



**INDIAN INSTITUTE OF LEGAL STUDIES  
INTRA MOOT COURT COMPETITION, 2024  
(AUGUST – DECEMBER SESSION)  
[MOOT PROPOSITION FOR SEMI-FINAL]**

- A. The Republic of India, having inclination towards socialism, through its Constitutional mandates upholds the spirits of social welfare state. The schemes of welfare states are enshrined in the Part IV of the Constitution of India which also secures various socio-economic rights. These schemes are emphasized in the Constitution as directive principles of state policy by making them fundamental in governance of the country. Along with these socio-economic rights, the constitution also provides various civil and political rights for both citizens as well as non-citizens as fundamental rights in its Part III. This constitutional bifurcation of rights in Part III and Part IV is facilitated by the enforceability of the rights, making fundamental rights enforceable by the court of law and the directive principles of state policy otherwise.
- B. Given this constitutional scheme, immediately after the commencement of the Constitution there was direct conflict between Part III and Part IV. For instance, Article 46 (Part IV) imposes an obligation upon the state to uplift the socially and educationally backward classes. Based upon this obligation, when Madras government formulated one reservation scheme for ensuring admission of socially and educationally backward class, the same was challenged on the ground of Article 15 (Part III) prohibits state from making any discrimination on the grounds of religion, race, caste, sex, place of birth or any of them. Considering the conflict the Hon'ble Apex Court of the Country ruled that such reservation policy is unconstitutional positing fundamental rights above directive principles [State of Madras v. Champakam Dorairajan, AIR 1951 SC 226]. Similar conflict was witnessed between Article 31 and Article

39(b) & (c). The land reforms policies of various states, promulgated under the constitutional mandate of Article 39(b) & (c), were questioned on the ground of violation of fundamental right, i.e., right to property. Therefore, the framers of the Constitution, who had drafted the Constitution with the intention of creating a welfare state, realised that the welfare schemes are getting hindered due to the existing constitutional mechanism.

- C. Taking this dilemma into consideration, the framers of the Constitution brought amendment into the Constitution by making the conflicting provisions consistent with one another through the Constitution (First Amendment) Act, 1951. For instance, exceptions were created within Article 15 and 31 to the extent that social welfare policies, viz., reservation, land reforms etc. were immuned from question on the ground of violation of fundamental rights. This attempt, though removed the conflict between the provisions but raised another significant constitutional dilemma.
- D. Once the fundamental rights, specifically, Articles 15 and 31, have been amended by virtue of the Constitution (First Amendment) Act, 1951, the Hon'ble Supreme Court was called upon to decide whether the Constitutional Amendment Act can be questioned under Article 13 if it amends any of the fundamental rights. In a nutshell, this brings to the question before the court that whether fundamental rights can be amended. In 1951, the Apex Court through its five-judge bench led by CJI Kania ruled that Article 13 cannot be extended towards the laws made by the constituent power of the Parliament and hence, Constitutional Amendment Act cannot be questioned under Article 13 [Sankari Prasad Singh Deo v. Union of India, AIR 1951 SC 458]. The same question was raised again before the Supreme Court in 1965 and the court reiterated the previous ruling [Sajjan Singh v. State of Rajasthan, AIR 1965 SC 845]. Further, in 1967 Hon'ble the Supreme Court deviated from its previous position and ruled that Constitutional Amendment Act is not enacted by virtue of the constituent power, rather it is enacted by ordinary legislative power; therefore, making the constitutional amendments questionable under Article 13 and rendering fundamental rights non-amendable [I.C. Golaknath & Ors. v. State of Punjab & Anr., AIR 1967 SC 1643].
- E. The issue reached in its finality in 1973 when Honourable Supreme Court addressed the same with its thirteen-judge bench and imposed restriction upon the powers of parliament to amend

the Constitution by introducing the Doctrine of Basic structure. The doctrine postulates that Parliament can amend any part of the Constitution without affecting the basic features of it [Keshavanada Sripadagalvaru Bharati v. State of Kerala, AIR 1973 SC 1461]. This doctrine though not mentioned in the Constitution explicitly, imposed restrictions upon the amending powers of the Parliament. Being unsatisfied with the ruling of the court, Parliament, by virtue of the Constitution (Forty-Second Amendment) Act, 1976 added new clause in Article 368, specifically clause (5), which negated the implied restriction as imposed by the basic structure doctrine. This clause states 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.” Again, when this forty-second amendment was challenged before the Supreme Court, the Court declared clause (5) of Article 368 as unconstitutional and restored the doctrine of basic structure; however, the said clause has not been removed from the Constitution [Mineva Mills Ltd. v. Union of India, AIR 1980 SC 1789].

F. In 2024, Parliament again made another attempt to gain supremacy in amending the Constitution by enacting the Constitution (One Hundred and Seventh Amendment) Act, 2024. This amendment added Clause (6), (7), (8) and (9) to Article 368 which are as follows:

**Clause (6):** *If any Constitutional Amendment, initiated under clause (2) of Article 368:*

- (a) Seeks to make any change, which, if made, would have the effect of*
  - (i) impairing the secular or democratic character of this Constitution; or*
  - (ii) abridging or taking away the rights of citizens under Part III; or*
  - (iii) prejudicing or impeding free and fair elections to the House of the People or the Legislative Assemblies of States on the basis of adult suffrage; or*
  - (iv) compromising the independence of the judiciary; or*

*(b) seeks to amend this clause,*

*The amendment shall, along with the requirements of Clause (2), also require to be approved by the people of India at a referendum under clause (7).*

**Clause (7):** *The referendum for the purpose of seeking the approval of the people of India for any amendment of the nature referred to in clause (6) shall be through a poll, and –*

- (i) *all persons who are for the time being eligible to be voters under article 326 at elections to the House of the People shall be entitled to vote at such poll; and*
- (ii) *any such amendment shall be deemed to have been approved by the people of India if such amendment is approved by a majority of the voters voting at such poll and the voters voting at such poll constitute not less than fifty-one percent. of the voters entitled to vote at such poll.*

**Clause (8):** *The superintendence, direction and control of the preparation of the rolls of voters for, and the conduct of, every referendum under this article shall vest in the Election Commission and the result of such referendum as declared by the Election Commission shall not be called in question in any court.*

**Clause (9):** *Subject to the provisions of clauses (7) and (8), Parliament may from time to time by law make provision with respect to all matters relating to, or in connection with referendum under this article, including the preparation of the rolls of voters.*

Therefore, the 107<sup>th</sup> Constitutional Amendment proposes a new mechanism of referendum in which the power to amend the basic features are vested in the hands of the people of India.

G. In September, 2024, a petition was filed before Hon'ble Supreme Court of India by the Supreme Court (Advocates on Record) Association contending that the 107<sup>th</sup> Constitutional Amendment is an attempt to affect the basic structure of the Constitution and therefore ultra vires the Constitution. Whereas, in an affidavit the Government of India asseverated that as Indian legal framework subscribes to the notion of transformative constitutionalism, basic features of the Constitution cannot be fixed for time immemorial, rather the same must be allowed be dynamic and flexible. It is also argued by the State that the sovereign power is held by 'We, the People of India'; therefore, popular will must decide what should be the basic features of the Constitution.

H. Considering the contentions of both the parties, Hon'ble the Supreme Court has listed a matter

to be heard before a 15-Judge Bench for deciding the Constitutionality of the Constitution (One Hundred and Seventh) Amendment Act, 2024. For the sake of convenience, the Court has framed the following issues:

1. Whether the basic features of the Constitution can be changed? Does Transformative Constitutionalism justify changing the basic features of Constitution?
2. Can the power to amend the basic features of the Constitution be given to the People of India?
3. Is the Constitution (One Hundred and Seventh) Amendment Act, 2024 a colorable piece of legislation that attempts to ensure Parliamentary Supremacy under the cloak of Public Referendum?

*Note: Students have the discretion to frame any more additional issues if they feel that the present issues are insufficient to deal with the entirety of the case. However, the additional issues have to be a maximum of 2 issues given that the students do not alter or remove the present issues created.*