reserve of 50 Crore, just only to give a message to common people of nation that she is working for Economic and Class equality. Under this ordinance one thing which was specifically written that the acquisitions by government in under the meaning of Article 31 (2) of the Constitution of India is for public purpose and have a provision of Compensation. The need of acquisition for this Public

[22] The slogan and the proposed anti-poverty programmes that came with it were designed to reach out directly to the poor and marginalised, by-passing the dominant rural castes. For their part, the previously voiceless poor would at last gain both political worth and political weight. For more details please refer to: http://indiragandhi.in/en/timeline/index/garibi-hatao-timeline.

[23] An Act to provide for the acquisition and transfer of the undertakings of certain banking companies, having regard to their size, resources, coverage and organisation, in order to control the heights of the economy and to meet progressively, and serve better, the needs of development of the economy in conformity with national policy and objectives and for matters connected therewith or incidental thereto. For further information please refer to http://legislative.gov.in/sites/default/files/A1970-5_0.pdf.

purpose was well clear to every person but the provision of compensation was still undermined by the Government to these banks. The most horrific and controversial part of the Ordinance was the second schedule it contained. The second schedule provided that:

1. Where an amount of compensation could be fixed by an agreement; it would be determined by such agreement
2. Where no such agreement could be reached in the provided time, the matter would be referred to tribunal. The compensation fixed by the tribunal will be awarded after 10 years from the date when the agreement failed.

By introducing the second method for determination of compensation to the banks the simple and practical meaning asserted by the government was simple to quietly agree on the mutual agreement and settlement, or otherwise wait for more than 10 years. Two days later when Parliament came in session it enacted the Banking Companies (Acquisition & Transfer of Undertaking) Act, 1969 with the same provisions as were in the Ordinance. In regards to the above background and facts a case that took birth against this ordinance was presented before the Supreme Court naming R.C. Coopercase[24] or commonly known as Bank Nationalization case whereby RustomCavasjee Cooper challenged this mainly on two grounds:

1. Whether the Ordinance was properly promulgated and whether the Parliamentary Act was within Parliamentary Competence.
2. Whether the impugned Parliamentary Act was violative of Article 14, 19(1)(f) & 31(2) of Constitution of India as only 14 banks were targeted through this ordinances not all other banks.

The court on the basis of Golaknath Case delivered the landmark judgment, speaking in 10:1 majority held that the said ordinance is a complete infringement of Fundamental Right's and the said ordinance was said to be unconstitutional on violation of Fundamental Rights.

By 1970s this judgment became the second biggest wrench for the ruling government and Supreme Court also directed that if you acquaint anyone's property you have to give the compensation and the compensation must also be reasonable in nature. Now the question which arose before the Government for consideration was that how can a poor nation manage to hold a reasonable compensation to big landlords as the governments also have a limited capitals in hand an on the other side where Supreme Court speaks that compensation mean to

[24]RustomCavasjee Cooper and Ors.v. Union of India (UOI), AIR 1970 SC 564; [1970] 40 CompCas 325 (SC); (1970) 1 CompLJ 244 (SC); MANU / SC / 0011 / 1970; (1970) 1 SCC 248; [1970] 3 SCR 530. For more detail please check: https://documentcloud.adobe.com/link/review?uri=urn:aaid:scds:US:93dc410f-4de0-42fc-986b-bad3870ff242.

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us must be equitable in nature otherwise it is completely the violation of Fundamental Rights.

VI. PRIVY PURSE CASE

After this defeat the leader of ruling Government at that time Indira Gandhi again took another step with regards to "Privy Purses"[25] that are granted to the family members of head of each Princely States and these Purses well elucidated under Article 291 and their rights under 362 and 366(22) of the Constitution,which were charge free from Consolidated Fund of India which mean that these expenses will be passed without any debate from the Parliament as a necessary expenses. Now Indira Gandhi was well determined to revoke all these provisions which were written under the Constitution, and since it was well scripted so as to alteration of any Article Constitutional Amendment by the parliament comes into the picture which requires a special majority in the house. This Constitutional amendment was quietly passed by the House of People (LokShabha) but fails short by just 1 vote for majority in the House of States (RajyaShabha).

Now after this very close defeat, Indira Gandhi promulgated an order by a medium of President on the basis of 366(22) that changed the definitions of Ruler and exiled all those Kings of Princely States from that definition. In the order she simply promulgated that the definition of Ruler envisaged under Article 366(22) from today will not be applicable. Again with respect to these changes a case was again filed before the Supreme Court by a medium of H. H. MaharajadhirajaMadhavRaoJiwajiRaoscindiaBahadurcommonly known as "Privy Purse Case". In this case also the Supreme Court in 1971 by a complete majority agreed that this order is a complete insolence and mistake of the Government and with this all the orders promulgated were disposed out.

Now this was the third injury for Indira Gandhi that was given by Supreme Court of India, First in Golakhnath Case[26], Second in Bank Nationalization case[27] and Third in Privy Purse Case,[28]while with all these three defeats Indira Gandhi was well determined off to do something big, as these small things will never lead her to win again in the general election, as in 1971 she was all the way pressurized by his own party members, from America due to outbreak of War and mostly by the Supreme Court as her every move was declared to be unconstitutional in law. With a view to do some big she herself recommended the President at

[25]MadhavRaoJivajiRaoScindiaBahadur and Ors. v. Union of India (UOI) and Ors., AIR 1971 SC 530; MANU / SC / 0050 / 1970; (1971) 1 SCC 85; [1971] 3 SCR 9. For complete Judgment please refer to: https://documentcloud.adobe.com/link/review?uri=urn:aaid:scds:US:f394725b-244a-40b4-aeff-564184fab50b.
[26] ibid
[27] ibid
[28] ibid

that time to conduct election in 1971 itself instead of 1972[29] (as this is considered as a right of Prime Minister, he can conduct the general election before time also) with a motive to win the election she went in between the public and promoted herself as a person who want to establish economic equality, and also spoke against the Supreme Court as they are providing the umbrellas to the landlords not the government. She advocated for the negativities of Supreme Court and his own party over to win election and repeated her lines once again "Gareebi Hatao". The public well recognized the internal feelings of Indira Gandhi and leads her to win the general election once again[30] and the notable thing was that even the people have voted against their own kings who were standing against the Indira Gandhi.

VII. Phase Of Retribution And Constitutional Amendments

Now Indira Gandhi returned to the Parliament with full majority of general election and has also won many state assemblies and then she had thought that now it is the right time to take revenge from everyone, she has no worry about other enemies rather it be Supreme Court or their Political Competitors, but a little too worry about the American pressure, and at the same time Pakistan and Bangladesh (present) were in armed conflict. By looking at the American Pressure, she made an agreement with USSR[31] just after few months of winning general assembly elections, for 25 years with a basic intention to tackle out America and China pressure. By getting the support of USSR (present Russia) Indira outbreak a war against Pakistan in the month of December 1971 and freed West-Pakistan from East-Pakistan and named it as Bangladesh.[32] By the result of this victory for war the whole nation celebrated with joy and assured Indira to support her in all her future decision's as because the Superpower nation like America, China was unable to control the decisions taken by India as to wage the war, and the people of nation started to think that this may lead to rise of Indian Nation Superpower in future.

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[29] Indira Gandhi, the prime minister of India, is found guilty of electoral corruption in her successful 1971 campaign. Despite calls for her resignation, Gandhi refused to give up India's top office and later declared martial law in the country when public demonstrations threatened to topple her administration. For complete details please refer to: https://www.history.com/this-day-in-history/indira-gandhi-convicted-of-election-fraud.

[30] Weiner, Myron. "The 1971 Elections and the Indian Party System." Asian Survey 11, no. 12 (1971): 1153-166. Accessed May 25, 2020.doi:10.2307/2642897. For details please refer to: https://documentcloud.adobe.com/link/review?uri=urn:aaid:scds:US:171121f0-e291-4cce-bbfa-88332a6293a1

[31] The Indo–Soviet Treaty of Peace, Friendship and Cooperation was a treaty signed between India and the Soviet Union in August 1971 that specified mutual strategic cooperation. The treaty was a significant deviation from India's previous position of non-alignment in the Cold War and in the prelude to the Bangladesh war, it was a key development in a situation of increasing Sino-American ties and American pressure. Please refer to: https://mea.gov.in/bilateral-documents.htm?dtl/5139/Treaty+of+.

[32]Drong, Andrio. (2016). India's Role in the Emergence of Bangladesh as an independent state.VESTNIK RUDN INTERNATIONAL RELATIONS. 16. 736-744. 10.22363/2313-0660-2016-16-4-736-744. For complete details refer to: https://documentcloud.adobe.com/link/review?uri=urn:aaid:scds:US:6564967f-1d55-4609-b9f4-fb6742784675.

Now after targeting America and Pakistan, Indira's concentration shifted now to the Supreme Court and started thinking of the way that how can she control the upper Judiciary, with this intention she brought 5 new amendments into the various provisions of Constitution respectively 24th, 25th, 26th, 27th, and 28th Constitutional Amendments and looking in totality of her 15 years working period serving as a Prime Minister she has brought 29 Constitutional Amendments. Let's have a look into the series of her revenge agitation with Supreme Court.

Firstly, she brought up 24th Constitutional amendment[33] in year 1971 as a reaction to GolakNath case, 1967. Through the 24th Amendment, Parliament restored to itself undisputed authority to amend the Constitution, including its repeal by amending Articles 13 and 368.

Just a few months later Indira Gandhi brought up the 25th Constitutional Amendment[34] sought to overcome the restrictions imposed on the government by ruling laid down by Supreme Court in Bank Nationalization case. This amendment curtailed the right to property, and permitted the acquisition of private property by the government for public use, on the payment of compensation, that would be determined by the Parliament and not the courts. The amendment also exempted any law giving effect to the article 39(b) and (c) of Directive Principles of State Policy from judicial review, even if it violated the Fundamental Rights.

Now with an intention to heal her third wound given to her by Supreme Court she brought up 26th Amendment[35] in same year to target the Judgment of Privy Purse case by which the concept of rulership, with privy purses and special privileges ceased to operate after 26th Amendment. This 26th Constitutional amendment omitted the Articles 291 and 362, inserted a new article 363A and amendment the clause 22 of Article 366 as in definition of Ruler.

VIII. THE CONCEPT OF BASIC STRUCTURE

The all three amendments changed the whole structure of Constitution and exerted a pressure upon the Supreme Court, as now the higher Judiciary was clearly able to notice that now the Government wan to centralize all the powers into the Parliament from Apex Court and at the same time there happened a most extensive 29th Amendment in 1972 under which some of

[33] The 24th amendment was enacted as a reaction to GolakNath case, 1967. The GolakNath ruling led to increased parliamentary authority to amend the Constitution. Through the Amendment, Parliament restored to itself undisputed authority to amend the Constitution, including its repeal. For complete details of it please refer to: http://legislative.gov.in/constitution-twenty-fourth-amendment-act-1971.

[34] The 25th Amendment Act, 1971, Curtailed the fundamental right to property. Provided that any law made to give effect to the Directive Principles contained in Article 39 (b) or (c) cannot be challenged on the ground of violation of the rights guaranteed by Articles 14, 19 and 31. For more details please refer to: https://www.india.gov.in/my-government/constitution-india/amendments/constitution-india-twenty-fifth-amendment-act-1971.

[35] The 26th Amendment to the Constitution of India in 1971, 'privy purse' was abolished. The amendment leads to the omission of Articles 291 and 362. For complete detail of it please refer to: https://www.india.gov.in/my-government/constitution-india/amendments/constitution-india-twenty-sixth-amendment-act-1971.

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the Acts were included into the 9th Schedule of Constitution and among which one was **Kerala Land Reform Act**. With all these regular amendments Supreme Court was in full pressure and was also in search a case where the court can clear it's all stands and importance on these amendments. The search for Supreme Court meets its expectations in the case of **Keshvananda Bharati Case**[36] against the 29th Amendment Kerala Land Reforms Act.

In this very case Keshvananda Bharati was the chief of Edneer Mutt which is a religious sect in Kasaragod district of Kerala. Edneer Mutt had certain pieces of land in the sect which were owned by him in his name. The state government of Kerala with introducing the Land Reforms Amendment Act, 1969 which entitled the State Government to acquire some of the sect's land of which Keshvananda Bharati was the chief.

On this Act by the State Government Keshvananda moved to Supreme Court under Article 32 of the Indian Constitution for enforcement of his Fundamental rights which guaranteed under Article 25, Article 26, Article 14, Article 19(1)(f), Article 31. In addition to all these Articles Keshvananda has also challenged a series of Amendments that were passed in order to overrule the judgment of the Golaknath case most correctly 24th, 25th, and 29th Constitutional Amendments.

Presently in this case, Supreme Court has to reconsider the Judgment delivered in Golaknath Case, so Supreme Court formulated a 13 judge Constitutional Bench (bigger than Golaknath Case) to hear out this case and the most interesting facts is that, at that time the strength of Super Court Judges was also of 13 only, unlike today i.e., 31 Judges, that means all the Judges at that time settle altogether in this case to hear out this Constitutional matter.

Under Keshvananda Bharati case, there was a lot of hearing, debate, argument and discussionthat is laid down before the 13 Judges Constitutional Bench, a 709 pages Judgment was brought forward and at the end the decision was made out by a majority of 7:6 on 24th April 1973. Now the Supreme Court judges completely worried about after listening to all the hearing they felt that it is true that Parliament has the power to amend the constitution, and if the state is not able to function properly due to the fundamental rights provided by the constitution then there must also be power to control these Fundamental Rights. The Supreme Court also considered about the power that had been taken away from Parliament in the Golkhanath case was also not right, but while considering all those things about past, the Supreme Court was also afraid about the present in the way Indira Gandhi was bringing out Constitutional Amendments or may bring any decision, amendment in future, as it

[36] id

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mayprobably happen that the importance of constitution be demised or Constitution itself gets defeated.

Now this present situation created a colossal problem in front of the court that what to do and how to decide in such a situation, by thinking of all these things the Judges of Supreme Court recalled some theories of America, even the theories of Pakistan[37] laid down by Chief Justice Corneliusinto a judgment in 1963, that there are certain "Fundamental features of the Constitution", in America[38] a word was repeatedly used as "Basic Spirit of Constitution", and in this decision, the Supreme Court turned out to take out a very excellent mid-way, where the Court said the first thing in this case that 24th, 25th and 29th Amendments are corrects and had no problemsin it the Parliament has power of Amendment under Article 368, or in straight forward way the Court reject the Golkhanath decision, while the decision that was pronounced in Sajjan Singh's Case or Shankari Prasad's Case was agreed upon by the Court meant that both Articles 13 and 368 are different from each other.

The Court agreed upon that the fundamental rights cannot be restricted or confined under any of the general law, but the Fundamental Rights may be restricted by bringing out any Constitution amendment into the Parliament, not only this, the Court also affirmed that Parliament has a complete power under Article 368 to change or amend any part of the constitution there is no problem in it they can do this, even they can also amend the preface of the Constitution under this Article, but the amendment power of the constitution is not equivalent to the creation of the Constitution, the Constitutional Assembly had the power to make the constitution and this Parliament is not a Constitutional Assembly, the Parliament can amend the Constitution but they cannot rewrite it and hence one thing must always has to be kept in mind before bringing any amendment that, in the Constitution there exists a "Basic Structure" and the Government cannot amend this Basic Structure of Constitution by bringing out any majority into the Parliament.

The government has asked the Court that where this term "Basic Structure" has been scripted in the Constitution, the Court replied the Government that it is not written, it is a matter of understanding and made it very clear that the Parliament can amend any part of the constitution with the help of Article 368, but Supreme Court has power to make review of

[37]Chief Justice Cornelius of Pakistan had held that the President of Pakistan could not alter the "fundamental features" of their Constitution in case of FazlulQuaderChowdhry v. Mohd. Abdul Haque, 1963 PLC 486. For complete detail of it please refer to: http://docs.manupatra.in/newsline/articles/Upload/4FF02084-F99E-4A1A-AEF2-1C1A95862553.pdf.

[38]McCulloch v. Maryland, 1819 "Let the end be legitimate … and all means which are … consistent with the letter and spirit of the Constitution are constitutional." Chief Justice Marshall invoked this phrase to establish the right of Congress to pass laws that are "necessary and proper" to conduct the business of the U.S. government. Here, the court upheld Congress' power to create a national bank.

every such Amendment with the help of tool "Judicial Review"and can see whether the amendment is violative of the Basic Structure of Constitution or not. After that, the Government asked the court what is in the basic structure, and then the Supreme Court replied that they will not tell it now, they will tell it later on time when it is right, but yes, as for example there is democracy, it is the Basic Structure of Constitution.

Later, in the S.R Bommai case,[39] the Supreme Court contended that secularism is also a Basic Structure of the Constitution, there are many things that we can consider to be the Basic Structure of Constitution. From the above Judgment, it cannot be said that the Supreme Court has rejected Indira Gandhi, because the Court has accepted the 24th, 25th and 26th amendments respectively, the Privy Purse was completely over, the Nationalization of Banks has also been accepted moreover, now it became very easy for the States Governments to make acquisition of the property, Golaknath's decision was also over turned, now implementation of land reforms has become an easy task, and lastly, Ninth Schedule is still alive and working, but the Supreme Court made it very clear for the Parliament to understand that not to tamper with the Basic Structure of Constitution in any conditions.

IX. MINDSETS OF INDIAN JUDICIARY (POST-KESHVANANDA BHARATI DEVELOPMENT)

At that time Indira Gandhi was in such a state of mind, that in a way it was a success for her but she was not completely happy, after that some things happened in our constitution which are considered as hurtful or atrocious things. 24th April 1973 was the day of the decision of the Keshvananda Bharati Case, but this day was also a very interesting day, the decision of the Keshvananda Case based on the majority of 7: 6 and on the same night means on the 25thof April, Chief Justice S.M. Sikri[40] was going to retire. In Supreme Court, the tendency of Judges can always be seen that the Judges always try to hit sixes on the last ball. No problem, it's all okay, everyone feels that before I should leave I must do something good or great, that the last fire should always stay in the minds of people, some jurists speaks this type of state of mind as "School Child Mentality" like some heroes retired after working.This mentality of School Child can most clearly be seen in Current Judges of Supreme Court after 2010, such as 45th Chief Justice of India,Honorable Dipak Misra who gave 30 most important decisions

[39]S.R. Bommai and Ors. v. Union of India (UOI) and Ors. AIR 1994 SC 1918; JT 1994 (2) SC 215; MANU / SC / 0444 / 1994; (1994) 3 SCC 1; 1994 (2) SCALE 37; [1994] 2 SCR 644. For complete judgment please refer to: https://documentcloud.adobe.com/link/review?uri=urn:aaid:scds:US:e7a9eaf4-4af6-4e15-afd8-4acb2ca2ddf7

[40]SarvMittraSikri was the 13th Chief Justice of the Supreme Court of India from 22 January 1971 until his retirement on 25 April 1973. For more details please refer to: https://www.ebc-india.com/lawyer/articles/92v4a3.htm

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in his last month of retirement,[41] after that 46th Chief Justice of India, Honorable RanjanGogoi, who made many important decisions in his last month of his retirement.[42]

Sir Sikri must have had the same thing in mind that's why he gave this decision just a few hours before his retirement, and now what happens to the post of Chief Justice, that under Article 124 of Constitution it has been clearly written about the appointment of the judges, or how it can be done but this Article was complete silent over the appointment of the Chief Justice of India, or how it will be made of either in the same way, or by any separately process. So it is always a tradition followed out by the Supreme Court that the senior most judge will be made the Chief Justice, in 1951 when the 1st Chief Justice of India Sir H.J. Kaniya retiredRetired, then who was the senior most judge after him was Sir M. PatanjaliSastri, but Jawaharlal Nehru did not like him, he felt that Justice Bijan Kumar Mukherjea can be better Justice than Sir M. PatanjaliSastri.Nehru Ji sent a proposal that Justice Bijan Kumar Mukherjea is to be made as Chief Justice of India,[43] the Judges of Supreme Court understood that if we gave them a chance to interference of the government in Supreme Court they will always continue to interfere, on this matter of interference by Jawaharlal Nehru all the judges including Justice Mukherjea sent their resignation letters to the Government,[44] by seeing this Jawaharlal Nehru had to bow down and then Justice P. Sastri became the 2nd Chief Justice of India, since then it became a rule that the Senior most Judge would be the Chief Justice of India. By 1973, this rule has always been followed having just only one exception related to Justice Zafar Imam, who could not become the Chief Justice because of his Physical health because he had to go on for a long holidays due to his health conditions.

In the Keshvananda Bharati case, it was decided on 24thApril by a majority of 7: 6, the judges who were in opposition to this Judgment among one of them was Justice A.N. Ray.[45] It was very natural that Justice Sikri would retire on April 25th and the senior most Judge after him would become the Chief Justice of India, meaning the next Chief Justice of Indian was either

[41] Justice Dipak Misra is an eminent Indian jurist who served as the 45th Chief Justice of India from 28 August 2017 till 2 October 2018. Please refer here for more details: https://www.hindustantimes.com/india-news/cji-dipak-misra-set-to-deliver-10-key-judgments-with-20-working-days-left-before-retirement/story-2OziOtwt4Y8N53ZPZmMiDK.html

[42] RanjanGogoi served as the 46th Chief Justice of India for 13 months between 2018 and 2019. For details refer to:https://www.thehindu.com/news/national/cji-ranjan-gogoi-has-10-days-and-5-judgments-to-deliver/article29815270.ece.

[43] Bijan Kumar Mukherjea was the 4th Chief Justice of India. He was in his office from 22 December 1954 to 31 January 1956. For more details please refer to: https://www.lawinsider.in/details.php?cat_id=115

[44] MandakolathurPatanjaliSastri was the second Chief Justice of India, serving in the post from 7 November 1951 to 3 January 1954. For more details please refer to: https://en.wikipedia.org/wiki/M._Patanjali_Sastri.

[45] AjitNath Ray was the 14th Chief Justice of the Supreme Court of India from 25 April 1973 till his retirement on 28 January 1977. For more details please refer to: https://en.wikipedia.org/wiki/A._N._Ray

any one of among Justice Hegde, Justice Grover or Justice Sylhet, as mainly because these three judges were senior most Judges of the Supreme Court at time after Justice Sikri.

On the 25th of April, Indira Gandhi declared that the next Justice A.N Ray Will be next Chief Justice of India, as soon as thisnotice was declared, these three judges resigned from their post[46] and Justice A.N. Ray did not take the same step as which was took by Justice Bijan Kumar Mukherjea in 1951, he became Chief Justice, and not only became the Chief Justice but also remained Chief Justice a long term from 1973 to 1977, in this same meantime, the Emergency was proclaimed by Indira Gandhi Government, and the most bitter truth of Emergency is that in these 21 months of Emergency,[47] the Supreme Court supported the government, and refused to support the people. It's biggest example comes from the Habeas Corpus case,[48] in which the rights of the public were protected by the Nine High Courts, but the Supreme Court abolished the rights of the people in this decision.

In the Habeas Corpus case, the decision taken by one of the Judges who stood against the government was Justice Hans Raj Khanna and those who stood in favor of the government's decision were Justice A.N Ray, Justice Mirza Hameedullah Beg, Justice Y.V Chandrachud, and Justice P.N. Bhagwati. Interestingly, after the retirement of 13th Chief Justice S.M. Sikri, Justice A.N. Ray became the 14th Chief Justice, Justice Hameedullah Beg became the 15th Chief Justice of India, Justice Y.V. Chandrachud became the 16th Chief Justice of India and Justice P.N. Bhagwati became the 17th Chief Justice of India. Among these four Chief Justices two of these were made on the basis of Seniority but the remaining two of them did not become Chief Justice on the basis of Seniority. One of which was Chief Justice A.N. Ray and another Chief Justice was Mirza Hameedullah Beg because since he was not the senior most Judge at that time in Supreme Court of India. Justice H.R Khanna was present in the Supreme Court as he was senior to Justice Mirza Hameedullah Beg but since Justice Khanna had passed his verdicts against the Indira Government both in Keshvananda Bharati case and

[46] Chief Justice, A.N. Ray, was appointed to the highest judicial office in the country. On that occasion, too, the practice of appointing the most senior judge as the Chief Justice was not followed. Three judges - J. M. Shelat, K. S. Hegde and A. N. Grover - had resigned in protest then. Khanna submitted his resignation to the President soon after Beg's appointment as the Chief Justice of India was announced. For complete details please refer to: https://www.indiatoday.in/magazine/indiascope/story/19770228-supersede-controversy-appointment-of-chief-justice-of-india-818734-2015-03-09

[47] In India, "The Emergency" refers to a 21 month period from 1975 to 1977 when Prime Minister Indira Gandhi had a state of emergency declared across the country. Officially issued by President Fakhruddin Ali Ahmed under Article 352 of the Constitution because of the prevailing "internal disturbance", the Emergency was in effect from 25 June 1975 until its withdrawal on 21 March 1977. For more details of it please refer to: https://www.moneylife.in/article/the-emergency-of-1975-and-role-played-by-the-judiciary/33638.html

[48] Additional District Magistrate, Jabalpur v. ShivakantShukla, AIR 1976 SC 1207; MANU / SC / 0062 / 1976; 1976 (8) UJ 610; 1976 CriLJ 945; (1976) 2 SCC 521; [1976]SuppSCR 172. Please refer here for complete judgment: https://documentcloud.adobe.com/link/review?uri=urn:aaid:scds:US:2bc3c03d-1462-4d0d-ad9d-80f74273eb61.

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in Habeas Corpus case, that is why the day on which Justice A.N. Ray retired, Mirza. Hameedullah Beg was declared as the 15thChief Justice of India and on the same day Justice H.R. Khanna resigned and after the resignation of Justice Khanna, Justice Beg automatically became the senior most Judge in the Supreme Court.

By 1970s it had become a very bad tradition that in the Supreme Court, the judge who will support the government will only become the Chief Justice, but in 1993, the Supreme Court itself passed a verdict in which nine Judge's Constitutional bench wrote in the judgment that the Chief Justice of India will be selected on the basis of seniority from then onwards, thereafter the status in relation to the position of Chief Justice fixed out.

This Doctrine of Basic Structure has protected the constitution many a times from big dangers and in case of Habeous Corpus, H.M Seervai who was advocate of the government in that case, after the completion of the emergency, himself believed that he was wrong, the protection of the basic structure of the constitution is necessary. Otherwise, if a government who is despotic in nature can do anything about the constitution.[49] During the Emergency in 1975, when A.N. Ray was the Chief Justice in the Supreme Court, he started the process to review the judgment of Keshvananda Bharati case and tried to change it, on 10thand 11th November 1975, the 13 judge's constitutional bench sit again with a view to review the Judgment of Keshvananda Bharati Case. It seemed to all the government and the Supreme Court agreed altogether to reverse the decisions of Keshvananda Bharati Case.

The famous advocate of the time Nanabhoy Palkhivala[50] who has defeated the government in every case, be it either Golak Nath case, or The Bank Nationalization case, The Privy Purses case or most importantly in Keshvananda Bharati case, all those cases were fought by him against government and has also secured victory, when he came to know that the Supreme Court is going to review the decisions laid down in Keshvananda Bharati Judgment, he again stood up in against to it before the court and in this case again he proved to the Supreme Court in just 2 days that the review is baseless at it going to be reviewed without any application of review petition filed against the judgment. Now after this defeat, the judges started getting discontented deep inside and they started worrying about their honor. After two days, the Judges had to close the review bench because there was no ground for review and also on the base of moral sensation at that time.

[49]Noorani, A. (1978). THE JUDICIARY AND THE BAR IN INDIA DURING THE EMERGENCY.Verfassung Und Recht in Übersee / Law and Politics in Africa, Asia and Latin America, 11(4), 403-410. Retrieved May 25, 2020, from www.jstor.org/stable/43108733.

[50]NaniArdeshirPalkhivala was an Indian jurist and liberal economist. For complete details please refer to: https://en.wikipedia.org/wiki/Nanabhoy_Palkhivala.

In 1976, there happened a 42nd constitutional amendment, which itself was called as mini constitution, in which the government tried once again to finish the Basic Structure of the constitution, the government in 42nd Amendment, under Article 368 clearly wrote that under this Article the Parliament has limitless power with respect to Constitutional Amendment of any Part of the constitution and there will be no judicial review of these amendment, but this government's attempt was rejected by the Supreme Court in 1980s through the medium of Minvera Mills case[51] in which by dismissed all the 42nd Constitutional Amendments and changes made in Article 368, and therein The Supreme Court said a very good thing that "the limited power of modification of the constitution is the basic structure of the constitution itself" i.e., the basic structure of the constitution itself is that the Parliament can amend the constitution in limited manner, and cannot make unlimited amendments. With respect to the last question that was left with the mind of Supreme Court that what if the Parliament makes such a law that violates the basic structure of the Constitution, and puts it in the 9th Schedule as the Supreme Court then doesn't have power to make Judicial Review with respect to the acts place inside the Ninth Schedule. The Supreme himself answered to this through the decision of the Waman Rao case[52] that the Supreme Court has the power of judicial review and the power of judicial review is also within the ambit of Basic Structure, and we will not apply the Basic Structure of Judicial Review to those Acts that has been put before the judgment Keshvananda Bharati's case, but if any law or an Act that has been inserted into the 9th Schedule after the principle judgment of Keshvananda Bharati case, then we can make review of it, although the Supreme Court has not yet done any judicial review of the Ninth Schedule, rather the Court has already said that we they need it they can also make judicial review of it.

X. CONCLUSION

From the above readings we can clearly analyze the power tussle game between the Parliament and Judiciary however, they both considered to be an organs of a state still they have tussle for power seeking. There is well established belief that "If the government in Parliament is weak then Supreme Court have extraneous power, while on the other hand if the Government in Parliament is strong with full majority then the nature of Supreme Court

[51]Minerva Mills Ltd. and Ors. v. Union of India (UOI) and Ors., AIR 1980 SC 1789; MANU / SC / 0075 / 1980; 1980 (12) UJ 727; (1980) 2 SCC 591; (1980) 3 SCC 625; [1981] 1 SCR 206. For complete judgment please refer to: https://documentcloud.adobe.com/link/review?uri=urn:aaid:scds:US:ae284bc3-46cb-4cca-a63f-2d4f04208862.

[52]Waman Rao and Ors. v. Union of India (UOI) and Ors., MANU / SC / 0091 / 1980; (1981) 2 SCC 362; [1981] 2 SCR 1. For complete judgment please refer to: https://documentcloud.adobe.com/link/review?uri=urn:aaid:scds:US:ddcef22d-20f5-419f-a559-230636f2ec45.

becomes humble," this same situation can be seen and applied here. Although these conflicts were resolved by the Supreme Court by establishing the "Basic Structure of Constitution" but is well known that these judgments were just delivered to make an unlike changes in future contradictions.

A certainty that takes birth from this tussle for power between Parliament and the judiciary is that all laws and constitutional amendments are now subject to judicial review and legislation, which is likely to bring the infrastructure into disrepute by the Supreme Court. In short, it was summarized as the power of Parliament to amend the Constitution is not absolute and the Supreme Court is the final arbiter to interpret and explain all constitutional amendments, the words of this was only based on the application of mind with respect to the interest of Citizens and Non- Citizens of nation.

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