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IMPACT ON LAND REFORM LAWS AFTER THE INTRODUCTION OF BASIC STRUCTURE DOCTRINE

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I. ABSTRACT

We had Article 31 and 19(1)(g) before the 44th Amendment, which gave the fundamental right to property. This was later on removed by the aforesaid Amendment. Having Article 31, the first Amendment brought in Article 31A and 31B, by which the land reform acts were given protection from the fundamental rights guaranteed under article 14 and 19. After the introduction of the doctrine of basic structure, Article 31A and 31B being a part of part III could also be considered as a part of the basic structure. But the very same article gives provisions to override the right to equality and freedom. Isn't it a clash? This clash was settled by the nine-judges bench by the judiciary. In this article, the constitutional provisions which relates to right to property is discussed along with the impact of the basic structure doctrine in ninth schedule with a jurisprudential point of view.

II. KEYWORDS:

Article 31A and 31B, land reforms act, Basic Structure Doctrine, Zamindari system

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III. INTRODUCTION

The land reforms in India, after Independence, had to go in accordance with the constitutional provisions, especially the fundamental rights conferred under the Indian Constitution, Part III. Article 13 of Indian Constitution, clearly says that whether it is a post Constitutional or pre constitutional law, it has to go in consistence with the part III and if it is inconsistent, to the extent of inconsistency, the act would be null and void. Right to property as stated by Cicero³, being one of the natural rights of people, which is inherent in nature and also, inalienable, was placed as a fundamental right in the Indian Constitution initially. And so, the land reforms act was to some extent infringing right to law and equality before law and other fundamental rights mentioned under Part III of Indian Constitution. Thus, the introduction of 9th schedule along with Article 31A, 31B, and 31C, gave the space of freedom for the state to enact such laws which violates constitutional provisions, and only for the sake of public welfare. Later on, it was made as a Constitutional Right⁴ through 44th Constitutional Amendment Act.

This act was brought to support land reforms whereby the government acquired private property for the welfare of the public and such acquisition through a legal act, is also legal. But the clarity needed here is does this constitutional privilege given for land acquisition by the State excludes the judiciary from fulfilling its duty towards establishment of justice? By giving higher priority to public interest and welfare, is a basic human right to property⁵ is being abrogated by the state? If it is so, is it fair to do so? If it is fair, to what extend can it be permitted? If such a defined line of permission is needed, is there no need of the judiciary who are the guardians of justice? A layman answer could be way different from a legal practitioner.

³ Arthur E. Wilmarth, Jr., 'Rethinking America's Cicero Connection, Law and Liberty' (Lawliberty, 17 October 2022) < <https://lawliberty.org/the-travails-of-james-wilsons-natural-law-jurisprudence> > accessed 6 August 2023

⁴ Constitution of India, 1950 Art. 300A

⁵ Universal Declaration of Human Rights, Article 17

The role of judiciary can be no where denied, and it is indeed the inbuilt concept of Indian Constitution which gave a check over the executive as well as the legislative by means of Judiciary through the Judicial Review Power vested upon the Judiciary. And that's where the judiciary ended with the end result of the Basic Structure Doctrine through the Kesavananda Bharati case⁶ in 1973. The doctrine very clearly explains that there can be no law or amendment which violates the basic structure of the Indian Constitution would be null and void. The question now is what comprises the basic structure of the Indian Constitution! This has been answered in the same case as well as in many subsequent cases, and it includes, rule of law, the Preamble, the Fundamental Rights, Democracy⁷, judicial review⁸, etc., 9th schedule is essentially excluded from the judicial review and now, judicial review is a basic structure of Indian Constitution. Will this entirely nullify the purpose of the 9th schedule for which it was introduced? Or are there any other exceptions? All these aspects as under the heading of impact of basic structure doctrine on 9th schedule, is analysed in this article in brief.

IV. SAVING CLAUSE FOR LAND REFORMATION LAWS

The Zamindari system which was one of the biggest hurdles for the Independent India to fight against was very progressively addressed by the Indian Constitution over a period of 30 years right from the implementation of the Constitution of India till the evolution of the doctrine of Basic Structure by the Judiciary. The Constitution, originally had right to property as a Fundamental Right guaranteed under Article 19 and 31. The very same Article 31, in its two clauses explains the concept of eminent domain which made a significant difference from that which was followed in America as well. Sub-clause 2 of Article 31, clearly mentions about the compensation which is to be rendered when the state acquires a person's private property for the public welfare and governance. As already the constitution is provided with this provision for land

⁶ *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461.

⁷ *Ibid.*

⁸ *Indra Nehru Gandhi v. Raj Narain*, AIR 1975 SC 2299; *Chandra Kumar v. Union of India*, AIR 1997 SC 1125

acquisition, on a rough reading of the Constitution, one might come to the question as why is there any need for the insertion of Article 31A and 31B through the first Constitutional Amendment Act, 1951 along with the 9th schedule through the virtue of Article 31B.

It's need in envisaged as a result of various cases, as that one dealt by the Patna High Court in 1952, in the case of Kameshwar vs. State of Bihar, where the Bihar Land Reforms Act was held to be unconstitutional as it was violative of Article 14, whereby the right to equality was denied among the Zamindaris in the advent of land acquisition by the government. But, still the Parliament, in order to overrule the judgment administratively, they made the land reforms act which had their object towards agrarian reformations, to be excluded from the purview of the Fundamental Rights enshrined under Article 14 and 19, whereby the state is provided with the advantage to enact law, provided if it is for the agrarian reformations, it would be protected by Article 31A and the same would be placed under the 9th schedule which prevents the judicial review of the act under the light of right to freedom guaranteed under Article 19 of Part III of Indian Constitution. Article 31A, 31B and 31C gave a broader range of Constitutional Protection for laws affecting the property rights of people.

Table 1: Historical Timeline of Art 31A and 31B

<i>Year</i>	<i>Amendment</i>
1951	First Constitutional Amendment Act, inserted Article 31A, 31B and Nineth Schedule of Constitution of India.
1955	Fourth Constitutional Amendment Act, brought in changes in Article 31A whereby the scope of the Article was extended from mere acquisition of estates to acquisition of management of the same. It also extended the definition of the term estate to include the raiyat and under-raiyat lands.
1964	the Seventeenth Constitutional Amendment Act, inserted the second proviso for Article 31A whereby, provisions for compensations for the

	cultivating lands which come under the land ceiling, when acquired by the state would be compensated. At the same time, the term estate was defined with a wider meaning.
1978	the Forty-fourth Amendment Act, made it clear that the law protected under article 31A would not be questioned on the grounds of Article 14 and 19.
<i>Source: Computed</i>	

From the above given table, it can be very clearly stated that, initially Article 31A which was brought in for saving the agrarian land reforms, through land acquisition was protected from not falling into the umbrella of Article 14, 19 and 31. As initially, right to property was a Fundamental Right, the article 31A very clearly included Article 31 also in it. Later the mentioning of Article 31 was removed as the same Article was removed through 44th Constitutional Amendment Act in the year 1978. Meanwhile, to increase the ambit of the term estate and to protect the interest of the landholder, the Article was amended again and again and now it covers any acquisition or requisition or modification or termination of the estate itself by the state or any right enshrined to it. The term estate is defined based on the local reference to the term estate, and it has to be decided by act to act and case to case. The term rights include, *jagir, janmam*, etc., as it is explicitly mentioned in the Article itself.

Article 31B though initially it was only for the property related laws that too which pertains to the existing agrarian reforms, later the article's scope and ambit was expanded in such a way that non-agrarian laws were also put under Schedule Nine in order to exclude the judicial review scope of the Judiciary. Though Article 31B is independent of Article 31A, they are both are to read together when it comes to agrarian reformations. The term agrarian reforms have also been extended in such a way that it not only includes the abolition of the Zamindari System but also, it includes the rural development-oriented laws as well. Though these are needed for the upholding of the public interest

and welfare of the weaker sections of the society, which is the main feature of a welfare state, the same privilege at some point be detrimental to the constitutionalism that the Indian Constitution has incorporated. This was settled in the case of Kesavananda Bharati Case.

V. BASIC STRUCTURE DOCTRINE

The Kesavananda Case, famously said as the Fundamental Rights case, propounded the Basic Structure Doctrine, which states that the Constitution can be amended by the Parliament in such a manner that the basic structure of the Constitution is not affected. The eminent judges in the case have explained the components that comprise the basic structure of the Indian Constitution. The Indian Constitution is a product of various other constitutions in the world, learned advocates and judges, as well as other laws, customs and practices in India. Being the lengthiest Constitution in the world, the Constitution addresses every diversity of this country such as linguistic, cultural, religious, social, economic, educational and political diversities through its Fundamental Rights, Fundamental Duties, Directive Principles of State Policies, and yet other provisions which also defines the powers and functions of the three organs of the government.

In the case, the very essence of the Indian Constitution which is the democracy, parliamentary system and federalism along with the Fundamental Rights enshrined under Part III of the Constitution were also regarded the basic structure of the Constitution. This doctrine in one hand, enhances the supremacy of the Constitutional Law and this Rule of Law – Supremacy of the law of the land – is also a component in the Basic Structure of the Indian Constitution. This doctrine was further developed by other upcoming cases whereby the Judicial Review was inserted as a basic structure of the Indian Constitution by the Indira Gandhi Case⁹. This was reassured in the Administrative Tribunals case¹⁰.

⁹ *Indira Gandhi v. Raj Narain and Anr.*, 1975 AIR 865, 1975 SCR (3) 333.

¹⁰ *L Chandra Kumar vs. Union of India & Ors*, 1995 AIR 1151

As established by the Golaknath case¹¹ that article 13 includes Constitutional Amendments also and they are too subjected to the judiciary's power of judicial review, now it could be very clear that anything that is law under as mentioned under Article 13 is subjected to judicial review and no supreme authority can curb this right from the judiciary. Yet the Parliament's amendment to Article 13 which inserted Article 13(4) and made Constitutional Amendments outside the scope of the term 'law' as defined under Article 13. This has been addressed using the Basic Structure Doctrine whereby, any amendment made by the Parliament is subjected to the Basic Structure of the Constitution and if they are in violation of the same, it would be rendered unconstitutional. Now, the question to be addressed is whether the enactment of land reformation laws which violate the Fundamental Rights itself is void or insertion of same under schedule nine through an amendment would be rendered unconstitutional making such laws out of the scope of the protection provided under Article 31B. Such declaration would literally destroy the ultimate aim of the article being inserted through Constitutional Amendment. The court while addressing this toughest task in the case of IR Coelho vs. State of Tamil Nadu.

VI. JUDICIAL REVIEW OF LAND REFORM LAWS AFTER 1976

The constitutional amendments made on or after 24-04-1973¹², would be subjected to the test of constitutional validity based on the Basic Structure Doctrine.¹³ This ruling was in need of reconsideration to establish proper steps and procedure which was addressed by the court in the nine judges' bench in Coelho case¹⁴. The judgement went in favour of validating the Article 31B unless it goes in hand in hand with the Basic Structure of the Indian Constitution. If any such law is in such a way that it eradicates the basic structure of the Constitution, then such a law would be rendered unconstitutional and null and void. Thus, insertion of such law into the schedules of Constitution, is also null and void.

¹¹ *I C Golaknath and Ors v. State of Punjab*, 1967 AIR 1643

¹² *Waman Rao vs Union of India*, AIR 1981 SC 271

¹³ *Ibid.*

¹⁴ *IR Coelho (Dead) by LRs vs. State of Tamil Nadu and others*, AIR 2007 SC 861

This test as when a particular law affects the basic structure of the Constitution is decided based on the 'rights test', also known as the 'essential rights test'.

- *Rights Test*

The test is that the essence of the law is tested with its effects and consequences. In other words, rights test can be defined as the test which examines the law, on the basis of its impact on people's essential rights. If the consequences are in such a way that it destroys the Basic Structure of the Indian Constitution, then such a law would not pass the test and eventually that law becomes unconstitutional and hence void ab initio. If possible, the doctrine of severance could be used to sever at least a single part of the act and make it lawful for further enactment. But basically, if the ultimate substance of the act is in violation of the basic structure, then, the act would be null and void.

The question to be answered here would be that the fundamental rights under part III forms a part of the basic structure of the constitution and even Art 31A and Art 31B also. Thus, as per Article 31A and 31B will any law though it is violative of Article 14 and 19, will it be considered to be a valid law. If yes, is there no need of any limit over there. The rights test should play the role here. Because, when there is a conflict of interest provided by a right between the public and individual, the public right is considered than the individual right. Thus, if the essence of the law is in violation or abrogation of the public order and national interest, automatically, though it is protected under Article 31A and 31B, it would not be given shelter under ninth schedule. While delivering the judgement, the court had reference to various precedents and analysed the fact that the motive of introduction of ninth schedule was to secure land reformation acts majorly, where the public interest component is very high that it could not be nullified on the grounds of the individual's interest over his/her private property.

- *Retrospective Effect*

The judgement says¹⁵, there that any law added to ninth schedule after 1976 would be subjected to rights test. But there is no retrospective effect to the same. Giving retrospective effect would actually lead to a situation where, all the decided cases would be made a mere injustice, and such a retrospective effect would affect in framing a committee to revise all the existing laws in it which is once again a burden and more over its not needed. Because the bitter truth is that, we were in need of such a law which grabs the basic human right to possess property from an individual. On the other side, it is a sovereign reality that though there is a limited government and constitutionalism which pose certain limitations on the sovereign while exercising its duty, the doctrine of eminent domain plays its own role.

VII. JURISPRUDENTIAL POINT OF ANALYSIS

Now let us analyze this rights test with reference to two different schools of law. One is the Analytical or the Positive school of law which was founded by Jeremy Bentham and whose father is, John Austin.¹⁶ On the other side we take the Sociological school of law, which had its major proponent, Roscoe Pound who proposed that laws are based on the general will. As per the sociological school of law, the law which is in accordance with the public will, will be very much entertained by the society and only such a law would obtain the expected rate of success indeed. On the other hand, the analytical school of law, as proposed by John Austin, it visualizes law as a command of the sovereign. Here, regardless of the social practice, the command of the sovereign gains momentum and it is backed by sanctions by which, the sovereign checks the obedience of the subjects as well.

The basic structure doctrine enhances the supremacy of law which is the utmost proposal of the analytical school. In other terms, it is the rule of law which upheld the supremacy

¹⁵ *Ibid.*

¹⁶ Shankar Prasad S, "**Schools of Jurisprudence: A Critical Study**", International Journal of Emerging Technologies and Innovative Research (www.jetir.org), ISSN:2349-5162, Vol.6, Issue 3, page no.616-623, March-2019, <<http://www.jetir.org/papers/JETIREW06083.pdf>>

of the law of the land. On the other hand, by approving the validity of the Article 31A and article 31B, the general will be upheld whereby the public interest to redistribute the land resources in a proper way such that the poor will be benefited. Thus, this interpretation of the basic structure doctrine through the rights test is an interdisciplinary approach of both the analytical and sociological school, whereby the supremacy of the constitution as well as the general will of the public is upheld. Moving to the Natural School of law or the philosophical school of law, we have ancient philosophers such as Aristotle, Plato, Socrates, and Cicero, followed by St. Thomas Aquinas, Hobbes, Locke, etc., Plato argue that there must be more of collective ownership of property for the promotion of common good¹⁷. Natural school of law (Socrates), argues that law, though being God-made law (Divine Law) is their major argument, when made-made, is subjected to the human morals and instincts, or to the reasoned decision of man. Aristotle also argues the concept of ownership in the light of freedom which gives for one, the sense of responsibility and prudence towards his property.

Getting into the social contract theory scholars, Hobbes argue that there is no concept of 'mine' or 'thine' and everything is understood to be under the sovereign. Contrary to Hobbes, Locke came up with the argument of private ownership, yet he also makes the point of limited property in one's hand, with the statement that, nothing in this world is created God, for man to destroy it.¹⁸ In Utilitarian School of Law, as propounded by John Stuart Mill, communism in case of ownership is seen as a viable option. He countered critics of the collectivist ideal by pointing out that many of issues at current society is due to unequal distribution of property in real capitalist societies.¹⁹ Thus, we could come to an inference that, though private ownership is given an inevitable place when it comes to ownership and property, in the minds of jurists, common good plays an undeniable

¹⁷ Waldron, Jeremy, "Property and Ownership", The Stanford Encyclopedia of Philosophy (Fall 2023 Edition), Edward N. Zalta & Uri Nodelman (eds.), URL = <https://plato.stanford.edu/archives/fall2023/entries/property/>.

¹⁸ Analysis Of John Locke's Ideology About Property And Private Ownership. (2020, October 10). GradesFixer. Retrieved January 10, 2024, from <https://gradesfixer.com/free-essay-examples/analysis-of-john-lockes-ideology-about-property-and-private-ownership/>

¹⁹ *Ibid.*

role. Having apart whether every land belongs to the sovereign or not and whether the subjects are only given an estate under it²⁰, the question of fact to the answered and analyzed is as to whether this acquisition of land by the sovereign for the purpose of public welfare, perhaps under the doctrine of eminent domain, is for common will or individual gain.

VIII. CONCLUSION

Thus, the impact of Kesavananda Bharati case and the doctrine obtained out of the case, has explained a possible solution, whereby both the public will and the supremacy of the constitution, I.e., the individual interest has also been settled amicably. This essential approach towards constitution, gives path for the state to implement various directive principles of state policy, as listed under part IV of the Constitution. The characteristic of the welfare government is thus being achieved. But still, the utilization of the ninth schedule for laws other than agrarian reforms would be detrimental and this would lead to a loop of law. Because, when such an act is done, the very base of the entire ninth schedule, i.e., the public interest, would be lost. If suppose a law other than agrarian reforms is in need of such protection as it also carries public interest, a separate legislative measure has to be taken. Because, merger of the two would lead to ambiguity and lawlessness. The very essence of limited government as imposed by the Constitution of India would be a collapsed.

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