THE CONSTITUTION STRENGTHENED AND WEAKENED- AN OVERVEW

Dr.shripad kulkarni
Assistant professor
University college of arts
Tumkuru.

Abstract:

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The constitution and the ability of the judiciary to protect it gained and lost ground in the year of Mrs. Gandhi's return. Scepticism greeted her government's policies affecting the judiciary, national security, and civil liberty – even when they may have been well intended. The Supreme Court's reaffirmation of the basic structure doctrine in the Minerva Mills case restored the balance between the judiciary and the legislature and definitively gave the government's resort to preventive detention and its enactment of other repressive legislation diminished constitutional liberties and the courts' ability to protect them. The prime Minister had not left all her authoritarian tendencies behind.

Parliamentary Supremacy Revisited: The Minerva Mills Case

On a main road behind the Bangalore railway station, near Sri Nagabhusana Roa Park and Gethsemane Lutheran Church, secluded by a steel-link fence and at the end of long entrance road lined with poplars, stands the Minerva Mills, a unit of the National Textiles Corporation. Claiming that the privately –owned mills were ill-managed, the government assumed management of them in 1971 and then nationalized them under the Sick textiles Undertakings (Nationalization) Act in 1974. Five years later, this gray structure became the focus of a renewed battle over parliamentary versus judicial supremacy when, in first Minerva Mills case, the mills' previous owners challenged elements of the 1971 takeover and the 1974 nationalization and the constitutionality of portions of three constitutional amendments.

The case bridged two governments. It came to the supreme Court in the autumn of 1979 when Charan Singh was caretaker Prime Minister; unbidden by his government. The court's ruling in May 1980 confronted newly-elected Indira Gandhi with a reaffirmation of the basic structure doctrine. The mills' nationalization was a property matter, but counsel N.A. Palkhivala's strategy was not to fight the nationalization on the basis of property rights, but to achieve the same result by framing the issue in terms of parliament's power to amend the Constitution. (This strategy recalls that in the Golak Nath Property case.) Although Palkhivala argued that the nationalization under the

Act infringed his clients' fundamental right to carry on their business, he focused on clauses 4 and 55 of the Forty-second Amendment … which deprived the Fundamental Rights of their supremacy … are ultra vires the amending power of parliament'. The court allowed Palkhivala to pursue this reasoning against the contentions of Charan Singh's Attorney General, L.N Sinha, and Additional Solicitor General K.K. Venugopal, who Claimed that constitutional questions did not arise directly in the petitions. Moreover; the Forty-second Amendment had been passed after the Sick Textiles Undertakings (Nationalization) Act was in force, Sinha and Venugopal contended and therefore the mills' nationalization could be challenged only under Article 31C as it was written in 1974.

Lenge to laws made under the Directive principles, was constitutionally bad beyond issues of property, and that the Forty-second Amendment's changes to the amending power, by making Parliament's power boundless, overruled the Court's decisions establishing the basic structure doctrine in the Kesavananda and Indra Gandhi Election cases. These clauses, said Palkhivala, were "The impertinence of those in Power" and the philosophy underlying Article 31C "is the very quintessence of authoritarianism". He contended that because the Directive Principles covered the 'whole spectrum' of governance, few laws were not in pursuance of them and the article thus allowed establishment of a non-democratic state. The version of the article in the Twenty-fifth Amendment and largely upheld by the court in Kesavananda 'had been limited to specific subjects like land reforms and other issues like concentration of wealth', Palkhivala explained in response to questions from the bench. This was the Court's 'last chance', he warned, '…to choose between a free and an authoritarian society in India' . Public appreciation of the case, Judging from newspaper headlines, mirrored Palkhivala's. the Minerva Mills by name and the subject of property rights were not mentioned. A Statesman headline read '42nd Amendment An Arrogant Act and one in the Hindu Said 'Hearing Begins in Case Against 42nd Amendment'. Continuing his presentation over a week's time, Palkhival also pressed the point that it was baseless to claim that Parliament necessarily represented the will of the people. Article 31C violated the Preamble as well as the fundamental Rights, he said, and the Constitution contained no power to frame a new constitution through a new constituent assembly- this in agreement with an interjection from Chief Justice Chandrachud.

Attorney General L.N Sinha agreed that the Fundamental Rights were sacred, but argued that Article 31C did not abrogate them. The Court in Shankari Prasad had upheld Parliament's power to amend the Constitution affecting the rights. Articles 31A, B, and C must be presumed 'reasonable', he said and the court in Kesavananda had upheld them. Sinha's claim would seem to be accurate, allowing for the fact that Articles 31A and 31B had been upheld prior to Kesavananda, and Kesavananda had upheld Article 31C as it then was with the exception of the 'escape clause'. Reacting to Sinha's specific claim that the Kesavananda decision had upheld the First Amendment

as not violating the basic structure, the five judges displayed the uncertainty about the clarity of Supreme Court decisions that on occasion has marked the countries Jurisprudence. These men could not agree on exactly what the Kesavananda bench had decided, and three of them wondered whether there had been 'any majority decision at all'. Over the next several days Sinha argued the social revolutionary position at the directive principles 'prevailed' over the rights because they 'provided the goals with out which the rights would be meaningless'. The new article 31C improved the constitution, he said, and extended the basic structure by making social and economic justice available to all citizens instead of a few.

Palkhivala began his rebuttal on 13 November. The changes made by the forty Second Amendment, he said, had been made specifically to 'overcome' the 'obstruction' caused by the basic structure test introduced in kesavananda. The amendment's Language made clear that if the ends are legitimate, the means employed 'become irrelevant and non-justiciable'. This case is a last – ditch battle for citizens to 'stop the rot in the constitution', phalkivala warned, for article 31C did not provide that laws passed under it had to meet the tests of reasonableness and public interest. 7 The twenty days of hearings concluded on 16 November with arguments by K.K. Venugopal ,who was also representing the state of Maharashtra in the Waman Rao case, which the court would rule on coincidentally with Minerva. Speaking from the bench during the hearings, Justices Bhagawati, Chandrachud,and Untwalia expressed the view that since the Indira Gandhi election case 'the doctrine of basic structure had become the acceptable ratio'.

While the bench was deliberating during January 1980, Justice Bhagawati wrote a '"Dear indirajip"' letter to the prime minister. This congradulated her on her re- election and praised her " iron will …uncanny insight and dynamic vision, great administrative capacity and …heart which is identified with the misery of the poor and the week".The justice continued that " the judicial system in our country is in a state of utter collapse .. .[W]e should have a fresh and uninhabited look at …[it] and consider what structural and jurisdictional changes are necessary…".a senior columnist's according a civic reception to the Prime Minister'. Its 'net effect is disastrous… criticizing an arrangement of which he is very much a part and that too in a letter to the Prime Minister hardly seems appropriate'.

Nearly six months after the hearings ended , the court on 9 May 1980 handed down its ' first orders ' in the Minerva Mills case. These said that section 4 of the forty-second amendment was beyond the amending power of parliament ' since it damages the basic of essential features of the constitution and destroys its basic structure by the total exclusion of challenge' to loss to implement the Directive Principles at the expense of the Fundamental Rights in the articles 14 and 19. (The 'clauses' of a bill are called 'sections' once the bill becomes an act.) Section 55 of that amendment

also was ruled behind the amending power of Parliament 'since it removes all limitations on the power of the Parliament to amend the constitution and confers powers upon it to amend the constitution so as to damage or destroy its basic or essential features or its basic structure'. Judges Chandrachud, Gupta, Untwalia and Kalilasam joined in issuing the order and said they would give their detailed reasoning later, a delay that was not unprecedented. Justice Bhagwati did not join the others in passing the orders, explaining that the issue being so momentous, he could not do so without a reasoned judgment (seeming to imply that his colleagues orders were not reasoned). He would provide his judgment when the court reconvened after the summer vacation.

The Hindu in an editorial thought the ruling 'a blow struck in favor of judicial review as well as the basic structure'. To have done otherwise the paper said, 'would have been to leave temptation in the way of parliament to repeat what happened under pressure during the Emergency' columnist K.K. Katyal noted that the Court did what Janata had been unable to get through. The Rajya Sabha in 1978. The The Hindustan Timed said the ruling was inevitable given the Kesavananda decision and the prime Minister would do well to accept the new situation. Both newspapers reported that the government might seek a review of the ruling Law Minister P. Shiv Shankar, Just returned from a trip abroad, was quoted as saying that he personally felt that a larger bench should go into such vital issues, and "I always thought that directive Principles are that the Constitution ordains the states (sic) to do in the interests of society. I feel individual interests must yield to the interests of society".

Chief Justice Chandrachud gave the detailed rational behind the May orders for himself and the three others on 31 July. Justice Bhagawati gave a separate opinion. The majority had held unconstitutional the Forty-second Amendment's provision (section55) that there shall be no limitation whatever on the constituent power of parliament' on the ground that the power to amend is not the power to destroy; Parliament could not convert a limited power to an unlimited one. This section's other change to Article 368, which said that no amendment made before or after the Forty-second could be questioned in court, also was held unconstitutional for the reason that it deprived the courts of powers to question an amendment even if it destroyed the basic structure. These changes in Article 368, Therefore, permitted violation of civil liberties. Turning to the amendment's expansion of Article 31C, The Court said that the Directive principles were vitally important, but to destroy the Fundamental Rights Purportedly to achieve the Principles was to subvert The Constitution. Section 4 of the Forty-second Amendment abrogated Articles 14, 19 and 21 and the court could not allow the balance between the Rights and the principles to be destroyed. The decision could not repeal Article 31C as expanded by the Forty-second Amendment nor delete it from the constitution. It remains in the Constitution today, technically unrepealed, but all the cases under it are being decided as it was before that amendment.

Justice Bhagawati, writing one opinion for both the Minerva and Waman Rao cases, agreed with the others that the changes in the Article 368 made by the Forty-second Amendment were unconstitutional because after Keshavananda and the Indira Gandhi Election case 'there was no doubt at all that the amendatory power of parliament was limited and it was not competent to alter the basic structure of the constitution. But, referring to the amendment's section 4, he believed that the amended Article 31C… [Was] constitutionally valid… [Because it] does not damage or destroy the basic structure …and is within the amending power of parliament. The Constitutions is first and foremost a social document, Bhagwati said, and therefore 'a law enacted … genuinely for giving effect to a Directive Principle… should not be invalid because it infringes a fundamental Right. The rights are precious, he continued, but they have absolutely no meaning for the poor, downtrodden and economically backward classes' who constitute the bulk of the people. He held that the government's takeover of Minerva Mills was valid. Bhagawati's Sentiments were consistent with those expresses in his 15 January letter to Mrs. Vhandhi: Our judicial system has proved inadequate to meet the needs of [the0 vast socio-economic developments taking place in the country', he had said.

Both in the text of his opinion and orally in court, Justice Bhagawati took a job at his Chief Justice. In court, according to a press report, he 'deplored that the highest court in the land had violated the principle of judicial collectivity and of not giving orders without reasons unless there was an urgency to do so. Momentous issues required collective deliberation, Bhagwati said, and this would been possible if the Chief Justice had seen to it that draft opinions were circulated, followed by a judicial conference. Absence of this process 'introduced a chaotic situation.' In his written opinion, Justice Bhagawati expressed the same regret at Chandrachud's failure to arrange a free and frank exchange of thoughts', during which 'I would either be able to share the views of my colleagues or … to persuade them …with my point of view'. He likened his situation to that Justice Chandrachud had said he faced during the Kehavananda Bharati case (chapter-12). But Bhagawati would violate his own strictures within a year in the Judges case.

The government seized upon Bhagawati's charge in partial support of the review petition it filed on 5 September challenging the Minerva ruling. Bhagawati, asserted the government, had declared that the decision "was not a judgment of the court at all" the court's decision was "merely" the opinion of each judge, argued Miss A. Subhashini, representing the law Ministry. Additionally, the government contended that Article 38 (of the directive Principles, which said that the state should strive to promote the welfare of the people by minimizing inequalities of income, and other inequalities) was also part of the constitution's basic structure. The government did not pursue the

review, and the matter was still hanging fire when shiv Shankar left the law Ministry to become minister of petroleum in early January 1982.

The Minerva Mills case was at once highly significant and peculiar. In upholding the basic structure (as did also in the parallel waman Rao case) the supreme court ensured that it would remain the foundation of the country's constitutionalism. The court had reaffirmed that the checks and balances of the constitution were vital to the preservation of democracy and of the Fundamental Rights Keshavananda had propounded the doctrine, the Indira Gandhi Election case had upheld it, and Minerva engraved it on stone. The peculiarities encompassed both context and substance. The hearings, begun while Charan Singh was the catetaker Prime Minister, produced a decision that the charan Singh government would have welcomed. Yet delivered when Indira Gandhi was prime Minister, the decision was unwelcome, and her government's first thought was to have the engraving erased through review.

Minerava was nationalization, a property case, Yet the right to property was no longer in the Fundamental Rights-thanks to the recently passed forty-fourth Amendment. And the precise issue of the mills nationalization was not even mentioned in the court's order of 9 May Addressing the petitioners' Challenge to the constitutionality of the sick Textiles Act. Chief Justice Chandrachud wrote in his opinion, We are not concerned with the merits of that challenge at this stage'. The case became a vehicle for N.A. Palkhivala and his fellow senior advocates to protect the constitution from those provisions of the Forty-second Amendment that congress in the Rajya Sabha had prevented the Janata government from repealing.

The Government under Charan Singh's caretaker Prime Ministry seems to have been caught between millstones. Confronted with the Minerva Mills case, it wished to defend a public enterprise from de-nationalization. Yet, it had no love for the portions of the Forty-second amendment that Janata had failed to get repealed. Could it separate the two issues? Could it win on keeping the mills public property while not minding a loss on the Forty-second Amendment-perhaps even hoping for it? Did such calculations lie behind the government's strategy to argue that the nationalization was defensible as a property issue, while leaving the constitutional issues to palkhivala by claiming that constitutional issues did not arise? If this was the strategy, it succeeded brilliantly, for the Supreme court did what the government had been unable to do in the Forty-fourth Amendment. Supremacy of Constitution' was the greeting the statesman gave the Minerva orders in its editorial of 10 May.

For her part, Mrs. Gandhi inherited a case whose outcome she was not in apposition to affect. With the hearings concluded before she returned as Prime Minister, she and her government's law officers only court's decision. The government's resulting review petition lacked weight, and there

seems to have been no energy expended in its pursuit. Thus, one cannot accuse Mrs. Gandhi during her second reign of direct attempts to overturn the basic structure doctrine, although it is unlikely that she had come to admire it. But when the Lawyers' Conference in the autumn of 1980 revived agitation for change to a presidential system, two months after the review agitation for change to a presidential system, two months after the review petition had been filed, her critics, suspecting she favoured the conference, credited her with designs on the basic structure. The Prime Minister by this time may have lost interest in the issue.

Liberties Lost.

As the Constitution was being saved in Minerva, Liberties were being lost to repression at least as harsh as that during the Emergency, although less widespread. The pattern of the past had returned. From 1980, centeral and state governments enacted or re-enacted laws providing for preventive detention, banning strikes, and threatening freedom of speech. The justifications for such legislation typically were the public interest or protection of national security and integrity. Doubtless, stern measures were necessary against insurgents in, for example, the Punjab, as will be described more fully in chapter 27. But harsh laws were used harshly, and the conditions they were enacted to meet originated in no small part from Mrs. Gandhi's misguided policies. Having sowed the wind. She reaped the whirlwind.

It was Charn Singh's caretaker government, however, that had re-instituted preventive detention after the Janata government had refrained from doing so. It promulgated an ordinance on 5 October 1979 providing for detention to prevent black –marketing and to ensure the maintenance of commodity supplies essential to the community. President Sanjiva Reddy took two days to sign the ordinance, reportedly because he did not share the Prime Minister's eagerness for it – any more than had a recently concluded conference of Chief ministers, where all but two had 'bitterly' opposed it. Making reference to the 1955 Essential commodities Act, a well-known commentator on economic affairs wrote, This is not the first time that a government has armed itself with excessive power to deal with a problem… (that) could have been tackled … (under) existing laws'. Sceptics said that Charan Singh thought the step would rescue his political positions from the effects of sharply rising food prices.

Parliament, following an opposition walk-out, replaced the ordinance with an act a month after Mrs. Gandhi resumed power. Under this comparatively mild law, the advisory boards to be established to review detentions were to be constituted as prescribed by the Forty-fourth amendment -i.e. according to the recommendations of the chief justice of the appropriate high court. The board

chairman was to be a serving judge of the court, and its two or more other members should be serving or retired judges of any high court. Within ten days the detenu was to be informed of the grounds for his detention and was allowed to make representations against them. But the government was not required to disclose facts considered against the public interest to disclose'. Within three weeks the governments was to place its case before the advisory board, which could call for further information and hear the detenu. Within seven weeks from the date of detention the board either should uphold the detention or invalidate it. Detentions could last six months.

The terms of the national security Act passed on27 December 1980 presaged years of new repressive legislation. Detentions were sanctioned to prevent an individual from acting in a manner prejudicial to the maintenance of public order', to the defense or security of India, to relations with foreign powers, to protect the maintenance of essential supplies and services. But the law's intent was far more inclusive. It was to combat "anti-social and anti-national elements including secessionist, communal and pro-caste elements" and elements affecting, "the services essential to the community". There were other significant differences from the Black marketing Act. Now the state government could appoint the advisory board without the high court chief justices' recommendations, and its members, except for the chairman, could either be high court judges or persons 'Qualified' to be so which included any advocate who had practiced for ten years in a high court. An Individual; might be detained for a year and then detained again, without prior release, if 'fresh fact had arisen" . A senior advocate feared abuse of such 'tyrannical laws' and said the Constitution did not con-template detention on such wide grounds. Another commentator noted that there had been no arrests of 'big' smugglers and black marketers, and cited highly questionable political detentions. The Supreme Court upheld the Act's constitutionality at the end of December 1981.

More egregious laws were to come. The president in April and June 1984, promulgated two ordinances amending the National Security Act-both these ordinances were later replaced by Acts of Parliament. The first ordinances allowed a detention order to be submitted to an advisory board four months and two weeks after the detention and allowed the board to take five months and three weeks to give its opinion-that is, ten months in jail on executive whim. Individuals might be detained for two years. The second ordinance outdid this. It said that before or after its promulgation a person detained on two or more grounds, each ground qualifying as a separate detention, could not have his detention rendered invalid if 'once or some' of the grounds were 'vague, non-existent, not relevant, not connected or not proximately connected with such person, or invalid for any other reasons whatsoever'. This 'lawless law' was explained as necessary to deal with the "'extraordinary Situation'" in parts of the country and as needed "'to deal stringently with anti-national extremist

and terrorist elements… in the larger interests of India'". The extraordinary situations included the Panjab, where, in July, the army invaded and occupied the Sikhs' Golden Temple and remained into October, Late that month. Two Sikhs of Indra Gandhi's security guard murdered her. Locally, as it had nationally during Mrs. Gandhi's Emergency, democracy had failed.

The Terrorist and Disruptive Activities Act (TADA), which followed on 20 May 1985 when Rajiv Gandhi had become Prime Minister, surpassed even the egregiousness of the amended National Security Act. It empowered the government to make rules as necessary and 'expedient' for 'Prevention of and coping with terrorist acts and disruptive activities'; to prevent the spread of reports 'likely to prejudice maintenance of peaceful condition'; to regulate 'the conduct of persons in respect of areas the control of which is considered necessary'; and to require persons 'to comply with any scheme for the prevention, or coping with, terrorist acts and preventive activities'. The law, wrote Fali Nariman, defined terrorist and disruptive activities so broadly 'as to encompass even peaceful expression of views about sovereignty and territorial integrity'; permitted detention for up to six months without charge; provided for trails before designated courts 'in camera and adopting procedures at variance with the Criminal Procedure Code'; and said that if the person detained came from an area the government had declared to be a terrorist affected area 'the burden of providing that he has not committed a terrorist act on him'. Common law had been reversed; you were guilty until you proved yourself innocent.

Meanwhile, various state legislatures had passed their own preventive detention laws paralleling the centre's, as they often had since 1950. Or' they had enacted particularistic preventive detention laws; for the broad control of crimes (Bihar 1980-1); against communal and dangerous activities (Maharashtra 1981, Tamil Nadu 1982, Andra Pradesh 1986); and anti-social activities (Gujarat 1985). Parilament had passed, with many states following suit, laws banning strikes and allowing arrests without a warrant and providing for summary trials (the 'essential services' acts). Mrs. Gandhi had said she wanted 'to assure workers that this ordinance is not against them… [W]e will never do anything to suppress them or create difficulties … , But it is necessary that the public services are kept going'. Attempting to deal with the situation in Punjab, Parliament passed laws other than those already mentioned such as those establishing special courts for disturbed areas, the Armed Forces (Punjab and Chandigarh) Special Powers Act, and the Fifty-ninth and Sixty-third Amendments to the Constitution (in 1988 and 1989, respectively), which gave the central government special emergency powers in Panjab. In particular, the latter said that during a Punjab emergency, there was no protection from Article 21- no person can be derived of life or liberty except according to procedure established by law. A commentator captured the reaction of many to these ordinances and laws when he referred to the gay abandon' of the central government in

'accumulating extraordinary powers… [which] makes one wonder whether in the not too distant future anything will be left of the normal law of the land'.

Oppressiveness being infectious, it spread to other civil liberties such as freedom of speech. The legislatures of Bihar and Tamil Nadu in 1982 passed laws restricting press freedom. The Bihar Act, reportedly passed in five minutes, provided for fines and imprisonment for possessing, selling, or publishing pictures, advertisements, or reports that are "grossly indecent or… [are] scurrilous or intended for blackmail". Publication was permissible if the material was expressed "in good faith". One would assume that Mrs. Gandhi's government previously had cleared these bills, given customary practice, namely that a state government consults the central government before enacting legislation dealing with an item on the Concurrent List. Bhihar Chief Minister Jagannath Mishra said the bill was not mean to intimidate the press. To the accompaniment of an immediate and loud press and public uproar, both bills were withdrawn.

During 1986 and 1988, the central government ventured, itself, into cubing the press and civil liberty other than through preventive detention. On 11 November 1986 Rajiv Gandhi's government introduced in the Lok Sabha what came to be known as the Postal Bill. With its passage by the Rajya Sabha on 10 December, the central and state governments were empowered to direct that in the interests of public safety or tranquility, the security of India, or on the occurrence of any public emergency, any postal article or class of postal articles 'shall be intercepted or detained or shall be disposed of 'as authority may direct. Public opposition against was vehement, although some knew that a certain amount of legal and 'informal' mail interception (by postal employees co-operating with Intelligence Bureau the CBI) had been going on for years.

The bill went to President Giani Zail Singh on 19 December for his assent, and the issue of presidential powers arose. Singh refused to sign the bill on 15 January 1987 and then sat on it, apparently without consulting anyone about this decision to do so. This was the first 'pocket veto', a thing not envisaged in the constitution. By this time, the President's relations with Prime Minister Rajiv Gandhi had become bitter, and informed opinion was divided about whether the President was acting on principle, from pique at his treatment by the government (he and Rajiv Gandhi were oil and water), or from resentment at government policies in the Punjab. R. Venkataraman became President on 25 July 1987 with the Postal Bill still lying at Rashtrapati Bhavan. The new president never understood his predecessor's mind on the issue, but himself disliked much of the bill. He returned it to Rajiv Gandhi on 7 January 1990 with the recommendation that it go the Law Ministry for reconsideration, having himself declined to suggest changes when the Prime Minister requested him to do so. The bill actually was returned to Rajya Sabha, where it was tabled on 3 March 1990, and where it was still pending in 1994.

The Rajiv Gandhi government again attacked the Fundamental Rights, at least in the view of an unusually united national press, when in August 1988 it attempted passage of the so called 'Defamation Bill'. Allegations of corruption against the Prime Minister (regarding weapons purchased for the army), his close associates, and other ministers had been current for months. Parliamentary, 'an act of desperation'. The bill's Statement of objects and Reasons said it proposed to make offences by any Person'. Freedom of speech must not 'degenerate into license', said the statement. The 'draconian character' of the bill was exemplified, said the Times of India in its putting 'the onus of Proof that no defamation was caused upon the accused'.

The government rammed the bill through the Lok Sabha on 30 August after an acrimonious debate over substance. The opposition charged that, in the process, Parliament's rules of procedure had been violated. The uproar caused Rajiv Gandhi to announce that the bill would not be introduced in the Rajya Sabha. The Defamation Bill thus achieved the dubious distinction of being the first passage in the Lok Sabha.

This attention to government policies affecting civil liberty should be understood in context. In several areas of the country state governments were unable to cope with internecine conflicts between local factions or with insurrectionary violence. They came to depend on central government forces to contain or subdue the violence and preserve a measure of government authority. Yet, although the Terrorist and Disruptive Activities Act extended nationally, in much of the country it was not extensively employed. Only in several states did repression under the act result in the virtual extinction of democracy-notably, Jammu and Kashmir, the Punjab, Assam, and elsewhere in the Northeast. Rajiv Gandhi's government inherited both the ugly condition in these areas and his mother's failed policies in the Punjab and Kashmir, which he attempted to redress. That the responsibility for these conditions rested both with local militants-secular and religious- and with New Delhi for its divide-and-rule meddling in state affairs did not lessen their precariousness. Nevertheless, repression became a substitute for reform. Authoritarian methods were the easy way out, demanding less intelligence, lees political effort, and no recognition that your opponent might have a point. Repression was power without perspective, an imperium, not the statesmanship the country needed.

Conclusion: The majority had held unconstitutional the Forty-second Amendment's provision (section55) that there shall be no limitation whatever on the constituent power of parliament' on the ground that the power to amend is not the power to destroy; Parliament could not convert a limited power to an unlimited one. This section's other change to Article 368, which said that no amendment made before or after the Forty-second could be questioned in court, also was held unconstitutional for the reason that it deprived the courts of powers to question an amendment even if it destroyed the basic structure.