CHAPTER IV

ANALYSIS OF LAWS IN THE NINTH SCHEDULE

Introduction

The Constitution of a country lays down the basic structure of the political system under which its people are to be governed. It establishes the main organs of the State—the Legislature, the Executive and the Judiciary, defines their powers, demarcates their responsibilities and regulates their relationships with each other and with the people. In a Democracy, Sovereignty vests in the people and ideally the people govern themselves. But, with the growing complexities of the administration and the size of the nation-States, direct Democracy is no more feasible. In the modern representative democracies, people exercise their inalienable right to decide how and by whom they should be governed. The very first and the most fundamental application of their Sovereignty by the people is in giving to themselves a Constitution which outlines the ground rules under which certain powers are transferred to different organs of the State and are to be exercised by them.

The Drafting Committee at the time of making of the our Constitution was dominated by eminent Lawyers and great Statesmen accustomed as they were to the ways and days of colonial rule, the Constitution as it finally emerged had to be and indeed was property-oriented. The right to property was itself introduced as a Fundamental Right. It could be enforced in a court of law but the right to subsist, which was the most important requirement of the vast millions of Indians was relegated to the position of a Directive Principle which was not justifiable. The Directive Principles also require the State to direct its policies towards securing that the
ownership and control of the material resources of the State. With the objective to remove the long existing disparities in the land holdings in the country since the time of British rule, the First Amendment was made to the Constitution by the Prime Minister Jawahar Lal Nehru Government in 1951 to abolish the Zamindari system.

While moving for the reference of the Constitution (First) Amendment Bill, 1951 to a select Committee, Prime Minister Jawahar Lal Nehru referred to the possibility of a conflict between the Fundamental Rights and the Directive Principles and explained the difficulty thus:

"The real difficulty which has come before us is this: the Constitution lays down certain Directive Principles of State Policy and after long discussion we agreed to them and they point out the way we have got to travel. The Constitution also lays down certain Fundamental Rights. Both are important. The Directive Principles of State policies represent the ideals which should be implemented by the State for establishing a welfare State".

Guided by the Directives the Central and State Governments have tried to the best of their resources to implement large number of directives. Under Article 39(b) the Governments have abolished the old institution of hereditary proprietors, such as; Zamindars, Jagirdars etc., and made the tillers real owners of the land. To prevent concentration of land holdings even in actual cultivation many States have enacted legislation fixing a ceiling. Untouchability, the age old curse has been made an offence. The Government has fixed minimum wages for the workers. The establishment of Panchayats. The amendments made by the Government are for the socio-economic reforms to be introduced by the Government. It was alleged that court were standing in the way of implementing the Directive Principles and hence Ninth Schedule is important.
The question of implementation of Directive Principles and the Fundamental Rights has led to the confrontation between the Parliament and the Judiciary. In number of cases the Supreme Court has given many Directive Principles the status of Fundamental Rights. Like Article 45 free and compulsory education, Article 39(d) equal pay for equal work, legal aid and speedy trial under Article 21 etc.

4.1 Aims and objectives of Constitutional amendments made to the Ninth Schedule

If we take a look at the Ninth Schedule we find that all the fourteen Constitutional amendments which were made to the Schedule had some objective to be fulfilled but the later amendments in the Schedule show that the Government deviated from its original objective leading to its misuse. We shall examine the objective of these Constitutional amendments in the following part.

4.1.1 First Amendment Act 1951: challenge to Fundamental Right to Property

The First amendment enforced on 18 June 1951, was made to fully secure the validity of the Zamindari abolition laws and was also made to put some reasonable restrictions on the freedom of speech. This amendment amended Articles 15,19,85,87,174,176,341,342,372 and 376. It inserted Article 31A and 31B and inserted Ninth Schedule in the Constitution to protect the laws from Judicial Review, which were contrary to the Constitutionally guaranteed Fundamental Rights. These laws encroached upon property rights, freedom of speech and equality before law. It put thirteen laws in the Ninth Schedule related to land reforms. At that time certain difficulties were brought by judicial decisions and pronouncements especially in regard to the chapter on Fundamental Rights. The citizen's right to freedom of speech and expression guaranteed by Article 19(1)(a) was held by
some court to be so comprehensive as not to render a person culpable even if one advocates murder and other crimes of violence. In other countries with written Constitutions, freedom of speech and of the press was not regarded as debarring the State from punishing or preventing abuse of this freedom. The citizen's right to practice any profession or to carry on any occupation, trade or business conferred by Article 19(1)(g) were subject to reasonable restrictions which the laws of the State may impose "in the interests of general public". While the words cited were comprehensive enough to cover any scheme of nationalization which the State may undertake, so it was desirable to place the matter beyond doubt by a clarificatory addition to Article 19(6). Another Article in regard to which unanticipated difficulties had arisen was Article 31. The validity of agrarian reform measures passed by the State Legislatures in the last three years was, in spite of the provisions of Clauses (4) and (6) of Article 31, formed the subject-matter of dilatory litigation, as a result of which the implementation of these important measures, affecting large numbers of people, were held up.

The main objects of this Bill was, accordingly to amend Article 19 for the purposes indicated above and to insert provisions fully securing the Constitutional validity of zamindari abolition laws in general and certain specified State Acts in particular. The opportunity was taken to propose a few minor amendments to other Articles in order to remove difficulties that had arisen.

It laid down that as in Article 46 as a Directive Principle of State policy that the State should promote with special care the educational and economic interests of the weaker Sections of the people and protect them from social injustice. In order that any special provision that the State may make for the educational, economic or social advancement of any backward class of citizens
may not be challenged on the ground of being discriminatory, it was proposed that Article 15(3) should be suitably amplified. Certain amendments in respect of Articles dealing with the convening and proroguing of the sessions of Parliament were found necessary and were also incorporated in this Bill. So also a few minor amendments in respect of Articles 341, 342, 372 and 376. Entries 1 to 13, which were purely only land reform laws, were made by this amendment in the Ninth Schedule to fulfill its objective.

4.1.2 Fourth Amendment Act 1955: Restrictions on Property Rights

This amendment sought to amend Article 31, 31A, and 305 and amended the Ninth Schedule. It was enforced on 27th April 1955. This Amendment sought to put restrictions on property rights and inclusion of related bills in the Ninth Schedule of the Constitution. During that time the decisions of the Supreme Court had given a very wide meaning to Clauses (1) and (2) of Article 31. Despite the difference in the wording of the two Clauses, they were regarded as dealing with the same subject. The deprivation of property referred to in Clause (1) was to be construed in the widest sense as including any curtailment of a right to property. Even where was caused by a purely regulatory provision of law and was not accompanied by an acquisition or taking possession of that or any other property right by the State, the law, in order to be valid according to these decisions, was to provide for compensation under Clause (2) of the Article. It was considered necessary, therefore, to re-State more precisely the State's power of compulsory acquisition and requisitioning of private property and distinguish it from cases where the operation of regulatory or prohibitory laws of the State resulting in "deprivation of property". This was sought to be done in Clause 2 of the Bill. It was recalled that the zamindari abolition laws which came first in
programme of social welfare legislation were attacked by the interests affected mainly with reference to Articles 14, 19 and 31, and that in order to put an end to the dilatory and wasteful litigation and place these laws above challenge in the court, Articles 31A and 31B and the Ninth Schedule were enacted by the Constitution (First Amendment) Act. Subsequent judicial decisions interpreting Articles 14, 19 and 31 had raised serious difficulties in the way of the Union and the States putting through other and equally important social welfare legislation on the desired lines, e.g., the following:

1. While the abolition of zamindaris and the numerous intermediaries between the State and the tiller of the soil had achieved for the most part, the next objectives in land reform was the fixing of limits to the extent of agricultural land that may be owned or occupied by any person, the disposal of any land held in excess of the prescribed maximum and the further modification of the rights of land owners and tenants in agricultural holdings.

2. The proper planning of urban and rural areas required the beneficial utilization of vacant and waste lands and the clearance of slum areas.

3. In the interest of national economy the State should have full control over the mineral and oil resources of the country, including in particular, the power to cancel or modify the terms and conditions of prospecting licenses, mining leases and similar agreements and also necessary in relation to public utility undertakings which supply power, light or water to the public under licenses granted by the State.
4. It was often necessary to take over under State management for a temporary period a commercial or industrial undertaking or other property in the public interest or in order to secure the better management of the undertaking or property. Laws providing for such temporary transference to State management should be permissible under the Constitution.

5. The reforms in company law which was under contemplation, like the progressive elimination of the managing agency system, provision for the compulsory amalgamation of two or more companies in the national interest, the transfer of an undertaking from one company to another, etc., required to be placed above challenge.

   It was accordingly proposed in Clause 3 of the Bill to extend the scope of Article 31A so as to cover these categories of essential welfare legislation.

6. As a corollary to the proposed amendment of Article 31A, it was proposed in Clause 5 of the Bill to include in the Ninth Schedule to the Constitution two more State Acts and four Central Acts which fall within the scope of sub-Clauses (d) and (f) of Clause (1) of the revised Article 31A. The effect was their complete, retrospective validation under the provisions of Article 31B.

At that time recent judgment of the Supreme Court in *Saghir Ahmed v. the State of U.P.*, had raised the question whether an Act providing for a State monopoly in a particular trade or business conflicts with the freedom of trade and commerce guaranteed by

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1 *AIR 1954 SC 728.*
Article 301, but left the question undecided. It appeared from the judgment of the Supreme Court that notwithstanding the clear authority of Parliament or of a State Legislature to introduce State monopoly in a particular sphere of trade or commerce, the law had to be justified before the court as being "in the public interest" under Article 301 or as amounting to a "reasonable restriction" under Article 304(b). It was considered that any such question ought to be left to the final decision of the Legislature. Clause 4 of the Bill accordingly proposed an amendment of Article 305 to make this clear.

Entry 14 to 20 was made in the Ninth Schedule by this amendment.

4.1.3 Seventeenth Amendment Act 1964: Acquisition of estates under 31A

This amendment was enforced on 20 June 1964 with the aim of amending Article 31A and Ninth Schedule. It was passed to secure Constitutional validity of acquisition of estates and place land acquisition laws in Ninth Schedule of the Constitution. Article 31A of the Constitution provided that a law in respect of the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights shall not be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Article 14, Article 19 or Article 31. The protection of this Article was available only in respect of such tenures as were estates on the 26th January, 1950, when the Constitution came into force. The expression "estate" was defined differently in different States and, as a result of the transfer of land from one State to another on account of the reorganization of States, the expression was to be defined differently in different parts of the same State. Moreover, many of the land reform enactments
related to lands which are not included in an estate. Several State Acts relating to land reform were struck down on the ground that the provisions of those Acts were violative of Articles 14, 19 and 31 of the Constitution and that the protection of Article 31A was not available to them. It was, therefore, proposed to amend the definition of "eState" in Article 31A of the Constitution by including therein, lands held under ryotwari settlement and also other lands in respect of which provisions were normally made in land reform enactments. It was further proposed to provide that where any law makes a provision for the acquisition by the State of any estate and where any land comprised therein was held by a person under his personal cultivation, it shall not be lawful for the State to acquire any such land as is within the ceiling limit applicable to him under any law for the time being in force or any building or structure standing thereon or apartment thereto, unless the law relating to the acquisition of such land, building or structure provides for payment of compensation at a rate not less than the market value thereof.

It was also proposed to amend the Ninth Schedule by including therein certain State enactments relating to land reform in order to remove any uncertainty or doubt that may arise in regard to their validity.

Entry 21 to 64 was made in the Ninth Schedule by this amendment.

4.1.4 Twenty-Fourth Amendment Act 1971: Parliament can Amend Part III

This amendment was enforced on 5 November 1971. It amended Article 13 and 368. It enabled Parliament to dilute Fundamental Rights through amendments to the Constitution. This amendment however did not make any amendment in the Ninth Schedule but it is important in Article 13 and 368.
The Supreme Court in the well-known Golak Nath's case had reversed, by a narrow majority, its own earlier decisions upholding the power of Parliament to amend all parts of the Constitution including Part III relating to Fundamental Rights. The result of the judgment was that Parliament was considered to have no power to take away or curtail any of the Fundamental Rights guaranteed by Part III of the Constitution even if it becomes necessary to do so for giving effect to the Directive Principles of State Policy and for the attainment of the objectives set out in the Preamble to the Constitution. It was, therefore, considered necessary to provide expressly that Parliament has power to amend any provision of the Constitution so as to include the provisions of Part III within the scope of the amending power.

The Bill sought to amend Article 368 suitably for the purpose and made it clear that Article 368 provided for amendment of the Constitution as well as procedure therefor. The Bill further provided that when a Constitution Amendment Bill passed by both Houses of Parliament is presented to the President for his assent, he should give his assent thereto. The Bill also seeks to amend Article 13 of the Constitution to make it inapplicable to any amendment of the Constitution under Article 368.

4.1.5 Twenty Fifth Amendment Act 1972: Article 31C – No Law void on ground of Part III

This Amendment was enforced on 20 April 1972. It amended Article 31 and inserted 31C. It aimed to restrict property rights and compensation in case the State takes over private property. This amendment also did not make any amendment in the Ninth Schedule. Article 31 of the Constitution as specifically provided that no law providing for the compulsory acquisition or requisitioning of

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2 (1967) 2 SCR 762.
property which either fixed the amount of compensation or specified the principles on which and the manner in which the compensation was to be determined and given shall be called in question in any court on the ground that the compensation provided by that law was not adequate. In the Bank Nationalization case, the Supreme Court had held that the Constitution guarantees right to compensation, that is, the equivalent in money of the property compulsorily acquired. Thus in effect the adequacy of compensation and the relevancy of the principles laid down by the Legislature for determining the amount of compensation had virtuality become justiciable in as much as the court can go into the question whether the amount paid to the owner of the property was what may be regarded reasonably as compensation for loss of property. In the same case, the court had also held that a law which seek to acquire or requisition property for a public purpose should also satisfy the requirements of Article 19(1)(f). The Bill seek to surmount the difficulties placed in the way of giving effect to the Directive Principles of State Policy by the aforesaid interpretation. The word "compensation" was sought to be omitted from Article 31(2) and replaced by the word "amount". It was being clarified that the said amount may be given otherwise than in cash. It was also proposed to provide that Article 19(1)(f) shall not apply to any law relating to the acquisition or requisitioning of property for a public purpose.

The Bill further seeked to introduce a new Article 31C which provided that if any law was passed to give effect to the Directive Principles contained in Clauses (b) and (c) of Article 39 and contains a declaration to that effect, such law shall not be deemed to be void on the ground that it takes away or abridges any of the rights contained in Article 14, 19 or 31 and shall not be questioned on the ground that it does not give effect to those principles. For this

\[3\] (1970) 3 SCR 530.
provision to apply in the case of laws made by State Legislatures, it was necessary that the relevant Bill should be reserved for the consideration of the President and receive his assent.

4.1.6 Twenty Ninth Amendment Act 1972: Save the Kerala Land Reforms which were declared unconstitutional

This amendment was passed on 9 June 1972 to amend the Ninth Schedule of the Constitution. It placed land reform Acts and amendments to these Acts under Ninth Schedule of the Constitution. The Kerala Land Reforms Act, 1963 (Act 1 of 1964), in the State of Kerala was included in the Ninth Schedule of the Constitution. In the course of implementation, the State Government faced serious practical difficulties and to overcome them, that Act was extensively amended by the Kerala Land Reforms (Amendment) Act, 1969 (Act 35 of 1969) and by the Kerala and Reforms (Amendment) Act, 1971 (Act 25 of 1971). Certain crucial provisions of the principal Act as amended were challenged in the High Court of Kerala and in the Supreme Court, creating a climate of uncertainty in the effective implementation of land reforms. Although the High Court of Kerala generally upheld the scheme of land reforms envisaged in the principal Act as amended, a few vital provisions were struck down by the High Court. Even in regard to the provisions upheld by the High Court, the affected parties had moved the Supreme Court in appeal. Some persons also moved the Supreme Court in original petitions challenging certain provisions of the Act. The Supreme Court in its judgments delivered on 26th and 28th April, 1972, generally upheld the scheme of land reforms as envisaged in the principal Act as amended but agreed with the High Court invalidating certain crucial provisions. It was feared that this will have far-reaching adverse affects on the implementation of the programme of land reforms in the State and thousands of tenants will be adversely
affected by some of the provisions which were either struck down or rendered ineffective. It was also apprehended that certain observations of the Supreme Court in the judgments might open the flood-gates of litigation much to the detriment of thousands of Kudikidappukars in the State who will not be able to defend themselves in protracted legal proceedings. Further, appeals were preferred against the judgment of the Kerala High Court invalidating certain important provisions of the principal Act as amended [e.g. Sections 4A (1)(a) and (b), 7, 7D(1) and 103] and they were pending in the Supreme Court.

It was, therefore, proposed to include the Kerala Land Reforms (Amendment) Act, 1969 and the Kerala Land Reforms (Amendment) Act, 1971 in the Ninth Schedule to the Constitution so that they have the protection under Article 31B and any uncertainty or doubt that may arise in regard to the validity of those Acts is removed.

Entry 65 and 66 was made in the Ninth Schedule by this amendment.

4.1.7 Thirty Fourth Amendment Act 1974: Revision of Ceiling Laws

This amendment was enforced on 7 Sept 1974. It amended Ninth Schedule and placed land reforms Acts and amendments to these Act under Ninth Schedule of the Constitution. The Chief Ministers' Conference held on the 23rd July, 1972, had made important suggestions with regard to reduction in the level of ceiling on land holdings, application of ceiling on the basis of land held by a family and the withdrawing of exemptions. The suggestions of the Chief Ministers' Conference were accepted by the Government of India and necessary guidelines were issued to the State Governments for the revision of ceiling laws.
It was proposed to amend the Ninth Schedule to the Constitution to include therein the revised ceiling laws which were so far been enacted in broad conformity with the aforesaid guidelines so that they have the protection under Article 31B of the Constitution and any uncertainty or doubt that arise in regard to the validity of those laws is removed. In addition, two Acts dealing with the abolition of intermediary tenures were also proposed to be included in the Ninth Schedule, namely, the Bihar Land Reforms (Amendment) Act, 1972 and the Gudalur Janmam estates (Abolition and Conversion into Ryotwari) Act, 1969, so that they also have the same protection.

4.1.8 Thirty Ninth Amendment Act 1975: Restriction on Judicial scrutiny of the Election of Prime Minister

This amendment was enforced on 10 August 1975. It amended Article 71 and 329 and inserted Article 329A and amended Ninth Schedule. The Amendment designed to negate the judgment of Allahabad High Court invalidating Prime Minister Indira Gandhi election to Parliament. The Amendment placed restrictions on judicial scrutiny of post of Prime Minister. Article 71 of the Constitution provided that disputes arising out of the election of the President or Vice-President shall be decided by the Supreme Court. The same Article provided that matters relating to their election shall be regulated by a Parliamentary law. So far as the Prime Minister and the Speaker were concerned, matters relating to their election were regulated by the provisions of the Representation of the People Act, 1951. Under this Act the High Court had jurisdiction to try an election petition presented against either of them.

Further it was mentioned that the President, the Vice-President, the Prime Minister and the Speaker are holders of high offices. The President is not answerable to a court of law for
anything done, while in office, in the exercise of his powers. So it was felt that a fortiori matters relating to his election should not be brought before a court of law but should be entrusted to a forum other than a court. The same reason was applied equally to the incumbents of the offices of Vice-President, Prime Minister and Speaker. It was accordingly proposed to provide that disputes relating to the election of the President and Vice-President shall be determined by a forum as may be determined by a Parliamentary law. Similar provision was proposed to be made in the case of the election to either House of Parliament or, as the case may be, to the House of the People of a person holding the office of Prime Minister or the Speaker. It was further proposed to render pending proceedings in respect of such election under the existing law null and void. The Bill also provided that the Parliamentary law creating a new forum for trial of election matters relating to the incumbents of the high offices abovementioned shall not be called in question in any court.

Recourse was made to the past to the Ninth Schedule whenever it was found that progressive legislation conceived in the interests of the public were imperiled by litigation. It had become necessary to have recourse to the device once again. Between 1971 and 1973 legislation was enacted for nationalizing cooking coal and coal mines for conserving these resources in the interests of steel industry. These enactments were brought before court on the ground that they are unconstitutional. So was the case of sick textile undertakings which were nationalized in 1974. To prevent smuggling of goods and diversion of foreign exchange which affected national economy, Parliament enacted legislation which again was challenged in the Supreme Court and in the High Court. These and other important and special enactments which were considered necessary which should have been given the Constitutional protection under Article 31B, were proposed to be included in the Ninth Schedule. Certain State
legislations relating to land reform and ceiling on agricultural land holdings were already included in the Ninth Schedule. Certain amendments made to these legislations also required protection of the provisions of Article 31B.

4.1.9 Fortieth Amendment Act 1976: Laws for Economic Zone and vest mineral wealth with Union of India

This amendment was enforced on 27 May 1976. It enabled Parliament to make laws with respect to exclusive economic zone and vest mineral wealth with Union of India. It placed land reform and other acts and amendments to these act under Ninth Schedule of the Constitution. Under Article 297 of the Constitution, all lands, minerals and other things of value underlying the ocean within the territorial waters or the continental shelf of India vest in the Union were to be held for the purposes of the Union. India has Sovereign rights over the resources of the exclusive economic zone and is entitled to exercise jurisdiction in respect of certain other matters. It was proposed in the amendment to amend Article 297 of the Constitution so as to provide that all lands, minerals and other things of value underlying the ocean within the exclusive economic zone of India and all other resources of the exclusive economic zone of India shall also vest in the Union and be held for the purposes of the Union. At that time, the limits of territorial waters and the continental shelf were determined by Proclamation issued by the President. It was proposed that the limits of the territorial waters, the continental shelf, the exclusive economic zone and the maritime zones of India shall be specified from time to time by or under law made by Parliament.

Recourse was had in the past to the Ninth Schedule whenever it was found that progressive legislation conceived in the interest of the public was imperiled by litigation. Certain State legislations
relating to land reforms and ceiling on agricultural land holdings have already been included in the Ninth Schedule. Certain amendments made to these legislations also require protection of the provisions of Article 31B inasmuch as in many cases such enactments have been challenged in court and court have granted interim reliefs which has hampered the implementation of the national land reform policy.

Besides these Acts relating to land reforms certain State enactments relating to private forests required protection of Article 31B as these enactments were progressive and beneficial pieces of legislation intended to and the monopoly of vested interests and forest contractors. Some of such legislations were challenged in Court and as the court had granted interim reliefs staying the operation of these enactments, the State Governments had not been able to implement these legislations.

Certain Central laws like the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976, the Urban Land (Ceiling and Regulation) Act, 1976, the Essential Commodities Act, 1955 and certain provisions of the Motor Vehicles Act, 1939 required protection of Article 31B. If these legislations were allowed to be challenged in court of law thereby delaying the implementation of these laws, the very purpose of enacting these laws would be frustrated and the national economy may be severely affected. These and other important and special enactments which was considered necessary should have the Constitutional protection was proposed to be included in the Ninth Schedule.

4.1.10 Forty-Fourth Amendment Act 1979: After Emergency

This amendment was enforced on 6 September 1979. This amendment was passed after revocation of internal emergency in the country. It provided for human rights safeguards and mechanisms to

The experiences at that time had shown that the Fundamental Rights, including those of life and liberty, granted to citizens by the Constitution were capable of being taken away by a transient majority. It was, therefore, necessary to provide adequate safeguards against the recurrence of such a contingency in the future and to ensure to the people themselves an effective voice in determining the form of Government under which they are to live. This was one of the primary objects of this Bill.

It was, therefore, proposed to provide that certain changes in the Constitution which would have the effect of impairing its secular or Democratic character, abridging or taking away Fundamental Rights prejudicing or impeding free and fair elections on the basis of adult suffrage and compromising the independence of Judiciary, can be made only if they are approved by the people of India by a majority of votes at a referendum in which at least fifty-one per cent of the electorate participate. Article 368 was being amended to ensure this.

In view of the special position sought to be given to fundamental rights, the right to property, which had been the occasion for more than one amendment of the Constitution, would cease to be a Fundamental Right and become only a legal right. Necessary amendments for this purpose were made to Article 19 and
Article 31 was deleted. It would, however, ensured that the removal of property from the list of Fundamental Rights would not affect the right of minorities to establish and administer educational institutions of their choice.

Similarly, the right of persons holding land for personal cultivation and within the ceiling limit to receive compensation at the market value would not be affected.

Property, while ceasing to be a Fundamental Right, would, however, be given express recognition as a legal right, provision being made that no person shall be deprived of his property save in accordance with law.

A Proclamation of Emergency under Article 352 had virtually the effect of amending the Constitution by converting it for the duration into that of a Unitary State and enabling the rights of the citizen to move the court for the enforcement of Fundamental Rights—including the right to life and liberty—to be suspended. Adequate safeguards were, therefore, necessary to ensure that this power was properly exercised and was not abused. It was, therefore, proposed that a Proclamation of Emergency can be issued only when the security of India or any part of its territory is threatened by war or external aggression or by armed rebellion. Internal disturbance not amounting to armed rebellion would not be a ground for the issue of a Proclamation.

Further, in order to ensure that a Proclamation was issued only after due consideration, it is sought to be provided that an Emergency can be proclaimed only on the basis of written advice tendered to the President by the Cabinet. In addition, as a Proclamation of emergency virtually has the effect of amending the Constitution, it was provided that the Proclamation would have to be approved by the two Houses of Parliament by the same majority which is necessary to amend the
Constitution and such approval would have to be given within a period of one month. Any such Proclamation would be in force only for a period of six months and can be continued only by further resolutions passed by the same majority. The Proclamation would also cease to be in operation if a resolution disapproving the continuance of the Proclamation is passed by Lok Sabha. Ten per cent. or more of the Members of Lok Sabha can requisition a special meeting for considering a resolution for disapproving the Proclamation.

As a further check against the misuse of the Emergency provisions and to put the right to life and liberty on a secure footing, it was to be provided that the power to suspend the right to move the court for the enforcement of a Fundamental Right cannot be exercised in respect of the Fundamental Right to life and liberty. The right to liberty was further strengthened by the provision that a law for preventive detention cannot authorise, in any case, detention for a longer period than two months, unless an Advisory Board has reported that there is sufficient cause for such detention. An additional safeguard would be provided by the requirement that the Chairman of an Advisory Board shall be a serving Judge of the appropriate High Court and that the Board shall be constituted in accordance with the recommendations of the Chief Justice of that High Court.

A special provision was being made guaranteeing the right of the media to report freely and without censorship the proceedings in Parliament and the State Legislatures. The provision with regard to the breakdown of the Constitutional machinery in the States was being amended so as to provide that a Proclamation issued under Article 356 would be in force only for a period of six months in the first instance and that it cannot exceed one year ordinarily. However,
if a Proclamation of Emergency is in operation and the Election Commission certifies that the extension of the President's rule beyond a period of one year is necessary on account of difficulties in holding elections to the Legislative Assembly of the State concerned, the period of operation of the Proclamation can be extended beyond one year. This was subject to the existing limit of three years. These changes would ensure that Democratic rule was restored to a State after the minimum period which will be necessary for holding elections.

With a view to avoiding delays, it was proposed to amend Articles 132, 133 and 134 and insert a new Article 134A to provide that a High Court should consider the question of granting a certificate for appeal to Supreme Court immediately after the delivery of the judgment, decree, final order or sentence concerned on the basis of an oral application by a party or, if the High Court deems fit so to do, on its own motion. Cases of special leave to appeal by Supreme Court will be left to be regulated exclusively by Article 136.

The other amendments proposed in the Bill were mainly for removing or correcting the distortions which came into the Constitution by reason of amendments enacted during the period of the Internal Emergency.

4.1.11 Fourty Seventh Amendment Act 1984: State Land Reform Laws added in Ninth Schedule

This amendment was enforced on 26 August 1984. It amended Ninth Schedule and placed land reform Acts and amendments to these Acts under Ninth Schedule of the Constitution. It was observed that as Article 31B of the Constitution confers on the enactments included in the Ninth Schedule to the Constitution immunity from any possible attack that they are violative of any of the Fundamental
Rights. The immunity does not extend to any amendment made to such Acts after their inclusion in the Ninth Schedule.

It was mentioned in the objective that recourse was had in the past to the Ninth Schedule whenever it was found that progressive legislation conceived in the interest of the public was imperilled by litigation. Several State enactments relating to land reforms and ceiling on agricultural land holdings were already been included in the Ninth Schedule. The Sixth Five Year Plan (1980-85) contained an assurance that "necessary action would be taken to bring before Parliament land reform Acts not yet included in the Ninth Schedule to the Constitution for immediate inclusion in the said Schedule" and that the same "would be done in the case of future Acts without delay so that these laws are protected from challenge in Court". The State Governments of Assam, Bihar, Haryana, Tamil Nadu, Uttar Pradesh and West Bengal and the Administration of the Union territory of Goa, Daman and Diu had suggested the inclusion of some of their Acts relating to land reforms in the Ninth Schedule. Some of the Acts suggested for inclusion were by way of amendments to Acts already included in the Ninth Schedule. The various Acts which were suggested for inclusion were examined and it was proposed to include in the Ninth Schedule such of these Acts as have either been challenged or were likely to be challenged and thereby ensured that the implementation of these Acts was not adversely affected by litigation.

4.1.12. Sixty-Sixth Amendment Act 1990

This amendment was enforced on 7th June 1990. It enabled the Parliament to place land reform Acts and amendments to these Act under Ninth Schedule of the Constitution. It was observed that Article 31B of the Constitution confers on the enactments included in the Ninth Schedule to the Constitution immunity from legal challenge
on the ground that they violate the Fundamental Rights enshrined in Part III of the Constitution.

At that time in the past, whenever it was found that progressive legislation, conceived in the interest of the public were imperilled by litigation, recourse was taken to the Ninth Schedule. Several State enactments relating to land reforms and ceiling on agricultural land holdings were included in the Ninth Schedule. Since the Government was committed to give importance to land reforms, it was decided to include all land reform laws in the Ninth Schedule so that they were not challenged before the court. The State Governments of Andhra Pradesh, Bihar, Gujarat, Himachal Pradesh, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Orissa, Rajasthan, Uttar Pradesh, West Bengal, Tamil Nadu and administration of the Union territory of Pondicherry had suggested the inclusion of some of their Acts relating to land reforms in the Ninth Schedule.

Since the amendment to Acts which were already placed in the Ninth Schedule were not automatically immunized from legal challenge, some amending Acts were also proposed to be included in the Ninth Schedule. The Acts which were proposed to be included in the Ninth Schedule were examined. In order to ensure that implementation of these Acts was not adversely affected by litigation, it was proposed to include them in the Ninth Schedule.

4.1.13 Seventy-Sixth Amendent Act 1994: Tamil Nadu 69 percent Reservation

This amendment was enforced on 31 August 1994. It amended the Ninth Schedule. It enabled continuance of 69percent reservation in Tamil Nadu by including the relevant Tamil Nadu Act under Ninth Schedule of the Constitution. The policy of reservation of seats in Educational Institutions and reservation of appointments of posts in public services for Backward Classes, Scheduled Castes and
Scheduled Tribes had a long history in Tamil Nadu dating back to the year 1921. The extent of reservation had been increased by the State Government from time to time, consistent with the needs of the majority of the people and it had reached the level of 69 per cent. (18 per cent. Scheduled Castes, 1 per cent. Scheduled Tribes and 50 per cent. Other Backward Classes).

The Supreme Court delivered its judgment in *Indira Sawhney and others Vs. Union of India and Others*[^4], on 16th November, 1992, holding that the total reservations under Article 16(4) should not exceed 50 per cent.

The issue of admission to educational institutions for the academic year 1993-94 came up before the High Court of Madras in a writ petition. The High Court of Madras held that the Tamil Nadu Government could continue its reservation policy as hitherto followed during that academic year and that the quantum of reservation should be brought down to 50 per cent. during the academic year 1994-95. The Government of Tamil Nadu filed a Special Leave Petition against the High Court of Madras in order that the present reservation policy of the State Government should be reaffirmed so as to ensure to continue advancement of the Backward Classes. However, the Supreme Court of India passed an interim order reiterating that the reservation should not exceed 50 per cent. in the matter of admission to educational institutions.

In the special Session of Tamil Nadu Legislative Assembly held on 9th November, 1993, it was unanimously resolved to call upon the Central Government to take steps immediately to bring a suitable amendment to the Constitution of India as to enable the Government of Tamil Nadu to continue its policy of 69 per cent. reservation in Government Services and for admission in Educational

[^4]: AIR 1993 SC 477.
Institutions at that time. An all parties meeting had also been held on 26th November, 1993 in Tamil Nadu urging that there should not be any doubt or delay in ensuring the continued implementation of 69 per cent. reservation for the welfare and advancement of the backward classes.

The Tamil Nadu Government enacted a legislation namely Tamil Nadu Backward Classes, Scheduled Castes and Scheduled Tribes (Reservation of Seats in Educational Institution and of appointments or posts in the Services under the State) Bill, 1993 and forwarded it to the Government of India for consideration of the President of India in terms of Article 31-C of the Constitution.

In view of the importance and sensitive nature of the matter, the Union Home Minister held meetings with the leaders of Political Parties on 13th July, 1994 to discuss the provisions of the Bill. The general consensus among the leaders was that the Bill should be assented to. Accordingly, the President gave his assent to the Bill on 19th July, 1994. The Tamil Nadu Government accordingly notified the Tamil Nadu Backward Classes, Schedule Castes and Scheduled Tribes (Reservation of Seats in Educational Institutions and of appointment or posts in the Services under the State) Act, 1993 as Act No. 45 of 1994 on 19th July, 1994.

The Tamil Nadu Government requested the Government of India on 22nd July, 1994 that the aforementioned Tamil Nadu Act 45 of 1994 be included in the Ninth Schedule to the Constitution of India for the reasons given below:-

"The said Act attracts Article 31C of the Constitution, as falling within the purview of Clauses (b) and (c) of Article 39 and Articles 38 and 46 of the Constitution-vide Section 2 of the Act. The Act has been passed relying on the Directive Principles of State Policy enshrined in Part IV of the Constitution and in particular,
Articles 38, 39 (b) and (c) and 46 of the Constitution. As the Act is to give effect to the Directive Principles of State Policy contained, inter alia, in Article 39(b) and (c), the said Act will get the protection of Article 31C of the Constitution and therefore, cannot be challenged under Articles 14 and 19 of the Constitution, with reference to which Article 14, the reservation exceeding 50 per cent. has been struck down by the Supreme Court. Now it has been decided to address the Government of India for including the Act in the Ninth Schedule to the Constitution, so that the law cannot be challenged as violative of any of the Fundamental Rights contained in Part III of the Constitution including Articles 15 and 16, and gets protection under Article 31B of the Constitution."

The Government of India had already supported the provision of the State legislation by giving the President's assent to the Tamil Nadu Bill. As a corollary to this decision, it was necessary that the Tamil Nadu Act 45 of 1994 was brought within the purview of the Ninth Schedule to the Constitution so that it gets protection under Article 31B of the Constitution in regard to the Judicial Review.


This amendment was enforced on 30 August 1995. It amended the Ninth Schedule and placed land reform Acts and amendments to these Acts under Ninth Schedule of the Constitution. As Article 31B of the Constitution conferred on the enactments included in the Ninth Schedule of the Constitution immunity from legal challenge on the ground that they violate the Fundamental Right enshrined in Part III of the Constitution. The Schedule consisted of list of laws enacted by various State Governments and Central Government which inter alia affected rights and interest in property including land.

In the past, whenever it was found that progressive legislation conceived in the interest of the public was imperilled by litigation,
recourse was taken to the Ninth Schedule. Accordingly, several State enactments relating to land reforms and ceiling on agricultural land holdings had already been included in the Ninth Schedule. Since the Government was committed to give importance to land reforms, it was certainly decided to include land reform laws in the Ninth Schedule so that they were not challenged before the court. The State Governments of Bihar, Karnataka, Kerala, Orissa, Rajasthan; Tamil Nadu and West Bengal had suggested the inclusion of some of their Acts relating to land reforms in the Ninth Schedule.

Since the amendment to Acts which were already placed in the Ninth Schedule were not automatically immunised from legal challenge, a number of amending Acts along with a few principal Acts were also proposed to be included in the Ninth Schedule so as to ensure that implementation of these Acts was not adversely, affected by litigation.

4.2 Classification of various Acts included in the Ninth Schedule

According to the nature of the laws included in the Ninth Schedule, the following classification has been made. Initially only land reform laws were included but later various laws regulating the property rights, including abolition of titles, fixation of ceiling on land holdings, tenancy, acquisition of mines, industries, law relating to foreign currency, reservation for SCs and STs were included in the Ninth Schedule.

4.2.1 Acts related to Land Reforms


13. Entry no. 13. The Hyderabad Jagirs (Commutation) Regulation, 1359F (No. XXV of 1359, Fasli).]


Entry no.27. The Bombay Taluqdari Tenure Abolition (Amendment) Act, 1954 (Bombay Act I of 1955).


Entry no.29. The Bombay Inams (Kutch Area) Abolition Act, 1958 (Bombay Act XCVIII of 1958).

Entry no.32. The Sagbara and Mehwassi Estates (Proprietary Rights Abolition, etc.) Regulation, 1962 (Gujarat Regulation I of 1962).

Entry no.33. The Gujarat Surviving Alienations Abolition Act, 1963 (Gujarat Act XXXIII of 1963), except in so far as this Act relates to an alienation referred to in sub-Clause (d) of Clause (3) of Section 2 thereof.


27. Entry no.52. The Orissa Land Reforms Act, 1960 (Orissa Act XVI of 1960).


32. Entry no.60. The West Bengal Land Reforms Act, 1955 (West Bengal Act X of 1956).


60. Entry no. 147. The Kerala Agricultural Workers Act, 1974 (Kerala Act 18 of 1974).


64. Entry no. 162. The Rajasthan Colonisation Act, 1954 (Rajasthan Act XXVII of 1954).


72. Entry no. 191. The Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Amending Act, 1974 (Bihar Act 13 of 1975).

73. Entry no. 192. The Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 1976 (Bihar Act 22 of 1976).


78. Entry no.201. The Goa, Daman and Diu Agricultural Tenancy Act, 1964 (Goa, Daman and Diu Act 7 of 1964).


4.2.2 Acts related to Land Tenancy


26. Entry no.208. The Bihar Tenancy Act, 1885 (Bihar Act 8 of 1885).

27. Entry no.209. The Chota Nagpur Tenancy Act, 1908 (Bengal Act 6 of 1908) (Chapter VIII-sections 46, 47, 48, 48A and 49; Chapter X-section 71, 71A and 71B; and Chapter XVIII-sections 240, 241 and 242).


44. Entry no. 253. The Calcutta Thikka Tenancy
(Acquisition and Regulation) Act, 1981 (West Bengal

45. Entry no.254. The West Bengal Land Holding Revenue
(Amendment) Act, 1982 (West Bengal Act 23 of 1982).

46. Entry no.255. The Calcutta Thikka Tenancy (Acquisition
and Regulation) (Amendment) Act, 1984 (West Bengal
Act 41 of 1984).

47. Entry no.258. The Bihar Privileged Persons Homestead
Tenancy Act, 1947 (Bihar Act 4 of 1948).

48. Entry no.259. The Bihar Consolidation of Holdings and
Prevention of Fragmentation Act, 1956 (Bihar Act 22 of
1956).

49. Entry no.260. The Bihar Consolidation of Holdings and
Prevention of Fragmentation (Amendment) Act, 1970
(Bihar Act 7 of 1970).

50. Entry no. 261. The Bihar Privileged Persons Homestead

51. Entry no.262. The Bihar Consolidation of Holdings and
Prevention of Fragmentation (Amendment) Act, 1973
(Bihar Act 27 of 1975).

52. Entry no.263. The Bihar Consolidation of Holdings and
Prevention of Fragmentation (Amendment) Act, 1981
(Bihar Act 35 of 1982).

53. Entry no. 265. The Bihar Privileged Persons Homestead
Tenancy (Amendment) Act, 1989 (Bihar Act 11 of
1989).

4.2.3 Acts related to Land Acquisition


8. Entry no. 89. The Requisitioning and Acquisition of Immovable Property Act, 1952 (Central Act 30 of 1952).


11. Entry no.194. The Land Acquisition (Bihar Amendment) Act, 1979 (Bihar Act 2 of 1980).


4.2.4 Acts related to fixation of ceiling on land

1. Entry no.20. The West Bengal Land Development and Planning Act, 1948 (West Bengal Act XXI of 1948), as amended by West Bengal Act XXIX of 1951.]


11. Entry no.68. The Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 1972 (Bihar Act 1 of 1973).


30. Entry no.132. The Urban Land (Ceiling and Regulation) Act, 1976 (Central Act 33 of 1976).


36. Entry no.159. The Maharashtra Agricultural Lands (Lowering of Ceiling on Holdings) and (Amendment)


42. Entry no. 169. The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Second Amendment Act, 1972 (Tamil Nadu Act 20 of 1972).


44. Entry no. 171. The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Fourth Amendment Act, 1972 (Tamil Nadu Act 39 of 1972).
45. Entry no.172. The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Sixth Amendment Act, 1972 (Tamil Nadu Act 7 of 1974).


49. Entry no.176. The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Second Amendment Act, 1974 (Tamil Nadu Act 32 of 1974).


55. Entry no. 188. The Pondicherry Land Reforms (Fixation of Ceiling on Land) Act, 1973 (Pondicherry Act 9 of 1974).


59. Entry no. 212. The Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 1982 (Bihar Act 55 of 1982).


65. Entry no.241. The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Second Amendment Act, 1979 (Tamil Nadu Act 8 of 1980).


68. Entry no.244. The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Second Amendment Act, 1983 (Tamil Nadu Act 2 of 1984).

69. Entry no.264. The Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 1987 (Bihar Act 21 of 1987).

70. Entry no.274. The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Amendment Act, 1983 (Tamil Nadu Act 3 of 1984).


4.2.5 Industries, Mines, Factories Acts


4.2.6 Acts related to Currency


4.2.7 Acts related to SCs/STs

1. Entry no. 150. The Kerala Scheduled Tribes (Restriction on Transfer of Lands and Restoration of Alienated Lands) Act, 1975 (Kerala Act 31 of 1975).


3. Entry no. 222. The Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of certain Lands) Act, 1978 (Karnataka Act 2 of 1979).


5. Entry 257A. The Tamil Nadu Backward Classes, Scheduled Castes and Scheduled Tribes (Reservation of Seats in Educational Institutions and of appointments or
posts in the Services under the State) Act, 1993 (Tamil Nadu Act 45 of 1994).


4.2.8 Miscellaneous Acts


4.2.9 Acts which were repealed from Ninth Schedule

From First Amendment to Seventy-Eight Amendment 284 legislations were put in Ninth Schedule and that by three Amendments in 1978 Entry 92 (Internal Security Act), in 1977 Entry 130 (Prevention of Publication of Objectionable Matter) and in 1978 Forty Fourth Amendment omitted Entry 87 (The Representation of Peoples Act) 92 and 130 from Ninth Schedule. Out of total Constitutional amendments 14 Constitutional amendments were related to Ninth Schedule.

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4.3 List of Amendments made in the Ninth Schedule

1st Amendment 1951 (entry 1-13 in Ninth Schedule)

4th Amendment 1955 (entry 14-20 in Ninth Schedule)

17th Amendment 1964(entry 21-64 in Ninth Schedule)

Twenty Ninth Amendment 1972 (entry 65-66 in Ninth Schedule)

34th Amendment 1974 (entry 67-86 in Ninth Schedule)

Thirty Ninth Amendment 1975(entry 87-124 in Ninth Schedule)

40th Amendment 1976 (entry 125-188 in Ninth Schedule)

47th Amendment 1984 (entry 189-202 in Ninth Schedule)

66th Amendment 1990 (entry 203-257 in Ninth Schedule)

76th Amendment 1994 (entry 257A in Ninth Schedule)

78th Amendment 1995 (entry 258-284 in Ninth Schedule)

44th Amendment omitted entry 87, 92, 130 from Ninth Schedule.

Twenty Fourth Amendment Act 1971(no entry made)

Twenty Fifth Amendment Act 1972(no entry made)

4.4 Specific Acts which were challenged in the Ninth Schedule

There are many challenges which were made to the Ninth Schedule and the basic question of challenge has been Part III of the Constitution. The Supreme Court has led down many landmark judgments which are not liked by the Parliament. The Parliament has considered them as 'judicial overreach' on the law making power of the Parliament. This topic has remained debatable till date.
4.4.1 Shankari Prasad v. Union of India

In this case the First Constitutional Amendment 1951 was challenged in this case on the ground that it curtails right to property guaranteed by Article 31. The First amendment added 13 entries in the Ninth Schedule and all were challenged in this case. The court disagreed with the view that the Fundamental Rights are inviolable and beyond the reach of the process of Constitutional amendment. The court ruled that Article 13 refers to a ‘legislative’ law, i.e., an ordinary law made by a Legislature, but not to a ‘constituent’ law, i.e., a law made to amend the Constitution. The court thus held that Parliament could by following the procedure’ laid down in Article 368 amend any Fundamental Right.

4.4.2 Sajjan Singh v. State of Rajasthan

In this case Constitution of India (First Amendment) Act, 1951; Article 31A and 31B; Constitution of India (Fourth Amendment) Act, 1955; Constitution of India (Seventh Amendment) Act, 1964 - and Articles 13(2), 32, 226 and 368 were challenged. The Seventeenth Amendment Act again adversely affected the right to property. By this amendment, a number of statutes affecting property rights were placed in the Ninth Schedule. The court held that the power of amending the Constitution conferred on the Parliament under Article 368 could be exercised over each and every provision of the Constitution. The majority refused to accept the argument that Fundamental Rights were “eternal, inviolate, and beyond the reach of Article 368”.

4.4.3. I.C Golaknath v. State of Punjab challenged the Seventeenth Amendment 1964 and overruled the case of Sajjan Singh

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1. AIR 1951 SC 458.
2. AIR 1965 SC 845.
and Articles which were challenged included 13(2), 14, 19, 31(2), 2A, 32, 245, 246, 248 and 368 of Constitution of India. Some State Acts like specifically Mysore Land Reforms Act 1961 (Entry 51) And Punjab Security of Land Tenures Act 1953 (Entry 54) were challenged as violative of Part III. The court overruled Shankari Prasad case and Golaknath Nath case and held that the Fundamental Rights were non amendable through the Constitutional amending procedure set out in Article 368, while the minority upheld the line of reasoning adopted by the court in the two earlier cases. It held Rule of Law an integral part of Constitution, Rule of Law serves needs of people without unduly infringing their rights and every institution or political party.

4.4.4. Kesavanand Bharti v. State Of Kerela\textsuperscript{8}: in this case a batch of six writ petitions challenging validity of Twenty-Fourth, Twenty-Fifth and Twenty-Ninth Amendments of Constitution - majority upheld validity of Twenty-Fourth Amendment which inserted Clauses (3) and (4) in Article 13, right to property did not form part of basic structure and individual freedom secured to citizens was basic feature of Constitution and inherent limitations under unamended Article 368 would still hold true even after amendment of Article 368. Then Sections 2 (a) and 2 (b) and first part of Section 3 of Twenty-Fifth Amendment held valid and majority invalidated second part of Article 31-C introduced by Twenty-Fifth Amendment. The validity of twenty-ninth Amendment which inserted Kerala Land Reforms (Amendment) Act, 1969 and Kerala Land Reforms (Amendment) Act, 1971 was upheld. This case laid down the ‘basic structure doctrine’.

4.4.5. Indira Gandhi v. Union of India\textsuperscript{9}: in this case the Thirty Ninth Amendment Act was challenged which brought enteries

\textsuperscript{8} AIR 1973 SC 1461.
\textsuperscript{9} AIR 1975 SC 2299.
from 87 to 124 in the Ninth Schedule. Articles 71 and 329 were amended by this amendment and 329A was added in the Constitution. This amendment was made to validate the unconstitutional election of Indira Gandhi. This Amendment placed restrictions on judicial scrutiny of post of Prime Minister. Here validity of Clause 4 of the amendment was challenged. It was held that first part of Clause 4 was regarded to violate three “essential features” of the Constitution. It destroyed basic Democratic feature of the Constitution i.e., free and fair elections.

4.4.6. *In Minerva Mills v. Union of India* 10: in this case the Constitution of India Articles 13, 14, 19, 31-A, 31-B, 31-C, 32, 38, 141, 226, 352, 352(1), 368, 368(4) and 368(5), Constitution of India (Forty Second Amendment) Act, 1976 - Sections 4 and 55; Maharashtra Agricultural Lands (Ceiling on Holdings) (Amendment) Act, 1975; Maharashtra Agricultural Lands (Ceiling on Holdings) (Amendment) Act, 1976; Sick Textile Undertakings (Nationalisation) Act, 1974; Constitution of India (Twenty-Ninth Amendment) Act, 1972; Constitution of India (Fortieth Amendment) Act, 1976; House of People (Extension of Duration) Act, 1976 were in question before the court.

The court held that in the Constitution amendment of Articles 13, 14, 19, 31-A, 31-B, 31-C, 32, 38, 132, 133, 134, 141, 226, 352 and 368 of Constitution of India - *vires* of Articles 368 (4) and 368 (5) introduced by Section 55 of Constitution of India (43rd Amendment) Act under challenge conferred upon Parliament unlimited power to amend Constitution. Article 368 (4) deprived court of its power of Judicial Review over Constitutional amendments and Article 368 (5) struck down as Parliament had only limited amending power and held that such limited power cannot be

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10 AIR 1980 SC 1789.
enlarged into absolute power. By expanding its amending powers Parliament cannot destroy its basic structure. The donee of limited power cannot convert such power into unlimited one. Article 368 (4) prohibiting Judicial Review violates basic structure and held, Articles 368 (4) and 368 (5) unconstitutional.

The court further held that whether Directive Principles can have supremacy over Fundamental Rights merely because Directive Principles are non-justiciable it does not mean that they are subservient to Fundamental Rights. Destroying Fundamental Rights in order to achieve goals of Directive Principles amounts to violation of basic structure and giving absolute primacy to one over another disturbs harmony. The goals of Directive Principles should be achieved without abrogating Fundamental Rights and Directive Principles enjoy high place in Constitutional scheme. Both Fundamental Rights and Directive Principles should be read in harmony and held that the amendments in Article 31C introduced by Section 4 of Forty Second Amendment Act unconstitutional.

4.4.7. *Waman Rao v. Union of India*¹¹: In this case the following issues related to the First, Fourth, Fortieth, Forty-Second Amendments which were challenged in the Supreme Court. Constitution of India - Articles 13(2), 14, 19, 31, 31(2), 31A(1), 31B, 31C, 352, and 368; Constitution of India (First Amendment) Act, 1951 - Section 4; Constitution of India (Fourth Amendment) Act, 1955; House of the People (Extension of Duration) Act, 1976 - Section 2; Constitution of India (Forty Second Amendment) Act, 1976 were in question before the court. It was held that Section 4 of Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, Articles 13 (2), 14, 19, 31, 31 (2), 31-A (1), 31-B, 31-C, 83 (2), 352 and 368 of Constitution of India, Section 4 of

¹¹ AIR1981 SC 271.

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Constitution of India (First Amendment) Act, 1951, Section 3 of Constitution of India (Fourth Amendment) Act, 1955, Section 2 of House of the People (Extension of Duration) Act, 1976, Constitution of India (Forty Second Amendment) Act, 1976 and Constitution of India (Fortieth Amendment) Act and Act of 1951 introduced Article 31-A with retrospective effect and Section 3 of Act of 1955 submitted new Clause for original Clause (1) with retrospective effect which was valid as it did not damage basic feature of Constitution of India. All the amendments made before 24.04.1973 and by which Ninth Schedule to Constitution of India was amended was valid and the amendment made on or after 24.04.1973 were open to challenge as they effect basic feature of Constitution of India. The Act included in Ninth Schedule if saved by Articles 31-A or 31-C to be challenged on ground that amendment damages essential feature would become otiose. The various Constitutional amendments, by which additions were made to the Ninth Schedule on or after April 24, 1973, will be held valid only if they do not damage or destroy the basic structure of the Constitution.

4.4.8 I.R Coelho V. State of Tamil Nadu in this case order of reference was made 7 years ago by Constitution Bench of 5 Judges. In the Ninth Schedule Acts challenged specifically were Janman Act 1969 struck down by HC of Tamil Nadu (added by Thirty Fourth Amendment 1974) and Balmadies plantation ltd. Struck down by High Court of Tamil Nadu (added by Sixty Sixth Amendment 1990). It was held that if the validity of any Ninth Schedule law has already been upheld by this court, it would not be open to challenge such law again on the principles declared by this judgment. However, if a law held to be violative of any rights in part III is subsequently incorporated in the Ninth Schedule after Twenty Fourth April 1973, such a violation/infraction shall be open to challenge on the ground

12 AIR 2007 SC 861.
that it destroys or damages the basic structure as indicated in Article 21 read with Article 14, Article 19 and the principles underlying there under.

Analysis

Most of the laws in the Ninth Schedule related to the land reforms, which won the uncodified understanding between the Parliament and Judiciary. Therefore the Ninth Schedule has served the purpose in that sense. But the problem arose when Article 31B was misused to include non-agrarian laws also. The Parliament followed the uncodified version of the understanding but subsequently other laws were also put in the Ninth Schedule.

Further, it is not true that Judiciary has been standing in the way of implementation of Directive Principles. No judicial pronouncement has impeded the implementation of Directive Principles contained in Article 40 to 51. Nor has any judicial decision interfered with the duty of the State to see that the citizens are not forced by economic necessity to enter avocations unsuited to their age or strength and the childhood and youth protected against exploitation against moral and material abandonment. The Judiciary has declared many directives as Fundamental Rights and has enforced them. Equal pay for equal work, protection of children from exploitation, abolition of child labor, free and compulsory education of children below the age of 14 years (Articles 39, 41, 45, 47), protection of working women from sexual harassment, free legal aid to poor, speedy trial for prisoners (Article 39-A), right to work and medical assistance to workers (Article 41), protection of ecology and environment pollution (Article 48-A). The question ‘judicial reach’ does not come when Judiciary is filling the gap left by the Parliament and the Executive in implementing the Directive Principles. The Ninth Schedule is required to implement the Directive Principles and
not for those laws which neglect public purpose. We still have evils like child labour and sexual exploitation of women in our society, the Parliament should make stringent laws and save them in the Ninth Schedule to deal with such menace in society or the Ninth Schedule should be strictly used only for Land reforms. There is no denying the fact that the amendments’ regarding property rights can be justified, to some extent of giving effect to Directive Principles of State of policy. But the addition of the Ninth Schedule immunizing as many as 284 State Acts from judicial scrutiny does not seem to be warranted if they are not related to the Directive Principles of State Policy. To begin with, it was envisaged that Ninth Schedule would be used to give immunity only to land laws, but, in course of time, all kinds of State laws have been added to the Schedule and granted immunity from Judicial Review. A significant question to be considered in this regard is: how far the concept of Ninth Schedule is compatible with the thesis that Judicial Review is an essential feature of the Constitution? Prima facie there is no compatibility between the two as the Ninth Schedule has been conceived primarily to keep Judicial Review of the protected laws at bay. In the Ninth Schedule the most important controversy has been regarding the Thirty Ninth Amendment which was added by Indira Gandhi Government to invalidate her election when her election were declared invalid by the Allahabad High Court. This amendment inserted Article 329A in the Constitution to exclude the office of Prime Minister and Speaker from any challenge regarding their election in the court. This amendment also amended Article 71 and included that like the election of President the election of the Vice-President, Prime Minister, and Speaker should not be unanswerable for the exercise of his powers while in office and fortorti matters relating to his election should not be brought before any court but should be entrusted to a form than a court. The forum shall be determined by the Parliament.
This amendment was declared unconstitutional by the Supreme Court and it was held by the court that free and fair elections are part of the essential features of the Democratic set up. So if we see it becomes clear from the amendments made in the Ninth Schedule that there has been a dramatic shift in the objective of the use of Ninth Schedule. The Parliament cannot justify its actions by saying that they represent the will of the Parliament therefore they have the right to amend the Constitution. If the Parliament represents the will of the people then the Constitution of India is also given by the people to themselves. So the power to protect the Constitution is vested with the Judiciary. It cannot allow the Parliament to change the Constitution to suit it whims. This amendment spread wide mistrust among the people of India that it led to the fall of Indira Gandhi Government after the proclamation of emergency in 1975. Therefore when the representatives of the people fail to protect their rights they seek protection from Judiciary. People have profound faith in Judiciary and that’s why people of India gave to themselves the Constitution which has an important feature of independence of Judiciary. When the gaps are left by the Executive and the Legislature, the Judiciary fills those gaps. The Ninth Schedule does not mention any criteria for implementing the Directive Principles of State Policy. There should be clear mention of the types of laws it can save and for what purpose it can save those laws. The Judiciary should avoid over-activism and should exercise restraint from encroaching upon the sphere of Parliament. The Ninth Schedule should be used strictly for public welfare laws. Abolition of Zamindari system has been a successful step of the Parliament.