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The Constitutional Validity of the Agricultural Laws, 2020

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ABSTRACT

The paper is premised on Indian Constitutional Law. It analyses the various provisions of the infamous agricultural laws through the lens of the basic structure doctrine by comprehensively scrutinizing the nature of the basic structure doctrine. In particular, federalism and the right to judicial review are the two principles of the basic structure doctrine which have been thoroughly scrutinized and relied upon. It further elucidates the requirements of the extraordinary test of arbitrariness, thereby explaining its functionality on the impugned laws. It elucidates how the right to appeal and the right to institute a suit, albeit not expressly contained in the ambit of the right to judicial review under Article 32, are protected by attaching a special test of the arbitrariness of legislation. The paper concludes that the impugned laws are ultra vires the basic structure of the Constitution of not one, but two principles embodied in the doctrine namely, federalism and the right to judicial review.

I. INTRODUCTION

The paper deals with the infamous agricultural laws, 2020 namely The Farmers' Produce Trade and Commerce (Promotion and Facilitation) Act, 2020, The Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020, and the Essential Commodities (Amendment) Act, 2020 which received the President's assent mid-September, 2020.

The Farmers' Produce Trade and Commerce (Promotion and Facilitation) Act, 2020 permits the farmers to sell their produce outside the Agricultural Produce Market Committees (APMCs), also known as Mandis. The law is aimed at facilitating intra-state and inter-state trade and commerce of the farmers' produce.

The Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020 aims at providing a national framework to facilitate farm agreements that empowers the farmers to engage in business with various agri-business firms, retailers,

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wholesalers, etc. In other words, regulates contract farming.

The Essential Commodities (Amendment) Act, 2020 is an amendment to the erstwhile Essential Commodities Act, 1955 which permits the intra-state and inter-state trade of the farmers' produce outside the Agricultural Produce Market Committees (APMCs) through the Farmers' Produce Trade and Commerce (Promotion and Facilitation) Act, 2020.

The paper answers various questions with regard to the Constitutionality of the impugned laws. Do the laws violate the basic structure of the Indian Constitution? Does the doctrine of basic structure apply to ordinary legislation? Do the impugned laws violate the federal structure of the Constitution? Do they violate the right to judicial review (as a fundamental right)? Does the Court need an extraordinary provision to strike down the impugned Acts or any of the provisions thereof?

II. THE DOCTRINE OF BASIC STRUCTURE

The basic structure doctrine is the single most factor that has made the survival of our Constitution possible in its pristine form[2]. The landmark Keshavnanda Bharati v. State of Kerala[3] Case enunciated the doctrine of basic structure as a limitation on the amending power of the Parliament. The principle of the basic structure was inherent in the Constitution ab initio, Kesavananda Bharati Case has merely made it expressed what was hitherto implied. The Case elucidated that the doctrine was based on the basic foundation i.e., the dignity and freedom of the individual, further explaining that the basic foundation of the basic features could be easily discernible from the Preamble, as well as, from the whole scheme of the Constitution. However, the position still remained hazy. Thereafter, the principle of basic structure was expounded through a series of cases.

Prior to the Kesavananda Bharati judgment, some of the cases had contributed to the development of the extant doctrine of basic structure in the Indian Legal System. In Shankari Prasad v. Union of India[4], the Constitutional (First Amendment) Act, 1951 was under challenge. The ground of challenge was that the word 'law' under Article 13(2) also includes 'law of the amendment to the Constitution' and therefore, the Articles 31A and 31B should be struck down as unconstitutional as they abridge the fundamental rights of the people. However, the Court kept the law of amendment beyond the scope of Article 13(2), thereby upholding the amendment. The above decision was reiterated in Sajjan Singh v. State of

[2] Virendra Kumar, Basic Structure of the Indian Constitution: Doctrine of Constitutionally Controlled Governance, Journal of the Indian Law Institute, Vol. 49, No, 3 (July-September, 2007), pp. 365-398.
[3] Kesavananda Bharati v. State of Kerala, AIR 1973 SC 1461.
[4] Shankari Prasad v. Union of India, AIR 1951 SC 458.

Rajasthan[5], where the same principle was applied *mutatis mutandis* to the Constitutional (Fourth Amendment) Act, 1955.

Finally, in I.C. Golaknath v. State of Punjab[6], the Court observed that 'Parliament had no power to amend the fundamental rights', thereby overruling both Shankari Prasad and Sajjan Singh cases to hold that Article 13(2) constitutes a bar to an amendment abridging or taking away the fundamental rights.

In Minerva Mills Ltd. and Others v. Union of India[7], the Court unanimously held that the power of judicial review was one of the basic structure of the Constitution which could not be destroyed. The challenge in the extant case appertained constitutionality of the Constitution (42nd Amendment) Act, 1976. While striking down the amendment to Article 31C which gave precedence to directives over Fundamental Rights observed:

"The Indian Constitution is founded on the bedrock of the balance between Part III and IV. To give absolute primacy to one over the other is to disturb the harmony of the Constitution. This harmony and balance between fundamental rights and directive principles is an essential feature of the basic structure of the Constitution".

In Indira N. Gandhi v. Raj Narain[8], the Court got an opportunity to elaborate and apply the doctrine of the basic structure. The Constitution bench by a majority opined that the judicial review, free and fair elections, rule of law, and the right to equality as the features constituting the basic structure of the Constitution. While striking down clause (4) to Article 329A, the Court observed that this clause "made the controlled Constitution uncontrolled" by overriding or eliminating the principles underlying articles 14, 19, and 21, which are collectively described as 'the golden triangle'.However, Mathew J. observed that:

"The concept of a basic structure, as brooding omnipresence in the sky, apart from the specific provisions of the Constitution, is too vague and indefinite to provide the yardstick for the validity of an ordinary law".

Finally, the case of I.R.Coelho v. State of Tamil Nadu brought a firmer footing to the basic structure doctrine. The Court contemplated that "there are certain parts or aspects of the Constitution including Articles 15, Article 21, read with Articles 14 and 19, which constitute the core values which if allowed to be abrogated would change the nature of the Constitution". Further observing that the object of the doctrine was to protect the basic

[5] Sajjan Singh v. State of Rajasthan, AIR 1965 SC 845 : (1965) 1 SCR 933.
[6] I.C. Golaknath v. State of Punjab, AIR 1967 SC 1643: 1967 2 SCR 762.
[7] Minerva Mills Ltd. and Others v. Union of India, (1980) 3 SCC 625.
[8] Indira N. Gandhi v. Raj Narain, AIR 1975 SC 2299.

features of the Constitution as indicated by the synoptic view of the rights in Part III and that "The doctrine, as a principle, has now become an axiom".

Thereafter, in Madras Bar Association v. Union of India[9], the Court held that "basic structure" was inviolable and that the rule would apply to all other legislations as well, even though the legislation had been, enacted by following the prescribed procedure and was within the domain of the enacting Legislature, thereby overruling Kuldip Nayar v. Union of India[10].

The rule of law and judicial review was held as a basic structure in Waman Rao v. Union of India[11], S.P. Sampath Kumar v. Union of India[12], and P. Sambamurthy v. State of A.P.[13] cases. Effective access to justice was held part of the Basic Structure, according to the ruling in the case of Central Coal Fields Ltd. v. Jaiswal Coal Fields Co.[14]

"Democracy is a basic feature of the Constitution and election conducted at regularly prescribed intervals is essential to the democratic system envisaged in the Constitution. So is the need to protect and sustain the purity of the electoral process that may take within it the quality, efficiency, and adequacy of the machinery for resolution of electoral disputes.", was iterated in Kihoto Hollohan v. Zachillhu[15]. In S.R. Bommai v. Union of India[16], the Court elucidated that, "Democracy and Federalism are essential features of our Constitution and are part of its basic structure", further opining that secularism is a basic or an essential feature of the Constitution.

III. FEDERALISM

The Farmers' Produce Trade and Commerce (Promotion and Facilitation) Act, 2020, and The Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020 have been enacted by the Union Parliament. This section analyses the nature of Indian federalism and the effects of the aforementioned acts thereof on the sanctity of Indian federalism.

The Apex Court, in S.R. Bonmai v. Union of India[17], has held Federalism to be a part of the basic structure doctrine, and hence, it cannot be abrogated or overridden by an amendment to

[9] Madras Bar Association v. Union of India, AIR 2015 SC 1571
[10] Kuldip Nayar v. Union of India, AIR 2006 SC 3127
[11] Waman Rao v. Union of India, (1981) 2 SCC 362.
[12] S.P. Sampath Kumar v. Union of India, (1987) 1 SCC 124.
[13] P. Sambamurthy v. State of A.P, (1987) 1 SCC 362.
[14] Central Coal Fields Ltd. v. Jaiswal Coal Fields Co., 1980 Supp SCC 471.
[15] Kihoto Hollohan v. Zachillhu, 1992 Supp SCC 651: AIR 1993 SC 412.
[16] S.R. Bommai v. Union of India, (1994) 3 SCC 1 : AIR 1994 SC 1918
[17] Supra note 15.

the Constitution or through legislation.

Federalism as a Part of the Basic Structure Doctrine

The quandary around federalism being part of the basic structure was resolved in the S.R. Bonmai case, wherein a bench of nine judges with a majority of 6:3 opined that federalism is indeed a part of the doctrine of basic structure and cannot be abridged by constitutional amendments. The Judgment has further clarified that the basic structure can be used to invalidate not only the constitutional amendments but beyond the same.

Justice Ahmadi, while elucidating upon the federal nature of the Constitution, described our Constitution as 'quasi-federal'. Further expressing that the Founding fathers of the Constitution leaned in the favour of a strong Centre while distributing various powers among the Centre and the States. The Parliament's powers Under Articles 2 & 3, the extraordinary powers in emergency situations, the power to amend the Constitution, the residuary powers under Article 246 read with List I of the VIIIth Schedule, among others, lean towards a strong Centre and question the federal appellation. That is why, the Constitution cannot be regarded as either federal or unitary, but is 'quasi-federal'. Justice Ramaswamy also elucidated along similar lines describing the federal powers of the States as being sovereign and paramount. Further observing that the Indian Constitution is different from that of the USA.

Justice Sawant and Kuldip Singh observed the federalism in the Indian Constitution as, despite the quantum of powers being strong with the Centre, the States are sovereign in the field left to them. The States are independent Constitutional machineries and have an important role to play in the political, economic, social, and cultural life of the people as the Union. Further explaining that the extraordinary powers conferred upon the Centre are exceptions and resorted to in special situations.

Justice Ramaswamy, put a comprehensive analysis of the Indian society and the character of federalism in the Indian Constitution while opining the end aim of the character of the federalism in Indian Constitution being to place the nation under the control of the Central Government and the States being sovereign within their legislative, executive and administrative sphere.

Constitutional Provisions

Article 245 of the Constitution, delineates the powers conferred upon the Union and the States appertaining legislations. The Union Parliament has been conferred the power to make laws for the whole of India whereas the State has powers to legislate upon the whole or any part of the respective State. Article 246, further expounded the proposition by introducing the

distribution of subject matter of legislation. The provision clearly demarcates the power of the Union to legislate upon the matters contained in the Union List or List I from the power of a State to make laws upon matters falling in the State List or List II of the Seventh Schedule to the Constitution. The Concurrent List or List III enlists matters which can be legislated upon by both the Centre and the States[18].

The Union List (List I) contains 97 items and contains matters which affect the entire country and are of general interest i.e. likely to affect the whole country. The exclusive jurisdiction to legislate of the matters enlisted herein rests with the Union Parliament. The State List (List II) comprises 66 items and the matters enlisted appertain subjects of local or state interest. The State has exclusive jurisdiction to legislate on matters enlister herein. The Concurrent List (List III) comprises 47 items, which can be legislated upon by both the Union Parliament and the State Legislature. The residuary powers to legislate are vested in the Union Parliament vide Article 248 of the Constitution read with Entry 97 in the Union List. Furthermore, the Union has the power to legislate of the matters enlisted in the State List in exceptional circumstances vide Articles 249 to 253, 352, 353, 356 of the Constitution.

Furthermore, in State of W.B. v. K. Industries Ltd.[19], the Court observed that the Constitution is an organic living document. Its expressions as perceived and expressed by the interpreters of the Constitution must be dynamic and must keep pace with the changing times.

IV. FEDERAL BALANCE

In the case of State (NCT of Delhi) v. Union of India[20], the Court expounded the concept of federal balance and collaborative federalism in the Indian Constitution. As per, Chief Justice Sikri and Justice Misra Khanwilkar, the Union and State Governments must harmoniously coexist and achieve federal balance so as to avoid any constitutional discord. The Hon'ble judges further elucidated that the Constitution has mandated a federal balance wherein the States are assured of a certain degree of independence and that the States enjoy freedom without any unsolicited interference from the Centre in matters exclusively falling in the former's domain.

While underlining the importance of a federal balance and the primary goal of our constitutional federalism, the Court opined that the State is a constituent unit having an exclusive legislative and executive process, same as the Union and both work in

[18] State of W.B. v. Committee for Protection of Democratic Rights, W.B., AIR 2010 SC 1476.
[19] State of W.B. v. K. Industries Ltd., AIR 2004 SC 1647.
[20] State (NCT of Delhi) v. Union of India, (2018) 8 SCC 501 : 2018 SCC OnLine SC 661 : (2018) 250 DLT 594.

coordination towards achieving the goal of protecting and preserving the unity and territorial integrity of India.

The Hon'ble Court further opined that the Union and States must work in harmony as to realise the principles enshrined in the Preamble of the Constitution, these include the principles of justice, liberty, equality, and fraternity. The Court observed that in a functional Constitution, both the Centre and the States must work within their spheres, and not think of any encroachment whilst relying upon the constitutional provisions as a source of authority. Thereby, concluding that the Constitution mandates a federal balance between the powers of the Centre and the States so that there is no unwarranted or unsolicited interference by the Centre which would encroach upon the powers of the States.

Doctrine of Pith and Substance

The doctrine of pith and substance is applied when the legislative competence of a legislature with regard to a particular enactment is challenged with reference to the Entries in the various Lists. The doctrine flows from the words "with respect to" in Article 246[21].

The doctrine reads that in case of encroachment, the legislation should be read as a whole and not as a collection of sections or clauses to determine the pith and substance of law[22]. To ascertain the true character of the legislation, the enactment should be read as a whole, meaning thereby, that it must be read with regards to its object, scope and effects of its provisions[23].

Furthermore, the Hon'ble Apex Court has opined in Assocn. Of Natural Gas v. Union of India[24], that only if the legislation substantially falls within the powers conferred upon the legislature which enacted it, will the legislation be invalid. Mere, incidental touching or encroachment is not invalid per se.

In the case of State of T.N. v. G.N. Venkataswamy[25], applying the doctrine of pith and substance, the Court held that the purpose and object of the impugned law pertained to the State Entry, even though the Act incidentally encroached upon the matter within the Parliament's competence.

V. AGRICULTURAL LAWS AND FEDERALISM

The extant laws deal with the subject of agricultural produce which is an exclusive domain of

[21] All India Federation of Tax Practitioners v. Union of India, AIR 2007 SC 2990.
[22] E.V. Chinniah v. State of A.P., AIR 2005 SC 162.
[23] State of W.B. v. Kesoram Industries, AIR 2005 SC 1646.
[24] Assocn. Of Natural Gas v. Union of India, AIR 2004 SC 2647.
[25] State of T.N. v. G.N. Venkataswamy, AIR 1995 SC 21.

the State List (List II) vide entries 14 (Agriculture, including agricultural education and research, protection against pests and prevention of plant diseases), 18 (land rights, tenures, transfer of agricultural land, agricultural loans), 28 (markets and fairs), 30 (relief from agricultural indebtedness), 46 (taxes on agricultural income), 47 (duties with respect to the succession of agricultural land), and 48 (estate duty on agricultural land).

The entries signify that the matters related to agricultural produce including their marketing, loans in relation to agricultural fields, etc. and furthermore, accentuate the point at hand, that all the matters connected therewith and incidental thereto are an exclusive domain of the State.

Whilst The Farmers' Produce Trade and Commerce (Promotion and Facilitation) Act, 2020 deals with trade and commerce which is a subject in entry 33 of the Concurrent List (List III), it expressly states that the trade and commerce in this entry appertain foodstuffs including edible oilseeds and oils which does not fit in the category of agricultural produce. What is more, the Union has defined foodstuffs in the Act itself which includes magnanimous additions into the category. The additions include vegetables, cereals, fruits, spices, among many others. This is a clear transgression of the power to legislate upon the subjects mentioned in the list. The Union has no express authority to legislate on matters appertaining agricultural produce or its trade and commerce, etc.

To validate the extant point, reliance must be placed on the case of I.T.C. Ltd. v. State of Karnataka & Ors.[26] wherein the Hon'ble Supreme Court has laid down a comprehensive elucidation of the concept of distribution of subject matter of legislation through the three lists in the Seventh Schedule and the Articles enshrined in the Indian Constitution connected thereto.

The Court in the instant case opined that a Central law, which in its pith and substance, dealt with a subject falling within the State List or List-II, would be ultra vires the Constitution and therefore, liable to be struck down. The position applies *mutatis mutandis* if a State law, in its pith and substance, encroaches upon or deals with a subject falling within the Union List or List I.

The Court further elucidated that the doctrine of repugnancy is functional only when the State or Union Law legislates upon matters enlisted in the Concurrent List or List III. As per Article 254 of the Constitution, in this position, if a State law is repugnant to the Central law, then it is liable to be struck down as the Central law will prevail but this operates only in the

[26] I.T.C. Ltd. v. State of Karnataka & Ors., 1985 SCR Supl. (1) 145 1985 SCALE (2) 515.

situation where the State law is inconsistent or contrary to the Central law.

VI. RIGHT TO JUDICIAL REVIEW

This section analyses the nature of the right to judicial review and the test of arbitrariness along with comprehensive scrutiny of the provisions of the impugned agricultural law, 2020 in relation to the right to judicial review and arbitrariness.

Both the Farmers' Produce Trade and Commerce (Promotion and Facilitation) Act, 2020, and The Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020 contain provisions to the effect:

15. Bar of jurisdiction of civil court- No civil court shall have jurisdiction to entertain any suit or proceedings in respect of any matter, the cognizance of which can be taken and disposed of by any authority empowered by or under this Act or the rules made thereunder.

The following part explains how the impugned Section 15 (Section 19 in the Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020) violate the right to judicial review enshrined in the Indian Constitution and the need to apply the test of arbitrariness in order to strike down such a law.

RIGHT TO JUDICIAL REVIEW AS A FUNDAMENTAL RIGHT

The right to judicial review is a fundamental right under Article 32 of the Constitution of India and is also a part of the basic structure of the Constitution[27]. The Right to move the Supreme Court for the enforcement of fundamental rights is itself a fundamental right under Article 32[28] and therefore, it is the duty of the Supreme Court to ensure that no fundamental right is contravened or abridged by any constitutional or statutory provision[29].

India follows the strong basic structure review model which bestows the judges with the ability to strike down legislation that is inconsistent with a particular constitutional provision, but also constitutional amendments incompatible with the principles on which the constitution rests[30].

The right to judicial review under Article 32 for the enforcement of fundamental rights confers the right to all persons to move the Supreme Court, the right to judicial review is not exercisable for all courts. The moot question arising thereby Do the people have no right to judicial review in Courts except the Apex Court?

[27] I.R. Coelho v. State of Tamil Nadu, AIR 2007 SC 861.
[28] Assam Sanmilita Mahasangha v. Union of India, AIR 2015 SC 783
[29] State of West Bengal v. C.P.D.R., W.B., AIR 2010 SC 1476
[30] Joeli Colon-Rios, A new typology of judicial review legislation, Global Constitutionalism (2014).

Arbitrariness

For questions outside the ordinary horizons of law, extraordinary tests exist. One such test is the test of arbitrariness. Non-arbitrariness is construed within the horizons of Article 14 of the Constitution of India. The Apex Court in E.R. Royappa v. State of Tamil Nadu[31], has opined that "Equality is a dynamic concept with many aspects and dimensions and it cannot be 'cribbed, cabined and confined' within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact, equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch". His Lordship Chief Justice Chandrachud, further opined that "where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law.." while adjudicating the case of K. Nagraj v. Union of India[32].

Further, in the case of Maneka Gandhi v. Union of India[33], the Supreme Court elucidated that the guarantee against arbitrariness, as a great equalizing principle, a founding faith of the Constitution and a pillar on which rests securely the foundation of our Democratic Republic. It is well settled that the Court should not declare a statute to be unconstitutional as it expresses the will of the people through its elected representatives[34]. However, that does not rule out the possibility of striking down the legislation altogether. The same was explained by the Apex Court, in Government of A.P. v. P. Laxmi Devi[35], as a statute could be declared unconstitutional where it clearly violated some provisions of the Indian Constitution.

It is also a well-settled proposition that no enactment could be struck down on the sole ground of arbitrariness or unreasonableness and a challenge would be sustained if there was some constitutional infirmity found within the four corners of the Constitution itself[36].

Trodding down the history of judicial decisions on the extant proposition, we find that the application of the test of arbitrariness has been extensively used to evaluate and in some cases strike down, the administrative orders. In the landmark case of Ajay Hasia v. Khalid Mujib[37], where a society framed rules governing the admission of students allocating more than 15% of the total marks for the oral interview, which the Court regarded as arbitrary and

[31] E.R. Royappa v. State of Tamil Nadu, AIR 1974 SC 555
[32] K. Nagraj v. Union of India, AIR 1985 SC 551
[33] Maneka Gandhi v. Union of India, AIR 1978 SC 597
[34] Suresh v. Naz Foundation, AIR 2014 SC 563.
[35] Government of A.P. v. P. Laxmi Devi, AIR 2008 SC 1648.
[36] State of A.P. v. Mcdowell and Co., AIR 1996 SC 1627; Binoy Viswam v. Union of India, AIR 2017 SC 2967; Khoday Distilleries v. State of Karnataka, AIR 1996 SC 911.
[37] Ajay Hasia v. Khalid Mujib, AIR 1981 SC 487.

unreasonable and liable to be struck down as constitutionally invalid. Furthermore, in the case of Air India v. Nargesh Meerza[38], the Supreme Court struck down the Indian Airlines Regulation providing for the retirement of the Air Hostess on her first pregnancy as manifestly unreasonable and arbitrary and thus, unconstitutional.

Certainly, some dicta have been found to be slightly inclined towards the legislative side of the proposition. The case of V. Subramaniam v. Rajesh Raghuvendra Rao[39] is one such example. Here, the Supreme Court struck down sub-section (2-A) introduced by the Maharashtra Amendment Act, 1984 in Section 69, Indian Partnership Act, 1932 which extended the bar of the proceedings to a suit for dissolution or recovery of property or will result in a situation where in case of disputes amongst the partners the relationship could not be put to an end by approaching a Court of law. The sub-section was held totally arbitrary and violative of Articles 14, 19(1)(g) and 300-A and hence, unconstitutional. Another case of Satyawati Sharma v. Union of India[40], wherein the Court struck down Section 14(1)(e) of the Delhi Rent Act, 1958 as violative of the doctrine of equality embodied in Article 14 of the Constitution of India. Further elucidating, that even if the validity of such legislation might have been upheld at a given point of time, the Court might in subsequent litigation, strike down the same, if it is found that the rationale of classification had become non-existent.

After a comprehensive analysis of the extant dicta on the proposition, the position has been somewhat clarified by the Apex Court in the case of Marida Chemicals v. Union of India. In this case, sections 13, 15, 17, and 34 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, were under challenge. The impugned statute aimed towards creating a mechanism allowing the secured creditors to recover their debt from the non-performing assets by allowing them to take recourse to numerous methods. Section 17, entitled 'right to appeal', authorized the debtor to institute an appeal against the aforementioned methods. However, prior to filing the appeal, the debtor will have to deposit an amount analogous to 75% of the amount claimed by the secured creditor with the Debt Recovery Tribunal. The impugned Section 17, violated the right to appeal the decision of the Debt Recovery Tribunal to a quasi-judicial body, therefore, prohibiting a right to institute a proceeding in toto. The contention in the Courtroom appertained the fact that the right to appeal was rendered illusory due to the inherent arbitrariness of the impugned provision. However, the Supreme Court could not strike down

[38] Air India v. Nargesh Meerza, AIR 1981 SC 1829
[39] V. Subramaniam v. Rajesh Raghuvendra Rao, AIR 2009 SC 1858
[40] Satyawati Sharma v. Union of India, AIR 2008 SC 3148

Section 17 under Article 32 or as violative of Fundamental Rights in Part III of the Constitution as Section 17 dealt with the Right to judicial review before a quasi-judicial tribunal. So the Court applied the extra-ordinary test, the test of arbitrariness for striking down the impugned section. The arbitrariness in Section 17 may therefore be attributed to its rendering illusory a right that was a part of the basic structure of the Indian Constitution.

The dictum has manifestly depicted that if the statute violates the basic structure of the Constitution or renders illusory a right inherent in the basic structure, it can be struck down as being arbitrary and unconstitutional which in turn underlines the point that the impugned section violates the fundamental right to judicial review of the people of India, especially the farmers rendering the law arbitrary and liable to be struck down as ultra vires the Constitution. This is so because the impugned provisions not only take away the right of judicial review of the people but in turn abridge their right to appeal or right to institute a suit altogether, thus rendering the law unconstitutional and arbitrary. Following the dictum of Marida Chemicals case, it is manifest that the statute has violated the right to judicial review as enshrined in the Indian Constitution.

VII. CONCLUSION

This paper analyses the nature of Indian Federalism and the Constitutional provisions connected therewith, the nature of the right to judicial review as a part of the basic structure doctrine and a fundamental right as enshrined in the Indian Constitution, and the extraordinary test of arbitrariness along with its applicability in the extant scenario.

The basic structure of the Indian Constitution has been expounded upon by a catena of judgments by the Hon'ble Supreme Court. It essentially contains the subject matters which are fundamental to the Indian Constitution and cannot be abridged or violated by any constitutional amendment or through ordinary legislation. Federalism and the right to judicial review have been held to be a part of the basic structure of the Indian Constitution.

Federalism is the basic structure of the Indian Constitution, albeit its nature being quasi-federal. The Indian Constitution also holds the values of collaborative federalism and federal balance at a high pedestal. It is also evident that these values of federal balance and collaborative federalism are distinct yet unique features of the Indian Constitution. Furthermore, the doctrine of pith and substance becomes functional in case of encroachment upon the subject matters which are the exclusive domain of a legislature. The distribution of this subject matter of legislation can be obtained from a combined reading of Article 246 and

the Seventh Schedule to the Indian Constitution. Concluding thereby that, agriculture being the exclusive domain of the State cannot be legislated upon by the Union which is the instant case. Therefore, the laws are ultra vires the Constitution being violative of the federalism and in turn the basic structure of the Constitution.

The paper, further analyses the provisions of the impugned laws which violate the right to judicial review as enshrined in the Constitution. The right to judicial review is a fundamental right under Article 32 and a part of the basic structure of the Constitution. Therefore, any legislation violating the aforementioned right would be liable to be struck down as ultra vires the Indian Constitution. However, the right cannot be exercised if the legislation bars the right to institute a suit or a right to appeal before any Court altogether. Here, the Court needs the extraordinary test of arbitrariness as a saviour of the sanctity of the fundamental rights guaranteed to the citizens of India.

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