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Basic Structure of Constitution: Impact of *Kesavananda Bharati* on Constitutional Status of Fundamental Rights

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ABSTRACT
Kesavananda Bharati was a mile stone in the constitutional history of India after *Golak Nath*. In *Golak Nath*, the Indian parliament was incapacitated to amend any fundamental right, guaranteed in the Constitution, while in *Kesavananda* case, the amendment power of Parliament was recognized, but was limited to the extent that it would not take away the basic structure of the Constitution. However, what was basic structure could be agreed upon. Gradually, in the following cases, fundamental rights were recognized as a part of basic structure therefore, unamendable by Parliament, even with hundred percent majorities of its both Houses. Later case-law, categorically established that Article 21, along with other fundamental rights, was also a part of the basic structure. Now, it is well-recognized principle that any constitutional amendment can be tested on the yardstick of Article 21.

KEY WORDS: Indian Constitution, Basic Structure of Constitution, Right to Life, Fundamental Rights, Constitutional Developments

Introduction

This part of the research would focus on the background of the bone of contention between the Parliament and the Judiciary; the way it triggered race among three organs of the State, particularly, the Parliament and the Judiciary. Further, the early response of the Parliament, in the form of constitutional amendments, has been examined thoroughly in the light of judicial observations, with respect to their independent and joint impact, focusing on the First and Fourth Constitutional Amendment Acts and the judicial reaction, in the cases of *Sankari Prasad Singh Deo* (Sankari Prasad Singh Deo v. Union of India, 1951:458; (Sankari Prasad Singh Dio V. Union of India, 1952: 89) and Sajjan Singh, (Sajjan Singh v State of

Rajastan 1965: 845). when their validity was challenged in the Supreme Court. The tug of war, between the Parliament and the Judiciary, to overawe each other for the position of a final arbiter of the Constitution would be analyzed in depth, to show the dynamics of inter-institutional conflicts within a State. Moreover, the study will throw light on the factors, arguments, counter contentions, along with some political developments, which ushered the Judiciary to create the doctrine of 'Basic Structure' of the Constitution, a unique idea that empowered the Judges to bifurcate the Constitution in the fundamental and the non-fundamental provisions of the Constitution, which the framers of the Constitution could not envisage.

The Chapter as well propounds to find out about the elements of basic structure of the Constitution, elaborated by different judges in their separate written judgments. Then, the research continues to have a profound insight of the impact of the doctrine of basic structure of the Constitution as *stare decisis*, for the future cases of similar nature. How the judicial self-empowerment, through the expansion of limits of judicial review, extended to a constitutional amendment, was received by the then political majority and culture of the Parliament. How the judicial fraternity faced all that kind of pressure with audacity to protect fundamental rights, from the clutches of dominant political temporary majority in the Parliament, has also been, in detail, discussed. Mostly, the research revolves around the power of judicial review of a constitutional amendment under 13(2), the extent of power of Parliament to amend the Constitution under Article 368 and the abridgement of fundamental rights protected under Articles 14, 19 generally and 21 in particular. Finally, the study of the Indian law has especially put attention on the status of Article 21: right to life, as a part of the basic structure of the Constitution, along with other fundamental rights like right to property, right to speech and right to equality. At the end, the evolution of the concept of the basic structure, stretched over 34 years, has been concluded in the light of recent constitutional amendments and the case law answering the questions, which could not be replied at the time of its conception or raised during its development. Impact of *Kesavananda* was enormous. In the constitutional history of India, it still enjoys the status of a most controversial case. No constitutional case has been hailed and hated at the same time like *Kesavananda*. In essence, the constitutional landscape of India, after *Golak Nath*, saw a fundamental metamorphosis. The former Chief Justice, K. Subba Rao, acknowledged extra-curially its significance that it provided a safety valve. (1973) 2SCCJ 1). It was also applauded as a counter-majoritarian check on democracy. (Sathe, 2001: 30).

Recently, the doctrine of basic structure of the Constitution has been recognized as an inevitable option for a Country like India, where temporary majorities of the government and culture of power thirst may disfigure the identity or basic features of the Constitution easily. To support the judgment, it has been vigorously suggested that, 'as long as India's politics remain fractured and its democratic culture fragile, independent judicial review remains the only bulwark against majoritarianism.' (Goldsworthy, 2007: 261). On the other hand, it has been

criticized ruthlessly. In the words of Professor Upendra Baxi, '*Kesavananda Bharati* generates many paradoxes. Although it is in the ultimate analysis a judicial decision, it is not just a reported case on some Articles of the Indian Constitution …it is, in some sense, the Indian Constitution of the future.' (Baxi, 1974: 45) Examining its outcome, in his another treatise, he opined that 'nowhere in the history of mankind has the power to amend a Constitution thus been used.' (Baxi, 1985). He was also critical of some elements of basic structure declared by *Kesavananda's* Court like sovereignty of the State, the will to defend a nation's political existence with coercive power, and the institutions and apparatuses of governance etc. Moreover, he suggested that a constitution was supposed to comprise of substantive rights, duties and obligations of a State, organizations and individuals etc. (Baxi, 2002: 69) The judgment was apprehended not to be sustainable by Ranganathan J, stating extra-curially (Ranganathan, 1989: 2). A number of other jurists were also skeptical about its durability because of the imbalance it created between the established relationship of the Judiciary and the Parliament. It was not only criticized as an unsustainable judgment, but also contrary to the theory of judicial review. (Sathe, 2001). *Golak Nath* spurred political and public reaction, enabling Indira Gandhi, the leader of the Congress Party and the Prime Minister, to exploit and garner more that a two third majority in the Parliament; while *Kesavananda* prompted vigorous intellectual and juristic criticism among legal and academic fraternity focused on the doctrine of basic structure of the Constitution.

Due to its length and separate judgment of every judge except the combined judgments of Shelat and Grover, and Hegde and Mukherjea, it is hard for the jurists and legal academia to discover its *ratio decendendi*. (Baxi, 2002: 69). What can confidently be said is that it set up few principles, which were opted or opposed by different Judges of the Bench. (Ibid). Even the critics, like Professor Upendar Baxi, were worried about the health and safety of the scholars who tried to cognize such a quantitative judgment, and for the future Judges who were bound to apply the doctrine of basic structure of the Constitution in the incoming cases. (Ibid). Although the ego hurt Judiciary (Ali, 1988: 166) categorically held the basic structure of the Constitution unalterable, but could not converge on the exact idol of basic structure. It remained, for a long time, tremendously undefined and vague. (Roa, 2002). Its vagueness and uncertainty became its major pitfall, which culminated in the enhanced power of judicial review, even at the cost of the supremacy of the Parliament. Thereafter, the Parliament could not maintain its status of law-making highest forum. The Supreme Court now surrogated the Parliament as a final authority what would be the law and the Constitution. (Ibid). The innovative doctrine of the basic structure of the Constitution unleashed an unending process of counter-majoritarian judicial activism. Now the judgment enabled every Judge to thwart any constitutional amendment against an overwhelming constitutional majority of the Parliament, which represents

hundreds of millions people of India. 'It seemed to wrestle supremacy to a non-elected court and against the elected Parliament.' (Sathe, 2001).

Conflict between Executive, Parliament and Judiciary

Although *Golak Nath* was overruled unanimously by *Kesavananda's* Court, because *Golak Nath* limited the parliamentary authority to amend the Constitution to the extent of fundamental rights, but *Kesavananda* brought about more clouds for the supremacy of the Parliament, in the guise of doctrine of basic structure of the Constitution. Indira's government became upset; it was not a rosy picture for her. The judgment was perceived as an utter failure of the government. This time, the recourse to cope with the situation was different than the previous one: a constitutional amendment.[1] The intensity of collision between three organs of the State touched its extreme, when the Gandhi's government advised the President to declare emergency under Article 352 of the Constitution in 1975.[2] For the next two years, it seemed that India was a totalitarian despotic state, instead of a democratic republic.[3] Dismay of the Nation touched its last limits, when the Supreme Court intimidated by the resignations of three senior Judges and elevation of a junior Judge as its Chief Justice, due to *Kesavananda* decided *A. D. M. Jabalpur v Shiv Kant Shukla*. (1976: 1207). In the instasnt case, a five member Bench comprising three of the Court's leading figures Chandrachud, Bhagwati, and Khanna JJ could not endorse the courageous High Court's Judges, who had continued to offer habeas corpus to detainees despite the emergency laws, which suspended access to the Courts. On the other hand, the majority of the Court, including Justices Chandrachud and Bhagwati, ruled that all access to the Courts could be choked, during a presidential emergency.[4] Meanwhile, the election of the Prime Minister was challenged and a criminal complaint was registered in the Court of a Magistrate by a prominent opposition leader, who contested the election against her from the constituency of Uttar Pardesh.[5] The contention was that a third party had spent more expenditure than permitted by the electoral laws. It was also argued that the excessively spent money might be accounted for her total limit; the election was asked to be declared void; the offender should be punished in criminal liability. The lower Court agreed and passed a judgment against the sitting Prime Minister. She appealed to the High Court, which also maintained the lower Court's decision. Desperately, the sitting Prime Minister of India filed an appeal to the Supreme Court.[6] Now the future of the Indira's Government was in the hands of the Supreme Court, which was sure short not in her favor. However, Krishna Ayer J 'issued a partial stay against the lower Court's judgment, permitting Gandhi to remain in office as the Prime Minister pending appeal, but denying her the right to speak or vote in the Parliament.'[7]

Post *Kesavananda* Constitutional Amendments and New Judicial Developments

Being mindful of the Supreme Court, the Government opted for a new package of constitutional amendments. Accordingly, the Parliament passed the Thirty Ninth Amendment Act, which debarred the jurisdiction of the Supreme Court to entertain the writs relating to the elections of the President, Vice President, Prime Minister and Speaker of the Lok Sabha, also precluding judicial review of the proclamation of a presidential emergency or of laws enacted during the emergency that conflicted with fundamental rights. Offence is the best defense convinced the Government to attack the judiciary preemptively.[8] The opposition leader, Raj Narain, who was widely respected due to his political career, did not waste a moment to challenge it in the Supreme Court, on the grounds that the hastily passed Thirty Ninth Amendment was inconsistent with the basic structure of the Constitution, which affected the conduct of free and fair election, and precluded the judicial review of the Constitutional Amendment that was against the *ratio decidendi* of *Kesavananda*. (Indira Nehru Gandhi v Raj Narain, 1975: 2299). *The case of Indira Nehru Gandhi v Raj Narain* (Ibid) *was the next case, after the recognition of the doctrine of basic structure of the Constitution in Kesavananda wherein the apprehension of its sustainability was to be tested.* A constitutional Bench, comprising of nine Judges of the Supreme Court, examined the vague and ambivalent ratios of the various judgments delivered in Kesavananda, in order to ascertain the contents of the basic structure to judge the validity of the Thirty Ninth Amendment Act. Like *Golak Nath* and *Kesavananda,* in the instant case as well, the Government won the battle, but lost the war. On the merit of the case, the criminal punishment of Indira Gandhi awarded by the Magistrate and endorsed by the Allahabad High Court was set aside by the Supreme Court unanimously. Her election was declared valid on the basis of the amended election laws. On the other hand, five Judges, including two staunch supporters of the Government's vision, Chief Justice Ray and Justice Beg of *Kesavananda's* saga, stamped once again the doctrine of basic structure of the Constitution. The 'doctrine' passed the test successfully, rebutting the claims of its non-sustainability. Like *Kesavananda,* the doctrine of basic structure survived with a razor-thin majority of one judge away from the range of absolute power of the Parliament to amend the Constitution and incapacitate the Courts from the judicial review of the constitutional amendments (Ibid). Although, in arithmetic terms, the government succeeded to achieve its main objective to save the election of the Prime Minister, Indira Gandhi, but tasted a bitter failure, when its own appointed Chief Justice, superseding three senior Judges after *Kesavananda*, turned his back on the Government and upheld the stumbling doctrine: basic structure of the Constitution.[9] Like *Kesavananda*, in the instant case too, each judge opted for reasoning his own separate judgment about what constituted the basic structure of the Constitution. (Indira Nahru Gandhi v Raj Narain, 1975: 2299). Unequivocally,

it affirmed the *ratio* of *Kesavananda Bharati* reiterating the supremacy of the Judiciary over the Parliament, although the Court again failed to express a unanimous opinion about what constituted the basic structure of the Constitution.[10]

Kesavananda had been a thorn in throat of the Government, all along. The Indira's Government did not leave any stone unturned to water down the doctrine of basic structure of the Constitution; hence, the judicial supremacy: a non elected and non accountable check on the democratically passed constitutional amendments. Feeling confident with the appointment of Justice Ray as a Chief Justice of India, *Shiv Kant Shukla* and triumph in the election case, a new attempt was made through judiciary itself when Chief Justice Ray, without any petition to review *Kesavananda*, constituted a three member Bench of the Supreme Court to review it, on the ground whether or not the basic structure doctrine restricted Parliament's power to amend the Constitution.[11] Finding no other reason, particularly the lack of any aggrieved applicant, it was obvious that the Government maneuvered the Bench, since it was the sole beneficiary. However, the hearing could not sustain and the Bench was dissolved within one week.[11] Right with the promulgation of second emergency, on the ground of domestic security concerns, a Committee was constituted under the chairmanship of Sardar Swaran Singh, Minister for External Affairs, with the mandate to recommend some appropriate constitutional amendments, which could successfully establish supremacy of the Parliament and could do away with the theory of basic structure of the Constitution: an unwanted judicial adventure. In light of the report of the Committee, a massive constitutional package was drafted in the form of the Forty Second Amendment Bill. (Sathe, 2001). To re-establish the Parliamentary supremacy over the Judiciary, Article 368 was altered to bestow the Parliament all kind of authority to amend any provision of the Constitution (Ibid). The Bill was passed by both Houses with comfortable required two-third majority. Meanwhile, a general election was called; the Congress uder Indira leadership lost the election; Janta Dul formed a coalition government.

In accordance with the electoral promises of the Janta coalition, after coming into power, the Alliance was poised to restore the Constitution in its original form. It did not look interested to reinvigorate the old battle between the Parliament and the Judiciary, rather many parties of the Alliance supported the Supreme Court's doctrine of basic structure of the Constitution.[12] Therefore, without any inordinate delay, the Forty Third Amendment Act was moved in the Parliament. With help of the Congress Party, it became a part of the Constitution. However, all provision of the Forty Second Amendment Act could not be erased from the Constitution, since the Congress disagreement did not enable the Janta's Government to get it pass on its own. Eventually, a deal was struck between the Janta Government and the Congress, whereas right to property was compromised by the Janta Party as an ordinary right, instead of a fundamental right, in the form of Forty Fourth Amendment Act.[13] Since the Alliance failed to fulfill its promise to repeal the Forty Second Amendment Act in Toto, due to lack of the required majority,

therefore, the repeatedly favorable tested forum of the Supreme Court was opted as an alternative to achieve the goal.[14] Similar to the previous constitutional amendments, the Forty Second Constitutional Amendment Act was not an exception; it was also challenged, in the case of *Minerva Mills,* (Minerva Mills v Union of India, 1980: 1789) as an unconstitutional constitutional amendment, after a parliamentary failed attempt to repeal it totally. [15] Although the Forty Second Amendment Act was challenged in *Minerva Mills,*[16] in the period of the Janta Party's Government, on the yardstick of basic structure of the Constitution, relying on *Kesavananda* and *Raj Narain,* but it was decided in reign of the Congress' Government. Nonetheless, the result was not different from *Kesavananda* and *Raj Narain.*[17]

Meanwhile, the Supreme Court had achieved and established public trust and support from the landmark cases, like *Maneka Gandhi* (Maneka Gandhi v Union of India, 1978: 597) *and Judges's* case; (S.P.Gupta v President of India, 1982: 149) therefore, the new Indira's Government could not revert to its old ambitious agenda to cut down the wings of the Judiciary. In *Sanjeev Coke,* (Sanjeev Coke MFG. Co. v Bharat Coking Coal, 1983: 239) while considering the validity of the Coal Mines (Nationalisation) Act 1972 under Article 31C, as it stood before its amendment by the Forty Second Amendment, Reddy J expressed some misgivings about the *Minerva Mills' case* in so far as it invalidated the amendment of Article 31C. He observed that *Minerva Mills' case* was concerned with a law passed before the amendment of Article 31C by the Forty Second Amendment; therefore, any decision on the validity of the amendment of that Article was purely hypothetical and academic. The Supreme Court, in *Waman Rao v Union of India,* (1981: 587) borrowing the principle of 'prospective overruling', laid down in *Golak Nath,* held that the post *Kesavananda*g *Bharati* Constitutional amendments 'made on or after that date would not be open to be challenged on the ground that all or any of them were beyond the constituent power of Parliament being violative of the basic structure of the Constitution.' (Ibid). However, the Supreme Court drew a distinction between integral part of the Constitution and its Basic Structure in the case of *Shri Raghunathrao Ganpatrao,* (Shri Raghunathrao Ganpatrao v Union of India, 1993: 1267) upholding the Twenty Sixth Amendment Act 1971, which de-recognized the former Indian Rulers, and abolished their privy purses and other privileges by repealing Articles 291 and 362, inserting Article 363A. Although the provisions were recognized as an integral part of the Constitution, but were denied as a basic feature of the Constitution. The amendment was, however, found in consonance with republicanism, human dignity, and equality, embodied in the Preamble.

Conclusion

In-depth study of the constitutional amendments and the developed case-law is evident that almost whole constitutional history of India is suffused with abridgment or protection of fundamental rights, guaranteed under Article 14, 19 and 21, and the attempts to take them away from the judicial scrutiny, amending Article 13 and 368 of the Indian Constitution. The first two decades of the constitutional developments, in the form of judicial activism, present an arid atmosphere after the Independence. Most of third decade heralded with an exercise of all forms of judicial activism: counter majoritarian, innovative, non originalist precedential, jurisdictional, judicial creativity, which particularly emerged in *Golak Nath* and *Kesavananda Bharati* in 1967 and 1973, respectively. After getting a fatal fist of interpretation in *A. K. Gopalan*, Article 21 remained hybrid till Forty Second Constitutional Amendment Act, wherein the laws against fundamental rights were protected, albeit their inconsistency, *inter alia*, with Article 21, during the second emergency. At the climax of the war between the Parliament and the Judiciary in the early 70's, the Judiciary ended its voyage on the innovation of doctrine of basic structure of the Constitution, paralyzing the Parliament to amend all parts of the Constitution. Although the Judiciary ultimately won the fierce war, by retention of power of judicial review and finding out about the limitations built in Article 368, but the triumph of the Judiciary remained evolutionary, for the next thirty four years. The journey initiated with *Kesavananda* raised more questions than answers. Even, it was lamented by the well known scholar that he was considerate of the safety of the future Judges, who were bound to apply the doctrine of basic structure of the Constitution in the incoming cases. (Baxi, 2002: 69). The apprehension was also seconded by other intellectuals. (Ranganathan, 1989: 2).

Time revealed that not only it sustained of all political turmoil and tumult, but no new situation expedited the Judiciary to abandon it. One after the other case the doctrine of 'Basic Structure' of the Constitution was ossified. It was launched in the face of an extreme unfavorable atmosphere; the Indian judiciary had never been so bitterly divisive. However, with the passage of time, the doctrine was strengthened with more healthy blood and flesh. Not only it was digested gradually by the Parliament and public, but also the number of dissenting judges in the coming cases decreasingly vanished and the Court came up with unanimous opinions.[18] Now, the doctrine of 'Basic Structure' of the Constitution is not only well recognized and established in the Indian constitutional, legal and political jurisprudence, but also provides guidance, as a persuasive precedent, for other South Asian Countries, like Pakistan and Bangladesh. (Anwar Hussan v People of Republic of Bangladesh, 1989). Although the conflict between the Parliament and the Judiciary started over fundamental right to property, but terminated on a deal, which transformed its status from a constitutional right to an ordinary right, by 44th Constitutional Amendment Act. On the other hand, Article 21: right to life

succumbed to the conservative interpretation of *A.K. Goapaln* and could not resurrect till *Maneka Gandhi*. Nonetheless, after its broader, liberal elaboration and recognition as an integral part of the basic structure of the Constitution, no other fundamental right can envy with reference to its expansion as a repository of a number of emerging rights.

Notes

1. Granville Austin, *Working a Democratic Constitution: The Indian Experience* (OUP, London 1999) 268: Now, the opposing judges of the government were themselves the target. The Chief Justice, Sikri, was due to retire; therefore, his imminent retirement prompted the summary judgment. On his retirement, the President on the advice of the Government appointed Justice A.N. Ray as a Chief Justice, who was the minority Judge in Kesavananda and consistently favored the view of the Government, superseding three majority Judges, Shelat, Hegde and Grover, who were next in line to become the Chief Justice, but went against the Government's vision of constitutional amendments and checks on judicial review. The act of superseding three most senior judges broke away the principle of seniority being observed since the Independence. The appointment spurred stern reaction from the Bar and the Bench. Immediately, the three superseded justices resigned, and from the Bar side reaction was more striking, when seven thousand lawyers, who practiced in the Bombay High Court, boycotted the Court on the day Chief Justice Ray took the oath of office; three thousand lawyers boycotted the Madras High Court, several days later in a sympathetic protest.
2. Burt Neuborne, *'Constitutional Court Profile: t*he Supreme Court of India' (2003) 1(3) IJCL 476-510:. Actually, an earlier proclamation of emergency of 1971 was still in force, imposed during the war with Pakistan, on the ground of confronting the threat of external aggression in 1971. Without withdrawing the first one, the second emergency was enforced on the ground of internal security reasons, which wreaked havoc. During this emergency, democracy and civil liberties were suspended and enforced ruthlessly, which had not been imposed under the previous emergencies. 'All the leaders of the opposition were arrested and imprisoned. Judicial review was severely restricted under various orders of the President issued under Article 359 of the Constitution and strict censorship was imposed on the press.' The electricity was shut off to prevent newspaper coverage, gatherings of more than five persons were forbidden, and the number of those in preventive detention swelled to more than 100,000. The doors of the Higher Courts were slammed on the detainees, even incarcerated incommunicado. Censorship laws were imposed, inhibiting to report debates in the Parliament.
3. Ibid.
4. Only one Judge, Khanna, dissented with the majority and held that the doors of the Courts could not be shut off, even during presidential emergency. If the seniority principle could be observed then Khanna J deserved to be appointed as Chief Justice of the Indian Supreme Court, but his dissenting view, expressed in *Shiv Kant Shukla invited the wrath of the Government, and a*

junior judge, who all along supported the Government stand, was appointed as Chief Justice. 'Justice Khanna resigned in protest and became a symbolic figure of great importance, both as an advocate for judicial independence, and as an example of great moral courage.' Meanwhile, another battle was being fought, within the fierce war among three fundamental organs of the State: executive, judiciary and parliament, on the issue of election of the Prime Minister, Indira Gandhi, held in 1971. Ostensible reason of second emergency was justified by the Government on the ground of internal security, but, in fact, the effort was to protect the election of the Prime Minister, Indira Gandhi, from the judicial proceedings designed to drive her from office.

5. Indira Gandhi, the head of the Congress Party, contested the general election of 1971, with the manifesto of reclamation of supremacy of the Parliament, in reaction to Golak Nath. Heavily mandated with two-third majority, she temporarily succeeded to get over the Judiciary. However, Kesavanada's Court averted the situation, declaring the basic structure of the Constitution unalterable under Article 368 of the Constitution.
6. Ibid.
7. Ibid.
8. The main purpose of the Constitutional Amendment Act was to save Indira's election from the unwanted opinion of the Supreme Court, which could affirm the decision of the Allahabad High Court. The political future of Indira has never been as dark as in the instant case. Creating a strong bulwark against the potential unfavorable decision of the Supreme Court, in addition to Thirty Ninth Amendment, the Fortieth Amendment Act was passed to keep away the censorship laws from the judicial review, by inserting them in the Ninth Schedule. Ironically, the government was so afraid of the Supreme Court that the Thirty Ninth Amendment Act was presented and passed in one day. The Upper House passed it next day and the President consented two days later. The quick and blind passing of the constitutional amendment act was against the spirit of democracy; hence self evident of mala fide intention of the government.
9. See Note 2.
10. See Note 1.
11. Ibid.
12. Ibid.
13. See Note 2.
14. Ibid.
15. However, after the Forty Second Constitutional Amendment Act, the Parliament remained equipped with an absolute power to amend the Constitution for the next two years. The Janta's Government could not survive and succumbed to its irreconcilable differences. Mid-term election was called and the Congress came back in the Parliament with a sizeable majority and formed the Government.
16. Ibid.
17. The majority of four to one reiterated the 'Basic Structure' of the Constitution, and the impugned provisions of sections 4 and 55 of the Constitution (42nd Amendment) Act 1976, which took away the powers of judicial review and preferred the Directive Principles over Fundamental

Rights, were held unconstitutional. Judicial Activism once again increasingly worked as a counter-majoritarian phenomenon.

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