TEXT MISREAD, BASIC STRUCTURE MISAPPLIED: THE 100% RESERVATIONS VERDICT

Shrutanjaya Bhardwaj[†]

Abstract

In Chebrolu Leela Prasad Rao v. *State of Andhra Pradesh (the 100% reservations judgment), the Supreme Court interpreted the non-obstante clause in Schedule V, Paragraph 5(1) of the Constitution erroneously. It read the phrase "notwithstanding anything in this Constitution" as "*notwithstanding anything in Article 245 and subject to Part III of the Constitution*". It did so, I demonstrate, by breaching three well-established rules of interpretation: first, that unambiguous text should be interpreted literally; second, that no words in the Constitution are otiose; and third, that the same phrase when used in different places in the Constitution carries the same meaning in all those places.*

The Court further held that the non-obstante clause must be interpreted consistent with the basic structure of the Constitution, and since Article 14 is part of the basic structure, the non-obstante clause cannot override Article 14. I argue that this reasoning places the cart before the horse. Since the basic structure is a reflection of the original Constitution, it is implausible that an original provision could be inconsistent with the basic structure. Further, because the basic structure doctrine has been held to apply prospectively from 1973, it cannot apply to original provisions of the Constitution enacted in 1950.

Keywords: Non-obstante, Notwithstanding, Basic Structure, interpretation, Schedule V.

[†] Shrutanjaya Bhardwaj is an advocate practising in New Delhi. He has completed his LL.M. from University of Michigan Law School (2019) and his B.A. LL.B. (H.) from National Law University, Delhi (2017). The author is grateful to the anonymous peer reviewer for their helpful suggestions.

1. Introduction

In *Chebrolu Leela Prasad Rao* v. *State of Andhra Pradesh* ("*Chebrolu*")[1] a constitution bench of the Supreme Court invalidated a notification issued by the Governor of Andhra Pradesh providing for 100% reservations in selections to the post of teachers in the scheduled areas of Andhra Pradesh. The notification was struck down on multiple grounds and the Court laid down several legal and constitutional propositions in the process. This comment focuses on and critiques only one of those propositions – not laid down in express terms but very clearly implied nonetheless – i.e. that the non-obstante clause in Schedule V, Paragraph 5(1) of the Constitution, which reads "notwithstanding anything in this Constitution", in fact means "notwithstanding Article 245 and subject to Part III of this Constitution". The Court used tools of textual interpretation as well as the idea of "basic structure" to arrive at this conclusion. I argue, through this comment, that the Court made a mistake on both counts.

2. Facts and Judgment

Schedule V of the Constitution deals with the administration and control of Scheduled Areas and Scheduled Tribes.[2] Paragraph 6 of the Schedule confers power on the President to declare areas as Scheduled Areas.[3] Paragraph 5 of the Schedule, which was at the heart of the dispute in *Chebrolu*, confers wide-ranging powers on the Governor. Specifically, Paragraph 5(1) provides as follows:

> *Notwithstanding anything in this Constitution*, the Governor may by public notification direct that any particular Act of Parliament or of the Legislature of the State shall not apply to a Scheduled Area or any part thereof in the State or shall apply to a Scheduled Area or any part thereof in the State subject to *such exceptions and modifications as he may specify* in the notification and any direction given under this sub-paragraph may be given so as to have retrospective effect.[4]
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> (emphasis supplied)

Purportedly in exercise of powers under Paragraph 5(1), the Governor of Andhra Pradesh issued G.O. Ms. No. 3 on 10 January 2000 providing that certain legislations and rules made under them "shall apply to the appointment of posts of teachers in schools situated, in the Scheduled Areas in the State subject to the modification that all the posts of teachers in the Schools… shall be filled in by the local Scheduled Tribe candidates only".[5] Of these candidates, 33½% shall be women.[6] Thus, 100% of the posts of teachers in the areas were reserved for members of Scheduled Tribes.

G.O. Ms. No. 3 was challenged in the High Court of Andhra Pradesh. The High Court rejected the challenge, after which the appellants approached the Supreme Court in appeal.

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1 2020 SCC Online SC 383.
2 Schedule V, the Constitution of India.
3 Ibid, at ¶6.
4 Supra 2, at ¶ 5(1).
5 Supra 1, at ¶8.
6 Supra 1, at ¶8.

Inter alia, they took the ground that 100% reservations constitute a denial of the guarantee of equality enshrined in Articles 14 and 16.[7] In response, it was submitted that the non-obstante clause in Paragraph 5(1) overrides Part III of the Constitution, thereby pre-empting all arguments from Articles 14 and 16.[8] The Supreme Court framed seven issues and sub-issues in total and rendered its decision on all of them. Of those, the issue and sub-issue relevant to this comment are extracted below:

> *1. What is the scope of Paragraph 5(1), Schedule V to the Constitution of India?*
>
> *a. ...*
>
> *b. ...*
>
> *c. Can the exercise of the power conferred therein override fundamental rights guaranteed under Part III?*
>
> *d. ...*

The Court answered sub-issue (c) in the negative, holding that the Governor's power under Schedule V, Paragraph 5(1) "is subject to some restrictions"[9] and "cannot override fundamental rights guaranteed under Part III of the Constitution".[10] I critique this finding below.[11]

3. Analysis

In reaching the conclusion that the non-obstante clause in Schedule V, Paragraph 5(1) does not override Part III, the Court adopted a two-pronged reasoning. The first aspect of the Court's reasoning is textual interpretation of the non-obstante clause. The second aspect is the invocation of the idea of "basic structure" to whittle down the wide textual scope of the clause. I suggest that the Court's reasoning is erroneous on both counts.

3.1 Textual Constitutional Interpretation

Observing that a non-obstante clause must be interpreted "in the context and purpose for which it has been carved out",[12] the Court holds that the clause "Notwithstanding anything in this Constitution" in Schedule V, Paragraph 5(1) only means that the Governor can exercise his or her powers – which are legislative in nature – in spite of Article 245 of the Constitution

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7 Supra 1, at ¶15.

8 Supra 1, at ¶31.

9 Supra 1, at ¶154.

10 Supra 1, at ¶154.

11 It may be noted as a preliminary point that it was unnecessary for the Court to decide this issue at all. This is in view of the Court's finding on issue 1(a), where the Court found that the Governor acted *ultra vires* Schedule V and declared the notification as invalid on that ground alone.
See Supra 1, at ¶51.
The conflict between the non-obstante clause in Schedule V Paragraph 5(1) and Part III was hence a moot issue and should not have been decided.
See Govt. of National Capital Territory v. Inder Pal Singh Chadha, (2002) 9 SCC 461, at ¶6: "*Constitutional issues should not be decided unless that is necessary to do for the purpose of giving relief in a given case*."

12 Supra 1, at ¶75.

which confers legislative powers only on Parliament and State Legislatures.[13] In other words, the Court reads the non-obstante clause as "Notwithstanding anything in Article 245". As a sequitur, it holds that the Governor cannot exercise his or her powers contrary to Part III of the Constitution. This conclusion is erroneous for three reasons.

First, it is a well-settled rule of interpretation that when the language used in a provision is clear and unambiguous, full effect must be given to it.[14] Specifically, it has been held that the Court cannot use "*a priori* reasoning as to the probable intention of the legislature in order to change the otherwise clear meaning of constitutional text"[15]. This principle has been applied to interpret the Constitution's non-obstante clauses as well.[16] In *Madhav Rao Jivaji Rao Scindia* v. *Union of India* ("*Privy Purses case*")[17], the Court cited with approval the following proposition that was laid down in an earlier judgment[18]:

> [T]he non obstante clause was to be understood as operating to set aside as no longer valid *anything contained in relevant existing laws which were inconsistent with the new enactment.*[19]
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> (emphasis supplied)

The words used in the non-obstante clause of Schedule V, Paragraph 5(1) – "anything in this Constitution" – are crystal clear in excluding *all* provisions of the Constitution. Yet, the Court holds that the Governor's powers are "not meant to prevail over the Constitution"[20] and must be exercised "subject to Part III and other provisions of the Constitution".[21] This reading is not only different from but also diametrically opposite to the plain textual meaning of the non-obstante clause.[22] In the absence of any ambiguity in the text, I submit that there was no occasion for the Court to hold that the clause does not mean what it says.

Second, an equally well-settled rule is the rule against redundancy, which says that no word occurring in the Constitution can be held as otiose.[23] The doctrine *maxim ut res magis valeat quam pereat* implies that every statute must be interpreted so as to give full effect to it.[24] However, the Court's reading of the non-obstante clause in Schedule V, Paragraph 5(1) renders it otiose. Article 245(1), which confers legislative powers on Parliament and State Legislatures, itself opens with the words "Subject to the provisions of the Constitution"[25]. Therefore, even in the absence of the non-obstante clause in Schedule V, Paragraph 5(1), the Governor's powers under that provision would have prevailed over Article 245(1).[26] This makes it clear that the width of the non-obstante clause is larger than what the Court erroneously suggests.

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13 Supra 1, at ¶74.
14 See Padma Sundara Rao v. State of Tamil Nadu, (2002) 3 SCC 533, at ¶12-14; Union of India v. Hansoli Devi, (2002) 7 SCC 273, at ¶9; Nathi Devi v. Radha Devi Gupta, (2005) 2 SCC 271, at ¶13.
15 Sri Venkataramana Devaru v. State of Mysore, 1958 SCR 895, at ¶25.
16 Madhav Rao Jivaji Rao Scindia v. Union of India, (1971) 1 SCC 85, at ¶374 (Shah, J. for himself and for six others).
17 Supra 16.
18 Aswani Kumar Ghosh v. Arabind Bose, 1953 SCR 1.
19 Supra 16.
20 Supra 1, at ¶78.
21 Supra 1, at ¶78.
22 On the overriding effect of a non-obstante clause contained in a constitutional provision, see K.M. Nanavati v. State of Bombay, (1961) 1 SCR 497, at ¶20.
23 See Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. v. Ram Gopal Sharma, (2002) 2 SCC 244, at ¶13.
24 See Girnar Traders (3) v. State of Maharashtra, (2011) 3 SCC 1, at ¶181.
25 Art. 245(1), the Constitution of India.
26 Samatha v. State of Andhra Pradesh, (1997) 8 SCC 191, at ¶85.

Interestingly, the Court does recognize the rule against redundancy but applies it wrongly. It notes that Article 13(2) prohibits the State from making any "law" that is contrary to Part III[27], and if the non-obstante clause in Schedule V, Paragraph 5(1) is read as excluding Part III, Article 13(2) will be rendered redundant.[28] It is tough to understand the Court's logic here. Nobody contended that the non-obstante clause has the effect of repealing Article 13(2) completely. Since Article 13(2) applies to *any* law made by *any* State authority, not just the ones made by the Governor under Schedule V, Paragraph 5(1)[29], it would continue to strike at the parliamentary or state legislation that infringes upon fundamental rights, irrespective of how the non-obstante clause is interpreted. Saying that Article 13(2) is *excluded* for the limited purposes of Schedule V, Paragraph 5(1) is different from saying that it is *redundant*. The Court, I argue, overlooks this obvious distinction.

Third, another well-settled rule of interpretation is that a word or phrase that is used at multiple places in the same enactment carries the same meaning at each of those places unless the context compels a different interpretation.[30] This rule must also govern the phrase "Notwithstanding anything in this Constitution". A quick search through the Constitution reveals that this phrase is used in thirty-seven different provisions.[31] Given that the Constitution is an internally consistent document – a "logical whole"[32] – it would have been prudent on part of the Court to examine these thirty-seven provisions and how they have been interpreted in the past. That examination would have revealed that the other non-obstante clauses have been held to be "all embracing"[33]. For instance, the clause in Article 363(1), which bars judicial interference in disputes arising from treaties or arrangements between the Indian State and Rulers of former princely states,[34] has been interpreted as overriding *inter alia* the critical Articles 32[35] and 226[36]. Likewise, the non-obstante clause of Article 329, which bars judicial review of any law dealing with delimitation of constituencies or the allotment of seats to constituencies and challenges to elections except through election petitions prescribed under an appropriate legislation,[37] has been interpreted to exclude Article 226.[38] A similar exclusion

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27 Art. 13(2), the Constitution of India.

28 Supra 1, at ¶77.

29 See Arts. 12, 13(2) and 13(3)(a), the Constitution of India.

30 See Bhogilal Chunilal Pandya v. State of Bombay, 1959 Supp. (1) SCR 310, at ¶5; Raghubans Narain Singh v. Uttar Pradesh Government, (1967) 1 SCR 489, at ¶7; Suresh Chand v. Gulam Chisti, (1990) 1 SCC 593, at ¶17; Punjab Land Development and Reclamation Corpn. Ltd. v. Presiding Officer, Labour Court, (1990) 3 SCC 682, at ¶67.

31 See generally the Constitution of India.

32 Kihoto Hollohan v. Zachillhu, 1992 Supp (2) SCC 651, at ¶27.

33 State of Seraikella v. Union of India, 1951 SCR 474, at ¶16 (Kania, C.J. for himself and Vivian Bose, J.). See also R. C. Poudyal v. Union of India, 1994 Supp (1) SCC 324, at ¶176 (M.N. Venkatachaliah, J. for himself and two others, holding that if such a non-obstante clause occurs in a constitutional provision that was inserted by way of amendment, it would override all other provisions of the Constitution except to the extent that it encroaches upon the basic structure.)

34 Art. 363(1), the Constitution of India.

35 Supra 16, at ¶129 (Shah, J. for himself and six others).

36 Supra 16, at ¶129 (Shah, J. for himself and six others).

37 Art. 329, the Constitution of India.

38 N.P. Ponnuswami v. Returning Officer, Namakkal Constituency, 1952 SCR 218, at ¶14; Mohinder Singh Gill v. Chief Election Commr., (1978) 1 SCC 405, at ¶21 (Krishna Iyer, J. for himself and two others), at ¶126 (Goswami, J. for himself and Shinghal, J.); Election Commission of India v. Ashok Kumar, (2000) 8 SCC 216, at ¶30.

has been implied from Articles 262[39], 243-ZG[40] and 243-O[41]. Even Article 13(2) has been held to be excluded by the non-obstante clause contained in the now-repealed Article 31(4).[42] It is difficult to spot anything different in the context of Schedule V that would warrant the drastically opposite interpretation placed upon the clause by the Court in *Chebrolu*.

Besides, a holistic look at the Constitution would also reveal that not all non-obstante clauses are worded so expansively as to exclude all provisions of the Constitution. Where the Framers wanted to exclude only a select few provisions, they expressly mentioned those provisions in the non-obstante clause. For instance[43], Article 6 applies "notwithstanding anything in Article 5",[44] Article 226 applies "notwithstanding anything in Article 32",[45] Article 253 applies "notwithstanding anything in the foregoing provisions of this Chapter"[46], and Article 276 applies "notwithstanding anything in Article 246"[47]. Of particular relevance is Article 363(1) which opens with the phrase "notwithstanding anything in this Constitution but subject to the provisions of Article 143"[48] – a great example of the fact that the word "anything" means what it says, and any intended exclusions would have to be separately provided. Therefore, the Court erred in not examining non-obstante clauses occurring elsewhere in the Constitution.

In summation, the Court held that the non-obstante clause should be read as "Notwithstanding anything in Article 245 and subject to Part III of the Constitution", notwithstanding its clear text. I have argued above that the Court's conclusion is contradicted by well-established principles of constitutional interpretation. In an apparent attempt to redeem its hitherto shoddy reasoning, then, the Court turns to the principle of basic structure.

3.2 The Basic Structure

It was contended before the Court, rightly, that original provisions of the Constitution such as Schedule V, Paragraph 5(1) cannot be tested on the anvil of the basic structure. The doctrine of basic structure was evolved in the specific context of constitutional amendments.[49] Further, it has a temporal cut-off – as held in *Waman Rao* v. *Union of India*[50] and later affirmed in *I.R. Coelho* v. *State of Tamil Nadu* ("*I.R. Coelho*"),[51], the doctrine cannot be applied even to constitutional amendments that were made before April 24, 1973. It would follow that the question of applying the doctrine to original provisions that existed in the Constitution as on January 26, 1950 does not arise.

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39 Atma Linga Reddy v. Union of India, (2008) 7 SCC 788, at ¶34, 38; State of Karnataka v. State of Tamil Nadu, (2017) 3 SCC 362, at ¶48.

40 Anugrah Narain Singh v. State of Uttar Pradesh, (1996) 6 SCC 303, at ¶34.

41 State of Uttar Pradesh v. Pradhan Sangh Kshettra Samiti, 1995 Supp (2) SCC 305, at ¶44-45.

42 State of Bihar v. Maharajadhiraja Sir Kameshwar Singh of Darbhanga, 1952 SCR 889, at ¶12-13 (Patanjali Sastri, C.J. for himself and Aiyar, J.); ¶47, 49-50 (Mahajan, J. for himself); ¶97-98, 105, 110 (Mukherjea, J. for himself).

43 See also Arts. 92(2), 120, 133 and 331, the Constitution of India.

44 Art. 6, the Constitution of India.

45 Art. 226(1), the Constitution of India.

46 Art. 253, the Constitution of India.

47 Art. 276, the Constitution of India.

48 Art. 363(1), the Constitution of India.

49 Minerva Mills Ltd. v. Union of India, (1980) 3 SCC 625, at ¶12 (Chandrachud, C.J. for himself and three others).

50 Waman Rao v. Union of India, (1981) 2 SCC 362, at ¶51.

51 I.R. Coelho v. State of Tamil Nadu, (2007) 2 SCC 1, at ¶151.

The judgment records the Court's agreement with this argument. According to the Court, the basic structure doctrine was "not at all germane"[52] to the case as the dispute was not about the validity of any constitutional amendment but pertained only to validity of a notification issued by the Governor. Then, in a drastic U-turn, the Court holds:

> Every action of the legislature, whether it is Parliament or State, has to conform with the rights guaranteed in Part III of the Constitution. *The original scheme of the Constitution itself so provides*…. The Constitution has not conferred any arbitrary power on any constitutional functionary…. The provision of the Fifth Schedule beginning with the words "notwithstanding anything in this Constitution" cannot be construed as taking away the provision *outside the limitations on the amending power and has to be harmoniously construed consistent with the foundational principles and the basic features of the Constitution*.[53]
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> (emphasis supplied)

This is a blatant contradiction in terms. The Court applied the doctrine of basic structure to restrictively interpret – indeed, to read down – an original provision of the Constitution merely nine paragraphs after holding that the doctrine was irrelevant to the case. This is problematic not only because it violates the case law cited before (and by) the Court, but also because it turns the concept of basic structure on its head.

The "basic structure" of the Constitution has always been understood as implying a set of principles that are embodied in the Constitution as a whole.[54] After all, the doctrine of basic structure is a doctrine of constitutional identity[55]; it demands that the original shape of the Constitution not be destroyed.[56] In *M. Nagaraj* v. *Union of India*[57], the Court described the basic structure as a set of "systematic and structural principles underlying and connecting various provisions of the Constitution" which "give coherence" to the document and make it "an organic whole".[58] This idea of *coherence* is crucial. There cannot be inconsistencies within the Constitution, and certainly not between an express provision of the Constitution on the one hand and the values that we see as the "basic structure" of the document on the other hand. For if there are inconsistencies, on what basis can the values be termed as *basic* to the *entire* document? Therefore, I submit, the only way to find the document's basic features is to first look at its text, and to do so *holistically*. In the words of Beg, J.,

> [T]he doctrine of "a basic structure" was nothing more than a set of obvious inferences relating to the intents of the Constitution-makers arrived at by applying the established canons of construction rather broadly, as they should be so far as an organic constitutional document, meant to govern the fate of a nation, is concerned. But, in every case where reliance is placed upon it, …what is put forward as part of "a

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52 Supra 1, at ¶61.
53 Supra 1, at ¶61-62, 70.
54 See Indira Nehru Gandhi v. Raj Narain, 1975 Supp SCC 1, at ¶691 (Chandrachud, J. for himself); State of Karnataka v. Union of India, (1977) 4 SCC 608, at ¶120 (Beg, J. for himself); M. Nagaraj v. Union of India, (2006) 8 SCC 212, at ¶23-25.
55 M. Nagaraj v. Union of India, (2006) 8 SCC 212, at ¶28.
56 Ibid.
57 Supra 56.
58 Supra 56, at ¶24.

> basic structure" must be justified by references to the express provisions of the Constitution. That structure does not exist *in vacuo*. *Inferences from it must be shewn to be embedded in and to flow logically and naturally from the bases of that structure.*[59]
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> (emphasis supplied)

The Court's mistake in *Chebrolu* lies in its non-holistic approach to viewing the basic structure. The Court places the cart before the horse by *first* identifying the principles of Part III as part of the basic structure and *then* restrictively interpreting the all-encompassing non-obstante clause in Schedule V, Paragraph 5(1) as being subject to the those "basic features".[60] Rather than deriving the basic structure from the text, the Court applies its notions of basic structure to the text. If the Court had adopted the right process in determining the basic structure, it would have had to conclude that an *absolute* principle of non-arbitrariness – admitting of no exceptions whatsoever – is not part of the basic structure.

As an aside, it may also be worthwhile to briefly examine this issue *de hors* precedent. There is a larger conceptual issue regarding the basic structure at play here: is it correct to say that the basic structure *emanates from* the Constitution and is thus defined and limited by constitutional text? Or is the basic structure more accurately imagined as a set of objective principles *predating* the Constitution, such that even constitutional text is subservient to those principles? If the latter view were adopted, the non-obstante clause of Schedule V, Paragraph 5(1) would be seen as subservient to the larger principle of equality which predates the Constitution, and hence the Court's decision in *Chebrolu* would not seem so bizarre after all.[61] The position taken by the Bavarian Constitutional Court (Germany) on this point is apposite.

> There are constitutional principles that are so fundamental and so much an expression of *a law that has precedence even over the constitution* that they also bind the framers of the constitution, and other constitutional provisions that do not rank so high may be null and void because they contravene these principles.[62]
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> (emphasis supplied)

The reference to a higher law that "bind[s] the framers" makes it clear that the Bavarian Court views its constitution's fundamental principles as *predating* and *superior* to the document. While there may be nothing inherently wrong about viewing the Constitution as inferior to some meta values[63], problems begin to surface when one imagines a related concern: *who* decides that a constitutional provision is void? The likely candidate for this job – the judiciary – owes its very existence to the Constitution and, to use Nani Palkhivala's metaphor,

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59 State of Karnataka v. Union of India, (1977) 4 SCC 608, at ¶120 (Beg, J. for himself).

60 Supra 1, at ¶62, 70.

61 The author grateful to the anonymous peer reviewer for suggesting this nuance.

62 Cited in The Southwest State Case 1 BVerfGE 14 (1951), quoted in Gautam Bhatia, *The Basic Structure Doctrine: Notes from Germany*, Indian Constitutional Law and Philosophy Blog, available at https://indconlawphil.wordpress.com/2013/09/24/the-basic-structure-doctrine-notes-from-germany/., last seen on 06.06.2020.

63 A fuller discussion on this issue would address other aspects such as the anti-democratic implications of unelected judges striking down constitutional provisions as invalid, and why that is worse than the present form of the Indian basic structure doctrine. That discussion is, however, beyond the scope of this paper.

is a "creature of the Constitution" and cannot act against it.[64] This is merely an extension of the common law doctrine of *ultra vires*- unless the Constitution empowers a court to declare parts of the document as invalid, the court cannot undertake such a project.[65] Neither is there any other entity (except of course the people) the existence of which does not flow from the Constitution. All constitutional entities are hence bound by the terms of the Constitution, and none of them wields the power to invalidate parts of constitutional text (even if it is assumed that some meta principles are superior to the Constitution). For this reason, the Bavarian Court's conception of fundamental constitutional features must be rejected as unimplementable.

Let us now return to *Chebrolu*. As discussed above, the Court restricted the scope of the non-obstante clause in Schedule V, Paragraph 5(1) so as to harmonize the clause with the value of non-arbitrariness. The apparent assumption underlying the Court's thought process is that a value that is part of the basic structure (such as non-arbitrariness) can never be excluded by other provisions of the Constitution, not even for limited purposes or in limited spheres. But this assumption flies in the face of the Court's own judgment in *I.R. Coelho*[66] where it acknowledged that the principle of equality can be excluded by the Constitution for limited purposes as was done by the Ninth Schedule[67], and at the same time held that the mere *excludability* of Article 14 through "limited exceptions… made for limited purposes" would not "prevent it from being part of the basic structure".[68]

The Court's incorrect attitude towards the basic structure is further betrayed by the reliance it places on *R.C. Poudyal* v. *Union of India* ("*R.C. Poudyal*").[69] That case concerned a non-obstante clause which was identical to the one in Schedule V, Paragraph 5(1) with the exception that it appeared in Article 371-F which was inserted by a constitutional amendment in 1975.[70] Readers will immediately note that this provision falls within the category of provisions that *can* be adjudged against the basic structure, for it is a constitutional amendment inserted after 24 April 1973.[71] It is not surprising, therefore, that the Court in *R.C. Poudyal* held that the non-obstante clause in Article 371-F would have to be "construed harmoniously consistent with the foundational principles and basic features of the Constitution".[72] It went on to conclude that the clause would exclude all provisions of the Constitution except to the extent that the exclusion impinged on the basic structure.[73] Therefore, *R.C. Poudyal* did not offer any support to the Court in *Chebrolu* and was wrongly relied upon to reach an erroneous finding.

For these reasons, the Court's conclusion that the non-obstante clause in Schedule V, Paragraph 5(1) does not exclude Part III is manifestly wrong. It is a product of internal

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64 See Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225, at ¶390. See also ¶1604 (Mathew, J.): "*Apart from its legal validity derived from the Indian Independence Act, its norms have become efficacious and a Court which is a creature of the Constitution will not entertain a plea of its invalidity*."

65 For an example of the application of the doctrine of *ultra vires* in Indian constitutional law, see Bennett Coleman & Co. v. Union of India, (1972) 2 SCC 788, at ¶40.

66 I.R. Coelho v. State of Tamil Nadu, (2007) 2 SCC 1.

67 Ibid, at ¶143.

68 Supra 67, at ¶130.

69 Supra 1, at ¶71.

70 R. C. Poudyal v. Union of India, 1994 Supp (1) SCC 324.

71 Waman Rao v. Union of India, (1981) 2 SCC 362, at ¶51; I.R. Coelho v. State of Tamil Nadu, (2007) 2 SCC 1, at ¶151.

72 Supra 70, at ¶102.

73 Supra 70, at ¶176.

contradiction within the judgment, is contrary to prior case law on basic structure, and turns the concept of basic structure on its head.

4. Conclusion

The Court decided issue 1(c) wrongly. It first overlooked well-established principles of textual constitutional interpretation and effectively converted a non-obstante clause into its exact opposite – a "subject to" clause. It then misapplied the doctrine of basic structure to read down an original provision of the Constitution. It is hoped that the Court will soon have the chance to correct this error.