



Relationship Between IXth Schedule of Indian Constitution and Section 118 of Himachal Pradesh Tenancy and Land Reforms Act (HPTLRA), 1972: An Analysis

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(Received 20 November, 2024, Accepted 22 January, 2025)

(Published by Research Trend, Website: www.researchtrend.net)

ABSTRACT: The Ninth Schedule of the Indian Constitution lists various central and state laws that are shielded from judicial review. It was introduced through the Constitution (First Amendment) Act, 1951. Initially, 13 laws were placed under this schedule. This amendment was a response to the Supreme Court's ruling in the *Shankari Prasad* case, which held that parliamentary laws could be contested if they infringed upon fundamental rights.

The Ninth Schedule was established by incorporating Article 31B into the Constitution, alongside Article 31A. These provisions aimed to safeguard legislation concerning agrarian reforms and the abolition of the Zamindari system. Laws under the Ninth Schedule cannot be challenged in courts for violating the fundamental rights enshrined in the Constitution. This schedule grants the legislature the authority to protect certain laws from judicial scrutiny through constitutional amendments. The relationship between the 9th Schedule of the Indian Constitution and the Himachal Pradesh Tenancy and Land Reforms Act (HPTLRA), 1972, illustrates the intersection of legislative power and judicial review in land reform matters. The 9th Schedule, introduced by the First Amendment Act of 1951, is essential in protecting specific laws, particularly those relating to land and agrarian reforms, from judicial scrutiny. This article examines how the 9th Schedule influences the HPTLRA, 1972, and its impact on the state's agrarian policies.

Keywords: Ninth Schedule, Himachal Pradesh Tenancy and Land Reforms Act, 1972, Indian Constitution, fundamental rights.

INTRODUCTION

Property, as a socio-legal institution, takes different forms across various cultures and legal systems. Despite these differences, the core concept and definition of property remain largely consistent across civilizations (Macpherson, 1978). The right to property is considered a natural and inherent right of individuals. After the Constitution of India came into force, the state prioritized creating a new social order in alignment with constitutional directives. Initially, the right to property was enshrined in the chapter on fundamental rights. However, in independent India, no other fundamental right resulted in as much conflict or litigation between the government and citizens as the right to property (Austin, 1966).

A key area of contention revolved around immovable property, particularly land. In the years following independence, both central and state governments enacted extensive legislation to regulate property rights. The government aimed to reform the agrarian economy by granting property rights to farmers, abolishing the Zamindari system, ensuring tenant security, imposing ceilings on landholdings, and redistributing surplus land to the landless. These initiatives sought to fulfill certain directive principles of state policy and establish a socialist society in India (Chaudhry, 2016; Ganguli, 2016).

These reforms significantly disrupted entrenched property interests, leading to widespread legal challenges. Many of these cases revolved around compensation for acquired property, land ownership, land redistribution, and the effective enforcement of land reforms (Chaudhry, 2016; Ganguli, 2016; Heri, 2020). While the Supreme Court of India initially sought to broaden the scope of the right to property, successive constitutional amendments progressively limited it. This ongoing struggle between the judiciary and the legislature over property rights persisted for several decades. Ultimately, the conflict was resolved in 1978 with the enactment of the Constitution (Forty-fourth Amendment) Act. This amendment removed the right to property as a fundamental right, reclassifying it as a statutory right under Article 300A, thereby reducing its level of constitutional protection (Jain, 2018; Heri, 2020).

ROLE OF THE NINTH SCHEDULE IN ADVANCING AGRARIAN REFORMS IN INDIA

The philosophy behind the Indian Constitution traces its roots to the Objective Resolution introduced by Pandit Jawaharlal Nehru, which was adopted by the Constituent Assembly on January 22, 1947 (Basu, 2013; Austin, 1966). This resolution guided the drafting of the Constitution at every stage, laying the foundation for the values enshrined in the Preamble. The Preamble guarantees justice social, economic, and political along with equality of status and opportunity, and freedom of thought, expression, belief, faith, and worship (Basu, 2013). Among the many rights enshrined in the Constitution, the right to property initially held significant importance, safeguarded by three key provisions:

1. Article 31(1): This ensured that no individual could be deprived of their property except through the authority of law.
2. Article 19(1)(f): It granted citizens the right to acquire, hold, and dispose of property by lawful means, such as inheritance or earnings, subject to reasonable restrictions in the public interest.
3. Article 31(2): This mandated that the state could acquire private property, but only with compensation to the owner.

The establishment of a socialist economic order envisioned by Nehru required extensive land acquisition and agricultural restructuring. However, the right to property posed significant obstacles to these reforms. Various states enacted land reform laws, many of which were challenged on the grounds of violating property rights. Courts issued conflicting rulings while the Patna High Court invalidated the Bihar Land Reforms Act in *Kameshwar Singh v. State of Bihar* other high courts, like those in Allahabad and Nagpur, upheld similar laws.

To overcome these legal hurdles and facilitate land reforms, the Constitution (First Amendment) Act, 1951 was introduced on May 29, 1951. This amendment created the Ninth Schedule, initially containing 13 laws, most of which pertained to agrarian reforms. The First Amendment also introduced Articles 31A and 31B to safeguard land reform legislation from being overturned by the courts.

- Article 31A protected laws related to land acquisition, property management, corporate restructuring, and the modification of managing agents' rights, shielding them from challenges based on violations of Articles 14 (equality) and 19 (freedom).
- Article 31B retrospectively validated laws placed under the Ninth Schedule, rendering them immune from being declared void due to inconsistencies with fundamental rights outlined in Part III of the Constitution. This meant that even if a court deemed a law unconstitutional, its inclusion in the Ninth Schedule nullified the judicial decision, ensuring the law's continued validity.

A key distinction exists between Articles 31A and 31B. Article 31A safeguards specific categories of laws, whereas Article 31B provides blanket immunity to all laws listed in the Ninth Schedule, regardless of their nature. As a result, since 1951, the Ninth Schedule has grown significantly, now encompassing nearly 200 laws.

Although Article 31B was originally intended to protect property-related legislation, its scope has expanded over time to cover a broad range of laws unrelated to property rights. This expansion has drawn criticism, as it diverges from the socio-economic purpose for which it was created.

The rationale behind the First Amendment stemmed from the need to expedite agrarian reforms and prevent protracted litigation that delayed land redistribution. Parliamentary debates highlighted concerns over judicial decisions that invalidated Zamindari Abolition Acts, which were deemed crucial to economic development.

In 1971, Article 31C was introduced by the Twenty-fifth Amendment to further empower land reform initiatives, shielding laws aimed at implementing Directive Principles of State Policy. Despite these efforts, the Ninth Schedule has faced scrutiny regarding its objectives and effectiveness.

Ultimately, the Ninth Schedule was instrumental in reshaping India's agrarian structure, redistributing land, and redefining economic power, aligning with the Nehruvian vision of planned development and social justice.

SUPREME COURT'S INTERPRETATION OF THE NINTH SCHEDULE IN THE FAMOUS I.R. COELHO CASE

In the case of *I.R. Coelho v. State of Tamil Nadu*, the Supreme Court addressed a fundamental issue: whether, after April 24, 1973, the date the basic structure doctrine was established, it is permissible for Parliament to shield legislation from fundamental rights by placing them in the Ninth Schedule under Article 31B. The Court also examined the impact of this on judicial review (Jain, 2018).

Judicial review serves as a critical mechanism to prevent the unconstitutional use of power by the legislature and executive. The Ninth Schedule, however, functions as a counterbalance to the principle of separation of powers, designed to create a system of checks and balances between the three branches of government. The primary objective of the Ninth Schedule was to limit the judiciary's authority to assess the validity of legislation enacted by Parliament (Basu, 2013).

Despite this, laws placed under the Ninth Schedule do not automatically benefit from the protections of Article 31B. Each law must undergo individual scrutiny to determine if the constitutional amendment that placed it in the Ninth

Schedule violates or undermines the basic structure of the Constitution. Consequently, the Ninth Schedule has, to some extent, lost its original significance concerning the purpose for which it was initially introduced (Heri, 2020).

TAKE OF JUDICIARY ON LAND LAWS

Sri Shankari Prasad Singh Deo v. Union of India was a landmark case in the history of property rights in India. To dismantle the zamindari system, which was prevalent across the country, various state governments enacted Zamindari Abolition Acts. These acts aimed to acquire large tracts of land held by wealthy zamindars and redistribute them to tenants. However, the zamindars contested these laws, arguing that they violated the fundamental right to property.

While the Patna High Court deemed the legislation unconstitutional, the High Courts of Allahabad and Nagpur upheld its validity. The case eventually reached the Supreme Court. During this period, the Union government introduced the Constitution (First Amendment) Act of 1951 to validate the Zamindari Abolition Acts. This amendment limited the right to property by inserting Articles 31A and 31B into the Constitution.

Zamindars challenged the First Amendment in the Supreme Court, asserting that it was unconstitutional as it attempted to curtail the rights guaranteed under Part III of the Constitution, which Article 13(2) prohibits. The Supreme Court dismissed this argument, ruling that Parliament's power to amend the Constitution, including fundamental rights, is provided by Article 368 and does not contravene constitutional provisions.

The court upheld the validity of land reforms, clarifying that they did not restrict the authority of the High Courts under Article 226 to issue writs for enforcing fundamental rights, nor did they limit the Supreme Court's appellate jurisdiction under Articles 132 and 136. Furthermore, Articles 31A and 31B were not found to be ultra vires. The court affirmed that while 'land' falls under the State List, the power to amend the Constitution is exclusively vested in Parliament.

JUDICIAL OVERSIGHT AND THE BASIC STRUCTURE DOCTRINE OF THE CONSTITUTION

While the 9th Schedule provides a shield against judicial review, the Supreme Court has emphasized that laws in the Schedule are not entirely immune from scrutiny. The Court established the Basic Structure Doctrine in the case of *K.K. Verma v. Union of India*, asserting that laws can be reviewed if they alter the fundamental framework of the Constitution. This means that even though the Himachal Pradesh Tenancy and Land Reforms Act, 1972, enjoys protection from challenges based on fundamental rights, it could still be subject to judicial review if found inconsistent with the core principles of the Constitution, such as justice, fairness, and equality.

CONSTITUTION SAFEGUARS REGARDING AGRARIAN STATUTES

In *Sajjan Singh v. State of Rajasthan*, fourteen years after the Supreme Court's ruling in *Shankari Prasad's* case, the Constitution (Seventeenth Amendment) Act, 1964, was contested. This amendment sought to protect numerous agrarian laws from being challenged for infringing on fundamental rights. It expanded the scope of Article 31-A and the Ninth Schedule to safeguard agrarian reforms passed by the states of Kerala and Madras.

The amendment broadened the definition of "estate" in Article 31-A to include jagirs, inams, muafis, and other grants, along with janman rights in Kerala and Madras, as well as ryotwari lands. Additionally, forty-four new acts were added to the Ninth Schedule, shielding them from judicial review on the grounds of fundamental rights violations. By doing so, Parliament reinforced the constitutional amendments introduced earlier through Articles 31A and 31B to facilitate agrarian reform.

In 1955, Parliament further amended Article 31A through the Constitution (Fourth Amendment) Act, 1955, to expand the scope of agrarian reform legislation. The purpose of this amendment was to secure legislative measures promoting agrarian reform by granting them immunity from legal challenges based on fundamental rights. The 1951 introduction of Articles 31A and 31B aimed to support state legislatures in implementing economic policies geared toward land reform.

Parliament recognized the importance of agrarian reform to benefit the large rural population whose livelihoods depended on agriculture. While these constitutional changes did not diminish the High Courts' power to issue writs under Article 226, they ensured that certain agrarian reforms could proceed without legal obstructions.

The framers of the Constitution acknowledged Parliament's authority to amend rights to align with the country's socio-economic needs and progress. Therefore, it is unreasonable to assume that the fundamental rights enshrined in Part III were meant to remain unalterable or beyond the reach of amendments. The inclusion of clauses 2 to 6 in Article 19, allowing the restriction of rights in public interest, reflects the dynamic nature of Part III, balancing the preservation of individual rights with evolving socio-economic policies. Although agrarian reforms could have been partially implemented without Articles 31A and 31B, doing so would have imposed greater financial burdens on the public exchequer.

CONSTITUTIONAL CHALLENGES TO LAND REFORMS

In *Golaknath v. State of Punjab*, the petitioners challenged the validity of the Punjab Security of Land Tenures Act, 1953, and the Mysore Land Reforms Act, 1961 (as amended by Act 14 of 1965) under Article 32 of the Indian

Constitution. A writ petition was filed in 1966 against the State of Punjab and the Financial Commissioner of Punjab. The petitioners argued that provisions of the Acts violated Articles 19(1)(f) and (g) of the Constitution, rendering the laws unconstitutional and inoperative, particularly in relation to surplus land declarations.

Since these Acts were included in the Ninth Schedule through the Constitution (Seventeenth Amendment) Act, 1964, the Supreme Court reconsidered its previous rulings in the Shankari Prasad and Sajjan Singh cases. The Court held that the Seventeenth Amendment was invalid as it contravened Article 13(2), which prohibits Parliament from enacting laws that infringe or abrogate fundamental rights.

In *Kesavananda Bharati Sripadagalvaru and Others v. State of Kerala*, the petitioner contested the Kerala Land Reforms Amendment Acts of 1969 and 1971, arguing that certain provisions infringed upon Articles 14, 19(1)(f), 25, 26, and 31 of the Constitution. During the proceedings, Parliament passed three constitutional amendments: the Twenty-fourth Amendment Act (1971), the Twenty-fifth Amendment Act (1972), and the Twenty-ninth Amendment Act (1972).

The Twenty-fifth Amendment introduced Article 31C, which aimed to implement the directive principles under Articles 39(b) and (c), even if such implementation conflicted with rights enshrined in Articles 14, 19, and 31. It also stipulated that no law effectuating these directive principles could be challenged in court for failing to implement the stated policy.

The Supreme Court upheld the first part of Article 31C, affirming Parliament's authority to pass laws aligning with directive principles, but struck down the second part, declaring it unconstitutional for attempting to preclude judicial review.

THE ROLE OF THE 9th SCHEDULE IN THE HIMACHAL PRADESH TENANCY AND LAND REFORMS ACT, 1972

By including the Himachal Pradesh Tenancy and Land Reforms Act, 1972, in the 9th Schedule, the state legislature ensured that the Act's provisions were shielded from judicial review. This inclusion was significant for several reasons:

- 1. Protection from Legal Challenges:** The inclusion of the Act in the 9th Schedule meant that its provisions could not be contested on the grounds of fundamental rights violations, such as Article 14 (Right to Equality) or Article 19 (Freedom of Speech and Expression). This protection was crucial in allowing the government to implement land reforms without interference from vested interests.
- 2. Advancing Social Justice:** The protection offered by the 9th Schedule allowed the government to focus on land reform without the delays caused by legal disputes. It enabled the redistribution of land to marginalized groups, aligning with the state's economic and social objectives.
- 3. Legislative Intent:** Including the Act in the 9th Schedule reflected the legislature's intent to prioritize land reform as a tool for socio-economic justice, aiming to benefit historically disadvantaged groups like tenants, agricultural labourers, and landless farmers.

JUDICIAL INTERPRETATION OF SECTION 118 OF H.P. TENANCY AND LAND REFORMS ACT, 1972

The Himachal Pradesh High Court in *Smt. Sudarashana Devi v. Union of India* clarified the intent behind the Himachal Pradesh Tenancy and Land Reforms Act, 1972. The court emphasized that the primary objective of the Act is to prevent agricultural land from falling into the hands of non-agriculturists, thus safeguarding the land resources of the state. The Act restricts the transfer of land to non-agriculturists to protect the interests of poor farmers. However, the court noted that land constructed for non-agricultural purposes, not serving agricultural needs, is excluded from the restrictions of Section 118.

In the case of *Nirmal Singh v. Randhir Sharma*, the issue was whether a non-agriculturist needed government permission under Section 118(2)(i) of the Act. The court concluded that the land in question, being a constructed area not subservient to agriculture, fell outside the definition of 'land' in the context of Section 118. Therefore, no permission was necessary for its transfer. The court further clarified that the term 'land' under Section 118 covers all types of land in Himachal Pradesh, including sites and structures, whether for agricultural or non-agricultural purposes, except for constructed areas in municipal limits that are not related to agriculture.

In *Krishan Singh and Others v. Smt. Krishna*, the Financial Commissioner reiterated that the exclusion under Section 118 applies only to constructed areas that are not used for agricultural purposes, even if the area is recorded as non-arable or as a building site. Such land is still considered 'land' under the Act unless it is a constructed area with no agricultural use.

A similar issue arose in *Smt. Rinchin Tsomo v. State of Himachal Pradesh*, where the land in question, located in a town area with no agricultural use, was deemed outside the scope of 'land' under Section 2(7) of the Act. The court emphasized that since the area was covered by permanent structures and not used for agriculture, it did not fall under the Act's restrictions.

In *Mrs. Peter Butt v. Sister Roseline Kokara*, the court outlined that when the purpose of the land is clear (i.e., agricultural or subservient to agriculture), it is the intended purpose that determines its classification. However, if

the purpose is unclear, the actual use of the land is what matters.

Lastly, in *Pradeep Kumar Sharma v. State of Himachal Pradesh*, the High Court addressed whether the state government could grant or deny permission under Section 118 without providing reasons. The court expressed dissatisfaction with the absence of clear guidelines under Section 118 and Rule 38A of the Himachal Pradesh Tenancy and Land Reforms Rules, 1975, noting that the rules had been in place for years without the necessary directives for proper implementation.

CONCLUSIONS

The Himachal Pradesh Tenancy and Land Reforms Act, 1972, played a pivotal role in the state's agrarian reform efforts, aiming to reduce inequality and improve the welfare of the rural population (Jain, 2023). The inclusion of the Act in the 9th Schedule allowed for its smooth implementation, free from challenges that could have delayed or derailed the reforms. However, despite this protection, the judiciary retains the power to ensure that the law aligns with the Constitution's fundamental values, particularly concerning social justice and fairness. Ultimately, the Act exemplifies the state's commitment to social and economic justice, while also highlighting the evolving role of the judiciary in safeguarding constitutional integrity.

Acknowledgement. The author extends heartfelt gratitude to Shri Prabodh Saxena, IAS, Chief Secretary, Government of Himachal Pradesh, for his invaluable guidance, unwavering encouragement, and generous support throughout the course of this study. His visionary leadership, steadfast commitment to progressive governance, and deep personal interest in the subject matter have been instrumental in shaping the direction and successful completion of this research. His continued support served as a constant source of inspiration and clarity, for which the author remains sincerely thankful.

Conflict of Interest. None.

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