**CASE ANALYSIS OF**

**I. R COELHO VS. STATE OF TAMIL NADU**

**BY**

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**I.R COELHO CASE AND IT’S IMPACT IN INDIAN SOCIETY**

**BACKGROUND OF THE CASE**

On 8th May, 1951 PM Nehru introduced their first Amendment bill. It is introduced on 16th May 1951, Nehru in the Parliament. After its Introduction, on 16th May 1951, Nehru moved that Bill to amend the constitution to be referred to a select committee consisting of himself and twenty others members of the provisional parliament, while moving the Bill he said .Emphasizing the need of Article 31B and Ninth Schedule, he said that if they led not make proper arrangements for the land all their schemes would fail. The main objective of this Bill is to insert provisions fully securing the constitutional validity of Zamindari abolition law is general and certain specified state acts in particular. The opportunity has been taken to proper a few minor amendments to other Articles is order to remove difficulties that may arise. Constitution validity of law placed in the ninth schedule through different amendment has been questioned from Shasnkari Parisad case to Kesvananda Bharti and from forty fourth Amendments to I.R Coelho case. In which both of the cases are based basic doctrine, in which The government said that according to the ninth schedule the judiciary has no power to gave any judgments which came under ninth schedule but after the I.R COELHO VS STATE OF TAMIL NADU court said that what is going on ? Because Government made arbitrary.

  **FACT IN ISSUE**

A written petition is field by the appellant in the public interest according to Article 31B, of the Constitution. Here is the Abolition and Conversion into Ryotwari Act 1969,in so far vested forest lands in the Janman estates in the state of Tamil Nadu was struck down by the court Balmadies plantations Ltd. & Anr. Vs. State of Tamil Nadu because this was not found to be a measure of Agrarian reform protected by the article 31A of the constitution. The Petitioner also urged Section 2(c) of the west Bengal land Holiday Revenue Act,1979 and thirty four Amendment bill and sixty six amendment bill where included in the ninth schedule. There is Article 14, 19, 21 these are also part of Basic Structure. Government’s wants that this Basic Structure (Article 14, 19, 21) is included in the Ninth Schedule. And their Article 32 which is also included in the Fundamentals Rights Article Constitution Of India - Article 13, 13(2), 13(4), 14, 15, 15(1), 15(4) , 16, 16(1), 16(4), 19, 19(1), 19(1)(a), 19(1)(f),20 , 21, 22, 226, 291, 300A, 31, 31, 31-B, 31A, 31B, 31C, 32, 329, 329-A(4),329A, 358, 359, , 362, 363, 363A, 368, 368(1), 368(4), 39; Urban Land (ceiling And Regulation) Act, 1976 [repealed] - Section 27(1) these all are mentioned .

**PETITIONER’S ARGUMENTS**

Article 31 A excludes the saving of laws providing for acquisition of estates, etc.

Article 31B excludes the validation of certain acts and regulations .

Article 32 excludes the Remedies for an enforcement of rights conferred by this part.

Article 14 excludes the Equality before law.

Article 19 excludes Protection of certain rights regarding freedom of speech and expression.

Article 21 excludes Protection of life and personal liberty.

**APPELLANT’S ARGUMENTS**

Appellant argue on Article 19 that this decision of India government is not violating the freedom of Speech and Expression of the people

Appellant argue on Article 21, Article 19 Article 14, Article 31 B , Article 31A that government does not violates fundamental right this case has to be dismissed because there is no right of judicial review in the I.R Coelho case .

Government all decision comes under ninth schedule.

Appellant said that because of ninth schedule there is no judicial review .

**ARTICLE 31A**

Article 31A – Notwithstanding anything contained in Article 213, no law providing for –

1. The acquisition by the state any estate or of any rights there or the extinguishment or modification of such rights rights,or
2. The taking over, of the management of any property by the state for a limited period by the state for a limited period either in the public interest or in order to secure the proper management of the property, or
3. The amalgamation of two or more corporation either in the public interest or in order to secure the proper management for any of the corporations.

 The extinguishment or modification of any rights of managing agents secretaries and treasurer, managing directors or managers of cooperation or of any agreement, base or license for the purpose of searching for , or winning any imminent act, or the premature terminates or cancellation of any such agreement. License.

**AMBIKA MISHRA vs. STATE OF UP** the supreme court upheld the constitutionality of clause(a) of article 31(A) (11) on the test of basic structure .

In the **MINERVA MILLS vs. UOI,** the court held that the whole Article 31(A) is inadmissible on the basic of structure decision acquisition that should not allowed to be misruled.

**ARTICLE 31B**

31B. Without prejudice to the generality of the provisions contained in article 31A, none of the Acts and Regulations specified in the Ninth Schedule nor any of the provisions thereof shall be deemed to be void, or ever to have become void, on the ground that such Act, Regulation or provision is inconsistent with, or takes away or abridges any of the rights conferred by, any provisions of this Part, and notwithstanding any judgment, decree or order of any court or Tribunal to the contrary, each of the said Acts and Regulations shall, subject to the power of any competent Legislature to repeal or amend it, continue in force.

**WAMON RAO vs. UNION OF INDIA**, the court held that amendments in the ninth schedule made before the decision of **KESHAVANANDA BHARTI vs. STATE OF KERALA.**

 **U.S AND INDIA**

United States v. Harvey. Where an earlier statement was involuntary because the accused was not properly warned of his Article 31 (b) rights, the voluntariness of the second statement is determined by the totality of the circumstances

U.S vs. Harvey steel.con followed to effect that the government liable to effect that the government is liable for royalties on the Harvey process even though every element thereof was not used on the plates involved in this action and even though the contractor furnishing plate and who used the process by permission of the united states was nott specially required to use it. The fact involve the construction of a contract with the united states for use of a steel process and the effect of the prior construction therefore by this court in a suit between the same parties, are stated in the opinion.

**SECTION 2(c) OF THE WEST BENGAL LAND REVENUE ACT , 1972**

 By the state of Calcutta was dismissed unconstitutional and special leave by pretition file in the judgment of the state of the West Bengal was dismissed .and we can see that section 2(c) of the West Bengal and holding revenue act 1979 was struck down by the high court of the Calcutta as being arbitrary. By the Constitution (Thirty-fourth Amendment) Act, the Janmam Act, in its entirety, was inserted in the Ninth Schedule. By the Constitution (Sixty-sixth Amendment) Act, the West Bengal Land Holding Revenue Act, 1979, in its entirety, was inserted in the Ninth Schedule. These insertions were the subject matter of challenge before a Five Judge Bench. The contention urged before the Constitution Bench was that the statutes, inclusive of the portions thereof which had been struck down, could not have been validly inserted in the Ninth Schedule.

 **ARTICLE 19 (FREEDOM OF SPEECH AND EXPRESSION**

 Protection of certain rights regarding freedom of speech etc

[(1)](https://indiankanoon.org/doc/1142233/) All citizens shall have the right

[(a)](https://indiankanoon.org/doc/1378441/) to freedom of speech and expression;

[(b)](https://indiankanoon.org/doc/1248826/) to assemble peaceably and without arms;

[(c)](https://indiankanoon.org/doc/445304/) to form associations or unions;

[(d)](https://indiankanoon.org/doc/1024002/) to move freely throughout the territory of India;

[(e)](https://indiankanoon.org/doc/844404/) to reside and settle in any part of the territory of India; and

[(f)](https://indiankanoon.org/doc/258019/) omitted

[(g)](https://indiankanoon.org/doc/935769/) to practise any profession, or to carry on any occupation, trade or business

[(2)](https://indiankanoon.org/doc/493243/) Nothing in sub clause (a) of clause ( 1 ) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence

[(3)](https://indiankanoon.org/doc/1723400/) Nothing in sub clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order, reasonable restrictions on the exercise of the right conferred by the said sub clause

[(4)](https://indiankanoon.org/doc/1801956/) Nothing in sub clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub clause

[(5)](https://indiankanoon.org/doc/1801593/) Nothing in sub clauses (d) and (e) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe.

[(6)](https://indiankanoon.org/doc/626103/) Nothing in sub clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub clause, and, in particular, nothing in the said sub clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,

[(i)](https://indiankanoon.org/doc/1172678/) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or

[(ii)](https://indiankanoon.org/doc/588489/) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise.

 **AFTER THE 44th AMENDMENT IMPACT ON ARTICLE 31**

Article 31 with sub- heading “Right to property” has been omitted by the constitution forty fourth Amendment Act. Article 31(a) has been shifted to article 300 A as a new insertion in chapter IV in part XII of the constitution. The shifting of the Article 31(1) and omitting Article 31 signify that fundamental right to property abolished. The right to under the Indian Constitution tried to approach the question of how to handle property and pressures relating to it by trying to glance the right to property with the right to compensation for its acquisition through an absolute fundamental right to property and then balancing the same with reasonable restriction and adding a further fundamental right to compensation Article is Article 31. This was development influenced by the british of the indentical that domain but overall , it truck an interesting balance hereby whereby it recognized the power of the state to acquire property, but for the first time in the history of India for a thousand years more it recognized the individual’s right to property against the state.

**ARTICLE 14**

The petitioner submitted that an offence whose components are vague is unreasonable and undefined and would result in the application of the discrimination a[[1]](#footnote-2)nd arbitrary. Furthermore the people had been faced discrimination, the government had taken arbitrary decision under schedule 9 in I.R COELHO case filed against the government arbitrary decision.

Reliance Energy Ltd. v. Maharashtra State Road Development Corp. Ltd., [2 Judge Bench]

 The S.C. held that

Article 14 is not a free standing provision. It has to be read along with Article19 and 21.

These Articles articulate the Rule of Law and certainly (even on contractual matters) is one of its constituent units.

Citations: (2006) 8 SCC 212: AIR 2007 SC 71

M. Nagaraj v. Union of India, [5Judge Bench]

[Kapadia, J.]

It was held by the Supreme Court that Equality and Rule of Law ensure social and economic justice

....

At the outset, it may be noted that equality, rule of law, judicial review and separation of powers are distinct concepts. They have to be treated separately, though they are intimately connected. There can be no rule of law if there is no equality before the law; and rule of law and equality before the law would be empty words if their violation was not a matter of judicial scrutiny or judicial review and judicial relief and all these features would lose their significance if judicial, executive and legislative functions were united in only one authority, whose dictates had the force of law. The rule of law and equality before the law are designed to secure among other things justice both social and economic.

In the case of Minerva Mills, (Minerva Mills Limited v. Union of India, [1981]1 SCR 206: (1980) 3 SCC 625) Chandrachud, C.J., speaking for the majority, observed that Arts. 14 and 19 do not confer any fanciful rights. They confer rights which are elementary for the proper and effective functioning of democracy. They are universally regarded by the universal Declaration of Human Rights. If Arts. 14 and 19 are put out of operation, Art. 32 will be rendered nugatory. In the said judgment, the majority took the view that the principles enumerated in Part-IV are not the proclaimed monopoly of democracies alone. They are common to all polities, democratic or authoritarian. Every State is goal-oriented and every State claims to strive for securing the welfare of its people. The distinction between different forms of Government consists in the fact that a real democracy will endeavor to achieve its objectives through the discipline of fundamental freedoms like Arts. 14 and 19. Without these freedoms, democracy is impossible. If Art. 14 is withdrawn, the political pressures exercised by numerically large groups can tear the country apart by leading it to the legislation to pick and choose favoured areas and favorite classes for preferential treatment.

From these observations, which are binding on us, the principle which emerges is that “equality” is the essence of democracy and, accordingly a basic feature of the Constitution….

Budhan Choudhry v. State of Bihar, AIR 1955 SC 191 [7 Judge Bench]

 The S.C. held

1. Article 14 forbids class legislation but not reasonable classification. 2. Classification may be based on geographical or territorial considerations. 3. Discrimination may be charged against the Legislature, Executive and Judiciary- but must be intentional and purposeful. 4. The discretion of Judicial officers and Tribunals are not arbitrary where the law provides for revisions to superior courts.

 **ARTICLE 21**

No person shall be deprived of his life on personal liberty except according to procedure established by law.

Government beguile people’s land and also did that work which violates the article 21 that means personal liberty. People has right to live their life & they have personal liberty. In I.R COELHO case petitioner argue in the court above the life of personal liberty.

**ARTICLE 300 A**

The Petitioner expostulate in **I.R COELHO vs. STATE OF TAMIL NADU** in which every person has **RIGHT TO PROPERTY** which authority is snaffle then People of Tamil Nadu by which authority it will happen.

**ARTICLE 368**

Notwithstanding anything in this constitution, parliament may in exercise of its constituent power amend by the way of addition, variation or repeal any provision of this constitution in accordance with the procedure laid down in this article SAJJAN vs. STATE OF RAJASTHAN .

BASIC STRUCTURE and Ordinary Laws (Analysis of the Election Case & the Coelho Case)

whether the legislation is within the scope of the affirmative grant of power or is forbidden by some provision of the Constitution. According to Rai J., if the contention were accepted then the plenary power to legislate would be subject to an additional limitation that no legislation can be made as to damage or destroy basic features or basic structures.28 He observed that “this will mean rewriting the Constitution and robbing the Legislature of acting within the framework of the Constitution”.29 He noted that the Basic Structure is indefinable and the scope of the plenary power is more definite. Thus applying the doctrine of Basic Structure to ordinary laws would denude the power of Parliament and State Legislatures of laying down legislative policies, which would amount to a violation of the principle of separation of powers. Mathew J. also endorsed this opinion and he was of the view than an ordinary law cannot be declared invalid for the reason that it goes against the vague concepts of democracy, justice, etc. The validity can only be tested with reference to the principles of democracy actually incorporated in the Constitution.30 He also opined negatively on the issue whether the doctrine would apply to these ordinary laws after they are incorporated in the Ninth Schedule after a Constitutional Amendment to that effect.31 This has been discussed at greater length hereinafter. Beg J. has expressed his dissent by holding that the “basic structure” of the Constitution tests the validity of both, constitutional amendments as well as ordinary laws. This is because ordinary law-making itself cannot go beyond the range of constituent power. He relies on Kelsen’s theory32 that the norms laid down in the constitution are the supreme/basic norms and the legality of laws, whether purporting to be ordinary or constitutional, tested by the norms laid down in the Constitution. Consistent Dicta-Inconsistent Application This dicta laid down by the majority in this case has been upheld by the Supreme Court in a plethora of cases, the first opportunity being made available in 1977 in State of Karnataka v. Union of India and Anr33 wherein Beg C.J., delivering the judgment for the majority relied on the majority opinion (Justice Chandrachud’s opinion) in the Election Case and held that in every case where reliance is placed upon the doctrine of Basic Structure, in the course of an attack upon legislation, whether ordinary or constituent, what is put forward as part of “a basic structure” must be justified by references to the express provisions of the Constitution34 and went on to hold that the doctrine would not apply to determine the validity of ordinary legislations.35 The Court upheld this principle in a plethora of cases36 before reiterating the principle recently in, Kuldip Nayar v. Union of India.37 Even though the judicial dicta on the issue is well-settled that ordinary legislations cannot be tested on the grounds of basic structure, the Court has applied the same in a couple of cases. In 1997, the Supreme Court was faced with the task of determining the constitutionality of those Amendments,38 which deprived the High Court of its jurisdiction under Articles 226 and 227, and also Section 28 of the Administrative Tribunals Act, 1985, providing for “exclusion of jurisdiction of Courts except the Supreme Court under Article 136 of Constitution”39. The Court in addition to striking down the Amendments .

**Basic Structure and Ordinary Laws (Analysis of the Election Case & the Coelho Case**

Constitution, which derives its validity from the Constitution. This proposition can be further substantiated with the argument that the Basic Structure, the anvil on which the Constitutional Amendments are required to be tested post Kesavananda Bharati, is itself a part of the Constitution. Thus applying the theory laid down by Kelsen, both ordinary laws and Amendments derive their validity from the Constitution and have been created by the procedure laid down in the higher norm, the Constitution,[[2]](#footnote-3) and thus it is submitted that the proposition that the doctrine of Basic Structure (higher norm) [[3]](#footnote-4)shall apply only to constitutional amendments (lower norm) and shall not extend to ordinary legislations (lower norm) does not hold good. Even if the presumption lies in the proposition that constitutional amendments are at a higher standard (higher norm) than ordinary legislations, as held by Chandrachud J. in the Election Case, it is submitted that the touchstone on which the validity of the higher norm is determined shall extend to determine the validity of the lower norm (ordinary legislation) and thus the doctrine of Basic Structure will extend to ordinary legislations. This leads one to the question as to whether a legislature enacts a constitutional amendment in exercise of constituent power, the nature of which the researcher has discussed subsequently in this paper.

**JUDGMENT AT A GLANCE**

* In this case court said that the law will have give order that law laws passed by government or parliament if it will violates the basic structure of Constitution will be announced invalid.
* Which the Ninth Schedule is amended by inclusion of various laws therein shall have to be tested on the touchstone of the basic or essential features of the Constitution as reflected in Article 21 read with Article 14, Article 19, and the principles underlying them.
* If a law held violative any rights in part III is subsequently incorporate in the ninth schedule of the 24th April 1973, then it will be violative challenge on the grounds of destroy and damage the basic structure.

**OVERVIEW OF THE JUDGEMENT**

The judgment maintained and safeguarded Right to Property **Article 300 A** , Right of freedom , speech and Expression **Article 19,** Right to Equality **Article 14**, No person shall be deprived of his life or personal liberty except according to procedure established by law, **Article 21** and **Article 31A** the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights, or (b) the taking over of the management of any property by the State for a limited period either in the public interest or in order to secure the proper management of the property, or (c) the amalgamation of two or more corporations either in the public interest or in order to secure the proper management of any of the corporations, or (d) the extinguishment or modification of any rights of managing agents, secretaries and treasurers, managing directors, directors or managers of corporations, or of any voting rights of shareholder, **Article 31B** Without prejudice to the generality of the provisions contained in article 31A, none of the Acts and Regulations specified in the Ninth Schedule nor any of the provisions thereof shall be deemed to be void, or ever to have become void, on the ground that such Act, Regulation or provision is inconsistent with, or takes away or abridges any of the rights conferred by, any provisions of this Part, and notwithstanding any judgment, decree or order of any court or Tribunal to the contrary, each of the said Acts and Regulations shall, subject to the power of any competent Legislature to repeal or amend it, continue in force. Eventually the judge had asked that why these all awful things occur. The Court said very clearly in the judgment that any law which that the any law which violates the basic structure which included fundamental rights of the constitution of the citizen it will challenging . And there is the section 2(c) of the west Bengal land revenue cases was struck down by this court in Balamadis plantation ltd. And Anr vs. state of Tamil Nadu. And the judgment is taken by reference from the famous case Kesvananda Bharti case.

 **REFERENCES**

Keshvananda bharti vs. State of kerala

S.P .Sampath kumar and ors. Vs. Union of India

State of West Bengal and ors. Vs The committee for protection of Democratic Rights and etc.

Suraj Praksh vs. State of Punjab

Gopal Singh vs. State of Rajsthan and[[4]](#footnote-5) Ors.

A.K Gopalan v. The State of Madras

Daryao and Ors. v. The State of U.P. and Ors.

Kameshwar v. State of Bihar

Maneka Gandhi v. Union of India

Minerva Mills Ltd. and Ors. v. Union of India

 **BRIEF ABOUT AUTHOR**

Rupali Jha is pursuing B.A.LLB (Hons) from Indore Institute of Law. She is currently an intern in the ProBono India. She had been member of organizing team in Moot court society in Indore Institute of Law and also workS as a Volunteer in events also .

1. Rustom Cavasjee Cooper v. Union of India

Sambhu Nath Sarkar v. The State of West Bengal

State of Bombay v. Bhanji Munji and Anr [↑](#footnote-ref-2)
2. ¶ 692, The Election Case. [↑](#footnote-ref-3)
3. Kelsen, “The Pure Theory of Law”, (1967), p. 226: “a superior norm determines merely the procedure by which another norm is to be created. Since the validity of one norm depends on the validity of the other norm the relation between the norm that regulates the creation of another norm and the norm created in conformity with the former can be metaphorically presented as a relationship of super and subordination.” [↑](#footnote-ref-4)
4. Article 31B. Validation of certain Acts and Regulations- Without prejudice to the generality of the provisions contained in Article 31A, none of the Acts and Regulations specified in the Ninth Schedule nor any of the provisions thereof shall be deemed to be void, or ever to have become void, on the ground that such Act, Regulation or provision is inconsistent with, or takes away or abridges any of the rights conferred by any provisions of this Part, and notwithstanding any judgment, decree or order of any court or tribunal to the contrary, each of the said Acts and Regulations shall, subject to the power of any competent Legislature to repeal or amend it, continue in force.

 The Ninth Schedule when incorporated contained 13 Items, all relating to land reform laws immunizing them from challenge on the grounds of Contravention of Article 13 of the Constitution. [↑](#footnote-ref-5)