Supreme Court of India
Waman Rao And Ors vs Union Of India (Uoi) And Ors. on 13 November, 1980
Equivalent citations: (1981) 2 SCC 362, 1981 2 SCR 1
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Bench: Y Chandrachud, A Sen, P Bhagwati, V Tulzapurkar, V K Iyer
JUDGMENT Chandrachud, C.J.

1. A ceiling on agricultural holdings was imposed in Maharashtra by the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 27 of 1961, which was brought into operation on January 26, 1962. The ceiling fixed by that Act (the Principal Act), was lowered and certain other amendments were made to that Act by Acts 21 of 1975, 47 of 1975 and 2 of 1976. The validity of these Acts was challenged in the Bombay High Court in a large group of over 2660 petitions. A Division Bench of the High Court sitting at Nagpur repelled that challenge by a judgment dated August 13, 1976, in Vithalrao Udhaorao Uttarwar v. State of Maharashtra . The High Court held that the provisions of the aforesaid Acts were not open to challenge on the ground that they were inconsistent with or took away or abridged any of the rights conferred by Part III of the Constitution, since those Acts were placed in the Ninth Schedule by the Constitution 17th Amendment Act, 1964, and the Constitution 40th Amendment Act, 1976, and also because of the promulgation of Emergency as a result of which, the rights under Articles 14 and 19 of the Constitution could not be enforced. The High Court also repelled the challenge to the validity of Article 31B itself by holding that far from damaging the basic structure of the Constitution, the Constitution (First Amendment) Act, 1951, which introduced Article 31B into the Constitution, fortified that structure by subserving a fundamental constitutional purpose. Certain provisions of the Principal Act and of the Amending Acts; particularly the concept of 'family unit' were challenged before the High Court on the ground, inter alia, that they were outside the purview of Article 31A. On an overall consideration of the movement of agrarian reforms, with particular reference to the relevant statistics in regard to Maharashtra, the High Court rejected that challenge too on the ground that those provisions formed a part of an integral scheme of agrarian reforms under which large agricultural holdings had to be reduced and the surplus land distributed amongst the landless and others.

2. The appeals filed against the decision of the Bombay High Court were dismissed by this Court by a judgment dated January 27, 1977 in Dattatraya Govind Mahajan v. State of Maharashtra . The only point urged in those appeals was that the Principal Act, as amended, was void being violative of the second proviso to Article 31A(1), in so far as it created an artificial 'family unit' and fixed the ceiling on the agricultural holdings of such family units. The argument was that the violation of the particular proviso deprived the impugned laws of the protection conferred by Article 31A. That argument was rejected by the Court on the view that even if the impugned provisions were violative of the second proviso, they would receive the protection of Article 31B by reason of the inclusion of the Principal Act and the Amending Acts in the Ninth Schedule. The Court considered whether, in fact, the provisions of the impugned Acts were violative of the second proviso and held that it was entirely for the legislature to decide what policy to adopt for the purpose of restructuring the agrarian system and the Court could not assume the role of an economic adviser for pronouncing upon the wisdom of such policy. The second proviso to Article 31A(1) was therefore held not to have been contravened.

3. The judgment of this Court in the appeals aforesaid was delivered on January 27, 1977 while the proclamation of emergency was in operation. On the revocation of that proclamation, petitions were filed in this Court by the appellants praying for the review of the judgment in Dattatraya Govind Mahajan (Supra) on the ground that several contentions, which were otherwise open to them for assailing the constitutional validity of the impugned Acts, could not be made by reason of the emergency and that they should be permitted to make those contentions since the emergency was lifted. Fresh Writ Petitions were also filed in this Court in which those contentions were put forward. The Court having accepted the request for the review of the judgment in Dattatraya Govind Mahajan, (supra) these matters have come before us for consideration of the other points involved in the appeals.

4. In these proceedings, the main challenge now is to the constitutionality of Articles 31A, 31B and the unamended Article 31C of the Constitution. The various grounds of challenge to the Principal Act and the Amending Acts were met on behalf of the respondents by relying on the provisions of these Articles which throw a protective cloak around laws of a certain description and variety, by excluding challenge thereto on the ground that they are violative of certain articles of the Constitution. The reply of the appellants and the petitioners to the defence of the respondents is, as it could only be, that the very provisions of the Constitution on which the respondents rely for saving the impugned laws are invalid, since these particular provisions of the Constitution, which were introduced by later amendments, damage or destroy the basic structure of the Constitution within the meaning of the ratio of the majority judgment in Keshavananda Bharati [1973] (Supp.) SCR 1.

5. Articles 14, 19, 31A. 31B, 31C (as unamended) and 368, which are relevant for our purpose, are familiar to lawyers and laymen alike, so great is their impact on law and life. Article 14, the saviour of the rule of law, injuncts that the State shall hot deny to any person equality before the law or the equal protection of the laws within the territory of India. Article 19 confers upon the citizens rights like the freedom of speech and expression, the right to assemble peaceably, the right to form associations, the right to move freely throughout the territory of India, the right to reside and settle in any part of India, and the right to practise any profession or to carry on any trade, business or calling. These rights make life meaningful and, without the freedoms conferred by Article 19, the goal of the Preamble will remain a dream unfulfilled. The right to property conferred by Articles 19(1)(f) and 31 was deleted by the 44th Amendment with effect from June 20, 1979.

6. Article 31A(1)(a) provides that :

Notwithstanding anything contained in Article 13, no law providing for-

(a) the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights, shall 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 or Article 19.

7. Article 31B provides that :

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.

8. Article 31C, as it existed prior to its amendment by the 42nd Amendment Act, which came into force on January 3, 1977, provided that :

Notwithstanding anything contained in Article 13, no law giving effect to the policy of the State towards securing the principles specified in Clause (b) or Clause (c) of Article 39 shall 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 or Article 19; and no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy.

9. Articles 31A and 31B were introduced into the Constitution by the Constitution (First Amendment) Act, 1951, the former with retrospective effect from the date of the enactment of the Constitution. Article 31C (unamended) was introduced by the Constitution (Twenty-fifth Amendment) Act, with effect from April 20, 1972. The last clause of that article, which gave conclusiveness to the declaration regarding the policy of the particular Act, was struck down as invalid in Kesavananda Bharati (supra). That part now lives an italicized existence in official publications of the Indian Constitution. The words "the principles specified in Clause (b) or Clause (c) of Article 39" were substituted by the words "all or any of the principles laid down in Part IV", by the 44th Amendment, with effect from June 20, 1979. We are concerned with Article 31C as it stood originally but, of course, without the concluding part struck down in Kesavananda Bharati (supra).

10. Article 368 of the Constitution reads thus :

368. (1) Notwithstanding anything in this Constitution, Parliament may in exercise of its constituent power amend by way of addition, variation or repeal any provision of this Constitution in accordance with the procedure laid down in this article.

(2) x x x (3) Nothing in Article 13 shall apply to any amendment made under this article.

(4) No amendment of this Constitution (including the provisions of Part III) made or purporting to have been made under this article (whether before or after the commencement of Section 55 of the Constitution (Forty-second Amendment Act 1976) shall be called in question in any court on any ground.

(5) For the removal of doubts, it is hereby declared that there shall be no limitation whatever on the constituent power of Parliament to amend by way of addition, variation or repeal the provisions of

this Constitution under this article.

Clauses (4) and (5) above were inserted by Section 55 of the 42nd Amendment Act 1976 with effect from January 3, 1977. Those clauses were declared unconstitutional, as being beyond the amending power of the Parliament, by a very recent decision of this Court in Minerva Mills was pronounced on July 31, 1980. The judgment of the Court on the invalidity of Clauses (4) and (5) was unanimous. The question as to whether Articles 31A(1)(a), 31B and the unamended Article 31C are valid shall have to be decided on the basis that Clause (5) of Article 368 is ineffective to enlarge the Parliament's amending power so as to empower it to make amendments which will damage or destroy any of the basic features of the Constitution and Clause (4) is ineffective to take away the power of the courts to pronounce a constitutional amendment invalid, if it damages or destroys any of the basic features of the Constitution. Thus, the main question arising before us has to be decided by applying the ratio of Kesavananda Bharati (supra), in its pristine form. It is quite another matter that learned counsel led by Shri M.N. Phadke question whether any ratio at all is discernible from the majority judgments in Kesavananda (supra).

11. The first question to which we have to address ourselves is whether in enacting Article 31A(1)(a) by way of amendment of the Constitution, the Parliament transgressed its power of amending the Constitution. As stated earlier, Article 31A was inserted in the Constitution by Section 4 of the Constitution (First Amendment) Act, 1951 with retrospective effect from the commencement of the Constitution. Article 31A(1), as introduced by the 1st Amendment on June 18, 1951, read thus :

31A. (1) Notwithstanding anything in the foregoing provisions of this part, no law providing for the acquisition by the State of any estate or of any rights therein or for the extinguishment or modification of any such rights shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by, any provisions of this Part.

Article 31A was amended, with the same degree of retrospective effect again, by the Constitution (Fourth Amendment) Act, 1955. Two alterations, not substance-wise material, were made by the 4th Amendment. The opening non-obstante clause which originally extended to "anything in the foregoing provisions of this Part", that is to say Part III; was substituted by a clause restricted to "anything contained in Article 13". Secondly, whereas under the Article as conceived originally, the challenge to laws of agrarian reform was excluded on the broader ground of their inconsistency, abrogation, or abridgement of any of the rights conferred by "any provisions of" Part III, under the amended article the challenge is excluded in relation to the violation of the three specific articles, namely, Articles 14, 19 and 31. The 4th Amendment introduced Clauses (a) to (e) in Article 31A, the content of Clause (a) being the same as that of old Clause (1). Clauses (b) to (e) were added newly by the 4th Amendment, comprehending laws of four other categories like laws providing for the taking over of the management of any property by the State for a limited period, laws providing for amalgamation of two or more corporations, laws providing for extinguishment or modification of rights of persons interested in corporations; and laws providing for extinguishment or modification of rights accruing under any agreement, lease or licence relating to minerals. We are not concerned in these matters with the provisions of Clauses (b) to (e), though we would like to state expressly and specifically that whatever is relevant on the question of the validity of Clause (a) will apply with

equal force to the validity or otherwise of Clauses (b) to (e).

12. By Section 7 of the Constitution (Forty-fourth Amendment) Act, 1978 the reference to Article 31 was deleted from the concluding portion of Article 31A(1) with effect from June 20, 1979, as a consequence of the deletion, by Section 2 of the 44th Amendment, of Clause (f) of Article 19(1) which gave to the citizens the right to acquire, hold and dispose of property. The deletion of the right to property from the array of fundamental rights will not deprive the petitioners of the arguments which were available to them prior to the coming into force of the 44th Amendment, since the impugned Acts were passed before June 20, 1979 on which date Article 19(1)(f) was deleted.

13. There is no doubt, nor indeed is it disputed, that the Agricultural Lands Ceiling Acts, which are impugned in these proceedings, fall squarely within the terms of Clause (a) of Article 31A(1). Those Acts provide for the extinguishment and modification of rights in an 'estate', the expression 'estate' being defined by Clause (2)(a)(iii) to mean "any land held or let for purposes of agriculture or for purposes ancillary thereto...." It must follow, as a necessary corollary, that the impugned Acts, are entitled to the protection of Article 31A(1)(a) when the result that their provisions cannot be deemed, and therefore cannot be declared, to be void on the ground that they are inconsistent with or take away or abridge any of the rights conferred by Articles 14, 19 or 31.

14. This is the reason why and the contest in which the validity of Article 31A(1)(a) is itself assailed by the petitioners. If a constitutional provision, which deprives the petitioners of the benefit and protection of Articles 14, 19 and 31, is invalid, the petitioners will be entitled to challenge the impugned laws on the ground that they are inconsistent with or that they take away or abridge the rights conferred by Part III of the Constitution. Article 13(2), has a sensitive touchstone. Not only does it mandate that the State shall not make any law which takes away or abridges the rights conferred by Part III but, it provides that any law made in contravention of the clause shall, to the extent of the contravention, be void. Mere abridgement, that is to say curtailment, and not necessarily abrogation, that is to say total deprivation, is enough to produce the consequence provided for by Article 13(2).

15. The validity of the constitutional amendment by which Article 31A(1)(a) was introduced is challenged by the petitioners on the ground that it damages the basic structure of the Constitution by destroying one of its basic features, namely, that no law can be made by the legislature so as to abrogate the guarantees afforded by Articles 14, 19 and 31. It is tantologous to say so but, if we may so put it, the obliteration of the rights conferred by these Articles, which Article 31A(1)(a) brings about, is total and complete because, as the clear and unequivocal language of that Article shows, the application of these three articles stands totally withdrawn in so far as laws falling within the ambit of Clause (a) are concerned. It is no argument to say that the withdrawal of the application of certain articles in Part III in respect of laws of a defined category is not total abrogation of the articles because they will continue to apply to other situations and other laws. In any given case, what is decisive is whether, in so far as the impugned law is concerned, the rights available to persons affected by that law under any of the articles in Part III is totally or substantially withdrawn and not whether the articles, the application of which stands withdrawn in regard to a defined category of laws, continue to be on the Statute Book so as to be available in respect of laws of other

categories. We must therefore conclude that the withdrawal of the application of Articles 14, 19 and 31 in respect of laws which fall under Clause (a) is total and complete, that is to say, the application of those articles stands abrogated, not merely abridged, in respect of the impugned enactments which indubitably fall within the ambit of Clause (a). We would like to add that every case in which the protection of a fundamental right is withdrawn will not necessarily result in damaging or destroying the basic structure of the Constitution. The question as to whether the basic structure is damaged or destroyed in any given case would depend upon which particular Article of Part III is in issue and whether what is withdrawn is quint-essential to the basic structure of the Constitution.

16. The judgment of this Court in Kesavananda Bharati (supra) provoked in its wake a multi-storied controversy, which is quite understandable. The judgment of the majority to which seven out of the thirteen Judges were parties, struck a bridle path by holding that in the exercise of the power conferred by Article 368, the Parliament cannot amend the Constitution so as to damage or destroy the basic structure of the Constitution. The seven learned Judges chose their words and phrases to express their conclusion as effectively and eloquently as language can do. But, at this distance of time any controversy over what was meant by what they said is plainly sterile. At 'this distance of time', because though not more than a little less than eight years have gone by since the decision in Kesavananda Bharati (supra) was rendered, those few years are packed with constitutional events of great magnitude. Applying the ratio of the majority judgments in that epoch-making decision, this Court has since struck down constitutional amendments which would otherwise have passed muster. For example, in Smt. Indira Gandhi v. Raj Narain . Article 329A(4) was held by the Court to be beyond the amending competence of the Parliament since, by making separate and special provisions as to elections to Parliament of the Prime Minister and the Speaker, it destroyed the basic structure of the Constitution. Ray C.J. based his decision on the ground that the 39th Amendment by which Article 329A was introduced violated the Rule of Law (p. 418); Khanna J. based his decision on the ground that democracy was a basic feature of the Constitution, that democracy contemplates that elections should be free and fair and that the clause in question struck at the basis of free and fair elections (pp. 467 and 471); Mathew J. struck down the clause on the ground that it was in the nature of legislation ad hominem (p. 513) and that it damaged the democratic structure of the Constitution (p. 515); while one of us, Chandrachud J., held that the clause was bad because it violated the Rule of Law and was an outright negation of the principle of equality which is a basic feature of the Constitution (pp. 663-665). More recently, in Minerva Mills, (supra) Clauses (4) and (5) of Article 368 itself were held unconstitutional by a unanimous Court, on the ground that they destroyed certain basic features of the Constitution like judicial review and a limited amending power, and thereby damaged its basic structure. The majority also struck down the amendment introduced to Article 31C by Section 4 of, the 42nd Amendment Act, 1976.

17. The period between April 24, 1973, when the judgment in Kesavananda Bharati (supra) was delivered and now is of course a short span in our constitutional history but the occasional challenges which evoked equal responses have helped settle the controversy over the limitations on the Parliament's power to amend the Constitution. Khanna J. was misunderstood to mean that fundamental rights are not a part of the basic structure of the Constitution when he said in Kesavananda Bharati (supra) :

I have no doubt that the power of amendment is plenary and would include within itself the power to add, alter or repeal the various articles including those relating to fundamental rights. (p. 688) But he clarified the true position in his judgment in the Election Case (supra) (pages 497-499), by drawing the attention of doubters to a significant qualification 'which he had engrafted on the above statement, at pages 688 and 758 of his judgment in Kesavananda Bharati (supra). The qualification was that subject to the retention of the basic structure or framework of the Constitution, the power of amendment was plenary. The law on the subject of the Parliament's power to amend the Constitution must now be taken as well-settled, the true position being that though the Parliament has the power to amend each and every article of the Constitution including the provisions of Part III, the amending power cannot be exercised so as to damage or destroy the basic structure of the Constitution. It is by the application of this principle that we shall have to decide upon the validity of the Amendment by which Article 31A was introduced. The precise question then for consideration is whether Section 4 of the Constitution (First Amendment) Act, 1951 which introduced Article 31A into the Constitution damages or destroys the basic structure of the Constitution.

18. In the work-a-day civil law, it is said that the measure of the permissibility of an amendment of a pleading is how far it is consistent with the original : you cannot by an amendment transform the original into the opposite of what it is. For that purpose, a comparison is undertaken to match the amendment with the original. Such a comparison can yield fruitful results even in the rarefied sphere of constitutional law. What were the basic postulates of the Indian Constitution when it was enacted ? And does the 1st Amendment do violence to those postulates ? Can the Constitution as originally conceived and the amendment introduced by the 1st Amendment Act not endure in harmony or are they so incongruous that to seek to harmonise them will be like trying to fit a square peg into a round aperture ? Is the concept underlying Section 4 of the 1st Amendment an alien in the house of democracy ?-its invader and destroyer ? Does it damage or destroy the republican framework of the Constitution as originally devised and designed ?

These questions have a historical slant and content : and history can furnish a safe and certain clue to their answer. The relevant part of the statement of Objects and Reasons of the 1st amendment says :

During the last fifteen months of the working of the Constitution, certain difficulties have been brought to light by judicial decisions and pronouncements specially in regard to the chapter on fundamental rights. The citizen's right to freedom of speech and expression guaranteed by Article 19(1)(a) has been held by some courts to be so comprehensive as not to render a person culpable even if he advocates murder and other crimes of violence. In other countries with written constitutions, freedom of speech and of the press is not regarded as debarring the State from punishing; or preventing abuse of this freedom. The citizen's right to practise any profession or to carry on any occupation, trade or business conferred by Article 19(1)(g) is subject to reasonable restrictions which the laws of the State may impose "in the interests of the general public." While the words cited are comprehensive enough to cover any scheme of nationalisation which the State may undertake, it is desirable to place the matter beyond doubt by a clarificatory addition to Article 19(6). Another article in regard to which unanticipated difficulties have arisen is Article 31. The validity of agrarian reform measures passed by the State Legislatures in the last three years has, in

spite of the provisions of Clauses (4) and (6) of Article 31, formed the subject-matter of dilatory litigation, as a result of which the implementation of these important measures, affecting large numbers of people has been held up.

The main objects of this Bill are, accordingly, to amend Article 19 for the purposes indicated above and to insert provisions fully securing the constitutional validity of zamindari abolition laws in general and certain specified State Acts in particular. The opportunity has been taken to propose a few minor amendments to other articles in order to remove difficulties that may arise.

19. In Shankari Prasad v. Union of India [1952] SCR 89, 95, Patanjali Sastri, C.J. explained the reasons that led to the insertion of Articles 31A and 31B by the 1st Amendment thus :

What led to that enactment is a matter of common knowledge. The political party now in power, commanding as it does a majority of votes in the several State Legislatures as well as in Parliament, carried out certain measures of agrarian reform in Bihar, Uttar Pradesh and Madhya Pradesh by enacting legislation which may compendiously be referred to as Zamindari Abolition Acts. Certain Zamindars, feeling themselves aggrieved, attacked the validity of those Acts in Courts of law on the ground that they contravened the fundamental rights conferred on them by Part III of the Constitution. The High Court at Patna held that the Act passed in Bihar was unconstitutional while the High Courts at Allahabad and Nagpur upheld the validity of the corresponding legislation in Uttar Pradesh and Madhya Pradesh respectively. Appeals from those decisions are pending in this Court. Petitions filed in this Court by some other zamindars seeking the determinations of the same question are also pending. At this stage, the Union Government, with a view to put an end to all this litigation and to remedy what they considered to be certain defects brought to light in the working of the Constitution, brought forward a Bill to amend the Constitution, which after undergoing amendments in various particulars, was passed by the requisite majority as the Constitution (First Amendment) Act, 1951.

20. Article 31A was further amended with retrospective effect by the Constitution (Fourth Amendment) Act 1955, the object of which was explained as follows in the Statement of Objects and Reasons of that Amendment :

It will be recalled that the zamindari abolition laws which came first in our programme of social welfare legislation were attacked by the interests affected mainly with reference to Article 14, 19 and 31, and that in order to put an end to the dilatory and wasteful litigation and place these laws above challenge in the courts, Articles 31A and 31B and the Ninth Schedule were enacted by the Constitution (First Amendment) Act. Subsequent judicial decisions interpreting Articles 14, 19 and 31 have raised serious difficulties in the way of the Union and the States putting through other and equally important social welfare legislation on the desired lines, e.g., the following :-

(i) While the abolition of zamindaries and the numerous intermediaries between the State and the tiller of the soil has been achieved for the most part, our next objectives in land reform are the fixing of, limits to the extent of agricultural land that may be owned or occupied by any person, the disposal of any land held in excess of the prescribed maximum and the further modification of the

rights of land owners and tenants in agricultural holdings.

(ii) x x x x x x (iii) x x x x x x (iv) x x x x x x It is accordingly proposed in Clause 3 of the Bill to extend the scope of Article 31A so as to cover these categories of essential welfare legislation.

21. The Constitution (First Amendment) Act was moved in the Provisional Parliament on May 12, 1951 as Bill No. 48 of 1951. It was referred to a Select Committee and after the receipt of its report, it was debated in the Parliament on various dates in May and June. It received the Presidential assent on June 18, 1951.

22. The speeches made in the Provisional Parliament by Jawaharlal Nehru and other national leaders who had participated in the freedom movement show, in a significant measure, the genesis of the 1st Amendment and its avowed purpose.

23. While moving that the Bill be referred to a Select Committee, Jawaharlal Nehru said :

This Bill is not a very complicated one : nor is it a big one. Nevertheless, I need hardly point out that it is of intrinsic and great importance. Anything dealing with the Constitution and change of it is of importance. Anything dealing with Fundamental Rights incorporated in the Constitution, is of even greater importance. Therefore, in bringing this Bill forward I do so and the Government does so in no spirit of light-heartedness, in no haste, but after the most careful thought and scrutiny given to this problem.

I might inform the House that we have been thinking about this matter for several months, consulting people, State Governments, Ministers of Provincial Governments, consulting when occasion offered itself, a number of Members of this House, referring it to various Committees and the like and taking such advice from competent legal quarters as we could obtain, so that we have proceeded with as great care as we could possibly give to it. We have brought it forward now after that care, in the best form that we could give it, because we thought that the amendments mentioned in this Bill are not only necessary, but desirable, and because we thought that if these changes are not made, perhaps not only would great difficulties arise, as they have arisen in the past few months, but perhaps some of the main purposes of the very Constitution may be defeated or delayed.

24. The Parliamentary Debates, Part II, Volumes XII and XIII (May 15-June 9, 1951) contain the record of the speeches made while the 1st Amendment was on the anvil. We reproduce below the relevant extracts from the speeches of the then Prime Minister, Jawaharlal Nehru :

The real difficulty which has come up before us is this. The Constitution lays down certain Directive Principles of State Policy and after long discussion we agreed to them and they point out the way we have got to travel. The Constitution also lays down certain Fundamental Rights. Both are important. The Directive Principles of State Policy represent a dynamic move towards a certain objective. The Fundamental Rights represent something static, to preserve certain rights which exist. Both again are right. But somehow and sometime it might so happen that that dynamic movement and that

static standstill do not quite fit into each other.

A dynamic movement towards a certain objective necessarily means certain changes taking place that is the essence of movement. (p. 8820) Now I shall proceed with the other article, the important one, namely Article 31. When I think of this article the whole gamut of pictures comes up before my mind, because this article deals with the abolition of the zamindari system, with land laws and agrarian reform. I am not a zamindar, nor I am a tenant. I am an outsider. But the whole length of my public life has been intimately connected, or was intimately connected, with agrarian agitation in my Province. And so these matters came up before me repeatedly and I became intimately associated with them. Therefore I have a certain emotional reaction to them and awareness of them which is much more than merely an intellectual appreciation. If there is one thing to which we as a party have been committed in the past generation or so it is the agrarian reform and the abolition of the zamindari system. (p. 8830) Now apart from our commitment, a survey of the world today, a survey of Asia today will lead any intelligent person to see that the basic and the primary problem is the land problem today in Asia, as in India. And every day of delay adds to the difficulties and dangers, apart from being an injustice in itself. (pp 8830-8831) ...it is patent that when you are out to remedy inequalities, you do not remedy inequalities by producing further inequalities. We do not want anyone to suffer. But, inevitably, in big social changes some people have to suffer. (p. 8831) How are we to meet this challenge of the times ? How are we to answer the question : For the last ten or 20 years you have said, we will do it. Why have you not done it ? It is not good for us to say : We are helpless before fate and the situation which we are to face at present. Therefore, we have to think in terms of these big changes, and changes and the like and therefore we thought of amending Article 31. Ultimately we thought it best to propose additional Articles 31A and 31B and in addition to that there is a Schedule attached of a number of Acts passed by State Legislatures, some of which have been challenged or might be challenged and we thought it best to save them from long delays and these difficulties, so that this process of change which has been initiated by the State should go ahead. (pp. 8831-8832) The other day I was reading an article about India by a very eminent American and in that article which contained many correct statements and some incorrect statements, the author finished up by saying that India has very difficult problems to face but the most acute of them he said can be put in five words and those five words were : land, water, babies, cows and capital. I think that there is a great deal of truth in this concise analysis of the Indian situation. (pp. 8832-8833) Now I come to Articles 31, 31A and 31B. May I remind the House or such Members of the House as were also Members of the Constituent Assembly of the long debates that we had on this issue. Now the whole object of these articles in the Constitution was to take away and I say so deliberately to take away the question of zamindari and land reform from the purview of the courts. That is the whole object of the Constitution and we put in some proviso etc. in regard to Article 31. (p. 9082) What are we to do about it ? What is the Government to do ? If a Government has not even the power to legislate to bring about gradually that equality, the Government fails to do what it has been commanded to do by this Constitution. That is why I said that the amendments I have placed before the House are meant to give effect to this Constitution. I am not changing the Constitution by an iota; I am merely making it stronger. I am merely giving effect to the real intentions of the framers of the Constitution, and to the wording of the Constitution, unless it is interpreted in a very narrow and legalistic way. Here is a definite intention in the Constitution. This question of land reform is under Article 31(2) and this clause tries to take it away from the purview

of the courts and somehow Article 14 is brought in That kind of thing is not surely the intention of the framers of the Constitution. Here again I may say that the Bihar High Court held that view but the Allahabad and Nagpur High Courts held a contrary view. That is true. There is confusion and doubt. Are we to wait for this confusion and doubt gradually to resolve itself, while powerful agrarian movements grow up? May I remind the House that this question of land reform is most intimately connected with food production. We talk about food production and grow-more-food and if there is agrarian trouble and insecurity of land tenure nobody knows what is to happen. Neither the zamindar nor the tenant can devote his energies to food production because there is instability. Therefore these loud arguments and these repeated appeals in courts are dangerous to the State, from the security point of view, from the food production point of view and from the individual point of view, whether it is that of the zamindar or the tenant or any intermediary. (pp 9082-9084) (Emphasis is supplied in the passages above)

25. These statements were made by the Prime Minister on the floor of the House after what is correctly described as the most careful deliberation and a broad-based consultation with diverse interests. They were made in order to resolve doubts and difficulties and not with the intention of creating confrontation with any other arm of the Government or with the people. They stand in a class apart and convey in a language characterised by logic and directness, how the Constitution was failing of its purpose and how essential it was, in order to remove glaring disparities, to pour meaning and content into the framework of the Constitution for the purpose of strengthening its structure. Looking back over the past thirty years' constitutional history of our country, we, as lawyers and Judges, must endorse the claim made in : the speeches above that if Article 31A were not enacted, some of the main purposes of the Constitution would have been delayed and eventually defeated and that by the 1st Amendment, the constitutional edifice was not impaired but strengthened.

26. Conscious as we are that though extraneous aids to constitutional interpretation are permissible the views of the mover of a Bill are not conclusive on the question of its objects and purposes, we will consider for ourselves the question, independently, whether the 1st and the 4th Amendments damage or destroy the basic structure of the Constitution in any manner. But before doing that, we desire only to state that these amendments, especially the 1st were made so closely on the heels of the Constitution that they ought indeed to be considered as a part and parcel of the Constitution itself. These Amendments are not born of second thoughts and they do not reflect a fresh look at the Constitution in order to deprive the people of the gains of the Constitution. They are, in the truest sense of the phrase, a contemporary practical exposition of the Constitution.

27. Article 39 of the Constitution directs by Clauses (b) and (c) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good, that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment. These twin principles of State policy were a part of the Constitution as originally enacted and it is in order to effectuate the purpose of these Directive Principles that the 1st and the 4th Amendments were passed. In his address to the Allahabad Session of the Agri-Economics Conference, Dr. D.R. Gadgil put a home-truth succinctly by saying :

Among all resources, the supply of land is the most limited and the claimants for its possession are extremely numerous. It is, therefore, obviously unjust to allow the exploitation of any large surface of land by a single individual unless other over-whelming reasons make this highly desirable. Further in the light of the available supplies of land, labour and capital, it would be undesirable to encourage capital-intensive method of production. Moreover, whatever the economics of large-scale management, they should, in the congested state of our countryside, accrue to collective or co-operative bodies of cultivators rather than an individual family. Lastly, in the context of the current socio-political climate, re-distribution of land would rather appear to be imperative.

As stated in the Report of the Committee of the Panel on Land Reforms (Government of India, Planning Commission, 1959), the policy of imposition of ceiling on agricultural lands fulfils the following objectives :-

(i) meeting the wide-spread desire to possess land;

(ii) reducing glaring inequalities in ownership and use of land;

(iii) reducing inequalities in agricultural incomes, and

(iv) enlarging the sphere of self-employment.

28. The Report of the Working Group on Land Reforms, 1978 (Ministry of Agriculture and Irrigation, Department of Agriculture) says that it was widely recognised that the imposition of ceiling on agricultural holdings and tenancy reforms constituted the substance of the agrarian reform movement and that, concentration of land in the hands of a small group inhibits production, encourages concealed or irregular tenancies and results in unequal accesses to facilities of production in the rural sector. In any economy with a preponderant agricultural sector, overall growth of the economy is largely determined by growth in agricultural production and elimination of constraints on production has to be a major national priority. Studies in certain developing countries have established that the productivity of smaller holdings can conceivably be higher than that of larger holdings, primarily because the intensity of farming operations varies inversely with the size of the holding. The Report of the Working Group says in paragraph 2.1 that whether or not this is true in all situations, the production system that denies opportunities of gainful employment to large numbers of workers and leads to pronounced distortions in the distribution of economic disadvantages, needs imperative over-hauling. In paragraph 2.2, the Report proceeds to say that in a predominantly agricultural society, there is a strong linkage between ownership of land and the person's status in the social system. Those without land surfer not only from an economic disadvantage, but a concomitant social disadvantage has also to be suffered by them. In the very nature of things, it is not possible to provide land to all landless persons but that cannot furnish an alibi for not undertaking at all a programme for the redistribution of agricultural land. Agrarian reform therefore requires, inter alia, the reduction of the larger holdings and distribution of the excess land according to social and economic considerations.

29. These then are the objectives of the Constitution and these the " reasons that formed the motive force of the 1st Amendment. Article 31A(1) could easily have appeared in the original Constitution itself as an illustration of its basic philosophy. What remained to be done in the hope that vested interests will not distort the base of the Constitution, had to be undertaken with a sense of urgency and expediency. It is that sense and sensitivity which gave birth to the impugned amendment. The progress in the degeneracy of any nation can be rapid, especially in societies riven by economic disparities and caste barriers. We embarked upon a constitutional era holding forth the promise that we will secure to all citizens justice, social, economic and political; equality of status and of opportunity; and, last but not the least, dignity of the individual. Between these promises and the 1st Amendment there is discernible a nexus, direct and immediate. Indeed, if there is one place in an agriculture-dominated society like ours where citizens can hope to have equal justice, it is on the strip of land which they tin and love, the land which assures to them and dignity of their person by providing to them a near decent means of livelihood.

30. The First Amendment has thus made the constitutional ideal of equal justice a living truth. It is like a mirror that reflects the ideals of the Constitution; it is not the destroyer of its basic structure. The provisions introduced by it and the 4th Amendment for the extinguishment or modification of rights in lands held or let for purposes of agriculture or for purposes ancillary thereto, strengthen father than weaken the basic structure of the Constitution.

31. The First Amendment is aimed at removing social and economic disparities in the agricultural sector. It may happen that while existing inequalities are being removed, new inequalities may arise marginally and incidentally. Such marginal and incidental inequalities cannot damage or destroy the basic structure of the Constitution. It is impossible for any Government, howsoever expertly advised, socially oriented and prudently managed, to remove every economic disparity without causing some hardship or injustice to a class of persons who also are entitled to equal treatment under the law. Thus, the adoption of 'family unit' as the unit of application for the revised ceilings may cause incidental hardship to minor children and to unmarried daughters. That cannot, in our opinion, furnish an argument for assailing the impugned laws on the ground that they violate the guarantee of equality. It seems to us ironical indeed that the laws providing for agricultural ceilings should be stigmatised as destroying the guarantee of equality when their true object and intendment is to remove inequalities in the matter of agricultural holdings.

32. The Note of the Panel set up by the Planning Commission in May 1959 on the adoption of 'family unit' as the unit of application for the revised ceilings and the counter affidavit of Shri J.G. Karandikar, Deputy Secretary to the Government of Maharashtra show the relevance and efficacy of the family being treated as the real operative unit in the movement for agrarian reform. Considering the Indian social milieu, the Panel came to the conclusion that agricultural ceiling can be most equitably applied if the base of application is taken as the family unit consisting of husband, wife and three minor children. In view of this expert data, we are unable to appreciate how any law passed truly for implementing the objective of Article 31A(1)(a) can be open to challenge on the ground that it infringes Articles 14, 19 or 31.

33. For these reasons, we are of the view that the Amendment introduced by Section 4 of the Constitution (First Amendment) Act, 1951 does not damage or destroy the basic structure of the Constitution. That Amendment must, therefore, be upheld on its own merits.

34. This makes it unnecessary to consider whether Article 31A can be upheld by applying the rule of stare decisis. We have, however, heard long and studied arguments on that question also, in deference to which we must consider the alternate submission as to whether the doctrine of stare decisis can save Article 31A, if it is otherwise violative of the basic structure of the Constitution. In Shankari Prasad v. Union of India (supra) the validity of the 1st Amendment which introduced Articles 31A & 31B was assailed on six grounds, the fifth being that Article 13(2) takes in not only ordinary laws but constitutional amendments also. This argument was rejected and the 1st Amendment was upheld. In Sajjansingh v. State of Rajasthan , the Court refused to reconsider the decision in Shankari Prasad (supra), with the result that the validity of the 1st Amendment remained unshaken. In Golaknath , it was held by a majority of 6 : 5 that the power to amend the Constitution was not located in Article 368. The inevitable result of this holding should have been the striking down of all constitutional amendments since, according to the view of the majority, Parliament had no power to amend the Constitution in pursuance of Article 368. But the Court resorted to the doctrine of prospective overruling and held that the constitutional amendments which were already made would be left undisturbed and that its decision will govern the future amendments only. As a result, the 1st Amendment by which Articles 31A and 31B were introduced remained inviolate. It is trite knowledge that Golaknath was overruled in Kesavananda Bharati (supra) in which it was held unanimously that the power to amend the Constitution was to be found in Article 368 of the Constitution. The petitioners produced before us a copy of the Civil Misc. Petition which was filed in Kesavananda Bharati, (supra) by which the reliefs originally asked for were modified. It appears thereform that what was challenged in that case was the 24th, 25th and the 29th Amendments to the Constitution. The validity of the 1st Amendment was not questioned Khanna J., however, held-while dealing with the validity of the unamended Article 31C that the validity of Article 31A was upheld in Shunkari Prasad, (supra) that its validity could not be any longer questioned because of the principle of stare decisis and that the ground on which the validity of Article 31A was sustained will be available equally for sustaining the validity of the first part of Article 31C (page 744).

35. Thus, the constitutional validity of Article 31A has been recognised in these four decisions, sometimes directly, sometimes indirectly and sometimes incidentally. We may mention in passing, though it has no relevance on the applicability of the rule of stare decisis, that in none of the three earlier decisions was the validity of Article 31A tested on the ground that it damaged or destroyed the basic structure of the Constitution. That theory was elaborated for the first time in Kesavananda Bharati (supra) and it was in the majority judgment delivered in that case that the doctrine found its first acceptance.

36. Though Article 31A has thus continued to be recognised as valid ever since it was introduced into the Constitution, we find it somewhat difficult to apply the doctrine of stare decisis for upholding that Article.

37. In Ambika Prasad Mishra v. State of U.P. this very Bench delivered its judgment on May 9, 1980 rejecting the challenge to the validity of the 'Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960'. But, the question as to whether Article 31A can be upheld by applying the doctrine of stare decisis was not decided in that case. In fact, the broad consensus among the members of the Court that the question of vires of Articles 31A, 31B & 31C (unamended) will be decided in the other cases, is reflected in the following observation specifically made by one of us, Brother Krishna Iyer, J., who spoke for a unanimous Court :

In this judgment, we side-step the bigger issue of the vires of the Constitutional amendments in Articles 31A, 31B and 31C as they are dealt with in other cases disposed of recently. (p. 721).

Since the question of vires of these three articles was not dealt with by Brother Krishna Iyer in his judgment on behalf of the Court, we are, as previously arranged amongst us, dealing with that question in this judgment. At page 722 of the report (paragraph 5), Brother Krishna Iyer has reaffirmed this position in these words :

Thus we get the statutory perspective of agrarian reform and so, the constitutionality of the Act has to be tested on the touchstone of Article 31-A which is the relevant protective armour for land reform laws. Even here, we must state that while we do refer to the range of constitutional immunity Article 31A confers on agrarian reform measures we do not rest our decision on that provision. Independently of Article 31-A, the impugned legislation can withstand constitutional invasion and so the further challenge to Article 31-A itself is of no consequence.

38. Krishna Iyer J. has observed in the same paragraph that The extreme argument that Article 31-A itself is void as violative of the basic structure of the Constitution has been negatived by my learned Brother, Bhagwati J., in a kindred group of cases of Andhra Pradesh.

the citation of that group of cases being Thumati Venkaiah v. State of A.P. . But, in that judgment too, one of us, Brother Bhagwati, who spoke for the unanimous Court, did not refer to the vires of Articles 31A, 31B and 31C. It will thus be clear that neither the one or the other of us, that is to say neither Brother Bhagwati nor Brother Krishna Iyer, dealt with the question of vires of Articles 31A, 31B and 31C which we are doing by this judgment. It has become necessary to make this clarification in view of an observation by Brother Krishna Iyer in the very same paragraph 5 of the aforesaid judgment in Ambika Prasad Mishra that the decision in Kesavananda Bharati (Supra) on the validity of Article 31A, "binds, on the simple score of stare decisis...." Brother Krishna Iyer clarified the position once again by a further caveat in the same paragraph to this effect :

...as stated earlier, we do not base the conclusion on Article 31A.

39. The doctrine of stare decisis is the basis of common law. It originated in England and was used in the colonies as the basis of their judicial decisions. According to Dias the genesis of the rule may be sought in factors peculiar to English legal history, amongst which may be singled out the absence of a Code. The Normans forbore to impose an alien code on a halfconquered realm, but sought instead to win as much wide-spread confidence as possible in their administration of law, by the

application of near uniform rules. The older the decision, the greater its authority and the more truly was it accepted as stating the correct law. As the gulf of time widened, says Dias, Judges became increasingly reluctant to challenge old decisions. The learned author cites the example of Bracton and Coke who always preferred older authorities. In fact, Bracton had compiled a Notebook of some two thousand cases as material for his treatise and employed some five hundred of them.

40. The principle of stare decisis is also firmly rooted in American Jurisprudence. It is regarded as a rule of policy which promotes predictability, certainty, uniformity and stability. The legal system, it is said, should furnish a clear guide for conduct so that people may plan their affairs with assurance against surprise. It is important to further fair and expeditious adjudication by eliminating the need to relitigate every proposition in every case When the weight of the volume of the decisions on a point of general public importance is heavy enough, courts are inclined to abide by the rule of stare decisis, leaving it to the legislature to change long-standing precedents if it so thinks it expedient or necessary. In Burnet v. Coronado Oil & Gas Co. 285 U.S. 393, 406, Justice Brandeis stated that 'stare decisis is usually the wise policy, because in most matters it is more important that the applicable rule of law be settled than it be settled right'.

41. While dealing with the subject of stare decisis, Shri H.M. Seervai in his book on 'Constitutional Law of India has pointed out how important it is for judges to conform to a certain measure of discipline so that decisions of old standing are not overruled for the reason merely that another view of the matter could also be taken. The learned author has cited an Australian case in which it was said that though the court has the power to reconsider its own decisions, that should not be done upon a mere suggestion that some or all of the members of the later court may arrive at a different conclusion if the matter were res integra The learned author then refers to two cases of our Supreme Court in which the importance of adherence to precedents was stressed. Jagannadhadas J. said in the Bengal Immunity Case that the finality of the decisions of the Supreme Court, which is the Court of last resort, will be greatly weakened and much mischief done if we treat our own judgments, even though recent, as open to reconsideration. B.P. Sinha J. said in the same case that if the Supreme Court were to review its own previous decisions simply on the ground that another view was possible, the litigant public may be encouraged to think that it is always worthwhile taking a chance with the highest Court of the land. In I.T.O. Tuticorin v. T.S.D. Nadar , Hegde J. said in his dissenting Judgment that the Supreme Court should not overrule its decisions except under compelling circumstances. It is only when the Court is fully convinced that public interest of a substantial character would be jeopardised by a previous decision, that the Court should overrule that decision. Reconsideration of the earlier decisions, according to the learned Judge, should be confined to questions of great public importance. Legal problems should not be treated as mere subjects for mental exercise. An earlier decision may therefore be overruled only if the Court comes to the conclusion that it is manifestly wrong, not upon a mere suggestion that if the matter were res Integra, the members of the later court may arrive at a different conclusion.

42. These decisions and texts are of high authority and cannot be overlooked. In fact, these decisions are themselves precedents on the binding nature of precedents.

43. It is also true to say that for the application of the rule of stare decisis, it is not necessary that the earlier decision or decisions of long standing should have considered and either accepted or rejected the particular argument which is advanced in the case on hand. Were it so, the previous decisions could more easily be treated as binding by applying the law of precedent and it will be unnecessary to take resort to the principle of stare decisis. It is, therefore, sufficient for invoking the rule of stare decisis that a certain decision was arrived at on a question which arose or was argued, no matter on what reason the decision rests or what is the basis of the decision. In other words, for the purpose of applying the rule of stare decisis, it is unnecessary to enquire or determine as to what was the rationale of the earlier decision which is said to operate as stare decisis. Therefore, the reason why Article 31A was upheld in the earlier decisions, if indeed it was, are not germane for the purpose of deciding whether this is a fit and proper case in which to apply that rule.

44. But, there are four principal reasons why we are not disposed to invoke the rule of stare decisis for deciding upon the constitutionality of Article 31A. In the first place, Article 31A breathes its own vitality, drawing its sustenance from the basic tenets of our Constitution. Its unstated premise is an integral part of the very making of the Constitution and it holds, as it were, a mirror to the ideals which inspired the framing of the Constitution.

45. The second reason why we do not want to resort to the principle of stare decisis while determining the validity of Article 31A is that neither in Shankari Prasad (Supra) nor in Sajjan Singh (Supra), nor in Golak Nath (Supra) and evidently not in Kesavananda Bharati (Supra) was the question as regards the validity as such of Article 31A raised or decided. As stated earlier, Shankari Prasad (Supra) involved the larger question as to whether constitutional amendments fall within the purview of Article 13(2) of the Constitution. It was held that they did not. In Sajjan Singh (Supra), the demand for reconsideration of the decision in Shankari Prasad (Supra) was rejected, that is to say, the Court was not inclined to consider once again whether constitutional amendments are also comprehended within the terms of Article 13(2). Golak Nath (Supra) raised the question as to where the amending power was located and not whether this or that particular amendment was valid. In none of these decisions was the validity of Article 31A put in issue. Nor indeed was that question considered and decided in any of those cases. A deliberate judicial decision made after hearing an argument on a question which arises in the case or is put in issue may constitute a precedent, and the precedent by long recognition may mature into stare decisis. But these cases cannot be considered as having decided, reasons apart, that the 1st Amendment which introduced Article 31A into the Constitution is valid.

46. Thirdly, the history of the World's constitutional law shows that the principle of stare decisis is treated as having a limited application only. Justice William Douglas said in New York v. United States 326 U.S. 572, 590-591 [1946] that it is a wise policy to restrict the principle of stare decisis to those areas of the law where correction can be had by legislation. Otherwise, the Constitution loses the flexibility which is necessary if it is to serve the needs of successive generations. It is for that reason again that Justice Frankfurter said in U.S. v. International Boxing Club 348 U.S. 236, 249 [1955] that the doctrine of stare decisis is not 'an imprisonment of reason'. Older the standing of a decision, greater the provocation to apply the rule of stare decisis. A possible mischief arising out of this position was pointed out by Justice Benjamin Cardozo in MacPherson v. Buick Motor Co. 217

N.Y. 382, 391 [1916] by saying that precedents drawn from the days of travel by stage-coach do not fit the conditions of travel today. And alive to that possibility, Justice Brandeis said in State of Washington v. W.C. Dawson & Co. 264 U.S. 219, 238 [1924] that stare decisis is merely a wise rule of action and is not a universal, inexorable command. "The instances in which the court has disregarded its admonition are many". In fact, the full form of the principle, "stare decisis et non quieta movere" which means "to stand by decisions and not to distrub what is settled", was put by Coke in its classic English version as : "Those things which have been so often adjudged ought to rest in peace". Such being the justification of the rule, it was said in James Monore v. Frank Pape 5 L. Ed. 2nd U.S. 492, 523, 528 that the relevant demands of stare decisis do not preclude consideration of an interpretation which started as an unexamined assumption. We have already pointed out how the constitutional validity of Article 31A has to be deemed to have been upheld in Shankari Prasad (supra) by a process of inferential reasoning, the real question therein being whether the expression 'law' in Article 13(2) includes law made in the exercise of constituent power.

47. The fourth reason is the one cited by Shri Tarkunde that on principle, rules like stare decisis should not be invoked for upholding constitutional devices like Articles 31A, 31B and 31C which are designed to protect not only past laws but future laws also. Supposing Article 31A were invalid on the ground that it violates the Constitution's basic structure, the fact that its validly has been recognised for a long time cannot justify its protection being extended to future laws or to laws which have been recently passed by the legislature. The principle of stare decisis can apply, if at all, to laws protected by these articles, if those laws have enjoyed the protection of these articles for a long time, but the principle cannot apply to the articles themselves. The principle of stare decisis permits the saving of laws the validity of which has been accepted or recognised over the years. It does not require or sanction that, in furture too, laws may be passed even though they are invalid or unconstitutional. Future perpetration of illegality is no part of the doctrine of stare decisis.

48. Our disinclination to invoke the rule of stare decisis for saving Article 31A does not really matter because e have upheld the constitutional validity of that Article independently on its own merits.

49. Coming to the validity of Article 31B, that article also contains a device for saving laws from challenge on the ground of violation of fundamental rights. Putting it briefly, Article 31B provides that the Acts and Regulations specified in the Ninth Schedule shall not be deemed to be void or ever to have become void on the ground that they are inconsistent with or take away or abridge any of the rights conferred by Part III of the Constitution. The provisions of the article are expressed to be without prejudice to the generality of the provisions in Article 31A and the concluding portion of the article supersedes any judgment, decree or order of any court or tribunal to the contrary. This article was introduced into the Constitution by Section 5 of the Constitution (First Amendment) Act 1951, Article 31A having been introduced by Section 4 of the same Amendment.

50. Article 31B has to be read along with the Ninth Schedule because it is only those Acts and Regulations which are put in that Schedule that can receive the protection of that article. The Ninth Schedule was added to the Constitution by Section 14 of the 1st Amendment Act, 1951. The device or mechanism which Sections 5 and 14 of the 1st Amendment have adopted is that as and when Acts and Regulations are put into the Ninth Schedule by Constitutional amendments made from time to

time, they will automatically, by reason of the provisions of Article 31B, received the protection of that article. Items 1 to 13 of the Ninth Schedule were put into that Schedule when the 1st Amendment was enacted on June 18, 1951. These items are typical instances of agrarian reform legislations. They relate mostly to the abolition of various tenures like Maleki, Taluqdari, Mehwassi, Khoti, Paragana and Kulkarni Watans and of Zamindaris and Jagirs. The place of pride in the Schedule is occupied by the Bihar Land Reforms Act, 1950, which is item No. 1 and which led to the enactment of Article 31A and to some extent of Article 31B. The Bombay Tenancy and Agricultural Lands Act, 1948 appears as item 2 in the Ninth Schedule. Items 14 to 20 were added by the 4th Amendment Act of 1955, items 21 to 64 by the 17th Amendment Act 1964, items 65 and 66 by the 29th Amendment Act of 1972, items 67 to 86 by the 34th Amendment Act 1974, items 88 to 124 by the 39th Amendment Act 1975 and items 125 to 188 by the 40th Amendment Act 1976. The Ninth Schedule is gradually becoming densely populated and it would appear that some planning is imperative. But that is another matter. We may only remind that Jawaharlal Nehru had assured the Parliament while speaking on the 1st Amendment that there was no desire to add to the 13 items which were being incorporated in the Ninth Schedule simultaneously with the 1st Amendment and that it was intended that the Schedule should not incorporate laws of any other description than those which fell within items 1 to 13. Even the small list of 13 items was described by the Prime Minister as a 'long schedule'.

51. While dealing with the validity of Article 31A we have expressed the view that it would not be proper to invoke the doctrine of stare decisis for upholding the validity of that article. Though the same considerations must govern the question of the validity of Article 31B, we would like to point out that just as there are significant similarities between Articles 31A and 31B, there is a significant dissimilarity too. Article 31A enables the passing of laws of the description mentioned in Clauses (a) to (e), in violation of the guarantees afforded by Article 14 and 19. The Parliament is not required, in the exercise of its constituent power or otherwise, to undertake an examination of the laws which are to receive the protection of Article 31A. In other words, when a competent legislature passes a law within the purview of Clauses (a) to (e), it automatically receives the protection of Article 31A, with the result that the law cannot be challenged on the ground of its violation of Articles 14 and 19. In so far as Article 31B is concerned, it does not define the category of laws which are to receive its protection, and secondly, going a little further than Article 31A, it affords protection to Schedule-laws against all the provisions of Part III of the Constitution. No act can be placed in the Ninth Schedule except by the Parliament and since the Ninth Schedule is a part of the Constitution, no additions or alterations can be made therein without complying with the restrictive provisions governing amendments to the Constitution. Thus, Article 31B read with the Ninth Schedule provides what is generally described as, a protective umbrella to all Acts which are included in the schedule, no matter of what character, kind or category they may be. Putting it briefly, whereas Article 31A protects laws of a defined category, Article 31B empowers the Parliament to include in the Ninth Schedule such laws as it considers fit and proper to include therein. The 39th Amendment which was passed on August 10, 1975 undertook an incredibly massive programme to include items 87 to 124 while the 40th Amendment, 1976 added items 125 to 188 to the Ninth Schedule in one stroke.

52. The necessity for pointing out this distinction between Articles 31A and 31B is the difficulty which may apparently arise in the application of the principle of stare decisis in regard to Article 31B

read with the Ninth schedule, since that doctrine has been held by us not to apply to Article 31A. The fourth reason given by us for not applying the rule of stare decisis to Article 31A is that any particular law passed under Clauses (a) to (e) can be accepted as good if it has been treated as valid for a long number of years but the device in the form of the Article cannot be upheld by the application of that rule. We propose to apply to Article 31B read with the Ninth Schedule the selfsame test.

53. We propose to draw a line, treating the decision in Kesavananda Bharati (supra) as the landmark. Several Acts were put in the Ninth schedule prior to that decision on the supposition that the power of the Parliament to amend the Constitution was wide and untrammelled. The theory that the parliament cannot exercise its amending power so as to damage or destroy the basic structure of the Constitution, was propounded and accepted for the first time in Kesavananda Bharati (supra). This is one reason for upholding the laws incorporated into the Ninth schedule before April 24, 1973, on which date the judgment in Kesavananda Bharati (Supra) was rendered. A large number of properties must have changed hands and several new titles must have come into existence on the faith and belief that the laws included in the Ninth schedule were not open to challenge on the ground that they were violative of Articles 14, 19 and 31. We will not be justified in upsetting settled claims and titles and in introducing chaos and confusion into the lawful affairs of a fairly orderly society.

54. The second reason for drawing a line at a convenient and relevant point of time is that the first 66 items in the Ninth Schedule, which were inserted prior to the decision in Kesavananda Bharati, (Supra) mostly pertain to laws of agrarian reforms. There are a few exceptions amongst those 66 items, like items 17, 18, 19 which relate to Insurance, Railways and Industries. But almost all other items would fall within the purview of Article 31A(1)(a). In fact, items 65 and 66, which were inserted by the 29th Amendment, are the Kerala Land Reforms (Amendment) Acts of 1969 and 1971 respectively, which were specifically challenged in Kesavananda Bharati (supra). That challenge was repelled.

55. Thus, in so far as the validity of Article 31B read with the Ninth schedule is concerned, we hold that all Acts and Regulations included in the Ninth Schedule prior to April 24, 1973 will receive the full protection of Article 31B. Those laws and regulations will not be open to challenge on the ground that they are inconsistent with or take away or abridge any of the rights conferred by any of the provisions of Part III of the Constitution. Acts and Regulations, which are or will be included in the Ninth Schedule on or after April 24, 1973 will not receive the protection of Article 31B for the plain reason that in the face of the judgment in Kesavananda Bharati (supra) there was no justification for making additions to the Ninth schedule with a view to conferring a blanket protection on the laws included therein. The various constitutional amendments, by which additions were made to the Ninth Schedule on or after April 24, 1973, will be valid only if they do not damage or destroy the basic structure of the Constitution.

56. That leaves for consideration the challenge to the constitutional validity of the unamended Article 31C. As we have stated at the beginning of this judgment, Article 31C was introduced by the Constitution (Twenty-fifth Amendment) Act, 1971. Initially, it sought to give protection to those laws

only which gave effect to the policy of the State towards securing the principles specified in Clauses (b) and (c) of Article 39 of the Constitution. No such law could be deemed to be void on the ground that it is inconsistent with or takes away or abridges the rights conferred by Articles 14, 19 and 31. The concluding portion of the unamended article which gave conclusiveness to certain declarations was struck down in Kesavananda Bharati, (supra)

57. Shri M.N. Phadke, who led the argument on behalf of the petitioners, built a formidable attack against the vires of Article 31C. But, with respect to the learned counsel, the effort is fruitless because the question as regards the validity of Article 31C is no longer res integra. The opening clause of Article 31C was upheld by the majority in Kesavananda Bharati (Supra) and we do not quite see how the petitioners can be permitted to go behind that decision. The learned counsel addressed to us an interesting argument on the principles governing the theory of precedent, and he argued that, in the welter of judgments delivered in Kesavananda Bharati, (Supra) it is impossible to discern a ratio because different learned Judges gave different reasons in support of the conclusions to which they came. It is well-known that six learned Judges who were in minority in Kesavananda Bharti (Supra) upheld the first part of Article 31C, which was a logical and inevitable consequence of their view that there were no inherent or implied limitations on the Parliament's power to amend the Constitution. Khanna,, J. did not subscribe to that view but, all the same he upheld the first part of Article 31C for different reasons. The question of validity of the Twenty-fifth Amendment by which the unamended Article 31C was introduced into the Constitution was specifically raised before the Court and the arguments in that behalf were specifically considered by all the six minority Judges and by Khanna, J. It seems to us difficult, in these circumstances, to hold that no common ratio can be culled out from the decision of the majority of the seven Judges who upheld the validity of Article 31C. Putting it simply, and there is no reason why simple matters should be made complicated, the ratio of the majority judgments in Kesavananda Bharati (Supra) is that the first part of Article 31C is valid.

58. Apart from this, if we are right in upholding the validity of Article 31A on its own merits, it must follow logically that the unamended Article 31C is also valid. The unamended portion of Article 31C is not like an unchartered ship. It gives protection to a defined and limited category of laws which are passed for giving effect to the policy of the State towards securing the principles specified in Clause (b) or Clause (c) of Article 39. These clauses of Article 39 contain directive principles which are vital to the well-being of the country and the welfare of its people. Whatever we have said in respect of the defined category of laws envisaged by Article 31A must hold good, perhaps with greater force, in respect of laws passed for the purpose of giving effect to Clauses (b) and (c) of Article 39. It is impossible to conceive that any law passed for such a purpose can at all violate Article 14 or Article 19. Article 31 is now out of harm's way. In fact, far from damaging the basic structure of the Constitution, laws passed truly and bona fide for giving effect to directive principles contained in Clauses (b) and (c) of Article 39 will fortify that structure. We do hope that the Parliament will utilise to the maximum its potential to pass laws, genuinely and truly related to the principles contained in Clauses (b) and (c) of Article 39. The challenge made to the validity of the first part of the unamended Article 31C therefore fails.

59. A small, though practically important, clarification seems called for at the end of this discussion of the validity of Article 31A, 31B and 31C. We have held that laws included in the Ninth Schedule on or after April 24, 1973, will not receive the protection of Article 31B ipso facto. Those laws shall have to be examined individually for determining whether the constitutional amendments by which they were put in the Ninth Schedule, damage or destroy the basic structure of the Constitution in any manner. The clarification which we desire to make is that such an exercise will become otiose if the laws included in the Ninth Schedule on or after April 24, 1973 fall within the scope and purview of Article 31A or the unamended Article 31C. If those laws are saved by these Articles, it would be unnecessary to determine whether they also receive the protection of Article 31B read with the Ninth Schedule. The fact that Article 31B confers protection on the schedule laws against "any provisions" of Part III and the other two Articles confer protection as against Articles 14 and 19 only, will make no real difference to this position since, after the deletion of Article 31, the two provisions of Part III, which would generally come into play on the question of validity of the relevant laws, are Articles 14 and 19.

60. Apart from these challenges to the various constitutional amendments, the petitioners have also challenged the validity of the Constitution (fortieth Amendment) Act, 1976, by which the Amending Acts 21 of 1975, 41 of 1975 and 2 of 1976 were placed in the Ninth Schedule. It may be recalled that the Principal Act was amended by these Amending Acts. The normal term of five years of the Lok Sabha was due to expire on March 18, 1976 but, its life was extended for one year by the House of the People (Extension of Duration) Act, 1976. Yet another Act was passed by the Parliament, The House of the People (Extension of Duration) Amendment Act, 1976, by which the term of the Lok Sabha was further extended by another year. The 40th Amendment was passed by the Lok Sabha on April 2, 1976 during its extended term. Since by the aforesaid two Acts, the life of the Lok Sabha was extended while both the proclamations of emergency were in operation, the petitioners challenge the proclamations of the state of Emergency, dated December 3, 1971 and June 25, 1975 as also the two Acts by which the term of the Lok Sabha was extended. The 42nd Amendment inserted Clauses 4 and 5 in Article 368 with effect from January 3, 1975. Which was also during the extended term of the Lok Sabha. That Amendment too is challenged for that reason. We have struck down that amendment unanimously by our judgment in Minerva Mills (supra) for the reason that it damages the basic structure of the Constitution. Thus, we are now left to consider the validity of :

(1) The Promulgation of the state of Emergency by the proclamations dated December 3, 1971 and June 25, 1975;

(2) The House of the People (Extension of Duration) Act, 1976;

(3) The House of People (Extension of Duration) Amendment Act, 1976, and (4) The Constitution (Fortieth Amendment) Act, 1976.

The validity of all these is inter-connected and the focus of the challenge is the aforesaid proclamations of Emergency.

61. The validity of the proclamations of Emergency is challenged mainly by Shri A.K. Sen, Shri M.N. Phadke, Dr. N.M. Ghatate and by Shri P.B. Sawant who appeared in person in Writ Petition No. 63 of 1977. It is contended by the learned counsel and Shri P.B. Sawant that the Courts have jurisdiction to enquire whether the power conferred on the President by Article 352 to proclaim an emergency is properly exercised as also the power to determine whether there are any circumstances justifying the continuance of the emergency. There may sometimes be justification for declaring an emergency but if an emergency, properly declared, is allowed to continue without justification, the party in power, according to counsel, can perpetuate its rule and cling to power by extending the life of the Parliament from time to time. The provisions of Article 352 should, therefore, be interpreted in a liberal and progressive manner so that the democratic ideal of the Constitution will be furthered and not frustrated. It is urged that the threat to the security of India having completely disappeared soon after the Pakistani aggression in December 1971, the continuance of the emergency proclaimed on December 3, 1971, must be held to be unjustified and illegal.

62. A list of dates has been furnished to us by counsel in support of their argument that the emergency declared on December 3, 1971, could not legitimately be continued in operation for a period of more than six years. On December 3, 1971 the President issued the proclamation of emergency in face of the aggression by Pakistan, stating that a grave emergency existed whereby the security of the country was threatened by external aggression. Both the Houses of Parliament approved the proclamation on the 4th, on which date the Defence of India Act, 1971, came into force. The Defence of India Rules, 1971, framed under Section 22 of the Defence of India Act, came into force on the 5th. On December 16, 1971; the Pakistani forces made an unconditional surrender in Bangladesh and on the 17th the hostilities between India and Pakistan came to an end. In February 1972, General Elections were held to the State Assemblies. On August 28, 1972 the two countries entered into an agreement for the exchange of prisoners of war, and by April 30, 1974 the repatriation of the prisoners of war was completed. On August 16, 1974 the Presidential Election was held in India. On June 25, 1975 came the second proclamation of emergency; in the wake of which a notification was issued under Article 359 on June 27 suspending the enforcement of the fundamental rights under Articles 14, 21 and 22. On February 16, 1976 the House of People (Extension of Duration) Act was passed. The normal term of the Lok Sabha expired on March 18, 1976. On April 2, 1976, the Lok Sabha passed the 40th Amendment Act by which the Maharashtra Land Ceiling Amendment Acts were put in the Ninth Schedule as Items 157, 159 and 160. On November 24, 1976 the House of People (Extension of Duration) Amendment Act was passed extending the term of the Parliament for a farther period of one year. The 42nd Amendment Act was passed on November 12, 1976. The Lok Sabha was dissolved On January 18, 1977 and both the emergencies were revoked on March 21, 1977.

63. The question as to whether a proclamation of emergency issued by the President under Article 352(1) of the Constitution raises a justiciable issue has been argued in this Court from time to time but, for some reason or the other, though the question has been discussed briefly and occasionally, there is no authoritative pronouncement upon it. We do not propose to enter into that question in this case also partly because, there is good reason to hope that in future, there will be no occasion to bring before the Court the kind of grievance which is now made in regard to the circumstances in which the proclamation of emergency was issued on June 25, 1975. Section 48 of the Constitution

(Forty-second Amendment) Act, 1976, which came into force on January 3, 1977, has inserted Clauses (2) to (8) in Article 352 which afford adequate insurance against the misuse of power to issue a proclamation of emergency. By the newly added Clause (3), the President cannot issue a proclamation under Clause (1) unless the decision of the Union Cabinet of Ministers that such a proclamation may be issued has been communicated to him in writing. Under Clause (4), every proclamation issued under Article 352 has to be laid before each House of parliament, and it ceases to operate at the expiration of one month, unless before the expiration of that period, it has been approved by a resolution of both the Houses of Parliament. Clause (4) provides that the proclamation so approved shall, unless revoked, cease to operate on the expiration of a period of six months from the date of the passing of the second of the resolutions approving the proclamation.

64. The question as to whether the issuance of a proclamation of emergency is justiciable raises issues which are not easy to answer. In any event, that question can more appropriately and squarely be dealt with when it arises directly and not incidentally as here. In so far as the proclamation of December 3, 1971 is concerned, it is not disputed, and indeed it cannot be disputed, that there was manifest justification for that course of action. The danger to the security of the country was clear and present. Therefore, the attempt of the petitioners has been to assail the continuance of the state of emergency under that proclamation. From the various dates and events mentioned and furnished to us, it may be possible for a layman to conclude that there was no reason to continue the state of emergency at least after the formality of exchanging the prisoners of war was completed. But we are doubtful whether, on the material furnished to us, it is safe to conclude by way of a judicial verdict that the continuance of the emergency after a certain date became unjustified and unlawful. That inference is somewhat non-judicious to draw. Newspapers and public men are entitled to prepare public opinion on the need to revoke a proclamation of emergency. They have diverse sources for gathering information which they may not disclose and they are neither bound by rules of evidence nor to observe the elementary rule of judicial business that facts on which a conclusion is to be based have to be established by a preponderance of probabilities. But Courts have severe constraints which deter them from undertaking a task which cannot judicially be performed. It was suggested that the proclamation of June 25, 1975 was actuated by mala fides. But there too, evidence placed before us of mala fides is neither clear nor cogent.

65. Thus, in the first place, we are not disposed to decide the question as to whether the issuance, of a proclamation of emergency raises a justiciable issue. Secondly, assuming it does, it is not possible in the present state of record to answer that issue one way or the other. And, lastly, whether there was justification for continuing the state of emergency after the cessation of hostilities with Pakistan is a matter on which we find ourselves ill-equipped to pronounce.

66. Coming to the two Acts of 1976 by which the life of the Lok Sabha was extended, Section 2 of the first of these Acts, 30 of 1976, which was passed on February 16, 1976, provided that the period of five years in relation to the then House of the People shall be extended for a period of one year "while the Proclamation of Emergency issued on the 3rd day of December, 1971 and on the 25th day of June, 1975, are both in operation". The second Act of Extension continues to contain the same provision. It is contended by the petitioners that the proclamation of December 3, 1971 should have been revoked long before February 16, 1976 and that the proclamation of June 25, 1975 wholly

uncalled for and was mala fide. Since the precondition on which the life of the Parliament was extended is not satisfied, the Act, it is contended, is ineffective to extend the life of the Parliament. We find it difficult to accept this contention. Both the proclamations of emergency were in fact in operation on February 16, 1976 when the first Act was passed as also on November 24, 1976 when the second Act, 109 of 1976, was passed. It is not possible for us to accept the submission of the petitioners that for the various reasons assigned by them, the first proclamation must be deemed not be in existence and that the second proclamation must be held to have been issued mala fide and therefore non-est. The evidence produced before us is insufficient for recording a decision on either of these matters. It must follow that the two Acts by which the duration of the Lok Sabha was extended are valid and lawful. The 40th and the 42nd Constitutional Amendments cannot, therefore, be struck down on the ground that they were passed by a Lok Sabha which was hot lawfully in existence.

67. These then are our reasons for the order which we passed on May 9, 1980 to the following effect :

"(1) The Constitution (First Amendment) Act, 1951 which introduced Article 31A into the Constitution with retrospective effect, and Section 3 of the Constitution (Fourth Amendment) Act, 1955 which substituted a new Clause (1), Sub-clause (a) to (e), for the original Clause (1) with retrospective effect, do not damage any of the basic or essential features of the Constitution or its basic structure and are valid and constitutional, being within the constituent power of the Parliament.

(2) Section 5 of the Constitution (First Amendment) Act 1951 introduced Article 31B into the Constitution which reads thus :

"31B: X X X X X

68. In Keshvananda Bharati (1973, Suppl., SCR 1) decided on April 24, 1973 it was held by the majority that Parliament has no power to amend the Constitution so as to damage or destroy its basic or essential features or its basic structure. We hold that all amendments to the Constitution which were made before April 24, 1973 and by which the 9th Schedule to the Constitution was amended from time to time by the inclusion of various Acts and Regulations therein, are valid and constitutional. Amendments to the Constitution made on or after April 24, 1973 by which the 9th Schedule to the Constitution was amended from time to time by the inclusion of various Acts and Regulations therein, are open to challenge on the ground that they, or any one or more of them, are beyond the constituent power of the Parliament since they damage the basic or essential features of the Constitution or its basic structure. We do not pronounce upon the validity of such subsequent constitutional amendments except to say that if any Act Regulation included in the 9th Schedule by a Constitutional amendment made on or after April 24, 1973 is saved by Article 31A, or by Article 31C as it stood prior to its amendment by the 42nd Amendment, the challenge to the validity of the relevant Constitutional Amendment by which that Act or Regulation is put in the 9th Schedule, on the ground that the Amendment damages or destroys a basic or essential feature of the Constitutional or its basic structure as reflected in Articles 14, 19 or 31, will become otiose.

(3) Article 31C of the Constitution, as it stood prior to its amendment by Section 4 of the Constitution (42nd Amendment), Act, 1976, is valid to the extent to which its constitutionality was upheld in Keshvananda Bharati. Article 31C, as it stood prior to the Constitution (42nd Amendment) Act does not damage any of the basic or essential features of the Constitution or its basic structure.

(4) All the Writ Petitions and Review Petitions relating to the validity of the Maharashtra Agricultural Lands Ceiling Acts are dismissed with costs. The stay orders granted in these matters will stand vacated. We quantify the costs at Rs. five thousand which will be borne equally by the petitioners in Writ Petitions Nos. 656-660 of 1977; 512-533 of 1977; and 505 to 511 of 1977. The costs will be payable to the Union of India and the State of Maharashtra in equal measure.

(5) Writ Petition No. 63 of 1977 (Baburao Samant v. Union of India) will be set down for hearing".

Bhagwati, J. The Judgment of Bhagwati J. should be read along with his reasons reported in the case published in

69. This Court made an Order on 9th May, 1980 disposing of the" writ petitions challenging the constitutional validity of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 27 of 1961 as amended from time to time by various subsequent acts. This Order was in the following terms :

"(1) The Constitution (First Amendment) Act, 1951 which introduced Article 31A into the Constitution with retrospective effect, and Section 3 of the Constitution (Fourth Amendment) Act, 1955 which substituted a new Clause (1), Sub-clause (a) to (e), for the original Clause (1) with retrospective effect, do not damage any of the basic or essential features of the Constitution or its basic structure and are valid and constitutional, being within the constituent power of the Parliament.

(2) Section 5 of the Constitution (First Amendment) Act 1951 introduced Article 31B into the Constitution which reads thus :

"31B : X X X X X

70. In Keshvananda Bharati (1973, Suppl., SCR 1) decided on April 24, 1973 it was held by the majority that Parliament has no power to amend the Constitution so as to damage or destroy its basic or essential features or its basic structure. We hold that all amendments to the Constitution which were made before April 24, 1973 and by which the 9th Schedule to the Constitution was amended from time to time by the inclusion of various Acts and Regulations therein, are valid and constitutional. Amendments to the Constitution made on or after April 24, 1973 by which the 9th Schedule to the Constitution was amended from time to time by the inclusion of various Acts and Regulations therein, are open to challenge on the ground that they, or any one or more of them, are beyond the constituent power of the Parliament since they damage the basic or essential features of the Constitution or its basic structure. We do not pronounce upon the validity of such subsequent constitutional amendments except to say that if any Act or Regulation included in the 9th Schedule by a constitutional amendment made on or after April 24, 1973 is saved by Article 31A, or by Article

31C as it stood prior to its amendment by the 42nd Amendment, the challenge to the validity of the relevant Constitutional Amendment by which that Act or Regulation is put in the 9th Schedule, on the ground that the Amendment damages or destroys a basic or essential feature of the Constitution or its basic structure as reflected in Articles 14, 19 or 31, will become otiose.

(3) Article 31C of the Constitution, as it stood prior to its amendment by Section 4 of the Constitution (42nd Amendment) Act, 1976, is valid to the extent to which its constitutionality was upheld in Keshvananda Bharati. Article 31C, as it stood prior to the Constitution (42nd Amendment) Act does not damage any of the basic or essential features of the Constitution or its basic structure.

(4) All the writ petitions and Review Petitions relating to the validity of the Maharashtra Agricultural Lands Ceiling Acts are dismissed with costs. The stay orders granted in these matters will stand vacated. We quantify the costs at Rs. five thousand which will be borne equally by the petitioners in Writ Petitions Nos. 656-660 of 1977; 512-533 of 1977; and 505 to 511 of 1977. The costs will be payable to the Union of India and the State of Maharashtra in equal measure.

(5) Writ Petition No. 63 of 1977 (Baburao Sawant v. Union of India) will be set down for hearing". No reasons were given in support of this Order but it was stated that reasons would be given later. While delivering my dissenting judgment in Minerva Mills Ltd. v. Union of India on 31st July 1980, I gave my reasons for subscribing to this Order. It is therefore not necessary to reiterate those reasons over again but they may be treated as forming part of this judgment and a copy of my judgment in Minerva Mills case may be attached as an annexure to this judgment. I may point out that pages 1 to 6 and pages 17 to 96 of the judgment in Minerva Mills case set out the reasons for the making of the order dated 9th May 1980 and I re-affirm those reasons.

71. I have had the advantage of reading the judgment just delivered by the learned Chief Justice, but I find myself unable to agree with him that "it is somewhat difficult to apply the doctrine of stare decisis for upholding "Article 31A and that it would not be proper to invoke the doctrine of stare decisis for upholding the validity of that Article." I have given reasons in my judgment for applying the doctrine of stare decisis for sustaining the constitutional validity of Article 31A, but apart from the reasons given by me in support of my view, I find that in Ambika Prasad Mishra v. State of U.P. the same Bench which is deciding the present writ petitions has upheld the constitutional validity of Article 31A by applying the doctrine of stare decisis. Krishna Iyer, J. speaking on behalf of a unanimous court said in that case :

It is significant that even apart from the many decisions upholding Article 31A, Golak Nath case decided by a Bench of 11 Judges, while holding that the Constitution (First Amendment) Act exceeded the constituent power still categorically declared that the said amendment and a few other like amendments would be held good based on the doctrine of prospective over-ruling. The result, for our purpose, is that even Golak Nath case has held Article 31A valid. The note struck by later cases reversing Golak Nath does not militate against the vires of Article 31A. Suffice it to say that in the Kesavananda Bharati case Article 31A was challenged as beyond the amendatory power of Parliament and, therefore, invalid. But after listening to the Marathon erudition from eminent counsel, a 13 Judge Bench of this Court upheld the vires of Article 31-A in unequivocal terms. That

decision binds, on the simple score of stare decisis and the constitutional ground of Article 141. Every new discovery or argumentative novelty cannot undo or compel reconsideration of a binding precedent. In this view, other submissions sparkling with creative ingenuity and presented with high-pressure advocacy, cannot persuade us to reopen what was laid down for the guidance of the nation as a solemn proposition by the epic Fundamental Rights case.

(Emphasis supplied.)

72. These observations show beyond doubt that this very Bench held Article 31-A to be constitutionally valid "on the simple score of stare decisis". It is true that Krishna Iyer, J. stated in the beginning of his judgment in Ambika Prasad Mishra's case :

In this judgment, we side-step the bigger issue of the vires of the constitutional amendments in Articles 31A, 31B and 31C as they are dealt with in other cases disposed of recently.

73. This statement was made presumably because the learned Judge must have thought at the time when he prepared his judgment in this case that the judgment in the present writ petitions would be given before his judgment came to be delivered and on this assumption, the learned Judge did not consider it necessary to discuss the entire range of arguments relating to the constitutional validity of Articles 31A, 31B and 31C. But so far as Article 31A was concerned, the learned Judge did proceed to hold that Article 31A was constitutionally valid "on the simple score or stare decisis" and the other four learned Judges subscribed to this view. It is also true that Krishna Iyer, J. did not rest his judgment entirely on the protective armour of Article 31A and pointed out that "independently of Article 31-A, the impugned legislation can withstand constitutional invasion" and sustained the validity of the impugned legislation on merits, but even so he did hold that Article 31-A was constitutionally valid on the principle of stare decisis and observed that "the comprehensive vocabulary of that purposeful provision obviously catches within its protective net the present Act, and broadly speaking the undisputed effect of that Article is sufficient to immunise the Act against invalidation to the extent stated therein". I cannot, therefore, despite the high regard and great respect which I have for the learned Chief Justice, agree with him that the doctrine of stare decisis cannot be invoked for upholding the validity of Article 31-A, since that would be in direct contradiction of what has been held by this very Bench in Ambika Prasad Mishra v. State of U.P. (supra).

Krishna Iyer, J.

74. While I agree with the learned Chief Justice, I must state that certain observations regarding Articles 31A, 31B and 31C are wider than necessary and I do not go that far despite the decision in Minerva Mills case. . I also wish to add a rider regarding the broader observations with the application of stare decisis in sustaining Article 31A. I have expressly upheld Article 31A by reliance on stare decisis and cannot practise a volte face without convincing juristic basis to convert me to a contrary position. I know that Justice Holmes has said : "Don't be" consistent, "but be simply true". I also remind myself of the profound reflection of Ralph Waldo Emerson :

A foolish consistency is the hobgoblin of little minds, adored by little statesmen and philosophers and divines. With consistency a great soul has simply nothing to do. He may as well concern himself with his shadow on the wall. Speak what you think now in hard words and tomorrow speak what tomorrow thinks in hard words again, though it contradict every thing you said today-"Ah, so you shall be sure to be misunderstood." Is it so bad then to be misunderstood ? Pythagoras was misunderstood, and Socrates, and Jesus, and Luther, and Copernicus, and Galileo, and Newton, and every pure and wise spirit that ever took flesh. To be great is to be misunderstood.

75. And yet, I hold to what I have earlier stated in Ambika Prasad Misra . What the learned Chief Justice has in mind, if, with respect, I may venture to speak is that in constitutional issues over-stress on precedents is inept because we cannot be governed by voices from the grave and it is proper that we are ultimately right rather than be consistently wrong. Even so, great respect and binding value are the normal claim of rulings until reversed by larger benches. That is the minimum price we pay for adoption of the jurisprudence of binding precedents. I leave it at that because the learned Chief Justice has held the impugned Act good in its own right. Enough unto the day is the evil thereof.