

NINTH REPORT

STANDING COMMITTEE ON URBAN AND RURAL DEVELOPMENT (1994-95)

(TENTH LOK SABHA)

THE CONSTITUTION (EIGHTY-FIRST AMENDMENT) BILL, 1994



Presented to Lok Sabha on.....1994

Laid in Rajya Sabha on.....1994

LOK SABHA SECRETARIAT
NEW DELHI

September, 1994 / Bhadra, 1916 (Saka)

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COMPOSITION OF THE STANDING COMMITTEE ON URBAN &
RURAL DEVELOPMENT

(1994-95)

CHAIRMAN

Shri Prataprao B. Bhosale

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Lok Sabha

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5. Dr. Y.S. Rajsekhar Reddy
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40. Prof. Vijay Kumar Malhotra
41. Smt. Mira Das
42. Shri S. Dronamraju

SECRETARIAT

1. Shri S.C. Gupta, *Joint Secretary*
2. Shri G.R. Juneja, *Deputy Secretary*
3. Shri C.S. Jain, *Assistant Director*

INTRODUCTION

1. I, the Chairman of Standing Committee on Urban & Rural Development (1994-95) having been authorised by the Committee to submit the Report on their behalf present the Ninth Report on the Constitution (Eighty-First Amendment) Bill, 1994.

2. The Constitution (Eighty-First Amendment) Bill, 1994 was introduced in Rajya Sabha on 19th April, 1994 and was referred to the Committee by the Speaker in consultation with Hon'ble Chairman, Rajya Sabha on 2.5.1994 under Rule 331E of the Rules of Procedure and Conduct of Business in Lok Sabha.

3. The Committee held general discussion on the Bill at their sitting held on 12.5.1994. The Committee held discussion with the representatives of Ministry of Rural Development and Ministry of Law on 23.8.1994. The Bill was also considered and approved by the Committee on 23.8.1994. The Report was considered and adopted by the Committee at their sitting held on 6.9.1994.

4. The Committee wish to express their thanks to the Ministry of Rural Development and Ministry of Law for placing before the Committee the information they wanted in connection with the examination of the Bill.

NEW DELHI;
September 6, 1994

Bhadra 15, 1916 (Saka)

PRATAPRAO B. BHOSALE,
Chairman,
Standing Committee on
Urban & Rural Development.

REPORT

1. The Constitution (Eighty-First Amendment) Bill, 1994 (Appendix I) was referred to the Committee on Urban & Rural Development by the Hon'ble Speaker under Rule 331E of the Rules of Procedure & Conduct of Business in Lok Sabha for examination and report thereon to Parliament.

2. 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. The Schedule consists mainly of list of laws enacted by various State Governments and Central Governments which *inter-alia* affects 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 have already been included in the Ninth Schedule.

3. The above mentioned Bill seeks to include 27 Acts of different State Governments relating to land reforms in the Ninth Schedule after entry 257. Amongst the 27 Land Reform Acts, three are original Acts and the remaining are Amendment Acts. Since the Amendment to Acts which are already placed in the Ninth Schedule are not automatically immunised from legal challenge, the Bill seeks to include different Amendment Acts also of respective State Governments in the Ninth Schedule so as to ensure that implementation of these Acts is not adversely affected by litigation.

4. A brief summary of the Acts proposed to be included in the Ninth Schedule to the Constitution alongwith the reasons for their inclusion, as furnished by the Ministry of Rural Development has been given at Appendix II.

5. Having considered the brief furnished by the Ministry and the clarifications given by the representatives of the Ministries of Rural Development & Law & Justice during the course of oral evidence the Committee approve the Constitution (Eighty-First Amendment) Bill, 1994 without any recommendation for amendment.

NEW DELHI;
September 6, 1994

Bhadra 5, 1916 (Saka)

PRATAPRAO B. BHOSALE,
Chairman,
Standing Committee on
Urban & Rural Development.

APPENDIX I

THE CONSTITUTION (EIGHTY-FIRST AMENDMENT) BILL, 1994

A BILL

further to amend the Constitution of India

BE it enacted by Parliament in the Forty-fifth Year of the Republic of India as follows:—

Short title

1. This Act may be called the Constitution (Eighty-first Amendment) Act, 1994.

Amendment of the Ninth Schedule

2. In the Ninth Schedule to the Constitution, after entry 257 and before the *Explanation*, the following entries shall be inserted, namely:—

258. The Bihar privileged Persons Homestead Tenancy Act, 1947 (Bihar Act 4 of 1948).

259. The Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (Bihar Act 22 of 1956).

260. The Bihar Consolidation of Holdings and Prevention of Fragmentation (Amendment) Act, 1970 (Bihar Act 7 of 1970).

261. The Bihar Privileged Persons Homestead Tenancy (Amendment) Act, 1970. (Bihar Act 9 of 1970).

262. The Bihar Consolidation of Holdings and Prevention of Fragmentation (Amendment) Act, 1973 (Bihar Act 27 of 1975).

263. The Bihar Consolidation of Holdings and Prevention of Fragmentation (Amendment) Act, 1981 (Bihar Act 35 of 1982).

264. The Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Amendment Act, 1987 (Bihar Act 21 of 1987).

265. The Bihar Privileged Persons Homestead Tenancy (Amendment) Act, 1989 (Bihar Act 11 of 1989).

266. The Bihar Land Reforms (Amendment) Act, 1989 (Bihar Act 11 of 1990).

267. The Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) (Amendment) Act, 1984 (Karnataka Act 3 of 1984).

268. The Kerala Land Reforms (Amendment) Act, 1989 (Kerala Act 16 of 1989).

269. The Kerala Land Reforms (Second Amendment) Act, 1989 (Kerala Act 2 of 1990).

270. The Orissa Land Reforms (Amendment) Act, 1989 (Orissa Act 9 of 1990).

271. The Rajasthan Tenancy (Amendment) Act, 1979 (Rajasthan Act 16 of 1979).

272. The Rajasthan Colonisation (Amendment) Act, 1987 (Rajasthan Act 2 of 1987).

273. The Rajasthan Colonisation (Amendment) Act, 1989 (Rajasthan Act 12 of 1989).

274. The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Amendment Act, 1983 (Tamil Nadu Act 3 of 1984).

275. The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Amendment Act, 1986 (Tamil Nadu Act 57 of 1986).

276. The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Second Amendment Act, 1987 (Tamil Nadu Act 4 of 1988).

277. The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Amendment Act, 1989 (Tamil Nadu Act 30 of 1989).

278. The West Bengal Land Reforms (Amendment) Act, 1981 (West Bengal Act 50 of 1981).

279. The West Bengal Land Reforms (Amendment) Act, 1986 (West Bengal Act 5 of 1986).

280. The West Bengal Land Reforms (Second Amendment) Act, 1986 (West Bengal Act 19 of 1986).

281. The West Bengal Land Reforms (Third Amendment) Act, 1986 (West Bengal Act 35 of 1986).

282. The West Bengal Land Reforms (Amendment) Act, 1989 (West Bengal Act 23 of 1989).

283. The West Bengal Land Reforms (Amendment) Act, 1990 (West Bengal Act 24 of 1990).

284. The West Bengal Land Reforms Tribunal Act, 1991 (West Bengal Act 12 of 1991)."

STATEMENT OF OBJECTS AND REASONS

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. The Schedule consists of list of laws enacted by various

State Governments and Central Government which *inter alia* affect rights and interest in property including land.

2. 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 have already been included in the Ninth Schedule. Since the Government is committed to give importance to land reforms, it has been certain decided to include land reform laws in the Ninth Schedule so that they are not challenged before the Courts. The State Governments of Bihar, Karnataka, Kerala, Orissa, Rajasthan, Tamil Nadu and West Bengal have suggested the inclusion of some of their Acts relating to land reforms in the Ninth Schedule.

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

The 22nd February, 1994.

4. The Bill seeks to achieve the above objects.

NEW DELHI;
The 22nd February, 1994

RAMESHWAR THAKUR

APPENDIX II

Brief summary of the Acts proposed to be included in the Ninth Schedule to the Constitution

BIHAR

1. The Bihar Land Reforms (Amendment) Act, 1989 (Bihar Act 11 of 1990).

The parent Act viz. the Bihar Land Reforms Act, 1950 provides for the transfer to the State of the interests of proprietors and tenure holders in land and of mortgagees and lessees of such interest including trees, forests, fisheries jalkars, ferries etc. and for constitution of a Land Commission to advise the State Government on agrarian policy. The Act stands incorporated in the Ninth Schedule to the Constitution.

The Bihar Land Reforms (Amendment) Act, 1989 (Act 11 of 1990) which is proposed for inclusion redefines the expression 'Estate' which means any land and several fishery and ferry rights included under one entry in any of the general registers of revenue-paying lands and revenue-free lands, prepared and maintained under the law for the time being in force by the Collector of a district, and includes revenue-free land and several fishery and ferry rights not entered into any register and a share in or of an estate. This was necessitated because Supreme Court observed that the existing definition of 'Estate' under Section 2(i) of the Bihar Land Reforms Act, 1950 was not clear because the rights of fisheries and ferry did not come in the purview of the definition. It was found that the landlords settled the fisheries and jalkars on sub-lease. There was serious tension between the sub-lessee and the local fishermen and therefore the definition was amended so as to include fisheries and ferry also within the purview of the definition of 'Estate' so that the provisions of Bihar Land Reforms Act could be made applicable to the rights over fisheries and ferries as well.

Reasons for inclusion

A number of Writ Petitions have been filed against the amendment before Patna High Court. The landlords may go on filing further Writs with a view to defeat the provision of the Act and cause revenue loss to the State. The parent Act i.e. the Bihar Land Reforms Act, 1950 has already been included in the Ninth Schedule. Hence it is essential to include Act 11 of 1990 also in the Ninth Schedule in public interest.

2. The Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 1987 (Bihar Act 21 of 1987).

The principal Act *i.e.* the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 provides for fixation of ceiling, acquisition of surplus land and its distribution, restriction on sub-letting and resumption of land by raiyat for personal cultivation.

The Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 1987 (Act 21 of 1987 which is proposed for inclusion provides for the hierarchy of tribunals under Article 323—B of the Constitution including the Constitution of the Bihar Land Reforms Tribunal for adjudication or trial of any dispute or complaint with respect to matters concerning ceiling law. The jurisdiction of all courts except that of Supreme Courts under Article 32 and 136 of the Constitution has been excluded.

Reasons for inclusion

Sections 53(3), 54, 55 and 59 of the Act have been declared as *ultra vires* the Constitution by the Patna High Court which observed that provisions regarding setting up of Tribunal affected the Constitutional authority of the High Courts and therefore these were beyond the legislative competence of the State Legislature. The State Government has gone in for appeal in Supreme Court. However, the State Government considers it necessary to include the Act in the Ninth Schedule which is closely related to the parent Act *i.e.* the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 which alongwith other subsequent Amendment Acts has already been included in the Ninth Schedule. The inclusion of this law in the Ninth Schedule would at least insulate it from being challenged on the ground of fundamental rights which if challenged would further hamper the cause of land reforms and frustrate the State Government's policy of effective implementation of the law and quick disposal of land ceiling cases.

3. The Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (Bihar Act 22 of 1956).

4. The Bihar Consolidation of Holdings and Prevention of Fragmentation (Amendment) Act, 1970 (Bihar Act 7 of 1970).

5. The Bihar Consolidation of Holdings and Prevention of Fragmentation (Amendment) Act, 1973 (Bihar Act. 27 of 1975).

6. The Bihar Consolidation of Holdings and Prevention of Fragmentation (Amendment) Act, 1981 (Bihar Act 35 of 1982).

The parent Act 22 of 1956 *i.e.* the Bihar Consolidation of Holdings and

Prevention of Fragmentation Act, 1956 provides for amalgamation of smaller fragments of land so as to create bigger plots of agricultural land in the State of Bihar. The procedure involved in the process of implementation of the Act envisages exchange of parcels of land between the different raiyats of the village. This entails the necessity of giving legal status to transfer of ownership of land at the end of the operation. Under the framework of this Act there exists a hierarchy of courts from village level to the State level. The jurisdiction of the civil courts in so far as the matter of title in land is concerned has been ousted. Apart from this, the Act provides for abatement of all cases pending in civil courts to the courts under the Consolidation Act as soon as a village is notified under Section 3 of the Act.

Act 7 of 1970 provides for preparation and acceptance of record of rights before consolidation.

By the amendment Act of 1975 all the courts exercising jurisdiction for disposal of cases under the Act were given the status of civil courts in certain matters. Other amending Act 35 of 1982 also has a bearing on the provisions of the principal Act. The three amending Acts have been enacted to strengthen the parent Act and make it more effective and purposeful.

Reasons for inclusion

The part of the Act which envisages exchange or transfer of parcels of land between the different raiyats of the village is vital and requires constitutional protection as it involves giving legal status to transfer of ownership of land at the end of the operation. The provision of exclusion of the jurisdiction of civil courts and abatement of the cases pending in civil courts along with some other provisions were challenged in the Patna High Court which observed that Sections 4(b), 4(c), 15 and 37 of the Act were *ultra vires* the Constitution. An appeal has been filed by the State Government in the Supreme Court which has stayed the operation of the order and has also made the stay order absolute.

In view of the above and the fact that the implementation of the Act has its own advantages leading to increased agricultural production with minimum managerial cost and efforts, the State Government considers it necessary to include the Principal Act as well as the amending Acts in the Ninth Schedule.

7. The Bihar Privileged Persons Homestead Tenancy Act, 1947 (Bihar Act 4 of 1948).
8. The Bihar Privileged Persons Homestead Tenancy (Amendment) Act, 1970 (Bihar Act 9 of 1970).
9. The Bihar Privileged Persons Homestead Tenancy (Amendment) Act, 1989 (Bihar Act 11 of 1989).

The Bihar Privileged Persons Homestead Tenancy Act, 1947 (Act 4 of 1948) *i.e.* the principal Act provides for acquisition of permanent tenancy rights by a certain class of tenants known as privileged persons on certain kinds of raiyat lands. Thus, a privileged person is the one who, besides his homestead holds either no land or holds land not exceeding one acre under some other persons and is liable to pay rent to him. Such person becomes privileged tenant. According to the provisions of this Act, if any privileged tenant has held such homestead at any time continuously for a period of one year, he is deemed to have acquired permanent tenancy, and protection is extended to him against ejection, payment of rent and other allied matters. By 1970 amendment, all the privileged tenant's holdings have also been declared to have vested in the State and settled with the privileged tenant directly under the State and the former raiyats, landlords are entitled to some compensation only. The other amendment Act 11 of 1989 also has a bearing on the provisions of the principal Act.

Reasons for inclusion

Providing security of tenancy to privileged homestead tenants is an important objective of land reform. On this account it is considered desirable to extend the protection of Ninth Schedule of the Constitution to the provisions of the principal Act together with its amendment Acts of 1970 and 1989 which are closely related to the parent Act.

KARNATAKA

10. The Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) (Amendment) Act, 1984 (Karnataka Act 3 of 1984).

The Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 *i.e.* the principal Act provides for prohibition of transfer and restoration of certain lands granted by the Government to persons belonging to the Scheduled Castes and Scheduled Tribes. This Act has already been included in the Ninth Schedule.

In the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) (Amendment) Act, 1984 (Karnataka Act 3 of 1984), which is proposed to be included, a provision for an appeal against the orders of the Assistant Commissioner has been made in Section 5A. According to this provision, any person aggrieved by an order passed after the commencement of the amendment Act, 1984, may, prefer an appeal to the Deputy Commissioner having jurisdiction within a period of three months from the date on which the order was communicated to him.

Reasons for inclusion

Since the relief of an appeal was not made available in respect of orders passed before the commencement of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) (Amendment) Act, 1984, it is necessary to include this Act in the Ninth Schedule to the

Constitution to protect it from being challenged in the courts on the ground of infringement of fundamental rights. The parent Act already stands included in the Ninth Schedule.

KERALA

11. The Kerala Land Reforms (Amendment) Act, 1989 (Kerala Act 16 of 1989).
12. The Kerala Land Reforms (Second Amendment) Act, 1989 (Kerala Act 2 of 1990).

The Kerala Land Reforms Act, 1963 *i.e.* the principal Act is a comprehensive legislation relating to land reforms in the State. This Act has already been included in the Ninth Schedule.

The expression 'Karaima' means a transfer of lands situated in the Kozhikode district or in the Ponnani taluk of the Mallapuram district, in consideration of ground rent, principally for the purpose of erecting a homestead and described as Karaima in the document, if any, evidencing the transfer.

The 1989 Amendment Act which is proposed for inclusion mainly provides for the following:

- (1) Karaima holders who are experiencing difficulties due to the limited size of their holdings get tenancy rights in respect of the land adjoining the karaima and in the possession of the karaima holder. The interest of the tenants whose leases are governed by Madras Aliasanthana Act, 1949 are protected.
- (2) Provision is made for payment of Kudikidappukaran's share of the purchase price from the Kudikidappukar's Benefit Fund.
- (3) The cultivating tenants who hold one hectare or less land are exempted from paying purchase price.
- (4) Power is conferred on the Taluk Land Board to review a ceiling case when such review is considered necessary on the ground that its decision was made by collusion or fraud or suppression of material facts.
- (5) Objection raised by the Reserve Bank of India against issue of bonds for the payment of compensation to the private trust or endowment are removed.

The other Act proposed for inclusion is of 1990 which provides for the establishment of a State Land Reforms Tribunal. Since the parties often moved the High Court against the final order passed in an appeal against the order of the Land Tribunal, or against the final orders of the Land Board and Taluk Land Boards to escape surrender of surplus lands, the delay in deciding these cases is a serious impediment in the taking over and distribution of surplus lands. With the establishment of State Land Reforms Tribunal as envisaged in Act

2 of 1990 it could deal with cases coming under section 103 of the Act expeditiously.

Reasons for inclusion

The parent Act and other amendments thereto have been included in the Ninth Schedule. The protection is necessary to the 1989 Act and to 1990 Act against their being challenged on the grounds of violation of fundamental rights conferred by Part III of the Constitution.

No instance of challenge of any of the provisions of the above two amendment Acts before a court of law for infringement of any fundamental rights has come to the notice of the State Government but in the circumstances mentioned above the amendment Acts need to be included in the Ninth Schedule to remove all possible impediments in the implementation of land reform measures in the State.

ORISSA

13. The Orissa Land Reforms (Amendment) Act, 1989 (Orissa Act 9 of 1990).

The Orissa Land Reforms Act, 1960 i.e. the principal Act relates to agrarian reforms and land tenures and has already been included in the Ninth Schedule to the Constitution.

The Orissa Act 9 of 1990 which is proposed for inclusion was enacted to amend Section 52 of the principal Act. The ceiling provisions of the Orissa Land Reforms Act, 1960 could not be implemented in certain areas of the State as the survey and settlement operations in these areas were not finalised and record-of-rights were not available. In some such unsurveyed areas, the settlement operations have been finalised and record-of-rights published. But there is no provision in the Act under which persons of such areas having land in excess of the ceiling as per record-of-rights can file return, since the time limit prescribed in Section 40-A or Section 40-B for submission of such return has expired. If the revenue officers initiate suo-moto proceedings under Section 42 of the Act in these areas the persons holding surplus land will get 50% of the amount of compensation in respect of surplus areas for no fault of theirs.

The Act, therefore, provides opportunity to the ceiling surplus land holders of these areas to file return under Section 40-A and to enable them to avail of full compensation.

Reasons for inclusion

The Act is a progressive legislation which extends the applicability of the Orissa Land Reforms Act, 1960 to some more areas of the State. Though, the amendment Act has received the President's assent under Article 31A yet it is apprehended that this may not debar the courts from examining the validity of the Act on the ground that it is inconsistent with or takes away or abridges any of the rights conferred by any provisions of Part III

of the Constitution. The principal Act already stands incorporated in the Ninth Schedule.

RAJASTHAN

14. The Rajasthan Tenancy (Amendment) Act, 1979 (Rajasthan Act 16 of 1979).

The Rajasthan Tenancy Act, 1955 *i.e.* the parent Act relates to tenancies of agricultural land. The Act already stands included in the Ninth Schedule.

The Rajasthan Tenancy (Amendment) Act, 1979 which is proposed for inclusion inserted a new section 15 AAA in the Rajasthan Tenancy Act, 1955 conferring Khatadari rights on tenant in the Canal Project Areas. Section 15 AAA provides that the rights of such classes of tenants as had heritable and transferable rights in the land in Rajasthan Canal Project Areas shall be recognised as Khatedar tenants for all purposes of this Act.

15. The Rajasthan Colonisation (Amendment) Act, 1987 (Rajasthan Act 2 of 1987).

16. The Rajasthan Colonisation (Amendment) Act, 1989 (Rajasthan Act 12 of 1989).

The Rajasthan Colonisation Act, 1954 *i.e.* the parent Act makes provisions for the colonisation and administration of lands in the State. The Act stands incorporated in the Ninth Schedule.

The Rajasthan Colonisation (Amendment) Act, 1984 provides for validation of certain transfer and declarations of consent to transfer within a prescribed period. This Act already stands included in the Ninth Schedule. The period stipulated in the 1984 amendment Act has been extended by the Rajasthan Colonisation (Amendment) Act, 1987 (Act 2 of 1987) and the Rajasthan Colonisation (Amendment) Act, 1989 (Act 12 of 1989) which are now proposed for inclusion.

Reasons for inclusion

Sometimes while filing writ petitions challenging such laws, the litigants deliberately avoid the assertion that these amending laws purport to give effect to the policy of the State contained in clauses (a), (b) and (c) of Article 39 of the Constitution and therefore the Constitutional protection to such laws provided under Article 31-C does not become available. Though, the right to property is not a fundamental right, yet the petitioners invoke the power of judicial review of the High Court and Supreme Court on the ground of violation of fundamental rights provided under Article 14. Therefore, to avoid such type of litigation and harassment of the State and to have additional benefit of validation of the existing sections and laws it seems necessary to have wide Constitutional protection of Article 31-B by including the Rajasthan Tenancy (Amendment), Act, 1979 (Act 16 of 1979), Rajasthan Colonisation (Amendment)

Act, 1987 (Act 2 of 1987) and the Rajasthan Colonisation (Amendment) Act, 1989 (Act 12 of 1989) in the Ninth Schedule. The parent Acts already stand included in the Ninth Schedule.

TAMIL NADU

17. The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Amendment Act, 1983 (Tamil Nadu Act 3 of 1984).

18. The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Amendment Act, 1986, (Tamil Nadu Act 57 of 1986).

19. Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Amendment Act, 1989 (Tamil Nadu Act 30 of 1989).

The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 i.e. the parent Act provides for fixation of ceiling on agricultural land holdings, acquisition of ceiling surplus land and distribution of such land to landless and other rural poor. This Act has been included in the Ninth Schedule.

The Act 3 of 1984 provides for a Special Appellate Tribunal under Article 323-B of the Constitution by name. 'The Tamil Nadu Land Reforms Special Appellate Tribunal', so as to speed up the implementation of the Land reform measures in the State. The Special Appellate Tribunal is vested with powers to hear appeals and revisions against the orders passed by the land Tribunals under the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 and to omit the existing provisions providing for appeals and revisions to the High Court. The Special Appellate Tribunal will also have revisionary powers against any proceedings of the Land Board and Land Commissioner. Under this Act, the Authorised officer, Land Board, Land Tribunal, Land Commissioner and Special Appellate Tribunal constitute the hierarchy of Tribunals for purposes of clause (3) (a) of Article 323-B of the Constitution.

The Act 3 of 1984 was amended by Act 57 of 1986. According to this Amendment Act, the Special Appellate Tribunal consists of a Chairman, a Vice Chairman, and a Member (either judicial or administrative) appointed by the Government after consultation with the Chief Justice of the High Court. The qualifications of the Chairman, Vice Chairman and Member, their age-limit, their terms and conditions of service and the power of the Special appellate Tribunal to summon persons to give evidence and produce documents have been specified in this Amendment Act.

The Act 3 of 1984 was further amended by Act 30 of 1989. In this amendment Act, the provision relating to appointment of Chief Secretary to Government as Chairman has been deleted and the Chairman, Vice Chairman and Member of the Special Appellate Tribunal have to be appointed by the Governor of the State in consultation with the Chief Justice of India.

Reasons for inclusion

A Division Bench of the Madras High Court has held on 25.10.91 that the Land Reforms Special Appellate Tribunal is not a substitute for the High Court and the High Court's power to issue writs will remain unimpaired in respect of land reforms cases also and that the State legislature has no power to infringe upon the High Court's power to issue writs under Article 226 of the Constitution. Consequent to this judgement the working of the Tribunal had become stand-still but in an appeal against this judgement, the Supreme Court has stayed the operation of the judgement pending final disposal of the case by the Supreme Court. However, in order that the Acts are not challenged on grounds of violation of fundamental rights it is necessary that these Acts get protection of Ninth Schedule so that other possible impediments in the implementation of land reforms measures are removed. Moreover, these Acts are closely related to the principal Act which has already been placed in the Ninth Schedule.

20. The Tamil Nadu Land Reforms (Fixation of Ceilings Land) Second Amendment Act, 1987 (Tamil Nadu Act 4 of 1988).

Prior to the amendment effected through the Tamil Nadu Act 4 of 1988, the maximum amount of fine was prescribed as Rs. 200/- in Sections 85 and 86, Rs. 1000/- in Sections 87,88,89 and 91 and Rs. 500/- in section 90. These amounts were found to be meagre and as such the amount of fine was enhanced to Rs. 2000/- through the enactment of this legislation.

Reasons for inclusion

As this is also an important Act, it needs to be included in the Ninth Schedule to the Constitution.

Though the validity of this amendment Act has not been challenged in the court of law on grounds of infringement of any fundamental rights, yet it is felt that since this is an important Act and the parent law has already been incorporated in the Ninth Schedule, it needs to be protected so as to avoid challenging its validity on grounds of violation of fundamental rights.

WEST BENGAL

21. The West Bengal Land Reforms (Amendment) Act, 1981 (West Bengal Act 50 of 1981).

The West Bengal Land Reforms Act, 1955 *i.e.* the principal Act relates to land tenure consequent on the vesting of all estates and certain rights in the State and it also consolidates the law relating to land reforms. The Act has been included in the Ninth Schedule.

The West Bengal Land Reforms (Amendment) Act, 1981 (Act 50 of 1981) which is proposed for inclusion is regarding bringing, under purview of definition of land, non-agricultural lands hitherto not termed as "land" and also persons holding non-agricultural land under purview of definition

of raiyats. Some additional restrictions on conversion and change of character of land have been made *vide* section 4(4) and section 4B of the parent Act. Transfer of agricultural or horticulture land within urban agglomeration has been regulated. The rights of sharecroppers have been strengthened by conferring right of preemption in case of transfer of land.

Reasons for inclusion

These amendments are being vigorously challenged in a large number of writ petitions. So, inclusion of this Act in the Ninth Schedule is necessary to remove uncertainty caused by prolonged litigation in the field of land reforms.

22. The West Bengal Land Reforms (Amendment) Act, 1986 (West Bengal Act 5 of 1986).

Sub-section (2) of section 1 of the parent Act has been amended to include within the ambit of the Act areas newly included in the Calcutta Municipal Corporation.

23. The West Bengal Land Reforms (Second Amendment) Act, 1986 (West Bengal Act 19 of 1986).

Section 2 of the parent Act has been amended by introducing a new clause 13 defining the expression "Scheduled Tribe".

A new section 14HH has also been added by this amendment Act to enable a raiyat belonging to a Scheduled Tribe to move any court exercising appellate or revisional jurisdiction to set aside the sale of the land in execution of a decree in cases where the sale is in favour of a person not belonging to a Scheduled Tribe.

24. The West Bengal Land Reforms (Third Amendment) Act, 1986 (West Bengal Act 35 of 1986).

This Act contemplates improvement in working of West Bengal Land Reforms (Amendment) Act, 1981. One of the basic objectives of the 1981 amendment Act was to fix the date of vesting of all rights and interests of all non-agricultural tenants and under-tenants within the meaning of the West Bengal Non-agricultural Tenancy Act, 1949, as on the 9th September, 1980 that is the date on which the West Bengal Land Reforms (Amendment) Act, 1981 was introduced as a Bill in the State Assembly. Section 3A of the principal Act was also amended by the 1981 Act to exclude the lands to which the Calcutta Thika Tenancy (Acquisition and Regulation) Act, 1981 applies and to amend section 14 of the principal Act to exclude from its purview "vacant land" defined under the Urban Land (Ceiling and Regulation) Act, 1976. These amendments were intended to avoid application to a land, of more than one Act under which rights and interests in land may vest in the State. Also, certain new sections *viz.* Section 4B, 4D were inserted by the 1981 Act in the West Bengal Land Reforms Act, 1955 which were made effective retrospectively from 7th August, 1969 according to which transfer, conversion, alteration in area or

change in the use of land without obtaining permission from the Collector has been made punishable. The amendments made by Act 35 of 1986 intended to ensure that a transfer, conversion, alteration in area, or change in the use of land if made lawfully by the raiyats in accordance with the provisions of any law for the time being in force do not come within the purview of the said sections so that a person who acted bonafide and in accordance with any law for the time being in force does not suffer.

25. The West Bengal Land Reforms (Amendment) Act, 1989 (West Bengal Act 23 of 1989).

West Bengal Land Reforms (Amendment) Act, 1989 contemplated incorporation of the provisions of West Bengal Land Reforms (Amendment) Ordinance, 1989. Section 21D of the parent Act was amended by this Act to remove ambiguity in the procedure for recording names of the bargadars.

Reasons for inclusion

The main purpose of the parent Act and the amendments thereto is to further the cause of land reforms. All the above five amendment Acts are closely correlated with the parent Act which has already been included in the Ninth Schedule. The correlation is so close that now the original provisions and the amendments are hardly separable. The amendments are of such nature that if they are struck down or even stayed in litigation the parent Act will become largely ineffectie and implementation of State policy will be jeopardised. The provisions of the amendment Acts are under challenge before the High Court in a large number of writ petitions and practically all the Sections of these Acts have been repeatedly challenged. Any challenge on Constitutional grounds, even if frivolous has the tendency of greatly slowing down the implementation of laws. If the Acts are placed in the Ninth Schedule, they will cease to be exposed to at least some of the challenges.

26. The West Bengal Land Reforms (Amendment) Act, 1990 (West Bengal Act 24 of 1990).

This Act enables the raiyat to mortgage his land by deposit of title deeds in favour of a scheduled bank, financial corporations etc. for obtaining loan or financial assistance for non-agricultural purposes besides for the development of land or for improvement of agricultural production. The Act also requires raiyat, holding land exceeding ceiling area, to first retain within the ceiling area the land which he has mortgaged and other areas free from mortgage to vest in the State.

Reasons for inclusion

(1) The Principal Act along with its amendments constitutes an integrated package in the field of land reforms. The Principal Act as also most of the amendments have already been included in the Ninth Schedule to the Constitution. Similar protection to this Act is considered necessary.

Unless this Act is also included, the amended Sections which are crucial to the Principal Act will in effect be deprived of the protection they now enjoy. Also, if it is included in the Ninth Schedule at least some of the challenges to it on the ground of constitutionality will go and thus implementation of land reforms in the State would be easier to that extent.

(2) It has become a common practice these days to challenge each and every amendment to the West Bengal Land Reforms Act before the High Court in Calcutta as ultra vires the Constitution and a very large number of rules have been issued by the said court on such prayers, often staying the operation of specific provisions of law. Inclusion of the Act in the Ninth Schedule may prevent to some extent at least such obstructive challenges, which greatly impede the implementation of land reforms.

(3) The Act may be challenged as violative of Article 14 of the Constitution as it restricts the rights of free option to retain land by raiyats a part of whose holding is mortgaged to a Bank, while no such restriction exists for other raiyats. It may also be challenged on other grounds which are difficult to foresee.

27. The West Bengal Land Reforms Tribunal Act, 1991 (West Bengal Act 12 of 1991).

The Act under Sections 4 and 15 provides for establishment of Regional Land Reforms Tribunal(s) at district/area level and Special Land Reforms Tribunal for the State in pursuance of Article 323B of the Constitution for adjudication or trial of cases relating to land reforms. The main objective of enacting this law is to expedite the disposal of cases relating to land reforms by Tribunals which otherwise remain pending with the Courts and other authorities for years together for decision. This delay frustrates the very objective of land reforms.

Reasons for inclusion

(1) Land Reforms is an accepted priority area in the national perspective but quite often the very purpose of the laws in the field are defeated by time consuming and costly litigations to the detriment especially of the rural poor. In the High Court of Calcutta alone, thousands of cases relating to land reforms are pending. The Act, therefore, ensures speedy justice to the poorer section of the community in respect of land reform cases.

(2) The grounds for pleas before the Court for striking down the provisions of a particular Act cannot be anticipated fully. However, it is a common practice for some sections of the people to challenge on various grounds each and every law as ultra vires the Constitution before the High Court. As the rules issued by the High Court are often accompanied by injunction orders and as they take considerable time for disposal, progress of land reforms is hampered. It is apprehended that this Act may also be challenged in a similar manner and also as violative of various provisions

of the Constitution as it excludes the jurisdiction of the High Court and other Courts and limits the scope of appeals. While the challenge may not be successful but such challenges can be minimised to some extent if the Act is included in the Ninth Schedule.

(3) Other laws relating to land reforms have already been included in the Ninth Schedule to the Constitution and this Act being an important step towards land reforms, the same needs to be included.

APPENDIX III

MINUTES OF THE FIFTH SITTING OF THE COMMITTEE ON URBAN AND RURAL DEVELOPMENT ON 12TH MAY, 1994.

The Committee sat from 9.30 hrs. to 11.00 hrs.

PRESENT

Shri Prataprao B. Bhosale—*Chairman*

MEMBERS

2. Shri B. Gangadhara
3. Shri Dharma Biksham
4. Shri Karia Munda
5. Shri K.M. Mathew
6. Shri Ram Singh Kashwan
7. Shri Surendra Pal Pathak
8. Shri Sudhir Giri
9. Shri Sajjan Kumar
10. Shri Shri Thennala Balkrishna Pillai
11. Shri Nagmani
12. Prof. Vijay Kumar Malhotra

SECRETARIAT

1. Shri G.R. Juneja—*Deputy Secretary (EPU)*
2. Shri C.S. Joon—*Assistant Director*

At the out set the Chairman explained that the Constitution (Eighty First Amendment) Bill, 1994 had been referred to the Standing Committee by Hon'ble Speaker, Lok Sabha for examination and to report to Parliament. The Bill seeks to include certain Acts pertaining to Land Reforms of various State Governments in the Ninth Schedule to the Constitution.

2. The Committee after considering the Bill decided that in the first instance the Ministry of Rural Development should be requested to prepare and furnish a brief alongwith Comments of the concerned State Governments on the said Constitution Amendment Bill.

3. *The Committee then adjourned.*

APPENDIX IV

MINUTES OF THE TENTH SITTING OF THE COMMITTEE ON URBAN & RURAL DEVELOPMENT ON 23RD AUGUST, 1994

The Committee sat from 15.00 hrs. to 15.45 hrs.

PRESENT

Shri Prataprao B. Bhosale — *Chairman*

MEMBERS

2. Shri J. Chokka Rao
3. Shri Dharma Biksham
4. Shri Karia Munda
5. Shri Ram Singh Kashwan
6. Shri Girdhari Lal Bhargava
7. Shri N. Sundararaj
8. Shri Surendra Pal Pathak
9. Shri Devi Bux Singh
10. Shri Ram Pal Singh
11. Shri Thennala Balkrishna Pillai
12. Shri Sangh Priya Gautam
13. Prof. Vijay Kumar Malhotra

SECRETARIAT

1. Shri S.C. Gupta — *Joint Secretary*
2. Shri G.R. Juneja — *Deputy Secretary*

WITNESSES

Ministry of Law & Justice

1. Dr. Sanjay Singh — *Asstt. Legislative Counsel*

Ministry of Rural Development

1. Shri B.N. Yugandhar — *Secretary*
2. Shri Ashok Jaitly — *Additional Secretary*
3. Shri M. Shankar — *Joint Secretary*
4. Shri Shivraj Singh — *Joint Secretary*
(Land Reforms)
5. Shri Sukumar Das — *Director (Land Reforms)*
6. Shri R.K. Upadhyay — *Asstt. Commissioner*
(Land Reforms)
7. Shri G.B. Upadhyay — *Research Officer*

2. At the outset, the Chairman welcomed the representatives of the Ministry of Rural Development and Ministry of Law & Justice. The Secretary, Ministry of Rural Development then gave a general introduction of the Bill. He stated that the said Constitution Amendment Bill seeks to include 27 Acts/Amendment Acts of respective State Governments in the Ninth Schedule of the Constitution. Amongst these Acts, all are amendments to the Principal Act which are already in the Ninth Schedule excepting three bills namely, The Bihar Privileged Persons Homestead Tenancy Act, 1947; The Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956; and The West Bengal Land Reforms Tribunal Act, 1991. These Acts which relate to land reforms are proposed to be included in the Ninth Schedule so as to ensure that implementation of these Acts is not adversely affected by litigation. Since the Amendment to acts which are already placed in the Ninth Schedule are not automatically immuned from legal challenge, the Bill proposes to include 29 Amendment Acts also in the Ninth Schedule.

3. A verbatim record of the evidence was kept.

4. The Committee thereafter considered the Bill and approved the same without any recommendation for amendment.

5. *The Committee then adjourned.*

APPENDIX V

EXTRACT OF THE MINUTES OF THE ELEVENTH SITTING OF THE COMMITTEE ON URBAN AND RURAL DEVELOPMENT ON 6TH SEPTEMBER, 1994

The Committee sat from 15.00 hrs. to 17.30 hrs.

PRESENT

Shri Prataprao B. Bhosale—*Chairman*

MEMBERS

2. Dr. Y.S. Rajsekhar Reddy
3. Mohd. Ali Asraf Fatmi
4. Shri Shailandra Mehto
5. Shri K.M. Mathew
6. Shri P.D. Chavan
7. Shri Girdhari Lal Bhargava
8. Shri P.P. Kaliaperumal
9. Shri N. Murugesan
10. Shri Surendra Pal Pathak
11. Shri Gulam Mohammad Khan
12. Shri P.R. Kumaramangalam
13. Shri Maruti Deoram Shelke
14. Shri Ram Deo Bhandari
15. Shri B.K. Hariprasad
16. Shri Nilotpal Basu
17. Shri Shiv Prasad Chanpuria
18. Shri Sangh Priya Gautam
19. Shri Debabrata Biswas
20. Shri Jagmohan
21. Smt. Mira Das
22. Shri S. Dronamraju

SECRETARIAT

1. Shri G.R. Juneja — *Deputy Secretary (EPU)*
2. Shri C.S. Joon — *Assistant Director*

2. The Committee first considered the draft Report on 'The Constitution (Eighty First Amendment) Bill, 1994 and adopted the same without any change/modification.

3. The Committee thereafter took oral evidence of the representatives of Ministry of Rural Development on the subject 'Rural Housing'.

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4. *The Committee then adjourned.*